

Administration of Railway Infrastructures, state-owned company (ADIF)

Third Parties Initiative Regime

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Administration of Railway Infrastructures, state-owned company (ADIF)

Third Parties Initiative Regime

Section 1°. General Provisions

The Third Parties Initiative Regime (the “Regime”) of the Administration of Railway Infrastructures, State-owned Company (“ADIF”) aims at stimulating private individuals to participate in projects and/or proposals related with ADIF’s subject matter or with its collateral, subsidiary or complementary activities, whether they are related to works, services, supplies and/or any other modality, to be developed by means of the various contracting systems regulated in the Purchasing and Contracting Rules and in the rest of the guidelines applicable to ADIF.

This way, emphasis has been placed on implementing an instrument of management that implies an agile procedure to identify and evaluate investment projects in order to declare them of interest.

The proposals subject matter of the Regime (indistinctly mentioned as the “Project” or the “Initiative”) must be innovative or original or imply a technological or scientific innovation.

In such context, ADIF is authorized to receive, instruct and substantiate Initiatives for the development of projects within the framework of Acts N° 26.352 and 27.132, provided that their subject matter is not similar to another that:

- a) Has been submitted by a previous bidder and declared of interest by the NATIONAL STATE and/or ADIF;
- b) As regards which the NATIONAL STATE and/or ADIF were performing the studies prior to their bidding and/or promotion in Third Parties Initiative Regime;
- c) Has been identified by ADIF and provided in its planning with the express statement that it will be promoted on their part.

For said purposes, one project shall be considered similar to another when their subject matters coincide totally or partially (geographic area, public or private goods used, target and main activities) and/or when its acceptance is incompatible with or affects negatively the development of said other projects.

In the case of submission of similar Initiatives, the one submitted first will have priority. To that effect, such Initiative submitted first complying with all the information referred to in the following section shall be considered.

Such Projects that have been rejected pursuant to the provisions of this section cannot be submitted again, neither by the Bidder who originated the Project nor by third parties, until two (2) years have elapsed after their rejection.

Section 2°. Stages in the Third Parties Initiative Procedure

The processing of the Initiative shall comprise the following stages:

2.1. Presentation

The bidder interested in developing its Initiative (the “Bidder”) must submit its original Project and a copy of it duly signed by the Legal Representative and/or Attorney-in-fact in ADIF’s General In-tray and Out-tray Desk and Archive –located at Av. Dr. José Ramos Mejía N° 1302 Ground Floor, Autonomous City of Buenos Aires- showing proof of technical, financial-economic and legal capacity for the development of the Project.

The Initiative must contain information relating to its identification as a Bidder, to the Project that it pretends to develop and to its feasibility analyzed at pre-feasibility level.

In particular, the submission of Projects pursuant to the Regime must contain at least the following admissibility requisites:

a) Project Identification and nature

The Bidder must identify, on the one hand, the unsatisfied need, the problem to be solved or the potentiality to be developed with the Project and, on the other hand, the characteristics of the possible solution that the Project might represent, as well as its main benefits and costs and the initial assessment indicators, both socio-economic and private, that allow to recommend a decision about the proposal.

b) Economic, technical and legal pre-feasibility grounds

The Initiative must consider the geographic location and the area of influence, market, technical, risk, tax, legal, domain, accessibility, competence, organization, economic and financial analysis, as well as the social and environmental impacts of the Project, identifying the population directly affected and establishing the mitigations of the damages that the Project development might produce.

For the Project's technical description, the Bidder must submit, including without limitation –if applicable: (i) descriptive and technical memory; (ii) calculation and budget; (iii) work plan and investment curves; (iv) engineering draft project; (v) general technical drawings, among other documents.

c) Estimated amount of investment

The Bidder must estimate the projected investment. Where appropriate, it must estimate the requirements of resources coming from the National State and/or ADIF, if existing, in the periods in which the Project will be developed, as well as the obligations to be undertaken by the NATIONAL STATE and/or ADIF by virtue of it.

At the same time, if applicable, it must weigh the operation costs, including the expected percentage of profitability and recovery costs.

d) Bidder's complete background

The Bidder must submit documents to prove its legal, tax, technical and financial capacity, establishing domicile an indicating telephone and e-mail address.

