

Riga

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Our Ref: 1.13p/LV-2021-274

Electronic Procurement System

***Answers to questions from the interested supplier
in the competitive procedure with negotiations
“Consolidated supply of rails for Rail Baltica railway construction”,
identification number RBR 2021/15***

RB Rail AS presents following answers to the questions received from the interested supplier until 20 August 2021:

Nr.	Questions	Answers
1.	In order to to meet the tender qualification rules Supplier combine his turnover and supply experience with the manufacturer. Both has signed partnership agreement. Does the supplier has right to submit the tender?	Procurement Commission confirms that only one member of the partnership may be registered to submit an Application on behalf of the partnership. Please note that in accordance with Clause 6.4.3. 2) of the Regulations in such case Application shall be accompanied with document that authorises one key member to sign the Application.
2.	Please explain by an example, how the technical, professional and finance resources of the manufacturer and supplier shall be transferred to the Candidate to prove availability of these resources.	<p>Procurement Commission explains that, in accordance with Section 4, Article 46 of Public Procurement Law of the Republic of Latvia, a subcontractor may be involved in the supply contract or the Candidate may rely on the technical or professional capacity of other person only if such person will perform the works or provide the services in the procurement contract.</p> <p>In accordance with Clause 4.6. of the Regulations for the fulfilment of the specific Contract, in order to comply with the selection requirements for the Candidates relating to the economic and financial standing and technical and professional ability, the Candidate may rely upon the capabilities of other persons.</p> <p>In such case, all the requirements established in further Clauses 4.6.1. – 4.7. of the Regulations shall be followed and relevant documents</p>

		<p>evidencing reliance (e.g. mutually signed cooperation agreement or similar document) submitted, to ensure that the resources on which the Candidate has relied on, will be available for the Candidate during the fulfilment of the contract.</p> <p>Please be advised, that one of the possible forms for reliance is establishment of partnership, clearly stating the responsibilities during the contract fulfilment in the cooperation agreement or similar document, however, it is up to the Candidate to decide on the most appropriate form.</p> <p>Nevertheless, the transfer of the resources shall be proved by the Candidate itself. Contracting Authority will assess each case and proofs of reliance during the evaluation of proposals.</p>
3.	Does agent agreement between supplier and manufacturer has proof of partnership in tenders context?	<p>Please note Clause 6.4.3. of the Regulations, stating that if an Application is submitted by a partnership, the Application shall include an agreement (or letter of intent to enter into agreement or any similar document) signed by all members of the partnership on the participation in the Competition, which: 1) lists responsibilities of each and every partnership member and a joint commitment to fulfil the Procurement Contract, 2) authorises one key member to sign the Application and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made.</p> <p>Considering previously mentioned, the type of the agreement can be various, most importantly, submitted documents shall include all the items listed in the Clause 6.4.3. of the Regulations. In addition, please note that in accordance with Clause 3.1.2. of the Regulations all the members of the partnership shall be listed in Annex 1 "Application form".</p>
4.	Does partnership agreement has to contain both parties responsibilities and duties? For example, which of them will produce, ship, distribute and stored.	<p>Procurement Commission confirms that partnership agreement shall list responsibilities of each and every partnership member. Please also refer to the answer to the question No 3.</p>
5.	Is it allowed between the same companies to change form and rules of partnership after the tenders first stage.	<p>Regarding the form of the partnership Procurement Commission explains that in accordance with Regulations Clause 3.1.2. a) if it will be decided to award contracting rights to partnership (partnership formed for this particular Competition) then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of Civil Law of</p>

		<p>the Republic of Latvia, Sections 2241 till 2280) and shall submit one copy of this agreement to the Contracting Authority or establish a general or limited partnership (within the meaning of Commercial Law of the Republic of Latvia, Chapter IX and X) and notify the Contracting Authority in writing.</p> <p>Regarding the rules of the partnership, Procurement Commission notes that in the 1st stage of the Competition Applicant should list responsibilities of each and every partnership member and a joint commitment to fulfil the Procurement Contract. Considering previously mentioned and that qualification documents are evaluated in the 1st stage of the Competition, rules of the partnership shall not change the intention regarding each parties involvement.</p> <p>Procurement Commission kindly notes that changes shall not be made regarding the passing of resources, which are subject to prove the compliance with qualification requirements.</p>
6.	<p>If the Candidate is foreign company, is it required to submit documents mentioned in points 4.1-4.1.12?</p>	<p>Procurement Commission notes that there is no obligation to submit documents specified in the Section 4.1. of the Regulations (except cases stipulated in Section 10.3. of Regulations) at this stage of procurement.</p> <p>Procurement Commission explains that according to Article 42 of the Public Procurement Law Procurement Commission verifies whether the exclusion grounds stipulated in Section 4.1. – 4.1.12. (<i>Article 42, Paragraph 1</i> of the Public Procurement Law) are applicable to the qualified Candidates (including persons on whose capabilities the Candidate is relying to meet qualification requirements) and which may be invited to submit proposal in Stage Two of this Competition.</p> <p>As regards companies registered outside of Latvia, Procurement Commission will obtain the respective information in one of the following ways:</p> <ol style="list-style-type: none"> 1) requiring the tenderer to submit a statement from a foreign competent authority, setting a term for the provision of information not shorter than 10 working days after the date of issue or dispatch of the request (including requesting information on

		<p>the beneficial owner or information that the beneficial owner cannot be identified),</p> <p>2) independently,</p> <p>3) if a certificate from a foreign competent authority is not issued, it may be replaced by an oath or, if the oath is not provided for by national law, by a certificate from the tenderer to a competent executive or judicial authority, a sworn notary or a in their country of registration.</p>
7.	Is there any limit of persons upon whose capabilities the Candidate can rely on?	<p>Procurement Commission explains that, the Candidate may rely on capabilities of other persons to meet the qualification requirements and the number of reliance's are not limited. Please note that in accordance with Section 4, Article 46 of Public Procurement Law of the Republic of Latvia, a subcontractor may be involved in the supply contract or the Candidate may rely on the technical or professional capacity of other person only if such person will perform the works or provide the services in the procurement contract.</p> <p>Only formal reliance will not be accepted, and the Candidate must prove that all resources used to meet the qualification requirements will be available during the contract fulfilment and that all entities on whose capabilities the Candidate has relied on, will provide respective services during the contract. All the requirements established in Clauses 4.6.1. – 4.7. of the Regulations shall be followed and relevant documents evidencing reliance (e.g. mutually signed cooperation agreement or similar document) submitted, to ensure that the resources on which the Candidate has relied on, will be available for the Candidate during the fulfilment of the contract.</p>

Procurement Commission Chairman

M.Blaus

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