

## PROCUREMENT POLICY FOR IMPLEMENTATION OF RAIL BALTIC / RAIL BALTICA PROJECT

### I. GENERAL INFORMATION

1. Rail Baltic / Rail Baltica is a new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevezys-Kaunas to Lithuanian-Polish border, with the connection of Vilnius-Kaunas, thus, located in the territories of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania (hereinafter - **Rail Baltic / Rail Baltica**).
2. Rail Baltic / Rail Baltica project is implemented by multiple public institutions and derived private persons in the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania which poses financial, legal and practical challenges given the fact that the Rail Baltic / Rail Baltica railway infrastructure must be fully interoperable.
3. Implementation of the Rail Baltic / Rail Baltica project is financed by the European Union through the Connecting Europe Facility and the co-founding of the three Baltic states – the Republic of Lithuania, the Republic of Latvia and the Republic of Estonia, and if necessary from other sources of financing. The Ministry of Economic Affairs and Communications of the Republic of Estonia, the Ministry of Transport of the Republic of Latvia and the Ministry of Transport and Communications of the Republic of Lithuania (hereinafter – **Beneficiaries**) are beneficiaries of the Rail Baltic / Rail Baltica project pursuant to the Connecting Europe Facility grant agreements.
4. The Beneficiaries of Rail Baltic / Rail Baltica project have designated the Estonian Technical Regulatory Authority, OU Rail Baltic Estonia, UAB Rail Baltica statyba, AB Lietuvos Geležinkeliai and SIA Eiropas dzelzceļa līnijas as the national implementing bodies of Rail Baltic / Rail Baltica project (hereinafter – **National implementing bodies**).
5. RB Rail AS is a joint-stock company established and operating under the laws of the Republic of Latvia. RB Rail AS has been established with the main business of the company being planning, designing, construction and marketing (including branding) of the Rail Baltic / Rail Baltica railway line.
6. Pursuant to the Agreement on the Contracting Scheme for the Rail Baltic / Rail Baltica (hereinafter – **Contracting Scheme**), entered into by both the Beneficiaries and the National implementing bodies, RB Rail AS has been put in charge of procuring certain elements of the Rail Baltic / Rail Baltica railway infrastructure, and associated studies, plans and designs, which are either for common benefit or which are crucial to the entire Rail Baltic / Rail Baltica

railway infrastructure, as well as procurements which are for the benefit of several or all the involved parties in the Rail Baltic / Rail Baltica railway project with an aim:

- 6.1. to maximise the economic efficiency via consolidation of procurements with potential economies of scale, ensure full and optimum interoperability, quality control and efficient supervision and put in place the best practise procurement model to ensure transparency and minimise corruption risks;
- 6.2. to use to the maximum extent possible the concepts of the central purchasing body and the joint procurement which are defined in the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 On Public Procurement and Repealing Directive 2004/18/EC (hereinafter – Directive 2014/24/EU) and the Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 On Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC (hereinafter – Directive 2014/25/EU);
- 6.3. to save resources and minimise the risks by using common procurement standards and guidelines, procurement document templates and a common minimum set of requirements for the qualification of suppliers and economic operators.

## **II. POLICY STATEMENT AND SCOPE OF APPLICATION**

7. This Procurement Policy is adopted to inform employees of RB Rail AS and National implementing bodies, potential suppliers and tenderers, as well as any other stakeholders or interested persons on the framework and main principles of procurements for the purposes of Rail Baltic / Rail Baltica project that will be carried out by RB Rail AS or under the supervision of RB Rail AS.
8. This Procurement Policy applies to the management and employees of RB Rail AS in any situation where they are involved in the public procurement activities. Adherence to the Procurement Policy is both an individual and a corporate responsibility. Unwarranted breach of this Policy, or unauthorised departure from the main principles derived from this Procurement Policy, may be sanctioned accordingly.
9. The Procurement Policy is a public document and shall be freely available to any potential supplier and tenderer. It sets out to management and staff of RB Rail AS and National implementing bodies, to actual and potential suppliers and contractors, to governmental and other regulatory institutions etc. those principles according to which public procurement procedures are organised and carried out within the framework of Rail Baltic / Rail Baltica project.
10. RB Rail AS acts as the main procuring institution for procurement within the Rail Baltic / Rail Baltica project. The Contracting Scheme sets out role, scope and competence of RB Rail AS - the joint venture implementing body – and National implementing bodies Rail Baltic / Rail Baltica in respect of carrying out public procurement related activities within the Rail Baltic / Rail Baltica project.

