

# Descriptive Document European Public Procurement for Traffic data from non-road bound systems

NDW TDNRS Framework Agreement

**NOTE:** This document has no legal status. The legally binding information about this tender you will find in the document *Beschrijvend Document* published in TenderNed.



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# **Descriptive Document European Public Procurement for Traffic data from non-road bound systems**

NDW TDNRS Framework Agreement

**Partners in NDW:**

NDW is a partnership of Rijkswaterstaat, all provinces, the Rotterdam The Hague metropolitan region, the Amsterdam transport region and the city councils of Amsterdam, Rotterdam, The Hague and Utrecht.



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# Summary (English summary)

The National Road Traffic Data Portal (hereinafter: NDW) will conduct a European procurement procedure for traffic data from non-road bound systems. You will find a short English summary below to explain the content of this procurement.

## **Organisation**

NDW is a Dutch public collaboration created and used by road authorities, whose aims include efficiency, increasing social effects and focus with regard to road users, and strengthening policy through better understanding of traffic data. NDW contributes to achieving better accessibility and traffic flow, reducing noise nuisance, improving air quality and achieving greater road safety. NDW is a network organisation where aims are achieved through collaboration and knowledge is built and shared. Collaboration takes place with partners from the public sector, business community, research fields and other stakeholders. Plans for joint implementation are drawn up, the implementing organisation is managed and mutual relationships are maintained and expanded.

## **Public procurement**

The current framework agreement for obtaining traffic data has ended and NDW wishes to enter into new framework agreements. Given recent developments in traffic data, NDW wishes to enter into two framework agreements for traffic data from road-based systems and non-road-based systems. The tender for road-based systems has already been awarded.

Due to market developments, the possibilities for traffic data from non-road bound systems will soon increase. NDW will focus on this type of traffic data in the future and wishes to have a procurement mechanism to fulfil its role as a central purchasing body for its partners.

The aim of this tender is to agree a framework agreement with all participants who have demonstrated that they meet the criteria for the delivery of traffic data from non-road bound systems.

## **Framework agreement**

The scope of the framework agreement is determined by the needs of the partners of NDW, which acts as a purchasing body for its partners. The scope relates to the delivery of traffic data from non-road bound systems. NDW will purchase this data in various forms including raw data, information, products and services. Data is obtained from different sources such as Floating Car Data, Probe vehicle data and crowd-sourced data.

The duration of the framework agreement is two years, after which NDW may extend the agreement for two (2) periods of twelve (12) months. Further assignments will be awarded under the framework agreement. The awarding of these assignments will be on the basis of the best value for money. In the event of a further assignment, NDW will submit a request for proposals to all contractors. Contractors are thereby allowed to submit their proposal in English.

This summary is designed to help non-Dutch speaking organisations to understand the scope of this public procurement and to invite and encourage them to participate in the procurement. Participants cannot derive any rights from the content of this summary.



# Terms

The terms used in this Descriptive Document are listed below. Terms are written with a capital letter. If the term is used in the singular, it also includes the plural. If the term is used in the plural, it also includes the singular.

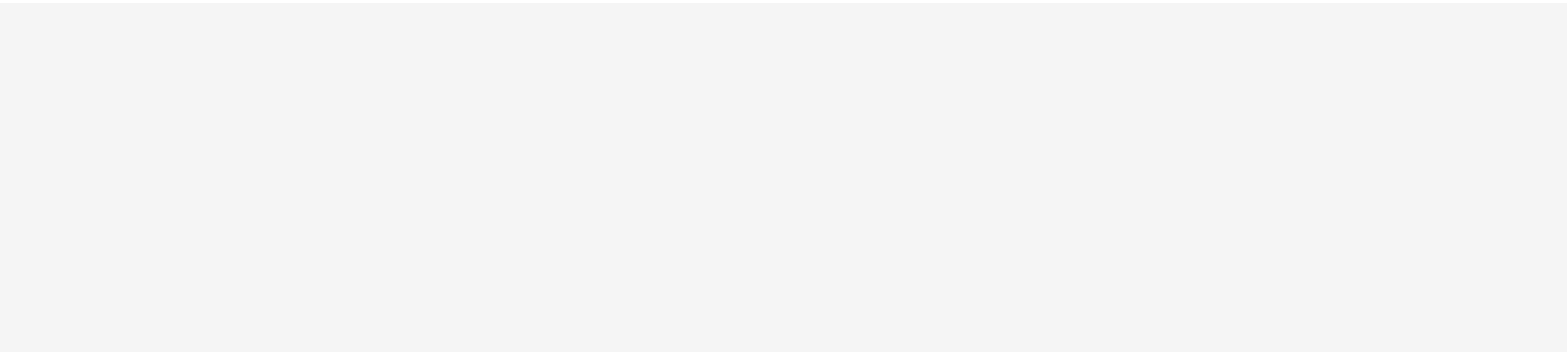
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Procurement                  | This public procurement procedure under the Procurement Act (Aanbestedingswet) for the award of an Agreement, the course and subject of which are described in more detail in the Tender Documents.                                                                                                                                                                                                                                                          |
| Procurement Platform         | The TenderNed platform on which the Tender Documents are placed and on which communication between the Commissioning Authority and the Participant takes place and which serves as the medium for submitting a Tender.                                                                                                                                                                                                                                       |
| Tender Documents             | All documents (in written or electronic form) submitted by the Commissioning Authority during the Procurement.                                                                                                                                                                                                                                                                                                                                               |
| Procurement Act              | Act of 1 November 2012, containing new rules on procurement, Stb. 2012, 542, as amended, inter alia, by the Act of 22 June 2016 amending the Procurement Act 2012 in connection with the implementation of procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU (Wet van 22 juni 2016 tot wijziging van de Aanbestedingswet 2012 in verband met de implementatie van aanbestedingsrichtlijnen 2014/23/EU, 2014/24/EU en 2014/25/EU), Stb. 2016, 241. |
| Descriptive Document         | The request for proposals, including appendices, provided to the Participants by the Commissioning Authority and containing a (further) description of the subject of the Procurement.                                                                                                                                                                                                                                                                       |
| Appendix                     | An addendum to one of the Tender Documents. An Appendix forms an integral part of the Tender Documents.                                                                                                                                                                                                                                                                                                                                                      |
| Participant                  | Before tendering, a business that has requested a copy of the Descriptive Document and after tendering, a business that has submitted a Tender.                                                                                                                                                                                                                                                                                                              |
| Service(s)/Service Provision | The services to be provided, the work to be performed and the performance to be delivered in this context by the Contractor for the benefit of the Commissioning Authority on the basis of the Agreement and Supplementary Agreement(s), all as described in the Tender Documents. The use of the terms 'Services' and 'Service Provision' also covers any deliveries made or to be made in the context of those Services.                                   |
| Suitability Requirements     | Requirements relating to capacity and capability which the Participant must meet.                                                                                                                                                                                                                                                                                                                                                                            |
| Awarding Criteria            | Criteria on the basis of which the Tenders will be assessed in order to identify the Participant offering the best value for money.                                                                                                                                                                                                                                                                                                                          |
| Revised Documentation        | The documents that have been labelled 'Revised Documentation' by the Commissioning Authority. Revised Documentation includes additions and/or amendments to the Tender Documents.                                                                                                                                                                                                                                                                            |

