

RESPONSES TO CLARIFICATION QUESTIONS OF INTERESTED PARTIES¹

REGARDING THE INVITATION TO SUBMIT AN EXPRESSION OF INTEREST FOR THE AWARD OF A SERVICE CONCESSION AGREEMENT IN RELATION TO FINANCING, OPERATION, MAINTENANCE AND EXPLOITATION OF EGNATIA ODOS MOTORWAY AND THREE VERTICAL ROAD AXES (THE “INVITATION”²)

Athens, 16.1.2018

A/A	REFERENCE³	QUESTION⁴	ANSWER
1.	10.2 (vi)	<i>«Παρακαλούμε επιβεβαιώστε ότι, σε περίπτωση υποβολής εγγράφων αλλοδαπής εταιρείας (καταστατικού, αποσπάσματος εμπορικού μητρώου κλπ) μεταφρασμένων στην αγγλική γλώσσα κατά τα ανωτέρω, ως επίσημη αγγλική μετάφραση νοείται μετάφραση επικυρωμένη σύμφωνα με το δίκαιο της χώρας της έδρας της αλλοδαπής εταιρείας».</i>	We refer to the Fund’s answer to question no. 4 of the “Responses to clarification questions of Interested Parties” dated 9.1.2018.
2.	8.6	<i>«Σε περίπτωση επίκλησης χρηματοοικονομικής επάρκειας τρίτου – αλλοδαπού νομικού προσώπου (οπότε και θα υπογραφεί από αυτό η σχετική υπεύθυνη δήλωση του Ν1599/1986), απαιτείται να προσκομισθούν τα νομιμοποιητικά έγγραφα της εταιρείας και του υπογράφοντος, όπως καταστατικό, πιστοποιητικό του εμπορικού μητρώου για το ΔΣ και πρακτικό ΔΣ που αποφασίζει την παροχή της σχετικής δήλωσης; Ή αρκεί η υπογραφή της εκ μέρους του νομίμου εκπροσώπου χωρίς να προσκομισθούν τα</i>	As already provided in art. 8.6 of the Invitation, in case an Interested Party relies on the financial eligibility of a third party, all documents specified in art. 10.5 and 10.6, including documents such as the ones referred to in your question, should be submitted with regards to such third party as part of the respective Interested Party’s Expression of Interest. Where necessary (due to the fact that any such third party is not directly a participant in the Tender Process, i.e. it is not an Interested Party), the content of the documents specified in art. 10.5 of the Invitation may be appropriately adjusted. For example, with respect to the document referred to under art. 10.5 (iii), a copy of a decision of the competent body

¹ Please note that, in case of conflict between the Greek and the English version of these responses, the Greek text shall prevail.

² Unless otherwise specified herein, capitalized terms used in the present shall bear the same meaning as in the Invitation.

³ Reference is made to articles of the Invitation.

⁴ Kindly note that all questions are included as posed.

		<i>έγγραφα από τα οποία προκύπτει η σχετική του εξουσία εκπροσώπησης και τα νομιμοποιητικά της εταιρείας του;»</i>	of the third party, approving the provision of reliance to its financial resources to the respective Interested Party etc. would need to be submitted within the context of the Interested Party's Expression of Interest.
3.	10.5 (iv), (v)	<i>"Cl. 10.5.iv and 10.5.v: Both the clauses request to provide a solemn declaration pursuant to Law 1599/1986. Should we submit two copies of the Solemn Declaration as per template provided in Annex E, or one copy is enough?"</i>	As per the relevant template included in Annex E, the statements referred to in art. 10.5(iv) and (v) of the Invitation, are included in one single solemn declaration pursuant to Law 1599/1986. Such solemn declaration is not necessary to be included twice in the Expression of Interest.
4.	ANNEX C TEMPLATE 2	<i>"May you please clarify whether the "ANNEX C TEMPLATE 2 RELIANCE ON THE TECHNICAL CAPACITY OF THIRD PARTIES SOLEMN DECLARATION pursuant to Law 1599/1986" shall be submitted at this stage or it is due at bidding stage?"</i>	We refer to the Fund's answer to question no. 18 of the "Responses to clarification questions of Interested Parties" dated 13.12.2017. In this context, the solemn declaration included in Annex C – Template 2 should <u>not</u> be included in the Expression of Interest.
5.	10.4	<i>"Please confirm that the common representative referred to in par. 10.4 of the Expression of Interest Letter as well as in paragraph 1 of Annex D (Template Expression of Interest Letter) in case of a Consortium, may be from a Consortium member residing in Greece and not necessarily from the Leader. Additionally any interested party is required to appoint a contact/process agent through the Expression of Interest Letter. Please confirm that, in case of a Consortium, the process agent may be from a member company (which resides in Greece) and not necessarily from the Leader."</i>	As per art. 10.4 of the Invitation, in case the Expression of Interest Letter is signed by a common representative of the Consortium, such common representative has to be duly authorized to this end by all Consortium members before a notary public or other competent public body empowered to certify the signatures of the signing parties. It is not necessary that the common representative is also a representative or an officer of the Leader. In such case, the Expression of Interest Letter should be adjusted accordingly. Furthermore, it is not compulsory that the contact/process agent is a representative or an officer of specifically the Leader. However, the Fund draws the attention of Interested Parties to the following: For the purposes of the Tender Process the Fund shall not be obliged to contact or dispatch notifications to any other person, other than the contact/process agent. Any miscommunication or untimely communication between the person appointed as contact/process agent and the Leader (that, in accordance

