

Warsaw, 17.08.2018

**To all participants in the proceeding,**

In relation to the request to clarify the content of the Tender Rules applicable to the proceeding for the Transport Market Study of the Rail Freight Corridor North Sea – Baltic, please find below the following explanations:

**Question 1:**

When considering subcontracting, do the conditions specified under 6.1, 6.2, 6.3 and 6.4 of the Tender Rules need to be applied and proven for the subcontractor as well, thus requiring submission of relevant evidence and documents?

**Answer 1:**

In case of subcontracting only the Contractor must fulfil the conditions specified in Article 6 of the Tender Rules. However, for the bid to be complete, Annex 5 to the Tender Rules needs to be filled by the Contractor.

**Question 2:**

With regard to chapter 6.3 and chapter 24. No. 1b) (p. 17) of the Tender Rules, do the criteria to fulfill the conditions of 6.3 need to be proven by each company in case of joint application or can the joint venture companies fulfill the criteria together?

**Answer 2:**

In case of submission of a joint bid, criteria to be met according to chapter 6.3 may be fulfilled jointly.

Art. 24 point 1 b) will be corrected and replaced by the following:

In case of submission of a joint bid, the detailed terms set out in Article 6.1-6.3 shall be deemed to be met if all the Contractors submitting the joint bid meet them jointly, whereas the document referred to in Article 6.4 must be submitted by each of the Contractors submitting a joint bid.

Document indicated in chapter 6.4 has to be submitted by each company in the joint venture. In case of subcontracting document referred in 6.4 has to be submitted by the Contractor only (see answer to Question 1).

**Question 3:**

With reference to conditions specified under 6.4 of the Tender Rules, more specifically the paragraph referring to contractors with residence outside Poland (p. 6), can these documents be summarized by submitting a duly signed self-declaration or do governmental documents of proof need to be submitted?

**Answer 3:**

In order to facilitate the declaration gathering procedure, the Contracting party changes the current provision of art. 6.4 of the Tender Rules by asking only for the original companies register. Documents numbered as Annexes 3.4.2, 3.4.3 and 3.4.4 are no longer applicable (proper update made in art. 12 Content of the Bid).

Therefore art. 6.4 will be replaced by the following:

Within the scope of the condition specified in 6.4, the following document must be submitted by the Contractor:

- a valid extract from the relevant register or from the central business records and information, if separate regulations require entry in the register or filing with the business register, issued not earlier than 6 months before the deadline for submission of bids (Annex No. 3.4.1 ).

**Question 4:**

Referring to Chapter 9, point 3 of the Tender Rules (p. 7), it is required in sentence 2 that all persons authorized to represent the contractor need to sign all documents provided with this bid. In Chapter 11 point 6 it is also required that the same number of persons is required to initial all pages that were changed (forms given by the contracting authority). We understand this to be rather high exclusion criteria; it is impossible to have several managing directors and authorized signatories, possibly situated in different offices, sign and initial one bid. Can we propose an alternative interpretation? Such as: it is required that the bid is signed by one or more person(s) legally authorized to represent the company as stated in the respective legal document.

**Answer 4:**

All documents have to be signed according to the power of representation. In the scenario described documents signed separately by each representative will be treated as one.

It is allowed to authorize a representative by issuing a power of attorney. This document may be also issued in more than one copy to be signed by each representative separately.

In case of a joint bid the companies in the venture may assign one representative among them by issuing a power of attorney signed as proposed above.

**Question 5:**

Referring to Annex No. 3.3 of the Tender Rules: As the table does not allow for enough space, is it allowed to fill out the list of orders performed by the contractor in a separate word document, although changes in forms provided by the contracting authority are not allowed? Also, in what form shall the evidence of proper performance be provided?

**Answer 5:**

Editable version of the annexes has been uploaded on the EEIG website to enable filling the table. It is allowed to use own templates though containing the exact information as the provided templates. References about the proper execution of the studies are sufficient.

**Question 6:**

Referring to Annex No. 5 of the Tender Rules: Who shall sign the List of work for subcontracting? The contractor or the subcontractor?

