

Form Q.1

Clarification Q&A

No.	Category (General, Technical, Financial / commercial, Legal)	Document (Name and reference)	Bidder Clarification required	Confidential (Yes/No. If yes, explain why)	City Response
1.	General	Tender documents	We kindly request a confirmation from the City, that the Publication Date, which needs to be used in accordance with Tender Requirements for the purpose of establishing the date when the Indicative Base Interest Rate must be calculated (in accordance with Clause 2.32) is May 26th . Accordingly, the date of establishment of the Indicative Base rate shall be 10 BDs after, i.e. 9 June	No.	The bidder should use the quotes available at the end of trading day on the 9th of June, and send the results to the Bloomberg account provided, which can be done on June 9 th , or during the week of June 12th.
2.	General	Tender documents – Section F1	<p>The Consortium notes that pursuant to Section F1, Bidders must provide heads of terms or draft subcontracts for each of the Key Sub-Contracts. Please can the City confirm whether such heads of terms or draft subcontracts should be initiated by:</p> <ul style="list-style-type: none"> the Contractor-SPV (if already formed) or the Bidder (if SPV is not yet formed) and the Key Sub-Contractors (or the Sub-Contractor's guarantor / Qualifying Group Entity) if the Sub-Contractor is not yet formed, e.g. for the Operation Sub-Contractor). 	No.	No local law requirement exists in this respect. With respect to heads of terms and/or drafts of agreements, the tender documents do not prescribe an obligation of including initials, therefore this is not necessary.
3.	General	Tender documents – Section G1	<p>The Consortium understands that the Public Procurement Law requirements for joint bids (which include, inter alia, that the integral part of a joint bid must be an agreement between bidders) is excluded in the process for choosing a private partner by operation of Article 20 para 5 point 2 of the PPP Law. However, the City has retained the provision requiring that any heads of terms or any agreement entered into between Consortium Members in relation to their participation in the Competitive Dialogue Process for the Project shall be submitted.</p> <p>The Consortium requests that the City reconsiders and clarifies the requirement for such document(s) given this is not required by Serbian law. Furthermore, In the Consortium's opinion:</p> <ul style="list-style-type: none"> any internal arrangements between Consortium 	No.	<p>The PPP Law references agreement amongst consortium members.</p> <p>Thus the Tender Documents detail what bidders are required to submit in that respect.</p>

			<p>Members for the period until the bid submission (e.g. organization of bid team, sharing of project development costs, respective responsibilities and liabilities, governance, etc.) are irrelevant to the City and the Proposal;</p> <ul style="list-style-type: none"> internal arrangements between Consortium Members that are applicable from the Contract Date and are relevant to the City will be fully and sufficiently disclosed to City via the information contained in the Bid Forms: <ul style="list-style-type: none"> if the Consortium Member is a future shareholder or equity provider of the Contractor: Form L6 (Project SPV Ownership), Form L.7 (Ownership structure chart / diagram), Form L.10 (Information about contractual performance security to be provided), Form L.16 (Information about the funding structure), Form L.17 (Financing structure chart / diagram) and Form L.18 (Equity Funding and Credit Support); if a Consortium Member is a future Sub-Contractor of the Contractor: Form L.8 (Information about contracts), Form L.9 (Contractual structure chart / diagram), and Form L.21 (Sub-Contracts); if a Consortium Member is a future guarantor of the obligations of the Contractor or any Sub-Contractor: Form L.10 (Information about contractual performance security to be provided) <p>In addition, Clause 66 of the PPP Contract strictly regulates any possible Change of Control of the Contractor, and would supersede any possible internal arrangement between Consortium Members.</p> <p>If such requirement is finally to be retained, it is requested that the City clarifies the type and scope of documents / information required to be submitted.</p>		
4.	General	Tender documents	<p>Given that notarization requirements for a Proposal are not regulated, please can the City confirm whether:</p> <ul style="list-style-type: none"> Forms L.3, L.4, L.11, L.12, and L.13 require signatures to be notarized and/or apostilled; and any documents requiring signature which are included as part of other forms (e.g. the Equity Commitment Letters), as well as any powers of attorney, should be notarized and, if applicable, apostilled. 	No.	Referenced documents do not need to be notarized/apostilled.

5.	General	Tender documents	<p>The Consortium notes that Bid Form L1 must be completed and submitted by each Consortium member. In respect of the items "Price (Project Payment, excl. VAT as per Form F.7)" and "Price (Project Payment, incl. VAT as per Form F.7)" it is requested that the City confirms how these items should be treated given that in practice, the Project Payment will be charged by the Contractor in full (rather than by the component Members of the Consortium).</p> <p>The Consortium also notes that the Bidder is requested to indicate in Bid Form L1 the Bid Validity period, which is already imposed by the Tender Requirements (unless the intention is to allow Bidders to propose a longer bid validity than the one set by Tender Requirements)</p>	No.	<p>Bidder is required to insert the requested information i.e. the Price/Project Payment that will be charged by the Contactor, in each Bid Form L.1.</p> <p>The bid validity period proposed by a Bidder must be at least as long as the Bid Validity Period (defined term), but can also be longer.</p>
6.	General	Tender documents	<p>The Consortium has noted several instances of where the internal cross referencing has been lost or there are incorrect cross references:</p> <ul style="list-style-type: none"> • Schedule 14 (Review Procedure): <ul style="list-style-type: none"> ○ Para. 6.2 – should refer to Schedule 18 (Change Protocol) ○ Para. 7 – should refer to Schedule 18 (Change Protocol) • Schedule 19 (Revision of Base Case): <ul style="list-style-type: none"> ○ Para. 2.3(b) – should refer to Schedule 18 (Change Protocol) ○ o Para. 6.3 – should refer to Schedule 19 (Revision of the Base Case) 	No.	The City confirms the error in the cross referencing. It shall be rectified in the execution versions.
7.	Technical	Tender documents	<p>We note that Section F.1 (Performance Bond) of Part III (Legal Proposal Requirements) of Appendix A (Proposal Requirements) to the Tender Documentation dated 23 May 2017 states that, on the one hand, each Construction Sub-Contractor is required to provide to the Project SPV an on-demand performance bond (paragraph 1) and, on the other hand, such performance bond must be in favour of the City (paragraph 3). There appears to be an inconsistency in the City's requirements with respect to who should be the beneficiary of the performance bond. We assume that the reference to the City in paragraph 3 is a typo, and it instead should state the performance bond as being in favour of the Project SPV, however we would appreciate confirmation on this matter</p>	No.	The City confirms the error. It will be amended to read as follows "The Performance Bond shall be in the form of an irrevocable, unconditional, first demand bank guarantee in favour of the Project SPV issued by a Qualifying Provider".