

## **EEIG RFC NORTH SEA – MED**

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## **TENDER RULES FOR A REQUEST FOR PROPOSALS**

### **STUDY FOR CAPACITY VISUALISATION**

**Call for tenders to develop indicators and visuals to understand and share capacity issues on most of corridor's routes and examine how they can help decision-making**



**Co-funded by  
the European Union**

## 1. GENERAL INFORMATION

These Tender Rules define the rules for selecting the Contractor with whom:

EEIG Rail Freight Corridor North Sea-Mediterranean, registered in Luxembourg, hereafter defined as "EEIG"

Will enter into an agreement in its own name and in the following scope:

### **Study for capacity visualisation**

#### **Call for tenders to develop indicators and visuals to understand and share capacity issues on most of the corridor's routes and examine how they can help decision-making**

The Contractor is obliged to keep all legally protected information obtained during negotiations and during the performance of the agreement in confidence.

The proceeding is conducted according to provisions applicable to the place of residence of the Contracting party.

**The context and technical requirements of the call are described in Annex 1: Terms of Reference.**

## 2. TYPE OF PROCEDURE

**Procurement procedure: request for proposals in a restricted tendering procedure.**

Order procedure will be conducted based on the regulations contained in these Tender Rules and in accordance with Luxembourg law.

## 3. DURATION OF THE CONTRACT

**Contract Period: Mid-January 2023 till the end of 2023.**

Commencement date: the subject of this order will be implemented from the date of signing the contract. Signing of the contract will take place after the selection of the contractor's offer.

End: at the delivery of the final results of the study and at last at the end of the contract period.

## 4. LANGUAGE IN WHICH SETTLEMENTS WILL BE CONDUCTED

All settlements to the implementation of this public procurement will be in English language.

## 5. CONDITIONS FOR PARTICIPATION IN THE PROCEEDINGS AND METHOD OF EVALUATION OF COMPLIANCE WITH THESE CONDITIONS

**The Contractor may apply for the award of this order that fulfil the terms related to:**

- 5.1. Competence or authority to pursue a specific professional activity if it is provided for in separate regulations.
- 5.2. The economic and financial situation.
- 5.3. Technical and professional capabilities.
- 5.4. Current legal situation of the company.
- 5.5. The requirements regarding the EU Connecting Europe Facility (CEF) financing conditions

**Within the scope of the condition specified in 5.1**, the Contractor will submit to the Contracting party a prove of competence or authority to pursue the requested services.

**Within the scope of the condition specified in 5.2,** the Contractor is required to prove having financial means or creditworthiness in the amount of not less than EUR 20,000.00. Evaluation of meeting the condition indicated in 5.2. 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.

**Within the scope of the condition specified in 5.3, the Contractor is required to indicate:**

- executing during the last three years before the deadline of submission of the bid, at least 2 (two) studies in the scope of rail operations with a description of the value, object, date of execution, and the entities for which the services were performed with the attachment of evidence that the service was executed properly.

Evaluation of meeting the condition indicated in Article 5.3. will be based on documents submitted by the Contractor:

- a list of orders performed, including the subject matter of the order, the dates of execution and the recipients of the services, and the documents confirming that the services had been duly executed.

**Within the scope of the condition specified in 5.4, 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.

**Within the scope of the condition specified in 5.5, the following conditions must be met and committed by the Contractor:**

- An acknowledgement that the operator is not in a conflict of interests' position and a commitment to disclose any information that could be linked to a conflict of interests that would be identified during the proceedings or the performance of the contract.
- A commitment to preserve confidentiality with respect to sensitive and classified information.
- A commitment to the ethical values of the European Union.
- An acknowledgement that the subcontractor is required to display the logos relating to the co-financing.
- A commitment to provide general information about itself, to notify any changes that may occur and to retain any information generally relating to the project which may be used to that can be used as evidence of the costs involved.
- A commitment to full cooperation with the Commission and other authorities that may wish to carry out an audit and investigations in relation to the of the outsourced assignment and the related costs.
- A commitment to comply with the terms of Schedule 5 of the "Grant Agreement" (the draft document being appended to these tender rules for a request of proposals).