**Answer 6:**

Annex No. 5 should be signed by the Contractor.

**Question 7:**

In Chapter 12 of the Tender Rules a list of documents to be submitted with the bid is provided. Respective Annexes are also mentioned. Besides the annexes and forms provided, will you provide further templates for annexes to be used in order to submit the respective proof and fulfil the criteria? Or do the annex numbers refer to the required numbering of the bid annexes? (e.g. Annex 3.2, 3.4.1, 3.4.2 etc.)

**Answer 7:**

No further templates are foreseen.

In case of no template being provided as an annex, a separate document should be enclosed by the Contractor (e.g. the document provided by the relevant bank or institution confirming the amount of financial means or the creditworthiness of the Contractor) and numbered as e.g. Annex 3.2 to the bid.

**Question 8:**

Do all pages of the proposal including all annexes need to be numbered sequentially and do they need to be paginated?

**Answer 8:**

According to point 8 of the Annex No. 2 Bid form, pages should be sequentially numbered. They do not need to be paginated.

**Question 9:**

The Tender Rules do not specify the number of originals or copies to be submitted. Is our understanding correct that only one paper-based original bid shall be submitted and that no electronic version (USB, CD) is required?

**Answer 9:**

The bid should be submitted in paper form, no electronic versions are required. One original is sufficient.

We consider documents multiplied due to the need of all representatives signatures as one paper (see the answer to Question 4).

**Question 10:**

Do bidders implicitly accept the Draft Contract and its conditions when submitting the Proposal?

**Answer 10:**

Yes. Draft Contract can only be modified till the offer submission.

**Question 11:**

In Annex 1, § 10 No. 3 refers to a penalty payment for breach of terms in the amount of PLN 10.000 per breach. Is it possible to make amendments in the following form: Penalty should be subject to the total contract value, the penalties for breach of contract shall be no more than 10% , maximum 25.000 EUR.

**Answer 11:**

The Contracting party maintains the provisions specified in Annex 5, § 10 No. 3 of the Draft Contract.

**Question 12:**

Is it correct that there is no § 11 in Annex 1?

**Answer 12:**

We guess you mean there is no §11 in Annex 5 of the draft contract, which is correct. The numbering of Annex 5 to the Draft contract will be corrected.

**Question 13:**

The Contract does not specify liability. We suggest the following: Liability shall be limited to 10-fold amount of the contract value, maximum 2.500.000 EUR, excluding damages and damages resulting from grossly negligent behavior.

**Answer 13:**

Liability provision is described in art. 13 point 6 of the Draft Contract: the Contracting party agrees to limit the Contractor's liability for damages incurred by the Contracting party to the proposed 10 times of the net remuneration.

**Question 14:**

Provisions of § 11 of the Draft Contract regulates various contracting penalties; are these open for amendment?

**Answer 14:**

These provisions may only be amended till the bid submission. Please note that contractual penalties will not be higher than 30% of the net remuneration. When the total sum of the contractual penalties exceeds 29% of the net remuneration the Contracting Party has the right to withdraw from the unexecuted part of the Contract.

**Question 15:**

Article 9 – Preparation of the Bid; Point 5: the Contractors can use their own templates to prepare Bid Annexes, provided the content of these documents remains in accordance with the Tender Rules, including with what stated in Article 9, point 6;

**Answer 15:**

In order to facilitate completing the bid, editable version of the Annexes has been uploaded on the EEIG website. It is allowed to use own templates though containing the exact information as templates.

**Question 16:**

Article 10 – Description of the price calculation method; Point 3: the VAT to be added to the price for bid evaluation purposes by contractors not registered in Poland shall be 23%?

**Answer 16:**

In terms of the price calculation method the gross price is taken into consideration. Therefore for the bids submitted by the companies registered outside of Poland, for the purpose of the comparison of the offers, the amount of VAT 23% will be added to the net amount of the offer.

**Question 17:**

Article 24 – Joint Bid, point 1, letter b, the requirement under article 6.3 relating to the delivery of at least 3 (three) transport market studies in the rail sector can be fulfilled by any of the contractors applying jointly for the bid, whereas the requirements set in articles 6.2 and 6.4 shall be fulfilled by each contractor applying jointly for the bid;

**Answer 17:**

See the answer to Question 2.

