

**THE SECOND ROUND OF ANSWERS DATED 11 NOVEMBER 2013**

**CONCESSION FOR THE OPERATION AND MAINTENANCE OF THE CROATIAN MOTORWAYS**

NO.	QUESTION	ANSWER
25.	<p><b>Section 10.7.1 - Motorway operation and maintenance experience</b>  <b>Issue:</b> "ii. Structural maintenance services including the regular inspection of all type of assets, functional and material maintenance, the robustness and safety of the road surface and/or the engineering structures of the road network and all auxiliary assets and items of the road. "Structural maintenance" therefore includes the service areas of functional inspection, maintenance, reinforcement and renovation and the preservation of the substance of all assets under the concession."  <b>Clarification 1:</b> This paragraph is not fully understood. Is it referring to road pavement and bridge inspections, and its relation with heavy maintenance strategy? Please, provide further details about this matter.</p>	<p>The overall reason for the performance of structural maintenance services is the preservation of the substance of all assets under the concession and to guarantee the road safety on the concession network.</p> <p>Structural maintenance includes, <i>inter alia</i>, road pavement and bridge inspection or any other type of inspection activity required to guarantee the preservation of the substance of all assets under the concession. Structural maintenance includes functional and heavy maintenance and all associated concepts and strategies.</p>
26.	<p><b>Section 11 – Evaluation of RTPs and Selection of Candidates</b>  <b>Issue:</b> "all amounts indicated in a foreign currency shall be converted into Croatian Kuna by using the mean exchange rate of the Croatian National Bank applicable at the date of publication of the tender notice in the Electronic Gazette of Public Procurement of Republic of Croatia"  Clarification 1: Our understanding is that the date of publication of the tender notice is October 7<sup>th</sup>, 2013, however, there is no corresponding date on the CNB website, only October 6<sup>th</sup> and 8<sup>th</sup>. Can you clarify which date to use?  <b>Clarification 2:</b> For converting of financial statements for the past three years, which exchange rate should be used. The exchange rate of the final date of each of those three years? Please clarify.</p>	<p>1: The mean exchange rates of the CNB are the ones applicable on 7 October 2013, as published by the CNB on 5 October 2013.</p> <p>2: All amounts indicated in a foreign currency, including the amounts from the financial statements for the past three years, must be converted into Croatian kuna by using the exchange rate indicated above (answer to question No. 26 part 1).</p>
27.	<p><b>Financial statements</b>  We have noted in the clause 10.8.1 of the RTP documentation that <i>the Candidate shall provide audited financial statements for the most recent three full financial years for which such statements are</i></p>	<p>The Candidate must submit all relevant documents proving its capacity, including the audited financial statements for the most recent three full financial years, also translated into the Croatian language. In case the relevant information is contained in segments of the financial statements,</p>

	<p><i>available, including the consolidated balance sheet, income statement, statement of cash flows and the accompanying notes.</i></p> <p>Can you please confirm that, concerning the translation to Croatian language, it is possible to provide only pertinent passages of the financial statements translated (approximately 8 pages including consolidated balance sheet, income statement, statement of cash flows in our case) and not the entire financial statement (approximately 70 pages with accompanying notes in our case)?</p>	<p>the Candidate may provide only such segments and the accompanying translations. The Candidate will be liable for the accuracy, truthfulness and sufficiency of such information supplied, including the assumption that nothing in the parts of the financial statements not supplied in Croatian to the Concession Grantor contains information that is substantially different from the information supplied in Croatian, or information that qualifies the information supplied in Croatian in any way. The Concession Grantor may at any time in the course of the tender procedure at hand and also after the contract award during the performance of the Project require the Candidate/Selected Candidate/Bidder/Winning Bidder to submit the entire audited financial statements including a translation into Croatian language if it doubts the accuracy, truthfulness and sufficiency of the segments provided by the Candidate.</p>
28.	<p><b>Form 2.D.2 Independence statement</b></p> <p>We understand that, in case the Candidate is a consortium, the form 2.D.2 must be filled in and signed by every members of a consortium. Can you please confirm that we can produce as many 2.D.2 forms as there are members in the consortium and not one single form 2.D.2 signed by all the members?</p>	<p>This understanding is correct. The Candidate being a consortium may produce as many 2.D.2 forms as there are members in the consortium.</p>
29.	<p><b>Motorway Operator</b></p> <p>We understand from the documentation (clauses 8.3, 9.5.4 and 10.3) that a Motorway Operator has to be designated among the members of a consortium. Nevertheless, in the case a consortium gathers various major motorway operation companies enjoying unique experience and know-how and wishing to be involved in the future operation of the national Croatian motorway network, can a consortium designate more than one member as Motorway Operator for the purpose of the Project? In such a situation, those members can create a dedicated company as Motorway Operator and provide, if need be, the necessary support to this entity through their own qualifications and references.</p>	<p>In the case of a Consortium, either a member of the Consortium or a subcontractor must be duly designated as the Motorway Operator. The Consortium can designate only one member or subcontractor as the Motorway Operator. This one member or subcontractor can also be a special purpose corporation created by the various motorway operation companies with appropriate and sufficient experience and know how. Such special purpose corporation may prove its capacity by relying on the capacity of its shareholders, subcontractors or third parties in the manner set out in the Documentation. The restrictions for the replacement of the Motorway Operator after the award of the Concession Contract are, inter alia, set out in Section 8.3 (second paragraph) and Section 9.5.4 (last paragraph) of the Documentation.</p>
30.	<p><b>Point of contact</b></p> <p>In regards of the clauses 9.5.1 and 9.5.4, we understand that there can be more than one Authorized Representative in a consortium. Can you please confirm that, consequently, each and every Authorized Representatives constitute a point of contact?</p>	<p>There can be more than one Authorized Representative in a Consortium. Each and every Authorized Representative constitutes a point of contact for the Consortium. Any declaration made as well as any omission and action taken by the Concession Grantor and communicated to any of the Authorized Representatives will be deemed made to the Consortium and each of its members and each of them will be accountable for receipt of the</p>