## 6. TENDER BOND

The Contracting party does not demand security in the form of a tender bond.

## 7. RULES OF PROVIDING CLARIFICATIONS

- The Contractor may request the Contracting party to clarify the content of the Tender Rules until 06/01/2023, no later than until the end of the day marking the half of the period for proposal submission.
- The Contracting party shall provide clarifications without delay, no later than within 7 calendar days, after the above-mentioned deadline.
- If the request for clarification of the Tender Rules, was received after the deadline, referred to in the first bullet point, the Contracting party may provide appropriate clarifications or leave the request unprocessed.
- Extending the deadline for submission of proposals shall not influence the deadline for submission of requests for clarification set forth in the first bullet point.
- The Contracting party shall post the content of requests and clarifications on its website, without revealing the source of the inquiry.
- In justified cases, the Contracting party may change the content of the Tender Rules before the deadline for the submission of proposals. Such a change shall be communicated without delay on its website.

- Should a major change in the Tender Rules, not resulting in the change of the content of the announcement on the procurement, require additional time for introducing necessary modifications to the proposals, the Contracting party shall extend the time prescribed for submission of proposals by posting proper information on the Contracting party's website, featuring the Tender Rules as well.
- Should the Tender Rules result in change of the procurement notice, the Contracting party shall publish proper information on the Contracting party's website.

## 8. PREPARATION OF THE BID

- Each Contractor may submit only one bid.
- The bid should be prepared strictly according to the requirements specified in these Tender Rules. The bid must be signed by persons authorized to represent the Contractor in accordance with the form of representation of the Contractor specified in the register or other document appropriate for the organizational form of the Contractor or by an authorized representative of the Contractor. If the document stating the legal status of the Contractor or the power of attorney shows that several persons are authorized to represent the Contractor, the documents included in the bid must be signed by all these persons.
- The power of attorney to represent the Contractor must directly result from the Statutory Document (representatives from National Court Register).
- The Annexes to these Tender Rules should be completed by the Contractor and attached to the bid or prepared by the Contractor in another form - in accordance with these Tender Rules.
- The Contracting party does not allow making any changes in the documents attached to these Tender Rules (abbreviations, omissions, deletions, corrections, or annotations) except for dotted spots, to be filled in or specially marked with a footnote for instance.
- The Contractor shall bear all costs associated with the preparation and submission of the bid.

## 9. DESCRIPTION OF THE PRICE CALCULATION

- The gross price specified in the bid must consider all the requirements of these Tender Rules and shall cover all direct and indirect costs that will be borne by the Contractor for the timely and proper performance of the whole of the subject matter of the Order and the value added tax (not applicable to foreign Contractors that are not VAT payers in Luxemburg).
- The bid price and the manner of its presentation in the bid is specified in the Bid Form, which constitutes Annex 2 to these Tender Rules.
- In the case of a foreign Contractor that is not registered in Luxemburg, the Contracting party shall, to evaluate the bid, add to the (net) price shown in it, the value added tax which the Contracting party would be obliged to pay in accordance with the applicable regulations.

## 10. FORM OF THE BID

- The Bid along with the Annexes should be drawn up in English, in a certified electronic version only.
- Appropriate filling in the dotted places in the templates of documents constituting annexes to these Tender Rules and subsequently being incorporated in the Bid can be made by computer, machine, or manually (and then scanned).
- Any places in the bid where the Contractor has made amendments or changes in the content entered by it (i.e. only in places where it is acceptable by the Contracting party) must be initialled by the person(s) signing the bid, otherwise they will not be included.
- The additional documents included in the bid may be presented in the form of originals scans or certified electronic copies. Compliance with the original of all recorded pages of copies of documents included in the bid should be confirmed by the person (or persons if two or more persons are authorized to represent the Contractor) signing the bid according to the content of the document defining the legal status of the Contractor or the content of the power of attorney attached to the bid.

