



Ministry of Economic Affairs  
and Climate Policy

## **Tender Document**

### **Invitation to tender in accordance with the European open procedure for the services determining Weighted Average Cost of Capital for tariff-regulated industries**

Publication date:	22 July 2021
Status:	Final
Reference:	202101067

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## Definition of terms

Tendering authority	The Netherlands Authority for Consumers and Markets (ACM) part of the Ministry of Economic Affairs and Climate Policy.
Tender Document	This document and all of its annexes.
Public Procurement Act	The Public Procurement Act 2012 ( <i>Aanbestedingswet 2012</i> )
General Government Terms and Conditions	General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI-2018: <i>Algemene Rijksvoorwaarden voor het verstrekken van Opdrachten tot het verrichten van Diensten</i> )
Tender	A quotation submitted by the Tenderer in response to this Tender Document.
Most Economically Advantageous Tender	The Tender that achieves the highest definitive total score based on the best price-quality ratio.
Suitability requirements	The requirements with which Tenderers must comply in order to be eligible to win the tender.
Tenderer	An entrepreneur or entrepreneurs who have submitted a Tender or is/are planning to submit a Tender. In this document, the word 'you' is taken to mean the Tenderer.
IUC-EZK	The Procurement Office (IUC) – part of the Netherlands Enterprise Agency (RVO.nl), which in turn is part of the Ministry of Economic Affairs and Climate Policy (EZK) – will serve as process manager during this tendering process.
Memorandum of Information	A document containing all questions asked and answers given, in anonymised form and, if applicable, additional information. This includes the questions and answers submitted via TenderNed.
Contracting Authority	The State of the Netherlands, represented by the State Secretary of Economic Affairs and Climate Policy, who concludes the Contract with the Contractor on behalf of the Contracting Authority.
Contractor	The party with whom the Contracting Authority concludes the Contract.
Contract	The written framework agreement between the Contracting Authority and the Contractor in which the conditions applicable to the public contracts that will be awarded via this tendering process (Further Agreements) will be recorded within a specific period.
Further Agreement	A written agreement signed by the Contracting Authority and the Contractor based on the framework agreement.

Further Assignment	The assignment for the services based on the Further Agreement
Exclusion Ground	A circumstance applicable to the Tenderer or a person affiliated with the Tenderer that results in exclusion of the Tenderer from participating in the tendering process.
Uniform Single Procurement Document	A statement in which the Tenderer declares his compliance with the requirements specified in this document.

# 1. Introduction

The Tender Document at hand contains information regarding this invitation to tender conducted in accordance with the European open procedure for 'determining the Weighted Average Cost of Capital (WACC)' for The Netherlands Authority for Consumers and Markets (ACM).

You are hereby invited to submit a Tender based on this Tender Document.

## 1.1 Tendering Authority and IUC-EZK

This tendering process is being conducted on the instructions of the ACM. IUC-EZK is the ministry's procurement office and will act as process manager during this tendering process.

*The Netherlands Authority for Consumers and Markets (ACM)*

The ACM is the Dutch National Regulatory Authority (NRA) and is an independent authority. The ACM is an autonomous administrative authority (under Dutch law), and is part of the Dutch central government.

The ACM is the competition authority and the consumer protection authority in the Netherlands, as well as the economic regulator of incumbent companies in the energy, telecommunication, transport (e.g. rail, airports, harbor pilots), drinking water, and postal services industries.

More information about the ACM can be found at [Authority for Consumers & Markets | ACM.nl](https://www.acm.nl).

## 1.2 Reason for this invitation to tender

In the regulated industries mentioned above ACM has a role in tariff setting. For this, the ACM needs to determine the reasonable return to set tariffs for incumbents in regulated markets, such as the telecommunication market, electricity market, gas market, pilotage market, et cetera. The ACM sets this reasonable return by calculating the Weighted Average Cost of Capital (WACC). Since the WACC is an important element when setting tariff, as well as an element of specific and varied regulatory methods, the ACM regularly needs advice to determine (parameters of) the WACC.

## 1.3 Time schedule

The schedule below applies to this tendering process.

22 July 2021	Issuing of publication, start of tendering period.
06 August 2021, 11:00 AM LT	Closure of 1st round of questions: deadline for the Tenderer to submit questions regarding this Tender Document and the Contract (including the general terms and conditions) and/or proposals for textual amendments to the draft Contract (including the general terms and conditions).
17 August 2021	Issuing of 1st Memorandum of Information
24 August 2021, 11:00 AM LT	Closure of 2nd round of questions: deadline for the Tenderer to submit questions.
02 September 2021	Issuing of 2nd Memorandum of Information
21 September 2021, 11:00 AM LT	Deadline for the receipt of Tenders and opening of new Tenders by the Tendering Authority.
21 September up until 17 October 2021	Assessment of Tenders.
25 October 2021	Announcement of the award of the Contract.
15 November 2021	Deadline for asking questions and/or filing an application for a preliminary injunction in relation to the announcement of the award of the Contract.

09 November 2021	Deadline for the winning Tenderer to provide the evidence requested by the Tendering Authority.
22 November 2021	Starting date of Contract.

If – in the opinion of the Tendering Authority – circumstances provide cause to do so, the Tendering Authority is entitled to amend the specified period(s). In such a case, timely notification of the new period(s) will be provided digitally.

## 2. Description of assignment

### 2.1 Description and objective of the assignment

The Contracting Authority wants to conclude a Framework agreement with three Tenderers that have submitted the most advantageous tender (Offer) based on the best price-quality ratio. The future Contractors, as well as the services to be performed by these Contractors, must fulfil the terms and conditions to be set by the Contracting Authority which are specified in this Tender Document.

Using a Framework agreement, the Contracting Authority intends to attract advice of high-quality experts who can support the ACM in determining the WACC. By using a Framework agreement it is possible for the ACM to contract the Further assignments at short notice and to specify the exact scope of each Further assignment at the moment that advice is needed.

In order to obtain a Further assignment, the future Contractors will participate in so called "mini competitions" the ACM will organize under the Framework agreement at the moment the ACM needs a specific advice. The ACM foresees different assignments with varying dimensions and scope. Some examples of assignments are:

- Calculate the WACC for Dutch water distribution firms.
- Calculate the specific risk for KPN's Fiber to the Home (Ftth) activities.
- Determine the peer group for the Dutch pilots.
- Determine the peer group for Dutch Caribbean energy and water companies.
- Calculate the WACC or the beta for a company which is subject of an abuse of dominance investigation (e.g. of using excessive prices)
- Give an advice on the reference period used to calculate the risk-free rate.
- Give an advice on the Equity Risk Premium based on Dividend Growth Models.
- Give an advice on the use of the Total Market Return approach, based on up-to-date scientific arguments.
- Give an advice on the effect of Quantitative Easing on the cost of capital of regulated companies.
- Give an advice on the ACM WACC method.

