

SECTION I Additional information

I.1 Documents under a fee

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| Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
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If Yes

Currency Albanian Lek (ALL) Price _____

This price covers the actual copying and distribution of Standard Concession / PPP Documents to the Economic Operators. Interested Economic Operators have the right to control Standard Concession / PPP Documents before purchasing.

I.2 Additional Information (location, offices, ways to acquire of the tendering documents)

This document can be found at the webpage www.app.gov.al

The "Project Description" and the "Draft Concession / PPP Contract" can be obtained at the Contracting Authority's address as specified in **Error! Reference source not found.** par. **Error! Reference source not found.** at the time to be agreed and after presentation of a copy of the **Error! Reference source not found.** (**Error! Reference source not found.**) signed by an authorized representative of the prospective tenderer.

Date of distribution of this notice:

16/ 09 /2016

INSTRUCTIONS TO TENDERERS

1 General

1.1 Scope

- 1.1.1 The Contracting Authority invites economic operators to tender for the Concession / Public Private Partnership (PPP), with the system of project financing, of the Project as outlined in the Project Description (*Error! Reference source not found.*) and in the Minimum Technical Requirements (*Error! Reference source not found.*) in accordance with the procedures, conditions and contract terms (*Error! Reference source not found.* and *Error! Reference source not found.*) prescribed in these tender documents.
- 1.1.2 The tender documents are modelled on international documents for competitive tendering. The type of contract to be used is specified in *Section Error! Reference source not found. Error! Reference source not found.*
- 1.1.3 The planned tendering schedule is as follows:
- | | |
|-----------------------|-----------------|
| Invitation to Tender | September 2016; |
| Submission of tenders | November 2016; |
| Contract Award | January 2017. |
- 1.1.4 Tenderers will be required to provide a tender security as outlined in *paragraph 4.3 Tender Security*. The successful tenderer will be required to provide a performance security.
- 1.1.5 The Project will be structured in compliance with the rules and procedures set out in Albanian Concession and Public Concessionaireship Law n. 125/2013, Decision of Council of Ministers n. 575 dated 10 July 2013, "*On approval of rules of evaluation and awarding of concessions / public private partnership*" and DCM 130, dated 12 March 2014 "*On the electronically conducting competitive procedures to the award of concession / PPP*", (jointly referred to as, the "**Concession Law**") on the basis of a DBFOT-type concession / PPP contract between the Contracting Authority and the Successful Tenderer (the "**Concession / PPP Contract**"). The term of the Concession / PPP Contract shall be not more than 35 years and not less than 15 years, according to the period offered by the Successful Tenderer (as defined in *paragraph 7.2.1*).

1.1.6 Every year during the Operational Phase of the Project, the concessionaire (the "**Concessionaire**") shall pay to the Contracting Authority a fee amounting to a percentage of the Annual Gross Revenue as offered by the Successful Tenderer according to the terms specified in the Concession / PPP Contract (the "**Concession Fee**").

1.2 Source of funds

1.2.1 The European Bank for Reconstruction and Development (EBRD) is interested to explore the opportunity to co-finance the project with the Successful Tenderer according to the "EBRD financing of private parties to concessions" policy.¹

1.3 Costs

1.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender and the Contracting Authority will in no case be responsible or liable for these costs regardless of the conduct or outcome of the tender process. Including, without limitation, all costs and expenses concerning the Tenderer's involvement in site visits and inspections, and/or all other information gathering processes, interviews, preparation of responses to questions and/or requests for clarification addressed to the Contracting Authority.

1.4 Pre-tender meeting and site visit

1.4.1 A clarification meeting and site visit will be held on 06 October 2016, 10 AM [20 days after tender launching]. Economic Operators that intend to participate at this meeting and site visit are requested to contact the Contracting Authority by fax or email at the address specified in *Error! Reference source not found.paragraph Error! Reference source not found.*, at least before 05October, 2016.

1.4.2 During this clarification meeting, prospective Tenderers may request clarification of the project requirements, the criteria for qualification or any other aspects of this Tender Documentation. The tenderer is advised to attend any pre-tender meeting or site visit.

1.4.3 The tenderer is advised to visit and examine the site and surroundings where the Project is to be realised and obtain for itself on its own responsibility all information that may be necessary for preparing the tender and entering into a Concession / PPP Contract. The costs of visiting the site shall be at the tenderer's own expense.

