

# REGULATIONS

FOR THE PROCUREMENT

**"ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES"**

(IDENTIFICATION NO RBR 2023/2)

## TABLE OF CONTENTS

1	ABBREVIATIONS AND TERMS .....	3
2	GENERAL INFORMATION.....	3
3	THE RIGHTS OF THE PROCUREMENT COMMISSION.....	4
4	THE OBLIGATIONS OF THE PROCUREMENT COMMISSION.....	4
5	THE RIGHTS OF THE TENDERER.....	5
6	SUBJECT-MATTER OF THE PROCUREMENT.....	5
7	TENDERER .....	6
8	SELECTION CRITERIA FOR TENDERERS .....	7
9	RELIANCE ON THE CAPACITY OF OTHER PERSONS.....	11
10	SUBCONTRACTING .....	12
11	FINANCIAL PROPOSAL.....	12
12	TECHNICAL PROPOSAL.....	13
13	CONTENTS AND FORM OF THE PROPOSAL .....	13
14	ENCRYPTION OF THE PROPOSAL INFORMATION .....	14
15	SUBMISSION OF THE PROPOSAL .....	14
16	OPENING OF THE PROPOSALS.....	14
17	VERIFICATION OF THE PROPOSALS FOR COMPLIANCE .....	15
18	VERIFICATION OF TECHNICAL PROPOSALS .....	15
19	VERIFICATION OF FINANCIAL PROPOSALS.....	15
20	FRAMEWORK AGREEMENT AWARD CRITERIA.....	15
21	TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE FRAMEWORK.....	18
22	DECISION MAKING, ANNOUNCEMENT OF THE RESULTS AND ENTERING INTO A FRAMEWORK AGREEMENT.....	18
23	ANNEXES .....	20
	ANNEX NO 1: TECHNICAL SPECIFICATION.....	21
	ANNEX NO 2: APPLICATION .....	29
	ANNEX NO 3: DESCRIPTION ON KEY EXPERT'S EXPERIENCE.....	32
	ANNEX NO 4: CONFIRMATION ON FINANCIAL STANDING.....	36
	ANNEX NO 5: FINANCIAL PROPOSAL .....	37
	ANNEX NO 6: DRAFT FRAMEWORK AGREEMENT.....	40
	ANNEX NO 7: NON-DISCLOSURE UNDERTAKING.....	41

## 1 ABBREVIATIONS AND TERMS

- 1.1 **Common procurement vocabulary (CPV)** – a nomenclature approved by the European Union which is applied in public procurement procedures;
- 1.2 **Contracting authority** (also, **RB Rail AS**) - the joint stock company RB Rail AS, registration number: 40103845025, legal address: Satekles iela 2B, Riga, LV-1050, Latvia;
- 1.3 **Contractor** - service provider awarded the right to enter into the Framework agreement in Procurement to provide services in accordance with requirements stipulated in Regulations and Framework agreement;
- 1.4 **Identification number** - designation, which includes the abbreviation of the name of the Contracting authority (the first capital letters), the relevant year and the procurement sequence number in ascending order (RBR 2023/2);
- 1.5 **Framework agreement** - agreement between Contracting authority and Contractor for the provision of Services;
- 1.6 **Procurement** - procurement “Adjudication and arbitration processes related services” (identification number: RBR 2023/2) in which all interested Suppliers are entitled to submit their Proposals;
- 1.7 **Procurement commission** - commission the composition of which has been established by the Contracting authority, order No 1.9-2023-4 dated 22 February 2023;
- 1.8 **Proposal** - documentation package the Tenderer submits to participate in the Procurement;
- 1.9 **Public Procurement Law (PPL)** - Public Procurement Law of the Republic of Latvia;
- 1.10 **Regulations** – regulations of the Procurement “Adjudication and arbitration processes related services” (identification number: RBR 2023/2), as well as all the enclosed annexes;
- 1.11 **Service (also Services)** - Adjudication and arbitration processes related services that are provided in accordance with terms and conditions set out in Regulations (especially in Annex No 1 “Technical specification” and Framework agreement).
- 1.12 **Supplier** – a natural person, a law firm or a legal person, a group or association of such persons in any combination thereof, which offers to provide Services;
- 1.13 **Tenderer** – a Supplier which has submitted a Proposal;
- 1.14 **VAT** – Value Added Tax.

## 2 GENERAL INFORMATION

- 2.1 The identification number of the Procurement is RBR 2023/2.
- 2.2 The Procurement is financed by the Contracting Authority.
- 2.3 This Procurement is organised in accordance with Section 10, Paragraph one of the Public Procurement Law in effect on the date of publishing the notice about social and other specific services.
- 2.4 The Procurement is carried out using E-Tenders system (<https://www.eis.gov.lv/EKEIS/Supplier>) which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EIS/>).
- 2.5 The Regulations is freely available on Contracting authority's profile in the E-Tenders system on webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> and on the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 2.6 Amendments to the Regulations and answers to Suppliers' questions will be published on Contracting authority's profile in the E-Tenders system on webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> and on the Contracting authority's webpage <http://railbaltica.org/tenders/>. It is the Supplier's responsibility to constantly follow the information published on the webpages and to take it into consideration in preparation of its Proposal.

- 2.7 Contact person of the Contracting authority for this Procurement is Procurement Specialist Zane Nore, telephone: +371 28312829, email: zane.nore@railbaltica.org.
- 2.8 The exchange of information between the Procurement commission and the Supplier or Tenderer shall be in writing (by sending documents electronically to e-mail or using E-Tenders system) in English (if information is submitted in Latvian, it shall be accompanied by a translation into English).
- 2.9 If the Supplier does not have access to the E-Tenders system, the Supplier shall follow the guidance for obtaining access to the system available on the Contracting authority's website at <http://www.railbaltica.org/procurement/e-procurement-system/>.
- 2.10 The Supplier can request additional information regarding the Regulations. Additional information shall be requested in writing on the E-Tenders system or (only in case the Supplier does not have access to the system yet) by sending it to the Procurement commission electronically to e-mail (please see Section 2.7 of the Regulations). Any additional information must be requested in a timely fashion, so that the Procurement commission can reply on time - no later than 2 (two) business days prior to the deadline of the Proposal submission.
- 2.11 The Supplier covers all expenses which are related to the preparation of the Proposal and its submission to the Contracting authority. Under no circumstances will the Contracting authority be liable for compensation of any costs and damages related to the preparation and submission of the Proposal or the Supplier's participation in the Procurement exercise.

### 3 THE RIGHTS OF THE PROCUREMENT COMMISSION

- 3.1 The Procurement commission has the right to demand at any stage of the Procurement that the Tenderer submits all or part of the documents which certify Tenderer's compliance to the requirements for the selection of tenderers. The Procurement commission does not demand documents or information which is already at its disposal or is available in public data bases.
- 3.2 If the Tenderer submits document derivatives (e.g. copies), then in case of doubt about the authenticity of the submitted document derivation the Procurement commission can demand that the Tenderer shows the original documents.
- 3.3 During the evaluation of the Proposals, the Procurement commission has the right to request the Tenderer to clarify the information included in its Proposal.
- 3.4 If the Procurement commission determines that the information about the Tenderer, its subcontractors and persons upon whose capacity the Tenderer is relying that is included in the submitted documents is unclear or incomplete, it demands that the Tenderer or a competent institution clarifies or expands the information included in the Proposal. The deadline for submission of the necessary information is determined in proportion to the time which is required to prepare and submit such information. If the Procurement commission has demanded to clarify the submitted documents but the Tenderer has not done this in accordance with the requirements stipulated by the Procurement commission, the Procurement commission is under no obligation to repeatedly demand that the information included in these documents is clarified. The Procurement commission has the right to reject all Proposals which are found not to comply with the requirements of the Procurement documentation.

### 4 THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 4.1 The Procurement commission ensures the documentation of the Procurement process.
- 4.2 The Procurement commission ensures free and direct electronic access to the Procurement documents on Contracting authority's profile at the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> and on the webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 4.3 If an interested Supplier has requested additional information in accordance with the Section 2.10 of the Regulations, the Procurement commission provides an answer electronically not later than 2 (two) work days before the deadline for submitting Proposals. Simultaneously with sending this information to the Supplier who has asked the question, the Contracting authority publishes this information on Contracting authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> and on Contracting authority's webpage <http://railbaltica.org/tenders/> where Procurement documents are available, indicating the question asked.



- 4.4 If the Contracting authority has amended the Procurement documents, it publishes this information on Contracting authority's profile on the E-Tenders system's webpage <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> and on Contracting authority's webpage <http://www.railbaltica.org/tenders/>, where Procurement documents are available and submits notification regarding the amendments to Procurement Monitoring Bureau. If Supplier wishes to receive relevant updates/notifications regarding the Procurement exercise (e.g., when amendments to the Procurement documentation are published) by email, the Supplier shall register as an interested supplier on the E-Tenders system for the particular Procurement exercise accordingly.
- 4.5 The exchange and storage of information is carried out in such a way that all data included in the Proposals is protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. From the day of submission of Proposals until the opening of the Proposals the Contracting authority does not disclose information regarding the existence of other Proposals. During the Proposal evaluation, the Contracting authority does not disclose any information regarding the evaluation process until the announcement of the results.
- 4.6 The Procurement commission evaluates Tenderers and their Proposals based on the Public Procurement Law, Regulations, as well as other applicable regulatory enactments.

## 5 THE RIGHTS OF THE TENDERER

- 5.1 The Tenderer has the right to submit registration documents for the registration on the Electronic Procurement System (if the Tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here: <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 5.2 The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet, which is an annex to the Proposal opening meeting minutes.
- 5.3 If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources and the Tenderer's submitted information differs from information obtained by the Contracting authority, the Tenderer in question has the right to submit evidence to prove the correctness of the information the Tenderer has submitted, if the information obtained by the Contracting authority does not conform to the factual situation.
- 5.4 If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Public Procurement Law regarding the Tenderer selection requirements, technical specifications or other requirements related to the Procurement, or related to the activities by the Contracting authority or the Procurement commission during the Procurement process.
- 5.5 The Supplier must submit a request for information, in order to receive the following: (a) information on the party that potentially will be the other party of the adjudication and arbitration related processes; and (b) information on the substance of the Disputes, including information on documents that the Contractor will need to review as a part of the provision of the Services. This information will enable the Supplier to evaluate potential conflicts of interest and to understand the scale of the Services needed.

Since the aforementioned information will not be publicly available and has a restriction due to the nature of the information, together with the request for the aforementioned information, the Supplier must sign and submit a non-disclosure undertaking (Annex 7 to the Regulations) and also indicate name, surname and e-mail address of the person who needs access to aforementioned information.

If the Procurement Commission has reasonable grounds to believe that the Supplier has a conflict of interest in the Procurement or in case the non-disclosure undertaking is not signed and submitted, the Procurement Commission shall refuse access to the aforementioned information.

## 6 SUBJECT-MATTER OF THE PROCUREMENT

- 6.1 The subject-matter of the Procurement is provision of adjudication and arbitration processes related services (hereinafter-Services) for RB Rail AS in accordance with Annex No 1 "Technical specification" of the Regulations (hereinafter – Technical specification). Through Procurement the Contracting authority intends to establish a cooperation with 1 (one) experienced Service provider.

