



Israel Railways Ltd.

Procurement & Contracting Division

Tender No. 41913 for the Manufacture and Supply of Heat Treated Rails ("Tender")

General Terms and Conditions

Israel Railways Ltd. ("ISR"), in accordance with its obligations under the Israeli Mandatory Tender Laws, its implementing regulations and the International Agreement on Government Procurement, wishes to obtain bid for:

Rails with profiles of, 60E2 & 54E1 which following a heat treated process having the steel grade of R350HT ("**The R350HT Rails**").

1. Pre-requisites for Participation in the Tender (the "Pre-requisites"):

For the interpretation of Section 1, the following definitions shall apply:

- "**Manufacturing Plant**" – the manufacturing plant which is controlled by the Bidder and proposed for the manufacture and supply of the R350HT Rails under the Agreement, as specified in the Bidder's Manufacturing Plant Nomination Form.
- "**54E**" - 54E1 R350HT and/or 54E2 R350HT and/or 54E3 R350HT type of rails pursuant to EN 13674-1,
- "**60E**" – 60E1 R350HT and/or 60E2 R350HT type of rails pursuant to EN 13674-1;
- "**Qualifying Body**" - a laboratory certified in accordance with ISO/IEC 17025 in the field of steel quality testing or a laboratory accredited by national laboratory accreditation authority in the field of steel quality testing.

1.1. Pre-requisites for the manufacturing of the R350HT Rails:

- 1.1.1. The Bidder is a rails manufacturer, or a Mother Company that fully owns and controls (100% ownership) of Rail Manufacture's Company.
- 1.1.2. The Manufacturing Plant manufactured and supplied from 2015 until the Final Submission Date at least 2,000 tons of 54E R350HT type of Rails and at least 2,000 tons of 60E R350HT type of Rails.
- 1.1.3. The Manufacturing Plant must be certified for a Quality Control system in accordance with ISO 9001.

- 1.1.4. The R350HT Rails manufactured by the Manufacturing Plant must have been successfully tested by a Qualifying Body for the manufacture of R350HT grade rails in accordance with EN 13674-1.

2. Proof of Compliance with the Pre-requisites for R350HT Rails:

- 2.1. The Bidder shall prove full compliance with the Pre-requisites specified in Section 1.1 above, by submitting to ISR all details, documents and confirmations required under the provisions of the Pre-requisites which shall include, inter alia, the following:
 - 2.1.1. The Bidder shall submit a signed and completed Bidder's Manufacturing Plant Nomination Form, in the form attached hereto as **Appendix D1**, for the nomination of the manufacturing plant which is controlled by the Bidder and proposed for the manufacture and supply of The R350HT Rails under the Agreement, as specified in the Bidder's Manufacturing Plant Nomination Form. It is hereby clarified that Bidder shall nominate only **one** Manufacturing Plant.
 - 2.1.2. The Bidder shall submit a signed statement evidencing that the Bidder is a R350HT Rails manufacturer.
 - 2.1.3. The Bidder shall submit a signed and completed Experience and Reference List, in the form attached hereto as **Appendix D2**, evidencing that The Manufacturing Plant manufactured and supplied from 2015 until the Final Submission Date at least 2,000 tons of 54E R350HT type of rails and at least 2,000 tons of 60E R350HT type of rails. In addition, Bidder shall submit additional proof such as manufacturing reports and supply reports and documentation.
 - 2.1.4. The Bidder shall submit an original copy of a valid certificate of the Manufacturing Plant for a quality control system in accordance with ISO 9001 standards. Such certification shall remain valid at all times, up until and including the Proposal Validity Period.
 - 2.1.5. The Bidder shall submit an original copy of a valid laboratory certificate of the Qualifying Body - a laboratory certified in accordance with ISO/IEC 17025 in the field of steel quality testing or a laboratory accredited by national laboratory accreditation authority in the field of steel quality testing.
 - 2.1.6. The Bidder shall submit an official report signed by the Qualifying Body attesting that the manufacturing of R350HT Rails is in accordance with EN 13674-1.

3. Technical Requirements

- 3.1. The rails with the profiles, 60E2 & 54E1 having the steel grade of R350HT shall fully comply with all of the requirements and terms included in the Technical Specifications A2 attached hereto as **Appendix A**.

