

## REGULATION

# PROCUREMENT

### "SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING"

(IDENTIFICATION NO RBR 2017/13)



**Co-financed by the European Union**  
Connecting Europe Facility

*The sole responsibility of this publication lies with the author.  
The European Union is not responsible for any use that may be made of the information contained therein.*

## Contents

1. GENERAL INFORMATION.....	3
2. THE RIGHTS OF THE PROCUREMENT COMMISSION .....	4
3. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION .....	4
4. THE RIGHTS AND OBLIGATIONS OF THE TENDERER.....	5
5. SUBJECT-MATTER OF THE PROCUREMENT .....	6
6. TENDERER.....	6
7. SELECTION CRITERIA FOR TENDERERS.....	7
8. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS .....	12
9. SUBCONTRACTING .....	13
10. FINANCIAL PROPOSAL .....	13
11. CONTENTS AND FORM OF THE PROPOSAL .....	13
12. SUBMISSION OF A PROPOSAL.....	14
13. OPENING OF PROPOSALS .....	15
14. VERIFICATION OF FINANCIAL PROPOSALS .....	15
15. CONTRACT AWARD CRITERIA.....	16
16. TENDERER'S CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT .....	16
17. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT .....	17
Annex No 1: Application .....	19
Annex No 2: Technical specification.....	20
Annex No 3: Entities on whose capabilities the tenderer relies.....	23
Annex No 4: Subcontractors.....	24
Annex No 5: Draft contract.....	25

# REGULATION

## 1. GENERAL INFORMATION

- 1.1. The identification number of this procurement is No RBR 2017/13.
- 1.2. The applicable CPV code is: 48000000-8.
- 1.3. The contracting entity is joint stock Contracting authority RB Rail AS, legal address: K. Valdemara Street 8 - 7, Riga, LV-1010, Latvia (hereinafter – Contracting authority).
- 1.4. This procurement is organised in accordance with Section 9 of the Public Procurement Law of Latvia in effect on the date of publishing the contract notice.
- 1.5. The procurement regulation and all its annexes are freely available at the Internet webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 1.6. Amendments to the procurement regulation and answers to Contractors' questions shall be published on the Contracting authority's Internet webpage <http://railbaltica.org/tenders/>. It is the Contractor's responsibility to constantly follow the information published on the webpage and to take it into consideration in its proposal.
- 1.7. Contact persons of the Contracting authority for this procurement:
  - (a) In administrative aspects of the procurement: Procurement specialist - lawyer Elina Saule, telephone: +371 26654433, e-mail address: [elina.saule@railbaltica.org](mailto:elina.saule@railbaltica.org), [procurement@railbaltica.org](mailto:procurement@railbaltica.org);
  - (b) In aspects concerning subject-matter of Procurement: Activity Manager Kristaps Rudzis, telephone +371 2815 0101, e-mail address: [kristaps.rudzis@railbaltica.org](mailto:kristaps.rudzis@railbaltica.org), [procurement@railbaltica.org](mailto:procurement@railbaltica.org).
- 1.8. The procurement commission and the Contractor exchange information in writing in English, by sending documents by post, electronically or by delivering in person.
- 1.9. The Contractor can request additional information regarding the Regulation. Additional information can be requested in writing, by sending it to the procurement commission by post or electronically to e-mail address [procurement@railbaltica.org](mailto:procurement@railbaltica.org), or delivering in person. Additional information must be requested in a timely fashion, so that the procurement commission can give it a reply no later than 4 (four) days prior to the deadline for proposal submission. The procurement commission shall provide additional information within 3 (three) business days from the day of receipt of the request.
- 1.10. The Contractor covers all expenses, which are related to the preparation of the Proposal and its submission to the Contracting authority. The submitted proposals are not returned to the Tenderer, unless specifically envisaged in the Regulations.

## 2. THE RIGHTS OF THE PROCUREMENT COMMISSION

- 2.1. The procurement commission has the right to demand at any stage of the procurement that the Tenderer submits all or part of the documents which certify Tenderer's compliance to the requirements for the selection of tenderers. The procurement commission does not demand such documents or information which is already at its disposal or is available in public data bases.
- 2.2. If the Tenderer submits document derivatives (e.g. copies), then in case of doubt about the authenticity of the submitted document derivation the procurement commission can demand that the Tenderer shows the original documents.
- 2.3. In the course of proposal assessment the procurement commission has the right to demand that the information included in the technical and financial proposal is clarified.

## 3. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 3.1. The procurement commission ensures the documentation of the process of the procurement procedure.
- 3.2. The procurement commission ensures free and direct electronic access to the procurement procedure documents at the Internet webpage of the Joint-Stock Contracting authority "RB Rail AS" <http://railbaltica.org/tenders/>.
- 3.3. If an interested Tenderer has in a timely fashion in writing by post or electronically, or delivering in person, requested additional information about the requirements included in procurement procedure documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the procurement commission provides a response electronically (if the Contractor has requested that the answer be given electronically or if it is impossible to send the response by fax) within 3 (three) business days, but not later than 4 (four) days before the deadline for submitting proposals. Simultaneously with sending this information to the Contractor who had asked the question, the Contracting authority publishes this information on its Internet webpage <http://railbaltica.org/tenders/>, where procurement procedure documents are available, indicating the question asked.
- 3.4. If the Contracting authority has amended the procurement procedure documents, it publishes this information on the Contracting authority's Internet webpage <http://railbaltica.org/tenders/>, where procurement procedure documents are available.
- 3.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. In time between the day of the submission of Proposals till the moment of opening thereof the Contracting authority does not disclose information regarding the existence of other Proposals. In

the time period of Proposal assessment till the moment of the announcement of the results the Contracting authority does not disclose information regarding the assessment process.

- 3.6. The procurement commission assesses the Tenderers and their submitted Proposals based on the Public Procurement Law, procurement procedure documents, as well as other regulatory enactments.
- 3.7. If the procurement commission determines that the information about the Tenderer, its subcontractors and persons upon whose capabilities the Tenderer is relying that is included in the submitted documents is unclear or incomplete, it demands that the Tenderer or a competent institution clarifies or expands the information included in the Proposal. The deadline for submission of the necessary information is determined in proportion to the time which is required in order to prepare and submit such information. If the procurement commission has demanded to clarify or expand upon the submitted documents, but the Tenderer has not done this in accordance with the requirements stipulated by the procurement commission, the procurement commission is under no obligation to repeatedly demand that the information included in these documents be clarified or expanded upon.