- 6.2 The applicable CPV code is 79112000-2 (Legal representation services).
- 6.3 The subject matter is not divided into parts. The Tenderer shall submit a Proposal for the entire Procurement.
- 6.4 The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal will be submitted, the Proposal will not be reviewed.
- 6.5 Period of provision of Services: 48 (forty-eight) months after the commencement date or until the maximum Framework agreement amount indicated in the Section 6.6 of the Regulations is reached, whichever comes first. There will be an option to extend the term of the Framework agreement for another year if the contract amount will not be reached within the initial period or there is an active arbitration process which needs to be completed.
- 6.6 The value of the Framework agreement shall not exceed EUR 600 000 (six hundred thousand *euros*), excluding VAT, unless circumstances which are mentioned in the Framework and which allow the amount to be varied will arise.
- 6.7 Rights to conclude Framework agreement will be awarded to 1 (one) Tenderer with the most economically advantageous proposal selected according to Section 20 of Regulations.

## 7 TENDERER

- 7.1 The Proposal can be submitted by:
  - 7.1.1 A Supplier, who is a law firm, legal person, or natural person (hereinafter – Tenderer) who complies with the selection criteria for Tenderers;
  - 7.1.2 A group of Suppliers (hereinafter also – Tenderer, partnership) who complies with the selection criteria for Tenderers:
    - 7.1.2.1 A group of Suppliers who have formed a partnership for the Procurement. In this case all members of the partnership shall be listed in Annex No 2 "Application for participation in the Procurement" of the Regulations. If it will be decided to award contracting rights to such partnership, then prior to entering into Framework agreement the partnership shall at its discretion either enter into a partnership agreement (within the meaning of the Civil Law of the Republic of Latvia, Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of the Commercial Law of the Republic of Latvia, Division IX and X) and notify the Contracting authority in writing.
    - 7.1.2.2 An established and registered partnership (a general partnership or a limited partnership, within the meaning of the Commercial Law of the Republic of Latvia, Division IX and X).
- 7.2 According to Article 5k of Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine<sup>1</sup> it is prohibited to participate in the Procurement:
  - 7.2.1 a Russian national, or a natural or legal person, entity or body established in Russia;
  - 7.2.2 a legal person, entity or body whose proprietary rights are directly or indirectly owned for more than 50% by an entity referred to in Sub-Section 7.2.1. of this Section;
  - or
  - 7.2.3 a natural or legal person, entity or body acting on behalf or at the direction of an entity referred to in Sub-Section 7.2.1. or 7.2.2. of this Section, including, where they account for more than 10% of the Framework agreement value, subcontractors, suppliers or entities whose capacities are being relied on within the meaning of the Public Procurement Law.
- 7.3 With reference to Section 15 of the Public Procurement Law and the Contracting Authority's discretion in the application of Section 15 of the Public Procurement Law, participation of any entities from the Russian Federation and/or the Republic of Belarus is prohibited.

---

<sup>1</sup> Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0576>.

## 8 SELECTION CRITERIA FOR TENDERERS

8.1 The Contracting authority shall exclude Tenderer from further participation in the Procurement in following circumstances:

No	Requirement	Documents to be submitted <sup>2</sup>
8.1.1.	<p>International or national sanctions or substantial sanctions by the European Union (EU) or the North Atlantic Treaty Organization (NATO) Member State affecting the interests of the financial and capital market has been imposed to the:</p> <p>a) Tenderer or a person who is the Tenderer's management board or supervisory board member, beneficial owner<sup>3</sup>, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch,</p> <p>b) member of the partnership or a person who is the partnership's management board or supervisory board member, beneficial owner<sup>4</sup>, person with representation rights or a procura holder (if the Tenderer is a partnership),</p> <p>and such sanctions can affect the execution of the Procurement contract.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer registered or residing in Latvia, the Contracting authority will verify the information itself from the Register of Enterprises of the Republic of Latvia.</li> <li>- For a Tenderer registered or residing outside of Latvia, the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence with all the information necessary for the examination regarding the Tenderer or a member of the partnership (if the Tenderer is a partnership), including but not limited, information about beneficial owner or the fact that there is no possibility to find out the beneficial owner.</li> </ul>

8.2 Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
8.2.1.	<p>The Tenderer, all members of the partnership (if the Tenderer is a partnership), a person on whose capacity Tenderer relies, a subcontractor must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer, a member of a partnership, a person on whose capacity Tenderer relies, a subcontractor, which is a legal person registered in Latvia, the Contracting authority will verify the information itself in publicly available databases.</li> <li>- For a Tenderer, a member of the partnership, a person on whose capacity Tenderer relies who is a natural person – a copy of an identification card or passport.</li> <li>- For a Tenderer, a member of a partnership, a person on whose capacity Tenderer relies, a subcontractor,</li> </ul>

<sup>2</sup> There is no obligation to submit documents, unless specifically requested by the Procurement commission.

<sup>3</sup> **Beneficial owner:** a natural person who is the owner of the customer - legal person - or who controls the customer, or on whose behalf, for whose benefit or in whose interests business relationship is being established or an individual transaction is being executed, and it is at least:

a) regarding legal persons - a natural person who owns, in the form of direct or indirect shareholding, more than 25 per cent of the capital shares or voting stock of the legal person or who directly or indirectly controls it;

b) regarding legal arrangements - a natural person who owns or in whose interests a legal arrangement has been established or operates, or who directly or indirectly exercises control over it, including who is the founder, proxy or supervisor (manager) of such legal arrangement.

<sup>4</sup> Please see the previous reference.

No	Requirement	Documents to be submitted
		<p>which is a legal person registered abroad (with its permanent place of residence abroad) – 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 where from at least the fact of registration, shareholders, officials and procura holders (if any) can be determined.</p> <ul style="list-style-type: none"> <li>- If a Proposal is submitted by a partnership, the Proposal shall include an agreement or letter of intention (LOI) to enter into an agreement signed by all members of the partnership. The agreement and/or LOI shall list responsibilities of each and every partnership member and a joint commitment to fulfil the Framework agreement. The partnership members in the agreement and / or LOI shall nominate a member, who is authorised on behalf of the partnership to sign the Proposal and related documents, as well as receive and issue orders, and who shall issue invoices and receive disbursement.</li> <li>- If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, member of the partnership, person on whose capacity Tenderer relies or subcontractor, a document certifying the rights of the person who have signed the Proposal or any other documents, to represent the Tenderer, member of the partnership, person on whose capacity Tenderer is relying or subcontractor (powers of attorney, authorization agreements etc.) must be enclosed.</li> </ul>
8.2.2.	<p>The representative of the Tenderer, a member of a partnership, a person on whose capacity Tenderer relies, a subcontractor who has signed documents contained in the Proposal, has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer or a member of a partnership, or a person on whose capacity Tenderer relies, or a subcontractor respectively.</p>	<ul style="list-style-type: none"> <li>- For a Tenderer, a member of a partnership, a person on whose capacity Tenderer relies, a subcontractor, which is a legal person registered in Latvia, the Contracting authority will verify the information itself in publicly available databases.</li> <li>- For a Tenderer, a member of a partnership, a person on whose capacity a Tenderer relies and subcontractor which is a legal person registered outside of Latvia, the Tenderer shall submit a document confirming the right of signature (representation) of the representative of the Tenderer, a member of a partnership, a person on whose capacity a Tenderer relies or subcontractor, who signs documents contained in the Proposal.</li> <li>- If the Tenderer, a member of a partnership, a person on whose capacity a Tenderer relies or subcontractor submits a power of attorney (original or a copy certified by the Tenderer) additionally there shall be submitted documents confirming that the issuer of the power of attorney has the right of signature (representation).</li> </ul>

### 8.3 Economic and financial standing

No	Requirement	Documents to be submitted
8.3.1.	<p>The Tenderer's or at least 1 (one) member of the partnership (if the Tenderer is a partnership) average annual financial turnover within last 3 (three) years (2020, 2021, 2022) is not less than EUR 1 000 000,00 (<i>one million euros</i>) per year.</p> <p>In the event the average annual financial turnover of a limited partner of a limited partnership (within the meaning of the Commercial Law of the Republic of Latvia, Division X) exceeds its investment in the limited partnership, the average annual financial turnover shall be recognized in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) years, the requirement shall be met during the Tenderer's actual operation period. For law firms that have been registered in the Commercial register in accordance with the procedures specified in the Commercial Law of the Republic of Latvia due to the amendments in the Advocacy Law of the Republic of Latvia, Section 116 (successors to rights and liabilities of such law firms which had been established until the day when amendments to Section 116 of Advocacy Law of the Republic of Latvia came into force), exception applies – their predecessor's average turnover will be recognized.</p>	<ul style="list-style-type: none"> <li>- Filled and signed Annex No 4 "Confirmation of Tenderer's financial standing" of the Regulations.</li> <li>- Audited or self-approved (if the annual financial statement is not required by the law of the country of residence of the Tenderer) annual financial statements for financial years 2020, 2021, 2022 or other document showing the turnover of the Tenderer or each member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Framework agreement (if the Tenderer is a partnership), or other entity on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the Framework agreement.</li> <li>- For a limited partnership (within the meaning of the Commercial Law of the Republic of Latvia, Division X) – an additional document evidencing the amount of the investment by the limited partner (the partnership agreement or a document with a similarly binding legal effect).</li> <li>- For law firms (within the meaning of the Advocacy Law of the Republic of Latvia, Section 116) – annual profit-loss statements for financial years 2020, 2021, 2022, showing their annual financial turnover.</li> <li>- If the previous 3 (three) reporting years of the Tenderer differ from the years specified in this Section 8.3.1 of the Regulations (2020, 2021, 2022), the financial turnover necessary must be indicated for the Tenderer's previous 3 (three) reporting years.</li> <li>- If the Proposal is submitted by a partnership, Tenderer shall indicate the member of the partnership on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Framework agreement including this information in the agreement of cooperation (or letter of intent to enter into agreement) stipulated in Section 8.2.1 of the Regulations.</li> <li>- If the Tenderer is relying on any other entity's capacity to certify its financial and economic performance and this entity will be financially and economically responsible for the fulfilment of the Framework agreement, Tenderer along with the Proposal submits confirmation or agreement on cooperation and/or passing of resources to the Tenderer, signed between such entity and the Tenderer (please see the Section 9 of the Regulations for detailed information).</li> </ul>
8.3.2.	<p>The Tenderer or at least one member of the partnership (if the Tenderer is a partnership) shall have a valid professional risk indemnity insurance with limit of liability in the amount</p>	<ul style="list-style-type: none"> <li>- Documentation that proves its possession of a valid insurance certificate that meets requirements set in Section 8.3.2 of the Regulations or a written statement of <u>an insurance institution</u> specifying that in case the</li> </ul>



of at least EUR 1 000 000 (one million euros) for any insurance claim and in the aggregate for the policy period with extended reporting period for at least 3 (three) years.