		<p>same.</p> <p>If there is more than one Authorized Representatives they may represent the Consortium only jointly. Accordingly, any declaration made as well as any omission and action shall be binding on and accountable to the Consortium only if taken by all of the Authorized Representatives.</p>
31.	<p><b>Authorized representatives</b> According to clause 9.5.1, we understand that each member of the consortium is entitled to nominate more than one Authorized Representative in the Form 2.C.3. Can you please confirm our understanding?</p>	<p>Your understanding is correct.</p>
32.	<p><b>1.Please explain the concept of the Motorway Operator:</b></p> <p>a) For a consortium bidder, can a member of the consortium or a sub-contractor which is to be appointed as the Motorway Operator by the consortium rely on the capabilities of its shareholder, a third party and/or sub-contractor when proving the capacity pursuant to requirements concerning motorway operation and maintenance? If yes, can it rely on capacity of more than one such person (e.g. two shareholders, one shareholder and another third-party/partner or similar)?</p> <p>b) For a single entity bidder (i.e. Bid Co), does the answer to the above question (question a) apply here as well, i.e. can BidCo rely on the capabilities of its shareholders, a third party and/or sub-contractor, when proving the capacity pursuant to requirements concerning motorway operation and maintenance? If yes, can it rely on capacity of more than one such person (e.g. two shareholders, one shareholder and another third-party/partner)?</p> <p>c) In either case (i.e. notwithstanding whether the Consortium or the BidCo is a Candidate) can the Candidate rely on its sub-contractor's Professional Suitability (Section 10.6 (b) and (c)) for the purpose of satisfying relevant criteria, in situation in which none of the consortium members/BidCo will actually perform specific elements of the activities contemplated by the PQQ (i.e. operation and maintenance), but instead that would be done by the sub-contractor?</p> <p>d) Can more than one entity be the motorway operator?</p>	<p>1. a) The Candidates may rely on the capacity of other Economic Operators, including Consortium members, shareholders, subcontractors and third parties, to prove the required capacity, provided that each such Consortium member, shareholder, subcontractor and/or third party (i) proves relevant capacity pursuant to applicable requirements concerning motorway operation and maintenance, and (ii) submits the Form 2.D.3. signed by such shareholder, third party and/or subcontractor in its RTP. The Candidate can rely on the capacity of more than one such person (e.g., two shareholders, or one shareholder and another third-party/partner, or a similar combination).</p> <p>1. b) In the event the Candidate is a single Economic Operator, such Economic Operator will automatically be designated as the Motorway Operator and also shall be required to meet the minimum criteria set forth in the Documentation to qualify as a Motorway Operator. Such Candidate may rely on the capabilities of its shareholders, third parties and/or subcontractors.</p> <p>1. c) In such case the Candidate can rely on its subcontractor's Professional Suitability (Section 10.6 (b) and (c) of the Documentation).</p> <p>1. d) Only one entity can be designated as the Motorway Operator.</p> <p>2. As set out in Section 10.2 of the Documentation we confirm that a single entity bidder (a Bid Co) can also rely on the financial capacity of its shareholders and third parties.</p>