## **4. THE RIGHTS AND OBLIGATIONS OF THE TENDERER**

### **4.1. The rights of the Tenderer:**

- 4.1.1. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet, which is an Annex to the Proposal opening meeting minutes;
- 4.1.2. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources, the Tenderer in question has the right to submit a statement or a different document regarding the corresponding fact, if the information obtained by the Contracting authority does not conform to the factual situation;
- 4.1.3. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Administrative court according to the procedure stipulated in the Public Procurement Law and Administrative Procedure Law regarding the Tenderer selection requirements, technical specifications or other requirements relating to this procurement, or relating to the activities by the Contracting authority or the procurement commission during the procurement procedure.

### **4.2. The obligations of the Tenderer:**

- 4.2.1. to prepare the Proposal in accordance with the requirements of the Regulations;
- 4.2.2. to provide true and accurate information about its qualification and the Proposal;

- 4.2.3. to provide answers to the inquiries of the Commission regarding additional information that is necessary for the selection of the Candidates, within the time limits specified by the Commission;
- 4.2.4. to cover all costs that are related to the preparation and submission of the Proposal;
- 4.2.5. until the end of the deadline for submission of the Proposal, to follow the information about the process of the procurement on the webpage of the Contacting authority <http://railbaltica.org/tenders/> taking into account the fact that the Contacting authority ensures free and direct electronic access to the documents of the procurement.

## 5. SUBJECT-MATTER OF THE PROCUREMENT

- 5.1. The subject-matter of the procurement is delivery of the software for train traffic modelling, providing of training services for the use of provided software and subscription for 2 (two) years. Detailed information is provided in Annex 2.
- 5.2. The delivery of the software for train traffic modelling and the training services will be provided in Latvia.

## 6. TENDERER

- 6.1. The proposal can be submitted by:
  - 6.1.1. A Contractor, who is a legal or natural person (hereinafter – Tenderer) and who complies with the selection criteria for tenderers;
  - 6.1.2. A group of Contractors (hereinafter also – Tenderer, partnership) which complies with the selection criteria for tenderers:
    - (a) a group of Contractors who have formed a partnership for this particular procurement. In this case all the members of the partnership shall be listed in Annex 1 "Application". If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of Latvian Civil Law Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of Latvian Commercial Law, Chapter IX and X) and notify the Contracting authority in writing;
    - (b) an established and registered partnership (a general partnership or a limited partnership, within the meaning of Latvian Commercial Law, Chapter IX and X) (hereinafter also – Tenderer) which complies with the selection criteria for tenderers.

## 7. SELECTION CRITERIA FOR TENDERERS

### 7.1. Exclusion grounds

The Contracting authority shall exclude the Tenderer from further participation in the procurement in any of the following circumstances:

No	Requirement	Documents to be submitted ( <i>no obligation to submit documents, unless specifically requested by the procurement commission</i> )
1.	Tenderer's insolvency proceedings have been announced, the Tenderer's business activities have been suspended, the tenderer is under liquidation.	<ul style="list-style-type: none"> <li>- For the Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For the Tenderer, which is registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence of non existence of such cases of exclusion.</li> </ul>
2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.	<ul style="list-style-type: none"> <li>- For the Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For the Tenderer, which is registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence of non existence of such cases of exclusion.</li> </ul>
3.	A person who drafted the procurement procedure documents (Contracting authority's official or employee), procurement commission member or expert is related to the tenderer, or is interested in selection of some tenderer, and the Contracting authority cannot	<ul style="list-style-type: none"> <li>- No obligation to submit documents, unless specifically requested by the procurement commission.</li> </ul>

No	Requirement	Documents to be submitted ( <i>no obligation to submit documents, unless specifically requested by the procurement commission</i> )
	<p>prevent this situation by measures that cause less restrictions on tenderers. A person who drafted the procurement procedure documents (Contracting authority's official or employee), procurement commission member or expert is presumed to be related to the tenderer in any of the following cases:</p> <ul style="list-style-type: none"> <li>- If he or she is a current or and ex-employee, official, shareholder, procura holder or member of a tenderer or a subcontractor which are legal persons and if such relationship with the legal person terminated within the last 24 months.</li> <li>- If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a Tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock Contracting authority, shareholder in a limited liability Contracting authority, procure holder or an official.</li> <li>- If he or she is a relative of a tenderer or a subcontractor which is a natural person.</li> </ul> <p>If the tenderer is a partnership, consisting of natural or legal persons, a relation to the tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting authority's</p>	



No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
	official or employee), procurement commission member or expert is related to a member of a partnership in any of the above mentioned ways.	
4.	The Tenderer's specified person on which possibilities the applicant relies in order to demonstrate that it meets the qualification requirements set out in the notice of the proposed contract or the procurement rules, as well as to the members of the partnership, if the applicant is a partnership, are applicable rules set in the requirements mentioned above, that is, sections 1, 2 and 3 of this table.	<ul style="list-style-type: none"> <li>- The rules for the document submission are set in the sections 1, 2 and 3, if applicable.</li> </ul>

## 7.2. Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.	<ul style="list-style-type: none"> <li>- For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies) registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Tenderer which is a natural person (or a member of a partnership, a person on whose abilities a Tenderer relies) – a copy of an identification card or passport.</li> <li>- For a Tenderer (or a member of a partnership, a person on whose abilities a Tenderer relies) which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of</li> </ul>

No	Requirement	Documents to be submitted
		<p>a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined.</p> <ul style="list-style-type: none"> <li>- If a proposal is submitted by a partnership, the Proposal shall include an agreement (or letter of intention to enter into agreement) signed by all members on the participation in the procurement, which lists responsibilities of each and every partnership members and a joint commitment to fulfil the procurement contract, and which authorises one key member to sign the proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made.</li> <li>- If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capabilities the Tenderer relies or sub-contractors, then a document certifying the rights of the persons who have signed the Proposal or any other documents, to represent the Tenderer, a member of the partnership, a person on whose capabilities the Tenderer is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.</li> </ul>