1.4.4 The tenderer and any of its personnel or agents will be granted permission by the Contracting Authority to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, its personnel and agents will release and indemnify the Contracting Authority, its personnel and agents from and against all liability in respect thereof and neither the Contracting Authority, its personnel

¹ <http://www.ebrd.com/downloads/procurement/concess.pdf>

or agents will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

2 Eligible tenderers

2.1 Qualification requirements

- 2.1.1 Tendering is open to firms and joint ventures from any country or countries meeting the minimum pass/fail criteria regarding the Tenderer's general and particular experience, and its financial position, specified in *Error! Reference source not found.*(*Error! Reference source not found.*), as demonstrated by the Tenderer's responses in the qualification forms attached to this notice and other requested documentation. Specific requirements for joint ventures are set forth in *Error! Reference source not found.*(*Error! Reference source not found.*) paragraph *Error! Reference source not found.*. The Contracting Authority reserves the right to waive minor deviations from the criteria, if they do not materially affect the capability of a Tenderer to perform the contract.
- 2.1.2 When the Tenderer intends to obtain highly specialised inputs (essential for execution of the contract) from specialised subcontractors, qualification forms shall be completed for such subcontractors along with complete details of the subcontractors and their qualification and experience. The subcontractors proposed shall be fully qualified for their work proposed.
- 2.1.3 Unless specified otherwise in *Error! Reference source not found.**Error! Reference source not found.*, the qualification and experience of subcontractors proposed by the Tenderer will not be considered for evaluation of the Tenderer. The Tenderer on its own (without taking into account the qualification and experience of the subcontractor) shall meet the qualification criteria.

2.2 Other eligibility requirements

- 2.2.1 No affiliate of the Contracting Authority shall be eligible to tender or participate in a tender in any capacity whatsoever, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the Contracting Authority and the affiliate.
- 2.2.2 Where a firm, its affiliates or parent company, in addition to consulting, also has the capability to manufacture or supply goods or to construct works, that firm, its affiliates or parent company normally cannot be a supplier of goods, services or works on a project for which it provides consulting services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control.

- 2.2.3 Tenderers shall provide evidence of their continued eligibility satisfactory to the Contracting Authority, as the Contracting Authority shall reasonably request.
- 2.2.4 Failure to provide information which is essential to evaluate the Tenderer's qualifications or to provide timely clarification or substantiation of the information supplied may result in disqualification of the Tenderer.

2.3 Joint venture requirements

2.3.1 Joint ventures must comply with the following requirements:

- (a) Any change in a joint venture after the date of tender submission will be subject to the written approval of the Contracting Authority. Such approval may be denied if (i) partners withdraw from a joint venture and the remaining partners do not meet the qualifying requirements; (ii) the level of participation by partners or the structure of the joint venture is substantially changed, or (iii) the new joint venture is not qualified.
- (b) Any tender shall be signed so as to legally bind all joint venture partners, jointly and severally, and any tender shall be submitted with a copy of the joint venture agreement providing for joint and several liability with respect to the contract.

2.3.2 A tenderer may submit or participate, in any capacity whatsoever, in only one tender. Submission or participation by a tenderer in more than one tender for the contract will result in the rejection of all tenders for that contract in which the party is involved. However, the same subcontractor may be included in more than one tender.

2.4 Fraud and Corruption

2.4.1 The Contracting Authority requires that tenderers, suppliers, contractors, concessionaires and consultants observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, the Contracting Authority:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) "*corrupt practice*" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) "*fraudulent practice*" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) "*coercive practice*" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) "*collusive practice*" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (b) will reject a tender if it determines that a Tenderer has engaged in corrupt, fraudulent, coercive or collusive practices in competing for the contract in question;
- (c) will declare a firm ineligible indefinitely or for a stated period of time, to be qualified under a Contracting Authority's contract if it at any time determines that:
- (i) the firm has engaged in corrupt, fraudulent, coercive or collusive practices in competing for, or in executing, an Contracting Authority's contract; or
 - (ii) the firm has been found by a judicial process or other official inquiry to have engaged in corrupt, fraudulent, coercive or collusive practices.

