

PROCUREMENT  
**REGULATIONS**

(for Candidate selection)

**"Preparation of Legal Documentation Related to Rail Baltica  
Infrastructure Management"**

(IDENTIFICATION NO RBR 2018/14)



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

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## 1. GENERAL INFORMATION

- 1.1. The identification number of this procedure is RBR 2018/14.
- 1.2. The applicable CPV code: for the Part 1 and Part 2 of the Subject-matter is 79100000-5 (Legal services).
- 1.3. The Contracting authority is joint stock company RB Rail AS, legal address: K. Valdemāra iela 8 - 7, Rīga, LV-1010, Latvia (hereinafter – **Contracting authority**).
- 1.4. The Procurement is co-financed by the Contracting Authority and Connecting Europe Facility (CEF).
- 1.5. The estimated contract value for the Services of Procurement Part 1 of the subject matter shall not exceed 100 000,00 EUR (one hundred thousand *euros*) excluding value added tax (hereinafter – **VAT**) and for the Services of the Procurement Part 2 of the subject matter shall not exceed 100 000,00 EUR (one hundred thousand *euros*), excluding VAT.
- 1.6. This Procurement is organised in accordance with Section 10 (1) of the Public Procurement Law of Latvia in effect on the date of publishing the notice about social and other specific services.
- 1.7. Procurement process will consist of the following:
  - 1.7.1. The selection of the Candidates will be carried out in accordance with the selection criteria set out in the Regulations. Maximum of four (4) Candidates will be selected according to methodology set out in Section 8;
  - 1.7.2. The selected Candidates shall be invited to submit proposal (the "**Invitation**"). Requirements for proposal including draft engagement agreement between Contracting authority and Contractor will be provided in Invitation (requirement might include requirements for Financial proposal and/or Technical proposal and/or detailed Technical Specification);
  - 1.7.3. After receipt of the proposals, the Procurement Commission has right to invite selected Candidates to negotiations covering following issues:
    - (a) financial proposal;
    - (b) contracts conditions;
    - (c) scope of the Technical specification;
    - (d) scope and principles of services.
- 1.8. The Procurement regulation and all its annexes (hereinafter – **Regulations**) are freely available at the Internet webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 1.9. Amendments to the Regulations and answers to suppliers' questions shall be published on the Contracting authority's Internet webpage <http://railbaltica.org/tenders/>. It is the supplier's responsibility to constantly follow the information published on the webpage and to take it into consideration in its Application.
- 1.10. Contact persons of the Contracting authority for this Procurement:
  - (a) In administrative aspects of the Procurement: Procurement Specialist – Lawyer Linda Kalniņa, telephone: +371 26178057, e-mail address: [linda.kalnina@railbaltica.org](mailto:linda.kalnina@railbaltica.org); [procurement@railbaltica.org](mailto:procurement@railbaltica.org).
  - (b) In aspects concerning subject-matter: Senior Lawyer Baiba Zauere, e-mail address: [baiba.zauere@railbaltica.org](mailto:baiba.zauere@railbaltica.org); [procurement@railbaltica.org](mailto:procurement@railbaltica.org).
- 1.11. The Procurement Commission and the supplier exchange information in writing in English or Latvian (accompanied by a translation in English), by sending documents electronically via e-mail specified in Section 1.10 (a) and (b) of the Regulations.

- 1.12. The supplier can request additional information regarding the Regulations. Additional information can be requested in writing, by sending it to the Procurement Commission electronically via e-mail. Additional information must be requested in a timely fashion, so that the Procurement Commission can give it a reply no later than 6 (six) days prior to the deadline for proposal submission.
- 1.13. The supplier covers all expenses, which are related to the preparation of the Application and its submission to the Contracting authority. The submitted Applications are not returned to the Candidate, 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 Candidate submits all or part of the documents which certify Candidate's compliance to the requirements for the selection of Candidates. The Procurement Commission does not demand documents or information which is already at its disposal or is available in public data bases.
- 2.2. If the Candidate 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 Candidate shows the original documents.
- 2.3. In the course of proposal assessment, the Procurement Commission has the right to demand that the included information is clarified.

## **3. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION**

- 3.1. The Procurement Commission ensures the minuting the Procurement process.
- 3.2. The Procurement Commission ensures free and direct electronic access to the Procurement documents at the Internet webpage of the Joint-Stock Company RB Rail AS <http://railbaltica.org/tenders/>.
- 3.3. If an interested supplier has in a timely fashion in writing electronically requested additional information about the requirements included in Procurement documents regarding the preparation and submission of the Application or regarding the selection of Candidates, the Procurement Commission provides a response electronically not later than 6 (six) days before the deadline for submitting proposals. Simultaneously with sending this information to the supplier who had asked the question, the Contracting authority publishes this information on its Internet webpage <http://www.railbaltica.org/tenders/>, where Procurement documents are available, indicating the question asked.
- 3.4. If the Contracting authority has amended the Procurement documents, it publishes this information in the Contracting authority's profile on the Contracting authority's Internet webpage <http://www.railbaltica.org/tenders/>, where Procurement documents are available and submits notification regarding the amendments to the Procurement Monitoring Bureau.
- 3.5. The exchange and storage of information is carried out in such a way that all data included in the Application is protected and the Contracting authority can check the content of the Application only after the expiration of the deadline for their submission. In time between the day of the submission of Application till the moment of opening thereof the Contracting authority does not disclose information regarding the existence of other Application. In the time period of Application 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 Candidates and their submitted Applications based on the Public Procurement Law of Latvia, the Regulations, as well as other regulatory enactments.

- 3.7. If the Procurement Commission determines that the information about the Candidate, its subcontractors and persons upon whose capabilities the Candidate is relying that is included in the submitted documents is unclear or incomplete, it demands that the Candidate or a competent institution clarifies or expands the information included in the Application. 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 Candidate 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 OF THE CANDIDATE

- 4.1. The Candidate can request and within 3 (three) business days after submitting the request receive a copy of the Application opening sheet, which is an Annex to the Application opening meeting minutes.
- 4.2. If a Candidate 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 Candidate has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Latvian Public Procurement Law regarding the Candidate 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 process.

