

Selection act for the purpose of European Tender

Negotiated procedure with prior publication

For the

Property Damage & Liability Insurance

per 1-1-2022

on behalf of

ProRail B.V.

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1 Definitions:

Contracting authority:	ProRail B.V.
Procurements documents:	all documents in this public procurement procedure which have been brought into the procedure by the Contracting authority.
Public Procurement Act 2012:	Act of 1 November 2012, containing rules with regard to tenders.
Aon:	Aon Nederland CV.
Tender specifications:	the descriptive document contains the public contract, the necessary risk information and award criteria.
Appendix:	an appendix to the Procurements documents, which is an integral part of the Procurements documents.
Service provider:	each party who brings insurance services on the market;
Candidate:	an interested party who submitted a Request for participation.
Underwriting authority:	an authority who applied on behalf of the Service provider for the Selection act.
Tenderer:	a Candidate who submitted a Tender.
Tender:	the offer submitted by the Tenderer.
Negotiation procedure:	procedure involving a negotiation with selected Candidates.
Information Notice:	an addition to the published Procurements documents, which forms an indissoluble part of the procedure to share the questions of the Service provider and the answers of the Contracting authority with all parties.
Lot:	a separately to be awarded part of the contract, which is tendered at the same time as the other Lots in this procurement procedure.
Selection act:	the descriptive document in which the Contracting authority described and explained the contract, the public procurements procedure and the selection criteria.
Request for participation:	the request of a Candidate to the Contracting authority to be allowed to participate to this public procurement procedure.

2 Introduction

2.1 General

This is the Selection act belonging to the Negotiation procedure. The document contains information on the Tender procedure including the selection criteria/requirements. This procedure is subject to the provisions of the Public Procurement Act 2012 and other legal and regulatory framework applicable.

The aim of this tender procedure is to select one suitable Service provider or several suitable Service providers with whom a contract regarding the Property and/or Liability insurance can be closed. All this in accordance with the requirements and wishes of the Contracting authority.

In the negotiation phase the Contracting Authority starts a negotiation about the appropriate insurance solution with each party separately. There can be several rounds of negotiations. After each round the Contracting Authority is allowed to modify the Tender specifications up to the final document. Except the contract award criteria and minimum requirements. Of each negotiation the Contracting authority makes a report which is sent to the relevant Service providers. The selected Candidates will receive after each round an invitation to submit a Tender. The assessment of the Tenders will be based on the criterion best value for money. This criterion is elaborated in the Descriptive document.

A Request for participation may only take place in accordance with the conditions made in this Selection act.

By submitting a Request for participation, the Candidate declares to agree unconditionally with this Selection act and the Appendices belonging thereto and all the administrative, legal and other conditions regarding this tender procedure mentioned therein.

The conditions contained in this Selection act apply to all procurement documents and to the entire tender procedure.

2.2 Further provisions

2.2.1 Rights Contracting authority

The Contracting Authority is entitled to:

- withdraw the tender procedure of the contract;
- withdraw the tender procedure of a lot of the contract;
- not to award the contract;
- not to award a lot of the contract;
- adapt the tender procedure, including a change of the periods. The Contracting authority will inform all Interested parties/Candidates of this immediately through an Information notice.

- adapt the contract until 10 days before the last tender date at a detailed level. The Contracting authority will inform all Tenderers of this immediately through an Information notice.

2.2.2 Mail delivery

The risk of mail delivery lies with the Service provider during the entire tender procedure.

2.3 About the contracting authority

ProRail B.V. (hereinafter: ProRail) is responsible for the railway network in the Netherlands: construction, maintenance, management, and safety. Our staff ensure on daily basis, 24/7, that 1,200,000 passengers and 100,000 tonnes of cargo reach their destination, using 6550 trains and over 7000 kilometres of rail track. The railway network truly is the beating heart of mobility in the Netherlands.

