

Rīga

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Our Ref: 1.13p/LV-2024-184

Electronic Procurement System

Answers to the questions received from the interested suppliers in the open competition "Detailed technical design and design supervision services for main line section from Riga International Airport to Misa and from Upeslejas to railway station "Rīga – Preču""
(ID No RBR 2023/17)

Particular Conditions DS1				
Tenderer's question				Procurement commission response
No	Clauses	Initial Wording	Clarifications requests	
	Standard of care			
1	Sub-Clause 1.1.37	<i>Add Sub-Clause 1.1.37 as follows:</i> "Design Services" - all and any activities, works, services required for and relating to preparation of the information, design documentation fit for its intended purpose (including, obtaining of all approvals from third parties and authorities) and any other deliverables set in the Agreement (including delivery of such documentation	1. The Agreement proposed by the Client in the Tender documentation is based on the "FIDIC White Book, 2017". which provides for a fair balance of risk between the Client and the Consultant. However, in several parts of, the Particular Conditions (Sub-clauses 1.1.37-1.1.38-3.3.2), and the Technical Specifications	1. The Procurement Commission kindly informs that the Consultant shall perform the Services in accordance with the Laws of the Republic of Latvia and applicable legal acts of the European Union, considering the purpose of the Services as provided in Appendix 1 [<i>Technical Specification</i>]. The Procurement Commission does not

<p>2</p>		<p>and other deliverables to the Client in the manner described in the Agreement and obtaining of necessary consents, permissions, approvals from any third party or authority as required under applicable laws and/or the Agreement).</p> <p>Services also include preparation and performance of any other activities, documents, information, surveys, studies, analysis, calculations, monitoring, investigations and other documents or activities unnamed in the Agreement but objectively necessary for achievement of the objective of the Agreement – submitting to the Client within the Total Remuneration for Design Services and the Time for Completion prepared and approved (with Client, and all required third parties and authorities) deliverables</p>	<p>(Sub-clauses 2.1.1.p), mention is made of the fitness for purpose notion. This Standard of Care, used in some countries, in the UK for instance, modifies deeply the philosophy of the FIDIC White Book as it presumes the Consultant's liability without the need of evidence of a breach on its part. This entails unbalanced and non-measurable risks to the Consultant, making it very difficult to price the Services correctly and reasonably. Additionally, professional indemnity insurance does not cover liabilities without evidence of fault or breach. Such insurance covers in the event of a breach of the Consultant to use reasonable skill and care. Therefore, we kindly ask to come back on the Standard of Care of the General Conditions of FIDIC White Book 2017 and to delete all mentions to the Fit for Purpose in the Particular Conditions and the Technical Specifications, as it is common practice for such design projects.</p> <p>2. Services shall be in accordance with the Agreement, including the Technical Specifications and the Technical Proposal but cannot include any other activities or any unnamed activities not clearly defined in the Agreement. This entails unbalanced and non-measurable risks to the Consultant, making it very difficult to price the Services correctly and reasonably. Therefore, we kindly ask you to delete all mentions to Services not clearly defined in the Agreement. Any Additional Services</p>	<p>consider that there are any substantial deviations regarding Fit for Purpose compared to Clause 3.3 Standard of Care of the General Conditions, which states that the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described In Appendix 1 [Scope of Services].</p> <p>2. The Procurement Commission kindly acknowledges that additional services shall be discussed in good faith and agreed in accordance with the conditions of the Agreement. However, the Procurement Commission expects that the Consultant shall provide all the Services which are objectively necessary for achievement of the objective of the Agreement and shall be fit for the purposes for which the Design Services are intended as defined in the Agreement.</p>
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		<p>which are ready for implementation under the Works Contract (or Contracts) without making any changes to them pursuant to requirements of the Agreement and applicable laws. Design Services shall be fit for the purposes for which the Design Services are intended as defined in the Agreement. Information produced, and Services rendered shall be valid or their verification, review, check or approval by the Client or Competent Supervisory Body (including calculations, drawings, manuals, models, documents of technical and legal nature listed in the Client's Requirements).</p>	<p>shall be discussed in good faith and agreed between the Parties.</p> <p>As per the Clarification Request n°1 above, we kindly ask to delete all mentions to the Fit for Purpose.</p> <p>In case the deletion of term "unnamed activities" is not possible, please confirm that these activities are limited by Technical Specifications. If not please clarify what could possibly be such unnamed activities.</p>	
3	Sub-Clause 1.1.38	<p><i>Add Sub-Clause 1.1.38 as follows:</i></p> <p>"Design Supervision Services" – all author's supervision Services as described in applicable Laws of the Country and the Agreement. The Design Supervision Services shall fit for its intended purpose to be provided by the Consultant in accordance with Laws of the Country, requirements specified in the Appendix 1 [Technical Specification] and the Agreement throughout the performance of the Works until the date when the final Performance Certificate (as defined in the Works Contract) is signed in order to ensure proper implementation of the Works in compliance with the requirements set for such Works and Laws of the Country.</p>	<p>3. Please refer to p. 1 of Clarification request above.</p>	<p>3. The Procurement Commission kindly informs that the Consultant shall perform the Services in accordance with the Laws of the Republic of Latvia and applicable legal acts of the European Union, considering the purpose of the Services as provided in Appendix 1 [Technical Specification]. The Procurement Commission does not consider that there are any substantial deviations regarding Fit for Purpose compared to Clause 3.3 Standard of Care of the General Conditions, which states that the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described In Appendix 1 [Scope of Services].</p>
4	Sub-Clause 3.3.1	<p><i>Delete Sub-Clause 3.3.1 and replace as follows:</i></p> <p>Notwithstanding any term or condition to the contrary in the Agreement or any related document or any legal requirement</p>	<p>4. Regarding article 3.3.1 and 3.3.2 of Particular Conditions, as per the Clarification Request n°1 , we kindly ask to come back to the original Sub-Clause 3.3 Standard of Care of the General Conditions</p>	<p>4. The Procurement Commission reasonably believes that the Consultant shall exercise the very high level of skill, care and diligence to be expected from</p>