4. The Bid Guarantee

- 4.1. In order to secure the due, timely and complete performance of each Bidder's obligations under its proposal, including the validity of its proposal, the Bidder shall submit an irrevocable first class Bank Guarantee to the order of ISR (the "**Bid Guarantee**").
- 4.2. ISR shall require the Bidders who meet the pre-requisite requirements listed above, to submit to ISR a bid guarantee within 30 days following the receipt of a written request from ISR (the "**Bid Guarantee Request**").
- 4.3. The Bid Guarantee must be an unconditional and irrevocable first class bank guarantee to the order of Israel Railways Ltd., in the amount of eight hundred thousand Euro (125,000 €), in Euro currency only, valid at least up to half a year (six months) as of the Final Submission Date.
- 4.4. It is hereby clarified that in any event that a Bidder is requested to submit a Bid Guarantee as established above in section 4.3, and fails to do so, the Bidder shall not be entitled to participate in the Tender Process.
- 4.5. In any event that a Bidder is requested to extend the Proposal Validity Period (as defined herein), the Bidder may be required to extend the term of the Bid Guarantee for the same duration of the extension of the Proposal Validity Period. ISR shall have the right, at its sole discretion, to disqualify a proposal submitted by a Bidder who fails to extend the term of the Bid Guarantee as required herein.
- 4.6. ISR shall be entitled, at its sole and absolute discretion, to exercise the Bid Guarantee or any part thereof, after the Bidder was given the opportunity to present its arguments, in case one of the following occurs, inter alia: (1) During the Tender procedure, The Bidder acted in a misleading manner or with a lack of good faith; (2) The Bidder provided misleading information or omitted material information; (3) the Bidder retracted its proposal to the Tender after the Final Submission Date; (4) After being selected as The Winning Bidder in the Tender, the Bidder did not follow the instructions of the Tender, which are a condition for ISR's engagement with The Winning Bidder. The Bid Guarantee shall also serve as an agreed compensation without proof of damage as defined in Section 15 of the Contracts (Remedies for Breach of Contract) Law, 1970.
- 4.7. Commencing from the Effective Date as defined in the Agreement, the Bid Guarantee furnished by The Winning Bidder for the purposes of the Tender shall secure the performance of all of The Winning Bidder's obligations under the Agreement, until the replacement by the Performance and Warranty Guarantee, as defined in the Agreement. Upon the receipt of the notification of being selected as The Winning Bidder, The Winning Bidder shall extend the validity

of his Bid Guarantee in order to ensure the continuing effect of the Bid Guarantee, until the replacement by the Performance and Warranty Guarantee, as defined in the Agreement.

5. **Governing Agreement**

The manufacture and supply of The R350HT Rails including but not limited to, the price, terms of payment, scope of liability, responsibility and all other general and legal terms for the engagement with the winning Bidder (the “Supplier”), shall be governed by the terms and conditions of the frame agreement attached hereto as Appendix C (the “Agreement”). The Agreement and the appendices attached thereto constitute an inseparable part of this Tender.

6. **Term of the Agreement**

6.1. The Agreement Term shall be as set forth in the Agreement.

7. **Delivery Terms**

7.1. The terms of supply and delivery of R350HT Rails mentioned above shall be as set forth in the Agreement.

8. **Time of Delivery**

8.1. The time of delivery for the supply of R350HT Rails mentioned above shall be as set forth in the Agreement.

9. **Price Proposal**

9.1. The Bidder shall provide the proposed price proposal for the manufacture and supply of R350HT Rails (the “Proposed Price”), in the Bidder’s Proposal Form attached hereto as **Appendix B** in accordance with the following instructions:

9.1.1. R350HT Rails (section 4 in the Bidder's Proposal Form.

10. **Evaluation process and selection of Winning Proposal**

10.1. The evaluation of the Bid submitted by the Bidders shall be conducted by ISR in accordance with the following process:

10.1.1. **Stage A - Preliminary Evaluation**

10.1.1.1. **Stage A1** – Pre-Requisites: Bidders will be evaluated in accordance with Section 2 above.

10.1.1.2. **Stage A2** - Bid Guarantee: Bidders who satisfy Stage A1 above shall be required to submit a Bid Guarantee, as specified in section 4 above.

10.1.1.3. **Stage A3** - Technical Evaluation - Technical Proposals shall be evaluated in accordance with the Technical Specifications.

10.1.2. **Stage B- Commercial Evaluation**

10.1.2.1. ISR shall open all of the commercial proposals of all the Bidders who satisfy all three Stage A's above.

10.1.2.2. **Stage B1** – The Total Evaluated Price ("**TEP**") for the Bids set forth in **Appendix B** shall be calculated in accordance with Appendix **B** as applicable.

