



Rijkswaterstaat
Ministerie van Infrastructuur en Milieu

Selection Instructions

N18 Groenlo – Enschede

"The New Twente Route"

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1 Introduction

1.1 Selection Instructions

The tender procedure for the N18 Groenlo - Enschede project is described in these Selection Instructions and the N18 Groenlo - Enschede Tender and Assessment Instructions that shall follow from this.

The Selection Instructions cover the period from placing the announcement to the Invitation to participate in the First phase of Dialogue. The Tender and Assessment Instructions shall cover the period from the Invitation to Participate in the First phase of Dialogue up to and including the Contract Close and Financial Close. The Tender and Assessment Instructions shall be provided at the time of the invitation to participate in the First Phase of Dialogue.

The Candidate is responsible for verifying proper receipt of the Tender Documents. If the Tender Documents have not (all) been received, the Candidate must report this fact to the Contracting Authority by replying by e-mail to the e-mail address listed in paragraph 1.3.

The Tender Documents have been prepared with great care. However, if a Candidate has any reservations about any alleged contradictions, inaccuracies, possible violations of the law or (other) irregularities, the Candidate should notify the Contracting Authority of these issues in writing as soon as possible or seek further clarification by submitting a request for clarification (in accordance with paragraph 2.10). If the Candidate fails to promptly notify the Contracting Authority of contradictions, inaccuracies or possible violations of law, the Candidate may not invoke them at a later date.

1.2 Definitions

Terms that are capitalised in these Selection Instructions are defined in schedule 1 to these Selection Instructions or in Schedule 1 to the (draft) DBFM Agreement. When a capitalised term is defined in schedule 1 to these Selection Instructions and in Schedule 1 to the DBFM Agreement, the definition in question applies only to the document to which it is appended. The Schedules linked to the DBFM Agreement are capitalised ("Schedule [.]"), while schedules for these Selection Instructions are not capitalised ("schedule [.]").

1.3 Contracting Authority

The Contracting Authority is:

The State of the Netherlands
Ministry of Infrastructure and the Environment,
Rijkswaterstaat Large Projects and Maintenance

Project Organisation: N18 Groenlo – Enschede
Contact: Mr J.P.M. van der Meer

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Office address: Eusebiusbuitensingel 66
6828 HZ Arnhem

The address where the request to participate must be submitted by the Candidates is:

Rijkswaterstaat Tendering Team RWS GPO
Contact: Mr M.J.J. de Regt
Email address: aanbestedingsteam-gww@rws.nl
Office address: Griffioenlaan 2
3526 LA Utrecht

The address for all items to be submitted by Candidates – i.e. items not to be communicated by electronic means – is:

Contact: Mr J.P.M. van der Meer
Office address: Eusebiusbuitensingel 66
6828 HZ Arnhem

The delivery address for all items to be submitted by Candidates by electronic means is:

Contact: Mr J.P.M. van der Meer
Email address: N18-DBFM@rws.nl

1.4 Project

The Project consists of all work, deliveries and services that need to be performed under the DBFM Agreement deriving from this tender. The following section includes a general description of the Project.

1.4.1 Motive

The N18 (Trunk Road 15) is a road between Varsseveld and Enschede and forms an important arterial road between Twente and the Achterhoek. At Varsseveld, the N18 connects to the A18 and forms in this way an important connection of the cities and towns in Twente with the urban Arnhem-Nijmegen region. The N18 is approximately 45 kilometres long and is part of the national main road network, but mainly has a regional and local function.

The current N18 is a single-lane road with mostly level junctions. The high-level of traffic and the mix of fast and slow traffic lead to hazardous situations and for long travelling times. The position of the route sections of the trunk road through the built-up areas of Eibergen, Haaksbergen and Usselo also lead to safety and quality of life problems. The presence of agricultural traffic on the road leads to flow problems as well as safety problems. The project has been included in the Multi-Year Programme for Infrastructure, Spatial Planning and Transport (Meerjarenprogramma Infrastructuur Ruimte en Transport, abbreviated MIRT) to remove the bottlenecks on and around the N18.

The Government and the region have agreed to diver the N18 between Groenlo and Enschede for this reason.

These measures have been laid down in the N18 Varsseveld - Enschede Route Decision signed by the Minister on 28 August 2013. The Route Decision is expected to become irrevocable halfway through 2015.

Due to the appeal lodged with regard to the Route Decision, a N18 Route Decision Amendment has been drawn up concerning, for example, the excavated situation of the intersection of the N18 with the Museum Buurtspoorweg and various small changes. The Route Decision Amendment has been laid down by the Minister on 21 February 2014.

In addition, Central Government shall be adjusting the N18 between Varsseveld and Lichtenvoorde with regard to specific sections and shall be implementing a number of traffic safety measures. These activities, however, are not within the scope of this agreement.

1.4.2 Scope

The scope in outline concerns the design and realisation of the following infrastructure:

Groenlo - Haaksbergen section (2 x 1 100 km/h):

- On this section that has a length of approximately 20 kilometres, a new route with two carriageways with each one lane shall be built. The maximum speed will be 100 km/h;
- The N18 shall have a grade-separated connection to the new connecting roads at Groenlo (De Laarberg industrial estate) and Eibergen;
- The N18 shall have a grade-separated connection to the N315 at Neede;

Haaksbergen - Enschede section (2 x 2 100 km/h):

- On this section that has a length of approximately 7.2 kilometres, a new route with two carriageways with each two lanes shall be built. The maximum speed will be 100 km/h;
- The N18 shall have a grade-separated connection to Kolenbranderweg at Haaksbergen;
- The N18 shall connect to the Enschede access road (Westerval) at the Enschede-West connection;
- The Enschede-West connection shall be changed; The access and exit roads of the A35 at the Enschede-West connection shall be adjusted as will the junctions of the access and exit roads with De Westerval. The connection will be expanded with a loop for traffic from the western direction on the A35 to the N18 in the direction of Enschede (a quarter connection).

