

Rīga

17.09.2020

Our Ref: 1.13p/LV-344

## Electronic Procurement System

***Answers to the questions from interested suppliers  
in the competitive procedure with negotiations  
“Shadow operator services for Rail Baltica Global Project”,  
identification number RBR 2020/14***

RB Rail AS presents following answers to the questions received from interested suppliers until 16 September 2020:

Nr.	Question	Answer
1.	<p>As per tender regulation, sub clause 4.1 – requirements for technical and professional ability, a candidate needs to have experience in operation of high-speed railway infrastructure, high-speed railway passenger transportation and railway freight transportation. To fulfil this technical and professional ability requirement, a candidate may rely on the capacity of other persons.</p> <p>To fulfil the above-mentioned requirements, at least the involvement of a railway infrastructure operator is required. As per tender regulations sub clause 5.2, the contracting authority shall evaluate the person, on whose capacities the Candidate to whom the rights to conclude the Contract should be assigned is relying according to Section 4.4.(1) to 4.4.(8) and 4.4.(12) to 4.4.(13) of the Regulations. As these railway infrastructure operators are public and state-owned companies, is a <b>declaration of oath that none of these exclusion grounds applies to the person, on whose capacities the Candidate relies, sufficient to fulfil this criteria?</b></p> <p>We are asking this, as the organizational structure of such railway infrastructure operators is usually quite large and</p>	<p>Procurement commission indicates that the procedure and the persons in respect of whom exclusion ground check shall be performed are indicated in the Section 42 of the Public Procurement Law of the Republic of Latvia (hereinafter – PPL). Accordingly, the Procurement commission has no right to determine other procedures. Documents for confirmation of non-existence of the exclusion grounds can be replaced by the oath only in cases indicated in the Section 42, Article 12 of the PPL (Section 4.7 of the competitive procedure with negotiations “Shadow operator services for Rail Baltica Global Project”, ID No RBR 2020/14 (hereinafter – Procurement) regulations (hereinafter – Regulations)).</p> <p>Additionally, Procurement commission indicates that exclusion ground check is performed only for those candidates whose application has been recognized as compliant with all the requirements included in the Regulations. If candidate’s application will be recognized as compliant to the requirements stipulated in the Regulations, Procurement commission will check evidences for confirmation of non-existence of the exclusion grounds itself or candidate will receive a request from Procurement commission to submit evidences for</p>

	<p>complex, and it will be impossible to receive all the documents (e.g. criminal records) for each Board Member and authorized representatives.</p>	<p>confirmation of non-existence of the exclusion grounds in accordance with the Section 4.4 of the Regulations.</p> <p>When submitting the application, the candidate may submit the European Single Procurement Document (hereinafter – ESPD) only (please see the Section 4.8 of the Regulations). Part III of ESPD contains information about the exclusion grounds. If candidate choose to submit ESPD, this document must be submitted for the candidate and for each person upon whose capacities the candidate relies, but if the candidate is a partnership - for each member thereof.</p> <p>Please be advised that to identify evidences and authorities in charge for issue of evidences for confirmation of non-existence of the exclusion grounds, candidate can use eCertis system (a mapping tool used to identify and compare certificates requested in public procurement procedures across the EU) available on <a href="https://ec.europa.eu/tools/ecertis/search">https://ec.europa.eu/tools/ecertis/search</a>.</p>
<p>2.</p>	<p>Considering that <b>“Company X”</b> (hereinafter <b>“X”</b>) is a newly incorporated joint-stock company, under the coordination of a sole shareholder (<b>Company Y.</b>), registered in the <b>“Country Chambers of Commerce” on December 17<sup>th</sup> 2019</b> [..].</p> <p>Considering that according to Article 3 <b>“Purpose”</b> of the Article of Incorporation of X (in attachment both in Country&amp; English translation): [..]</p> <p>Considering that the Parent Company (<b>Company Y.</b>) for statutory and Corporate Governance reasons cannot be included as partner in international tenders procedure, having established X for this scope.</p> <p>Considering that the above statement is also confirmed from the attached declaration by Country Ministry of Infrastructure and Transport: [..]</p> <p>Considering all the above, X intends to participate to the <b>“Shadow Operator Services For Rail Baltica Global Project”</b> procedure, in partnership with other Sister Companies covering all required experiences, and after a proper analysis of the tender regulations, requests for the following clarifications:</p>	<p>Procurement commission indicates that, if candidate cannot fulfil requirements stipulated in the Regulations itself, it can form a partnership (please refer to the Section 3.1.2 and other relevant Sections of the Regulations) or relay on the capacities of other persons (please refer to the Section 5 of the Regulations). More detailed answers to the questions regarding this follows.</p>

