

Market Dialogue for the proposed procurement of water chain Limburg in respect of Wauter II, Security & Big Data, and for the Pre-commercial Public Procurement around Big Data

Fields marked with * are mandatory.

Market dialogue questionnaire

Note:

1. Bullet option '*not applicable*' has been added to questions 7,8,9,10,11,12
2. Two (2) new documents have been added: *Presentation 3 October 2018*, and *Annex of the meeting 3 October 2018*.

* Name of your company:

* Website of your company:

* Statutory seat and country of your company:

This questionnaire is based upon the information provided in the main Market Consultation document and its annexes.

Please download and read the following relevant documents before filling in the questionnaire, in order to understand the context of the questions.

Market Consultation/Dialogue document

[Marktconsultatie_WBL_versie_14092018_v10-compressed.pdf](#)

Annex 1. Model agreement on the security of information systems - Critical Infrastructure Agreement (Model vitale infrastructuur overeenkomst)

[WBL vitale infrastructuur overeenkomst v10_1409018.pdf](#)

Annex 2. Confidentiality agreement (Geheimshoudingsovereenkomst)

[Geheimhoudingsovereenkomst versie 14092018_10.pdf](#)

Annex 3. Waterketen Limburg Prior Art Analysis

[Waterketen Limburg - Prior Art Analysis - Market Consultation - BODY-COMPRESSED.pdf](#)

Annex 4. Waterketen Limburg Prior Art Analysis Annex

[Waterketen Limburg - Prior Art Analysis - Market Consultation - ANNEX-COMPRESSED.pdf](#)

New

Market consultation presentation 3 October 2018

[Marktconsultatie-presentatie 3 okt.pdf](#)

New

Annex of the meeting of 3 October.

[Annex bijeenkomst 3 oktober 2018 v10_00000002 .pdf](#)

*** Question 1: Model agreement on the security of information systems**

We would like to request detailed comments on the attached model agreement on the security of information systems in the context of critical infrastructure.

WBL will analyse the comments and, where possible, incorporate them in a new version that will be used in the tendering procedure.

Do you have any objections to specific provisions?

☐ Yes

☐ No

* If yes, which provisions?

Critical Infrastructure Agreement

Article 1 Definitions

Article 2 Data and the Information Security Plan (2.1 - 2.12)

Article 3 Duration of the Agreement (3.1 - 3.4)

Article 4 Control and monitoring (4.1 - 4.5)

Article 5 Special legal consequences of default on the part of the Contractor (5.1 - 5.3)

Article 6 Representation (6.1 - 6.3)

Article 7 Applicable law and dispute settlement (7.1 - 7.2)

Article 8 Final provisions (8.1 - 8.6)

ANNEX 1 Individual confidentiality statement

Comments on Article 1 Definitions

Comments on Article 2 Data and Information Security Plan (please refer to the specific numeral: 2.1... 2.12)

Comments on Article 3 Duration of the Agreement (please refer to the specific numeral: 3.1 ...3.4)

Comments on Article 4 Control and Monitoring (please refer to the specific numeral: 4.1 ...4.5)

Comments on Article 5 Special legal consequences of default on the part of the Contractor (please refer to the specific numeral: 5.1 ...5.3)

Comments on Article 6 Representation (please refer to the specific numeral: 6.1...6.3)

Comments on Article 7 Applicable law and dispute settlement (please refer to the specific numeral: 7.1... 7.2)

Comments on Article 8 Final provisions (please refer to the specific numeral: 8.1...8.6)

Comments on Annex 1 Individual confidentiality statement

Critical Infrastructure Agreement

[WBL_vitale_infrastructuur_overeenkomst_v10_1409018.pdf](#)

* Are you missing something in the model agreement?

- ☐ Yes
☐ No

* If yes, what are you missing?

*** Question 2: Data Processing Act and the duty to report cybersecurity**

Do you have any reservations about the position of WBL with regard to the obligations arising from the Data Processing Act and the duty to report cybersecurity and the Decree on the obligation to notify cybersecurity incidents?