			with the Invitation, shall represent the Consortium and all its members towards the Fund during the course of and for the purposes of the Tender Process, being duly authorized by the Consortium members to this end), shall be the sole responsibility of the respective Interested Party.
6.	9	<i>“In case where a Consortium meets the Technical Eligibility Criterion through one of its members, could you please clarify the contractual relationship of the Consortium member(s) fulfilling the Technical Eligibility Criterion with the SPV, i.e. through a subcontract with SPV? Through the participation in an Operation Company to be specifically established to perform the operation and maintenance works?”</i>	According to the Invitation the member of the Consortium that meets the Technical Eligibility Criterion must retain a participation percentage in the Consortium no less than 10%. It is noted that such member of the Consortium shall retain the same participation percentage in the share capital of the SPV for a minimum time period in line with the specific provisions of the Concession Agreement. Apart from this condition there are no other requirements within the context of the examination of the fulfillment of the Technical Eligibility Criterion during Phase B of the Tender Process. However, please note that relevant requirements with respect to the provision of the services that are object of the Concession Agreement may be included in the Request for Submission of Binding Offers and the draft Concession Agreement.
7.	9.4	<i>“Pursuant to article 9.4 of the Invitation “a Prequalified Investor (or in case of a Consortium, its member) may for the purposes of satisfying the Technical Eligibility Criterion, rely on the technical capacities of a third party on the condition that such third party will itself participate actively in the maintenance and operation of the Road Axis as a subcontractor of the SPV...” Please confirm that (a) in this case, such third party does not need to be the sole subcontractor regarding the maintenance and operation of the Road Axis and that (b) the joint performance of the maintenance and operation works by a consortium/company, where the relevant third party participates jointly with other partners, is not excluded”.</i>	The issues referred to in your question shall, if necessary and at the Fund’s unfettered discretion, be addressed within the context of the Request for Submission of Binding Offers and the draft Concession Agreement.

8.	9.3	<p><i>“In case where the Technical Eligibility Criterion is met by more than one member of a Consortium, please clarify how article 9.3 of the Invitation applies in relation to the obligation of the member(s) fulfilling the Technical Eligibility Criterion to retain a stake of 10% both in the total interest of the Consortium and the share capital of the SPV”.</i></p>	<p>In case the relevant Consortium wishes to invoke – with respect to fulfillment of the Technical Eligibility Criterion – the technical capacities of more than one of its members, then at least one of such Consortium members should have a stake of no less than 10% in the total interest of the Consortium and subsequently the same member shall retain at least the same percentage of shareholding in the share capital of the SPV. It is noted that a Consortium may not invoke cumulatively the combined technical capacities of more than one of its members i.e. at least one member of the Consortium with a stake of no less than 10% in the total interest of the Consortium should fulfill the relevant criterion on a stand-alone basis. The same applies mutatis mutandis for any Interested Party relying on the technical capacities of any third parties.</p>
9.	10.4 (i)	<p><i>“Αναφερόμαστε στην απάντηση που χορηγήσατε επί του με Α/Α 14 ερωτήματος άλλου Ενδιαφερομένου, όπως η εν λόγω απάντηση περιέχεται στη σχετική λίστα που αναρτήθηκε στον ιστότοπο του Ταμείου την 3^η Ιανουαρίου 2018. Στην απάντηση αυτή αναφέρετε τα ακόλουθα: «[...] Σε περίπτωση που η Επιστολής Εκδήλωσης Ενδιαφέροντος υπογράφεται από τον νόμιμο εκπρόσωπο κάθε μέλους της Ένωσης Προσώπων, η Πρόσκληση δεν εμποδίζει να πραγματοποιηθεί η θεώρηση μίας ή περισσότερων υπογραφών από διαφορετικό αρμόδιο πρόσωπο.». Ωστόσο, από την ανάγνωση και γραμματική προσέγγιση του άρθρου 10.4(i) εδάφιο β΄ της Πρόσκλησης, κατανοούμε ότι η υποχρέωση θεώρησης του γνησίου των υπογραφών ενώπιον συμβολαιογράφου ή άλλη δημόσιας αρχής προβλέπεται μόνο για την περίπτωση διορισμού κοινού εκπροσώπου και αναφέρεται στο γνήσιο των υπογραφών των νομίμων εκπροσώπων των</i></p>	<p>It is clarified that, in accordance with the template included in Annex D of the Invitation, an attestation of signature(s) of signatories to the Expression of Interest Letter by a competent judicial or administrative authority or notary public is also required.</p>

	<p><i>μελών της Ένωσης Προσώπων επί του εγγράφου διορισμού του κοινού εκπροσώπου, δεν αναφέρεται δε στην περίπτωση υπογραφής της Επιστολής Εκδήλωσης Ενδιαφέροντος από τον νόμιμο εκπρόσωπο κάθε μέλους της Ένωσης Προσώπων χωριστά. Σε επίρρωση των ανωτέρω, αναφέρουμε ότι το άρθρο 10.2(iii) της Πρόσκλησης (το οποίο, ούτως ή άλλως, αφορά στα Δικαιολογητικά Τεκμηρίωσης, στα οποία δεν περιλαμβάνεται η Επιστολή Εκδήλωσης Ενδιαφέροντος) κατονομάζει ρητώς τις περιπτώσεις όπου απαιτείται η θεώρηση του γνησίου της υπογραφής και, πιο συγκεκριμένα, αναφέρεται αποκλειστικά και μόνο στις υπεύθυνες δηλώσεις του ν. 1599/1986. Παρακαλούμε επιβεβαιώστε την ανωτέρω κατανόησή μας.”</i></p>	
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