ProRail continually works to ensure accessibility in the Netherlands by providing an optimal railway network. We distribute the capacity available on the rail network, we control all rail traffic, we build and manage stations, and we construct new railway lines. Additionally, ProRail is responsible for maintaining existing infrastructure, such as rail tracks, switches, signals, and railway crossings.

ProRail makes an important contribution to keeping the Netherlands accessible. For this we cooperate with passenger and cargo carriers, while ensuring that we keep the interests of their customers in mind. In cooperation with municipalities and provinces, we consider what is the best manner to meet their demand for rail transportation and station facilities.

The demand for mobility continues to increase. Therefore, we need to further extend the capacity of our already heavily used rail network. If we fail to do this, the Netherlands will come to a standstill. In this context new areas of technology, such as automatic directing technology, sensor technology, and big data, offer new opportunities. As a result, other types of transport, such as cars and coaches, are developing quickly. Rail transport must ensure it does not fall behind. We will use these possibilities to operate more trains, with a higher frequency and more efficiently causing as less disruption as possible. In addition to this, sustainability is getting more and more important; to the world, to the Netherlands, and therefore also for us. In order to prepare for the future, ProRail responds to these developments. We do so by focusing on three ambitions:

- ProRail **connects**: increased mobility
- ProRail **improves**: more reliable mobility
- ProRail **aims for sustainability**: more sustainable mobility

For further information about ProRail we refer to 'ProRail corporate presentatie EN'.

2.4 About the contract

This Selection Act concerns:

- Lot #1:
The Property Damage insurance for ProRail partly on all risks and partly on Fire Lightning Explosion Aircraft (flexa) and Storm conditions.
- Lot #2:
The General Liability insurance for ProRail, including public and product liability;

For the purpose of this European tendering procedure, these insurances are divided into two separate lots. Insurers are invited to submit a tender for either one or both lots.

The contract term for both lots is at least 12 months (starting 1/1/2022) with tacit renewal for consecutive periods of 12 months.

3 The procedure

3.1 Planning

The table below contains the most important dates for this tender procedure. The Contracting authority reserves the right to adapt the planning and will inform the Candidates of this forthwith.

Activity	Date
Phase 1	
Publication announcement of the contract	14 July 2021
Final date for asking questions	30 July 2021
Sending Information Notice	06 August 2021
Final date for submitting a Request for participation	17 August 2021
Announcement preliminary selection decision Candidates (after the lapse of the 8 day period the preliminary selection will be final; if no candidates are rejected the period will lapse)	20 August 2021
Announcement definitive selection decision Candidates	30 August 2021
Phase 2:	
Sending invitations and Specifications to Candidates	30 August 2021
Final date asking questions	10 September 2021
Sending Information notice	20 September 2021
Final date for submitting a Tender	15 October 2021
Negotiation	18 October – 5 November 2021
Sending notification of intended awarding (commencing date objection period)	15 November 2021
Announcing definite award	6 December 2021
Publication of definite award	7 December 2021
Commencing date contract(s)	1 January 2022

3.2 Contact

Questions/remarks

The Candidates are given the opportunity to ask questions with regard to the Selection act and to communicate possible remarks. Any questions and possible remarks can only be sent to the contact address as referenced in paragraph 3.2.1 stating the name of the Invitation to Tender: **Property & Liability Insurance ProRail**.

The questions and/or remarks shall be anonymously answered in an Information Notice. The Information Notice shall be distributed simultaneously to all Service Providers involved. This process aims to remove ambiguities in the Invitation to Tender documents and prevent incorrect interpretations of those documents. In case of inconsistency between the Information Notices, the most recent Information Notice shall prevail.

3.2.1 Digital correspondence

All communication with regard to this invitation to tender procedure has to take place digitally through Tendered to the contact person mentioned below. Any communication about this invitation to tender procedure should contain the project name: **Property & Liability Insurance ProRail**. Questions asked by telephone shall not be taken into consideration. Interested parties and Candidates are requested not to save questions until the final date for asking them.

