

Riga

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Our Ref: 1.13p/LV-2021-300

## 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 9 September 2021:

Nr.	Questions	Answers
1.	<p>Section 4.4. of the Candidate Selection Regulation (the “Regulation”) foresees selection criteria for Candidate’s technical and professional abilities.</p> <p>Clauses 4.4.2., 4.4.3. and 4.4.4. of the Regulation provide for similar requirements for experience in all three Lots. According to the requirements, a Candidate within the last five years must have performed at least one rail supply contract with a total volume of at least 60 000 tons of rail. The parameters of the supplied rails must comply with the European Standard EN 13674-1. In order to demonstrate compliance with the requirements, Candidate must submit a certificate attesting rail conformity with Standard EN-13674-1.</p> <p>This means that, for example, producers from non-EU countries cannot participate in the Tender because they do not have certificate of conformity EN 13674-1. However, the manufactured rails of the said producers comply with other certificates attesting to equivalent quality and experience. In our opinion, such requirements of the Regulation impose unjustified restrictions to competition and prohibits participation in the</p>	<p>Procurement Commission kindly explains that request for including a reference that the requirements for experience can be met by supplying rails that meet equivalent standards was approved and Procurement Commission has decided to amend the Regulations accordingly. Please keep following updates in the procurement profile in E-Tender system, amendments in the Regulations may be expected shortly.</p>

procurement of suppliers who have equivalent experience.

The Procurement Monitoring Bureau's (the "Bureau") guidelines on the most common non-compliances in the procurement documents state that in cases where the procurement documentation imposes requirements for experience that must be obtained in accordance with certain standards (for example, national or international standards), in order not to prohibit participation of suppliers who do not have required experience in accordance with specified standards, but have equivalent experience to perform work of appropriate quality, selection criteria must be set in a way that the supplier may also provide equivalent experience (available at: <https://www.iub.gov.lv/lv/media/5501/download>, p.8.).

We would like to point that Section 20 (5), Clause 2 of the Public Procurement Law also provides that if the contracting authority includes a reference to specific standard in technical specification, such reference must include the words "or equivalent". In our view, the requirements for technical and professional abilities of a Candidate should also include the reference "or equivalent", if the Contracting Authority requires experience in supply of goods that must conform to certain standard. In addition, requirement that a product must be manufactured in the European Union (the "EU") is not in line with the EU principle of free movement of goods, which states that industrial goods manufactured or imported in one EU Member State can be sold freely in any other Member State (please see Bureau's Guideline, p.16. Available at: <https://www.iub.gov.lv/lv/media/5501/download>).

Annex No 4 to the Regulation contains Candidate's experience form. After reviewing the experience form prepared by the Contracting Authority, we conclude that it is not possible to indicate compliance with an equivalent certificate.

	<p>In the light of the foregoing, we kindly ask to amend Section 4.4.2., 4.4.3. and 4.4.4. of the Regulation by including a reference that the requirements for experience can be met by supplying rails that meet equivalent standards.</p> <p>It is forbidden for the supplier to arbitrarily make changes to the forms prepared by the Contracting Authority. Therefore, we kindly ask to amend the experience form in Annex No 4 to the Regulation, providing possibility to submit a certificate of conformity attesting equivalent experience.</p>	
	<p>We would like to ask Procurement committee to postpone procurement's submission date for 2 weeks, till 08 October 2021 due of the change our company ownership. Because of that it'll not be possible to use on date 23/09/2021 our actual company name and official registration EU number. We are awaiting now for finishing the registration process while we'll have new company name and EU registration number. We have to prepare all documents for procurement with new company name, also we have to provide all documents to Procurement committee which will show relationship between old and new companies' regarding to rails deliveries experiences, certificates of conformity, ISO certificates etc.</p>	<p>Procurement Commission kindly notes that Application submission date is prolonged till 8 October 2021, 15:00 o'clock. Please follow up the information provided in the E-Tender system, the amendments to the Regulations may be expected shortly.</p>
	<p>Please consider the possibility of extending the application time period for candidates having regard to the following. Taking into account the volume of the Competition and its significant requirements it is a time-consuming process to prepare applications to the required standards. Besides that our partners has vacation months in July-August so tender preparation has started late. Also considering the practice of other contracting authorities when determining deadlines for submission of tender documents, we hope you would consider extending the application time period for candidates till 30th of November 2021.</p>	<p>Procurement Commission kindly explains that currently it is not possible to extend the submission time till November 2021 due to the demanding time schedule of the project.</p> <p>Please note that Procurement Commission has prolonged Application submission date till 8 October 2021, 15:00 o'clock.</p>

Procurement Commission Chairman

M.Blaus

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