

Invitation to submit requests to participate
including
Qualification documents
and
Instructions for the preparation of documents to prove
qualification

(hereinafter referred to as the "**Invitation**")

Správa železnic, state organisation and the Czech Republic -
Ministry of Transport

(hereinafter jointly referred to as the "**Contracting Authority**")

carry out a procurement procedure for the conclusion of a contract pursuant to Section 68 et
seq. of Act No. 134/2016 Coll., on public procurement, as amended

(hereinafter referred to as "**the PPA**")

with title

PPP project of railway connection Prague - Václav Havel
Airport Prague

Table of Contents

1	Introduction	4
2	Contracting Authority Identification	4
3	Information on Public Contract.....	5
3.1	Division of the Public Contract.....	6
3.2	Subject Matter of the Public Contract	6
3.2.1	Building products, technological products and materials.....	10
3.3	Subject headings	11
4	Special conditions of performance of the Public Contract	12
4.1	Socially responsible procurement principle.....	12
4.2	Principle of environmentally responsible procurement	12
4.3	Innovation principle	13
5	Preliminary market consultations.....	13
6	Estimated value of the Public Contract.....	14
7	Information regarding the funding of the Public Contract	14
7.1	Payment mechanism.....	14
7.2	Currency	14
7.3	ESA	15
7.4	Involvement of international financial institutions	15
7.5	Exclusivity of banks	15
8	Public Contract specifications and the procurement procedure.....	15
8.1	Period of performance.....	15
8.2	Estimated timetable for the competitive dialogue procedure	16
8.3	Deliberation of Procedure with Competitive Dialogue.....	16
8.3.1	Qualification	16
8.3.2	Rules for Reduction of the Number of participants in the Procurement Procedure.....	17
8.3.3	Competitive dialogue	18
8.3.4	Place of performance	19
8.3.5	Communication language	19
9	Invitation to submit requests to participate and explanation of the Invitation to submit requests to participate	19
10	Qualification of contractors of the procurement procedure.....	20
10.1	General principles	20

10.2 Documents proving compliance with requirements of the procurement documents.....	21
10.3 Proof of qualification by extracting from the list of qualified contractors	21
10.4 Proving qualification by certificate	21
10.5 Proving qualifications obtained abroad	22
10.6 Proving qualification through other persons and subcontractors.....	22
10.7 Proof of qualification and liability of contractors in case of joint participation of contractors	24
10.8 Basic qualification	25
10.9 Professional qualification.....	26
10.10 Economic qualification.....	26
10.11 Technical qualifications.....	27
11 Award period and security.....	31
12 Conditions and requirements for preparation of the request to participate	32
12.1 Requirements for preparation of the request to participate	32
12.2 Requirements for the structure of the request to participate	32
12.3 Submitting a request to participate.....	35
12.4 Time Limit for Submission of Requests to Participate	35
13 Subcontractors.....	35
14 Conflict of interest provisions.....	36
15 Personal data protection	37
16 Other terms and conditions and reserved rights of the Contracting Authority	37
16.1 Participation of entities from countries not guaranteeing competition	37
16.2 Participation of entities with foreign subsidies	38
16.3 Prohibited agreements	39
16.4 Reserved change of services from the Contract.....	39
16.5 Trade secrets.....	39
16.6 Sanctions	39
16.7 Other conditions and reserved rights of the Contracting Authority.....	40
17 Project website	41
18 List of annexes.....	42

1 Introduction

This Invitation includes the terms and conditions in the details necessary for the participation of the contractor in the procurement procedure for the sectoral public service contract awarded in a competitive dialogue procedure pursuant to Section 68 et seq. of the PPA entitled "*PPP project of the railway connection Prague - Václav Havel Airport Prague*", reference number in the Tenders Electronic Daily Z2024-054274 (hereinafter referred to as the "**Public Contract**"), i.e. the terms and conditions of the procurement procedure, the conditions of participation in the procurement procedure, in particular the qualification conditions.

The information and data provided in the Invitation define the binding requirements of the Contracting Authority for participation in the procurement procedure. Each contractor is obliged to comply fully and unconditionally with these requirements when processing its request to participate. Non-acceptance of the Contracting Authority's requirements specified in the Invitation, or in its clarification, amendment or supplement, or non-compliance with the commercial or technical terms and conditions will be considered as non-compliance with the procurement documents, which may result in the exclusion of the participant from the procurement procedure pursuant to Section 48 of the PPA.

The participant in the procurement procedure is fully responsible for carefully studying the Invitation, or any subsequent clarifications, amendments and supplements thereto, as well as for obtaining reliable information in relation to all conditions and obligations that may in any way affect the correctness of its request to participate in the Public Contract.

The procurement procedure and all related legal relations are governed by the law of the Czech Republic, in particular the PPA or Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter referred to as the "**CC**"). The details of the procurement procedure that are not specifically mentioned in the Invitation are determined by the relevant provisions of the PPA. By submitting its request to participate, the contractor accepts fully and without reservation the terms and conditions of the Public Contract.

Contractors are obliged to follow the instructions contained in this Invitation when preparing and submitting requests to participate. Contractors shall not be entitled to reimbursement of the costs associated with the preparation and submission of the request to participate, nor of any costs associated with participation in the procurement procedure for the Public Contract.

The Contracting Authority hereby informs that a Preliminary Notice - Sectoral Public Procurement form was published on 31 October 2024 under the registration number F2024-054274 for the Public Procurement¹, for the purpose of announcing the Contracting Authority's intention to initiate a procurement procedure pursuant to Section 34 of the PPA.

2 Contracting Authority Identification

Title: Správa železnic, state organisation

¹ Form available here: <https://vvz.nipez.cz/vyhledat-formular/1a4f6258-7110-4451-84df-9a0d82f32641>

Registered Office: Dlážděná 1003/7, 110 00 Praha 1

Business ID No.: 70994234

Taxpayer No.: CZ70994234

Corporate form: 325 – State organization Správa železnic

Acting through: Ing. Mojmír Nejezchleb, Deputy Director General for Railway Modernization, on the basis of authorisation no. 3592

Contracting Authority Contact: Ing. Jana Klomfarová

E-mail: klomfarova@spravazeleznice.cz

Contracting Authority Profile Address: <https://zakazky.spravazeleznice.cz/>

(hereinafter referred to as the „SŽ“ or „Acting Contracting Authority“)

and

Title: Czech Republic – Ministry of Transport

Registered Office: nábreží Ludvíka Svobody 1222/12, 110 15 Praha 1

Business ID No: 66003008

Taxpayer No.: CZ66003008

Corporate form: 325 – State Organizational Unit

Acting through: Ing. Lenka Hamplová, Managing Director

Contracting Authority Contact: Ing. Jan Ornst, Ph.D.

E-mail: jan.ornst@md.gov.cz

Contracting Authority Profile Address: <https://nen.nipez.cz/profily-zadavatelů-platné/detail-profilu/mdcr>

(hereinafter referred to as the „MD“ or „Participating Contracting Authority“)

3 Information on Public Contract

Title of the Public Contract:	PPP project of railway connection Prague - Václav Havel Airport Prague
Type of public contract:	Public contract on services
System number of the Public Contract in E-ZAK:	P24V00001616
Type of public contract:	Above-threshold public contract
Type of public procurement:	Procedure with competitive dialogue

The following persons were involved in the preparation of the terms of reference.

- a) PORTOS, advokátní kancelář s.r.o., ID No.: 481 18 753, with registered office at Hvězdova 1716/2b, Nusle, 140 00 Prague 4 - Invitation including its Annexes 1 to 8, 10;
- b) Pavol Blaňár, attorney at law, executive director and shareholder of the law firm Blaňár & Partners s. r. o., IČO: 368 66 784, with registered office at Gunduličova 4, Bratislava 1, Postal Code 811 05, Slovak Republic - Invitation: determination of qualification conditions and determination of rules for reduction of the number of participants in the procurement procedure;
- c) Luis Branco, registration number 5800L, attorney at law, executive director and partner of the law firm Morais Leitão, Galvão Teles, Soares da Silva & Associados - Sociedade de Advogados, with registered office at Rua Castilho, 165, 1070-050 Lisboa, Portugal - Invitation: determination of the conditions of qualification and determination of rules for reduction of the number of participants in the procurement procedure;
- d) Česká spořitelna, a.s., ID No: 452 44 782, with registered office at: Praha 4, Olbrachtova 1929/62, Postal Code 140 00 - Invitation;
- e) Deloitte Advisory s.r.o., ID No.: 275 82 167, with registered office at Italská 2581/67, Vinohrady, 120 00 Prague 2 - Invitation;
- f) AFRY CZ s.r.o., ID No.: 453 06 605, with registered office at Magistrů 1275/13, 140 00 Prague 4 - Call, including Annexes 10a and 10b.
- g) Deloitte Consulting S.L.U., with registered office Plaza de Pablo Ruiz Picasso 1 Torre Picasso, 28020 Madrid, Spain, Tax No.: B81690471, registered in the Madrid Commercial Registry, volume 12.031, book 0, sheet 190, section 8, page M-189413, entry 7;
- h) Deloitte Albania Sh.p.k., Rruga e Kavaja, Komplex Delijorgji, building L, floors 1, 2 and 3, Tirana, Albania 1010, Tax No.: J62329003N
- i) Ing. Jakub Slavík, MBA, ID No.: 419 93 594, with registered office at K Podjezdu 596/18, 251 01, Říčany - Radošovice

3.1 Division of the Public Contract

This Public Contract is not divided into parts within the meaning of Section 35 or Section 101 of the PPA. The core of the PPP project lies precisely in the merging of the contractor's responsibilities from the design phase, through the implementation phase to the operation and maintenance phase, including a higher degree of risk transfer to the contractor than would be the case if these phases were awarded separately. If the individual parts of the subject of performance of this Public Contract are provided by different entities, the Contracting Authority is exposed to organisational risks and multiple costs and it would not be possible to implement the contract in accordance with the best practice of PPP projects even in such a scenario. The division of the Public Contract into parts is also not possible due to the specific method of financing the Public Contract, where the payment for the performance of the Public Contract will be provided to the contractor depending on the availability and quality of performance only after the completion of the design and implementation phase. For these reasons, the Contracting Authority does not consider it advisable, economical or even possible to divide the Public Contract into several parts.

3.2 Subject Matter of the Public Contract

This Public Contract on services covers selected sections of the investment project Modernisation of the line Prague - Kladno with connection to Václav Havel Airport Prague ("PRAK project"), namely sections

- A-46: Modernisation of the line Prague-Veleslavín (included) - Prague-Ruzyně (included),

- A-47: New construction of the line Prague-Ruzyně (excluded) - Prague Václav Havel Airport (excluded),
- A-48: New construction of the railway station Prague Václav Havel Airport and
- A-33: Rounding of the railway connection from the Václav Havel Airport to the line Prague - Václav Havel Airport - Kladno,

also referred to in the Invitation as A-46, A-47, A-48 and A-33. The entire length of the line will be a double-track railway line with a standardised gauge of 1435 mm, electrified by an alternating current traction power supply system 1x25 kV / 50 Hz, secured for the operation of railway transport by the ETCS L2 system, together with ensuring the compatibility of the constructed parts of the Public Contract with the surrounding parts of the railway infrastructure implemented by SŽ, or by the selected contractor.