11. Under the Contracting Scheme, division of public procurement related activities for the purpose of implementation of Rail Baltic / Rail Baltica project is as follows:
  - 11.1. RB Rail AS Procurement - where RB Rail AS procures in its own name;
  - 11.2. Consolidated Procurement - where RB Rail AS organises public procurement procedures in the name and on behalf of any/all Beneficiaries or/and National implementing bodies of the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania;
  - 11.3. Supervised National Procurement - where the Beneficiaries and/or National implementing bodies of Rail Baltic / Rail Baltica project procure on their own behalf, while RB Rail AS fulfils a supervisory role.
12. While the duties and responsibilities of RB Rail AS vary depending on the above division of procurement activities, RB Rail AS will ensure that as far as possible and by all means that are at disposal of RB Rail AS, this Procurement Policy will apply to public procurement procedures organised within the framework of the Rail Baltic / Rail Baltica Project irrespective of any distinction between procurement procedures and different types of Rail Baltic / Rail Baltica project procurement activities under the Contracting Scheme.
13. Representatives of RB Rail AS who will either provide supervision and consultancy under the Supervised National Procurement or will work jointly with the Beneficiaries and/or National implementing bodies under the Consolidated Procurement, shall adhere to this Procurement Policy and in their best efforts shall strive to implement this Procurement Policy also in respect of both the Supervised National Procurement and Consolidated Procurement.
14. This Procurement Policy shall also apply to any public procurement procedures organised by RB Rail AS outside the scope of Rail Baltic / Rail Baltica project activities in accordance with the applicable law of the Republic of Latvia and in view of the thresholds therein.
15. Under the Contracting Scheme, both RB Rail AS Procurement and Consolidated Procurement will be organised in accordance with the statutory laws and procurement regulations of the Republic of Latvia. Supervised National Procurement will be organised in accordance with the national procurement regulations of either the Republic of Latvia, the Republic of Lithuania or the Republic of Estonia depending on the Beneficiary and/or National implementing body organising the procurement procedure.

### **III. PROCUREMENT POLICY OBJECTIVES**

16. This Procurement Policy is aimed to ensure that the public procurement procedures organised within the framework of Rail Baltic / Rail Baltica project:
  - 16.1. are legal and compliant with the requirements of applicable European Union law as well as national statutory laws and regulations;
  - 16.2. deliver the best value for money and ensure efficient, effective and responsible use of resources;
  - 16.3. are auditable, accountable and transparent;
  - 16.4. facilitate free competition of interested suppliers;
  - 16.5. promote socially and environmentally sustainable procurement;

- 16.6. provide appropriate management of corruption and other related risks.
17. The principles and objectives of this Procurement Policy shall not be viewed as solely declaratory, as RB Rail AS will use every means at its disposal to operate in compliance with those principles and ensure respective compliance throughout the Rail Baltic / Rail Baltica project. RB Rail AS may issue internal procurement regulations and guidelines on the basis of the principles set out in this Procurement Policy.
18. RB Rail AS acknowledges that it may not always be possible to adhere to each and every objective set out in this Procurement Policy, as different situations could potentially arise where two or more of these principles limit or act in contradiction to one another. Nonetheless the principles of legality, accountability, transparency and auditability shall not be compromised under any circumstances.

