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Answers to the questions provided by the Tenderers 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 Tenderers:

No	Questions	Answers
1.	We refer to clause 1.5 of the Regulation: 1.5. Estimated contract price for the Detailed Technical Design Review and Design Expertise Services (for both Services together) is EUR 1 000 000,00 (one million euros, zero cents) without VAT. Tenderer`s proposed contract price for the Design Review and Design Expertise Services together shall not exceed the estimated contract price. In case the proposed contract price exceeds the estimated contract price, 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. We note that the authority provides an estimated budget with the consideration to be a not-to-exceed amount respect the applicants' economical offer. We would like to drive the Authorities attention to the fact that the economical offer scores 70% and therefore with this marks the Applicants shall tend to be cautious respect the price for the economical to offered in case they would like to be competitive. Therefore, it's the risk of the Applicant to estimate a competitive budget. On the other hand, the price for the economical offer provided by the Applicant has to borne all the costs associated to the services in such a way that in case of contract award neither the applicant not the Authority may incur in risks associated to undervalued services.	Procurement commission kindly explains that it has its budget planned and available within the Rail Baltica Global project for the respective activity (Detailed technical Design Review and Design Expertise services in the Republic of 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. Procurement commission considers that chosen evaluation model is commensurate, and fully complies with Procurement strategy and aims. In addition, Procurement commission explains that by setting the respective qualification requirement, Procurement commission is obliged to follow the requirements established in Subclause 1), Section 11 of Article 41 of Public Procurement Law of the Republic of Latvia and it cannot be changed. Considering all the above-mentioned, Clause 1.5., 11.3 and 20.1 of the open competition Regulations shall remain unchanged.

	In line with this, we kindly request to the authority to allow for economical offers whose price may exceed the estimated budget in case the applicant may consider so, otherwise this limitation may strongly disincentive some applicant to bid for this contract concluding in an undesirable limitation of the competition.	
2.	2019/14 We refer to clauses 5.3 and 5.4 of the Regulation, and clause 2.3 of the contract. 5.3. Period for the provision of the services: Period for the provision of the Design Review and Design Expertise Services is envisaged to last 24 (twenty-four) months starting from the Contract Signing Date, however, both 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 Contract Signing Date. 5.4. Contract period: Contract shall be valid and effective from the Contract Signing Date until full completion of the Contractual obligations, but no longer than sixty (60) months from the Contract Signing Date. 2.3. Contract Period. Contract is valid until full completion of obligations of the Parties but no longer than 60 (months) from Contract Signing Date. We drive the attention to the uncertainty these clauses to the Applicant, since they contribute to not set forth a clear time duration of the services. In line with clauses above, the period of provision of services could be extended for more than double, not having the Authority explained which kind of services and dedication may be expected by the Consultant during the extended time, i.e. whether the extended time from 24 to 60 months shall require the same scope and resources than previous 24 months or not. Allocating this risk in the back of the Consultant may contribute to raise the price for the economical offer unnecessarily. Could the Authority give more clarity in how is intended to be managed this potential time extension? Is the intention of the Authority to request to the Consultant strictly 24 months of real net dedication, which eventually could be extended to 60 months	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 – Services) is envisaged to last for 24 (twenty-four) months starting from the Contract Signing Date. However, both 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. For more clarity please note, that Design Review and Expertise Services during the construction phase is not and will not be in the scope of ESP based on this procurement procedure and Contract. The scope of the Design Review and Expertise Services within this open competition procedure is defined in the Technical Specification of the open competition. To clarify, the aim for setting the maximum contract term of 60 months is to ensure both Design Review and Expertise services' availability in case the design works in any of the design section lasts 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