## 11. CONTENT OF THE BID

The complete bid must contain the following documents:

- The completed bid form – filled in Annex 2 to the Tender Rules;
- A statement by the Contractor on the fulfilment of the conditions - filled in Annex 2 to the Tender Rules;
- List of the orders performed;
- Confirmation of the technical and professional qualifications of the persons;
- 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;
- 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;
- Description of the methodology and the project schedule.
- List of work for subcontracting – if applicable.

## 12. BID VALIDITY

The Contractor is bound by the bid until 60 days from the date of the opening of the proposals.

## 13. PLACE, DATE AND METHOD OF SUBMISSION

The bid should be submitted in an electronic form, by e-mail, to the contact person mentioned hereunder,

And this by 23/12/2022 until 03:00 p.m. local time

A bid made after the deadline will be returned to the Contractor without opening.

Contract: [matthieu.maeselle@rfc-northsea-med.eu](mailto:matthieu.maeselle@rfc-northsea-med.eu)

## 14. CONTRACT AWARD CRITEREA

The criteria for choosing the best bid will be:

- **Total Gross Price: 30%**
- **Skills of the team: 30%**
- **Methodology & project schedule: 40%**

Price (A)			30%
Skills of the Team Members Performing (B)		<b>100 points</b>	30%
	Knowledge of English	10 points	
	Experience of the team regarding capacity studies in railways.	45 points	
	Capacity IT tools expertise of the Contractor .	45 points	

<b>Methodology and the project schedule (C)</b>		<b>100 points</b>	<b>40%</b>
	Evaluation of the description of the methodology	80 points	
	Evaluation of the proposal of the project schedule regarding the asked planning	20 points	

**Score points:**

$$A \text{ points} = \frac{\text{The lowest gross price}}{\text{Price of the offer X}} \times 30\%$$

$$B \text{ points} = \text{total points for skills} \times 30\%$$

$$C \text{ points} = \text{total points for the methodology and project schedule} \times 40\%$$

**Total points of the offer = A + B + C**

Points will be given to two decimal places.

**Skills of the Team Members Performing:** The team delivering the service should include the following profiles:

- at least 5 years' experience in rail capacity, experience in participating at least two studies in rail capacity.
- Language quality check: all of the team members having contact with the Contracting party should have proficiency level language skills in English.
- Confirmation of the educational and professional qualifications of the persons who will provide the service for this tender including the management.

## 15. BID REJECTION

**The Contracting party shall reject a proposal if:**

- Its content fails to comply with the Tender Rule.
- Submission of the proposal constitutes an act of unfair competition under the Luxemburg regulation,
- The Contractor should be excluded in accordance with Article 29 of the Law of 8 April 2018 on public tenders.

It contains an abnormally low price or costs in relation to the object of procurement and if the Contractor failed to submit clarifications within the established period of time, as mentioned in Art.16.

- The Contractor fails to meet the conditions specified in Article 5, and in particular the requirements of the EU CEF financing mentioned in Article 5.
- The contractor is an entity which is prohibited to apply for public procurement as a preventive measure.
- Within 3 days from being serviced with a proper notice, the contractor refused to correct errors.
- The proposal is invalid under separate provisions.
- The Contractor failed to complete lacking documents within the established deadline despite being noticed to do so.
- The proposal contains errors in calculations which cannot be corrected.
- The contractor submitted improper information influencing or possible to influence the result of the pending procedure.