**Question 18:**

Article 25 – Method for communication of the contracting party with the contractor; Point 1: The tender rules refer to regular post. Can the Contractor submit the bid by express courier as well (i.e. DHL, UPS, TNT...), or by hand?

**Answer 18:**

The bid has to be delivered to the EEIG headquarter in original paper form. The express courier can be used to deliver the bid to the address of the EEIG or delivered by hand within the deadline. The deadline is 27.08.2018 4 p.m. local time – the bid has to be received by the deadline.

No electronical submission is allowed.

**Question 19:**

Within the scope of the condition specified in 6.2, the Contractor is required to prove having financial means or creditworthiness in the amount of not less than EUR 45,000.00. Evaluation of meeting the condition indicated in 6.2. will be based on the documents provided by the Contractor: information of the bank or the cooperative savings and credit bank where the Contractor holds an account, confirming the amount of financial means or the creditworthiness of the Contractor, issued not earlier than 3 months before the deadline for submission of the bid (Annex No. 3.2).

Is it supposed to mean a bank guarantee or just an official letter from bank confirming the amount of financial means or the creditworthiness of the Contractor?

**Answer 19:**

An official letter from the bank or other institution confirming the amount of financial means or the creditworthiness of the Contractor is sufficient. No bank guarantee is required.

**Question 20:**

In Section 1.4. "Milestones and deliverables" in the Terms of reference, Annex 1 to the Tender Rules) - will the delivery of the information from IMs/ABs be coordinated by the WG TMS or is it expected to be done by the Contractor itself?

**Answer 20:**

The central contact point for the Contractor will be Working Group TMS Leader and the consultant will cooperate and gather the information from the Working Group only. WG representatives will coordinate gathering information within respective IMs.

**The Contracting party makes the following changes to the content of the Tender Rules in this proceeding:**

**The following provisions shall change:**

**Tender Rules Art. 6.4**

6.4 Their bid will not be subject to rejection under Article 16 points 5-10 of the Tender Rules. Within the scope of the condition specified in 6.4, in order to demonstrate that the Contractor's bid is not subject to rejection under Article 16 point 5-10 of the Tender Rules, the following documents must be submitted by the Contractor:

- a valid extract from the relevant register or from the central business records and information, if separate regulations require entry in the register or filing with the business register, issued not earlier than 6 months before the deadline for submission of bids (Annex No. 3.4.1 );
- up-to-date information from the National Criminal Register within the scope defined in Article 16, point 5 - 7, 9, 10 of the Tender Rules, issued not earlier than 6 months before the deadline for submission of bids (Annex No. 3.4.2);
- current certificate of the appropriate head of the tax office and the relevant branch of the Social Insurance Institution or the Agricultural Social Insurance Fund confirming respectively that the Contractor is not in arrears with the payment of taxes, fees, and health and social insurance premiums or a certificate that they obtained the legal exemption, postponement or distribution of the outstanding payments or suspension of performance of the decision of the competent authority in full, issued not earlier than 3 months before the deadline for the submission of the bid (Annex No. 3.4.3).

The Contractor with its registered office or place of residence outside the territory of the Republic of Poland, it shall submit a document or documents issued in accordance with the law of the country in which it is established or domiciled, confirming that:

- no liquidation or bankruptcy related to it has been declared,
- no ban on applying for the order has been adjudicated against it,
- it is not in arrears with the payment of taxes, social security or health insurance fees or premiums, or they have obtained legal exemption, postponement, or spreading of

outstanding payments into instalments, or suspension of the full implementation of the decision of a competent authority (Annex No. 3.4.4).

is replaced by:

#### 6.4 Current legal situation of the company.

Within the scope of the condition specified in 6.4, the following document must be submitted by the Contractor:

- a valid extract from the relevant register or from the central business records and information, if separate regulations require entry in the register or filing with the business register, issued not earlier than 6 months before the deadline for submission of bids (Annex No. 3.4.1 ).

