



Rijkswaterstaat  
Ministerie van Infrastructuur en Milieu

**RWS UNCLASSIFIED**

## TENDERING GUIDELINES

### Afsluitdijk

version A

Case number 31091279

Water. Wegen. Werken. Rijkswaterstaat





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## 1 Introduction

### 1.1 Tendering Guidelines

These Tendering Guidelines describe the tendering procedure for the Afsluitdijk Project. The principles defined in these Tendering Guidelines are final, and will not change during the tendering procedure. Where relevant, during a dialogue phase a supplement to these Tendering Guidelines may be issued, which describes the process in the relevant dialogue phase in more detail.

The Candidate is responsible for checking the proper receipt of the Tender Documents. If the Tender Documents are not received in good order, the Candidate must report this immediately via TenderNed, "*Berichten*" ("Messages") (see paragraph 1.3).

The Tender Documents have been carefully compiled. If the Candidate should nonetheless have any objections to, for example, supposed inconsistencies, deficiencies, contraventions of statutory regulations, or any other irregularities, then the Candidate must inform the Contracting Authority of this as quickly as possible in writing and/or ask for clarification through the submission of a request for information (in accordance with paragraph 2.10). By submitting documents and the Tender, the Candidate agrees in full with the provisions of the Tendering Guidelines. If the Candidate fails to give the Contracting Authority timely notification about inconsistencies, deficiencies, or any contraventions of statutory regulations, the Candidate will not be able to invoke such at a later date.

### 1.2 Definitions

Capitalised terms in these Tendering Guidelines are defined in schedule 1 of these Tendering Guidelines or in schedule 1 of the (draft) DBFM Agreement. If a capitalised term is defined in both schedule 1 of these Tendering Guidelines and in Schedule 1 of the DBFM Agreement, the relevant definition will only apply to the document in whose schedule it is included. Schedules to the DBFM Agreement are written with a capital letter ("**S**chedule [.]"), while schedules to these Tendering Guidelines are written with a small letter ("**s**chedule [.]").

### 1.3 Contracting Authority and the method of tendering

The Contracting Authority is:

The State of the Netherlands  
Ministry of Infrastructure and the Environment  
RWS Major Projects and Maintenance

Project organisation:  
Afsluitdijk Project  
Contract Manager W. Schat  
Office address: Griffioenlaan 2, 3526 LA Utrecht, the Netherlands

The tendering procedure will be carried out exclusively digitally via TenderNed: [www.tenderned.nl](http://www.tenderned.nl). This means that requests for participation and Tenders can only be submitted via TenderNed. The Candidate must be registered in TenderNed as a user in the Netherlands in order to participate in the tendering procedure. The "TenderNed Conditions of Use" apply. The Candidate is expected to have all the necessary knowledge to be able to take part in the tendering procedure in the correct way. The use of TenderNed is for the account and risk of the Candidate.

In the event a Candidate cannot access TenderNed at the deadline for receiving requests for participation, the Shortlisting Product or the Tender, as a result of a breakdown in "eHerkenning",

in TenderNed or in the high-voltage power grid, the Tender can be submitted in accordance with Article 2.109a of the Public Procurement Act. In such case, the Contracting Authority may also postpone the deadline for receiving requests for participation, the Shortlisting Product or the Tender, depending on the situation and the consequences. The amended deadline for receiving tenders will be announced to candidates via TenderNed "Rectificatie".

All documents shall be submitted via TenderNed, in accordance with the TenderNed manual, which can be found at the website of TenderNed in the "eGids". **In case of the digital submission of documents that must be signed, these documents will have to be submitted in PDF format and signed with a recognised electronic signature with security level IV (PKI government certificate or EU-Qualified certificate).**

As an exception to this rule, for some documents that must be provided by financial institutions upon submitting a Tender, it will be possible to submit these without a recognised electronic signature with security level IV (PKI certificate). This includes the following documents:

- Support Letter financial advisor (in accordance with the format set out in schedule 9.3);
- Support Letter from (external) loan capital provider (in accordance with the format set out in schedule 9.4);
- To the extent applicable: Support Letter from the European Investment Bank (in accordance with the format of schedule 9.5);
- A Financial Close Bond, (in accordance with the format set out in schedule 9.6);

The following options are available for the above-referenced documents:

- a) The documents can be submitted in PDF format with a certified electronic signature of the relevant financial institution with security level IV (as described in the previous paragraph);  
**or**
- b) The Tenderer can instead submit a statement in accordance with the format specified in schedule 9.1 C. This statement must be signed by the Tenderer with a certified electronic signature with security level IV. For informational purposes, a scan of the complete and original document signed by the financial advisor/debt capital provider/bond provider (support letter or guarantee in PDF format) must be attached to this statement, while the original document (with handwritten signature) must be received by the Contracting Authority (by post, courier or in some other way) prior to the closing of the tender period.

Questions in relation to this tendering procedure can only be submitted by way of TenderNed. During a dialogue phase, Relatics will be used.

#### **1.4 Project and objectives**

The Project consists of all the works, supplies and services that have to be carried out under the DBFM Agreement arising out of this tendering procedure. A general description of the Project and the objectives is set out below.

The Afsluitdijk Project has a task regarding flood protection and drainage. In 2006, it was determined that the Afsluitdijk does not meet the current requirements for safety against flooding from the sea. The government has decided to reinforce the Afsluitdijk (dyke body and civil engineering structures).

In addition, both the government and the region have expressed the ambition to develop the area from a broader perspective. The regional authorities involved are responsible for the coordination, plan development and the realisation of the preparation for these objectives.

Based on the plan development, a solution space has been defined for measures necessary for:

- Flood Protection: the dyke body and the sluices and locks at Den Oever and Kornwerderzand will be reinforced in such a manner that the entire Afsluitdijk will withstand a storm with a probability of 1/10,000 years until at least halfway through this century. Both lock complexes will be reinforced by building new safety lock gates in front of the existing navigation locks. In the case of Den Oever, the new safety lock gates will be located in the outer harbour. For Kornwerderzand, the Wadden Sea was chosen as the location for the new safety lock gates. The existing navigation locks fall outside the scope of the project;
- Water drainage: pumps will be installed within the sluice complex at Den Oever to ensure the availability of drainage capacity even at times when sluicing is not possible.
- National Motorway A7 (the swing bridges are not part of the scope);
- Management and Maintenance of RWS Infrastructure.

In line with the RWS goals, the following project objectives have been formulated:

- The Afsluitdijk and Engineering Structures must be safe until at least 2050.
- Realisation of additional drainage capacity under the water management requirements until 2050.
- Good integration with respect for the iconic status of the Afsluitdijk and regional ambitions, with the government working on the safety.

### **1.5 DBFM Agreement**

The Draft DBFM Agreement will be released on 16 February 2017.

At the end of the Dialogue, the draft DBFM Agreement will be worked out in more detail based on the results of the Dialogue.

In the DBFM Agreement and the Schedules, the symbol [•] indicates that the Contracting Authority will complete further details in a manner that is identical for every Candidate.

The symbol [••] indicates where candidate-specific sections will be included in the DBFM Agreement.

### **1.6 Payment mechanism and project financing**

The Contractor will receive a periodical performance-related availability payment during the term of the DBFM Agreement.

Furthermore, the Contractor will receive a Bullet Payment upon the issuing of the Availability and Completion Certificate.

The Contractor will be responsible for arranging the financing of the Project. The financing structure must be such that the Lenders will provide the Contractor with loan capital, or at least a guarantee for such, based on the principles of project financing.

The Contracting Authority will conclude a Direct Agreement with the Contractor and the relevant Lenders, and if requested it will cooperate with the pledging of the Net Availability Payment. A draft of the Direct Agreement is attached to the DBFM Agreement as Schedule 6 (Direct Agreement).

The Tenderers must submit a Financing Plan with the Tender, in which they explain how sufficient financing will be raised for the Project in order to be able to satisfy all the obligations under the DBFM Agreement. The Candidate will be asked to submit a (draft) Financing Plan during the Second Phase of the Dialogue, and to discuss such with the Contracting Authority. The Financing Plan must then be submitted by the Tenderer as part of the Tender, in which regard the Contracting Authority emphasises that the due diligence assessment for the Tender must have taken place by that time, based on the assumption that no more changes will be made to the DBFM Agreement.

The interest rate risk over the period between the Tender and the Financial Close will be borne by the Contracting Authority, subject to certain conditions. These conditions and the interest rate risk are explained in more detail in paragraph 7.4.

The Contracting Authority will discuss the process to obtain the financing for the Project with the Candidate, and will follow the situation on the financial markets carefully. This could lead to a modification of the Tender Documents. The Contracting Authority also reserves the right to change the process for obtaining the financing for the Project if the situation on the financial markets gives cause for this.

At this point in time, the Contracting Authority assumes that project finance with an inflation-related component and/or Hard Mini Perm financing will not be made possible for the Project.

## 1.7 Brief description of the tendering procedure

### 1.7.1 Tendering procedure phases

The tendering procedure will be carried out in a number of phases. These phases are shown in the following schedule. The dates given are indicative and may be amended during the tendering procedure. The planning included in TenderNed shall prevail.

<b>Afsluitdijk</b>		
<b>Tender planning</b>		
<b>ACTIVITY</b>	<b>START</b>	<b>END</b>
Selection Phase (n Candidates)		
Publication Contract Notice and sending of TED	24 November 2016	
Submission of requests for information	24 November 2016	22 December 2016
Publication (final) Information Brief	12 January 2017	
Submission requests for participation	24 November 2016	23 January 2017
Assessment of requests for participation	24 January 2017	26 January 2017
Selection Decision	2 February 2017	
Objection period	3 February 2017	10 February 2017
First Phase of the Dialogue (n Candidates)		
Invitation to participate in the First Phase of the	10 February 2017	

<b>ACTIVITY</b>	<b>START</b>	<b>END</b>
Dialogue		
Kick-off meeting	16 February 2017	
Opening Data Room	16 February 2017	
Dialogue meeting 1	6 March 2017	10 March 2017
Dialogue meeting 2	27 March 2017	31 March 2017
Submission of requests for information	16 February 2017	6 April 2017
Publication (final) Information Brief	13 April 2017	
Submission of Shortlisting Product	26 April 2017	
Assessment of Shortlisting Product	26 April 2017	18 May 2017
Decision on participation in Second Phase of the Dialogue	18 May 2017	
Objection period	19 May 2017	7 June 2017
<b>Second Phase of the Dialogue (3 Candidates)</b>		
Invitation for the Second Phase of the Dialogue	30 May 2017	
Kick-off meeting Second Phase of the Dialogue	8 June 2017	
Dialogue meeting 1	12 June 2017	16 June 2017
Dialogue meeting 2	10 July 2017	14 July 2017
Dialogue meeting 3	4 September 2017	8 September 2017
Dialogue meeting 4	2 October 2017	6 October 2017
Dialogue meeting 5	30 October 2017	3 November 2017
Submission of requests for information	30 May 2017	10 November 2017
Publication (final) Information Brief	16 November 2017	
Dialogue conclusion	16 November 2017	
<b>Best and Final Offer (BAFO) Tender Submission Phase (3 Tenderers)</b>		
Invitation to Tender	16 November 2017	
Submission qualitative part of the Tender	14 December 2017	
Assessment of qualitative part of the Tender	15 December 2017	15 February 2018
Submission quantitative part of the Tender	25 January 2018	
Assessment of quantitative part of the Tender	29 January 2018	22 February 2018
Appointment of Successful Tenderer (intention to award)	22 February 2018	
Judicial protection period for non-Selected Tenderers	23 February 2018	14 March 2018
<b>Rounding off (1 Successful Tenderer)</b>		
Contract Close		
Financial Close	Q2 2018	

## **1.7.2 Description of the Procedure**

### **Selection phase**

The tendering procedure commences with the Selection Phase. Admission to the First Phase of the dialogue will take place on the basis of an assessment for grounds for exclusion and suitability requirements. The Contracting Authority will invite the Candidates in respect of whom no exclusion criteria exist and who satisfy the suitability requirements to participate in the Dialogue.

The Selection Phase is described in more detail in chapter 3.

### **Dialogue**

The Contracting Authority makes use of the possibility provided for in Article 30, paragraph 4, of Directive 2014/24/EU, of organising the Dialogue in successive stages. In this tendering procedure, the Dialogue consists of the following stages:

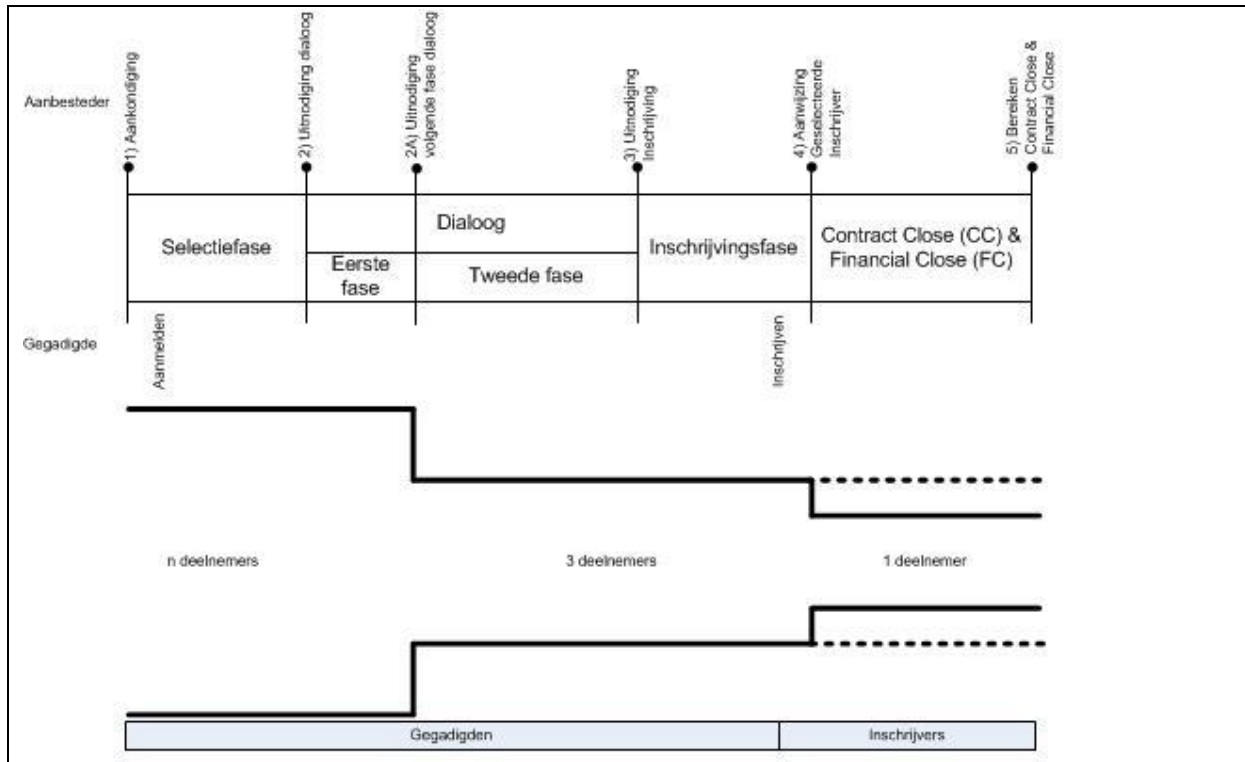
- First Phase of the Dialogue
- Second Phase of the Dialogue

The First Phase of the Dialogue is described in chapter 4. In the First Phase of the Dialogue, the number of Candidates who will be invited to participate in the rest of the tendering procedure will be reduced to three - in the event that more than three Candidates satisfy the minimum conditions. This will be carried out by way of an assessment of the Shortlisting Products of the Candidates. The Contracting Authority will invite the three Candidates that it has selected based on the assessment of their Shortlisting Products to participate in the Second Phase of the Dialogue. The Second Phase of the Dialogue is described in chapter 5. During the Second Phase of the Dialogue, the Contracting Authority will complete the contents of the DBFM Agreement in more detail with the Candidates, and adjust such contents where necessary. During the Second Phase of the Dialogue, no shortlisting will take place.

Based on the results of the Second Phase of the Dialogue, the Contracting Authority may revise the Tender Documents, identically for all Candidates.

### **Tender Submission Phase**

After the Second Phase of the Dialogue has been concluded by the Contracting Authority, the Tender Submission Phase will follow. This phase is described in chapter 7. Award of the Project is based on the criterion of the economically most advantageous tender with the best value for money (hereinafter referred to as "EMAT-BVFM").



**Diagram of the tendering procedure**

### 1.8 Public planning procedures

The National Integration Plan Afsluitdijk (NIP Afsluitdijk) and the Provincial Integration Plan (Fish Migration River) are irrevocable.

The National Integration Plan Afsluitdijk - Connection to the Wieringen Dike Ring and the National Integration Plan Windpark Fryslân have been defined.

### 1.9 Stakeholder and implementation agreements

In preparation of this tendering procedure, the Contracting Authority has concluded the stakeholder and implementation agreements detailed below:

Party	Description of agreement	Date of agreement
The Province of North Holland, Friesland Province, Wieringen Municipality (now Hollands Kroon Municipality) and Súdwest Fryslân Municipality	Stakeholder agreement Future of the Afsluitdijk	23 December 2011
The Province of North Holland, Friesland Province, Wieringen Municipality (now Hollands Kroon Municipality) and Súdwest Fryslân Municipality	Amendment agreement on the Stakeholder agreement Future of the Afsluitdijk	5 October 2012
Hollands Noorderkwartier Water Authority	Realisation agreement on Den Oever Harbour Jetties	15 September 2015
The Province of North Holland,	Realisation agreement on the	06 July 2016

<b>Party</b>	<b>Description of agreement</b>	<b>Date of agreement</b>
Friesland Province, Municipality of Harlingen, Municipality of Hollands Kroon and the Municipality of Súdwest Fryslân	Afsluitdijk Project regarding the North-Holland part of the Afsluitdijk	
The Province of North Holland, Friesland Province, Municipality of Harlingen, Municipality of Hollands Kroon and the Municipality of Súdwest Fryslân	Realisation Agreement on Sustainable Energy	06 July 2016
The Province of North Holland, Friesland Province, Municipality of Harlingen, Municipality of Hollands Kroon and the Municipality of Súdwest Fryslân	Realisation Agreement on Fryslân Bicycle Path	06 July 2016
The Province of North Holland, Friesland Province, Municipality of Harlingen, Municipality of Hollands Kroon and the Municipality of Súdwest Fryslân	Realisation Agreement on the Fish Migration River	06 July 2016

Insofar as requirements in relation to the Project arise out of these agreements, these requirements are comprised within the DBFM Agreement.

## 2 General information

### 2.1 Acceptance declaration Candidates

By submitting a request for participation, the Candidate declares that it unconditionally accepts the tendering procedure described in these Tendering Guidelines.

### 2.2 Applicable Legislation

The tendering procedure will be conducted as a competitive dialogue (sections 2.28 and 2.29 Public Procurement Act and Chapter 4 of the Procurement Rules on Public Works Contracts 2016).

Insofar as the Tendering Guidelines do not deviate from such, inter alia the following legislation and regulations will apply to this tendering procedure:

- Directive 2014/24/EU of 26 February 2014 regarding the award of public works;
- Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;
- The Public Procurement Act 2012 as amended by the Act of 22 June 2016 (The Public Procurement Act);
- The Public Procurement Decree of 24 June 2016;
- The Procurement Rules on Public Works Contracts 2016 (ARW 2016);
- The Proportionality Guide of 16 June 2016;
- The Public Administration (Probity Screening) Act (BIBOB Act).

### 2.3 Judicial protection- choice of forum

The Contracting Authority will inform the relevant Candidate or Candidates about decisions that have legal consequences in the sense of article 1, paragraph 1, of Directive 89/665/EEC, in connection with the tendering procedure via TenderNed "Messages".

All time limits detailed in the Tender Documents will commence the day after the sending of the decision at midnight 0.00 hours, and all time limits are fixed and final deadlines. This means that if a Candidate does not lodge an objection against a decision within the set time limit, after the sending of that decision, the relevant Candidate will no longer be able to lodge an objection in relation to that decision. In that case the Contracting Authority is therefore free to carry out the decision. To the extent that no specific objection deadline is mentioned for a decision intended to have legal effect, an objection period of 20 calendar days is applicable to that decision.

With respect to all decisions, a Candidate who has made an objection against a decision must also institute preliminary relief proceedings against that decision by the Contracting Authority within 20 Calendar Days after the date that decision was sent. The action will be deemed to have been instituted as of the date of the summons (article 125 of the Dutch Code of Civil Procedure).

A decision to appoint the Preferred Tenderer as referred to in paragraph 7.9 will be notified to the Candidates by way of TenderNed "Messages". This notification will contain all the relevant reasons for that decision, as well as a precise description of the date and time on which the time limit of 20 Calendar Days referred to above will end.

All disputes that arise between the parties involved in the tendering procedure in connection with the tendering procedure must be put before the civil courts in The Hague.

## **2.4 Terminating the procedure – withdrawal of Candidates**

The Contracting Authority may prematurely terminate the tendering procedure.

If the Contracting Authority decides to terminate the tendering procedure following the Selection Phase, then depending on the stage at which the tendering procedure is at the time, and depending on the efforts made by the Candidates to that point, the Contracting Authority will pay a reasonable amount of compensation, to be determined by the Contracting Authority, for the expenses incurred by the Candidates, with a maximum of the (design) costs compensation payment specified in paragraph 4.9 and paragraph 7.11 respectively.

Candidates may withdraw from the tendering procedure up until the submission of the Tender without being liable for damages with respect to the Contracting Authority.

Candidates who are invited to participate in the next stage of the tendering procedure but who withdraw nevertheless, are not entitled to any compensation in the (design) costs.

## **2.5 Announcement**

The contract notice was announced on the website [www.tenderned.nl](http://www.tenderned.nl) on 24 November 2016.

## **2.6 Language**

This tendering procedure will be conducted in the Dutch language. Unless the Contracting Authority indicates otherwise, all documents to be submitted must be drawn up in the Dutch language. If statements originally made in a foreign language must be submitted in the Dutch language, the Candidate must submit the statement both in the original (foreign) language, as well as the translation thereof in the Dutch language.

The Contracting Authority will allow the following documents to be submitted in English, German or French without an attached translation:

- Certificate of conduct for procurement (CCP) or an equivalent certificate;
- Extract from the trade register;
- Copy of a valid identity document;
- Declaration of economic and financial standing;
- Power of attorney.

If the Candidate is asked to submit a contractor's certificate of good conduct, an extract from the trade register, or a copy of a valid identity document, and the Candidate wishes to submit the document - without an attached translation - in a language other than Dutch, English, German or French, it must obtain the advance permission of the Contracting Authority.

The Contracting Authority will allow the following documents to be submitted in English without an attached translation:

- Original Financial Model;
- Financing Plan;
- Support Letter financial advisor in accordance with schedule 9.3;
- Support Letter (external) debt capital provider (Mandated Lead Arranger) in accordance with schedule 9.4;
- Letter of Support from the European Investment Bank in accordance with schedule 9.5.

## **2.7 Ceiling price**

The Ceiling Price for the execution of the DBFM Agreement will amount to €600,000,000 (six hundred million Euros), excluding VAT, price level 1 January 2016. The present value of the Tender (see paragraph 7.6) must not exceed the Ceiling Price that applies to the Tenderer. Tenders that do not satisfy this requirement will be invalid.

The Contracting Authority reserves the right to make a generic adjustment of the Ceiling Price during the subsequent phases of the tendering procedure. Candidates will be given timely notification of this in all cases.

## **2.8 Information supply**

### **2.8.1 Website**

EXPIRED

### **2.8.2 Data Room - Provision of information**

For purposes of this tender procedure, the Contracting Authority has set up a virtual Data Room on an extranet. This Data Room may be supplemented until the Invitation to Tender is sent. The Candidates will have to conclude an agreement with the Contracting Authority on the basis of which they will receive access to the Data Room. For purposes of this tendering procedure, the Contracting Authority will - wherever possible - provide the data to be furnished, digitally in PDF file format together with Word or Excel format. The PDF version will be leading in case of any differences between the formats.

The Contracting Authority will decide during the Dialogue to which extent the information in the Data Room will be designated as Disseminated Information in the sense of the DBFM Agreement. The Contracting Authority does not bear any responsibility for the accuracy or completeness of the information that is not designated as Disseminated Information.

### **2.8.3 Electronic communication**

In this tendering procedure, use will be made of the option of conducting the communication between the Candidate and the Contracting Authority by electronic means.

Information which is communicated electronically between the Contracting Authority and the Candidates will be provided in PDF format as much as possible and also in Word format and/or Excel format. In the event of any differences between the formats, the PDF version will be leading.

## **2.9 Confidentiality and Intellectual Property Rights**

### **2.9.1 Confidentiality to be observed by the Candidates**

By participating in the tendering procedure the Candidates oblige themselves to keep confidential all information that they receive from the Contracting Authority - insofar as not available in the public domain - and not to disclose such to third parties. Candidates must protect the information they receive from the Contracting Authority against unauthorised use. They may disclose such information to the subcontractors of the Candidates who are involved in the tendering procedure, on the condition of imposition of this confidentiality clause. This obligation does not apply if provisions to the contrary are explicitly stated in the Tendering Guidelines, or in any other announcements of the Contracting Authority. The confidential information provided may only be used for the purpose for which it is intended.

## **2.9.2 Confidentiality to be observed by the Contracting Authority and intellectual property rights**

The following will be designated as confidential:

- a) Reference Details, Shortlisting Products, Dialogue Products, and Tenders;
- b) Confidential Information as referred to in paragraph 2.10.2;
- c) All other information which – by its nature – is confidential.

Confidential information will be handled as such by the Contracting Authority. The Contracting Authority will therefore not disclose confidential information to third parties – including other Candidates – except if and insofar as the Contracting Authority is reasonably obliged to disclose such on the grounds of any legal obligation or in connection with legal proceedings. Before the Contracting Authority discloses confidential information to third parties in such situations, it will hold consultations with the relevant Candidate about the method of disclosure that is the least inconvenient for the latter, without prejudice to the fulfilment of aforementioned obligations by the Contracting Authority.

Any intellectual property rights held by the Candidates will not be transferred to the Contracting Authority on account of the participation in the tendering procedure, unless otherwise is agreed.

## **2.10 General and Confidential Information**

During the tendering procedure, the Candidates can ask the Contracting Authority for additional information about the Project and the Tender Documents. Requests for information can lead to the issuing of General and Confidential Information by the Contracting Authority.

The Contracting Authority can also issue information to the Candidates at its own initiative.