## 16. EXAMINATION AND EVALUATION OF PROPOSALS

- The Contracting party shall examine the compliance of the proposals with the Tender Rules.
- During examination and evaluation of the proposals the Contracting party may request Contractors to provide clarifications on the content of submitted proposals.
- The Contracting party shall analyse the provided documents to check compliance of the documents with the requirements.
- Should the Contractor not submit documents confirming circumstances specified in this document hereof or other documents required for conducting the procedure; not submit all the documents; submit documents that feature mistakes or provoke the Contracting party's doubts, the Contractor shall be required to provide the lacking documents, complete the documents or provide clarifications within the period established by the Contracting party, unless despite submission, completion or provision of clarifications the proposal is subject to rejection or annulment of the procedure would have been necessary.
- The Contracting party shall require the Contractor to submit the original or the document certified by a notary to be a true copy of the power of attorney for conclusion of the proposal, unless such a power is stipulated by other documents submitted with the proposal. The content of the power of attorney shall clearly state which action the holder of the power of attorney is authorised for. Should the Contractor not submit the required powers of attorney or submit incorrect powers of attorney, the Contractor shall be required to provide the documents unless despite submission, completion or provision the proposal is subject to rejection or annulment of the procedure would have been necessary.
- The Contractor shall submit original documents or documents certified to be true copies of original documents, in an electronic way.
- The Contracting party may request presentation of the original or certified copy (electronic) of the document, should the submitted copy of the document be illegible or provoke doubts in terms of its genuineness.
- Documents shall be submitted in English.
- The Contracting party shall correct the following mistakes in the proposals:
  - obvious typographical errors.
  - obvious errors in calculation, with considering the consequences of the introduced corrections for further calculations.
  - other errors leading to lack of compliance of the content of the proposal with the procurement announcement and the Tender Rules but which shall not result in major changes of the content of the proposal.

**All Contractors who submitted their proposal shall be informed about such a fact without delay.**

## 17. SELECTION OF THE BEST PROPOSAL

- Each Contractor who submitted a proposal shall be informed on the choice of the winning proposal.
- Should the winning Contractor, whose proposal has been selected, avoid conclusion of the agreement on the public procurement, the Contracting party may choose the best proposal among the remaining ones without additional evaluation, unless there are indications that the procedure shall be annulled.
- The Contracting party may request the Contractors to submit additional proposals, should the price of the best offer exceed the amount assigned to financing the procurement. In case of additional proposals, the Contractors shall only offer prices lower than in the primary proposals.
- The Contracting party shall publish information on the choice of the best offer through request for proposals on the Contracting party's website.

## 18. NOTIFICATION OF THE RESULT

- When selecting the most advantageous bid, the Contracting party will apply only the criteria specified in these Tender Rules.
- The Contracting party will award the order to the Contractor whose bid will be considered the most advantageous in line with the evaluation criteria of Art. 14.
- Promptly after selecting the most advantageous bid, the Contracting party will notify the Contractors who have submitted a bid about:
  - the selection of the most advantageous bid, giving the name (company), seat, and address of the Contractor whose bid was selected and justification of its selection, as well as the name (company), seat, and addresses of the Contractors that submitted a bid together with the score awarded to the bids in each bid evaluation criterion and a total score;
  - the Contractors whose bid has been rejected, providing factual and legal justification. Promptly after selecting the most advantageous bid, the Contracting party will provide the information referred to in the Tender Rules on the Contracting party's website.
- The place and date of signing the contract will be indicated to the Contractor, whose bid has been selected, in a separate e-mail.
- In case of refusal to sign the contract by the selected Contractor, the Contracting party may re-select from the other valid bids, unless their validity has expired. The Contracting party will be entitled to seek from the Contractor, who refused to sign the Contract, claims arising from the provisions of the Luxemburg Civil Code, including, among others, compensation on general terms (for damage caused by refusal to sign the contract).

## 19. INFORMATION WHICH CONSTITUTES A BUSINESS SECRET IN THE MEANING OF REGULATIONS ON COUNTERACTING UNFAIR COMPETITION

The Contractor may reserve in the Bid Form (Annex 2 to these Tender Rules) that the Contracting party will not be permitted to disclose information constituting a business secret within the meaning of the regulations on counteracting unfair competition. Every sheet (page) covered by the business secret must be inscribed with an indication that it is a business secret (e.g., "Confidential"). If the Contractor fails to comply with the provisions of this point, the Contracting party will not be liable in case of disclosure of information contained therein, e.g. when third parties review the bids.

The Contractor cannot specifically reserve the following information: name and address, price information, date of order execution, warranty period, and terms of payment.