#### **Tender Rules Art. 12**

The complete bid must contain the following documents:

1. The completed bid form (filled in Annex No. 2 to the Tender Rules);
2. A statement by the Contractor on the fulfilment of the conditions (filled in Annex No. 3.1 to the Tender Rules);
3. Information of the bank confirming the amount of financial means or the creditworthiness of the Contractor (Annex No. 3.2);
4. List of the orders performed (filled in Annex No. 3.3 to the Tender Rules);
5. A valid extract from the relevant register or from the central business records and information, if separate regulations require entry in the register or filing with the business register, issued not earlier than 6 months before the deadline for submission of bids - Annex No. 3.4.1;
6. Up-to-date information from the National Criminal Register within the scope defined in Article 16, points 5 - 7, 9, 10 of the Tender Rules, issued not earlier than 6 months before the deadline for submission of bids - Annex No. 3.4.2;
7. Current certificate of the appropriate head of the tax office and the relevant branch of the Social Insurance Institution or the Agricultural Social Insurance Fund confirming respectively that the Contractor is not in arrears with the payment of taxes, fees, and health and social insurance premiums or a certificate that they obtained the legal exemption, postponement or distribution of the outstanding payments or suspension of performance of the decision of the competent authority in full, issued not earlier than 3 months before the deadline for the submission of the bid Annex No. 3.4.3;
8. Contractors with their registered office or place of residence outside the territory of the Republic of Poland documents issued in accordance with the law of the country in which they are established or domiciled, confirming that:
  - no liquidation or bankruptcy related to them has been declared,
  - no ban on applying for the order has been adjudicated against them,
  - they are not in arrears with the payment of taxes, social security or health insurance fees or premiums, or they have obtained legal exemption, postponement, or spreading



- of outstanding payments into instalments, or suspension of the full implementation of the decision of a competent authority - Annex No. 3.4.4;
9. Confirmation of the technical and professional qualifications of the persons (filled in Annex No. 4.1 to the Tender Rules);
  10. Brief description of the methodology of the study and the project schedule - Annex No. 4.2;
  11. List of work for subcontracting (filled in Annex No. 5 to the Tender Rules).

is replaced by:

The complete bid must contain the following documents:

1. The completed bid form (filled in Annex No. 2 to the Tender Rules);
2. A statement by the Contractor on the fulfilment of the conditions (filled in Annex No. 3.1 to the Tender Rules);
3. Information of the bank confirming the amount of financial means or the creditworthiness of the Contractor (Annex No. 3.2);
4. List of the orders performed (filled in Annex No. 3.3 to the Tender Rules);
5. A valid extract from the relevant register or from the central business records and information, if separate regulations require entry in the register or filing with the business register, issued not earlier than 6 months before the deadline for submission of bids - Annex No. 3.4.1;
6. Confirmation of the technical and professional qualifications of the persons (filled in Annex No. 4.1 to the Tender Rules);
7. Brief description of the methodology of the study and the project schedule - Annex No. 4.2;
8. List of work for subcontracting (filled in Annex No. 5 to the Tender Rules).

#### **Tender Rules Art. 16**

The Contracting party shall reject a proposal if:

1. Its content fails to comply with the Tender Rules, subject to the provision of Article 17 subsection 11 point c) hereof;
2. Submission of the proposal constitutes an act of unfair competition under the Polish Act of Counteracting Unfair Competition;
3. It contains an abnormally low price or costs in relation to the object of procurement or if the contractor failed to submit clarifications within the established period of time;
4. The contractor fails to meet the conditions specified in Article 6.
5. The contractor is a natural person legally convicted of an offence:
  - a) Offence under section 165a, sections 181-188, section 189a, sections 218-221, sections 228-230, section 250a, section 258 or sections 270-309 of the Act of 6th June 1997 – the Polish Criminal Code (Dziennik Ustaw item 553, as amended 127) or section 46 or 48 of the Act of 25th June 2010 of sport (Dziennik Ustaw of 2016 item 176),