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Figure 1. Overview of the N18 Project

Except for the realisation of the new N18, a large quantity of additional infrastructural facilities and measures must be designed and realised and/or changes such as:

- 25 engineering works (5 cycling tunnels, 14 viaducts, 4 bridges, an excavated situation and a wildlife tunnel);
- 17 Dry ecological corridors;
- Various connecting roads, cycling connections, parallel roads and plot access roads;
- Adjustment of the museum railway;
- Lighting at various locations;
- Crash barriers in the central reservation;
- Noise-reducing and noise-screening measures at different locations;
- Water management measures such as moving and widening waterways;
- Other mitigating, compensating and integrating measures.

1.4.3 Special scope

- The building of 44 km of a new underlying road network;

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- The maintenance as from the Commencement Date up to the Availability Date of the connecting sections of the N18 and A35 with the new N18;
- The maintenance of the N18 between Groenlo and Enschede 25 years after the Availability Date;
- The maintenance after the Availability Date of the surface layers on the engineering works over and under the N18;

1.5 DBFM Agreement

The draft DBFM Agreement is attached as schedule 3.

At the end of the Dialogue, the draft DBFM Agreement shall be supplemented with the results from the Dialogue.

The [•] symbol in the DBFM Agreement and Schedules indicates that further details shall be added by the Contracting Authority in a manner that shall be identical for all Candidates.

The symbol [••] indicates where items for specific candidates are included in the DBFM Agreement.

1.6 Payment regime and project financing

During the term of the DBFM Agreement the Contractor shall receive a performance-dependent availability payment.

In addition, the Contractor shall receive a Lump-Sum Payment upon issue of the Completion Certificate.

The Contractor is responsible for the financing of the Project. The financing must be structured in such a way that Financiers make debt capital available to the Contractor, or at least guarantee such, based on the basic principles of project financing.

The Contracting Authority shall enter into a Direct Agreement with the Contractor and the respective financing parties and, if necessary, shall cooperate in pledging the Net Availability Payment. A draft of the Direct Agreement shall be attached to the DBFM Agreement as Schedule 6 (Direct Agreement).

The Tenderers must submit a financing plan with their Tender which specifies how they shall attract sufficient financing for the Project to fulfil all the obligations arising from the DBFM Agreement. The Candidate shall be asked to submit its financing plan (in draft form) during the Second Phase of Dialogue for the purpose of discussion with the Contracting Authority. Additionally, the financing plan must be submitted by the Tenderer as part of its Tender; the Contracting Authority stresses that due diligence must have taken place prior to Tender, assuming that the DBFM Agreement shall not undergo any further changes.

The interest rate risk during the period between submission of Tender and Financial Close remains under conditions with the Contracting Authority. This specifically means that only changes in respect of the reference rates, with regard to the reference rates

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specified by the Contracting Authority for the purpose of the Tender, shall lead to the adjustment of the Gross Availability Payment.

The Contracting Authority shall discuss the process of obtaining financing for the Project with the Candidates and shall closely follow the situation on financial markets. The evolving situation may lead to certain adaptations in the Tender Documents. The Contracting Authority furthermore reserves the right to change the process for obtaining financing for the Project if prompted by circumstances on financial markets.

For the time being, the Contracting Authority is assuming that financing with an inflation-related component and/or hard mini perm financing shall not be an available option for the Project.

1.7 Abridged description of tender procedure

1.7.1 Phasing of the tender procedure

The tender procedure shall proceed in a number of phases. These phases are indicated in the table below. The dates are provisional and may be changed in the course of the tender procedure.

ACTIVITY	START	END
Selection phase (n Candidates)		
Publication of Announcement and dispatch of TED		12 December 2014
Submission of requests for clarification	12 December 2014	19 January 2015
Publication of the final summary of additional information and changes		28 January 2015
Submission of requests to participate		11 February 2015 between 10 a.m. and 3 p.m.
Assessment of requests to participate	12 February 2015	27 February 2015
Selection based on suitability		02 March 2015
First phase of Dialogue (n Candidates)		
Invitation to Participate in the First Phase of Dialogue.		05 March 2015
Starting conference		09 March 2015
Opening of Data Room		09 March 2015
Submission of requests for clarification	09 March 2015	19 May 2015
Publication of the (final) summary of additional information and changes		26 May 2015
Round 1 dialogue discussions	20 March 2015	02 April 2015
Round 2 dialogue discussions	10 April 2015	23 April 2015
Submission of Short-listing Product		09 June 2015 15:00
Assessment of Short-Listing Product	10 June 2015	29 June 2015
Decision on participation in Second Phase of Dialogue		03 July 2015
Appeal deadline	04 July 2015	13 July 2015

