

Denmark-Copenhagen: Railway construction works
OJ S 55/2023 17/03/2023
Contract notice – utilities
Works

Legal Basis:

Directive 2014/25/EU

Section I: Contracting entity

I.1. Name and addresses

Official name: Femern Bælt A/S
National registration number: 28986564
Postal address: Vester Søgade 10
Town: København V
NUTS code: DK011 Byen København
Postal code: 1601
Country: Denmark
Contact person: Kirsten Margrethe Christensen
E-mail: info@femern.dk
Telephone: +45 33414453
Internet address(es):
Main address: www.femern.com

I.3. Communication

The procurement documents are available for unrestricted and full direct access, free of charge, at: http://eu.eu-supply.com/app/rfq/rwlenrance_s.asp?PID=349674&B=KA
Additional information can be obtained from the abovementioned address
Tenders or requests to participate must be submitted electronically via: http://eu.eu-supply.com/app/rfq/rwlenrance_s.asp?PID=349674&B=KA
Tenders or requests to participate must be submitted to the abovementioned address

I.6. Main activity

Other activity: Femern A/S' sole activity is the procurement, construction and operation of the fixed link across the Fehmarnbelt and any ancillary activities related to this purpose

Section II: Object

II.1. Scope of the procurement

II.1.1. Title

Tender for the Tunnel Track and Catenary contract for the Fehmarnbelt Fixed Link

II.1.2. Main CPV code

45234100 Railway construction works

II.1.3. Type of contract

Works

II.1.4. Short description

The Fehmarnbelt Fixed Link Project is the final stage in the realization of a straight traffic corridor between Scandinavia and continental Europe. It will be an immersed tunnel containing two dual carriageways and a twin-track railway traversing the 19 km distance across the Fehmarnbelt between Rødbyhavn on the island of Lolland in Denmark and Puttgarden on the island of Fehmarn in northern Germany. The Tunnel Track and Catenary ('TTC') contract covers design, build (installation), testing and commissioning of the tunnel track and catenary (overhead contact line ('OCL')) systems described in section II.2.4).

II.1.5. Estimated total value

Value excluding VAT: 200 000 000,00 EUR

II.1.6. Information about lots

This contract is divided into lots: no

II.2. Description

II.2.2. Additional CPV code(s)

31214000 Switchgear, 34632300 Electrical installations for railways, 34940000 Railway equipment, 34946000 Railway-track construction materials and supplies, 34946100 Railway-track construction materials, 34946110 Rails, 34946120 Railway materials, 34946200 Railway-track construction supplies, 45221242 Railway tunnel construction work, 45230000 Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork, 45234000 Construction work for railways and cable transport systems, 45234116 Track construction works, 45234160 Catenary's construction works, 50000000 Repair and maintenance services, 50220000 Repair, maintenance and associated services related to railways and other equipment, 50225000 Railway-track maintenance services, 71311230 Railway engineering services, 71541000 Construction project management services

II.2.3. Place of performance

NUTS code: DK022 Vest- og Sydsjælland

NUTS code: DEF08 Ostholstein

Main site or place of performance: Rødbyhavn

II.2.4. Description of the procurement

The TTC Contractor will be required to design, build (install), test and commission the TTC systems described below (*design and build track and OCL systems). The TTC Contractor shall apply the Technical Specifications for Interoperability (TSI)- and Common Safety Method (CSM) RA-compliance processes and follow them throughout the execution of the contract (*TSI/CSM compliance). Further, the TTC Contractor shall provide maintenance of the TTC systems for an envisaged period of 5 years (coinciding with the defects notification period in the TTC contract) with a rapid response in order to ensure availability of the systems.

The track works include:

- slab track in the tunnel and on the ramps (approximately 2 x 19.1 km) (*installation of slab track in tunnels)
- ballast track from the end of the ramps on the approaches on the Danish and German sides (approximately 2 x 4.1 km on the Danish side and 2 x 2.2 km on the German side)
- turnouts on the Danish side and on the German side including point trace heating system (the contracting entity is envisaged to provide the turnouts)

the OCL system ('OCLS') works include:

- OCLS in the tunnel (approximately 2 x 18.4 km) (*installation of OCLS in tunnels)
- OCLS on the ramps and approaches on the Danish and German sides (approximately 2 x 4 km on the Danish side and 2 x 3 km on the German side)

- connection to the traction power substation on Lolland
- return current and earthing and bonding systems
- overhead line section panels (Ober Leitungs Spannungs Prüfeinrichtung)
- system separation sections
- switchgears
- uninterrupted power supply system for OLSPs and SCADA type-systems
- fibre cable

The railway will be operated at 200 km/h (*design speed).