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tender                    | The offer that the Participant makes to the Commissioning Authority in accordance with the Tender Documents and which serves to implement the Agreement.                                                                                                                                                                                                                                                                                                                                                                                                 |
| Mini-competition          | The awarding of Supplementary Agreements under the Framework Agreement on the basis of a Request for Proposals to all Contractors with whom a Framework Agreement has been concluded. The Request for Proposals sets out the assessment criteria for the Supplementary Agreements.                                                                                                                                                                                                                                                                       |
| Supplementary Agreement   | The agreement between the Commissioning Authority and the Contractor under the Framework Agreement for Traffic data from non-road bound systems, the model of which is attached as Appendix C.                                                                                                                                                                                                                                                                                                                                                           |
| Memorandum of Information | <p>Document containing the answers to questions from Participants and/or responses to comments from Participants, as well as any announcements from the Authority and changes to the Descriptive Document and/or other Tender Documents.</p> <p>The Memorandum of Information forms part of the Descriptive Document and prevails over the Descriptive Document and the associated Appendixes. Documents made available with a Memorandum of Information labelled 'Revised Documentation' prevail over earlier versions of the document in question.</p> |
| Proposal                  | The offer that the Contractor makes in response to a Request for Proposals                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Request for Proposals     | A request issued by the Commissioning Authority to the Contractors for the submission of a Proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Commissioning Authority   | The party issuing the Agreement (Commissioning Authority) is the National Road Traffic Data Portal (Nationale Databank Wegverkeersgegevens - NDW).                                                                                                                                                                                                                                                                                                                                                                                                       |
| Contractor                | The business with which the Commissioning Authority enters into the Agreement in the context of the Procurement.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Framework Agreement       | The Framework Agreement for Traffic data from non-road bound systems, a draft of which is included in Appendix A, between the Commissioning Authority and one or more Contractors, for the purpose of setting out the conditions governing the assignments to be awarded during a specified period and on the basis of which the Commissioning Authority may award an assignment for the provision of services to the Contractor.                                                                                                                        |
| Consortium                | A consortium of legal entities or natural persons who participate in the Procurement jointly as one Participant.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Standard Form             | A mandatory form to be used by a Participant when preparing and/or submitting its Tender, as included with the Descriptive Document.                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Assessment Criteria       | Criteria relating to Service Provision to be provided of a knock-out nature.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| ESPD                      | European Single Procurement Document: the document intended for the submission of the self-declaration as referred to in Section 2.84 of the Procurement Act, as included as Standard Form 1 in the Descriptive Document.                                                                                                                                                                                                                                                                                                                                |
| Grounds for Exclusion     | Circumstances which, if they apply to the Participant, will result in exclusion from further participation in the Procurement.                                                                                                                                                                                                                                                                                                                                                                                                                           |

## Interpretation

Unless explicitly stipulated otherwise, in the Tender Documents:

- Citing a time period refers to a continuous period;
- The use of words such as 'including', 'also includes', 'encompassing' and 'comprising' shall mean 'including, but not limited to'.





# 1 Foreword

This is the Descriptive Document pertaining to the Procurement for Traffic Data for Non-Road-based Systems (TDNRS) which has been launched by the Commissioning Authority.

The Descriptive Document includes information about the Procurement procedure and the information requested in the context of the Procurement. The Commissioning Authority is following a public procurement procedure which is announced via a notice on Tenders Electronic Daily (TED) (<http://ted.europa.eu>) and TenderNed ([www.TenderNed.nl](http://www.TenderNed.nl)).

The Descriptive Document serves as the basis for submitting a Tender.

In order for the evaluation to run as smoothly as possible, Participant must adhere to the instructions set out in this Descriptive Document. Chapter 4.5 of this Descriptive Document describes how Participant can ask any questions.

**PLEASE NOTE:** In order to gain access to TenderNed, Participant must have eHerkenning. It may take a few days before Participant receives this eHerkenning through TenderNed. More information on applying for eHerkenning can be found at: <https://www.tenderned.nl/cms/voor-ondernemingen/registreren-en-eherkenning>.

Guide to the contents:

- Chapter 2 contains an introduction to the Commissioning Authority;
- Chapter 3 contains an introduction to the Procurement;
- Chapter 4 contains information on the procurement procedure;
- Chapter 5 deals with tendering requirements;
- Chapter 6 deals with the award and contains the applicable conditions.

Paragraph 5.1 contains a checklist of documents that must make up the Tender. The prescribed Standard Forms and Appendices containing relevant information that applies to the execution of the TDNRS Framework Agreement are attached to this Procurement as a separate appendix.



## 2 Commissioning Authority: National Road Traffic Data Portal

National Road Traffic Data Portal (Nationaal Dataportaal Wegverkeer - NDW) is a public-public partnership of and for road managers. NDW's goal is:

- To achieve efficiency through economies of scale, purchasing power, knowledge pooling and preventing redundancy in execution between individual road managers;
- To increase social effects through collaboration between government agencies and between government agencies and private sector operators;
- To increase public focus on road users by removing unnecessary barriers between road managers and private sector operators;
- To strengthen public policy activities through better insight into traffic data.

NDW contributes to social effects in the field of mobility, open data and government efficiency. These are listed in the preamble to the partnership agreement.

NDW contributes to improved accessibility and traffic flow, reducing noise pollution, improving air quality and enhancing road safety.

NDW does this by supporting a number of policy tools:

1. Providing better up-to-date traffic information for road users before and during their journey.
2. Better use of infrastructure through a well-matched provision of road infrastructure through effective traffic and network management at national level, and at regional level around conurbations.
3. Good traffic and transport policy, good planning studies and impact assessments, supported by high quality information.
4. The availability of well-harmonised and uniformly defined information about the state of the road network in crisis and emergency situations for all government authorities and emergency services involved.

NDW also acts as a networking organisation, where:

- There is liaison on how to achieve the goals;
- Knowledge is built up and shared;
- Coordination takes place with chain partners from the public sector, industry, the research world and other stakeholders;
- Plans and accountability for joint implementation activities are established;
- The implementing organisation is managed in a coordinated manner;
- The mutual relationship is maintained and expanded.

NDW's infrastructure includes a central system, a database of status data and a historical database. NDW also manages other systems, including systems around roadworks and signposting. These systems are filled with data collected by data providers (external suppliers and partners of NDW) and partners of NDW, such as Rijkswaterstaat (the Directorate-General for Public Works and Water Management).