These Further assignments can relate to different markets, in particular the markets the ACM regulates:

- Telecommunication
- Postal services
- Rail
- Airports
- Pilots
- Electricity
- Gas
- Drinking water

But the assignments may also relate to other regulated or non-regulated markets, e.g. relating to excessive pricing cases under competition law.

The Further assignments may include various tasks:

- Collecting up-to-date evidence on the relevant financial parameters, keeping in mind the ACM method (see below). This evidence should be based on up-to-date knowledge of the incumbent company, the market in which the incumbent company is active, the regulation of that specific incumbent, current status in financial markets, recent data and up-to-date financial scientific literature.
- Writing a report with the findings.
- Provide all data and models (e.g. databases, spreadsheets) to allow the ACM to replicate the analysis and to carry out sensitivity analyses.

For all these Further assignments, the Contractors need to bear in mind that the ACM uses the ACM WACC Method. This method prescribes the principles to be used when determining the parameters of the WACC. This method has been applied for example in the following report:

[https://www.acm.nl/sites/default/files/documents/rapport-the-brattle-group-the-wacc-for-the-dutch-gas-tso\\_0.pdf](https://www.acm.nl/sites/default/files/documents/rapport-the-brattle-group-the-wacc-for-the-dutch-gas-tso_0.pdf).

## **2.2 Lots**

The tender is not subdivided in lots, since the expertise needed to do any of the Further assignments is in the same area. Moreover, managing different lots would be inefficient for the Contracting Authority.

## **2.3 Contract Period**

The Contracting Authority intends to conclude a Contract for a period of two (2) years, including a unilateral option for the Contracting Authority to extend the contract two (2) times by one (1) year until 22 November 2025.

## **2.4 Scope of the assignment**

The Tendering Authority has estimated a total contract value (including optional extension years) of EUR 500.000,00 (exclusive of VAT), relating to 8 to 12 Further assignments.

The estimated value and the number of assignments are an indication from which no rights can be derived. This Tender Document was created using up-to-date knowledge and insights valid at the time of its formulation.

It is possible that the services specified in the contract may change in the event of political, budgetary, administrative or organisational developments within the Dutch government and the Contracting Authority's expansion or contraction resulting from this, or changes to the Contracting Authority's position within the government or to the targets that must be met. In the event such circumstances occur, the Contracting Authority will consult with the Contractor.

### 3. Requirements to this assignment

This section includes the requirements set by the Tendering Authority concerning the requested services. The next section contains requirements with respect to the Tenderer.

**By submitting a Tender, you as Tenderer, explicitly consent to all requirements and conditions specified in this Tender document and declare that you will continue to comply with these throughout the entire contract period. Failure to comply with one or more requirements will result in your Tender being disqualified from the assessment process and therefore excluded from the tendering process.**

#### 3.1 Requirements relating to personnel

1.1	Among the pool of consultants, there are at least two persons with each at least 5 years of relevant experience in working with and/or advising about the WACC, regulation and financial markets.
1.2	Among the pool of consultants, there is up-to-date knowledge about financial markets and about developments which may influence the cost of capital of regulated companies.
1.3	Among the pool of consultants, there is up-to-date knowledge about new developments in the scientific literature on corporate finance and financial markets with respect to the cost of capital of regulated companies.
1.4	Among the pool of consultants, there is adequate knowledge of the trends and developments in regulation. Tenderer is familiar with the (European) regulatory regimes in different regulated markets, tariff regulation and the influence of regulation on the risk of a regulated company.
1.5	Tenderer will dedicate the same personnel or personnel with similar experience for the duration of the Framework agreement.

#### 3.2 Requirements relating to the execution of the Framework agreement

2.1	The Tenderer appoints an account manager who is responsible for the entire service to the ACM, and who also acts as point of contact. The account manager shall be named in the Framework agreement.
2.2	The Tenderer assigns qualified personnel to each Further assignment, at least of equal knowledge and experience as the set in personnel mentioned in Requirements as mentioned in the bullets above.
2.3	The work performed by the Tenderer's personnel satisfies professional standards and prevailing legislation.

#### 3.3 Requirements relating to Further assignments

3.1	The Tenderer appoints a project manager to each Further assignment.
3.2	The project manager of a Further assignment communicates with the ACM about the execution of the assignment, takes an active stance towards the ACM in executing the assignment, planning, solving problems, making suggestions, etc.
3.3	The project manager of a Further assignment keeps the account manager informed of the execution of the project.
3.4	The project manager of a Further assignment co-ordinates the project team in executing the assignment. The project manager explicitly checks the quality of documents, including calculations and (financial and statistical) numbers mentioned in the report, produced by the project team.
3.5	An offer for a Further assignment contains a price expressed in euro. In addition to other requirements that the ACM may specify in a Further assignment, an offer for a Further assignment contains at least a specification of the price, with number of hours and hourly prices.

3.6	By submitting an Offer for a Further assignment, the Tenderer must declare explicitly and without reservation that there is no conflict of interest in executing the Further assignment and the execution of other studies assigned to the Tenderer by other customers. If the Tenderer does see a conflict of interest, the Tenderer should specify this conflict of interest and indicate which measure the Tenderer will take to avoid that this conflict of interest interferes with performing the specific assignment for the ACM.
3.7	Before starting the execution of a Further assignment, the project manager and project members each sign a confidentiality agreement.
3.8	The Tenderer intends to tender for all Further assignments.

### 3.4 Requirements relating to the result of Further assignments

4.1	The Tenderer guarantees that (1) advice is written in a sound and coherent way, (2) advice corresponds to generally accepted scientific criteria, (3) advice will meet specifications of the Further assignment.
4.2	Reports should be suitable for publication and should be written in a clear and accessible way. Reports should be readable by a non-expert audience and should avoid or otherwise clearly define jargon and abbreviations.
4.3	Reports are written in English. In case of a Dutch Tenderer, reports may be written in Dutch only with the prior written permission from the ACM. Writing reports in Dutch is not a requirement (and also does not constitute an advantage, chapter 5).
4.4	Financial market data, e.g. bond yields and stock prices for beta estimation, are based on Bloomberg.
4.5	When submitting the final report, the Tenderer provides the data and models which are used for the final report, including the calculations (e.g. a database, spreadsheet) to the ACM.
4.6	Reports, including supporting files, will become property of the ACM. The ACM will publish the reports on its website.
4.7	The Tenderer shall refrain from publishing reports unless the ACM has published them.