Tenderer will be awarded the Framework agreement, the insurance institution will issue the insurance certificate that meets requirements set in Section 8.3.2 of the Regulations.

#### 8.4 Technical and professional ability (Team of key experts)

No	Requirement	Documents to be submitted
8.4.1.	<p>The Tenderer should propose a team consisting of key experts indicated in the Section 3 of the Technical specification. All positions mentioned in the Section 3.2 of the Technical specification must be covered.</p> <p>The Tenderer shall propose:</p> <ol style="list-style-type: none"> <li>1 (one) <u>key expert for position "Public procurement expert"</u> mentioned in the Section 3.2 Sub-Section 1 of the Technical specification;</li> <li>2 (two) key experts for position "Arbitration experts" mentioned in the Section 3.2 Sub-Section 2 of the Technical specification;</li> <li>2 (two) key experts for position "FIDIC experts" mentioned in the Section 3.2 Sub-Section 3 of the Technical specification;</li> </ol> <p>The Tenderer can propose one key expert for several positions, if proposed expert meets the requirements for the specific position and it will not negatively affect the provision of the Services.</p>	<ul style="list-style-type: none"> <li>- Filled in Annex No 3 "Description of key expert's experience" of the Regulations, <u>signed by the relevant key expert</u>.</li> <li>- If one expert is proposed for more than one key expert position, separate description of key expert's experience (Annex No 3 of the Regulations) accompanied with complete set of other requested documents shall be submitted.</li> <li>- In case of doubts, the Procurement commission is entitled to request the Tenderer to submit contact information of the Client, so that the Procurement commission can check the compliance of the specified experience with the requirements.</li> </ul>
8.4.2.	Each proposed key expert shall have English skills (C <sub>2</sub> Level – based on Common European Framework of Reference for Languages <sup>5</sup> ) in understanding, speaking and writing.	<ul style="list-style-type: none"> <li>- Self-declared information about language skills filled in Annex No 3 "Description of key expert's experience" of the Regulations and <u>signed by the relevant key expert</u>.</li> </ul>
8.4.3.	Each proposed key expert should have at least a Master's degree (or equivalent) in Law or Lawyer's qualification.	<ul style="list-style-type: none"> <li>- Filled in Annex No 3 "Description of key expert's experience" of the Regulations, <u>signed by the relevant key expert</u>.</li> <li>- A copy of a diploma proving relevant level of education.</li> </ul>
8.4.4.	<p>In addition to the requirements stipulated in the Section 3 of the Technical specification, the Public procurement expert should have at least 7 (seven) years' work experience as lawyer within the period of last 10 (ten) years (from 2013 until the submission date of the Proposals) in the field of public procurements in Latvia (applied Latvian Public Procurement Law).</p> <p>Proposed key expert will be considered as a lawyer if she/he has a lawyers qualification.</p>	<ul style="list-style-type: none"> <li>-</li> </ul>

<sup>5</sup> Please see: <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

No	Requirement	Documents to be submitted
8.4.5.	In addition to the requirements stipulated in the Section 3 of the Technical specification, each of the Arbitration experts should have at least 7 (seven) years' work experience as lawyer within the period of last 10 (ten) years (from <u>2013</u> until the submission date of the Proposals) in the field of arbitration.  Proposed key expert will be considered as a lawyer if she/he has a lawyers qualification.	- Filled in Annex No 3 "Description of key expert's experience" of the Regulations, <u>signed by the relevant key expert.</u>
8.4.5.	In addition to the requirements stipulated in the Section 3 of the Technical specification, each of the FIDIC experts should have at least 7 (seven) years' work experience as a lawyer within the period of last 10 (ten) years (from <u>2013</u> until the submission date of the Proposals) in the field of FIDIC.  Proposed key expert will be considered as a lawyer if she/he has a lawyers qualification.	

- 8.5 Information, provided in the Proposal to prove the compliance with above-mentioned requirements for Economic and financial standing (Section 8.3 of the Regulations), Technical and professional ability (Section 8.4 of the Regulations) shall be clear and understandable without any additional analysis or external proof of the submitted information. The Procurement commission shall not be obliged to use additional sources of information to make a decision regarding Tenderer's compliance with the qualification requirements. The Tenderer shall remain fully responsible for the provision of sufficiently detailed information in the Proposal required to confirm clearly the compliance with qualification requirements set in the Regulations.
- 8.6 Statements and other documents issued by Latvian competent authorities in the cases referred to in Public Procurement Law shall be accepted and recognised by the Procurement commission if they have been issued not earlier than 1 (one) month prior to the day of submission, but the statements and other documents issued by foreign competent authorities shall be accepted and recognised by the Procurement commission if they have been issued not earlier than 6 (six) months prior to the day of submission, unless the issuer of the statement or the document has specified a shorter term of validity thereof.

## 9 RELIANCE ON THE CAPACITY OF OTHER PERSONS

- 9.1 For the fulfilment of the specific contract, to comply with the selection requirements for the Tenderers related to the economic and financial standing and technical and professional capacity (including regarding the team of key experts), the Tenderer may rely on the capacity of other persons, regardless of the legal nature of their mutual relationship. In this case:
- 9.1.1 The Tenderer shall indicate in the Proposal all persons upon whose capacity it relies by filling in the table which is included in the Annex No 2 "Application for participation in the Procurement" of the Regulations and prove to the Contracting authority that the Tenderer will have available all the necessary resources for the fulfilment of contracts under the Framework agreement by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced with any other type of documents by which the Tenderer can prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of contracts under the Framework agreement.
- 9.1.2 Documents on cooperation and passing of resources must be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil contracts under the



Framework agreement, as well as that during the validity of the Framework agreement Tenderer will in fact use the resources of such person upon whose capacity it relies.

9.1.3 The Contracting authority shall require joint and several liability for the execution of the Framework agreement between the:

9.1.4 Tenderer and a person on whose capacity Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Framework agreement;

9.1.5 Each member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying and who will be financially and economically responsible for fulfilment of the Framework agreement.

9.2 Tenderer may rely on the capacity of other persons only if these persons will provide services that require the relevant capacity.

## 10 SUBCONTRACTING

10.1 The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by filling in the table which is included in the Annex No 2 "Application for participation in the Procurement" of the Regulations.

## 11 FINANCIAL PROPOSAL

11.1 The Financial proposal shall be indicated and submitted as part of the Annex No 5 "Financial proposal" of the Regulations.

11.2 Tenderer shall indicate:

11.2.1. Total prices for assistance in Adjudication processes indicated in the Section 2.3.1. of Technical specification:

11.2.1.1. indicating total prices for assistance for each items listed in the Section 2.3.1.1. of Technical specification;

11.2.1.2. indicating additional total prices for assistance for each item listed in Section 2.3.1.2. of Technical specification for 1 (one) additional (new) Dispute, i.e., for Dispute cases that were not specified during the Tender;

11.2.2. As a part of assistance in arbitration process (according to Section 2.3.2. of Technical Specification), hourly rates for the following experts: Public procurement expert, arbitration experts, FIDIC experts indicated in the Section 3 of Technical specification.

11.3 The proposed total prices for assistance in adjudication processes and hourly rates for experts that might be used in arbitration must be indicated in euro without VAT.

11.4 The proposed total prices for assistance in adjudication processes and hourly rates for experts that might be used in arbitration must be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma will be indicated, then only the first two decimal places will be considered.

11.5 The proposed total price for assistance in adjudication processes and hourly rates for experts that might be used in arbitration must include all taxes, fees and payments, and all costs related to the fulfilment of the specific services that can be reasonably estimated, except VAT, including but not limited to:

11.5.1 visits to the Contracting authority (cost of business trips, time of consultants and daily allowance) (except costs to be reimbursed as specified in Section 4 of the Technical specification),

11.5.2 field research if applicable,

11.5.3 purchase of external materials and researches if applicable,

11.5.4 purchase of external experts if applicable.

11.6 The proposed total prices for assistance in adjudication processes and hourly rate for experts shall be fixed for all the term of the fulfilment of the Framework agreement and will not be recalculated, except in cases stipulated in the Framework agreement (if any).

## 12 TECHNICAL PROPOSAL

- 12.1 Tenderers shall submit a Technical proposal in accordance with this Section considering aspects in the Annex No 1 “Technical specification” of the Regulations. Technical proposal must contain at least the following:
- 12.1.1 presentation consisting of information on experts and the Services delivery in both - Dispute adjudication and arbitration processes, as specified in Section 8 of Technical specification;
  - 12.1.2 Tenderer may gain additional points if the team of proposed key experts has additional experience indicated in the Section 20.3.2 of the Regulations.

## 13 CONTENTS AND FORM OF THE PROPOSAL

- 13.1 The Proposal must be submitted electronically on E-Tenders system of the Electronic Procurement System in accordance with the following options for the Tenderer:
- 13.1.1 by using the available tools of the E-Tender system, filling the attached forms of the E-Tender system for the Procurement;
  - 13.1.2 by preparing and filling the necessary electronic documents outside the E-Tenders system and attaching them to relevant requirements (in this situation the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
  - 13.1.3 by encrypting electronically prepared Proposal outside of the E-Tenders system with data protection tools provided by third parties, and protection with electronic key and password (in this situation, the Tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document by the Contracting authority).
- 13.2 During preparation of the Proposal, the Tenderer shall respect the following requirements:
- 13.2.1 Each document mentioned in Section 13.3 of the Regulations must be filled separately, each in a separate electronic document in line with forms attached to Procurement in a Microsoft Office 2010 (or later) format and attached to the designated part of the Procurement (<https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158>) on E-Tenders system;
  - 13.2.2 Upon submission, the Tenderer must sign the Proposal with secure electronic signature and time-seal or with electronic signature provided by Electronic Procurement System. The Tenderer can use certified electronic signature<sup>6</sup> and time-seal and sign each document mentioned in the Section 13.3 of the Regulations and other documents separately. The Proposal (its parts, if signed separately) shall be signed by authorized person, including authorization document (e.g. power of attorney) *expressis verbis* stating the authorisation to sign, submit and otherwise manage the documents.
- 13.3 Documents to be included in the Proposal:
- 13.3.1 Application for participation in the Procurement including the information about entities on whose capacity Tenderer is relying and Tenderer's subcontractors accompanied with relevant documents (please see the Section 9 and 10 of the Regulations; form enclosed as Annex No 2 of Regulations);
  - 13.3.2 Information and documents confirming compliance of the Tenderer with the selection criteria for the Tenderers (please see the Section 8 of the Regulations; form enclosed as Annex No 3 and 4 of Regulations);
  - 13.3.3 Financial proposal (please see the Section 11 of the Regulations; form enclosed as Annex No 5 of Regulations);

---

<sup>6</sup> Issued by organisation, which is included in the Trusted list according to the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

- 13.3.4 Technical proposal prepared in accordance with the Section 12 and the Annex No 1 of the Regulations;
- 13.3.5 Annex No 3 of the Regulations filled in and signed by the relevant key expert confirming the compliance of it with the evaluation criteria set in Section 20.3.2 of the Regulations (if applicable).
- 13.4 The Proposal may contain original documents or their derivatives (e.g., copies). In the Proposal or in reply to a request of the Procurement commission Tenderer shall submit only such original documents which have legal force. In order for the document to gain legal force it has to be issued and formatted in accordance with the Latvian Law on Legal Force of Documents of the Republic of Latvia (<https://likumi.lv/ta/en/id/210205-law-on-legal-force-of-documents>), but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law of the Republic of Latvia (<https://likumi.lv/ta/id/301436-dokumentu-izstradasanas-un-noformesanas-kartiba>). Public documents issued abroad can be self-approved by the Tenderer, if it is applicable by the legislation of the respective country. When submitting the Proposal, the Tenderer has the right to certify the correctness of all submitted documents' derivatives and translations with one certification.
- 13.5 The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this Procurement (please see the Section 8.2.2 of the Regulations).
- 13.6 The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available on <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158>.
- 13.7 The Proposal must be submitted in a written form in English or Latvian (if submitted in Latvian, translation in English of the Proposal must be provided together with the Proposal). Upon request by the Procurement commission the Tenderer shall provide a translation in Latvian within the deadline requested by the Procurement commission.