The following organisations are currently partners of NDW: the State (Rijkswaterstaat), all provinces, the Rotterdam The Hague metropolitan region, the Amsterdam transport region and the four large city councils. The provinces in principle thereby also represent the local municipalities.

More information about NDW can be found at [www.ndw.nu](http://www.ndw.nu).

## **2.1 Supporting parties for the procurement**

NDW has been assisted by Significant Synergy in the preparation of this Procurement. Significant Synergy is providing purchasing and procurement expertise to NDW during this Procurement. Significant Synergy shall therefore not be involved in this Procurement in any way as a Participant, subcontractor or consultant to a Participant.

# 3 Introduction

## 3.1 General information

NDW, is conducting a European procurement in accordance with the public procedure on behalf of the State of the Netherlands.

The subject of the tender is a Framework Agreement for Traffic data from non-road bound systems (TDNRS).

NDW has opted for the public procedure because it wishes to contract with as many suitable businesses as possible for the supply of traffic data from non-road bound systems.

This procurement will be entirely digital and will be conducted on the TenderNed procurement platform. More information about the use of TenderNed can be found in the document 'six steps to digital tendering for public procurements via TenderNed' on the website [www.TenderNed.nl](http://www.TenderNed.nl).

This Descriptive Document provides further information about the course of the procurement procedure and the requirements which the (contents of the) tender must meet.

The total set of Tender Documents that form part of this European procurement is summarised in the table below.

| Abbreviation | Normative Document                                                                                                                                                                          |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DD           | Descriptive Document (this document)                                                                                                                                                        |
| FA           | Framework Agreement for TDNRS                                                                                                                                                               |
| WNO          | Method of working within the TDNRS Framework Agreement                                                                                                                                      |
| SA           | Model Supplementary Agreement for TDNRS                                                                                                                                                     |
| ARVODI-2018  | General State Conditions for the Award of Contracts for the Provision of Services 2018 (Algemene Rijksvoorwaarden voor het verstrekken van opdrachten tot het verrichten van Diensten 2018) |

Normative documents contain requirements stipulated for the purpose of this procurement. Normative documents form an integral part of the assignment.

Insofar as descriptions on the Procurement Platform and the Descriptive Document conflict, the Descriptive Document will prevail over the descriptions on the Procurement Platform. New documents will prevail over older documents of the same kind.

## 3.2 Complaint handling

NDW has set up a central contact point where businesses can submit complaints. The e-mail address is: [klachtenmeldpunt@ndw.nu](mailto:klachtenmeldpunt@ndw.nu).

A complaint must be submitted in good time by a business which has an interest in this procurement.

The complaint sets out with reasons the aspects on which the business disagrees with the procurement or a part thereof. The complaint shall also include the date, name and address of the business and the designation of the procurement.

Only the following are deemed to be interested parties:

- Interested businesses;
- (Potential) participants;
- Subcontractors of (potential) Participants;
- Trade organisations and industry-related advice centres for businesses.

The complaint must be recognisable as such and relate to aspects of this procurement. Complaints cannot relate to NDW's procurement policy in general.

A business that has submitted a complaint can at any time still bring the matter before the courts in summary proceedings. A complaint that has already been submitted will then not be dealt with until after the court has handed down its judgment.

Submitting a complaint does not suspend a procurement procedure. NDW is free to decide whether or not to suspend the procedure.

The complaints contact point will immediately confirm receipt of the complaint and forward it to NDW to be dealt with.

The submitted complaint is dealt with by an independent complaints committee. The committee shall start the investigation as soon as possible and continue its work expeditiously, taking into account the timetable of the procurement procedure. If the complaint is found to be justified in whole or in part and NDW takes corrective and/or preventive steps, this will be communicated in writing to the business and the other (potential) Participants, or TenderNed, as soon as possible.

If the complaint is found to be unjustified, this shall be communicated to the business in writing, stating the reasons.

### **3.3 Reason for the procurement**

The current framework agreement for the purchase of traffic data has ended and NDW wishes to enter into a new framework agreement for the purchase of traffic data. Given the developments in traffic data in recent years, NDW would like to conclude two framework agreements, namely a framework agreement for traffic data from location-based systems and a framework agreement for traffic data from non-road bound systems. The procurement for traffic data from location-based systems has already been awarded.

Given the current developments in the market, the possibilities relating to traffic data from non-road bound systems will increase over the coming years. Over the coming years NDW wishes to focus more on this traffic data from non-road bound systems. In addition, it would like to have a new legal purchasing tool in order to fulfil its role as a purchasing centre for its partners. It thereby wishes to be able to ask the market for non-road-based traffic data as widely as possible.

### **3.4 Purpose of the procurement**

The purpose of this procurement procedure is to conclude a Framework Agreement with all Participants that have shown that they meet the stipulated Suitability Requirements and Assessment Criteria for the provision of traffic data from non-road bound systems.

## 3.5 Description of the Framework Agreement

### 3.5.1 Scope

The scope of the Framework Agreement consists of the provision of traffic data (in the broadest sense of the word) from non-road-based systems. NDW wants to be able to purchase this traffic data in various forms, including as raw data, information, products and services. This traffic data comes from various data sources including Probe Vehicle Data, Floating Car Data, cellular data and crowd-sourced data. NDW's need can involve a defined form and data source, but it can also be a need that is functionally specified and is an aggregation of different forms and data sources.

The actual scope of the Framework Agreement will be determined by the needs of NDW's partners. NDW thereby acts as a purchasing centre for its partners. These partners are not obliged to purchase traffic data from non-road bound systems via NDW, and thus under this Framework Agreement, but can make use of NDW's Framework Agreement. An indicative overview of possible requirements of NDW's partners can be found in Appendix E: *Indicative overview of requirements of NDW's partners*. This overview serves as an illustration of possible requests that will be issued under the Framework Agreement. Participants cannot derive any rights from this overview.

The following services are related to the Framework Agreement, but do not fall within the scope of the Framework Agreement:

- The purchase of traffic data from location-based systems;
- The purchase of hardware for the purpose of acquiring traffic data;
- The purchase of 'standard traffic data' (Floating Car Data) for NDW's journey time product (current assignment runs until the second quarter of 2025, after which date this may become part of the scope)\*;
- The purchase of bicycle and pedestrian traffic data (framework agreement expected to run until 1 October 2023 at the latest, after this date this may become part of the scope)\*;
- The purchase of a dashboard for asset management, winter management and traffic hazard situations (this concerns the ongoing ROMO procurement by the Ministry of Infrastructure and Water Management, whereby the agreement is expected to run until 1 December 2023, after which date it may become part of the scope)\*;
- In the context of an open marketplace to be developed in the context of the NTM and dESM, scope can be purchased through this open marketplace. Should NDW wish to make use of this option, the (framework) contractors will be informed in good time about how they can compete for these assignments;
- Acquisition of traffic data from non-road bound systems that does not involve a financial transaction (e.g. traffic data exchanges) does not form part of the scope of the agreement.

