

Rīga

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Electronic Procurement System

**Answers to questions from the interested supplier
in the open competition
"Mobile communication services in Latvia, Lithuania and Estonia",
identification number RBR 2021/8**

RB Rail AS presents following answers to the questions received from the interested supplier until 2 June 2021:

Nr.	Questions	Answers
1.	<p>[•] invites Contracting authority (RB Rail AS) to make amendments in Clause 3.3.5. of the Service Agreement.</p> <p>"3.3.5. if deficiencies or other inaccuracies are established in the performance of the Services with the requirements set forth in the Agreement, which should be eliminated, and about which the Principal has informed the Contractor and if the Contractor does not eliminate the discrepancies or deficiencies recorded in the claim within the term specified by the Principal, the Principal has the right not to pay the invoice in full or in part, as the case may be, submitted by the Contractor. In this case, the contractual penalty specified under the Agreement cannot be applied to the Principal;</p> <p><i>Statement of reasons – the Clause 3.3.5. must be defined more precisely pursuant to the conditions set out in Clause 5.3. of the Service Agreement.</i></p>	<p>The procurement commission kindly explains that pursuant to Clause 3.3.5. and in compliance with the Clause 5.3. the Principal shall be entitled not to pay the invoice in full or in part only where the Contractor does not eliminate the discrepancies or deficiencies outlined in the Principals' claim within the term specified thereto pursuant to Section 5 of the Agreement. Therefore, in the view of the procurement commission, the matter is already regulated under the Clause 5.3. of the Agreement and the proposed amended is not necessary.</p>

2.	<p>[.] invites Contracting authority to make amendments in Clause 3.3.8. of the Service Agreement.</p> <p>"3.3.8. to initiate inspections of the Contractor in accordance with legal enactments of the Republic of Latvia to be executed by the competent regulatory institution on ensuring critical infrastructure security, (incl. granting access to personal data to the competent regulatory institution to perform necessary inspections if necessary)."</p> <p><i>Statement of reasons - [.] is strictly prohibited to allow access to information and data concerning critical infrastructure security to any third party unless that demands a competent regulatory authority in accordance with legal enactments of the Republic of Latvia. Secondly, [.] will not involve sub-contractors in performance of this Agreement. Thirdly, [.] do not agree to allow inspection of individual employees as they are not a party of the current Open competition.</i></p>	<p>The procurement commission clarifies that Clause 3.3.8. refers to inspections foreseen under the regulatory enactments of the Republic of Latvia and to be carried out by involving competent security authority (state institutions of the Republic of Latvia) which is entitled to perform such inspections according to the law, where and if such inspection would ever be needed. Therefore additional amendments to that extent are not necessary.</p>
3.	<p>[.] invites Contracting authority to make amendments in Clause 7.5 of the Service Agreement.</p> <p>"7.5. Notwithstanding the provisions of Clause Error! Reference source not found. of the Agreement, the Contractor agrees that the Principal transfers the personal data received from the Contractor to third parties who provide services to the Principal and with whom the Principal cooperates to ensure its operation and performance of the Agreement. The Principal is responsible to have signed non-disclosure agreements and relevant data processing agreements with each third side company who process personal data under this Clause on behalf of the Principal. The Principle shall be responsible for the activities of such authorised third persons to the same extent as for itself."</p>	<p>Kindly note that the RB Rail AS ensures that the processing of personal data (including personal data received from the service providers) is done in compliance with the applicable data protection regulation and thus if the personal data received from the Contractor would be transferred to a third party such data processing would be done in strict compliance with the applicable regulations and under relevant data processing agreement. Such obligation derives from the applicable data protection regulation and is complied with by RB Rail AS on an ongoing basis thus implementation of the proposed amendment to this extent is not necessary.</p>

