

Rīga

30.06.2020

Our Ref: 1.13p/LV-157

***Answers to the questions provided by the Tenderer in the open competition „Detailed technical design review and design expertise services for Rail Baltica in Latvia”, Id No RBR 2019/16***

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

No	Questions	Answers
1.	<p>In section 5 of the technical specifications included in the procurement documentation, among other things, during the solution review the contractor should pay special attention to the construction project compliance with the requirements specified in Clause 9 the Construction Law, construction project interoperability, structure calculations, etc. We call your attention to the Cabinet Regulations No. 500 “General Construction Regulations” Paragraph 36 that defines construction project manager duties, including to coordinate the mutual compliance of the individual parts of the project with the construction project as a whole (Sub-paragraph 36.1), whereas the duties of the manager of the part of the building design are specified in Paragraph 38 of the Regulations, among others it mentions that this manager is obliged to carry out necessary calculations and to develop the relevant parts of the building design, by ensuring their conformity with the construction intention, client's order, conditions of the construction permit and requirements of the laws and regulations and standards. However, if the construction project is developed according to the European Union Member State national standard and construction standard technical requirements, - the European Union Member State national standard and construction standard technical as well as the technical and special regulation requirements (Sub-paragraph 38.1.), he mutual co-ordination of solutions developed within the framework of the relevant parts (38.3.), etc. should be ensured. Reviewing the tasks included in the technical specification that refer to the review of building design solutions in the context of the cited legal form, it can be concluded that, by performing review of the construction project solutions, the contractor actually becomes a co-author of building</p>	<p>The Procurement Commission hereby explains that Paragraph 36 of the Cabinet of Ministers Regulations No 500 “General Construction Regulations” of August 19 2014 (hereinafter – the General Construction Regulations), defines duties of the construction project manager (services already purchased by the Contracting Authority, and being provided by Detailed Technical Design service provider (designer)). Meanwhile Paragraph 41 of General Construction Regulations defines duties of the construction project Expertise service provider (services to be purchased within this Open competition – Detailed Technical Design Review and Expertise services). In accordance with Paragraph 41 of General Construction Regulations construction expertise services (Design Review and Expertise services) can be provided by Expertise service provider, independent from the construction project developer (designer)). With respect to the Paragraph 41, the Procurement Commission has established several clauses in the Regulations of the Open competition (clause 4.5.), as well as in Technical specification (e.g. clause 3.1., Table 4) and draft Contract (e.g. Section 16, clause 2.7. and 2.4.) stipulating that the Tenderer must choose a team of key experts that are not in conflict in relation with their availability or interests in accordance with legislation of the Republic of Latvia and this requirement must be considered while participating in the Open competition.</p>

	<p>design and enters into a conflict of interest, thus violating Paragraph 41 of the above mentioned Cabinet Regulations, which stipulates that a construction project expert-examination can be performed by an expert who is independent from the developer of the building design.</p> <p>How do you plan to ensure an independent review of solutions of building design and an independent expert-examination of the building design, considering that construction review of solutions of building design and expert-examination of the building design will be performed by the same person?</p>	<p>In addition, Procurement commission clarifies that Design Review services are part of the Design Expertise services which will be provided by the team of key experts purchased within this Open competition. Design Review services shall be used as an input basis for the Design Expertise Services (Technical Specification, clause 5.1.5), thus ensuring Expertise service provider's assessment in a structural order set-forth to provide Expertise statement as part of the Design Expertise services.</p>
<p>2.</p>	<p>Section 7.5. of the Tender Regulations set out requirements for experts proposed by the tenderer. As there are no experts among the experts appropriately certified by the State Construction Control Bureau in Latvia who have the experience specified in the mentioned section, it is clear that the tenderers must engage foreign specialists with relevant experience. Cabinet Regulation No. 500 "General Construction Regulations" Paragraph 44 stipulates that only those construction merchants who employ construction specialists with the right to independent practice to perform expert-examination are entitled to perform expert-examination of the building design for third group structures. The right to practice in the Republic of Latvia is confirmed by a relevant certificate of expert-examination of the building design. In order to obtain the right to perform, for instance, expert-examination for third group building construction projects, a construction specialist must have developed at least three third group building construction projects or building design sections in the relevant field during the last 10 years. In order for a construction merchant to register a foreign specialist in the Latvian Register of Construction Merchants, the specialist must obtain a permit for provision of temporary services. To receive this permit, construction specialist must submit a number of documents to the recognition authority, as well as pass a qualification test.</p> <p>Considering all of the above, it is not possible to perform all the necessary actions to certify a foreign specialist in accordance with the regulatory enactments in place in the Republic of Latvia.</p> <p>Does the client consider it permissible that the construction project examinations will be performed by specialists who have not received an appropriate certification in the relevant field of expert-examination?</p>	<p>Procurement Commission kindly explains that in accordance with general principles of the Public Procurement Law of the Republic of Latvia Contracting Authority is entitled to establish requirement for foreign specialists to be certified in accordance with Latvian legislation for the provision of the services during the contract fulfilment, however, Contracting Authority is not entitled to request foreign experts to be certified in accordance with Latvian legislation during the procurement phase.</p> <p>Thus, in case the Tenderer is awarded with the contract signing rights, the Tenderer shall ensure involvement of all experts listed in Technical Specification (Table No 5 "Key-Experts" and Table No 6 "Required non-exhaustive Additional Experts") and in case the Tenderer involves foreign experts, all such expert's professional competence (qualification) shall be acknowledged by the respective Latvian authorities in accordance with respective legislation.</p> <p><u>The Tenderer must provide services in accordance with all applicable legislation of the Republic of Latvia, regardless of whether local or foreign experts are involved.</u></p> <p>In addition, Procurement commission would like to point out that the main aim of establishing respective qualification requirements for the Key Experts (Section 7.5 of the open competition Regulations) is to ensure Key Experts competence with proven experience that would be in a full compatibility with Rail Baltica Global project Design Guidelines and current ongoing Detailed Technical Designs. Procurement commission considers that the current requirements established in Section 7.5 of the open competition Regulations in line with</p>