\* The (framework) agreements for the purchase of bicycle and pedestrian traffic data, 'standard traffic data' (Floating Car Data) for NDW's journey time product and the dashboard for asset management, winter management and traffic hazard situations expire during the term of this Framework Agreement. NDW may decide to include these (framework) agreements within the scope of the Framework Agreement following the expiry of the specific (framework) agreement.

For a more detailed description of the Framework Agreement, see Appendix A, which contains the model of the Framework Agreement.

### 3.5.2 Objectives

The Commissioning Authority wishes to achieve the following objectives with the Procurement

| Objective                             | Notes                                                                                                                                                                                                                                                    |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Flexibility                        | NDW wishes to enter into a Framework Agreement that will enable NDW to keep up with the latest developments in the market and in technology.                                                                                                             |
| 2. Stimulating innovation             | With the procurement NDW wants to stimulate innovation and the use of traffic data from non-road bound systems.                                                                                                                                          |
| 3. Privacy                            | With the Framework Agreement, NDW wishes to purchase traffic data from non-road bound systems in accordance with the applicable GDPR legislation.                                                                                                        |
| 4. Purchasing centre for NDW partners | The outcome of the procurement will enable NDW to meet its partners' various needs for traffic data from non-road bound systems.                                                                                                                         |
| 5. Reuse and open data                | NDW wants to stimulate the reuse of traffic data from non-road bound systems and make developed knowledge and innovations in this field available to the market. NDW will determine the extent to which data will be reused for each additional request. |

### 3.5.3 Frameworks for the Framework Agreement

#### Privacy

Various types of mobility data will be purchased by NDW for traffic management purposes.

NDW will use the data for traffic information, analyses for the benefit of traffic policy, support for traffic management, improvement of traffic safety, support in the event of crises and emergencies and improvement of the efficiency of its partner organisations.

Some data streams may contain sensitive personal information. The providers are expected to only provide data in accordance with the requirements of the General Data Protection Regulation (hereinafter: GDPR). Each Supplementary Agreement will further assess the privacy sensitivity of the data to be provided. In doing so, it is always important for the Framework Contractors to consider privacy risks and their mitigation(s). NDW's general principles for processing personal data are that NDW does not seek to collect personal data other than for traffic management purposes. This include aspects such as safety, the environment and traffic flow. In addition, a broadening is being sought to include asset management and winter management, amongst other things. NDW thereby does not go beyond what is strictly necessary for the processing purpose. NDW takes the protection of personal data seriously and takes appropriate technical and organisational measures to prevent misuse, loss, unauthorised access, unwanted disclosure and unauthorised changes, and expects the same of the Framework Contractors.

The processing of mobility data may in some cases breach the privacy rights of citizens. The case law on this has not yet been crystalised. During the term of the Framework Agreement, the processing of certain data which was previously thought not to breach citizens' privacy rights may nevertheless result in breaches of citizens' privacy rights. The Framework Contractors should take this into account. Both NDW and the Framework Contractors are bound by subsequent and new laws and regulations (implementing the) General Data Protection Regulation and will implement the consequences as soon as possible. Where this leads to a change in the Services or their performance, this does not constitute a material change.

#### Cyber security

NDW attaches great importance to cyber security. NDW is therefore working on the implementation of ISO 27001 and ISO 27002, and expects its providers to also pay specific attention to cyber security.

In order to be admitted to the Framework Agreement, NDW will assess the level of cyber security and will ask Participants to indicate how their organisation is set up with regard to cyber security. See paragraph 5.3 for more information on this Suitability Requirement.

For each Supplementary Agreement, additional requirements may be set for the Contractor's cyber security in the context of the Government Information Security Baseline (Baseline informatiebeveiliging Overheid). These may therefore vary from one Supplementary Agreement to another. If Contractors wish to compete for a Supplementary Agreement, they must be able to meet the relevant requirements of the specific Request for Proposals.

### **3.5.4 Duration and scope and term of the Framework Agreement**

This Framework Agreement shall commence on the date of signing by both Parties for a period of two (2) years, after which the Framework Agreement shall terminate by operation of law unless the Commissioning Authority wishes to extend the Framework Agreement. After the end of this period, the Commissioning Authority may extend the Framework Agreement two (2) times for a period of twelve (12) months. The duration of the Framework Agreement, including extensions, shall not exceed four (4) years.

The estimated value of the Framework Agreement is € 5,000,000 excluding VAT per year. For a total term of the Framework Agreement of up to four years, the estimated value would then be € 20,000,000 excluding VAT. Taking account of an uncertainty margin on this estimate of 100%, the maximum value of the Framework Agreement is € 40,000,000 excluding VAT; when this maximum is reached, the Commissioning Authority will no longer grant any Supplementary Agreements under the Framework Agreement. The Commissioning Authority considers this margin of uncertainty justified, given that NDW is a partnership organisation and it is uncertain what data requirements will arise among NDW's partners during the term of the Agreement. No rights can be derived from this estimate.

### **3.6 Lot allocation**

The tender has not been divided into Lots because the scope of the procurement does not lend itself to that. NDW's needs consist of raw data, information, products and services. No clear distinction can thereby be made between these different needs, since it involves a spectrum in which the various forms merge into one another. NDW also wishes to stimulate collaboration and innovation within the Framework Agreement by encouraging businesses to combine different data sources and technologies. A division into Lots would therefore mean that NDW would not be able to procure the most optimal and innovative solutions under the Framework Agreement. For this reason, NDW has decided not to divide the Framework Agreement into Lots.

In addition, given the size and nature of the Framework Agreement and the expertise required, the number of potential suppliers eligible for the Framework Agreement is such that, even without a division into lots, competition will still be guaranteed and not restricted, and that there is sufficient access for small and medium-sized businesses.

### **3.7 Awarding of assignments within the Framework Agreement**

Supplementary Agreements are entered into within the Framework Agreement. A Supplementary Agreement is awarded on the basis of best value for money. In the event of a Supplementary Agreement, the Commissioning Authority will issue an Request for Proposals to all Framework Contractors by means of a Mini-competition. The exact method of working is described in more detail in Appendix B: Method of working within the Framework Agreement.

# 4 Procurement procedure

## 4.1 General

The procurement procedure is taking place on the basis of the Procurement Act 2012. The definitions from the Procurement Act 2012 therefore apply. The procurement will follow the public procedure.

## 4.2 NDW contact details

| Name of Commissioning Authority | National Road Traffic Data Portal (Nationaal Dataportaal Wegverkeer) |
|---------------------------------|----------------------------------------------------------------------|
| Contact person                  | Mr F. Qayoumi                                                        |
| E-mail address                  | <a href="mailto:aanbesteding@ndw.nu">aanbesteding@ndw.nu</a>         |
| Postal address                  | PO Box 24016, 3502 MA Utrecht                                        |
| Address for visitors            | Archimedeslaan 6, 3584 BA, Utrecht                                   |

## 4.3 Publication

The Tender Documents will be published via TenderNed ([www.TenderNed.nl](http://www.TenderNed.nl)). They can be downloaded by any interested party.