10.1.2.3. The lowest bidder will win that Bid. Thus each Bid is examined separately vis a vis other Bids.

10.1.3. **Stage C - Factory Evaluation**

10.1.3.1. ISR's technical staff shall conduct a visit to the premises of the Bidder whose proposal has the lowest total evaluated price. During that visit, ISR shall inspect, inter alia, the following:

The Bidder's Manufacturing Plant, and the laboratories- the rail production, including the Heat Treatment process, quality control, quality assurance, loading and transporting the Rails, fulfilling its compliance with EN 13674-1 and the Technical specifications.

10.2. The Winning Bidder shall be the Bidder who submitted a Bid whose proposal fully complies and evidences compliance with the Pre-requisites as per Section 1 above, the Relevant Technical Specifications (**Appendixes A**), Factory Evaluation (specified in section 10.1.3 above) and all of the other requirements of the Tender and has the Lowest Total Evaluated Price ("**TEP**") as calculated in **Appendix B** below ("**The Winning Bidder**").

10.3. The Bidder's TEP shall be calculated in accordance with the evaluation formula as specified in **Appendix B**.

10.4. When reviewing the submitted proposals, ISR reserves the right, at its sole discretion, to take into consideration negative past experience of ISR and/or any other entity with any particular Bidder and ISR may reject any particular proposal based solely on such past experience.

11. **Submission of Proposals**

11.1. All proposals must be submitted no later than **April 20, 2020** by 13:00 (Israel time) ("**Final Submission Date**") in two separate envelopes, and these two envelopes shall all be inserted into one main envelope as specified below, which

shall read Tender No. 41913 (hereinafter: the “Main Envelope”) at the address set forth below.

- 11.2. The proposal shall be submitted by a single Bidder. A Bidder which submits more than one proposal shall be disqualified. For the removal of doubt, the provisions of this Section shall not be construed as prohibiting or restricting a Consortium, as defined herewith from submitting a Bid.
- 11.3. The proposal is to be submitted in 2 copies into Tender Box No. 8, located at the following address:

Israel Railways Ltd.
Management Building – Tender Box #8
1st. Yoseftal St.
Lod, ISRAEL

- 11.4. The Bidder is requested to read carefully all of the documents attached herein and submit the following documents in three separate envelopes as set out below, which should be included in the Main Envelope, signed, where applicable, by the authorized signatory bodies:

- 11.4.1. A separate envelope which shall read “Pre-requisites - Tender No. 41913” shall be inserted in the Main Envelope and shall include the following:

A signed copy of the Agreement (**Appendix C**), including the Bidder’s relevant information in the heading thereof (excluding the date);

- 11.4.2. A signed and completed Experience and Reference List (Appendixes D1 and D2) including all the forms attached to it;

- 11.4.3. A separate envelope which shall read “Technical proposal - Tender No. 41913” shall be inserted in the Main Envelope and shall include the following:

- 11.4.4. Company profile of the Bidder and its expertise.

A signed copy of the Technical Specifications for – Appendix A

- 11.4.5. Any and all drawings, documentation, information, reports and certifications required and relevant pursuant to the Technical Specifications, 2 sets in hard copy and one set in magnetic media in English and/or Hebrew.

- 11.4.6. A separate envelope which shall read “Commercial proposal - Tender No. 41913” shall be inserted in the Main Envelope and shall include the following:

- 11.4.7. A signed and completed Bidder Proposal Form (Appendix B).

12. **Appendices**

The following appendices are attached hereto:

Appendixes A–The Technical Specifications.

Appendix B - Bidder's Proposal Form.

Appendix C - A copy of the Agreement.

Appendix D1 - Nomination of Manufacturing Plant Form

Appendix D2 - Experience and Reference List of the Bidder.

13. Proposal Validity

All submitted proposals must be valid until at least six (6) months from the Final Submission Date as set forth above (the "Proposal Validity Period"), and may not be revoked or changed by the Bidder during this period for any reason whatsoever. In the event ISR shall not enter into a contractual relationship with The Winning Bidder, for any reason whatsoever, and/or the Agreement with The Winning Bidder will be cancelled, ISR shall be entitled to elect, as a winning proposal, the proposal which offered the next lowest Total Evaluated Price ("TEP"). The terms set forth in this Section shall apply, mutatis mutandis, following the replacement of the Bidder's proposal as aforesaid.

14. Verification

ISR shall have the right, at its sole and absolute discretion, to verify the recommendations and other documents provided by the Bidder, and to request from any of the Bidders additional details, approvals, recommendations certificates and reports. In addition, ISR may, at its sole and absolute discretion, upon prior coordination with the Bidder and/or the Manufacturing Plant, inspect the facilities of such Bidder and/or Manufacturing Plant at any time or any facilities where components or process proposed by the Bidders are part of the manufacturing. ISR may, at its sole and absolute discretion, contact and/or visit each of the customers detailed in Appendix D1 in order to check and evaluate the Pre-requisites, the Technical Proposal, and/or Bidder's Proposal.

