

Rīga

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**Answers to questions from interested suppliers
in competitive procedure with negotiations "Notified Body (NoBo)
services for Rail Baltica trackside infrastructure
TSI conformity assessment (verification)",
identification number RBR 2019/19**

RB Rail AS presents following answers to the questions received from the interested suppliers until 21 October 2019:

Nr.	Questions	Answers
1.	May certificates for individual subsystems (e.g. CCS) also be issued by NoBos involved in a partnership or must all certificates be issued by one "leading" NoBo?	Procurement commission indicates that, if "leading" Notified Body (NoBo) will accept and recognize the certificates for individual subsystems (e.g. CCS) issued by NoBos involved in a partnership and will issue final EC certificate of verification in accordance with Technical specification of the competitive procedure with negotiations "Notified Body (NoBo) services for Rail Baltica trackside infrastructure TSI conformity assessment (verification)" (hereinafter – Competition), certificates for individual subsystems can be issued by NoBos involved in a partnership.
2.	Does a partnership agreement have to be signed and submitted with the prequalification (stage 1) or is a letter of intent (LOI) sufficient that a partnership agreement will be in place when the contracting rights are awarded?	Procurement commission indicates that in Candidate selection phase (1 st phase) of the Competition partnership can submit letter of intention to enter into agreement, if it contains all information mentioned in the Section 4.2.1 of the Competition regulations (hereinafter – Regulations) and if it is signed by all members of the partnership.

		<p>Additionally, in accordance with the Section 3.1.2 of the Regulations, if application is submitted by a group of suppliers who have formed a partnership for this Competition, all members of the partnership shall be listed in Annex No 1 "Application form". If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either:</p> <ul style="list-style-type: none"> - enter into a partnership agreement; - or establish a general or limited partnership.
3.	<p>By what date will the service bid have to be delivered to RB Rail AS?</p>	<p>Procurement commission indicates that only candidates selected in the 1st phase of the Competition will be invited to submit their bid proposals in the 2nd phase of the Competition. The exact date of announcing the 2nd phase of the Competition cannot be predicted at this moment because it depends on the actual progress of the evaluation of applications submitted in the 1st phase of the Competition.</p>
4.	<p>Could you please clarify requirements of the paragraph 4.4. Exclusion grounds:</p> <p>a. In case the Candidate is a partnership formed under the Civil Law of the Republic of Latvia between a company registered and residing in Latvia and a company registered and residing abroad, where "key member" (4.2. Legal standing, No.1) is Latvian company, should all (both Latvian and foreign companies) partnership members provide documents to demonstrate compliance with paragraph 4.4. requirements?</p> <p>b. Foreign company, member of the partnership, can choose out of 3 options how to comply with the paragraph 4.4. requirements: (1) ESPD, (2) statement from the competent authority or (3) oath/certification by the Candidate?</p> <p>c. Latvian company, member of the partnership, does not need to provide evidence of compliance with paragraph 4.4., all requirements will be checked by Contracting Authority by itself?</p>	<p>Procurement commission indicated that:</p> <p>a. In accordance with Section 42, Paragraph one, Clause 9 of the Public Procurement Law of the Republic of Latvia (hereinafter – PPL¹), if the Candidate is a partnership, a member of the partnership shall be subject to the conditions of Clause 1, 2, 3, 4, 5, 6 or 7 of the Paragraph mentioned before (please see the relevant Paragraph of PPL). Therefore, in this case Candidate should provide all documents that are mentioned in the Section 4.4.1 – 4.4.8 and Section 4.4.13 of the Regulations for each member of the partnership who is registered and residing abroad. For member of the partnership who is Latvian company, it is not necessary to submit the documents that are mentioned in the Section 4.4 of the Regulations. Contracting authority will verify the information mentioned in the Section 4.4 of the Regulations itself in publicly available databases.</p> <p>b. Foreign company (member of the partnership) can choose to submit documents that are mentioned in the Section 4.4 of the Regulations issued by the competent authorities of the country of the registration of residence or</p>

¹ Public Procurement Law of the Republic of Latvia. Available: <https://likumi.lv/doc.php?id=287760>

