

Rīga, 9 January 2018

No 6.1/2017-14

**Answers to the questions from the interested suppliers
in open competition "Risk management framework" ID. No RBR 2017/24**

RB Rail AS presents the following answers to the questions received until 9 January 2017 from the interested suppliers:

No	Questions	Answers
1.	Should all of the documents referred to clause 7.1 of the Regulation be attached to the submission of the tender documents (content in accordance with clause 13 of the Regulation)?	<p>According to the Clause 20.1. of the Regulations, prior to decision making 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), persons on whose capabilities the Tenderer is relying and subcontractors whose share of work is equal to or exceeds 10% of the Contract value.</p> <p>As procurement commission performs a check regarding the existence of grounds for exclusion only prior to making the decision about assigning rights to conclude the Contract, there is no obligation to submit documents about non-exclusion criteria till the proposal submission deadline.</p> <p>However, the Tenderer has rights to submit those documents, as notices and other documents, which are issued by foreign competent institutions, are accepted and recognized by the procurement commission, if they are issued not earlier than 6 (six) month prior to the date of opening of Proposals (Clause 7.5. of the Regulations). For Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases.</p>
2.	<p>2.1. Please specify whether the provisions of clauses 13.4, 13.6 are not in conflict with the provisions of clauses 15.1, 15.3?</p> <p>2.2. Paragraph No 13.4 of the Regulation states that: "The Tenderer shall submit a Proposal sewn or bound together, the loose ends of the ribbon fixed so that</p>	<p>Procurement commission informs that Clauses 13.4, 13.6 are in conflict with the provisions of Clauses 15.1, 15.3 and there will be amendments in the Regulations, excluding Clauses 13.4 and 13.6 from Regulations, as Clauses 13.4 and 13.6. are in self-evident conflict with Regulations (Section 1.,3.,4. of Regulations), which</p>

	<p>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." And Paragraph No 13.6 of the Regulation states that: "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."</p> <p>Are the above mentioned paragraphs (13.4 and 13.6) of the Regulation valid and applicable if further paragraph No 15.3 of the Regulation states that: "Only Proposals submitted to the E-Tenderers system will be accepted and evaluated for participation in the procurement procedure. Any Proposal submitted outside the E-Tenders system will be declared as submitted in a non-compliant manner and will not participate in the procurement procedure."?</p>	<p>indicates that proposals shall be submitted electronically using the tools offered by the E-Tenderers system available at http://www.eis.gov.lv.</p>
3.	<p>In accordance with Regulation's paragraph No 13.9, the Tenderer shall prepare Proposal in electronic form using the E-Tenderers system available at http://www.eis.gov.lv/.</p> <p>Do we understand correctly that the Proposal is supposed to be submitted in the E-Tenderers system divided in parts and attached as a separate documents under the required sections in the E-Tenderers system?</p> <p>Considering the above, in which sections in the E-Tenderers system it is expected to attach parts of the Proposal mentioned in the paragraphs 13.1.2 and 13.1.3. of the Regulation?</p>	<p>Tenderer must prepare proposal in accordance with the form prepared by Contracting authority, submitting documents as it is required in particular sections. If Tenderer cannot find the relevant sections in the form prepared of Contracting authority in E-Tenderers system, Tenderer should submit "all other documents required by the Regulations" in the Section "Other requirements".</p> <p>For example: Copy or original of Bid security, ESPD form, Agreements on cooperation if Group of suppliers, evidences on presence of resources and any other relevant documents required by the open competition Regulations must be added here.</p>
4.	<p>Clause 15.1 of the Regulations refers to Clause 12 of the Regulations. Is the reference not referring to Clause 13 of the Regulations?</p>	<p>Yes, there is a misprint in the Clause 15.1. reference - "Proposal (<u>documents referred to in the Section 13</u>) shall be submitted electronically using the tools (...)".</p>
5.	<p>Please specify in paragraph 18.1 of the Agreement Draft if liability limit of 5 000 000 EUR (page 65) is not in conflict with the requirements of clause 7.2.3?</p>	<p>There will be amendments in the Clause 18.1. of the agreement - the sentence "The limit of liability for the insurance coverable shall be not less than EUR 5,000,000 per claim/occurrence" will be excluded as a result of self-evident conflict with Regulations and other</p>