In case it is a legal person, all the background to certify its existence and legal validity and powers of its legal representatives and/or authorized agents and/or principals and/or attorneys-in- fact.

e) Resources and financing source

The submission must consider the following topics: (i) Identification of sources: own resources (self-generated and/or general) and/or resources of third parties; (ii) financing structure; (iii) projections.

f) Initiative Bond

The Bidder must submit an Initiative Bond as provided in Act Nº 17.804 (Surety bond or Bank Guarantee), pre-establishing its value by ranks, pursuant to the following scale:

- i) Investment up to SIX HUNDRED AND TWENTY FIVE MILLION (\$625.000.000) must submit a bond equivalent to 0,5% of the estimated amount;
- ii) Investment over SIX HUNDRED AND TWENTY FIVE MILLION PESOS(\$625.000.000) must submit a bond equivalent to 0,6% of the estimated amount.

g) Other

Any other Project background that the Bidder considers useful or necessary for its evaluation.

Each one of said requirements or backgrounds must be duly supported and justified, indicating the sources of information used and/or back-up.

2.2. Evaluation of pre-feasibility study

ADIF's Board of Directors shall establish a Third Parties Initiatives Evaluation Commission (the "Commission"), which shall be in charge of the reception and evaluation of the Projects submitted pursuant to the Regime.

The Commission by itself and/or with the help of ADIF's different areas and/or professionals within the competence of the matter shall previously review the Project

in its formal aspects. Should the background be incomplete or should complementary information and/or documents be required, the Bidder must submit said supporting documents and instruments in the term provided by ADIF to that effect. In case said new documents fail to be submitted within the indicated term, the submission shall be held as not valid.

Upon verification that the submission complies with the complementary information in agreement with this Regime, the Commission shall intervene once more.

For the purpose of evaluating the different aspects of the Project and/ or analyzing whether the Initiative is of interest, ADIF may request the intervention of the MINISTRY OF TRANSPORT and/or ARGENTINE RAILWAYS STATE-OWNED COMPANY and/or other actors of the railway system and/or other public or private competent bodies, whose reports shall not be legally binding.

The Commission shall evaluate the convenience of the Initiative's acceptance, with or without modifications, or of its rejection.

For this purpose, the Commission shall submit to ADIF's BOARD OF DIRECTORS a detailed report of the feasibility of the Initiative's being declared of interest. Said report shall not be legally binding.

ADIF's BOARD OF DIRECTORS shall decide upon the Initiative's Declaration of Interest and upon its inclusion in this Regime considering the general provisions and the following basic guidelines:

- a) That the Project be related to ADIF's corporate purpose or to its collateral, subsidiary or complementary activities;
- b) That the Initiatives be intended to the development of railway infrastructure, the improvement of transport service quality or of its service capacity, that is, that in any case inure to the benefit of the users and of the society as a whole;

c) That the amount of the Project be within the budget provisions for the fiscal year and/or the provisions projected for the next fiscal years, if appropriate.

In case the Project is rejected, the Initiative's Bidder shall not be entitled to receive any compensation on account of expenses, fees or any other concepts.

In case the submitted Initiative exceeds the framework of the competences, capacities or powers legally attributed to ADIF, it shall be entitled to be submitted to the MINISTRY OF TRANSPORT and/or ARGENTINE RAILWAYS STATE-OWNED COMPANY for its consideration, within the applicable regulatory framework, if pertinent.

2.3. Presentation and evaluation of Feasibility study

Upon the Initiative being declared of interest, with or without modifications, the Bidder must elaborate and submit the studies belonging to the feasibility level pursuant to the requirements and within the term indicated by ADIF to that effect, which term shall not exceed three (3) months, unless previously and expressly otherwise provided for by ADIF for a justified cause.

If applicable, ADIF will be able to, at its sole discretion request to the Bidder the elaboration of the Technical Specifications that will be part of the bidding documents. The final terms and conditions shall be elaborated by ADIF.

All the costs incurred in the submission of the Initiative as well as the feasibility studies will be at the expense and risk of the Bidder.