Aon will support this tender procedure on behalf of the Contracting Authority. On behalf of Aon the contact will be:

Name : Enrico Elderhorst
Tel. : 0031 6 22526917
Email : enrico.elderhorst@aon.nl

All correspondence concerning this tender procedure takes place with Aon and not with the Contracting authority.

3.2.2 Timely Tender

The risk of submitting the Request for participation and the Tender in a timely fashion (both digitally and physically) lies with the Service Provider throughout the whole Invitation to Tender procedure.

3.3 Contents of the Request for participation

The Request for participation - exhaustively - comprises the following documents:

- the legally valid signed and completed European Single Procurement Document (Appendix 1);
- a completed Reference statement (only on request) (Appendix 3);

If applicable the Request for participation also comprises:

- in case of a Consortium: the legally valid signed and completed form European Single Procurement Document (Appendix 1) by each separate alliance partner;
- the legally valid signed and completed Letter of authorisation (Appendix 2). The Authorised agent shall draw up a European Single Procurement Document regarding his underwriting agency and with regard to his parties giving the authorisation (see chapter 4 and the Letter of authorisation).

3.4 Submission rules Request for participation

Submission of the Request for participation must take place in accordance with the rules below:

- The Request for participation is only valid if Appendix 1 (European Single Procurement Document) is fully completed, signed and attached.
- The Request for participation must be submitted at Tendered not later than **17 August 2021**
- The Request for participation shall be in the English language.
- A Request for participation which is received after the closing date shall not be taken into consideration.
- Amounts shall be mentioned in Euros (excluding V.A.T. and/or excluding insurance tax).
- The risk of submitting the Request for participation in a timely fashion lies with the Service Provider throughout the whole Invitation to Tender procedure.
- Requests for participation that are not submitted according to these rules shall be excluded from participation.
- After receipt of the Request for participation Aon shall issue a confirmation of receipt.
- Questions asked by telephone shall explicitly not be taken into consideration. Candidates are requested not to save questions until the final date for asking them.

4 Requirements

4.1 Introduction

In this chapter it is indicated what requirements the Service provider must comply with, under penalty of exclusion from the tender procedure, unless indicated otherwise, in order to be eligible for an invitation to participate in the tender phase. These requirements are applicable for both Lot #1 and Lot #2.

4.1.1 Request for participation submission manner

Candidates can submit a Request for participation in this invitation to tender procedure in the following manner:

- A Candidate can request to participate independently to this contract; or
- A Candidate can be represented by another party; or
- A Candidate cooperates with another Interested party (of the same level) and enters into a partnership, which is denominated a Combination in this document.

A Candidate can only submit one Request for participation and/or Tender for this contract. In that respect businesses of the same concern shall be deemed to be one and the same business, unless they can substantiate sufficiently that the separate Requests for participation and/or Tenders have been drafted independently of each other and the competition has not been adversely affected by it.

4.1.2 Terminology

The terminology used in the Public Procurement Act 2012 does not fit perfectly with the insurance sector. Therefore, this document describes exactly what should be understood by the different terms.

With an insurance contract, an agreement is made between an insurer and the Contracting authority. This means that an insurer can request to participate on the insurance contract. An insurer can also be represented by an Authorized Agency, who can request to participate on behalf of the insurer. In that situation the insurer is the main contractor and the Authorized Agency is the subcontractor, according to public procurement law.

With an insurers contract as the one at hand it is possible to:

- Form a Combination;
- Rely upon third parties;
- Engage a subcontractor.

Below these terms are clarified and discussed with reference to insurance law aspects.

4.1.3 Combination (partnership)

It is permitted to submit a Request for participation as a Combination. A Combination of businesses may submit a joint Request for participation as a single Candidate. In that case, each of the businesses is not permitted to submit the Tender separately, alone or in combination with others.