## 14 ENCRYPTION OF THE PROPOSAL INFORMATION

- 14.1 E-Tender system which is a subsystem of the Electronic Procurement System ensures first level encryption of the information provided in the Proposal documents.
- 14.2 If the Tenderer applied additional encryption to the information in the Proposal (according to the Section 13.1.3 of the Regulations), the Tender must provide the Procurement commission with the electronic key with the password to unlock the information not later than in 15 (fifteen) minutes after the deadline of the Proposal submission.

## 15 SUBMISSION OF A PROPOSAL

- 15.1 The Proposal (documents referred to in the Section 13.3 of the Regulations) shall be submitted electronically using the E-Tenders system available on <https://www.eis.gov.lv/EKEIS/Supplier/Procurement/96158> by:

**15 March 2023 till 11:00 (Riga time).**

- 15.2 The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals by using the E-Tenders system.
- 15.3 Only Proposals submitted on the E-Tenders system will be accepted and evaluated for participation in the Procurement. Any Proposal submitted outside the E-Tenders system will be declared as submitted in a non-compliant manner and will not participate in the Procurement.

## 16 OPENING OF PROPOSALS

- 16.1 The Proposals will be opened on the E-Tenders system on **15 March 2023** starting at 15:00 (Riga time) during the opening session. It is possible to follow the opening of submitted Proposals online on the E-Tenders system.
- 16.2 The Proposals will be opened by using the tools offered by the E-Tenders system. The proposed hourly rate and other information that characterizes the Proposal (excluding confidential information) will be published on the E-Tenders system.

- 16.3 The information regarding the Tenderer, the time of Proposal submission, the proposed hourly rate and other information that characterizes the Proposal is generated at the opening of the Proposals by the E-Tenders system and written down in the Proposal opening sheet which will be published on the E-Tenders system and Contracting authority's webpage.

## 17 VERIFICATION OF PROPOSALS FOR COMPLIANCE

- 17.1 Following of the opening of the Proposals the Procurement commission verifies the compliance of Proposals received. The Procurement commission evaluates the Proposals in closed sessions.
- 17.2 The Procurement commission verifies whether the submitted Proposals comply with the requirements stipulated in the Section 13 of the Regulations and whether all required information and documents are submitted and selects for further evaluation the compliant Proposals.
- 17.3 The Procurement commission verifies whether the Tenderers comply with the selection criteria stipulated in the Section 8.2. – 8.4 of the Regulations and selects compliant Tenderers for further evaluation.

## 18 VERIFICATION OF TECHNICAL PROPOSAL

- 18.1 The Procurement commission verifies whether the submitted Technical proposals comply with the requirements stipulated in Section 12 of the Regulations and Technical specification and selects for further evaluation the compliant Technical proposals.

## 19 VERIFICATION OF FINANCIAL PROPOSALS

- 19.1 The Procurement commission verifies whether Tenderers have filled-in the relevant part of the Annex No 5 "Financial proposal" of the Regulations in accordance with the requirements.
- 19.2 The Procurement commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the hourly rates proposed.
- 19.3 The Procurement commission informs the Tenderer whose arithmetical errors have been corrected about the correction of arithmetical errors and the corrected financial proposal.
- 19.4 When evaluating the financial proposal, the Procurement commission takes corrections into account.
- 19.5 The Procurement commission has the right to demand that the Tenderer explains the calculation upon which the financial proposal is based and other related aspects in order to ascertain the objectivity of the financial proposal and whether an abnormally low Proposal has been submitted.
- 19.6 The Procurement commission further evaluates the compliant Proposals which have not been declared as abnormally low proposals.

## 20 FRAMEWORK AGREEMENT AWARD CRITERIA

- 20.1 The Proposal selection criterion is the most economically advantageous proposal according to the evaluation methodology described in this Section below.
- 20.2 The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

No.	Evaluation criteria	Maximum points
20.2.1	<b>Quality of the Technical proposal</b> , which will be evaluated in accordance with the Section 20.3 of the Regulations	<b>51</b>
	Presentation containing info on key experts and the Service delivery process	30
	Additional experience of proposed key experts	21

20.2.2	<b>Total prices for assistance in FIDIC dispute adjudication processes mentioned in the Section 11.2.1. of the Regulations, which will be evaluated in accordance with Section 20.4. of the Regulations</b>	<b>29</b>
	Total price for assistance in connection with the Disputes (in accordance with Section 2.3.1.1. of Technical specification) and Annex 4 "Financial proposal" Table 2	20
	Total price for assistance with 1 (one) additional Dispute (in accordance with Section 2.3.1.2. of Technical specification) and Annex 4 "Financial proposal" Table 3	9
20.2.3	<b>Proposed hourly rates mentioned in the Section 11.2.2. of the Regulations for Services to be provided in relation to arbitration, which will be evaluated in accordance with the Section 20.4 of the Regulations and Annex 4 "Financial proposal" Table 1</b>	<b>20</b>
	<b>Proposed hourly rate for Arbitration Experts Services</b>	10
	<b>Proposed hourly rate for FIDIC Experts Services</b>	7
	<b>Proposed hourly rate for Public Procurement Experts Services</b>	3
	<b>Total</b>	<b>100</b>

### 20.3 Evaluation of the quality of the Technical proposal

#### 20.3.1. Evaluation of the Presentation

20.3.1.1. The Presentation will be evaluated according to the following criteria:

No	Criteria	Points
1	<b>Outstanding level of detail</b> The Tenderer has offered well-structured and detailed presentation that, <i>inter alia</i> , includes: <ul style="list-style-type: none"> <li>a) information on the prognosed timeline for Dispute adjudication and arbitration process, accompanied by detailed and justified explanations supporting the forecast;</li> <li>b) highly detailed step-by-step description with examples of how to conduct the aforementioned Dispute resolution processes based on relevant documents and corresponding legal acts;</li> <li>c) highly detailed description on key expert's previous experience in relevant cases, justification on proposed key experts and further explanations as to whether the Tenderer is planning to involve more experts or only the proposed key experts according to Section 3.2. of Technical specification.</li> </ul>	30
2	<b>High level of detail</b> The Tenderer has offered well-structured presentation that, <i>inter alia</i> , includes: <ul style="list-style-type: none"> <li>a) information on the prognosed timeline for Dispute adjudication and arbitration process, accompanied by some explanations supporting the forecast;</li> <li>b) description with examples of how to conduct the aforementioned Dispute resolution processes based on relevant documents and corresponding legal acts;</li> <li>c) description on key expert's previous experience in relevant cases, justification on proposed key experts and further explanations as to whether the Tenderer</li> </ul>	20

No	Criteria	Points
	is planning to involve more experts or only the proposed key experts according to Section 3.2. of Technical specification.	
3	<b>Low level of details</b> The Tenderer has provided structured, but not sufficiently detailed presentation, that, <i>inter alia</i> , includes: <ul style="list-style-type: none"> <li>a) superficial information on the prognosed timeline for Dispute adjudication and arbitration process, without explanations supporting the forecast;</li> <li>b) description with examples of how to conduct the aforementioned Dispute resolution processes without info on relevant documents and corresponding legal acts;</li> <li>c) superficial information on the proposed team.</li> </ul>	10

20.3.1.2. If at least one of conditions mentioned under description of criteria No 1 listed above is not met, the Procurement commission shall evaluate and score the Proposal according to the methodology (description) of next (lower) level continuing till the criteria No 3. If the proposal does not meet all conditions under the criteria No 3, proposal does not receive any additional points under sub - criteria "Presentation".

#### 20.3.2 Evaluation of the additional experience of proposed key experts

20.3.2.1. Every proposed key expert shall be evaluated based on his/her experience that is above the minimum of the qualification criteria.

20.3.2.2. Only the following experience, which exceeds the minimum experience that is requested in the Section 8.4 of the Regulations and the Section 3 of the Technical specification shall be awarded with points according to the following sub-criteria and methodology:

No	Criteria	Points
a)	1 (one) of the key experts has professional experience as a counsel in a dispute which was dealt under the FIDIC terms and conditions in connection to dispute on entitlement of claims (variations) as well as quantum	7
b)	1 (one) of the key experts has professional experience as an arbitrator in a FIDIC-related dispute with a value of at least 10 000 000 EUR (ten million EUR).	7
c)	1 (one) of the key experts has experience in resolving a FIDIC related dispute in an infrastructure project that concerned application of any of the EU Member States public procurement rules	7
<b>TOTAL:</b>		<b>21</b>

20.3.2.3 The Procurement commission shall obtain the final score for each Technical proposal in this criteria by summing up all points obtained by the particular Technical proposal in this criteria and dividing the sum with the number of members of the Procurement commission which participated in the evaluation of the Technical proposals. The result shall be used as the points for the particular Technical proposal for the purposes of Section 20.5 of the Regulations.

20.3.2.4 The Procurement commission shall obtain the final score for each Technical proposal in this criteria by summing up all points obtained by the particular Technical proposal in this criteria and dividing the sum with the number of members of the Procurement commission which participated in the evaluation of the Presentation analysis. The result shall be used as the points for the particular Technical proposal for the purposes of Section 20.5 of the Regulations.

#### 20.4. Evaluation of the proposed fixed prices for assistance in adjudication processes and hourly rate for experts that might be used in arbitration, mentioned in the Section 11.2 of the Regulations.