		<p>of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), in the performance of the Services the Consultant shall exercise the very high level of skill, care and diligence to be expected from a consultant that is providing services of such size, nature and complexity to clients that are acting outside their usual professional competence. Further, the Consultant shall be at all times proactive, seek mutually acceptable solutions and perform the Services to the maximum benefit of the Client and Employer.</p>	<p>of Fidic White Book 2017 which provides for a reasonable skill, care and diligence and for obligations of means for the Consultant.</p>	<p>a consultant that is providing services of such size, nature and complexity.</p>
5	Sub-Clause 3.3.2	<p><i>Delete Sub-Clause 3.3.2 and replace as follows:</i> By using the standard of care set in Sub-Clause 3.3.1, the Consultant shall perform the Design Services to the level of quality and detail that allows the Contractor to implement the design documentation and other deliverables developed by the Consultant without making any changes to them, and without delaying the Works due to any errors in the deliverables or due to any necessities for detailing of the deliverables, and so that the intended function and purpose of objects constructed as a result of the Works may be achieved. For clarity – the below mentioned does not mean the Consultant assuming any liability for the Contractor's obligations under the Works Contract and applicable laws.</p>	<p>5. As per the Clarification Request n°1 above, we kindly ask you to come back on the Clause 3.3 Standard of Care of the General Conditions.</p>	<p>5. The Procurement Commission kindly informs that the Consultant shall perform the Services in accordance with the Laws of the Republic of Latvia and applicable legal acts of the European Union, considering the purpose of the Services as provided in Appendix 1 [Technical Specification]. The Procurement Commission does not consider that there are any substantial deviations regarding Fit for Purpose compared to Clause 3.3 Standard of Care of the General Conditions, which states that the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described In Appendix 1 [Scope of Services].</p>

Obligations related to the delays in construction contract			
6	Part A- Special Provisions – Contract Data Sub-Clause 1.1.24	For Design Supervision Services : 60 Months or until the date when the Final Taking-Over certificate for the Works is issued (as defined in the works contract), whichever is longer	6. As mentioned in the Sub-Clause 3.3.2, the Consultant cannot bear any liability for the Contractor's obligation under the Works Contract and applicable laws. Duration of the works is not under the Consultant's control. Therefore, this risk should not be heard by the Consultant. Therefore we kindly request you to delete the mention " <i>or until the date when the Final Taking-Over certificate for the Works is issued (as defined in the works contract), whichever is longer</i> " from Sub-Clause 1.1.24 - the new Sub-Clause 3.9.7 entirely. In case of delays non attributable to the Consultant, any related additional services shall be discussed in good faith and agreed between the Parties and possibly lead to Variation Orders.
7			6. The Procurement Commission kindly informs that the Design Supervision Services should be provided during the whole construction period. If the Design Supervision Services shall exceed 60 months, then the Consultant shall be eligible to Variation in accordance with Sub-Clause 5.1.2.(g). 7. The Procurement Commission can not provide the Works Contract at this stage of procurement. The relevant extract of the Works Contract will be provided to the Consultant after the Agreement is signed. The Procurement Commission considers that the scope of Design Supervision Services (Author Supervision Services of the Works Contract) shall not exceed the scope of Services stipulated within the Appendix 1 of the Agreement (Annex 2, "Technical Specification") Clause 6 and requirements of the Agreement, including the Annex No 4, "Detailed Financial Proposal.", Appendix 4, "Remuneration and Payment", clause 5.5. If the scope of Design Supervision Services shall be exceeded then the
			7. Could you please provide us the Works contract for analysis as several clauses of the Particular Conditions refer to Consultant's obligations therein. Could you also please precise the Consultant's obligations under such Works Contract?

