

Riga

27.02.2020

Our Ref: 1.13p/LV-56

Answers to the questions provided by the Tenderer in the open competition „Detailed technical design review and design expertise services for Rail Baltica in Estonia”, Id No RBR 2019/14

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

No	Questions	Answers
1.	REGULATION. SECTION 15. SUBSECTION 15. Page 27/51. Considering all the documentation available for the subject Tender and the anticipated analysis of the responses to be provided, we kindly request for a submission deadline extension of three weeks.	Hereby Procurement commission informs that it has made a decision to extend the date for submission of proposals. The time for submission of proposals is extended till 23.03.2020.
2.	REGULATION. SECTION 5. SUBSECTION 5.8. Page 6/51. Please confirm that during the 60- month contract, the ESP's scope of works refers just to services during the Mater Design and Detailed Technical Design, and therefore, the Design Review and Design Expertise during the construction phase are not included in ESP's scope of works.	Procurement commission hereby confirms that Detailed Technical Design Review and Design Expertise Services during the <u>construction phase is not a part of the scope of works</u> within this procurement procedure. The scope of the Design Review and Expertise Services within this open competition procedure is defined in the Technical Specification of the open competition.
3.	REGULATION. SECTION 7. SUBSECTION 7.3.1. Page 14/51. Economic and financial standing. It is understood that in case of ESP being a "Partnership Agreement", average financial turnover shall be determined according to the participation interest of each member in the	Yes, that is correct. If proposal is submitted by a partnership the Tenderer shall indicate the member of the partnership on whose capabilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the contract including this information in the agreement of cooperation (or

	"Partnership Agreement". If not, please clarify.	letter of intention to enter into such agreement) and in addition indicate it in the Annex 8. The Tenderer must submit audited or self-approved (if the annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statements for financial years 2017, 2018, 2019, showing the turnover of each member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Contract.
4.	REGULATION. SECTION 7. SUBSECTION 7.3.2. Page 15/51. Economic and financial standing. It is understood that in case of not having yet audited financial statements from 2019 period, these ratios could be estimated using provisional data (this could be support by a letter of the Financial Director of the Company stating that they are provisional). If not, please clarify.	Yes, that is correct. If the audited annual financial statement for the financial year 2019 according to the law of the country of residence of the Tenderer is not available on the Proposal submission date, the Tenderer can submit other documents showing the annual turnover and values of the Tenderer for the financial year 2019. Please note that the Tenderer should submit document confirming the right of respective person to approve above mentioned financial statement.
5.	REGULATION. It is understood when it is stated "excluding VAT" that you refer to Estonia's VAT.	Considering that contract shall be governed and interpreted in accordance with laws and regulations of the Republic of Estonia, value added tax (VAT) shall be applied in accordance with respective tax laws and regulations of the Republic of Estonia.
6.	CONTRACT. SECTION 7.8. It is understood that contract will be signed between ESP and RB Rail AS Estonia Branch (which is a RAIL BALTICA AS branch). Nevertheless, according to point 7.8 invoices shall be submitted to Rail Baltic Estonia OÜ and payments shall be received by it. Please confirm.	The Procurement Commission confirms that according to Clause 7.8 of the contract invoices shall be submitted to the "Beneficiary" and payments shall be received from it.
7.	CONTRACT. Please confirm that in case of ESP being a "Partnership Agreement" if contract shall be signed by the leading member or by all the	The Procurement Commission explains that the Contract may be signed by the leading member of the partnership on behalf of the partnership, based on precise power of attorney