### 3.5 Requirements relating to the prices/rates

5.1	The Tenderer will provide an overview of the prices and rates applicable to this assignment by filling in Annex 3. 'Prices/Rates'.
5.2	The prices/rates must be all inclusive. In any event, they must include all of the following: wage costs, overheads (e.g. accommodation and wage costs for support staff), costs relating to the use of equipment and machinery during the assignment, insurance costs, any applicable costs for e-invoicing, and local travel and accommodation expenses.
5.3	<p>The first opportunity to adjust the prices and rates will be on 1 January 2023. The prices and rates can be adjusted in line with the price index figure set by Statistics Netherlands applicable to collectively negotiated hourly wages (including special bonuses) in the corporate-services category. For this purpose, the monthly figure for October is used each time, and the index for from the month of the start date is set as 100%.</p> <p>Any proposed amendments to the price that the Contractor wishes to make must be submitted in writing to the Contracting Authority at least two months before they come into force. The proposal submitted by the Contractor must be itemised, accompanied by a printout from CBS Statline, and contain a reference to the Contract in question with the Contracting Authority. The proposal must contain a summary of both the current prices and rates and the new prices and rates. The Contracting Authority will inform the Contractor in writing of the decision regarding whether or not to accept the new prices and/or rates. The Contracting Authority reserves the right to refuse to process any proposal that is submitted too late.</p>
5.4	The Tenderer will not submit any zero or negative prices/rates.

### 3.6 Tax-related requirements

6.1	The Tenderer indemnifies the Contracting Authority against any claims from the Dutch Tax and Customs Administration ( <i>Belastingdienst</i> ) or other tax authorities.
6.2	The Tenderer will quote the prices according to the following structure: <ul style="list-style-type: none"> <li>the amount excluding Dutch VAT and any VAT due outside the EU;</li> <li>the amount of Dutch VAT due (if applicable) and the amount of any VAT due outside the EU, and;</li> <li>the amount including Dutch VAT (if applicable) and any VAT due outside the EU.</li> </ul>
6.3	If the Tenderer indicates that no VAT is applicable, then he agrees to provide documentary proof of the grounds for this to the Contracting Authority within fifteen calendar days of the request to do so.
6.4	You are liable for any extra costs for Dutch and/or foreign VAT due if you incorrectly charge no VAT or an incorrect amount of VAT to the Contracting Authority. If applicable, you are liable for accurate payment of VAT in the Netherlands and outside the EU, with the exception of the case stipulated in the following sentence. If the Contracting Authority procures a service from a foreign business and Dutch tax law considers the work to have been performed in the Netherlands, then the Contracting Authority is liable for the payment of VAT to the Dutch Tax and Customs Administration for this/these service(s) performed in the Netherlands.
6.5	You guarantee that the amounts specified in the quotation of the Further assignments are inclusive of all taxes and levies (including amounts considered equivalent to taxes or levies), regardless of their description and wherever in the world they may have been levied.
6.6	You indemnify the Contracting Authority against any claims from any tax authority for any taxes, levies or contributions considered equivalent to taxes or levies, originating from either the Netherlands or outside the Netherlands.
6.7	If you believe that your work is being taxed simultaneously (in part or in full) in both the Netherlands and a foreign country (outside the EU), then you agree to provide evidence from the foreign tax authorities in question that prove VAT has been levied on one of the services/amounts substantiated by you in the quotation. You will provide this statement in English. If the statement from the foreign tax authorities is not in English, then you agree to provide a sworn translation of this statement, the costs of which will be borne by you.

### 3.7 Invoicing requirements

7.1	<p><u>E-invoicing</u></p> <p>The general terms and conditions that apply to this contract contain a provision that invoices must be sent electronically (not in pdf). This can be done in 4 different ways:</p> <ul style="list-style-type: none"> <li>The invoicing portal of the Dutch government</li> <li>Link with Digipoort</li> <li>E-invoicing with your own (accounting) software package through Peppol</li> <li>E-invoicing through a service provider.</li> </ul> <p><b>For companies not established in the Netherlands</b></p> <p>The paragraph concerning e invoicing does not apply to companies located outside of the Netherlands</p>
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### 3.8 Environmental requirements

8.1	Most meetings between the ACM and Tenderer will take place through videoconferencing.
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## 4. Requirements concerning the Tenderer

### 4.1 Introduction

In this section, you can find the requirements set by the Tendering Authority to determine whether particular Tenderers are suitable to be awarded the Contract. For this purpose, Exclusion Grounds and Suitability Requirements have been set.

You can indicate whether or not the Exclusion Grounds apply to you and whether or not you are in compliance with the Suitability Requirements by completing the 'European Single Procurement Document'.

The 'European Single Procurement Document' is a PDF file that has been partially filled in for you. You must fill in the rest of the form, print it, legally sign it, scan it and submit it together with your Tender via TenderNed (see paragraph 7.3.15).

### 4.2 Exclusion Grounds

The following Exclusion Grounds are specified in the annex 'European Single Procurement Document':

- all Exclusion Grounds specified in Part III A and B;
- the Exclusion Grounds in Part III C of the 'European Single Procurement Document' that have been selected by the Tendering Authority by means of the tick boxes.

See Section 7 for information on how to submit a Tender in collaboration with other organisations. This section specifies who must provide a completed and signed European Single Procurement Document during the process of submitting a Tender.

Evidence (do not submit together with the Tender – only submit when requested by the Tendering Authority).

**Please note:** The process of applying for a GVA (certificate of conduct) can take several weeks.

For information on types of evidence, see Section 2.89 of the Public Procurement Act.  
<http://wetten.overheid.nl/BWBR0032203/2016-07-01>

The evidence consists of:

1. Extract of Trade Register (no older than 6 months see §4.3)
2. 'Certificate of Conduct for procurement' ('Gedragverklaring Aanbesteden' -no older than 2 years)
3. Tax statement (no older than 6 months)

The Tendering Authority, to which a Tenderer submits data in order to prove that the exclusion grounds referred to in Article 2.86 or Article 2.87 do not apply to the Tenderer, also accepts data and documents from another Member State, from the country of origin of the Tenderer or from the country where the Tenderer is established, that serve an equivalent purpose or that show that the exclusion ground does not apply to Tenderer.

**Please refer to <https://ec.europa.eu/tools/ecertis/search>  
eCertis is the information system that helps you identify different certificates requested in procurement procedures across the EU.**

### 4.3 Suitability Requirements

The purpose of the Suitability Requirements is to assess whether the Tenderer is suitable to fulfil the Contract in the opinion of the Tendering Authority.

By signing the annex 'European Single Procurement Document' (which uses the term 'Selection Criteria' to refer to the Suitability Requirements), the Tenderer declares that he complies with the Suitability Requirements as specified in this subsection of the Tender document. These Suitability Requirements are further specified in the subsequent paragraphs in this section.

