

Rīga

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Our Ref: 1.13p/LV-50

Answers to the questions provided by the Tenderer in the open competition „Detailed technical design review and design expertise services for Rail Baltica in Lithuania”, Id No RBR 2019/15

RB Rail AS presents the following answers to the questions from the Tenderer:

No	Questions	Answers
1.	<p>Maximum budget of 1 mill EUR plus VAT is far not sufficient for providing services for the requested scope. Please note that for the similar scope allocated budget for Estonia is 2,44 mill EUR even for the tender in Lithuania expertise is required for Master Design and Detail Technical Design, while for Estonia only for Master Design documentation. Please review the maximum budget and adjust it to be realistic according to requested scope of services.</p>	<p>Procurement commission kindly explains that it has its budget planned within the Rail Baltica Global project for the respective activity (Detailed technical Design Review and Design Expertise services in Lithuania) and it cannot be exceeded. Procurement commission has evaluated scope of works in line with estimated contract price and has concluded that it is sufficient for the provision of the respective services.</p> <p>Please note that in accordance with Clause 1.5 and 11.3 of the open competition Regulations in case the proposed contract price will exceed the estimated contract price (1 000 000,00 without VAT), such proposal in accordance with Subclause 1), Section 11 of Article 41 of the Public Procurement Law of the Republic of Latvia will be rejected as incompliant and further will not be evaluated.</p> <p>Considering all the above-mentioned, the requirement established in Clause 1.5 and 11.3 of the open competition Regulations shall remain unchanged.</p>
2.	<p>In the tender documents it is indicated that period of main services is 24 months. However, it is also stated a possible extension for 60 months, which we anticipate will cover project until construction commissioning. Please</p>	<p>The Procurement Commission hereby kindly clarifies that in accordance with Clause 5.4 of the open competition Regulations period for the provision of the Design Review Services and Design Expertise Services (hereinafter –</p>

	<p>describe exactly services, which can be requested to provide during above mentioned extension of 60 months. In case you can't define exactly scope of the above mentioned services, please include provisional scope as number of man-hours of key and non-key experts (separately). Otherwise it's not possible to make any estimate of the re- requested scope, while contract is going to be fixed price. Above situation is against standard professional practise and is not acceptable to market participants.</p>	<p>Services) is envisaged to last for 24 (twenty-four) months starting from the Contract Signing Date. However, Services shall be available for the Contracting Authority till the end of the design works for each design section, but no longer than sixty (60) months from the Signing Date. Please note that expertise services during the construction phase will not be in the scope of ESP based on this procurement procedure and Contract. To clarify, the aim for setting the maximum contract term of 60 months is to ensure both review and expertise services' availability in case if design works in any of the design section last longer than 24 months (and, for sure, Services shall be provided for all Detailed Technical Design Section), in order to ensure availability of Services for implementation of Rail Baltica Global Project. Therefore, the Tenderer shall anticipate its scope of Services based on the amount of objects which shall be verified. In addition, and to avoid any doubt, please note contractual regulation, as in accordance with Clause 2.3 of the draft contract, the contract shall be valid until full completion of obligations of the Parties. Plus, please note that according to currently effective information the Contracting Authority intends to complete the Detailed Technical Design services in due time as envisaged in Detailed Technical Design contracts, i.e., within 24 months (if no partial suspension tools are used, etc.), and thus, after Services are finished and all contractual obligations are fulfilled, the contract with ESP shall be completed.</p>
<p>3.</p>	<p>It is not clear a requirement related to avoiding potential conflict of interest. Following the requirement included in tender documents, service providers are practically eliminated from any future projects in transportation projects in Lithuania and other countries as many market players are providing services internationally. Having in mind that main conflict of interest is related to preparation of Master and Detail Technical Design for specific projects only we ask you to define it only in relation to it but not connect to any other cooperation with market players, which are engaged for carrying out Master and Detail Technical Design.</p>	<p>In order to clarify the Tenderer's described issue, and based on the level of detail indicated by the Tenderer, the Procurement Commission hereby kindly notes that specific conflict of interest requirements are set-forth in Clauses 4.5, 6.2 and 12.2 of the Regulations, and Annex 1 (item 6) of the Regulations, plus Clause 2.7, Section 16 and Annex 9 (item 15) of the draft contract. These contractual and Regulations requirements are reflecting general legally mandated requirements which are stipulated in applicable laws, and which are objectively and evidently required within this procurement in order to ensure the main principle – ESP's independence from designers which are designing respective Design section in the Republic of Lithuania. To avoid any doubt, the Contracting Authority is not requiring any other criteria which goes above legally mandates</p>