		agreement sections, where is indicated that "the tenderer should have a valid Professional risk indemnity insurance with limit of liability of at least 10 000 000,00 EUR (ten million euro) per claim and policy period".
6.	Please clarify if the reference in paragraph 18.1 of the Agreement to paragraph 17.2 is not a mistake (page 65)?	The reference in paragraph 18.1. of the Agreement is correct – in the case of claim/occurrence insurer should be able to pay contractual penalty and compensation for damages.
7.	<p>Upon acquaintance with the process of registration in the Electronic Procurement System, the Tenderer which is registered outside Latvia has doubts about its ability to provide it until the deadline for the submission of tenders.</p> <p>Is it possible that such an offer by a foreign Tenderer to the Electronic Procurement System is submitted by a Latvian branch or a person that itself has registered in the Electronic Procurement System and the Tenderer has included in his tender documentation an authorization for such right to submit his tender proposal?</p>	<p>Tender can be submitted by any authorized person. According to the Clause 13.8., the Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this open competition procedure.</p> <p>The Tenderer must submit a document confirming the right of signature (representation) of the representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who signs the proposal. 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.</p>
8.	Technical specification, paragraph No 3.2.2. – Could you please specify what is meant under "normative" risks – is it purely regulatory environment or also other legal risks? Is it expected that during the project also tax risks will be evaluated?	Procurement commission informs that "Normative" risks include all possible legal risks. Tax risks shall be included under financial risks.
9.	Annex No 7 Draft Contract – second part of the Clause No 3.4: "To the extent the Service is completed or terminated, the Service Provider shall furnish inventories of whatever has not been consumed in the performance of the Service to the Principal and shall deliver such inventories in such manner and to such location(s) as designated by the Principal. For the avoidance of any doubt, such delivery shall not be forming part of the Scope of Service and the terms of the delivery shall be agreed between the Principal and the Service Provider separately".	Please note that the contract also includes general clauses and not all of the cases indicated in the contract will materialize, therefore they will only be applied if necessary (upon occurrence of the indicated cases).

	Could you, please, explain, how this Clause relates to the scope of this project?	
10.	<p>Annex No 7 Draft Contract, Clause No 7.4: <i>"Defects Date</i>. On the Defects Date the Principal shall notify the Service Provider of all Defects which has been found. The Contractor shall have an obligation to correct each Defect, irrespective of the nature or extent of Defect, within a reasonable period of time determined in the sole discretion of the Principal in a manner which eliminates the adverse effect of the relevant Defect on the Principal and/or the Project. In the event of failure by the Service Provider to eliminate the Defect in accordance with this Clause 7.4, the Principal shall assess the Costs to the Principal of having the Defect eliminated by other Persons and the Contractor shall have an obligation to pay the amount of such Costs."</p> <p>By "Contractor" – is it meant "Service Provider"?</p>	Yes, procurement commission confirm that the term "contractor" is to be interpreted as "service provider".
11.	<p>Annex No 7 Draft Contract, Clause No 8.8: <i>"Principal's Obligation to Pay</i>. Subject to the provisions of Clause 8.7 and except in the event of termination by the Principal occurring as a result of violation by the Service Provider of Clause 14.7, in the event this Agreement is terminated for any reason prior to completion of the Service, the Principal shall have an obligation to pay the Service Provider the following..."</p> <p>We couldn't find the Clause 14.7 in the Draft Contract. Could you, please, clarify the correct Clause?</p>	Procurement commission clarifies that instead of reference to Clause 14.7. there should be Clause 15.7.
12.	<p>Annex No 7 Draft Contract, Clause No 18.1, 3rd paragraph: "...The limit of liability for the insurance coverable shall be no less than EUR 5,000,000 per claim/occurrence. The limit of liability for the insurance coverable shall be no less than 10 000 000,00 EUR per claim/occurrence and policy period..."</p> <p>What should be the limit of liability for the insurance coverable – no less than EUR 5,000,000 per claim/occurrence or no less than 10 000 000,00 EUR per claim/occurrence?</p>	Please see the answer to question 5.
13.	Annex No 7 Draft Contract, Clause No 19.1: <i>"Governing Law</i> . This Agreement	Yes, procurement commission confirms that Agreement shall be governed by and

	shall be governed by and construed in accordance with the Republic of law." Was it meant "Republic of Latvia" instead of "Republic of law.	construed in accordance with the Republic of law of Latvia."
14.	<p>Annex No 7 Draft Contract, Annex A "DEFINITIONS AND COMMON TERMS", point (l),</p> <p>(i) costs of all materials and supplies forming part of the Service, including <i>transportation and storage expenses</i> (discounts for cash or prompt payments will not reduce these costs);</p> <p>(vi) <i>costs, including transportation and maintenance, of equipment and hand tools</i> not owned by workmen employed by the Service Provider which are employed or consumed toward the Service;</p> <p>(vii) <i>payments for rental charges for machinery, equipment, facilities and tools used in connection with the Service, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items.</i></p> <p>Could you, please, explain, how these points relates to the scope of the project?</p>	Please see the answer to question No.9.

Procurement commission vice-chairperson

Vija Vītola