

Riga

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Electronic Procurement System

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

RB Rail AS presents following answers to questions received from the interested supplier until 16 August 2022:

Nr.	Question	Answer
1.	<p>Estonian Public Procurement Act (PPA) or administrative law, do not foresee a "procurement commission". There is even no mention of such a commission in the PPA. The authority to issue decisions in Estonian public tenders rests with the contracting authority or contracting entity itself, not any commission that the contracting authority or entity might or might not set up. Hence, decisions in public procurement are issued by persons who have a statutory authority to make such decisions. If a contracting authority is a public body under administrative law, as usually is the case, then the decision is an administrative act, and therefore issued by a person authorized under law to issue such decisions. Usually it's the head of the authority. Therefore, the reference in 4.1.1.(b) is not relevant in Estonia, as such commissions are not required by law and even if a contracting authority sets up such a commission, then the commission does not have authority to issue decisions. Under Estonian procurement practice, such commissions, if they are formed, prepare decisions for the decision makers, not make decisions themselves. In addition, a tender in Estonia does not "finish" with a decision to award a contract. According to the PPA § 73(3) a tender procedure finishes with the awarding of the contract (not the decision to award) or on various grounds</p>	<p>The Procurement commission kindly indicates that the aim of the requirement for the Public Procurement Law Expert stipulated in the Section 3.1, Sub-Section 4.1, Clause 1), Sub-Clause b) of the Annex 1 "Technical specification" of the Procurement regulations is that tender indicated to meet the requirements for experience of the Public Procurement Law Expert has ended (is not ongoing) and it has ended with awarding the contract (tenderer was not terminated, suspended etc.).</p> <p>Although establishing the procurement commission is not mandatory in Estonia, in practice it is still often formed for each procurement. But considering the aim of the requirement mentioned above and the fact that establishing the procurement commission is not mandatory in Estonia, experience of the Public Procurement Law Expert proposed for Estonia in this regards (Section 3.1, Sub-Section 4.1, Clause 1), Sub-Clause b) of the Annex 1 "Technical specification" of the Procurement regulations) will be considered as compliant also if the tender indicated was concluded with the awarding of the public contract.</p>

	where the procedure fails. The PPA foresees a possibility of a decision to award a contract only for contracts concluded under a framework agreement, but is not available for any other types of procedures. Should Clause 4.1.1.(b) of the Annex 1 to the Regulation be worded as follows - tender procedure concluded with the awarding of a public contract?	
2.	Based on our experience, drafting answers to the questions addressed during the procurement phase in Estonian procurement is normally reserved to the technical experts of the contracting authority, not an external law firm. Since the aim of the tender is to set up a panel of law firms, we would kindly ask you to reconsider the requirement in Clause 4.2.4 of the Annex 1 to the Regulation because it is hindering competition on the Estonian market.	Considering that assignment orders within the Framework agreement may include assisting and advising the procurement commissions on the preparing answers to potential suppliers' questions, the existence of such experience is necessary to ensure quality service and accordingly the Procurement commission considers the requirement reasonable and justified. Please note that it is not planned to involve experts in preparation of the answers to technical questions, but in preparing answers to questions related to the legal/public procurement topics.
3.	The Regulation refers to two terms – procurement contract price (Clause 4.1.1.(a) of the Annex 1 to the Regulation) and planned procurement contract price (Annex 4, table "Project experience of Public Procurement Law Expert", column 7). Could you please clarify which of the numbers should the tenderers indicate and whether that should be understood as the estimated value of the procurement under Article 5 of the Directive 2014/24/EU.	The Procurement commission confirms that "procurement contract price" mentioned in the Section 3.1, Sub-Section 4.1, Clause 1), Sub-Clause a) of the Annex 1 "Technical specification" of the Procurement regulations is the same as "planned procurement contract price" mentioned in the column 7 of table "Project experience of Public Procurement Law Expert" in the Annex 4 "Description of key expert's experience" of the Procurement regulations. Additionally, it is the same as "estimated value of the procurement" mentioned in the Article 5 of the Directive 2014/24/EU ¹ .

Sincerely,

Procurement commission chairperson / secretary

V. Ezergaile

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AND CONTAINS A TIME STAMP*

¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>)