## 4.4 Timetable for procurement procedure

The following timetable applies for the procurement procedure. Participants cannot derive any rights from the timetable below. NDW reserves the right to adjust the timetable.

| Procurement timetable                                                              | Date                                           |
|------------------------------------------------------------------------------------|------------------------------------------------|
| Publication of announcement                                                        | See TenderNed                                  |
| Register for information meeting                                                   | Tuesday 16 November 2021 before 12.00          |
| Digital information meeting                                                        | Wednesday 17 November 2021 from 12.00 to 13.00 |
| Round of questions 1: Closing date for submission of <b>questions and comments</b> | Friday 19 November 2021                        |
| Written answers to questions in Memorandum of Information 1                        | Friday 26 November 2021                        |
| Round of questions 2: Closing date for submission of <b>questions and comments</b> | Friday 10 December 2021                        |
| Written answers to questions in Memorandum of Information 2                        | Friday 17 December 2021                        |
| <b>Deadline for submitting the tender</b>                                          | Friday 14 January 2022 before 12.00            |

| Procurement timetable             | Date                      |
|-----------------------------------|---------------------------|
| Announcement of award decision    | Friday 21 January 2022    |
| Signing of Framework Agreement    | Thursday 17 February 2022 |
| Start date of Framework Agreement | Tuesday 1 March 2022      |

## 4.5 Information

All information as contained in the Tender Documents has been compiled with great care. NDW expects the Participants to actively study the relevant circumstances and information regarding the Framework Agreement (e.g. by asking questions in the rounds of questions).

Participants should only submit questions regarding the procurement procedure and/or the Tender Documents or other information relevant to this procedure in accordance with the possibilities described in the paragraphs below.

It is not permitted to directly contact employees of NDW who are directly involved in (the preparation of) this procurement within the context of this procurement procedure, other than the contact person mentioned above, in order to obtain any information whatsoever. Breach of these communication rules will generally result in exclusion from further participation in the Procurement.

The Participant is not permitted to contact a member or members of the evaluation committee, employees of the Commissioning Authority or other parties involved in the Procurement for any information whatsoever regarding the Procurement. Any influencing, in any way, of employees involved in this Procurement will generally result in to exclusion from participation in the Procurement.

### 4.5.1 Digital information meeting

The client is organising a digital information meeting on Wednesday **17 November 2021**. During this meeting, an explanation of the procurement procedure will be given. Any questions will be answered as far as possible. The Commissioning Authority shall not produce a written report of the information meeting. No rights may be derived from oral answers to the questions. It is therefore recommended that questions asked during the information meeting should also be submitted in writing via the option provided for this purpose on TenderNed. The answers in the Memorandum of Information are determinant.

Participants wishing to attend the information meeting must register in writing no later than one day before the session using the e-mail address specified in paragraph 4.2. A maximum of two people per Participant can attend the meeting. Please provide the names and contact details (e-mail address) of the persons attending the Information Meeting on behalf of the Participant when registering. The information meeting will take place digitally via Microsoft Teams. Participants who have registered via TenderNed will receive a link to the digital meeting.

If it is found that there is too little interest in the information meeting, the Commissioning Authority may decide to cancel it. The Participants will then be informed as soon as possible about the cancellation of the Information Meeting.

### 4.5.2 General information

Questions to clarify this European tendering procedure and the associated Tender Documents, including the Framework Agreement for TDNRS and its appendices, should be submitted via the TenderNed facility.

Participants must use the question-and-answer module in TenderNed. In the unlikely event that this does not work, the Participant may e-mail its questions to the e-mail address given above. Questions must be submitted before the deadline as stated in paragraph 4.4.

NDW will record the (anonymised) questions from the Participants and the answers in general Memoranda of Information that are included in the Tender Documents on TenderNed. Participants are not notified of this by NDW. Participants are responsible for ensuring that this information is shared with them. TenderNed offers the possibility of doing this using the 'button' below.

► Houd mij op de hoogte van deze aanbesteding!

The published general Memoranda of Information form part of the Tender Documents. In the event of conflict, general Memoranda of Information shall prevail over previously published Tender Documents.

With this opportunity to ask questions NDW is enabling Participants to ask questions and make comments about the Tender Documents. NDW will take these points under consideration, and reserves the right to amend the Descriptive Document and the draft Framework Agreement for TDNRS. Participants cannot derive any rights from the opportunity to submit text proposals. If NDW does not agree with the proposed amendment, the original text will apply in full. NDW will make any amended documents available to all Participants together with the Memorandum of Information. After this, if the Participant submits a Tender it is declaring that it can meet the stipulated requirements and agrees with the draft Framework Agreement for TDNRS.

#### 4.5.3 Individual information

The Participant may make a request with reasons to NDW not to include a question as referred to in paragraph 4.5.1 and the corresponding answer in the general Memoranda of Information.

NDW may decide to provide the information individually in that case. NDW will consider whether inclusion in the general Memorandum of Information could harm the Participant's legitimate commercial interests. The Participant must indicate at the same time as submitting the question whether, in the event that NDW does not consider the information to be of legitimate commercial interest, it wishes the question to be answered by means of a general Memorandum of Information or whether it wishes to withdraw the question.

NDW will provide the relevant individual information to Participants by means of individual Memorandum(s) of Information.

The individual Memoranda of Information in question are subordinate to the Tender Documents and the published general Memoranda of Information. In the event of conflict, the Tender Documents and the general Memoranda of Information shall prevail.

# 5 Tendering requirements

## 5.1 General

This chapter sets out the grounds for exclusion, the suitability requirements and the assessment criterion that NDW stipulates for the Participant.

| No. | Description                                            | Participant declares with Tender that it meets the stipulated requirements | Participant will include the evidence with its Tender | Commissioning Authority will only request the evidence from the proposed winner(s) | §     |
|-----|--------------------------------------------------------|----------------------------------------------------------------------------|-------------------------------------------------------|------------------------------------------------------------------------------------|-------|
| A1  | ESPD                                                   | X                                                                          | X                                                     |                                                                                    | 5.1.1 |
| U1  | Entry in the national professional/commercial register | X                                                                          |                                                       | X                                                                                  | 5.1.2 |
| U2  | Declaration of conduct for tendering                   | X                                                                          |                                                       | X                                                                                  | 5.1.2 |
| G1  | Required standards                                     | X                                                                          |                                                       | X                                                                                  | 5.3   |
| T1  | Supply of traffic data                                 | X                                                                          | X                                                     |                                                                                    | 5.4   |

Table 1 Tender checklist

### 5.1.1 Requirements for documents to be submitted with the tender

Participant must:

- With regard to the Tender, complete the ESPD as referred to in Section 2.84 of the Procurement Act 2012 and add it to the Tender on the Procurement Platform. The Commissioning Authority declares the Grounds for Exclusion, both the compulsory and selected optional Grounds for Exclusion, applicable to this Tender, as they are set out in Part 3 of the ESPD. The ESPD must be duly signed by the person who is authorised to represent Participant in this matter and who, in the event of award, will sign the agreement.