Together with the Request for participation, each member of the Combination is required to submit a signed European Single Procurement Document. The members of the Combination

are jointly and severally liable (Note: the joint and several liability concept does not apply to insurers, see hereafter) for any loss arising from or in relation to the to be tendered contract in case of failure to comply with the agreement. The name of the business that will act as representative on behalf of the Combination shall be mentioned, for that business shall be authorised to represent and to commit the Combination in all respects.

The requirements imposed in chapter 4 apply for each of the businesses in a Combination separately. In the European Single Procurement Document this should be mentioned in Part II A “Manner of participation” (page 3).

Particulars in insurance situation

A Combination is only possible if the Combination consists of equal parties (depending on the requested service). A combination of an insurer and a broker is not permitted. This also applies to the combination of an authorised agent and a broker.

Note:

A combination as per public procurement law is not usable within insurance law. The insurer is only responsible for the execution of the percentage for which he carries the risk and cannot be held jointly and severally liable for the total risk. However, the situation could occur that one insurer applies for one part (for example 50%) and another insurer for another part. In case these two (or more) insurers should want to apply jointly, this can be done by a Combination, with the observation that each insurer is only responsible/liable for their own percentage.

4.1.4 Rely on third parties

A Candidate can rely on the qualifications/resources of third parties regarding the requirements applicable to this tender procedure if the Candidate does not independently comply with the requirements.

The Candidate warrants that the third party fulfils all requirements applicable to this tender procedure regarding these parts of the contract that the third party shall perform. The Contracting authority reserves the right to check this warranty for correctness. The Candidate is liable for the acts and/or omissions of the third parties he engages and shall bear full responsibility, therefore.

In order to prove that a candidate complies with the suitability requirements a candidate may, in addition to his own competence, only appeal to the competence of a third party, if and in so far as the Candidate proves that such third party committed itself unconditionally towards the Candidate to deploy the resources required for carrying out the contract (in the widest sense, also including: knowledge, manpower and equipment).

The Candidate must prove this during his Request for participation by submitting a written and legally validly signed contract to such end between the Candidate and the third party in question. The third party in question has to be employed actually and accordingly whilst carrying out the contract.

If the Service provider wants to have the contract wholly or partially carried out by a third party not presented at the time of the selection, he must submit this for approval to the Contracting authority prior to the deployment of the third party. The Contracting authority may refuse such approval in a substantiated way. In the Single European Procurement Document, this should be mentioned at Part II C on page 5.

Particulars in insurance situation

If an Authorized Agent wants to rely on a broker for the execution of certain activities, this should be mentioned. Also, if an insurer wants to engage a broker as third party with an insurance contract, this should be mentioned.

The Candidate should mention this at the Single European Procurement Document. Furthermore, the business that is being relied upon should fill in a Single European Procurement Document as well.

4.1.5 Subcontracting

In this document subcontracting refers to the Authorised Agent and other subcontractors.

Authorised agent

In case of a Request for participation from an Authorised Agent the Authorised party will have to complete a Single European Procurement Document which proves that the principal(s) each separately comply with the requirements as per this Selection act. In addition, the Authorised party, with regard to his authorised agency, has to:

- a. declare that he has a permit, as per the Dutch Act on Financial Supervision (Wft) or similar foreign laws and regulations;
- b. declare that no circumstance as mentioned in section 2.86 Public Procurement Act 2012 presents itself by completing the Single European Procurement Document in the indicated way;
- c. declare that no circumstance as mentioned in section 2.87 Public Procurement Act 2012 presents itself by completing the Single European Procurement Document in the indicated way;
- d. comply with the requirements in chapter 4 of this Selection act, with the exception of the financial requirements as mentioned in paragraph 4.6.

By signing the Single European Procurement Document the Authorised party warrants that his authorised agency and the principal(s) giving the authorisation (as specified in the Letter of authorisation) comply with the requirements as per this Selection act and that he is authorised to participate in the present tender on behalf of these principal(s). Not complying with the above implies exclusion from the tender. In the Single European Procurement Document, this shall be filled in at Part II D.

Other subcontractors

If an insurer or an Authorised agent on behalf of the insurer (for example in the event of a claim) relies on a claims settlement or expertise agency, part II D shall be filled in.

