

Riga

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## Electronic Procurement System

### ***Answers to questions from interested supplier in the procurement "Legal services", identification number RBR 2022/17***

RB Rail AS presents following answers to questions received from interested supplier until 9 August 2022:

Nr.	Question	Answer
1.	<p>Clause 8.4.3 of the Regulations and Clause 4.2 of Annex 1 thereto introduces the requirement for a new expert – public procurement specialist. We would like to kindly ask you to clarify the following:</p>	
1.1.	<p>Must the tenderers propose one specialist per country even though the Latvian Public Procurement Law applies to most procurement procedures of RB Rail?</p>	<p>Yes, the Tenderer shall propose expert for each Baltic state – Latvia, Lithuania and Estonia as RB Rail AS has branches in all three Baltic states and procurements in Lithuania and Estonia may be announced in accordance with regulatory acts of the Republic of Lithuania and the Republic of Estonia. Additionally, RB Rail AS employees may be involved in the procurements announced by the Rail Baltica national implementing bodies in all three Baltic states.</p>
1.2.	<p>If yes, why RB Rail requires experience for drafting minutes of the meetings for the Estonian specialist if those are not required under Estonian public procurement laws, nor used in practice by most contracting authorities?</p>	<p>While the public procurement laws of the Republic of Estonia do not require the contracting authority to prepare minutes of the meetings, the practice is different by each contracting authority and depends greatly on their inner processes, but (especially for larger procurements) preparation of the meeting minutes is still a widely used practice in Estonia. RB Rail AS has chosen common approach in all three Baltic States, and it prepares the meeting minutes, however this requirement will be amended considering that it is not mandatory</p>

		in the Republic of Estonia. <b>Please follow the upcoming amendments in the procurement documentation.</b>
1.3.	Why RB Rail requires the specialist to have experience on drafting minutes, even though in Latvia that is normally done by a secretary to the procurement body not involved in the substance of the tender (drafting notices, examining the bids etc.)?	There are different practices in Latvia – sometimes secretary has no voting rights, but sometimes the duties of the secretary are performed by one of the members of the procurement commission in parallel. Last one is the most common approach of the RB Rail AS. Additionally, the Procurement commission explains that it is expected that considering the need to formulate the decisions made by the procurement commissions in a legally precise manner, legal support in the preparation of protocols might be expected. However, the Procurement commission indicates that there is no intention to involve any of the proposed experts as the procurement commission members.
1.4.	Why RB Rail requires experience based on at least 5 public procurement tenders (exercises) above EU thresholds? How has RB Rail ensured that it is not hindering competition in the tender for legal services?	The Procurement commission kindly indicates that Public Procurement Specialist (Expert), <i>inter alia</i> , must have an experience in organizing at least 5 public procurement exercises, but only for 2 of them planned contract price shall be above the thresholds set by the European Union (please see the last sentence of the requirement).  As most of the procurement procedures carried out by RB Rail AS are with planned contract price above the thresholds set by the European Union, the Procurement commission finds it reasonable to request the Public Procurement Specialist (Expert) such experience.
1.5.	What is the expected workload of the specialist per country?	As it is almost impossible to predict the planned workload for the experts RB Rail AS intentionally has chosen to conclude the Framework agreement as a result of this procurement and order the services on-demand bases. It will mostly depend on various complicated situations that may arise when the involvement of the relevant expert would be needed and on the workload of RB Rail AS employees on that specific moment.
1.6.	Please elaborate on what is RB Rail's envisaged role for the specialist? It is important to understand the scope of the role / tasks better as members of procurement commission have other responsibilities under the law (for example, to declare their interests publicly in Lithuania, sign undertakings of confidentiality, etc.) which might be difficult to align with the statutory	In general, the role and potential tasks of the Public Procurement Specialist (Expert) can be assumed from the requested experience, but specific tasks will be known only during the execution of the Framework agreement.  The Procurement commission indicates that there is no intention to involve any of the proposed experts as the procurement commission members but involved experts will have to sign non-disclosure agreement, if their

	obligations of independence and confidentiality for attorneys, which can be both the specialists or the tenderer liable for execution of the award.	tasks will involve working with publicly unavailable or confidential information. At the same time the Procurement commission does not foresee that statutory obligations of independence and confidentiality for attorneys anyhow could be potentially jeopardised.
2.	<b>Clause 4.1 of Annex 1 to the Regulation sets out the requirements for a public procurement law expert. We would like to kindly ask you to clarify the following:</b>	
2.1.	Are the requirements for the expert under each subsection of Clause 4.1.1. of Annex I and each of the subsections of Clause 4.1.2. cumulative or alternative? For example, under Lithuanian law it is an impossible scenario for an appeal time of the Decision to expire (Clause 4.1.1. (c) and (d) for the appeal to be rejected. Please clarify the wording in order to avoid ambiguities.	The Procurement commission kindly indicates that requirements for Public Procurement Law Expert (please see the Section 3.1, Sub-Section 4.1 of the Technical specification) stipulated in the Clause 1) and Clause 2) are alternatives, but their Sub-Clauses a), b), c) and d) (for Clause 1)) are cumulative requirements (all have to be covered). Please be careful and follow the wording of "and" and "or" usage in the requirement.  Additionally, please pay attention that Sub-Clause d) of the Clause 1) (please see the Section 3.1, Sub-Section 4.1 of the Technical specification) is applicable only if the decision of the procurement commission has been appealed.
2.2.	What shall be considered to be "a decision on the dispute has been taken in favour of a client" under Clause 4.1.2.(a)? What about situations whereby the claim is upheld / rejected in part?	As Clause 2) of the Section 3.1, Sub-Section 4.1 of the Technical specification stipulates the requirements for Public Procurement Law Expert when representing the client (a contracting authority or a tenderer) in the public procurement dispute in the national Procurement Monitoring Bureau and/or court, decision on the dispute has to been taken in favour of the client. Within the framework of this Regulation, it is understood as decision that favours the client fully. Claims that are upheld / rejected in part unfortunately will not be considered as compliant.

Sincerely,

Procurement commission chairperson / secretary

V. Ezergaile

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