

Rīga, 19 October 2018

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**Answer to the question from the interested supplier  
in open competition "Quality assessment study on usage of local mineral  
materials for Rail Baltica Railway project",  
identification number RBR 2018/24**

RB Rail AS presents following answer to the question received until 19 October 2018 from the interested supplier:

No	Questions	Answers
1.	<p>In the Annex No 11: Draft Contract for part No 2 Study Agreement Clause 10.2 a contractual penalty stated in case of breach of any of the Obligations of Contractor is to pay 0,5 % of the amount of total the Fee payable under the Agreement for each day of delay, when penalty stated for the Principal in the event of failure to pay any amount in accordance with Clause 6.1 is 0,01% of the amount invoiced for each day. The Supplier notices that such a different Contractual Penalty applicable for the Parties contradicts with the principle of equality of Contracting parties, application of the criteria of justice and reasonableness stated in Civil Code of Lithuania of July 18, 2000, Law No. VIII-1864 (hereinafter – CC) Article 1.5 Paragraph 2 and principle of fair dealing, stated in CC Article 6.158. Paragraph 1. Following the above mentioned the Supplier suggests to amend the Draft Contract Clause 10.2 and to reduce Contractual Penalty in case of breach of any of the Obligations of Contractor from 0,5 % to 0,06 % of the amount of total the Fee payable under the Agreement for each day of delay, granting reasonable legal consequences for breaching of contractual obligations of Contractor and assurance of interests of both Parties.</p>	<p>Procurement commission indicates that amount of the penalty for both parties has been determined by evaluating all possible risks of failure to fulfil obligations in timely fashion and their impact on the progress of the project. Considering the fact mentioned before, Procurement commission believes that amount of penalties is stated proportionately with the impact of the delay of fulfilment of each parties' obligations.</p> <p>Procurement commission kindly asks Tenderer to pay attention, that in accordance with the Clause 16.1 of the Annex No 11 "Draft contract for the Part No 2" of the Regulations, agreement should be governed by and construed in accordance with law of the Republic of Latvia.</p>

Procurement commission chairperson



V. Kļaviņa