	<p><b>2.Evidence of financial requirement:</b>  <b>Section 10.8.1</b> (last sentence) refers only to the consortium acting as the Candidate – please confirm a BidCo can also rely on financial capacity of its shareholders and third parties as set out in Section 10.2 second paragraph.</p>	
33.	<p><b>1. Authorized Representative:</b></p> <p>a) Section 9.5.1 describes the requirement to have the Authorized Representative nominated in case of the Consortium acting as the Candidate, while e.g. Forms 2.B.1 (RTP submission form) and Form 2.C.3 (Power of Attorney) imply that such person also has to be appointed in case of the BidCo, i.e. a single Economic Operator acting as the Candidate – please clarify.</p> <p>b) If several persons are authorized to act as the Authorized Representative, can each of them be authorized to act solely and independently, or do they need to represent the Consortium only jointly?</p>	<p>1. a) The Authorized Representative must be nominated in both cases (i.e., the Candidate being a Consortium or a single Economic Operator).</p> <p>1. b) Please see our answer 30.</p>
	<p><b>2. Evidence on technical requirements:</b>  Section 10.7.3 refers to a list of "executed contracts" (in English) and "izvršenih ugovora" (in Croatian) but these terms do not have the same meaning. Namely, Croatian version implies the listed contracts may need to be performed in full in order to qualify. Please confirm this requirement will be satisfied by listing the contracts executed although not necessarily performed in full, i.e. contracts still in force and referring to the projects currently being operated.</p>	<p>2. We confirm the requirement will be satisfied even though the contracts are still in force (please see Section 10.7.3 of the Documentation according to which the service contracts indicated in the list need to be "<i>executed over the period referenced for each of the requirements</i>").</p>
	<p><b>3. Financial requirements:</b></p> <p>a) Section 10.8.1 requires the submission of audited financial statements, including consolidated balance sheet, income statement, cash flows and accompanying notes. This information is confidential for some parties – is the submission of the consolidated balance sheet sufficient to demonstrate the net assets requirement?</p> <p>b) Whether just the consolidated balance sheet or additional information is provided, can we provide this document in</p>	<p>3. a) The Candidate must provide audited financial statements for the most recent three full financial years for which such statements are available, including the consolidated balance sheet, income statement, statement of cash flows and the accompanying notes. The submission of the consolidated balance sheet is not sufficient, unless all entities included in the consolidated balance sheet provide letters of support to the Candidate in terms of financial capacity. All documents submitted in the RTP are considered confidential.</p>

	English only?	3. b) Please see Answer to Question No. 27.
	<p><b>4. Candidate's Affidavit:</b> For the statement of no criminal record by all persons authorized to represent the Company, we have a large number of people with such authorization. We can make the statement "To our knowledge no authorized representatives have been convicted of a felony (or applicable equivalent) and that all new employees are subject to background check procedure and require to report any criminal record." Can you confirm this satisfies your requirement?</p>	4. The statement has to be signed in the wording of Form 2.D.1. The person(s) authorized under law to represent the legal person of the Economic Operator can be, e.g., in the case of a limited liability company, managing directors, and, in the case of a joint stock company, members of the board. The Form 2.D.1. should be signed by the authorized representatives pursuant to their representation authority (e.g., all representatives jointly).
	<p><b>5. Translation requirement:</b> The following is unclear from the Documentation for prequalification: given that Section 9.1.1 of the Documentation for prequalification defines the RTP as submission forms together with the other required documents, and that the RTP has to be submitted in Croatian and English language and Section 9.3 (vii) of the Documentation for prequalification sets out that all evidences (documents) must be in Croatian language (or translated into Croatian by a certified court interpreter), does it still mean that documents (evidences) like excerpts from the court register or financial statements originally in Croatian language have to be translated into English as well, and whether the documents that are originally in another foreign language have to be translated into both Croatian <u>and</u> English, in order to comply with Section 9.1.1 and the defined scope of the RTP and language requirement for the RTP?</p>	5. Yes, documents (evidences) like excerpts from the court register or financial statements originally in the Croatian language have to be translated into English as well. If the documents are originally in another foreign language, they have to be translated into both Croatian and English.
	<p><b>6. Foreign currencies:</b> We understand foreign currency amounts need to be converted to Kuna as of the date of the tender publication – we understand this is 7-Oct- can you please confirm?</p>	6. Please see our Answer to Question No. 26, part 1.
	<p><b>7. Annexes</b> Annex 2.A in the RTP (Contact Notice) has no content. Please clarify why it is empty and in case the content is missing please provide it.</p>	7. The Contract Notice is the notice published for this contract and is accessible in the Electronic Gazette of Public Procurement of Republic of Croatia ( <a href="https://eojn.nn.hr">https://eojn.nn.hr</a> ).
	<p><b>8. Currencies:</b> Forms 2.E.2 and 2.E.3 require amounts in "current euro" but section 11 of the Documentation for prequalification requires amounts in Kuna ~ please confirm which is correct. Also, if an investment is not</p>	8. All amounts indicated in a currency other than the Croatian kuna must be converted into Croatian kuna, including amounts in currencies other than the euro. Therefore, the Candidate must state all financial amounts in Croatian kuna (e.g., value of investment or equity pursuant to Form 2.E.2