No	Requirement	Documents to be submitted
2.	The representative of the Tenderer who has signed the proposal documents has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.	- the document confirming the right of signature (representation) of the representative of the Tenderer who signs the proposal. If the Tenderer submits a power of attorney (original or a copy certified by the Tenderer) there shall be additionally submitted document confirming that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.
3.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must have the legal rights to sell the licenced software and provide maintenance and servicing of the software.	- A certificate from the software manufacturer with a confirmation of the legal rights to distribute, maintain and service the software, or an equivalent document.
4.	The Tenderer has provided the software offered for this procurement for at least three (3) railway operators operating on railway networks with ERTMS.	- References from three (3) railway operators (Tenderer's Clients) operating on railway networks with ERTMS confirming that Tenderer's proposed software is a software tool they are using for train traffic modelling.
5.	The Tenderer or all members' of the partnership together (if the Tenderer is a partnership) shall have stable financial and economic performance, namely, in the previous audited year Tenderer's liquidity ratio or in the 2015 year ( <i>if there is no audited annual report for 2016 yet</i> ) (current assets divided by short-term liabilities) shall be equal to or exceed 1 and the Tenderer shall have positive equity.	- Audited annual reports for previous fiscal year or 2015 year ( <i>if there is no audited annual report for 2016 yet</i> ) showing the balance and calculation that proves liquidity ratio.

7.3. Notices and other documents, which are issued by Latvian competent institutions, are accepted and recognized by the procurement commission, if they are issued no earlier than 1 (one) month prior to the date of opening of

the Proposals. Notices and other documents, which are issued by foreign competent institutions, are accepted and recognized by the procurement commission, if they are issued no earlier than 6 (six) month prior to the date of opening of Proposals.

- 7.4. If the documents, with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 7.1, are not issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or a person on whose capabilities the Tenderer relies before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence).
- 7.5. The Tenderer, in order to certify that it complies with the selection criteria for Tenderers, may submit the European single procurement document as initial proof. This document must be submitted in paper format, including for each person upon whose capabilities the Tenderer relies, but if the Tenderer is a partnership – for each member thereof. In order to fill in the European single procedure document the Tenderer uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/growth/tools-databases/espd/filter?lang=lv#>.

## 8. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS

- 8.1. For the fulfilment of the specific contract, in order to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional ability (including regarding the team of key experts), the Tenderer may rely upon the capabilities of other persons, regardless of the legal nature of their mutual relationship. In this case:
- 8.1.1. the Tenderer indicates in the Proposal all persons upon whose capabilities it relies by filling in the table which is attached as Annex 3 and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the contract, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the contract.
- 8.1.2. documents on cooperation and passing of resources have to be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the contract, as well as that during the validity of the contract the Tenderer will in fact use the resources of such person upon whose capabilities the Tenderer relies.
- 8.2. the Contracting authority shall evaluate the person, on whose capabilities the Tenderer to whom the rights to conclude the Contract should be assigned is relying. In case such person will comply with any of the exclusion grounds which are mentioned in Section 7.1, the Contracting authority shall request the Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the

selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the procurement.

## 9. SUBCONTRACTING

9.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is attached as Annex 4.

## 10. FINANCIAL PROPOSAL

10.1. The Financial proposal shall be submitted as part of Annex 1.

10.2. The proposed contract price shall be determined in euro without value added tax (hereinafter – VAT).

10.3. The proposed contract price is to be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma are indicated, then only the first two decimal places will be taken into account.

10.4. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the obligations specified in the Contract.

10.5. The prices are fixed for all the term of the fulfilment of the Contract and are not recalculated, except in cases stipulated in the Contract (if any).

## 11. CONTENTS AND FORM OF THE PROPOSAL

11.1. The documents shall be included in the proposal in the following order (hereinafter – Proposal):

11.1.1. title page with title "SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING" No RBR 2017/13", name, address and contact information of the Tenderer;

11.1.2. the table of contents with page numeration;

11.1.3. application (financial proposal) in accordance with Annex No. 1;

11.1.4. information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers, or the corresponding European single procurement documents;

11.1.5. information and documents relating to entities on whose capabilities the Tenderer is relying, or the corresponding European single procurement documents;

11.1.6. information about subcontractors.

- 11.2. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 11.3. The Tenderer may submit a Proposal only for the whole subject matter of the procurement in total.
- 11.4. The Tenderer shall submit a Proposal sewn or bound together, the loose ends of the ribbon fixed so that they cannot be opened without damaging the fixation, upon which the Tenderer must confirm with a signature the number of pages contained in the Proposal.
- 11.5. The Proposal must be submitted in written form in English. Upon the request from procurement commission Tenderer will have to submit Proposal documents translated in Latvian in period within 2 (two) weeks.
- 11.6. The Tenderer shall submit 1 (one) signed Original, 1 (one) Copy and a digital format (USB format files being in MS Office format or PDF format) copy of the Proposal.
- 11.7. The Proposal may contain original documents or their derivatives (e.g. copies). In the proposal or in reply to a request of the procurement commission the Tenderer shall submit only such original documents which have legal force. In order for the document to gain legal force it has to be issued and formatted in accordance with the Law on Legal Force of Documents, but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 11.9. The Tenderer shall submit Proposal in a glued up envelope, on which it shall be indicated: ""SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING" No RBR 2017/13". Do not open until 22 June 2017 at 11:00 o'clock". And the address: To the RB Rail AS, K. Valdemara Street 8 - 7, Riga, LV-1010. The name, address and telephone number of the Tenderer shall be specified on the envelope.
- 11.10. The Proposal shall be valid for 60 (sixty) days from the day of opening (deadline for submission) of the Proposal.

## 12. SUBMISSION OF A PROPOSAL

- 12.1. Proposal (documents referred to in the Section 11) shall be submitted personally, by courier or registered mail to the RB Rail AS, K. Valdemara street 8 - 7, Riga, LV-1010, Latvia by 22 June, 2017 till 11:00 o'clock.
- 12.2. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals. In case of amendments, the Tenderer has to clearly indicate on the Proposal that the Proposal is amended by indicating: "AMENDMENTS" in addition to the information mentioned in Section 11.9.
- 12.3. Proposals submitted after the expiry of the deadline for the submission of Proposals shall not be reviewed.

### 13. OPENING OF PROPOSALS

- 13.1. The opening of Proposals takes place during an open meeting of the procurement commission at 11:00 o'clock on 22 June, 2017 at RB Rail AS, K. Valdemara street 8 - 7, Riga, LV-1010.
- 13.2. The Proposals are opened in order of their submission, by naming the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal.