20.4.1 The Proposal will receive points for **proposed fixed prices for assistance in adjudication processes and hourly rate for experts that might be used in arbitration, mentioned in the Section 11.2 of the Regulations** in accordance with following formulas:

A.

$$\text{points} = \frac{\text{lowest proposed hourly rate for Procurement expert from the compliant proposals}}{\text{Tenderer's proposed hourly rate for Procurement expert}} \times 3$$

B.

$$\text{points} = \frac{\text{lowest proposed hourly rate for Arbitration expert from the compliant proposals}}{\text{Tenderer's proposed hourly rate for Arbitration experts}} \times 10$$

C.

$$\text{points} = \frac{\text{lowest proposed hourly rate for FIDIC expert from the compliant proposals}}{\text{Tenderer's proposed hourly rate for FIDIC experts}} \times 7$$

D.

$$\text{points} = \frac{\text{lowest proposed fixed price for Adjudication process from the compliant proposals}}{\text{Tenderer's proposed fixed price for Adjudication process}} \times 20$$

E.

$$\text{points} = \frac{\text{lowest proposed fixed price for additional Dispute from the compliant proposals}}{\text{Tenderer's proposed fixed price for additional Dispute}} \times 9$$

20.5 The Procurement commission shall sum up the points obtained by each Proposal by summing up all points that particular Proposal obtained in accordance with the procedures set out in Section 20.2 – 20.4 of the Regulations and dividing by the number of members of Procurement commission participated in the evaluation. The points obtained are calculated and indicated with an accuracy of 2 (two) decimal places after comma. The Framework agreement will be awarded to 1 (one) Tenderer whose Proposal shall obtain the highest final score according to Section 20.2 – 20.4 of the Regulations.

20.6 In case several Tenderers will obtain equal number of points, the Procurement commission will award the right to conclude the Framework agreement to the Tenderer which has obtained higher score for its Technical proposal. If also this score will be equal, then the Procurement commission will award the right to conclude the Framework agreement to the Tenderer which has obtained higher score for additional experience of its proposed key experts (Section 20.2.1, Sub-Section a) of the Regulations). If also this score will be equal, then the Procurement commission will invite representatives of those particular Tenderers and organize a draw. In situation, when representatives of Tenderers chose to not be present at the draw, the Procurement commission will carry out the draw without representatives of Tenderers presence by inviting impartial participant from the Contracting authority.

## 21 TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE FRAMEWORK AGREEMENT

21.1 Prior to making the decision about assigning rights to conclude the Framework agreement, the Procurement commission performs a check regarding the existence of grounds of exclusion stipulated in the Section 8.1 of the Regulations for Tenderer and members of a partnership (if the Tenderer is a partnership). The Tenderer should provide all the necessary evidence upon the Procurement commission request regarding check of exclusion grounds mentioned above.

21.2 If the Tenderer fails to submit required evidence before the deadline, the Procurement commission excludes the Tenderer from participation in the Procurement.

## 22 DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A FRAMEWORK AGREEMENT

22.1 The Procurement commission selects the Tenderer in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulations



and chooses the Proposal in accordance with the Framework agreement award criteria as described in the Section 20 of the Regulations. 1 (one) Tenderer whose Proposal will receive the highest score shall be selected.

- 22.2 Within 3 (three) business days from the date of decision about the Procurement results the Procurement commission informs all the Tenderers about the decision made by sending the information by post or electronically (including on the E-Tenders system) and keeping the evidence of the date and means of sending the information. The Procurement commission announces the name of the chosen Tenderer/-s, indicating:
- 22.2.1 to the rejected Tenderer - the reasons for rejecting its Proposal;
  - 22.2.2 to the Tenderer who has submitted compliant Proposal - the characterization of the chosen Proposal/s and the relative advantages;
  - 22.2.3 the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 22.3 If the Procurement is terminated, the Procurement commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the Procurement is terminated and informs about the deadline within which a Tenderer may submit an application regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 22.4 The Procurement commission when informing about the results has the right not to disclose specific/confidential information, if it may infringe upon public interests or if the Tenderer's legal commercial interests or the conditions of competition would be violated.
- 22.5 The selected Tenderer upon receiving the notification from the Procurement commission must:
- 22.5.1 within 5 (five) business days - to submit to the Contracting authority a copy of a partnership agreement or notification regarding the establishment of the partnership, if required pursuant to requirements under the Section 7.1.2.1 of the Regulations;
  - 22.5.2 within 5 (five) business days - to submit to the Contracting authority a copy of a valid professional risk indemnity insurance that meets the requirements stipulated in the Section 8.3.2 of the regulations. The professional risk indemnity insurance shall be with limit of liability of at least 1 000 000,00 EUR (one million euro) per claim and in the aggregate for the policy period covering all experts mentioned in Proposal with extended reporting period for at least 3 (three) years.
  - 22.5.3 within 10 (ten) days from receiving the invitation - to sign the Framework agreement.
- 22.6 The Framework agreement will be concluded on the basis of the selected Tenderer's/-s' Proposal/-s and in accordance with the Annex No 6 “Draft Framework agreement” of the Regulations.
- 22.7 The Procurement commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulations:
- 22.7.1 refuses to conclude a partnership agreement or to establish the partnership in the cases and deadlines defined by the Regulations or in the cases and deadlines defined by the Regulations does not submit a copy of the partnership agreement or does not inform of the founding of a partnership company;
  - 22.7.2 does not submit a valid professional risk indemnity insurance as stipulated in Section 22.5.2 of the Regulations;
  - 22.7.3 refuses to conclude the Framework agreement or does not submit a signed Framework agreement within the deadlines defined in the Regulations.
- 22.8 In any of such cases mentioned in the Section 22.7 of the Regulations, the Procurement commission is entitled to terminate the Procurement without selecting any Proposal or to select the Proposal with the next most economically advantageous proposal. For either of these decisions a written decision must be made.
- 22.9 Prior to making the decision regarding the conclusion of the Framework agreement with the next Tenderer, the Procurement commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer, the Procurement commission makes a decision

to terminate the Procurement without selecting any Proposal. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer or it does not comply with requirements set in the Section 22.7 of the Regulations, the Procurement commission decides to terminate the Procurement without selecting any Proposal.

## 23 ANNEXES

1. Annex No 1 – Technical specification on 7 (seven) sheets;
2. Annex No 2 – Application for participation in the Procurement (form) on 3 (three) sheets;
3. Annex No 3 – Description of key expert`s experience (form) on 4 (four) sheets;
4. Annex No 4 – Confirmation of the Tenderer`s financial standing (form) on 1 (one) sheet
5. Annex No 5 – Financial proposal (form) on 3 (three) sheets;
6. Annex No 6 – Draft Framework agreement on 24 (twenty four) sheets;
7. Annex No 7 – Non-disclosure undertaking (form) on 3 (three) sheets.

**ANNEX NO 1: TECHNICAL SPECIFICATION**

**TECHNICAL SPECIFICATION FOR THE PROCUREMENT**  
**"ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES"**  
**(ID NO RBR 2023/2)**

## 1. INTRODUCTION TO RAIL BALTICA

The Baltic countries Estonia, Latvia and Lithuania have historically been linked to the east-west railway transport axis using the 1520mm gauge railway system. Because of the existing historical and technical constraints, the existing rail system is incompatible with mainland European standards, thus there is a consensus that Estonia, Latvia and Lithuania need to be fully integrated into the wider European rail transport system. Currently there is no efficient 1435 mm railway connection along the Warsaw-Kaunas-Riga-Tallinn axis, i.e. there are missing links or significant bottlenecks. Thus, there are no direct passenger or freight services along the railway axis as the existing infrastructure does not allow for competitive services compared to alternative modes of transport. Thus, the clear majority of the North-South freight is being transported by road transport and the overall accessibility in the region is low.

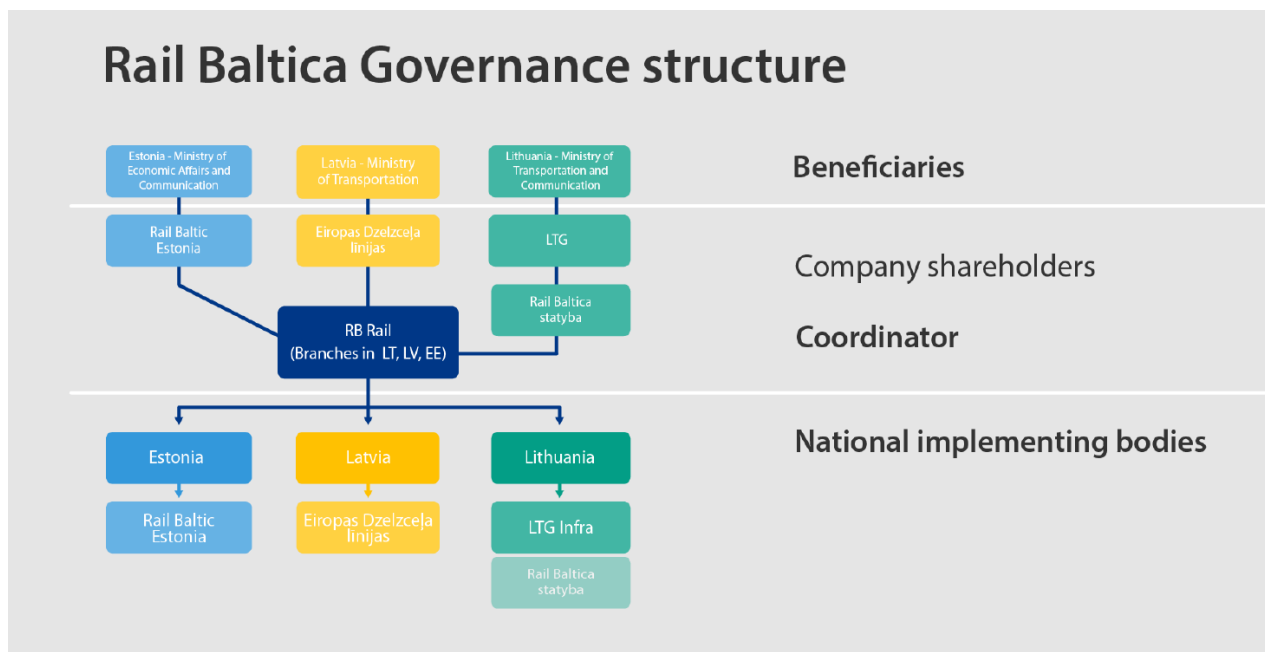
The ambitions of the Rail Baltica Global project (Global Project) are:

- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
- new opportunities for multimodal freight logistics development;
- new intermodal transport solutions for passengers;
- safety and performance improvements;
- a new value platform for digitalization and innovation;
- completion of Baltic integration in the European Union transport ecosystem.

Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe’s largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

RB Rail AS was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU.

The diagram below illustrates the shareholder and project governance structure of the Rail Baltica project.



RB Rail AS together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015-2022 (seven applications in total). The applications were successful and six CINEA grants under the Connecting Europe Facility are available to support the Global Project expenses.

Rail Baltica is a joint project of three EU Member States – Estonia, Latvia and Lithuania – and concerns the building of a fast conventional double-track 1435 mm gauge electrified and ERTMS equipped mixed use railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including a Kaunas – Vilnius spur) with a design speed of 240km/h. In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.

The expected core outcome of the Rail Baltica Global Project is a European gauge (1435mm) double-track railway line of almost 900 km in length meant for both passenger and freight transport and the required additional infrastructure (to ensure full operability of the railway). It will be interoperable with the TEN-T Network in the rest of Europe and competitive in terms of quality with other modes of transport in the region. The indicative timeline and phasing of the project implementation can be found here: <http://www.railbaltica.org/about-rail-baltica/project-timeline/>.