	in euro, should this be converted to euro for the purposes of this form?	and Form 2.E.3 RTP).
	<p><b>9. Evidence on technical requirements:</b> Section 10.7.3 requires a certificate from the "Concession Grantor" as evidence for technical requirements. "Concession Grantor" is defined as the Croatian government which will not be the relevant entity to certify other investments. We assume this should refer to the relevant concession grantor in the country in which the asset is located?</p>	9. The assumption is correct.
	<p><b>10. Net assets request:</b> Section 10.8.1 requests to expose the Net Assets of the Candidate(s). The definition Total Assets – Total Liabilities, under an IFRS perspective, is equivalent to Total Equity + Reserves – is our understanding correct?</p>	10. Correct. Net assets is the difference between assets and liabilities, as indicated in the definition. It equals the sum of equity and reserves.
	<p><b>11. Criteria for selection of candidates:</b> Section 11.1 requests equity investments as the criterion to rank the Candidates. In this respect:</p> <ul style="list-style-type: none"> <li>a) Are equity acquisitions of motorway companies acceptable? For example, acquisition of a motorway company through the payment of consideration to the previous owner of the company.</li> <li>b) Are equity acquisitions operated through another legal entity acceptable? For example, an equity stake in a company which operates a motorway. What minimum level of ownership is required for such an investment to be considered and what documentation is needed to prove the acceptability of the equity contribution?</li> </ul>	<p>11. a) Equity acquisitions of motorway companies are acceptable for proving the requirements set out in Section 11.1 provided that all requirements set out in Section 11.1 are met, e.g., the primary underlying business (i.e., the business which the motorway company performs) meets the requirements for reference projects set out in Section 11.1 and the target company (motorway company) meets the requirements for a Special Purpose Vehicle as set out in Section 11.1. In particular, the transaction has to be a limited recourse or non-recourse transaction with original shareholder(s) (the previous owner(s) of the company) being equity investor(s) in the motorway company.</p> <p>11. b) Equity acquisitions of legal entities operating transport infrastructure operators will not be accepted for proving the volume of equity investments under Section 11.1</p>
	<p><b>12. Certification of statements:</b> The requirement is that the Independence Statement should be certified by a notary public or other competent body (Section 10.5, p.21). Do we need to notarize other statutory representative's statements, for example Candidate's Affidavit?</p>	12. The formal requirements pertaining to other statements are set out in the Documentation and the Croatian Public Procurement Act (e.g., documents regarding the non-existence of the exclusion criteria pursuant to Art 10.4 of the Documentation). The Candidate's Affidavit has to be notarized.

	<p><b>13. The Consortium Agreement:</b> In the case of a Consortium, the Candidate may be requested to submit a signed original of a legally binding document establishing the Consortium (the "Consortium Agreement") after the submission of the RTP. Consortium Agreement must be duly notarized and signed by an authorized officer of each Consortium member. How much time will be provided for the Consortium to respond to such a request in order to ensure it can be notarized as requested?</p>	<p>13. The Concession Grantor will provide the Candidate with adequate time for the Candidate to arrange for the certification of signatures.</p>
	<p><b>14. Changes in the ownership structure</b></p> <p>a) Can a bidder or a member of a consortium bidder assign participation or ownership in a joint bidding vehicle (BidCo) to any of its affiliate (for structuring purposes) after qualification?</p> <p>b) In case of a consortium bidder, is there any flexibility to add consortium members during the bid process? Is it different in case of a single entity bidder (BidCo), i.e. if shareholder(s) of BidCo could transfer (part of) their shareholdings to additional shareholders?</p>	<p>14. a) The Candidate may, in general, assign its ownership (i.e., shareholding) in a special purpose company (BidCo) after qualification to any of its affiliates. However, by doing this the legal identity of the Candidate must not change (the circumstances regarding this will be evaluated by the Concession Grantor in each individual case). The Candidate, or a member of the Consortium, may not be replaced after qualification.</p> <p>14. b) It is not possible to add consortium members during the bid process (i.e., after the pre-qualification phase). In the case of a special purpose company/single entity bidder (BidCo), shareholders of the BidCo could transfer (part of) their shareholdings to additional shareholders in line with the requirements set out in Answer 14. a) above (i.e., the legal identity of the Candidate must not change).</p>
34.	<p><b>Single Candidate Structure</b></p> <p>If the Candidate is a single Economic Operator will it have to establish an SPV in Croatia (which will be the concessionaire) and then enter into an operation and maintenance contract with the Candidate i.e. the shareholder of the SPV as Motorway Operator?</p>	<p>The Winning Bidder will be required to establish a Croatian SPV, which will sign the Concession Contract and be the concessionaire. Further structuring depends on whether a designated Motorway Operator is integrated in the Winning Bidder, a member of the Winning Bidder's consortium, or a subcontractor to the Winning Bidder. In any case, the Winning Bidder will have general liberty to structure its operations in line with the requirements set out in the Documentation and applicable Croatian law (including subcontracting of individual works and services), provided that the SPV must always remain liable for the performance of the Concession Contract.</p>
35.	<p><b>Operation and Maintenance Scope of Works</b></p> <p>a. What will be the scope of services under the operation and maintenance contract to be made between the SPV (concessionaire) and the Motorway Operator?</p>	<p>The concessionaire SPV will be primarily liable for the performance of the Concession Contract, which will also include regular and heavy maintenance. For organizational requirements set out for such SPV, please see our Answer 34.</p>