### 14. VERIFICATION OF FINANCIAL PROPOSALS

- 14.1. The procurement commission verifies whether Tenderers have completed Annex 1 "Application" in accordance with the requirements.
- 14.2. The procurement commission verifies whether there are any arithmetical errors, whether an abnormally low price Proposal has been received, as well as assesses and compares the contract prices proposed.
- 14.3. The procurement commission informs the Tenderer whose mathematical errors have been corrected about the correction of mathematical errors and the corrected financial proposal.
- 14.4. When evaluating the financial proposal, the procurement commission takes corrections into account.
- 14.5. The procurement commission has the right to demand that the Tenderer explains the calculation upon which the financial proposal is based and other related aspects in order to ascertain the objectivity of the financial proposal and whether an abnormally low price Proposal has been submitted.
- 14.6. The procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low price proposals.

## 15. CONTRACT AWARD CRITERIA

- 15.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.
- 15.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

No	Criteria	Points	Calculation methodology
1.	Initial license cost	45	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 45$
2.	Yearly subscription cost	45	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 45$
3.	Training costs	10	$Score = \frac{\text{Lowest proposed price}}{\text{Proposed price under evaluation}} \times 10$
<b>Total</b>		<b>100</b>	

- 15.3. The procurement commission shall estimate the final score for each financial proposal by summing up all points received for the particular financial proposal.
- 15.4. The Contract shall be awarded to the Tenderer whose Proposal receives the highest score.
- 15.5. In case several Tenderers will obtain equal number of points, the procurement commission shall award the right to conclude the contract to the Tenderer which will obtain higher score for the initial license cost. If also this score will be equal then the procurement commission shall award the right to conclude the contract to the Tenderer which submitted its Proposal first.

## 16. TENDERER'S CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT

- 16.1. Prior to making the decision about assigning rights to conclude the Contract, the procurement commission performs a check regarding the existence of grounds for exclusion of tenderers for Tenderers, members of a partnership (if the Tenderer is a partnership) and persons on whose capabilities the Tenderer is relying.
- 16.2. If, in accordance with the information published on the day of the last data update in a public database, on the last day of proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), or a person on whose capabilities the Tenderer is relying have tax debts, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, the procurement commission informs the Tenderer and sets a deadline – 10 days from the day of issuing or receiving information – for the submission



of a certificate evidencing absence of tax debt or decision to prolong the deadline or postpone payment of the tax, an agreement on payment of the tax or other objective evidence proving absence of a tax debt.

- 16.3. If the Tenderer fails to submit required evidence about itself before the deadline, the procurement commission excludes the Tenderer from participation in the procurement.

## **17. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT**

- 17.1. The procurement commission selects the Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulation and chooses the Proposal in accordance with the contract award criteria as described in Section 15. The Tenderer whose Proposal shall receive the best score shall be selected.

- 17.2. Within 3 (three) business days from the date of decision about the procurement results the procurement commission informs all the Tenderers about the decision made by sending the information by post or electronically and keeping the evidence of the date and mode of sending the information. The procurement commission announces the name of the chosen Tenderer, indicating:

- 17.2.1. to the refused Tenderer the reasons for refusing its Proposal;

- 17.2.2. to the Tenderer who has submitted an eligible Proposal, the characterization of the chosen proposal and the relative advantages.

- 17.3. If the public procurement procedure is terminated, the procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons due to which the procurement procedure is terminated, and informs about the deadline within which a Tenderer may submit an application regarding the violations of the public procurement procedure to the Administrative court.

- 17.4. The procurement commission, when informing of the results, has the right not to disclose specific information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of procurement would be violated.

- 17.5. The selected Tenderer upon receiving the notification about the procurement results must:

- 17.5.1. within 5 (five) business days submit cooperation or partnership agreement if required pursuant to requirements under Section 6.1.2;

- 17.6. The Contract is concluded on the basis of the Tenderer's Proposal and in accordance with Annex 5.

- 17.7. The procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulation:

- 17.7.1. refuses to conclude a partnership contract in the cases and deadlines defined by the Regulation, or in the cases and deadlines defined by the Regulation does not submit a copy of the partnership contract or does not inform of the founding of a partnership Contracting authority;
- 17.7.2. refuses to conclude the Contract or does not submit a signed Contract.
- 17.8. In such a case the procurement commission is entitled to terminate this procurement without selecting any Proposal, or to select the Proposal with the next best score. For either of these decisions a written decision must be made.
- 17.9. Prior to making the decision regarding the conclusion of the contract with the next Tenderer, the procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer, the procurement commission makes a decision to terminate the procurement without selecting any Proposal. If the next chosen Tenderer also refuses to conclude the contract or does not submit a signed public procurement contract within the deadline set by the procurement commission, the procurement commission makes the decision to terminate the procurement without selecting any Proposal.

## ANNEX NO 1: APPLICATION

[form of the Tenderer's Contracting authority]

2017.\_\_\_\_.\_\_\_\_

No \_\_\_\_\_

### APPLICATION FOR PARTICIPATION IN THE PROCUREMENT "SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING", No RBR 2017/13

Tenderer [name of the Tenderer or members of the partnership], reg. No. [registration No of the Tenderer or members of the partnership], represented by [name, last name and position of the representative of the Tenderer], by submitting this application:

- Confirms participation in the procurement "SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING" No RBR 2017/13.
- Proposes to provide licences for the following software: \_\_\_\_\_, and give training services in accordance with the Technical specification and this Proposal for the following prices (excluding VAT):

Software and Service	Cost
1. Initial license cost (EUR, excluding VAT):	
2. Yearly subscription cost for 2 years (EUR, excluding VAT):	
2.1. Technical support (for 2 years):	
2.2. Software updates (for 2 years):	
3. Training costs (EUR, excluding VAT):	
<b>Total offered price of the Tender (EUR, excluding VAT):</b>	

- Confirms that the Regulation is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a contract it shall fulfil all conditions of the Regulation as well as enter into a procurement contract in accordance with the draft contract enclosed with the Regulation.
- Confirms the period of validity of its Proposal for 60 (sixty) days from the day of opening of the Proposal.
- Guarantees that all information and documents provided are true.