		<p>requirements in the Republic of Lithuania. And, please note that based on the information received during this this questions and answers exercise, the Procurement Commission currently is not in a position to precisely evaluate the Tenderer's circumstances, and the Tenderer shall carry out all necessary measures in order to comply with applicable laws. Each such case raised shall be reviewed separately and in accordance with legislation of the respective country.</p>
4.	<p>Please note that based on contract conditions related to payment schedule, service provider will have significant negative cash flow during the Project, which request additional budget for covering related financing costs and in most of cases are not acceptable for market. Please review above conditions in order to get positive cash flow for service provider. Reasonable coverage of risks and liability of service provider in the above case can be ensured by using a performance guarantee of an adequate size.</p>	<p>Regarding the Tenderer's cash-flow: the Procurement Commission hereby kindly clarifies that contractual structure requires the Tenderer to provide the Services (both Design Review Services and Design Expertise Services) based on the Assignment Orders to be issued by the Principal to ESP as to each Service Module with a specific price pursuant to Annex 5 of the Contract, thus, the Contract entitles ESP to be structurally and consequently remunerated as per the Tenderer's proposal, ensuring positive cash-flow. It is evident that it is ESP's task to precisely allocate the necessary resources in order to implement the specific Assignment Order whilst maintaining positive cash-flow.</p> <p>In addition, please note that the Tenderer is entitled to require the advance payment from the Principal based on the Contract's conditions (10% of the total remuneration). Procurement Commission considers that the amount established for the Performance Bond is adequate and respective requirement shall remain unchanged.</p> <p>Regarding the coverage of risks: the Procurement Commission hereby kindly clarifies that the Tenderer shall not undertake all risks, and, indeed, the Tenderers obligation pursuant to this assignment is to provide legally mandated expertise services in the Republic of Lithuania and Latvia (regarding the bridge over the Mūša river) in order to perform compliance check of the Principal's design packages, and, accordingly, the Tenderer shall be remunerated on a completed work basis, while maintaining legally</p>

		<p>mandated liability towards the Services as per laws of the Republic of Lithuania and Latvia (regarding the bridge over the Mūša river). In this respect it is evident that there are no risks which are re-allocated from the Principal to ESP.</p>
5.	<p>We believe that the Client, following international best professional practice related to similar services, wish to prioritise quality of services, also having in mind importance of the requested services. In the above case weight in evaluation for price set as 70% and for technical proposal - 30% looks not adequate as it push market to prioritise lowest price and minimum quality services. Please change it by setting weight for technical proposal at least 70% and not more than 30% for price. Please note that in the above case any escalation of service price is excluded by limiting maximum budget for services.</p>	<p>Procurement commission considers that chosen evaluation model is commensurate, and fully complies with Procurement strategy and aims and thus, shall remain unchanged.</p>
6.	<p>Please clarify if key-experts have to have respective certificates for carrying out expertise during submission of the bid or they could be obtained after signing a contract for provision of services. Please note that in case a first option is requested it might be not realistic to expect any bids as to our knowledge there are no international experts, meeting qualification requirements for key-experts, which have a certificate for carrying out expertise. Please also consider an option that a report of expertise could be signed only by non-key experts, while key-experts sign review reports only.</p>	<p>Procurement commission kindly explains that in accordance with Clause 7.5.1. 1., 7.5.1. 2., 7.5.1. 3., 7.5.1. 4. of the open competition Regulations Key experts named in the above-mentioned Clauses <u>shall have professional qualification/education according to the Country's (Country, where the qualification/education has been obtained) legislation</u> for the provision of respective services in the field of his/her expertise (if necessary, by the respective Country's legislation).</p> <p>Thus, in case the Tenderer involves foreign Key experts (e.g. in case the qualification/education has been obtained outside Lithuania) in order to participate in the open competition (during the procurement stage), it is not mandatory for such experts to be certified / qualified or have respective education obtained in accordance with Lithuanian legislation. Such foreign experts <u>shall only have professional qualification/education obtained according to the Country's (Country, where the qualification/education has been obtained) legislation, in order to participate in the procurement.</u></p> <p>In accordance with Clause 6.1.5., 6.2., 6.3. and 6.5. of the Technical Specification of open competition Regulations, for the provision of</p>

