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**Answers to the questions from the interested suppliers
in open competition "Legal Services" ID. No RBR 2017/25**

RB Rail AS presents the following answers to the questions received until 8 December 2017 from the interested suppliers:

No	Questions	Answers
1.	<p>Do individuals (natural persons), who will be named in proposal as Tenderer's experts, have to comply with requirements of Section 7.3. of the open competition regulation, e.g.</p> <p>1) shall have average annual financial turnover within last 3 years not less than 500 000 EUR excluding VAT and</p> <p>2) shall have valid Professional risk indemnity insurance with limit of liability in the amount of at least 1 000 000 EUR (one million euro)?</p>	<p>Yes, according to the Clause 7.3. of the Regulations, persons on whose abilities Tenderer relies:</p> <p>1) each average annual financial turnover within last 3 (three) years (2014, 2015, 2016) shall be not less than 500 000,00 EUR (five hundred thousand euros) excluding VAT per year;</p> <p>2) shall have a valid professional risk indemnity insurance with limit of liability in the amount of at least 1 000 000,00 EUR (one million euro) for any insurance claim and in the aggregate for the policy period.</p> <p><u>If Tenderer is relying on the capabilities of:</u></p> <p>a) the other firm experts (for example, lawyer apprenticeship is the law firm) - requirement about turnover and valid professional risk indemnity insurance should be met by the expert's firm;</p> <p>b) natural person (for example, lawyer practising individually) - requirement about turnover and valid professional risk indemnity insurance should be met by natural person.</p> <p>This requirement is equal for person and entity on whose capabilities the Tenderer is relying (and regardless of the legal status of this person/entity), as the Contracting authority requires joint and</p>

		several liabilities for the execution of the contracts under the Framework agreement between the Tenderer and a person on whose capabilities the Tenderer is relying (Clause 8.1.3. of the Regulations).
2.	What are the legal grounds to require average annual financial turnover to be more than 500'000.00 EUR for subcontractors and the person on whose abilities a Tenderer relies (section 7.3.1. of the Regulation).	<p>The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), a member of a partnership, a person on whose abilities a Tenderer relies and a subcontractor whose share of work is equal to or exceeds 10% of the contract value, each average annual financial turnover within last 3 (three) years (2014, 2015, 2016) <u>is not less than 500 000,00 EUR (five hundred thousand euros) excluding VAT per year.</u></p> <p>This requirement is established as the Contracting authority requires joint and several liabilities for the execution of the contracts under the Framework agreement between the Tenderer and a person on whose capabilities the Tenderer is relying (Clause 8.1.3. of the Regulations).</p>
3.	What kind of method will be used to evaluate the level of detail of the Technical proposal (section 17.7.1. of the regulation) and the answer to the cases study (section 17.8. of the regulation)?	The Contracting authority will use the methodology mentioned in Section 17.7.1 and Section 17.8 of Regulation.
4.	<p>a) how many points shall a Tenderer get if it meets the minimal qualification requirements (3 large scale projects in each service line)?</p> <p>b) please clarify how many points can one expert get if he/she has experience in 5 projects per service line? How many points can a Tenderer get if all its experts in all service lines have experience in 5 projects? (Regulation states that the</p>	<p>a) according to the Clause 17.9.1. only the experience, <u>which exceeds the minimum experience</u> which is requested in Section 7.4 and Section 3.1 of the Terms of Reference (Annex No 3), shall be awarded with points according to the sub-criteria and methodology indicated in the Clause 17.9.1. <u>Consequently, minimal requirements must be met to qualify for the open competition and they are not awarded with any points.</u></p> <p>b) according to Section 17.9. maximum Experience score Tenderer in one service line can receive - 6 points. For expert's experience in every additional completed project satisfying the minimal qualification requirements set in a column "Project</p>