Particulars in insurance situation

The public procurement provisions cause the activities of an Authorised Agent to be qualified as activities that are performed in subcontracting¹. on behalf of the insurer (for example in the event of a claim) relies on a claims settlement or expertise agency, part II D shall be filled in.

4.1.6 Overview manner of application

Request for participation submission manner	Instructions
Enter as Combination.	Each party should submit a filled in and legally signed Single European Procurement Document. At part IIA each party fills in "yes" and mentions the names of the other parties in the combination.

¹ See advice 411 Commission experts on Procurement law

Rely on the financial economic strength of a third party Note! If a Tenderer wants to/should rely on a third party for requirements of which the supporting documents shall be submitted later (like for example certificates) then the Single European Procurement Document should be submitted completed and legally validly signed at the Tender.	Tick “yes” in part IIC and fill in the name of the third party on whose financial strength you are relying.
	Let the third parties whom you rely on fill in a Single European Procurement Document (at least the parts IIA, IIB and III) and let them sign it in a legally valid manner and then submit it with the Tender.
	Mention the specific strength that the business is relying on for each of the entities concerned.
Rely on the technical competences or resources of third parties (for example: comply with a requested core competence, quality system and/or certification). Note! If a Tenderer wants to/should rely on a third party for requirements of which the supporting documents shall be submitted later (like for example certificates) then the Single European Procurement Document should be submitted completed and legally validly signed at the Tender.	Tick “yes” in part IIC and fill in the name of the third party on whose technical competences or resources you are relying.
	Let the third parties whom you rely on fill in a Single European Procurement Document (at least the parts IIA, IIB and III) and let them sign it in a legally valid manner and then submit it with the Tender.
	Mention the specific strength that the business is relying on for each of the entities concerned.
A Request for participation with deployment of a subcontractor who is not relied on for financial strength or technical competence.	Tick “yes” in part IID of the Single European Procurement Document and fill in the name of the specific subcontractor.

4.2 Exclusion grounds

4.2.1 Grounds for exclusion section 2.86 Public Procurement Act 2012

The Candidate is excluded from (further) participation in the tender procedure if on the day of the tender or on the day of awarding of the contract, he finds himself in one or more of the circumstances referred to in section 2.86 Public Procurement Act 2012 (mandatory grounds for exclusion), all this subject to what has been provided further in the act.

4.2.2 Grounds for exclusion section 2.87 Public Procurement Act 2012

The Candidate is excluded from (further) participation in the tender procedure if on the day of the tender or on the day of awarding of the contract, he finds himself in one or more of the circumstances referred to in section 2.87 Public Procurement Act 2012 (optional grounds for exclusion), all this subject to what has been provided further in the act.

In evidence of the fact that the circumstances mentioned under paragraph 4.2.1 and paragraph 4.2.2 have not arisen, the Candidate must, within seven calendar days after the request thereto by the Contracting authority, submit the documentary evidence as meant in section 2.89 Public Procurement Act 2012.

4.3 Entry in the professional/trade register

The Candidate has to be entered in the professional or trade register according to the regulations of the member state in which he is established.

This requirement does not apply in respect of Candidates who have not been entered in such a register and who are able to prove that this is not compulsory in accordance with the legislation of the country of establishment. In such cases submitting a statement under oath or affidavit is required.

With his Request for participation the Candidate confirms that he has such extract at his disposal.

As evidence of the fact that the Candidate meets this requirement, he shall within seven calendar days after a request thereto by the Contracting authority, submit an extract of the entry in the professional or trade register, which may not be older than six months at the moment of Tendering.

4.3.1 Permit

Before the execution of the contract, the Candidate shall be in possession of the necessary permits to undertake insurance business in the Netherlands, as laid down in the Dutch "Wet op het Financieel Toezicht" (Act on Financial Supervision; Wft) or equivalent foreign financial supervision legislation and/or regulations.