For each phase of the tendering procedure, the Contracting Authority will specify the date before which the requests for information have to be submitted.

### **2.10.1 General Information**

In principle, the Contracting Authority will respond to requests for information by way of General Information. General Information constitutes adjustments, elaborations and explanations that are identical and apply equally to all Candidates as well other information concerning the Project or the Tender Documents.

If the Contracting Authority responds to a request for information from a Candidate by way of General Information, the Contracting Authority will display and respond to this request for information via TenderNed, "Questions and answers"<sup>1</sup>.

### **2.10.2 Confidential Information**

If the handling of a request for information from a Candidate by way of General Information would lead to the disclosure of confidential information about the solutions planned or proposed by the Candidate or of other commercially sensitive information, the Candidate can make a motivated request to the Contracting Authority for this information to be treated as Confidential Information. The Contracting Authority will take a decision about such a request. If the Contracting Authority agrees to the request, it will exclusively release this information to the relevant Candidate by way of Confidential Information. If the Contracting Authority denies this request, the Contracting

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<sup>1</sup> See the TenderNed manual, which can be found at the website of TenderNed in the "eGids".

Authority will notify the Candidate of this decision, and no (Confidential or General) Information will be issued in connection with this request, unless the request for (Confidential) Information concerns an error in the Tender Documents of which the Contracting Authority must inform the other Candidates.

If the planned or proposed solutions dealt with in the Confidential Information will only be possible through a modification of the Project or the Tender Documents, and the Contracting Authority is of the opinion that such a modification is in its interests, the Contracting Authority can issue General Information comprising a modification of the Project or the Tender Documents. The Contracting Authority will hold consultations about the drafting of the General Information with the Candidate that has made the request for information. The Candidate will then be able to make a proposal to the Contracting Authority about the drafting of the General Information. If these consultations do not lead to an agreement about the drafting of the General Information to be released, the relevant Candidate will be allowed to withdraw its request for (Confidential) Information, and the Contracting Authority will not issue any (Confidential or General) Information in connection with this request, unless the request for (Confidential) Information concerns an error in the Tender Documents of which the Contracting Authority must inform the other Candidates.

### **2.11 Communication**

The Candidates are not permitted to communicate with employees of the Contracting Authority, advisors of the Contracting Authority, or other persons and legal entities on the side of the Contracting Authority who are involved in the tendering procedure and the preparation of the Project, or with other parties involved in the Project, about the tendering procedure and/or the Project, in any other way than as described in these Tendering Guidelines, unless prior written permission has been given for such by the Contracting Authority. A request for this written permission must be submitted by a Candidate as a "request for information" to the Contracting Authority.

Candidates that act in violation of the provisions of this paragraph can be excluded from (further) participation in the tendering procedure.

### **2.12 Inside information and conflict of interest**

The guidelines of RWS for the prevention of inside information and conflicts of interest, as included in the 'Separation of interests, Policy to prevent conflict of interest in the awarding of contracts' report dated 14 September 2007 (see schedule 12), are applicable in full to this tendering procedure.

All Candidates and Significant Subcontractors must state in the Supplementary Compliance Statement (schedule 2.3 B) if there is (or has been) any involvement in the preparation of the Project. If there is or has been any involvement in the preparation of the Project, this will be grounds to suspect there is inside information and/or a conflict of interests.

The Contracting Authority will give the Candidate the opportunity to refute the suspicion referred to in the previous paragraph to the satisfaction of the Contracting Authority, and to show that this (previous) involvement will not be detrimental to fair competition.

A Candidate can be excluded from participation in the tendering procedure if the suspicion referred to in the second paragraph has not been refuted.

### **2.13 Complaints in relation to the tendering procedure**

The Contracting Authority has set up a complaints desk in accordance with the 'Complaints procedure for contract tendering' advice<sup>1</sup>. Complaints in relation to the tendering procedure can be submitted to the Central Contract Tendering Complaints Desk of the RWS at the following e-mail address: klachtenmeldpunt@rws.nl.

Complaints can be made in relation to non-compliance with statutory regulations or contravention of the general principles of contract tendering. A complaint must be submitted in writing, and must give a clear description of the aspect of the tendering procedure which the complaint relates to and the reasons for the complaint.

A complaint will be dealt with by officials who are expert in the relevant field, and who are not involved, nor will be involved, in this tendering procedure.

A complaint will be dealt with as quickly as possible; the complainant will be notified of this. The submission of a complaint will not have any suspensory effect, and will not change the circumstance that a Candidate must make a formal objection on time, or start legal proceedings on time if and insofar this is necessary or relevant (see paragraph 2.3).

### **2.14 Reasons within the context of the Public Procurement Act**

- a) The present tendering procedure concerns a contract in which different types of work and/or construction phases have been integrated in accordance with the purchasing strategy of RWS. This results in the following advantages for this project: The integration of types of work and/or construction phases has the advantage that a single contractor will be responsible for ensuring the different functions of the Afsluitdijk. The functions of the Afsluitdijk are closely interconnected, and it would be undesirable for multiple contractors to be responsible for carrying out work on the Afsluitdijk.
- b) The Afsluitdijk Project comprises both infrastructure and transportation hubs, which means it would be undesirable to have several different contractors carry out various works within the Afsluitdijk. Furthermore, with a single contractor it will be easier to control and minimise nuisance, including traffic congestion, which is in line with the project ambitions.
- c) DBFM is by definition an integrated contract. The different components within the DBFM construction are inextricably connected with each other, and collectively they form a single entity.
- d) The specific character of DBFM, which involves an integrated performance of a, by definition, logically interrelated scope, precludes the dividing up of the contract into lots;
- e) The combination of design, build, finance, and maintenance:
  - Offers private sector parties more space for product and process innovation, which leads to better performance at a lower cost;
  - Leads to maintenance-friendlier design and higher quality;
  - Offers private sector parties excellent opportunities to keep construction and maintenance costs to a minimum;
  - Leads to better project management, shorter lead times and higher quality of the services to be supplied;
  - Leads to the clear allocation of responsibility for the area to a single party, as a result of which the safety and the smooth flow of traffic is enhanced;

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<sup>1</sup> For more information about the complaints desk and the advice 'Complaints procedure for contract tendering', see the website of RWS. Go to: "[www.rijkswaterstaat.nl/zakelijk](http://www.rijkswaterstaat.nl/zakelijk)", and then select: Zaken doen met Rijkswaterstaat > Inkoopbeleid > Aanbesteden > Klachtenmeldpunt aanbesteden. (Doing business with RWS > Procurement policy > Tenders > Tenders' complaints desk)

- Leads to a higher-quality design because the (financial) consequences for faults in the design are carried by the contractor;
- f) DBFM is an instrument adopted on a government-wide basis in order to ensure the efficient use of government resources and to reduce costs. The Rutte II government has also encouraged the application of DBFM, and this policy is not contrary to the objective that section 1.5 of the Public Procurement Act aims to achieve;

### **2.15 Liability for documents of the Candidate**

The fact that the Contracting Authority has taken cognisance of documents submitted by the Candidate during the Dialogue, or has assessed such, does not in any way mean the Contracting Authority will accept any liability or responsibility for the contents thereof. The Contractor itself will be responsible for making sure the Work is carried out in accordance with all the requirements under the DBFM Agreement.

### **3 Selection Phase**

#### **3.1 General**

During this phase, Candidates can qualify for participation in the First Phase of the Dialogue. For this purpose, the Contracting Authority will assess the Candidates on the basis of the exclusion criteria and suitability requirements described in this chapter.

The Candidate must satisfy the requirements provided for in this chapter and fully complete the forms included in schedule 2. Failing to complete a form completely may result in exclusion from (further) participation in the tendering procedure.

#### **3.2 Registration**

Interested parties can register with the Contracting Authority until 23 January 2017 by linking themselves to the tendering procedure via TenderNed (see paragraph 1.3). If an interested party wishes to participate in the tendering procedure it will also have to submit a request for participation in accordance with paragraph 3.4.

#### **3.3 Information**

Information concerning the tendering procedure and the documents that are relevant for the registration can be requested until 5 p.m. on 22 December 2016 at the latest via TenderNed, "Questions and Answers". The provisions of paragraph 2.10 apply to this information.

Requests that have not been submitted on time will not be handled by the Contracting Authority in principle.

The Information Brief to be drawn by the Contracting Authority will be published on TenderNed by 12 January 2017 at the latest.

#### **3.4 Requests for participation**

Interested parties are required to submit their request for participation via TenderNed by 3 p.m. on 23 January 2017 at the latest (see paragraph 1.3), the TenderNed clock being decisive. The TenderNed digital safe closes at the aforementioned time. Requests for participation which are submitted in a different manner will not be considered. All documents to be submitted with the request for information that must be signed must be provided with a recognised electronic signature with security level IV, in accordance with the requirements provided for in paragraph 1.3.

The request for participation must be structured entirely in accordance with the model prescribed in schedule 2.1. The request for participation must be signed by an authorised representative.

Requests for participation can no longer be submitted after the digital safe in TenderNed has closed at the time referred to in this paragraph.

#### **3.5 Single involvement persons and legal entities**

Persons and legal entities may only participate once as Candidate or only be involved via one Candidate as Significant Subcontractor. For the purpose of this provision, persons and legal entities to whom the conditions below apply are considered to be a single person or legal entity:

1. Persons and legal entities who are affiliated in a manner as referred to in article 2: 24a of the Dutch Civil Code; or

2. Persons and legal entities who are affiliated in a group as referred to in article 2: 24b of the Dutch Civil Code; or
3. Persons and legal entities who are affiliated in a manner comparable to the manner described under 1 or 2 under foreign law.

### **3.6 Candidates: SPV's, SPV's under incorporation**

The Contractor must be a SPV (Special Purpose Vehicle). The DBFM Agreement will be concluded with this SPV.

The following can register as Candidates:

- a) The SPV, if it has already been incorporated or (if the SPV has not yet been incorporated):
- b) One or more persons or legal entities acting on behalf of the SPV under incorporation.

If the case referred to under (b) involves two or more legal entities who register while acting on behalf of the SPV under incorporation, one of them shall be designated as representative in the model form request for participation included in schedule 2.1 under 1). The representative must be authorised to duly represent the other legal entities who have registered while acting on behalf of the SPV under incorporation in all matters relating to this tendering procedure. The Candidate guarantees this authorisation towards the Contracting Authority.

In the case referred to under (b) the SPV must be incorporated on the day before the Date of Agreement at the latest and by this date it must have confirmed the legal acts performed on its behalf by the persons or legal entities referred to under (b). Proof of the aforementioned incorporation and confirmation must be provided to the Contracting Authority immediately after the incorporation and confirmation without a request to that effect.

Registration with the trade register is not necessary yet if the Candidate registers as SPV under incorporation. All persons and legal entities (or, as the case may be, Shareholders) who are to participate in the SPV to be incorporated are required to submit the required data.

### **3.7 Article 6 Competition Act**

For the avoidance of doubt, the Contracting Authority informs the Candidates that it is prohibited to conclude agreements with the purpose or the result of obstructing, restricting or forging competition in the Dutch market or part thereof.

The Contracting Authority reserves the right to submit a report to the Netherlands Authority for Consumers & Markets concerning Candidates in respect of whom the Contracting Authority suspects that they have concluded an agreement for the purpose of the Project contrary to the Competition Act, have contributed to a decision of an employers' association or that they have coordinated their concerted practices with another company or other companies, with the purpose or the result of obstructing, restricting or forging competition in the Dutch market or part thereof.

### **3.8 Demonstrating suitability**

#### **3.8.1 General**

It is the responsibility of the Candidates to demonstrate their own compliance with the suitability requirement set out in paragraph 3.12. The Candidates must demonstrate that they satisfy the suitability requirements provided for in paragraphs 3.13.1 and 3.13.2 themselves or by (partly) relying on the technical expertise of one or more third parties.

### **3.8.2 Relying on third parties: Significant Subcontractors**

A person or legal entity upon whose technical expertise a Candidate relies in order to satisfy one or more suitability criteria are designated as Significant Subcontractors.

If a Candidate relies on one or more third parties - Significant Subcontractor(s) - it must demonstrate when it submits its request for participation that it will actually be able to dispose of the experience of those third parties and in which manner, for which purpose the relevant Significant Subcontractor shall complete the model statement included in schedule 2.2 and sign it digitally using an electronic signature in accordance with the requirements of paragraph 1.3.

Significant Subcontractors must actually be deployed by the Contractor when performing the work that concern the requirements for which the Candidate has relied on the technical expertise of the Significant Subcontractor.

### **3.8.3 Experience**

As regards the suitability requirements as provided for in the paragraphs 3.13.1 and 3.13.2, a Candidate or Significant Subcontractor can only invoke certain experience if and to the extent that Candidate or Significant Subcontractor itself performed the work relevant for that experience.

### **3.9 Changes in composition of Candidates, designation of Significant Subcontractors**

In the event of unforeseen circumstances, such as the withdrawal of a participant in the SPV or a Significant Subcontractor due to events beyond the control of the Candidate, or for organisational reasons on the condition the group of parties involved is not unnecessarily expanded, Candidates can propose changes in their composition or in the designation of Significant Subcontractors. Candidates that propose such a change must explain the reasons for this change in its proposal.

The express written permission by the Contracting Authority is required for such changes. Conditions may be attached to this permission. The Contracting Authority will assess whether or not the change in the composition will have consequences, for example, in relation to:

- The applicability of exclusion/disqualification criteria;
- The fulfilment of the suitability requirements or the selection criteria;
- Inside information or conflict of interest;
- Other aspects in the field of competition law.

The Contracting Authority, however, will not refuse its permission on unreasonable grounds.

In all cases, in order for this permission to be given, the Candidate must demonstrate that after the change it continues to satisfy all the requirements that apply until that time in this tendering procedure for Candidates and Significant Subcontractors. If a selection has already taken place, in order for permission to be given the Candidate will also need to show that, in the new composition, it will still achieve at least the same or a higher total score under the applicable criteria for selection.

### **3.10 Information to be submitted**

The Candidates are required to submit the following information with their request for participation with respect to the Candidate itself (the SPV or all participants in the SPV under incorporation) and the Significant Subcontractors:

- a) Request for participation including all related documents (schedule 2.1).
- b) Statement(s) concerning the availability of the Significant Subcontractor(s) (paragraph 3.8) including all related documents (schedule 2.2).
- c) As regards the SPV or each person or legal entity participating in the SPV under incorporation: A European Single Procurement Document (schedule 2.3 A, being the standard statement in accordance with the Public Procurement Act) and a Supplementary compliance statement (schedule 2.3 B).
- d) From each Significant Subcontractor: a European Single Procurement Document (schedule 2.3 A, being the standard statement in accordance with the Public Procurement Act) of which sections A and B of part II have been completed and part III has been fully completed, as well as a Supplementary Compliance Statement (schedule 2.3 B).
- e) Declaration of economic and financial standing (paragraph 3.12) including all related documents (schedule 2.4).
- f) References concerning project management experience (paragraph 3.13.1) including all related documents (schedule 2.5).
- g) References concerning project financing experience (paragraph 3.13.2) including all related documents (schedule 2.5).

A list of the documents to be submitted has been included in the overview per requirement in schedule 2.1 and the prescribed manner of signing digitally is set out in paragraph 1.3.

### **3.11 Grounds for Exclusion**

#### **3.11.1 Mandatory grounds for exclusion**

The Contracting Authority will exclude each Candidate or Significant Subcontractor from participation or involvement in the tendering procedure to whom one or more of the circumstances referred to in Sections 4.13.1 to 4.13.5 Procurement rules on public works contracts 2016 applies, without prejudice to the provisions of Section 4.13.12 of the Procurement rules on public works contracts 2016.

#### **3.11.2 Optional grounds for exclusion**

The Contracting Authority may exclude each Candidate or Significant Subcontractor from participation or involvement in the tendering procedure to whom one of the circumstances referred to in Section 4.13.7 Procurement rules on public works contracts 2016 applies, without prejudice to the provisions of Section 4.13.12 of the Procurement rules on public works contracts 2016.

#### **3.11.3 Statements to be submitted**

The Candidate shall enclose the following statements, completed fully and truthfully, with its request for participation:

- As regards the SPV or each person or legal entity (future Shareholder) participating in the SPV under incorporation: European Single Procurement Document (schedule 2.3 A, being the standard statement in accordance with the Public Procurement Act) and a Supplementary compliance statement (schedule 2.3 B).
- From each Significant Subcontractor: a European Single Procurement Document (schedule 2.3 A, being the standard statement in accordance with the Public Procurement Act) of which sections A and B of part II have been completed and part III has been fully completed, as well as a Supplementary Compliance Statement (schedule 2.3 B).

The abovementioned parties are obliged to continue to comply with the statements during the tendering procedure.

A completed European Single Procurement Document or a Supplementary Compliance Statement is considered to be a statement made by the party that has submitted the statement. The items of evidence as referred to in Sections 4.13.6 and 4.13.9 Procurement rules on public works contracts 2016 must be submitted at the request of the Contracting Authority. The Candidate is required to submit the items of evidence to the Contracting Authority within two business days<sup>1</sup> of such request. The documents referred to in schedule 2.1 under requirement C must be submitted together with the request for participation.

A European Single Procurement Document or a Supplementary Compliance Statement which has not been completed fully or not truthfully may lead to Candidate's exclusion from participation in the (remainder of the) tendering procedure.

Contractor's certificate of good conduct:

The Contracting Authority may request the Candidate to submit a Contractor's certificate of good conduct, as referred to in Section 2.89 subsection 2 of the Public Procurement Act, which is not older than two years at the time of submission, by way of proof of the fact that there are no Grounds for Exclusion. A Contractor's certificate of good conduct must concern the Candidate's current situation.

If a statement comparable to the Contractor's certificate of good conduct is not issued in the country of origin, it will be sufficient to submit a statement made under oath or a solemn affirmation that is made before a competent judicial or administrative organisation, a civil-law notary or a competent professional organisation in the country of origin.

#### **3.11.4 Advice Public Administration Probity Screening Agency**

If the Contracting Authority has indications that a Candidate or a Significant Subcontractor is in one of the circumstances referred to in Sections 4.13.1 to 4.13.5 or Section 4.13.7 of the Procurement Rules on Public Works Contracts 2016, but there is insufficient information available to substantiate exclusion from participation or further involvement, the Contracting Authority may obtain the advice of the Public Administration Probity Screening Agency (see Section 8 of the Public Administration (Probity Screening) Act). A Candidate or a Significant Subcontractor in respect of whom advice has been requested is notified thereof by the Contracting Authority of the content of that advice via TenderNed, "Messages".

#### **3.11.5 Exclusion**

At selection, shortlisting and contract award, a Candidate must be able to demonstrate to the Contracting Authority upon request that the grounds for exclusion, as referred to in paragraphs 3.11.1 and 3.11.2 do not apply to it or its Significant Subcontractors, failing which the Candidate may be excluded from (further) participation in the tendering procedure. If

If one of the grounds for exclusion, as referred to in paragraphs 3.11.1 and 3.11.2, becomes applicable to a Candidate or one of its Significant Subcontractors during the tendering procedure, that Candidate must notify this fact immediately to the Contracting Authority via TenderNed, "Messages".

Candidates who, in the opinion of the Contracting Authority, act in violation of the rules or requirements as set in the Tender Documents, can be excluded from (further) participation in the tendering procedure.

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<sup>1</sup> Note: Obtaining a contractor's certificate of good conduct may take several weeks.

If at any point in time it becomes apparent that a Candidate has provided incorrect information, that Candidate can be excluded from (further) participation in the tendering procedure.

If the Contracting Authority decides to exclude a Candidate based on an exclusion/disqualification criterion that concerns a participant in the SPV under incorporation or a Significant Subcontractor, the relevant Candidate will be given the opportunity to submit a change proposal as referred to in paragraph 3.9 to the Contracting Authority, within 15 Calendar Days, for the replacement of the relevant participant or Significant Subcontractor.

Candidates who are excluded on the grounds of the provisions of this paragraph will not receive any compensation.

### **3.12 Economic and financial standing;**

#### **3.12.1 Economic and financial standing requirement**

The Candidate must demonstrate that the Shareholders are willing and able to make at least an amount of € 60,000,000 (sixty million euros) available to the Candidate for the purpose of the Project.

In case of registration as SPV under incorporation, the participants in the SPV under incorporation must declare individually what amount they will make available to the Candidate for the purpose of the Project. The requirement will have been satisfied if the amounts of the statements that have been issued add up to at least the required € 60,000,000 (sixty million euros).

#### **3.12.2 Demonstrating economic and financial standing**

The Candidate is required to submit a statement structured entirely in accordance with schedule 2.4 to evidence that it complies with the requirement concerning the economic and financial standing, which statement has been signed an authorised representative of a financial institution that:

- a) Is not an institutional investor and that is supervised by a regulator or by a regulatory authority of another Member State or by a regulatory authority of a state that is not a Member State and that imposes requirements that are at least equal to those of a regulatory authority of a Member State (all of the above as defined in Article 1.1 of the Financial Supervision Act);  
or
- b) An institutional investor and that is supervised by a regulator or by a regulatory authority of another Member State or by a regulatory authority of a state that is not a Member State and that imposes requirements that are at least equal to those of a regulatory authority of a Member State (all of the above as defined in Section 1.1 of the Financial Supervision Act).

In case of registration of (participants in) an SPV under incorporation, several statements may be submitted on behalf of the SPV under incorporation provided the amounts of the statements added together satisfy the requirement. In the event several statements are submitted, in the second paragraph of schedule 2.4 [name legal entity (entities)] must be read instead of [name Candidate] and otherwise only the amount may be adjusted.

This statement is only required in respect of the (participants in the) SPV (under incorporation) and not with respect to Significant Subcontractors.

### **3.13 Technical and organisational experience**

#### **3.13.1 Project management experience**

The Candidate must be able to demonstrate that it can actually dispose of the following experience for the performance of the Project:

The Candidate must have performed the project management of a project during the past five years (to be calculated from the final date for submission of a request for participation, see paragraph 3.4). This project must meet the following requirements:

- a) Infrastructure project involving groundwork, road and hydraulic engineering (EHW) related to (line) infrastructure or within residential and non-residential building (B&U), water purification, water production or water distribution;
- b) Integrated performance of at least design and construction activities, performed subject to certified quality assurance (based on NEN-EN-ISO 9001, or an equivalent standard);
- c) The total value of the design and construction activities referred to under b. must amount at least to € 50,000,000 (in real euros, exclusive of VAT);
- d) Construction must have been completed for at least 25%, such to the satisfaction of the relevant contracting authority, at the time the request is submitted.

Project management within the meaning of the present suitability requirement is defined as having been demonstrably responsible for or having had a managerial role in all of the following duties at the level at which the design and construction activities were integrated:

- i. Daily management of the work;
- ii. Risk management;
- iii. Quality management;
- iv. Financial management;
- v. The time schedule;
- vi. The handling of changes.

#### **3.13.2 Project financing experience**

The Candidate must be able to demonstrate that it can actually dispose of the following experience for the performance of the Project:

The Candidate must have been involved in at least one project with a contract value of the amounts to be paid by the Contracting Authority of at least €50,000,000 (in real euros, exclusive of VAT) in an important role as regards the conclusion of Finance Agreement(s) for the purpose of project financing between a special purpose vehicle and the debt capital providers, where the facilities provided to the special purpose vehicle had a joint value of at least 50% of the aforementioned contract value. The reference projects listed within the context of 3.13.1 may also be listed in relevant cases.

The required experience may have been gained on the part of the special purpose vehicle or on the part of the debt capital providers or as financial advisor.

#### **3.13.3 Information to be submitted**

The Candidate is required to declare by means of the model enclosed as schedule 2.5 that it complies with the requirements listed in paragraphs 3.13.1 and 3.13.2 concerning experience in

the area of project management and project financing. A separate statement must be submitted for each reference project.

**3.14 Verification by the Contracting Authority**

The Contracting Authority reserves the right to verify the soundness of the references that have been provided. The Candidate is obliged to cooperate therein.

**3.15 Assessment request for participation - invitation to the Dialogue**

The Contracting Authority will only invite the Candidates in respect of whom no exclusion criteria as referred to in paragraph 3.11 exist and who satisfy the suitability requirements as referred to in paragraphs 3.12 and 3.13 to participate in the Dialogue.

Decisions on the part of the Contracting Authority not to invite Candidates to the Dialogue are subject to paragraph 2.3. If a Candidate objects to this decision, it is required to notify the Contracting Authority of its objections in writing within ten Calendar Days after dispatch of the decision.

## **4 First Phase of the Dialogue**

### **4.1 Objective**

In this phase the Candidates will be informed in general terms about the Tender Documents, and they will also have to submit a Shortlisting Product. The three Candidates whose Shortlisting Products receive the highest quality score will be invited to participate in the Second Phase of the Dialogue.

### **4.2 Kick-off meeting and information**

The First Phase of the Dialogue will start with a general information meeting, which all the selected Candidates will be invited to attend. During this joint meeting, the Contracting Authority will give an explanation about the details and the organisation of the First Phase of the Dialogue. The Candidates will also be given the opportunity to ask questions at this meeting. The time and address for these information meetings will be stated in the invitation to participate in the First Phase of the Dialogue.

Candidates can submit requests for information during the First Phase of the Dialogue from 16 February 2017 through 6 April 2017. The procedure for the submission and handling of requests for information is described in paragraph 2.10.

The Candidates will be given the opportunity during the First Phase of the Dialogue to hold bilateral meetings with the Contracting Authority. During the consultations with the Contracting Authority, the focus will be on the Shortlisting Product that has to be submitted and dealing with questions that the Candidates might have about such.

Each Candidate must submit the items it wants to put on the agenda of a dialogue meeting, via TenderNed, "Messages", no later than five business days before the dialogue meeting, with the following details given for each item it wants to put on the agenda:

- The expected time it will take to discuss the item;
- An explanation of the agenda item;
- Specific issues, or questions.

### **4.3 Shortlisting Product**

All Candidates who are admitted to the First Phase of the Dialogue will be invited to submit a Shortlisting Product during this phase as described in schedule 5. The Contracting Authority will provide the information that the Shortlisting Product has to be based on prior to the First Phase of the Dialogue.

The Shortlisting Products submitted by the Candidates will be assessed for validity and then assessed in accordance with the criteria of schedule 5.

Through the assessment of the Shortlisting Products, the number of Candidates participating in the tendering procedure will be reduced to three. The three Candidates whose Shortlisting Products receive the highest total score will be invited to participate in the Second Phase of the Dialogue.

#### **4.4 Relationship between the Shortlisting Product and the Tender**

All (risk management) measures provided for in the Shortlisting Product should be continued by the Candidate in the Tender: All (risk management) measures specified in the Shortlisting Product must also be offered in the Tender. Deviating from this stipulation is allowed only with the written permission of the Contracting Authority.