				Consultant shall be eligible to Variation in accordance with Sub-Clause 5.1.2.(g).
8	Sub-Clause 3.9.7	<p><i>Add Sub-Clause 3.9.7 as follows:</i></p> <p>The Consultant confirms that it has evaluated and undertakes all the risk for the possible delay of the completion of the Contract Works of the Design if the Works continue longer than foreseen in the Works Contract. The Consultant confirms that the Remuneration includes the necessary actions to be made to determine, allocate and solve risks. The Consultant shall be obliged to provide the Design Supervision Services according to the procedures established in the Agreement until actual full completion of all the Contract Works and rectification of all the Project Contract Works defects and any inconsistencies, deficiencies and non-compliances by the end of the period but not shorter than until issuing all the certificates certifying the completion of all the Contract Works of the Project, including Performance Certificate.</p>	8. Please refer to p. 6 and p. 7 of Clarification requests above.	8. Please refer to p. 6 and p. 7 of answers above. It also be noted that Sub-Clause 3.9.6 provides the following: "If an ambiguity or discrepancy is found between the Consultant's obligations under the Agreement and the Consultant's duties under the Works Contract, the Consultant shall give Notice to the Client Indicating the effect of such ambiguity or discrepancy. The Client shall rectify such ambiguity or discrepancy by Instruction as soon as reasonably practicable and where necessary shall Issue a Variation to the Services In accordance with Clause 5.1 [Variations]".
Reliance on Client's documents				
9	Sub-Clause 2.1.1	Before entering into this Agreement, the Consultant evaluated the accuracy, sufficiency and consistency of all the information provided to the Consultant by the Client. The Consultant asked all the necessary questions and received satisfactory answers. The Client shall not be responsible for any error, inaccuracy, omission, or ambiguity of any kind in the Client's Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information. The Consultant shall use	9. Please confirm, the possibility of having a Variation Order if the error is discovered after the effective date and a Consultant having used the "skill and care" of the contract have not discovered it.	9. The Procurement Commission confirms that if the Consultant in accordance with the procedure provided by the Agreement shall inform the Client regarding error after the Effective Date, then there is a possibility of having the Variation.

		<p>reasonable endeavors to review all significant information provided to it by the Client after the Effective Date. To the extent achievable using the Standard of Care in Sub-Clause 3.3.1 [Standard of Care], the Consultant shall review such information with a view to ensuring that such information does not contain any manifest error, omission or ambiguity and shall give Notice to the Client promptly of any adverse findings. The Client shall not be responsible for the accuracy, sufficiency or consistency of the information provided to the Consultant if the Consultant has failed to review the provided information and provide Notice to the Client pursuant to this Sub-Clause within 10 (ten) days as of the moment the Consultant received such information.</p>		
10	Sub-Clause 2.1.3	<p>Delete Sub-Clause 2.1.3 and replace as follows: In the event of any error, omission, or ambiguity (for the avoidance of doubt, including a manifest error, omission or ambiguity) in the information provided to the Consultant by the Client, the Consultant shall rectify as part of the Services such matter by carrying out necessary relevance procedures in order to provide Services timely and in accordance with the Agreement. The rectifications of such nature shall neither be a Variation or as grounds for a Variation nor shall it be a basis for Exceptional Costs or form an Exceptional Event.</p>	<p>10. Regarding Sub-Clauses 2.1.1 and 2.1.3 The Consultant will review all Client's documents with Reasonable skill & care until the Effective Date However, if any error, omission or ambiguity is discovered after the Effective Date that an experienced Consultant exercising the reasonable skill and care wouldn't have discovered, any related Additional Services shall be discussed in good faith and agreed between the Parties with a possibility of Variation Order.</p>	<p>10. The Procurement Commission confirms that if the Consultant in accordance with the procedure provided by the Agreement shall inform the Client regarding error after the Effective Date, then there is a possibility of having the Variation.</p>
11	Sub-Clause 2.3.1	<p>Delete Sub-Clause 2.3.1 and replace as follows:</p>	<p>11. Since the Consultant cannot be liable because of Clients failure to its Assistance</p>	<p>11. The Procurement Commission kindly informs that if the Consultant</p>