	<p>Operation and maintenance (O&amp;M) contracts usually relate only to operation (including tolling) and routine maintenance services and do not include “structural maintenance” works as these are very different from the routine services the operators provide on a daily basis. Since construction works are not required frequently and hence the operator does not have the staff or the machinery for it such “structural maintenance” works are usually done by the contractor members of the concessionaire or subcontracted case by case by the concession company. Also as it is not a continuous service required regularly throughout the term of the contract therefore it is difficult to price in advance for 30 years or longer and make a commitment to those prices for a very long period.]</p> <p><b>b.</b> Will the Concession Grantor accept a similar structure as usually used in concession projects, i.e. that the Motorway Operator only provides operation and routine maintenance services and in relation to “structural maintenance” it only carries out surveys and test and prepares the “structural maintenance” programme? The Motorway Operator may also manage the selection procedure of the contractor, but its scope of works excludes the works themselves and the associated risks (of pricing) is borne by the SPV (concessionaire).</p>	
36.	<p>Motorway Operator SPV</p> <p>Under the requirement that one member of the consortium or a subcontractor must be designated as the Motorway Operator will it be accepted if more or all members of the consortium or more subcontractors will set up another special purpose vehicle in Croatia after tender award to become the Motorway Operator?</p>	<p>Only one of the members of the Consortium or only one subcontractor (i.e., one legal entity) is to be designated as the Motorway Operator by the Consortium for purposes of prequalification. The transfer of such entity's liabilities to another entity after contract award is allowed under the general requirements of Croatian legislation and the Documentation (specifically Section 8.3).</p>
37.	<p>Reference of concessions</p> <p>The required technical experience for the Motorway Operator includes “structural maintenance”, therefore it seems that only concessionaires can fulfill that requirement, typically special purposes vehicles set up for a project and owned by several various sponsors, construction companies, operator specialists and financial investors. Will the Concession Grantor accept such references issued to a concession company partially owned by the Candidate or</p>	<p>The Candidate may provide its own references or rely on the capacity of its shareholders, subcontractors or third parties. In this respect, the Concession Grantor will accept the quoted references if the Candidate submits the Letter of Support (Form 2.D.3) signed by the concession company and the Candidate together with the duly evidenced references issued to the concession company.</p>

	a member of the Consortium?	
38.	<p>Subcontractors</p> <p>Section 8.4 requires that subcontractors are designated, including the quantity, value, deadline of the services to be provided by such a subcontractor. Can you please clarify whether only the first level of subcontractors to the future SPV need to be designated or also subcontractors to the Motorway Operator will need to be named? Would you please consider that the exact scope and value and other details of such subcontracts is only established by the Candidates during the later stages of the tender procedure? This would be reasonable as neither the information received by the Candidates nor the timeline before the submission of the RTP is sufficient to establish such details.</p>	<p>The Candidate must provide all required information according to Section 8.4 of the Documentation in relation to all subcontractors to which the Candidate intends to subcontract part of the Concession Contract. If a Candidate has not yet decided at this stage of the tender procedure whether it intends to subcontract a certain part of the Concession Contract to one or several certain subcontractors then the information foreseen in Section 8.4 of the Documentation does not (yet) need to be provided in that respect. If a member of the Consortium is designated as Motorway Operator or a single Economic Operator is automatically designated as Motorway Operator then an intended subcontractor to the Motorway Operator qualifies, in principle, as a subcontractor according to Section 8.4 of the Documentation. Further details of the subcontractors, which are not and cannot be known at this stage, can be delivered to the Concession Grantor in further stages of the tender process in compliance with applicable law (especially Art 86 Act on Public Procurement).</p>
39.	<p>Section 7 of the Documentation for Pre-qualification:</p> <p>Can you please explain whether you have discussed potential support for the project from the international finance institutions, which of them expressed interest in the project and what was their feedback in relation to: (1) in what way such support can be provided, (2) their general requirements, (3) proposed structure of the project and (4) the Public Authority objectives.</p>	<p>The European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC) confirmed their interest in considering participating in financing of the Project. Specific support will be discussed later in the process. The Concession Grantor also consulted with the Multilateral Investment Guarantee Agency of the World Bank (MIGA). MIGA has indicated that, in principle, it would consider providing an investment guarantee to eligible investors subject to its business terms and approvals.</p>
40.	<p>In relation to point 10.3 and 10.7.1.</p> <p>Can you please confirm that designation of the Motorway Operator and proving Motorway Operation Services mean that it is only such member or subcontractor of the Consortium whose main activity as evidenced by relevant commercial registry or similar documents (as per 10.6) is provision of Motorway Operation Services as described in 10.7.1.</p>	<p>For the avoidance of doubt, the entity designated by a Candidate as a Motorway Operator must meet the minimum criteria requirements set out in Section 10.3 of the Documentation (which includes the minimum criteria in Sections 10.4, 10.6 and 10.7.1 of the Documentation). However, the Candidate may rely on the capacity of shareholders, subcontractors or third parties irrespective of whether such shareholders, subcontractors or third parties meet the requirements set out in Article 10.3.</p>
41.	<p>1. Financial requirements</p> <p>Audited financial statements of the Candidate contain over 200 pages. Do audited financial statements have to be translated into Croatian by an official court interpreter? If your answer to the raised question is affirmative, please clarify whether it is allowed to limit the</p>	<p>Please see Answer to Question No. 27 and No. 33, part 3.</p>