#### **4.5 Requirements for the Shortlisting Product**

The Shortlisting Product must consist of a detailed description of the risks and opportunities as described in schedule 5, paragraph 2 "Shortlisting Product Requirements". If a Shortlisting Product is declared invalid because it does not satisfy the aforementioned requirements, the Candidate will not be allowed to participate any further in the tendering procedure. That provided for in paragraph 2.3 will apply in relation to a decision to this effect made by the Contracting Authority.

#### **4.6 Submission of the Shortlisting Product**

The Shortlisting Product must be submitted together with a submission form that is drawn up completely in accordance with schedule 4. The Candidates have to submit the submission form and their Shortlisting Product in PDF format, via TenderNed, "Messages", by 3 p.m. on 26 April 2017 at the latest. The Shortlisting Product can only be submitted digitally via TenderNed. All parts of the Shortlisting Product that must be signed must be provided with a recognised electronic signature with security level IV, in accordance with the requirements provided for in paragraph 1.3.

A Shortlisting Product that is not received on time will be declared invalid. The provisions of paragraph 2.3 will apply in relation to a decision to this effect made by the Contracting Authority.

#### **4.7 Method of assessment of Shortlisting Products**

The Shortlisting Product will be assessed by the Contracting Authority on the basis of schedule 5 and the associated calculation sheet in schedule 6. The Candidates will be given an assessment score for the risk management measures submitted for a risk, as well as for the measures submitted for an opportunity. The assessment scores for the parts will be multiplied by the weighting factor, which will yield a weighted score. The weighted scores will be added together to calculate the total score.

Only valid Shortlisting Products will be assessed. If the Shortlisting Product was submitted in a timely manner and elaborated in accordance with schedule 5, paragraph 2 "Shortlisting Product Requirements", the Shortlisting Product will be valid.

#### **4.8 Invitation for the Second Phase of the Dialogue**

The Contracting Authority will invite the three Candidates that have received the highest total scores for the Shortlisting Product to participate in the Second Phase of the Dialogue via TenderNed, "Messages". The other Candidates will be deactivated for this tendering procedure in TenderNed by the Contracting Authority.

If two or more Candidates obtain an equal score, with this having an impact on the determination of the three Candidates with the highest overall scores, and the distinction made in schedule 5 between opportunities and risks does not provide a solution either, a drawing of lots will decide which of them will be invited to participate in the Second Phase of the Dialogue. This drawing of lots will take place after the objection period of 10 Calendar Days referred to in the following paragraph has expired, in accordance with the following procedure:

- 1) All Candidates will be invited to be present during the drawing of lots;
- 2) Each lot will contain the name of a Candidate who is to participate in the draw;
- 3) The drawing of lots will take place by the blind drawing of all lots, in which regard the order in which they are drawn will be recorded, and the Candidates whose lots are drawn first will be selected.

The provisions of paragraph 2.3 will apply in relation to decisions made by the Contracting Authority about admission to the Second Phase of the Dialogue. If a Candidate has an objection concerning the decision that involves the determination of the three Candidates admitted to the Second Phase of the Dialogue on the basis of the highest total score, the Candidate must submit this objection to the Contracting Authority via TenderNed, "Messages", within ten Calendar Days after the announcement of this decision.

If the drawing of lots has taken place, and a Candidate has an objection concerning the decision that involves the determination of the Candidates admitted to the Second Phase of the Dialogue based on that drawing of lots, the Candidate must submit this objection to the Contracting Authority via TenderNed, "Messages", within three Calendar Days after the announcement of this decision.

#### **4.9 (Design) costs compensation payment**

The Contracting Authority will pay each of the Candidates that have submitted a valid Shortlisting Product, but which have not been invited to participate in the Second Phase of the Dialogue, a (design) costs compensation payment of € 200,000, exclusive of VAT, for the costs incurred by it. The (design) costs compensation payment will be paid out if the decision not to invite a Candidate to participate in the Second Phase of the Dialogue has become final, and the relevant Candidate subsequently submits an invoice for the (design) costs compensation payment. The payment period for the invoice will be thirty days.

## **5 Second Phase of the Dialogue**

### **5.1 Objective**

The objective of the Second Phase of the Dialogue is as follows:

- To discuss the Shortlisting Products of the Candidates;
- To discuss the starting points of the DBFM Agreement in the same way for all Candidates, as well as the definitive description of the invitation to tender;
- To agree the details of the DBFM Agreement and all of the associated Schedules, with the exception of those elements that have to be agreed on during or after the submission of the Tender;
- To discuss the process to obtain the financing for the Project with the Candidates.

### **5.2 Kick-off meeting**

The Second Phase of the Dialogue will start with a general information meeting, which all the selected Candidates will be invited to attend. During this joint meeting, the Contracting Authority will give an explanation about the further course of the tendering procedure. The Candidates will also be given the opportunity to ask questions at this meeting.

### **5.3 Meetings with the Contracting Authority and information**

The Candidates will be given the opportunity during the Second Phase of the Dialogue to hold meetings with the Contracting Authority<sup>1</sup>.

The Candidates who participate in the Second Phase of the Dialogue can discuss the admissibility of certain solution proposals within the framework of the DBFM Agreement with the Contracting Authority, as well as possible modifications of the DBFM Agreement.

Each Candidate must submit the items it wants to put on the agenda of a dialogue meeting, via TenderNed, "Messages", no later than five business days before the dialogue meeting, with the following details given for each item it wants to put on the agenda:

- The expected time it will take to discuss the item;
- An explanation of the agenda item;
- Specific issues, or questions.

Requests for information may be discussed during the meetings with the Contracting Authority. Only requests for information that were received by the Contracting Authority at the latest by 12.00 p.m. on the Tuesday prior to the meetings of the next week will be discussed during those meetings. The procedure for requests for information, including requests for adjustment, is described in paragraph 2.10.

Any consultations about specialist subjects requested by a Candidate will only be held if the Contracting Authority agrees to such. The Candidate must submit the reasons for such meetings in the request, and the Contracting Authority may deny a request for specialist meetings.

The Candidates may – in preparation for the Tender – submit parts of the Tender in a draft form. Draft proposals for the tender parts fall within the definition of Dialogue Products. If a Candidate

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<sup>1</sup> The planning timetable for the dates and times of the consultation meetings will be specified in the invitation to participate in the Second Phase of the Dialogue.

wants to submit part of the Tender as a draft for discussion, it must do this digitally by means of a request for information as referred to in paragraph 2.10. The Candidate must also explain what the objective of the submission is, and what specific questions it has in relation to this part of the Tender. Candidate will be allowed to submit a maximum of two drafts for a part of the Tender.

The Candidate will in any case be asked to submit the following sections (in draft form), and to discuss such with the Contracting Authority, during the Second Phase of the Dialogue:

- The Basic Project Plan, including a phasing plan as referred to in schedule 8.1;
- The Action Plan start-up phase in accordance with the requirements of schedule 8.2;
- The Design Plan, as referred to in schedule 8.3;
- The Original Financial Model and Financing Plan, in which regard in this phase the aforementioned products may contain "dummy" figures, and with regard to the Original Financial Model the emphasis will be on the format, the cost book, and the cost invoice.

During the first dialogue round of the Second Phase of the Dialogue, the Contracting Authority will discuss with the Candidates in which dialogue round and/or specialist consultation meeting these sections will be discussed.

Parts of the Tender that are submitted during the Second Phase of the Dialogue will be discussed, but not assessed. Candidates are not bound in any way whatsoever by a draft submitted during this phase, and can deviate from such in their Tender.

#### **5.4 European Investment Bank**

If the Project becomes eligible for financing from the European Investment Bank, the Contracting Authority will give the Candidates the opportunity during the Dialogue, if requested, to consult with the European Investment Bank as preparation for the Tender.

## **6 Finalisation of the DBFM Agreement- Invitation to Tender**

After the conclusion of the dialogue discussions of the Second Phase of the Dialogue, the Contracting Authority will make a Dialogue Report available to the Candidates, containing a brief summary of the Dialogue and the finalised DBFM Agreement.

After finalisation of the Dialogue Report, the Contracting Authority will invite the Candidates to submit their Tenders. The Candidates shall base their Tenders on the Dialogue Report.

## **7 Tender**

### **7.1 Objective**

The objective of this phase is to identify the Preferred Tenderer.

The submission of the Tender will take place in two phases. First, the qualitative part of the Tender will be submitted through TenderNed "Messages" and a few weeks later the quantitative part via TenderNed "Tender". The results of the qualitative assessment will not be announced in the interim period. The Preferred Tenderer will be appointed following submission of the quantitative part.

### **7.2 Content of the Tender**

The Tender should include a qualitative part and a quantitative part.

#### **7.2.1 Content of the qualitative part**

The qualitative part shall consist of the following sections:

1. Copy of the ID of the signatory or signatories of the Tender;
2. Model Tender submission form, fully laid out according to the format provided in appendix 9.1 A;
3. The qualitative offer of the Tenderer, consisting of the Risk and Opportunity Plan and the Sustainability Plan, which will be assessed according to schedule 7, "EMAT-BPKV table and EMAT-BPKV spreadsheet" ;
4. The Basic Project Plan, including the phasing plan, in accordance with the requirements of schedule 8.1;
5. The Action Plan start-up phase in accordance with the requirements of schedule 8.2;
6. [The Design Plan in accordance with the requirements of schedule 8.3;]
7. The statement on the CO2 target level in accordance with schedule 9.8.

#### **7.2.2 Content of the quantitative part**

The quantitative part shall consist of the following sections:

1. Copy of the ID of the signatory or signatories of the Tender;
2. Extract from the trade register;
3. A Model Tender Submission Form, fully laid out according to the format included in appendix 9.1 B;
4. A list of the Gross Availability Payment, at the price level of 1 January 2016, excluding VAT, in accordance with the Reference Rates established by the Contracting Authority or, where applicable, the EIB Reference Rates made known to the Candidate by the EIB;
5. The Original Financial Model in accordance with the requirements set out in schedule 9.7a;
6. The Financing Plan in accordance with the requirements set out in schedule 9.7b;
7. The Indexation Formula in accordance with the model form Indexation Formula (schedule 11);
8. A Shareholder Support Letter from each of the Shareholders (completely in accordance with the format set out in schedule 9.2);
9. A financial advisor's Support Letter (completely in accordance with the format set out in schedule 9.3);
10. For a total of at least 100% of the debt capital financing requirement, one or more support letters from a debt capital provider (Mandated Lead Arranger) (completely in accordance with the format set out in schedule 9.4);
11. Insofar as applicable: a Support Letter from the European Investment Bank upon Tender (schedule 9.5);

12. A Financial Close Bond, completely in accordance with the format set out in schedule 9.6:
13. Model K statement(s) of the directors(s) of the Tenderer (completely in accordance with the format set out in schedule 10);
14. Statement relating to the obligations in the areas of environmental, social and labour legislation (completely in accordance with the format set out in schedule 13);
15. A statement of the expected Commencement Date, Scheduled Availability Date and the Scheduled Completion Date, in accordance with the Basic Project Plan.

### **7.3 Requirements for Tender**

The following Tender requirements apply to the Tender and to the subcontractors already contracted.

#### **7.3.1 Requirements of the Tender**

The Tender must meet the following requirements:

- a) The Tender must be based on the Dialogue Report, including the DBFM Agreement, with the Schedules completed at such time, and the Information Briefs;
- b) The Tender must be arranged in accordance with schedules 9.1.A and 9.1.B;
- c) The Tender must comply with the provisions of these Tendering Guidelines;
- d) The present value of the Tender as defined in paragraph 7.6 must not exceed the Ceiling Price;

#### **7.3.2 Requirements for subcontractors - not being a Significant Subcontractor - upon Tender**

If the Tenderer has already entered into a final subcontract with a subcontractor – not being a Significant Subcontractor – prior to the submission of the Tender in case the contract is awarded to the Tenderer, the Tenderer must submit with the Tender a European Single Procurement Document (schedule 2.3 A), completed by such subcontractor, of which sections A and B of part II have been completed and part III has been fully completed, as well as a Supplementary Compliance Statement (schedule 2.3 B) completed by the said subcontractor.

That stipulated above concerning subcontractors is only applicable if the value of the part of the commission that has been subcontracted through this contract is greater than €1,000,000.00 (one million Euros).

Any exclusion of a subcontractor does not affect the Tenderer itself since this does not concern a Significant Subcontractor.

Paragraphs 3.11.1 to 3.11.4 will apply mutatis mutandis to the above subcontractors, other than the Significant Subcontractors.

### **7.4 Interest rate risk**

The interest rate risk for the period between the submission of the quantitative part of the Tender and the date of Financial Close shall remain with the Contracting Authority on the conditions permitted by the Contracting Authority. Specifically, this means that only changes to the Reference Rates, relative to the Reference Rate specified by the Contracting Authority for the purpose of the Tender, lead to an adjustment of the Gross Availability Payment as specified below in paragraph 7.4.1.

[Additionally, the risk of a change in the EIB Reference Rate between the Tender and Financial Close remains with the Contracting Authority.]

If the Candidate wishes to assume a Swap Base Rate, this must be based on the Reference Rates determined by the Contracting Authority. The Swap Base Rate is subject to a benchmark performed by the Contracting Authority.

For the sake of clarity, the Contracting Authority notes that the Reference Rates do not include fees or any other costs that are passed on by the Lenders.

#### 7.4.1 Reference Rates

Candidates must base the Gross Availability Payment in the quantitative part of the Tender on the Reference Rates determined by the Contracting Authority on a transparent and objective basis and announced by the Contracting Authority prior to the submission of the quantitative part of the Tender, and if applicable, on the EIB Reference Rate announced by the EIB to the Tenderer.

At Financial Close, the Gross Availability Payment shall be modified in the case of a change in the Reference Rates and/or the EIB Reference Rate according to a Financial Close Protocol determined by the Contracting Authority. The Original Financial Model should facilitate the adjustment of the Gross Availability Payment. In addition, the following applies:

- a. 5 Business Days prior to the submission of the quantitative part of the Tender, the Reference Rates to be used in the quantitative part of the Tender will be determined by the Contracting Authority;
- b. At the time of Financial Close, the Reference Rates to be used will be determined almost real-time by the Contracting Authority to facilitate the adjustment of the Swap Base Rate and, if applicable, the EIB Reference Rate; and
- c. At the time of Financial Close, the Swap Base Rate and, if applicable, the EIB Reference Rate to be used by both the Preferred Tenderer and the Contracting Authority will be determined almost real-time in accordance with a Financial Close Protocol determined by the Contracting Authority in order to facilitate the adjustment of the Gross Availability Payment.

The Reference Rates have the following structure:

Reference Rates	Quote	Fixing	Against
EONIA	[•]	Actual/360	Depo
1 month Euribor	[•]	Actual/360 MID	Depo
3 month Euribor	[•]	Actual/360 MID	Depo
6 month Euribor	[•]	Actual/360 MID	Depo
12 month Euribor	[•]	Actual/360 MID	Depo
1 year Euribor SWAP	[•]	30/360 MID	3 month Euribor
2 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
3 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
4 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
5 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
6 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
7 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
8 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
9 year Euribor SWAP	[•]	30/360 MID	6 month Euribor

Reference Rates	Quote	Fixing	Against
10 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
12 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
15 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
20 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
25 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
30 year Euribor SWAP	[•]	30/360 MID	6 month Euribor
1 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
2 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
3 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
4 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
5 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
6 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
7 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
8 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
9 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
10 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
11 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
12 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
15 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
20 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
30 Year EUR Basis SWAP	[•]	Act/360 MID	1M vs 3M
1 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
2 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
3 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
4 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
5 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
6 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
7 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
8 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
9 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
10 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
11 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
12 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
15 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
20 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M
30 Year EUR Basis SWAP	[•]	Act/360 MID	3M vs 6M

#### 7.4.2 Exclusivity provision of debt capital providers

In order to facilitate the process to Financial Close, the Contracting Authority requires that the Tenderers release their debt capital providers as well as the advisors of their debt capital providers from any exclusivity obligations at such time as a Preferred Tenderer is appointed and the judicial protection period in question has expired. If the Contracting Authority is obliged at any time to appoint another party as the Preferred Tenderer rather than the originally appointed Preferred Tenderer, then the debt capital providers of the originally appointed Preferred Tenderer must also be released from any exclusivity obligations.

## **7.5 Submission of the Tender**

The Tenderers must submit the parts specified in paragraph 7.2.1, being the qualitative part of the Tender, as well as the related details of the Scheduled Availability Date and the Scheduled Completion Date, no later than 3 p.m. on 14 December 2017 via TenderNed "Messages", in accordance with schedule 9.1 A, and the other parts of the Tender as specified in paragraph 7.2.2, being the quantitative offer, by 3 p.m. on 26 January 2018 via TenderNed "Tender", in accordance with schedule 9.1 B. The TenderNed digital safe closes at the latter time. After the digital safe is closed it is no longer possible to make a submission. TenderNed's clock is decisive as regards timely submission.

All parts of the Tender may only be submitted digitally via TenderNed. All parts of the Tender that must be signed must be provided with a recognised electronic signature with security level IV, in accordance with the requirements provided for in paragraph 1.3.

A Tender which is subject to conditions will be declared invalid. A Tender which is not received in good time will be declared invalid. The provisions of paragraph 2.3 will apply in relation to a decision to this effect made by the Contracting Authority.

The Contracting Authority reserves the right to perform a verification of the Tenders.

## **7.6 Present value of the Tender**

The Contracting Authority will determine the present value of the Tender as follows:

- 1) The Contracting Authority will set out the offered Gross Availability Payment, price level as at 1 January 2016, in a sequence to be expected by the Tenderer based on the Commencement Date and Scheduled Availability Date included by the Tenderer in the Basic Project Plan, where the Gross Availability Payment in relation to any Payment Period falls at the end of that Payment Period.
- 2) The Contracting Authority will include the resulting sequence in step 1) in the indexation based on the Indexation Formula offer by the Tenderer. The Indexation Formula offered by the Tenderer is part of the Tender. The Format Indexation Formula is set out in schedule 11. The Contracting Authority will use a reference value for n for each index used in this formula, as shown in the table in schedule 11.
- 3) The Contracting Authority adds the Bullet Payment Availability and/or Bullet Payment Completion to the sequence resulting from step 2) on the basis of the Scheduled Availability Date and the Scheduled Completion Date offered by the relevant Tenderer in his Basic Project Plan.
- 4) The Contracting Authority will discount the sequence resulting from step 3) of the Gross Availability Payments and the Bullet Payment Availability and the Bullet Payment Completion to 1 January 2016 using a nominal discount rate of 5.95% per annum.

The calculation of the present value of the Tender is elaborated in detail in the "present value calculation model and neutralised present value of the Tender Phase". The Contracting Authority has provided this calculation model to the Candidates in the Data Room.

## **7.7 Assessment of Tenders**

### **7.7.1 Validity**

The Contracting Authority will first consider whether the Tenders are valid. If a Tender is declared invalid because it does not comply with the requirements in paragraphs 7.2 and 7.3, paragraph 2.3 applies to this decision by the Contracting Authority.

### **7.7.2 Award criterion**

The award criterion is that of the economically most advantageous tender with the best value for money. The economically most advantageous tender with the best value for money is the Tender with the lowest notional tender price, determined as follows.

The Contracting Authority will determine the notional tender price of a valid Tender by:

- a) Determining the neutralised present value of the quantitative part of the Tender;
- b) Correcting the value determined in a) by the notional reduction and/or notional addition in accordance with schedule 7.

For the sake of clarity, the Contracting Authority points out that the present value of the Tender (defined in paragraph 7.6) should not exceed the Ceiling Price, but the neutralised present value of the Tender may exceed the Ceiling Price.

#### ***Point (a) The neutralised present value of the Tender***

The Contracting Authority will neutralise the effects in the present value of the quantitative part of the Tender, as defined in paragraph 7.6, which would result from the fact that the Tenderers may offer a different Scheduled Availability Date as well as a different Scheduled Completion Date as compared to each other. This neutralisation aims to neutralise the negative effect for the Tenderer of offering an earlier Scheduled Availability Date or Scheduled Completion Date in relation to the other Tenderers, with respect to the present value of the quantitative part of the Tender.

The Contracting Authority will neutralise these effects by calculating the neutralised present value of the quantitative part of the Tender according to the following steps:

- 1) The Contracting Authority will set out the offered Gross Availability Payment, price level as at 1 January 2016, in a sequence to be expected by the Tenderer based on the Commencement Date. 15 July 2018 and the Scheduled Availability Date offered by the Tenderer in the Basic Project Plan, where the Gross Availability Payment in relation to any Payment Period falls at the end of that Payment Period.
- 2) The Contracting Authority will shift the sequence resulting from step 1), the part that starts on the Scheduled Availability Date indicated by the Tenderer in its Basic Project Plan (and which ends 25 years after this date), to the Scheduled Availability Date of the Tenderer that offered the last Scheduled Availability Date in relation to the other Tenderer or Tenderers in a valid Tender.
- 3) The Contracting Authority will include the resulting sequence in step 2) in the indexation based on the Indexation Formula offered by the Tenderer. The Indexation Formula offered by the Tenderer is part of the quantitative part of the Tender. The Format Indexation Formula is set out in schedule 11. The Contracting Authority will use a reference value for n for each index used in this formula, as included in schedule 11.

- 4) The Contracting Authority will add to the sequence resulting from step 3) for all Tenderers the Bullet Payment Availability and Bullet Payment Completion on that date that is equal to the Scheduled Availability Date and the Scheduled Completion Date of the Tenderer that offered the last Scheduled Availability Date and Completion Date in relation to the other Tenderer or Tenderers in a valid Tender.
- 5) The Contracting Authority will discount the sequence resulting from step 4) of the Gross Availability Payment and the Bullet Payment Availability and Bullet Payment Completion to the price level on 01 January 2016, using the same nominal annual discount rate as mentioned in paragraph 7.6.

The calculation of the neutralised present value of the quantitative part of the Tender is elaborated in detail in the "present value calculation model and neutralised present value of the quantitative part of the Tender". The Contracting Authority makes this calculation model available in the Second Phase of the Dialogue to the Candidates in the Data Room.

#### **Point (b) Notional correction**

The Contracting Authority will correct the neutralised present value by the notional reduction and/or notional addition in accordance with schedule 7.

#### **7.8 Clarification by the Tenderer**

At the request of the Contracting Authority, a Tenderer may be asked to clarify aspects of the Tender or confirm commitments contained in the Tender, provided this clarification/amendment does not substantially alter the substance of the Tender or the announcement and does not cause or threaten to lead to a distortion of competition or discrimination.

#### **7.9 Appointment of the Preferred Tenderer**

The Tenderer with the economically most advantageous tender with the best value for money is the Tenderer with the lowest notional tender price. The Tenderer with the lowest notional tender price will be appointed as the Successful Tenderer.

The Contracting Authority will inform every Tenderer that submitted a Tender simultaneously and with reasons concerning the proposed award. The Contracting Authority will thereby state the name of the Tenderer that has been designated as the Successful Tenderer and to whom the Contracting Authority therefore intends to award the Tender. No rights may be derived from this intention to award. The message of the Contracting Authority regarding the intention to award does not imply acceptance as referred to in article 6:217, first paragraph, of the Dutch Civil Code, of an offer of a Tenderer.

Paragraph 2.3 applies to a decision by the Contracting Authority not to designate a Tenderer as a Successful Tenderer.

The Contracting Authority reserves the right not to award the contract. In that case, paragraph 2.4 applies.

The Contracting Authority will return the Financial Close Bond to a Tenderer on the first of the following dates:

- When the decision of the Contracting Authority to declare the Tender of the Tenderer invalid has become final;
- When Financial Close has been achieved with the Preferred Tenderer.

- 02 July 2018.

## **7.10 Insurance**

After appointment of the Preferred Tenderer, the Preferred Tenderer and the Contracting Authority will determine the contents of Schedule 11 of the DBFM Agreement in accordance with the following procedure.

### **7.10.1 Procedure Insurance Availability Period after appointment of the Preferred Tenderer**

The procedure aims to determine which insurance will fall under the scope of Article 14 of the DBFM Agreement (Insurance) and determine the appropriate premium levels and the scope of cover.

### **7.10.2 Requirements for information to be submitted**

The Preferred Tenderer must submit the following information to the Contracting Authority no later than 20 Business Days before the planned Date of Agreement:

- a) An overview of the insurance that the Selected Tenderer intends to obtain within the scope of Article 14 of the DBFM Agreement. In the overview, only the following insurances for the Availability Period may be included:
  - (i) Business interruption insurance other than for loss of profits;
  - (ii) Property damage insurance; and
  - (iii) Business liability insurance.
- b) Per insurance mentioned in the overview:
  - (i) a certified offer by the insurer or insurers showing the cover, exclusions, excess, the commencement date and the term of the insurance policy as well as an indication of the nett premium or the gross premium outstanding to the insurers mentioning the rate of commission (agency fee); and
  - (iii) The full insurance terms.The insurance premium for each cover must be provided (also for a combined insurance) and should be competitive.

### **7.10.3 Contracting Authority response**

The Contracting Authority will notify the Preferred Tenderer within 15 Business Days of receipt of the data referred to in paragraph 7.10.2 whether it considers that the information meets the requirements mentioned in paragraph 7.10.2. If the Contracting Authority announces that it believes that the information complies with the requirements mentioned in paragraph 7.10.2, this information will be included as Schedule 11 to the DBFM Agreement. If the Contracting Authority announces that it believes that the information does not comply with the requirements mentioned in paragraph 7.10.2, it will give reasons for this and the Preferred Tenderer will submit the information that complies with these requirements as soon as possible.

## **7.11 (Design) costs compensation payment**

The Contracting Authority shall pay any Tenderer who submits a valid Tender a (design) costs compensation payment of € 4,000,000, exclusive of VAT, for the (design) costs incurred by it. This compensation payment will be paid after the decision to appoint the Preferred Tenderer as mentioned in paragraph 7.9 has become final and the Tenderer has subsequently submitted an invoice for the (design) costs compensation payment. The payment period for the invoice will be thirty days.

## **8 Definitive Award/Date of Agreement and Financial Close**

### **8.1 Purpose**

The purpose of this phase is to conclude the Agreement and reach Financial Close. During this phase, it is not possible to make changes to the DBFM Agreement.

This phase will be elaborated in more detail in the invitation to submit a Tender.

### **8.2 Validity period**

The Tender should be honoured within 18 weeks from the date on which the final parts of the Tender must be submitted in accordance with paragraph 7.5.