The subject of the Public Contract on services will be the provision of a set of activities carried out in relation to the selected sections A-46, A-47, A-48 and A-33, consisting of:

- delivery or provision of changes to the project documentation and related engineering activities (design part), exercise of the rights and obligations of the builder;
- the execution of selected preparatory works prior to the commencement of construction, in particular archaeological survey, pyrotechnical survey, felling works, execution and evaluation for the contractor of the necessary additional engineering surveys (including drilling works);
- construction of selected railway sections, including the supply of related technologies and ensuring the implementation of the induced modifications (construction part) according to the minimum technical and work requirements defined by the Contracting Authority;
- supervising the execution of the works in cooperation with the Contracting Authority and an independent supervisor;
- ensuring the financing of the initial investment by the contractor (financing);
- repair and maintenance (or renewal) of the key subsystems: infrastructure, energy and track control and signalling for the duration of the contract (maintenance/operational part).

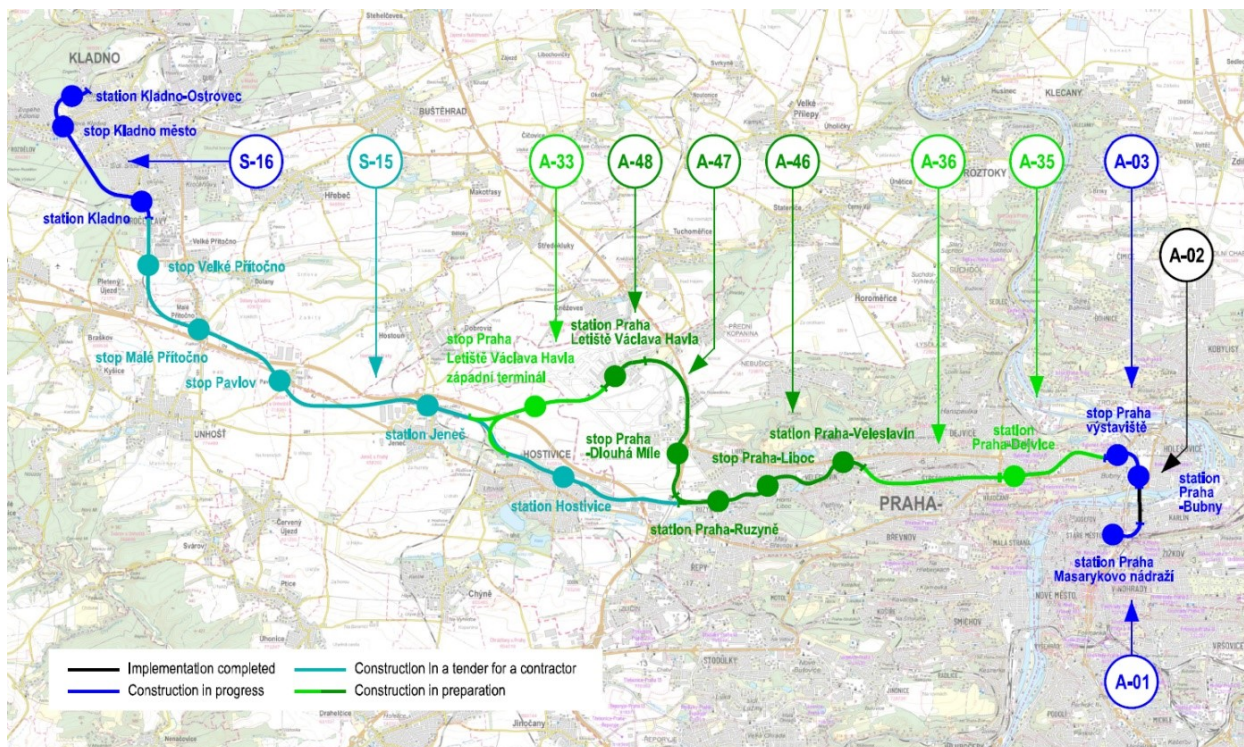
The intention of the Contracting Authority, i.e. the final objective pursued by the implementation of the Public Contract, is to implement selected sections of the PRAK project, including the design, construction, financing, repair and maintenance of the newly built railway line.

The performance of the subject matter of the Public Contract will be financed by the private sector (the selected contractor), which will be remunerated by the Contracting Authority in the form of availability payments once the railway line is operational.

On the contrary, the subject matter of the Public Contract **will not be**:

- operation of passenger or freight rail transport (to be provided by third party passenger or freight operators - carriers);
- operation of the railway as defined in the Railway Act² (to be provided by SŽ);
- acquisition or maintenance of rail vehicles (to be provided by carriers);
- traffic management and allocation of railway capacity (to be provided by SŽ);
- operation of signalling and communication technology (to be operated by SŽ);
- operation of power technology, purchase of electricity for traction (to be operated by SŽ).

² Act No. 266/1994 Coll., on railways, as amended ("**Railway Act**")



The Public Contract is part of a larger investment project called the PRAK project, the aim of which is the construction of a suburban railway line from the Prague-Masarykovo nádraží station located in the historical centre of Prague to the Kladno-Ostrovec station, which also includes the construction of a railway connection to the Václav Havel Prague Airport, the only international airport in Prague.

The entire PRAK project is divided into 11 line sections, 4 of which have been selected for implementation through PPP and are the subject of this Public Contract.

- A-01 Modernisation and Completion of the Prague Masarykovo nádraží Railway Station
- A-02 Reconstruction of Negrelli Viaduct
- A-03 Modernisation of the line Praha-Bubny (included) - Praha-Výstaviště (included)
- A-35 Modernisation of the line Praha-Výstaviště (excluded) - Praha-Dejvice (included)
- A-36 Modernisation of the line Praha-Dejvice (excluded) - Praha-Veleslavín (excluded)
- **A-46 Modernisation of the line Praha-Veleslavín (included) - Praha-Ruzyně (included)**
- **A-47 New construction of the line Praha-Ruzyně (excluded) - Praha-Letiště Václava Havla (excluded)**
- **A-48 New construction of the railway station Praha-Letiště Václava Havla**
- **A-33 Rounding of the railway connection from the Václav Havel Airport to the line Prague - Václav Havel Airport - Kladno**
- S-15 Modernisation of the line Praha-Ruzyně (excluded) - Kladno (excluded)
- S-16 Modernisation of the line Kladno (included) - Kladno-Ostrovec (included)

The section Praha-Veleslavín - Praha-Ruzyně (designated A-46) will be a completely new double-track electrified line to be built on the route of the historic, and currently still operated, single-track non-electrified line.

The section of Prague-Ruzyně station to Prague Václav Havel Airport (designated A-47), will feature a new double-track and electrified line on a green field with a multimodal hub for suburban transport in the middle of the section (Dlouhá Míle Terminal).

This section will be followed by the construction of the railway station at Prague Václav Havel Airport (designated A-48).

The last section is the so-called "rounding" (designated A-33), i.e. the extension of the line through the airport area (through the space between the current runway 06L/24R and the future parallel runway 06R/24L), which will create a connection back to the main line Prague - Kladno in the direction of Kladno and Hostivice. This "rounding " will allow some trains to operate from Prague to Kladno directly via the airport. The "rounding" section will also bring the possibility of serving the airport with long-distance trains directly from Prague Central Station in accordance with the EU TEN-T Regulation.

The Contracting Authority reserves the right, depending on the progress of the tendering procedure and the competitive dialogue, to narrow or otherwise modify the scope of the Public Contract, especially narrow the scope of the Public Contract to exclude the A-33 section and the supply and related installation of signalling and communication equipment.

A more detailed specification of the subject of the Public Contract is given in Annexes 10a and 10b to this Invitation.

3.2.1 Building products, technological products and materials

The Contracting Authority expects that during the competitive dialogue, it will discuss in detail with the participants, inter alia, the question of the suitability of construction products, technological products and materials and the requirements for demonstrating their suitability/usability for the performance of the Public Contract.

The Contracting Authority expects that, in the case of those parts of the work that do not have a functional overlap outside the section to be implemented by the contractor, it will also accept the usability of products and materials that will not be approved for use on the railway track in accordance with the internal regulations of the SŽ at the time of their incorporation into the work. For these products, the contractor will be obliged to obtain their approval for use on the railway line during construction or only during the operational period if operational verification is necessary for approval in accordance with SŽ Directive No. 67.

In the case of equipment with a network overlap (signalling and communication equipment, electrical power), the Contracting Authority will also accept the use of products which, at the time of submission of bids, will not be approved by the SŽ for use on the railway infrastructure in the Czech Republic, but which comply with the technical requirements of the relevant Technical Conditions (GTC) issued in accordance with the technical specifications of SŽ Directive No. 34. Network compatibility and compliance with security requirements, including e.g. cyber security, must be confirmed between the contractor and the SŽ before the installation of these devices is started using the procedures according to the SŽ Directive No. 34.

The contractor shall be obliged to ensure that the delivered solution is compatible with the surrounding part of the railway network operated by SŽ. The contractor shall also be obliged to demonstrate to SŽ compliance with the requirements of SŽ Directives 34 and 67³ so that SŽ can adjust its relations with the manufacturers of the associated products as necessary before termination of the contract in accordance with SŽ Directives 34 and 67. All parts of the work shall comply with the rules for the marketing of products in the EU. The directly applicable EU Regulation on Technical Specifications for Interoperability ("TSI") and other generally binding legislation in force in the Czech Republic shall also be respected. The contractor shall be obliged to provide the Railway Authority with all documentation required by the Railway Authority for the issuance of a certificate of operation for SŽ as a railway operator.

In the field of signalling equipment, it must be a product certified in the Czech Republic or another EU Member State with proven functional compatibility within the ETCS L2. The central part of the signalling system is being procured by SŽ within the framework of the Prague-Ruzyně (excluded) - Kladno (excluded)⁴ construction directly related to the Public Contract for which the procurement procedure is in progress at the time of launching this procurement procedure.

The contractor will be obliged to ensure the compatibility of the signalling equipment supplied by him for the Public Contract with the central part of the SŽ system.

³ SŽ Directives No. 34 and 67, which form Annexes No. 9 and 11 to this Invitation, are in the version valid and effective as of the date of commencement of the procurement procedure for the Public Contract. Should any changes occur

In the case of products that will not have direct compatibility provided by the manufacturer, SŽ will provide the contractor with the necessary level of cooperation from the supplier of the construction Praha-Ruzyně (excluded) - Kladno (excluded) in accordance with the Contract on Cooperation, which forms Annex 2.1.1 to the procurement documents of the public contract entitled "Modernisation of the line Praha-Ruzyně (excluded) - Kladno (excluded)". The Contracting Authority states that it will not limit the supplier of the signalling equipment in terms of their possible subcontracting cooperation with multiple bidders in the role of contractor of this Public Contract. The Contracting Authority foresees the need for close cooperation between suppliers of security equipment during the competitive dialogue itself and reserves the right to require contractors to demonstrate during the competitive dialogue that they have a security equipment subcontractor meeting the required conditions.

3.3 Subject headings

CPV code	CPV designation
50220000	Repair, maintenance and related services for railways and other equipment
71300000-1	Technical and engineering services
71311220	Transport engineering
71311230-2	Railway engineering
71320000-7	Technical design
71322000-1	Technical projects for the implementation of civil engineering works
45220000	Design and construction work
45221112	Construction of railway bridges
45230000	Construction work for pipelines, telecommunications and power lines, highways, roads, airstrips and railways; surface grading
45234110-0	Construction of intercity railways
34970000	Traffic control equipment
50225000-8	Maintenance of railway lines

in one or both of these annexes during the procurement procedure, the Contracting Authority shall inform about such changes in accordance with the procedure set out in Section 98 et seq. of the PPA.

⁴ This is a public contract entitled "Modernization of the line Praha-Ruzyně (excluded) - Kladno (excluded)", available here: https://zakazky.spravazeleznic.cz/contract_display_14154.html

4 Special conditions of performance of the Public Contract

In accordance with Section 6(4) of the PPA, the Contracting Authority is obliged to comply with the principles of socially responsible public procurement, environmentally responsible procurement and innovation (hereinafter referred to as "**SOVZ**"), provided that this is appropriate in view of the nature and purpose of the Public Contract.