The TTC Contractor works also include other ancillary tasks such as establishing a maintenance area (earth and drainage works and laying of tracks). Further, the TTC Contractor is envisaged to be required to install e.g. marker boards and other items and equipment during the installation which is provided by the contracting entity.

The TTC contract is large scale and complex. It requires the contractor to establish a railway connection through open land and through more than 18 kilometers of tunnel (*long tunnel). The TTC Contractor shall carry out the works with full focus on safety and in observation of principles set out in terms of ethical, social and environmental behaviour (e.g. UNGC global compact, labour related obligations, use of apprentices) (*compliance with CSR requirements).

II.2.5. Award criteria

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6. Estimated value

Value excluding VAT: 200 000 000,00 EUR

II.2.7. Duration of the contract, framework agreement or dynamic purchasing system

Duration in months: 108

This contract is subject to renewal: no

II.2.9. Information about the limits on the number of candidates to be invited

Envisaged number of candidates: 4 Objective criteria for choosing the limited number of candidates:

The shortlisting of candidates invited to tender will be based on an overall assessment of which candidates have documented the most relevant experience in delivery of works comparable to the works covered by the contract, see the description in sections II.1.4) and II.2.4).

This overall assessment will be made on the basis of the submitted portfolio of references, see section III.1.3), and the extent to which these references – as a whole – document delivery of functionally comparable works.

When considering whether works are functionally comparable (and as such considered relevant experience) please refer to section II.1.4) and II.2.4) where the works are described – and in particular to the areas marked by a * in a parenthesis (e.g. ‘(*design and build track and OCL systems)’), which will be given special weight in the assessment.

II.2.10. Information about variants

Variants will be accepted: no

II.2.11. Information about options

Options: no

II.2.13.

Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:
yes

Identification of the project: The construction of the fixed link across the Fehmarn Belt receives EU funding from the CEF programme under project code 2014-EU-TM-0221-W and 21-EU-TG-Fehmarnbelt Tunnel.

II.2.14. Additional information

Sections II.1.5) & II.2.6); the amount is an estimate of the contract price for the entire term of the contract. An economic operator may only submit one application. A legal entity may provide services to more than one applicant/tenderer (as a “normal” subcontractor) - the contracting entity may request proof that this has not limited the competition in conflict with applicable competition laws.

Section III: Legal, economic, financial and technical information

III.1. Conditions for participation

III.1.2. Economic and financial standing

List and brief description of selection criteria:

The candidate must submit the European Single Procurement Document (‘ESPD’) with the following information:

The candidate's equity ratio in each of the 3 latest financial years available

The candidate's total annual turnover in each of the 3 latest financial years available.

If the candidate relies on the economic and financial capacity of other entities in relation to the fulfilment of minimum requirements, see below, the entities in question will be required to issue a financial guarantee in favour of the contracting entity covering any financial claims against the contractor in relation to the performance of the contract. See Tender Specifications paragraph 3.2 for further on the securities required.

Please note that in relation to the fulfilment of minimum requirements, see below, the financial capacity of another entity may be disregarded, in case the financial statements of such entity are consolidated with the financial statements of the candidate or any other financially supporting entity (i.e. to avoid double counting).

The ESPD serves as provisional documentation that the candidate fulfils the minimum suitability requirements in respect of economic and financial capacity.

Before the award decision is made, the tenderer to whom the contracting entity intends to award the contract must submit documentation that the information stated in the ESPD is accurate. The intention is that in connection with the contracting entity's pre-qualification of candidates, the following documentation of economic and financial capacity must be submitted:

The operator's balance sheets or extracts from balance sheets in the three latest annual reports/financial statements available if publication of the balance sheets is required under law in the country in which the operator is established, or other documentation of the size of the equity ratio and the total annual turnover in each of the 3 latest financial years available. For groups of operators (e.g. a consortium), the mentioned documentation must be submitted for each participating operator in the group. Where an operator relies on the economic and financial capacity of other entities (e.g. a parent company, a sister company or a subcontractor), information for such other entities must be provided as well.

Where an operator relies on the economic and financial capacity of other entities (e.g. a parent company, a sister company or a subcontractor), it will further be necessary to submit a letter of commitment from each supporting entity based on the template provided in the tender specifications, appendix C.

If a legal entity participates in more than one application (e.g. as a supporting entity), the contracting entity may request proof that this has not limited the competition in conflict with applicable competition laws.