#### 5. SUBJECT-MATTER OF THE PROCUREMENT

- 5.1. The subject-matter of the procurement is drafting of the key legal texts related to Rail Baltica infrastructure management and related legal support as described in Annex 4 (Technical Specification).
- 5.2. Subject matter is divided in 2 (two) parts each part, and contains list of services described in Annex 4 (Technical Specification):

No	Subject-matter	CPV code
Part 1	Legal services indicated in Section 2.1 of the Technical Specification (Annex No 4): a) analysis of the national legislation and regulatory framework of Estonia, Latvia, Lithuania in area of the railway infrastructure management and providing recommendations for the necessary changes to laws and regulations; b) drafting of the Inter-Governmental Agreement on Infrastructure Management; c) drafting of the Infrastructure Management Contract.	79100000-5
Part 2	Legal services indicated in Section 2.7 of the Technical Specification (Annex No 4): a) subsequent advice to the Contracting Authority; b) participation in negotiations of the draft Inter-Governmental Agreement on Infrastructure Management and draft Infrastructure Management Contract; c) amending draft Inter-Governmental Agreement on Infrastructure Management and draft Infrastructure Management Contract according to the outcome of the negotiations.	79100000-5

- 5.3. The services will be provided for Rail Baltica Global Project. The delivery of the services will take place in Latvia, excluding necessary visits according to Section 2.3 of the Technical Specification.
- 5.4. The selected Candidates shall be invited to submit the Proposal (and the Final proposal) for the whole subject-matter of the Procurement in total (Part 1 and Part 2).
- 5.5. The selected Candidate is not permitted to submit alternative options of the Proposal. If alternative options of the Proposal shall be submitted, the Proposal will not be reviewed.

## 6. CANDIDATE

6.1. The Application can be submitted by:

6.1.1. A supplier, who is a law firm or legal person (hereinafter – **Candidate**) and who complies with the selection criteria for candidates;

6.1.2. A group of suppliers (hereinafter also – **Candidate, partnership**) which complies with the selection criteria for candidates:

- (a) A group of suppliers who have formed a partnership for this particular Procurement. In this case all the members of the partnership shall be listed in Annex No 1 "Application". If it will be decided to award the rights enter into Agreement to such partnership, then prior to entering into the Agreement 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) which complies with the selection criteria for tenderers.

## 7. QUALIFICATION CRITERIA

7.1. **Legal standing and suitability to pursue the professional activity**

No	Requirement	Documents to be submitted
7.1.1.	The Candidate, all members of the partnership (if the Candidate is a partnership), must be registered, licensed or certified in accordance with its 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 Candidate, a member of a partnership, which is a legal person registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- For a Candidate or a member of a partnership, which is a natural person – a copy of an identification card or passport.</li> <li>- For a Candidate (or a member of a partnership) which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of 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</li> </ul>

No	Requirement	Documents to be submitted
		(if any) can be determined. <ul style="list-style-type: none"> <li>- If a proposal is submitted by a partnership, the Application shall include an partnership agreement or letter of intention (LOI) to enter into an agreement signed by all members of the partnership. The agreement and/or LOI shall list responsibilities of each and every partnership member and a joint commitment to fulfil the Agreement. The partnership members in the agreement and /or LOI shall nominate a member, who is authorised on behalf of the partnership to sign the proposal and related documents, as well as receive and issue orders, and who shall issue invoices and receive disbursement.</li> </ul>
7.1.2.	The representative of the Candidate, a member of a partnership, a person on whose abilities a Candidate relies, a subcontractor, who has signed documents contained in the Application, has the right of signature, i.e., it is an official representative having the right of signature or a person authorized by the Candidate or a member of a partnership, or a person on whose abilities a Candidate relies, or a subcontractor.	<ul style="list-style-type: none"> <li>- A document confirming the right of signature (representation) of the representative of the Candidate, or a member of a partnership, or a person on whose abilities a Candidate relies, or subcontractor, or who signs the Application.</li> <li>- For a Candidate which is a legal person (or a member of a partnership), a person on whose abilities a Candidate relies, or sub-contractor, registered in Latvia the Contracting authority shall verify the information itself in publicly available databases.</li> <li>- If the Application or any other document, including any agreement, is not signed by the legal representative of the Candidate, members of the partnership, person on whose capabilities the Candidate relies or sub-contractors, then a document certifying the rights of the persons who have signed the Application or any other documents, to represent the Candidate, a member of the partnership, a person on whose capabilities the Candidate is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.</li> <li>- If the Candidate, or a member of a partnership, or a person on whose abilities a Candidate relies, sub-contractor submits a power of attorney (original or a copy certified by the Candidate) there shall be additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) of the Candidate.</li> </ul>



## 7.2. Economic and financial standing

No	Requirement	Documents to be submitted
7.2.1.	<p>The Candidate's or at least one member of the partnership (if the Candidate is a partnership), or person's on whose abilities a Candidate relies average annual financial turnover within last 3 (three) years (2015, 2016, 2017) is not less than 200 000,00 EUR (two hundred thousand euros), excluding VAT per year.</p> <p>In the event the yearly average annual financial turnover of a limited liability member of a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) exceeds its investment in the limited partnership, the average annual financial turnover shall be recognised in the amount of the investment in the limited partnership.</p> <p>In the event the Candidate or a member of a partnership (if the Candidate is a partnership) has operated in the market for less than 3 (three) years, the requirement shall be met during the Candidate's actual operation period.</p>	<ul style="list-style-type: none"> <li>- Filled and signed Annex No 2;</li> <li>- In case if Procurement Commission shall deem it necessary and in accordance with Section 2.1 of the Regulations it may request to submit:</li> <li>- Audited yearly reports for fiscal years 2015, 2016, 2017 or other document showing the turnover of the Candidate;</li> <li>- For a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) an additional document evidencing the amount of the investment by the limited liability partner (the partnership agreement or a document with a similarly binding legal effect);</li> <li>- For law firms (within the meaning of Advocacy Law of the Republic of Latvia Section 116 or an equal status of legislation of Country of residence of the Candidate) profit-loss statement for fiscal years 2015, 2016, 2017.</li> </ul>
7.2.2.	<p>The Candidate or at least one member of the partnership (if the Candidate is a partnership), or a person on whose abilities a Candidate relies 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 euros) for any insurance claim and in the aggregate for the policy period.</p>	<ul style="list-style-type: none"> <li>- a copy of a valid professional indemnity insurance policy.</li> </ul>

## 7.3. Technical and professional ability (Team of key experts)

No	Requirement	Documents to be submitted
7.3.1.	<p>The Candidate should propose a team consisting of all key experts as stated in this Section. Every proposed expert has to meet minimal qualification requirements of particular role of expert, where</p>	<ul style="list-style-type: none"> <li>- information about each expert, filled in and signed Expert's application (Annex No 3).</li> <li>- The Procurement Commission shall be entitled to request the Candidate to submit written references in order to verify the correctness of</li> </ul>



