

## MARKET SOUNDING ROUND TABLE – PPP ADVISORS TO THE STATE RE: R4 SUMMARY & RECOMMENDATION PAPER

Prague, 7<sup>th</sup> July 2015

The **Czech Infrastructure Association (ARI)**, in cooperation with the **Czech Ministry of Transport (MoT)**, organized the round table discussion between the representatives of MoT and interested PPP advisors (**Round Table**). Over 40 participants attended the Round table, which took place on Monday 29 June 2015 from 13:00 till 15:30 in MoT's premises.

The aim of the market sounding discussion was to exchange comments on preliminary terms and conditions of an expected PPP tender in order to ensure a transparent, equal and non-discriminatory process leading to the selection of the most qualified and experienced advisors for a reasonable price, acceptable to MoT. The participants provided their opinions and recommendations reflecting their experience with similar tenders in the past.

This paper summarises the discussion highlights and outlines key recommendations presented by the participants. It also includes ARI's position and recommendations on the quality-based evaluation of bids.

### BACKGROUND

In April 2015, MoT announced its strategy to prepare and procure the first two pilot PPP projects in the transport sector in the Czech Republic, namely, the expressways R4 and R7, each approximately 70-80 km long. The projects shall involve green field and brown field parts with an estimated CAPEX of 275 and 365 million EUR, respectively. DBFOM scheme with an availability payment structure is being considered. The project information sheets are attached. A tender notice concerning the advisory services for R4 project was preliminarily issued in TED: 2015/S 113-204892 on 13 June 2015 with an estimated price of 75 million CZK.<sup>1</sup> The tender is expected to be launched at the end of July or in the beginning of August 2015.

### TENDER PROCEDURE

As announced by the MoT, the open procedure (*otevřené řízení*) shall be used (nevertheless, the specification of the tendering procedure was not stated in the preliminary notice). We believe that the **open procedure can generally be used**, however, we recommend **using the negotiated procedure** (*jednací řízení s uveřejněním*). As you will read below, we strongly advise using the quality-based evaluation including the use of an **interview session** with each of the bidder's key experts. The negotiated procedure, within the Czech procurement framework, appears to be a more suitable tender procedure.

<sup>1</sup> <http://ted.europa.eu/udl?uri=TED:NOTICE:204892-2015:TEXT:CS:HTML&src=0&tabId=1>

## SCOPE

It is understood that a single mandate for a consortium of financial, legal and technical advisors will be tendered. While the scopes of the financial and legal mandates usually do not differ significantly, the technical scope of work may considerably vary depending on whether the Project includes a brownfield part. In case the Project is going to include a brownfield part, we recommend that MoT undertakes vendor technical due diligence of the Project ahead of releasing the tender documentation to pre-qualified bidders in the PPP tender (a tender for a concessionaire). This due diligence can be undertaken either by the technical advisor selected in the tender procedure for advisors or within a separate technical due diligence mandate. In any case, MoT should decide whether to include the brownfield part or not and the approach to the vendor technical due diligence prior to tendering the advisors.

Also, we recommend specifying the scope for all of three advisors in detail and outlining the expected timeline, including a mechanism to compensate advisors in case the timeline is exceeded due to delays and lack of cooperation by public authorities.

## PRICE

The estimated price in the published tender notice is 75 million CZK, excluding VAT (*DPH*). As a reference, the expected price of a similar advisory tender launched in Slovakia in 2014 was 5,35 million EUR, excluding a price for a feasibility study phase (EUR 6 100 000 – 750 000). It is an equivalent of 150 million CZK.

We recommend that 75 million CZK is used as an “expected price”. It shall not be used as a limit of the maximum price in the tender documentation. We believe that a price expectation at the level of 75 million CZK can eventually be achieved; however, it is at the low end of the expected bid range. In order for the MoT to attract price offers close to this price expectation whilst securing the necessary quality of the advisory services, we recommend the following:

- a. the scope of the work to be clearly defined in terms of advisors’ work, tender timeline and advisors expected involvement (see SCOPE); and
- b. a competitive tender to be achieved by opening a qualification to a larger number of bidders (see QUALIFICATION CRITERIA).

Considering that this will be the first Czech pilot PPP project, there will be many uncertainties to both sides of the advisory contract, in terms of scope, process and legal environment. Therefore, we strictly recommend using the quality-based evaluation in order to focus bidders on their bids’ quality rather than a blind price dumping. In other words, the pressure to lower bid prices should be reasonable.