		<p>European Single Procurement Documents (hereinafter – ESPD) as initial proof. In accordance with the Section 4.7 of the Regulations oath or certification is allowed only in cases if the documents with which a Candidate registered or permanently residing abroad (outside Latvia) can certify its compliance with the requirements of Section 4.4 of the Regulations are not issued or these documents are insufficient.</p> <p>c. For the Latvian company (member of the partnership) Contracting authority will verify the information mentioned in the Section 4.4 of the Regulations itself in publicly available databases. Notwithstanding, Procurement commission might request Latvian company to submit an additional information e.g. in cases mentioned in Section 7.2 of the Regulations.</p>
5.	<p>We act as Notified Body in the regulated domain of the interoperability directive 2008/57/EC or 2016/797/EC. This activity is covered by the ISO/IEC 17065 and also requests elements of the ISO/IEC 17021 for management system auditing and certification.</p> <p>This is in line with the ERA Technical document MNB - Assessment scheme 000MRA1O44 ver 1.1</p> <p>https://www.era.europa.eu/sites/default/files/activities/docs/technical_document_requirements_for_nobos_en.pdf which states in point 4. That „[...]the baseline standard is the EN ISO/IEC 17065:2012 “Conformity assessment – requirements for bodies certifying products, processes and services”.</p> <p>We kindly ask to remove the standard ISO/IEC 17021 from the requirements or leave it as “option”.</p>	<p>Procurement commission stresses that evaluation of the submitted applications according to evaluation criteria mentioned in Section 13.1 of the Regulations will take place only in situation if more than 7 (seven) candidates will comply with candidate selection criteria. Therefore, requirement regarding the ISO/IEC 17021 certification (or newer version) or equivalent mentioned in the Section 4.1.4 of the Regulations is not mandatory and can be considered as “optional”.</p>
6.	<p>Is it possible to extend the deadline for providing the documents for the pre-qualification (stage 1) until 15.11.2019?</p>	<p>The Procurement commission could consider extension of the deadline for submission of the applications only when serious reasons exist. In this specific case Procurement commission from the information received from the potential supplier could not justify the requested extension.</p> <p>The deadline for submission of applications is set in accordance with the Paragraph 3 and 6 of the Republic of Latvia Cabinet Regulation</p>

		No 107 "Tendering Procedures for Procurement Procedures and Design Contests", adopted 28 February 2017 ² , and in Procurement commission's opinion it is reasonable.
7.	In the document "Candidate Selection Regulation", at page 3, § 1.8, it is mentioned 'the Contracting Authority isn't able to provide sufficiently precise specifications referring to Standards, European Technical assessment, common technical specifications or technical references'. Could you please clarify why in the opinion of the Contracting Authority it is not possible to provide sufficiently precise specifications? Since the services of a Notified Body are specified in detail in directives EU 2008/57 and EU 2016/797 we wonder what exactly cannot be specified precisely enough. Is Contracting Authority referring to other factors/circumstances than Notified Body services?	<p>Section 8, Paragraph 6 of the PPL defines the cases when contracting authority is entitled to apply a competitive procedure with negotiation. One of these cases is when the technical specifications cannot be prepared with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical references.</p> <p>Taking into account the overall complexity of the Rail Baltica Global Project, number of stakeholders involved in preparation of the Technical Specifications as well as different implementation status and not finalized deployment strategies of specific railway sections of Rail Baltica Global Project to be assessed by NoBo, the Contracting Authority decided to proceed with Competitive Procedure with Negotiation. Among main reasons for selection of this procurement method could be clearly mentioned:</p> <ul style="list-style-type: none"> ▪ Minimization of the number of proposals to be evaluated; ▪ Raising the quality of final proposals by asking questions to selected candidates; ▪ Need to understand in more detail approach on deployment of NoBo services on the basis of description of reference projects.
8.	<p>The document "Candidate selection regulation", page 7, table at § 4.3 ('Economic and financial standing'), item 1, states that 'the Candidate or all members of a partnership together' are expected to have an average turnover of € 10.000.000,=. The same document, at page 14, § 5.1, states that the candidate may rely on the turnover at the capacity of 'other persons, regardless of the legal nature of their mutual relationship'.</p> <p>a) Is our interpretation correct that a Candidate is allowed to rely on the</p>	<p>If potential supplier does not meet the requirement itself, it can apply for participation in the Competition together with another supplier as a partnership or apply itself (as a Candidate), but involving another supplier as a person on whose capacity Candidate relies to cover all requirements in the Regulations that potential supplier can not cover by itself.</p> <p>a) In accordance with Section 5.1 of the Regulations Candidate may rely on any person regardless of the legal nature of their mutual relationship, if it fulfils all</p>