3 Tender documents

3.1 Contents of tender documents

- 3.1.1 The tender documents comprise the documents listed below and addenda issued in accordance with paragraph 3.3.

Tender notice

Sections I through V of this document

Error! Reference source not found. (Error! Reference source not found.)

Prequalification criteria (**Error! Reference source not found.**)

Awarding criteria (**Error! Reference source not found.**)

Confidentiality Agreement (**Error! Reference source not found.**)

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Instructions to Tenderers

These Instructions to Tenderers

Administrative Documentation Forms

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Eligibility and Qualifications Forms

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Technical Tender Form

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Financial Tender Forms

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Draft Contract Conditions

The following documents constitute the draft contract conditions:

- The "Draft Concession / PPP Contract" including the Concession / PPP Contract Forms and the Bank Financial Guarantee. This is a separate document that can be obtained as described at SECTION I par. I.2.
- **Error! Reference source not found. (Error! Reference source not found.)**

Project Requirements

The following documents constitute the project requirements:

- The description of the Project (the "**Project Description**") is a separate document that can be obtained as described at SECTION I par. I.2.
- The Minimum Technical Requirements (**Error! Reference source not found.**)
- The **Error! Reference source not found.** (**Error! Reference source not found.**)

3.1.2 The tenderer is expected to examine all instructions, forms, terms, specifications and other information in the tender documents. Failure to furnish all information required by the tender documents or submission of a tender not substantially responsive to the tender documents in every respect will be at the tenderer's risk and may result in rejection of its tender.

3.2 Clarification of tender documents

3.2.1 A prospective tenderer requiring any clarification on any aspect of the tender documents may notify the Contracting Authority in writing by email at the Contracting Authority's email address indicated in *Error! Reference source not found.* paragraph *Error! Reference source not found.* *Error! Reference source not found.*. All requests for clarification must be received by the Contracting Authority no later than five (5) days prior to the deadline for the submission of tenders. The Contracting Authority will respond to such requests for clarification of the tender documents which it receives. The written responses of the Contracting Authority (including a description of the enquiry but without identifying its source) will be published on the website www.app.gov.al.

3.2.2 No response to clarifications and/or information given whether orally or in writing shall be binding on any party. Only the Concession / PPP Contract and its appendices, when duly executed, shall be binding on the parties.

3.3 Amendment of tender documents

3.3.1 At any time prior to the deadline for submission of tenders, the Contracting Authority may, for any reason, whether at its own initiative or, in response to a clarification requested by a tenderer, amend the tender documents by issuing addenda.

3.3.2 Any addendum thus issued shall be part of the tender documents and shall be published on the website www.app.gov.al. It is the obligation of the tenderer to verify on the website the publication of any amendment to the tender documents. It will be assumed that the published information will have been taken into account by the tenderer in its tender.

3.3.3 To give prospective tenderers reasonable time in which to take the amendment into account in preparing their tender, the Contracting Authority may, at its discretion, extend the deadline for the submission of tenders, as provided for in paragraph 5.2.2.

3.4 Information provided by the Contracting Authority / Tenderers Due Diligence

- 3.4.1 Each tenderer is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and for seeking any other independent advice necessary for the preparation of the tender, negotiation of agreements, and the subsequent delivery of all services to be provided by the Successful Tenderer.
- 3.4.2 No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the Contracting Authority or its advisors, employees, consultants or agents, for the completeness or accuracy of any information contained in the Tender Documents or the Response to Questions Documents, or provided during the tender process or during the term of the Concession / PPP Contract, be liable to any person or entity as a result of the use of any information contained in the Tender Documents or the Response to Questions Documents, or provided during the tender process or during the term of the Concession / PPP Contract.
- 3.4.3 Tenderers shall not rely on any oral statements made by the Contracting Authority or its advisors, employees, consultants or agents.
- 3.4.4 All tenderers shall, prior to submitting their tender, review all requirements with respect to corporate registration and all other requirements that apply to companies that wish to conduct business in Albania. The tenderers are solely responsible for all matters relating to their legal capacity to operate in the jurisdiction to which this Tender Process applies.
- 3.4.5 Any information (as defined in the Confidentiality Agreement given in **Error! Reference source not found.**) provided by the Contracting Authority, shall be subject to the Confidentiality Agreement duly signed by all Tenderers.

