

Riga, 22 January 2016
No 6.1/2016-12

**Answers to the questions from the Candidates
in procurement No P/2016-2 “Legal Services for Rail Baltica Project”**

The Management of RB Rail AS has prepared following answers to the questions received from the Candidates by January 20, 2016:

No	Question	Answer
1.	Is RB Rail AS looking for one service provider for all three jurisdictions or a separate service provider for each of the jurisdictions?	RB Rail is looking for a service provider who is able to deliver the services in all three Baltic States. The ability to provide knowledge and expertise on the specific subject in each of the Baltic States will be evaluated in accordance with the Evaluation methodology.
2.	In case one service provider is accepted for provision of legal services in all three jurisdictions (maybe with sub-contacting arrangements for some of the jurisdictions), will certification and registration in the country of residence of that service provider alone (Latvia) satisfy the requirement in Section 5.1 of the by-laws?	If a sub-contracting approach is proposed, the Candidate has to submit a documentary evidence proving the sub-contractor's competence and qualifications in the respective field in accordance with the section 5.1 of the Rules of pre-qualification.
3.	Taking into consideration that services will be needed in all three jurisdictions, including sub-contracting arrangements are allowed, is it acceptable according to Section 5.3 of the by-laws to submit references from any of the jurisdiction (e.g. two projects from one jurisdiction and the third from another, or each project from different jurisdiction)?	The Candidate is allowed to rely on the competence and experience of another provider. But there must be proof of the cooperation with this provider whose experience and resources will be used for the provision of the requested services by the company. References can be submitted disregarding place of delivery (jurisdiction).
4.	Please clarify meaning of the phrase „for EU funded projects“ which is used in Section 5.3 of the by-laws: does it mean that legal services were paid from EU funding or does it merely mean that the project was financed from EU funding although the legal services could have been paid from different funding?	The section 5.3 means that Candidate shows the experience in provision of services under EU funded projects. Using the formulation from the question: ‘it merely means that the project was financed from EU funding although the legal services could have been paid from different funding’.

Akciju sabiedrība „RB Rail AS”

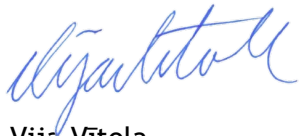
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5.	Please clarify the requirement in Section 6.5 of the by-laws: is documentary evidence proving the qualification of a candidate required or not, and with respect to which qualification requirements such documentary evidence is required?	The Candidate has to submit a documentary evidence proving applicant's and sub-contractor's (if such is proposed) competence and qualifications in the respective field in accordance with the sections 5.1 and 5.2 of the Rules of pre-qualification. The Candidate may submit any documents that are deemed appropriate to support the required qualifications. There is no limitation to a specific set of documents.
6.	What documents if any a law firm should submit with a proposal according to requirements defined at clause 6.5. of invitation to submit pre-qualification documents for procurement "Legal Services for Rail Baltica Project"?	See answer 5.
7.	Should a candidate limit description of its experience in providing services in Annex 2 to the by-laws to the experience which it has had during the previous three full economic years, as in Section 5.3 and Annex 3., or there is no such limitation?	There is no such limitation. However, the Candidate has to ensure that the referenced experience and resources are still is available for the provision of the services included in the proposal.
8.	We understand the candidate should have the capability to provide legal services on a pan-Baltic level, (Estonia, Latvia and Lithuania). Can the candidate consist of a group of persons and/or legal entities in all three countries (for example a group of law firms with one firm from each of the three Baltic countries) or must the candidate be an entity/person/group of persons from one country with sub-contractors (or other cooperation arrangements) with legal service providers in the other two countries?	It is not required that a Candidate from Latvia participates in association with representatives (group of persons) in Lithuania or Estonia. However, it has to be described how the Candidate is planning to deliver the Services (including the involvement of the experts) as described in the Specification in order to ensure that experienced legal advisors provide legal services on various legal matters across all three Baltic states.
9.	Section 5.2 of the prequalification rules requires that the Candidate's annual turnover is not less than 200,000 EUR for the last three years (2013,2014, 2015). If the applicant operates in a business form which is not required to prepare annual accounts (for example a sworn attorneys office or <i>zvērinātu advokātu birojs</i>) in Latvia, what documents may the Candidate utilize to show its turnover? Is a statement of confirmation of the annual turnover from the Candidate sufficient?	Statement of the confirmation of the annual turnover from the Candidate is sufficient if the applicant operates in a business form which is not required to prepare annual accounts. But, if the Candidate is in the possession of documentary evidence to prove qualification of section 5.2 (i.e. profit-loss statement, etc.), it shall be submitted.
10.	Section 5.3 of the prequalification rules states that the candidate must have successfully performed (i.e. the agreement must have been finalised by	Requirement refers to any of the mentioned situations. This requirement is meant to make sure that the Candidate has the appropriate

	<p>the date of submission of the proposal) at least 3 services (tasks, works etc.) for EU funded projects in the field of proposed services by the Candidate. Do we understand correctly that this requirement should be read broadly and refers to any of the below situations:</p> <ul style="list-style-type: none"> a. The candidate provided legal services/advice to a person or entity that receives EU funding; b. The candidate has been awarded EU funds for implementing a project; c. The candidate has acted as a sub-contractor on an EU funded project; d. The candidate advises on legal issues pertaining to EU funded projects (for example compliance with EU funding reporting requirements or implementation requirements of a particular project.). 	<p>experience and is familiar with the EU laws relevant to the EU financed projects (see answer 4).</p>
11.	<p>During our review of the Rules of Pre-qualification we have observed that in the Pre-Qualification criteria there is a requirement listed in Section 5.3 that within last 3 full economic years (2013, 2014, 2015) the candidate must have successfully performed (i.e. the agreement must have been finalized by the date of submission of the proposal) at least 3 services (tasks, works, etc.) for EU funded projects in field of proposed services by the candidate.</p> <p>Pursuant to our knowledge of existing public procurement regulations of Latvia and the European Union it is not permitted to include a qualification criterion for services which is based on the source of funding for the relevant projects in which the experience is demonstrated by candidates. This interpretation has applied towards several contested terms and conditions of public procurement projects in which experience in the state-funded, municipality-funded, or EU-funded projects was required, and it was not recognized as presenting the candidates' experience in the most objective manner.</p> <p>Do we understand this correctly that the requirement of Section 5.3 may not be applicable as the only add-on condition presenting the candidates' expertise in</p>	<p>The public procurement regulations of Latvia are not binding for this particular procurement procedure. Also see answer 10.</p>

	the list of Services? Namely, would the candidate's expertise in totality 11 sections of Fields of Proposed Services be disregarded if at least 3 of them in the last 3 years are not EU-funded projects? We believe that such interpretation may unjustifiably narrow the scope of candidates.	
12.	Is it acceptable that at a list of references (annex No 3) information regarding capex of agreement is not mentioned as such information in most cases is confidential and clients do not allow to disclose it to third persons.	The information regarding capex in the list of the references is meant as total amount of EU funded project within which the legal advice (services) was provided to Customer (receiver of EU funds).



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