## 2. PROCUREMENT AIM

- 2.1. Based on the FIDIC<sup>7</sup> templates (white book, fifth edition), RB Rail AS and designer have concluded multiple "Design and Design supervision" contracts that are needed to implement Rail Baltica railway project in Latvia, Estonia and Lithuania (the "Contracts"). Subject-matter of all Contracts is regulated by Law of the respective country, however, public procurement related questions are subject to Public Procurement Law of Latvia.

<sup>7</sup> <https://fidic.org/>

- 2.2. Within the implementation of the Contracts, several disputes between RB Rail AS and the designer regarding Contracts variations have occurred, which requires the assistance of independent parties to resolve (the "Disputes").
- 2.3. As a result of the aforementioned, RB Rail AS is seeking to establish a cooperation with the Contractor in order to receive a support on the following matters:
- 2.3.1. **Legal assistance and representation of RB Rail AS during the FIDIC Disputes adjudication procedure**, that shall be conducted under FIDIC white book (fifth edition) disputes adjudication rules. Please note that 2 (two) kinds of assistance might be needed under this part of the Services:
- 2.3.1.1. Assistance in connection with all the Disputes regarding which RB Rail AS **will inform the Tenderers during the Tender process** and assistance in connection with other tasks to be carried out irrespective of the time of reporting the content of the Disputes. The Tenderer must take into account that the following types of assistance (and any other assistance required in connection to below) from the Contractor might be needed in connection with this part:
- I. Assistance in collection of evidence;
  - II. Assistance in selection of the Disputes adjudicator;
  - III. Assistance in selection of technical and / or legal experts;
  - IV. Preparation of RB Rail AS's position/justification of RB Rail AS's position on procedural and substantive matters:
    - a. Related to extension of time;
    - b. Related to rejected variations;
    - c. Related to accepted and/or partially accepted variations, where the subject matter of dispute is only quantum;
    - d. Related application of penalties and enforcement.
  - V. Representation of the RB Rail AS's in oral hearings.
- 2.3.1.2. Assistance in connection with **additional** Disputes regarding which RB Rail AS will inform the Contractor **after the Procurement is finished**. The Tenderer must take into account that the following types of additional assistance (and any other assistance required in connection to below) from the Contractor might be needed in connection with this part:
- I. Assistance in collection of evidence;
  - II. Preparation of RB Rail AS's position/justification of RB Rail AS's position on procedural and substantive matters:
    - a. Related to extension of time;
    - b. Related to rejected variations;
    - c. Related to accepted and/or partially accepted variations, where the subject matter of dispute is only quantum;
    - d. Related application of penalties and enforcement.
  - III. Representation of the RB Rail AS's in oral hearings.
- 2.3.2. If FIDIC Disputes adjudication, mentioned in Section 2.3.1, is unsuccessful, it might be necessary to provide **legal support and representation of RB Rail AS in relation to the subsequent arbitration of Disputes**. The Tenderer must take into account that, *inter alia*, the following types of assistance from the Contractor might be needed in connection with this part:
- I. Assistance in collection of evidence;
  - II. Assistance in selection of the arbitrator;
  - III. Assistance in selection of technical and / or legal experts;
  - IV. Preparation of RB Rail AS's position on procedural and substantive matters (from initiation of arbitration until award stage);
  - V. Preparation of documents (request for arbitration, claim/counterclaim, reply/rejoinder, additional explanations, skeleton arguments, other);
  - VI. Representation of the RB Rail AS in document disclosure stage and other procedural stages, including if necessary, emergency arbitration proceedings
  - VII. Representation of the RB Rail AS's in oral hearings;

## VIII. Other assistance required in connection to above.

- 2.4. In connection with the Services to be provided pursuant to Section 2.3.1.1., in addition, please note that:
- 2.4.1. the Contractor must exclude from the scope of Services entitlement and quantum related analysis (related to additional works and delays), because it will be done by RB Rail AS or a third-party hired by RB Rail AS for this task.
  - 2.4.2. it will be within the sole discretion of the RB Rail AS to decide which types of assistance might be needed. If some type of assistance is not used, the RB Rail AS will not be obliged to pay any penalties, damages, or any other payments related to the non-use of this type of the Services.
- 2.5. In connection with the Services to be provided pursuant to Section 2.3.1.2., in addition, please note that:
- 2.5.1. The prices offered must include costs for all assessments that might be needed in connection with the specific (additional) Disputes (this also includes Contractors obligation to carry out entitlement related assessments, but excludes obligation to carry out quantum related assessments).
  - 2.5.2. It will be within the sole discretion of the RB Rail AS to decide whether assistance might be needed. If RB Rail AS does not request the Contractor for assistance with additional Disputes or if some type of assistance is not used, under no circumstances the RB Rail AS will be obliged to pay any penalties, damages, or any other payments related to the non-use of this part/type of the Services.
- 2.6. In connection with the Services to be provided pursuant to Section 2.3.2. in addition, please note that:
- 2.6.1. the Disputes must be settled in the International Court of Arbitration of the International Chamber of Commerce under the rules of Arbitration of the International Chamber of Commerce.
  - 2.6.2. It will be within the sole discretion of the RB Rail AS to decide whether at all and to what extent it will be necessary to provide legal support and representation of RB Rail AS in relation to the subsequent arbitration of Disputes. If such support is not used, the RB Rail AS will not be obliged to pay any penalties, damages, or any other payments related to the non-use of this part of the Services.
- 2.7. In order for RB Rail AS to issues the following information: (a) information on the party that potentially will be the other party of the adjudication and arbitration related processes; and (b) information on the substance of the Disputes, including information on documents that the Contractor will need to review as a part of the provision of the Services, the Supplier must act in accordance with the procedure set out in Section 5.5. of the Regulations.

**3. KEY EXPERTS**

- 3.1 The entrusted assignments shall be carried out by key experts who comply with the minimum qualification criteria stipulated in Section 8.4 of the Procurement Regulations and in the table below. The Tenderer can propose one key expert for several positions, if proposed expert meets the requirements for the specific position and it will not negatively affect the provision of the Services. By submitting a Proposal, the Tenderer confirms that expert has the required professional experience, and he/she has participated in projects, that complies with the requirements of table below.
- 3.2. In submitted Proposal the Tenderer should name the projects where the key expert, has participated as a lead expert during the specified period. Participation of the key expert in a project means full responsibility (*any kind of assisting role shall not be considered as sufficient to satisfy project experience requirements*) throughout the full project implementation period on important matters directly related to a project. The Contracting authority reserves the right to request copies of documentation of the particular project proving the key expert's role in a project and the responsibilities covered.

The Tenderer shall ensure the availability of at least the following key experts:



1	1 (one) Public procurement expert
<b>The Public procurement expert</b> must meet the following minimum requirements:	
	<p>Within the last 5 (five) years (from 2018) until the proposal submission date the <b>Public procurement expert</b> has gained experience in at least 5 (five) public procurement procedures related to infrastructure projects that were conducted according to the applicable <u>Public Procurement Law of the Republic of Latvia</u>.</p> <p>An infrastructure project is a proposed plan to build, maintain, and upkeep infrastructural facilities, systems, and services, as well as building new roads, constructing new power plants, maintaining sewage systems, and providing drinking water to the public are all examples of infrastructure projects.</p>
2	2 (two) Arbitration experts
<b>The Arbitration experts</b> must meet the following minimal minimum requirements:	
	<p>Within the last 5 (five) years (from 2018) until the proposal submission date) the <b>Arbitration experts</b> have a track-record of arbitration dispute experience in disputes of at least 10 million EUR value (values per 1 dispute).</p> <p>One of the Arbitration experts must be located in Latvia and the other one may be from Estonia or Lithuania.</p>
3	2 (two) FIDIC experts
<b>The FIDIC experts</b> must meet the following minimal minimum requirements:	
	<p>Within the last 5 (five) years (from 2018) until the proposal submission date) the <b>FIDIC experts</b> have a track-record of experience in FIDIC contract management and / or dispute, in projects that value beyond 50 million EUR.</p>

- 3.3 The Tenderer may receive additional points for proposed key experts experience in accordance with the requirements stipulated in the Section 20.3.2.2. of the Regulations.
- 3.4 The Tenderer is not allowed to change its key experts during the execution of the Framework agreement without the prior written approval of the Contracting authority. The Contracting authority is only allowed to grant an approval for such a change if the new expert meets all the same qualification criteria and obtains at least the same amount of points as the expert to be substituted.
- 3.5 The Contracting authority reserves the right to request the Tenderer to replace any involved expert in case of any of the following reasons:
- 3.5.1 repeated careless performance of duties;
  - 3.5.2 incompetence or negligence;
  - 3.5.3 non-fulfilment of obligations or duties stipulated in the Framework agreement;
  - 3.5.4 poor knowledge of English language (unsatisfactory presentation, writing skills in English);
  - 3.5.5 termination of employment relations or cooperation agreement with the Tenderer.
- 3.6 Failure of the Tenderer to propose another expert with equivalent or better qualifications might lead to the termination of the Framework agreement.

#### 4. REIMBURSEMENT OF TRAVEL EXPENSES

- 4.1. In case the Contracting authority for the implementation of a specific instance of service that is procured by the Contracting authority in accordance with the Framework agreement ("Assignment") requires an expert to travel from his/her place of residence or Tenderer's office (whatever is applicable) for more than 200 km one way, the Contracting authority shall reimburse incurred travel<sup>8</sup> expenses and pay for

<sup>8</sup> The point of departure shall be limited to the location in Europe.

accommodation (only when the implementation of the Assignment requires overnight stay and the hotel will be chosen by the Contracting authority) for every expert included in a particular Assignment.

- 4.2. For the implementation of a particular Assignment where traveling is included, the Expert shall ensure average level economical travel and accommodation expenses.
- 4.3. The following travel expenses are subject to reimbursement:
  - 4.3.1. Bus travel – for a distance of less than 400 km one way;
  - 4.3.2. Second-class rail travel – for a distance of less than 400 km one way;
  - 4.3.3. Economy class air travel – for a distance of more than 400 km one way;
  - 4.3.4. A travel expense in total (including but not limited to a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR will be reimbursed at 500 EUR max.
- 4.4. The Contracting authority does not cover other expenditure, including but not limited to daily allowance, meals, local transport, sundry expenses, as well as accident insurance.

## **5. OBLIGATIONS OF TENDERER AND EXPERTS INCLUDED IN THE PROPOSAL**

- 5.1. By accepting to be included in the Proposals, each expert confirms his/her availability and intention to perform the necessary occasional Assignments defined by the Contracting authority in a fully professional manner.
- 5.2. Tenderers (including their corresponding experts) shall remain fully responsible for the results of their services after the completion of an Assignment. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Tenderer concerned. On reasonable grounds the Contracting authority reserves the right to request a particular Tenderer (including their corresponding experts) to correct the results of its services regardless of whether it is necessary during the implementation of a particular Assignment or after it was completed and approved.
- 5.3. During the provision of the services Tenderer is not allowed to unilaterally appoint another expert as a lead expert to implement the Assignment. During the provision of the services Tenderer is allowed to appoint another expert as expert to implement the Assignment with prior approval of the Contracting authority.
- 5.4. If the Contracting authority finds (at any time of Procurement process or during the implementation of the Framework agreement) that provided information on education, experience on a particular expert is false, the concerned expert shall be eliminated from the Procurement process or from the Framework agreement and must be replaced in accordance with Framework agreement and Public Procurement Law (whatever is applicable).