#### **4.3.1 Financial and economic standing**

By signing the 'European Single Procurement Document', the Tenderer declares:

- a. That he possesses sufficient financial and economic capacity to fulfil the contractual obligations.
- b. That the Tenderer has a sufficient level of professional and/or statutory liability insurance for the fulfilment of the assignment and that in the event of the Contract being awarded to him, will remain sufficiently insured throughout the duration of the assignment(s).

Evidence (do not submit together with the Tender – only submit it when requested to do so):

Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- a. appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- b. the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;
- c. a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

If the data of the Tenderer's parent/holding company is used in relation to the aspect of financial-economic capacity, then the Tenderer must provide a statement from the parent/holding company that specifies that the parent/holding company unconditionally acts as a guarantor for the obligations to be undertaken by the subsidiary company and any debts arising from the Contract incurred by the subsidiary company. The statement by the parent/holding company must be signed by a legally authorised representative.

#### **4.3.2 Reference data (technical qualifications)**

The Tendering Authority has set the following core competences, which demonstrate experience with essential aspects of the assignment:

- Knowledge and experience with respect to financial markets and the WACC
- Knowledge and experience with respect to the regulated markets (see also chapter 2.1)
- Knowledge and experience with respect to tariff regulation

By signing the 'European Single Procurement Document', the Tenderer declares that he has carried out at least one reference assignment for each of the core competences listed above that meets the following minimum requirements:

- The subject of the reference assignment must be comparable to the core competence in question.
- The reference assignment must have been executed or completed within the three years prior to the closing date for the submission of tenders. If the Tenderer uses an assignment that is not yet fully complete, then only the completed results of the ongoing assignment can be submitted for reference purposes: projected results cannot be taken into consideration.

Assignments including one or more subcontractors can only be used as reference assignments if the subcontractor(s) in question will be involved in the fulfilment of the Contract and if the Tenderer can and will make use of the knowledge and experience of the subcontractor(s) in question during the fulfilment of the assignment.

### **Evidence submit with the Offer.**

You may not provide more than one reference for each core competence. If a single reference testifies to multiple competences that comply with the applicable requirements, then you can use the same reference for these different core competences.

The reference(s) must be signed by the referee (the client in question).

If required, the Tendering Authority reserves the right to check the accuracy and completeness of the references and to contact one or more of the reference parties without the Tenderer's involvement or permission.

### **4.3.3 Quality assurance (technical qualifications)**

By signing the 'European Single Procurement Document', the Tenderer declares:

- That he has a quality-assurance system that is at least equivalent to a certified quality-assurance system. By 'equivalent', we mean the following:
  - Quality assurance is embedded in the entire organisation (by means of policy), adopted by the responsible department and executed by this department (e.g. by means of a quality handbook). This department also bears responsibility for the correct design, execution and management of this quality policy.
  - Presence and company-wide implementation of relevant procedures relating to service provision/end products and management of resources and documents, within which continual improvement is an important point of attention.
  - Operation of an internal quality cycle, including the measurement, analysis and improvement of quality levels.
  - Performance of a periodic, independent audit by an expert concerning compliance with the quality procedures.
  - Customer-oriented processes: a system is in place to ensure (from the customer's perspective) that there is a clear picture of the customer's needs and that these needs are implemented into your business processes.

Or:

- That the Tenderer possesses a validly certified quality-assurance system, the certificate for which was drawn up by a certification institution recognised within the national or international accreditation structure, such as the European standards series EN 45000.

In the event that your Tender involves a collaboration between organisations, see Section 7: 'Tenders involving collaborations with other organisations'.

Evidence (do not submit together with the Tender – only submit when requested by the Tendering Authority).

Compliance with these quality-control requirements can be demonstrated by means of:

- A description (max. 1000 words) of the quality-assurance system in place at your organisation, which demonstrates that this system is at least equivalent to a certified quality-assurance system. The subsection 'Quality Assurance' explains what is meant by the term 'equivalent'. Your description must address all the points specified in this subsection and demonstrate the system's equivalence or more.

Or:

- Provision of the latest audit report or a copy of a certificate or certificates for the quality-assurance system that was/were drawn up by a certification institution recognised within the national or international accreditation structure, such as the European standards series EN 45000.

In the event that your Tender involves a collaboration (consortium), then every member of this collaboration, for their part, must provide the quality-assurance evidence requested for the purposes of the Tender.

#### **4.3.4 Professional/trade register extract**

The Tendering Authority expects the Tenderer to be authorised to practise his trade. For this reason, the Tendering Authority reserves the right to ask the Tenderer to demonstrate that he is registered in the professional register or in the trade register referred to in Annex XI of EU Directive 2014/24/EU in accordance with the regulations applicable in the country in which he is established.

It is also vital that the signed documents included in the Tender have been signed by a legally authorised representative of the Tenderer. For this reason, the Tendering Authority can also ask the Tenderer who is awarded the contract to demonstrate the legal validity of the signature.

Evidence (do not submit together with the Tender – only submit when requested by the Tendering Authority).

In order to establish the legal validity of the signed statements, declarations and other evidence, it is vital that a recent and up-to-date (**max. six months old**, counted from the time of submission of the Tender) extract from the professional register or trade register is provided in compliance with the provisions stipulated in Section 2.98 of the Public Procurement Act. The extract must demonstrate the legal authorisation of the signatory.

If the signatory of the statements, declarations and other evidence is not featured on the extract, then authorisation of the signatory must be provided by one of the parties featured on the extract, in the form of a statement declaring that the signatory was authorised to legally bind the Tenderer at the time that he signed the documents.

In the event that the Tender involves a collaboration (consortium), then every member of this collaboration must provide the aforementioned evidence separately.

## 5. Award criteria and assessment

### 5.1 Introduction

This Section concerns the award criteria. The Tenders are assessed based on the award criteria. Your response to the award criteria must be included in your Tender. In your response, you must take into account the requirements set in Section 3.

Part of your Tender are two reports on the WACC determination in regulated industries, curriculum vitae of five consultants and your hourly rates.

A maximum of 100 points can be obtained for your response to the award criteria: 54 points for the reports, 36 points for the CVs and 10 points for Prices/rates.

### 5.2 Quality criteria

#### 5.2.1 Award criteria relating to quality of the reports

Tenderer adds to the Offer two reports, which are not older than the year 2018 and are written in English or Dutch. The Tenderer also submits the underlying research question related to the two reports. The reports have not been commissioned by The Netherlands ACM. A report is defined as a result of an assignment in which the Tenderer has delivered any advice on an issue relating to the determination of a WACC and that was commissioned by a regulator. The two reports serve as a basis for assessing the following points:

- **Relevance and scope of the reports:** The reports relate to the WACC in regulated industries. The reports present the WACC including values for the parameters of the WACC. The reports address specific issues as quantitative easing, economic crisis, asymmetric risk or specific sector-related developments such as energy transition.
- **Quality and clarity of reasoning:** The reports are based on a solid methodology. The reasoning behind the choices is valid, well specified and where applicable refers to scientific literature in such a way that it is understandable for an economist who is not per se a specialist in the area of the WACC.
- **Completeness and traceability of the calculation:** The WACC advice and the reasoning is complete and well structured. This includes a clear reference to the used sources. "Complete" means whether the report covers all the issues (including statistical tests) it should cover given the objective of that specific report and whether counterarguments (e.g. from the regulated party) are discussed.