No	Requirement	Documents to be submitted
	he/she is proposed as stated in this Section. Experts cannot serve for several roles.	information provided by the Candidate set out in the form.
7.3.2.	Every expert is expected to have a very good English language skills in communication, presentation, negotiation (at least <b>C1 Level</b> – based on Common European Framework of Reference for Languages <sup>1</sup> ) and report writing ( <b>C2 Level</b> – based on Common European Framework of Reference for Languages).	- self-declared information about each experts' language skills filled in (Annex No 3) and signed by the relevant expert.
7.3.3.	All experts should have a Master's degree (or equivalent) in law or lawyer's qualification.	- Filled in and signed Expert's application (Annex No 3); - A copy of a diploma proving relevant level of education; - If expert submits documents of equivalent education, the expert shall provide evidences to prove equivalence.
7.3.4.	<b>Team of experts:</b>	
7.3.4.1.	<b>Project manager - experienced in legal projects related to railway infrastructure management who complies with the following requirements:</b>	- Filled in and signed Annex No 3.
	(a) current position – partner or special counsel, or director of department (head of department) of a law firm or previously was a partner of such;	
	(b) practical project experience in leading and supervising at least one (1) project or study <sup>2</sup> related to the management of railway infrastructure within the last eight (8) years (2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017, including 2018 until the date of submission of the Application):  1) with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1), 2) operating within the EU legislative framework,	

<sup>1</sup> see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

<sup>2</sup> The relevant experience is if project is finished in the mentioned time period and/or project is ongoing and the Inception report is delivered and accepted by principal.

No	Requirement	Documents to be submitted
	3) with a project CAPEX value of at least 200 million euro;	
	(c) At least one international project team (team involving experts representing expertise in legislative framework of at least two (2) different countries) management experience over the last five (5) years (2013; 2014; 2015; 2016; 2017; including 2018 until the date of submission of the Proposal).	
7.3.4.2.	<b>Lead expert in the field of railway infrastructure management</b> who complies with the following requirements:	- Filled in and signed Annex No 3.
	(a) current position – at least special counsel, or director of department, or head of department, or senior associate <sup>3</sup>	
	(b) practical project experience in senior position of at least one (1) project or study <sup>4</sup> related to the management of infrastructure within the last eight (8) years (2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017, including 2018 until the date of submission of the Application): <ul style="list-style-type: none"> <li>1) with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1) management,</li> <li>2) operating within the EU legislative framework,</li> <li>3) with a project CAPEX value of at least 200 million euro.</li> </ul>	
7.3.4.3.	<b>National Expert (one for each country – Latvia, Lithuania, Estonia<sup>5</sup>)</b> in the field of infrastructure management and/or operations projects or studies (railways, roads, gas, electricity, heating) who complies with the following requirements:	- For each country national expert (Latvia, Lithuania, Estonia) filled in and signed Annex No 3.

<sup>3</sup> "Senior lawyer" is lawyer, who: 1) as employee or self-employed person who provides his/her services to the law firm or a company in the role of middle or senior manager (for example, a senior lawyer or a manager); or 2) he/she is holding a management position at state or municipal authority (for example, a head of a unit or department); or 3) he/she has the rights to pass autonomous decisions; or 4) he/she is in charge of one or several employees; or he/she has right to delegate the tasks to other people or subordinates and to monitor how tasks are performed.

<sup>4</sup> The relevant experience is if project is finished in the mentioned time period and/or project is ongoing and the Inception report is delivered and accepted by principal.

<sup>5</sup> The Candidate shall propose three National Experts. Each having expertise in one of legislative framework of following countries – Latvia, Lithuania and Estonia. All three National Experts shall cover expertise of all mentioned countries.

No	Requirement	Documents to be submitted
	(a) current position - at least special counsel, or director of department, or head of department;	
	(b) practical project experience in senior position in leading and supervising of at least three (3) projects or studies related to management and/or operations of infrastructure (railway, roads, gas, electricity, heating) within the last eight (8) years (2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017, including 2018 until the date of submission of the Application) related to: <ol style="list-style-type: none"> <li>1) operating within the EU and each national (Latvia's, Lithuania's or Estonia's) legislative framework in an organization involved in infrastructure development (e.g. infrastructure manager, project delivery company, centralized procurement authority),</li> <li>2) with either a project CAPEX value of at least 10 million euros or a book value of fixed assets under management of at least 50 million.</li> </ol>	

- 7.4. The Candidate shall not be allowed to replace any of key experts during the whole term of execution of the Agreement without prior written approval of the Contracting authority (Company) as laid down by Article 62 of the Public Procurement Law.
- 7.5. Information, provided in the Application to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 7.2) and Technical and professional ability (Team of Experts) (Section 7.3) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Contracting authority shall not be obliged to use additional sources of information in order to make a decision regarding Candidate's compliance with the qualification requirements. The Candidate shall remain fully responsible for the provision of sufficiently detailed information in the Application required to confirm clearly the compliance with qualification requirements set in the Regulations.
- 7.6. Notices and other documents, except diploma providing relevant level of education, fact of registration supporting documents, copies of ID cards, passports, marriage certificates or documents certifying economic standing of the Candidate which are issued by Latvian competent institutions, are accepted and recognized by the Procurement Commission, if they are issued no earlier than one (1) month prior to the date of its submission. Notices and other documents, except diploma providing relevant level of education, fact of registration supporting documents, copies of ID cards, passports, marriage certificates or documents certifying economic standing of the Candidate, which are issued by foreign competent institutions, are accepted and recognized by the Procurement Commission, if they are issued no earlier than six (6) month prior to the date of its submission.

- 7.7. The Candidate, in order to certify that it complies with the qualification criteria for Candidate, may submit the European Single Procurement document as initial proof. This document must be submitted for each person upon whose capabilities the Candidate relies, and for each of their indicated subcontractors, but if the Candidate is a partnership – for each member thereof. In order to fill in the European Single Procedure document the Candidate uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/tools/espd/filter?lang=en>.

## 8. SELECTION METHODOLOGY

- 8.1. The Procurement Commission shall select and invite maximum of four (4) selected Candidates, whose Applications shall obtain the highest score according to methodology described in this Section.
- 8.2. The procedure described below is applied for the Applications of those Candidates whose have been acknowledged as meeting qualification requirements.
- 8.3. Every expert shall be evaluated based on his/her experience.
- 8.4. Only the following experience, which exceeds the minimum experience which is requested in Section 7.3, shall be awarded with points according to the following criteria:

Expert	Criteria	Points for project	max points
<i>Project Manager</i>	for each additional project ("n+1", where "n" is amount of the projects required for qualification) which meets all the requirements set in Section 7.3.4.1 in the experience of the expert.	10	30
<i>Lead expert</i>	for each additional project ("n+1", where "n" is amount of the projects required for qualification) which meets all the requirements set in Section 7.3.4.2 in the experience of the expert.	8	24
<i>Cross border project experience for Project Manager and Lead expert<sup>6</sup></i>	for each project complying requirements set out by Sections 7.3.4.1 or 7.3.4.2, <u>except for the requirement set out in Sections 7.3.4.1(b) 2) and 7.3.4.2(b) 2) that "infrastructure shall operate within the EU legislative framework"</u> , and which meets the following requirement: <u>Cross border project experience</u> , where railway infrastructure crosses State border between at least two (2) countries with at least one country being an EU Member State.	23	46

<sup>6</sup> If Project manager and Lead expert participated in the same project which complies with the cross-border project experience requirements - points shall be awarded to each expert for the same reference.