	members.	(authorization) issued by all members or by all members jointly.
8.	<p>CONTRACT. Please clarify, if in case of ESP being a "Partnership Agreement", each member could invoice separately to the client according to its participation interest in the "Partnership Agreement". Or if the leading member shall invoice all contract price to the Client.</p>	<p>The Procurement Commission draws the attention of the Tenderers to the fact that in accordance with Clause 7.2.1 of the procurement Regulations, 6th bullet of the column "Documents to be submitted", if a proposal is submitted by a partnership, the Proposal shall include an agreement of cooperation (or letter of intention to enter into such agreement) which among other things authorises one key member with whom all payments will be made. Thus, only the leading member of the partnership shall invoice the contract price.</p>
9.	<p>CONTRACT. In case of ESP being a "Partnership Agreement", in which the leading member is a company not registered in Estonia (that is, not registered in Estonia, Lithuania or Latvia but registered in other European country) and leading member invoicing all ESP's contract price to the Client;</p> <ul style="list-style-type: none"> • Please clarify in this case, if invoices submitted to this leading member by other "Partnership Agreement" members registered and providing services in Estonia shall have Estonia's VAT or which treatment should follow this VAT. • Please confirm this fact, in case of subcontractors registered and providing services in Estonia to this leading member. 	<p>The Procurement Commission explains that its competency is limited to organising the procurement procedure. The Procurement Committee may not advise the Tenderers on their tax liabilities, including, on the application of VAT between members of a "Partnership Agreement" or with subcontractors, and in this respect, as it is precisely mentioned in the contract (Clauses 7.17 and 7.18), ESP shall settle all taxing and operational duties in the respective state in order to implement the contract.</p>
10.	<p>CONTRACT. Please clarify that VAT refers to Estonia's Vat according to point 7.8.</p>	<p>Considering that contract shall be governed and interpreted in accordance with laws and regulations of the Republic of Estonia, value added tax (VAT) shall be applied in accordance with respective tax laws and regulations of the Republic of Estonia.</p>

11.	<p>CONTRACT. Please clarify that when it is stated in point 7.17 that “<i>ESP certifies that for purposes of implementation of the Contract ESP has settled all tax and commercial registration issues...</i>” are you referring to ESP’s country of origin taxes and commercial registration. If not, please clarify.</p>	<p>The Procurement Commission clarifies that the certification of settlement of all tax and commercial registration issues is not related only to ESP’s country of origin because the needed registrations will depend on the ESP’s chosen model of implementation of the Contract.</p> <p>For example, please note that Clause 6.1.2.1 of the procurement Regulations lays down rules on how a group of suppliers should formalise their partnership in case it will be awarded a contract.</p> <p>Additionally, depending on how services will be provided, the Tenderer may need to register a permanent establishment or a fixed establishment in the Republic of Estonia.</p> <p>The above are only non-binding examples given by the Procurement Commission for the purpose of illustrating the kind of registrations that are meant in Clause 7.17 of the Contract.</p> <p>Each Tenderer must individually assess the registrations that it will have to perform in order to be able to implement the contract.</p>
12.	<p>CONTRACT. According to point 7.8 it is not needed for ESP to get a commercial registration in Estonia in case of the income mentioned in the Contract does not derive through permanent establishment or fixed base maintained in the Republic of Estonia. Please confirm.</p>	<p>The Procurement Commission explains that its competency is limited to organising the procurement procedure. The Procurement Committee may not advise the Tenderers on their tax liabilities or corporate registration issues, including, on whether the chosen model of providing services will or will not create a permanent establishment or require commercial registration. Whether a permanent establishment or a commercial registration is required is a corporate or tax law matter for the specific Tenderer. These aspects must be cleared by the Tenderer with its own advisors.</p>
13.	<p>CONTRACT. According to point 9.8, performance bond guarantee shall have a duration equal to Contract period and thirty days after expiry. Please clarify if contract period refers to 60 months.</p>	<p>The Procurement Commission clarifies that pursuant to contract clause 2.3., the contract is valid until full completion of obligations of the Parties, but no longer than 60 (months) from Contract Signing Date. Therefore, the performance bond should be valid at least 60 months plus additional 30 days.</p>

14.	<p>CONTRACT. It is understood that Advance Payment shall be set-off proportionally against to the schedule of payments to be received by ESP during project execution. Please confirm.</p>	<p>The Procurement Commission explains that according to contract clause 7.14, if applicable, advance payment shall be set-off against payments due to ESP based on Annex 5 of the Contract. For clarity, the advance payment shall be set-off against the first payment following the advance payment, until such time when the advance payment is completely set-off. It shall be noted that set-off against ESP invoices shall be applied until such time the entire value of the advance payment has been set-off.</p>
15.	<p>CONTRACT. Please confirm if in case of ESP being a "Partnership Agreement" if Bid security, Performance Bond and Advance Payment Guarantee shall be issued jointly by all the "Partnership Agreement" members or could be issued by the leading member in the name of the "Partnership Agreement".</p>	<p>The answer to the question submitted to the Procurement Commission on 20 February 2020 will be provided to the Tenderer shortly.</p>

Document is approved by Procurement commission's decision made on 27 February 2020, Session minutes No 9, and is valid without signature.