



## Milot-Morine Highway Project, Albania

### Prequalification Process

#### Response to Questions Document, Sets 1-3

February 1, 2012

Please note: Questions and answers which have been received and/or answered previously are shown in black; questions and answers which are being answered for the first time are shown in blue font.

Questions		Answers
1	Our “By Laws” and “Commercial Registry Extract” are in a language different from English. Would a simple English translation together with the original suffice? Or do we need to have the English translation certified as well?	All translations of documents into English or Albanian languages from any other language must be certified by a certified translator.
2	Financial Statements: should we submit financial statements in both their original language <u>and</u> English, or is it sufficient to submit only the English versions?	It is sufficient to submit financial statements only in English. However, if financial statements exist only in the original language (other than English or Albanian), English language translations must be certified by a certified translator.
3	In paragraph 2.5 (page 10) it is said that each Consortium member shall submit a letter confirming its commitment to the Consortium. Is there a letter template that we need to fill out or can we write our own text?	There is no template which must be used in order to provide this information. You can submit your own letter following the requirements of Article 2.5.
4	Form 6: should this form be signed or simply filled out?	Form 6 should be filled in and duly signed.
5	Appendix 6 (Affidavit): should this form	Appendix 6 (Affidavit) should be signed



	be signed by each Consortium member or only the by the Lead Consortium Member on behalf of all consortium members?	by the Lead Member of the Consortium and by each member of the consortium.
6	What is the expected duration of the concession period?	Although exact length of the concession period has not been defined yet, it can be expected that the concession period will be <u>long term</u> (i.e. between 20 and 30 years). The period will be precisely defined following further analysis by the Grantor of the project's structure and risks, and consultations with short listed bidders and potential financiers. This is subject of the second phase of the tender process.
7	Who will bear traffic risk?	The Grantor will aim to structure a fair and bankable transaction. If a pure toll revenue model (where the concessionaire bears all traffic risk) proves acceptable to most sponsors and financiers, then the project will be structured this way. If it turns out that some government support will be needed (for example, in the form of minimum traffic guarantees), then the Grantor will consider this. The Grantor's least preferred project structure will be for the concessionaire to collect and pass through toll revenues while receiving availability payments. It is too early now to say what traffic risk allocation will look like, but the Grantor will work to structure the project in a way that ensures its long term viability.
8	Please provide an estimate (in EUR) of the capital investment that will need to be effectuated directly after Financial Close.	It is expected that the total amount of construction works will amount to around 100 million Euros over the lifetime of the project. Such construction works would consist primarily of the following: <ol style="list-style-type: none"><li>1. Expansion of Segment I of the highway from 2 to 4 lanes;</li><li>2. Slope stabilization works, primarily on</li></ol>



		<p>Segment II;</p> <p>3. Construction of a bridge and tunnel at Kukes, Segment III;</p> <p>4. Construction and upgrading of several interchanges;</p> <p>5. Various smaller works such as provision of lighting, fencing, construction of a toll plaza and some minor rehabilitation works.</p> <p>It is important to note that these works are not likely to be required on day one of the concession. Instead, they will be phased. Construction program schedule will be developed on the basis of the financial and bankability analysis of the project which will be finalized in the near future by the Government and its advisors and which will take into consideration discussions with short listed bidders and financiers. Most likely these capital investment works will take place between years 3 and 10 of the concession term, although at this point it is too early to know this with total certainty.</p>
9	<p>Please specify in more detail the envisaged distribution of risk (between the MPWT and the private partner) with regards to:</p> <ul style="list-style-type: none"><li>a. Traffic &amp; revenue (hard toll vs. availability model)</li><li>b. Revenue reconciliation</li><li>c. Currency Exchange risk</li><li>d. Setting of the tolling policy</li><li>e. Latent defects in the existing roads and structures</li></ul>	<p>Discussions about risk allocation will take place between the Government and short listed bidders following conclusion of the prequalification process.</p> <p>The Government will aim to structure a fair and bankable transaction. In each case, the Government will aim to allocate risks to the party which is best positioned to mitigate them.</p>
10	<p>Please specify whether IFC (or World Bank as the case may be) envisage participating in financing of the project.</p>	<p>IFC's infrastructure investment team is following the project very closely. IFC may have potential interest in providing both</p>