4 Preparation of tenders

4.1 Language of tender

- 4.1.1 The tender and all documents and correspondence relating to the tender shall be in the language of the tender specified in **Error! Reference source not found.** paragraph **Error! Reference source not found.** **Error! Reference source not found.**. Any printed literature furnished by the tenderer may be written in another language so long as such literature is accompanied by an accurate translation of its pertinent passages in the language of the tender, in which case, for purposes of interpretation of the tender, the translation shall govern.

4.2 Documents comprising the tender

4.2.1 Information shall be submitted in the formats specified in the forms in this Tender Documentation. A tender submitted in accordance with these Instructions to Tenderers shall comprise the following:

- (a) The Qualification Documentation comprised of the following documents (collectively, the "**Administrative Documentation**"):
 - (1) Tender Application Form (in the format indicated in **Error! Reference source not found.**) duly completed in the manner and detail indicated therein and signed by the tenderer;
 - (2) Tender Security, furnished in accordance with **Error! Reference source not found.**;
 - (3) Power of attorney (in the format indicated in *Error! Reference source not found.***Error! Reference source not found.**)
 - (4) Tenderer's Eligibility and Qualifications required by *Error! Reference source not found.***Error! Reference source not found.**, using the Eligibility and Qualifications Forms:
 - i. **Error! Reference source not found.**
 - ii. **Error! Reference source not found.**
 - iii. **Error! Reference source not found.**
 - iv. **Error! Reference source not found.**
 - v. **Error! Reference source not found.**
 - vi. **Error! Reference source not found.**
 - vii. **Error! Reference source not found.**
 - viii. **Error! Reference source not found.**
 - ix. **Error! Reference source not found.**
 - x. **Error! Reference source not found.**
 - xi. **Error! Reference source not found.**
 - xii. **Error! Reference source not found.**

xiii. **Error! Reference source not found.**

xiv. **Error! Reference source not found.**

xv. **Error! Reference source not found.**

(b) The technical offer comprised of the following documents (collectively, the "**Technical Tender**"):

(1) Technical description of the project prepared in accordance with (a) the Minimum Technical Requirements and the Project Description (**Error! Reference source not found.**and **Error! Reference source not found.**) and (b) the Technical Proposal Form (**Error! Reference source not found.****Error! Reference source not found.**);

(2) Draft of the Concession / PPP Contract with each page thereof initialled by the Tenderer;

(c) The financial offer, comprised of the following documents (collectively, the "**Financial Tender**"):

(1) The financial proposal that indicates the offered Concession Period, the offered Concession Fee and the offered Terminal Charges using the Financial Tender Form (**Error! Reference source not found.****Error! Reference source not found.**);

(2) The timing proposal that indicates the number of days between the signing of the Concession / PPP Contract and the date of completion of the construction using the Construction Time Form (**Error! Reference source not found.**);

4.2.2 The Administrative Documentation, the Technical Tender and the Financial Tender collectively constitute the "**Tender**". Any false data shall constitute a legal ground for disqualification of the Tenderer, and any finding that the Tenderer has wilfully provided false material information or withheld material information in its Tender will constitute grounds for termination of the Concession / PPP Contract. The tenderers shall use only the standard documents of the Tendering Process, without making any modifications to the terms thereof.

4.2.3 In addition to paragraph 4.2.1 above, tenders submitted by a joint venture or consortium of two or more firms shall comply with the following requirements:

(i) the Tender shall include all the relevant information as requested in paragraph 4.2.1 a.(3) and 4.2.1 a.(4) for each member firm of the joint venture or consortium;

- (ii) the Tender shall be signed so as to be legally binding on all member firms of the joint venture or consortium;
- (iii) one of the member firms of the joint venture or consortium shall be nominated as being in charge; this authorisation shall be evidenced by submitting with the tender a power of attorney signed by legally authorised signatories of all member firms of the joint venture or consortium;
- (iv) the member firm of the joint venture or consortium in charge shall be authorised to incur liabilities and receive instructions for and on behalf of any and all member firms of the joint venture or consortium, and the entire execution of the contract shall be done exclusively with the member firm in charge;
- (v) all member firms of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms;
- (vi) a copy of the agreement entered into by the member firms of the joint venture or consortium shall be submitted with the tender.