		<p>In the Country and in respect of the Consultant, its personnel, and dependents, as well as sub-contractors/sub-consultants, if any, as the case may be, the Client shall endeavor to reasonably, when and where possible, assist the Consultant in:</p> <ul style="list-style-type: none"> (a) Cooperation with the Consultant in accordance with the provisions of this Agreement. (b) Providing the Consultant with support on communication with governmental and municipal authorities. (c) Providing the Consultant with support that shall allow him to gain access to the Site, during the Works. (d) Providing the Consultant with the Client's data and technical documentation necessary for design purposes, including associated industries, provided that the Client has such data and documentation available to provide within his possession. (e) Providing support to access, within reason where possible, to the other organizations for collection of information in case Consultant is not able to obtain such information by himself. <p>This Sub-Clause constitutes a "best effort" obligation for the Client only, and nothing in this Clause (including, Client's failure to perform any of the above-mentioned assistances) shall entitle the Consultant to claim from the Client reimbursement of any costs, increase of the Total Remuneration, or extension of any deadlines under the Agreement.</p>	<p>obligations, please confirm that any Additional Services related to the Client's failure to perform its Assistance obligations shall be discussed in good faith and agreed between the Parties with a possibility of Variation Order.</p>	<p>considers that the Client has failed to perform any of its obligations, then the Consultant should inform the Client in accordance with provisions of the Agreement and such failure shall be discussed in good faith and could lead to the possible Variation.</p>
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Scope of services				
12	Sub Clause 1.1.32	<p>Add Sub-Clause 1.1.32 as follows:</p> <p>“Client’s Requirements” means the document (or a set of related documents) constituting an integral part of the Agreement and designated as appendices to the Agreement, including without limitation, Technical Specification, Design Guidelines, including its annexes, appendices, changes and other documentation in any form constituting Design Guidelines approved by the Client within the term of the Agreement, Environmental Impact Assessment information, spatial plan, deadlines of the Services, requirements for Site Investigation, as well as any other documents, information and additions and amendments to such documents in accordance with the Agreement.</p>	<p>12. The Consultant will perform the Services according to the Agreement but cannot commit to Requirements without limitation.</p> <p>The mentions “including without limitation” in Sub-Clause 1.1.3 and “the Consultant shall prepare all Consultant’s Documents and shall also prepare any other documents necessary under the Services” in Sub-Clause 3.1.4 should be avoided and deleted as these sections give the power to the Client to vary the Services without a Variation. The Consultant is committed to deliver the defined scope with a high standard of quality but cannot commit to a scope of services extendable at Client’s will.</p>	<p>12. The Procurement Commission considers that the Consultant shall be committed to deliver defined scope as provided by the Agreement. The Agreement provides various instances when the Consultant is eligible to Variation. Please consider the Sub-Clause 5.1.2, other clauses of the Agreement providing the possibilities of Variations and Sub-Clause 1.1.32 you referring to which also provides the following: “If the Consultant considers that amendments, changes or supplements of the Employer’s Requirements have the impact to Programme and/or Total Remuneration the Consultant should proceed with the Notice in accordance with Sub-Clause 5.1.3.”</p>
13			<p>13. We kindly request to confirm that any Additional Services shall be discussed in good faith and agreed between the Parties with a possibility of Variation order.</p>	<p>13. The Procurement Commission confirms that additional Services shall be discussed in good faith and the possible variations shall be agreed in accordance with the conditions of the Agreement.</p>
14	Sub-Clause 3.1.9	<p><i>Add Sub-Clause 3.1.9 as follows:</i></p> <p>The Consultant’s duties include in particular:</p> <p>(f) Providing of the Design Supervision Services during the execution of Construction Works according to the Works Contract and on the basis of the</p>	<p>14. Could you please precise the Consultant’s obligations under such Works Contract and provide us the Works contract for analysis.</p>	<p>14. See answer 7.</p>