### **8.3 Commitment to the Tender - penalty**

The Preferred Tenderer will owe an immediately due and payable penalty of € 5,000,000 if it fails to unconditionally commit to its Tender within the period specified in paragraph 8.2, or a period subsequently agreed in deviation therefrom.

The above is applicable mutatis mutandis to successive Preferred Tenderers.

## **schedule 1: Definitions**

### **Basic Project Plan**

Document that Tenderers must submit when Tendering, in compliance with schedule 8.1.

### **Candidate**

An SPV or one more persons and legal entities that will be participating in - and acting on behalf of - an SPV that has yet to be incorporated and which is submitting or has submitted a Tender.

### **Ceiling Price**

The amount set by the Contracting Authority below which the present value of the Tender must remain, on pain of invalidity.

### **Confidential Information**

Confidential information provided by the Contracting Authority to the Candidates in accordance with paragraph 2.10 of the Tendering Guidelines.

### **Contracting Authority**

Ministry of Infrastructure and the Environment  
RWS

### **Data Room**

The digital archive comprising documents and data relating to the tendering procedure for the Project.

### **Data Room Regulations**

The regulations setting out access to and use of the Data Room.

### **DBFM Agreement**

The (draft) Design, Build, Finance, Maintain agreement as attached in schedule 3, including all Schedules.

### **Dialogue**

The First Phase of the Dialogue and the Second Phase of the Dialogue together.

### **Dialogue Products**

The (draft) proposals requested by the Contracting Authority during the Dialogue and to be submitted by the Candidates, with the exception of the Shortlisting Product.

### **Dialogue Report**

The recording of the outcome of the Dialogue on which the Tenderer must base its Tender.

### **EIB Reference Rate**

The interest premium that reflects the EIB's cost of funding as indicated in the EIB's (indicative) term sheet.

### **EMAT-BVFM**

The economically most advantageous tender with the best value for money.

**European Single Procurement Document**

The Compliance Statement adopted by the European Commission in Implementing Regulation (EU) 2016/7.

**Financial Close Bond**

The bank guarantee to be included with the Tender, laid out entirely in accordance with the format in schedule 9.6.

**First Phase of the Dialogue**

The phase of the tendering procedure described in chapter 4 of the Tendering Guidelines.

**Financing Plan**

The Financing Plan referred to in schedule 9.7.

**General Information**

Information provided by the Contracting Authority to all Candidates in accordance with paragraph 2.10 of the Tendering Guidelines.

**Hard Mini Perm Financing**

A form of mini perm financing with mandatory refinancing which, if that refinancing does not take place, may be regarded by the Lender as an event of default. Bridge loans in respect of which the Finance Agreements or the Shareholder Loan Agreements at the Financial Close provide that the funds are to be used for such refinancing are not regarded as hard mini perm financing.

**Indexation Formula**

The formula used to calculate the indexation, laid out entirely in accordance with the format in schedule 11.

**Invitation to participate in the (First Phase of the) Dialogue**

The document in which the Contracting Authority invites the selected Candidates to participate in the First Phase of the Dialogue.

**Invitation to participate in the Second Phase of the Dialogue**

The document in which the Contracting Authority invites the selected Candidates to participate in the Second Phase of the Dialogue.

**Original Financial Model**

The model to be presented by Tenderers in accordance with schedule 9.7.

**Preferred Tenderer**

The Tenderer with whom the Contracting Authority intends to enter into the DBFM Agreement.

**Project**

All works, deliveries and services that must be carried out on the basis of the DBFM Agreement.

**Reference Rates**

The interest rates made available by the Contracting Authority in accordance with the provisions in paragraph 7.4.1 of the Tendering Guidelines.

**Second Phase of the Dialogue**

The phase of the tendering procedure described in chapter 5 of the Tendering Guidelines.

### **Selection Phase**

The phase of the tendering procedure described in chapter 3 of the Tendering Guidelines.

### **Shareholder**

A person or legal entity that participates in the Candidate and/or the Tenderer.

### **Shortlisting Product**

The product submitted by the Candidates in the First Phase of the Dialogue used to select the Candidates who will continue to the next phase of the Dialogue.

### **Significant Subcontractor**

A person or legal entity whose technical expertise is relied upon by a Candidate in order to satisfy requirements with respect to technical expertise.

### **SMART**

By SMART, the Contracting Authority means:

- Specific: Is the Candidate's proposal clearly described and geared to the Project?
- Measurable: Under what (measurable/observable) conditions has the aim of the proposal been achieved?
- Acceptable: Is the proposal acceptable in light of the requirements for the Project?
- Realistic: Is the proposal feasible?
- Time-based: By what point (in time) must the aim of the proposal be achieved?

### **SPV**

Special Purpose Vehicle organised in the form of a private limited company.

### **Swap Base Rate**

The swap rate specified by the Tenderer which is based on the Reference Rates.

### **Supplementary Compliance Statement**

The Supplementary Compliance Statement in schedule 2.3 B of the Tendering Guidelines.

### **Tender**

The tender that is submitted pursuant to chapter 7 of the Tendering Guidelines by the invited Candidates. If the Tender is submitted in stages, the "date of Tender" is the date on which the final parts of the Tender (must) have been submitted.

### **Tender Documents**

The Tendering Guidelines, the DBFM Agreement, the General and Confidential Information, the invitations to a (next) phase of the tendering procedure and all other documents that will be provided by the Contracting Authority to the Candidates and designate as such within the context of the tendering procedure.

### **Tenderer**

An SPV or one more persons and legal entities that will be participating in - and acting on behalf of - an SPV that has yet to be incorporated and which has been registered to participate in the present tendering procedure.

### **Tendering Guidelines**

The present document describing the tendering procedure.

**Tenderer's Statement**

The European Single Procurement Document together with the Supplementary Compliance Statement, as referred to in paragraph 3.11.3 of the Tendering Guidelines.

**schedule 2: Model forms belonging to requests for participation****schedule 2.1: Model form requests for participation**

<b>1) Details of the Candidate<sup>1</sup>.</b>	
Name	
Legal form	
Registered office (included in the articles of association)	
Country of establishment	
Number Trade Register	
Office address	
E-mail	
Telephone	
Name possible representative	

<b>2) Details of the Shareholder(s) (to be provided per Shareholder)</b>	
Name	
Legal form	
Registered office (included in the articles of association)	
Country of establishment	
Number Trade Register	
Office address	
E-mail	
Telephone	
Percentage (future) participation in the Candidate	

<sup>1</sup> If there is an SPV that has already been incorporated, the data requested under 1) must be provided by the SPV and all data requested under B. by the participants (or Shareholders) in the SPV. In case of an SPV under incorporation, all persons and legal entities (members of the consortium) who act on behalf of the SPV under incorporation must provide the information requested under B. and one of them must be designated as representative. The representative can be referred to under 1) with the addition "acting on behalf of the SPV under incorporation".

<b>3) Details concerning Significant Subcontractor(s) (to be provided per Significant Subcontractor)</b>	
Name	
Legal form	
Registered office (included in the articles of association)	
Country of establishment	
Number Trade Register	
Office address	
E-mail	
Telephone	

<b>4) Details of the authorised representative who has signed this request for participation on behalf of the Candidate.<sup>1</sup></b>	
Name of person with power of representation	
Date and place of birth	
Position	
Name legal entity that is represented	

**5) Statement by the Candidate concerning the procedure and the accuracy of information**  
[name of Candidate] declares that:

- a) It has taken note of the Tendering Guidelines and agrees unconditionally with the procedure laid down therein;
- b) All the information it has provided and will provide to the Contracting Authority in connection with this tendering procedure is accurate.

Signed in [place], [date]

**Name of [Candidate<sup>2</sup>]**

<sup>1</sup> In case of an SPV, the details of the natural person or persons referred to under 4) must be provided and these natural person or persons must sign this request for participation on behalf of the SPV. In case of an SPV under incorporation, the information referred to under 4) must be provided by all persons and legal entities (members of the consortium) who act on behalf of the SPV under incorporation and the persons mentioned by these legal entities (members of the consortium) must sign this request for participation on their behalf.

<sup>2</sup> In case of an SPV, the person or persons referred to under 4) must sign this request for participation on behalf of the SPV. In case of an SPV under incorporation, the persons referred to under 4) sign this request

on whose behalf,

[name person or persons referred to under 4)]

[signature person or persons referred to under 4)]

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for participation on behalf of the persons and legal entities (members of the consortium) who act on behalf of the SPV under incorporation.

**schedules belonging to request for participation:**

**Requirement A: Request for participation**

A request for participation fully completed and duly signed by the Candidate in accordance with the model included in **schedule 2.1**, with:

- A copy of a valid identity document of the person or persons authorised to sign, who sign the request for participation on behalf of the Candidate.
- Any (special) power of attorney granted to the abovementioned persons in order to be able to sign the request for participation in legally valid manner. This power of attorney is only required if the power of representation of those signatories is not already clear from the trade register. In such cases, a copy of a valid identity document of the person who signed the power of attorney must also be submitted.
- Possibly a power of attorney of the other persons and legal entities granted to the representative in case of a request for participation from multiple legal persons who act on behalf of the SPV under incorporation.

**Requirement B: Statement concerning the availability of the Significant Subcontractors (paragraph 3.8)**

A statement concerning the availability of Significant Subcontractors in accordance with the model included in **schedule 2.2** fully completed and duly signed by each Significant Subcontractor, with:

- A copy of a valid identity document of the person or persons authorised to sign, who sign the statement concerning the availability of Significant Subcontractors on behalf of the Significant Subcontractors.
- Any (special) power of attorney granted to the abovementioned persons in order to be able to sign the Statement concerning the availability of Significant Subcontractors in legally valid manner. This power of attorney is only required if the power of representation of those signatories is not clear from the trade register. In such cases, a copy of a valid identity document of the person(s) who signed the power of attorney must also be submitted.

**Requirement C: Compliance Statement (paragraph 3.11)**

A Compliance Statement fully completed and duly signed by the Candidate<sup>1</sup> and by each Significant Subcontractor consisting of the European Single Procurement Document (Candidate) (**schedule 2.3 A**) (see paragraph 3.11.3 of the Tendering Guidelines) as well as the Supplementary Compliance Statement (**schedule 2.3 B**). The Compliance Statement must be submitted together with:

- A copy of a valid identity document of the person or persons authorised to sign, who sign a Compliance Statement on behalf of the SPV or the relevant participant in the SPV under incorporation or a Significant Subcontractor.
- Any power of attorney granted to the abovementioned persons in order to be able to sign the Compliance Statement in a legally valid manner. This power of attorney is only required if the power of representation of those signatories is not clear from the trade register. In such cases, a copy of a valid identity document of the person(s) who signed the power of attorney must also be submitted.

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<sup>1</sup> In case of an SPV under incorporation, all persons and legal entities (members of the consortium) who act on behalf of the SPV under incorporation or, as the case may be, the future shareholders of the SPV under incorporation must complete the European Single Procurement Document.

**Requirement D: Declaration of economic and financial standing (paragraph 3.12);**

A statement concerning economic and financial standing in accordance with the model included in **schedule 2.4** fully completed and duly signed by the financial institution, as referred to in paragraph 3.12.2 of the Tendering Guidelines, with:

- An extract from the trade register concerning the financial institution.
- A copy of a valid identity document of the person or persons authorised to sign, who sign the statement concerning the economic and financial standing on behalf of the financial institution.
- Any (special) power of attorney granted to the abovementioned persons in order to be able to sign the statement concerning the economic and financial standing in a legally valid manner. This power of attorney is only required if the power of representation of those signatories is not clear from the trade register. In such cases, a copy of a valid identity document of the person(s) who signed the power of attorney must also be submitted.

**Requirement E: Statement technical and organisational expertise (paragraph 3.13)**

A reference for each reference project fully completed and duly signed by the Candidate in accordance with the model included in **schedule 2.5 under A and B**, with for each reference project:

- A copy of a valid identity document of the person or persons authorised to sign, who sign the reference on behalf of the Candidate if the copy of the valid identity document of the signing natural person has not been submitted already.
- Any (special) power of attorney granted to the abovementioned persons in order to be able to sign the reference in a legally valid manner. This power of attorney is only required if the power of representation of those signatories is not clear from the trade register. In such cases, a copy of a valid identity document of the person(s) who signed the power of attorney must also be submitted.

**schedule 2.2: Model Statement concerning the availability of the Significant Subcontractors<sup>1</sup>**

<b>Details Significant Subcontractor</b>	
Name	
Legal form	
Address details	
E-mail	
Telephone	

[Name Significant Subcontractor] declares:

1. It has taken note of the Tendering Guidelines for this tendering procedure and agrees unconditionally with the procedure laid down therein;
2. All the information it has provided and will provide to the Contracting Authority directly or indirectly in connection with this tendering procedure is accurate and that it is aware that any inaccuracies identified therein by the Contracting Authority could lead to the Candidate being excluded from further participation in this tendering procedure;
3. That [name Candidate], if the Project is awarded to [name Candidate], will be able to dispose of the knowledge, experience and resources available to the undersigned for the performance of the Project, and that the work that relate to the requirements for which the undersigned is engaged, will be performed by the undersigned. It agrees in this connection that the experience of the undersigned is considered to be personal experience of the Candidate.

Signed in [place], [date]

[Significant Subcontractor],

[name of person authorised as representative]

[function]

[signature]

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<sup>1</sup> To be completed by each Significant Subcontractor whose experience is relied on by the Candidate.

**schedule 2.3 A: European Single Procurement Document**

The European Single Procurement Document is published separately as a PDF form on TenderNed.

**schedule 2.3 B: Model Supplementary Compliance Statement**

(to be submitted in addition to the European Single Procurement Document or the Third-party Statement of Grounds for Exclusion)

All participants in the SPV (under incorporation) are required to submit a separate and fully-completed *Supplementary Compliance Statement*.

Significant Subcontractors as well as other subcontractors to the extent such follows from paragraph 7.3.2 of the Tendering Guidelines are only required to submit a completed and signed *Supplementary Compliance Statement* for the section entitled "Questions concerning inside information and conflict of interest".

The Contracting Authority reserves the right to have the Public Administration Probity Screening Agency perform a further investigation into the Candidates, Shareholders, Significant Subcontractors or other subcontractors, to the extent such allowed pursuant to Directive 2004/18/EC.

To the extent applicable, *company* is defined as the Candidate, each Significant Subcontractor and each subcontractor if and to the extent such follows from paragraph 7.3.2 of the Tendering Guidelines.

**SUPPLEMENTARY COMPLIANCE STATEMENT**

within the context of the tendering procedure for the contract [name Project]

Name and address of the company:

\_\_\_\_\_  
Chamber of Commerce registration number (registration number of the Trade Register or a corresponding register of the country where the company is established):

\_\_\_\_\_  
Contact person of the company (name, email, telephone):

**1. QUESTIONS CONCERNING INSIDE INFORMATION AND CONFLICT OF INTEREST**

1.1. Did the company perform work or services in preparation of the Project or was the company otherwise involved directly or indirectly in the preparation of the Project prior to this tendering procedure?

Yes / no (delete as appropriate)

If so, state the nature of the relevant work or services, or that involvement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.2. Does the company employ persons who performed work or services in preparation of the Project or does the company employ persons who were otherwise involved directly or indirectly in the preparation of the Project prior to this tendering procedure?

Yes / no (delete as appropriate)

If so, state for each person:

a) The name and position within the company;

b) The nature of the relevant work or services, or that involvement.

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1.3. Does or will the company engage subcontractors within the context of this tendering procedure who performed work or services in preparation of the Project or were those subcontractors otherwise involved directly or indirectly in the preparation of the Project prior to this tendering procedure?

Yes / no (delete as appropriate)  
If so, state for each subcontractor:

- a) The name and the address, the legal form and the number of registration in the trade register (or a similar register in the country where the company is established);
  - b) The nature of the relevant work or services, or that involvement.
- 
- 

1.4. Does or will the company engage consultants (both persons and legal entities) within the context of this tendering procedure who performed work or services in preparation of the Project or were those consultants otherwise involved directly or indirectly in the preparation of the Project prior to this tendering procedure?

Yes / no (delete as appropriate)  
If so, state for each consultant:

- a) The name and the address, the legal form and the number of registration in the trade register (or a similar register in the country where the company is established);
  - b) The nature of the relevant work or services, or that involvement.
- 
- 

1.5. Is the company affiliated with one or more other companies and/or does the company form part of a group, such within the meaning of Articles 2: 24a, 2:24b and 2:24c of the Dutch Civil Code or comparable legal forms according to foreign law?

Yes / no (delete as appropriate)  
If so, did one or more of those affiliated companies or group companies perform work or services in preparation of the Project or were one or more of those companies otherwise involved directly or indirectly in the preparation of the Project prior to this tendering procedure?

Yes / no (delete as appropriate)  
If so, state for each company:  
a) The name and the address, the legal form and the number of registration in the trade register (or a similar register in the country where the company is established);  
b) The nature of the relevant work or services, or that involvement.

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**2. QUESTIONS CONCERNING FORMING OF THE CONSORTIUM WHEN SUBMITTING A TENDER OR IN CASE OF REGISTRATION BY A PARTNERSHIP OF ENTREPRENEURS\*3)**

\*3) These questions only have to be answered if the Tender is submitted or registration takes place by a partnership of entrepreneurs (a consortium) as a general partnership or as a Special Purpose Vehicle (SPV). All (future) participants in the SPV (under incorporation) must answer these questions separately. Significant Subcontractors and other subcontractors do **not** have to answer these questions.

2.1 Indicate what factors mean that the company is unable to submit a tender for the Project individually.

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2.2 Indicate why the nature and size of the partnership (consortium) that was formed is necessary in relation to the size and nature of the contract to be performed, in view of the importance and capacity of each of the entrepreneurs who are part of the syndicate.

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2.3 Indicate which part or parts of the contract will be performed by the company itself.

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**DECLARATION**

The undersigned declares that:

- That the questions included in this questionnaire have been answered fully and truthfully;
- that it has signed this completed questionnaire unconditionally and without any reservations; that it is aware that providing incorrect or incomplete information may be considered by the Contracting Authority to constitute a false statement and that this may lead to unconditional exclusion from the remainder of this tendering procedure;
- that no changes have been made to the text of this questionnaire;
- that this questionnaire was signed by an authorised representative as evident from the Trade Register or a corresponding register of the country where the company is established;

Name(s) authorised signatory or signatories:

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_

#### **schedule 2.4: Model Statement of economic and financial standing**

This statement must be signed by an authorised representative of a financial institution that:

- a) Is not an institutional investor and that is supervised by a regulator or by a regulatory authority of another Member State or by a regulatory authority of a state that is not a Member State and that imposes requirements that are at least equal to those of a regulatory authority of a Member State (all of the above as defined in Article 1.1 of the Financial Supervision Act);  
or
- b) An institutional investor and that is supervised by a regulator or by a regulatory authority of another Member State or by a regulatory authority of a state that is not a Member State and that imposes requirements that are at least equal to those of a regulatory authority of a Member State (all of the above as defined in Section 1.1 of the Financial Supervision Act).

The following statement must be submitted on the stationery of the financial institution.

To Contracting Authority

Ministry of Infrastructure and the Environment  
RWS Major Projects and Maintenance  
Afsluitdijk Project organisation  
Attn. Mr W. Schat  
Griffioenlaan 2  
3526 LA Utrecht, the Netherlands

The undersigned, [name financial institution], with its registered office at [place], declares as follows in connection with the tendering procedure carried out by the State of the Netherlands (Ministry of [name Ministry], [name department] concerning the Project [name Project], hereinafter referred to as "the Project".

The undersigned declares on the basis of the information that is currently known to [name financial institution] that [name of Candidate] must be considered capable of contributing an amount of € 60,000,000 in equity, either by making this available as equity/share capital/paid-up share premium or by making this available by way of a subordinated loan.

This statement does not constitute a guarantee from [name financial institution] towards the Contracting Authority. This statement was formed on the basis of a careful examination by [name financial institution] of the information made available by the Candidate to [name financial institution], in particular as regards the Project and with respect to the financial situation of [name of the parties involved in the Candidate].

[Name financial institution] is aware that this statement will be used by the Contracting Authority to determine whether [name Candidate] complies with the financial-economic minimum requirement that has been set.

Signed in [place], [date]

[Name of financial institution]

[name of person authorised as representative]  
[function]

**schedule 2.5: Model Statement technical and organisational expertise**

This statement must be completed and signed by the Candidate. A separate statement must be completed, signed and submitted for each reference project.

The Contracting Authority reserves the right to request further information from the client's contact person referred to in this form.

<b>REFERENCEP ROJECT</b>		
Name reference project		
Contract value (in euros, exclusive of VAT)		
Place of performance		
Period of performance		
Contracting Authority	Name	
	Address	
	Name contact person	
	Telephone	
	E-mail	
Contractor <sup>1</sup>		
Description reference project (at most 500 words)		
The Candidate uses this reference project to demonstrate that for the purpose of the performance of the Project it has experience in the area of Project management / Project financing / Project management & Project financing <sup>2</sup> .		
<b>A. Project management</b>		
Infrastructural project	Is this reference project an infrastructural project within the meaning of paragraph 3.13.1 of the Tendering Guidelines?	Yes/no
Project management	Did the abovementioned contractor perform the project management - within the meaning of article 3.13.1 of the Tendering Guidelines - of this reference project during the past five years, to be calculated from the final date for submission of a request for participation?	Yes/no
Integrated	Does this reference project comprise	Yes/no

<sup>1</sup> The Contractor must be a (participant in (or, as the case may, a (future) Shareholder of) the Candidate or a Significant Subcontractor.

<sup>2</sup> Delete as appropriate.

Performance	integrated performance of at least design and construction activities performed subject to certified quality assurance (based on NEN-EN-ISO 9001, or an equivalent standard)?	
Value	Does the total value of the design and construction activities amount at least to € 50,000,000 exclusive of VAT?	Yes/no If so, what is the value of the design and construction activities?
Completion of construction	Were the construction activities concerning this reference project completed for at least 25% at the time the request for participation is submitted?	Yes/no
Sound performance	Have the construction activities (so far) been performed to the satisfaction of the contracting authority?	Yes/no
<b>B. Project financing</b>		
Infrastructural or similar project	Is this reference project an infrastructural project within the meaning of article 3.13.2 of the Tendering Guidelines or a similar project?	Yes/no
Contract value	Does the contract value amount at least to € 50,000,000 exclusive of VAT?	Yes/no
Project financing	Was the Candidate involved in an important role in the conclusion of financing agreement(s) for the purpose of project financing between a special purpose vehicle and the providers of loan capital, where the facilities provided to the special purpose vehicle had a joint value of at least 50% of the present value?	Yes/no

Thus signed in [city], [date]

[name Candidate / Significant Subcontractor],

[name of person authorised as representative]

[function]

[signature]

**schedule 2.6: Third-party Statement regarding grounds for exclusion**

(to be submitted by all parties that are not part of the Candidate (SPV or SPV under incorporation), but which are relied upon by the Candidate in order to comply with the suitability requirements)

EXPIRED

**schedule 3: The Draft DBFM Agreement and Schedule 1 Definitions  
pertaining to the DBFM Agreement**

**The Draft DBFM Agreement will be released on 16 February 2017.**

#### **schedule 4: Submission Form First Phase of the Dialogue**

[name of Candidate] declares that:

1. He has read the Tendering Guidelines and unconditionally agrees with the procedure described therein;
2. All the information he has provided and will provide to the Contracting Authority in connection with this tendering procedure is accurate;

Signed in [place], [date]

[name of Candidate],

[name of person authorised as representative]

[function]

[signature]

## **schedule 5: Shortlisting Product**

### **1. Introduction**

The Contracting Authority bases the Shortlisting Product on the risks and opportunities of the Project as referred to in Schedule 6: Shortlisting Product Calculation Sheet, First Phase of the Dialogue

### **2. Shortlisting Product requirements**

The Shortlisting Product comprises:

- the strategic approach and corresponding risk management measures for the risks specified by the Contracting Authority;
- the strategic approach and corresponding measures for the opportunities specified by the Contracting Authority;

The Shortlisting Product must consist of a file with the elaboration of the above-mentioned (risk management) measures for the risks and opportunities that meets the following requirements:

- Document in A4 format of 16 pages maximum
- Verdana font;
- font size of at least 9 points;
- line spacing of at least 1;
- full page with margins of 2 cm on top, below, left and right

A front cover and a back cover (where relevant together in the form of a cover binder) can be submitted together with the Shortlisting Product, in addition to the above-listed six pages.

#### **2.1 Risks and opportunities**

In the Shortlisting Product, the Candidate must:

- a) Specify its strategic approach for each risk and for each opportunity (with vision and analysis), and
- b) Specify the risk management measures that reduce the chance of the risks occurring and/or the consequences of the risks, and
- c) Specify the measures to fill in the opportunities, and
- d) Provide a substantiation with the (risk management) measures explaining why those (risk management) measures will be effective.

#### **2.2 Conditions for risks and opportunities**

The Candidate elaborates the strategic approach and the (risk management) measures in accordance with the following conditions:

- The Candidate describes its strategic approach and vision with regard to minimising the risk concerned or filling in the relevant opportunity. As part of this, the Candidate prepares an analysis of the factors crucial to minimising the risk concerned or filling in the relevant opportunity.
- The Candidate describes as SMARTly as possible, for each risk and for each opportunity which (risk management) measures it will be taking to minimise that risk or fill in that opportunity and what impact the application of those (risk management) measures will have on minimising the relevant risk or filling in the relevant opportunity.

- The Candidate provides a substantiation of the impact for each (risk management) measure. "Substantiation" means: Explanation to convince the Contracting Authority that the (risk management) measure will be effective.
- For each (risk management) measure (or set of measures) the Candidate demonstrates that the (risk management) measures will not cause the Ceiling Price to be exceeded. The more obvious this is, the shorter the explanation can be.
- The (risk management) measures must comply with the Tender Documents.
  - Candidates are not permitted to propose (risk management) measures that conflict with the DBFM Agreement, the National Integration Plan Afsluitdijk, National Integration Plan Windpark Fryslân, Provincial Integration plan (Fish Migration River), National Integration Plan Afsluitdijk - Connection to the Wieringen dike ring or statutory requirements and legislation.
- The Candidate may only propose (risk management) which it will implement as the Contractor. This means that no (risk management) measures may be proposed which entail the combined efforts of the Contractor and Principal or third parties (other than subcontractors);
- The application of the (risk management) measures may not be made contingent upon a choice to that effect made by the Principal or third parties (other than subcontractors).
- No (risk management) measures may be proposed that are implemented in the period prior to the Contract Date;
- The strategic approach and (risk management) measures must be mentioned separately in the Shortlisting Product for each specified risk or defined opportunity, so that they can be assessed independently of each other. If one aspect of the strategic approach or a (risk management) measure is proposed for various risks or different opportunities, this must be included separately for each risk or for each opportunity.
- The strategic approach and (risk management) measures submitted by the Candidate must be consistent with the other components of the Shortlisting Product.
- The Contracting Authority does not regard a statement by the Candidate that it will assume the risk of a Compensation Event or a Delay Event at the time of the Tender - or words to that effect - as a risk management measure. Taking over a risk from the Contracting Authority is not considered to be a risk management measure in this context either.

