

Rīga

03.08.2021

Our Ref: 1.13p/LV-2021-261

Electronic Procurement System

***Answers to questions from the interested suppliers
in the competitive procedure with negotiations
“Consolidated supply of turnouts and rail expansion joints for Rail Baltica railway construction”,
identification number RBR 2021/2***

RB Rail AS presents following answers to the questions received from the interested suppliers until 3 August 2021:

| Nr. | Questions | Answers |
|-----|--|--|
| 1. | Considering the answer 5 provided on 21.07.2021, please confirm that a copy of valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence to be submitted pursuant to 4.2.1 may not include information on beneficial owners and such document without information on UBOs will be sufficient to comply with requirements set in 4.2.1. | <p>Procurement Commission explains, that, according to Clause 4.2.1. the Candidate, each member of a partnership (if the Candidate is a partnership), a person on whose capabilities the Candidate is relying, which is a legal person registered abroad (with its permanent place of residence abroad), shall submit a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, beneficial owners, legal representatives (officials) and procura holders (if any) can be determined.</p> <p>However, in case registration document issued by the foreign authority and submitted in this stage of Competition will not contain information about the beneficial</p> |

| | | |
|----|---|--|
| | | <p>owners, Procurement Commission in Stage Two of this Competition shall obtain the respective information by:</p> <ul style="list-style-type: none"> - requiring the tenderer to submit a statement (certificate) 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 the beneficial owner or information that the beneficial owner cannot be identified). Information that beneficial owner cannot be identified shall be included in the respective statement; or - independently. <p>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> |
| 2. | <p>Please confirm that the Candidate may submit a separate application for each Lot, incl. by forming different groups of suppliers for each Lot.</p> | <p>Procurement Commission confirms, that the Application and all relevant documents shall be submitted for each procurement Lot separately, in line with all requirements established in the procurement Regulations.</p> <p>Procurement Commission explains that procurement Regulations does not limit any form of the Candidate for any of the procurement Lots.</p> <p>According to the Clause 3.1.: The Application can be submitted by:</p> <p>3.1.1. A supplier, who is a legal or natural person and who complies with the selection criteria for the Candidates;</p> <p>3.1.2. A group of suppliers (hereinafter also – Tenderer, partnership) which complies with the selection criteria for Tenderers:</p> <p>a) a group of suppliers who have formed a partnership for this particular Competition. In this case all the members of the</p> |

| | | |
|----|--|---|
| | | <p>partnership shall be listed in Annex No 1.1. "Application form" for Lot No.1, Annex No 1.2. "Application form" for Lot No.2. and Annex No 1.3. "Application form" for Lot No.3. If it will be decided to award contracting rights to such partnership, 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 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>b) an established and registered partnership (a general partnership or a limited partnership, within the meaning of Commercial Law of the Republic of Latvia, Chapter IX and X) which complies with the selection criteria for Candidates.</p> |
| 3. | <p>Considering the definition of supply (provided in footnote 4, p.13), please explain if the completion date of the manufacturing and completion date of the delivery shall be in the same continuous 12 month period (in 4.4.1 and etc).</p> | <p>Clause 4.4.1. of the Regulations states the following (for the Candidates applying for Lot No.1):</p> <p>Within the last 12 (twelve) years before the date of submission of the Application (year 2009 - 2021 till the submission of the Application) in any of continuous 12 months period the Candidate has performed 1 (one) or several supplies^[1], within 1 (one) or several contracts, of not less than 120 (one hundred twenty) high speed railway turnout sets in total, were:</p> <ul style="list-style-type: none"> a) turnout types are designed with main track speed of at least 250km/h, and b) at least 30 turnouts out of 120 are compliant with 1435 mm track gauge and put in operation in TSI^[2] compliant railway line. |

^[1] **Supply** – supply here and for all other references to the "supply" for experience requirements shall include manufacturing and delivery of the turnout set / expansion joint.

^[2] **The Technical Specifications for Interoperability (TSI)** (here and for all further references to "TSI" in the Regulations) defines the technical and operational standards which must be met by each

| | | |
|----|--|---|
| | | <p>^[1] Supply – supply here and for all other references to the “supply” for experience requirements shall include manufacturing and delivery of the turnout set / expansion joint. [..]</p> <p>Procurement Commission explains, that the main aim by developing the respective requirement was to ascertain of the Candidate`s ability to manufacture and deliver respective goods within the certain period of time – in any continuous 12 months (each of the services shall be provided within any continuous 12 months).</p> <p>Thus, in case the manufacturer of goods is different company than the one, delivered respective goods, and delivery has been done in different continuous 12 months period than the manufacturing process, such experience shall be accepted (if all other requirements for experience established in the respective Clause of Regulations are fulfilled as well).</p> |
| 4. | <p>Considering the definition of supply (provided in footnote 4, p.13) and simultaneous possibility to certify the Candidate`s rights to supply the goods and provide warranty by submitting a document issued by the manufacturer (4.4.4, 4.4.7 and 4.4.10), please explain whether the Contracting Authority expects that a supplier in order to comply with the requirements of specific supply experience (4.4.1, 4.4.2, 4.4.5, 4.4.8) is at the same time also a manufacturer of the goods or the said experience requirement would be fulfilled if a person has delivered within the continuous 12 months period the necessary amount of goods as a supplier, but is not the manufacturer of the delivered goods.</p> | <p>Procurement Commission explains that, according to the Clause 4.4.4., 4.4.7 and 4.4.10. of the Regulations, relevant for the respective procurement Lot, the Candidate <u>is entitled to supply the goods and provide warranty for goods specified in Annex No 2 “General description of subject matter”.</u></p> <p>Thus, requirements established in the Clause 4.4.4., 4.4.7 and 4.4.10 of the Regulations, relevant for the respective procurement Lot, applies for and certifies the Candidate`s rights to supply the goods and provide warranty for goods specified in Annex No 2 “General description of subject matter”.</p> <p>Meanwhile requirements established in Clause 4.4.1, 4.4.2, 4.4.5, 4.4.8. of the Regulations evidences the Candidate`s previous experience for the respective procurement Lot. The Candidate must have respective experience to meet the qualification requirements.</p> <p>In addition Procurement Commission explains, that in accordance with Clause 4.6. of the</p> |

subsystem or part of subsystem in order to meet the essential requirements and ensure the interoperability of the railway system of the European Union.