*(1) Legality*

19. Procurement activities within the framework of Rail Baltic / Rail Baltica project carried out by RB Rail AS and National implementing bodies shall comply with:
- 19.1. all applicable statutory laws and regulations of the respective jurisdiction (Republic of Estonia, Republic of Latvia or Republic of Lithuania), in particular, but not exclusively the statutory laws and regulations in the area of public procurement;
- 19.2. all applicable European Union legal acts – directives and regulations, including Directive 2014/24/EU, Directive 2014/25/EU, Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU Text with EEA relevance, Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010;
- 19.3. international treaties, regulations and other relevant legal acts applicable to RB Rail AS or the respective National implementing body.
20. A procurement procedure and the resulting contract for delivery of works or services shall not only comply with the statutory procurement regulations, but also with the applicable requirements in such areas as employment, health and safety, environmental protection, taxation, and anti-corruption regulations etc. Therefore, it is important to ensure that each and every potential supplier and tenderer taking part in implementation of Rail Baltic / Rail Baltica project shall conduct their business activities in a legal and compliant manner. RB Rail AS will within the limits that the statutory laws allow, award procurement contracts to suppliers which honour requirements of applicable statutory laws as well as best market practice.
21. If suspicious and/or potentially illegal activity (e.g. bribery or other attempts at corruption, bid-rigging, cartels, abnormally low tender prices or other illegal anti-competitive practices) by contractors or tenderers will be noticed, RB Rail AS will without hesitation notify the necessary authorities and fully co-operate with them to resolve the situation and protect any possible Rail Baltic / Rail Baltica project investments. This Procurement Policy is to support and protect 'whistleblowers', inside or outside of our organisation, who act in good faith, even if their suspicions should subsequently prove to be unfounded. Any person that wishes to notify RB

Rail AS of illegal activities or of suspicions of such activities that is in his/her knowledge should immediately contact RB Rail AS representatives. RB Rail AS will preserve anonymity of such persons within the framework of applicable laws.

22. In order to confirm compliance of the tenderers with the applicable qualification requirements, RB Rail AS and National implementing bodies shall, among other, verify statutory grounds for exclusion, i.e.:
  - 22.1. that economic operator has not been the subject of a conviction by final judgment for participation in a criminal organisation, corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or terrorist financing, child labour and other forms of trafficking in human beings etc.;
  - 22.2. that the economic operator is not in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority etc.

*(2) Best value for money*

23. In order to attain legal and efficient use the financial resources at disposal of RB Rail AS, as well as to attain the best value for money in the procurement process, RB Rail AS following the new procurement standards set out in Directive 2014/24/EU and Directive 2014/25/EU will, whenever it is appropriate and possible, use the "the most economically advantageous tender" as the award criteria for RB Rail AS organised procurement procedures. For procurement contracts, especially contracts for the delivery of various services, the award criteria of "lowest price" does not automatically mean the best value for money, as various other elements must be considered, such as quality of services or the service life of equipment.
24. In order to attain best value for money, during the preparation of procurement documentation RB Rail AS will, whenever appropriate and possible, seek out experts on the subject matter of the respective procurement to ensure that the requirements and characteristics of procurement are in line with the best industry practice. Experts will also be involved in further procurement processes – if appropriate and necessary, RB Rail AS procurement committees will involve independent experts who will provide their expert knowledge and independent opinion on various legal, technical or other issues that may naturally arise during public procurement procedures.

*(3) Auditability, accountability and transparency*

25. RB Rail AS will keep and archive documentation of procurement procedures in accordance with the time limits laid down by the applicable statutory laws of the Republic of Latvia. The main goal for the management of documentation, either current or historical, is to ensure traceability throughout the procurement procedure and its conformity with applicable legislation, recording and monitoring procurement activities etc.
26. In order to facilitate transparency of planned procurement procedures, the annual procurement plans of RB Rail AS organised procurements will be made freely accessible to

the public on the webpage of RB Rail AS. This, however, shall be without prejudice to the right of RB Rail to publish a contract notice which has not been included in the annual procurement plan, provided there are objective necessity to organise such a procurement procedure.