## QUALIFICATION CRITERIA

The objective of MoT should be to pre-qualify all applicants who routinely provide financial, technical, and legal advisory services for road infrastructure projects in the Central and Eastern Europe / European Union. Selection of the winning bid should then be based on a balanced mix of price and quality-based evaluation criteria in the next phase. This approach would provide the tender process the much-desired credibility and eventually lead to the selection of the best advisor.

When defining the qualification criteria, MoT should consider that the CEE/SEE PPP market in terms of recent transactions, mainly due to financial crises, remained extremely limited in the recent years. The last road PPP deal in CEE/SEE market was the Slovak R1 expressway closed in 2009.

MoT should also note that although the scope of advisory work provided in PPP projects for public sector and for private sector is different, the experience from advising the private sector in PPP tenders is also partially relevant when advising the public sector.

In the context of the above mentioned objectives and considerations we recommend:

- a. opening the qualification by applying less strict criteria (without endangering bids' quality) to have more qualified bidders in the assessment phase; however, combine this with a quality-based evaluation in order to have the possibility to choose among those qualified, the most experienced bidder with a reasonable price;
- b. expanding the period for which bidder's project references will be requested, to start as early as in 2008; we believe that under the current Czech Procurement Act it is possible to expand the period in order to achieve a competitive tender. Alternatively, the period in respect of team member's past references could be extended;
- c. accept both public sector and private sector experience of the bidders, but consider giving preferential points to the public sector experience;
- d. not limiting qualification to advisory services to road PPP projects that have reached financial close only; but broaden the definition to road PPP projects that have reached the negotiated procedure;
- e. expanding the region of eligible reference projects beyond EU countries. However, we understand that there are a certain specifics like EUROSTAT and EU procurement rules, which are relevant to the project. The MoT could consider awarding preferential points in quality-based evaluation for references from EU countries, especially due to the similarity of the legal environment; and
- f. allowing bidders to put forward all their relevant experience and judging that experience on a quality basis as set out above (see Quality-based Evaluation in the section and the Annex below).

## BID EVALUATION CRITERIA

The public PPP advisory does not necessarily cost less for a smaller project than when compared to a larger project measured by CAPEX. There is always similar scope of work, no matter of the size of the deal. The real efficiency can be achieved in the project delivery. Well-structured and well-tendered project in a competitive tender with international bidders creates the highest added value, which can only be achieved when experienced and reputable team of experts will be engaged by MoT.

We strongly advise the MoT to **use a quality-based evaluation** (*ekonomická výhodnost jako hodnotící kritérium*) to select the most experienced and quality bid out of those qualified. There are no doubts that it is possible under the Czech Procurement Act. We recommend using the provision of Section 78/4 of the Czech Public Procurement Act in that respect (*hodnocení členů odborného týmu podle ustanovení § 78 odst. 4 ZVZ*).

We also recommend, as a part of the quality-based evaluation, **using the Interview session** with key experts of the bidder's proposed team, which will be evaluated based on a pre-defined set of questions.

We propose the following weights structure of the evaluation criteria:

<b>EVALUATION CRITERIA</b>	<b>WEIGHTS</b>
Quality of the approach & risk mitigation	20%
Quality of the proposed key experts (with an interview)	30%
Overall bid price (all phases till Financial Close)	50%
Total	100%

### **QUALITY-BASED EVALUATION**

Quality-based evaluation in general could be focused on evaluation of the following:

Adequacy of methodology and the proposed plan of work compliant to the scope of work
Key risk assessment and risk mitigation strategy
Qualification, experience and level of an involvement of the <u>team leader</u> to the assignment
Qualification, experience and level of an involvement of the <u>team experts</u> to the assignment
Experience in advising public authorities
Experience in PPP and project development

The interview with the key members to explain their approach shall be used. The list of evaluation questions and the time of the interview must be the same for all interviewed experts.

Quality evaluation of the key members experience should be focused on PPP expertise. Each expert's track record will be evaluated based on:

- the more relevant road projects to R4 project, the higher score;
- the more relevant experience of advising on other PPP projects, the higher score;
- the more relevant expert's role on the project, the higher score;
- the higher number of relevant PPP projects, the higher score;
- the higher stage the projects reached, the higher score (bid preparation, submission, award and FC).