		<p>the Design Expertise Services, <u>in case the Tenderer is awarded with the contract signing rights</u>, the Tenderer shall follow requirements established in Technical Specification (Table No 5 “Key-Experts” and Table No 6 “Required non-exhaustive Additional Experts”) and <u>shall obtain professional competence (qualification) (in accordance with respective legislation of Lithuania and Latvia (if applicable))</u> for experts proposed for the provision of the Design Expertise Services during the fulfilment of the contract, as required.</p> <p>As regards signing of the report (legal expertise act), Procurement commission indicates that one of required Key-Experts is Project manager of Design Review and Design Expertise. According STR 1.04.04:2017 „Statinio projektavimas, projekto ekspertizė“, Project manager of Design Expertise (in Lithuania Bendrosios projekto ekspertizės vadovas and in Latvia Ekspertizės vadītājs) shall sign legal expertise act. For legislations acts regarding Design Expertise in Latvia please refer to this link (https://em.gov.lv/lv/nozares_politika/buvnieciba/normativie_akti/normativo_aktu_saraksts/).</p>
7.	<p>Some parts of the scope seem to be in the same level that the requirements for the Design Consultant, such as the revision of certain structures (where a complete recalculation is re- quired), or checking of the BoQ. Please note that above requested scope is not in line with standard international practise related to design review services.</p> <p>Once more, there're relevant doubts that the indicative fees may cover such requirement.</p> <p>Also limitation of making review/expertise within 30 days is not realistic having in mind above scope. Please adjust above requirements/duration for design review (expertise)/max fee accordingly.</p>	<p>Procurement commission hereby explains that Consultant being a professional service provider shall study the Technical Specification in such extent to be able to assess the necessary requirements stated by the Contracting Authority. For more information please familiarise yourself with all Technical Specification requirements (e.g., Chapter 5.2.)</p> <p>As regards 30 days limitation please refer to Clause 4.4. and Clause 4.5. of the Technical Specification that both are interlinked, and which states the work execution sequence for the detailed Technical Design Review and Design Expertise services. In addition, Procurement commission explains that the time given for provision of the Detailed Technical Design Review and Design Expertise services is closely linked to the provision of the Detailed Technical Design services. Procurement commission would like to point out that the main intention of the Contracting Authority is to receive the services in the highest quality, not to go against international practice.</p>