	translation into Croatian language by translating only those parts of the audited financial statements which are explicitly set forth in Section 10.8.1 of the documentation for prequalification, more accurate, to consolidated balance sheet, income statement, statement of cash flows and the accompanying notes.	
42.	<b>Section 3</b> Please clarify if it is really the intention that the SPV takes over the personnel or shall it be the Motorway Operator?	The concessionaire's SPV shall be required to take over the operation and maintenance business of HAC-ONC, including the employees.
43.	<b>Section 5.1.2</b> Could you please let us know whether the indicative price to be submitted in the indicative bid will be published?	The indicative price submitted in the indicative bid will not be published.
44.	<b>Sections 5.1.2 and 7 (iv)</b> Please clarify whether the LAFO will have to include a fully committed financial offer. In clause 5.1.2 reference is made to "committed financing", whereas in 7 (iv) reference is made to "indicative commitments".	A fully committed financial offer will not have to be included in the LAFO. Each Bidder must submit (together with its LAFO) indicative commitments of its debt providers and binding commitments of its equity providers as well as a detailed financial model reflecting, inter alia, the contemplated financing of the Project.
45.	<b>Section 9.1.1</b> Please confirm that (i) the official submission forms as annexed to the Documentation have to be signed, that (ii) every page has to be numbered and initialed provided that (iii) pages of un-amended printed documentation (such as company register, articles of association...) do not have to be initialed, but numbered	(i) The forms: 2.B.1, 2.C.3, 2.D.1, 2.D.2 and 2.D.3 must be signed (with certified signatures or notarization, where required). The forms 2.E.1, 2.E.2, 2.E.3 and 2.F.1. do not have to be signed.  (ii) Every page (including un-amended printed literature) has to be numbered, but not initialed.
46.	<b>Section 9.3 (vii)</b> Please confirm that the original of the evidence mentioned in this provision shall, if such original is e.g. in German language, be translated into Croatian only and not additionally into English as well.	If any original documents forming part of the RTPs are in any other language than Croatian or English, they must be attached together with a certified translation in the English and Croatian language (i.e., English translation in the English package, Croatian translation in the Croatian package).
47.	<b>Section 9.5.1</b> Please confirm that the document mentioned in this provision can be signed by each consortium member separately so that one such document per consortium member can be submitted (rather than having all signatures on one single document).	We confirm that the document can be signed by each consortium member separately and that one such document per consortium member can be submitted.
48.	<b>Section 9.5.1</b> Please confirm that the Authorized Representative can also be a legal person, i.e. an Economic Operator as member of the Consortium.	The Authorized Representative has to be a natural person.

49.	<p><b>Section 9.5.4 (Motorway Operator)</b> Please clarify meaning and intention of this provision. We understand that</p> <p>(i) the Motorway Operator can be a subcontractor or an Economic Operator being member of the Consortium</p> <p>(ii) the Motorway Operator can establish a special purpose vehicle (OpCo) with the sole purpose of undertaking the operation and maintenance activities of the Project</p> <p>(iii) the SPV will conclude with the OpCo an operations and maintenance contract</p> <p>(iv) the shareholders to the OpCo will have to provide parent company guarantees to the SPV to ensure performance of the operation and maintenance contract</p>	<p>(i) If the Candidate is a Consortium, then the Motorway Operator must be either a member of the Consortium or its subcontractor.</p> <p>(ii) Yes. The Motorway Operator can establish a special purpose vehicle (OpCo) under the laws of Croatia after the award of the Concession Contract. The purpose of the special purpose vehicle (OpCo) shall be the operation of motorways within the meaning of the Documentation.</p> <p>(iii) If the Motorway Operator establishes a special purpose vehicle (OpCo) under the laws of Croatia after the award of the Concession Contract, such special purpose vehicle (OpCo) may enter into an operation and maintenance agreement with the SPV (provided the additional requirements according to Section 8.3 and 9.5.4 of the Documentation are met).</p> <p>(iv) The Motorway Operator as the sole shareholder of OpCo must guarantee the proper performance of the contract by OpCo (i.e., the special purpose vehicle).</p>
50.	<p><b>Section 10</b> Please confirm a Candidate can also submit references from its Affiliates as own references (and not as those of third parties or subcontractors).</p>	<p>No. The Candidate may submit references from its Affiliates, but these references will be considered as those of third parties or subcontractors and a letter of support will be needed.</p>
51.	<p><b>Section 10.2</b> Please confirm that the wording "personally involved and fully committed to the delivery of the services under the Concession Contract" is not meant to alter or undermine the non-/limited recourse nature of the Project, i.e. that the liability of the shareholders of the SPV is limited to its equity commitment.</p>	<p>The nature of the Projects is non-/limited recourse. The quoted wording indicates that the Concession Grantor expects that the Candidates and sponsors will commit their time and know-how to deliver the expected value for money to the Concession Grantor.</p>
52.	<p><b>Section 10.7</b> Please confirm that should a special purpose vehicle undertake the required services in a reference project as concessionaire or operation company, such experience can be submitted as experience of the shareholder of such special purpose company.</p>	<p>Candidates may rely on the capacities of other Economic Operators (such as special purpose vehicles) under the conditions set out in Section 10.2 of the Documentation (please also see our Answer to Question No. 50).</p>
53.	<p><b>Section 10.7</b> Please confirm that a reference project is eligible if the services required under 10.7.1 are executed (either directly or indirectly) from the concessionaire under a concession contract.</p>	<p>Please see Answer to Question No. 37 and No. 52.</p>
54.	<p><b>Section 10.7</b> Please confirm that it is eligible to refer in one reference project to</p>	<p>Generally, it is possible to refer in one reference project to two contracts, where applicable. In this respect, leadership in the reference project is</p>