Please note that a scoring mechanism must be defined in the tender document - for example: a leadership (5 points), a significant involvement (4 points), a partial involvement (3 points) and similar.

### **POST SELECTION FOLLOW UP**

Once the winning bidder is announced we recommend that MoT arranges meetings with all (or all of the unsuccessful) bidders and debriefs them on how they scored and why. This practice is used by *Rijkswaterstaat* in the Netherlands and was proved to substantially limit the number of appeals against their decisions.

## **EXPERIENCED EVALUATION TEAM**

ARI recommends that MoT involves EIB experts / or contract the Dutch BVP experts to provide a quality-based evaluation expertise within the MoT's bid evaluation group.

## **BID BOND**

We recommend reconsidering the use of a bid bond. While all qualified bidders shall not have any problem to provide it, we see it as a redundant administrative obstacle with no real added value to MoT.

## **LIMITATION OF LIABILITY**

We recommend limiting the overall liability of advisors to 2x – 3x times the fee they receive based on the contract with MoT. In case the liability would not be limited (capped) at all, the participation of number of interested international bidders would be severely threatened. Limitation of liability is a standard condition in the majority of international advisory tenders.

## **JOINT & SEVERAL LIABILITY**

The nature of the work of financial, legal and technical advisors differs. While each advisor can bear liability for its own work, it is very difficult to assume risks and liabilities on behalf of other members of consortia. In the past, there were many occasions when international consortia of reputable bidders refused to submit the bid as they could not accept the provision of joint and several liability.

The MoT should therefore allow the leader of the consortium to submit its bid on its own with the other advisors acting as its subcontractors.

Alternatively, MoT may decide not to require joint & several liability in the advisory contract based on Section 51 sec. 6 of the Czech PPA<sup>2</sup>. However, in such case the benefit of joint tendering of the technical, financial and legal advisors would be limited to the fact that MoT will receive bids from advisory teams who teamed up voluntarily and are thus arguably more likely to cooperate better than in case of separate tenders for each of the three advisory fields.

## **LANGUAGE OF COMMUNICATION**

It should be recognised that all bidders are likely to need inputs from non-Czech PPP experts within their consortium given the first-of-a-kind nature of this project. We recommend that the day-to-day project communication as well as preparation of draft deliverables is done in English. Only the communication with MoT's project steering committee and submission of final deliverables should be in the Czech language. The PPP contract should be bi-lingual with the Czech version prevailing in case of differences.

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<sup>2</sup> § 51 sec. 6: „...Požadavek na závazek podle věty první, aby dodavatelé byli zavázáni společně a nerozdílně, platí, pokud zvláštní právní předpis nebo zadavatel nestanoví jinak.“

ARI is prepared to support MoT in making right decisions to prepare and procure the project in line with the international best practice. Although some decision might not be easy, we believe that it is a right time to make them. ARI will initiate a discussion with the Czech Office for the Protection of Competition (UOHS) on the proposed quality-based evaluation to seek guidance and increase awareness of international best practice. We highly appreciate the approach of MoT to market sounding and also to our cooperation. Should you have any question to the above stated, please, do not hesitate to contact us.



**Czech Infrastructure Association (ARI)** is a private sector think-tank for the Czech public infrastructure, uniting views held by major infrastructure players including engineers, contractors, banks and consultants. ARI is pushing through the clear rules for planning, public procurement, and transparent contract administration in line with a proven good international practice, which will allow for the Czech public infrastructure long-term sustainable development. ARI cooperates with various embassies and multilateral institutions, such as UNECE, EIB and EBRD.

## ANNEX

### A PROPOSED QUALITY-BASED EVALUATION MECHANISM DERIVED FROM THE INTERNATIONAL PRACTICE USED BY THE MULTILATERAL INSTITUTIONS SUCH AS WORLD BANK, EIB AND EBRD (ONLY IN THE CZECH LANGUAGE)

## PŘÍLOHA

### NÁVRH MOŽNÉHO ZPŮSOBU HODNOCENÍ EKONOMICKÉ VÝHODNOSTI PODLE MEZINÁRODNÍ DOBRÉ PRAXE UŽÍVANÉ MULTILATERÁLNÍMI INSTITUCEMI JAKO JE SVĚTOVÁ BANKA, EIB A EBRD

#### Hodnotící manuál

Hodnocení nabídek bude provedeno v souladu s § 78 odst. 1 písm. a) zákona č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů podle kritéria ekonomické výhodnosti nabídky.