Failure to satisfy the above conditions will not render the Shortlisting Product invalid, but will result in a lower rating for the product.

### **3 Assessment of Shortlisting Product**

The Contracting Authority will award an assessment score for the whole of the strategic approach and the (risk management) measures for each individual risk and for each individual risk and each individual opportunity. For risks, the Contracting Authority assigns a rating for the degree to which the whole of the strategic approach and the risk management measures contributes to minimising the relevant risk. For opportunities, the Contracting Authority assigns a rating for the degree to which the whole of the strategic approach and the measures substantiate the relevant opportunity.

The following are taken into account here:

- The points of attention specified with the relevant risk or relevant opportunity in Table EMAT-BVFM criteria in Schedule 7; and
- The insight into the nature of the Project demonstrated by the Candidate when setting out the (risk management) measures; and
- The relevance and viability of the (risk management) measure; and

- The extent to which the (risk management) measures are formulated more Smartly, and
- The extent to which the effectiveness of the (risk management) measures are properly and convincingly substantiated.

For each section, the assessment score consists of a whole assessment score between a minimum of 2 and a maximum of 10 points. More than one Candidate may be awarded the same rating for the elaboration.

If a Candidate proposes the exact same (risk management) measure several times, it will not automatically lead to a better score. In this situation, the Candidate must state, for the sake of completeness, individually, for each risk or each opportunity, if (risk management) measures for several risks or several opportunities are relevant, so that the different risks or opportunities can be assessed independently from each other.

The Contracting Authority will multiply the assessment scores obtained by a Candidate by the weighting factor stated for the section in question in the calculation sheet (schedule 6) and add together the scores obtained. The three Candidates with the highest evaluation (total of all points scored for all sections) will proceed to the Second Phase of the Dialogue.

If two or more Candidate have received the same total score, meaning than more than three Candidates would be eligible to participate in the Second Phase of the Dialogue, the Candidate with the highest score for Risk 1.3: "The risk of the Sluicing agent not functioning so that SYS-0044 or SYS-0041 is not complied with" passes to the Second Phase of the Dialogue. If the relevant Candidates also receive the same score for Risk 3.1, the Candidate with the highest score for Opportunity 1.8: "The opportunity for a satisfied waterway/road user, other than described in opportunity 1.6 and/or 1.7" passes to the Second Phase of the Dialogue.

If the relevant Candidates also have the same score for Opportunity 1.8 in the end, lots will be drawn to decide which of them will be invited to participate in the Second Phase of the Dialogue, as stipulated in paragraph 4.8 of the Tendering Guidelines.

## **schedule 6: Calculation sheet Shortlisting First Phase of the Dialogue**

### **Shortlisting in First Phase of the Dialogue based on Shortlisting Product**

<b>Criterion</b>	<b>Assessment score</b>	<b>weighting factor</b>	<b>SCORE ACHIEVED</b>
Risk 1.3: The risk of the Discharging Sluices not functioning so that SYS-0044 or SYS-0041 is not complied with.		1	
Risk 1.5: The risk that it turns out, during verification of the Den Oever pumps and Dijk , that SYS-0044, SYS-0041 and condition 12 of the NB Act permit are not complied with.		1	
Opportunity 1.6 The opportunity for a satisfied environment, other than as a consequence of filling in opportunity 1.7 as referred to in Schedule 7 and/or opportunity 1.8.		1	
Opportunity 1.8 The chance of a satisfied waterway/road user, other than as a consequence of filling in opportunity 1.6 and/or opportunity 1.7 as referred to in Schedule 7.		1	
<b>Total score</b>			

#### **Assessment score**

The assessment scores range from 10 to 2. Each assessment score awarded by the assessment team is a team result agreed by consensus and is not an average of individual scores.

<b>Assessment score</b>	<b>Rating</b>
10	Excellent
9	Very good
8	More than satisfactory to good
7	Reasonable to satisfactory
6	Not
5	Reasonably insufficient to insufficient
4	Insufficient to less than unsatisfactory
3	Poor
2	Very poor

#### **Assessment score lower than 6**

An assessment score lower than 6 is possible if a solution offered is inadequate, negative or hazardous because it, for example:

- Fails to comply with the current state of the art or knowledge, and the Candidate consequently offers an obsolete product or method while better alternatives are available;
- Entails risks that are difficult to control;

In addition, an assessment score lower than 6 can be given if the Candidate does not give any consideration, or not enough consideration, to what is requested in the framework of the Shortlisting Product.

## **schedule 7: EMAT-BVFM table and calculation sheet EMAT-BVFM**

The following criteria are applied when assessing which tenderer has submitted the economically most advantageous tender with the best price-quality ratio:

1. The neutralised present value
2. The Risk and Opportunity plan
3. The Sustainability Plan

### **Ad. 1 The neutralised present value**

The neutralised present value is calculated as described in paragraph 7.7.2 of these guidelines, under "point a)".

### **Ad. 2 The Risk and Opportunity plan**

#### **2.1 Introduction**

The Contracting Authority bases the Risk and Opportunity plan on the risks and opportunities of the Project as referred to in the table EMAT-BVFM criteria included in this schedule.

#### **2.2 Risk and Opportunity plan requirements**

The Risk and Opportunity plan comprises:

- the strategic approach and corresponding risk management measures for the risks specified by the Contracting Authority;
- the strategic approach and corresponding measures for the opportunities specified by the Contracting Authority;

The Risk and Opportunity plan must consist of a file with the elaboration of the above-mentioned (risk management) measures for the risks and opportunities that meets the following requirements:

- Document in A4 format of 50 pages, at maximum
- verdana font;
- font size of at least 9 points;
- line spacing of at least 1;
- full page with margins of at least 2 cm on top, bottom, left and right.

A front cover and a back cover (where relevant together in the form of a cover binder) may be added to the Risk and Opportunity Plan, in addition to the above listed 50 pages.

According to the stipulations in Section 4.4 of these Tendering guidelines, the Risk and Opportunity plan must continue building on the Shortlisting Product submitted by the Tenderer in the First Phase of the Dialogue.

#### **2.2.1 Risks and opportunities**

In the Risk and Opportunity plan, the Candidate must:

- a) Specify its strategic approach for each risk and for each opportunity (with vision and analysis); and
- b) Specify the risk management measures that reduce the chance of the risks occurring and/or the consequences of the risks, and
- c) Specify the measures to fill in the opportunities, and
- d) Provide a substantiation with the (risk management) measures explaining why those (risk management) measures will be effective.

### **2.2.2 Conditions for risks and opportunities**

The Candidate elaborates the strategic approach and the (risk management) measures in accordance with the following conditions:

- The Candidate describes its strategic approach and vision with regard to minimising the risk concerned or filling in the relevant opportunity. As part of this, the Candidate prepares an analysis of the factors crucial to minimising the risk concerned or filling in the relevant opportunity.
- The Candidate describes as SMARTly as possible, for each risk and for each opportunity which (risk management) measures it will be taking to minimise that risk or fill in that opportunity and what impact the application of those (risk management) measures will have on minimising the relevant risk or filling in the relevant opportunity.
- The Candidate shall provide a substantiation of the impact for each (risk management) measure. "Substantiation" means: Explanation to convince the Contracting Authority that the (risk management) measure will be effective.
- The (risk management) measures must comply with the Tender Documents.
- Candidates are not permitted to propose (risk management) measures that are contrary to the DBFM Agreement, the National Integration Plan Afsluitdijk, National Integration Plan Windpark Fryslân, Provincial Integration plan (Fish Migration River), National Integration Plan Afsluitdijk - Connection to the Wieringen dike ring\*\* or statutory and regulatory requirements.
- The Candidate may only propose (risk management) which it will implement as the Contractor. This means that no (risk management) measures may be proposed which entail the combined efforts of the Contractor and Principal or third parties (other than subcontractors);
- The application of the (risk management) measures may not be made contingent upon a choice to that effect made by the Principal or third parties (other than subcontractors).
- No (risk management) measures may be proposed that are implemented in the period prior to the Contract Date;
- The strategic approach and (risk management) measures must be mentioned separately in the Risk and Opportunity plan for each specified risk or defined opportunity, so that they can be assessed independently of each other. If one aspect of the strategic approach or a (risk management) measure is proposed for various risks or different opportunities, this must be included separately for each risk or for each opportunity.
- The strategic approach and (risk management) measures submitted by the Candidate must be consistent with the other components of the Shortlisting Product.
- The Contracting Authority does not regard a statement by the Candidate that it will assume the risk of a Compensation Event or a Delay Event at the time of the Tender - or words to that effect - as a risk management measure. Taking over a risk from the Contracting Authority is not considered to be a risk management measure in this context either.

### **2.3 Risk and Opportunity plan assessment**

The Contracting Authority will award an assessment score for the whole of the strategic approach and the (risk management) measures for each individual risk and for each individual risk and each individual opportunity. For risks, the Contracting Authority assigns a rating for the degree to which

the whole of the strategic approach and the risk management measures contributes to minimising the relevant risk. For opportunities, the Contracting Authority assigns a rating for the degree to which the whole of the strategic approach and the measures substantiates the relevant opportunity.

The following are taken into account here:

- The points of attention specified with the relevant risk or relevant chance in Table EMAT-BVFM criteria; and
- The insight into the nature of the Project demonstrated by the Candidate when setting out the (risk management) measures; and
- The relevance and viability of the (risk management) measure; and
- To what extent the (risk management) measures are formulated more SMARTly, and
- The extent to which the effectiveness of the (risk management) measures are properly and convincingly substantiated.

For each section, the assessment score consists of a whole assessment score between a minimum of 2 and a maximum of 10 points. More than one Candidate may be awarded the same rating for the elaboration.

If a Candidate proposes the exact same (risk management) measure several times, it will not automatically lead to a better score. In this situation, the Candidate must state, for the sake of completeness, individually, for each risk or each opportunity, if (risk management) measures for several risks or several opportunities are relevant, so that the different risks or opportunities can be assessed independently from each other.

#### **2.4. Incorporation into the DBFM Agreement**

The Risk and Opportunity Plan of the Preferred Tenderer – including the (risk management) measures included in it – will be included in Schedule 8 part 1 (Risk and Opportunity Plan) of the DBFM Agreement. The Contracting Authority reserves the right not to include parts of the Risk and Opportunity Plan, including (parts of) the risk management measures, in Schedule 8 part 1 of the DBFM Agreement and incorporate (parts of) the measures in other parts of the Agreement, such as Schedules 1, 2 and 3. The Contractor must comply with the Risk and Opportunity Plan (Article 8.1 c, DBFM Agreement) when implementing the Work

#### **Ad. 3 The Sustainability Plan**

It is the explicit desire of the Contracting Authority to have the RWS Infrastructure developed and kept available in a sustainable way. This means that as much sustainable development as possible is encouraged. This schedule is composed of four parts:

- a) The Energy Dike Plan;
- b) Simulating a low-energy design with the aid of the CO2 performance ladder.
- c) Limiting the environmental impact caused by the choice of materials and method with the aid of DuboCalc (Sustainable construction calculator);
- d) The Social Return Plan.

#### **A. Energy Dike Plan**

##### **A.1 Introduction**

The energy consumption at the Afsluitdijk will increase in the future due to the use of pumps to discharge the water from the IJsselmeer to the Wadden Sea.

## A.2 Objective

The Contracting Authority's objective is to keep the Afsluitdijk energy neutral for as long as possible.

The Tenderer is expected to demonstrate by means of an Energy Dike Plan how and to what extent it contributes to realising the 'Contracting Authority's objective' by generating energy from the sustainable sources sun and water.

## A.3 Energy Dike Plan requirements

### A.3.1 Table of Contents

The Energy Dike Plan must consist of the following three sections:

a) Strategic approach

The Tenderer makes an analysis of what is crucial for realising the 'Contracting Authority's objective'

b) Measures

The Tenderer offers SMARTly formulated measures with which it contributes to realisation of the 'Contracting Authority's objective'

Attention must be focused on at least the following here:

- Description of the measures;
- Description and substantiation of the intended effect of the measures

c) Quantitative consumption analysis

The Tenderer provides insight into the estimate of the energy consumption by Den Oever Pumps using the following table:

<b>T</b> <b>(period of 4 Quarters)</b>	<b>E<sub>T</sub></b> <b>(MWh)</b>
T = 1	[••]
T = 2	[••]
T = 3	[••]
T = 4	[••]
T = 5	[••]
T = 6	[••]
[••]	[••]
<b>Total</b>	[••]

Where:

- T is a period of 4 Quarters in the Operational Phase, in which T=1 presents the period starting on the first day of the Quarter in which the Availability Date occurs, and T=25 presents the period ending on the last day of the Quarter preceding the Quarter in which the Expiry Date occurs;
- E<sub>t</sub> (MWh) the estimated energy consumption of Den OeverPumps is determined in period T according to the procedure described in the benchmark protocol.

The table above is subject to a benchmark performed by the Contracting Authority. The Contracting Authority will make the benchmark protocol available during the dialogue.

The Energy Dike Plan must comply with the Tender Documents.

### **A.3.2 Layout and size of the Energy Dike Plan**

The Energy Dike Plan must meet the following requirements:

- Document in A4 format of no more than 15 pages (including schedules and not including the front and back cover and the table of contents).
- Font is Verdana;
- Font size is at minimum 9 points;
- Line spacing at least 1;
- Full page with margins of at least 2 cm on top, below, left and right;
- The elaboration of the three components set forth in a separate chapter;

### **A.4 Energy Dike Plan Assessment**

The Contracting Authority assesses the Energy Dike Plan first of all for validity according to Section A.3 (*Energy Dike Plan requirements*) of the Energy Dike Plan.

The Contracting Authority can invalidate an Energy Dike Plan that does not meet the requirements and exclude the Tenderer from (further) participation in the tender procedure. Section 2.3 of these Tendering Guidelines applies to a decision of this purport.

Once the Energy Dike Plan has been validated, the Contracting Authority will award one assessment score to the Energy Dike Plan. This assessment score is based on the components referred to in Section A.3.1 (Table of Contents) under (a) and (b) of the Energy Dike Plan. Component (c) is not part of the assessment score.

This involves absolute assessment. Thus Tenderers can receive the same rating for the Energy Dike Plan. The Contracting Authority assesses the Energy Dike Plan on the basis of the extent to which the Energy Dike Plan contributes to realising the 'Contracting Authority's objective' formulated. The greater the contribution to realisation of the objective after the whole of the strategic approach and the measures has been applied, the higher this is scored. In addition, the following applies, the SMARTer the measures and their effect are formulated, the higher the Energy Dike Plan is scored.

### **A.5 Incorporation into the DBFM Agreement**

The Energy DIke Plan submitted by the Tenderer, including the measures in it, will be incorporated into Schedule 8, Part 2 (Sustainability Plan) of the DBFM Agreement. The filled in table required in Section A.3.1 (Table of Contents) under (c) of the Energy Dike Plan is included in Chapter [7.2] of Schedule 2 of the DBFM Agreement.

The Contracting Authority reserves the right not to include parts of the Energy Dike Plan, including (parts of) the measures, in Schedule 8 part 2 of the DBFM Agreement and incorporate (parts of) the measures in other parts of the Agreement, such as Schedules 1, 2 and 3. The Contractor must comply with the Energy Dike Plan (Article 8.1 sub c of the DBFM Agreement) when implementing the Work.

## **B. CO2 performance ladder**

### **B.1 Introduction**

The Contracting Authority aims to reduce the CO2 emission in the performance of infrastructural works. This is only possible by and with an active effort made by the Contractor. The Contracting Authority has opted to use a framework in which the Candidates that contribute to this CO2 target during the implementation of the work are given an advantage in the awarding of the tender. If the

Tenderer opts to contribute to the Contracting Authority's CO2 target, the Tenderer can make a choice from five CO2 ambition levels. The higher the Tenderer's CO2 ambition level is, the higher the notional reduction of the neutralised cash value of the Tender will be.

The selected CO2 ambition level does not have to be pursued until after the Commencement Date. During the term of the DBFM Agreement, the Contractor will be required to demonstrate annually that implementation of the work will at least meet the presented CO2 ambition level. When submitting the tender, the Tenderer must already indicate how it will demonstrate, during implementation, that it complies with the CO2 ambition level it opted for. This can be done in two ways:

- a) By submitting a "CO2 Bewust" (CO2 Aware) certificate in keeping with the presented CO2 ambition level. If the Tenderer is a consortium of companies, each participant in the consortium must submit a CO2 Bewust certificate that is at least in keeping with the presented CO2 ambition level, or
- b) By submitting project-specific documents showing that the Agreement was performed in accordance with the criteria laid down in the tables included in the document 'Tendering Manual Version 3.0: the EMVI criterion CO2 performance ladder for contracting authorities' (05 February 2016, Foundation for Climate-friendly Tendering & Business Management). These criteria are also included in Schedule 7.2a below.

In the second method (providing project-specific documents of proof), the Tenderer must already indicate in its Tender which certifying institution (CI) will implement the test; the following conditions apply during implementation:

- documents of proof consist of a project dossier and an explanation of the CI referred to whether the ambition level proposed is complied with, including all underlying levels, and
- compliance with the ambition level proposed must be secured in the project management system used by the Contractor; and
- the Contractor has the designated CI test, on the basis of the project dossier and securing in the project management system, whether the ambition level proposed is complied with; and
- the Contractor demonstrates that the CI is accredited for certification at the level of the ladder certificate corresponding with the ambition level proposed, and that the person implementing the testing on behalf of the CI has verifiable experience with certification of companies at the level of the ladder certificate corresponding with the ambition level proposed; and
- testing by the CI takes place within one year after the order is awarded, and subsequently annually, during the time the Project is implemented; and
- If the Contractor has a CO2-awareness certificate at a lower ambition level, the Contractor can base the burden of proof in part on information from the management system belonging to the CO2-awareness certificate, but the proof must be provided entirely project-specifically, however, for the ambition level proposed, including all underlying levels (a mixed argumentation is not possible).

The standard EMVI criterion CO2 performance ladder is presented in the tables below. The definitions used in this EMAT criterion are explained in Schedule 8 **with the Tendering Manual version 3.0: The CO2-Performance ladder 3.0. Manual** For application of the EMVI criterion, the Manual is normative with regard to the explanation of the definitions and standards used in the tables below. A company which wants to be certified at a certain level will of course have to meet all requirements in the Manual. However, a company only wanting to demonstrate for a specific project that it has complied with a certain level in implementing the project only needs the Manual

for explanation of the definitions and standards used in the tables below. This has already been taken into consideration in drafting the standard EMAT criterion, since these phrasings emanate from the project, and not the entire company. The five CO2 ambition blows below are recognised as part of the Economically Most Advantageous Tender (EMAT).

<b>Level 1: CO<sub>2</sub>-AMBITION LEVEL 1</b>					
	<b>Aspect</b>	<b>Sub-criteria</b>		<b>Aspect</b>	<b>Sub-criteria</b>
<b>1A</b>	<b>Energy consumption</b>	<b>1.</b> Identification and analysis of anticipated and actual energy flows for the project has taken place.	<b>1B</b>	<b>Energy reduction</b>	<b>1.</b> The Contractor verifiably examines the possibilities to reduce the energy consumption of the project.
		<b>2.</b> All anticipated and actual energy flows of the project are mapped verifiably.			<b>2.</b> The Contractor draws up a report of an independent internal inspection for the project.
		<b>3.</b> During the turnaround time of the project, this list is regularly followed up and kept up to date.			
<b>1C</b>	<b>Communication</b>	<b>1.</b> The Contractor verifiably communicates internally on an ad-hoc basis on the energy reduction policy of the project.	<b>1D</b>	<b>CO2 reduction initiatives</b>	<b>1.</b> The Contractor demonstrates it is aware of sector and/or supply chain initiatives in the area of CO2 reduction that are relevant to the project.
		<b>2.</b> The Contractor: communicates verifiably externally on an ad-hoc basis on the energy reduction policy of the project.			<b>2.</b> The Contractor is aware of the sector and supply chain initiatives and their relevance to the project and discusses this in the management meeting.

<b>Level 2: CO2 AMBITION LEVEL 2</b>					
	<b>Aspect</b>	<b>Sub-criteria</b>		<b>Aspect</b>	<b>Sub-criteria</b>
<b>2A</b>	<b>Energy consumption</b>	<b>1.</b> All anticipated and actual energy flows of the project are mapped quantitatively.	<b>2B</b>	<b>Energy reduction</b>	<b>1.</b> The Contractor formulates a qualitatively defined objective to reduce energy and has designated measures for the project.
		<b>2.</b> The list is complete and is regularly followed up during the turnaround time of the project and kept up to date.			<b>2.</b> The Contractor formulates a defined objective for the use of alternative fuels and/or the use of green power at the project.
		<b>3.</b> The Contractor draws up a energy assessment for the project.			<b>3.</b> The energy and reduction objective and the corresponding measures are documented, implemented and communicated to all employees of the Contractor insofar as involved in the project.
<b>2C</b>	<b>Communication</b>	<b>1.</b> The Contractor structurally communicates internally on the energy policy of the project. The communication comprises at minimum the energy policy and reduction objectives of the project.	<b>2D</b>	<b>CO<sub>2</sub>-reduction initiatives</b>	<b>1.</b> The Contractor verifiably examines the possibilities of implementing project-specific measures ensuing from relevant initiatives in the project.
		<b>2.</b> The Contractor realises with respect to CO <sub>2</sub> -reduction an effective control cycle with designated responsibilities for the project.			
		<b>3.</b> The Contractor identifies the external stakeholders for the project.			

Level 3: CO2 AMBITION LEVEL 3					
	Aspect	Sub-criteria		Aspect	Sub-criteria
3A	CO <sub>2</sub> emission	<p><b>1.</b> The Contractor draws up a report of</p> <ul style="list-style-type: none"> <li>a. the anticipated scope 1 &amp; 2 emissions of the entire project and</li> <li>b. the elaborated current emission inventory for the actual scope 1 &amp; 2 emissions of the project, in accordance with ISO 14064-1.</li> </ul>	3B	CO <sub>2</sub> -reduction	<p><b>1.</b> The Contractor formulates a quantitative reduction objective for scope 1 &amp; 2 emission of the project, expressed in absolute figures or percentages in comparison with one or more relevant reference(s) and within a certain period of time, and has drawn up a corresponding plan of approach including the measures.</p>
		<p><b>2.</b> The emission inventory from 1B of the project is verified by a CI with at least a limited degree of certainty.</p>			<p><b>2.</b> The Contractor uses an Energy management action plan/system in the project (according to NEN-ISO 50001 or equivalent).</p>
3C	Communi-cation	<p><b>1.</b> The Contractor: structurally communicates internally AND externally on the CO<sub>2</sub> footprint (scope 1 &amp; 2 emissions), the quantitative reduction objective(s) and the measures in the project. The communication comprises, at a minimum, the energy policy and the reduction objectives of the project, a description of the reference(s) used, options for an individual contribution, information on the current energy consumption and trends in the project.</p>	3D	CO <sub>2</sub> -reduction initiatives	<p><b>1.</b> The Contractor demonstrates that specific measures derived from a (sector or supply chain) initiative in the area of CO<sub>2</sub> reduction are made.</p>
		<p><b>2.</b> The Contractor draws up a documented internal AND external communication plan with tasks, responsibilities and ways of communication set down.</p>			

Level 4: CO2 AMBITION LEVEL 4															
	Aspect	Sub-criteria		Aspect	Sub-criteria										
<b>4A</b>	<b>CO<sub>2</sub> emission</b>	<p><b>1.</b> The Contractor demonstrates that it has insight in the most material emissions to be expected from scope 3 for the project, and demonstrates, for one of the most material (supply chains of) activities of the project, the CO<sub>2</sub> emission per unit.</p>	<b>4B</b>	<b>CO<sub>2</sub>-reduction</b>	<p><b>1.</b> The Contractor formulates, on the basis of the insight into the material emissions to be expected from scope 3 of the project, linked to it, a CO<sub>2</sub> reduction objective and has drawn up a corresponding plan of approach including the measures to be taken.</p> <p>The objective is expressed in an absolute number or percentage in relation to one (or several) relevant reference(s) and within a specified period.</p>										
						<p><b>2.</b> The Contractor draws up a quality management plan for the project inventory.</p>	<p><b>2.</b> The Contractor periodically reports (internally AND externally) on the progress with respect to the objectives for the project.</p>								
								<b>4C</b>	<b>Communi-cation</b>	<p><b>1.</b> The Contractor demonstrates that it will maintain a regular dialogue (at least 2x per year with stakeholders in government and NGOs, for example (at a minimum of 2) on its CO<sub>2</sub> reduction objective and measures in the project*.</p>	<b>4D</b>	<b>CO<sub>2</sub>-reduction initiatives</b>	<p><b>1.</b> The Contractor demonstrates that it is capable of taking initiative in the application of innovative measures in the project that are aimed at CO<sub>2</sub> reduction and also facilitate the sector to achieve CO<sub>2</sub>-reduction by connecting the company name to the initiative in the project, by means of publications and confirmation of stakeholders.</p>		
														<p><b>2.</b> The Contractor demonstrates that the points of concern formulated by the government and/or NGO on the project have been identified and addressed*.</p>	
															<p>*: 4C 1.&amp; 2. apply to sizable long-term projects</p>

Level 5: CO2 AMBITION LEVEL 5					
	Aspect	Sub-criteria		Aspect	Sub-criteria
<b>5A</b>	<b>CO<sub>2</sub> emission</b>	<b>1.</b> The Contractor demonstrates it has current insight in the material scope 3 emissions of the project and the most relevant parties in the supply chain involved in this.	<b>5B</b>	<b>CO<sub>2</sub>-reduction</b>	<b>1.</b> The Contractor has formulated a reduction strategy for the material scope 3 emissions of the project, based on the analyses in 5.A.2, as well as CO <sub>2</sub> reduction objectives. A corresponding plan of approach has been drawn up, including the autonomous actions to be taken. Objectives are expressed in absolute figures or percentages with respect to one (or several) relevant reference(s).
		<b>2.1.</b> The Contractor has a substantiated and current analysis available of possible autonomous actions the Contractor can take in order to affect the material scope 3 emissions (upstream and downstream) of the project.			<b>2.</b> The Contractor submits its emission inventory of scope 1, 2 & 3-related CO <sub>2</sub> emissions (internally and externally) of the project at least twice per year, as well as the progress in reduction objectives and measures taken.
		<b>2.2.</b> The Contractor demonstrates it has insight in possible strategies in order to reduce these scope 3 emission of the project (both upstream and downstream).			<b>3.</b> The Contractor is successful in realising the reduction objectives.
		<b>3.</b> The Contractor must have current, specific emission data available, provided by direct (and potential) supply chain partners, which are relevant for implementation of the scope 3 strategy for the project (see 5.B.1).			
<b>5C</b>	<b>Communication</b>	<b>1.</b> The Contractor structurally communicates	<b>5D</b>	<b>CO<sub>2</sub>-reduction initiatives</b>	<b>1.</b> The Contractor uses the project as an open

Level 5: CO2 AMBITION LEVEL 5					
	Aspect	Sub-criteria		Aspect	Sub-criteria
		externally on the way the project functions as an open experimental plot for innovations or innovative measures and on the manner in which it has actively involved its supply chain partners.			experimental plot to make innovations or take innovative measures and actively involves its supply chain partners in this. The Contractor shall submit a description of intended CO <sub>2</sub> emission reduction as a result of the measure in the project.
		2. The Contractor structurally communicates (at minimum 2x per year) internally AND externally on the CO <sub>2</sub> footprint (scope 1, 2 & 3) and quantitative reduction objectives of the project.			2. The innovations or innovative measures are provided with professional comments by a knowledge institute certified as competent in this matter, as well as independent.
		The communication comprises at minimum the energy policy and the reduction objectives of the project, a description of the reference(s) used, options for an individual contribution, information on the current energy consumption and trends in the project.			