- b) Offence of a terrorist nature under section 115 Article 20 of the Act of 6th June 1997 – Kodeks Karny [Polish Criminal Code],
  - c) financial offence – tax fraud.
6. The contractor with its registered office or place of residence outside the territory of the Republic of Poland, did not submit a document or documents issued in accordance with the law of the country in which it is established or a statement which confirms what is required in the proceedings.
  7. The contractor whose incumbent member of its management board or supervisory body, a partner in a general or professional partnership, or a general partner in a limited partnership or limited joint-stock partnership, or a holder of a commercial power of attorney has been sentenced for an offence referred to in point 5 hereof by a final and binding judgement of court;
  8. There is a final and binding judgement or a final administrative decision convicting the contractor of being in delay with payment of taxes, fees or contributions on social and health insurance,
  9. The contractor participated in preparing the procedure for awarding the procedure or the contractor's employee, as well as person hired under an agreement for specific work, for personal services, of agency or other agreement on provision of services took part in preparations of such procedure, unless breach of competition caused by such a relationship may be eliminated in a manner other than rejection of the contractor's proposal;
  10. The contractor being a collective entity against whom the court has ruled the prohibition of applying for public procurement contracts pursuant to the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty (Dziennik Ustaw 2015 item 1212, 1844 and 1855 as well as of 2016 item 437 and 544);
  11. The contractor is an entity which is prohibited to apply for public procurement as a preventive measure;
  12. Within 3 days from being serviced with a proper notice, the contractor refused to correct errors specified in Article 17 subsection 10 point c) hereof;
  13. The proposal is invalid under separate provisions;
  14. The contractor failed to complete lacking documents within the established deadline despite being noticed to do so;
  15. The proposal contains errors in calculations which cannot be corrected under Article 17 subsection 10 hereof;
  16. The contractor submitted improper information influencing or possible to influence the result of the pending procedure;

is replaced by:

The Contracting party shall reject a proposal if:

1. Its content fails to comply with the Tender Rules, subject to the provision of Article 17 subsection 11 point c) hereof;

2. Submission of the proposal constitutes an act of unfair competition under the Polish Act of Counteracting Unfair Competition;
3. It contains an abnormally low price or costs in relation to the object of procurement or if the contractor failed to submit clarifications within the established period of time;
4. The contractor fails to meet the conditions specified in Article 6.
5. The contractor is an entity which is prohibited to apply for public procurement as a preventive measure;
6. Within 3 days from being serviced with a proper notice, the contractor refused to correct errors specified in Article 17 subsection 10 point c) hereof;
7. The proposal is invalid under separate provisions;
8. The contractor failed to complete lacking documents within the established deadline despite being noticed to do so;
9. The proposal contains errors in calculations which cannot be corrected under Article 17 subsection 10 hereof;
10. The contractor submitted improper information influencing or possible to influence the result of the pending procedure.

**Tender Rules Art. 24 point 1 b)**

In case of submission of a joint bid, the detailed terms set out in Article 6.3 shall be deemed to be met if all the Contractors submitting the joint bid meet them, whereas the documents referred to in Article 6.3 and 6.4 indicating that the bid is not subject to rejection must be submitted by each of the Contractors submitting a joint bid.

is replaced by:

In case of submission of a joint bid, the detailed terms set out in Articles 6.1-6.3 shall be deemed to be met if all the Contractors submitting the joint bid meet them jointly, whereas the document referred to in Article 6.4 must be submitted by each of the Contractors submitting a joint bid.

**Tender Rules Art. 24 point 1 c)**

The declaration referred to in Article 6 is jointly submitted by all the Contractors submitting the joint bid or by the Proxy on their behalf.

is replaced by:

The declaration referred to in Article 6.1 is jointly submitted by all the Contractors submitting the joint bid or by the Proxy on their behalf.

**Tender Rules Annex No. 3.1**

The title: Statement by the Contractor on the fulfilment of the conditions contained in Article 6.2 of the Tender Rules

is replaced by:

Statement by the Contractor on the fulfilment of the conditions contained in Article 6.1 of the Tender Rules.

**The remaining provisions of the Tender Rules and Annexes do not change, and the changes introduced above should be treated as only binding.**