In case that for any reason the Bidder fails to perform the feasibility studies within the terms established by ADIF, ADIF will be entitled to perform them by itself or to contract them pursuant to the pertinent contracting procedures, the Bidder losing all rights and preferences provided for in section 4° herein.

In such case, ADIF shall be able to choose whether to summon the pertinent selection procedure pursuant to the Purchasing and Contracting Rules to

prequalify bids and establish that the feasibility studies be co-financed by all the pre-qualified initiatives. In such case, the awardee must repay to each pre-qualified bidder the payment made for the feasibility studies.

Section 3°. Public Request for Proposals

Upon the Initiative having been declared of interest by ADIF's BOARD OF DIRECTORS and upon the reception of the totality of the required documents to the full satisfaction of ADIF, a Public Request for Proposals shall be issued, complying with the following requisites:

- a) Invitation for bids
- b) Preparation of the corresponding Bidding Terms and Conditions, determining the contracting criteria and containing the contract's general guidelines, with identification of the work or project and the technical, economic and legal grounds.
- c) Evidence of the publications made pursuant to the Purchases and Contracting Rules.
- d) The date of submission of bids shall be established between thirty (30) and ninety (90) days counted as from the last publication.
- e) The Initiative declared of interest must be made available.

In this case, the procedure to be started shall be that to award the Initiative in terms substantially equivalent to those of the declaration of interest.

The Regime herein established does not prevent the application of the provisions of ADIF's Procedures for the issuance of Purchase Orders and/or Contracts, the corresponding Bidding Terms and Conditions and/or Terms of Reference and/or Technical Specifications must establish the provisions required by the regulations herein mentioned.

Section 4°. Rights of Bidder

The Bidder shall have the following rights and preferences:

4.1. Preference in the evaluation of bids

In those cases where the bids submitted to the request for proposals issued pursuant to the requirements of section 3° are of equivalent convenience, the one of the Bidder shall be preferred, understanding that there is equivalence of bids when the difference between the Bidder's offer and the best qualified offer does not exceed five percent (5%).

The preceding prerogative shall apply whatever the adopted selection criteria.

4.2. Second round

If the difference between the best qualified bid and the one of the Bidder exceeds the five per cent (5%) and is less or equal to twenty percent (20%), the best qualified offeror and the Bidder shall be invited to improve their proposals, simultaneously and in a closed envelope, not applying in this instance the formula of equivalence of offers of the previous section.

4.3. Rights of repayment of expenses

The Bidder, if not awarded the bid, shall have the right to receive from the awardee, as repayment of expenses, the one per cent (1%) of the amount of the contract, except in the case provided for in section 2.3 sub-sections four and five of the Regime.

Said costs shall involve the studies of the pre-feasibility and feasibility phases previously approved by ADIF and shall be payable by the Awardee, which must be informed in the corresponding public request for proposals.

ADIF shall in no case be liable to repay expenses, fees or any other item to the Bidder in its capacity as such.

4.4. Validity of Bidder Rights

The rights of the Bidder shall be valid for two (2) years as from the Initiative's Declaration of Interest.

Should the Initiative be declared of interest and then the bidding declared deserted, should no admissible bids be submitted or should the request for proposals be declared void, for whatever reason, the Bidder shall hold the rights provided for in this Regime for the maximum term of two (2) years as from the first request, as long as the new request be made using the same studies and the same Project, except in the case provided for in section 2.3. sub sections fourth and fifth of the Regime.

Section 5°. Confidentiality

All the information submitted to ADIF regarding the Initiative shall be confidential until the declaration of Interest or the rejection of the pertinent Project.

The backgrounds related to the rejected Projects may be published in ADIF's web site.

Once declared of interest, the Initiative shall be transferred *ipso iure* to ADIF. Should the request fail to be made, the Bidder shall hold all the rights on it during the term provided for in section 4.4. of the Regime.

Section 6°. Resolution of Controversies

For all controversies that might eventually arise in the execution, application and/or interpretation of the contracts held under this Regime, the Bidding Terms and Conditions may determine the possibility of establishing mechanisms of compromise and/or arbitration.