	by including intermediate times where the contract could be suspended?	obligations are fulfilled, the contract with ESP shall be completed.
3.	We refer to clause 7.5 of the Regulation For each and every Key Expert is requested the following document: Copies of references from respective clients or similar documents (copies of building permits, deeds of conveyance or other proof evidencing the experience). The Consultant have proven certificates issued by each respective Client of the participation of the Company in the different projects for proving the Professional Experience. Anyhow, these certificates do not include as part of their wording the nominal participation of the key experts involved. Although the Regulation applies for "similar documents", it may be difficult to find a document proving the involvement of the Key Expert in such project. Maybe acceptable in this case a sworn self-declaration of the Consultant? If not, any other document registering the participation of the Key Expert (reports, drawings…), shall be considered acceptable?	Procurement commission clarifies that any kind of document issued or approved from the third party (Contracting Authority, Client etc.) that proves experts experience requested in Clause 7.5. of the open competition Regulations will be considered as acceptable.
4.	We refer to clause 14 of the Contract. 14. LIABILITY, DELAYS 14.1. The Parties shall be liable for the direct damages caused to the other Party due to breach of the Contract or incorrect, false or misleading representation or warranty. Neither Party shall be liable for the loss of revenue, loss of profit or any incidental loss incurred by the other Party. 14.2. ESP shall be fully liable for the activities, inactivity, infringement or negligence of the Sub-Contractors and Experts within the framework of this Contract, and always shall keep the Principal indemnified from and against all costs which the Principal incurs or suffers as a result of any action, claim or proceedings by its Sub-Contractors and Experts.	The Procurement Committee confirms that no monetary cap regarding the maximum liability of the ESP has been set in Clause 14 of the Contract. The liability of the ESP is however limited. Pursuant to Clause 14.1, the ESP is only liable for direct damages. It is also specifically mentioned that the ESP is not liable for loss of revenue, loss of profit or any incidental loss incurred by the other Party. In this respect the intention of the Procurement Committee is to not set a monetary cap for liability, and as ESP shall note mandatory liability requirements set-forth in applicable laws of the Republic of Lithuania.

	14.3. ESP liability is not reduced nor is ESP released from liability for defects in the Services by: (a) acceptance by the Principal of ESP's reports or other deliverables; (b) review of ESP's work by any designers, contractors or any private or state authorities working with the project in consequent stages; (c) defects in the original work of the designer being reviewed by ESP. The clause defines the aspects in which the ESP may incur in liabilities, but there's no any mention to limit of liability. Is the intention of the Authority to request unlimited liability to the ESP for this contract? Alternatively, can the Authority express which shall be the limit of liability for the ESP?	
5.	We refer to clause 12.2 of the Regulation. 12.2. The Tenderer must comply with the following requirement The Tenderer, its sub-contractors and experts proposed for the provision of the Design Review and Design Expertise Services shall be completely independent from the Design Service provider in each Design Section (in accordance with requirements established in all applicable laws and regulations of the Republic of Estonia) and shall not be in conflict of interest's situation. If the Tenderer fails to meet previously named requirement such Tenderer will be recognized as incompliant and excluded from further participation in Procurement. Prior exclusion of the Tenderer from further participation Procurement commission will request the Tenderer to provide evidences of absence of the respective grounds (the Tenderer will not be automatically excluded). The Consultant considers of utmost importance to include local companies as partners/subcontractors for supporting and granting the quality of services to be provided. The size of the market in the Baltic countries and the involvement of the majority of local companies in the design contracts is resulting, pursuant to the clause above, in a conflict of interest to participate	Hereby Procurement commission informs that time for submission of proposals is extended until 23.03.2020.