The Contracting Authority shall therefore execute the Public Contract in accordance with the principles expressed in Section 6(4) of the PPA (principles of socially responsible procurement, environmentally responsible procurement and innovation; for more information, see <https://www.sovz.cz/>).

The Contracting Authority is interested in awarding the Public Contract in accordance with the principles of the SOVZ. In addition to the emphasis on purely economic parameters, the SOVZ also takes into account the related impacts of the Public Contract, in particular in the areas of employment, social and labour rights and the environment. The awarded contractor will be required to ensure, inter alia, compliance with the principles described below in the performance of the subject matter of the Public Contract.

The Contracting Authority will also monitor overall developments in the field of ESG and will take into account the current requirements of both the EU and financial institutions (including multilateral ones) and expects them to be reflected in the contractual documentation on the basis of which the Public Contract will be subsequently carried out.

4.1 Socially responsible procurement principle

In relation to the nature and purpose of this Public Contract, the Contracting Authority will comply with this principle. In particular the Contracting Authority will set the required performance appropriately and by provisions in the contract with the selected contractor that require the contractor to ensure legal employment, fair and dignified working conditions and an adequate level of occupational safety for all persons who will be involved in the performance of the subject matter of the Public Contract. The contractor will ensure that its subcontractors comply with this requirement of the Contracting Authority. The contract with the selected contractor shall also reflect appropriate sustainable practices in accordance with the internal rules of the Contracting Authority.

4.2 Principle of environmentally responsible procurement

In relation to the nature and purpose of this Public Contract, the Contracting Authority complies with this principle by requiring the selected contractor to reflect the applicable EU ESG legislation and directives as well as the environmental and social (E&S) standards and requirements defined in the legislation or the contract. The selected contractor will also reflect the applicable EBRD Environmental and Social Policies (hereinafter referred to as "**EBRD Policies**")⁵ and the European Investment Bank Environmental and Social Standards (hereinafter referred to as "**EIB Standards**")⁶ to the extent defined in the procurement documents or the contract. The contractor will be responsible for monitoring and complying with them during construction and operation, and these obligations, as well as the corresponding principles of

⁵ Available at: [Environmental and Social Policy \(ebrd.com\)](https://www.ebrd.com/en/environmental-social-policy)

⁶ Available at: [Environmental and Social Standards \(eib.org\)](https://www.eib.org/en/standards)

sustainable practice in accordance with the internal rules of the Contracting Authority, will also be reflected in the contract with the selected contractor.

4.3 Innovation principle

In relation to the nature and purpose of this Public Contract, the Contracting Authority states that the required performance itself represents a major innovation in the activities of the Contracting Authority and other public entities.

Therefore, the Contracting Authority has carefully considered the possibilities of applying the principles of socially responsible procurement, environmentally responsible procurement and innovation. The Contracting Authority has concluded that the application of other requirements in addition to the above is not appropriate, given the nature and purpose of the subject matter of the Public Contract.

5 Preliminary market consultations

In accordance with Section 36(4) of the PPA, the Contracting Authority states that in the preparation of this procurement procedure, it has used the possibility of organising preliminary market consultations pursuant to Section 33 of the PPA. These pre-market consultations were first organised through a document called the PPP Project Information Memorandum, which included a comprehensive questionnaire focusing on the different areas of interest related to the Public Contract. To ensure a wide range of responses, the questionnaire covered different topics through 16 questions and their sub-questions. This questionnaire was distributed to selected respondents, which included mainly construction companies, banks, investment funds and investors, and was also published on the SŽ profile https://zakazky.spravazeleznic.cz/contract_display_14986.html.

Subsequently, the preliminary market consultations were organised through the Investor Day, which was open to an unlimited number of persons or potential contractors. During the Investor Day, held on 5 September 2024 at the premises of the Contracting Authority, presentations were made on a range of topics that are, from the perspective of the Contracting Authority, essential to the structuring of these procurement documents.

The information on the organisation of the Investor Day was sent by the Contracting Authority to the entities that provided their answers to the above-mentioned written questions in the framework of the Information Memorandum and was also published on the profile of SŽ and in the form of a press release, which was subsequently picked up by selected media.

The main purpose of the Investor Day was to provide feedback from the participants (potential contractors) to the Contracting Authority on the individual topics presented. The presentation for Investor Day and the audio recording of Investor Day are available on the website <https://www.youtube.com/watch?v=9QLYuOrRb5o>.

- 1) On the basis of the respondents' suggestions, the Contracting Authority has extended in Article 3.2.1 of the Invitation the range of materials and products for construction to those which, at the time of incorporation into the works, will not be approved for use on the railway track within the meaning of the internal regulations of SŽ, provided that they subsequently obtain the necessary approvals or meet the general technical conditions (OTP). The rules for placing products on the

EU market, including the directly effective TSI Regulations and other generally binding legislation applicable in the territory of the Czech Republic, remain unaffected.

- 2) Proposals for adjustments to specific ESG and sustainability criteria are not directly reflected in the text of the Invitation but according to Article 4.2 the Contracting Authority will consider the current requirements of the EU and financial institutions (including multilateral ones). These requirements will be reflected in the procurement documentation on the basis of which the Public Contract will be executed. The Public Contract is prepared in accordance with environmental and social standards of the EIB and EBRD ensuring the possibility of their participation in the financing while fully respecting their specific requirements.
- 3) The recommendation that the Contracting Authority issue an official communication to prevent participants from securing exclusivity with banks during the procurement procedure has been reflected. The Contracting Authority reserves the right, in Article 7.5 of the Invitation, to require participants to declare during the competitive dialogue or in their bids that there are no exclusivity arrangements with any bank for financing the Public Contract.
- 4) Based on respondents' suggestions, the Contracting Authority has extended the period for acknowledgement of completed reference projects from 5 to 10 years in Article 10.11 of the Invitation.

6 Estimated value of the Public Contract

The Contracting Authority has set the estimated value of the Public Contract at CZK 84 billion excluding VAT. This amount represents the sum of the estimated nominal availability payments for each railway section of the Public Contract according to the updated financial model prepared for the Public Contract.

The estimated value of the Public Contract was determined considering the expected inflation rate in the form of the ČNB / ECB inflation target.

The estimated value of the performance according to Article 100(3) of the PPA is CZK 25,2 billion excluding VAT; see Article 16.4 of the Invitation for more details.

The total expected value of the Public Contract within the meaning of Section 16(3) of the PPA thus amounts to CZK 109.2 billion excluding VAT.

7 Information regarding the funding of the Public Contract

7.1 Payment mechanism

The Contracting Authority envisages the use of a payment mechanism based on availability payment. The actual amount of the availability payment paid to the contractor will reflect the actual inflation rate and will be subject to adjustments (deductions), mainly as a result of non-compliance with the agreed quality and availability of the specified services. The specific parameters of the payment mechanism will be negotiated in a competitive dialogue.

7.2 Currency

The Contracting Authority is willing to pay availability payments in a combination of CZK and EUR or in one of these currencies only.

7.3 ESA

The Contracting Authority expects that the Public Contract will be structured to achieve a classification outside the general government balance sheet according to the applicable Eurostat⁷ rules. The Contracting Authority does not exclude a reconsideration of this requirement in case this requirement would imply a significant disadvantage in terms of value for money achieved. The structuring of the Public Contract with regard to the applicable Eurostat rules will be the subject of negotiations in the competitive dialogue.

7.4 Involvement of international financial institutions

The Public Contract is being prepared in accordance with EIB and EBRD standards (including E&S) to enable participation in the financing of both institutions while fully respecting their specific requirements.

7.5 Exclusivity of banks

The Contracting Authority reserves the right to require participants to declare during the competitive dialogue / in their bids that there are no exclusive financing arrangements for the Public Contract with any bank.

8 Public Contract specifications and the procurement procedure

8.1 Period of performance

The Public Contract will be executed on the basis of a contract for the provision of design, construction, financing, maintenance and operational support⁸ (hereinafter referred to as the "**Contract**"), which will be concluded between the Contracting Authority and the selected contractor on the basis of the result of the procurement procedure.

The Contracting Authority emphasises that the Contract does not constitute a concession within the meaning of section 174 of the PPA. The Contract does not transfer the operational risks resulting from the operation of the construction to the selected contractor, which is one of the defining features of a concession within the meaning of the above-mentioned provision.

The Contracting Authority expects the commencement of performance under the Contract between Q4 2026 and Q1 2027. The Contracting Authority expects that the duration of the Contract will be the sum of the construction period according to the bid of the selected contractor + 25 years of the operational period from the effective date of the Contract (financial close).

The timetable for the implementation of the Public Contract will be specified on the basis of negotiations with the participants in the competitive dialogue.

⁷ Currently, the document „Manual on Government Deficit and Debt, Implementation of ESA 2010“ available online at: <http://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-GQ-16-001>

⁸ Not the operation of a railway within the meaning of the Railway Act. SŽ will be the railway operator for the entire duration of the Contract, while within the scope of its contractual responsibility, it will also provide the operation of signaling and communication equipment, as well as the operation of the electrical power equipment supplied by the contractor.

8.2 Estimated timetable for the competitive dialogue procedure

Action under the competitive dialogue procedure	Estimated date of implementation
Preparation of requests to participate by contractors	December 2024 - February 2025
Consideration by the Contracting Authority of requests to participate, including reduction of the number of participants in the procurement procedure	February 2025 - April 2025
Invitation to submit requests to participate in a competitive dialogue	April 2025
Competitive dialogue	April 2025 - December 2025
Closure of the competitive dialogue, invitation to submit bids	March 2026
End of the deadline for submission of bids	March 2026
Assessment and evaluation of bids submitted - selection of contractor	March 2026 - April 2026
Possible negotiations with the selected contractor within the meaning of Section 69(8) of PPA	April 2026 - May 2026
Invitation to submit requests to participate to the selected contractor to submit documents and their assessment	April 2026 – May 2026
Conclusion of Contract	June 2026

The Contracting Authority explicitly reminds the contractor that the above is only an estimated timetable for the competitive dialogue procedure, which is neither binding nor enforceable.

8.3 Deliberation of Procedure with Competitive Dialogue

8.3.1 Qualification

After the submission deadline, the Contracting Authority will review the requests for participation to ensure they meet the procurement conditions.

If more than four participants comply with the procurement documents, the Contracting Authority will use the technical qualification criteria to reduce the number to 4 (four), as per Section 111 of the PPA. Participants who do not meet the requirements, fail to provide necessary documents, or are not selected will be excluded, in accordance with Section 68(4) of the PPA.

The participants who were not excluded from the procurement procedure will then be invited by the Contracting Authority to participate in a competitive dialogue by way of invitation in compliance with the requirements set out in Annex 6 to the PPA.

8.3.2 Rules for Reduction of the Number of participants in the Procurement Procedure

The Contracting Authority shall determine the ranking of the participants on the basis of the evaluation of the technical qualification criteria in accordance with the rules set out in Article 8.3.2 of the Invitation.

The Contracting Authority will only evaluate reference projects that meet all the requirements of the Invitation.

