

Ankara - Niğde Highway Project

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The tender process for the Ankara-Niğde Highway Project has recently been launched by the General Directorate of Highways ("KGM"). Project includes construction, operation and transfer of Ankara-Niğde Highway on a BOT basis and consists of (i) Ankara – Acıkuyu, (ii) Acıkuyu - Alayhan and (iii) Alayhan - Gölcük intersections.

Main Features of the Tender and Project

1. Tender Process

The tender announcement has been published in the Official Gazette on 30 December 2016.

Potential bidders may see and purchase the tender documents from KGM in Ankara starting from 17 January 2017. The purchase price of the tender documentation is TL 75,000, but the potential bidders can review the documents free of charge at KGM's offices in Ankara.

The deadline for submission of the bids is 14 April 2017. Together with their bids, the bidders will be required to submit a bid bond in the amount of TL 75 million.

The tender process will consist of two phases. In the first phase the bidders which fulfill the required qualifications will be selected. The prequalification will be conducted based on the (i) organizational structure; (ii) financial strength and (iii) engineering and construction experience of the bidders.

In the second phase, the prequalified bidders will compete based on the proposed duration of the operation term. The bidder which proposes the shortest operation term shall be awarded the tender.

2. Eligible Bidders

Both Turkish and foreign companies or other entities such as consortiums can participate in the tender. In case of foreign bidders, they must have a notification address in Turkey, and they must establish a Turkish joint stock company if they become successful bidder.

3. Project Model and Applicable Legislation

The project model is build-operate-transfer (BOT). The main pieces of legislation applicable to the tender and the project are the Build-Operate-Transfer Law. No 3996 and its implementation regulation, namely the Council of Ministers Decree No. 2011/1807.

4. Relevant Public Authority

The relevant public authority, which will conduct the tender process and will be a party to the concession agreement, is KGM. KGM is a public authority affiliated with the Ministry of Transport, Maritime Affairs and Communications. However, its obligations do not constitute direct obligations of the State. For this reason, Turkish Treasury will sign a Debt Assumption Agreement with the lenders as explained below.

5. Concession Period

The concession period consists of the construction term and the operation term. The construction term is 3 years from the date of signing of the Implementation Contract (“IC”), subject to possible extensions due to force majeure events or other reasons attributable to KGM, such as variation orders. The operation term will be determined as a result of the tender process, as the bidder which proposes the shortest operation term will be awarded the tender.

6. Contractual Structure

The main concession agreement will be the IC to be signed between KGM and the project company to be established by the successful bidder. In addition to the IC, an Implementation Contract Direct Agreement (“ICDA”) will be signed between KGM, the project company and the lenders to regulate the rights of lenders vis-à-vis KGM, such as step-in, substitution, KGM’s representations and undertakings, and the mechanisms for lenders to trigger its secured rights regarding the Project and the IC. Furthermore, a Debt Assumption Agreement (“DAA”) will be signed among Treasury, KGM, project company and the lenders as explained below. Both the IC, the ICDA and the DAA shall be private law agreements.

7. Traffic Guarantee

The project will benefit from a “traffic guarantee” to be provided by KGM. The minimum number of vehicles using the intersections of the highway will be guaranteed on an annual basis. The tariff for using the intersections will also be set in the IC, subject to an annual adjustment mechanism.

8. Debt Assumption by Treasury

Debt assumption basically refers to the assumption of the loan and financing costs by the State or the relevant public entity upon termination of the underlying concession agreement.

The legislation governing debt assumption by Treasury, namely the BOT Law No. 3996 and the Debt Assumption Regulation are applicable to Ankara-Niğde Highway Project. Therefore, Treasury will sign a Debt Assumption Agreement with the lenders whereby the Treasury would undertake to assume the debt of the project company to the lenders in case of termination of the IC.

9. Precedent Deals

A number of similar mega infrastructure projects have been tendered and developed in Turkey especially over the past five years in both transport and other infrastructure sectors. In the transport sector, Gebze-Izmir Highway Project (including Izmit Bay Suspension Bridge), 3rd Istanbul Bridge Project and Eurasia Tunnel Project are among of such precedent projects where, similar to the Çanakkale Bridge Project, the relevant public authority was KGM, a debt assumption agreement was signed with the Treasury, and the project model was BOT. All these three projects have been successfully financed and Gebze-Izmir Suspension Bridge as well as 3rd Istanbul Bridge Projects started operation while Eurasia Tunnel Project will become operational within 2016. Istanbul 3rd Airport Project is also one of the precedent deals as it was a BOT project with similar direct agreement and debt assumption structure, although the relevant public authority was not KGM, and Treasury was not a party to the Debt Assumption Agreement in that project.

In addition, tender process of Çanakkale Bridge Project has been recently launched and its bid submission date is 26 January 2017. The legal and contractual structures of the Ankara-Niğde Project and Çanakkale Bridge Project are identical except the project specific differences. You may also refer to our Client Alert regarding Çanakkale Bridge Project published in November 2016 on our website for further information.

10. Next Steps

Potential bidders can also ask their questions in writing until 25 March 2017. KGM will provide its answers again in writing by 4 April 2017. The bids will be submitted by 14 April 2017, and a two-stage selection process will be conducted after such date as explained above.

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