Minimum level(s) of standards possibly required:

As a minimum requirement, an equity to total assets ratio is required of at least 15 % in each of the three latest annual reports/financial statements available at the time limit for submitting requests for participation, cf. section IV.2.2).

The equity to total assets ratio is calculated as the operator's total equity divided by the operator's total assets, calculated as a percentage. The equity to total assets ratio is thus calculated as $(\text{total equity}/\text{total assets}) \times 100 = \text{equity to total assets ratio}$. If the candidate relies on the financial capacities of other entities, the equity to total assets ratio is calculated as the total equity of the candidate and such other entities divided by their total assets, calculated as a percentage. For groups of operators (e.g. a consortium), the equity to total assets ratio is calculated as the total equity of the operators divided by their total assets, calculated as a percentage. The information is to be stated in section IV.B of the ESPD.

As a minimum requirement, a total annual turnover of at least EUR 200 million is required in each of the three latest annual reports/financial statements available at the time limit for submitting requests for participation, cf. section IV.2.2).

If the candidate relies on the financial capacities of other entities, the turnover is to be calculated as the total turnover of the candidate and such other entities in each of the 3 latest annual reports/financial statements available. For groups of operators (e.g. a consortium), the turnover is calculated as the total turnover of the operators in each of the three latest annual reports/financial statements available. The information is to be stated in section IV.B of the ESPD.

In relation to both minimum requirements the calculations shall be made taking into account any consolidated financial accounts such that any turnover, etc., is not counted twice.

III.1.3. Technical and professional ability

List and brief description of selection criteria:

A portfolio of references documenting up to 7 comparable works, see sections II.1.4) and II.2.4), that the candidate has carried out in the latest 5 years before the expiry of the deadline for application.

Works are considered carried out in the latest 5 years, if the candidate has completed (handed-over to the customer) the works within the latest 5 years (i.e. if hand-over is within the 5-year period the entire works are considered). When assessing whether a reference fulfils any of the minimum requirements regarding technical and professional capacity, only references which have been completed will be considered.

In case the candidate submits a reference where the candidate has yet to complete the works, only the works carried out at the time of application will be given importance in the evaluation of which candidates have documented the most relevant experience, see section II.2.9). In such a case the candidate is requested to specify which parts have been performed.

Each reference is requested to include a description of the deliveries made. The description should include a clear description of how it relates to the works set out in sections II.1.4) and II.2.4) (in particular to the areas marked by a * in a parenthesis) and the candidate's role(s) in the performance of the delivery.

Each reference is also requested to include the financial value of the delivery, the date of delivery and the name of the customer (recipient), including point of contact. When indicating the date of the delivery, the candidate is requested to indicate the date of commencement and finalisation of the delivery. If this is not possible the candidate is asked to indicate how the date is specified.

The portfolio may not include more than 7 references, irrespective of whether the candidate is a single operator, a group of operators (e.g. a consortium) or whether the candidate (single operator or group of operators) relies on the technical capacity of other entities. If more than 7 references are submitted, only the 7 references that commenced first will be considered by the contracting entity. However, if the candidate has clearly indicated which 1-2 references fulfil the minimum requirements, then these references will always be among the 7 references to be considered.

If the candidate relies on the professional experience of other entities for the performance of specific parts of the works comprised by the contract, (see section II.2.4), such specific parts of the works under the contract must be performed by the entity on which the candidate relies, e.g. by acting as a sub-contractor to the candidate regarding the relevant parts of the works or by making the necessary employees and/or facilities available for the candidate's performance of the relevant parts of the works.

The ESPD serves as provisional documentation that the candidate fulfils the minimum suitability requirements in respect of technical and professional ability, (see this section III.1.3) and the candidate's compliance with the selection criterion, (see section II.2.9).

Prior to award, the tenderer to whom the contracting entity intends to award the contract must submit documentation that the information stated in the ESPD is accurate. However, no additional documentation of technical and professional capacity will be required from the candidate, but the contracting entity reserves the right to contact the candidate or the customer stated in the reference for verification. Where a candidate relies on the professional experience of other entities, it will further be necessary to submit a letter of commitment from each supporting entity based on the template provided in the tender specifications, appendix C. If a legal entity participates in more than one application (e.g. as a supporting entity), the contracting entity may request proof that this has not limited the competition in conflict with applicable competition laws.