The Contracting Authority will award points for reference projects that meet the requirements set out in Article 10.11(a), (b)(i) and (c) of the Invitation. Participants will receive points for reference projects as follows:

- **The Contracting Authority shall award 1 point per single reference project under Article 10.11(a),**
- **the Contracting Authority shall award 4 points per single reference project under Article 10.11(b)(i), and**
- **the Contracting Authority will award point(s) per one reference project, specifically marked by the participant under Article 10.11(c) in relation to the amount of project financing secured for that reference project as follows:**
 - a) **1 point if the amount of the secured project financing exceeds CZK 10,000,000,000 (or foreign currency equivalent)**
 - b) **2 points if the amount of the secured project financing exceeds CZK 15 000 000 000 (or foreign currency equivalent)**
 - c) **3 points if the amount of the secured project financing exceeds CZK 20 000 000 000 (or foreign currency equivalent)**
 - d) **5 points if the amount of the secured project financing exceeds CZK 25 000 000 000 (or foreign currency equivalent)**
 - e) **an additional 3 points (in addition to the points awarded under the rules in (a) to (d) above) will be awarded if the project financing for this reference project has been secured also or exclusively by multilateral financial institutions.**

Multilateral Financial Institutions is an International Development Bank within the meaning of Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

There is no limit to the number of reference projects a participant could submit under Article 10.11(a) - (e) of the Invitation for the purpose of qualification and assessment of the technical qualification criterion used for reducing the number of participants. For the avoidance of doubt, the Contracting Authority establishes the following rules.

For reference projects which meet the requirements of **Article 10.11(a) of the Invitation, a participant may receive a maximum of 10 points** if ten reference projects presented meet the requirements of Article 10.11(a) of the Invitation.

For reference projects under Article 10.11(b)(i) of the Invitation, **the number of points** that a participant could receive is not limited, provided that each individual reference project presented meet the requirements under Article 10.11(b)(i) of the Invitation.

For reference projects under Article 10.11(c) of the Invitation **only one reference project**, through which the participant proves the qualification pursuant to Article 10.11(c) of the Invitation, **will be evaluated by the Contracting Authority**; this reference project will be clearly identified by the participant in the request for participation (in the List of Reference Projects in Annex 3).

The Contracting Authority specifies that a reference project within the meaning of Article 10.11(a) and 10.11(b)(i) or 10.11(c) of the Invitation, shall be counted only once for the purposes of awarding points and shall be awarded the number of points corresponding to the highest score to which that project would be entitled under the above rules for the awarding of points (i.e. a maximum of 8 points).

The Contracting Authority specifies that if a project proving qualification under Article 10.11(b)(ii) of the Invitation also meets the definition of a Rail PPP project, it will be awarded the number of points corresponding to the reference project under Article 10.11(b)(i) of the Invitation. In the event that a project under the previous sentence also fulfils the requirements of a reference project within the meaning of Article 10.11(a) or 10.11(c) of the Invitation, the rules set out in the previous paragraph shall apply.

In the event that two (2) or more participants obtain the same number of points, the ranking of such participants will be determined in descending order from the total number of reference projects submitted, that simultaneously fulfil Article 10.11(b)(i) of the Invitation. In the event that the total number of reference projects submitted pursuant to Article 10.11(b)(i) of the Invitation is identical for such participants, the ranking of such participants shall be determined by the total length of the transport routes of the projects submitted under all reference projects, that simultaneously fulfil to Article 10.11(b)(i) of the Invitation.

The Contracting Authority specifies that a single project may be counted only once for each participant as a single reference project under Article 10.11 of the Invitation; this applies even if the participant demonstrates compliance with the qualification through other persons or in the case of joint participation of suppliers.

8.3.3 Competitive dialogue

The Contracting Authority will conduct a competitive dialogue to identify the best solution for its needs. In the competitive dialogue, the Contracting Authority may discuss all aspects of the Public Contract. The competitive dialogue will be based on the draft Contract. Detailed rules of the competitive dialogue shall be specified by the Contracting Authority in the invitation to participate in the competitive dialogue. The Contracting Authority expects separate meetings in person with each participant in the competitive dialogue. The Contracting Authority will not gradually reduce the number of solutions submitted during the competitive dialogue within the meaning of Section 112 of the PPA.

The Contracting Authority will notify participants when the competitive dialogue concludes and will then send a written invitation to all participants to submit tenders for the proposed solutions.

Based on the results of the competitive dialogue, the Contracting Authority will set specific rules for evaluating tenders, as per Section 115 of the PPA. The Contracting Authority will evaluate the tenders on the basis of the most favourable price/quality ratio, with the assumption that the main (not the only) evaluation criterion will be the net present value of the amount of future availability payments converted

into CZK. The method of conversion will be proposed by the Contracting Authority and subject to confirmation of acceptability from the participants.

The Contracting Authority expects the quality criterion to be weighted at no more than 5%. This quality criterion will evaluate the quality of the assets upon their handover back to the Authority. The evaluation will focus on selected parameters that exceed the minimum requirements for handover set up by the Contracting Authority.

The Contracting Authority, according to Section 69(2) of the PPA, does not exclude that other aspects of the performance of the Public Contract will be evaluated by the Contracting Authority. These aspects will be defined in the Invitation (and these aspects will result in the definition of other sub-criteria for evaluation, or the refinement or modification of the above-mentioned sub-criteria for evaluation).

8.3.4 Place of performance

The place of performance of the subject matter of this Public Contract shall correspond to the location as shown on the map referred to in Article 3.2 of the Invitation and its Annex 10a and 10b respectively. The exact place of performance of the Public Contract will be further specified in the competitive dialogue and will be precisely defined in the Contract.

The Contracting Authority will be ready to organize a site visit following the competitive dialogue.

8.3.5 Communication language

The official, preferred and main language of communication in this procurement procedure is Czech. Negotiations within the competitive dialogue will be conducted in the Czech language unless the Contracting Authority determines otherwise in this Invitation or at the request of a participant(s). In such case the Contracting Authority will proceed in line with the basic principles of public procurement (transparency). If any member of the participant's team is not proficient in the Czech language, both written and spoken, the participant shall arrange for a Czech language translator familiar with the relevant specialised terminology. The cost of any interpretation/translation services shall be borne solely by the participant.

9 Invitation to submit requests to participate and explanation of the Invitation to submit requests to participate

The information and data provided in this Invitation and its annexes define the binding requirements of the Contracting Authority for the processing of the request to participate in the procurement procedure for the Public Contract. The contractor is obliged to fully and unconditionally respect these requirements.

The Contracting Authority publishes together with the Czech language a non-binding (i.e. unofficial) English translation. For the purposes of this procurement procedure, only the Czech language version of the Invitation shall be considered binding. All communication with the Contracting Authority during the period for submission of the request to participate must be conducted exclusively in the Czech language. Those parts of the request to participate which are provided for in the PPA, or those documents whose submission in a foreign language is explicitly permitted by the Contracting Authority in this Invitation, may be submitted in a foreign language.

The Contracting Authority provides unrestricted and direct remote access to this Invitation in full on the profile of the Contracting Authority: <https://zakazky.spravazeleznice.cz/>.

The contractor is entitled to request the Contracting Authority to clarify the Invitation pursuant to Section 98 of the PPA. The regime for the provision of additional information is governed by the provisions of Section 98 of the PPA. The Contracting Authority prefers that any questions concerning the Public Contract be submitted via the above-mentioned profile of the Contracting Authority, i.e. the Acting Contracting Authority, or directed to the contact person of the Acting Contracting Authority indicated in Article 2 of this Invitation.

10 Qualification of contractors of the procurement procedure

10.1 General principles

A participant who fails to meet the qualifications within the scope set out in the Invitation will be excluded from participation in this procurement procedure in accordance with Section 48(2)(a) of the PPA. This does not preclude the right of the Contracting Authority to take action pursuant to Section 46 of the PPA before exclusion. The Contracting Authority shall promptly notify the participant of its decision to exclude him from participation in the procurement procedure, stating the reason.

A participant who fails to provide the required information or documents within the scope of these procurement documents, including the information required under the PPA, or if the documents or information provided by the participant are incomplete or incorrect, may be excluded from the procurement procedure.

Pursuant to Section 86(2) of the PPA, the Contracting Authority stipulates that all documents required below to prove compliance with the qualifications, with the exception of documents proving compliance with the technical qualifications pursuant to Article 10.11 of this Invitation, could be replaced by a written affidavit when submitting a request to participate. This is also valid in the case of documents proving the qualifications of other persons within the meaning of Section 86(2) of the PPA. An affidavit pursuant to Section 86(2) of the PPA can't substitute the written commitment pursuant to Section 83(1)(d) of the PPA. The affidavit must be signed by a person authorised to act on behalf of the Contractor.

A template of the affidavit within the meaning of Section 86(2) of the PPA is attached as Annex 4 to this Invitation. This template is not binding on the contractor and the contractor is entitled to submit an affidavit proving fulfilment of the qualification in a different form which is in line with the requirements of the PPA and the Invitation.

The provisions of the PPA relating to the possibility of proving the required part of the qualification by means of a single European certificate for public procurement pursuant to Section 87 of the PPA are not affected by the individual provisions of these procurement documents. However, even in the case of proving the qualification or part thereof by means of a single European certificate, the Contracting Authority may, in accordance with the provisions of Section 45(1) of the PPA and Section 46(1) of the PPA, invite the participants in the procurement procedure to clarify the data submitted, to submit originals or officially certified copies of documents, if these documents were not already submitted when submitting the request for participation, or to fill in other missing data.

If the contractor is participating alone and does not intend to make use of the competencies of other entities to meet the qualification criteria, it must complete a single European Single Certificate (or provide evidence of its qualifications). If the contractor is participating individually but intends to make use of the qualifications of one or more other entities to meet the qualification criteria, it must submit a European Single Certificate (or provide evidence of its qualifications) for each entity whose competencies it intends to make use of. Where a group of contractors, including temporary associations, participate jointly in the procurement procedure, each of the participating contractors must submit a separate single certificate (or evidence of their qualifications). To the extent that the Single European Certificate does not contain the information required by the Invitation, the contractor is obliged to prove it or to provide evidence in another way in accordance with the Invitation and the PPA.

10.2 Documents proving compliance with requirements of the procurement documents

Documents proving compliance with the procurement conditions shall be submitted by the contractor in the Czech language, except in cases where the submission of a document in a foreign language is permitted by the PPA, or except in the case of selected documents listed in more detail below, which may also be submitted in a specified foreign language. For all documents where the possibility of their submission in a specified foreign language is not explicitly stated, the Contracting Authority determines, in accordance with Section 45(3) of the PPA, that a translated version into Czech is always required. This does not exclude the right of the Contracting Authority to require the Contractor to provide an officially certified translation in accordance with Section 45(3) of the PPA.

In accordance with Section 86(3) of the PPA, the documents proving compliance with the basic qualification pursuant to Section 74 of the PPA must prove compliance with the required qualification criterion no later than 3 months before the date of opening of the procurement procedure.

10.3 Proof of qualification by extracting from the list of qualified contractors

As part of proving the compliance with the qualification criteria, the contractor is entitled to submit to the Contracting Authority an extract from the list of qualified contractors or similar records of another EU Member State in order to prove the basic qualification pursuant to Section 74 of the PPA and the professional qualification pursuant to Section 77 of the PPA to the extent that the data in the extract from the list of qualified contractors proves the compliance with the professional qualification criteria (Section 77 of the PPA). The contractor is obliged to prove the qualification criteria which are not proven by the data listed in the extract from the list of qualified contractors in the manner specified in the qualification part of these tender conditions. According to Section 228(2) of the PPA, the extract from the list of qualified contractors must not be older than 3 months from the last date on which compliance with the qualification is to be proved.

10.4 Proving qualification by certificate

As part of the proving of compliance with the qualification criteria, the contractor is entitled, under the conditions set out in section 234 of the PPA, to submit to the Contracting Authority a certificate issued under the Certified Supplier System (or issued under a similar system of another EU Member State pursuant to section 234(3) of the PPA), which, to the extent of the data specified in this certificate, replaces the demonstration of compliance with the relevant part of the qualification according to the

qualification criteria set out in this Invitation. The contractor shall be obliged to prove compliance with the qualification criteria of the Contracting Authority, which are not proved by the above certificate and which the Contracting Authority requires to be proved at the same time pursuant to these procurement conditions, by the relevant documents or in the manner specified in the qualification part of these procurement conditions.