The Participant will enter all the required information in the ESPD completely and correctly and add it to the Tender. The following requirements apply to the signing:

- A signature on the ESPD is also regarded as a signature on the Tender. The Tender itself and documents and statements accompanying the Tender therefore do not need to be signed separately;
- The ESPD must be duly signed (both a physical signature and a digital signature are permitted) by an authorised natural person. The legal authority of the signatory is evidenced by the extract(s) from the Chamber of Commerce or the registration in the national professional or commercial register in the country of domicile or, in the absence thereof, by another piece of evidence as referred to in Section 2.98 of the Procurement Act 2012. A signatory who is not registered in the professional or commercial register as a person authorised to represent must be mandated by a person who does has the authority to represent. The mandate must be attached to the Tender.

If businesses decide to tender for the Tender jointly, the following applies:

- *Subcontractor(s)* - If the Participant is tendering with Subcontractor(s), it must state this in Part II D of the ESPD. In addition, each Subcontractor must complete a ESPD (Part II A & B and Part III) and duly sign it;

- *Consortium* - If the Participant tenders as a Consortium, all members of the Consortium must complete the ESPD separately and duly sign it. The Participant shall state under Part II A with which entities it is entering into a Consortium;
- *Reliance on Third Party/Parties* - If the Participant relies on (a) Third Party/Parties in order to be able to meet the Suitability Requirements in this way, the Participant must state this in Part II C of the ESPD. Each Third Party concerned must also complete its own ESPD (Part II A and B and Part III) and duly sign it.

### 5.1.2 Grounds for exclusion

In this section, NDW describes which grounds for exclusion apply to the Participants.

As proof of the Participant's declaration (by means of the ESPD, made available in the tender documentation on TenderNed) that no Grounds for Exclusion apply to it, the winning Participants must submit the relevant documentary evidence to the Commissioning Authority within five working days of the initial request. The documentary evidence that can be requested by Commissioning Authority is:

- U1: Entry in national professional/commercial register

A statement as referred to in Section 2.89(1) of the Procurement Act 2012, demonstrating that the Participant is registered in the national professional/commercial register in accordance with the requirements applicable in the country in which the Participant is domiciled, or, if such a statement is not issued in the country of domicile, a sworn declaration or attestation. Within the Netherlands, an extract of registration in the trade register of the Chamber of Commerce fulfils this function.

*PLEASE NOTE: The extract from the national professional/commercial register or a mandate granted must show that the signatory of the Tender (being a natural person) is duly authorised to represent the Participant.*

- U2: Declaration of conduct for tendering

A copy of the declaration of conduct for tendering as referred to in Section 2.89(2) and Chapter 4.1 of the Procurement Act 2012. The declaration of conduct for tendering should be no more than two years old at the time of submission. If a Ground for Exclusion has arisen after the issuing of the declaration of conduct for tendering, the Participant is obliged to state this in its Tender (on pain of exclusion). Participant can apply for the declaration of conduct for tendering via Justis, see <https://www.justis.nl/producten/gva/>.

*PLEASE NOTE: TenderNed may ask for this Declaration of Conduct with the Tender; this may be ignored or a dummy document may be attached.*

With regard to a business domiciled in another Member State, the Commissioning Authority will, in accordance with Section 2.89(4) of the Procurement Act 2012, also accept information and documents from the relevant Member State that serve an equivalent purpose as the evidence referred to above or that demonstrate that the Grounds for Exclusion do not apply to the business in question.

The Commissioning Authority is free to request all Supplementary documentary evidence it deems necessary for the assessment against the Grounds for Exclusion.

*Tendering in Consortium or with subcontractors*

If a Tender is submitted by a Consortium, each member of the Consortium must submit the relevant documentary evidence following a request from the Commissioning Authority. Subcontractors do not have to provide the aforementioned evidence relating to Grounds for Exclusion.

## 5.2 Minimum requirements

By signing the ESPD, the Participant declares:

- That it unconditionally agrees to all the rules, conditions and provisions contained in the Tender Documents;
- That it complies with or agrees to (the contents of) the stipulated requirements which the Participant has declared will be complied with and any changes to them as specified in the Memoranda of Information;
- That it unconditionally accepts the draft Framework Agreement included in Appendix A, and any amendments to it as set out in the Memoranda of Information;
- That it unconditionally accepts the method of working within the Framework Agreement as described in Appendix B, and any amendments to it as set out in the Memoranda of Information;
- That it unconditionally accepts the model Supplementary Agreement included in Appendix C, and any amendments to it as set out in the Memoranda of Information;
- That it unconditionally agrees to the ARVODI-2018 Procurement Terms and Conditions included in Appendix D, and any amendments to them specified in the Memoranda of Information, and that any delivery, payment and/or other general terms and conditions of the Participant do not apply.

## 5.3 Suitability requirements

The Commissioning Authority determines whether a Participant is suitable for the execution of the Assignment on the basis of the Suitability Requirements described below relating to technical and professional competence (see also part IV, section C of the ESPD, made available in the tender documentation on TenderNed).

By ticking 'Yes' in part A in Part IV of the ESPD, the Participant declares that its business meets all the following Suitability Requirements. The term 'selection criteria' in the ESPD refers to the Suitability Requirements. If the Participant does not meet the stipulated Suitability Requirements, the Tender is invalid and will be discarded.

### 5.3.1 Demonstration of technical and professional competence - Required standards (G1)

The Participant shall comply with the following standards or demonstrably working comparable systems:

| Norm, standard | Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Quality        | <p><i>The Participant implements quality management measures</i></p> <p>The Participant uses a described quality system. Evidence of this can be provided by:</p> <ul style="list-style-type: none"><li>- Possession of certification such as ISO 9001;</li><li>- Or by other means by which the Participant is able to demonstrate, e.g. by means of a policy document, that it works systematically (i.e. using a plan-do-check-act cycle) on the quality of the business processes within the organisation.</li></ul> |
| Environment    | <p><i>The Participant implements environmental management measures</i></p> <p>The Participant uses a described environmental management system. Evidence of this can be provided by:</p>                                                                                                                                                                                                                                                                                                                                 |

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | <ul style="list-style-type: none"> <li>- Having certification such as ISO 14001 certification or EMAS registration;</li> <li>- Or by other means with which the Participant is able to demonstrate that it is taking environmental management measures because the organisation pays attention to social and environmental aspects in the annual report;</li> <li>- Or that the organisation has a sustainability policy document that indicates what the sustainability policy entails and how often it is updated.</li> </ul>                                                            |
| Information security | <p><i>The Participant implements information security measures</i></p> <p>The Participant uses a described management system for information security. Evidence of this can be provided by:</p> <ul style="list-style-type: none"> <li>- Having certification such as ISO 27001;</li> <li>- Or by other means with which the Participant is able to demonstrate that it is taking measures in terms of process-based information security by means of an information security policy document that indicates what the information security entails and how often it is updated.</li> </ul> |

By signing the ESPD, the Participant declares that it complies with the above.

