



## QUESTIONS AND ANSWERS (section 10 of the invitation to tender)

Version 2 (25/06/2018)

### Open Procedure - S2R.18.OP.02

*NB: in order to respect the confidentiality between the interested parties, questions submitted and answers provided must be written down in an anonymous way. Therefore, the S2R JU reserve the right to modify the question submitted by the interested party or delete the parts are not consider to be written in an anonymous way.*

	QUESTION	ANSWER
1.	We have also noted the following text in section 5.5 (Consortia and Joint tenders) of the tender specifications: “ <i>Notice for S2R JU Members: Please note that if the contract is awarded to a JU member (either “sole tenderer” or a member of a consortium), the S2R JU reserves the right to request, after the signature of the contract, evidence from the JU Member regarding the amount received (“transfer of money”) under this contract in order to verify the S2R JU contribution planned to be received in accordance with their respective Membership Agreement. This rule does not apply in case that the S2R JU member is a subcontractor as in this case the amount will be counted only to the leader of the consortium.</i> ” If we understand correctly, this clause is not in the Shift2Rail JU statutes.	The S2R JU procurement rules are governed by the S2R JU establishment Regulation and the S2R JU Financial Rules (both documents available at the following address: <a href="https://shift2rail.org/about-shift2rail/reference-documents/">https://shift2rail.org/about-shift2rail/reference-documents/</a> ). Article 5 of the S2R Regulation states that the S2R JU shall adopt its specific Financial rules in accordance with Article 209 of the EU Financial Regulation. Article 33(1) of the S2R JU Financial Rules states that, as regards procurement, the EU Financial Regulation and its Rules of application shall apply. Therefore, for S2R JU procurement procedures, the EU procurement rules shall apply, including for those tenders submitted by a S2R JU Founding or Associated member or their constituent or affiliated entities. The EU procurement rules states that in case of a joint



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In addition, the Shift2Rail JU's statutes only indicate that "... if a Shift2Rail JU Founding or Associated Member is awarded with the contract ..." and states nothing of the situation where a constituent entity or an affiliated entity is awarded a procurement contract. Furthermore may we draw notice to the fact that the Shift2Rail JU's statutes only reference "... the S2R contribution planned to be received in accordance with their respective Membership Agreement ..." and makes no reference to the Founding or Associated Member's (hereafter called Member) statutes, nor the relation of the constituent entity or an affiliated entity as defined in those statutes, nor their relation to the contribution.

tender, the contracting authority must request the identity of each member of the group and it may also request a document stating clearly the allocation of tasks between the members, including the amount received by each member of group if they have been awarded the contract. As the S2R JU statutes annexed to the S2R JU establishment Regulation foresees (article 17) that the Union financial contribution is limited up to 40 % to S2R founding members and their affiliated entities and up to 30 % to associated members and their affiliated entities, the S2R JU must verify that this maximum allocation is not reach neither by the members nor by their affiliated entities, whatever the source of Union's funding received (i.e.: following a call for proposals or a call for tenders). This obligation is also in line with Article 196(4) of the Rules of application of the Financial Regulation which state that, for grant applications, that "the applicant shall indicate the sources and amounts of Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action" (principle of avoiding double funding).

Finally, as stated in the tender specifications (section 5.5), *"in the case of a consortia or joint tender all the members of the group (including subcontractors), are jointly and severally liable for the performance of the contract"*. Therefore, the consortium/joint agreement must comply



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		<p>with the procurement documents. In this is not the case, the tender could be rejected for non-compliance with the terms and conditions of the frame-work contract (section 6.4 of the tender specifications).</p>
2	<p>Following the last Q&amp;A document published on 21/06/2018 and in order to have enough time to analyse it, we kindly ask to you to extend the submission deadline.</p>	<p>Unfortunately we cannot extend the deadline for submission of tenders for the reason you mentioned. Following the procurement rules, an extension of the deadline of tenders is only mandatory when the contracting authority, after the request made by the potential tenderer, decides to correct the procurement documents with a significant change, which is not the case in this particular request, as the procurement documents remain unchanged. In addition, following the indicative calendar mentioned in section 2.4 of the tender specifications, we intend to sign the contract on 03/09/2018 at the latest, taking into consideration the mandatory legal deadlines for an open procedure and the fact that is recommended not to fix the deadline of submission of tenders during the summer' holidays.</p>