**We meet the criteria of (please mark):**

☐ a small ☐ medium ☐ other

sized enterprise<sup>1</sup> as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise;<sup>2</sup>

Date: [date of signing]

Name: [name of the representative of the Tenderer and position]

<sup>1</sup> The information on the size of the Candidate is used solely for statistical purposes and are not in any way whatsoever used in the evaluation of the Candidates and their Requests to participate.

<sup>2</sup> Available here - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC)

## Annex No 2: Technical specification

Annex No 2  
to the Regulation  
for the procurement No RBR 2017/13  
SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING

### TECHNICAL SPECIFICATION

### FOR PROCUREMENT

### SOFTWARE DELIVERY FOR TRAIN TRAFFIC MODELLING

## CONTENT

### 1. OBJECTIVE OF PROCUREMENT

1.1. Through the applicable procurement procedure Contracting authority seeks to procure software and employee training services for said software in order to perform the following tasks (among others):

- 1.1.1. railway line and station capacity calculation;
- 1.1.2. train traffic modelling;
- 1.1.3. calculation of train running times;
- 1.1.4. analysis of the efficiency of the planned and/or existing infrastructure;
- 1.1.5. train traffic / infrastructure capacity analysis by simulating different railway infrastructure technical solutions (such as track alignment, signalling system, electrification system, power capacity etc.) and railway operation scenarios;
- 1.1.6. power consumption calculations.

1.2. The results to be delivered by the Tenderer<sup>3</sup> (the Contractor) are following:

No.	Title of deliverable	Description of deliverable
1.2.1.	Software	1 (one) software license delivery and installation. If the software cannot be installed by the Contracting authority, then the Contractor must install the software on a computer on the premises of the Contracting authority for no additional charge.
1.2.2.	Employee training	Training of maximum three (3) employees with said software for maximum three (3) days (eight (8) hours per day). Training must be done in the premises of the Contracting authority.
1.2.3.	Technical support	Contractor must provide two (2) years of technical support by e-mail or by phone with possibilities to extend this duration as an annual subscription.
1.2.4.	Software updates	Contractor must provide two (2) years of software updates to the newest supported version with possibilities to extend this duration as an annual subscription.

1.3. The deadline for the delivery of software and provision of the employee training is 2 months from the commencement date of the Contract.

### 2. SPECIFICATION OF THE SOFTWARE

2.1. The Software mentioned in Section 1.2 must be able to perform the following tasks:

- 2.1.1. software must be able to fully operate on Windows 10 (or higher version) platform;
- 2.1.2. determining the capacity of a planned or existing railway line and stations, including localization of bottlenecks (UIC 405 and EU TSI compliant);

<sup>3</sup> definitions "Tenderer" and "the Contractor" are considered as equal in terms of their meaning.

- 2.1.3. possibility to import and export data (including infrastructure) in RailML format among others;
- 2.1.4. software includes information most commonly used signalling systems in the European Union, specifically, it must include the ERTMS Level 2 (baseline 2.3.0d and higher versions);
- 2.1.5. software shall include all electrification systems used in Europe, mainly DC, AC (1x25 kV, 2x25kV);
- 2.1.6. infrastructure model must take into account all geometric parameters of the railway (slope gradient, cant, curvature radius among others);
- 2.1.7. testing and evaluating the component, system and rolling stock reliability effect on the operation of the railway line (sensitivity of the timetable);
- 2.1.8. providing railway line operation diagrams, including maintenance (train graphs – speed/time, tractive effort, electric energy consumption, acceleration behaviour) as well as showing real time operation of the railway;
- 2.1.9. software must include information on most commonly used rolling stock in Europe on 1435mm gauge (including acceleration behaviour, tractive effort etc.) so that no additional information collection is required from the Contracting authority for the simulations;
- 2.1.10. software shall have the possibility to analyse and represent various train infrastructure and train operation scenarios;
- 2.1.11. software interface must be in English and a full manual in an electronic format must be provided.

### 3. DESCRIPTION OF SERVICES

3.1. The employee training mentioned in the Section 1.2 must include the following:

- 3.1.1. training shall be done at the premises of the Contracting authority, thus travel and accommodation costs for the Contractor's employee(s) will be covered by the Contractor and must be included in the offer;
- 3.1.2. training shall be done in a group setting within 2 months after signing the contract;
- 3.1.3. training must be done in English and during the training the Contractor should explain and demonstrate the full functionality of the software on a demo project or client's data. This includes a theoretical background (description on how the software works) and practical examples;
- 3.1.4. any required equipment, presentation materials for the training shall be prepared and costs thereof shall be covered by the Contractor.

4.2 Technical support mentioned in Section 1.2 must include the following:

- 4.2.1. Contractor must provide technical support with any issues arising from the use of his software (both technical errors and other issues). The amount of support required will depend on the quality of the training (more qualified employees will require less support) and the quality of the software (less technical problems).
- 4.2.2. technical support will be done in English and all requests from the Contracting authority related to the technical support must be answered within 2 working days by the Contractor
- 4.2.3. Contractor must provide all available manuals and instructions for the software in English (both in electronical format and a physical copy)

4.3. Software updates mentioned in 1.2 must include the following - Contractor obliges to update the software to the most recent version when it is available. This includes fixing any technical issues arising from this software which may or may not be experienced by the Contracting authority.

**ANNEX NO 3: ENTITIES ON WHOSE CAPABILITIES THE TENDERER RELIES**

No	Name	Description of the capabilities
1		
2		
n+1		

---

Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*

## ANNEX NO 4: SUBCONTRACTORS

No	Name of the sub-contractor	Sub-contracted tasks		
		Description of the sub-contracted task	Amount, EUR (without VAT)	% from the proposed price
1				
2				
n+1				
Total:				

Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*



## ANNEX NO 5: DRAFT CONTRACT

to the Open Competition  
"Software Delivery for Train Traffic Modelling"  
Identification No RBR 2017/13

### AGREEMENT

This Agreement ("**Agreement**") is entered into in Riga, on [date] [month] 2017 ("**Effective Date**") by and between:

**RB Rail AS**, registration number: 40103845025, having its registered address at K. Valdemāra iela 8-7, Riga, LV-1010, Latvia ("**Contracting authority**"), represented by [name] [surname], the [position] and [name] [surname], the [position], acting on the basis of the Articles of Association,

and

[**Name of the Contractor**], registration number [number], having its registered address at [address] ("**Contractor**"), represented by [name] [surname], the [position], acting on the basis of [document],

each individually referred to as the "Party" and collectively referred to as the "Parties".