With his Request for participation the Candidate confirms that he possesses the necessary permits.

As evidence of the fact that the Candidate meets this requirement, he shall within seven calendar days after a request thereto by the Contracting authority, submit a copy of the permit, which shall not be older than six months prior to the date of the intended award decision, and which proves that the Candidate complies with the requirement imposed.

4.4 Language fluency

The employees to be deployed by the Candidate shall be fluent, both verbally and orally, in the Dutch or English language.

With his Request for participation the Candidate confirms that he deploys the necessary employees who are fluent in the Dutch or English language.

4.5 Financial requirements

On the date of application and on the commencing date of the insurances the Candidate must have a financial rating of at least A- in accordance with Standard & Poor's, or an equivalent rating from another rating agency or an equivalent financial position demonstrable in another way.

With his Request for participation the Candidate confirms that he has the necessary financial rating.

4.6 Technical competence

4.6.1 Required experience

On pain of exclusion, the Candidate shall have acquired sufficient demonstrable experience over the past three years prior to the date of the invitation to tender, with:

- the (administrative) handling of an insurance contract of the same extent or of a principal comparable to the Contracting authority;
- the claims handling of the same extent or of a principal comparable to the Contracting authority;

The Candidate must within seven calendar days after receipt of the request thereof from the Contracting authority, for each experience requirement mentioned, submit documentary evidence of one comparable contract, containing the following information:

- brief description of the contract
- name of principal
- period

4.6.2 Required professional competence

The Candidate's staff has sufficient expertise both at the underwriting department and at the claims department with experience with insurance contracts of the same extent. At the request thereto by the Contracting authority the Candidate shall within seven calendar days after receipt of such request demonstrate the competence of its staff. The Candidate shall comply with this requirement by submitting a summary of the names and professional qualifications of the staff to be entrusted with the execution of the contract.

4.7 Insurance conditions

The Candidate shall consent to the insurance conditions as included in the Descriptive document, which will be sent in the next phase of this procedure or offer equivalent conditions. In case the Candidate does not consent, he shall include the insurance conditions he would like to apply with possible extra clauses as Attachment to his Tender. The responsibility for comparing the insurance conditions shall lie with the Candidate/Tenderer and shall be supplied in an overview. The Contracting authority will judge the overview on quality. Furthermore, the Tenderer shall give his reasons in the Tender documents for not being able or wanting to comply with the requested insurance conditions.

4.8 Means of proof

The Tenderer to whom the Contracting authority intends to award the contract has to submit, within seven calendar days after the request thereto by the Contracting authority, means of proof with respect to the exclusion grounds mentioned in chapter 4.

The Contracting authority reserves the right to check all details for correctness and to approach the specified references for this check prior to the award.

4.9 Prioritisation

In case of inconsistencies in the text of the Tender documents the following priority rules apply:

1. Information Notice; In case of more Information Notices and inconsistencies between the Information Notices, the most recent Information Notice shall prevail.
2. Tender documents (Selection act, Descriptive document, etc.).

5 Award criteria

Further information about the interpretation and weighting of the Award criteria will be included in the Descriptive Document. The contract will be awarded to the Tenderer who has the economically most attractive tender.

The Tenders shall be assessed based on the criterion “Best price-quality ratio”. For the determination which Tenderer has the “Best price-quality ratio”, the Contracting authority applies the below Award criteria with sub criteria which differentiate between premium and quality of offered service.

Criterion	Points
1. Premium vs Coverage	Max 90
2. Coverage periode	Max 10
• 12 months • 24 months • 36 months	• 0 points • 5 points • 10 points
Maximum points	Max 100

6 Other procedural stipulations

6.1 Method of assessment Request for participation

The Requests for participation are assessed in the following manner:

Step 1

The information provided by the Candidate with the Request for participation is assessed for completeness. If the requested details cannot be submitted, the Candidate must indicate the reason for this. The Contracting authority may consider allowing the shortcomings in the submitted details to be corrected by the Candidate, or to disqualify the Candidate from further participation in the procedure.

