

Rīga

28.02.2020

Our Ref: 1.13p/LV-58

**Answers to the questions provided by the Tenderers 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 Tenderers:

No	Questions	Answers
1.	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>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 <u>it applies to all members of the partnership</u>. 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.</p> <p>The same explanation applies also regarding issuance of the Performance Bond and Advance Payment Guarantee.</p>
2.	<p>We refer to clause 1.5 of the Regulation:</p> <p>1.5. Estimated contract price for the Detailed Technical Design Review and Design Expertise Services (for both Services together) is EUR 2 439 489,00 (two million four hundred and thirty-nine thousand four hundred and eighty-nine euro, 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</p>	<p>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 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. Therefore, Procurement commission considers that chosen evaluation model is commensurate, and fully complies with Procurement strategy and aims. Thus Clause 1.5., 11.3 and 20.1 remain unchanged.</p>

	<p>the Republic of Latvia will be rejected as non-compliant and further will not be evaluated.</p> <p>We note that the authority provides an estimated budget with the consideration to be a not-to-exceed amount respect the applicants' economical offer.</p> <p>We would like to draw 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.</p> <p>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 nor the Authority may incur in risks associated to undervalued services.</p> <p>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.</p>	
3.	<p>2019/14 We refer to clauses 5.8 and 5.9 of the Regulation, and clause 2.3 of the contract.</p> <p>5.8. Period for the provision of the services: Period for the provision of the Design Review and Design Expertise Services is envisaged to last 27 (twenty-seven) 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.</p> <p>5.9. 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.</p> <p>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.</p>	<p>Procurement commission hereby kindly clarifies that 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 27 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.</p> <p>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 27 months (if no partial</p>

	<p>We draw the attention to the uncertainty these clauses cause to the Applicant, since they contribute to not setting 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 27 to 60 months shall require the same scope and resources than previous 27 months or not.</p> <p>Allocating this risk in the back of the Consultant may contribute to raise the price for the economical offer unnecessarily.</p> <p>Could the Authority give more clarity in how is intended to be managed this potential time extension?</p> <p>Is the intention of the Authority to request to the Consultant strictly 27 months of real net dedication, which eventually could be extended to 60 months by including intermediate times where the contract could be suspended?</p>	<p>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>
4.	<p>We refer to clause 7.5 of the Regulation</p> <p>For each and every Key Expert is requested the following document:</p> <p>Copies of references from respective clients or similar documents (copies of building permits, deeds of conveyance or other proof evidencing the experience).</p> <p>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.</p> <p>Anyhow, these certificates do not include as part of their wording the nominal participation of the key experts involved.</p> <p>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.</p> <p>Maybe acceptable in this case a sworn self-declaration of the Consultant?</p>	<p>Procurement commission clarifies that any official document issued by third party that proves experts experience requested in Clause 7.5. will be considered as acceptable. Please note that Procurement Commission should be able to identify expert's position and kind of project from the submitted document.</p>

	<p>If not, any other document registering the participation of the Key Expert (reports, drawings...), shall be considered acceptable?</p>	
5.	<p>We refer to clause 14 of the Contract.</p> <p>14. LIABILITY, DELAYS</p> <p>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.</p> <p>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.</p> <p>14.3. ESP liability is not reduced nor is ESP released from liability for defects in the Services by:</p> <p>(a) acceptance by the Principal of ESP's reports or other deliverables;</p> <p>(b) review of ESP's work by any designers, contractors or any private or state authorities working with the project in consequent stages;</p> <p>(c) defects in the original work of the designer being reviewed by ESP.</p> <p>The clause defines the aspects in which the ESP may incur in liabilities, but there's no any mention to limit of liability.</p> <p>Is the intention of the Authority to request unlimited liability to the ESP for this contract?</p> <p>Alternatively, can the Authority express which shall be the limit of liability for the ESP?</p>	<p>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 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>
6.	<p>We refer to clause 12.2 of the Regulation.</p> <p>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</p>	<p>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 until 23.03.2020.</p>

	<p>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.</p> <p>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).</p> <p>The Consultant considers of utmost importance to include local companies as partners/subcontractors for supporting and granting the quality of services to be provided.</p> <p>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 in these Design Review and Design Expertise contracts,</p> <p>As a consequence of this, is resulting very difficult to find out partners and/or subcontractors who may support.</p> <p>In terms to conclude the searching of local companies and the negotiations to be held, we kindly request a time extension of 1 month.</p>	
7.	<p>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.</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>

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