- ☐ Yes
☐ No

*** If yes, which reservations ?**

Can you indicate alternative ways of thinking, which WBL could also follow instead of voluntarily committing to the Data Processing Act and the duty to report cybersecurity and the Decree on the obligation to notify cybersecurity with the purpose to protect information of critical infrastructure from the public domain?

*** Question 3: Application of Directive 2009/81 / EC**

The envisaged tender will not use the Directive 2014/24 / EU, but the Directive 2009/81 / EC. In this way, WBL can also make use of the legal possibilities arising from Directive 2009/81 / EC during the tendering process. To know (due to the sensitive nature of critical infrastructure):

Set further requirements as regards security of information and security of supply. In order to ensure security of information particular commitments may be required from both contractors and subcontractors to protect classified information against unauthorised access, as well as sufficient information regarding their capacity to do so.

Requirements and security clearances could be in accordance with national laws and regulations.

Do you have any reservations about the application of Directive 2009/81 / EC by WBL?

- ☐ Yes
☐ No

*** If yes, which are these reservations? Can you indicate in which way your concerns can be met?**

*** Question 4: Confidentiality agreement**

WBL has drawn up a specific model for a confidentiality agreement [Annex] which must be signed by interested parties before WBL makes detailed information available to them. If the Directive 2009/81 / EC should apply, the confidentiality agreement will have to be signed by the market parties after they have been selected by WBL in the context of a restricted procedure. If the 2014/24 / EU Directive should apply, the confidentiality agreement will have to be signed by the market parties to whom the contract has been awarded. Only after the confidentiality agreement has been signed by the market parties for approval, they

will receive detailed information from WBL. WBL has qualified this information as business confidential and / or confidential within the meaning of the Data Processing Act and the duty to report cybersecurity and the Decree on the obligation to notify cybersecurity incidents.

We would like to request detailed comments on the attached confidentiality agreement model. WBL will analyse the comments and, where possible, incorporate them in a new version that will be used in the tendering procedure.

Do you have any objections to specific provisions?

☐ Yes

☐ No

* If yes, which provisions?

Non Disclosure Agreement

1. Definitions
2. Confidentiality (2.1 - 2.13)
3. Conflict of interest (3.1 - 3.6)
4. Duration of Agreement (4.1 - 4.3)
5. Audit (5.1 - 5.3)
6. Dissolution and interim termination (6.1 - 6.7)
7. Representation (7.1 - 7.3)
8. Applicable law and dispute settlement (8.1 - 8.2)
9. Final provisions (9.1 - 9.7)

Comments on 1. Definitions

Comments on 2. Confidentiality (please refer to the specific numeral: 2.1 ... 2.13)

Comments on 3. Conflict of interest (please refer to the specific numeral: 3.1...3.6)

Comments on 4. Duration of Agreement (please refer to the specific numeral: 4.1...4.3)

Comments on 5. Audit (please refer to the specific numerals 5.1...5.3)

Comments on 6. Dissolution and interim termination (please refer to the specific numeral: 6.1... 6.7)

* If yes, what concerns do you have?

Can you explain your concerns in more detail?

Comments on 7. Representation (please refer to the specific numeral: 7.1...7.3)

Comments on 8. Applicable law and dispute settlement (please refer to the specific numeral: 8.1...8.2)

Comments on 9. Final provisions (please refer to the specific numeral: 9.1...9.7)

Confidentiality agreement

[Geheimhoudingsovereenkomst versie 14092018_10.pdf](#)

*** Question 5: Use of framework agreement**

Because it is foreseen that the management and maintenance activities can be phased out at WBL (read, at the new supplier) at any time (in accordance with the agreements in the MOU), the activities currently carried out will be qualified as a ceiling. Because it is not clear at this moment in which way and at what speed that phasing out (to what extent) will take place, it can theoretically be that at any moment during the term of the agreement the extent of the management and maintenance is completely reduced, or that it is possible that there is no reduction in management and maintenance, because the cooperation between WML and WBL is re-assessed. Various scenarios are possible in theory.