## **6. CONFIDENTIALITY, INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST**

- 6.1. All Tenderers (including their corresponding experts) are expected to ensure that their contractual and professional obligations in particular with regard to confidentiality, independence and absence of conflict of interests are well understood and upheld throughout and after the implementation of any Assignment.
- 6.2. Experts shall remain independent from any activities of other parties, companies, or organizations whatsoever directly acting against the Contracting authority (including but not limited to litigation and procedures for examination of complaints according to the Public Procurement Law) and shall avoid any legally binding relations or any other kind of relations with such parties.

## **7. DURATION OF THE FRAMEWORK AGREEMENT**

- 7.1. The Framework agreement at present is expected to enter into force in the first quarter of 2023. The Framework agreement term will have following conditions: the Framework agreement shall be valid for 48 (forty-eight) months after the Framework agreement is signed or until the maximum Framework agreement amount is reached. There will be an option to extend the term of the Framework agreement for another 1 year if the contract amount will not be reached within the initial period and there is an

active arbitration process which needs to be completed. The volume of work under Framework agreement is not precisely predictable and cannot be quantified reliably.

- 7.2. The Contracting authority reserves the right to terminate the Framework agreement in the cases specified in the Framework agreement, e.g., at any time in the event of a Tenderers' failure to meet the obligations of services quality stated in order form and generally expected for ready to use documents or when services of the Tenderer are no longer required.

## 8. PRESENTATION

- 8.1. The Tenderer shall prepare (free of charge) a presentation (the "**Presentation**") that shall include information on:
  - 8.1.1. the prognosed timeline for the Disputes adjudication and arbitration process;
  - 8.1.2. suggestions on how to better engage in the Disputes adjudication procedure and subsequent arbitration of Disputes;
  - 8.1.3. the proposed team.
- 8.2. Within 2 (two) weeks after the submission of the Proposal, it will be required to present the Presentation in an online meeting. The specific time for the presentation will be subject to agreement with the Contracting Authority.
- 8.3. Length of the Presentation shall not exceed 15 (fifteen) minutes.

## ANNEX NO 2: APPLICATION

APPLICATION FOR PARTICIPATION IN THE PROCUREMENT  
“ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES”  
(ID NO RBR 2023/2)

Name of the Tenderer or all members of the partnership	
Registration number of the Tenderer or all members of the partnership	
VAT payer registration number of the Tenderer or all members of the partnership	
Name, surname and position of the person authorized to represent the Tenderer or name of nominated representative (in case of established partnership)	
Legal address of the Tenderer or all members of the partnership	
Correspondence address of the Tenderer or all members of the partnership	
Bank of the Tenderer or all members of the partnership	
Bank code (SWIFT) of the Tenderer or all members of the partnership	
Bank account (IBAN) of the Tenderer or all members of the partnership	
Contact person and contact information of the Tenderer (name, surname, position, telephone number, e-mail)	

By submitting the Proposal, the Tenderer hereby:

1. Confirms participation in the procurement “Adjudication and arbitration processes related services”, ID No RBR 2023/2;
2. Confirms that, if the Tenderer will be awarded the Framework agreement, the Tenderer will provide quality and timely performance of the contractual liabilities for the proposed price and in accordance with the requirements of the Annex No 1 “Technical specification” of the Regulations;
3. Proposes following key experts for the Service provision:

No	Key expert	Name of the key expert	Country <sup>9</sup>
1	Public Procurement expert		
2	Arbitration expert	a)	
		b)	

<sup>9</sup> Please specify the country where key expert is located.

3	FIDIC expert	a)	
		b)	

4. Indicates that Tenderer will rely on the capacity of following entities (if applicable):

No	Name of the entity (registration No., legal address)	Description of the capacity
1		
2		
n+1		

5. Indicates that Tenderer will involve following subcontractors in the provision of the Services (if applicable):

No	Name of the sub-contractor (registration No., legal address)	Description of the sub-contracted task	Sub-contracted tasks		
			Amount, EUR (without VAT)	% from the proposed price	Size of the enterprise <sup>10</sup>
I	Total amount of the sub-contracted tasks is equal to or exceeds 10'000 euros from the proposed contract price				
1					
2					
n+1					
Total:					
II	Total amount of the sub-contracted tasks is smaller than 10'000 euros from the proposed contract price				
1					
2					
n+1					
Total:					
Total (I+II)					

6. Confirms that Regulations is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a Framework agreement it shall fulfil all conditions of the Regulations as well as enter into a Framework agreement in accordance with the Draft Framework agreement enclosed with the Regulations (Annex No 6 of the Regulations);
7. Confirms that in the preparation and submission of its Proposal, Tenderer has fully considered all the clarifications issued by the Contracting authority;

<sup>10</sup> Please indicate the size of enterprise (small, medium or other) as defined in the Article 2 of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise. Available here: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ.L.2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ.L.2003:124:TOC)

8. Confirms that Tenderer has prepared the Proposal without connection with any other person, company or parties likewise submitting a Proposal and that it is prepared in all respects for in good faith, without collusion or fraud;
9. Confirms that Tenderer's offered services are free from all liens, interests or other rights of third parties;
10. Agrees that the Contracting authority reserves itself the right to reject any or all Proposals and cancel the procurement process before entry into Framework agreement on the grounds specified in the Regulations or the law;
11. Guarantees that all information and documents provided are true;
12. Confirms<sup>11</sup> that meets the criteria of (please indicate by ticking relevant box):  
☐ a small                      ☐ medium                      ☐ other

sized enterprise<sup>12</sup> as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise.<sup>13</sup>

[date of signing]

[name and position of the representative of the Tenderer]

---

<sup>11</sup> Tenderer must indicate size of enterprise for each member of the partnership if the Tenderer is a partnership.

<sup>12</sup> The information on the size of the Tenderer is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

<sup>13</sup> Available here - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2003.124.01.0036.01.ENG&toc=OJ.L.:2003:124:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ.L.:2003:124:TOC)

**ANNEX NO 3: DESCRIPTION OF KEY EXPERT'S EXPERIENCE****KEY EXPERT'S APPLICATION<sup>14</sup>  
FOR PARTICIPATION IN THE PROCUREMENT****"ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES"****(ID No RBR 2023/2)**

---

The position for which the key expert is proposed

Name of key expert	
Education	
Obtained degree	
Location <sup>15</sup>	

---

<sup>14</sup> Separate key expert's application of every position shall be prepared

<sup>15</sup> Please specify the location (country) where key expert is based



**Professional experience within last 7 (seven) years<sup>16</sup>:**

No	Employing organization	Employment period (start – finish dates: month/year – month/year)	Positions held	Activities / Tasks performed
1.				
2.				
3.				

**English language skills<sup>17</sup>:**

Understanding		Speaking		Writing
Listening	Reading	Spoken interaction	Spoken production	
<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>	<i>Enter level</i>

Levels: A1/A2 - Basic user; B1/B2 - Independent user; C1/C2 - Proficient user.

I confirm that I have consented that my candidature is proposed in the procurement "Adjudication and arbitration processes related services", ID No RBR 2023/2.

I confirm that in case the Tenderer [name of the Tenderer or members of the partnership] will conclude the Framework agreement as the result of the Procurement I will participate as Key expert in the execution of the Framework agreement.

**Annexes (diplomas, etc.):**

- 1) Project experience
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

[date of signing]

[signature]

[name of the key expert]

<sup>16</sup> Please see the Section 8.4. of the Regulations.

<sup>17</sup> Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

**Experience<sup>18</sup> of Public procurement specialist:**

No	Public procurement procedures related to infrastructure projects <sup>19</sup>	Period of the service provision (month/year – month/year)	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>20</sup>	Description of the responsibilities	Link to Procurement and/or Procurement dispute publication, Procurement Id No
1. <sup>21</sup>					
2.					
3.					
4.					
5.					

**Experience<sup>22</sup> of Arbitration experts**

No	Brief description of arbitration dispute scope	Period of the service provision (month/year – month/year)	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>23</sup>	Description of the role and responsibilities	Dispute value (EUR <sup>24</sup> , excl. VAT)
1.					

<sup>18</sup> Procedures listed to prove experts experience must be conducted in relation with Public Procurement Law of Latvian Republic

<sup>19</sup> Please indicate gained experience according to Section 3 of Technical specification.

<sup>20</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements.

<sup>21</sup> At least 5 (five) public procurement procedures related to infrastructure projects

<sup>22</sup> Please indicate gained experience in accordance to Section 3.2. Sub-section 2 of Technical specification.

<sup>23</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements.

<sup>24</sup> If the fee is in different currency than EUR, the Tenderer shall recalculate it in EUR in accordance with the currency exchange rate of the European Central Bank on the day of signing the Proposal.

Experience of FIDIC experts:

No	Brief description of FIDIC contract and/ or dispute	Period of the service provision (month/year – month/year)	Client, client’s contact information for references (name of representative, phone, e-mail) <sup>25</sup>	Description of the role and responsibilities	Contract and/ or dispute value (EUR <sup>26</sup> , excl. VAT)
1.					

<sup>25</sup> In case of doubt, the Contracting authority has the right to contact the Client to verify that the services specified complies with the requirements.

<sup>26</sup> If the fee is in different currency than EUR, the Tenderer shall recalculate it in EUR in accordance with the currency exchange rate of the European Central Bank on the day of signing the Proposal..

## ANNEX NO 4: CONFIRMATION OF FINANCIAL STANDING

### CONFIRMATION OF TENDERER'S FINANCIAL STANDING FOR THE PROCUREMENT "ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES" (ID NO RBR 2023/2)

#### Section 8.3.1 of the Regulations

The Tenderer's or at least 1 (one) member of the partnership (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2019, 2020, 2021) is not less than EUR 1 000 000,00 (one million euros) per year.

In the event the average annual financial turnover of a limited partner of a limited partnership (within the meaning of the Commercial Law of the Republic of Latvia, Division X) exceeds its investment in the limited partnership, the average annual financial turnover shall be recognised in the amount of the investment in the limited partnership.

In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) years, the requirement shall be met during the Tenderer's actual operation period. For law firms that have been registered in the Commercial register in accordance with the procedures specified in the Commercial Law of the Republic of Latvia due to the amendments in the Advocacy Law of the Republic of Latvia, Section 116 (successors to rights and liabilities of such law firms which had been established until the day when amendments to Section 116 of Advocacy Law of the Republic of Latvia came into force), exception applies – their predecessor's average turnover will be recognized.

