

November 29, 2020

**Invitation for Pre-Qualification for the Participation in a Tender for  
the Light Railway Project between Haifa and Nazareth**  
**Clarification Letter No. 9**

The following comprises TRI's responses to Candidates' Requests for Clarification ("RFC"). TRI's responses herein are binding as of the date of this Letter.

**1. RFC 108**

**(1.2.2; 9.8.3)**

**The Tender Committee is requested to clarify whether, if a Merger has occurred prior to Bid Submission, the Bidder shall be entitled to change the Entity serving as Guarantor, and provide an Updated Financial Statement with respect to the replacement Guarantor?**

**TRI's Response**

It is clarified that any change of composition of the Participant after the PQ Submission Date and before the submission in the Tender Selection Stage should be reported to the Tender Committee to receive its instructions in accordance with the provisions of the PQ Invitation and the Invitation in the Tender Selection Stage (as shall be published).

**2. RFC 109**

**(2.13)**

**According to Section 2.13.2, Participating Entities are prohibited from employing the Tender Committee's Advisors. According to 2.13.5, each Participant needs to submit its Request for Approval, and its and its Affiliated Entity's Notifications. Please clarify whether all Participating Entities are required to submit a Request for Approval and/or a Notification, and whether the obligation to submit a Notification also applies to all Participating Entities' Affiliated Entities.**

**If each Participating Entity and its Affiliated Entities are required to submit such Notification, this could mean, for international companies, hundreds of companies that need to provide such a Notification, many of them are not even related to transportation sector.**

**TRI's Response:**

It is clarified that Affiliated Entities which:

1. are not incorporated in Israel; and
2. do not have any activities in Israel; and
3. have engaged/ engage TRI Advisors who are on a separate team of personnel to the individuals engaged by TRI; and
4. where the applicable engagement of TRI Advisors is in relation to a project outside of Israel,

are not obliged to submit Notifications in respect of TRI Advisors.

**3. RFC 110**

**(3.3.5; PQ Form "5" Section 1.3)**

**According to these Sections, Experience Providers will be responsible jointly and severally with the Participant for the execution of the part of the Works for which they demonstrated experience.**

**The request that the Experience Provider will be jointly and severally liable with the Participant causes major problems for Experience Providers, since, among others: (i) Experience Providers will not have a direct contractual relationships with TRI, and (ii) it de-facto prevents Experience Providers from having a limitation of liability (under the assumption that the Concession Agreement will not include any limitation of liability of the concessionaire).**

**Therefore, please delete the request that the Experience Provider has to be jointly and severally liable with the Participant.**

**TRI's Response**

The request is accepted. Please refer to Addendum 8, Items 3, 4 and 14.

**4. RFC 111**

**(4.1)**

**1) The Tender Committee is kindly requested to amend the requirement of demonstrating at least three Rail Projects, either:**

- (a) To demonstrate the requisite experience for at least three LRT, Metro or heavy rail lines; or**

(b) To demonstrate experience on at least two Rail Projects.

The reason is that a single project could consist of multiple rail lines, each with different completion and commissioning dates. Thus, by referring to projects, bidders that performed only few, but very large projects might not be able to pre-qualify for this area even though they have comparable experience.

- 2) The Tender Committee is kindly requested to amend the definition of "Systems" so that only two such Rail Projects must have included overhead catenary scope. The reason is that many relevant Metro references instead operate with a third rail for power conduction, yet the definition of Systems requires overhead catenary.

#### **TRI's Response**

- 1) For the purpose of Section 4.1 (Experience in the Design and Installation of Systems) and Section 4.2 (Experience in the Design and Installation of Signaling Systems), a Completed section of a rail project, which complies in itself with the requirements of Section 4.1 or 4.2, may be considered a Rail Project.

**It is clarified that the same section or any part of a demonstrated rail project cannot be considered as included within more than one Rail Project.**

**Also, for the purpose of demonstrating Commercial Operation, each section demonstrated as a Rail Project shall have had its own dedicated commencement of Commercial Operation.**

The threshold requirements in respect of the number of Rail Projects remain unchanged.

- 2) The request is accepted. Please see Addendum 8 Item 5.

#### **5. RFC 112**

(4.3)

**The Tender Committee is hereby requested to amend Section 4.3 as follows: "Completion, as a Lead Contractor, during the period commencing on 1 January 2008 and ending on the Pre-Qualification Submission Date, of the Design and construction of Track-Way works for at least three (3) Rail Projects, wherein: [...]"**

#### **TRI's Response**

The request is rejected.