		requirements established in Technical Specification are commensurate, objective, completely justified and is not limiting the competition and are sufficient to receive the services in a highest quality.
3.	With regards to chapter 12 "Technical Proposal – Criterion B: Quality of the Technical Proposal and related topics to be evaluated in accordance with Section 20.4.1" of the Regulations, could you please clarify what you are expecting to be included in the paragraph 2.3 "Description of procedures of expert's certification for Design expertise"?	Procurement Commission explains that Clause 2.3 of Section 12.3 of the Regulations provides Technical Proposal preparation requirements in a view of certification requirements applicable in the Republic of Latvia. In this respect the Procurement Commission kindly explains that it shall evaluate level of detail of the Tenderer's description of applicable certification procedures as per the laws and regulations of the Republic of Latvia to ensure that the Tenderer's expert's and personnel understand certification requirements and are entitled to provide expertise services in the Republic of Latvia.
4.	Considering our willing to deliver a high-level offer and taking into account the clarification raised, we kindly ask you to release a time extension of 2 weeks.	Procurement Commission hereby informs that your request was noted, and Procurement commission will inform you shortly.
5.	Good morning, Concerning the references (Technical and professional ability) in "regulations" on chapter 7.4.1, can you confirm that the value of the services provided is not less than 3,000,000 euros for each reference and not for the the sum of the references presented? If yes, this criteria will exclude companies specializing only in design review. Thank you.	Procurement Commission hereby confirms that in accordance with Clause 7.4.1 of the Open competition Regulations the value of the provided services shall be not less than 3 000 000,00 EUR (three million euros, zero cents) <u>for each railway design project.</u>  In addition, Procurement Commission clarifies that experience in provision of the railway <u>design review</u> services covers wide range of services and thus the Tenderer has more options to choose applicable experience. As set per Clause 7.4.1 of the Regulations railway design solution supervision, verification of completed railway design solutions, such as railway geometry, structures, geotechnics, stations layout plans etc., will be considered as design review services.  Moreover, the Tenderer may rely on capabilities of other persons to comply with the qualification requirements.  Considering all the above mentioned, qualification requirement established in Clause 7.4.1. of the Open competition Regulations shall remain unchanged.
6.	Regulation 7.4. Technical and professional ability, 74.1. The Tenderer within the previous 10 (ten) years (2010 to until submission of the proposal) has provided railway design expertise or railway design review services as a main contractor or lead consultant in at least 3 (three) railway design projects <sup>6</sup> , covering at least the following	Please refer to the answer stated in Clause No 5 of this letter.  In addition, Procurement Commission explains that the scope of the services provided within Lithuanian and Estonian Detailed Technical Design Expertise and Design Review contracts

	<p>requirements for each such project: - railway is developed according to the European Technical Specification for interoperability (TSI); - length of railway line section at least 10 km; - value of the provided services is not less than 3.000.000,00 EUR (three million euros, zero cents).Design speed &gt; 201 km/h.</p> <p>Following a deeper analysis of the railway line features and characteristics, in our opinion, in the eligibility criteria, stated in the point 7.4.1 of the regulations, the value of the provided services (3.000.000,00 EUR) required to the Consultant for each eligible project (at least 3 projects) seems to be high, if compared to the other similar lots tendered in Lithuania and Estonia. We kindly ask to the Client to evaluate the possibility to consider the value of 3.000.000,00 EUR as the cumulative value required for all the 3 reference projects, and not as to the minimal value of the provided services for each projects.</p>	<p>differs from the scope of the services to be provided within this procurement procedure (different amount of the services etc.).</p>
7.	<p>Regulation 15. Submission of a proposal. We would like to kindly request an extension of the submission deadline to an additional 2 weeks. This extension will allow Consultants to produce a more detailed and competitive proposal.</p>	<p>Procurement Commission hereby informs that your request was noted, and Procurement commission will inform you shortly.</p>

Document is approved by Procurement commission's decision made on 30 June 2020, Session minutes No 4, and is valid without signature.