## 20. ANNULMENT OF THE PROCEEDINGS

The Contracting party will annul the proceedings on awarding this order if:

- all submitted bids were subject to rejection.
- there has been a significant change in the circumstances that conducting of the proceedings or fulfilment of the order is not in the interest of the EEIG.
- the price of the most advantageous bid exceeds the amount that the Contracting party may spend on financing the order unless the Contractors will make additional proposals and offer prices lower than in the primary proposals.
- the proceedings are subject to a defect which prevents the conclusion of a valid contract.

**The Contracting party notifies about the annulment of the proceedings all Contractors who applied for the award of the order, giving factual and legal justification.**

## 21. LEGAL REMEDIES FOR CONTRACTORS

- In case of violation of the provisions of the Tender Rules or an announcement concerning:
  - conditions for participation in the procedure.
  - criteria for the evaluation of bids and their significance.



- rejection of the Contractor's bid.
- having or likely to affect the outcome of the proceedings - the Contractor may lodge a complaint. The complaint shall be lodged within 5 calendar days running from the date on which the Contractor was informed or with due diligence one could have been informed of the circumstances giving rise to its lodging.
- The complaint lodged after the deadline or by an entity not entitled to lodge complaints shall be rejected.
- Complaints shall be received and decided on by the Contracting party conducting the procedure for awarding the procurement.
- The complaint shall indicate the procedure giving rise to the complaint and include:
  - brief description of the charges.
  - legal and factual circumstances providing grounds for the complaint.
  - the Contractor's claims.
- The Contracting party shall inform the Contractors participating in the procedure about the instance of lodging the complaint and about the content of the complaint. Contractors shall have the right to take part in the complaint procedure through providing a written statement.
- If necessary, the Contracting party conducting the procedure shall inquire about prolonging the tender binding period to the Contractors.
- The Contracting party may hear explanations provided by the Contractors having interest in the procedure. The hearing shall be public.
- The Contracting party shall waive, reject, or allow the complaint. Should the complaint be allowed, the Contracting party shall repeat the actions included in the complaint or the procedure for awarding the procurement shall be annulled.
- The decision on the complaint shall be sent to the Contractors who are directly involved in the complaint within 10 days from the date of lodging.

## 22. SUBCONTRACTING

- Subcontracting is permitted but the Contractor will retain full liability towards the Contracting party for performance of the Contract as a whole.
- The Contractor is obliged to indicate, the parts of the order which they intend to entrust to the Sub-Contractors.
- Failure to submit this with the bid is deemed by the Contracting party as the Contractor's consent to perform the entire object of the order alone, without entrusting any part of the order to Sub-Contractors.
- During Contract performance, the change of any subcontractor identified in the tender or additional subcontracting will be subject to prior written approval of the Contracting party.

## 23. JOINT BID

- Contractors may jointly apply for this order. A joint bid must meet the following requirements:
  - Contractors jointly applying for the order must establish and appoint a Proxy to represent them in the proceedings for award of this order or to represent in the proceedings for award of this order and conclusion of a Contract for public procurement. Contractors appoint a proxy attorney who shall represent them in the procedure for awarding a procurement or to represent them in the procedure and conclude the agreement on the procurement.
  - In case of submission of a joint bid, the detailed terms set out in Article 5.1-5.3 shall be deemed to be met if all the Contractors submitting the joint bid meet them, whereas the documents referred to in Article 5.4 must be submitted by each of the Contractors submitting a joint bid.
  - The declaration referred to in Article 5.1 is jointly submitted by all the Contractors submitting the joint bid or by the Proxy on their behalf.
- All correspondence will be exchanged exclusively with the Proxy.