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ACTIVITY	START	END
Draw (if required)		15 July 2015
Appeal deadline	16 July 2015	20 July 2015
Second Phase of Dialogue (3 Candidates)		
Invitation to participate in the Second Phase of Dialogue		22 July 2015
Round 1 of the dialogue discussions	01 September 2015	03 September 2015
Round 2 dialogue discussions	29 September 2015	01 October 2015
Round 3 dialogue discussions	03 November 2015	05 November 2015
Submission of requests for qualitative clarification	22 July 2015	27 November 2015
Publication of the (final) summary of additional information and changes		04 December 2015
Conclusion of Dialogue		04 December 2015
Submission Phase (3 Tenderers)		
Invitation to Tender		Q4 2015
Submission of the qualitative part of the Tender		Q1 2016
Evaluation of the qualitative part of the Tender		Q1 2016
Submission of requests for quantitative clarification		Q1 2016
Publication of the (final) summary of additional information and changes (only quantitative)		Q1 2016
Submission of the quantitative part of the Tender		Q1 2016
Evaluation of the quantitative part of the Tender		Q1 2016
Designation of Selected Tenderer (intention)		Q1 2016
Term for safeguarding the legal rights of unselected Tenderers		Q1 2016
Completion (1 Selected Tenderer)		
Contract Close		Q2 2016
Financial Close		Q2 2016

1.7.2. Procedure Description

Selection Phase

The tender procedure starts with the Selection Phase. Selection takes place on the basis of an evaluation of grounds for exclusion and of suitability requirements. The Contracting Authority shall invite Candidates to participate in the Dialogue in the absence of any grounds for their exclusion and on condition that they have met the suitability requirements.

This Selection Phase is further described in Chapter 3.

Dialogue

The Contracting Authority avails itself of the option of conducting the Dialogue in successive phases as per Article 29, paragraph 4 of Directive 2004/18/EC. In the present tendering procedure, the Dialogue consists of the following phases:

- First Phase of Dialogue:
- Second Phase of Dialogue:

First Phase of Dialogue

The First Phase of Dialogue, including further investigation of the Short-Listing Product and the method for its assessment and evaluation, shall be described in more detail in the Tender and Assessment Instructions. In the First Phase of Dialogue, the number of Candidates invited for the continuation of the tender procedure is narrowed down to three insofar as more than three Candidates are found to meet the minimum requirements. This is done by an assessment of the Candidates' Short-Listing Products. The Contracting Authority shall invite three Candidates to participate in the Second Phase of Dialogue on the basis of assessment of their Short-Listing Products.

Second Phase of Dialogue

The Second Phase of Dialogue shall be described in more detail in the Tender and Assessment Instructions. During the Second Phase of Dialogue, the Contracting Authority shall further harmonise and, if required, adjust the contents of the DBFM Agreement with the Candidates. No selection shall take place during the Second Phase of Dialogue.

Based on the results of the Second Phase of Dialogue, the Contracting Authority shall be able to review the Tender Documents for all Candidates on an equal basis.

Submission Phase

The Submission phase follows the Contracting Authority's completion of the Second Phase of Dialogue. This phase shall be described in the Tender and Assessment Instructions. The Project is awarded according to the criterion of the most economically advantageous submission (EMAS). The EMAS criteria are described in schedule 4.

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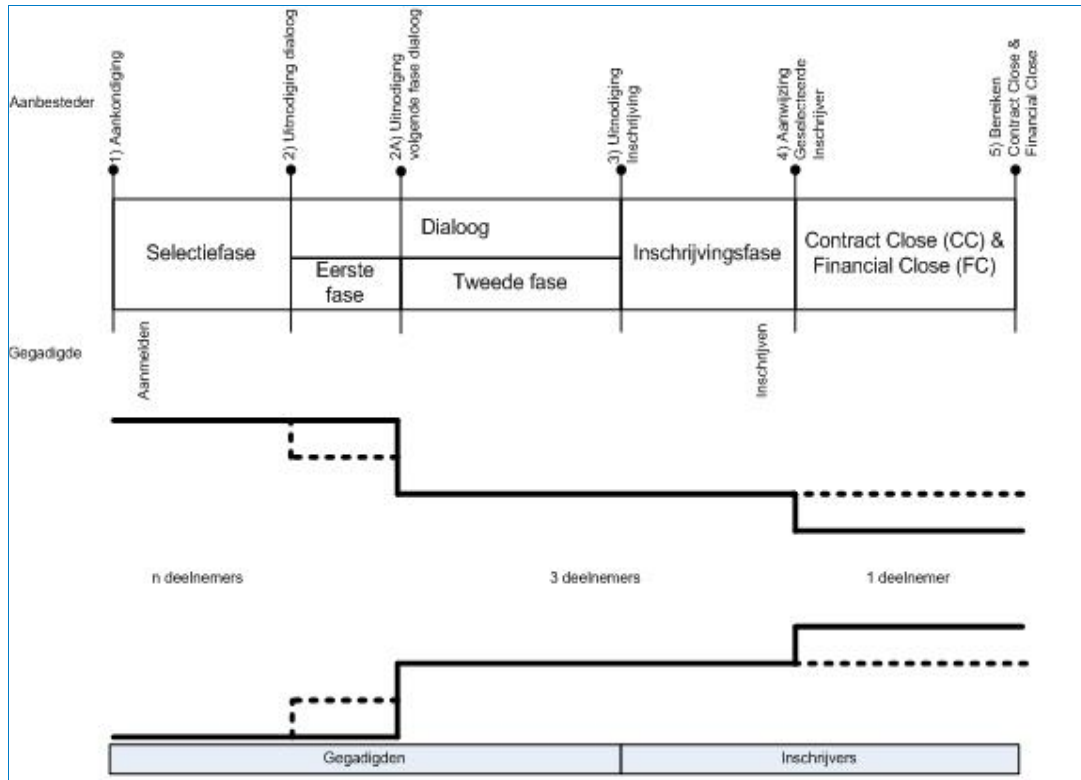


Figure 2. Schematic representation of the N18 Groenlo - Enschede Tender Procedure

1.8 Planning procedure(s)

The Minister of Infrastructure and the Environment signed the N18 Varsselveld - Enschede Route Decision on 28 August 2013.