6. **RFC 113**

(5.4)

The Tender Committee is hereby requested to amend Section 5.4 as follows:  
"Each Participant is required to demonstrate that at least one of its Members has, as of 1 January ~~2007~~ 2010, obtained (borrowed) External Financing for at least two (2) Infrastructure Projects. The amount of External Financing for each referenced project shall not be less than NIS 750 Million."

**TRI's Response**

The request is rejected.

7. **RFC 114**

(4.6)

The Tender Committee is kindly requested to clarify that if there are two operational lines built in parallel in the same section, whether the second operational line will be cumulatively calculated. For instance, within a 20 km long section, there are 2 operational lines built in parallel, which of the total length will be adopted: 40 km or 20 km?

**TRI's Response**

Section 4.6 refers to the length of Routes, which are defined as twin track or greater rail track. Accordingly, the two tracks will be counted as one length of the Route and not cumulatively. In the given example, only 20km will be considered for qualification as related to Section 4.6.

8. **RFC 115**

(4.7)

The Tender Committee is kindly requested to confirm that for the purpose of Operation experience, a Vehicle only needs to meet or exceed the total capacity of 180 passengers, where a minimum capacity of 30 passengers are to be seated. The demonstration of Operator capability should not be restricted by an arbitrary ratio of seated to standing passengers per Vehicle.

**TRI's Response**

It is clarified that for the purposes of the Threshold Requirement under Section 4.7, the definition of "Vehicles" does not require a ratio of seated to standing passengers; the definition requires certain minimum capacities for seated passengers and for standing passengers.

**9. RFC 116**

**(4.7.4)**

**The Tender Committee is kindly requested to confirm that a section complies with the requirement for at-grade operation if it is an elevated section (higher than ground level), operating on an exclusive right-of-way.**

**TRI's Response**

For the purpose of Section 4.7.4, an at-grade section must include ground level operation, although some elevation may be included as part of the demonstrated section.

**10. RFC 117**

**(4.7.5)**

**The Tender Committee is kindly requested to amend the minimum aggregate ridership for each period of twelve (12) consecutive months from fifteen million (15,000,000) passengers to ten million (10,000,000) passengers.**

**TRI's Response**

The request is accepted. See Addendum 8, Item 6.

**11. RFC 118**

**(6.1.1.3, 6.1.1.4)**

**The Tender Committee is hereby kindly requested to reconsider its response to RFC 078 which stated:**

*"The Tender Committee is hereby kindly requested to confirm that the holding structure of a Supporting Entity, where the Experience Provider indirectly holds 100% of the effective holdings in the Supporting Entity through several second, third and fourth tier entities (each with partial effective holdings in the Supporting Entity), is compliant with the provisions of Section 6.1.1.3 and/or of Section 6.1.1.4 of the PQ Invitation.*

TRI's Response

*The request is rejected.*

**TRI's Response**

The Tender Committee retracts its response of rejection to RFC 078. The participant has presented a specific structure of holdings in the Supporting Entity (via a diagram of its organizational structure which is not being published herein). The compliance of any specific organizational structure will be considered in the review of the submissions. The RFC process is not intended to serve as a pre-ruling for the PQ stage.

12. **RFC 119**

**(6.1.1.4)**

**The Tender Committee is kindly requested to amend Section 6.1.1.4 of the Invitation in a manner that for the purpose of demonstrating compliance with the Professional Pre-Qualification Requirements, an Experience Provider may present and rely on projects which were executed by itself and on projects which were executed by a Supporting Entity which is held by the Experience Provider so that the Experience Provider has Effective Holdings of one hundred percent (100%) of all Means of Control in one or more intermediate Entity(ies) provided that the immediate, direct shareholder of the Supporting Entity ("Entity") directly holds at least 50% of all Means of Control in that Supporting Entity.**

**In this regard the Tender Committee is kindly referred to Section 6.1.1 of the Invitation which states that an Experience Provider may rely on works which were executed by Supporting Entity which is either a Subsidiary (direct holding of 50%) or an entity which is a second tier Subsidiary of the Experience Provider in which the Experience Provider has Effective Holdings of 50% or more of all Means of Control. We do not believe that the fact that there is more than one intermediate entity which is held 100% should change the effective holding requirement to 75%.**

**TRI's Response**

The request is rejected.

13. **RFC 120**

**(PQ Form "1")**

**The Tender Committee is hereby requested to allocate a spot for the Participant's signature on the form.**

**TRI's Response**

Please see Addendum 8, Item 8.

14. **RFC 121**

(PQ Form "4")

The requirements of Form "4" require each of the Participating Entities to complete the form, yet under section 2 (Role of the Participating Entity), the Financial Entities are required to fill in the form. The Tender Committee is hereby requested to amend the instructions stipulated in the Form so that it shall be specified: *"To be completed by each Participating Entity, and each financial Entity, each on a separate form"*. Alternatively, the Tender Committee is requested to clarify which entity among the Participating Entities should complete the Financial Entities box in Section 2 of the mentioned form.