Step 2

It is verified whether the Candidate complies with the requirements set in chapter 4. Failure to comply with these requirements may result in disqualification.

Step 3

All Candidates who comply with the set requirements are selected and are invited to submit a Tender based on the Descriptive document.

6.2 Complete, correct and legally valid

If a Request for participation or a Tender is not complete, correct or legally valid, the Contracting authority is entitled to disregard such Request or Tender and not to take it into account when assessing. A conditional Tender shall be deemed not to have been made and shall not be qualified for awarding.

6.3 Errors, contradictions and the like

All Tender documents have been drawn up with the greatest possible care. If nonetheless a Candidate/Tenderer discovers errors, illegalities, irregularities, contradictions or unclear elements (hereinafter: errors), he has to inform the Contracting authority of this as soon as possible but at the latest within 7 calendar days after receipt of the Tender documents. If the Candidate/Tenderer did not inform the Contracting authority in time, such Candidate/Tenderer shall have no case in any (subsequent) claim addressed against aforementioned errors.

If a Candidate/Tenderer believes that in the Tender documents one or more requirements have been included of which - for a duly experienced, expert and well-equipped business or collaborative venture of businesses - in implementation of the contract compliance is impossible or unreasonably prejudicial, so that compliance with such requirement(s) in implementation of the contract cannot reasonably be demanded, such Candidate/Tenderer will have to report this at once in writing in a reasoned way to the Contracting authority. Such notice must be given at the latest within 7 calendar days after receipt of the Tender documents. If the Candidate/Tenderer did not inform the Contracting authority in time and in the prescribed manner such Candidate/Tenderer shall be declared inadmissible to the (subsequent) claim addressed against the requirements in question.

6.4 Complaints procedure

If you have complaints or objections in the context of a specific tendering procedure, please direct them to the Complaints Desk set up by ProRail. The procedure is outlined in “Klachtenregeling Aanbesteden” (Tendering Complaints Procedure), available at <http://www.prorail.nl/leveranciers/aanbesteden-en-inkoop/documenten-en-juridische-voorwaarden>. The Complaints Desk can be contacted via aanbestedingsklachten@prorail.nl

The submission of a complaint will not suspend the procurement procedure. It is up to the Contracting Entity to decide whether to stop, suspend or continue the procurement procedure.

6.5 Applicable law and disputes

This invitation to tender procedure including the Tender documents belonging thereto and the resulting contract are subject to Dutch law, including the usages applicable in the Dutch insurance practice.

Disputes between the parties involved in the tender, arising as a result of this tender procedure, must be submitted to the competent court in the district where the Contracting authority is established.

The Candidate/Tenderer shall lose his right to submit the disputes described above to the competent court and its case shall therefore be declared inadmissible, if the dispute is brought to the court later than 20 calendar days after the date of the intended awarding.

The Candidate/Tenderer to whom the Contracting authority intends to award the contract may intervene as an interested third party in any legal proceedings.

6.6 Confidentiality

The submitted Requests for participation, Tenders and other documents will be dealt with in strict confidence by the Contracting authority. The Candidate/Tenderer shall employ the same degree of confidentiality for both the Selection act and the Descriptive document.

6.7 Intellectual property

The Candidate/Tenderer shall grant the Contracting authority the right to use, process or model ideas, suggestions, (textual) proposals, drawings and other information and documents provided within the framework of this tender procedure, even if the contract is not in the end awarded to the Candidate/Tenderer. The use, processing or other modelling does not entitle the Candidate/Tenderer to any remuneration under whatever name or title.

6.8 False statements

The Contracting authority explicitly points out that statements which – whether or not – subsequently turn out to contain inaccuracies or undertakings which are not (cannot be) met, shall be identified by the Contracting authority as ‘false statements’ within the meaning of section 2.87 subsection 1e Public Procurement Act 2012. This may result in exclusion from further participation in this and future tender procedures from the Contracting authority. Should it appear after awarding that it took place on the basis of ‘false statements’, the contract may

be dissolved by the Contracting authority, without the Contracting authority being required to pay any compensation. On the other hand, the Candidate/Tenderer who issued a 'false statement' shall be liable for all direct and indirect losses sustained or to be sustained by the Contracting authority as a result of this.