		Consultant's Documents constituting the subject of the Agreement.		
15	Sub-Clause 3.1.10	<p><i>Add Sub-Clause 3.1.10 as follows:</i></p> <p>The Parties shall establish the following conditions for submission and acceptance of the Consultant's Documents:</p> <p>The Consultant confirms and represents that the Beneficiary will be entitled to approve the Detailed Technical Design (final deliverable ready to be executed) within the 30 (thirty) days in accordance with the Agreement concluded between the Client and the Beneficiary before the acceptance documentation stipulated in this Agreement is approved and signed. This approval is binding to the Consultant. If the afore mentioned approval is expressed, the Consultant shall be entitled to receive the Remuneration in accordance with the Agreement. In case if the afore mentioned approval is negative, the Consultant shall carry out all the necessary activities and actions to rectify any inconsistencies, defects, incompliances and other issues required to satisfy the Beneficiary. The Beneficiary hereby warrants that the afore mentioned obligation will not be used in a bad faith.</p>	15. The Consultant will perform the Services according to the Agreement. Any Additional Services shall be discussed in good faith and agreed between the Parties with a possibility of Variation order.	15. The Procurement Commission confirms that additional Services shall be discussed in good faith and the possible variations shall be agreed in accordance with the conditions of the Agreement.
Exceptional Events.				
16	Sub-Clause 1.1.13	<p>Add the following paragraphs at the end of the Sub-Clause 1.1.13:</p> <p>Any of the following events are not to be considered as Exceptional Event under the Agreement:</p> <p>(a) actions or decisions (acts) made by the state or municipal authorities, or public institutions, or commercial entities (which issue the technical requirements (in</p>	16. Regarding Sub-Clause 1.1.13 the Consultant cannot be held responsible for actions or decisions made by Third Parties. Any Additional Services related to such decisions shall be discussed in good faith and agreed between the Parties with a possibility of Variation Order.	16. The Procurement Commission confirms that additional Services shall be discussed in good faith and the possible variations shall be agreed in accordance with the conditions of the Agreement. Please, also consider Sub-Clause 5.1.2 (specifically item (a)) and other clauses

		Latvian: tehniskie noteikumi), if such authorities, institutions and entities have acted within the limits of applicable laws and if such actions/decisions/approvals are made directly regarding the Services;		of the Agreement providing the possibilities of Variations.
Role of the Competent Supervisory Body				
17	Sub-Clause 1.1.33	Add Sub-Clause 1.1.33 as follows: “Competent Supervisory Body” means a competent public authority established and operating under the Laws of the Country or applicable legal acts of the European Union, which supervises and controls different stages of Construction Works according to the Works Contract, including development of design, as well as issues binding decision and instructions to the parties involved in the preparation of design or construction of respective infrastructure (including public and private utility services providers).	17. Could you please precise that the Competent Supervisory Body is (<i>in Latvian: Valsts dzelzceļa tehniskā inspekcija</i>) and what is its role and obligations ?	17. The Procurement Commission can confirm that the State Railway Technical Inspectorate corresponds the definition of Competent Supervisory Body as well as other authorities which supervises and controls different stages of Construction Works according to the Works Contract, including development of design. The State Railway Technical Inspectorate’s (in Latvian: Valsts dzelzceļa tehniskā inspekcija) role and obligations are provided in “Railway Construction Regulations” issued by Cabinet of Ministers of the Republic of Latvia on September 2, 2014, regulations No 530.
18	Sub-Clause 3.1.8	<i>Add Sub-Clause 3.1.8 as follows:</i> The Consultant shall correct within 30 (thirty) days (including approvals), at the Consultant’s own expense, any irregularities, errors, omissions, ambiguities, inconsistencies, inadequacies or other defects found in the Consultant’s Documents according to the Client’s Requirements, the Competent Supervisory Bodies, construction technical supervisor and/or during expertise of the Detailed Technical Design. The Client may request the Consultant to correct errors at any time until the expiry of the Defects Notification Period.	18. Please confirm that the Consultant shall, <u>to the extent it is attributable to the Services</u> , fully cooperate with Conformity Assessment Body, Competent Supervisory Bodies, and other stakeholders involved in the implementation of the Project and Rail Baltica Global Project to perform the Services.	18. The Procurement Commission confirms that the Consultant shall, to the extent it is attributable to the Services, fully cooperate with conformity assessment body (NoBo, AsBo), Competent Supervisory Bodies, and other stakeholders involved in the implementation of the Project and Rail Baltica Global Project to perform the Services.