An N18 Route Decision Amendment was taken on 21 February 2014.

The Route Decision is expected to become irrevocable halfway through 2015.

1.9 Management contracts and implementation agreements

In preparation for this tender procedure the Contracting Authority has entered into the administrative and implementation agreements listed below.

<i>Party</i>	<i>Description of agreement</i>	<i>Date of agreement</i>
Province of Gelderland Province of Overijssel Twente Region Municipality of Berkelland Municipality of Enschede Municipality of Haaksbergen Municipality of Oost Gelre Municipality of Oude IJsselstreek	Realisation Agreement	14 July 2014
Municipality of Oost Gelre	Implementation agreement	To be determined
Municipality of Berkelland	Implementation agreement	To be determined
Municipality of Haaksbergen	Implementation agreement	To be determined
Municipality of Enschede,	Implementation agreement	To be determined
Province of Gelderland	Implementation agreement	To be determined
Province of Overijssel	Implementation agreement	To be determined
Rijn en IJssel Water Board	Implementation agreement	To be determined
Vechtstromen Water Board	Implementation agreement	To be determined
Museum BuurtSpoorweg	Implementation agreement	To be determined

2 General Information

2.1 Candidates' declaration of consent

In submitting a request to participate, the Candidates declare their unconditional consent with the tender procedure described in these Selection Instructions.

2.2 Applicable regulations

The tender procedure shall be conducted as a competitive dialogue (Articles 2.28 and 2.29 of the Public Procurement Act and Chapter 4 of the Works Procurement Regulations 2012).

Unless otherwise stated in the Selection Instructions or the Tender and Assessment Instructions, the laws and regulations shall applicable to the tender procedure shall include the following:

- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 (OJ. L 134/114, 30 April 2004) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- Directive 89/665/EC of the European Parliament and of the Council of 21 December 1989 (OJ. L 395/33, 30 December 1989) on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;
- The Public Procurement Act 2012 (Bulletin of Acts and Decrees 2012, No. 542);
- The Public Procurement Decree (Bulletin of Acts and Decrees 2013, No. 581);
- The Works Procurement Regulations 2012 (ARW 2012) (Government Gazette 2013, No. 3075);
- The Public Administration (Probity in Decision-Making) Act (BIBOB Act).

2.3 Safeguarding of legal rights – choice of court

The Contracting Authority shall notify the Candidates in writing of decisions concerned with the observance of law, in the meaning of Article 1, paragraph 1 of Directive 89/665/EEC, with regard to the tender procedure.

All periods mentioned in the Tender Documents shall begin at 12:00 AM on the day following the issue of the decision and all deadlines are expiry dates. This means that if a Candidate does not actually file an appeal against a decision within the stated period following issue of the decision then the Candidate can no longer lodge an appeal against the decision. In such a case the Contracting Authority would be free to (further) implement the decision. Should any legally valid decision fail to indicate a specific appeal period, the appeal period for said decision is then 20 calendar days.

A Candidate that has objected to any decision must also initiate interim injunction proceedings against the decision within 20 calendar days following the date on which Contracting Authority issued the decision. Proceedings are pending starting on the day of the summons (Article 125 of the Code of Civil Procedure).

Any dispute between the parties involved in the tender procedure arising on account of the tender procedure must be submitted to the civil courts in The Hague.

2.4 Discontinuation of the procedure, Candidates' withdrawal

The Contracting Authority may prematurely discontinue the tender procedure.

Should the Contracting Authority discontinue the tender procedure after the Selection Phase, the Contracting Authority shall pay the Candidates reasonable compensation, to be determined by the Contracting Authority, for the costs incurred by them, according to the stage of the tender procedure reached and according to the efforts devoted by the Candidates up to that point.

Candidates may withdraw from the tender procedure prior to submitting their Tender without being liable for compensation with regard to the Contracting Authority.

Candidates that have been invited to participate in a subsequent phase of the tender procedure but that nonetheless withdraw of their own accord shall have no claim to any compensation for (preliminary) costs.

2.5 Notice

The notice was announced on 12 December 2014 on www.tenderned.nl and sent to the Office for Official Publications of the European Communities.

An advance notice was published on 13 June 2014.

2.6 Language

This tender procedure is to be conducted in the Dutch language. Insofar as the Contracting Authority does not specify otherwise, all documents to be submitted in Dutch. In the event that certain declarations originally formulated in a foreign language have to be submitted in Dutch, the Candidate is required to submit the declaration in both the original (foreign) language with a translation into Dutch.

The Contracting Authority permits the following documents to be submitted in English, German or French without a translation:

- Certificate of Conduct for Procurement (GVA) or equivalent certificate;
- Extract from a Trade Register;
- Copy of valid proof of identity;
- Statement of economic and financial standing;
- Power of attorney.

If the Candidate is asked to submit a Certificate of Conduct for Procurement, extract from a trade register or copy of valid proof of identity and the Candidate wishes to submit the document in a language other than Dutch, English, German or French without a translation, it must first obtain permission from the Contracting Authority.

The Contracting Authority permits the following documents to be submitted in English without a translation:

- Original Financial Model:
- Financing plan:
- Financial Advisor's supporting statement
- Supporting statement for (external) credit (Mandated Lead Arranger)
- European Investment Bank supporting statement

2.7 Ceiling Price

The Ceiling Price for the execution of the DBFM Agreement shall be indicated in the Tender and Assessment Instructions.

2.8 Provision of information

2.8.1 Website

Not applicable.