4.2.4 Pursuant to paragraph 2.3.2, a firm can be a member in only one joint venture or consortium; tenders submitted by joint ventures or consortia including the same member firm will be rejected.

4.2.5 Tenderers are not permitted to propose alternatives with their tender.

4.3 Tender Security

4.3.1 The Tenderer shall furnish, as part of its tender, a Tender Security in the amount stipulated in *Error! Reference source not found.* paragraph *Error! Reference source not found.* *Error! Reference source not found.*, in the currency of the tender.

4.3.2 The Tender Security shall, at the tenderer's option, be in the form of a certified cheque, letter of credit or a bank guarantee from a reputable bank located in Albania or abroad with a rating of at least BBB-. If the bank issuing the Tender Security is incorporated outside Albania, it shall have a branch or correspondent financial institution incorporated in Albania to make it enforceable. The format of the bank guarantee shall be in accordance with the form of Tender Security included in the tender documents (*Error! Reference source not found.**Error! Reference source not found.*); other formats may be permitted, subject to the prior approval of the Contracting Authority. The Tender Security shall remain valid for a period of twenty-eight (28) days following the last day of the original Tender Validity Period, and following the last day of any extension of the Tender Validity Period pursuant to paragraph 4.6.2.

- 4.3.3 Any Tender not accompanied by an acceptable Tender Security shall be treated as non-responsive and rejected. The Tender Security of a joint venture or consortium must be in the name of all member firms of the joint venture or consortium submitting the Tender.
- 4.3.4 The Tender Securities of unsuccessful tenderers will be returned as promptly as possible, but not later than twenty eight (28) days after the last day of the Tender Validity Period.
- 4.3.5 The Tender Security of the Successful Tenderer will be returned when the tenderer has signed the Concession / PPP Contract, and has furnished the required Performance Security.
- 4.3.6 The Tender Security may be forfeited:
- (a) if the tenderer
 - (i) withdraws its Tender during the period of Tender Validity;
 - (ii) invalidates its Tender pursuant to paragraph 6.2.2.
 - (b) in the case of a Successful Tenderer, if the tenderer fails
 - (i) to sign the Concession / PPP Contract in accordance with paragraph 7.2 or
 - (ii) to furnish a Performance Security in accordance with paragraph 7.3 or
 - (iii) to furnish the Bank Financial Guarantee in accordance with paragraph 7.4.

4.4 Conflict of Interest Statement

- 4.4.1 In the Administrative Documentation, each tenderer (or if the tenderer is a Joint Venture, each Joint Venture member) shall provide a written Conflict of Interest Statement, substantially in the form attached hereto in **Error! Reference source not found.**, regarding any existing, potential, possible or future conflict of interest that a tenderer (or each member of a Joint Venture) may have with the Tender Process, the Project, the Contracting Authority or any agency, instrumentality, consultant or advisor thereof. For the purpose of this paragraph, "conflict of interest" shall be defined and construed as per the Albanian law.

4.5 Tender currencies

- 4.5.1 The currency to be used to quote prices and investments in this tender is that indicated in **Error! Reference source not found.** paragraph **Error! Reference source not found.** **Error! Reference source not found.**

4.6 Tender validity period

- 4.6.1 Tenders shall remain valid for the period specified in in **Error! Reference source not found.** paragraph **Error! Reference source not found.** **Error! Reference source not found.** A tender valid for a shorter period shall be rejected by the Contracting Authority as being non-responsive.

4.6.2 In exceptional circumstances, the Contracting Authority may solicit the tenderer's consent to an extension of the Tender Validity Period. The request and responses thereto shall be made in writing by email. If a tenderer agrees to extend the period of validity, the Tender Security shall also be extended accordingly. A tenderer may refuse the request without forfeiting its Tender Security. A tenderer granting the request will not be required nor permitted to modify its Tender.

4.7 Format and signing of original Tender

4.7.1 The original Tender shall be typed, printed or written in indelible ink. The Tender shall be signed by the tenderer or person(s) duly authorised to act on behalf of the tenderer. The latter authorisation shall be evidenced by the written power of attorney received with the Tender. All pages of the Tender, except for unamended printed literature, shall be initialled by the person or persons signing the Tender.

4.7.2 Any interlineation, erasures or overwriting shall only be valid if they are initialled by the person or persons signing the Tender.