	<p><i>Statement of reasons – [.] is responsible for secure personal data protection conditions and asks to maintain the same level of data security from any of its contractors.</i></p>	
4.	<p>[.] invites Contracting authority to delete Clause 8.4 of the Service Agreement.</p> <p><i>Statement of reasons – According to [.] is not allowed to accept direct agreements between its employees, staff and any third party with whom [.] does the business or to who it provides the services. Any matters concerning the security and confidentiality of IT systems and/or data or information of the Principal must be the subjected to the Service Agreement.</i></p>	<p>The procurement commission kindly explains that Clause 8.4. would be applied only in exceptional cases where at any time during the Agreement for the provision of the services the Contractor would have to obtain access to certain IT systems or classified data of the Principal, if any. Therefore, the Clause cannot be deleted as suggested, however, if such event would ever occur the application of Clause 8.4. can be adjusted considering all objective material aspects, including certain internal requirements of the Contractor, to extent that the security of such IT systems or classified data is ensured.</p>
5.	<p>[.] invites Contracting authority to make amendments in Clause 10 and 11 of the Service Agreement for ensuring that prior to any audit and on-the-spot visit the Principal must accept signing of non-disclosure agreement with the Contactor and inform the Contractor about the incoming audit / visit (indicating the term, content and participants of such visit).</p>	<p>The procurement commission kindly explains that Clause 10 and Clause 11 cannot be amended to the proposed extent. At the same kindly note that in case the rights provided under Clause 10 or Clause 11 would ever be exercised any and all Contractors' information would be treated as confidential pursuant to Section 8 of the Agreement. Regarding the proposed amendment towards the obligation to provide a notification in advance, note that where the right to audit would be exercised pursuant Clause 10 the particular terms for such audit would be aligned with the Contractor in advance, however in case of on-the-spot visits the Principal shall retain the right for an unannounced on-the-spot visit to ensure the opportunity for verification, among other things, of the legitimacy of the RB Rail AS use of funds and Contractors ability to provide the Services.</p>
6.	<p>[.] invites Contracting authority to delete Clause 10.3. of the Service Agreement.</p> <p><i>Statement of reasons – [.] doesn't see the objective reason to provide Principle's rights to audit the Contractor after expiration or termination of the Agreement. [.] provides services in the strictly regulated market and its business is supervised by the local Communications Regulatory Authority which can execute the audit rights at any time and for any reason it sees necessary.</i></p>	<p>The procurement commission kindly explains that the requirements under Clause 10.3 derive from the European Climate, Infrastructure and Environment Executive Agency (CINEA) grant agreements and are intended to ensure the opportunity to verify the use of funds of RB Rail AS under the Agreement where the legitimacy of the use of such funds would be contested and thus cannot be amended.</p>

7.	<p>[•] invites Contracting authority to delete Clause 18 of Annex C: Contractors Declaration of the Service Agreement</p> <p><i>Statement of reasons – [•] has already implemented its own supplier action codex. [•]do its best to apply this codex to [•] suppliers' chain and any other codex adoption is likely impossible. [•] is able to provide statement that the principles of [•] supplier action codex in force comply with the principles of Contractor's Declaration.</i></p>	<p>The procurement commission kindly explains that the Contractors Declaration in the provided wording is applied equally with the same content to all service providers of RB Rail AS and is not subject to adjustments.</p>
8.	<p>[•] invites Contracting authority to delete Clause 19 of Annex C: Contractors Declaration of the Service Agreement.</p> <p><i>Statement of reasons – [•] has implemented its own procurement procedures regarding fair, transparent and lawful business provision. These procedures are evaluated and implemented on a regular basis only by [•] management. [•] reserves the exclusive right to decide with which contractors and clients [•] enters into contractual relationship. It is not the subject of current procurement and can't be used to evaluate tenderers abilities and capacities. Besides, [•] will not involve sub-contractors and persons on whose capacities [•] is relying on in performance of the Agreement which evaluation could be necessary pursuant to the regulations of the Open competition.</i></p>	<p>The procurement commission kindly explains that the Contractors Declaration in the provided wording is applied equally with the same content to all service providers of RB Rail AS and is not subject to adjustments.</p>

Procurement Commission Vice-chairperson

L.Buivida

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