**B.2 Requirements for the CO2 performance ladder**

The Tenderer must state, using the format given in schedule 9.8, that it will take a sustainable approach to the DBFM Agreement during implementation and thus will adequately substantiate a CO2 reduction of the CO2 ambition level it has indicated.

**B.3 Method of assessing the CO2 performance ladder**

Each CO2 ambition level has an accompanying fixed percentage notional reduction of the neutralised cash value of the Tender, calculated according to section 7.7.2 of the Tendering Guidelines, presented in the table below.

<b>CO2 ambition level</b>	<b>Notional reduction in percentage of the neutralised cash value of the Tender</b>
Level 1:	1%
Level 2:	2%
Level 3:	3%
Level 4:	4%
Level 5:	5%

**B.4 Incorporation of the CO2 performance ladder into the DBFM Agreement**

The CO2 ambition level indicated by the Tenderer will be included in Schedule 8 part 2 (Sustainability Plan) of the DBFM Agreement.

**C. DuboCalc****C.1 Description of the environmental impact criterion for the use of material and work method.**

It is the wish of the Contracting Authority to have the infrastructure realized and kept available in a sustainable way. RWS regards sustainability as an important aspect in the performance of its social tasks. This means that sustainable development is encouraged in the supply chain where possible.

Tenderers can use the DuboCalc calculation program to calculate the environmental impact resulting from the choice of materials and working methods and energy consumption. The calculation program is used to calculate the Environmental Cost Indicator variable value with euros as the unit. The Environmental Cost Indicator is a measure of the environmental impact of a road building and hydraulic engineering project. The lower the ECI value, the less the environmental impact.

DuboCalc is a software tool, based on the life cycle analysis (LCA) for quantitatively determining the environmental impact of the material and energy consumption of a GRHE work (greenhouse effect, human toxicity, eutrophication, acidification, ozone layer depletion, ecotoxicity, etc.). The aspects that determine this environmental value include: the extraction and production of materials, the building of the infrastructure, energy consumption, maintenance work on the infrastructure and the environmental impact of demolishing and disposing of materials.

Energy consumption is not part of the scope of the DuboCalc calculation.

**2 Requirements for DuboCalc**

The Tenderer should provide an insight into the environmental impact caused by the choice of materials and working methods in the Development Phase, expressed as the Environmental Cost

Indicator value calculated using the DuboCalc calculation program. DuboCalc software 4.01.2 with DuboCalc library 4.03 is the version on which the Tenderer is to base his Tender. The Tenderer can download the DuboCalc calculation program via [www.dubocalc.nl](http://www.dubocalc.nl).

The said version will be used until the Completion Date. For the purpose of obtaining a Completion Certificate it must be shown what ECI value has been realized.

The Tenderer is to calculate the Environmental Cost Indicator value for the objects referred to in the table below for which the Tenderer uses the document 'Protocol for the use of DuboCalc for Sustainable RWS Procurement] (contractor version, V23, dated 03 May 2016, hereinafter referred to as 'the Protocol') and the 'FAQ DuboCalc calculation program' (version December 2014, hereinafter referred to as: 'FAQ', unless this Schedule 7 EMVI-BPKV-table and calculation sheet EMVI-BPKV ad 3 Sustainability Plan of the Tendering Guidelines stipulate otherwise.

### C.3 Scope calculation

The scope of the DuboCalc calculation is:

Object	Scope	Project life cycle for DuboCalc
1.1 Dike	All quantities of materials to be delivered, removed, and/or used, which will be applied and/or used in the Work for the Dike object in the period between the Commencement Date and the Completion Date pertaining to ground work and dike covering (including filter layers and geotextile)	100 years
1.6 Road	All quantities of materials to be delivered, removed, and/or used, which will be applied and/or used in the Work for the Road object in the period between the Commencement Date and the Completion Date.  The Road object consists of 1.6.2 Main Road network and 1.6.1 Underlying road network and underlying objects of 1.6.1 and 1.6.2 pertaining to the upper structure, as defined in the upper structure requirement document.	100 years

The objects are in accordance with Schedule 9 Programme of Requirements, Part 1 System definition.

In addition to the customary materials like sand, soil and clay, groundwork can also include other materials that are used as substitute(s) in the ground. Without being limitative, these may be materials like gravel, debris, granulates and IBC materials .

The Tenderer does not have to include materials moved on RWS premises and recycled.

In deviation from the stipulations in Section 7.1.1 of the Protocol, the default transport distance of an item included in the DuboCalc Library must not be deviated from.

In deviation from the stipulations in Section 7.1.3 of the Protocol, the default life cycle of an item included in the DuboCalc Library must not be deviated from.

#### **C.4 Element excluded**

The following elements are not part of the scope of the DuboCalc calculation:

- demolition and removal of existing installations and buildings;
- materials/plant and equipment used to make construction work possible (e.g., building cranes and scaffolding);
- materials for temporary structures, auxiliary structures and casing, with the exception of temporary flood defence and temporary sheet piling;
- the mechanical engineering components and electrical engineering installations;
- road furniture.
- zinc objects, geotextile;
- (service) buildings;
- noise barriers
- grout;
- energy consumption

#### **C.5 Use of new items (materials and processes) not incorporated into the DuboCalc Library**

If a material is not included in the DuboCalc Library, this is considered a new item. In case of a new item, the possibility exists for the Tenderer to carry out the ECI calculation of the new item with the aid of data that (as yet) are not included in the prescribed version of the DuboCalc Library.

In deviation from Section 7.2 of the Protocol, submitting deviating items is not possible.

The ECI-calculation of the new item should be prepared and tested in accordance with the SBK (Construction Quality Foundation) procedure specified in respect of category 1 and 2 data. This procedure consists of:

- a) An LCA (life cycle analysis) must have been submitted with the Tender, according to the requirements of the 'Determination Method of the Environmental Performance of Buildings, Earthworks and Hydraulic Works in effect, with the exception of the requirement referred to in Section 2.9 (Verification and validity of an EPD (EN 15804 9 Verification and validity of an EPD));
- b) The LCA submitted with the Tender must be established no later than 1 year after the Contract Date. This means that the LCA is tested according to Section 2.9 (Verification and validity of an EPD (EN 15804 9 Verification and validity of an EPD)). The tester should be an LCA expert included in the "Lijst van LCA-deskundigen die door SBK als toetser erkend zijn voor het toetsen van categorie 1 en 2 data ten behoeve van opname in de Nationale Milieudatabase" (List of LCA experts recognized as assessor by SBK for testing category 1 and 2 data for the purpose of inclusion in the National Environmental Database) in force. Furthermore, evidence must be provided in the form of a declaration from the verifying authority confirming that the LCA drawn up for the new items satisfies the requirements in relation to category 1 and 2 data. Alternatively, this evidence will also be deemed to have been provided if the SBK agrees to include the new items in the GWW National Environmental Database within 1 year after the Date of Agreement.

Further information describing the procedure to be followed can be found at the site of the National Environmental database: [milieudatabase.nl](http://milieudatabase.nl)

### **C.6 Requirements for the product to be delivered**

For the purposes of this section the Tenderer should complete and submit the following:

1. The Environmental Cost Indicator value calculated with DuboCalc for the scope set out above (0 decimal points);
2. An overview of the construction of the calculation on the basis of the DuboCalc report "Projectoverzicht beknopt" (Project overview summary);
3. If a new item is used, an LCA report that meets the requirements in the 'Determination Method of the Environmental Performance of Buildings, Earthworks and Hydraulic Works', with the exception of the items as referred to in Section 2.9 of the above-mentioned determination method, to substantiate the Environmental Cost Indicator value of that item and a specification of the contribution of the new item to the overall presented Environmental Cost Indicator value.

### **C.7 DuboCalc assessment method:**

The Contracting Authority will assess the documents to be submitted first and foremost on the basis on validity.

The maximum notional reduction of the tender sum that is included in the valuation of the Tender of this component amounts to EUR 30,000,000.

The notional reduction that the Tenderers are given with their Tenders is calculated as follows:

- for an offered ECI value of 18,600,000.00 or less a notional reduction of EUR 30,000,000 is awarded;
- for an offered ECI value of 41,400,000 or more no notional reduction is awarded;
- a linear reduction is applied for a presented Environmental Cost Indicator between 41,400,000 and 18,600,000.

The amounts of the notional deduction are rounded off to the closest amount in whole Euros, where a sum of 0.5 Euros or more is rounded off upwards and an amount of less than 0.5 Euros is rounded off downwards.

The presented Environmental Cost Indicator value may be departed from after the contract is awarded provided that the Environmental Cost Indicator value for this work is equal to or lower than the presented Environmental Cost Indicator value.

### **C.8 DuboCalc incorporation into the DBM Agreement**

The Environmental Cost Indicators calculated by the Tenderer (being the Environmental Cost Indicator value in euros presented by the Tenderer in its Tender) will be included in Schedule 2 (Payment Mechanism), Section 8.1 (Offsetting DuboCalc) of the DBFM Agreement.

The structure of the calculation based on the report 'Concise Project Overview' from DuboCalc will be included in Schedule 8 part 2 (Sustainability Plan) of the DBFM Agreement.

If it concerns the use of a new item, the LCA report submitted by the Tenderer will also be included in Schedule 8 part 2 (Sustainability Plan) of the DBFM Agreement.

## **D. Plan of approach for Social Return**

### **D.1 Introduction**

The Client in this Project regards social return as an important aspect in the performance of its social tasks.

### **D.2 Objective social return in Afsluitdijk**

The objective of the Client is that the Contractor create as much sustainable employment as possible in implementing the Work, for people far removed from the labour market, and prepares as many people far removed from the labour market for sustainable work.

In the framework of this Project, the following people qualify as people far removed from the labour market if they:

- have been unemployed for a minimum of three months and are registered with a benefit agency like UWV Werkbedrijf\*\*, a municipality or a comparable agency; and/or
- has left school prematurely; and/or
- are covered by the WSW-, WGA/WIA/WAO, Wajong or NUG schemes, or a comparable scheme abroad.

The Tenderer is expected to demonstrate by means of a social return Plan of Approach how and to what extent it contributes to realising the 'Contracting Authority's objective'.

### **D.3 Requirements for the social return Plan of approach**

#### **D.3.1 Table of Contents**

The social return Plan of approach must consist of the following 2 components:

- a) Strategic approach  
The Tenderer makes an analysis of what is crucial for realising the 'Contracting Authority's objective'
- b) Measures  
The Tenderer offers SMARTly formulated measures with which it contributes to realisation of the 'Contracting Authority's objective' when implementing the Work.  
Attention must be focused on at least the following here:
  - Description of the measures;
  - Description and substantiation of the intended effect of the measures

The social return Plan of approach must comply with the Tender Documents

#### **D.3.2 Lay-out and maximum size**

The design action plan may have a size of no more than 10 pages (including schedules and exclusive of front and back cover and table of contents);

The layout of the social return Plan of approach is subject to the following requirements:

- Paper format is A4;
- Font is Verdana;
- Font size of at least 9 points throughout the document;
- Line spacing at least 1;
- Full page with margins of at least 2 cm on top, below, left and right;
- The elaboration of the three components are set forth in a separate chapter;

### **D.4 Social Return Plan of approach**

The Contracting Authority first of all assesses the social return Plan of approach in accordance with Chapter D.3 'Requirements for the social return Plan of approach' for validity.

The Contracting Authority can invalidate a social return Plan of approach that does not meet the requirements and exclude the Tenderer from (further) participation in the tender procedure. Section 2.3 of these Tendering Guidelines applies to a decision of this purport.

Once the social return Plan of approach has been validated, the Contracting Authority will award one assessment score to the Energy Dike Plan.

This involves absolute assessment. Thus Tenderers can receive the same rating for the social return Plan of approach.

The Contracting Authority assesses the social return Plan of approach on the basis of the extent to which the social return Plan of approach contributes to realising the 'Contracting Authority's objective' formulated in D.2. The greater the contribution to realisation of the objective of the whole of the strategic approach and the measures, the higher this is scored. Besides that, the SMARTer the measures and their effect are formulated, the higher the social return Plan of approach is scored.

#### **D.5 Incorporation into the DBFM Agreement**

The social return Plan of approach submitted by the Tenderer, including the measures in it, will be incorporated into Schedule 8, Part 2 (Sustainability Plan) of the DBFM Agreement. The Contracting Authority reserves the right not to include parts of the social return Plan of approach, including (parts of) the measures, in Schedule 8 part 2 of the DBFM Agreement and incorporate (parts of) the measures in other parts of the Agreement, such as Schedules 1, 2 and 3. The Contractor must comply with the social return Plan of approach (Article 8.1 sub c of the DBFM Agreement) during the performance of the Work.

#### **Table of EMVI-BPKV criteria**

<b>Criteria</b>	<b>Sub-criteria</b>	<b>Points of attention</b>	<b>Contracting Authority's objective</b>
1. Risk and Opportunity plan	Risk 1.1: The risk of the decision of the competent administrative authority not being taken in a timely manner in accordance with the application on an application of the Contractor for a Permit to which the provisions of Schedule 9 (Schedule of Requirements), part 3 (Management Specifications), annex 1 (Permit Harmonisation Directive) apply, this insofar as the Contractor demonstrates that the submitted application satisfies applicable prerequisites for consideration, and that it complies with what may be expected from a careful Contractor (Schedule 1, definition Delay Event, sub f).	The extent to which the Objective of the Contracting Authority is achieved, including: <ul style="list-style-type: none"> <li>- the extent to which the schedule interacts with this;</li> <li>- the way communication contributes to this;</li> <li>- the way the National Monument status is dealt with.</li> </ul>	Reducing this risk.
	Risk 1.2: On the basis of Section 3 Coordination schedule sub (i) of	The extent to which the Objective of the Contracting Authority is achieved,	Reducing this risk.

Criteria	Sub-criteria	Points of attention	Contracting Authority's objective
	<p>Schedule 9, Part 3, Annex 4 (RWS Infrastructure Interface Coordination Scheme), the Client decides that a previously set down Coordination schedule is deviated from as a result of a desirable deviation from Windpark Fryslân BV (Schedule 1, definition Compensation Event, sub p); and</p> <p>On the basis of Section 3 Interface design sub (g) of Schedule 9, Part 3, Annex 4 (RWS Infrastructure Interface Coordination Scheme), the Client decides that the Contractor must adapt its Interface design as a result of an inconsistency with this of a design of Windpark Fryslân BV (Schedule 1, definition Compensation Event, sub q)</p>	<p>including:</p> <ul style="list-style-type: none"> <li>- the extent to which the schedule interacts with this;</li> <li>- the way communication contributes to this;</li> <li>- the way the design provides for this.</li> </ul>	
	<p>Risk 1.3: The risk of the Discharging sluices not functioning so that SYS-0044 or SYS-0041 is not complied with.</p>	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- the extent to which an 80-year old area is taken into account;</li> <li>- the way concrete damage is dealt with;</li> <li>- the way the fact that part of the area is not inspectable is taken into account.</li> </ul>	<p>Reducing this risk.</p>
	<p>Risk 1.4: The risk of the Den Oever navigation lock, the Kornwederzand navigation lock, the Kornwederzand moveable bridges and the Den Oever moveable bridges do not function as a result of the Work.</p>	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- the extent to which working in the physical presence of vulnerable infrastructure is given attention;</li> <li>- the way the interface pertaining to Industrial Automation is dealt with.</li> </ul>	<p>Reducing this risk.</p>
	<p>Risk 1.5: The risk that it turns out, during verification of the Den Oever pumps and Dijk, that SYS-0044, SYS-0041 and condition 12 of the NB Act permit are not complied with.</p>	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- the way the design provides for this;</li> <li>- the way the verification of pumps and sluices is interacted with;</li> <li>- the way the verification of the dike body** Afsluitdijk is interacted with.</li> </ul>	<p>Reducing this risk.</p>
	<p>Opportunity 1.6 The opportunity for a satisfied environment, other than as a consequence of filling in opportunity 1.7</p>	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p>	<p>Substantiating this opportunity.</p>

Criteria	Sub-criteria	Points of attention	Contracting Authority's objective
	and/or 1.8.	<ul style="list-style-type: none"> <li>- the extent to which synergy is accomplished with the ambitions of 'the New Afsluitdijk';</li> <li>- The extent to which the interests of residents, companies and other stakeholders (not being the manager and waterway/road users).</li> </ul>	
	Opportunity 1.7 the opportunity for a satisfied manager, other than as a consequence of filling in opportunities 1.6 and/or 1.8.	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- the extent to which the present discharge sluicing capacity can be retained;</li> <li>- The extent to which the discharge capacity is available during the Building Phase;</li> <li>- The extent to which the manager is facilitated in performing his tasks.</li> </ul>	Substantiating this opportunity.
	Opportunity 1.8 The opportunity for a satisfied waterway/road user, other than as a consequence of filling in opportunities 1.6 and/or 1.7.	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- The extent to which nuisance is limited;</li> <li>- The extent to which nuisance is predictable;</li> <li>- The extent of nuisance perception.</li> </ul>	Substantiating this opportunity.
	Opportunity 1.9 The opportunity that the Afsluitdijk becomes the paragon of innovative hydraulic engineering.	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- The extent to which innovative and future-oriented technology is used;</li> <li>- the way innovations can result in a paragon of contemporary hydraulic engineering;</li> <li>- the extent to which the architectonic and landscape design contributes to forming a positive idea about the hydraulic engineering solution.</li> </ul>	Substantiating this opportunity.
	Opportunity 1.10 The opportunity for more discharge capacity required in SYS-1709 in order to maintain the IJsselmeer water level.	<p>The extent to which the Objective of the Contracting Authority is achieved, including:</p> <ul style="list-style-type: none"> <li>- the extent to which the solution is future-proof;</li> <li>- the extent changes in climate</li> </ul>	Substantiating this opportunity.

<b>Criteria</b>	<b>Sub-criteria</b>	<b>Points of attention</b>	<b>Contracting Authority's objective</b>
		scenarios are interacted with.	
2. Sustainability Plan	2.1 Energy Dike Plan	The extent to which the Objective of the Contracting Authority is achieved, including: <ul style="list-style-type: none"> <li>- the extent to which energy consumption of Den Oever Pumps is limited;</li> <li>- the extent to which sustainable energy is generated.</li> </ul>	Seeing to it that the Afsluitdijk remains energy neutral as long as possible.
	2.2 CO2 performance ladder	The extent to which the Objective of the Contracting Authority is achieved.	CO2 emission reduction
	2.3 DuBo-Calc	The extent to which the Objective of the Contracting Authority is achieved.	Environmental impact reduction
	2.4 Social Return Plan	The extent to which the Objective of the Contracting Authority is achieved.	Creating sustainable employment for target groups far removed from the labour market and preparing as many people far removed from the labour market for sustainable work.

<b>EMAT-BPKV spreadsheet**</b>					
<b>Criteria</b>	<b>Sub-criteria</b>	<b>Maximum quality value (€)</b>	<b>Assessment score</b>	<b>Achieved quality value (€)</b>	<b>Totals (€)</b>
1. Risk and Opportunity plan	Risk 1.1	10000000			
	Risk 1.2	10000000			
	Risk 1.3	20,000,000			
	Risk 1.4	25,000,000			
	Risk 1.5	30,000,000			
	Opportunity 1.6	15000000			
	Opportunity 1.7	50000000			
	Opportunity 1.8	30,000,000			
	Opportunity 1.9	25,000,000			
	Opportunity 1.10	30,000,000			
2. Sustainability Plan	2.1 Energy Dike Plan	30,000,000			
	2.3 DuboCalc	30,000,000			
	2.4 Social Return	15000000			
Quality value quality criterion 1 to 2					
2.2 Quality value CO2 ambition (1, 2, 3, 4 or 5%) of the neutralised cash value					
Total quality value					
Neutralised present value					
Notional tender price(Neutralised present value minus the Total quality value)					

### **Quality criteria, performance criteria and maximum quality value**

The spreadsheet distinguishes between quality criteria and performance criteria. For a performance criterion the quality value achieved is calculated directly, i.e. without a quality assessment, by multiplying the performance units included in the tender by the value per performance unit. This is not possible for quality criteria, and the achieved quality value is identified on the basis of a score. The EMAT-BPKV spreadsheet\*\* states the maximum quality values to be obtained. These are shown at sub-criterion level.

**Achieved quality value**

A score is awarded for each criterion or sub-criterion for which the quality value has been shown. The maximum quality value is assigned for the score 10. The relationship between 'Score' and 'Achieved quality value' is otherwise linear. The table below contains the overview of the scores with the accompanying quality values.

**Quality value table**

The relationship between the assessment score, rating and quality value is as follows for all quality criteria:

<b>Assessment score</b>	<b>Rating</b>	<b>% of the maximum quality value</b>
10	Excellent	100
9	Very good	75
8	More than satisfactory to good	50
7	Reasonable to satisfactory	25
6	Not	0
5	Reasonably insufficient to insufficient	- 25
4	Insufficient to less than unsatisfactory	- 50
3	Poor	- 75
2	Very poor	- 100

The linear relationship: 'Achieved quality value' = ('Score' - 6)/4 \* 'Maximum quality value'.

**Assessment score lower than 6**

Assessment scores lower than 6 are possible if a criterion does not build on a requirement in the question specification and/or the Programme of Requirements. An assessment score lower than 6 is possible if a solution offered is inadequate, negative or hazardous because it, for example:

- fails to comply with the current state of the art or knowledge, and the Tenderer consequently offers an obsolete product or method while better alternatives are available, or
- Entails risks that are difficult to control;

In addition, an assessment score lower than 6 can be given if the Candidate does not give any consideration, or not enough consideration, to what is requested in the framework of the Risk and Opportunity Plan or the Sustainability Plan.

## **schedule 8: Other products**

### **Schedule 8.1 Basic Project Plan, including the phasing plan**

#### **1. Description**

The Basic Project Plan has the following four objectives:

- To establish the Scheduled Availability Date and the Scheduled Completion Date, which are part of DBFM Agreement;
- To lay down the basis for the Project Plan to define the Critical Delay and Critical Delay in Completion, also in relation to the General Contracting Authority Buffer incorporated by the Contractor;
- To record the basis for the Project Plan for external communications sent by RWS;
- Providing insight into the main phasing of the project with the aid of a phasing plan as part of the Basic Project Plan.

#### **2. Requirements for the Basic Project Plan**

##### **2.1 Contents**

- a) The Basic Project Plan must comprise the period from the Date of Agreement up to and including the Scheduled Completion Date;
- b) The Basic Project Plan should be consistent with all parts of the Tender;
- c) The Basic Project Plan must comply with the Tender Documents and in particular with the requirement ME\_01034 including the underlying requirements, in which regard the Basic Project Plan must be elaborated up to and including level III for the requirement ME\_01038. The requirement ME\_01037 does not have to be satisfied for the Basic Project Plan. After the Date of Agreement, the Basic Project Plan should be elaborated further into the Project Plan for the levels up to and including level IV.
- d) The Basic Project Plan includes the following planning restrictions:
  - i. Scheduled Availability Date: no later than 31 December 2022;
  - ii. Scheduled Completion Date should not be later than six months after the Scheduled Availability Date.

The Basic Project Plan shall include the report of the probabilistic analysis including a list of the top 15 current time-related Contracting Authority and Contractor risks that could threaten achievement of the milestones included in the Basic Project Plan.

##### **2.2 Layout**

The Basic Project Plan shall be submitted digitally in a file format that can be imported into the Contracting Authority's planning software (Primavera Professional R8.2).

##### **2.3 Tender documentation**

The Candidate shall submit the following planning together with the Tender:

1. The Basic Project Plan, with the following mutually consistent documents modelled on P85 in PDF and Primavera format:
  - a. An independently readable summary in A3 format, in accordance with ME\_01041;
  - b. An independently readable plan for Level I, in accordance with ME\_01038;
  - c. An independently readable plan for Level II, in accordance with ME\_01038;
  - d. An independently readable plan for Level III, in accordance with ME\_01038;

A P85 calculation for b., c. and d. will apply to these products, including the buffers from the Risk Management and Opportunities Plan that may have been offered as elaborated scenarios. The following principles should be applied to the above:

- The milestones associated with the Contracting Authority Risks from the Risk Management and Opportunities Plan are included;
  - The preventative risk management measures that may be offered in the Risk Management and Opportunities Plan for each of the Contracting Authority risks from the Risk Management and Opportunities Plan, modelled as P85 activity including the required P85 buffer;
  - The buffers for the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan that may have been offered, modelled with a chance of occurrence of at least 10% and a turnaround time of at least 50% of the offered buffer from the Risk Management and Opportunities Plan;
  - The required activities following use of the buffer for the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan, modelled as P85 activity including the required P85 buffer, these P85 buffers should not be included in the probabilistic analysis in accordance with requirements ME\_01044 and ME\_01045;
  - The relationship of the activities after the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan with the critical path shall be modelled. This relationship must be prior to the Contractor's buffer according to requirements MSP 01044 and MSP 01045 ;
  - The General Contingency Buffer should be modelled as a determination activity with a processing time in accordance with the definition in Schedule 1 of the DBFM Agreement.
2. The Basic Project Plan with an independently readable Level III plan, in accordance with ME\_01038 in a Primavera file and PDF.  
The following principles should be applied to the above:

- All Contractor activities should be deterministically modelled;
- The milestones associated with the Contracting Authority Risks from the Risk Management and Opportunities Plan are included;
- The preventative risk management measures that may be offered in the Risk Management and Opportunities Plan for each of the Contracting Authority risks from the Risk Management and Opportunities Plan are modelled deterministically;
- The buffers for the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan that may have been offered are modelled as determination activities with a turnaround time in accordance with the offered buffer from the Risk Management and Opportunities Plan;
- The required activities following use of the Risk Management and Opportunities Plan buffer for the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan are modelled as determination activity;
- The relationship of all activities after the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan with the critical path shall be modelled;
- The General Contingency Buffer should be modelled as a determination activity with a processing time in accordance with the definition in Schedule 1 of the DBFM Agreement; and
- The determination values of the activities listed under (I) should be traceably equal to the determination values of the activities listed under (II).