		Considering all the above-mentioned, Procurement commission notes that all the respective conditions shall remain unchanged.
8.	Within scope/direct costs related to services you have stated field research and purchase of external materials and researches. Based on professional practise we do not anticipate such kind of scope/costs related to design review and/or design expertise. Please clarify in which cases above scope/costs might occur? Please clearly describe related scope/costs for making possible to include in financial proposal fixed price estimate related to it.	<p>Procurement commission hereby explains that the respective Section 11 of the open competition Regulations lists that the proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the Detailed Technical Design Review and Expertise Services that can be reasonably estimated, except VAT, including but not limited to:</p> <p>11.5.2. field research if applicable,</p> <p>11.5.3. purchase of external materials and researches if applicable,</p> <p>11.5.4. purchase of external experts if applicable [..].</p> <p>Procurement commission would like to clarify that <u>it is not</u> envisaged within this procurement procedure to make any field researches or purchase external materials etc. The main aim of indicating the above-mentioned costs possible was to emphasize that all costs (except VAT) shall be included in proposed Contract price. Contracting Authority is not in a position to list all possible costs which can occur for the Tenderer during the provision of the services, thus, information indicated in Clause 11.5.2.-11.5.3. shall be treated as informative (provided as an example of costs possible).</p>
9.	Please exclude any wording in description of scope as "minimum", "but not limited to" etc., which presumes unlimited scope of services and is against international professional practise for such kind of services.	As the Tenderer has not referd to the specific clauses of the procurement documentation, the Procurement commission can only assume that the Tenderer refers to the requirements deriving from the Technical specification clauses where the scope of services are described. The full scope of works is complete and defined in the Technical Specification. Thus, the Contracting Authority does not see objective necessity to amend wording in the Technical Specification and other related procurement documentation.
10.	It is clear that service provider has to include in a fee estimate first and second review/expertise for one package of documents. However, scope of services indicates possible additional reviews/expertise. Please clearly limit of the above scope or in case it is not possible, please include provisional number of hours for key and non-key experts to be included in the proposal for above additional review/expertise services.	<p>Procurement commission hereby explains that the maximum number of examinations is stated in Clause 5.1.7. of the Technical Specification.</p> <p>Considering all the above-mentioned, Procurement commission notes that the respective conditions shall remain unchanged.</p>

11.	<p>Please include clear statement about how many separate design review/design expertise packages will be delivered to service provider. Will the number of packages be limited to number of building permits, which are going to be obtained by Design Consultant? If number of the packages is going to be large, please include maximum number of packages. The above information is important for an estimate of service price as more packages increase number of meetings and related costs/travelling expenses.</p>	<p>Procurement commission kindly explains that preliminary construction object (design deliverable packages) for each Design Section and Design Priority Section in Lithuania are indicated in Annex No. 3 of the Technical Specification.</p> <p>Please take into account, that design works for both Design sections in Lithuania are currently ongoing (in Value Engineering stage), thus exact number of the building permits at this stage cannot be precisely determined.</p> <p>Railway design package (including structures (railway bridges and viaducts, noise barriers, retaining walls, culverts, ecoducts, underpasses for animals, etc), access and maintenance roads, local roads reconstruction with new road viaduct construction, utilities for railway, etc) will be splitted per Design Priority Sections and one building permit shall be issued for each Design Priority Section.</p> <p>However, please be informed, that each national road, owned by Lithuanian Road Administration, each main utility, owned by affected party, land melioration in each municipality will be delivered as separate design packages and thus separate building permits shall be issued for each such construction object.</p>
12.	<p>Please fix place of meetings as it is directly related to direct expenses and resources, which have to be allocated by service provider.</p>	<p>Procurement commission kindly notes that place of meetings shall be organized at Contracting Authority`s- premises in Lithuania. ESP shall be notified at least 5 days in advance on planned meeting place and date.</p>
13.	<p>Please state in what language will be delivered Master Design and Detailed Technical Design documentation (only English, or English and Lithuanian languages).</p>	<p>Procurement commission hereby clarifies that Master design and Detailed Technical design documentation will be delivered in Lithuanian and English languages, but for cross border bridge over Mūša river design will be delivered in English, Lithuanian and Latvian.</p>
14.	<p>Please provide prices of licences and technical information related to Client's Common Data Environment.</p>	<p>Procurement commission explains that approximate price for RB RAIL information sharing Common Data Environment platform (deployed, implemented and maintained by Bentley system`s) varies from approx. 150-300 EUR. The exact price will be clarified after the entering into Contract.</p>