#### WHEREAS:

- (A) the Contracting authority is implementing the European standard track width project Rail Baltica, within the scope of which the Contracting authority needs marketing services;
- (B) The Contracting authority has organised the open competition "Software Delivery for Train Traffic Modelling" (identification No RBR 2017/13) ("**Procurement**") in which the Contractor's procurement proposal ("**Proposal**") was selected as the winning bid;
- (C) Procurement is co-financed by the Contracting authority and Connecting Europe Facility (CEF).

**NOW, THEREFORE**, the Parties hereby enter in to this agreement ("**Agreement**") on the following terms and conditions:

#### 1. SUBJECT OF THE AGREEMENT

- 1.1. The Contractor undertakes to deliver and install for the Contracting authority the software for train traffic modelling (1 (one) license ("**Software**"), provide the technical support for 2 (two) years ("**Technical Support**") and provide the employee training services, in accordance with Proposal for the Procurement and Agreement ("**Training**", but Software, Technical Support and Training jointly referred to as "**Services**"), whereas the Contracting authority undertakes to pay for the Services provided by the Contractor in accordance with the Agreement.
- 1.2. The Procurement Regulation and Contractor's Proposal shall form integral part of the Agreement.
- 1.3. The Contractor represents and warrants that the Software performs the following tasks (among others):
  - 1.3.1. railway line and station capacity calculation;
  - 1.3.2. train traffic modelling;
  - 1.3.3. calculation of train running times;

- 1.3.4. analysis of the efficiency of the planned and/or existing infrastructure;
- 1.3.5. train traffic / infrastructure capacity analysis by simulating different railway infrastructure technical solutions (such as track alignment, signalling system, electrification system, power capacity etc.) and railway operation scenarios;
- 1.3.6. power consumption calculations.
- 1.4. The Contractor represents and warrants that the Software has the following key characteristics:
  - 1.4.1. be able to fully operate on Windows 10 (or higher version) platform;
  - 1.4.2. determine the capacity of a planned or existing railway line and stations, including localization of bottlenecks (UIC 405 and EU TSI compliant);
  - 1.4.3. possibility to import and export data (including infrastructure) in RailML format among others;
  - 1.4.4. include information most commonly used signalling systems in the European Union, specifically, it must include the ERTMS Level 2 (baseline 2.3.0d and higher versions);
  - 1.4.5. include all electrification systems used in Europe, mainly DC, AC (1x25 kV, 2x25kV);
  - 1.4.6. Infrastructure model must take into account all geometric parameters of the railway (**slope gradient, cant, curvature radius among others**);
  - 1.4.7. be able to test and evaluate the component, system and rolling stock reliability effect on the operation of the railway line (sensitivity of the timetable);
  - 1.4.8. provide railway line operation diagrams, including maintenance, (train graphs – speed/time, tractive effort, electric energy consumption, acceleration behaviour) as well as showing real time operation of the railway;
  - 1.4.9. include information on most commonly used rolling stock in Europe on 1435mm gauge (including acceleration behaviour, tractive effort etc.) so that no additional information collection is required from the Contracting authority for the simulations;
  - 1.4.10. has the possibility to analyse and represent various train infrastructure and train operation scenarios;
  - 1.4.11. software interface must be in English and a full manual and instructions in an electronic format and a physical copy must be provided.
- 1.5. The Contractor will provide the Technical support for 2 (two) years from the moment of delivery of the Software (Section 3.4) as follows:
  - 1.5.1. provide support with any issues arising from the use of his software (both technical errors and other issues);
  - 1.5.2. provide support in English and answer all requests by e-mail or by phone from the Contracting authority related to the Technical support within 2 working days;
  - 1.5.3. to update the Software to the most recent version when it is available. This includes fixing any technical issues arising from the Software which may or may not be experienced by the Contracting authority.
- 1.6. The Contractor shall deliver the Training, which shall include the following:
  - 1.6.1. the Training shall be done at the premises of the Contracting authority, thus travel and accommodation costs for the Contractor's employee(s) will be covered by the Contractor;
  - 1.6.2. the Training shall be done in a group setting - maximum (3) three employees for maximum (3) three days (8) eight hours per day);

- 1.6.3. during the Training, the Contractor should explain and demonstrate the full functionality of the Software on a demo project or client's data. This includes a theoretical background (description on how the Software works) and practical examples;
- 1.6.4. any required equipment, presentation materials for the training shall be prepared and costs thereof shall be covered by the Contractor.
- 1.7. The Contractor shall deliver the Software and provide the Training within 30 days from the date of the Agreement and agree on the exact delivery and training date with the Contracting authority.
- 1.8. The Services shall be provided in the English language.
- 1.9. The Agreement contains the following Annexes:
  - 1.9.1. Annex A - Proposal's financial proposal;
  - 1.9.2. Annex B – Contractor's declaration.
- 1.10. The Annexes listed in Section 1.9 of this Agreement shall form an integral part of the Agreement and are incorporated herein by reference as if set out at length in the Agreement.
- 1.11. In the event of any inconsistency between the terms of this Agreement and any of the Annexes, the text of this Agreement shall take precedence over any term set forth in any of the Annexes. In the event of any inconsistency between the terms of any of the Annexes, the terms of the Proposal shall prevail.
- 2. PROVISION OF SERVICES**
  - 2.1. The Contractor shall deliver the Services of the Contracting authority within the dates approved by the Parties and following the deadlines set in the Agreement.
  - 2.2. The Contractor provides the Services in accordance with its best knowledge and experience and perform all necessary actions in order to provide the Services.
  - 2.3. Contracting authority's liaison person that is authorized in the name of the Contracting authority to approve the delivery of the Services fully or partially and communicate between the Parties is [position], [name] [surname, phone [phone number], e-mail: [e-mail address]].
  - 2.4. Contractor's liaison person that is authorized to approve the delivery of the Services fully or partially and communicate between the Parties is [position], [name] [surname, phone [phone number], e-mail: [e-mail address]].
  - 2.5. During the absence of the Parties' liaison persons their duties shall be carried out by other respectively qualified employees of the Parties.
  - 2.6. After the successful delivery and installation of the Software on a computer on the premises of the Contracting authority and delivery of the Training, the Contractor shall prepare and submit to the Contracting authority the delivery and acceptance act signed on its part in respect of the Services provided.
  - 2.7. The Contracting authority shall review the delivery and acceptance act not later than within 5 (five) business days as of the receipt thereof and sign the delivery and acceptance act thereby confirming the compliance of the Services rendered with the Agreement and requirements of the Contracting authority, or raise reasonable objections in respect to the Services rendered. The objections thereto must be expressed in a written form and communicated by electronic mail to the Contractor's liaison person.
  - 2.8. The delivery and acceptance act signed on the part of the Contracting authority shall serve as a basis for issuing invoice by the Contractor for the delivery and installation of the Software, the delivery of the Training and the annual subscription cost for the Software for the first year. For the annual subscription cost for the Software for the second year the invoice shall be issued not earlier than 12 months after the date of the delivery and acceptance act.