	two contracts, e.g. the concession contract with the public authority (covering lit (i) of 10.7.1) and the operation contract with the concessionaire (covering lit (ii) of 10.7.1)	necessary (see Answer no. 1).
55.	<b>Section 10.7.2</b> Please confirm that the requirement in 10.7.2 is fulfilled where the candidate has maintained equity investment at any point in time after 01.01.2008, even if Financial Close has occur before 01.01.2008	Yes, such reference would be acceptable.
56.	<b>Section 11.1</b> Please clarify the meaning of "fulfilled contract" under lit (b) and how this would translate into ongoing contracts.	Please see our Answer to Question No. 33, point 2.
57.	<b>Section 11.1</b> Please confirm that the total equity investment of a given project company will be considered in the evaluation and not only that portion of the Candidate submitting such reference.	The Concession Grantor shall consider (only) the level of the equity investment corresponding to the share of the Candidate submitting the reference. As regards the remaining level of the equity investment, the Candidate may rely on the capacity of other legal entities under the conditions stipulated in the Documentation (especially the Letter of Support).
58.	<b>Annex 2.A</b> Please confirm that the Contract Notice referred to in Annex 2.A and Form 2.B.1 means the official Contract Notice as published on TED or similar.	The Contract Notice referred to in Annex 2.A and Form 2.B.1 means the official Contract Notice published in the Electronic Gazette of Public Procurement of Republic of Croatia ( <a href="https://eojn.nn.hr">https://eojn.nn.hr</a> ).
59.	<b>Annex 2.D.2</b> Please confirm that the Independence Statement needs to be signed by the Authorized Consortium Representative only.	The Independence Statement (Form 2.D.2) must be in case of a Consortium signed by each member of the Consortium. Please note that a signature certified by a notary public or other competent body is required.
60.	<b>Annex 2.E.3 vs. 11.1</b> Please clarify Candidates can submit 5 reference projects for equity investment (as stated in Form 2.E.3) or 10 projects (as stated in 11.1).	A maximum of five reference projects will be evaluated. The Candidate must state a maximum of five reference projects in the forms provided in the Documentation. If the Candidate states more than five reference projects, only the first five reference projects stated will be considered.
61.	In case when Economic Operator needs to obtain a certificate from the concession grantor of another jurisdiction, that is not subject to Croatian Public Procurement Act, can such concession grantor, as other party in terms of Section 10.7.3, be considered as a private subject, i.e. for the purpose of proof of executed agreement with the concession grantor under Section 10.7.3, will a statement of the Economic Operator along with the proof that the certificate was requested, suffice?	Yes.

62.	<p>With respect to “Form 2.E.2” and “Form 2.E.3”, please provide additional details on the following items:</p> <p>a) Total Equity of the Candidate in the Project (in current Euro) Please find below an explanation of our understanding of the item: (Total Equity) * (FX) * (overall Candidate’s ownership)</p> <ul style="list-style-type: none"> <li>- Total Equity = (Total Assets) – (Total Liabilities)</li> <li>- Currency: (local currency values) * (spot FX rate at December 31st 2012)</li> <li>- Scope: overall Candidate’s ownership (direct + indirect) (%)</li> <li>- Source: financial reports of the project company at December 31st 2012</li> <li>- Accounting Principles: local GAAP (depending on incorporation law of the relevant project company)</li> </ul> <p>b) Approx Value of Investment (in current Euro) Please find below an explanation of our understanding of the item:</p> <p>(Net Invested Capital) * (FX) * (overall Candidate’s ownership)</p> <ul style="list-style-type: none"> <li>- Net Invested Capital = (Non-Current Non-Financial Assets) + (Working Capital) – (Non-Current Non-Financial Liabilities)</li> <li>- Currency: (local currency values) * (spot FX rate at December 31st 2012)</li> <li>- Scope: overall Candidate’s ownership (direct + indirect) (%)</li> <li>- Source: financial reports of the project company at</li> </ul>	<p>The Candidates are free to use such formulae to calculate the values indicated in the question as they deem fit. The calculations must not be wrong or misleading, and the Candidate is liable for the truthfulness and accuracy of the information stated in the RTP. The manner of proving individual capacity requirements is set out in the Documentation, and the Concession Grantor reserves the right to investigate the truthfulness and accuracy of the information supplied, as well as to exclude from participation such Candidates who provide inaccurate, wrong or misleading information in their RTPs.</p>
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	<p>December 31st 2012</p> <ul style="list-style-type: none"> <li>- Accounting Principles: local GAAP (depending on incorporation law of the relevant project company)</li> </ul> <p>c) Total Value of the Project (in current Euro) Please find below an explanation of our understanding of the item: (Net Invested Capital) * (FX)</p> <ul style="list-style-type: none"> <li>- Net Invested Capital = (Non-Current Non-Financial Assets) + (Working Capital) – (Non-Current Non-Financial Liabilities)</li> <li>- Currency: (local currency values) * (spot FX rate at December 31st 2012)</li> <li>- Source: financial reports of the project company at December 31st 2012</li> <li>- Accounting Principles: local GAAP (depending on incorporation law of the relevant project company)</li> </ul> <p>Should our understanding be wrong, please provide us with detailed formulas and explanations for the calculation.</p>	
63.	<p>Response #6: "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 the assumptions stated in Answer 2"</p> <p>Clarification 1: Given the quick turnaround time of the Request for Participation, will a Candidate need to fully incorporate a new shell company before the deadline for RTP submission (15 November) in order to use it as a place holder? If so, we assume that the shell</p>	<p>The Candidate must fully incorporate a new shell company before the deadline for the RTP submission in order to use it as a place holder. The shell company can be incorporated in any jurisdiction at the discretion of the Candidate (i.e., not necessarily in Croatia). The Candidate can be the sole shareholder of the corporation, but there may be others. The Candidate has to decide on the particular corporate type at its own risk.</p> <p>It is not possible to use for the above stated purposes a "to be formed" entity as a member of the Consortium. It is also not possible to add a member to the Consortium after prequalification (selection of Selected Candidates).</p>