**TRI's Response**

Per the definitions of the Invitation, a Participating Entity is any entity which participates in a Pre-Qualification Submission in any capacity. The status of an entity as being a "Financial Entity" does not refer to its role within the Project, rather to the entity's form of incorporation and registered purposes. Thus, a Financial Entity may serve as a Participating Entity, for example, as a Member. In such case, the Financial Entity shall fill out Form "4" by marking itself both as a Member and as the relevant type of Financial Entity. There is no contradiction or inconsistency in the Tender Documents in this regard; the requested amendments are hereby rejected.

15. **RFC 122**

(Addendum no. 7, PQ Form "4")

Addendum no. 7 added the definition "Parent Company" to the definition "Participating Entities" yet Form "4" that required the completion by each Participating Entity hasn't been changed/updated accordingly, and the option "Parent Company" does not exist under Section 2 (Role of the Participating Entity). The Tender Committee is hereby requested to amend PQ Form "4" accordingly.

**TRI's Response**

Please refer to Addendum 8, Item 10.

16. **RFC 123**

(PQ Form “6”)

**The Tender Committee is hereby requested to allocate a spot for the signature of the Experience Provider on the form.**

**TRI’s Response**

Please see Addendum 8, Item 15.

17. **RFC 124**

(PQ Form 5)

**The main principles of the EPC Contract will only be specified in the Tender Selection Stage. Given these circumstances, it is almost impossible for an Experience Provider to assess some of the undertakings of PQ form 5. Therefore, it is hereby requested to delete entirely Section 1 of PQ form 5 until the Tender Selection Stage.**

**TRI’s Response**

Please refer to Addendum 8, Item 14.

18. **RFC 125**

(PQ Form 5 Section 6.2)

**The Tender Committee is requested to accept foreign mailing addresses and facsimile numbers.**

**TRI’s Response**

The request is rejected.

19. **RFC 126**

(PQ Form 6 Annex A)

**The Tender Committee is requested to:**

- (a) Allow confirmation of the information required under section 1 to be given by a non-Israeli lawyer; and**
- (b) Confirm that the “formal certificate of the applicable statutory authority under the laws of the applicable jurisdiction” may be a confirmation given by the**

company's authorized signatories, duly notarized and apostilled (and does not necessarily have to be given by a governmental authority).

**TRI's Response**

- (a) The request is rejected.
- (b) The request is rejected.

20. **RFC 127**

**(PQ Form "14")**

Form "14" instructions are *"to be completed by each Member (which is not a Financial Entity)"* yet the first paragraph of Form "14" requires *"to be completed if this Pre-Qualification Form is submitted by a Member who is not a Guarantor."*

In light of the fact that there are different definitions in the Invitation of the terms "*Guarantor*" and "*Financial Entity*" the Tender Committee is hereby requested to clarify which provision of the form is correct.

**TRI's Response**

Both provisions of the Form are correct, as Guarantors are not necessarily Financial Entities as the term "Financial Entity" is defined in the Invitation. It is clarified that when the Form refers to "Members," it only refers to such Members who are required to complete such Form, i.e. Members which are not Financial Entities, per the instructions of the Form.

21. **RFC 128**

**(Clarification Letter No. 7, RFC 073)**

The Tender Committee is kindly requested to clarify their response to RFC 073 and confirm our interpretation, that

- a) the withdrawing Entity can be replaced by one new Entity or multiple new Entities which fulfill(s) the requirements of the PQ Invitation; and
- b) the remaining Members of the Participant (Bidding Consortium) can continue their participation in the Tender Process with the new Entity(ies) as a replacement of the withdrawing Entity.

**TRI's Response**

- a) It is clarified that in the referenced circumstances if the withdrawing Participating Entity has fulfilled multiple functions as a Participating Entity within PQ Submission,

it is possible to replace such Participating Entity by different Entities for each such function, all subject to the compliance with the instruction of the Tender Committee.

- b) Correct, subject to the discretion of the Tender Committee in accordance with the provisions of the Invitation.

**22. RFC 129**

**(Clarification Letter No. 7, RFC 078)**

**The Tender Committee is kindly requested to clarify its response to RFC 078, whether any indirect holding structure of the Supporting Entity by the Experience Provider of 100% through one or several intermediate Entities or Subsidiaries is compliant with the provisions of Section 6.1.1.3 and/or Section 6.1.1.4 of the PQ Invitation.**

**TRI's Response**

See response to RFC 118 above.