6.9 Claims from Candidates/Tenderers

The Candidates/Tenderers may not derive any right from their Requests for participation/Tender and the intended awarding in respect of the actual acquisition of the contract. Costs which must be made in drawing up the Request for participation and the Tender are not compensated by the Contracting authority.

The Contracting authority reserves the right to temporarily suspend or definitively terminate the tender procedure. For the sake of good order, it is stated that also in that case, the Contracting authority will not compensate any costs made or loss sustained by the Candidate/Tenderer.

7 Descriptive document information (to prepare for the submission phase)

7.1 Leading and/or to-follow insurer

(Note: this choice should be indicated in the final Tender following the Dialogue phase).

If the Tenderer wants to qualify for the position of leading insurer, he has to mention this explicitly in his Tender. If the Tenderer does not indicate this in the prescribed manner this results in the Tenderer being assessed as to-follow insurer. This means that such Tenderer does not qualify for the position of leading insurer.

With his Tender the Tenderer has to indicate what capacity (expressed in a percentage) he is able to offer. The insurers shall be at liberty to underwrite the risk for 100%.

7.2 Primary and/or excess capacity

(Note: this choice should be indicated in the final Tender following the Dialogue phase).

With this Tender the Tenderer has to indicate Tenderer is proposing a position in a primary layer and/or wants to propose for a position in an excess layer attaching the limit of the primary layer.

7.3 Method of assessment Tenders

Tenders are assessed in the following manner:

Step 4

The Tenders of the Tenderers who have tendered as leading insurer, are tested for completeness and assessed on the basis of the applicable award criteria in the descriptive document. The contract will be awarded to the Tenderer with the highest number of marks.

Step 5

If the Tender of the leading insurer does not lead to full underwriting, the remaining capacity required will be completed with shares of the to-follow insurers in the manner mentioned below. The share of the Tenderer with the second highest number of marks gained is used first to complete the capacity to 100%. If 100% is not yet reached the share of the Tenderer with the highest score after that is added to the capacity. This is repeated until 100% cover is realised.

Upon completion up to 100% the starting point is the premium and the capacity offered as to-follow insurer during the Tender.

The Tenderer underwriting for the last share may have to accept a lower percentage than the capacity he offered.

Step 6

The Tenderer to whom the Contracting authority intends to award the contract on the basis of the applicable awarding criterion, will submit, at the request of the Contracting authority, the means of proof mentioned in chapter 5 within seven calendar days. If the requirements imposed in chapter 5 are met, this Tenderer shall be eligible for awarding. If the Tenderer in question is unable to submit the means of proof mentioned, this request will be passed on to the next Tenderer who is eligible for this on the basis of the applicable awarding criterion.

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Appendix 1 Single European Procurement Document

The Single European Procurement Document must be completed fully and uploaded in tenderned.

The signing of the tender documents shall apply as a signing of the Single European Procurement Document.

You will find the Single European Procurement Document on:

<https://www.tenderned.nl/espd-web/response/eo/print>

Appendix 2 Letter of authorisation

In case of an application by an Authorised agent, a statement will have to be made of the powers of representation awarded to him in the statement below.

LETTER OF AUTHORISATION	
Insurer giving powers of representation	Share

The undersigned declares that he has completed this statement and the Single European Procurement Document (both with regard to his Authorised agency and with regard to the insurers giving powers of representation) truthfully, and also that he is authorised to participate in this tender procedure on behalf of the insurers mentioned in this form.

Name authorised agent :

Contact :

Date :

Place :

APPENDIX 3 References

The References should be added as separate attachments

1. Brief description reference contract and contract value
2. Contract value
3. Name principal