#### 5.2.2 Assessment method for the quality of the reports

During the assessment, the assessment team will work in accordance with the following scale for the weighting of the quality criteria.

Assessment		Description
Knock out	Not submitted	No report is submitted
0%	Poor	The reports are not or only distantly related to WACC determination in regulated industries. The reports are superficial, and lack argumentation. Counterarguments are not mentioned.
30%	Fair	The reports are related to WACC determination in regulated industries, but the WACC may not be the main focus. Not all the questions are answered clearly in the reports and motivation falls short of expected scientific standards. There is limited reference to sources, way of calculating and types of analyses used. Some counterarguments are mentioned, but they are not clearly addressed.
60%	Average	The reports are closely related to WACC determination in regulated industries. All questions are clearly and adequately answered but the choices are not always supported with scientific arguments or evidence. References to sources of data, ways of calculating and types of analyses used are not clear or not complete. A number of counterarguments is mentioned and they are discussed to some degree.
80%	Good	The reports are closely related to WACC determination in regulated industries and contain some discussion of specific regulatory issues in relation to the WACC. All questions are clearly and adequately answered and the choices are supported with scientific arguments or evidence. Methodological issues are discussed. There are references to sources of data, ways of calculating, and types of analyses used. Counterarguments are mentioned and adequately addressed.
100%	Very good	The reports are closely related to WACC determination in regulated industries and contain discussion of specific regulatory issues in relation to the WACC. All questions are clearly and adequately answered and the choices are supported with scientific arguments or evidence. Methodological issues are clearly discussed, counterarguments are addressed extensively. There are clear references to sources of data, ways of calculating, and types of analyses used; additional checks on data and analyses are reported. Counterarguments are addressed extensively. Reports contain robustness check of the results with respect to certain parameters or assumptions.

### 5.2.3 Award criteria relating to knowledge and experience of the pool of consultants

Tenderer adds to the Offer a list of five names and CV's with positions and relevant knowledge / experience of the personnel who will carry out the work under the Framework agreement. The CV's will be assessed with respect to relevant knowledge and experience to a) the WACC, b) tariff regulation and c) regulated markets. The following points will be assessed:

- **Knowledge and experience with WACC and tariff regulation:** The personnel that will perform the assignments has up-to-date knowledge and relevant experience with

determination of the WACC and with tariff regulation. The personnel has an education that is relevant for the projects (e.g. finance, financial economics, econometrics). There are consultants in the pool with scientific background.

- **Knowledge and experience with regulated markets:** The personnel that will perform the assignments has up-to-date knowledge and relevant experience with the markets that the ACM regulates (see chapter 2.1). The personnel prepared reports to different regulators.

#### 5.2.4 Assessment method for the knowledge and experience of the pool of consultants

During the assessment, the assessment team will work in accordance with the following scale for the weighting of the quality criteria.

Assessment		Description
Knock Out	Not submitted	No CV's are submitted.
0%	Poor	Few of the industries that are regulated by the ACM are covered in the CV's, few consultants have knowledge and experience with WACC and tariff regulation.
30%	Fair	Some of the industries that are regulated by the ACM are covered in the CV's, most consultants have knowledge and experience with WACC and tariff regulation.
60%	Average	Most of the industries that are regulated by the ACM are covered in the CV's, most consultants have knowledge and experience with WACC and tariff regulation.
80%	Good	All of the industries that are regulated by the ACM are covered in the CV's, all consultants have knowledge and experience with WACC and tariff regulation. Consultants prepared reports to different regulators. There are many senior or medior consultants in the pool.
100%	Very good	All of the industries that are regulated by the ACM are covered in the CV's, all consultants have ample experience and knowledge with WACC and tariff regulation. Consultants prepared reports to many different regulators. There are many senior or medior consultants in the pool, with scientific background.

### 5.3 Price

The Tenderer must fill in all the annex 3 'Prices / Rates' target prices and rates.

By completing the annex 3 'Prices/rates', the Tenderer gives a detailed overview of the prices and rates to be charged for this contract. When completing the price format, the Tenderer states the prices and rates as follows:

- the amount excluding VAT;
- the VAT amount and;
- the amount including VAT.

You state the prices and rates as the amount excluding VAT;

Tenderer states a **maximum** all-in hourly rate for:

1. Junior (up to 4 years of experience) €
2. Medior (4 to 8 years of experience) €
3. Senior (at least 8 years of experience) €

The lower limit is established to a hourly rate (VAT excluded) of:

1. Junior € 75
2. Medior € 120
3. Senior € 150

The hourly rates will be weighted as follows:

1. Junior € x 0.40
2. Medior € x 0.25
3. Senior € x 0.35

Together this results in the weighted maximum all-in hourly rate.

The Tenderer with the lowest weighted maximum all-in hourly rate (excl. VAT), above or equal to the lower limit (see above), receives the maximum points. The remain Tenderers will receive the points based on the following formula:

$$\text{Points} = (\text{lowest weighted all-in hourly rate}) / (\text{weighted all-in hourly rate Tenderer}) * \text{maximum points}$$

## **6. Assessment of the Tender**

### **6.1 Assessment of the Tender's completeness and legal validity**

The Tender will be assessed according to the following procedure. The Tendering Authority will check whether:

1. all required documents have been provided (see the checklist in the subsection 'Structure and content of the Tender' in Section 7);
2. the information is correct and complete, and no adjustments have been made to the documents provided by the Tendering Authority;
3. no provisos have been made by the Tenderer (e.g. specifying that the Tenderer's own terms and conditions apply);
4. the 'European Single Procurement Document' has been completed in full and has been legally signed.

In the event that the aforementioned requirements have not been complied with, the Tender will be excluded from assessment and further participation in the tendering process, unless rectification is permitted within the boundaries of public procurement legislation.

### **6.2 Assessment of requirements relating to the assignment**

Subsequently, the Tender's compliance with the requirements to the assignment (see Section 3) will be assessed. Any Tenders that do not comply, will be excluded from further participation in the tendering process.

### **6.3 Assessment of award criteria relating to the assignment**

Subsequently, all Tenders not excluded from the tendering process, will be assessed according to the award criteria stipulated in Section 5.

### **6.4 Determination of definitive total score**

The Contract will be awarded according to the principle of the Most Economically Advantageous Tender. The Most Economically Advantageous Tender is the Tender that achieves the highest definitive total score based on the best price-quality ratio.