## 24. METHOD FOR COMMUNICATION OF THE CONTRACTING PARTY WITH THE CONTRACTOR

- The bids must be submitted in writing, by electronic means (e-mail) and in English language.
- All clarifications, statements, motions, submissions, notices, and information may be sent by electronic means.
- Clarifications, statements, motions, notices, and information provided by electronic means are deemed to have been submitted in time, if their content has reached the addressee before the deadline. The addressee may request a written (electronic) confirmation of the statement, motion, notice, and information.
- The Contracting party entitles Mr. Matthieu Maeselle, Manager Finance and communication, EEIG “Rail Freight Corridor North Sea-Mediterranean”, to communicate with the Contractors on working days between 8 a.m. and 4 p.m., e-mail address: [matthieu.maeselle@rfc-northsea-med.eu](mailto:matthieu.maeselle@rfc-northsea-med.eu)

## 25. GDPR INFORMATION CLAUSE

- The Contracting party acting pursuant to Article 13 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (EU Official Journal L 119 of 2016, pp 1– 88), hereinafter referred to as: “GDPR”, hereby informs you<sup>1</sup> that:
  - the Permanent Team of the EEIG “Rail Freight Corridor North Sea-Mediterranean”, hereinafter referred to as the Contracting party, with its registered office at: Luxemburg, 9 Place de la Gare, 1616 Luxembourg.
  - o personal data shall be processed in order to:
    - conduct public procurement procedure.
    - appoint the Contractor and award a public procurement by concluding an Agreement.
    - store documentation on the public procurement procedure in case of an inspection conducted by authorised bodies and entities.
    - transfer the documentation on the public procurement procedure to the archives and then to dispose it (permanently remove and destroy).

within the scope: common data – name, surname, position held, workplace and professional qualifications required to fulfil the conditions of a participation in the procedure/performance of the Agreement, as well as in the case of submitting a power of attorney, declarations and other documents – personal data included in them.
  - o the legal basis for the processing of personal data by the Contracting party is Article 6.1 (c) and (f) of the GDPR, while the legitimate interest of the Contracting party is the necessity to conduct public procurement procedure.
  - o personal data shall be made available to other recipients if it is laid down by specific provisions.
  - o personal data may be transferred to a country not belonging to the European Economic Area (a third party) or international organisation within the meaning of GDPR, as part of outsourcing of the personal data processing or making available under the provisions of law, whereas, always subject to the fulfilment of one of the conditions:
    - European Commission stated that the third country or international organisation ensures appropriate level of personal data protection, pursuant to Article 45 of GDPR,
    - the third country or international organisation ensures appropriate safeguards and there are enforceable rights of data subjects and effective legal protection measures applicable, pursuant to Article 46 of GDPR,
    - there is a case referred to in the second paragraph of Article 49.1 of the GDPR, whereas, the data are appropriately secured, and the Contractor has the right to access the copy of the safeguards.
  - o personal data shall be stored pursuant to the provisions of law during the public procurement procedure, performance of the Agreement and for the period in which the Contracting Party will be fulfilling objectives

<sup>1</sup> concerns a natural person, a natural person conducting business activity, a Contractor’s representative being a natural person, a member of the managing body of the Contractor being a natural person or a natural person assigned to prepare and conduct the public procurement procedure

resulting from the legitimate interests of the data controller which are related with the subject of the Agreement or obligations resulting from the provisions of generally applicable law.

- you have the right to demand access to personal data concerning you and to rectify, remove them or limit their processing and the right to object to their processing, as well as the right to data portability.
  - you have the right to lodge a complaint with the EEIG.
  - provision of personal data is voluntary, however, without providing them it is impossible to allow for participation in the public procurement procedure.
  - the Contracting Party will not perform an automated decision-making, including profiling, based on the personal data provided.
- The Contractor undertakes to inform, on behalf of the Contracting Party, all-natural persons assigned to perform the Contract and natural persons conducting business activity who will be appointed as subcontractors and whose personal data are included in the tender submitted or any appendix or document submitted in the public procurement procedure, of:
    - the fact of transferring personal data to the Contracting Party.
    - processing personal data by the Contracting Party.
  - Pursuant to Article 14 of the GDPR, the Contractor undertakes to perform, on behalf of the Contracting Party, the information obligation towards the persons referred to in section 2, by providing them with the content of the information clause referred to in section 1, indicating, at the same time, for the persons the Contractor as the source of origin of the personal data which will be at the disposal of the Contracting Party.

**ANNEXES:**

Annex 1 – Terms of Reference

Annex 2 - Bid form

Annex 3 – Schedule 5 of the Grant Agreement (draft)