2.8.2 Data Room – Dissemination of information

For the purposes of this tender procedure, the Contracting Authority shall set up a virtual Data Room on an extranet site at the start of the First Phase of Dialogue. The Candidates shall sign an agreement with the Contracting Authority, on the basis of which they shall be granted access to the Data Room. To facilitate this tender procedure, the Contracting Authority shall disseminate the information digitally – as far as possible – in PDF file format and in Word and Excel format. In case of discrepancies between the two formats, the pdf version shall prevail.

During the Dialogue, the Contracting Authority shall promptly determine which information in the Data Room is to be designated as being "Disseminated Information" in the meaning of the DBFM Agreement.

2.8.3 Electronic communication

This tender procedure allows the option of communications between the Contracting Authority and the Candidates occurring by electronic means.

Information exchanged between the Contracting Authority and the Candidates by electronic means shall primarily be communicated in pdf format and, in some cases, also in Word and Excel format. In case of discrepancies between the two formats, the pdf version shall prevail.

2.9 Confidentiality and intellectual property rights

2.9.1 Confidentiality to be observed by the Candidates

By participating in the tender procedure, the Candidates place themselves under obligation to maintain the confidentiality of all the information they receive from the Contracting Authority, provided the information is not in the public domain, and not to disclose it to third parties. Candidates must protect information received from the Contracting Authority against unauthorised use. Candidates may, however, make such information available to subcontractors involved in the tender procedure, provided they subject them to this condition of confidentiality. This obligation is not valid if the Selection Instructions, or any other communications of the Contracting Authority, explicitly state otherwise. The confidential information provided may only be used for the purpose for which it was intended.

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

The following are designated as being confidential:

- a) Reference materials, Short-listing Products, dialogue products and Tenders;
- b) Confidential Clarification as referred to in 2.10.2;
- c) All other confidential information of any kind.

Confidential information shall be treated by the Contracting Authority as such. The Contracting Authority shall therefore not disclose confidential information to third parties (including other Candidates) unless the Contracting Authority is reasonably bound to disclosure on account of a legal obligation or within the context of a lawsuit. Before the Contracting Authority supplies third parties with confidential information in such situations, it shall consult with the respective Candidate concerning the form of disclosure least objectionable to the latter, without prejudice to the Contracting Authority's fulfilment of the aforementioned obligations.

By participating in the tender procedure, the Candidates contingent intellectual property rights are not transferred to the Contracting Authority, unless agreed otherwise.

2.10 General and Confidential Clarifications

During the tender procedure, Candidates may request the Contracting Authority for clarification of the Project and the Tender Documents. Requests for clarification may give cause to the Contracting Authority's issue of General and Confidential Clarification.

The Contracting Authority may also provide the Candidates with clarification at its discretion.

The Contracting Authority shall state the deadline date for each phase of the tender procedure for the submission of requests for clarification.

2.10.1 General Clarification

In principle, the Contracting Authority shall respond to requests for clarification by providing General Clarifications. General Clarifications are adaptations, consequences and explanatory statements, or any other type of information about the Project or the tender Documents, which are identically worded and equally valid for all Candidates.

If the Contracting Authority responds to a Candidate's request for clarification by means of General Clarification then the Contracting Authority shall publish this request anonymously and answer it in a way accessible to all Candidates.

2.10.2 Confidential Clarification

In principle, no Confidential Clarification shall be issued in the Selection Phase.

2.11 Communication

Candidates are not permitted to communicate about the tender procedure and the Project with the employees of the Contracting Authority, advisors of the Contracting Authority, other (legal) persons that are involved on the side of the Contracting Authority in the tender procedure and the preparation of the Project, or other stakeholders concerned with the Project, in a manner different from the one stipulated in the Selection Instructions or the Tender and Assessment Instructions, except after written permission from the Contracting Authority. A request for the granting of this written permission must be submitted to the Contracting Authority by a Candidate as a "request for clarification".

Candidates who act in breach of the provisions of this paragraph can be excluded from (further) participation in the tender procedure.

2.12 Inside information and conflicts of interest

The guidelines from the Rijkswaterstaat [Directorate-General for Public Works and Water Management] to prevent insider trading and conflicts of interest, as contained in the

memorandum "Segregation of Interest: Policy Against Conflicts of Interest in the Tender Procedure" dated 14 September 2007 (see schedule 5) are fully applicable to this tender procedure.

Every Candidate and Significant Subcontractor must indicate in the Supplementary Self-declaration (schedule 2.3) whether there is (was) involvement in the preparation of the Project. If there was any involvement in the preparation of the Project, the Candidate is presumed to have advanced knowledge and/or a conflict of interest.

The Contracting Authority shall allow the Candidate the opportunity to refute, to the satisfaction of the Contracting Authority, the presumption referred to in the preceding paragraph and to show that fair competition is not affected by the (previous) involvement.

A Candidate may be excluded from participation in the tender procedure if the presumption referred to in the second subparagraph is not refuted.

2.13 Complaints regarding the tender procedure

In response to the report "Handling Complaints during Tender Procedures", the Contracting Authority has set up a complaints office.¹. Complaints regarding the tender procedure can be submitted to the Rijkswaterstaat Central Complaints Office for Tenders via the following email address: klachtenmeldpunt@rws.nl.

Complaints may relate to non-compliance with statutory requirements or violation of the general tender principles.

Complaints must be submitted in writing and must clearly state the specific aspect of the tender procedure to which the complaint relates, supported by reasoned arguments.

Complaints shall be handled by expert officers who are not, nor shall be, involved in the present tender procedure.