Minimum level(s) of standards possibly required:

As a minimum requirement, the candidate must have at least

1) one (1) reference regarding construction of a track system in a tunnel (cf. section II.2.4) of a minimum total continuous length of 3 km (i.e. the tunnel has a continuous stretch of at least 3 km of tunnel); and

2) one (1) reference regarding construction of a slab track system (cf. section II.2.4).

The works covered by No 1) and 2) must be completed and in operation. The minimum requirement may be fulfilled by submitting two separate references covering No 1) and 2), respectively, or by submitting one reference covering both No 1) and 2) (in which case a slab track system shall be constructed in a tunnel of a minimum length of 3 km). The candidate should clearly indicate which reference(s) in the application fulfil(s) the minimum requirements.

III.1.6. Deposits and guarantees required

The contractor will be required to provide a performance guarantee.

If the candidate relies on the economic and financial capacity of other entities in relation to the fulfilment of minimum requirements the entities in question will be required to issue a financial guarantee in favour of the contracting entity covering any financial claims against the contractor in relation to the performance of the contract.

See Tender Specifications paragraph 3.2 for further on the securities required.

III.1.7. Main financing conditions and payment arrangements and/or reference to the relevant provisions governing them

The contractor may receive an advance payment (against provision of relevant security). Further financing and payment conditions can be found in the tender documents.

III.1.8. Legal form to be taken by the group of economic operators to whom the contract is to be awarded

No specific legal form is required.

If the contract is awarded to a group of operators (such as a consortium), the participants of the group must undertake joint and several liability and appoint a joint representative.

III.2. Conditions related to the contract

III.2.2. Contract performance conditions

The contract has incorporated the corporate social responsibility considerations, as appropriate, as laid down in the conventions on the basis of which the principles of the UN Global Compact are worded and as laid down in the OECD Guidelines for Multinational Enterprises. The contract furthermore lays down requirements on labour clauses in Denmark and Germany.

The contracting entity has assessed that the conclusion of the contract may be subject to the authorisation requirement pursuant to the Danish Investment Screening Act. See further in Appendix F.

III.2.3. Information about staff responsible for the performance of the contract

Obligation to indicate the names and professional qualifications of the staff assigned to performing the contract

Section IV: Procedure

IV.1. Description

IV.1.1. Type of procedure

Negotiated procedure with prior call for competition

IV.1.3. Information about a framework agreement or a dynamic purchasing system

IV.1.4. Information about reduction of the number of solutions or tenders during negotiation or dialogue

Recourse to staged procedure to gradually reduce the number of solutions to be discussed or tenders to be negotiated

IV.1.8. Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: yes

IV.2. Administrative information

IV.2.1. Previous publication concerning this procedure

Notice number in the OJ S: [2022/S 220-632847](#)

IV.2.2. Time limit for receipt of tenders or requests to participate

Date: 28/04/2023 Local time: 13:00

IV.2.3.

Estimated date of dispatch of invitations to tender or to participate to selected candidates

Date: 09/06/2023

IV.2.4. Languages in which tenders or requests to participate may be submitted

English

IV.2.6. Minimum time frame during which the tenderer must maintain the tender

Duration in months: 12 (from the date stated for receipt of tender)

Section VI: Complementary information

VI.1. Information about recurrence

This is a recurrent procurement: no

VI.3. Additional information

Participation in the tendering procedure may only take place by electronic means via the electronic tendering system used by the contracting entity, see the link in section I.3). For access to the procurement documents, the candidate must be registered or register as a user. If the application contains several versions of the same document, the latest uploaded version will apply.

All communication in connection with the tender procedure must take place through the electronic tendering system. Questions regarding prequalification shall be submitted not later than 20 April 2023. Questions asked after this date will be answered if they are received in time for the contracting entity to provide the information required and communicate the answers not later than six days before expiry of the application deadline. Questions received later than six days before expiry of the deadline cannot expect to be answered unless the deadline is also postponed.

Interested operators are requested to keep updated via the electronic tendering system. If the candidate encounters problems with the system, please contact support by e-mail, dksupport@eu-supply.com, or telephone (+45) 70 20 80 14.

The candidate must as its application submit an ESPD as preliminary documentation of the circumstances set out in section 148(1), paras 1-3 of the Danish Public Procurement Act, cf. section 12 of Ministerial Order on procurement by entities operating in the water, energy, transport and postal services sectors (implementeringsbekendtgørelsen — 'the Danish Implementing Order'). A guide on how to complete the ESPD is attached to the Tender Specifications as an appendix E, including explanations regarding groups of operators and supporting entities.