15. Language of Bids

All documents submitted by the Bidder in this Tender (including but not limited to all attachments, schedules, annexes, sketches, drawings, diagrams, tables, reports and charts) and any additional information, questions, request for clarification and interpretation, or any other communication, must be in English and/or Hebrew only, unless otherwise specifically stated in the Tender Documents or approved by ISR.

16. Rights in Tender Documents

All rights and titles in and to any and all drawings, sketches, and other technical documents and information provided by ISR or on its behalf to the Bidder as well as to all of the Tender Documents and the contents thereof, shall be deemed to be the sole and exclusive proprietary of ISR, and/or otherwise permitted to ISR by third parties.

17. General Prerogatives of ISR

- 17.1. A proposal reflecting any reservation regarding the attached documents or any part thereof, including the Agreement or the appendixes attached thereto, whether by rejection, insertion or amendment to any part of the attached documents, may be disqualified.
- 17.2. ISR shall not be bound to accept the lowest-priced proposal or any other proposal whatsoever. In addition, ISR does not commit itself in any way to acquire the requested movables or to enter into a contractual relationship with any of the Bidders.
- 17.3. The groups acquired shall be on a non-exclusive basis and ISR, at its sole discretion may, at any time, obtain The R350HT Rails from any of the Bidders, and/or may acquire similar or identical rails from any third party.
- 17.4. ISR shall issue Purchase Orders under the Agreement following the receipt and subject to the receipt of the necessary budgetary approvals.
- 17.5. ISR, in its sole and absolute discretion, may decide not to select any of the submitted proposals or may decide to cancel the entire Tender at any time.
- 17.6. ISR reserves the right to reject a Bidder's proposal which does not have the required financial strength for the performance of the Agreement or that its commercial proposal is significantly lower than ISR's estimation.
- 17.7. In addition to any other event which entitles ISR by law to cancel the Tender, ISR reserves its absolute and sole discretionary right, to cancel this Tender in the following events:
- 17.8. If only one of the proposals is found suitable, according to the Pre-requisites and/or other specification requirements according to these Tender Documents;
- 17.9. If ISR concludes that there was a flaw in the Tender process and/or in the evaluation of the proposals;
- 17.10. If ISR has found that a critical mistake has been made in the Technical Specifications, inter alia, by giving false data, missing data or incomplete data;
- 17.11. If the circumstances and/or ISR's requirements have been significantly changed, to such extent which requires the cancellation of the Tender;
- 17.12. ISR reserves the right, at its sole discretion, to conduct negotiations with any of the Bidders in this Tender that it finds suitable, with respect to their commercial and/or technical proposals, or not to conduct negotiations at all.

17.13. Each Bidder shall solely bear all costs associated with the preparation and submission of its proposal. This shall include, without limitation, any and all expenses and losses, which may be incurred by the Bidder, consultations with professionals, conducting investigations and inquiries of any kind, preparation of surveys and documents and the authentication and translation thereof and any other aspect in connection with the proposal. ISR will in no case be responsible or liable for any of the above costs, nor shall it be required, under any circumstances, to reimburse any such costs to any Bidder.

18. **Request for clarifications and/or additional information**

18.1. Any Bidder may submit in writing to ISR, their inquiries and/or requests for clarification and/or additional information regarding the Tender or relating to the Tender Documents, as specified herein below.

18.2. Any inquiries with regards to this Tender should be addressed, in writing only and no later than **March 2nd, 2020**, to Netanel Kimchi, Coordinator of International Procurement and Contracting, by e-mail: netanelk2@rail.co.il. Bidders shall be responsible for verifying receipt by ISR of Requests for Clarification.

18.3. Should ISR decide, at its sole discretion, to respond to any requests for clarifications, such response shall be published in ISR's website (in the "Tenders section under the Tender's name) and, as of the date of such publication, shall constitute an integral part of the Tender Documents (each, a "**Notice to Bidders**").

18.4. Bidders shall be solely responsible to check ISR's website on a regular basis in order to follow publications by ISR. Any Notice to Bidders published at ISR's website shall be binding upon each bidder, whether or not bidder is aware of such Notice to Bidders, and bidders shall not have any claim in connection therewith.