The Scheduled Availability Date for the Basic Project Plan for level III of section (II) should be either on, or prior to, the Scheduled Availability Date of the Basic Project Plan for level III from section (I).

The Candidate must submit the following documents together with the Tender;

1. A Buffer Register, listing:
  - The result of the Monte Carlo analysis in order to comply with requirements ME\_01044, including the required risk buffer in Calendar Days (Contractor Buffer);
  - A list of the buffers for the occurrence of each of the Contracting Authority risks from the Risk Management and Opportunities Plan that may have been offered;
  - The value of the General Contingency Buffer (in accordance with the definition in Schedule 1 of the DBFM Agreement)
2. An independently readable report on the Monte Carlo analysis in Word, in accordance with ME\_01044, including a list of the top 15 current time-related Contracting Authority and Contractor risks that could threaten achieving the milestones as incorporated in the Basic Project Plan, including the risk management measures to be implemented by the Contractor for each risk and the graph with the feasibility of the milestones for which at least 85% reliability can be assured. Candidate should also describe the assumptions and principles of the risk models.
3. The source file used for the Monte Carlo analyses of the risks on which the Basic Project Plan's risk models are based from sub I, paragraphs b, c and d, including the 3-point estimates of the applied risks.

### **3. Requirements for the phasing plan**

#### **3.1 Contents**

- a) The phasing plan should comply with the requirements specified in the Tender Documents;
- b) The phasing plan should be consistent with the Basic Project Plan;
- c) The phasing plan must provide insight into the building phasing during the Development Phase so that it can be monitored how the Basic Project Plan is structured and how the sequentiality of the activities from the Basic Project Plan was created;
- d) The phasing plan must provide an overview for each main phase of the closed or the obstructed traffic flows as part of the schematic representation of the RWS Area.

#### **3.2 Lay-out**

The phasing plan must present the information per main phase on a single A3 page in PDF format.

### **4. Method of assessment**

The validity of the Basic Project Plan and the phasing plan will be assessed by the Contracting Authority in accordance with Chapter 2 "Requirements for the Basic Project Plan" and Chapter 3 "Requirements for the phasing plan". The Basic Project Plan, including the phasing plan, does not contribute to the determination of the economically most advantageous tender.

### **5. Incorporation into the DBFM Agreement**

The Scheduled Availability Date and Scheduled Completion Date from the Basic Project Plan will be incorporated into Schedule 1 (*Definitions*) of the DBFM Agreement.

The Basic Project Plan, including the phasing plan, will be incorporated into schedule 8, part 3 (Basic Project Plan and phasing plan) of the DBFM Agreement.

The Project Plan should follow on from the Basic Project Plan and the phasing plan.

## **schedule 8.2: Start-up Phase Action Plan**

### **1. Description**

The start-up phase is the period commencing on the Contract Date and ending on the Commencement Date. The Action Plan start-up phase serves to create the foundations for a plan-based and controlled execution of the Work in the start-up phase. The Action Plan start-up phase should be elaborated in more detail after the Date of Agreement to form the Management Plan and should comply with the requirements in the Tender Documents.

### **2. Requirements for Start-up Phase Plan of approach**

#### **2.1 Contents**

In the Action Plan start-up phase, the Tenderer should state how the Contractor intends to implement the following during the start-up phase:

- a) the development of the Contractor's Management System, with a specific focus on the start-up phase. In this Action Plan start-up phase, the Tenderer should explain how the Contractor demonstrably shall work out a Management Plan in the period between the Date of Agreement and the Commencement Date that complies with the requirements of the DBFM Agreement and has been coordinated between all the parties involved. The Contractor must demonstrably comply with NEN-ISO-IEC 15288 (paragraph 6.4.6), the requirements prescribed in the Management specifications that are related to the NEN-ISO-IEC 15288 verification process (paragraph 6.4.6) and the requirements related to the verification process (NEN-ISO-IEC 15288, paragraph 6.4.8). In this respect, the Contractor must address the following subjects:
  - i. the operation of the triangle Principal - Contractor – road manager in order to start all Work on time in which regard interaction is required with the parties in the triangle; the Tenderer also provides a description of the process in order to realise the operation of the aforementioned triangle;
  - ii. acquiring the Performance Measurement System (PMS) in due time, putting it into operation and keeping it up to date with due observance of NEN-ISO-IEC 15288 (paragraph 6.3.7) and the requirements for the processes in the setup of the Performance Measurement System prescribed in the Management Specifications (paragraph 01.06.01) and the Output Performance Measurement System (paragraph 01.06.02);
  - iii. drawing up sectional plans, including the Plan for Conservation of Concrete Structures, in the start-up phase for Work that is to be executed immediately after the Commencement Date with due observance of NEN-ISO-IEC 15288 (paragraph 6.3.1) and consistent with the Basic Project Plan;
  - iv. setting up and manning the Contractor's company in the start-up phase in such a way that it is demonstrably (with due observance of NEN-ISO-IEC 15288, paragraph 6.4.6) capable of executing the Work in and following the start-up phase in accordance with the Action Plan start-up phase, the Management Plan and the (sectional) plans that apply at that point respectively;
  - v. implementing the verification process (NEN-ISO-IEC 15288, paragraph 6.4.6) and the validation process (NEN-ISO-IEC 15288, paragraph 6.4.8) and the requirements set for both subjects as listed in the Management Specifications;
  - vi. acquiring and putting into operation, in due time, the Document Management System (DMS) as intended in the Management Specifications, with due observance of NEN-ISO-IEC 15288 (paragraph 6.3.6) and the requirements listed in the Management Specifications related to the information management process (NEN-ISO-IEC 15288, paragraph 6.3.6); incorporating, in due time, the Documents (including the registrations listed in paragraph

- 02.03 (Information Provision) of the Management Specifications); and granting employees, Agents, Subcontractors and the Contracting Authority access to the DMS;
- vii. for a controlled start with the subject of industrial automation, the Contractor has to draw up the following plans:
- a) a Testing Master Plan IA (TMP-IA); in this plan the Tenderer should describe the way it will organise the testing process.
  - b) a Software Development Plan (SDP); in this plan the Tenderer has to describe the way it will organise the process of developing, testing and releasing the software.
  - c) a Configuration Management Plan (CMP); in this plan the Tenderer should describe the way it will manage the configuration, both during and after the design process. It should moreover explain how, in its opinion, the replacement of a certain IT component should take place.
- b) applying adequate quality control and assurance to the Work to be executed in the start-up phase and drawing up Documents in accordance with the provisions of the Measurement Process (paragraph 6.3.7) of NEN-ISO-IEC 15288.

The Plan for the start-up phase should also comply with the Tender Documents. In the Action Plan start-up phase, the Tenderer must indicate in which way the Contractor will involve the Contracting Authority in the start-up phase of the Work so that adequate coordination is assured. The Action Plan start-up phase should tie in with, and be consistent with, the other sections of the Tender.

## **2.2 Layout**

The Action Plan start-up phase should comprise at least 15, but no more than 25 pages (including schedules and excluding front and back cover and table of contents).

The layout of the Start-up Phase Plan of approach is subject to the following requirements:

- Paper format is A4;
- Font is Verdana;
- Font size of 9 points throughout the document;
- Line spacing at least 1;
- Full page with margins of at least 2 cm on top, bottom, left and right.

## **3. Method of assessment**

The Contracting Authority will assess the validity of the Action Plan start-up phase in accordance with Chapter 2 "Requirements for the Action Plan start-up phase". The Start-up Phase Plan of approach does not contribute to the determination of the economically most advantageous tender.

## **4. Incorporation into the DBFM Agreement**

The Action Plan start-up phase will be incorporated into Schedule 8, Part 4 (Action Plan start-up phase) of the DBFM Agreement.

### **schedule 8.3: Design Plan**

#### **1. Description**

The design of the Project and the integration into the landscape are essential for the spatial quality. By requesting a Design Plan, the Contracting Authority intends to express these interests to the Tenderer.

The Tenderer should draw up a Design Plan consisting of two parts: (1) a design action plan and (2) a preliminary design.

The design action plan provides the Contracting Authority insight into a controlled, integrated design process of Tenderer, and the preliminary design allows assessing whether the interpretation of the Aesthetic Schedule of Requirements (ASoR) of the Tenderer is acceptable.

## **2. Design Plan requirements**

### **2.1 Contents of the design action plan**

The Tenderer must demonstrate how spatial quality and design form part of an integrated design and construction process. Integrated visual and structural design means: ensuring aesthetic quality as well as the mutual consistency of all visible components, coordinated with all disciplines involved.

The design action plan should include at least the following components:

- Composition and experience  
An overview of the employees (incl. education, title, position, competencies, relevant experience, role and activities), who play an essential role in the design, integration and design of the Afsluitdijk project. This information should include how the continuity in the composition of the design team will be guaranteed throughout the Tender and realisation process (with a view through to the Availability Period);
- Integrality of the design process  
Demonstrate the manner in which the design process will, in relation to the design and integration, be addressed integrally and controlled during all stages of the design and construction process from the tender design until the delivery and the Availability Period. It must be demonstrated how interfaces between the various relevant disciplines will be controlled. It must be clear when and how any issues with regard to spatial quality are detected, how considerations take place and how choices are made.
- Spatial design and roles and authorities of the design team  
Provide insight into the position of the spatial design in the design and construction process of the entire project and in the role(s) and authorities of the (landscape) architect(s). Specify how the position and the roles will be made demonstrable and explain the decision-making structure and how the escalation lines run.
- Relationship with the Contracting Authority and stakeholders  
Provide insight into the relationship with the project team and experts of the Contracting Authority, the independent Afsluitdijk Quality Team and the buildings aesthetics committees of the municipalities concerned in terms of spatial quality. Indicate at what times and how the Contractor, the Quality Team and buildings aesthetics committees will be involved in the design process. The relationship with stakeholders in terms of spatial quality and gaining public support should also be made transparent.

The design action plan should comply with the Tender Documents.

### **2.2 Layout of the design action plan**

The design action plan should have a size of no more than 15 pages on A4 size (including schedules and exclusive of front and back cover and table of contents).

The layout of the design action plan is subject to the following requirements:

- Paper format is A4;
- Font is Verdana;
- Font size of 9 points throughout the document;
- Line spacing at least 1;

- Full page with margins of at least 2 cm on top, bottom, left and right.

### 2.3 Preliminary Design

The Candidates must draw up a preliminary design of a number of components / objects of the Project based on the ASoR.

Preliminary Design means:

"A spatial and architectural presentation of the Project which provides insight into the location, the integration, the main layout, structural and constructive layout, materialisation and the integral consistency in and with the environment."

A preliminary design must consist of the following components:

- An overview plan on a scale of 1: 500, or a transverse profile on a scale of 1: 100;
- Dimensionally stable visualisation in 3D and in colour from two different relevant view sides (e.g. IJsselmeer side and the Wadden Sea side) on bird's-eye level or, where relevant, at road or water level, in A3 size;
- For buildings (such as for pumps, installations) and engineering structures (such as the cutting, ecopassage, footbridge and safety lock): a layout plan and building elevations on a scale of 1 : 100 with some relevant architectural details on a scale of 1:10.
- Colour and BOM of all components that remain in sight; and
- Explanatory text of up to 1 A4 per object.

The following table shows the objects that require at least a preliminary design and the components this preliminary design should comprise.

<b>Object</b>	<b>Overview plan</b>	<b>Transverse profile</b>	<b>Visualisation</b>	<b>Colour and BOM</b>	<b>Explanatory text</b>
Solution for water drainage Den Oever and Installation buildings	X	X	X	X	X
The following dyke sections: - Den Oever – Monument - Monument- Kornwerderzand - Kornwerderzand – Friesland coast		X	X	X	X
Fish Migration River the flood defence and FMR Fish passage		X	X	X	X
Kornwerderzand Safety Lock Gates: Kornwerderzand Safety Lock Gates and Installation buildings	X		X	X	X

A preliminary design should comply with the requirements specified in the Tender Documents.

### **3. Method of assessment**

The Design Plan should comply with the requirements specified in the Tender Documents. The validity of the Design Plan is assessed in accordance with Chapter 2 "Design Plan requirements" and does not contribute to the determination of the economically most advantageous tender.

### **4. Incorporation into the DBFM Agreement**

The Design Plan will be incorporated into Schedule 8, Part 5 (Design Plan) of the DBFM Agreement. The Contracting Authority reserves the right not to include parts of the Design Plan in Schedule 8, Part 5 of the DBFM Agreement. The Contractor must abide by the Design Plan (Article 8.1 c of the DBFM Agreement) during the performance of the Work.

## **schedule 9: Model Forms for the Tender**

### **schedule 9.1 A: Model submission form for the qualitative part of the Tender**

[name of Tenderer] hereby submits his qualitative part of the Tender for project [Project] and declares that:

1. he has taken note of the Tendering Guidelines and unconditionally agrees to the procedure set out in them;
2. the qualitative part of his Tender fully corresponds with the Dialogue Report, the DBFM Agreement provided with the Invitation to Tender and other Tender Documents, General Information and the Confidential Information that applies to it.
3. the qualitative part of his Tender was not formed under the influence of an agreement, decree or act that is contrary to Dutch or European competition law.

Signed in [place], [date]

[Tenderer's name],

[name of natural person authorized to represent]

[function]

[signature]

**Order of schedules for the qualitative part of the Tender:**

**Requirement A Qualitative part of the Tender:**

The qualitative part of the Tender should at least include the following components (in the order provided and numbered as stated below):

1. A copy of an identity document of the signatory or signatories to the Tender.
2. Model Tender submission form, fully laid out according to the format provided in appendix 9.1 A;
3. The qualitative offer of the Tenderer, consisting of the Risk and Opportunity Plan and the Sustainability Plan, which will be assessed according to schedule 7, "EMAT-BPKV table and EMAT-BPKV spreadsheet";
4. The Basic Project Plan, including the phasing plan, in accordance with the requirements of schedule 8.1;
5. The Action Plan start-up phase in accordance with the requirements of schedule 8.2;
6. [The Design Plan in accordance with the requirements of schedule 8.3;]
7. The statement on the CO2 target level in accordance with schedule 9.8.

**schedule 9.1 B: Model submission form for the quantitative part of the Tender**

[name of Tenderer] hereby submits its Tender for project [Project] and declares that:

1. The Compliance Statement, filled in, with due observance of any changes in the circumstances contained in the Compliance Statement in question previously disclosed to the Contracting Authority in writing, pursuant to paragraph 3.11.3 of the Tendering Guidelines, by the Tenderer and Significant Subcontractors and, if applicable, pursuant to paragraph 7.3.2 of the Tendering Guidelines by Subcontractor, corresponds to the actual situation and is correct and complete at the time of the Tender;
2. The quantitative part of his Tender fully corresponds with the Dialogue Report, the DBFM Agreement provided with the Invitation to Tender and other Tender Documents, General Information and the Confidential Information that applies to him;
3. Its Tender, including the previously submitted qualitative part, is fully and unconditionally valid until [fill in date: [number] of months after the date of the Tender];
4. The Gross Availability Payment included in his Tender is based on the Reference Rates provided by the Contracting Authority [and if applicable, the EIB reference rate provided by the EIB];
5. It accepts that the Gross Availability Payment included in his Tender shall be adjusted to Financial Close in accordance with the procedure included in paragraph 7.4.1 of the Tendering Guidelines;
6. It accepts that the present value of the Tender shall be determined by the calculation model for the present value of the Tender, provided by the Contracting Authority, as intended in paragraph 7.6 of the Tendering Guidelines;
7. It accepts that the neutralised present value of the Tender shall be determined by the calculation model for the neutralised present value of the Tender, provided by the Contracting Authority, as intended in paragraph 7.6 of the Tendering Guidelines;
8. He accepts that, if he does not fully honour his Tender to the Contracting Authority, he shall immediately incur a fixed compensation for damages of €5,000,000 (in words: five million euros) due to the Contracting Authority. Such will occur if he does not achieve Financial Close in due time. The Tenderer has submitted the bank guarantee specified under Requirement C. The fixed compensation for damages will not be due in the exclusive event the Tenderer does not achieve Financial Close as a consequence of a disruption of financial markets or of a Supervening Event as defined in the Tender Documents;
9. Its Tender was not formed under the influence of an agreement, decree or act that is contrary to Dutch or European competition law.

Signed in [place], [date]

[Tenderer's name],

[name of natural person authorized to represent]

[function]

[signature]

**Order of schedules for the quantitative part of the Tender:**

**Requirement B Quantitative part of the Tender**

The quantitative part of the Tender must in any case contain the following components (in the indicated sequence and numbering):

1. A copy of an identity document of the signatory or signatories to the Tender.
2. Extract from the trade register of the Tenderer
3. A Model Tender Submission Form, fully arranged according to the format provided in schedule 9.1 B.
4. A list of the Gross Availability Payment, at the price level of 1 January 2016, excluding VAT, in accordance with the Reference Rates established by the Contracting Authority or, where applicable, the EIB Reference Rates made known to the Candidate by the EIB;
5. The Original Financial Model in accordance with the requirements set out in schedule 9.7a;
6. The Financing Plan in accordance with the requirements set out in schedule 9.7b;
7. The Indexation Formula in accordance with the model form Indexation Formula (schedule 11);
8. A Shareholder Support Letter from each of the Shareholders (completely in accordance with the format set out in schedule 9.2);
9. A financial advisor's Support Letter (completely in accordance with the format set out in schedule 9.3);
10. One or more support letters from a debt capital provider (Mandated Lead Arranger) for a total of at least 100% of the debt capital financing requirement (completely in accordance with the format set out in schedule 9.4);
11. where applicable: A Support Letter from the European Investment Bank (schedule 9.5);]
12. A Financial Close Bond, completely in accordance with the format set out in schedule 9.6.;
13. Model K statement(s) of the directors(s) of the Tenderer (completely in accordance with the format set out in schedule 10);
14. Statement relating to the obligations in the areas of environmental, social and labour legislation (completely in accordance with the format set out in schedule 13);

**Requirement C Financial Close Bond**

Financial Close Bond in accordance with the format of schedule 9.6 of the Tendering Guidelines.

**schedule 9.1 C: Model submission form for the scanned version of the Support Letter from the financial advisor, Support Letter from (external) debt capital provider and/or Financial Close Bond**

Instead of an electronically signed version, [name of Tenderer] hereby submits for the project [Project], a scanned PDF version with a handwritten signature of:

[- Support Letter from the financial advisor (in accordance with the format set out in schedule 9.3)]

[- Support Letter from (external) debt capital provider (in accordance with the format set out in schedule 9.4)]

[- Support Letter from the European Investment Bank (in accordance with the format set out in schedule 9.5)]

[- A Financial Close Bond, (in accordance with the format set out in schedule 9.6)]<sup>1</sup>

and declares that:

1. The attached scanned document(s) actually is / are signed by the financial advisor / debt capital provider / guarantor and is / are in the possession of [name of Candidate];
2. [name of Candidate] will ensure it that the original document(s) of the attached scanned document(s) is / are received by the Contracting Authority prior to the closure of the tender period.

Signed in [place], [date]

[Tenderer's name],

[name of natural person authorized to represent]

[function]

[signature]

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<sup>1</sup> It is the responsibility of the Tenderer to indicate here which statements of financial institutions it wishes to submit with a handwritten signature.

**schedule 9.2: Model form for the Shareholder Support Letter**

[Name of Shareholder] participating for [percentage]% in [name of Tenderer].

[Name of Shareholder] confirms that, on the condition that [name Candidate] is awarded (the Contract), [name of Shareholder] shall, in accordance with its participation in [name of Candidate], invest a sum to be contributed pro rata to its participation with a maximum of €[amount] million in the form of equity and/or a subordinated loan provided to the Contractor.

[Name of Shareholder] confirms that the Tender dated [date] includes an offer from (external) senior debt providers to complete the financing of the Project.

This Support Letter is issued exclusively to [name of Tenderer] and no other person or legal entity is entitled to rely on this Letter or derive rights from it.

This Support Letter is governed by Dutch law.

[name of Shareholder]

[name of person authorised as representative]

[function]

[signature]

**schedule 9.3: Model form for financial advisor's Support Letter**

[Name of financial advisor] has been appointed by [name of Candidate] as financial advisor for the financing of the Afsluitdijk Project.

In the capacity as financial advisor of [name of Candidate], [name of financial advisor] declares that the Submission dated 26 Jan. 2018:

- a) is in line with the financial estimate and the planning as foreseen by [name of Candidate];
- b) is sufficiently robust to allow [name of Candidate] to fulfil all the financial obligations arising from the DBFM Agreement under normal conditions;
- c) makes clear how [name of Candidate] shall raise sufficient financing for the Project to allow [name of Candidate] to fulfil all the financial obligations arising from the DBFM Agreement under normal circumstances;
- d) is furnished with letters of support from (external) debt providers for a total amount of EUR [amount].

This Letter of Support is issued exclusively for [name of Candidate] and no other (legal) person is entitled to rely on this statement or to derive rights from it.

This Letter of Support is governed by Dutch law.

[name of financial advisor]

[name of natural person authorised as representative]

[position]

[signature]

**schedule 9.4: Support Letter from (an external) debt capital provider (Mandated Lead Arranger)**

[name of debt capital / credit support provider] has been appointed by [name of Candidate] as [arranger / underwriter] for the financing of the Project [name of Project].

Within the scope of the framework of the Submission of [name of Candidate] for the [name of Project], [debt capital provider] has carried out due diligence with its legal advisor [name], its technical advisor [name], and its insurance advisor [name] in relation to (the stipulations in):

- The Tender Documents; and
- The Submission dated [date of tendering of quantitative part of the Submission] of [name of Candidate]

[name of debt capital provider] is offering a financing arrangement to [name of Candidate], for an amount of [amount] stated in its letter dated [date of letter] with reference [reference of letter] for [number] weeks after 26 January 2018.

The financing arrangement offered to [name of Candidate] is unconditional with the exception of the following – exhaustively listed – conditions:

- The definitive approval by the [name of debt capital / credit support provider authorised for that purpose] of [name of debt capital / credit support provider];
- Completion of the financing or loan documents in the legal relationship between [name of Candidate] and [name of debt capital provider] (satisfactory loan documentation);

The financing arrangement is based on the DBFM Agreement with Appendices dated [date] with reference [reference].

This Letter of Support is furnished solely for [name of Candidate] and no other (legal) person is entitled to rely on this Letter of Support or to derive rights from the Letter of Support.

To avoid misunderstanding: this Letter does not constitute an unconditional or irrevocable obligation or a legally binding commitment, in any manner whatsoever, to provide financing.

This Letter of Support is governed by Dutch law.

This Letter of Support is valid for a period of [at least equal to the 18-week period of validity of the Submission] days after the date of 26 January 2018.

[name of (external) debt / credit support provider]

[name of natural person authorised as representative]

[position]

[signature]

### **schedule 9.5: Support Letter from the European Investment Bank**

[Name of Multilateral] has been approached by [name of Candidate] as [financing party] for the financing of the Afsluitdijk Project. In the requirements of the Submission dated [date of Submission], the Contracting Authority has requested a letter of support from the (external) debt capital provider of [name of Candidate]. [Name of multilateral] has carried out a due diligence assessment relating to Project Afsluitdijk and has, in principle, been granted permission by the Board of Directors to grant a [Project Bond Solution / Structured Finance Facility] for the Project.

In the context of the Submission of [Name of Candidate] with regard to the Afsluitdijk Project, [Name of Multilateral] has carried out due diligence regarding (the provisions of):

- the Tendering Documents;
- the documents in the Submission dated [date] of [name of Candidate], mentioned in Annex 1.

[Name of multilateral] is prepared to support the Submission of [name of Candidate] with a financing arrangement for an amount of a maximum of [amount per instrument/facility] of which the terms and conditions are set out in the term sheet(s) dated [date] with reference [reference] included in Annex 2.

The financing arrangement is offered to [name of Candidate] under the following conditions:

- the definitive approval of the arrangement by the Management Committee of the [name of Multilateral];
- the finalising of the financing documentation to the satisfaction of [name of Multilateral]; and
- conclusion to the satisfaction of [name of multilateral] of the due diligence assessment (including receipt of final versions of documents mentioned in Annex 1).

The financing arrangement is based on the DBFM Agreement of [date], including Schedules.

[Name of Multilateral] shall, after receipt of all the necessary documentation and information from [name of Candidate] and the satisfactory resolution of any outstanding issues (including in respect of the financing documentation), request the definitive approval of the Management Committee as soon as possible after the appointment of [name of Candidate] as Selected Candidate and inform the Contracting Authority of this in writing.

This 'letter of support' of [name of Multilateral] has a term of validity of [at least equal to the period of validity] days after [latest date for tendering quantitative part of the Submission].

This 'letter of support' is issued exclusively for [name of Candidate] and no other person (legal entity or natural person) is entitled to rely on this statement or to derive rights from it.

For the avoidance of doubt, this 'letter of support' does not constitute a commitment or a binding obligation for [Name of Multilateral], by operation of law or otherwise, to provide financing.

This 'letter of support' is subject to Dutch law and any dispute relating to it shall be submitted to the jurisdiction of Amsterdam.

Yours sincerely,

[name of Multilateral]

[name of natural person authorised as representative]

[position]

[handwritten signature]

Annex 1:

Documents received by [name of Multilateral] as part of the Submission dated [date] of [name of Candidate]:

- Information Memorandum dated [date] with reference [reference];
- [Draft] Term sheet dated [date] with reference [reference];
- [DBFM Agreement] dated [date] with reference [reference];
- [Heads of Terms Subcontracts];
- [Legal Due Diligence Report dated [date]];
- [Technical Due Diligence Report dated [date]];
- [Common Terms Agreement];
- [Facility Agreements];
- [Intercredit Agreement];
- [other tbd].