If businesses decide to tender for the Tender jointly, the following applies:

- Subcontractor(s) - If the Participant tenders as a main contractor with Subcontractor(s), only the main contractor needs to demonstrate that it meets the above requirements;
- Consortium - If the Participant registers as a Consortium, the members of the Consortium will jointly demonstrate that they meet the above requirements;
- Reliance on Third Party/Parties - If the Participant relies on (a) Third Party/Parties to meet the above requirements, the Participant shall provide evidence of this and complete Standard Form 2.

## 5.4 Assessment Criterion (T1)

In addition to the fact that the Tenders must comply with the stipulated minimum requirements, Grounds for Exclusion and Suitability Requirements, compliance with this assessment criterion will be assessed. The Participant must obtain a pass for this. A 'fail' on this assessment criterion means exclusion from further participation in the procurement procedure.

The purpose of this assessment criterion is to give NDW confidence that the Participants with whom it enters into a Framework Agreement are actually capable of executing Supplementary Agreements under the Framework Agreement. In order to give NDW this confidence, the Participant must provide a brief description (maximum one A4) of the traffic data from non-road bound systems that the Participant possesses or can possess and can provide. This description contains a brief explanation of the traffic data from non-road bound systems that the Participant possesses or can possess. This description also includes an explanation of how the Participant can guarantee that it can actually deliver this data to NDW.

# 6 Award

## 6.1 Opening of the Tenders

The Tenders will not be visible to the Commissioning Authority until the closing date for tendering has passed. The Commissioning Authority will open the Tenders as soon as possible after the closing date and time. Participants cannot be present at the opening of Tenders.

## 6.2 Evaluation of the Tenders

After opening, the Tenders are checked and verified.

### Verification of completeness and form requirements

The Commissioning Authority checks whether a Tender is complete and meets the form requirements. A Tender that is incomplete or fails to meet the form requirements will generally be rejected as invalid and excluded from further participation in the Procurement.

### Assessment

The Commissioning Authority will check whether Grounds for Exclusion apply and whether the Participant and the Tender meet the Suitability Requirements. A Tender that does not meet these requirements will generally be rejected as invalid and excluded from further participation in the Procurement.

### Evaluation of Assessment Criterion

In addition to the aforementioned assessment, the Tenders are evaluated qualitatively on the basis of the assessment criterion T1. The purpose of this assessment criterion is to give NDW confidence that the Participants with whom it enters into a Framework Agreement are actually capable of executing Supplementary Agreements under the Framework Agreement.

NDW has this confidence if the evaluation shows that the submitted description meets both the criteria listed below:

- Provision of traffic data: the Participant has demonstrated to the Evaluation Committee that it has or can obtain traffic data from non-road bound systems. In other words, in the judgement of the evaluation committee the description contains sufficient guarantees that the Participant will be able to execute Supplementary Agreements under the Framework Agreement;
- Guaranteed delivery: in the judgment of the evaluation committee the Participant has demonstrated that it can guarantee delivery to NDW of the traffic data from non-road bound systems that it possesses or can possess. In other words, in the judgement of the evaluation committee the description contains, sufficient guarantees that the Participant will be able to execute Supplementary Agreements under the Framework Agreement.

This is a qualitative evaluation (with a score of 'pass' or 'fail') in the form of an 'expert opinion' given by an evaluation committee to be appointed by NDW. The evaluation committee consists of at least three members who have the expertise required to assess the content of the Tender. The evaluation committee may seek the advice of (an) (external) expert(s) for the purpose of the evaluation.

Tenders that are evaluated as passing with regard to this assessment criterion will be designated as a tender with the best value for money and will be eligible for the award of the Framework Agreement.

## 6.3 Award decision

After the assessment of the Tenders, the Commissioning Authority will simultaneously announce the award decision to all Participants. No rights may be derived from the award decision, nor does it constitute acceptance of an offer. The Commissioning Authority is not permitted to enter into the Framework Agreement with the awarded parties during a suspensive period of at least twenty calendar days after dispatch of the notification of the award decision.

## 6.4 Conditions

### 6.4.1 Premature termination of procurement procedure

NDW reserves the right to terminate the procurement procedure in whole or in part, temporarily or permanently, in the following exceptional cases:

- There is no effective competition;
- No suitable financial, legal and/or substantive solution can be provided for NDW;
- There are other political or policy reasons.

### 6.4.2 General Terms and Conditions

NDW declares the General State Conditions for the Award of Contracts for the Provision of Services 2018 (Algemene Rijksvoorwaarden voor het verstrekken van opdrachten tot het verrichten van Diensten 2018 - ARVODI-2018) applicable to the execution of the Framework Agreement for TDNRS, insofar as they are not deviated from in the Framework Agreement for TDNRS.

The Participant's delivery, payment and other general conditions are expressly rejected.

### 6.4.3 English or Dutch language

The Participant's employees who are involved in the content of the Framework Agreement must have an adequate command of written and spoken English or Dutch insofar as this is relevant at the time of this procurement procedure and for the execution of the assignment. The Commissioning Authority emphasises that, in view of the international playing field, the use of the English language is fully accepted and that Participants are permitted to submit both their Tenders for this Procurement and tenders for Supplementary Agreements in English.

### 6.4.4 No reimbursement of costs

Participants are not entitled to reimbursement of costs in connection with this Procurement. For this provision, the Commissioning Authority has made a careful assessment based on regulation 3.8a of the Guide on Proportionality and the Tendering Costs Reimbursement Guidelines (Gids Proportionaliteit en de Handreiking Tenderkostenvergoeding) of October 2018. In the event of (unexpected) termination of the Procurement due to causes not attributable to Participants, the Commissioning Authority will reconsider a reimbursement of tendering costs.

### 6.4.5 Tender once

A Participant (legal entity, natural person or partnership) may only tender once, either as an independent Participant or as a member of a Consortium.

A legal entity or partnership that acts as a Subcontractor for a Participant may not also tender as an independent Participant or as a member of a Consortium. A legal entity or partnership may act as a Subcontractor for multiple Participants.

For the purposes of this provision, legal entities and/or partnerships which satisfy the following conditions shall in any event be regarded as a single legal entity or partnership:

- a. Legal entities and/or partnerships which are affiliated with each other in the manner referred to in Section 2:24a of the Dutch Civil Code;
- b. Legal entities and/or partnerships which are affiliated with each other in a group as referred to in Section 2:24b of the Dutch Civil Code; or
- c. Legal persons and/or partnerships which are associated with each other in legal forms under foreign law comparable to those under (a) or (b).