5 Submission of tenders

5.1 Uploading of tenders

5.1.1 Each Tenderer shall prepare and submit its Tender on the website of the Albanian Public Procurement Agency (PPA). Detailed information regarding the uploading of the tender can be found in the user manual, which is published on the website www.app.gov.al (in Albanian language only).

5.1.2 The tender files uploaded on the website of the Public Procurement Agency shall be identical with the original tender in the format and signed as defined in paragraph 4.7.

5.1.3 Pursuant to DCM 130, dated 12 March 2014, "*On the electronically conducting competitive procedures to the award of concession / PPP*" and DCM 575 dated 10 July 2013, "*On approval of rules of evaluation and awarding of concessions / public private partnership*", the Tender will be submitted in electronic format in accordance with the instructions of the Public Procurement Agency. Clear information of this procedure can be found on the official website www.app.gov.al.

5.1.4 Contracting Authority accepts no responsibility to any tenderer against any claim or complaint on the uncertainty in the manner of submission of the Tender except when an application is not secured properly due to lack of proper infrastructure upgraded by the Contracting Authority.

5.1.5 In any case, tenderers shall submit electronically all mandatory and necessary documentation for the presentation of their Tender.

5.1.6 Any Tender received by the Contracting Authority through other means than as described at paragraph 5.1.1 (e.g. by hand delivery, by email) shall be rejected.

5.2 Deadline for submission of tenders

5.2.1 Tenders must be received by the Contracting Authority no later than the time and date stated in *Error! Reference source not found.paragraph Error! Reference source not found. Error! Reference source not found.*

5.2.2 The Contracting Authority may extend this deadline for submission of tenders by amending the tender documents in accordance with paragraph 3.3, in which case all rights and obligations of the Contracting Authority and tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

5.3 Late tenders

5.3.1 Any tender received by the Contracting Authority after the tender submission deadline will be rejected.

5.4 Modification and withdrawal of tenders

5.4.1 No tender may be modified or withdrawn in the interval between the deadline for submission of tenders and the expiration of the Tender Validity Period specified in paragraph 4.6.1. Withdrawal of a tender during this interval may result in the tenderer's forfeiture of its Tender Security, pursuant to paragraph 4.3.6.

6 Tender opening and evaluation

6.1 Opening of tenders by Contracting Authority

6.1.1 The Contracting Authority will open all tenders at the time, on the date and at the location specified in *Error! Reference source not found.paragraph Error! Reference source not found. Error! Reference source not found.*

6.1.2 The Contracting Authority will prepare minutes of the tender opening, including the tenderers' names, the presence or absence of required Tender Security, the Concession Period, the Concession Fee, the discount on the Terminal Charges, the Construction Period, and other such details as the Contracting Authority, at its discretion, may consider appropriate.

6.2 Contacting the Contracting Authority

6.2.1 Subject to paragraph 6.3, no tenderer shall contact the Contracting Authority on any matter relating to its tender, from the time of tender submission to the time the contract is awarded.

6.2.2 Any effort by a tenderer to influence the Contracting Authority's tender evaluation or award decision, including the offering or giving of bribes, gifts or other inducement, may result in the invalidation of its tender and the forfeiture of its Tender Security, pursuant to paragraph 4.3.6.

6.3 Clarification of tenders

6.3.1 To assist in the examination, evaluation and comparison of tenders, the Contracting Authority may, at its discretion, ask a tenderer for a clarification of its tender. Such clarification may be requested at any stage up to award of the contract. Requests for clarification and the responses thereto shall be in writing by email, and no change in the substance of the tender shall be sought, offered or permitted except as required to confirm the correction of computational errors discovered by the Contracting Authority in the examination of the tenders.

6.4 Preliminary examination of tenders

6.4.1 The Contracting Authority will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required Tender Securities have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

6.4.2 The Contracting Authority may waive any minor informality, non-conformity or irregularity in a tender that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any tenderer as a result of the detailed evaluation pursuant to paragraphs 6.5, 6.6 and 6.7.

6.4.3 Prior to the detailed evaluation pursuant to paragraphs 6.5, 6.6 and 6.7, the Contracting Authority will determine whether each tender is of acceptable quality, is complete and is substantially responsive to the tender documents. For purposes of this determination, a substantially responsive tender is one that conforms to all terms, conditions and specifications of the tender documents without material deviations, objections or reservations. A material deviation, objection or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the tender documents, the Contracting Authority's rights or the successful tenderer's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other tenderers who are presenting substantially responsive tenders.