| | | |
|----|--|--|
| | | <p>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 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> <p>Please note, that 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 the entity on whose capabilities the Candidate has relied on, will be the one providing the same services during the contract (e.g. if the Candidate has relied on the capabilities of other person to meet experience in the turnout design, such person shall provide the turnout design services during the contract fulfilment).</p> <p>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> |
| 5. | <p>Please explain - if the Candidate is not a manufacturer of the goods, whether the manufactures of the goods (having valid ISO certificates to be submitted by the Candidate as provided in 4.5) shall be qualified as persons upon whose capacity the Candidate relies and shall be listed in annexes 3.1, 3.2 and 3.3.</p> | <p>Procurement Commission notes, that according to the Clause 4.5.1. of the Regulations manufacturer of the goods shall have valid quality management system that complies with ISO 9001:2015 standard or equivalent, and according to the Clause 4.5.2. of the Regulations manufacturer of the goods shall have an environmental management system that complies with ISO 14001:2015 standard or equivalent.</p> <p>Procurement requirements do not limit or restrict the form for cooperation and transfer of the resources, however, the Candidate must be able to prove the transfer and availability of the respective resources.</p> <p>Once again, please note, that in accordance</p> |

| | | |
|----|--|---|
| | | <p>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. In this case 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, including Annexes 3.1., 3.2., 3.3. filled in for respective procurement Lot) 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> |
| 6. | <p>Please explain by an example, how the technical and professional resources of the manufacturer and supplier shall be transferred to the Candidate to prove availability of these resources.</p> | <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, 4.6. 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 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.</p> |

| | | |
|----|---|--|
| | | Contracting Authority will assess each case and proofs of reliance during the evaluation of proposals. |
| 7. | Please confirm that the Candidate at later stage during the competition or following the award of the contract may change manufacturer(s) of the goods to be supplied by ensuring compliance of goods with the requirements of the Competition and compliance of the manufacturer with Quality Management standards (4.5). | <p>Procurement commission explains that there is possibility to change the manufacturer of the goods, however, only within the legal framework of the Public Procurement Law of the Republic of Latvia (hereinafter – PPL), e.g., in case member of the partnership is being liquidated (if the Candidate is partnership). Any change without objective (within the meaning of PPL) reasoning is not allowed, especially during the procurement stage which can be treated as amendments in the Application which is not allowed by the PPL.</p> <p>Nevertheless, each such case raised shall be assessed separately during the procurement or contract stage in line with general principles and regulation of the Public Procurement Law of the Republic of Latvia.</p> |
| 8. | Please explain whether the set requirements for Technical and professional ability may be fulfilled by number of persons together. For example, the experience requested in 4.4.1 would be ensured by 4 suppliers which within the same continuous 12 months period have together (but being contracted separately) performed supplies of not less than 120 high speed railway turnout sets in total, out of which at least 30 turnouts shall comply with 2 cumulative criteria - a) and b). Please confirm that in such a case the Candidate may rely upon the capabilities of other persons regardless of the legal nature of their mutual relationship, e.g., based on a sub-supply agreement. | <p>As already clarified before, Procurement Commission notes that, the Candidate may rely on capabilities of other persons to meet the qualification requirements.</p> <p>In such case, 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> <p>Once more please note that, 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.</p> <p>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</p> |

| | | |
|----|--|---|
| | | <p>procurement contract.</p> <p>In addition, please note, that <u>each such manufacturer (in case the Candidate relies on several) shall meet all other requirements established for manufacturer in the procurement Regulations (e.g. Clause 4.4.4., 4.4.7 and 4.4.10. of the Regulations, relevant for the respective procurement Lot).</u></p> |
| 9. | <p><i>Question submitted on 23 July 2021:</i></p> <p>Following the publication of the Procurement Notice RBR 2021/2 concerning the Supplier Qualification for the Consolidated Supply of Turnouts and Expansion joints for RailBaltica railway, and taking into consideration the announced date for presenting the candidatures (12 August 2021) we kindly ask you to accept postponing the Opening date at least until 31st September in order to have enough time to conveniently read through the documents and prepare our candidature.</p> <p>The reason for asking such extension is based on the fact, that during the months of July & August some of our staff and customer representatives involved in the preparation of the documents are not in the office (leave on vacations due) and that is causing some limitation to cope with the schedule.</p> <p>Besides considering the tender conditions to cope with combined turnover for the 3 lots, we might have to reach some agreements with other suppliers. Such agreements require time to be materialized and partnership agreements must be negotiated. Once again most of the persons in charge of these negotiations (Directors, board members) have limited availability these months.</p> | <p>In addition, please note, that Procurement Commission has decided to prolong the Application submission date till 10 September 2021, 15:00 o'clock.</p> <p>Please inform us, if there are any concerns towards ability to submit the application within the extended time period, by providing objective reasoning.</p> <p>Please follow the information provided in the E-Tender system and Procurement Bureau's website.</p> |

Procurement Commission Chairman

M.Blaus

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A SAFE ELECTRONIC SIGNATURE AND CONTAINS A
TIME STAMP