		<p>debt and equity financing.</p> <p>For additional inquiries, please contact Mr. Pavlo Grabovets at the following email address: pgrabovets@ifc.org</p>
11	<p>With regards to dualization of Segment I – please provide an estimate when shall that happen, in accordance with the traffic study conducted by the Public Authority.</p>	<p>Based on the Government’s current analysis, dualization of Segment I of the highway shall commence after the end of year 3 of the concession. However, this decision is not yet final, and its eventual resolution will depend on additional analysis and feedback from short listed bidders and financiers.</p>
12	<p>Please confirm that any of the formal documents requested in Item 2.4 issued outside Albania do not require any further formal legalization as long as they are translated into Albanian or English.</p>	<p>During this prequalification stage of the tender process documents issued outside Albania do not require legalization as long as they are translated into Albanian or English by a certified translator. However, please note that the Grantor may require legalization of such documents at the time of bid submissions.</p>
13	<p>Paragraph 2.3.1, Prequalification Criteria QC1-QC6: If a Prospective Bidder is not able to fully meet any of the Prequalification Criteria, does this mean that the Prospective Bidder will be disqualified?</p>	<p>Yes. A Prospective Bidder whose Prequalification Application is determined by the Bid Evaluation Committee not to meet any of the Prequalification Criteria specified in section 2.3 Part I and/or the other requirements in section 2 shall be designated as a “Non-Prequalified Bidder” and shall not be included in the short list of bidders who will be invited to participate in the tender and submit bids.</p>
14	<p>The Prequalification document refers to the construction of toll plaza(s) and operation of an “open” tolling system. Please provide more information on the definition of an open tolling system.</p>	<p>In an open toll system, tolls are levied at certain points on the highway, either on the main carriageway or at interchanges. These flat toll fees do not necessarily reflect a consistent rate per kilometer traveled since they may relate to different trip lengths. The system therefore only requires toll plazas where users are identified by their category and pay a</p>



		fixed toll per category.
15	The Prequalification document mentions a data room. Has the date for this been defined?	The virtual data room will be launched after the prequalification process is finalized. Access to the data room will only be given to short listed tender participants.
16	Please advise whether provision of a tolling system (equipment, software, etc.) is part of the tender.	Yes. The winning bidder will be responsible for the provision, among many other things, of the tolling system.
17	Appendix 2 – Forms 2 to 5: what does “Complexity” mean? How shall we describe “complexity” of Toll Road operations for instance? This is very unclear.	“Complexity” refers to the level of sophistication of the relevant activity. For instance, complexity of a project which is being presented as evidence of meeting criteria QC2 (toll road operation experience) may be described in terms of levels and patterns of traffic, levels of sophistication of tolling systems that are employed there (e.g., number of toll plazas and lanes, accepted payment methods), extent of interaction / cooperation with the grantor and other authorities (e.g., what happens in case of toll non-payment by drivers), etc.
18	Appendix 2 - Form 6 “Financial Situation”: does “Net Worth” equal “Total Equity” on the Balance Sheet?	“Net Worth” is equivalent to “Owners’ Equity” on the Balance Sheet. In other words, Net Worth excludes Minority Interest on the Balance Sheet.
19	Please confirm that copies of certificates issued by the hiring Authority are sufficient in order to satisfy DQC1-DQC5 (section 2.3.1).	Confirmed. Copies of certificates issued by the hiring authority are sufficient to satisfy QC1-QC5 (in other words, investors can submit either copies of contracts or copies of certificates from the hiring authority; they do not have to submit both, although they can do so if they wish). In case such certificates are in a language other than English or Albanian, they should be accompanied by certified translations as per the requirements of Article 2.1.



20	Please confirm that “the hiring authority” shall be understood as the respective client, such as the SPV in case of direct commissioning. Otherwise please clarify the term “hiring authority” (section 2.3.1).	In case of a concession contract, the hiring authority would be the public authority issuing the concession agreement. In case of a project company hiring a toll road operator, the hiring authority would be the project company (SPV). In each case ‘hiring authority’ is defined as the authority which commissions works or services.
21	Please confirm there is a typing error in the English version of Appendix 3 “Form of Power of Attorney” and the last sentence of the preamble shall be read as follows: “And is hereby authorized to appoint others for all or part of the powers delegated [...]”.	Confirmed. The last sentence of the preamble in the Power of Attorney form shall be read as follows: “And is hereby authorized to appoint others for all or part of the powers delegated [...]”.
22	Please confirm that an apostil is not required for any of the Prequalification Documents.	Confirmed. Apostils are not required for any of the documents submitted as part of prequalification applications. However, please note that the Grantor may require apostils to be placed on relevant documents at the time of bid submissions.
23	Please confirm that the meaning of “Prospective Bidder” and “Applicant (as used in Par 2.3.4 and Appendix 7)” is the same. Otherwise please elucidate the difference.	Confirmed. Meanings of “Prospective Bidder” and “Applicant” are the same.
24	Please confirm that “Employer” shall be understood as “hiring authority” (used under section 2.3.1 and Appendix 5).	Confirmed. Meanings of “Employer” “Hiring Authority” are the same.
25	Form 6: please confirm that it is okay if this form is signed by the CFO and/or the CEO of the Company. (In your previous answer to Question 4, it was not specified who should sign it).	Confirmed. It can be signed by CFO or CEO.
26	Appendix 5 – Forms 1, 2, 3, and 4 - “Total Contract Value”: for an existing concession contract, please confirm that	For the purpose of Forms 1-4, in case of existing concession and/or O&M contracts “Total Contract Value” shall



