

Rīga

04.10.2019

Our Ref: 6.1p/340

**Answers to questions from the interested supplier
in open competition "Audit services for 2019 - 2021",
identification number RBR 2019/8**

RB Rail AS presents following answers to the questions received from the interested supplier until 4 October 2019:

| Nr. | Questions | Answers |
|-----|---|--|
| 1. | <p>3.15. – Visibility requirements</p> <p>Supplier comment: auditors do not in our audit reports make any references to any logos regarding EU co-financing. Law on audit services regulates work of the auditor and what information shall be included in audit report.</p> <p>RB Rail response: Procurement commission indicates that Clause 3.15 of the Draft contract will not be changed as visibility requirement comes from signed Grant Agreement (Article II.7.1.).</p> <p>Our question: We have reviewed Article II.7.1. as per Model Grant Agreement under CEF (https://ec.europa.eu/inea/sites/inea/files/cef_model_ga_2017_update_tran_consolidated_for_publication_en_0.pdf) and note that Grant Agreement requires "Unless the Agency requests or agrees otherwise, any communication or publication related to the action, made by the beneficiaries jointly or individually, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall indicate that the action has received funding from the Union and shall display the European Union</p> | <p>Procurement commission indicates that Procurement commission has taken a decision and Annex No 9 "Draft contract" (hereinafter – Draft contract) of Regulations for open competition "Audit services for 2019-2021", ID No RBR 2019/8 (hereinafter – Regulations), including the Clause 3.15, will be amended.</p> <p>Please follow the upcoming information regarding the amendments in the Regulations.</p> |

| | | |
|----|--|--|
| | <p>emblem." In Annex no 9 Draft contract, Clause 3.15. has more extensive requirements than Grant Agreement, stating that "[...] any report, brochure, document or information related to the Service provided by the Service Provider to the Principal or any other Person, or which the Service Provider makes publicly available shall include each of the following: [...]". It is our view that Visibility requirements set out in Grant Agreement do not apply to deliverables (reports) provided to Principal by Service Provider. Moreover, the templates of the audit reports to be provided under the Procurement are strictly regulated. Audit opinion on statutory financial statements – template is approved by LZRA (Latvian Association of Certified Auditors) and does not foresee adding European Union emblem. Independent Report of Factual Findings on costs declared under CEF template is determined by INEA (as published on https://ec.europa.eu/inea/sites/inea/files/wifi4eu/model_grant_agreement/cef_mga_annex_vii_revision_nov_2017_-_update_140119.docx) and does not include European Union emblem in the report. Taking into account aforementioned, we ask Procurement Commission to re-evaluate the inclusion of the requirement in Draft Contract or to provide detailed arguments why EU emblem is required to be included in the Auditor's deliverables to Principal as set out in the Contract.</p> | |
| 2. | <p>Section XIV Right to Audit and Section XV On-The-Spot-Visits</p> <p>Supplier comment: such clause cannot be accepted. Auditors are strictly regulated by law and only supervisory authorities can execute such rights to audit based on law regulation and conditions. Law on Audit Services (Section 35.1, Chapter VIII, Chapter VIII1, Chapter IX).</p> <p>RB Rail response: Procurement commission indicates that Section XIV Right to Audit and Section XV On-The-Spot-Visits of the Draft contract will not be changed. Signed Grant Agreement (Article II 9.1) stipulates that the Beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under Article II.27 also towards the contractor.</p> | <p>Procurement commission indicates that Procurement commission has taken a decision and Draft contract, including the Section XIV Right to Audit and Section XV On-The-Spot-Visits, will be amended.</p> <p>Please follow the upcoming information regarding the amendments in the Regulations.</p> |

Our question: We have reviewed Article II.9.1. as per Model Grant Agreement under CEF (https://ec.europa.eu/inea/sites/inea/files/cef_model_ga_2017_update_tran_consolidated_for_publication_en_0.pdf) and noted that Procurement Commission has precisely quoted the requirements of the Grant Agreement. We bring to Procurement Commission's attention that the respective sections (XIV and XV) of the Annex no 9 Draft contract do not address the rights of these institutions to carry out the audits and on-the-spot-visits, with OLAF being the only authority explicitly mentioned. Instead, the Contract clauses establish the right of RB Rail AS itself as Principal to the Contract to carry out the audits at its discretion, which in our view does not arise from the Grant Agreement requirements. We would like to emphasize that Auditors are strictly regulated by law and only supervisory authorities can execute such rights to audit based on law regulation and conditions (Law on Audit Services (Section 35.1, Chapter VIII, Chapter VIII1, Chapter IX)). We therefore expect that some amendments would be made to the respective clauses and ask Procurement commission to re-evaluate the inclusion of the requirement in Draft Contract or to modify the clauses stating that only statutory bodies which are authorized by law regulation may exercise such on-site visits strictly in accordance with the regulatory requirements.

Procurement commission chairperson



A. Benfelde