No	Year	Total Turnover in EUR	Notes
The Tenderer or member of the partnership (if the Tenderer is a partnership) on whose capacity Tenderer is relying to certify its financial and economic performance (Section 8.3.1 of the Regulations) and who will be financially and economically responsible for fulfilment of the contract or other entity on whose capacity Tenderer is relying (if the Tenderer is relying on other entity's capacity) to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the Contract:			
Name of the Tenderer/member of a partnership/other entity			
1.	2022		
2.	2021		
3.	2020		
<b>Average annual turnover within the last 3 (three) financial years</b>			

[date of signing]

[name and position of the representative of the Tenderer]

## ANNEX NO 5: FINANCIAL PROPOSAL

### "ADJUDICATION AND ARBITRATION PROCESSES RELATED SERVICES"

Table No 1

No	Service	Hourly rate (EUR without VAT)
	<b>Hourly rate for the following key experts (for assistance in arbitration proceedings in accordance with Section 2.3.2. of Technical Specification)</b>	
1.	Arbitration Experts Services	
2.	FIDIC Experts Services	
3.	Public Procurement Expert Services	

Table No 2

No.	Service	Price for the assistance within entire FIDIC Disputes adjudication procedure (regardless of the number of Disputes to be submitted for examination) <sup>27</sup>	Price per 1 (one) Dispute (EUR without VAT) <sup>28</sup>	Number of Disputes <sup>29</sup>	Total Price (EUR without VAT) of the item in question for the whole FIDIC Disputes adjudication procedure
<b>Assistance and representation of RB Rail AS during the FIDIC Disputes adjudication procedure (in accordance with Section 2.3.1.1. of Technical Specification)</b>		-	-	-	-
1.	Assistance in collection of evidence	-			
2.	Assistance in selection of the Disputes adjudicator		-	-	
3.	Assistance in selection of technical and/or legal experts		-	-	
4.	Preparation of RB Rail AS's position/justification of RB Rail AS's position on procedural and substantive matters:	-			
4.1.	Related to extension of time	-			
4.2.	Related to rejected variation	-			
4.3.	Related to accepted and/or partially accepted variations, where the subject matter of dispute is only quantum	-			
4.4.	Related application of penalties and enforcement	-			
5.	Representation of the RB Rail AS's in oral hearings		-	-	
<b>TOTAL PRICE FOR THE WHOLE FIDIC DISPUTES ADJUDICATION PROCEDURE (FOT THE INITIAL SCOPE)<sup>30</sup>:</b>					<b>31</b>

<sup>27</sup>If a price is to be indicated in this column, RB Rail AS will be able to choose whether or not to use this type of assistance, but if used, RB Rail AS will be obliged to pay the amount indicated regardless of the number of Disputes submitted for review.

<sup>28</sup>If a price is to be indicated in this column, RB Rail AS will be able to choose whether or not to use this type of assistance, but if used, RB Rail will still have the right to choose whether to receive this type of assistance in respect other Disputes. The use of this type of assistance does not imply that RB Rail is obliged to use other types of assistance (which are priced per dispute) related to the dispute in question.

<sup>29</sup>Case/claim count will be specified to Tenderer only after the Tenderer has signed and sent the Non-Disclosure undertaking (Annex No 7) to the Contracting Authority.

<sup>30</sup>For avoidance of doubts - this figure: (a) will be evaluated in accordance with the Section 20.4.1. D of the Regulations; and (b) must include full assistance and representation in FIDIC Disputes adjudication procedure (no additional fees will be paid even if it is necessary to carry out actions that are not expressly mentioned on the list).

<sup>31</sup>Price indicated in this cell, is the price Tenderer should write in in Electronic Procurement system Section “Financial proposal”

Table No 3

No.	Service	Price per 1 (one) additional Dispute (EUR without VAT)
	<b>Additional price for assistance and representation of RB Rail AS during the FIDIC Disputes adjudication procedure in relation to 1 (one) additional Dispute</b> (in accordance with Section 2.3.1.2. of Technical Specification)	
1.	Assistance in collection of evidence	
2.	Preparation of RB Rail AS's position/justification of RB Rail AS's position on procedural and substantive matters:	
2.1.	Related to extension of time	
2.2.	Related to rejected variation	
2.3.	Related to accepted and/or partially accepted variations, where the subject matter of dispute is only quantum	
2.4.	Related application of penalties and enforcement	
3.	Representation of the RB Rail AS's in oral hearings	
<b>TOTAL PRICE FOR ALL TYPE OF ASSISTANCE <sup>32</sup>:</b>		

<sup>32</sup> For avoidance of doubts - this figure: (a) will be evaluated in accordance with the Section 20.4.1. E of the Regulations; and (b) must include full assistance and representation in FIDIC Disputes adjudication procedure (no additional fees will be paid even if it is necessary to carry out actions that are not expressly mentioned on the list).



**ANNEX NO 6: DRAFT FRAMEWORK AGREEMENT**

Please see separate file "Adjudication and arbitration processes related services Framework Agreement".

**ANNEX NO 7: NON-DISCLOSURE UNDERTAKING****Non-disclosure Undertaking No \_\_\_\_\_**

This Nondisclosure Undertaking (the "**Undertaking**") is made on [date] by:

[●], a company registered in [●] under the registration No. [●], having its registered office at [●] (the "**Recipient**"), represented by [●] on the basis of [●].

1. **Purpose.** RB Rail AS, a company registered in Latvia with registration number 40103845025 (the "**Company**") will provide to the Recipient certain information on Rail Baltica Global Project (the "**Confidential Information**") for the purpose of the Recipient to participate in the procurement "Adjudication and arbitration processes related services" (identification number: RBR 2023/2) (the "**Procurement**"). This Undertaking is intended to protect the Company's Confidential Information (including Confidential Information previously disclosed to the Recipient in relation to the purpose indicated in this Clause) against unauthorised use or disclosure.
2. **Confidential Information** means all and any information, – including, but not limited to which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the Company's statements and deliberations – whether in oral, visual machine-readable or written form, recorded or embodied in whatever medium – received before, during or after the Procurement that are related to the Company and/or Rail Baltica project. Confidential Information cannot be disclosed to any third parties/persons or made public otherwise under any circumstances except as set in the Undertaking. The Confidential Information includes, among other things, the respective documents and information received from the Company under this Undertaking regarding the Procurement, irrespectively, whether it is specified as confidential. In case of doubt, whether respective information is confidential, the Recipient will process and handle it as Confidential Information until the Company confirms otherwise.
3. **Obligations of the Recipient:**
  - 3.1. not to use the Confidential Information for purposes other than the implementation of the Procurement;
  - 3.2. not disclose or permit disclosure of any Confidential Information to third parties (other than the persons of the Recipient who are required to have the Confidential Information in relation to the Procurement) or to directors, officers, employees, consultants or agents and sub-contractors of the Recipient, other than directors, officers, employees, consultants and agents and sub-contractors of the Recipient who are required to have the Confidential Information in relation to the Procurement;
  - 3.3. take all reasonable measures to protect and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Undertaking to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care;
  - 3.4. notify in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to the Recipient's attention;
  - 3.5. notify in writing of the existence, terms and circumstances regarding a request or demand to disclose all or any part of the Confidential Information by a court or competent public authority (the "**Disclosure Order**").
4. **Exceptions.** Notwithstanding the above, the Recipient shall not be liable to the Company with regard to disclosure of any Confidential Information if it:

- 4.1. has been made public in a way that does not constitute a violation of this Undertaking;
- 4.2. becomes known to the Recipient, without restriction, from a source other than the Company without breach of this Undertaking by the Recipient and otherwise not in violation of the Company's rights;
- 4.3. is disclosed with the prior written approval of the Company.
5. **Limitations.** The obligation not to disclose the Confidential Information does not apply when it results from the applicable provisions of law and respective persons demand its disclosure. In the event that the Recipient receives a Disclosure Order, the Recipient shall disclose only that portion of the Confidential Information which it is legally required to disclose, and prior to such disclosure, the Recipient, if permitted by applicable law, shall give the Company, and its legal counsel, an opportunity to review the Confidential Information prior to the disclosure.
6. **Confidential information access and protection.** Unless other approach is taken by the Company, the access to the Confidential Information will be performed in electronic (digital) form using the agreed electronical document exchange and storage site in the IT infrastructure of the Company. The Company shall grant access rights to document exchange and storage site to an identifiable natural person who will be involved on behalf of the Recipient. A user's account in said storage site shall be linked to an e-mail of a natural person that contains the Recipient's e-mail domain (Internet network address). The Recipient shall apply IT solutions to protect acquired Confidential Information which are not worse than solutions which the Recipient applies to protect its own confidential information.

Confidential Information shall be managed under following principles:

- (i) *"Need to know"* principle: the Recipient shall provide the Confidential Information to the persons who need it in order to carry out activities required to perform the Procurement and only in extent objectively required to perform obligations entrusted to these persons.
  - (ii) *"Clean screen"* principle: upon completion of work with the Confidential Information the browser software shall be closed, and upon completion of work with the specific document or specific portion of the Confidential Information the computer shall be shut-down or the user shall sign out of its user account in the operating system.
  - (iii) *"Clean desk"* principle: upon completion of work with the Confidential Information in paper form the documents shall be removed from the work tables and other work surfaces and stored in a way to prevent falling into unauthorised hands or documents shall be destroyed in line with procedure set-forth in law.
  - (iv) *"Awareness"* principle: the Confidential Information shall not be left unsupervised and the content shall not be disclosed to persons it does not apply to.
7. **Term.** The obligations of this Undertaking shall become effective as of the date of its signing by the Recipient and shall be for unlimited time period or maximum time period allowed by laws.
  8. **Return of Materials.** All Confidential Information supplied to the Recipient shall be promptly returned to the Company or deleted, accompanied by all copies of such Confidential Information made by the Recipient, within five (5) business days after the written request by the Company and the Recipient shall use its reasonable endeavors to ensure that anyone to whom the Recipient has supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that such recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body, or where the Confidential Information has been disclosed under Clause 5 of this Undertaking.
  9. **Remedies.** In the event that the Recipient breaches its commitments under the Undertaking, the Recipient shall compensate all damages to the Company. The Recipient's obligations set forth in the Undertaking are necessary and reasonable in order to protect the Company's interests and its business. The Company and the Recipient each expressly agree that due to the unique nature of the Confidential Information, compensation of direct damages solely might be inadequate to compensate the Company for any breach

by the Recipient of its covenants and agreements set forth in this Undertaking. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the Company and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Company shall be entitled to obtain injunctive relief against the threatened breach of this Undertaking or the continuation of any such breach by the Recipient, without the necessity of posting a bond or other security or proving actual damages.

10. **Governing Law and Dispute Resolution.** This Undertaking and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Republic of Latvia, without giving effect to principles of conflicts of law. All disputes arising out of or in connection with this Undertaking shall be dealt with by amicable negotiation. If the parties are unable to reach an agreement by negotiation, then any dispute, disagreement or claim arising from this Undertaking which relates to the same or any breach thereof, termination or invalidity shall be finally resolved in the light of general civil jurisdiction rules of the Republic of Latvia.
11. **Amendment and Waiver.** Any term of this Undertaking may be amended with the written consent of the Company and the Recipient. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Undertaking by the Recipient shall not constitute a waiver of any term hereof.
12. **Inside Information.** The Recipient acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation and the Recipient undertakes not to use any Confidential Information for any unlawful purpose.

On behalf of the Recipient:

---

[•]

---

[•]