	<p>“Annual Turnover of the Concession Company” and/or its “Annual Operating Expenses” are both valid figures.</p>	<p>mean the average annual turnover over the contract life (in nominal terms).</p>
27	<p>Regarding QC 4 (Tunnel O&amp;M experience), can operation of a double-deck tunnel (i.e. traffic lanes on two separate floors) with length over 1.5km satisfy criterion QC 4, in the sense that it corresponds to a twin-bore tunnel?</p>	<p>Yes, a double-deck tunnel can be used to satisfy criteria QC4 for the following reasons:</p> <ol style="list-style-type: none"><li>1. Double-deck tunnel involves traffic in two separated directions, therefore operation and traffic management of such a tunnel resembles that of a twin-bore tunnel.</li><li>2. Double-deck tunnels typically have electromechanical systems that are of similar complexity to twin-bore tunnels and in some cases (e.g. ventilation) even more complex. Therefore the quantity of hardware to be maintained is similar.</li><li>3. Traffic management of a double-deck tunnel during maintenance and in case of accidents is of similar complexity (or even more complex) as that of a twin-bore tunnel.</li></ol>
28	<p>Forms 2-5 in Appendix 5 require insertion of the Employer’s name and Counter-signature. Based on recent experience, Employers are usually reluctant to sign documents which have not been drafted by them. Even if relevant Employers agree to sign such Forms (i.e. Forms 2-5), arranging for the signing is likely to be time consuming. Therefore, we propose that this requirement be waived provided that Prospective Bidders submit relevant certificates for the projects being referenced to.</p>	<p>Your proposal cannot be accepted in this phase of the procedure.</p>
29	<p>In order to demonstrate that it satisfies criteria QC2-QC5, the Prospective Bidder shall provide copies of contracts and/or certificates issued by the hiring authority that include all required information, as</p>	<p>Please note that RFQ requires submission of certificates and/<u>or</u> contracts. Thus, in case an Applicant cannot secure on time certificates issued by the hiring authority, the relevant contract should be submitted</p>



	<p>well as fill out the Forms presented in Appendix 5.</p> <p>Acquisition of certificates from Employers is sometimes a time consuming process and there is a chance that bidders will not be able to secure the certificates on time. We propose the following solution. In a case where Prospective Bidder cannot manage to obtain on time the required certificates, the bidder submits the relevant applications to the Employers, along with the Forms of Appendix 5. If such bidder is designated as a “Prequalified bidder” (subject to provision of required certificates), it shall submit to the Ministry pending certificates at least two working days prior to issuance of the Request for Proposal. Failure of the Prequalified bidder to comply with this requirement shall automatically result in its designation as “Non-Prequalified Bidder”.</p>	<p>instead.</p>
30	<p>Article 2.3.4. states the following: “...If any qualifying criterion, technical or financial, has been executed through an entity which is an Affiliate of the Applicant, the Applicant must submit documentation evidencing that such entity satisfies the definition of an Affiliate as hereinabove set forth. For purposes of the above the Affiliate shall provide an executed letter of support in the form attached in Appendix 7”.</p> <p>The required procedure for reasons outside the control of the Applicant may be time consuming. It is proposed that in place of the Letter of Support from an Affiliate in the form of Appendix 7, the Applicant can confirm by a Letter signed by the authorized person of the Applicant (in case of a Consortium, by the members which have presented experience from</p>	<p>Notwithstanding potential complexity of obtaining necessary signatures from affiliates, the requirement remains that in case an Affiliate’s experience is used, the Affiliate <u>must</u> sign Appendix 7.</p>



