

Rīga

20.11.2020

Our Ref: 1.13p/LV-573

***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 2020/19***

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

No	Questions	Answers
1.	<p>Paragraph 3.2.3 of the technical specification states, inter alia, that ESP must apply the most recent laws, regulations and standards in the provision of the service. In order to avoid a situation where an expert-examination is performed in conformity with other regulatory enactments than those that were applied during the development of building designs, please amend this paragraph, determining that the expert-examination of building designs must be performed in accordance with the regulatory enactments in force and applied during the development of building designs.</p>	<p>Procurement Commission would like to clarify that requirements about legal acts are explained in paragraph 3.1 Legal references of the Technical Specification and fully covers previously mentioned remark. Paragraph 3.2.3 is additional emphasize on Design Review Services that might include specific documents, standards such as for example Rail Baltica Design Guidelines and others.</p> <p>Considering all previously explained, paragraph 3.2.3 of the Technical specification remains unchanged.</p> <p>The Procurement Commission kindly clarifies that in line with Clauses 2.4, 2.5, 5.1, 6.1 and 6.3 of the Contract ESP shall perform the services always in accordance with applicable laws and regulations at the moment of performance of ESP's services, as well as with the Principal's requirements, i.e. Rail Baltica Design Guidelines, and others, as the case may be.</p>
2.	<p>Paragraph 3.2.3 of the technical specification also states that Client has a right to decide whether Design Review remarks provided by ESP shall be implemented or not. It is also mentioned that ESP shall use Design Review as input basis for Design Expertise. If the Design Review is part of an expert-examination opinion, a situation arises where the Client intervenes in the work of an ESP, pointing out what the content of the expert-examination opinion should be. In addition, according to the division of responsibility in construction included in Section 19 of the Construction Law, the Client shall not assume responsibility for the content of the expert-examination opinion. Please amend paragraph 3.2.3 of the Technical Specification in</p>	<p>The Procurement Commission kindly notes that in accordance with Clause 2.7 of the Contract ESP shall carry out the Services independently, in a responsible manner and with due professional integrity. ESP must not allow any undue influence or appearance of such with respect to the Services. In addition, the Procurement Commission kindly notes that in line with other requirements, i.e. Section 16 and Clause 2.4. of the Contract ESP shall ensure objective and independent Design Expertise Services performance. As Design Review Services are used as an input for the Design Expertise Services, the Principal's comments described in Clause 3.2.3 of the Technical</p>

	<p>accordance with the requirements of the regulatory enactments.</p>	<p>Specification may be exercised in order to transfer ESP's remarks to detailed technical design contractors in order to rectify any inconsistencies (if any), and not to use ESP's remarks as a feedback to process it back to ESP. Contract, including its annexes, does not allow for the Principal to intervene in ESP's expert-examination. The Procurement commission would like to clarify that item No 3.2.3 specifically is related to Design Review Services not the Design Expertise Services.</p> <p>This specific item shall be also read together with the Chapter 4. Sequence and description of work procedure as well as item 5.1.5 and 5.2.6 which describes the maximum number of iterations for Design Review Services. Therefore, Clause 3.2.3 of the Technical Specification shall remain unchanged.</p>
<p>3.</p>	<p>Paragraphs 3.2.5 and 6.4 of the technical specification require the ESP to provide the service until a positive expert-examination opinion is issued. It is noted that a negative opinion of the expert-examination may also be issued and that the expert should inform the relevant authorities thereof, so the Client does not have the right to request the issuance of a positive opinion only. Please amend paragraphs 3.2.5 and 6.4 of the Technical Specification in order to comply with the requirements of the regulatory enactments, as well as explain who will cover the costs of these, possibly several re-examinations, since the Tenderer cannot foresee an undetectable number of expert-examinations in its costs in order to prepare a competitive tender.</p>	<p>The Procurement Commission kindly notes that Clauses 3.2.5 and 6.4 of the Technical Specification shall be read together with Clause 6.3, thus setting ESP's obligation to issue opinion (positive or negative) as to compliance with laws and regulations and technical conditions. Meanwhile, Clause 3.2.5. of the Technical Specification indicates the duration of the contract and time for provision of the services.</p> <p>Regarding coverage of costs of several re-examinations as concerns Design Expertise Services, the costs shall be covered by the Beneficiary, but always in line with Clause 20 of the Contract (Variations) and requirements of the Public Procurement Law of the Republic of Latvia. Considering explanation given above, Clauses 3.2.5 and 6.4 of the Technical Specification shall remain unchanged.</p>
<p>4.</p>	<p>Paragraph 6.5 of the technical specification states that the ESP shall be fully responsible for the content of the opinions drawn up by the Main Experts and additional experts and the conclusions contained in the opinion. We point out that this paragraph is in contradiction with the existing regulatory framework – Section 19, Paragraph seven of the Construction Law states that the expert shall be responsible for the content of an expert-examination opinion and the validity of the conclusions included therein, while Paragraph 47 of the General Construction Regulations states that the construction merchant who carries out an expert-examination has a duty to involve only employees of appropriate qualification with skills and experience in the performance of assigned tasks. Please amend point 6.5 of the technical specification in order to comply with the requirements of regulatory enactments.</p>	<p>The Procurement Commission kindly clarifies that in accordance with Clause 2.6 of the Contract any work performed by ESP's Experts and Sub-Contractors shall be considered as work of ESP, and such a requirement together with the Tenderer's outlined requirement (Clauses 6.5 of the Technical Specification) are aligned with applicable legislation requirements. Thus, Clauses 6.5 of the Technical Specification shall remain unchanged.</p>