The Tenderer's definitive total score will be rounded to one decimal place. No scores will be rounded off until the moment that this definitive total score is determined. If two or more Tenderers have an equal definitive total score that would result in the Tendering Authority having to award the Contract to more parties than is desired, then the Tendering Authority will award the Contract to the Tenderer with the highest final score for the subcriterion quality of reports. In the event that the highest scoring Tenderers also achieve an equal score for this subcriterion, then determination of the Tenderer to which the Contract will be awarded will be made by drawing lots.

### **6.5 Assessment of evidence**

At the moment that the Tenderer legally signs the 'European Single Procurement Document' and submits the Tender, the Tenderer is not (yet) required to provide any evidence, unless expressly asked to do so in this Tender document.

By signing the 'European Single Procurement Document' and submitting his Tender, the Tenderer agrees that at a later date, the Tendering Authority is entitled to request that the winning Tenderer provides the required evidence.

Upon awarding the Contract, the Tendering Authority will only request evidence from the winning Tenderer. The Tendering Authority is entitled to request this evidence at an earlier stage and from all Tenderers if it believes such a course of action is necessary to facilitate the progress of the tendering process.

The evidence must demonstrate that the Tenderer indeed complies with the content of both the 'European Single Procurement Document' and the Tender. Following the Tendering Authority's request to provide the evidence, the Tenderer has 15 (fifteen) calendar days to hand over the

required evidence. If the Tendering Authority does not agree with the content and/or validity of one or more of the pieces of evidence provided by the winning Tenderer, then this could result in the winning Tenderer being excluded from further participation in the process. In such cases, the Tendering Authority will inform every Tenderer of this situation. The Tendering Authority will then determine the next Most Economically Advantageous Tender. The score of the Tenderer that has just been excluded will be removed. The calculations will then be carried out once more and a new ranking will be created. The award process will then be conducted again.

In the event a winning Tenderer does not qualify for the definitive award of the Contract, then all Tenderers will be notified of this and the consequences thereof concerning the award of the contract.

## 7. Submission procedure for Tenders

### 7.1 Statement of agreement

By submitting a Tender, including the 'European Single Procurement Document', the Tenderer explicitly consents to all requirements and conditions stipulated in this Tender document and the Memorandum of Information and declares that he will continue to comply therewith throughout the entirety of the contract period. Furthermore, the Tenderer confirms that he will comply with all of the specified prices and rates, including any agreed indexation. Failing to comply with one or more requirements will result in his Tender being disqualified from the assessment process and therefore excluded from the tendering process.

### 7.2 Schedule

See schedule in Subsection 1.3.

### 7.3 General procedure

This tendering process will be carried out in compliance with the Public Procurement Act. In this case, the 'open procedure' was selected. An announcement thereof was published on [www.tenderned.nl](http://www.tenderned.nl) and on Tender European Daily (TED).

In the event that a Tender is not submitted in accordance with the provisions and regulations stipulated in this section, the Tendering Authority can set aside the Tender and exclude the Tenderer from further participation in this tender procedure.

#### 7.3.1 Communication

All communication relating to this tender procedure will be conducted via TenderNed ([www.tenderned.nl](http://www.tenderned.nl)), unless otherwise specified.

Once you have indicated your interest in this invitation to tender on TenderNed, you can send and receive messages about this tender process via 'My Tenders'. Any questions concerning the tender process can be sent to the Tendering Authority's contact person via TenderNed. You will receive messages via TenderNed. Via your personal TenderNed settings, you can turn on automatic notifications, including notifications to your private email address. It is your responsibility to ensure that these emails are not blocked by your email provider's security system. If the communication cannot be conducted via TenderNed, you can contact the following contact person(s): Teun van den Maagdenberg (iucezteam5@rvo.nl)

Attempts to directly contact parties other than the contact person(s) stated above in relation to this tender process are prohibited.

If you have any functional or technical questions regarding TenderNed, you can contact the TenderNed service desk on weekdays between 08:30 and 18:00 CET on 0800-8363376 or via [servicedesk@tenderned.nl](mailto:servicedesk@tenderned.nl). You can also consult the eHandbook via <http://www.tenderned.nl/egids/>.

#### 7.3.2 eHerkenning

All TenderNed users affiliated with a *Dutch* company registered with the Dutch Chamber of Commerce are obliged to log in and register using eHerkenning.

*This obligation does not apply to companies not registered in The Netherlands.*

Visit <http://www.tenderned.nl/eherkenning-en-tenderned-0> for more information about eHerkenning, including the terms and conditions. You are responsible for any consequences arising from the failure to register with eHerkenning in a timely manner.

#### 7.3.3 Questions and additional information/changes

During the procedure, you have the opportunity to ask questions. Ask your questions as soon as possible. All questions will be answered anonymously. The Tendering Authority can answer your questions via TenderNed in two ways:

- Via one or more Memoranda of Information.
- By means of the TenderNed 'Questions and Answers' facility.

The deadline for submission of your questions is specified in the schedule (see section 1.3). In any event, all questions asked will be answered at least 10 days prior to the deadline for submission of the Tender.

### ***Submitting a question to the Tendering Authority***

Questions are to be asked via TenderNed. See <https://www.tenderned.nl/cms/english/six-steps-bidding-public-procurement-contracts-online-through-tenderned>.

All questions and answers will be published anonymously for all interested parties to view. If you have a compelling reason why you do not wish your question (and its answer) to be revealed to the other interested parties, then tick the 'Answer Individually' box. However, the Tendering Authority will decide whether or not to process your question individually.

### ***Answers from the Tendering Authority***

The Memoranda of Information are an integral part of this Tender document. The Tendering Authority assumes that all sections for which no questions have been asked have been clearly and fully understood.

### ***7.3.4 Validity period and submission of Tender***

The Tender must be valid for at least the four months after the deadline for submitting the tenders. In the event that an application for a preliminary injunction is filed with the competent court in The Hague against the award decision, then the Tenderers must in any event ensure that their Tenders are valid until four weeks subsequent to the initial decision by the court.

### ***7.3.5 Variants on Tender***

Upon submitting a Tender in accordance with the Tender document, the Tenderer is not permitted to submit a variant of this Tender.

### ***7.3.6 Costs of submitting a Tender***

The Tendering Authority will not reimburse any Tenderers for any costs resulting from the drafting and submitting of a Tender, including any further information requested of the Tenderer.

### ***7.3.7 Termination of tendering process***

Until the moment that the Contract is signed, the Tendering Authority reserves the right to partially, fully, temporarily or permanently terminate the tendering process. In such cases, Tenderers will not be entitled to receive compensation for any costs incurred by them in connection with this Tender, unless the Contracting Authority is of the opinion that a (small) contribution to the tender costs is appropriate in view of the circumstances.