	<p>maximum experience score Tenderer can receive in one service line is 6 points. There are 3 experts per service line which could mean that maximum score each expert can get per service line is 2 points. Maximum experience score all experts from one proposal can receive is 35 points (which could be 2 points for each expert in a service line + 5 points for experience with FIDIC agreements). In a meantime for every additional project satisfying minimal qualification requirements expert can get 1 point. Expert can list up to 5 projects. Which means that each expert can receive up to 2 extra points for every additional project.)</p>	<p>experience” for a corresponding Service line as stated in the Table of Section 3.1. of the Terms of Reference (Annex No 3) Tenderer can get extra 1 point. As there are 5 service lines and in each service line are 3 experts, if expert indicates 5 projects per service line, maximum experience score <u>all experts (Tenderer) from one proposal can receive is 35 points, as:</u></p> <ul style="list-style-type: none"> • 3 projects are required to qualify (no points awarded). Extra 1 point is awarded for expert’s experience in every additional completed project satisfying the minimal qualification requirements set in a column “Project experience” for a corresponding Service line as stated in the Table of Section 3.1. of the Terms of Reference (Annex No 3). • Tenderer can receive 5 points, if at least one expert has completed Construction, Real estate and Environmental project set in a column “Project experience” for a corresponding Service line as stated in the Table of Section 3.1. of the Terms of Reference (Annex No 3) which involved FIDIC standards.
<p>5.</p>	<p><u>Regarding Section 17.9.2. of the Tender Regulation</u> Section 17.9.2 of the Regulation sets out the procedure the procurement commission will follow in the award of points for quality of the proposed team of experts. Section 17.9.2. stipulates that the score a Tenderer receives for its proposed list of experts shall be summed up and divided by the number of the members of the procurement commission who have carried out the evaluation. Taking into account that a proposed expert’s previous experience is a matter whose compliance with the requirements of the Tender Regulation is based on an objective compliance/conformity test that the procurement commission is performing as a single body rather than a subjective individual judgement of each member of the procurement commission, we suggest the Company to amend Section</p>	<p>As a situation where one member of the commission would award more points for previous experience than another legally may not be possible, as the conformity of the proposed expert’s experience shall not be a judgement call on the part of individual members of the procurement commission, then the total assessment will not change if calculation indicated in Clause 17.9.2 will be applied.</p>

	<p>17.9.2. of the Tender Regulation in order to ensure that the points for the criterion of quality of experts' are no longer based on average score of points by dividing the total points awarded by the commission, but rather – to award points for this criterion based on a joint decision of the procurement commission to declare the proposed expert's previous experience (project by project) as compliant or non-compliant with the qualification requirements and then summing up the total points obtained (i.e. a situation where one member of the commission would award more points for previous experience than another legally may not be possible, as the conformity of the proposed expert's experience shall not be a judgement call on the part of individual members of the procurement commission).</p>	
6.	<p><u>Regarding the definition of a 'large-scale' project for a public procurement expert</u></p> <p>It is stated in footnote No 41 of the Tender's Terms of Reference that the alternative No 2 of the 'large-scale' project has the following requirements: <i>(i) the expert as a lead public procurement expert has represented a contracting authority or a tenderer in the public procurement dispute in the national Public Monitoring Bureau and/or court and (ii) a dispute decision has been taken in favour of a client and (iii) a decision came into force and (iv) a procurement contract price for such procurement must be equal or higher than EUR 750,000, excluding VAT.</i></p> <p>It shall be pointed out that favourable outcome or decision either in a national Public Monitoring Bureau and/or court does not constitute sufficient evidence of expert's performance or quality of service as it hinges on the facts and complexity of the particular matter at etc. (i.e. an expert can perform his or her duties to the highest possible standard, yet still not receive a favourable decision). Therefore, it is inconceivable how a favourable or unfavourable decision</p>	<p>1.The Contracting authority trusts that qualified expert with good experience will not file manifestly unfounded claim or claim without sufficient evidence. The expert shall act based on code of conduct and should not submit unfounded claims.</p> <p>Thus, the Contracting authority believes that such requirement is legal and permissible.</p>

<p>could determine the scope of a 'large-scale' project. Thus, we would suggest the Company to remove this sub-condition (ii) from the alternative No 2. In case the Company deems it necessary to leave the aforementioned, we would like to obtain some clarification/explanation as to how such a decision of court or administrative body would be indicative of the expert's past performance as well as - why the 'large-scale' project definition in respect of the competition law and state aid expert contained in footnote No 44 of the Tender's Terms of Reference in a comparable situation (representation before the Competition Counsel and/or court) does not contain a reference to such a favourable decision.</p>	<p>2. Please see the answer above. The processing time for competition and state aid claims are longer as procurement claim processing time.</p>
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Procurement commission chairman



Mārtiņš Blaus