6.4.4 In particular, deviations from, objections to or reservations about critical provisions, such as those concerning Tender Security, Governing Law, Taxes and Duties, Functional Guarantees, Patent and Indemnity, Limitation of Liability, and related requirements, will be treated as non-responsive. The Contracting Authority's determination of the

responsiveness of a tender is to be based on the contents of the tender itself without recourse to extrinsic evidence.

- 6.4.5 If a tender is not substantially responsive, it will be rejected by the Contracting Authority and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation, objection or reservation.

6.5 Administrative evaluation

- 6.5.1 The Contracting Authority will carry out the detailed evaluation of the Administrative Documentation of the tenders not previously rejected as being substantially non-responsive in order to determine whether they comply to the eligibility and qualification criteria.
- 6.5.2 In the case a Tenderer has been "conditionally qualified" by the Contracting Authority, pursuant to paragraph **Error! Reference source not found.**, the Contracting Authority may require the tenderer to modify certain specified elements within fourteen (14) days from the written request of the Contracting Authority.
- 6.5.3 Tenderers that meet the eligibility and qualification criteria will be considered a "Qualified Tenderer" and will be admitted to the next stage of the tender evaluation process.
- 6.5.4 The Contracting Authority will send a notification of disqualification (using the form given in **Error! Reference source not found.**) to the tenderers that do not meet the eligibility and qualification criteria.

6.6 Technical evaluation

- 6.6.1 The Contracting Authority will carry out a detailed technical evaluation of the tenders of the Qualified Tenderers in order to determine whether the technical aspects of such tenders are in accordance with the requirements set forth in the tender documents. In carrying out such technical evaluation, the Contracting Authority will examine and compare the technical aspects of the tenders based on the information supplied by the tenderers, taking into account: (i) the overall completeness and compliance with the Project Description, deviations from the Minimum Technical Requirements set out in **Error! Reference source not found.** as identified by the tenderer in its tender and those deviations not so identified; (iii) quality, function and operation of any process control concept included in the tender. The tender that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected as non-responsive.
- 6.6.2 The evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Project Description, applying the evaluation criteria, sub criteria, and point system specified in **Error! Reference source not found.** Each responsive Tender will be given a technical score. A Tender shall be rejected at this stage if it does not respond to important aspects of the Tender Documents, and

particularly the Minimum Technical Requirements or if it fails to achieve the minimum technical score indicated in *Error! Reference source not found.**Error! Reference source not found.*

- 6.6.3 Where alternative technical solutions have been permitted and offered by the tenderer, the Contracting Authority will make a similar evaluation of the alternatives. Where alternatives have not been permitted but have been offered, they shall be ignored.
- 6.6.4 The Technical Evaluation will be concluded with an Evaluation Report, assigning to the tenders not previously rejected a technical score.

6.7 Financial evaluation

- 6.7.1 The Contracting Authority's evaluation will also include the evaluation of the Financial Proposals and the Timing Proposal of each tenderer, assigning to the tenders not previously rejected a financial score and a timing score resulting from the application of the evaluation factors as given in *Error! Reference source not found.**Error! Reference source not found.* In case of discrepancy between word and figures, the formers will prevail.
- 6.7.2 Proposals will be ranked according to their combined technical, financial and timing scores. The tenderer achieving the highest combined technical, financial and timing score will be invited for negotiations.

6.8 Contracting Authority's right to accept any tender and to reject any or all tenders

- 6.8.1 The Contracting Authority reserves the right to accept or reject any tender, and to annul the tender process and reject all tenders at any time prior to award of contract, without thereby incurring any liability to any tenderer or any obligation to inform any tenderer or tenderers of the grounds for the Contracting Authority's action.