² The Republic of Latvia Cabinet Regulation No 107 "Tendering Procedures for Procurement Procedures and Design Contests", adopted 28 February 2017. Available: <https://likumi.lv/ta/id/289086-iepirkuma-proceduru-un-metu-konkursu-norises-kartiba>

	<p>turnover of other subsidiaries with combined turnover exceeding € 10.000.000,= who are part of the same Holding Company and will be jointly bidding?</p> <p>b) Alternatively, is it correct to assume that the turnover of the Holding Company can be relied on. If so, is it enough to submit a statement or guarantee by the Holding Company regarding its turnover?</p>	<p>requirements mentioned in the Section 5 of the Regulations. But if potential supplier submits a proposal together with another supplier (as a group of suppliers) please refer to relevant Section in the Regulations regarding the partnership.</p> <p>b) Please refer to the Answer No 8 a) in this document.</p>
9.	<p>a) Are reference projects from other subsidiaries offering NoBo services, who are all part of the same Holding Company, allowed to be presented on behalf of the Candidate?</p> <p>b) If not, by which way do you recommend to include these projects in the qualification of the Candidate?</p>	<p>If potential supplier does not meet the requirement itself, it can apply for participation in the Competition together with another supplier as a partnership or apply itself (as a Candidate), but involving another supplier as a person on whose capacity Candidate relies to cover all requirements in the Regulations that potential supplier cannot cover by itself.</p>
10.	<p>The document "Candidate selection regulation", page 19, table at § 13.1 ("Candidate evaluation"), item 4, states "a copy of certificate issued by a certification body". Based on the context we assume this is a typing error. Shouldn't this sentence be "a copy of certificate issued by an accreditation council"? If not, could you please clarify what is meant by "a copy of certificate issued by a certification body"?</p>	<p>Procurement commission indicates that to prove that Candidate meets the standards mentioned in the Section 13.1.4 of the Regulations one of the documents that needs to be submitted is a copy of relevant certificate regardless of what this authority who issues these certificates is called - a certification body or an accreditation council. It is important that the authority concerned has the right to issue these certificates mentioned in the Section 13.1.4 of the Regulations.</p>
11.	<p>Annex No. 4 lists as requirement for the proposed "Project Leader with demonstrated experience in leading NoBo experts' team during all project phases".</p> <p>As it is good business practice to split the role of project manager and lead assessor, and in large long-term projects to combine or replace project managers, the experience now requested from the Candidate in managing all phases of the project is in practice often not concentrated in one person. Would Rail Baltica be willing to accept a project leader in compliance with the requirements of Article 4.1.2 of the Regulations in combination with a lead assessor experienced in all project phases?</p>	<p>Procurement commission indicates that all project phases mentioned in the Section 4.1.3, Sub-section 1) of the Regulations (set up, design, construction, commissioning and closure) can be covered with several NoBo projects, if those projects (each of them) meets the requirements mentioned in the Section 4.1.3 of the Regulations:</p> <ul style="list-style-type: none"> ▪ Reference project/-s have minimal complexity and tasks as described in Section 4.1.2 of the Regulations (all characteristics (a)-f) must be covered); ▪ Project leader's experience in reference project/-s was gained within previous 10 (ten) years until the date of submission of the application.
12.	<p>§8.5: it is written that « For the document to gain legal force it has to be issued and formatted inf accordance with Law on</p>	<p>Procurement commission confirms that for all documents to be submitted in Latvia, all</p>

	<p>Legal Force...but public documents issued abroad shall be formatted and legalised in accordance with the requirements of the document legalization law ».</p> <p>Could you please confirm that for all documents to Latvia, all European countries are exempted from legalization / apostille according to the Exemption provided under the Convention of the European Communities of 25 May 1987?</p>	<p>European countries are exempted from legalization / apostille.</p>
13.	<p>Should the upcoming project be invoiced according to a fixed price (lump sum) or according to expenditure (at cost)?</p>	<p>Procurement commission indicates that information regarding the invoicing and payment plan will be included in the regulations of the 2nd stage of the Competition. 2nd stage regulations will be sent to those candidates who will qualify for the 2nd stage of the Competition and will be invited to submit a Bid.</p>

Procurement commission chairperson



A. Benfelde