### 3. FEE AND PAYMENT

- 3.1. For the Services, the Contracting authority shall pay to the Contractor the following fees:
- 3.1.1. for the delivery and installation of the Software - [amount] EUR ([amount]euro and [amount] cents), excluding value added tax ("VAT");
  - 3.1.2. for yearly subscription of the Software - [amount] EUR ([amount]euro and [amount] cents), excluding value added tax ("VAT");
  - 3.1.3. for the delivery of the Training - [amount] EUR ([amount]euro and [amount] cents), excluding value added tax ("VAT").
- 3.2. Total amount of the Agreement excluding VAT is [amount] EUR ([amount]euro and [amount] cents).
- 3.3. The Contractor confirms that the fee mentioned in Section 3.1 cover all and any costs of the Contractor for the delivery of the Services at the premises of the Contracting authority, including, but not limited to travel and accommodation costs for the Contractor's employee(s).
- 3.4. The Contracting authority shall make the payment set in Section 3.1 of the Agreement within 30 (thirty) days after receipt of the signed delivery and acceptance act, the signed Contractor's declaration and receipt of the invoice from the Contractor by transfer of the payment to the bank account. For the annual subscription cost for the Software for the second year the invoice shall be issued not earlier than 12 months after the date of the delivery and acceptance act.
- 3.5. Invoices should be sent to the e-mail [invoices@railbaltica.org](mailto:invoices@railbaltica.org) and should include the following details about the contract: Identification number RBR 2017/13 and name of the contact person Kristaps Rudzis.

### 4. INTELLECTUAL PROPERTY RIGHTS

- 4.1. Unless agreed otherwise in writing between the Parties, all copyright and other intellectual property rights (except personal copyrights of an author) to all materials created by using the Software shall be exclusively owned by the Contracting authority. The material author's property rights include, but are not limited to, the rights to communicate the materials mentioned above to the public, publish, distribute, reproduce, translate or modify them. The Contracting authority is entitled to use the materials created by using the Software in any manner and an unlimited number of times in Latvia, Lithuania, Estonia and other countries. The Contractor may not assign, transfer, sell, license, sublicense or grant any right in or to the all materials created by using the Software by the Contracting authority and any related documentation to any other person or entity. For the avoidance of any doubt, the Contractor shall be deemed to have granted the Contracting authority the right to use any materials deliverable to the Contracting authority under this Agreement (including all data contained in such materials) for whatever purpose. The Contractor confirms the Contracting authority is the owner of the data it has entered and defined in the software (infrastructure, timetable, rolling stock, perturbations etc.) and all related results of the the Contracting authority investigations.
- 4.2. The Contractor confirms that in the course of provision of the Services, the Contractor will ensure that the rights of the copyright holders are respected and there will be no infringements of any copyrights. If necessary, the Contractor shall obtain all the necessary permits, consents and licences for the use of the work protected by the intellectual property rights.
- 4.3. The Contractor agrees that the costs of all the necessary permits, consents, licences etc., if any such will be incurred in relation to provision of the Services and due performance of the Agreement, are included in the fee set in Section 3.1.
- 4.4. This Agreement does not transfer or convey to the Contractor or any third party any right, title or interest in or to any of the Contracting authority's property.

### 5. RIGHTS AND OBLIGATIONS OF THE PARTIES

- 5.1. Rights and Obligations of the Contracting authority:

- 5.1.1. to adhere to the provisions of the Agreement;
- 5.1.2. to a reasonable extent supply the Contractor with information, as well as provide answers to the Contractor's questions required for provision of the Services;
- 5.1.3. to accept the Services duly provided by the Contractor pursuant to the Agreement and pay for them;
- 5.1.4. refuse to accept the Services if the Contracting authority discovers that the Services or part of the Services are provided in a bad quality, incompletely or not in accordance with the terms of the Agreement;
- 5.1.5. request the Contractor to remove free of charge and within the term defined by the Contracting authority the defects and incompliances that are discovered in the provided Services;
- 5.1.6. to control at his own expense the performance of the Agreement, engaging professionals and experts, if necessary.
- 5.2. Rights and obligations of the Contractor:
  - 5.2.1. to adhere to the provisions of the Agreement and the Contractor's declaration;
  - 5.2.2. to provide Services using its professional skills, timely and autonomously, in a good quality and with such accuracy that one can expect from a decent and proper Contractor;
  - 5.2.3. to cooperate with the Contracting authority;
  - 5.2.4. to independently request, receive and assess information required for provision of the Services.
- 5.3. Parties shall immediately notify the other Party in writing on any circumstances occurring irrespective of their action and hindering provision of the Services according to deadlines and procedure set in the Agreement.

## **6. LIABILITY**

- 6.1. If the Contractor fails to deliver the Services by the Parties' approved deadlines as provided for in the Agreement, and the Contractor's delay has not occurred due to the Contracting authority's fault, the Contractor shall pay the Contracting authority a contractual penalty in the amount of EUR 150 for each day of delay, but not exceeding in total 10% of the Fee for the Services rendered in the relevant month. The same penalty shall apply to the Contractor, if it fails to perform other obligations under the Agreement (for example, fails to sign and deliver the Contractor's declaration) and does not eliminate the breach within 5 (five) days from receipt of respective written notice from the Contracting authority. The Contracting authority is entitled to withhold from the payment the contractual penalties accrued.
- 6.2. For failure to make payments when due under the Agreement, the Contracting authority shall pay to the Contractor a contractual penalty amounting to 0.05 % (zero point zero five per cent) of the outstanding amount for each day delayed, but not exceeding 10% of the sum of the delayed payment.
- 6.3. Payment of the contractual penalty shall not release the Parties from performance of obligations.
- 6.4. The Parties are reciprocally liable for the breaches of obligations and damages caused to the other Party. The Party that is liable for the breach of the contractual obligations shall pay damages to the other Party.