Complaints shall be handled as soon as possible and the complainant shall be informed accordingly. The filing of a complaint shall not have suspensive effect and shall not exempt the Candidate from having to submit a formal appeal on time or to initiate proceedings if and to the extent required (see paragraph 2.3).

2.14 Motivations in the context of the Public Procurement Act

The present tender procedure involves a contract in which different types of work and/or construction phases are integrated in accordance with the procurement strategy of Rijkswaterstaat. This offers the following advantages with regard to this project:

- The decision to apply the DBFM Agreement for the Project has been made on the basis of careful analysis using the Public Private Comparator (PPC), whereby the DBFM is chosen only if sufficient numbers of market parties can participate;

¹ For more information about the complaints office and the "Handling Complaints During Tender Procedures" report see the Rijkswaterstaat website. Go to: " www.rijkswaterstaat.nl/zakelijk" and make the following selections: Zakendoen met Rijkswaterstaat > Inkoopbeleid > Aanbesteden > Klachtenmeldpunt aanbesteden.

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- The decision to apply the DBFM contract type for the project has been made on the basis of the PPC and thus meets the requirements of proportionality, transparency and objectivity;
- DBFM is in essence an integrated contract. The various components within the DBFM structure are inextricably linked and together form one unit within which the private financier frequently assumes management responsibility for the project;
- Due to its specific nature, DBFM does not lend itself to being split up into component parts for integrated projects which, by definition, have a logically coherent scope;
- Combining design, development, maintenance and financing:
 - o affords market parties more room for product and process innovations leading to better performance at lower costs;
 - o leads to more maintenance-friendly designs and higher quality;
 - o offers market parties optimal opportunities to reduce the construction and maintenance costs;
 - o leads to better project management, shorter lead times and higher quality of services;
 - o leads to a clear allocation of area responsibility to one party, promoting the safety and flow of traffic;
 - o leads to higher design quality as the (financial) consequences of errors in the design rest with the contractor;
 - o makes it easier to limit the inconvenience for road users on the geographically connected Groenlo - Enschede route sections as well the underlying road network.
- DBFM contracts have fewer interfaces, thereby requiring less coordination;
- The combination of an integrated contract and award on price and quality (MEAT) offers tenderers more opportunities to compete on quality;
- DBFM is a strategic tool used across government to facilitate the efficient use of government resources and achieve savings. The Rutte II Cabinet also encourages the use of DBFM and this policy is not inconsistent with the objective that Article 1.5 of the Public Procurement Act seeks to achieve.

3 Selection Phase

3.1 General

During this phase the Candidates have the opportunity to qualify as participants in the First Phase of Dialogue. For this purpose, the Contracting Authority shall evaluate Candidates based on the grounds for exclusion and suitability requirements described in this chapter.

The Candidate must fulfil the requirements set forth in this chapter and must completely fill out the forms stipulated in schedule 2. Incomplete and/or incorrectly filled out forms may lead to exclusion from (further) participation in the tender procedure.

3.2 Registration

Interested parties may register with the Contracting Authority until 26 January 2015 by sending an email to N18-DBFM@rws.nl. The Contracting Authority shall send the General Clarifications to be provided in connection with the Selection Phase to all registered parties. If an interested party wishes to participate in the tender procedure, it must also submit a request for participation in accordance with paragraph 3.4.

3.3 Clarifications

Interested parties may submit requests for clarification no later than 19 January 2015 by email to the email address provided in paragraph 1.3. The provisions of Subsection 2.10 are applicable to this clarification.

In principle, requests not submitted in time shall not be accepted by the Contracting Authority.

The Contracting Authority shall supply General Clarification in time for requests submitted by no later than 28 January 2015.

3.4 Requests to participate

Candidates must mark their request to participate:

*"Confidential Request to Participate in the N18 Tender Procedure
File number 31083071"*

and submit it to the Contracting Authority between 10 a.m. and 3 p.m. on 11 February 2015 at the office address indicated in paragraph 1.3. The Contracting Authority shall afford interested parties the opportunity to submit the request to participate at an earlier time. Candidates shall make an arrangement with the Contracting Authority for this purpose via e-mail.

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A request to participate should consist of an original copy of all documents to be submitted in accordance with the overview of the tabs included in schedule 2.1. One copy of all original documents must also be included, as well as a copy of all documents on data carrier in PDF file format.

Requests to participate must entirely adhere to the model prescribed in schedule 2.1 and must be signed by an authorised representative.

Requests to participate not received by the Contracting Authority within the time limit specified in this paragraph, are null and shall not be accepted by the Contracting Authority.

3.5 Single instance of involvement of (legal) persons

(Legal) persons may only participate as Candidates once and may only be involved as a Significant Subcontractor or a Shareholder via a single Candidate. In terms of the applicability of this condition, (legal) persons that meet the conditions given below are considered as being one (legal) person:

1. natural or legal persons affiliated with each other in some manner as per Article 2: 24a of the Dutch Civil Code; or
2. natural or legal persons associated with each other as a group as per Article 2: 24b of the Dutch Civil Code; or
3. (legal) persons affiliated with each other in a way comparable to subsection 1 or subsection 2 according to foreign law.

3.6 Candidates: SPVs, SPVs in process of incorporation

The Contractor must be an SPV (Special Purpose Vehicle). The DBFM Agreement shall be signed with the SPV.

The following may apply as Candidates:

- (a) the SPV, when already incorporated or – if the SPV has not yet been incorporated,
- (b) one or more (legal) person(s) acting on behalf of the SPV in process of incorporation.