The candidate will be excluded from participation in the tender procedure if the candidate is subject to the compulsory grounds for exclusion set out in sections 134a, 135 and 136 of the Danish Public Procurement Act, cf. section 11(1), para. (1) of the Danish Implementing Order, unless the candidate has submitted sufficient documentation of its reliability in accordance with section 138 of the Danish Public Procurement Act, cf. section 11(1), para. (2) of the Danish Implementing Order.

Attention is drawn to Article 5k in Regulation (EU) No 833/2014 as later amended which applies for the tender procedure (prohibition against award of contracts to Russian companies, etc.).

Before the award decision is made, the tenderer to whom the contracting entity intends to award the contract must provide documentation of the information submitted in the ESPD pursuant to sections 150-155, cf. section 12 of the Danish Implementing Order. Further, the contracting entity reserves the right to contact the candidate or the customer stated in the

reference for verification of the information stated in the reference, including the dates of the reference indicated.

In the event of changes to the composition of the tenderer, the provisions of section 147 of the Danish Public Procurement Act will apply in their entirety.

As regards section II.2.7), the stated duration of the contract is based on the preliminary assumption that contract signing will take place in early 2025 with commencement March 2025 (but counted from March 2025). As the case is the award of contract and signing of contract may be done following the first negotiation tender, in which case the duration may be correspondingly longer.

The contracting entity may ask the candidate to supplement, specify or complete the application pursuant to Article 76, para. (4) of the Utilities Directive if the application or tender does not meet the formal requirements of the tender documents.

The contracting entity reserves the right to award on the basis of the initial tender.

The contracting entity will pay remuneration to the tenderers for participation. The remuneration is up to EUR 200 000; rules for entitlement to participation fee are set out in the tender specifications.

VI.4. Procedures for review

VI.4.1. Review body

Official name: Klagenævnet for Udbud

Postal address: Nævnenes Hus, Toldboden 2

Town: Viborg

Postal code: 8800

Country: Denmark

E-mail: klfu@naevneshus.dk

Telephone: +45 72405600

Internet address: <https://klfu.naevneshus.dk/>

VI.4.3. Review procedure

Precise information on deadline(s) for review procedures:

Pursuant to the Danish Act on the Complaints Board for Public Procurement, etc. (lov om Klagenævnet for Udbud m.v.) (the Act is available (in Danish) at www.retsinformation.dk), the following deadlines apply to the lodging of complaints:

Complaints for not having been selected must be submitted to the Danish Complaints Board for Public Procurement before the expiry of 20 calendar days, see section 7(1) of the Act, from the day after submission of notification to the candidates concerned of the identity of the successful tenderer where the notification is accompanied by an explanation of the grounds for the decision in accordance with section 2(1), para (1) of the Act.

In other situations, complaints of award procedures, see section 7(2) of the Act, must be lodged with the Danish Complaints Board for Public Procurement before the expiry of:

- 1) 45 calendar days after the contracting entity has published a notice in the Official Journal of the European Union that the contracting entity has entered into a contract. The deadline is calculated from the day after the day when the notice was published;
- 2) 30 calendar days calculated from the day after the day when the contracting entity has notified the candidates concerned that a contract based on a framework agreement with reopening of competition or a dynamic purchasing system has been entered into where the notification has included an explanation of the relevant grounds for the decision;
- 3) 6 months after the contracting entity entered into a framework agreement calculated from the day after the day when the contracting entity notified the candidates and tenderers concerned, see section 2(2) of the Act.

Not later than at the time of lodging a complaint with the Danish Complaints Board for Public Procurement, the complainant must notify the contracting entity in writing that a complaint has been lodged with the Danish Complaints Board for Public Procurement and whether the appeal was lodged during the standstill period, see section 6(4) of the Act. In cases where the complaint was not lodged within the standstill period, the complainant must furthermore indicate whether a suspensory effect of the complaint has been requested, see section 12(1) of the Act.

The e-mail address of the Complaints Board for Public Procurement is set out in section VI.4.1).

The Complaints Board's own complaints procedure is available at <https://naevneneshus.dk/start-din-klage/klagenaevnet-for-udbud/vejledning/>

VI.4.4. Service from which information about the review procedure may be obtained

Official name: Konkurrence- og Forbrugerstyrelsen

Postal address: Carl Jacobsens Vej 35

Town: Valby

Postal code: 2500

Country: Denmark

E-mail: kfst@kfst.dk

Telephone: +45 41715000

Internet address: <http://www.kfst.dk>

VI.5. Date of dispatch of this notice

13/03/2023