## **7. FORCE MAJEURE**

- 7.1. None of the Parties will be considered in breach of the Agreement to the extent that any fulfilment of obligations under the Agreement is prevented or becomes impossible due to the event of force majeure, which neither of the Parties was able to prevent by any reasonable measure available to it. Force majeure is natural disasters, war and any type of war operations, siege, epidemic and other circumstances of extraordinary character beyond the reasonable control by the Parties that the Parties could not foresee during fulfilment of the Contract.
- 7.2. The force majeure clause shall apply also to the changes in legislative regulations and existing rules that may delay or make the provision of the Services impossible.

- 7.3. The Party that refers to the force majeure shall without delay and within the shortest possible time notify to the other Party in writing the force majeure circumstances. The other party has the right to request the certified statement of the competent authority that proves and characterizes the notified force majeure circumstances.
- 7.4. In case the fulfilment of the obligations of the Agreement becomes impossible due to the force majeure circumstances for more than 30 (thirty) days, the Parties has the right to withdraw from the Agreement. In this case the Contractor shall transfer to the Contracting authority the completed Services and the Contracting authority shall pay for them.

## 8. CONFIDENTIALITY

- 8.1. The Parties agree that any information ("**Information**") obtained in the course of fulfilment of the Agreement, incl. but not limited to information obtained by one Party on the other Party, ideas, methods and work techniques of Parties, as well as information obtained by the Contractor in the course of performance of work will be considered as confidential.
- 8.2. The Parties undertake not to disclose without a prior written consent of the other Party any Information obtained in the course of fulfilment of the Agreement, save for the cases referred to in Section 8.4 of the Agreement. This provision shall be applicable during the validity of the Agreement, and shall remain effective also after the expiration or termination of the Agreement.
- 8.3. The Parties undertake to provide Information to their employees only to the extent required for provision of the Services and due performance of the Agreement. The Contractor ensures that its employees or other persons involved in the provision of the Services respect the provisions of confidentiality defined in the Agreement. The Contractor shall be fully responsible for the damages caused to the Contracting authority due to the reveal of the Information to the third persons, disregarding whether the Information was revealed by the Contractor itself, its employees or by other persons involved in the provision of the Services.
- 8.4. The disclosure of the Information will not be considered a breach of the Agreement if it is revealed due to the legislative requirements and in accordance with the provisions of the normative enactments or EU legislation, including the obligation of the Contracting authority to disclose the Agreement terms to any authorities controlling spending of public funds.
- 8.5. The Party which itself or through its engaged persons is in breach of the confidentiality obligation, shall compensate direct losses incurred by the other Party.

## 9. VALIDITY OF THE AGREEMENT AND TERMINATION

- 9.1. The Agreement shall enter into force upon its signing by the both Parties and shall remain in force for two years from the date of date of the delivery and acceptance act.
- 9.2. The Contracting authority is entitled to unilaterally terminate the Agreement having notified the Contractor in writing 10 (ten) days in advance in one of the following cases:
- 9.2.1. the Contractor misses deadlines set by the Parties for provision of the Services under the Agreement by more than 5 (five) days;
- 9.2.2. the Contractor is in breach of other contractual obligations or liabilities, and the Contractor has not eliminated the breach within 5 (five) days from receipt of respective written notice from the Contracting authority;
- 9.2.3. the Contractor has been declared insolvent, legal protection process or liquidation of the Contractor has been initiated.
- 9.3. In case of early termination of the Agreement the Parties shall draft and sign a special deed on actually provided volume and value of Services. The Contracting authority shall approve the Services to the extent completed and compliant with the Agreement. The Contracting authority shall pay to the Contractor for the Services provided on the basis of duly drafted and mutually signed deed. The Contracting authority is



entitled to withhold from the payment the contractual penalties accrued. In the case referred to in this clause above the Parties shall settle mutual payments within 10 (ten) days from signing of the deed.

#### 10. DISPUTE RESOLUTION

- 10.1. Any disagreements arising between the Parties concerning performance of the liabilities as per the Agreement shall be resolved by way of mutual negotiations. The agreement reached shall be documented in writing.
- 10.2. If no agreement is reached during 30 (thirty) days period, the dispute shall be settled in the court of the Republic of Latvia according to the procedure set by the normative enactments of the Republic of Latvia.

#### 11. FINAL PROVISIONS

- 11.1. Communication between the Parties (e.g. information, requests, submissions, formal notifications, etc.) during the Agreement must be carried out in English language.
- 11.2. If the final day of a time period referred to in this Agreement is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.
- 11.3. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law. Amendments and supplements to the Agreement shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Agreement and become an integral part of it. If any of the provisions of the Agreement become void, it shall not affect other provisions of the Agreement.
- 11.4. The Parties shall timely notify the changes of billing details, legal addresses or representatives.
- 11.5. Rights and obligations not covered by this Agreement are regulated according laws of the Republic of Latvia.
- 11.6. The Agreement has been signed in two identical copies, one copy for the Contracting authority and the other for the Contractor.

#### 12. DETAILS OF THE PARTIES

**Contracting authority:****RB Rail AS**

Uniform registration No. 40103845025

address: K.Valdemāra iela 8-7

Riga, LV-1010

Account details:

bank:

SWIFT code:

Account number

**Contractor:**

Uniform registration No.

address:

Account details:

bank:

SWIFT code:

Account number

---

[name] [surname] [position]

---

## ANNEX B: CONTRACTOR'S DECLARATION

I, the undersigned duly authorised representative, on behalf of [*name of the Contractor*] undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective agreement, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective agreements covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;
9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Contractor or an undertaking related to the Contractor has advised a Beneficiary or



Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Contractor's business or any kind of economic ties with the Contractor;

16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Contractors' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Contractor which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Contractor's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Contractors;
19. Not procure goods, works and services from other Contractors:
  - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Contractor, or a person having the right to represent such Contractor in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
    - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
    - ii. fraud, misappropriation or laundering;
    - iii. evading payment of taxes and payments equivalent thereto,
    - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;

- b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
  - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
  - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
- c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical agreement aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel agreement, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Contractor to participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Contractor is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

\_\_\_\_\_[signature] [name, last name] [position] [date]