Should the situation under (b) above involve two or more legal persons applying on behalf of the SPV in process of incorporation, then one of those parties must be designated as the lead party in the model form for request to participate supplied in schedule 2.1 under A. The lead party must be able to legally represent the other legal persons applying on behalf of the SPV in process of incorporation in all matters related to this tender procedure. The Candidate vouches for said authorisation vis-à-vis the Contracting Authority.

In the case cited under (b) above, the SPV must be operational no later than the day prior to Contract Close and must by then have certified the legal procedures undertaken on account of it by the (legal) person(s) cited under (b) above. The Contracting

Authority must – without submitting any request to that effect, receive, immediately upon incorporation and certification, evidence of said incorporation and certification.

If Candidates make their request as an SPV in the process of incorporation, entry in the Commercial Register is not required at the time of request to participate. All (legal) persons (and/or future Shareholders) who will participate in the SPV in process of incorporation must submit the required information.

3.7 Article 6 of the Dutch Competitive Trading Act

The Contracting Authority makes Candidates abundantly aware that it is prohibited to enter into agreements having the aim or effect of reducing, restricting or disrupting competition on the Dutch market or any portion of it.

The Contracting Authority reserves the right to report Candidates to the Dutch Authority for Consumers & Markets if the Contracting authority suspects they are in breach of the Dutch Competitive Trading Act with regard to the Project because they have entered into an agreement, contributed to a decision by a business association or undertaken concerted practices in collaboration with one or more companies to the effect that, or with the result that, competition on the Dutch market or part of the market is hindered, limited or falsified.

3.8 Demonstrating suitability

3.8.1 General

Candidates must provide proof that, either on their own or by availing themselves of the technical expertise of one (or more) third parties, they fulfil the suitability requirements cited in Paragraphs 3.13.1 and 3.13.2.

Should a Candidate avail itself of a third party (or several third parties), then it is to provide, at the same time as submitting its request to participate, proof that, and in which way, it shall (or might) indeed avail itself of the experience of the third parties, for which purpose the model statement supplied in schedule 2.2 is to be filled out and signed by the Significant Subcontractors.

3.8.2 Use of third parties: Significant Subcontractors

A Significant Subcontractor is considered to be a (legal) person whose technical competence is employed by a Candidate to fulfil one or more suitability requirements.

Significant Subcontractors must actually be used in activities that relate to the requirements for which the Significant Subcontractor is hired.

3.8.3 Attribution of experience

With regard to the suitability requirements laid down in paragraphs 3.13.1 and 3.13.2, a Candidate or Significant Subcontractor may only claim a particular type of experience if

and to the extent that the Candidate or Significant Subcontractor has personally done the work pertaining to that type of experience.

3.9 Changes in the composition of Candidates, designation of Significant Subcontractors

In the event of unforeseen circumstances, such as the withdrawal of a participant in the SPV or a Significant Subcontractor due to events beyond the Candidate's control or for organisational reasons provided there are no additions to the parties involved, the Candidates may propose changes to their composition or to the designation of Significant Subcontractors.

The Contracting Authority must give its explicit written consent to such changes, and certain conditions may be attached to said consent. The Contracting Authority shall verify if the change in composition has consequences affecting, for example:

- applicability of grounds for exclusion;
- compliance with suitability requirements or further selection criteria;
- inside information or conflict of interests;
- other factors relating to competition law.

The Contracting Authority shall, however, not withhold its consent on unreasonable grounds.

In any event this consent requires that the Candidate demonstrate that after the changes all the requirements placed on Candidates and Significant Subcontractors. If a selection has taken place, in order to obtain approval the Candidates must also demonstrate that they, in the new composition and in applying the criteria for selection, would achieve at least the same or a higher total score.

3.10 Information to be submitted

In requests to participate, Candidates must submit the following information about themselves (the SPV or all the participants in the SPV in process of incorporation) and the Significant Subcontractors:

- a. Request to participate including all documents pertaining thereto (schedule 2.1).
- b. Declaration(s) of availability of Significant Subcontractors (paragraph 3.8) including all documents pertaining thereto (schedule 2.2).
- c. From the SPV or every (legal) person participating in the SPV in process of incorporation: a Self-declaration for tender procedures of contracting authorities (standard declaration in accordance with the Public Procurement Act 2012² (schedule 2.3A)) and a Supplementary Self-declaration (schedule 2.3B).

² see the website: <http://www.rijksoverheid.nl/documenten-en-publicaties/formulieren/2013/03/22/eigen-verklaring-aanbestedingsprocedure-aanbestedende-diensten.html>

- d. From every Significant Subcontractor: a "Third-party Declaration on grounds for exclusion" (schedule 2.6.) and a Supplementary Self-declaration (schedule 2.3B).
- e. Statement of financial and economic standing (paragraph 3.12) including all documents pertaining thereto (schedule 2.4).
- f. Reference regarding project management experience (paragraph 3.13.1) including all documents pertaining thereto (schedule 2.5).
- g. References regarding project financing experience (Paragraph 3.13.2) including all documents pertaining thereto (schedule 2.5).

A list of documents to be submitted is included in the overview of the tabs in schedule 2.1.

3.11 Grounds for Exclusion

3.11.1 Compulsory grounds for exclusion

The Contracting Authority will exclude any Candidate or Significant Subcontractor from participation or involvement in the tender procedure if one of more of the circumstances mentioned in Article 4.5.1 of the Works Procurement Regulation 2012 apply, without prejudice to the provisions in Article 4.5.7 of the Works Procurement Regulation 2012.