### ***7.3.8 Order of precedence of documents***

In the event of inconsistencies between the Tender document and the Memorandum of Information, the Memorandum of Information takes precedence.

In the event that there are multiple Memoranda of Information, then the provisions in the most recent Memorandum of Information takes precedence in the event of inconsistencies between the different Memoranda.

### ***7.3.9 Information about the Tenderer's obligations***

The Tenderer must take into account his obligations relating to environmental, social and employment law in compliance with article 2.81 paragraph 2 of the Public Procurement Act.

Information on obligations resulting from Dutch legal provisions with regard to taxes, environmental protection, occupational health and safety and terms of employment that will be applicable to the Tenderer's activities throughout the Contract period is available from the following sources:

- Information on taxes: the Dutch Tax and Customs Administration: ([www.belastingdienst.nl](http://www.belastingdienst.nl)).
- Provisions concerning environmental protection: the Ministry of Infrastructure and Water

- Management ([www.rijksoverheid.nl](http://www.rijksoverheid.nl)).
- Provisions pertaining to occupational health and safety and terms of employment: the Ministry of Social Affairs and Employment: ([www.rijksoverheid.nl](http://www.rijksoverheid.nl)).

### **7.3.10 Inconsistencies and objections**

If the Tenderer is of the opinion that the documents contain inconsistencies, errors or matters that are unclear or if the Tenderer has any objections, then the Tenderer must report this to the contact person in writing, including substantiation.

### **7.3.11 Complaints procedure**

If a Tenderer disputes a response given by the Tendering Authority to a question, request, comment or objection from the Tenderer, or if the Tenderer receives no response, then he can submit a complaint. More detailed information on this matter can be found in the 'Complaints Procedure' annex.

### **7.3.12 Dispute resolution**

In addition to the provisions in the 'Complaints Procedure' subsection, any dispute arising from this tendering process can be presented to the Public Procurement Experts Committee ([www.commissievanaanbestedingsexperts.nl](http://www.commissievanaanbestedingsexperts.nl)) and/or to the competent court in The Hague. Dutch law applies exclusively to such proceedings.

### **7.3.13 Submission of the Tender**

The deadline (date and time) for submission of Tenders is stipulated in the 'Time schedule' (1.3) and it is a final deadline.

- In order to submit a Tender, you must register with TenderNed. One or more registered users must be connected and authorised to submit the Tender via TenderNed on behalf of your company.  
The Tendering Authority advises that you start the TenderNed registration process immediately rather than postponing it until the tendering period is coming to a close. Upon registering your organisation, you must add your tender via TenderNed's announcements platform.
- For more information on registering and establishing your organisation with TenderNed and digital submission of your Tender, visit <https://www.tenderned.nl/cms/english/six-steps-bidding-public-procurement-contracts-online-through-tenderned>.
- Only Tenders that have been submitted to the digital safe for this invitation to tender either prior to or on the day of the deadline (prior to the time of the deadline) will be processed by the Tendering Authority.
- The time and date as displayed on the digital countdown clock in TenderNed serves as the definitive deadline for the submission of Tenders.
- The Tendering Authority is only able to see the Tenders once the digital safe opens in TenderNed. This safe can only be opened upon expiry of the deadline for the submission of Tenders.
- In the event you have technical issues or questions regarding submission of your Tender via TenderNed, you can contact the TenderNed service desk via [servicedesk@tenderned.nl](mailto:servicedesk@tenderned.nl) or +31 (0)70-3798899. If you believe that the TenderNed service desk is taking too long to answer your question or comment, then you can contact your contact person within the Tendering Authority.
- Any risks resulting from late submission of the Tender and/or submission of an incomplete Tender is borne by the Tenderer.
- The Tendering Authority is neither responsible nor liable for any consequences resulting from a Tender that is submitted too late, incorrectly or incompletely.

The Tendering Authority will treat confidential information provided by the Tenderer with due care.

### **7.3.14 Structure and content of the Tender**

The Tender must be submitted entirely via TenderNed and the 'European Single Procurement Document' must be legally signed.

You can use the following checklist during the submission of your quotation.

Subject	Description	Action required from tenderer
Annex 1	European Single Procurement Document*	Fill in, legally sign and add to TenderNed
Annex 3	Prices/rates	Fill in, and add to TenderNed
Annex 6	Reference contracts	Fill in, sign by the referee and add to TenderNed
Award criteria	A separate response to each of the Tendering Authority's award criteria.	Add to TenderNed

\* See Subsection 7.3.16 in the event your Tender is submitted in collaboration with other companies.

### **7.3.15 Legally binding signature**

A legally binding signature means that a document has been signed by a duly authorized representative.

If it is recorded in the professional or company register that two or more persons only have joint powers of representation, then the documents requiring a legally binding signature must be signed by those two or more persons. If any restrictions are in place regarding the authorization to represent the organization, then these must be taken into account.

Where a legally binding signature is required, the Contracting Authority accepts, in addition to an original handwritten signature, also the qualified electronic signature within the meaning of article 3: 15a of the Civil Code (or EU Regulation no. 910/2014, article 3, part 12).

**Please note:** it is not possible to sign the European Single Procurement Document with a qualified electronic signature immediately. You can provide the ESPD with a handwritten signature or you must make a digital PDF printout of the PDF form, after which the qualified electronic signature can be placed on this digital PDF printout.

The lack of a legally binding signature in principle will lead to exclusion from the tendering procedure. In that case, however, you will be given one single opportunity to correct it within 48 hours.

### **7.3.16 Submission of a Tender in collaboration with other organisations**

If you cannot carry out the assignment independently, you can set up a collaboration with other organisations.

There are two ways in which you can submit a Tender in collaboration:

- 1) As a consortium in which each member of the consortium is jointly and severally liable for the fulfilment of the obligations arising from the Tender as well as the fulfilment of the Contract.
- 2) In a principal contractor-subcontractor structure in which the Contractor is liable for the fulfilment of all obligations, including the obligations that will be subcontracted.

#### *Tendering as a consortium*

If a Tender is submitted by a consortium, then:

- Every member of the consortium must fill in and legally sign a separate 'European Single Procurement Document', which also includes a specification of who the consortium members are (see Part II of the 'European Single Procurement Document'). Indicate the role each member plays within the consortium. In the 'European Single Procurement Document', you must indicate who is in charge of the consortium (who is lead manager) and will act as its authorised representative.

- All organisations in the consortium accept joint and several liability for the fulfilment of the obligations arising from the Tender and the eventual fulfilment of the Contract.
- If a consortium member relies upon the capacity of another entity in order to demonstrate compliance with the applicable Suitability Requirements, then the entities in question must complete and sign Part II C of the 'European Single Procurement Document' (in compliance with the provisions specified below in the subsection 'Submitting a tender together with subcontractors' in the eventuality that subcontractors are obliged to demonstrate their capacity).
- Every member of the consortium, for their part, must provide the evidence requested for the Tender.