Pro všechny nabídky bude stanoveno hodnotící kritéria (**HK**) podle metodiky uvedené níže.

Komise provede hodnocení tak, že stanoví Celkové hodnocení nabídky podle pravidel uvedených níže. Nabídka s nejvyšší hodnotou Celkového hodnocení nabídky, bude vyhodnocena jako nabídka nejvýhodnější.

#### Celkové hodnocení nabídky

$$CHN = 20\% * ZKA + 30\% * ZKB + 50\% * ZKC$$

CHN	Celkové hodnocení nabídky	Váha (%)
ZK A	Dílčí známka za hodnotící kritérium „ <b>Kvalita plnění</b> “ (dle vzorce v části I.)	20 %
ZK B	Dílčí známka za hodnotící kritérium „ <b>Kvalita klíčových členů týmu</b> “ (dle vzorce v části II.)	30 %
ZK C	Dílčí známka za hodnotící kritérium „ <b>Cena</b> “ (dle vzorce v části III.)	50 %
	Celkem	100%

## I. Výpočet dílčího hodnotícího kritéria ZK A „Kvalita plnění“

$$ZK A = \sum_{i=1}^n ZK_i = 50\% * ZK1 + 50\% * ZK2$$

	<b>Sub-kritérium</b>	<b>Váha dílčího sub-kritéria (%)</b>
ZK 1	Dílčí známka za hodnotící sub-kritérium ZK1 („ <b>Přístup k realizaci zakázky</b> “)	50 %
ZK 2	Dílčí známka za hodnotící sub-kritérium ZK2 („ <b>Řízení klíčových rizik zakázky</b> “)	50 %
	Celkem	100 %

Způsob hodnocení sub-kritérií, tedy nastavení přesných vah a bodových hodnot, je možné až po definování počtu hodnotících sub-kritérií. Lze uvažovat o bodové stupnici (0 - 10, resp. 0 - 5), nebo o jiných modelech.

Příklad: Bodové hodnocení 1 - 10

1	Dokument zpracován ve zcela nedostačující kvalitě nebo nezpracován vůbec. Odpovědi při interview jsou nedostatečné či jsou nesprávné.
5	Dokument vyžaduje doplnění nebo je zpracován pouze částečně. Odpovědi při interview jsou správné avšak nikoliv úplné, nebo jsou úplné avšak ne zcela správné.
10	Dokument bezvadně zpracován po obsahové i logické stránce. Odpovědi při interview jsou úplné a správné.

### Hodnotící sub-kritérium ZK1 („**Přístup k realizaci zakázky**“)

Modelové okruhy témat:

- Adekvátnost metodologie a návrh postupu realizace zakázky z pohledu požadavků zadavatele;
- [Další]

### Hodnotící sub-kritérium ZK2 („**Řízení klíčových rizik zakázky**“)

Modelové okruhy témat:

- Identifikace klíčových rizik projektu, které mohou zapříčinit jeho neúspěšnou realizaci;
- Návrh způsobu předcházení a způsob řízení těchto rizik;
- Návrh plánu přidané hodnoty uchazeče při řízení rizik;

Formální požadavky pro obě výše uvedená sub-kritéria:

- Omezení rozsahu (př. max. 5 normostran);
- Český nebo anglický jazyk.