10.5 Proving qualifications obtained abroad

In accordance with Section 81 of the PPA, if the qualification has been obtained abroad, it shall be proved by documents issued in accordance with the laws of the country in which it was obtained, to the extent required by the Contracting Authority, see other parts of these procurement conditions.

10.6 Proving qualification through other persons and subcontractors

The contractor may prove the economic qualification or technical qualification required by the Contracting Authority through other persons. **A person with a different registration number is considered to be another person, even if, for example, it is part of the same concern as the participant.**

In such a case, the contractor must submit to the Contracting Authority:

- a) documents proving that the professional qualification pursuant to Section 77(1) of the PPA has been complied with by another person,
- b) documents proving the compliance with the remaining part of the qualification by another person,
- c) evidence of compliance with the basic qualification pursuant to Section 74 of the PPA by another person; and
- d) a contract or a confirmation of its existence signed by another person, the content of which is an undertaking by another person to provide the performance intended for the execution of the Public Contract or to provide goods or rights which the contractor will be entitled to exercise in the execution of the Public Contract, at least to the extent that the other person has proven qualification for the contractor, whereby:
 - i. the requirement shall be deemed to be met if the content of the contract or the confirmation of its existence implies an obligation of the other person to perform the Public Contract jointly and severally with the contractor;
 - ii. if, however, the contractor proves qualification through another person and submits documents pursuant to Section 79(2)(a), (b) or (d) of the PPA relating to such a person, the contract or the confirmation of its existence must imply an undertaking that the other person will perform the services or works to which the proven qualification criterion relates.

The Contracting Authority confirms that, in the case of the submission of a contract or a confirmation of the existence of a contract, the commitment of such a person to perform the works or services to which the proven qualification criterion relates must be implied; however, in the case of joint participation of contractors in the Public Contract, it is sufficient if such a contract is concluded between another person

and only one of these contractors (or for the benefit of one of these contractors) or if such a confirmation is issued by another person or by one of these contractors (or for the benefit of one of these contractors).

For the purposes of proving the qualification criterion under Article 10.11(b) or (c) of this Invitation, if another person has participated in the reference project under Article 10.11(b) or (c) of this Invitation as a shareholder of a special purpose vehicle ("SPV"), it is sufficient, if the contract under Article 10.6(d) of this Invitation contains an undertaking by that other person to provide the skills acquired through its participation in the SPV which implemented the relevant PPP project pursuant to Article 10.11(b) or (c) of this Invitation.

Where the qualification criterion referred to in Article 10.11(a), (d) or (e) of this Invitation is demonstrated by another person who has participated in the reference project as a member of the SPV, the contractor shall provide, for the purpose of demonstrating the requirement under Article 10.6(d) of this Invitation, a contract or a certificate signed by the other person confirming its existence. The content of such contract or a certificate is an undertaking by the other person to perform the relevant works or services at least to the extent that the other person has demonstrated the relevant qualification on behalf of the contractor.

In the case of proving the qualification criterion according to Article 10.11 (a) to (e) of this Invitation through a PPP project, if another person of such project (reference project) participated as a partner of the SPV, it is sufficient, if the contract according to Article 10. 6(d) of this Invitation contains an undertaking by that person to provide the skills acquired through his/her participation in the SPV that implemented the relevant PPP project pursuant to Article 10.11(b) and/or (c) of this Invitation, and also an undertaking to perform the relevant works or services at least to the extent that the other person has proven qualification pursuant to Article 10.11(a), (d) and/or (e) of this Invitation on behalf of the contractor.

The Contracting Authority states that the completeness of the commitment expressed in the contract or in the signed confirmation of its existence will be assessed in accordance with the current decision-making practice of the Office for the Protection of Competition and the case law of the administrative courts. In particular, the decision of the President of the Office for the Protection of Competition of 22 May 2023, file no. ÚOHS-R0037/2023/VZ⁹ is relevant. **According to that decision, it is necessary that all subcontracts contain an undertaking by each of the subcontractors to perform the services to which the proven qualification criterion relates** (pursuant to Art. § 83(2) and (3) of the PPA), **and that this commitment is always fully specific and reliably demonstrates the actual level of participation of the subcontractor in the performance itself, i.e. the performance of specific activities or the provision of specific persons.** The vague formulation that the subcontractor "*will participate in the performance of the subject matter of the Public Contract to the extent that the participant has demonstrated in its bid for the Public Contract that it meets the technical qualification requirements*" cannot be considered sufficient.

⁹ Although the decision in question was issued when the Act as amended on 15 July 2023 was in force, its conclusions can also be applied to the wording of Section 83 of the Act as amended by Act No. 166/2023 Coll. As of 16 July 2023. For more see the decision of the Office for the Protection of Competition (ÚOHS-S0822/2023/VZ) of 4 June 2024.

The Contracting Authority requires the participant in the procurement procedure to submit documents proving the basic qualification pursuant to Section 74 of the PPA and the professional qualification pursuant to Section 77(1) of the PPA of its subcontractors, in the manner specified in Articles 10.8 and 10.9 of this Invitation; the wording of Article 10.1 of this Invitation is not affected by this.

A subcontractor who fails to prove compliance with the qualification criteria required by the Contracting Authority, or in the event of its ineligibility, must be replaced. In this case, the contractor must replace the subcontractor no later than at the end of a reasonable period specified by the Contracting Authority. This time limit may be extended by the Contracting Authority.

If a participant in the procurement procedure fails to replace a subcontractor who has not demonstrated compliance with the qualification or is ineligible pursuant to Section 48(5) or (6) of the PPA within a reasonable period of time provided by the Contracting Authority and the procurement procedure is not completed by that time, the Contracting Authority shall be entitled to exclude such participant in the procurement procedure.

10.7 Proof of qualification and liability of contractors in case of joint participation of contractors

If several contractors participate in the procurement procedure jointly and for this purpose, they submit or intend to submit a joint request to participate, each of the contractors is obliged to prove, in accordance with Section 82 of the PPA, the basic qualification and professional qualification pursuant to Section 77(1) of the PPA separately.

The other qualification requirements shall be proven jointly by the contractors submitting a joint request to participate in accordance with Section 84 of the PPA.

In the event that the subject matter of the Public Contract is to be performed jointly by several contractors, these contractors are obliged to submit to the Contracting Authority a contract containing an undertaking that all these contractors will be jointly and severally liable to the Contracting Authority and third parties in respect of any legal relations arising in connection with the Public Contract for the entire period of performance of the Public Contract and for the duration of any other obligations arising from the Public Contract.

The Contracting Authority specifies that if several contractors participate in the procurement procedure jointly (e.g. within a consortium) and for this purpose they submit or intend to submit a joint request to participate, none of these contractors may, pursuant to Article 16.1 of this Invitation, represent a contractor whose registered office is not located in a Member State of the European Union, the European Economic Area, the Swiss Confederation or in another State which has concluded an international agreement with the Czech Republic or the European Union guaranteeing access to the Public Procurement to contractors from these States. The Contracting Authority states that the requirement under Article 16.1 of this Invitation does not apply to other persons through whom the contractor may prove qualification in accordance with the procurement conditions.

The Contracting Authority further states that subject to the conditions set out in this Invitation and the PPA (in particular Section 88 of the PPA), it is possible to change a member of the consortium (contractor).

The Contracting Authority will assess specific changes to the qualifications of a participant on an individual basis.

10.8 Basic qualification

The Contracting Authority requires proving compliance with the basic qualification within the scope defined in Sections 74(1), (2) and (3) of the PPA.

Qualified according to Section 74 of the PPA is a contractor who:

1. has not been convicted of a criminal offence listed in Annex 3 of the PPA or a similar offence under the laws of the country of the contractor's seat in the country of its seat in the last five (5) years prior to the commencement of the procurement procedure,
2. does not have a tax arrear in the Czech Republic nor in the country of its registered office,
3. does not have an outstanding balance of insurance premiums or penalties for public health insurance payable in the Czech Republic nor in the country of its registered office,
4. it has no arrears of social security contributions or penalties payable in the Czech Republic nor in the country of its registered office,
5. is not in liquidation, has not been the subject of a bankruptcy order, has not been placed under receivership under another legal regulation or is in a similar situation under the law of the country of the supplier's registered office.

If the contractor is a legal person, the condition set out in Article 10.8(1) of the Invitation must be complied with by that legal person and by a member of the statutory body. If a legal person is a member of the contractor's statutory body, this condition must be fulfilled by:

6. that legal person,
7. each member of the legal entity's statutory body and
8. the person representing that legal person in the contractor's statutory body.

Where participation in the procurement procedure is by a branch of the factory

9. of a foreign legal person, the condition referred to in point 10.8(1) of the Invitation must be fulfilled by that legal person and by the head of the branch of the factory,
10. of a Czech legal entity, the condition referred to in Article 10.8(1) of the Invitation must be fulfilled by the persons referred to in Article 10.8(6) to (8) above and the head of the factory branch.

In accordance with Section 75 of the PPA, the contractor shall prove compliance with the basic qualification conditions in relation to the Czech Republic by submitting:

11. an extract from the Criminal Records Register in relation to the requirement under Article 10.8(1) of the Invitation, and
12. a certificate from the competent tax office in relation to Article 10.8(2) of the Invitation;
13. a written affidavit relating to excise duty in relation to Article 10.8(2) of the Invitation; and
14. a written affidavit in relation to Article 10.8(3) of the Invitation; and

15. a certificate from the competent territorial social security administration in relation to Article 10.8(4) of the Invitation;
16. an extract from the commercial register, or by submitting a written affidavit if not registered in the commercial register, in relation to Article 10.8(5) of the Invitation.

Pursuant to Section 86(2), first sentence, of the PPA, the Contracting Authority accepts the substitution of a document pursuant to this Article by a written affidavit for the purposes of the request to participate. The affidavit must be signed by the contractor or a person authorised to act on behalf of the contractor.

The selected contractor shall be obliged to provide the Contracting Authority with the documents referred to in this Article upon written request made pursuant to Section 122(3)(a) to (c) of the PPA or Section 122(4) of the PPA, if the Contracting Authority has requested them and they are not available.

10.9 Professional qualification

Professional qualification pursuant to Section 77(1) of the PPA is complied with by a contractor who submits an extract from the Commercial Register, if the contractor is registered therein, or an extract from another similar register, if another legal regulation requires entry in such register.

The selected contractor shall be obliged to provide the Contracting Authority with the documents referred to in this Article upon a written request made pursuant to Section 122(3)(a) to (c) of the PPA, or Section 122(4) of the PPA, if the Contracting Authority has requested them and they are not available.

If the foreign contractor cannot prove professional qualification in the above-mentioned form for the reasons referred to in Section 77(3) of the PPA, it shall make a written affidavit to that effect.

Pursuant to Section 86(2), the first sentence, of the PPA, the Contracting Authority accepts for the purpose of the request to participate the substitution of the document referred to in this Article by a written affidavit. The affidavit must be signed by the contractor or a person authorised to act on behalf of the contractor. The substitution of an affidavit for an extract from the commercial register may also be used in cases where the contractor is established abroad and the State where the contractor is established requires registration in the commercial register. Contractors submitting a joint request to participate shall be required to provide a power of attorney or other authorisation if the extract from the commercial register or similar register does not demonstrate that the person concerned is authorised to conclude consortium agreements or similar documents.

