

Riga

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Electronic Procurement System

*Answers to questions from interested suppliers
in the competitive procedure with negotiation
"Rail Baltica Energy Subsystem Design and Build",
identification number RBR 2022/7*

RB Rail AS presents following answers to questions received from the interested suppliers until 28th July 2022:

No	Question	Answer
1	<p>We would like to clarify the answer No.1 of the 25.07.2022. answers No.1.13p/LV-2022-242 regarding Section 5.2. of the Candidate Selection Regulations.</p> <p>From the answer we understand that the financial documentation according to Section 5.2. of the Regulations can be submitted with respect to the one member who alone fulfills both economic and financial standing criterions (Sections 5.2.1. and 5.2.2. of the Regulations). Accordingly, financial documentation should not be submitted with respect to other members of the partnership, as the candidate can fully prove its economic and financial standing by providing financial documentation with respect to that one member of the partnership.</p> <p>At the same time, according to the consortium agreement all members of the partnership (Candidate) will be "jointly and severally" liable (also, economically and financially) for the fulfillment of the contract, thus additionally increasing certainty for the contracting authority of the contract fulfillment. I.e., all members of the partnership, including those on whose economic and financial capacity the partnership is not relying to fulfil the economic and financial standing criterions (according to Sections 5.2.1 and 5.2.2 of the</p>	<p>The Procurement commission explains that in case the candidate is a partnership, and the candidate chooses relying on one particular member's financial capacity (i.e., turnover), and also this member will be financially and economically responsible for fulfilment of the procurement contract, then this member must fulfil the requirements stipulated in the Section 5.2.1 of the competitive procedure with negotiation "Rail Baltica Energy Subsystem Design and Build" (ID No RBR 2022/7) (hereinafter – Procurement) regulations, and only this relevant member of the partnership will be assessed in accordance with the requirements stipulated in the Section 5.2.2 of Procurement regulations.</p> <p>The procurement commission points out that candidate needs to indicate in the application on which members financial capacity (i.e., turnover) the candidate is relying and needs to indicate each member of the partnership which will be financially responsible for the performance of the contract (please pay attention to requirements stipulated in Section 5.1.1, "documents to be submitted", i.e., the information that must be indicated in the partnership agreement or letter of intent).</p> <p>At the same time, notwithstanding the fact which member of the partnership will be indicated in the partnership agreement or letter of intent as the member which will be financially responsible for the performance of the contract, all members of</p>

	<p>Regulations) and about which financial documentation according to Section 5.2. of the Regulations will not be submitted, will be jointly and severally liable for execution (fulfillment) of the contract according to the consortium agreement.</p> <p>Please confirm our understanding: if all members of the partnership are jointly and severally liable for performance of the contract – then only with respect to the one member of the partnership that alone meets financial standing criterions (Sections 5.2.1. and 5.2.2. of the Regulations) financial documentation (Section 5.2. of the Regulations) must be submitted.</p>	<p>the partnership will be jointly and severally liable for the fulfilment of the Procurement contract.</p> <p>Considering abovementioned, the Procurement commission explains that the candidate can submit the documentation specified in the Section 5.2 of the Procurement regulations only for one member of the partnership, if this particular member alone meets the financial standing criteria specified in the Section 5.2.1 and 5.2.2 of the Procurement regulations.</p>
	<p>Whereas a partnership of several international companies (A, B, C and D) qualify for the tender second stage. At the second stage a member (D) of the partnership decides to withdraw from the partnership due to technical, legal or other concerns before the final offer is submitted. The remaining members (A, B and C) of the partnership have sufficient capabilities to meet all the requirements of the tender regulations.</p> <p>Question no. 1 Would RB Rail A/s consider the partnership's remaining members (A, B and C) final offer as valid for the final evaluation despite the fact that a member (D) has left the partnership? Alternatively, would it be permissible to change the composition of partnership structure by stepping down of member (D) to the role of a sub-contractor in the final offer at the second stage.</p>	<p>The Procurement commission kindly asks the interested supplier to pay attention to the Procurement commission answer No 1.13p/LV-2022-242 dated on 25th July 2022, to the interested supplier's question No 3, where detailed information is provided about changes in the composition of the partnership and its consequences.</p> <p>Additionally, Procurement commission wants to explain, that such changes in the composition of the partnership also are not allowed, if one of the members of the partnership changes its position (in the described situation, its stepping down and becomes a subcontractor).</p>

Sincerely,

Procurement commission chairperson

A. Benfelde

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