The consequence of this is that, since the scope of the services and / or activities cannot be determined, use will be made of the instrument of a framework agreement.

Do you have any reservations about the use of the instrument of the framework agreement?

- ☐ Yes
☐ No

* If yes, which are these reservations? How can WBL meet your concerns?

*** Question 6: Checks and balances between lots**

It is the intention that for each lot a different supplier is chosen, whereby a supplier for a particular parcel can explicitly not make an offer on another parcel and also not as a subcontractor or part of a joint venture (the reason for this restriction lies in the checks and balances between the three lots).

Do you have reservations about these restrictions for offering on lots?

- ☐ Yes
☐ No

* If yes, which ones? How can WBL meet your concerns?

* Question 7: Lots

WBL has come to the preliminary conclusion that it wishes to place several lots on the market on the basis of a tender for framework agreements. The first lot concerns the core activity of management and maintenance of the current PA landscape (called Wauter II); the second lot concerns the Security and the third lot concerns Big data. The lot concerning Big data, will not only include the delivery of services (for example advice), but also the delivery of an application layer to enable the storage of data for the purpose of carrying out analyses. The Security lot will cover the provision of services (for example advice and the execution of penetration tests) and the provision of associated facilities (for example test environments).

Do you have any reservations about the intended approach in three lots and the expected scope of the assignment?

- ☐ Yes
☐ No
☐ Not applicable

* If yes, what concerns do you have?

Can you explain your concerns in more detail?

* Question 8: Preliminary analysis

The first analyses that WBL has made show that there are major innovation opportunities for the EU and especially the Netherlands, especially in the area of Big Data, all the more because the majority of innovations in this area come from the Asia-Pacific region. In contrast, the area of Security is dominated by technology providers from North America in terms of intellectual property.

Do you endorse the preliminary conclusions, both regarding the dominance of market parties from Asia-Pacific and regarding technological developments in the field of Big data and the dominance of market parties from North America, regarding Security?

- ☐ Yes
☐ No
☐ Not applicable

* Yes

Why do you agree with these conclusions?

* No

Why do you not endorse these conclusions?

Waterketen Limburg Prior Art Analysis

[Waterketen Limburg - Prior Art Analysis - Market Consultation - BODY-COMPRESSED.pdf](#)

Waterketen Limburg Prior Art Analysis Annex

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*** Question 9: Preliminary analysis on Big data**

The preliminary analysis seems to justify the conclusion that Dutch and European technology companies do not have relevant IPR (intellectual property rights), and therefore they are no more than (added value) resellers of technology vendors from Asia-Pacific (in terms of Big data) or from North America (as far as Security is concerned).

Do you agree with this analysis?

- ☐ Yes
☐ No
☐ Not applicable

* No, are there perhaps IP rights (e.g. patents) that have not yet been recognized, or perhaps rights of trade secrets?

If so, give a reference to the relevant patent registration and related details, as well as a general description of any rights of trade secrets to specific relevant services or deliveries or technological developments.

*** Question 10: Standardization in the field of security**

It can also be concluded from the analysis that the degree of standardization in the field of security seems to have a greater degree of maturity than the area of Big data. In other words, it seems that there is little room for innovation in the area of security.

Is the assumption correct?

- ☐ Yes
☐ No
☐ Not applicable

* No, why do you think that, despite the large degree of standardization in the field of Security, there is room for innovation?

What room for innovation do you see?

*** Question 11: Critical infrastructure**

The degree of far-reaching standardization in the field of security is a reason for WBL to let market parties choose a methodology in the field of security, with a well-founded choice of relevant standards covering the critical infrastructure.

Do you subscribe to this choice of WBL to offer the market parties freedom to make a well-founded choice for a methodology that covers relevant standards in the field of security?

- ☐ Yes
☐ No
☐ Not applicable

* Yes, why?

* No, why?

*** Question 12: Big data**

In the area of Big data, a large number of standards apply to the storage of data and not to the analyses of data.

Is this assumption correct, are there are a large number of standards for the storage of data, but not the analyses of data?

- ☐ Yes
☐ No
☐ Not applicable

* Yes, why?