## II. Výpočet dílčího hodnotícího kritéria ZK B „Kvalita klíčových členů týmu“

$$ZK B = \sum_{i=1}^n ZK_i = X\% * ZK1 + X\% * ZK_n$$

	<b>Sub-kritérium</b>	<b>Váha dílčího sub-kritéria (%)</b>
ZK 1	Dílčí známka za hodnotící sub-kritérium ZK1 („ <b>Klíčový člen týmu: finanční expert 1</b> “)	10 %
ZK 2	Dílčí známka za hodnotící sub-kritérium ZK2 („ <b>Klíčový člen týmu: finanční expert 2</b> “)	7 %
ZK 3	Dílčí známka za hodnotící sub-kritérium ZK3 („ <b>Klíčový člen týmu: finanční expert 3</b> “)	5 %
ZK 4	Dílčí známka za hodnotící sub-kritérium ZK4 („ <b>Klíčový člen týmu: finanční expert 4</b> “)	2 %
ZK 5	Dílčí známka za hodnotící sub-kritérium ZK5 („ <b>Klíčový člen týmu: právní expert 1</b> “)	10 %
ZK 6	Dílčí známka za hodnotící sub-kritérium ZK6 („ <b>Klíčový člen týmu: právní expert 2</b> “)	7 %
ZK 7	Dílčí známka za hodnotící sub-kritérium ZK7 („ <b>Klíčový člen týmu: právní expert 3</b> “)	5 %
ZK 8	Dílčí známka za hodnotící sub-kritérium ZK8 („ <b>Klíčový člen týmu: právní expert 4</b> “)	2 %
ZK 9	Dílčí známka za hodnotící sub-kritérium ZK9 („ <b>Klíčový člen týmu: technický expert 1</b> “)	10 %
ZK 10	Dílčí známka za hodnotící sub-kritérium ZK10 („ <b>Klíčový člen týmu: technický expert 2</b> “)	7 %
ZK 11	Dílčí známka za hodnotící sub-kritérium ZK11 („ <b>Klíčový člen týmu: technický expert 3</b> “)	5 %
ZK 12	Dílčí známka za hodnotící sub-kritérium ZK12 („ <b>Klíčový člen týmu: technický expert 4</b> “)	2 %
ZK 13	Dílčí známka za hodnotící sub-kritérium ZK13 („ <b>Zkušenost uchazeče – finanční poradenství</b> “)	10 %
ZK 14	Dílčí známka za hodnotící sub-kritérium ZK14 („ <b>Zkušenost uchazeče – právní poradenství</b> “)	9 %
ZK 15	Dílčí známka za hodnotící sub-kritérium ZK15 („ <b>Zkušenost uchazeče – technické poradenství</b> “)	9 %
	Celkem	100 %

### Hodnotící sub-kritérium ZK1 – ZK12 („Klíčový člen týmu“)

- Počet projektů, na kterých se podílel v obdobné pozici za posledních X let (doporučující dopisy pro danou osobu).
  - Lépe budou hodnoceny PPP projekty, které dosáhly vyšší fáze realizace;
  - Lépe budou hodnoceny PPP projekty, kde člen týmu měl relevantnější roli k nabízené pozici v týmu;
  - Lépe budou hodnoceny PPP projekty, kde člen týmu působil na straně veřejného sektoru;
- Doporučeno hodnocení odborných znalostí projektů (ústní prezentace a odpovědi na otázky k zakázce);

- Doplnující otázky hodnotící komise zadavatele ověřující znalost problematiky:
  - Zadavatel předem definuje otázky;
  - Otázky nesmí být známy uchazečům předem;
  - Otázky musí směřovat k ověření zkušeností klíčového člena týmu;
  - Otázky mohou vycházet z modelového příkladu (př. „*Jak by měl zadavatel řešit situaci X*“) či v návaznosti na vysvětlení vzorových plnění;
  - Všichni uchazeči musí mít dán stejný prostor pro vyjádření;
  - Průběh interview by měl být nahráván (zvuková nahrávka);
  - Pouze daný klíčový člen uchazeče se smí účastnit interview;

#### Hodnotící sub-kritérium ZK13 – ZK15 („Zkušenost uchazeče“)

- Další body za každý dodatečný projekt uchazeče splňující kvalifikační kritéria nad minimální hranici z kvalifikace ve srovnání s jinými uchazeči, dle vzorce:

$$ZK\ 13, ZK\ 14\ a\ ZK\ 15 = \frac{A}{A_{max}}$$

$A_{max}$	znamená nejvyšší počet referencí nad minimální hranici ze všech v hodnocených nabídkách uvedených pro dílčí hodnotící kritérium ZK 5.
A	znamená počet referencí nad minimální hranici uvedenou v hodnocené nabídce pro dílčí hodnotící kritérium ZK 5.

### **III. Výpočet dílčího hodnotícího kritéria ZK C „Cena“**

$$ZK\ C = \frac{A_{min}}{A}$$

$A_{min}$	znamená nejnižší cenu (Lump Sum 1, 2) ze všech cen v hodnocených nabídkách uvedených pro dílčí hodnotící kritérium ZK B.
A	znamená cenu (Lump Sum 1, 2) uvedenou v hodnocené nabídce pro dílčí hodnotící kritérium ZK B.