	<p>Projects in the experience of <b>Project Manager</b> and <b>Lead expert</b> meeting the following requirements shall be scored with additional points:</p> <p>practical project experience in leading and supervising (for Project Manager) or in senior position (for Lead expert) in project or study<sup>7</sup> related to the management of infrastructure within the last eight (8) years (2010; 2011; 2012; 2013; 2014;2015; 2016; 2017, including 2018 until the date of submission of the Application):</p> <ol style="list-style-type: none"> <li>1) with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1) management,</li> <li>2) project, where railway infrastructure crosses State border between at least 2 (two) countries with at least one country being an EU Member State,</li> <li>3) with a project CAPEX value of at least 200 million euro.</li> </ol>		
		TOTAL (Max)	100

- 8.4.1. All information regarding experience of the experts shall be evaluated and scores shall be given based on their qualification and experience in a particular expert position expert applied for.
- 8.4.2. The Procurement Commission shall obtain the final score for each Application in accordance with selection methodology described in this section by summing up all points obtained for each criteria. Applications shall be ranked according to obtained points from highest to lowest score. Scores obtained by the each Application shall be used as the points for the purposes of selection of Candidates in accordance with Section 8.1.
- 8.5. In case several Applications will obtain equal number of points where the amount of points are between four (4) highest scores, the Procurement Commission shall select and shall invite to submit proposal the Candidate whose Application obtained higher score for cross border project experience . If the number of points obtained for cross-border project experience will remain equal, then the Procurement Commission shall invite to submit proposal the Candidate whose Application obtained higher score for its Project Manager. If in the both cases the number of points for the Candidates' applications shall remain equal the Procurement Commission shall hold a draw for the rights to be among selected Candidates by inviting representatives of the Candidates whose scores are equal to participate in draw process organised in RB Rail AS premises. If the Candidates shall not be able to participate personally the Procurement Commission shall make the draw without the presence of Candidate representative.
- 8.6. Before sending Invitations, the selected Candidates shall be requested to sign Non-Disclosure Agreement. If the selected Candidate will refuse to sign the Non-Disclosure Agreement, the selected Candidate will lose his rights to participate in the Procurement and shall not be invited to submit Proposal. In such case the

<sup>7</sup> The relevant experience is if project is finished in the mentioned time period and/or project is ongoing and the Inception report is delivered and accepted by principal.

Procurement Commission shall invite the Candidate, who obtained next highest score after selected Candidates for its Application.

## 9. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS

9.1. For the fulfilment of the specific contract, in order to comply with the qualification and selection requirements for the Candidate relating to the economic and financial standing and technical and professional ability (including regarding the team of key experts), the Candidate may rely upon the capabilities of other persons, regardless of the legal nature of their mutual relationship. In this case:

9.1.1. The Candidate indicates in the Application all persons upon whose capabilities it relies by filling in the table which is attached as Annex No 1 and proves to the Procurement Commission that the Candidate shall have available all the necessary resources for the fulfilment of the Agreements, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Candidate between such persons and the Candidate. The confirmations and agreements on cooperation and passing of resources can be replaced by the Candidate with any other type of documents with which the Candidate is able to prove that the necessary resources will be available to the Candidate and will be used during the term of fulfilment of the Agreements.

9.1.2. Documents on cooperation and passing of resources have to be sufficient to prove to the Contracting authority that the Candidate will have the ability to fulfil the contracts under the Agreements, as well as that during the validity of the Agreements the Candidate will in fact use the resources of such person upon whose capabilities the Candidate relies.

9.1.3. The Contracting authority requires joint and several liabilities for the execution of the contracts under the Agreements between the Candidate and a person on whose capabilities the Candidate is relying.

## 10. SUBCONTRACTING

10.1. The Candidate shall indicate in the Application all subcontractors of the Candidate and indicate the experts involved by each such subcontractor or person on which capability it relies by filling in the table which is attached as Annex No 1.

## 11. CONTENTS AND FORM OF THE APPLICATION

11.1. The documents shall be included in the application in the following order (hereinafter – **Application**):

11.1.1. Title page with title "Application for the Procurement "Preparation of legal documentation related to Rail Baltica infrastructure management" No RBR 2018/14", name, address and contact information of the Candidate;

11.1.2. The table of contents with page numeration;

11.1.3. Information and documents confirming compliance of the Candidate with the selection criteria for the Candidates, or the corresponding European Single Procurement documents.

11.1.4. Information and documents relating to entities on whose capabilities the Candidate is relying, or the corresponding European Single Procurement documents.

11.1.5. Information and documents relating to subcontractors and/or or the corresponding European Single Procurement documents.

11.1.6. Candidate's offered expert Applications (in the order as listed in application for participation in Procurement) – Experts' application form(s) (Annex No 3) separately for every expert signed by the proposed expert,

accompanied with copies of higher education diplomas issued according to the legislation of the country of expert's origin.

- 11.2. The Application must be submitted in written form in English. Upon request by the Procurement Commission the Candidate shall provide a translation in Latvian within the deadline requested by the Procurement Commission.
- 11.3. The Candidate may submit an Application only for the whole subject matter of the Procurement in total.
- 11.4. The Candidate shall submit:
  - 11.4.1. one (1) signed original, one (1) hard copy and a digital format (USB containing files in MS Office format or PDF format) copy of the Application or
  - 11.4.2. one (1) digital format original (USB containing one eDoc, PDF or ASIC-E file) signed by secure e-signature<sup>8</sup> and valid time seal and one (1) hard copy of the Application.
- 11.5. The Application may contain original documents or their derivatives (e.g. copies). In the proposal or in reply to a request of the Procurement Commission the Candidate 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 Latvian Law on Legal Force of Documents, but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Latvian Document Legalization Law. When submitting the Application, the Candidate has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 11.6. The Application must be signed by a person who is legally representing the Candidate or is authorized to represent the Candidate in this Procurement procedure.
- 11.7. The Candidate shall submit Application in a glued-up envelope, on which it shall be indicated:

"Application for the Procurement "Preparation of legal documentation related to Rail Baltica infrastructure management" No RBR 2018/14".

**"Do not open until 11 July 2018 at 14:00 o'clock".**

"To the RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010."

## 12. SUBMISSION OF AN APPLICATION

- 12.1. Application (documents referred to Section 11) shall be submitted personally, by courier or registered mail to the RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010, Latvia by **11 July 2018 till 14:00 o'clock**.
- 12.2. The Candidate may recall or amend its submitted Application before the expiry of the deadline for the submission of Application. In case of amendments, the Candidate has to clearly indicate on the Application that the Application is amended by indicating: "AMENDMENTS" in addition to the information mentioned in Section 11.7.
- 12.3. Application submitted after the expiry of the deadline for the submission of Applications shall not be reviewed.