10.10 Economic qualification

The Contracting Authority requires that the minimum annual turnover of the contractor reaches at least CZK 5,000,000,000 for each of the three (3) immediately preceding accounting periods; if the contractor was established later, it is sufficient if it submits data on its turnover in the required amount for all accounting periods since its establishment; in such a case, the Contracting Authority, in accordance with Section 167 of the PPA, shall require that the turnover of at least one completed accounting period be documented. The starting point for the determination of the last three preceding closed accounting periods is the start of the procurement procedure.

The contractor shall provide evidence of turnover by means of the contractor's profit and loss account or similar document in accordance with the laws of the country in which the contractor is established. The

Contracting Authority states that a copy of the relevant parts of the accounts relating to the profit and loss account shall be sufficient for the purposes of the request to participate. The Contracting Authority may, in accordance with the procedure laid down in Article 46(1) of the PPA, require the submission of the original or an officially certified copy of the document.

If the contractor's minimum annual turnover is to be demonstrated by a profit and loss account stating the relevant amounts in foreign currency, the contractor shall convert the relevant amounts at the CNB exchange rate applicable at the date of the opening of the procurement procedure.

The Contracting Authority expressly states, in accordance with Section 84 of the PPA, that the required turnover must be achieved by the contractor alone, or may be demonstrated by one of the members of the company (in the case of joint participation in the procurement procedure) or by another person as a whole; aggregation of the turnover of several contractors/other persons in order to achieve the required minimum value is not permitted.

In accordance with Section 83(4) of the PPA, the Contracting Authority requires that the contractor and another person through whom the contractor proves economic qualification pursuant to Section 78 of the PPA bear joint and several liability for the performance of the Public Contract.

Pursuant to Section 86(2), the first sentence, of the PPA, the Contracting Authority allows the substitution of a written affidavit for the document referred to in this Article for the purposes of the request to participate. The affidavit must be signed by the contractor or a person authorised to act on behalf of the contractor.

10.11 Technical qualifications

The contractor shall demonstrate compliance with the technical qualification criteria by producing the following documents:

List of major works and services according to Section 79(2) of the PPA provided in the last 10 years prior to the start of the tendering procedure

The contractor meets this qualification criterion provided that:

(a) has carried out at least: five (5) Railway projects with a continuous line section length of at least 5 km for each Railway project, with commissioning (i.e. commissioning by virtue of a decision of approval or authorisation of full preliminary occupation permit by an act of a public authority, or an equivalent act of a public authority issued under the laws of the respective country) having taken place within the 10-year period preceding the start of the procurement procedure; at the same time, at least two (2) of these reference projects must also have included new construction or reconstruction of a Railway station;

(b) carried out at least:

- (i) one (1) Railway PPP project, and at the same time
- (ii) two (2) other PPP Transport Infrastructure Projects.

The Railway PPP project or PPP Transport Infrastructure Project must have had a continuous length of at least 5 km of transport route, the commissioning date is not decisive, but the

operation and maintenance phase must have been carried out for at least 3 years during the last 10 years prior to the start of the procurement procedure;

c) has secured project financing as a debtor for at least one (1) Transport Infrastructure Project for at least CZK 5,000,000,000 (or foreign currency equivalent) obtained from Non-State Financial Institution(s) and/or Multilateral Financial Institution(s), with which the debtor entered into a project financing agreement and this project has successfully achieved Financial close in the last 10 years before the start date of the procurement procedure;

(d) has carried out at least: three (3) completed project documentations at the stage of construction execution documentation for a Railway project with a continuous line section length of at least 5 km, and its complete delivery to the contracting authority in the form of a clean copy on the basis of a delivery report or similar document, whereby the delivery of the project documentation to the contracting authority must have taken place within the last 10 years prior to the starting date of the procurement procedure; simultaneously, at least one (1) of these reference projects must also have included the preparation of the project documentation for the new construction and/or reconstruction of the Railway station;

(e) has carried out at least: one (1) construction of a new tunnel in the Transport Infrastructure Project (tunnel refers to a structure comprising a tunnel tube, tunnel portals, and, if applicable, connecting pre-cut frame walls), with a minimum tunnel section length of 500 m, whereby the commissioning of the tunnel (i.e. putting into operation by means of a decision of approval or authorisation of full preliminary operation permit on the basis of an act of a public authority, or an equivalent act of a public authority issued under the laws of the respective country) has taken place within 10 years before the start of the procurement procedure.

(also referred to as **“reference projects”** in the text of the Invitation).

The Contracting Authority specifies that the place of performance of the major services and works mentioned above is not territorially limited.

The Contracting Authority will also accept reference projects delivered after the start date of the procurement procedure, provided that all conditions set out in this Invitation are met.

In the case of a reference project that has not been paid in CZK, the foreign currency must be converted by the participant according to the ČNB exchange rate applicable on the starting date of the procurement procedure.

If the participant or the person through whom the participant proves qualification (as defined in Article 10.6 of the Invitation) has participated in the reference project pursuant to Article 10.11(b) or (c) of the Invitation as a shareholder of the SPV, the participant or the person must have held a share of at least 15% of the voting rights in the SPV for at least 3 consecutive years during the last 10 years prior to the start of the procurement procedure for the reference project to be acknowledged by the Contracting Authority. The share of voting rights in the SPV and the duration of this shareholding, must be indicated in the confirmation reference (see Annex 5 to this Invitation) as well as in the list of reference projects (see Annex 3 to this Invitation). The Contracting Authority further adds that it is not sufficient for a participant to prove qualification solely on the basis of voting rights in a subcontractor of the SPV without also holding the required voting interest in the SPV itself.

A participant may demonstrate that it has the required voting interest in the SPV by other means if it cannot obtain it through a certificate issued in accordance with the model in Annex 5. Nevertheless, the participant must demonstrate compliance with this criterion in each case.

If the participant in the procurement procedure or the person through whom the participant proves qualification (according to Article 10.6 of the Invitation) participated in the reference project according to 10.11 a), d) or e) of the Invitation as a partner of the SPV, the participant or this person had to directly provide the performance which is the subject of the reference project in order for the reference project to be acknowledged by the Contracting Authority.

The participant shall indicate which qualification criterion under (a) to (e) above each reference project proves.

The Contracting Authority determines that a single project may be used to demonstrate more than one (i.e. all, if applicable) of the reference projects under items (a) to (e)..

The Contracting Authority specifies that each reference project can be used only once to demonstrate the fulfilment under items (a) through (e) for each participant, even if the participant is proving qualification through other persons or if multiple contractors are participating jointly..

Terms used in this Invitation starting with capital letters have the following meaning:

- i. "Railway project" is a new construction or reconstruction of a double-track or multi-track electrified line with a gauge of at least 1435 mm and a load class of at least C3 (20 t/axle), including at least the following activities or constructions: railway superstructure, railway substructure, overhead line, railway bridge, power equipment, signalling and communication equipment.
- ii. "Transport Infrastructure Project" means (a) the construction of a road or (b) the construction of a national railway or (c) construction of a regional railway or (d) construction of a special railway (metro) (e) the construction of a tramway or (f) construction of an urban light rail (or light railways within the meaning of Commission Regulation (EU) No 1302/2014).
- iii. "PPP (Public-Private Partnership) project" is a project encompassing a long-term contractual relationship, concluded on the basis of a public tender open to foreign contractors, between the public and private sectors for the investment in infrastructure and the provision of services within that infrastructure, where the private partner carries out the design and implementation of the construction, provides the project financing, and operates and/or maintains the infrastructure for an agreed period of time. The mere provision of warranty service, warranty defect correction or similar services shall not be considered as operation/operability. For the purposes of this Public Contract, a PPP project is characterised in particular by (i) the sharing of risks between the public and the private partner, with the private partner assuming some of the economic risks of the project (e.g. construction and availability risk), (ii) a remuneration to the private partner consisting of direct payments from the public partner at the operational stage and/or payments from infrastructure users, or a combination of such payments with direct payment for the construction of the infrastructure, (iii) the existence of a project company (SPV) or joint venture. A concession for works and a concession for services which fulfil the above characteristics are also PPP projects.
- iv. "PPP Transport Infrastructure Project" is a PPP project as defined under (iii), the subject matter of which is the construction of transport infrastructure as defined under (ii).

- v. "Rail PPP Project" is a PPP Project as defined under (iii), the subject matter of which is the construction of a Transport Infrastructure Project under (ii)(b), (c), (d), (e) or (f). .
- vi. "Operation and Maintenance Phase" means the phase of a PPP project from the commissioning of the construction (i.e. commissioning by virtue of a decision of approval or authorisation of full test operation by an act of a public authority, or an equivalent act of a public authority issued under the laws of the respective country), including the provision of services for the operation or maintenance of that construction (routine maintenance and construction maintenance).
- vii. "Railway station" means a transport station with a track formation of at least 4 tracks, intended for the operation of a train sequence.
- viii. "Construction documentation" means the documentation defined by Decree No. 227/2024 Coll., on the scope and content of project documentation for transport infrastructure constructions, Decree No. 146/2008 Coll., on the scope and content of project documentation for transport constructions, or other similar documentation that enables the delivery of the construction and is the basis for the creation of a schedule of works with a bill of quantities.
- ix. "Financial close" means the moment of conclusion of the project financing contracts between the contractor carrying out the project and the financing institutions, which occurs at the same time as or after the conclusion of the contract for the project between the client and the contractor; it is the milestone at which the terms of the project financing are contracted between the contractor and the financing institutions and any conditions precedent to the concluded contract between the client and the contractor is fulfilled.
- x. "Non-State Financial Institution" means a financial institution that is not controlled (directly or indirectly) by the State, i.e. the State is not in a position of control over the institution within the meaning of Section 74 et seq. of the CFC.¹⁰
- xi. "Multilateral Financial Institution" means an International Development Bank within the meaning of Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

The participant is required to prove their compliance with this criterion by producing a list of the implemented reference projects in the form of Annex 3 to the present procurement documentation. Such list will contain structured data related to each individual reference project , clearly demonstrating that all the requirements of the Contracting Authority have been fulfilled):

- title of the reference project,
- specification of the subject matter of the reference project, i.e. the specification of works and services including all parameters decisive to prove the qualification
- the critical milestones of the reference project's performance,, i.e. the time of the conclusion of the contract, the time of financial close, the time of commissioning, the period of service provision (from-to), if relevant for the provision of qualification by individual reference projects,
- the entity to which the works or services have been provided (name, address, registration number, contact person for verification of the reference project, including name, surname, telephone and email),

¹⁰ Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Act on Commercial Corporations) ("ZOK").

- the share of voting rights in the SPV, if the participant or other person (as defined in Article 10.6 of the Invitation) of the reference project was a shareholder of the SPV,
- an indication of which qualification criterion under points (a) to (e) the reference project proves (column 'Reference to the Invitation' in Annex 3 to this Invitation). If more than one criterion under points (a) to (e) is met by a single reference project, the participant shall also indicate this fact in the relevant box.
- an indication of whether the reference project is to be used to reduce the number of participants in accordance with the procedure set out in Article 8.3.2 of this Invitation ((box 'Reference project for reducing the number of participants in accordance with Article 8.3.2 of the Invitation'); this indication is relevant for reference projects proving qualification in accordance with Article 10.11(a) and (c) of this Invitation.

The attached list of reference projects must demonstrably show in relation to each reference project, that all the requirements of the Contracting Authority under Article 10.11 of this Invitation have been met.

If the contractor proves compliance with the qualification criterion under Article 10.11(a), (d) or (e) of the Invitation by submitting a reference project which it has carried out jointly with other contractors or as a subcontractor, the contractor must demonstrate that it has carried out the required volume of works or services under the reference project.

To demonstrate the reference projects under Article 10.11(a) to (e) of this Invitation, the participant shall also attach a written confirmation by the client of the proper implementation and completion of the reference project (relating to Article 10.11(a) and (e)) or written confirmation by the client of the reference project (relating to Article 10.11(b), (c) and (d)) in the form set out in Annex 5 to this Invitation, signed by the relevant client.