		Correction of irregularities, errors or defects shall not constitute a valid reason for extension of the Time for Completion.		
Penalties				
19	Sub-Clause 8.1.4	<p><i>Add Sub-Clause 8.1.4 as follows:</i> [...] If the Agreement is terminated pursuant to the sub-paragraphs (a); (b); (c); (g); (h); (i) of Sub-Clause 6.4.1, the Client is entitled to demand a contractual penalty according to the rate specified in Appendix 4 [Remuneration and Payment]. The contractual penalty is calculated from the Total Remuneration payable to the Consultant for the provision of all Services under the Agreement.</p>	<p>19. Regarding Sub-Clause 8.1.4, damages upon Termination should be assessed according to the proceedings specified in the contract and in particular in accordance with Sub-Clause 10 Disputes and Arbitration). Please confirm this understanding.</p>	<p>19. Damages shall be assessed in accordance with the conditions of the Agreement and provisions of Law. Clause 10 regulates the procedure of disputes and arbitration. If there will be the arbitration dispute between the parties which shall involve the claim on damages, then the arbitration will be the final institution on awarding the damages to either of parties.</p>
20	Appendix 4	<p>Contractual penalty rate for the Consultant's failure to perform any other obligation (rather than per item 1.7) arising out of the Agreement in due time shall be 0.001% per day of the Total Remuneration calculated from the first delayed date to the actual date the specific obligation is fulfilled, but not exceeding 10% of the Remuneration. Contractual penalty rate stipulated in this item is not applicable in case if the delay is caused by Exceptional Event.</p>	<p>20. Please confirm all penalties under the Contract are limited to 10% in the aggregate.</p>	<p>20. Contractual penalties for the Consultant's delays are limited to 10% of the Total Remuneration.</p>
Defects notification period				
21	<p>Clause 3.11 Quality Guarantee and Warranty Sub-Clause 3.11.1</p>	<p><i>Add new Clause 3.11 [Quality Guarantee and Warranty] as follows:</i> 3.11.1 The Consultant is liable to the Client for any defects in the Consultant's Documents. The Consultant declares that (if applicable) the Client is entitled to transfer to any third party the Client's rights under the guarantee of quality and warranty acquired under this Agreement.</p>	<p>21. Please inform the reason for this transfer option and to whom the Client intends to transfer this right as this provision seems very unusual and unbalanced? Such right should be agreed between the Parties.</p>	<p>21. If the Client shall exercise its rights to transfer part of the Agreement, for example, Design Supervision Services to SIA "Eiropas Dzelzceļa Līnijas", then the warranties acquired can also be transferred to SIA "Eiropas Dzelzceļa Līnijas".</p>

22	Sub-Clause 3.11.2	<p><i>Add Sub-Clause 3.11.2 as follows:</i></p> <p>The Consultant within the Total Remuneration gives a guarantee of quality and warranty (“Warranty”) for the Consultant’s Documents and other documents and information (including, but not limited to, findings, conclusions, measurements, statements, recommendations, calculations, assessments) constituting the subject of the Agreement, for the entire period (“Defects Notification Period”) as aligned with the Works Contract, starting from the acceptance of the Consultant’s Documents and ending 12 (twelve) months from the date of signing the Performance Certificates (issued after the warranty term resulting from Works) defined in the Works Contract of Construction Works carried out according to the Consultant’s Documents constituting the subject of the Agreement, based on the Works Contract conditions, but not later than 10 (ten) years after issuing of the Final Delivery and Acceptance Certificate. The Client shall inform the Consultant immediately about signing of the above-mentioned Performance Certificate. [...]</p>	22. Could you please confirm that the Defects Notification period is related to the Works Contract and the Consultant guarantee of quality and warranty (“Warranty”) should be valid till the final Performance Certificate of Works Contract is issued.	22. The Procurement Commission confirms that Defects Notification Period is aligned with the Works Contract and it shall be until the date when the final Performance Certificate (as defined in the Works Contract) is issued.
Variations				
23	Clause 5.1 Variations Sub-Clause 5.1.2	<p><i>Delete Sub-Clause 5.1.2 and replace as follows:</i></p> <p>A Variation to the Services may be issued in respect of any: (f) changes to the scope of the Services required due to the update of the Design Guidelines as defined in Appendix 1 [Technical Specification] or changes to the</p>	23. Please confirm that any changes regarding to the Scope of the Services shall be discussed in good faith and agreed between the Parties with a possibility of Variation order.	23. The Procurement Commission confirms that additional Services shall be discussed in good faith and the possible variations shall be agreed in accordance with the conditions of the Agreement.