## 13. OPENING OF APPLICATIONS

- 13.1. The opening of Applications takes place during an open meeting of the Procurement Commission at **14:00 o'clock on 11 July 2018** at RB Rail AS, K. Valdemāra iela 8 - 7, Riga, LV-1010.

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<sup>8</sup> Issued by organisation, which is included in the Trusted list according to the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014



- 13.2. The Applications are opened in order of their submission, by naming the Candidates, the time of Application submission and other information that characterizes the Application but is not confidential.
- 13.3. The information announced at the Applications opening meeting is written down in the Application opening sheet, which is signed by the present members of the Procurement Commission. The copy of the Application opening sheet is issued to Candidate' representatives upon their request.

#### **14. VERIFICATION OF APPLICATION**

- 14.1. Procurement commission verifies whether the submitted Applications comply with the requirements stipulated in the Regulation (Section 11) and whether all required information and documents are submitted and selects for further evaluation the compliant Applications.

#### **15. SELECTION OF CANDIDATES**

- 15.1. The Procurement Commission verifies whether the Candidates comply with the requirements stipulated in the Section 7.1, 7.2 and 7.3 and selects for further evaluation the compliant Candidates.
- 15.2. The Procurement Commission shall select and invite maximum of four (4) selected Candidates, whose Applications shall obtain the highest score according to methodology described in Section 8.

#### **ANNEXES**

- Annex No 1 – Candidate's application forms on one (1) pages;
- Annex No 2 – Financial standing on one (1) page;
- Annex No 3 – Experience of key expert on two (2) pages;
- Annex No 4 – Technical Specification on twelve (12) pages.

**ANNEX 1: APPLICATION**

2018.\_\_\_\_.\_\_\_\_

No \_\_\_\_\_

**APPLICATION FOR PARTICIPATION IN THE PROCUREMENT  
"PREPARATION OF LEGAL DOCUMENTATION RELATED TO RAIL BALTICA INFRASTRUCTURE  
MANAGEMENT", NO RBR 2018/14**

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

1. Confirms participation in the procurement "Preparation of Legal Documentation Related to Rail Baltica Infrastructure Management", No RBR 2018/14.
2. 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 Contracts it shall fulfil all conditions of the Regulation as well as enter into a procurement Contracts.
3. Guarantees that all information and documents provided are true.
4. Declares that, for the purposes of qualifying for the procurement, we rely on the capabilities of the following entities:

No	Name, registration number and registered address of the entity	Capabilities on which the Candidates relies
1.		
2.		
3.		

5. Declares that during the execution of the Contracts we will have sub-contractors as stated below and confirm that the list is complete:

No	Name of the sub-contractor	Registration No	Expert provided by sub-contractor
1			
2			
n+1			

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

a small                       medium                       other

sized enterprise<sup>9</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>10</sup>

 \_\_\_\_\_  
Date: [*date of signing*]

 \_\_\_\_\_  
Name: [*name of the representative of the Candidate and position*]

<sup>9</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 Candidate and their Requests to participate.

<sup>10</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 2: FINANCIAL STANDING**
**Confirmation of Candidate`s Financial Standing**

The Candidate`s or at least one member`s of the partnership, average financial turnover within the last 3 (three) financial years, i.e. 2015, 2016, 2017, is not less than 200 000,00 EUR (two hundred thousand euros).

In the event the average financial turnover of a limited liability member of a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) exceeds its investment in the limited partnership, the average financial turnover shall be recognised in the amount of the investment in the limited partnership.

In the event the Candidate or a member of a partnership (if the Candidate is a partnership) has operated in the market for less than 3 (three) financial years, the requirement shall be met during the Candidate`s actual operation period.

No	Year	Total turnover in EUR	Notes
Name of the Candidate or member of the partnership, or entity (if the Candidate is relying to members of the partnership (in case of a partnership), or entity`s abilities to certify it`s financial and economic performance and who will be financially and economically responsible for the fulfilment of the contract): _____			
1	2015		
2	2016		
3	2017		
<b>Average turnover within the last 3 (three) financial years</b>			

\_\_\_\_\_  
Date: [date of signing]

\_\_\_\_\_  
(signature)  
Name: [name of the representative of the Candidate and position]

ANNEX 3: EXPERIENCE OF KEY EXPERT

No	Expert's role in team	Name, Surname	Obtained degree (-s)
1.	Education (Educational institution)	Period of studies (month/year – month/year)	
1.1.			
...			

Project experience			
Project title <sup>12</sup>	Date of contract and completion date (if project is not completed – Initial report acceptance date)	Value of the project (EUR)	Description of the contract – provided services, project duration, location, technical parameters, countries involved, position of the expert, approach which characterize the required experience in Section 7.3.4 <sup>13</sup>
1.			Name of the Client, Contact person of the Client (telephone, email, address)
2.			

Professional cross border experience <sup>14</sup> (for additional scoring, refer to Section 8 of the Regulations):			
Project title <sup>15</sup>	Date of contract and completion date (if project is not completed – Initial report acceptance date)	Description of the contract – provided services, project duration, location, technical parameters, countries involved, position of the expert, approach which characterize the required experience in Section 7.3.4 <sup>16</sup>	Name of the Client, Contact person of the Client (telephone, email, address)
3.			Countries involved in cross border project
3.1.			
3.2.			

<sup>11</sup> Separate national experts application for every country (Latvia, Lithuania, Estonia) shall be prepared.

<sup>12</sup> Up to four (4) projects which Candidate considers in line with project experience requirements shall be indicated in the table for Team Manager and in the table for Lead Expert, Procurement Commission will evaluate only first four (4) projects in each table if more projects will be provided. Three (3) projects which Candidate considers in line with project experience requirements shall be indicated in the table for each National Expert, Procurement Commission will evaluate only first three (3) projects if more projects will be provided.

<sup>13</sup> Only completed contracts can be used for reference or at least Interim Report shall be accepted.

<sup>14</sup> Only for Team Manager and Lead Expert shall be completed.

<sup>15</sup> Up to two (2) projects which Candidate considers in line with project experience requirements shall be indicated in the table for Team Manager and/or Lead Expert, Procurement Commission will evaluate only first two (2) projects if more projects will be provided.

<sup>16</sup> Only completed contracts can be used for reference or at least Interim Report shall be accepted.

**English language skills<sup>17</sup>:**

Understanding		Speaking	
Listening	Reading	Spoken interaction	Spoken production
Enter level	Enter level	Enter level	Enter level
Writing		Enter level	

Levels: A1/A2 - Basic user; B1/B2 - Independent user; C1/C2 - Proficient user.