* No, why?

*** Question 13: Pre-commercial procurement (PCP) in the field of Big data**

In order to stimulate the development of new technologies in the Netherlands and Europe (probably in the area of Big Data) and to embed them in the management and maintenance activities, use will be made of the so-called demand methodology of pre-commercial procurement (PCP). For more information, see: www.eafip.eu

In essence, the PCP concerns a tender of R&D services at level TRL = 3 up to and including TRL = 8, with a lead time of about 3-5 years. Starting from the start of the PCP process at the end of 2019, it is currently anticipated that the completion of the PCP process will take place in 2023/2024, whereby two competing technology vendors will be able to offer their technologies to the three market parties (Wauter II, Big data & Security). Through the Value engineering method, the three market parties can use the outcomes of the PCP and integrate their services to WBL. The expectation is then that the benefits of this integration can be recovered in about 2-3 years. The consequence of this is that the duration of the various framework agreements for Wauter II, Big data and Security must be linked to this payback period. It is currently anticipated that all framework agreements (Wauter II, Security & Big data) will have an equal end duration by 31 December 2026. The various framework agreements are all expected to begin in 2019, but it is envisaged that the framework agreements for Wauter II will come into effect first, then the framework agreements for Security and finally the framework agreements for Big data.

Do you have reservations about the intended duration and equal duration of the different framework agreements?

- ☐ Yes
☐ No

* If yes, which reservations do you have? Can you substantiate this?

*** Question 14: FRAND agreements**

WBL has opted for market parties taking part in the PCP to be given the opportunity to commercialize their results to third parties (including outside WBL). This means that in principle the intellectual property rights remain with the market parties that participate in the PCP and that WBL acquires user rights on the results of the PCP.

WBL also offers in principle the possibility to market parties that participate in the PCP (at least at the last stage of the PCP) to commercialize their results via the framework contractors by means of FRAND (fair, reasonable, and non-discriminatory) agreements towards WBL; the framework contractors then have to integrate these results into their services to WBL via the so-called value engineering method. Possible savings will then be allocated in a manner to be determined between the framework contractors and WBL.

Do you have any doubts about the above-mentioned approach to integrating the outcomes of the PCP process into the services offered by the framework contractors to WBL?

- ☐ Yes
☐ No

* If yes, which? How can WBL meet your concerns?

*** Question 15: Participation in the PCP**

WBL is of the opinion that market parties participating in the tendering procedure may also participate in the PCP procedure, in the sense that each of these market parties is permitted to make an offer (or to participate in the current procurement procedure for the PCP).

Do you have any reservations about this possibility offered by WBL to participate in the PCP?

- ☐ Yes
☐ No

* If yes, which ones? How can WBL meet your concerns?

*** Question 16: Proposed procedure**

It is currently assumed that following the award of the various lots, the following procedure will be followed:

it is awarded to two market parties; these two market parties sign (in any case) the framework agreement, the confidentiality agreement and a further agreement for issuing a recommendation or in-depth investigation. The two market parties that have issued an advice or in-depth investigation based on a further agreement, will then be able to issue an offer based on the received confidential information. That offer will be assessed not only on quality but also on price.

Do you agree with the proposed procedure, or do you have any reservations and if so which ones?

- ☐ Yes
☐ No

* If yes, which are these?

*** Question 17: Value engineering**

It is the intention that every year (for the first time in 2020) during the duration of the framework agreement, the contractor will come up with proposals for improvement, with the ultimate goal of the effectiveness and efficiency of the service towards WBL. To improve, which leads to less work, is on the understanding that the realized savings are in principle distributed on a yet to be determined basis between WBL and the market party. For more information about the value engineering method, see: www.eafip.eu

Do you have any reservations about the use of the Value Engineering method?

- ☐ Yes
☐ No

* If yes, which ones? Can you substantiate this?

You may upload any documents that you consider relevant.

Please upload your file

The maximum file size is 1 MB

Please note that to understand the context of the questions you need to read the Market Consultation document and its 4 annexes.

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Thank you for your cooperation!