		<p>scope of Services due to changes made to track layout, additional side tracks or side track connections, additional road or pedestrian structures, additional Investigations; [...] Any of the above potential Variations initiated shall always comply with requirements of the applicable Laws, including Public Procurement Law of the Republic of Latvia (in particular – Article 61). Each variation shall be valued and assessed in accordance with the applicable requirements of the Law of the Country. The total amount of all the potential Variations listed above is limited to 50% (fifty percent) of the Total Remuneration.</p>		
Exceptional Costs				
24	Sub-Clause 7.1.2	<p><i>Delete Sub-Clause 7.1.2 and replace as follows:</i> Unless otherwise agreed in writing, the Beneficiary shall pay the Consultant in respect of Exceptional Costs: (a) for the extra time spent by the Consultant's personnel in the performance of the Services at the rates and prices stated in Appendix 4 [Remuneration and Payment]. Where the rates and prices are not provided in Appendix 4 [Remuneration and Payment], the lowest rate applicable for the particular category shall be applied. The Consultant shall be entitled to remuneration for such Exceptional Costs upon prior written agreement with the Client. No payment for Exceptional Costs shall be made if such costs arise due to suspension of the Services for the term not exceeding an aggregate of 360 days.</p>	24. Please confirm that Exceptional Costs shall be discussed in good faith and agreed between the Parties with a possibility of Variation order.	24. The Procurement Commission confirms that Exceptional Costs shall be discussed in good faith and the possible payments of Exceptional Costs shall be agreed in accordance with the conditions of the Agreement.

Limitation on liability				
25	Clause 8.3 Limit of Liability Sub-Clause 8.3.1	<p><i>Delete Sub-Clause 8.3.1 and replace as follows:</i></p> <p>The Consultant shall be liable to the Client for damages related to non-performance or improper performance of the Agreement by the Consultant, however the total liability of the Consultant related to the Agreement is limited to the amount of the Total Remuneration specified in Appendix 4 [Remuneration and Payment] of the Agreement.</p>	25. We kindly ask you the cap of liability to 50% of the Total Remuneration	25. The cap of damages is aligned with the conditions of the Law and any damages subject to be recovered should be justified and proven.
Insurances				
26	Clause 9.1 Insurance to be taken out by Consultant. Sub-Clause 9.1.1	<p><i>Delete Sub-Clause 9.1.1 and replace as follows:</i></p> <p>The Consultant shall at its own cost take out and throughout validity of the Agreement and Period of Liability maintain insurances as mandated and, in accordance with the amounts, specified in Appendix 6 [<i>Insurance and Guarantee Requirements</i>]. The Client should be named as insured and Third party. For clarity, the Consultant's liability means both liability in relation to the Design Services, liability in relation to the Design Supervision Services and any additional services that are part of this agreement. Insurances shall be issued for this particular Project.</p> <p>Before issuance (including, renewal) of any insurance, it shall be coordinated in writing and subject to consent by the Client (for clarity – such Client's consent shall not relieve the Consultant from any obligations regarding insurance). The Consultant shall notify the Client in good time if any of the insurances required by this Agreement</p>	26. A specific insurance will increase the amount of the proposal. Please accept that members of the JV provide their corporate insurances that actually comply with the requirements instead of a specific insurance.	26. Corporate insurance policy can be accepted if it is accompanied with the confirmation from the insurance company providing the details specified in accordance with Clause 9.1 (the Client is named as insured and Third party, Insurance covers this particular Project etc.).

		<p>could be cancelled, amended or limited by the insurers.</p> <p>Certified copies of the required insurances (i.e., policies and certificates) together with evidence on payment of insurance premiums, at the Consultant's own cost, shall be provided to the Client within 15 (fifteen) days from the date the Agreement is signed by all the Parties. No later than 15 (fifteen) days before the expiration of any of the required insurances (i.e., policies and certificates) the Consultant shall, at his/her own cost, submit to the Client certified copies of renewed insurance policies together with evidence on payment of insurance premiums.</p>		
Payment				
27	Avance Payment	27. Is it possible to increase the Advance payment to 20%, against Advance Payment Security ?	Procurement Commission will not increase the Advance Payment. The Consultant is eligible for the advance payment in amount of 10% (ten percent) from the Remuneration for Design Services, which will be issued against the Advance Payment Security. Further payments for approved design deliverables and geological investigation per BP ensures steady cash flow within the Agreement.	
28	Payment Schedule	28. Is it possible to modify the Payment Schedule for the Design services without investigations as follows ; <ul style="list-style-type: none"> - Partial Master Design (to be defined and agreed by the Parties) 20% - Master Design 20% - Partial Detailed Technical Design (to be defined and agreed by the Parties) 20% - Detailed Technical Design 20% - Approved Technical Design 20% 	Procurement Commission will not modify the Payment Schedule. Within given time period of the Agreement, three design deliverables per every BP is already considered as the additional administrative and management process for both – the Client (experts, expertise, NoBo, AsBo etc.) and the Consultant. Therefore, five payments per BP design would impose unnecessary administrative and management burden, and would not bring real added value to the Parties.	
Extension of Time for Proposal Submission				