7 Award of contract

7.1 Communication of final ranking

- 7.1.1 After completion of the tender evaluation, the Contracting Authority shall promptly notify all tenderers who have submitted proposals of the ranking of the Tenderers by the Tender Evaluation Committee.
- 7.1.2 Upon notification of the final classification, each tenderer may request an administrative review of the selection process, when judging that an action taken by the Contracting Authority and the Tender Evaluation Committee is contrary to the provisions of Law no. 125/2013 "On concessions and public private partnership" and Decision of Council of Ministers n. 575 dated 10 July 2013, "*On approval of rules of evaluation and awarding of*

concessions / public private partnership", using the Complaint Form set out in **Error! Reference source not found.**

7.2 Determination of the Successful Tenderer

- 7.2.1 Upon expiry of the claim period referred to in Section 7.1.2, the Contracting Authority shall issue the Successful Tenderer Notification in the form attached hereto under **Error! Reference source not found.**, to the Tenderer whose tender has received the highest final score (the "**Successful Tenderer**").
- 7.2.2 The Successful Tenderer shall present the Contracting Authority the original tender at the address specified in **Error! Reference source not found.** within seven days from the date of the Successful Tenderer Notification.
- 7.2.3 The Successful Tenderer will be invited for the negotiation and finalization sessions as defined at paragraph 7.5, and will be requested to deliver the Performance Security and the Bank Financial Guarantee (as defined in the Draft Concession / PPP Contract) and to sign the Concession / PPP Contract within 30 days from the date of the Successful Tenderer Notification.

7.3 Contract Performance Security

- 7.3.1 Within thirty (30) days from the receipt of the Successful Tenderer Notification, the Successful Tenderer shall furnish the Contract Performance Security in accordance with the Concession / PPP Contract and in the form provided in **Error! Reference source not found.** or in another form acceptable to the Contracting Authority.

7.4 Bank Financial Guarantee

- 7.4.1 Within thirty (30) days from the receipt of the Successful Tenderer Notification, the Successful Tenderer shall furnish a Bank Financial Guarantee for evidence that the Bank or a leading international financial institute has been entered into an agreement with the Successful Tenderer to finance the Project. The Bank Financial Guarantee shall be in accordance with the Concession / PPP Contract and in the form provided in Schedule 20 of the Draft Concession / PPP Contract or in another form acceptable to the Contracting Authority.

7.5 Contract negotiation and finalisation

- 7.5.1 In the course of the finalization sessions, the Contracting Authority and the Successful Tenderer will, with due regard to the fair treatment of Tenderers, discuss, negotiate and agree in good faith on certain pending matters expressly stated in the Draft Concession / PPP Contract as requiring further discussions and negotiations with the Successful Tenderer, and the final terms and conditions of the Concession / PPP Contract will be modified accordingly; provided, however, that, aside from those specific pending matters,

the Contracting Authority will only entertain minor drafting changes for the purposes of clarity and customization of the Concession / PPP Contract, and the Successful Tenderer will be required to sign the Concession / PPP Contract in the form of the initialled copies submitted as part of its Technical tender, as amended during the finalization process.

7.6 Discharge of tender security

- 7.6.1 If within thirty (30) days from the date of the Successful Tenderer Notification, it becomes clear to the Contracting Authority that the Successful Tenderer will not comply with the requirements of paragraph 7.3.1 and/or paragraph 7.4 and/or sign the Concession / PPP Contract, the Contracting Authority shall be entitled to forfeit the Tender Security of the Successful Tenderer and invite for negotiations the other Tenderers in the order of their ranking until it receives a Contract Performance Security and a Bank Financial Guarantee and signs the Concession / PPP Contract or otherwise rejects all remaining Tenders.
- 7.6.2 Upon the Successful Tenderer's furnishing of the Contract Performance Security and the Bank Financial Guarantee (as defined in the Draft Concession / PPP Contract) and then the signing of the Concession / PPP Contract by the Successful Tenderer, the Contracting Authority will promptly notify the name of the Successful Tenderer to each unsuccessful tenderer and will discharge the tender security of the unsuccessful tenderers.
- 7.6.3 The Contracting Authority shall publish in the Public Notification Bulletin the name of the Successful Tenderer and the essential terms of the Concession / PPP Contract within thirty (30) days after the signing of the Concession / PPP Contract.

8 Miscellaneous

8.1 Confidentiality

- 8.1.1 Information relating to evaluation of Tenders and recommendations concerning awards shall not be disclosed to the Tenderers who submitted the Tenders or to other persons not officially concerned with the process, until the publication of the award of Contract. The undue use by any Tenderer of confidential information related to the process may result in the rejection of its Tender.