5.	Please specify in the draft contract what sanctions are, if the ESP does not provide some of the required experts for the performance of the contract!	Based on the level of detail provided by the Tenderer the Procurement Commission kindly notes that ESP's failure to provide required experts for the performance of the Contract may result in legal consequences as per the laws of the Republic of Latvia as well as consequences outlined in the Contract, depending on factual circumstances of the specific breach as well as the Contract implementation phase. Therefore, the Contract requirements shall remain unchanged.
6.	Table 6 of the technical specification requires the Tenderer to provide a land melioration systems design Expert. There is no such expert in the Republic of Latvia or Europe. Why are there requests for specialists whose involvement cannot be assured? Please also indicate the building projects and/or objects in which construction/rebuilding of melioration structures of group III.	Procurement Commission would like to clarify that Land melioration systems design Expert is a certified field of Expertise in Latvia. This particular Expert is in the list of Additional Experts and his/her qualification criteria is defined in the Table 6, Non-Exhaustive additional Experts. According to local legislation requirements expertise can be carried out not only to Group III construction objects, but others as well. Indicative information on affected land melioration systems can be found in Technical Specification Annex 4, Rail Baltica Preliminary Design.  Procurement Commission would like to note that Land Melioration System design would mainly be necessary for Design Review stage.
7.	Clause 5.10 of the Tender Regulations stipulates that the delivery of the Detailed Technical Design Review and Design Expertise Services will take place in Latvia. What are the sanctions if the service is performed outside Latvia?	Procurement commission hereby explains that ESP is not obliged to be located in Latvia for the provision of the Design Review and Design Expertise services. Nevertheless, ESP shall ensure the presence of experts necessary during the meetings, as well as delivery / submission of the documentation necessary, in full extent as envisaged in the Technical specification, Regulations and Draft Contract of the open competition. During the contract fulfilment ESP shall follow all requirements established in the contract in order penalties envisaged per contract are not applied.
8.	We note that at the Master design stage the degree of readiness of the building design is not sufficient to carry out all the tests referred to in Table 2 of paragraph 5.1.15 of the Technical Specification, i.e. (not all solutions at a sufficient level of detail). Please specify Table 2 of the technical specification according to the information available at the level of detail of the MD and including only the essential requirements, taking into account that after the completion of the MD stage, the basic solutions may be substantially modified/clarified within the DTD phase.	Procurement commission kindly notes that Table 2 of paragraph 5.1.15 of the Technical specification clearly states that during design review service provider shall assess if relevant data has been considered in Master design deliveries. If the design data would not be enough to assess correctness of Master design, it is obligation of service provider to assess situation accordingly and request additional information that is missing.  Changes in static calculation scheme of the structure should not occur after MD stage (and they are generally not expected). In DTD stage it is expected that only detailing of the design will

		be developed further (ie. fixings of secondary elements).
9.	<p>For example, Table 1 of the Technical Specifications indicates that within the framework of Section 1 of the project, on August 5, 2021, 3 deliverables will be submitted to the ESP for review, which, after getting acquainted with the materials included in the procurement documentation, includes 11 high complexity structures, 8 Average complexity structures and 11 low complexity structures. Among other things - Torņakalns tunnel and several overpasses 1700m, 600m, 800m, 300m long. In parallel, at the MD stage, deliverables 2 (IIIp), 3 (Ip), and 4 (III and Vp) are envisaged for evaluation within the section, where the total number of high complexity structures is expected to be 7 structures. Considering that the planned tasks do not correspond to the practice of providing such a service in Latvia, and the significant amount of expected work, please amend the technical specification, reducing the expected amount of work or extend the deadline for evaluation of high complexity and average complexity construction projects.</p>	<p>Procurement commission would like to note that the time given for provision of the Detailed Technical Design Review and Design Expertise services is foreseen while considering Detailed Technical Design deliverables submission schedule.</p> <p>In addition, Procurement Commission kindly explains that in accordance with Clause 5.8. 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 20 (twenty) months starting from the Contract Signing Date. However, Contracting Authority has the right to extend the contract if any Design works in any of Design sections lasts longer. In this case Contracting authority will send the notice to the Service Provider 45 days prior the deadline, informing that the contract will be extended (extension shall be no longer than for forty (40) months).</p> <p>According to currently effective information the Contracting Authority intends to complete the Detailed Technical Design services as indicated in the Table 1 of the Technical specification. Considering all the above-mentioned, Procurement commission notes that all the respective conditions shall remain unchanged.</p>

Procurement commission chairperson

E.Saule

*Document is approved by Procurement commission's decision made on 20 November, 2020 and is valid without signature.*