The Contracting Authority stipulates that the written confirmation referred to in the preceding paragraph may be submitted in English in the request to participate.

If the contractor cannot submit a written confirmation of the reference signed by the client for reasons beyond their control, they may submit an equivalent document, such as a contract with the client and proof of performance, in accordance with Section 79(5) of the PPA. This document must contain all the required information, and the information proving the various parameters of the reference project will be clearly identified in such a document.

The Contracting Authority points out to contractors that **reference projects under Articles 10.11(a), (b)(i) and (c) will be a criterion for reducing the number of participants in the tendering procedure.**

For the purposes of the request to participate, compliance with the technical qualification criteria under Section 10.11 of this procurement documentation may not be proven by submitting a written affidavit within the meaning of Section 86(2) of the PPA.

11 Award period and security

The Contracting Authority expects to specify the bid security and the award period; details will be specified by the Contracting Authority in the Invitation.

12 Conditions and requirements for preparation of the request to participate

12.1 Requirements for preparation of the request to participate

The request to participate must be prepared and submitted in accordance with the requirements of the Contracting Authority set out in the Invitation and the PPA.

The request to participate and all other documents and data shall be submitted in the Czech or Slovak language (documents in languages other than Czech or Slovak shall be supplemented by a translation into Czech) in written form, with the exception of documents confirming the reference projects, which the Contracting Authority allows to be submitted in English, see above.

12.2 Requirements for the structure of the request to participate

The Contracting Authority requests that the request to participate should be processed according to the structure and sequence set out below:

	Name of document	Table of Contents	Note
1.	Cover Sheet	A document containing basic information about the contractor.	This document will contain the identification data of the participant by analogy to the provisions of Section 28(1)(g) of PPA, the contact person of the participant for the purposes of this Public Contract, including his/her contact details (telephone, e-mail) and will be signed by the contractor or a person authorised to act on behalf of or for the contractor, including the particulars in accordance with the model in Annex 1.
2.	Powers of attorney	Documents certifying authorisation to act for the contractor or other persons.	The contractor shall submit only if any document bears the signature of the person acting on behalf of the contractor or another person under a power of attorney. The power of attorney must indicate the authority of the authorised person to act. The principal must be a person(s) authorised to act on behalf of the contractor, and this authorisation must be demonstrated in the request to participate.

3.	Basic qualification	Evidence of basic qualification must be submitted in accordance with Article 10 or 10.8 of this Invitation to submit requests to participate.	
4.	Professional qualification	Evidence of professional qualification must be submitted in accordance with Article 10 or 10.9 of this Invitation to submit requests to participate.	
5.	Economic qualification	Evidence of economic qualification must be submitted in accordance with Article 10 or 10.10 of this Invitation to submit requests to participate.	
6.	Technical qualifications	Documents proving compliance with the technical qualifications set out in Article 10.11 of this Invitation to submit requests to participate.	
7.	Affidavit of no conflict of interest	An affidavit of absence of conflict of interest in accordance with Article 14 of this Invitation to submit requests to participate and in accordance with the template in Annex 6 of this Invitation to submit requests to participate.	
8.	Affidavit in relation to prohibited agreements	Affidavit in relation to Prohibited Agreements in accordance with Article 16.3 of this Invitation to submit requests to participate and in accordance with the template in Annex 7 of this Invitation to submit requests to participate.	
9.	Affidavit of contractor on international sanctions	Affidavit of contractor on international sanctions in accordance with Article 16.6 of this Invitation to submit requests to participate and as per the template in Annex 8 of this Invitation to submit requests to participate.	

10.	List of subcontractors	A document by which the contractor specifies which qualification criteria it intends to prove through other persons (or a document stating in an affidavit that the contractor does not demonstrate any part of the qualification criteria through another person) and which subcontractors it intends to use in the performance.	In accordance with Article 10.6 of this Invitation to submit requests to participate in case the contractor proves the fulfilment of (part of) the qualification in the missing scope through another person. If the contractor does not prove any part of the qualification criteria through another person, it shall state this in an affidavit. In such a case, the list of subcontractors shall only include a list of subcontractors known to the participant, including the part of the Public Contract to be performed by each of them.
11.	Contract concluded between contractors submitting a joint request to participate	A document containing a commitment of the contractor to jointly provide the performance according to the jointly submitted request to participate and containing a commitment that they will be jointly and severally liable to the Contracting Authority and to third parties for any legal relations arising in connection with the Public Contract for the entire period of performance of the Public Contract and for the duration of any other obligations arising from the Public Contract.	The contractor shall only submit the request if it is a request for participation submitted jointly by several contractors. The contract can be submitted as a copy. The contract must contain an undertaking by the contractors that they will be jointly and severally liable to the Contracting Authority and to third parties for any legal relations arising in connection with the Public Contract for the entire duration of the Public Contract and for the duration of any other obligations arising from the Public Contract.
12.	Notification of foreign subsidies, or a declaration that the foreign subsidies received are not subject to notification obligations under the Regulation	Notification of any Foreign Subsidies, or a declaration that the foreign Subsidies received are not subject to the reporting obligation under the Regulation.	The contractor submits only if the conditions of the Regulation are met. The notification or declaration of foreign subsidies must be completed for each individual contractor subject to the conditions of Article 28 of the Regulation in aggregate and the Contracting Authority shall promptly forward the notifications or declarations so received to the Commission for examination.

12.3 Submitting a request to participate

The Contractor is entitled to submit the request to participate only in electronic form via the E-ZAK electronic tool. The correct way of submitting a request to participate in electronic form for a public contract is set out in the User's Guide to the E-ZAK electronic tool for contractors, which is available on the website of the Contracting Authority's profile: <https://zakazky.spravazeleznice.cz/manual.html>.

The request to participate shall be submitted by the participant via the E-ZAK electronic tool via the 'send request to participate' button. A request to participate in the E-ZAK electronic tool means a request in accordance with this Invitation and the deadline for submitting requests to participate in the electronic tool means the deadline for requesting participation in accordance with this Invitation. The phase of the procurement procedure referred to in the electronic tool as 'Proof of Qualification' means the assessment of the applications submitted in accordance with this Invitation. Where a consortium composed of several entities is to participate in the procurement procedure, the request to participate shall be submitted by an authorised representative of the consortium via the electronic tool E-ZAK, and the authorisation of the representative shall also be documented in the request to participate. If the participant does not have experience with the E-ZAK system, the Contracting Authority recommends that the registration be made sufficiently in advance to allow the participant time to become familiar with the E-ZAK system.

For this purpose and in accordance with the PPA, the system requires registration of contractors and an electronic signature based on a qualified certificate. By submitting a request to participate, the contractor agrees to the established form of communication and delivery in the further course of the procurement procedure and undertakes to provide all necessary cooperation, in particular to register in E-ZAK well in advance of the submission of the request to participate and to regularly check the messages received.

A participant is entitled to submit only one request to participate.

Pursuant to Article 28(2) of the PPA, if the request to participate has not been delivered to the Contracting Authority within the time limit or in the manner specified in this Invitation, such request to participate shall not be considered.

The Contracting Authority recommends and prefers that the request to participate to be submitted using the cover sheet set out in Annex 1 to this Invitation.

12.4 Time Limit for Submission of Requests to Participate

The time limit for the submission of requests to participate runs as of the start of the procurement procedure and ends on the date specified in the Tenders Electronic Daily.

The deadline for submission of requests to participate was set in accordance with the provisions of Section 68(3) of the PPA, considering the nature and subject matter of this Public Contract and the requirements of the Invitation.

13 Subcontractors

The Contracting Authority draws attention to and reserves the right to require, in accordance with the wording of Section 105(1) of the PPA, that the contractor specify in detail the parts of the Public Contract that it intends to perform through subcontractors in its request to participate / bid and submit a list of

subcontractors together with an indication of which part of the Public Contract each of the subcontractors will perform.

If the participant does not fully comply with the Contracting Authority's qualification criteria set out in Articles 10.10 and 10.11 of this Invitation, it shall be entitled to prove compliance with the required qualification criteria through other persons (qualifying subcontractors). In the case of qualifying subcontractors through which the contractor demonstrates qualification, the contractor is obliged to submit documents in accordance with Article 10.6 of this Invitation.

At the same time, the participant in the procurement procedure is obliged to submit documents confirming compliance with the requirements of the basic qualification of the non-qualifying subcontractor arising from Section 74(1) and professional qualification pursuant to Section 77(1) of the PPA, in accordance with Section 85 of the PPA (see Article 10.6 of this Invitation for details), if such subcontractors are known to the participant.

The contractor shall provide the above information in a list of subcontractors. The list of subcontractors need not be signed. If the contractor does not prove any part of the qualification criteria through another person - a subcontractor, it shall state this in an affidavit indicating this fact.

The Contracting Authority informs and reserves the right to require, in accordance with the wording of Section 105(1) of the PPA, that during the procurement procedure the participant specify in detail the parts of the Public Contract that it intends to perform through subcontractors (if known to it), and submit or, where appropriate, supplement the list of subcontractors together with their identification and an indication of which part of the Public Contract each of the subcontractors will perform.

The Contracting Authority shall not limit the amount of services, works or supplies that may be provided through subcontractors. The Contracting Authority hereby informs the contractor that the change of subcontractors (both qualifying and non-qualifying) during the procurement procedure is possible, provided that the conditions of fulfilment of the qualification by the tenderer are maintained, while during the performance of the Public Contract it is possible only under the conditions specified in the Contract.

14 Conflict of interest provisions

The Contracting Authority shall act in such a way as to avoid conflicts of interest. The Contracting Authority requires the contractors and their subcontractors, by means of which they prove their qualifications, to submit an affidavit in accordance with the model in Annex 6 (Affidavit of no conflict of interest), in which the contractor states that it meets the requirements within the meaning of Section 4b of Act No. 159/2006 Coll, on conflicts of interest, as amended, and whether in connection with participation in the tender procedure and in the implementation of the Public Contract it cooperates with companies that provide investor preparation (in particular design services and engineering) on the part of the Contracting Authority. In case such companies are or are to be active on the side of the participant in the procurement procedure, such a participant is obliged to ensure that separate teams within the company providing investor preparation are active on the side of the Contracting Authority and on the side of this participant in the procurement procedure (and consequently also of the selected contractor) in terms of personnel, location and data. The Contracting Authority further specifies that the affidavit in the form of Annex 6 may be completed for each individual contractor, but that it is sufficient if one member of the consortium

(the lead member of the consortium on the basis of the contract concluded between the contractors submitting a joint request to participate) completes and signs an affidavit in the form of Annex 6 to this Invitation for all contractors in the consortium.

The participant shall, at any time at the request of the Contracting Authority, demonstrate what measures it has taken to ensure the staffing, location and data separation of the teams.

The Contracting Authority notes at this point that the conflict of interest arrangements will also be included in the Contract.

15 Personal data protection

By submitting a request to participate, the contractor agrees to the processing of personal data. The processing of personal data, including special categories of personal data provided during the procedure, is carried out by the Contracting Authority only for the purpose of awarding the Public Contract. The Contracting Authority shall act in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council 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, generally binding legal regulations and the Contracting Authority's internal regulations governing the protection of personal data throughout the entire process of personal data protection. The Contracting Authority may process personal data of contractors and their subcontractors (natural persons engaged in business), members of the statutory bodies and contact persons of suppliers and their subcontractors, persons through whom the contractor proves qualification, members of the contractor's implementation team and the beneficial owners of the contractor in the framework of the procurement procedure of the Public Contract.