<p>2.1.</p>	<p><u>REF: chapter 4. Selection criteria for candidates- 4.1 Technical and professional ability- point 5 and related</u> Please confirm if, according to X Articles of Incorporation, it is accepted to present references of the Parent Company for demonstrating the fulfilment of the technical requirements (shadow operator services or similar advisory services) because at the time of execution of the project for which we are able to provide the reference X was not existing and the project was executed by the Parent Company.</p>	<p>Yes, it would be acceptable, but in this case the parent company becomes the person on whose capacity candidate relies.</p> <p>If candidate has intention to use the references of other company to meet the requirements stipulated in the Regulations, this company will become the person on whose capacity candidate relies and candidate must follow the conditions stipulated in the Section 5 of the Regulations, in particular, the candidate shall:</p> <ul style="list-style-type: none"> <li>- indicate in the application all persons upon whose capacities it relies by filling in the table which is attached as Annex No 1;</li> <li>- fill the necessary information in E-Tenders system; and</li> <li>- prove that the candidate will have available all the necessary resources for the fulfilment of the Contract, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the candidate between such persons and the candidate.</li> </ul> <p>If company on whose capacity candidate relies will be a subcontractor as well, then additionally to the Section 5 of the Regulations, Section 6 of the Regulations applies.</p>
<p>2.2.</p>	<p><u>REF: Chapter 4. Selection criteria for candidates - 4.1 Technical and professional ability – point 6</u> Please confirm if, according to X Articles of Incorporation, it is accepted to present references ISO 9001:2015 certification of the other Companies participating in the prequalification process, since X applies the quality management system of the Companies Y Group but has not its own certification yet, due to its recent establishment.</p>	<p>Yes, it would acceptable, but in this case the parent company becomes the person on whose capacity candidate relies. Please refer to answer given on the question No 2.1.</p>
<p>2.3.</p>	<p><u>REF: chapter 4. Selection criteria for candidates - 4.3 Economic and Financial standing and related Annex 7</u> Please confirm if it is suitable to demonstrate the fulfilment of the requirements related to financial and economic performance of year 2019 by referring to the financial statements of the Parent Company (Company Y), being X established only in December 2019, or it is necessary to add also a letter of endorsement from the Parent Company.</p>	<p>Yes, it would be suitable, but in this case parent company becomes the person on whose capacity candidate relies. Please refer to answer given on the question No 2.1.</p> <p>Additionally, Procurement commission indicates that in accordance with Section 5.1.3 of the Regulations it is requested joint and several liability for the execution of the contract between the:</p> <p>(a) candidate and a person on whose capacities the candidate is relying to certify its financial and economic performance and who will be financially</p>

		<p>and economically responsible for fulfilment of the procurement contract;</p> <p>(b) each member of the partnership (if the candidate is a partnership) on whose capacities partnership is relying and who will be financially and economically responsible for fulfilment of the procurement contract.</p> <p>If candidate is not willing to rely on other company financial capacity, in this specific case, where candidate has been established in December 2019, candidate can submit self-approved current financial statement which includes financial information regarding current candidate's liquidity ratio and equity (for example, regarding first six or eight months of 2020) and in Annex No 7 of the Regulations indicates the financial information regarding current situation (for example, on 30 June 2020 or 31 August 2020).</p>
2.4.	<p><b><u>REF: chapter 4. Selection criteria for candidates - 4.4 Exclusion Grounds</u></b></p> <p>Please confirm if X can consider as a time reference for the requirements referred to in paragraph 4.4, the period starting from December 2019 (date of establishment of the Company) up to the date of presentation of the present tender.</p>	<p>Procurement commission indicates that all requirements mentioned in the Section 4.4 of the Regulations that apply directly to the candidate itself are limited in time to its establishment, in this case starting from December 2019.</p> <p>In respect of requirements for other persons, e.g. members of the candidate's management board, the time limits specified in the Regulations shall remain in force.</p>
2.5.	<p><b><u>REF: chapter 10. Submission of the application</u></b></p> <p>Considering the amount of documents to be produced by each Candidate / member of the partnership also considering the particular period of COVID-19 sanitary emergency, we request the postponement of deadline for submission of the application of 20 days.</p>	<p>Procurement commission has evaluated the request for extension, however considering Procurement timeline and lack of specific justification, it is decided not to extend the submission deadline. Please be informed that the submission deadline remains the same.</p>

Procurement commission chairperson

A. Benfelde