I confirm that I have consented that my candidature is proposed in the procurement "Preparation of legal documentation related to Rail Baltica infrastructure management", No RBR 2018/14. I confirm that in case the Candidate [name of the candidate or members of the partnership] will conclude the contract as the result of the procurement, I will participate in the execution of the contract.

\_\_\_\_\_ (Signature)

[Name and surname of the expert or legal representative of expert]

<sup>17</sup> Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

ANNEX 4: TECHNICAL SPECIFICATION

TECHNICAL SPECIFICATION

FOR PROCUREMENT  
"PREPARATION OF LEGAL DOCUMENTATION RELATED TO RAIL BALTICA  
INFRASTRUCTURE MANAGEMENT"



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

Riga, 2018

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## 1. INTRODUCTION

The Baltic countries Estonia, Latvia and Lithuania have historically been linked to the east-west railway transport axis using the 1520mm gauge railway system. Because of the existing historical and technical constraints, the existing rail system is incompatible with mainland European standards, thus there is a consensus that Estonia, Latvia and Lithuania need to be fully integrated into the wider European rail transport system. Currently there is no efficient 1435 mm railway connection along the Warsaw-Kaunas-Riga-Tallinn axis, i.e. there are missing links or significant bottlenecks. Thus, there are no direct passenger or freight services along the railway axis as the existing infrastructure does not allow for competitive services compared to alternative modes of transport. Thus, the clear majority of the North-South freight is being transported by road transport and the overall accessibility in the region is low.

The ambitions of the Rail Baltica Global project (Global Project) are:

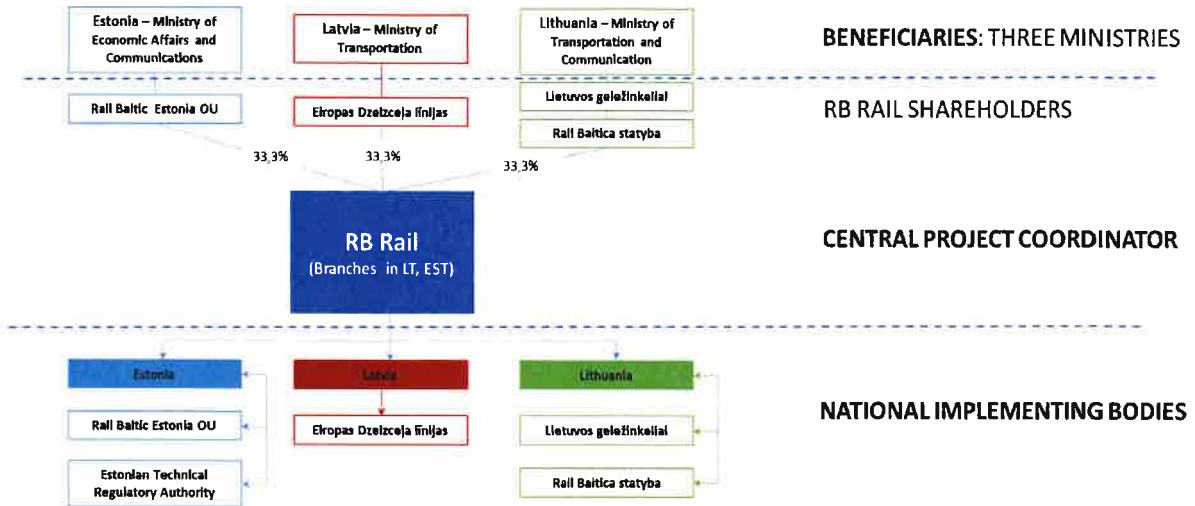
- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
- new opportunities for multimodal freight logistics development;
- new intermodal transport solutions for passengers;
- safety and performance improvements;
- a new value platform for digitalization and innovation;
- completion of Baltic integration in the European Union transport ecosystem.

Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe's largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

The Contracting authority RB Rail AS (RBR) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic

states with Poland and the rest of the EU. The main technical parameters shall correspond to traffic code P2-F1 as per INF TSI (Commission Regulation 1299/2014/EU) and they are detailed in Design Guidelines.

The diagram below illustrates the shareholder and project governance structure of the Rail Baltica project.



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first three applications have been successful and INEA grants are available for Rail Baltica project implementation with total approved eligible cost of 823 EUR million, with up to 85% of co-financing rate.

Rail Baltica is a joint project of three EU Member States – Estonia, Latvia and Lithuania – and concerns the building of a fast conventional double-track 1435 mm gauge electrified and ERTMS equipped mixed use railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including a Kaunas – Vilnius spur) with a design speed of 249km/h. In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.

The expected core outcome of the Rail Baltica Global Project is a European gauge (1435mm) double-track railway line of almost 900 km in length meant for both passenger and freight transport and the required additional infrastructure (to ensure full operability of the railway). It will be interoperable with the TEN-T Network in the rest of Europe and competitive in terms of quality with other modes of transport in the region. The indicative timeline and phasing of the project implementation can be found here: <http://www.railbaltica.org/about-rail-baltica/project-timeline/>.

## 2. OBJECTIVE OF PROCUREMENT

### PART 1:

2.1. Following legal services shall be provided and works shall be done during the Part 1:

2.1.1. Preparing the analysis of national legislation and regulatory framework of Estonia, Latvia, Lithuania as well as EU law requirements in area of the railway infrastructure management and providing recommendations for the necessary changes to laws and regulations in three countries, so that the proposed infrastructure management concept for Rail Baltica according to the optimum model suggested by the Rail Baltica Infrastructure Management Study (id. No RBR 2017/26) (the “Main Study”) can be implemented. The

optimum model will be provided to the Contractor at the later stage and might be based on options mentioned in Section 3 of the Technical Specification.

2.1.2. Drafting Inter-Governmental Agreement on Infrastructure Management between the Governments of the Republic of Estonia, Latvia and Lithuania according to the optimum model suggested by the Main Study.

2.1.3. Drafting Infrastructure Management Contract agreement on Rail Baltica infrastructure management based on the EU and national law requirements as well as best EU industry practice. After negotiations this contract shall form the basis of the infrastructure management agreement between the stakeholders and infrastructure manager (-s). Draft Infrastructure Management Contract which shall include at least the following issues:

- a. Commencement and Duration;
- b. Charging and Capacity Allocation;
- c. Usage risk;
- d. Performance scheme;
- e. Payment mechanism;
- f. Asset stewardship;
- g. Subcontracting;
- h. Intellectual Property;
- i. Change mechanism;
- j. Insurance;
- k. Indemnity;
- l. Handback and Exit;
- m. Dispute Resolution.

2.2. The above mentioned documents shall be prepared taking into account Draft Final Report prepared under Main Study and the infrastructure management model chosen there.