15.	Please clearly define scope of expertise and design review for Technical Detail Design. Will it cover only some disciplines of the Project or entire project documentation?	<p>Procurement commission hereby explains that scope of Design Review for Detailed Technical Design (in LT "Darbo projektas") shall be the same as it is in Master Design stage. ESP shall check if the Detailed Technical Design is in required level of detalisation according to national legislation and according to requirements established in Clause 5.4. of the Technical Specification.</p> <p>Scope of Design Expertise for Detailed Technical Design (in LT "Darbo projektas") shall be done according to Lithuanian legal acts. For cross border bridge over Mūša river it is required compliance of building design documentation or part thereof that forms a basis for construction with requirements according to Lithuanian and Latvian legislation.</p> <p>Please refer to Clause 5.4. of the Technical Specification for more detailed information.</p>
16.	Please clarify if it is allowed for a sub consultant to participate in the tender with several main Consultants and propose the same non-key experts for several bids?	Procurement commission hereby explains that there are no restrictions to participate as subcontractor with several Tenderers and propose the same personnel in several proposals, deriving from the Public Procurement Law of the Republic of Latvia.
17.	Please note that liabilities of service provider seem to be not capped and are against international professional practice. While in the Design Contracts it was clearly stated that the limit of liability was the contract value, in this case there's no any indication of a limit of liability. This is a special point of concern, since the liability of design is transferred to services provider in case any mistake/fault/error in the design would not be detected during design review and design expertise exercise. Also, the responsibility of a service provider in granting that the designs fully comply with regulations and must be ready for building permits and consequently for commencing the procedure for construction bids, put a big pressure and responsibility. Having above in mind please set up reasonable maximum limit liability and provide provisions related to liability related to the above services, which are reasonably shared with Design Consultant and is in accordance with standard practice applied by insurance companies.	The Procurement Commission hereby kindly notes that ESP's liability shall be established based on legal acts as applicable in the Republic in Lithuania and Latvia (regarding the bridge over the Mūša river), and in this respect the Contract provides compliant liability arrangements under Section 14, thus providing balanced Contract's implementation approach. In addition, the Procurement Commission clarifies that it is not in a position to expand/reduce liability of ESP as required by legal acts in the Republic in Lithuania, and Latvia (regarding the bridge over the Mūša river) and ESP, in turn, shall undertake responsibility over activities as concerns ESP's Services strictly as required by respective legislation. In this respect the Contracting Authority is looking forward to establishing contractual relationship with supplier which can undertake liability of its work.

18.	<p>Please note that a required maximum deductible of 2900 EUR is unreasonably low having in mind size of required insurance and other guarantees and securities, which are provided by service provider. Such requirement also will significantly escalate costs related to project insurance or may even complicate obtaining of such kind of insurance. Please note that usual professional practise is to provide a professional insurance, which coverage is not less than maximum professional liability of a Consultant. Please review size of deductible and adjust it in accordance to standard international practise.</p>	<p>The Procurement Commission hereby kindly clarifies that pursuant to Clause 8.1 of the Contract ESP shall ensure ESP's professional civil liability insurance policy based on commercially reasonable terms (including reasonable exclusions) and as indicated in the Contract. Clause 8.4 of the Contract states that the insurance amount of this insurance in aggregate and for each insured event shall be no less than the Contract Fee and deductible shall be no more than EUR 2 900, and these contractual requirements indicate balanced and reasonable insurance coverage requirements.</p> <p>In Lithuania local rules applicable to civil liability insurance of contractors, designers and design expertise clearly indicate that the maximum deductible is EUR 2 900. The rule in Lithuania is the following:</p> <p>If the insurance is mandatory (for example insurance for design expertise) – the deductible cannot be more than EUR 2 900.</p>
19.	<p>Having in mind that above questions/issues are essential for most of market player for making decision if to start or not to start arranging pre-bid agreements with partners and to start significantly investing in any activities related to preparation of a proposal we ask to postpone the deadline for submission of proposals by 6 weeks counting from the day, when you issue responses and clarification related to all the above listed items.</p>	<p>Your request has been noted and Procurement commission will inform you regarding its decision shortly. Please follow the information provided in E-Tender system.</p>

Document is approved by Procurement commission's decision made on 24 February 2020, Session minutes No 8, and is valid without signature.