	in these Design Review and Design Expertise contracts, As a consequence of this, is resulting very difficult to find out partners and/or subcontractors who may support. In terms to conclude the searching of local companies and the negotiations to be held, we kindly request a time extension of 1 month.	
6.	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 time for submission of proposals is extended till 23.03.2020.
7.	REGULATION. SECTION 5. SUBSECTION 5.4. 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 confirms, that ESP´s scope of works refers just to services during the Master Design and Detailed Technical Design, Design Review and Design Expertise during the construction phase are not included in ESP´s scope of works.
8.	REGULATION. According to the clause 7 " Selection Criteria for tenderers", point 7.3.1: 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 "Partnership Agreement". If not clarify.	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 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.
9.	REGULATION. According to the clause 7 " Selection Criteria for tenderers", point 7.3.2: 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 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.
10.	REGULATION. It is understood when it is stated excluding VAT that you refer to Lithuania ´s VAT.	Considering that contract shall be governed and interpreted in accordance with laws and regulations of Lithuania, VAT shall be applied in accordance with respective tax laws and regulations of Lithuania.
11.	CONTRACT. It is understood that contract will be signed between ESP and RB Rail AS Lithuania branch (which is a RAIL BALTICA AS branch). Nevertheless, according to point 7.8 invoices shall be submitted to the "Beneficiary" 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.
12.	CONTRACT. Please confirm that in case of ESP being a "Partnership Agreement" if contract shall be signed by the leading member (Representative) or by all the members.	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 (authorization) issued by all members or by all members jointly.
13.	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 the leading member (Representative) shall invoice all contract price to the Client.	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.
14.	CONTRACT. Please clarify, in case a separate invoice is not allowed to the members of a "Partnership Agreement", if a non-leading member (Non representative) could assume the functions of invoicing contract price to the Client.	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.
15.	CONTRACT. In case of ESP being a "Partnership Agreement", in which the leading member is a company not registered in Lithuania (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. • Please clarify in this case, if invoices submitted to this leading member by other "Partnership Agreement" members registered and providing services in Lithuania shall have Lithuania ´s VAT or which treatment should follow this VAT. • Please confirm this fact, in case of subcontractors registered and providing services in Lithuania to this leading member (Representative).	The Procurement Committee 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.
16.	CONTRACT. Please clarify that VAT refers to Lithuania ´s Vat according to point 7.8.	Considering that contract shall be governed and interpreted in accordance with laws and regulations of Lithuania, VAT shall be applied in accordance with respective tax laws and regulations of Lithuania.
17.	CONTRACT. Please clarify that when it is stated in point 7.17 that:" ESP certifies that for purposes of	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

	implementation of the Contact ESP has settled all tax and commercial registration issues…" are you referring to ESP's country of origin taxes and commercial registration. If not clarify.	needed registrations will depend on the ESP's chosen model of implementation of the Contract. 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. 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 Lithuania. 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. Each Tenderer must individually assess the registrations that it will have to perform in order to be able to implement the Contract.
18.	CONTRACT. According to point 7.8 it is not needed for ESP to establish a permanent establishment or to get a commercial registration in Lithuania in case of the income mentioned in the Contract does not derive through permanent establishment or fixed base maintained in the Republic of Lithuania. Please confirm	The Procurement Commission explains that its competency is limited to organising the procurement procedure. The Procurement Commission 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.
19.	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.	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.
20.	CONTRACT. It is understood that Advance Payment shall be set-off proportionally against to the schedule of payments to be received by ESP	The Procurement Committee 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

	during project execution. Please confirm.	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.
21.	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".	In accordance with Clause 10.5 of the procurement Regulation, if the Tenderer is a partnership, the Proposal (Bid) Security must be formalized in such a way that it applies to all members of the partnership. The Tenderer (partnership) may decide itself whether all members of the "Partnership Agreement" take care about the issuance of the Proposal (Bid) Security jointly, or only the leading member takes care about its issuance. The same explanation applies also regarding issuance of the Performance Bond and Advance Payment Guarantee.
22.	During the meeting with interested suppliers (held on 18 February 2020 in Riga, RB Rail AS premises) the Tenderer addressed question regarding the involvement of the same experts in two separate procurements (Detailed Technical Design Review and Expertise Services in Lithuania (id.No RBR 2019/15) and Detailed Technical Design Review and Expertise Services in Estonia (id.No RBR 2019/14)).	Considering that the Tenderer didn`t submit the respective question in E-Tender system, Procurement commission hereby provides the Tenderer with an answer, by explaining that there are no restrictions deriving from the Public Procurement Law of the Republic of Latvia or open competition Regulations to propose the same experts for two separate procurements. Nevertheless, in such case the Tenderer shall be able to prove to the Contracting Authority that in case the Tenderer is awarded with the contract signing rights in both procurements: Detailed Technical Design Review and Expertise Services in Lithuania (id.No RBR 2019/15) and Detailed Technical Design Review and Expertise Services in Estonia (id.No RBR 2019/14), it will be able to provide the services in full extent and capacity described in the open competition Technical specification, contract and all other related documentation. In addition, the Tenderer shall describe the respective situation (resource allocation) in its` Technical proposal.

Document is approved by Procurement commission's decision made on 28 February 2020, Session minutes No 10, and is valid without signature.