	Affiliates), that business entities of which the Applicant has presented evidence of works or services, are Affiliate(s) of the Applicant, meaning an entity directly or indirectly controlling, controlled or under common control with the Applicant.	
31	What is the length of the concession period?	No final decisions have been made regarding any of the transaction structuring and risk allocation elements, including the length of the concession period. We can only confirm that it will be a long term concession anywhere between 20 and 35 years long (maximum determined by the Law on Concessions).
32	What is the applicable concession regulatory framework: the Albanian Law on Concessions or UNCITRAL PFI Guide recommendations?	Albanian Law on Concessions is the applicable concession regulatory framework.
33	Whose responsibility will it be to secure financing for construction works?	Financing of all project works will be the responsibility of the Concessionaire.
34	Will the tolls be fixed or flexible?	No final decisions have been made regarding any of the transaction structuring and risk allocation elements, including the level and nature of tolls. The Government understands the importance of properly setting toll levels and will make sure that the tolls are set in ways that will make the project bankable.
35	What is the regulatory framework for construction activities?	Construction activities shall be carried out in accordance with applicable Albanian legislation in the area of construction works.
36	Please confirm that the structure of the Project shall be a common non-recourse model as used in usual PPP Projects, i.e. that all rights and obligations will be vested within a Special Purpose Vehicle ("SPV") and that the obligations of the Bidder (=Shareholder of the SPV) will be	No final decisions have been made regarding any of the transaction structuring and risk allocation elements. As a preliminary and non-binding answer we can state that the intention of the Grantor is that:



	restricted to the injection of equity.	<p>(i) the Project will be based on the project finance (e.g. non-recourse) model which follows international practice;</p> <p>(ii) obligations of the sponsor will be limited and may include, among others: provision of equity financing; delivery of performance bank guarantees; formation of the SPV; restrictions on the transfer of ownership of the SPV, if any; payment of Government's advisors' fees.</p>
37	Is there a certain time period (before Pre-Qualification, after awarding the concession contract, etc.) foreseen when the SPV shall be established?	No final decisions have been made regarding any of the transaction structuring and risk allocation elements. As a preliminary and non-binding answer we can state that the intention of the Grantor is that if the Concession Contract is signed by the Sponsor (i.e. the winning bidder), a process will be defined in the Concession Agreement for the transfer of rights and obligations to the SPV following its formation.
38	Shall the Prequalified Bidder be the same party which shall sign the concession contract? If yes, is it possible that the concession contract can be assigned from the Bidder to the SPC upon Financial Close?"	Deadline for the formation of the SPV will be set in the tender documents. We can confirm that it will be defined following acceptable international practice.
39	Would one contract which includes operation and maintenance of two tunnels (whose lengths meet the criteria set out in QC4) satisfy the QC4 criteria?	The intention of QC4 is for the Grantor to receive evidence that a Prospective Bidder has operation and maintenance experience of two tunnels which meet the length and technical characteristic requirements set in QC4. Therefore, if a Prospective Bidder operates and maintains two tunnels which meet the requirements set out in QC4 under a single contract, this experience shall be deemed sufficient to satisfy the requirements of QC4.
40	Regarding slope stabilization works (20	Applicants should clearly show all slope



	<p>km within a 3 year period - QC5, bullet point 3); would demonstration of excavation works (in m<sup>3</sup>) and embankment construction for a motorway with the length of at least 20 km be acceptable?</p>	<p>stabilization works that they have experience with. These works could, for example, include construction of retaining and containing walls, bioengineering and erosion control measures, slope drainage, rockfall barriers, rock bolts and bolted nets. Showing volume of excavated earthworks and embankment construction without showing evidence of the abovementioned types of works will not be sufficient.</p>
41	<p>Please confirm that Audited Financial Statements as an extract from the Annual Report without any further information is sufficient enough.</p>	<p>In order to satisfy QC6, applicants must submit, among other things, audited financial statements duly certified by a certified public accountant 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. This can be either as a standalone document or as part of the applicant's Annual Report.</p>
42	<p>Please confirm that the "Shareholder Certificate" mentioned in Appendix 4-<i>Basic Information Form</i> is related to the list of shareholders of each member of a bidding consortium, and not to the percentage ownership of shares in the SPV company to be established for the project's realization.</p>	<p>Yes, we confirm that the "Shareholder Certificate" is related to the list of shareholders of each member of a bidding consortium, and not to the percentage ownership of shares in the SPV company to be established for the project realization.</p>