**23. RFC 130**

**(5.5; PQ Form 17)**

**The Tender Committee is kindly requested to amend the provisions of Section 5.5 and of Pre-Qualification Form "17" so that only the Participant, Member and/or Guarantor shall be required to submit said Form.**

**TRI's Response:**

The request is rejected.

**24. RFC 131**

**(Annex 1, clause 4.3.3)**

**The Tender Committee is kindly requested to elaborate on the "limited use of catenary-free" that is under consideration. We assume that it will be considered for sections in an urban environment (either Haifa or Nazareth or both). A typical technical solution would be to have onboard energy storage devices like batteries, but then their weight would need to be carried over the long interurban sections of the route. We believe this may be counterproductive to the intended goal of energy efficient transportation and would recommend that catenary-free operation is avoided for this rail system.**

**TRI's Response**

This will be expanded upon within the Tender Selection Stage Documents.

**25. RFC 132**

**(RFC 002)**

**The Tender Committee is kindly requested to clarify the expected fleet size. The PQ advertises an expected fleet size of 30-40 trains, while RFC 002 in Clarification Letter No. 1 states that "the current projection for full service is between 25 and 35 trains of single or multiple LRVs". Though this projection is not final or binding, the TRI response goes on to suggest that the initial operation stages may even require less trains. Will the tender outline the operation concept, timetables and passenger forecasts for peak and off-peak service at initial and ultimate stages of system operation?**

**TRI's Response**

Information regarding forecasts and peak-hour service will be included in the Tender Selection Stage Documents.

**26. RFC 133**

**(General)**

**The Tender Committee is kindly advised to consider avoiding any performance obligations (e.g. design works, permits, documents) until Financial Close (FC). Any such pre-FC work would be a risk that is very difficult to accept, particularly by international bidders: Should FC be delayed or not be achieved, the Project Company and its subcontractors would lose any compensation for such pre-FC work performed and would face further Owner's & other third party damage claims. Such risk could materialize also for reasons outside of bidder's control (e.g. changes in the financial markets, uncommon lender requirements). In view of this, especially the EPC subcontractors might choose a set-up that provides for mitigation and protection against this risk, likely leading to a higher price. To the extent the pre-FC work requirement is meant to save project-time, we see in other markets (Australia, UK, Canada) that the financial due diligence is brought forward to the bid phase at (reasonable) costs of the bidders. Such due diligence could be defined as a Proposal requirement that is also relevant for the bid evaluation.**

**TRI's Response**

Relevant information will be included in the Tender Selection Stage Documents.

**27. RFC 134**

**(4.3; PQ Form 9)**

**The Tender Committee is kindly requested to confirm:**

- 1) that the Track-Way lengths in section 4.3 refer to double track lengths (to be considered at 100%), and**
- 2) that the Track-Way lengths to be noted in Form 9 are single track lengths (to be considered at 50%), meaning that double track lengths of references need to be presented as twice their length.**

**TRI's Response**

- 1) In Section 4.3 the Track-Way lengths are either 100% of the length of one track, in the case of a double track, or 50% of the length of a single track.
- 2) In PQ Form 9, the track length is to be indicated as follows:
  - if double track, please indicate the track-way length of one track.
  - If single track, please indicate the entire length of the track (100%). For the purpose of the PQ evaluation, the evaluation team will consider only 50% of the indicated length of a single track.

**28. RFC 135**

**(Annex 2, clause 4.2)**

**Would the situation be acceptable to TRI whereby an O&M Contractor is 50% held by a Bus Operator with the remaining shareholding held by a Party that could pre-Qualify in its own right, but chooses not to as a result of the exemption granted under Section 4.7.5**

**TRI's Response**

The request is rejected. In the event that the Operation Experience Provider/ Bus Operator does not hold 100% of Means of Control in the O&M Contractor, the remaining shares therein shall be held by Participating Entities that were pre-qualified by the Tender Committee or otherwise approved according to the provisions of the Tender Documents.

29. **RFC 136**

(Annex 2, clause 4.8)

**The Tender Committee is hereby requested to provide guidance on Bus Operators' professional experience threshold requirements ahead of the Tender Selection Stage.**

**TRI's Response**

The request is hereby rejected.

30. **RFC 137**

(Annex 4)

**The Tender Committee is requested to add Taiwan New Dollar ("TWD") and Turkish Lira ("TRY") to the currency conversion table.**

**TRI's Response**

The request is accepted. See Addendum 8, Item 20.

The TWD was converted in accordance with the instructions of Section 6.3.3 of the PQ Invitation. However, as the TRY is not included in the US Federal Reserve System, therefore the Tender Committee approved the conversion of the TRY to Euro in accordance with the Eurostat website (<https://ec.europa.eu>), and then by adjusting to a conversion rate to NIS.