2.3. The Process and the results to be delivered by the Tenderer (the Contractor)<sup>18</sup> and the deadlines are following:

Deliverable	Activity	Time	Comment
List of questions/ comments	1. Review of Draft Final Report prepared under Main Study, especially section on Proposed contractual model for Member States concerned, and submitting clarifying questions to RB Rail	CD*+2 weeks	
	2.Participation at the alignment seminar with Atkins, authors of the Draft Final Report, in Riga		During the 2nd week of Activity 1
Report	3. Analysis of the necessary changes in the national legislation and regulatory framework of Estonia, Latvia, Lithuania to implement Main Study, drafting report,	CD+4 weeks	

<sup>18</sup> definitions "Candidate", "Tenderer" and "the Contractor" are considered as equal in terms of their meaning

	and providing recommendations for the necessary changes to laws and regulations, especially taking into account compliance with EU law requirements (including the Fourth Railway Package), EU funding requirements on the moment of start of activities and including references to the known upcoming changes of EU, Estonian, Latvian and Lithuanian legislation.		
Draft Agreement	4. Drafting Inter-Governmental Agreement on Infrastructure Management	CD+6 weeks	Done in parallel with Activity 5
Draft Heads of Terms and list of questions	5A. Drafting Heads of Terms and list of issues/choices for Infrastructure Management Contract for RB Rail to consider and comment	CD+5,5 weeks	Done in parallel with Activity 4
Draft contract	5B. Drafting detailed Infrastructure Management Contract based on input following Activity 5A.	CD+7 weeks	Done in parallel with Activity 4
	6.Meeting with RB Rail in Riga (or via electronic means) and discussing the draft documents prepared under Activity 3-5; collecting RB Rail comments and amending the draft documents	CD+8 weeks	
Seminar materials	7. Organising and leading 1 day seminar of the analysis and draft documents to the Beneficiaries of Estonia, Latvia, Lithuania in a respective country to present the draft documents, together with RB Rail representatives	CD+9 weeks	
Finalised draft documents	8. The Beneficiaries provide written comments and recommendations on the 1st version of the draft documents (2 weeks). The Contractor reviews and provides written recommendations to RB Rail (1 week). RB Rail decides on which recommendations to accept, the Contractor provides the final version of the draft documents. (1 week)	CD+13 weeks (2 + 1 + 1)	
Summary Report	9. Preparing Summary report of the whole Legal Study process and final drafts of Inter-Governmental Agreement on Infrastructure Management and Infrastructure Management Contract.	CD+14 weeks	
	<b>Total</b>	<b>14 weeks</b>	

(\*) CD: commencement date of the contract

2.4. The deadline for completion of the provision of services is 14 weeks from the commencement date.

2.5. The intermediate deliverables (with contents as per Section 2.3 above) for the provision of services are as follows:

Deliverables/Reports	No. of copies
List of questions/ comments	electronically by e-mail
Report	1 hard copy, electronically by e-mail
Draft Agreement	electronically by e-mail
Draft HoT and list of questions	electronically by e-mail
Draft contract	electronically by e-mail
Seminar materials	electronically by e-mail
Finalised draft documents	electronically by e-mail
Summary Report	electronically by e-mail

**PART 2:**

- 2.6. The Contracting Authority will conclude agreement for Part 2 only after Part 1 will be completed and if the Contracting Authority will deem it necessary to obtain Legal services mentioned in Section 2.7 of the Technical Specification.
- 2.7. During Part 2 following Legal services to be provided and the results to be delivered by the Contractor and the deadlines are following:

Deliverable	Activity	Time
Negotiations	Up to three rounds of the negotiations with stakeholders	Up to 100 h
Final draft documents	The Beneficiaries provide written comments and recommendations on the latest version of the draft documents (1 week). The Contractor reviews and provides written recommendations to RB Rail AS. RB Rail AS decides on the recommendations to accept, the Contractor provides the next or final version of all documents (1 week).	Up to 300 h
	<b>Total</b>	Up to 400 h / CD+3 months

- 2.8. The deadline for the provision of services is 3 months from the commencement date of Part 2.
- 2.9. The intermediate deliverables' (with contents as per Section 2.7 of Technical Specification above) approval for the provision of services are as follows:

Deliverables/Reports	No of copies
Finalised draft documents	electronically by e-mail

- 2.10. Reports and documents will be officially delivered and accepted, the Contracting authority or its authorized representative will approve the receipt of the document in writing by signing the acceptance-delivery note.
- 2.11. The Contractor shall provide in its work programme enough time for the review of submitted deliverables by representatives of the Contracting Authority, leaving at least 5 working days for the review and preparation of their statement.

### 3. MAIN GENERIC OPTION TYPES UNDER CONSIDERATION:

#### 3.1. Option for infrastructure management main model 1: 'Cooperation'

- 3.1.1. There will be a single, independent infrastructure manager across all three countries, formed by the three Baltic states.
- 3.1.2. Under this scenario, the infrastructure manager for Rail Baltica would be responsible for the management of the physical infrastructure of the route across the 3 countries of Latvia, Lithuania and Estonia as well as for all activities associated with the role of a system authority and technical authority.
- 3.1.3. The Infrastructure manager would be responsible for marketing of services on the route, both internationally and nationally.
- 3.1.4. A multi-governmental agreement will be needed in order to commercially protect the Rail Baltica Infrastructure Manager in the event that the operating revenues needed to maintain the infrastructure fail to materialise. If the infrastructure manager will pay dividends to its shareholders, the decision on dividend payment will be made by the infrastructure manager.

#### 3.2. Option for infrastructure management main model type 2: 'Individual approach'

- 3.2.1. Under this scenario, Rail Baltica exists only as a virtual route across the 3 countries of Latvia, Lithuania and Estonia. While services might be marketed internationally, giving 3<sup>rd</sup> parties a single point of contact, the three-existing national infrastructure management companies will assume control for the operation and maintenance of the railway within their sovereign territory.
- 3.2.2. In addition to this, each existing national infrastructure management company will work directly with Railway Undertakings to try to increase national train path utilisation on their own elements of the network, provided that this does not impact on the baseline international operational plan for Rail Baltica.
- 3.2.3. In this case there will need to be a complex and detailed inter-governmental agreement to manage the cooperation reflecting the fact that the majority of traffic will continue to be cross-border. Such an agreement should prevent each nation from reducing their (national) costs where this presents a risk to the efficacy of the line.
- 3.2.4. This agreement will also need to ensure that perverse behaviours do not arise, such as track access charges being changed on a national basis to such an extent that the traffic flows on Rail Baltica are impacted in a manner which is deleterious to the overall scheme.