27. Results of procurement procedures organised by RB Rail AS will be publicly available and accessible freely by any interested party in accordance with the applicable legislation.
28. When the contract is awarded on the basis of the “most economically advantageous tender” criteria, RB Rail AS will in the procurement documentation provide distinct clarifications and explanations on the respective weighting of each criterion and the methodology of the awarding of points. Transparent award criteria are of utmost importance in order to attain transparency and legality of the procurement procedure.
29. In case of National Supervised Procurement, RB Rail AS will in accordance with the Contracting Scheme perform a supervisory role and also will have the rights to perform technical, legal and financial checks and audits of the national Rail Baltic / Rail Baltica project implementing bodies and/or Beneficiaries, as well as the option to perform unannounced audits and on-the-spot visits in cases where RB Rail AS deems so necessary with the goal to provide maximum accountability of Rail Baltic / Rail Baltica project procurement.

#### *(4) Facilitation of competition*

30. RB Rail will strive to ensure that public procurement organised within the Rail Baltic / Rail Baltica project is opened up to competition and does not result in a distortion of competition in relation to any private economic operators as well as ensures equal treatment and does not discriminate directly or indirectly against economic operators and workers from other countries.
31. RB Rail AS will not:
  - 31.1. discriminate against interested suppliers and tenderers due to their nationality or country of origin;
  - 31.2. mention specific brands, trademarks or patents in the procurement documentation when setting the requirements on the characteristics of goods, services or works to be procured;
  - 31.3. refuse to accept tender documentation issued by another country of the European Union, provided it contains the necessary guarantees (i.e. certificates) set out under the applicable legislation.
32. RB Rail AS will refrain from defining the level of requirements or characteristics of the subject-matter of public procurement to the extent that may prejudice fair and equal competition among the tenderers.
33. While every single requirement of a procurement procedure limits the free competition in one way or another, RB Rail AS will perform market research before the procurement notice is issued to fully understand the respective market and determine by what set of requirements will RB Rail AS ensure both the effective use of its resources and the free competition of potential suppliers.

34. In order to reach and inform as many potential suppliers as possible RB Rail AS when organising RB Rail AS Procurement and Consolidated Procurement, a respective notice will be published in the Official Journal of European Union, the Tenders Electronic Daily webpage, and the respective public procurement publication websites of the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania in accordance with the applicable legislation.
35. Procurement documentation drafted within the framework of the Rail Baltic / Rail Baltica project will be in English language as well as the respective official language of the location where services will be provided or where works or goods will be delivered (i.e. in Estonian, Latvian or Lithuanian).

*(5) Social and environmental sustainability*

36. Given that public procurement may affect new market tendencies relating to environmental and social sustainability standards, RB Rail AS will organise its procurement in sync with the latest procurement practices by including “green” public procurement requirements in the tender documentations whenever the subject matter of the procurement allows so and where it would be beneficial to do so.
37. Social sustainability in public procurements go hand-in-hand with the award criteria of “lowest price”. RB Rail AS believes that social and environmental award criteria should be included in the “most economically advantageous tender” award criteria as that is a direct way of attaining the sustainability goals.
38. With regard to predatory prices or abnormally low tender price offers in order to offset the criteria of the “most advantageous tender” RB Rail AS notes that pursuant to the Directive 2014/24/EU and the applicable national procurement regulations, such abnormally low tender prices can be investigated and, if found to be “unreasonably low”, RB Rail AS will in accordance with law exclude such tenderers from further participation in the respective procurement procedure. Potentially abnormally low tender prices will be evaluated by taking into account the tenderer’s compliance with social, environmental, employment, employment protection requirements as stipulated in the applicable laws and regulations.
39. In setting out the “green” requirements of procurements RB Rail AS will follow European Union recommendations and sectorial regulations such as “Buying green! The handbook on green public procurement”. “Green” procurement requirements will be used both in the technical specifications and award criteria weighting framework. For example, in buying office equipment eco-labels will be a definitive requirement or general, goods to be procured, life-cycle costs will as far as each situation allows be implemented in the overall “most economically advantageous tender” framework.