29		<p>29. As there are still some uncertainties regarding the contractual conditions affecting significantly the pricing, we kindly request an extension of time of two weeks for the Proposal Submission.</p>	<p>29. Procurement Commission kindly informs you that your request has been received and Procurement Commission at this point do not see objective reasons for prolonging deadline for submitting bids for the following reasons:</p> <ul style="list-style-type: none"> -The announcement date of open competition was 31 January 2024 providing tender notice in E-Tenders System: https://www.eis.gov.lv/EKEIS/Supplier/Procurement/112508 and also on official webpage of RB Rail AS (https://www.railbaltica.org/tenders/detailed-technical-design-and-design-supervision-services-for-main-line-section-from-riga-international-airport-to-misa-and-from-upeslejas-to-railway-station-riga-precu/); -Initial deadline for submitting bids was set on 15 March 2024 and after receiving request with objective reasoning to prolong deadline from several suppliers, Procurement Commission took decision to prolong initial deadline already several times, finally till 3 June 2024; -There is very limited time frame dedicated for implementation of Programme (schedule) of the procurement agreement in conjunction with conditions of related EU co-funding agreement as well as considering the potential impact of implementation of subsequential activities of the project (e.g. land acquisition, construction works, implementation of agreements regarding subsystems).
30		<p>The Agreement proposed by the Client in the Tender documentation is based on the "Client/Consultant Model Services Agreement (5th Edition of FIDIC White Book, 2017". stipulating the notion Reasonable Stand of Care (Clause 3.3). However, in several parts of the draft contract, the Particular Conditions, and the Technical Specifications, mention is made to the fit for purpose notion. This notion, used in some countries, in the UK for instance, modifies deeply the philosophy of the FIDIC White Book as it transforms the Consultant's obligations to obligation of results instead of the obligation of means. This entails unbalanced and non-measurable risks to the Consultant, making it very difficult to price the Services correctly and reasonably. Therefore, we kindly ask you to come back on the Clause 3.3 Standard of Care of the General Conditions and to delete all mentions to the Fit for Purpose in the Particular Conditions and the Technical Specifications, as it is common practice for such design projects in Europe. If for any reasons the mention of Fit for Purpose cannot be deleted, please confirm that the contract is construed under Latvian law and under no circumstances the term Fit for Purpose shall be applied as it is applied in English Law.</p>	<p>The Procurement Commission kindly informs that the Consultant shall perform the Services in accordance with the Laws of the Republic of Latvia and applicable legal acts of the European Union, considering the purpose of the Services as provided in Appendix 1 [Technical Specification]. The Procurement Commission does not consider that there are any substantial deviations regarding Fit for Purpose compared to Clause 3.3 of the General Conditions, which states that the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described In Appendix 1 [Scope of Services].</p>

31	Please kindly clarify that the corporate insurance of the leader of JV can cover other members of JV OR each member of JV should provide their own insurance?	Corporate insurance of JV leader can cover all members of the JV. In such case the additional document issued by the insurance company stating that all JV members are insured might be required by the Client.
32	Please kindly confirm, that the payment for the Investigation works (topographical and geotechnical) according to the p. 5.2 of Appendix 4 to the Contract will be paid only together with the payment for Master Design?	Payment for the Investigation works will be paid together with the Master Desing and Detailed Technical Design. For geotechnical investigations payment per actual works/amounts of units performed according to Annex No. 18. will be made together with the approved Design Service deliverable (MD, DTD, etc.).
33	Please confirm that the Consultant should only foresee an interface with stations mentioned in the Tender (Saurieši, Jaunmarupe, Olaine, Ķekava) and no other works (including platform design) should be foreseen. If no, please clarify the scope related to the mentioned above stations in details;	Scope of Services foresees an interface with the stations mentioned in the Tender documentation. Railway station infrastructure (supply utilities, power supply, lighting, communication, drainage, water supply, car parking place etc.) shall be foreseen at the Conceptual design level for international stations and regional stations, stops.
34	Please kindly clarify that the boreholes and field tests 10-25 m. of geotechnical investigations are not foreseen;	Boreholes and field tests up to depths of 10-25 meters are not anticipated. However, if it will be required, they shall be performed according to item and unit cost corresponding to deep investigations up to 25-50 meters.
35	Please provide mentioned in the Annex 5 Rail Baltics Additional requirements for site investigations document named Rail Baltica Design Guidelines RBDG-MAN-038-0100 "Geodetic network establishment for design stage of Rail Baltica high speed railway".	Mentioned document RBDG-MAN-038-0100 "Geodetic network establishment for design stage of Rail Baltica high speed railway" is already provided under Annex No.1 "Design Guidelines".

Sincerely,

Procurement commission chairperson / secretary

Z. Nore

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECTRONIC SIGNATURE
AND CONTAINS A TIME STAMP