	<p>company can be incorporated in a jurisdiction at the discretion of the candidate (i.e. UK not necessarily Croatia)? Shall the Candidate be the sole shareholder of the corporation? Does the corporation need to be organized under a specific corporate type (plc, ltd)?</p> <p>In the interest of time, can the Candidate instead identify a to be formed entity as a member of its Consortium? Or, preferably, that Candidates are allowed to add members to their consortium subject to the approval of the procuring authority?</p>	
64.	<p>Please confirm it is acceptable that the Consortium which submits the RTP and who becomes a Selected Candidate, later in the tender process incorporates a bidding company in order for such bidding company to replace the (initial) Consortium in the tender process and continue to act in Phases 2 and 3 as a Selected Candidate instead of the (initial) Consortium.</p>	<p>Such an approach will not be permitted and would constitute a change to the composition of the Consortium. The Consortium members will be permitted to form such an SPV only after being declared a Winning Bidder and the concession contract would be signed by such an SPV.</p>
65.	<p>What would be definition of a “third party” or a “third person” in terms of the Documentation?</p>	<p>Third party or third person is any entity or individual that is none of a Candidate, a consortium forming a Candidate, nor any of its shareholders, affiliates or subcontractors.</p>
66.	<p>On the basis of the provisions of Article 10, it is concluded that the Economic Operator or a Consortium, in order to prove the capacity requirements set out in the Documentation, can rely upon the capacities of a “third party”, i.e. “third person”. We find that, in terms of the Documentation, also (i) a mandatory pension fund management company in form of a joint-stock company or a limited liability company which manages a mandatory pension fund and/or (ii) a mandatory pension fund established and managed by a mandatory pension fund management company, could be deemed as a “third party” i.e. “third person”. Hereby, we would like to kindly ask you to confirm such interpretation.</p>	<p>We confirm. For purposes of proving capacity of fund managers, please see our Answer 1.</p>
67.	<p>On the basis of the provisions of Article 10.5, it is concluded that the consultants that have assisted the Concession Grantor with the preparation of the documentation are not allowed to participate in this tender process. Would you please clarify whether the aforementioned restraint also envisages legal entities in which the consultants of the Concession Grantor have any ownership stake?</p>	<p>The restriction does not apply to Affiliates of the consultant.</p>
68.	<p>The Candidate wishes to engage Croatian pension funds as equity</p>	<p>Croatian pension funds may participate in the tender as equity or debt</p>

	<p>or debt investors for participation in the tender. Please confirm that Croatian pension funds are allowed to participate in the tender as consortium members or subcontractors.</p>	<p>investors.</p> <p>If the Concession Grantor determines that any behavior of any Candidate is against the rules of market competition, the Concession Grantor will exclude all the affected Candidates from further participation in the tender.</p> <p>For further details, please see answer to Question no. 3.</p>
69.	<p>Given the initial tight timeframe of the submittal, we are requesting a two week extension to the due date until November 29th. The requirements of the submittal require significant assistance from unrelated and uninvolved third parties and they need more time. Additionally, to finalize partnership agreements to meet the requirements, we also request the additional two weeks.</p>	<p>The deadline for the submission of the Requests to Participate is extended for additional 31 days and is now 16 December 2013. Accordingly, the Concession Grantor amends the first sentence in Section 9 of the Documentation for Prequalification so as to read as follows: "A RTP must be received at the address indicated herein by 12:00 CET no later than 16 December 2013."</p>