*(6) Elimination of corruption and other related risks*

40. In order to mitigate national biases in procuring within the framework of Rail Baltic / Rail Baltica project, the Beneficiaries and National implementing bodies have agreed in the Contracting Scheme on the procedure of establishing and formation of the procurement committees. For RB Rail AS Procurements RB Rail AS shall create the procurement committee

as an independent structure of RB Rail AS with members who have knowledge of the respective subject of the procurement to be organised. Neither the members of the management board nor the supervisory board of RB Rail AS can be selected for participation in the procurement committee. The same applies for RB Rail AS organised Consolidated procurement except the procurement committee will consist of at least 50% of RB Rail AS nominated members (including the committee chairman) while the other 50% of procurement committee members will be selected by relevant National implementing bodies and/or Beneficiaries, where the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania will nominate one procurement committee member each. In Supervised National Procurement, each National implementing body and/or Beneficiary is responsible for the formation and selection of members of the procurement committees, save for one procurement committee member which is selected by RB Rail AS.

41. For procurement procedures organised within the framework of Rail Baltic / Rail Baltica project, complete impartiality of members of procurement committees shall be ensured, as members of each procurement committee will sign a declaration stating that they are not in any way personally interested in the results of the procurement and that they are not in conflict of interest. Such declaration will also be signed by any experts invited to consult the procurement committee as well as any secretaries, officials or employees who have either participated in drafting of procurement documentation or have provided other support during the meetings of the procurement committees. Compliance with the statutory information confidentiality obligations shall be ensured.
42. RB Rail AS acknowledges that conflicts of interest may sometimes arise during a procurement procedure. In such cases RB Rail AS will evaluate the situation and possible actions required. The European Union and national procurement legislation allow for exclusion of a tenderer where a member of the procurement committee is in a conflict of interest with the respective tenderer. For example, family ties of a member of the procurement committee with the management of the tenderer would be viewed as an "automatic" conflict of interest and RB Rail AS would take immediate action depending on the severity of the situation, either by dismissing the specific member of the procurement committee, excluding the tenderer from further participation or in extreme cases discontinue the procurement procedure.
43. RB Rail AS shall act in accordance with the principle of good-faith (e.g. where a member of the procurement committee timely informs the management of RB Rail AS or the chairman of the procurement committee of a potential or actual conflict of interest situation in a procurement procedure that has yet to be publicised and no procurement documentation has yet been approved or issued, then no disciplinary action would be taken).
44. In case a member of the procurement committee of RB Rail AS is in a situation of conflict of interest or his or her integrity can be questioned due to any allegations in corruption, or illegal influence of the activities of the procurement committee would have been attempted or taken place, RB Rail AS will diligently, pursuant to statutory laws request the individuals involved be held liable for their actions.
45. Members of procurement committee and other persons involved in preparation of public procurement documentation or conduct of public procurement procedures shall not accept gifts of any kind in accordance with the restrictions set out by the applicable statutory laws.

Any such gift received shall be logged and sent back to the supplier with a polite explanation of why the offer is unacceptable.

#### **IV. MONITORING AND ENFORCEMENT OF PROCUREMENT POLICY**

46. RB Rail AS shall monitor and enforce compliance of this Procurement Policy with public procurement statutory laws and regulations, internal policies and procedures, international agreements and other applicable acts.
47. Failure to comply with this Procurement Policy may trigger disciplinary, administrative, civil or criminal liability that will be evaluated on a case-to-case basis.

Next Review Date: should be reviewed when all 3 Baltic countries will have transposed the European Union Directive in the area of public procurement.