Annex 2:

Term sheet(s) offered by [name of Multilateral] as part of the Final Submission dated [date] of [name of Candidate].

**schedule 9.6: Model Financial Close Bond**

[Name and other details of the bank or financial institution]

guarantee number [guarantee number]

THE UNDERSIGNED,

[Name of bank or financial institution], with its registered office at [place] (the "Bank"),

WHEREAS:

[Name Tenderer], (with its registered office at<sup>1</sup>[place]) and principal place of business at ([postcode] [address] at [place], hereinafter to be referred to as the "Tenderer", is invited to submit a Tender by the State of the Netherlands, the Ministry of Infrastructure and Environment, hereinafter to be called the "Contracting Authority" within the context of the tendering procedure of the DBFM Agreement Afsluitdijk with reference case number 31091279, hereinafter to be called the "DBFM Agreement";

pursuant to the Tendering Guidelines [date, reference] (hereinafter to be called: the "Tendering Guidelines") and the DBFM Agreement, the Tenderer is obliged to provide a bank guarantee for the benefit of the Contracting Authority by way of security for compliance with its obligation towards the Contracting Authority to pay a penalty in the event it does not commit to its Tender within 18 weeks and its obligation to pay compensation if it does not Financial Close at the latest on 1 June 2018 as further described in the DBFM Agreement;

the undersigned is prepared to issue such a bank guarantee in favour of the Contracting Authority on the conditions as stated below;

DECLARES AS FOLLOWS:

1. The Bank hereby guarantees unconditionally as an independent commitment towards the Contracting Authority the obligation of the Preferred Tenderer pursuant to the Tendering Guidelines to pay a penalty in the event it does not commit to its Tender within [validity period] and its obligation on the basis of the DBFM Agreement to pay compensation if it does not achieve Financial Close at the latest on [date [validity period], such subject to a maximum amount of € 5,000,000 (five million euros). This bank guarantee is an abstract first demand guarantee. The Bank can never invoke the underlying legal relationship between the Contracting Authority and the Tenderer arising from the Tendering Guidelines and/or as laid down in the DBFM Agreement;
2. With a view to the provisions under 1., the Bank commits towards the Contracting Authority that at the Contracting Authority's first written demand without requiring reasons or further evidence, it will pay as its own obligation everything the Contracting Authority declares towards the Bank it is owed by the Preferred Tenderer pursuant to the

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<sup>1</sup> Delete as appropriate.

aforementioned obligation to achieve Financial Close, such with due observance of the maximum amount referred to under 1. of this bank guarantee.

3. This bank guarantee has a term of validity of 22 weeks after 26 January 2018 and therefore lapses on 29 June 2018.
4. This bank guarantee may lapse before the due date referred to above under 3 in the event the Performance Bond as referred to in article 3.3 of the DBFM Agreement has been provided or if Financial Close has been realised with a party other than the Tenderer, which will be evident to the Bank from the receipt of a written release from the Contracting Authority with or without this original bank guarantee.
5. Dutch law applies to this bank guarantee. All disputes that may arise in connection with this bank guarantee will be settled by the competent court in The Hague.

This bank guarantee must be returned to the undersigned after it has ended at the following address: [address].

[Name of bank or financial institution]

[name of person with power of representation]

[function]

[signature]

## **schedule 9.7: Requirements concerning the Financial part of the Tender**

### **schedule 9.7a: Original Financial Model**

#### **1. Description**

The Original Financial Model is the model used by the Tenderer to substantiate its Tender financially.

The Contracting Authority may use the Original Financial Model to determine the plausibility and consistency of the financial assumptions and outcomes. The Parties will authenticate the Original Financial Model on the Date of Agreement. The Contracting Authority refers to article 3.5 of the DBFM Agreement as regards the manner in which the Original Financial Model will be used after the Date of Agreement.

Tenderers are required to submit a draft of the Original Financial Model during the Second Phase of the Dialogue and discuss it with the Contracting Authority, where it will be discussed whether the draft Original Financial Model that has been submitted satisfies the applicable requirements.

The Original Financial Model may be submitted in the English language.

#### **2. Requirements concerning the Original Financial Model**

The Original Financial Model must meet the requirements included below:

##### **2.1 Organisational requirements**

- a) The Original Financial Model consists of a calculation model with a manual and instructions, a data book and accounting and tax memoranda. The calculation model must be filled with figures so that the mathematical operation of the model is clear;
- b) The Tenderer must submit the Original Financial Model as softcopy.
- c) The Contracting Authority demands that the Original Financial Model to be submitted as part of the quantitative part of the Tender is provided with a statement from an independent (model) auditor who declares that the Original Financial Model complies with the requirements set by the Tenderer and that the model does not contain model-technical errors that have material consequences. The Contracting Authority allows the aforementioned statement from an independent auditor to be drawn up in the English language and that the statement is registered in the name of the Tenderer.
- d) The manual to the calculation model must include a verification table that at least includes:
  - i. The (literal) requirements imposed by the Contracting Authority concerning the Original Financial Model; and
  - ii. An opinion from the Tenderer whether the relevant requirement has or has not been met; and
  - iii. An explanation from which it is evident that the relevant requirement has been satisfied, including (if possible) an unambiguous reference to the location in the Original Financial Model.

##### **2.2 Functional requirements**

The Tenderer is required to shape the model structure and calculation rules of the Original Financial Model in such a way that the Original Financial Model complies with the functional requirements set out below.

- a) Unambiguous and expressly visible calculation or determination of the Gross Availability Payment;
- b) Unambiguous and expressly visible calculation or determination of the Weighted Average Cost of Capital. The Weighted Average Cost of Capital must be determined as the weighted average nominal project return after taxes ('Post-Tax Nominal Project IRR'), which is calculated on the basis of the nominal operational project cash flow after taxes (consisting of all cash flows not related to financing);
- c) Link between the Gross Availability Payment and
  - the Reference Rates or the Swap Base Rate; and
  - if applicable, the EIB Reference Rate,in accordance with the procedure to be announced by the Contracting Authority as referred to in paragraph 7.4 of the Tendering Guidelines;
- d) User-friendliness concerning at least the sections calculation speed, facilitation of Financial Close and performance of sensitivity analyses;
- e) The Original Financial Model must contain an optimisation module for the automatic (re-)optimisation of the model. The optimisation module will ensure at least the optimisation of the Gross Availability Payment, gearing, debt service cover ratio and blended equity IRR (post tax). The optimisation module must provide an unambiguous result for each (re-)optimisation. Manual operations should, in principle, be avoided and replaced by macros;
- f) It must also be possible to optimise and re-optimize the Original Financial Model without using macros using the optimisation module (this means that it must also be possible to perform any steps that are steered by macro independently). This makes it possible to determine in a transparent and functional manner that equal input results in equal output.

### **2.3 Substantive requirements**

The Tenderer is required to shape the model structure and calculation rules of the Original Financial Model in such a way that the Original Financial Model complies with the substantive requirements set out below.

- a) The Original Financial Model must be in accordance with generally accepted accounting principles, for which purpose the Tenderer is free to use the Dutch standard (Book 2, Dutch Civil Code, Part 9);
- b) The Original Financial Model must provide (at least) insight into:
  - i. The Gross Availability Payment (GAP) at the end of each Payment Period, price level as at 01 January 2016, exclusive of VAT;
  - ii. The expected Commencement Date, the Scheduled Availability Date, the Scheduled Completion Date, and the Expiry Date;
  - iii. The Indexation Formula; the parameters that form part of the Indexation Formula must be mentioned and quantified, in which regard the Indexation Formula Format as included in schedule 11 to these Tendering Guidelines is followed;
  - iv. The present value of the Tender, according to the calculation method as applied by the Contracting Authority;
  - v. All relevant assumptions such as (economic) life, depreciation periods (specified by project component). This requirement is considered as satisfied if the Original Financial Model provides the information that is required to compose financial results that satisfy the accounting standard in accordance with the provisions of 2.3 under a;
  - vi. Expectations with regard to Availability Adjustments and Performance Deductions, fiscal consideration, types of capital (including margins and fees), terms of loans, required return on equity capital after tax, and capital structure as well as other financial instruments;
  - vii. Separate insight into the nature and extent of the EIB financing;

- viii. The structure of the applicable interest rate for each financing facility;
- ix. At which stages during the term of the agreement which amounts will be paid and/or received in turnover tax, corporation tax and any other relevant taxes;
- x. Insight into the minimal, actual and average cover ratios, being at least the debt service cover ratio (DSCR), the loan life cover ratio (LLCR) and the project life cover ratio (PLCR), according to the definition that is demanded by the Lenders;
- xi. Insight into the internal rate of return (IRR) for the entire term in both real and nominal terms for at least the project IRR (pre-tax), project IRR (post tax), equity investor IRR, subordinated debt IRR (post tax), blended equity IRR (post tax), according to the definition demanded by the Lenders;
- xii. Insight into any other financial ratio that is demanded by the lender or that is relevant to the financing structure;
- xiii. Insight into the debt profiles that are used to determine the Swap Base rates.

#### **2.4 Model-technical and model structure requirements**

Supplementary to the model structure and model-technical calculation rules to be drawn up by the Tenderer, the following requirements apply in the area of model technique and structure:

- a) The Format Original Financial Model must include at least the following overviews of:
  - i. summary of the output
  - ii. data book;
  - iii. ratio analysis;
  - iv. balance sheet;
  - v. income statement;
  - vi. cash flow statement;
  - vii. financing structure;
  - viii. availability Payment phased over time;
  - ix. vulnerabilities;
  - x. taxes.
- b) The Original Financial Model must be compatible with the software: Microsoft Excel 2010
- c) The Original Financial Model must be a stand-alone model and therefore should not include any links to third-party models or plug-ins or require other third-party software;
- d) All functions of the Original Financial Model, the formulas and reference data must be operational. None of the components of the Original Financial Model must contain password security;
- e) The Original Financial Model must comply with the requirements that relate to financial models in terms of transparency and an audit trail. Specifically, this also means a clear distinction between input (variable and fixed input), calculation fields, and output. It must be possible to trace where cells refer to and/or have been derived from, to the extent this is possible using the software auditing tools (as provided for in 2.4 under b);
- f) The Original Financial Model must include a manual. This manual must be drawn up in such a manner that it contains at least the following sections:
  - i. a description of the assumptions;
  - ii. operating instructions;
  - iii. a description of the functionalities;
  - iv. a detailed description of the operation of any macros;
  - v. a description of the procedure in which it is indicated which components and the related calculation rules of the model are adjusted for the purpose of determining the compensation in case of Supervening Events, compensation in case of Early Termination, or refinancing advantages. The aforementioned components and related calculation rules

- must be recognisable for the Contracting Authority in the Original Financial Model visibly, transparently and unambiguously;
- vi. a detailed description of the manner in which sensitivity analyses are performed.
  - g) The Original Financial Model must contain a log in which the adjustments are recorded. The log must describe the reason for the adjustment and describe the successive steps of the adjustment with a reference to the cells that have been changed;
  - h) The Original Financial Model must facilitate the performance of sensitivity analyses as regards the following components, among other things:
    - i. changes in interest costs;
    - ii. changes in inflation;
    - iii. changes in corporation tax and turnover tax;
    - iv. changes in installation costs;
    - v. changes in maintenance costs;
    - vi. delays in the activities;
    - vii. delay of Financial Close;
    - viii. changes in the Availability Adjustment and the Performance Deduction.
  - i) The projections (end of the period) concerning the Development Phase must be shown at monthly or quarterly level and for the Availability Period at least at the semi-annual level;
  - j) The projections must be expressed in nominal amounts;
  - k) The price level on the basis of which the results must be expressed is that of 01 January 2016;
  - l) The projections must be shown for up to at least three years after the Expiry Date of the DBFM Agreement;
  - m) The terminology applied in the Original Financial Model must be in line with the terms used in the DBFM Agreement or the English translation thereof. When using an English translation of the terms used in the DBFM Agreement, these terms must be included in a glossary from which it is evident which Dutch term from the draft DBFM Agreement is referred to.
  - n) The Original Financial Model must include a cost overview. This document must provide a description of at least:
    - i. The main guiding principles and assumptions with respect to the investment estimate, in such a manner that the scope of the applied cost rules in the cost book is clear at a level so that the quantities (for example: items, days, hours, tonnes, m1, m2 or m3) and the prices are traceable, and the surcharges and percentages applied to the direct and indirect costs are substantiated;
    - ii. The main guiding principles and assumptions with respect to the maintenance estimate, in such a manner that the scope of the applied cost rules in the cost book is clear at a level so that the quantities (for example: items, days, hours, tonnes, m1, m2 or m3) and the prices are traceable, the maintenance strategy of the variable maintenance (less than 1 time a year) is clear and that any choices in relation to the investment and the surcharges and percentages applied to the direct and indirect costs are substantiated;
    - iii. The assumptions applied for the indexation of amounts to substantiate the Indexation Formula.  
The cost overview may be a separate file and may be drawn up in either the Dutch or English language.
  - o) The Original Financial Model must include a cost book. This MS Excel file must include the decomposition of the cost items and be set out over time. The cost book must be a stand-alone model and therefore should not include any links to third-party models or plug-ins or require other third-party software. The cost book must meet the following requirements:
    - i. The cost book must be in accordance with the SSK system that has been laid down in the fully revised 3rd edition of the 'Standard System Cost Estimates - SSK-2010' edition CROW 137;

- ii. The cost categories must be in accordance with the aforementioned CROW publication (this means that the non-recurring costs, implementation costs, general construction site costs, management costs, general costs, profit & risk, engineering costs and any non-recurring discounts are clear individually);
- iii. The costs are in line with the cost rules in the Original Financial Model;
- iv. The costs must be set off against time in accordance with the series applied in the Original Financial Model and the Basic Project Plan;
- v. The costs must be substantiated so that:
  - A. The costs categories are divided into direct and indirect cost items in accordance with the aforementioned CROW publication;
  - B. Any risk reservations are clear separately;
  - C. Cost rules are in line with the guiding principles and assumptions in the cost invoice and ordered logically by technical discipline;
  - D. Direct costs that comprise more than 2.5% of the investment estimate or more than 5% of the maintenance estimate are broken down, unless the cost items can no longer be broken down into logical components;
  - E. Indirect costs that comprise more than 5% of the investment estimate or the maintenance estimate are broken down, unless the cost items can no longer be broken down into logical components;

The cost book and the cost invoice can be separate files and may be drawn up in either Dutch or English.

### **3. Method of assessment**

The Original Financial Model will be checked for validity by the Contracting Authority. The Original Financial Model does not contribute to the determination of the economically most advantageous tender.

### **4. Relationship and processing in the DBFM Agreement**

The difference between the (draft) Original Financial Model that is submitted during the Second Phase of the Dialogue and the Original Financial Model to be submitted when submitting the Tender mainly consists of the input data used to fill in the model in order to realise an unambiguous calculation of the Gross Availability Payment. These input data are allowed to still be provisional in the draft Original Financial Model. These input data must be consistent with the Tenderer's Tender, including the Gross Availability Payment, in the Original Financial Model to be submitted as part of the Tender.

As regards the Original Financial Model, the Contracting Authority demands consistency with the Financing Plan and the Project Plan (no deviations between Project Plan and the Original Financial Model). The Tenderer's expectations as regards inflation based on the Indexation Formula offered by the Tenderer must be processed in the Original Financial Model to be submitted by the Tenderer upon submitting the Tender.

The Parties will authenticate the Original Financial Model on the Date of Agreement. The Contracting Authority refers to article 3.5 of the DBFM Agreement as regards the manner in which the Original Financial Model will be used after the Date of Agreement.

## **schedule 9.7b: Financing Plan**

### **1. Description**

The Tenderers must submit a Financing Plan in which they explain how sufficient financing will be raised for the Project in order to be able to satisfy all the obligations under the DBFM Agreement.

The Financing Plan may be submitted in the English language.

### **2. Product requirements**

The Financing Plan must:

- a) Demonstrate how the Tenderer will raise sufficient financing for the Project in order to be able to satisfy all the obligations under the DBFM Agreement; the Financing Plan must provide the Contracting Authority with sufficient financial information to enable an assessment thereof;
- b) Demonstrate the realism/fairness and deliverability for each source of financing;
  - i. The Tenderer must enclose support letters as included in schedule 9.2 (Support Letter shareholders, 9.3 (Support Letter financial advisor), 9.4 (Support Letter (external) senior debt provider) and 9.5 (Support Letter European Investment Bank);
  - ii. The Tenderer is required to enclose term sheets for each source of financing, including the equity and/or subordinated loan shareholders, and the Tenderer is required to demonstrate for each source of loan capital that the debt capital provider complies with the Lender's definition;
  - iii. In the event the intended senior debt provider(s) require(s) a project rating, the Tenderer must enclose a statement from the relevant rating agency that confirms the intended project rating. The Contracting Authority confirms that the relevant rating agency is not liable towards the Contracting Authority for the content of the relevant statement. The Tenderer must make it clear how the Tenderer controls its risk, if any, related to changes after the pre-rating has been obtained that could lead to a deviating (adverse) final project rating up to and including Financial Close.
- c) Include an activity plan up to and including the Financial Close including the process concerning all conditions to be satisfied prior to Financial Close;
- d) Describe the heads of terms of the subcontracting contracts including (but not limited to) information concerning:
  - i. security (parent company guarantees, letters of support)
  - ii. liability (liability caps)
  - iii. termination (termination caps)
  - iv. performance bonds and security (performance/surety bonds)
  - v. any third-party support
- e) Take into account the fact that the Principal's contribution to the financing is limited to the cash flows that follow from the DBFM Agreement;
- f) Describe the flexibility envisaged in the Financing Arrangement (to the extent this flexibility does not concern the period until Financial Close);
- g) Make it clear where the draft Financing Plan, which is submitted by the Candidate during the Second Phase of the Dialogue, deviates from the Financing Plan that forms part of the Tender.

### **3. Method of assessment**

The Financing Plan will be checked for validity by the Contracting Authority. The Financing Plan does not contribute to the determination of the economically most advantageous tender.

#### **4. Relationship and processing in the DBFM Agreement**

As regards the Financing Plan, the Contracting Authority demands consistency with the Project Plan and the Original Financial Model. The Financing Plan does not have direct dependencies with other parts of the Tender, other than obligations arising from other sections of the Tender to be included in the DBFM Agreement for which financing must be raised in order to be able to comply with all of these obligations.

The Financing Plan must be in line with the Original Financial Model, the support letters and the related term sheets for each source of financing.

The Tenderers must indicate exactly in the Tender where the Financing Plan deviates from the Financing Plan that had to be submitted by the Candidate during the Second Phase of the Dialogue.

The Contracting Authority emphasises that due diligence must have been performed before the date the Tender is submitted and based on the assumption that no more changes will be made to the DBFM Agreement.

**schedule 9.8: Format CO2 ambition level**

[name Tenderer] declares itself willing to perform the DBFM Agreement in a sustainable manner and thereby adequately implement a CO2 reduction at CO2 ambition level [●●] as described in schedule 7.

Signed in [place], [date]

[Tenderer's name],

[name of natural person authorized to represent]

[function]

[signature]

## **schedule 10: Model K - statement**

### **Explanation**

The Tenderer must enclose a statement when submitting the Tender that the Tender was not formed under the influence of an agreement, decision or act contrary to Dutch or European competition law.

This statement, structured in accordance with Model K included below, must be signed by a director with a recognised electronic signature with security level IV, in accordance with the requirements of paragraph 1.3, who duly represents the Tenderer in this connection (Model K - statement).

In the event the Tenderer is an SPV, the Tenderer shall issue such a statement from a director of the SPV.

In the event the Tenderer is an SPV under incorporation, the Tenderer shall issue such a statement from a director of each person or legal entity (consortium member) who acts on behalf of the SPV under incorporation.

The person who signs the Model K - statement must be registered as director in the registers of the Chamber of Commerce. If a director is not registered with the Chamber of Commerce, but has been designated in the articles of association filed with the Chamber of Commerce, the Tenderer must submit these articles of association together with the Tender.

If the directors only have joint power of representation, they must jointly sign the Model K - statement digitally in accordance with the requirements of paragraph 1.3.

The Tender is invalid if a required Model K - statement is lacking or has not been completed truthfully. It's not possible to submit a corrected Model K - statement after Tendering.

### **Model K - statement of director concerning tender legitimacy**

[Project name]

The undersigned declares that the Tender in question has not been established under the influence of an agreement, decision or conduct in violation of Dutch and European competition law.

Completed truthfully

on [date] in [city]  
by [name and initials]  
as director of [company name],  
who legally represents [company name]

in the matter of this Tender.

[signature]

## **schedule 11: Indexation Formula**

The Indexation Formula is part of the Tender. The Indexation Formula offered by the Tenderer will become part of the DBFM Agreement. The Tenderer shall choose a maximum of six indices from the exhaustive list of indices included below that he wishes to include in the Indexation Formula. The Tenderer is obliged to offer seven sets of weighting factors for each desired period for each index that has been selected. The relevant periods that correspond to these seven sets commence on the prescribed moments as defined below.

The format for the Indexation Formula provided by the Tenderer is as follows:

$$\text{Index number } t,p = 1 + \sum_{n=1}^6 (a_{n,p} * m_{n,t})$$

where:

$$0 \leq a_{n,p} \leq 0.5 \text{ and } \sum_{n=1}^6 (a_{n,p}) \leq 0.5 \text{ and } m_{n,t} = (i_{n,t} / i_{n,2016}) - 1$$

Index number<sub>t,p</sub> = Index number for year t in period p.

index n = index published by an independent agency, selected from an exhaustive list of indices made available by the Contracting Authority.

period p = a 5 calendar year period. In deviation from this, the first period starts on the Date of Agreement and runs until 31 December of the calendar year in which the Availability Date occurs, and the last period starts on 1 January of the year following the year in which the penultimate period ends, and will end on the Expiry Date;

$a_{n,p}$  = weighting factor related to index n in period p

$m_{n,t}$  = change in index n on the basis of the index numbers for index n for a determined publication period in year t and publication period 1 January 2016.

$i_{n,t}$  = index number of index n for a determined publication period in the year t (being a number, published by CROW, Statistics Netherlands or Eurostat, which shows the relationship between the value of a quantity in year t and the value of that quantity in the publication period that is applied as reference period by the publishing agency)

The Contracting Authority only accepts an Indexation Formula in respect of which it is sufficiently likely in advance for the Contracting Authority that there is a sufficient correlation between the selected indices including the weighting factors and the cost components of the Work.

The Contracting Authority does not allow any Indexation Formula that was structured to transfer to the Contracting Authority the risk of price developments that are expressed in the costs of senior debt.

The exhaustive list of indices as included in the table below contains the reference values of the Contracting Authority for the purpose of calculating the present value and the neutralised present value of the Tender.

A Reference Value stands, merely for the purpose of the calculation of the present value and the neutralised present value of the Tender, for the year-on-year change of the index figures of index n.

*Table: Exhaustive list of indices for the Indexation Formula*

<b>agency</b>	<b>index n</b>	<b>period</b>	<b>Reference Value n (*)</b>
Statistics Netherlands	Groundwork, road and hydraulic engineering	January	0.92%
Statistics Netherlands	Roads with open pavement	January	1.49%
Statistics Netherlands	Roads with closed pavement	January	0.01%
Statistics Netherlands	Aboveground and underground railways	January	1.31%
Statistics Netherlands	Bridges and tunnels	January	0.43%
Statistics Netherlands	Works related to liquids	January	1.07%
Statistics Netherlands	Hydraulic works	January	1.38%
Statistics Netherlands	Make land ready for building	January	1.57%
Statistics Netherlands	Electrical installation	January	1.44%
Statistics Netherlands	CPI all households	January	1.55%
Statistics Netherlands	The Netherlands, HICP	January	1.50%
Statistics Netherlands	Eurozone, MUICP	January	1.33%
Statistics Netherlands	European Union, EICP	January	1.88%
Statistics Netherlands	Metalelektro 24-30, 33 (CLA wages)	January	1.70%
Statistics Netherlands	Building industry F (CLA wages)	January	1.28%
CROW	Wage costs	January	2.48%
CROW	Diesel fuel high excise duty	January	2.87%
CROW	Diesel fuel excluding excise duty	January	3.27%
CROW	Electricity	January	1.05%
CROW	Gravel and industrial sand	January	2.78%
CROW	Crushed stones and crushed sand	January	2.65%
CROW	Concrete	January	3.20%
CROW	Concrete production	January	1.73%

CROW	Cement	January	0.77%
CROW	Quarry stone	January	2.30%
CROW	Plastics including PVC, excluding Geosynth.	January	2.94%
CROW	Reinforcing concrete bars	January	0.00%
CROW	Steel excluding Reinforcing concrete bars	January	1.52%
CROW	Bitumen binders	January	3.71%
CROW	Mineral asphalt mix including fuel	January	2.43%
Eurostat	HICP excluding Tobacco (00X TOBAC) (EA)	January	1.42%

<sup>(1)</sup> Reference Value of the Contracting Authority for the purpose of the calculation of the present value and the neutralised present value of the Tender

Tenderers must submit the Indexation Formula using the model form provided below.

The Contracting Authority notes for the record in that connection that the weighting factors entered by the Tenderer are fixed and that following submission of the quantitative part of the Tender can only be amended at Financial Close as a result of a change in the Reference Rates. The weighting factors included in the Original Financial Model when submitting the Tender must correspond with the weighting factors (including the number of decimals) included in this form.

#### Model form format Indexation Formula

n	index n	publishing agency	publication period	a <sub>n,1</sub>	a <sub>n,2</sub>	a <sub>n,3</sub>	a <sub>n,4</sub>	a <sub>n,5</sub>	a <sub>n,6</sub>
1	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]
2	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]
3	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]
4	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]
5	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]
6	[●●]	[●●]	January	[●●]	[●●]	[●●]	[●●]	[●●]	[●●]

**schedule 12: Memorandum separation of interest**

The Memorandum separation of interest will be made available as a separate PDF document, in both Dutch and English.

**schedule 13: Statement relating to the obligations in the areas of environmental, social and labour legislation**

Name and address of the company:

.....

Chamber of Commerce registration number (registration number of the Trade Register or a corresponding register of the country where the company is established):

.....

Contact person of the company (name, email, telephone):

.....

The undersigned declares to have taken account in the preparation of his tender submission of the obligations in the field of environmental, social and labour legislation under the European Union laws, national law or collective labour agreements or pursuant to the provisions regarding international environmental, social and labour legislation set forth in schedule X of Directive 2014/24/EU.

Name(s) authorised signatory/signatories:

.....

Date:

Signature(s):