*Submitting a tender as a principal contractor together with subcontractors*

If a Tender is submitted by a principal contractor that does not rely upon the capacity of any subcontractors, then only the principal contractor is required to complete and legally sign Part II D of the 'European Single Procurement Document'.

If the principal contractor does rely on the capacity of subcontractors in order to demonstrate compliance with the applicable Suitability Requirements, then the subcontractor(s) in question must also complete and legally sign Part II C of the 'European Single Procurement Document'.

The principal contractor is fully liable for the fulfilment of the obligations arising from the Tender as well as the fulfilment of the contract (if awarded). In addition, the principal contractor is liable for the fulfilment of the obligations for which he has hired the subcontractor(s).

All completed and legally signed 'European Single Procurement Document' forms must be added to the Tender.

**7.3.17 Single Tender**

All natural persons, legal entities and organisations may only submit a single Tender (either individually or in combination with other natural persons, legal entities and/or organisations). Tenderers who are mutually connected via a relationship of dependence (group link) are permitted to participate separately in this tendering procedure. However, this is on the express condition that they participate as competitors in this tendering process. For this purpose, they must demonstrate that their mutual relationship has not influenced their behaviour within the scope of this tendering procedure nor has it restricted fair competition.

By submitting a Tender, the Tenderer in question agrees to this condition.

**7.3.18 Violation of the fundamental principles of procurement law and restriction of fair competition**

Any Tenderer whose actions violate a fundamental principle of procurement law (such as the equality principle), the result of which restricts or could restrict fair competition, will be excluded from this tendering procedure. This is also the case if the violation or the restriction of fair competition only comes to light after the announcement of the award of the Contract to all Tenderers. Prior to making the decision to exclude the Tenderer in question, the Tendering Authority will notify the Tenderer of this intention, at which point the Tenderer will be given the opportunity to demonstrate to the Tendering Authority that no violation of a fundamental principle of procurement law or restriction of fair competition has taken place.

By submitting this Tender, the Tenderer declares his awareness that actions contravening any fundamental principle of procurement law can result in the aforementioned consequences. The Tendering Authority can use all resources available to him in order to identify any violation of the fundamental principles of procurement law or the restriction of fair competition. A judicial decision will not be a necessary requirement in such cases.

**7.3.19 Communication and language**

During the tendering process, communication with the Tendering Authority must be conducted in Dutch or English.

The Tender must be submitted in English.  
Additional documents (such as informational materials etc.) can also be provided in Dutch or English.

During the fulfilment of the contract, communication must be conducted in Dutch or English.

#### **7.3.20 General terms and conditions**

The applicability of any of the Tenderer's general terms and conditions concerning delivery, payment and/or any other matters is explicitly excluded. The General Government Terms and Conditions apply to the Contract.

#### **7.3.21 Contract conditions**

The draft Contract, and the corresponding General Government Terms and Conditions are included in the annexes. The Tenderers have the opportunity to ask questions, make comments and propose textual amendments.

The Tendering Authority is free to accept or reject the proposed textual amendments. The Tendering Authority will indicate whether or not the proposals have been accepted or rejected in the Memorandum of Information. By submitting the Tender, the Tenderer declares his consent to the (possibly amended) Contract. Only the definitive Contract will apply during the execution of the assignment.

#### **7.3.22 Explanation and verification of the Tender**

The Tendering Authority can request that the Tenderer explains his Tender in greater detail and/or provide substantiating documents. The Tendering Authority is entitled – although not obliged – to check the accuracy of all data and statements submitted within the scope of the Tender.

#### **7.3.23 Request for supplementary information concerning the Tender**

The Tendering Authority can ask Tenderers to provide supplementary information and/or clarification of their Tender.

#### **7.3.24 Announcement of the award of the Contract**

All Tenderers will receive a message simultaneously that announces the award of the Contract and substantiates its decision. All Tenderers are entitled to request further information regarding this decision from the Tendering Authority.

#### *Standstill period*

All Tenderers and stakeholders who dispute the award of the Contract and/or the verbal/written substantiation thereof can apply for a preliminary injunction at the competent civil court in The Hague. This must be done no later than 20 calendar days subsequent to the sending of the digital notifications concerning the award of the Contract. Upon expiry of this period, no more applications for a preliminary injunction can be submitted. In the event a Tenderer applies for a preliminary injunction, we kindly request that you send a copy of the summons to the Tendering Authority.

On the grounds of Section 2.129 of the Public Procurement Act the award of the Contract does not yet mean the Tenderer's Tender has been accepted. For the 20 calendar days subsequent to the sending of the digital notification of the award of the Contract, the Tendering Authority is not permitted to definitively award the assignment by concluding the Contract.

If a preliminary injunction is applied for during these 20 calendar days, then a waiting period will be required pending a judgement in the preliminary injunction proceedings. The judgement will serve as the basis for further decision making by the Tendering Authority.

If preliminary injunction proceedings are brought against the award of the Contract, then the Tendering Authority will notify the Tenderer of this fact. The Tenderer must ensure that his Tender remains valid for at least four weeks subsequent to the judgement in the preliminary injunction proceedings.

*Interest in relation to the judgement*

Tenderers who have an interest in the judgement in these preliminary injunction proceedings can only engage in these proceedings by means of intervention or joinder. The Tenderer cannot initiate separate proceedings or other judicial proceedings.

#### **7.4 Further Agreements within the Contract**

##### **7.4.1 Further agreements within the Contract**

Further agreements are awarded through the so called mini competition between the contracted parties of the Framework agreement. The Further agreements are based on the best price-quality ratio. The Further agreements are awarded to the Contractor who has submitted the most advantageous tender (Offer) based on the following criteria:

- Price: firm fixed price for the Further assignment;
- Lead time of the assignment;
- A plan of approach.

In case of a Further agreement (mini competition), the Contracting Authority sends a request for quotation to the Contractors. The Contractors submit ACM an irrevocable Offer in writing based on the terms of reference of the Further assignment. This Offer includes:

- A reference to the Framework agreement;
- The formulation of the research question;
- A plan of approach to the research question;
- Maximum fee that will be charged by the Tenderer excluding and including VAT

Any other requests will be mentioned in the request for quotation of the Further assignment.

## **Annexes**

The following annexes constitute an integral part of this Tender document. These annexes were published together with the Tender document.

Annex 1: European Single Procurement Document

Annex 2: Draft Contract

Annex 3: Prices/Rates

Annex 4: ARVODI-2018

Annex 5: Complaints Procedure

Annex 6: Reference contracts