#### 4. SOURCE INFORMATION TO BE CONSIDERED

- 4.1. The Contractor shall consider the following non-exhaustive list of documents, studies, study projects and any other documents required for service provision:
  - 4.1.1. Draft Final Report prepared under "Rail Baltica Infrastructure Management Study" (identification No. RBR 2017/26) and the infrastructure management model chosen there (when it will be available);
  - 4.1.2. Final Completion report prepared under "Preparation of the operational plan of the railway" (identification No RBR 2017/19) (when it will be available);
  - 4.1.3. Joint Venture Study, 2013;
  - 4.1.4. Rail Baltica Joint Venture Shareholders' Agreement;
  - 4.1.5. Rail Baltica Contracting Scheme Agreement (infographic: <http://railbaltica.org/wp-content/uploads/2017/05/Contracting-Scheme-Rail-Baltica-2016.jpg>);
  - 4.1.6. Rail Baltica Contracting Scheme study; PwC, 2016;
  - 4.1.7. Inter-Governmental Agreement on the Development of the Rail Baltica Railway Connection, 2017 ([http://railbaltica.org/wp-content/uploads/2017/05/Intergovernmental\\_Agreement\\_2017.pdf](http://railbaltica.org/wp-content/uploads/2017/05/Intergovernmental_Agreement_2017.pdf));
  - 4.1.8. Rail Baltica Global Project Documentation Library (<http://railbaltica.org/about-rail-baltica/documentation/>);
  - 4.1.9. Relevant studies, reports, position papers by the relevant European and international institutions (including the European Commission, European Parliament, European Rail Agency, Rail Freight Corridors, ITF/OECD etc);
  - 4.1.10. Relevant studies, reports, position papers by key railway industry NGOs (including EIM, CER, UIC, ERFA, UNIFE);
  - 4.1.11. Recent and relevant research papers, studies, presentations and articles by leading academic institutions/authors in peer-reviewed railway and logistics journals, academic textbooks and international events.
- 4.2. The Contractor is expected to join and actively participate in the relevant alignment meetings.
- 4.3. The Contractor shall ensure that the result of the study is compliant with respective EU legislation, especially in the area of railway and railway infrastructure management.

#### 5. CONTRACTOR'S OBLIGATIONS

- 5.1. For the provision of services the Contractor shall remain fully responsible for the results of its services during and after the provision of services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of its services regardless whether it is necessary during the period of service provision or after completion of thereof.
- 5.2. In case Contracting authority finds (at any time of procurement process or during the implementation of the Contract for the provision of services) that provided information on the education and/or experience of a Contractor is false, a Contractor shall be eliminated from the procurement process or shall be subject to the termination of contract for the services (whichever is applicable).



- 5.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of services.
- 5.4. The Contractor shall be responsible for ensuring that its experts included in service contract are available throughout the service provision period.
- 5.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly, and the expenses were actually incurred. These must be available for review upon the request of Contracting authority.
- 5.6. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for service provision.
- 5.7. The Contractor shall ensure that its team members (experts etc.) involved in service provision are adequately supported and equipped. In particular, the Contractor shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable team members to concentrate on their primary responsibilities. The Contractor must also transfer funds as necessary to support its activities under the Contract and ensure that his employees are paid regularly and in a timely manner. Costs for administration of service contract and office operation including telecommunication costs shall be included.
- 5.8. The Contractor will arrange for formal coordination and decision making on project interventions and establish an adequate internal management structure. Progress meetings with the Contracting authority are held at least once per month. If needed, ad-hoc and weekly meetings can be arranged, which may be initiated both by the Contractor, or the Contracting Authority.

## **6. PROVISION OF SERVICES**

- 6.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.
- 6.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports, minutes of the meetings and any other information material required for the provision of the services.
- 6.3. During the implementation of services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver services on time.
- 6.4. Contracting authority reserves the right to ask the Contractor to provide an intermediate results (deliverables) of the services in short notice (within 3 business days), in order to check the progress of the implementation of a service contract. The Contractor within the short notice period shall provide with the information, status of the progress including proof of the thereof, such as intermediate documentation, reports, etc. This confirmation does not mean the implementation any additional assignments (reports etc.), rather confirming the progress of the implementation of service contract. Failing to do so within the short notice period or by providing the information that it is obvious for the Contracting authority that service contract would not be completed within the specified deadlines, Contracting authority reserves the right to proceed with the procedures for breaching the Contract.
- 6.5. As a part of services, the Contractor shall prepare information material in a fully comprehensive and understandable way, by providing explicit and full source details (initial information, evidences etc.) used for

the analysis and provision of services. The deliverables shall include detailed explanation of methods employed that lead to the solutions delivered by the Contractor.

- 6.6. Contracting authority shall have no influence on outcome results (reports, summary, advice, decisions, agreements etc.) delivered by the Contractor. However, Expert shall consider Contracting authority's reasoned observations on the initial information used and analysis methods employed by the Contractor to provide outcome results of the services. The implementation of such observations is subject to the approval of the services by Contracting authority.

## 7. CONTRACTOR'S TEAM

- 7.1. The Contractor shall propose an optimum structure for its team, based on the conditions of terms of reference, and where possible propose a core team with cross-functional roles. Experts cannot serve several roles. All experts should have an excellent written and very good verbal presentation skills in English, as well as proficiency of the railway industry professional terminology.
- 7.2. For the provision of services, the Contractor shall ensure the availability of at least the following team members (experts, assistants etc.) who comply with the qualifications stipulated in Section 7.3. of the Regulation:
- 7.2.1. **Project Manager** – experienced in railway infrastructure management study projects;
- 7.2.2. **Lead expert** – experienced in the field of railway infrastructure management;
- 7.2.3. **National experts** – one in Latvia, one in Estonia and one in Lithuania, experienced in the field of railway and/or other regulated sectors (gas, electricity, roads).
- 7.3. The Contractor is not allowed to change its key experts during the execution of the procurement contract without the prior written approval of the Contracting Authority. The Contracting Authority is only allowed to grant an approval for such a change if the new key expert meets all the same qualification criteria as the key expert to be substituted.
- 7.4. Contracting authority reserves the right to request the Contractor to replace a team member in case of any of the following reasons:
- 7.4.1. repeated careless performance of duties;
- 7.4.2. incompetence or negligence;
- 7.4.3. non-fulfilment of obligations or duties stipulated in the Contract;
- 7.4.4. poor knowledge of English language (unsatisfactory presentation, writing skills in English);
- 7.4.5. termination of employment relations with the Contractor.
- 7.5. Failing of the Contractor to propose another expert with equivalent or better qualifications might lead to the termination of the Contract.

## 8. CONFIDENTIALITY, INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST

- 8.1. All Candidates (including their corresponding Experts) are expected to ensure that their contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after the implementation of any assignment.

- 8.2. Experts shall remain independent from any activities of other parties, companies, or organisations whatsoever directly acting against the Contracting authority (including but not limited to litigation and procedures for examination of complaints according to the Public Procurement Law) and shall avoid any legally binding relations or any other kind of relations with such parties.