Detailed information on the processing of personal data by the Contracting Authority is contained on the Contracting Authority's website available at the following address: <https://www.spravazeleznice.cz/onas/sdeleni-o-zpracovani-osobnich-udaju-pro-verejnost> and [Ministry of Transport of the Czech Republic - Ministry \(mocr.cz\)](https://www.mocr.cz/).

16 Other terms and conditions and reserved rights of the Contracting Authority

16.1 Participation of entities from countries not guaranteeing competition

Pursuant to Section 6(3) of the PPA, the Contracting Authority shall exclude from the procurement procedure a participant whose registered office is not located in a member state of the European Union, the European Economic Area, the Swiss Confederation or in another state which has concluded an international agreement with the Czech Republic or the European Union guaranteeing access to the awarded Public Contract to contractors of these states.

The Contracting Authority adds that for the purposes of assessing whether the participant is established in a country which has an international treaty with the Czech Republic or the European Union guaranteeing access to the awarded Public Procurement to contractors from these countries, it is not sufficient if the participant is established in a country which has only the status of an observer to the

Government Procurement Agreement (GPA) since in such a case it is not a party to the international treaty within the meaning of this Article 16.1 of this Invitation and Section 6(3) of the PPA.

16.2 Participation of entities with foreign subsidies

The Contracting Authority requires contractors and their subcontractors to comply with the restrictions imposed by directly applicable EU regulations: Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (in the text of the Invitation referred to as "**the Regulation**"), Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed rules for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market, Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on access for third-country operators, goods and services to Union markets for public contracts and concessions and on procedures to support negotiations on access for third-country operators, goods and services to Union markets for public contracts and concessions (International Procurement Instrument).

According to Article 28 of the Regulation, the rules laid down in the Regulation apply to public contracts with an estimated value equal to or more than EUR 250 million if, at the same time, the participant in such a procurement procedure has received cumulative financial contributions from third countries equal to or more than EUR 4 million in the three (3) years preceding the notice of award (hereinafter referred to as "**foreign subsidies**").

Where the conditions of the preceding paragraph are complied with, participants in the procurement procedure must notify the Contracting Authority of any foreign subsidies or provide a declaration that the foreign subsidies received are not subject to notification under the Regulation.

The notification or declaration of foreign subsidies shall be completed for each individual contractor subject to the conditions of Article 28 of the Regulation and the Contracting Authority shall without delay forward the notifications or declarations so received to the Commission for examination.

The notification or declaration shall be made using the form set out in Annex II to the Regulation, on a single form containing information on all notifying parties involved in a single request to participate.

It is **possible and advisable** to submit the notification or declaration using the electronic FS-PP form available on the European Commission's website.¹¹ The notification or declaration shall be sent by the contractor to the Contracting Authority in the same way as the submission of the request to participate in this procurement procedure.

The contractor acknowledges that if the Commission, in the course of its investigation, finds that the contractor is using a foreign subsidy in breach of the Regulation and at the same time fails to offer adequate commitments to ensure full and effective remedy of the distortions caused to the internal market of the European Union pursuant to Articles 4, 5 and 6 of the Regulation, or if the Commission considers that the commitments submitted by the participant are neither appropriate nor sufficient to remedy the distortions caused, it will prohibit the contracting authority from awarding the contract to such participant pursuant to Article 31(2) of the Regulation.

¹¹ The form is available online at: <https://ecas.ec.europa.eu/cas/>.

16.3 Prohibited agreements

The contractor is obliged to declare that in connection with the Public Contract it has not entered into and will not enter into a prohibited agreement with other persons within the meaning of Act No. 143/2001 Coll, on the protection of competition and on the amendment of certain acts (Act on the protection of competition), as amended, and that it has not prepared or will not prepare parts of the bids to be evaluated according to the evaluation criteria in collusion with another participant in the same procurement procedure with whom it is a related party pursuant to Act No 235/2004 Coll., on value added tax, as amended. This will be submitted in the form set out in Annex 7 to this Invitation. The Contracting Authority reserves the right to request that an updated affidavit be submitted with the bid.

16.4 Reserved change of services from the Contract

In accordance with Section 100(1) of the PPA, the Contracting Authority reserves the possibility to change the obligation from the Contract, with the conditions for such change and its content being defined in the Contract following the negotiations during the competitive dialogue.

Pursuant to Section 100(2) of the PPA, the Contracting Authority reserves the possibility to change the contractor during the performance of the Public Contract, while the conditions for this change and the method of determining the new contractor will be defined in the Invitation or Contract following the competitive dialogue.

Furthermore, in accordance with Section 100(3) of the PPA, the Contracting Authority reserves the option to use the negotiated procedure without prior publication for the provision of new works/services by the selected contractor even after the financial closure of the project. The scope of these new works/services is expected to be at most 30 % of the price of the Public Contract, while the actual price without value added tax will not exceed by more than 30% the estimated value of the works/services set by the Contracting Authority in the Invitation pursuant to Section 16(3) of the PPA. The estimated time and extent of the provision of such new works/services will be determined following the competitive dialogue.

16.5 Trade secrets

The contractor must indicate in the documents submitted (in particular in the request to participate, in the proposals submitted during the competitive dialogue and in the bid) any information which it considers to be confidential or protected under specific legislation and which must not be disclosed. The Contracting Authority will maintain the confidentiality of all data and documents identified by the contractor as business secrets, unless otherwise specified in this Invitation or required by the PPA. The Contracting Authority's obligation of confidentiality shall not apply to such information which the Contracting Authority is, or will be, required to disclose by valid and effective legal provisions by which the Contracting Authority is or will be bound.

16.6 Sanctions

The Contracting Authority requires contractors and their subcontractors to comply with the restrictions imposed by directly applicable EU regulations, in particular Council Regulation (EU) No.833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's activities destabilising the situation in Ukraine, as amended, Council Regulation (EU) No. 69/2006 Coll. on restrictive measures in view of activities undermining or threatening the territorial integrity, sovereignty and independence of Ukraine,

as amended, and Council Regulation (EU) No. 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended, respectively, on the implementation of international sanctions, as amended. This means, in particular, that the contractor, the subcontractor through which the participant demonstrates qualification, and the subcontractor, if their participation in the performance is to exceed 10% of the value of the performance under the Contract, must not be a person referred to in Article 5 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's activities destabilising the situation in Ukraine, as amended, and furthermore, the contractor must not make available any funds from the contracting authority to a person referred to in particular in Article 5 of the Contract. 269/2014 of 17 March 2014 concerning restrictive measures in view of activities undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended, and in Article 2 of Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended, or in the national sanctions list issued pursuant to Act No 69/2006 Coll, on the implementation of international sanctions, as amended.

The international sanctions affidavit must be completed for each individual contractor, subcontractor and other entities, but it is sufficient if one member of the consortium completes the affidavit in the form set out in Annex 8 to this Invitation for all contractors in the consortium together. If the contractor does not prove the above mentioned facts in the form according to Annex 8 of this Invitation, the Contracting Authority shall exclude the contractor from the procurement procedure in accordance with the provisions of Section 48a(2) of the PPA. This is without prejudice to the Contracting Authority's obligation to inform the Financial Analytical Office within the meaning of Decree No. 281/2006 Coll., on the details of the manner of fulfilling the notification obligation under Act No. 69/2006 Coll., on the implementation of international sanctions, as amended.

16.7 Other conditions and reserved rights of the Contracting Authority

A participant who fails to comply with the procurement conditions to the extent required by this Invitation or the PPA, or who submits information or documents that are not clarified or supplemented or do not correspond to the facts and have had or may have an impact on the assessment of the conditions of participation, may be excluded from participation in this procurement procedure in accordance with the provisions of Section 48(2) of the PPA. In such a case, the Contracting Authority shall promptly send the participant in the procurement procedure a notification of his exclusion from participation in the procurement procedure with reasons.

The assessment of compliance with the conditions of participation and the reduction of the number of participants will be made without the presence of the contractors.

The manner of submission of the contractor's request to participate, the scope and manner of processing of the contractor's request to participate, as well as all other elements in the contractor's relationship to the procurement procedure, shall be carried out in accordance with the terms of this Invitation and of the PPA.

The Contracting Authority does not grant the contractor the right to reimbursement of costs associated with participation in the procurement procedure, without prejudice to Section 40(6) of the PPA. At the same time, the Contracting Authority will not claim reimbursement of the costs of the implementation of

this procurement procedure from the contractor, neither in the form of reimbursement of actual costs incurred nor in the form of fees for the participation of the contractor in this procurement procedure.

The Contracting Authority shall not be liable for errors, misstatements, misinterpretations or any omissions or incorrect information obtained by the Contractor from sources other than the Invitation.

The Contracting Authority reserves the right to verify and check the information provided by each participant in the request to participate (or in the bid) and the participant shall provide all necessary cooperation in this respect. The Contracting Authority may exclude a participant from the procurement procedure if the participant provides false information in its request to participate (or in its bid).

The Contracting Authority reserves the right to amend or modify the procurement conditions, either on the basis of contractors' requests for clarification of the Invitation or on its own initiative.

The Contracting Authority reserves the right to cancel the procurement procedure pursuant to Section 170 of the PPA. In such a case, the Contracting Authority shall state the reasons for such a procedure in the notice of cancellation of the procurement procedure.

The Contracting Authority will require, as a condition for the conclusion of the Contract, that the selected contractor adopt the form of a special purpose vehicle under Czech law with its registered office in the Czech Republic, while the change of the legal form of the special purpose vehicle and the change of its registered office is subject to the consent of the Contracting Authority. The Contracting Authority states that the requirement of the participant's liability for the obligations of the special purpose vehicle responsible for the performance of the Public Contract will be determined in accordance with the PPA and considering the outcome of the competitive dialogue, given the specific nature of the PPP project.

The Contracting Authority shall not return the submitted requests to participate (or bids) to the contractors.

Each contractor shall bear all costs associated with its participation in the procurement procedure and the Contracting Authority shall not be bound by any liability for such costs regardless of the conduct or outcome of the procurement procedure.

In the event of a change in the information provided in the request to participate (or in the bid) prior to the conclusion of the Contract with the selected contractor, or with the contractor with whom the Contract is to be concluded, the relevant contractor shall inform the Contracting Authority of such change in writing without delay. In the event of a change in the Contractor's qualification, the procedure shall be followed in accordance with Section 88 of the PPA.

The Contracting Authority points out that, using the provisions of Section 242(5) of the PPA, it has stipulated that objections to this Invitation may be submitted no later than 72 hours before the end of the deadline for the submission of requests to participate. This deadline is then also decisive for the running of the time limits under Section 98(1) of the PPA.

17 Project website

The Contracting Authority further informs that the PRAK website is maintained, including selected information about the Project available at <https://www.spravazeleznice.cz/zeleznice-na-letiste>. The

information provided on this website as well as in other publicly available sources does not form part of the procurement conditions and their knowledge is not necessary for the preparation and submission of the request to participate under this Invitation.

18 List of annexes

Annex 1 - Cover sheet for request to participate

Annex 2 - Report of preliminary market consultations

Annex 3 - List of reference projects

Annex 4 - Affidavit pursuant to Section 86(2) of the PPA

Annex 5 - Client confirmation of reference project under section 10.11 of the Invitation

Annex 6 - Affidavit of no conflict of interest

Annex 7 - Contractor's Affidavit on prohibited agreements

Annex 8 - Contractor's affidavit on international sanctions

Annex 9 - Directive No. 34 of the SŽ

Annex 10a - Description of the subject matter of the Public Contract

Annex 10b - Objects and complexes

Annex 11 - Directive No. 67 of the SŽ

In Prague on 2024

Ing. Mojmír Nejezchleb

Deputy Director General

Správa železnic, s. o.