18.5. It is hereby clarified that only information provided by ISR to the Bidders by the way of a Notice to Bidders in accordance herewith shall be binding upon ISR (unless expressly specified otherwise therein), and ISR shall not be bound by any oral or written response or information communicated to Bidders in any other way.

19. **Amendment of Tender Documents**

At any time prior to the Final Submission Date, ISR may amend the Tender Documents by issuing Notices to Bidders. Any notice thus issued, shall be deemed as an integral part of the Tender Documents, and shall be communicated in writing. Each Bidder shall promptly acknowledge receipt of each notice to ISR (however, each notice shall be binding upon each Bidder, regardless whether the Bidder has acknowledged receipt of such notice(s) or not).

20. Notification of The Winning Bidder

ISR shall send notification of its decision to the Bidder selected as the winner in the Tender. Notifications shall also be sent to the other Bidders. For the removal of doubt, the aforementioned notification of the winning proposal shall not constitute the formation of a contract between ISR and such Bidder, and the entering into a binding agreement is conditioned upon the fulfillment of all required terms and conditions as detailed in the Tender Documents and the Agreement.

Appendix A
Tender No. 41913

TECHNICAL SPECIFICATIONS
Attached separately

Appendix B

Bidder's Proposal Form - Tender 41913

Date: _____

Israel Railways Ltd.

Contracting & Purchasing Division

1st. Yoseftal, Lod , Israel

Name of Bidder: _____

Address: _____

Telephone and

E-mail: _____

Re: Proposal for the Manufacture and Supply of **Heat Treated Rails ("Tender")-**
Tender No. 41913

1. Bidder declares that it has read, fully understands, and agrees to the terms and conditions included in the Tender Documents of Tender No. 41913, including the General Terms and Conditions, the Technical Specifications and any appendices thereof (collectively, the “**Tender Documents**”). All of the terms and conditions included in the Tender Documents shall be considered integral parts of this proposal, and all defined terms not otherwise defined in this **Appendix B**, shall bear the same meaning as defined in the Tender Documents.

2. Any price stipulated herein shall be quoted in Euro (€) currency, only. Bidder hereby acknowledges and declares that all of the sums stated herein (Appendix B) shall constitute the final price that will be paid to the bidder for the manufacture and supply of Heat Treated Rails including all of the related services, equipment, cost, fees duties and taxes as specified in the Agreement.
3. To preclude any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and delivery of Heat Treated Rails including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה"), wharfage fees (in Hebrew "Dmei Ratzif" or "דמי דריציף"), Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול"), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cam locks for discharging the Heat Treated Rails at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the Proposed Price for the Heat Treated Rails shall be borne solely by Supplier (The Winning Bidder). Notwithstanding same, Israeli Value Added Tax, if applicable, shall be borne by ISR.

4. The Proposed Price for Rails R350HT ("**TEP**") shall be as follows:

No.	Type of Rails	Price per one Ton in digits – In Euro Currency ONLY	Quantity in Tons (For Evaluation Purpose Only)	Total (Price per one Ton multiplied by Quantity)
1	60E2 R350HT Rails		1000	
2	54E1 R350HT Rails		1000	
Total Evaluated Price ("TEP")				

Signature of Bidder: _____

By: (print or type name): _____

Title: _____

Appendix C

Agreement

Tender No. 41913

Attached separately

Appendix D1

TENDER No. 41913

Nomination of Manufacturing Plant Form

1. We, the undersigned, _____, the Bidder of Tender No. _____ hereby nominate _____ (Name of proposed manufacturing plant) of _____ (please fill in full registered address of manufacturing plant) for the manufacture of the Rails Grade type R350HT, proposed by us for Tender No. _____.

2. The legal representative of the manufacturing plant is _____

(please specify name, title and contact details of the legal representative of the Manufacturing Plant).

3. We hereby declare and confirm that _____ (name of proposed manufacturing plant) is controlled by the undersigned, the Bidder of Tender No. _____.

Name _____

Title _____

Date _____

Appendix D2

TENDER No 41913

Date: _____

Experience and Reference List of the Bidder

In accordance with Section 2.2 of the Tender General Terms and Conditions:

The Manufacturing Plant manufactured and supplied from 2014 until the Final Submission Date at least 2,000 tons of 54E R350HT type of Rails and at least 2,000 tons of 60E R350HT type of Rails.

Name of company to which the 60E R350HT and/or 54E R350HT Rails were supplied	Date the under Rails were Supplied	Quantity of Rails 60E R350HT and/or 54E R350HT supplied	Client Name and Contact Person Name	Telephone and E-mail of contact person

Signature of Bidder: _____

By: _____

Title: _____

Please copy this page in order to fill in all relevant experience