The Commissioning Authority will not exclude any legal entity or natural person if that legal entity or natural person demonstrates that, in their case, there is no real risk of practices occurring that could threaten transparency and distort competition between the Participants and, more generally, that this relationship has not and will not influence their respective conduct in the context of this Procurement.

#### 6.4.6 Consortium

Businesses that tender jointly in a Consortium must appoint a representative. Businesses that tender jointly in a Consortium are jointly and severally liable for the fulfilment of all obligations under the Framework Agreement for TDNRS.

#### 6.4.7 Tendering with subcontractors

In addition to the requirements for tendering with (a) Subcontractor(s) that are set out in Chapter 5 of this Descriptive Document, the following applies. If the Participant relies on (a) Subcontractor(s) in order to fulfil (a) Suitability Requirement(s), the Participant must indicate (i) which Subcontractor(s) this involves and (ii) for which part of the Assignment this Subcontractor(s) will be called upon or for which Suitability Requirement(s) the Participant is relying upon this Subcontractor. Proof of registration in the national professional/commercial register must be submitted for all subcontractors after notification of the award decision, at the Commissioning Authority's first request. The Subcontractor(s) will carry out certain instructions on behalf of and under the responsibility of the Contractor. In this arrangement, the main contractor is fully liable for the fulfilment of the obligations arising from the Tender, as well as for its potential performance. The main contractor is also liable for the fulfilment of the obligations of the Subcontractor(s) which it calls upon.

The Contractor must also accordingly actually use the Subcontractor(s) concerned for the execution of the Assignment. If the Contractor relies upon the relevant Subcontractor(s) to meet one or more Suitability Requirements, the main contractor must demonstrate that it can actually make use of the necessary resources (knowledge, manpower, equipment) of the relevant Subcontractor(s) for the execution.

A subcontractor to which a Ground for Exclusion applies may not be called upon, unless the Commissioning Authority gives its explicit permission for this on account of one or more of the reasons referred to in Sections 2.86a, 2.87a and 2.88 of the Procurement Act 2012. The Participant will demonstrate by means of evidence that no Grounds for Exclusion apply to its subcontractors at the Commissioning Authority's first request.

Participants are also permitted to submit a Proposal under the Framework Agreement as a consortium or to use subcontractors for a specific assignment awarded under the Framework Agreement. If the Participants and/or subcontractors themselves also have a Framework Agreement with NDW, no additional requirements will apply. If the businesses do not have a Framework Agreement for the supply of traffic data with NDW, the requirements that also apply to the Framework Agreement will apply. This is further explained in Appendix B 'Method of working within the Framework Agreement'.

#### 6.4.8 Help with tendering

If the Participant has no experience with tendering for European procurements, NDW would like to point out the option of hiring an independent consultant to assist with the TenderNed tendering procedure. A list of such consultants can be found at [Training and advice for businesss | TenderNed](#).

#### 6.4.9 Legal remedy

If the Participant objects to (the reasoning for) the award decision, it must initiate summary proceedings at The Hague District Court by serving a summons within the suspensive period of twenty calendar days (commencing on the day after the date of dispatch of the award decision).

If the Participant has not instituted summary proceedings within this suspensive period, this means that:

- The Participant waives the right to challenge the outcome and further progress of the Procurement;
- The Participant also waives any rights it may have to claim certain (legal) acts and/or compensation from the Commissioning Authority in proceedings on the merits or in summary proceedings after the end of this period.

Provided that the Commissioning Authority has not reversed its award decision (in the interim) in writing, the Commissioning Authority will award the Framework Agreement to the Participant(s) when the aforementioned suspensive period has expired without any summary proceedings being initiated. The Commissioning Authority expressly reserves the right to reconsider the award decision if it believes there are grounds to do so. If summary proceedings have been initiated against the award decision or rejection, the Commissioning Authority will not proceed with the award until the interim relief court in the first instance has ruled on the matter. If summary proceedings are initiated, the other Participants will intervene as third parties in the proceedings at the Commissioning Authority's first request, on pain of forfeiting the right to appeal against the decisions made by the Commissioning Authority on account of (the outcome of) the summary proceedings.

#### 6.4.10 Inconsistencies, ambiguities or shortcomings in the Tender

The absence of requested information, declarations and/or documents will generally result in exclusion. If there are any inconsistencies, ambiguities or shortcomings in a Tender and this is considered by Commissioning Authority to be an obvious and remediable omission, then Commissioning Authority reserves the right to ask the Participant for a clarification and/or addition. Such a clarification and/or addition may not entail a substantial change to the Tender. If the Commissioning Authority is of the opinion that this is the case, it will not include these clarifications and/or additions in the evaluation.

#### 6.4.11 Inconsistencies and/or shortcomings and consent

If there are any inconsistencies, ambiguities or shortcomings in the Tender Documents, the Participant must report this as soon as possible - in any event before the closing date of the last round of questions. The Commissioning Authority expects Participants to adopt a proactive attitude so that the Commissioning Authority can rectify the Tender Documents effectively. If the Participant fails to report inconsistencies, ambiguities or shortcomings or does not do so on time, then the right to complain about them and/or to raise objections at a later point in time lapses.

If the Participant still believes that there are inconsistencies, ambiguities or shortcomings after reading the Memorandum(s) of Information, it must submit a complaint to the Commissioning Authority. See the complaints procedure in paragraph 3.2. If the Participant finds that the complaint has not been dealt with satisfactorily, it must, on pain of forfeiture of rights, initiate summary proceedings by serving a summons on the Commissioning Authority at least five calendar days before the closing date for submission of the Tender.

#### 6.4.12 Announcement of the award decision

Pursuant to Section 2.129 of the Procurement Act 2012, the announcement of the award decision does not constitute acceptance of an offer from a Participant. The Commissioning Authority is not permitted to enter into the Agreement with the winning Participant during a suspensive period of at least twenty calendar days after dispatch of the notification of the award decision. If summary proceedings are initiated within this suspensive period - which must be shown by submission of a copy of the writ of summons - the Commissioning Authority will not proceed to award the Agreement before a judgment in summary proceedings has been rendered. The aforementioned period of twenty calendar days is a term of forfeiture. If summary proceedings have not been initiated within this period, the rejected Participants can no longer object to the decision and have waived their rights in this respect.

This does not mean that the Participant's offer is accepted after the automatic expiry of the suspensive period. The Commissioning Authority accepts the Participant's offer by signing the Framework Agreement with the Participant.

## Appendixes

**Appendix A: Draft TDNRS Framework Agreement**

**Appendix B: Method of working within the Framework Agreement**

**Appendix C: Model of TDNRS Supplementary Agreement**

**Appendix D: ARVODI 2018**

**Appendix E: *Indicative overview of requirements of NDW's partners***

**Standard form 1: ESPD**

**Standard form 2: Technical and professional competence**



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