3.11.2 Optional grounds for exclusion

The Contracting Authority may exclude any Candidate or Significant Subcontractor from participation or involvement in the tender procedure if one of the circumstances as referred to in Article 4.5.4 of the Works Procurement Regulation 2012 applies, without prejudice to the provisions in Article 4.5.7 of the Works Procurement Regulation 2012.

3.11.3 Declarations to be submitted

A Candidate shall append the following complete and truthful declarations to its request to participate:

- From the SPV or every (legal) person participating in the SPV in process of incorporation: a Self-declaration for tender procedures of contracting authorities (schedule 2.3A) and a Supplementary Self-declaration (schedule 2.3B).
- From every Significant Subcontractor: a "Third-party Declaration on grounds for exclusion" (schedule 2.6.) and a Supplementary Self-declaration (schedule 2.3B).

The above-mentioned parties are required to continue to comply with the declarations throughout the tender.

A completed Self-declaration for tender procedures of contracting authorities, Third-party Declaration on grounds for exclusion or Supplementary Self-declaration functions as a self-declaration by the party that submitted the declaration. The supporting documentation specified in Articles 4.5.3 and 4.5.5 of the Works Procurement Regulation 2012 must be submitted at the Contracting Authority's request. A Candidate must

provide the Contracting Authority with the supporting evidence within two working days.³

The documents listed under Tab C in schedule 2.1 have to be submitted along with the request to participate.

Failure to truthfully complete a Self-declaration for tender procedures of contracting authorities or a Supplementary Self-declaration may result in exclusion of the Candidate from (further) participation in the tender procedure.

Certificate of conduct for procurement:

As proof of non-existence of grounds for exclusion, the Contracting Authority may ask the Candidate to provide a certificate of conduct for procurement, as referred to in Article 2.89, subsection 2 of Public Procurement Act 2012, which at the time of submission is not older than two years.

A certificate of conduct for procurement must pertain to the current situation of the Candidate

If a certificate comparable to the certificate of conduct for procurement is not issued in the country of origin, it shall suffice to submit a statement under oath or a solemn declaration made before an authorised legal or administrative body, a civil notary or a qualified professional organisation in the country of origin.

3.11.4 BIBOB Advisory Bureau

If the Contracting Authority has reason to believe that a Candidate or Significant Subcontractor is subject to one or more of the circumstances cited in Articles 2.86 or 2.87 of the Public Procurement Act 2012, but if sufficient information for justifying the exclusion from participation or further involvement is not available, the Contracting Authority may seek the advice of the BIBOB Bureau (see Article 8 of the Public Administration Probity in Decision-Making Act (BIBOB)). The Candidate or Significant Subcontractor concerning which advice is solicited shall be informed of the contents of said advice by the Contracting Authority.

3.11.5 Exclusion

During the selection, short-listing and awarding of the contract, a Candidate may be requested to demonstrate to the Contracting Authority that the grounds for exclusion referred to in paragraphs 3.11.1 and 3.11.2 do not apply to the Candidate or its Significant Subcontractors, failing which the Candidate may be excluded from (further) participation in the tender procedure. If, during the tender procedure, grounds for exclusion referred to in paragraphs 3.11.1 and 3.11.2 become applicable to a Candidate or one of its Significant Subcontractors, this Candidate must immediately notify the Contracting Authority in writing.

Candidates who, in the view of the Contracting Authority, act in breach of the terms or requirements stipulated in the Tender Documents can be excluded from (further) participation in the tender.

If, at any time, it becomes evident that a Candidate has provided incorrect information, this Candidate may be excluded from (further) participation in the tender process.

³ Note: It may take several weeks to obtain a certificate of conduct for procurement.

If the Contracting Authority proceeds with the exclusion of a Candidate due to grounds for exclusion pertaining to a participant involved in the SPV in process of incorporation or a Significant Subcontractor, the Candidate in question shall have the opportunity for 15 calendar days to submit a proposal for modification in the sense of paragraph 3.9 for replacing the participant or Significant Subcontractor in question.

Candidates that are excluded on the basis of the provisions in this paragraph shall not receive any compensation.

3.12 Financial and economic standing

3.12.1 Financial and economic standing requirement

Candidates must show that the Shareholder(s) is (are) willing and able to provide the Candidate with a minimum amount of EUR 15,000,000 (fifteen million euros) for funding the Project.

In case of a request as an SPV in process of incorporation, the participants in the prospective SPV must individually declare the amount they are making available to the Candidate for the Project, and the requirement is satisfied if the amounts of the provided declarations add up to at least the required EUR 15,000,000 (fifteen million euros).

3.12.2 Proof of financial and economic standing requirement

For the purpose of proving that it meets the financial and economic standing requirement, the Candidate must submit a statement in full conformity with schedule 2.4, signed by an authorised representative of a financial institution which:

(a) is not an institutional investor and which is under the supervision of a regulatory body or a regulatory agency of another member state, or of a regulatory agency from a state that is not a member state but imposes at least comparable requirements as a regulatory agency of a member state (all the above as defined in Article 1.1 of the Dutch Financial Supervision Act); or

(a) is an institutional investor under the supervision of a regulatory body or a regulatory agency of another member state, or of a regulatory agency from a state that is not a member state but imposes at least comparable requirements as a regulatory agency of a member state (all the above as defined in Article 1.1 of the Dutch Financial Supervision Act).

In case of a request made by (the participants in) an SPV (in the process of incorporation), multiple statements may be submitted on behalf of the SPV in the process of incorporation, providing the accumulated amounts involved in the statements meet the requirement. If multiple statements are submitted, [Name of Candidate] indicated in the 2nd paragraph of schedule 2.4 must be read as [Name of Legal Entity/ies] and only the amount may be otherwise changed.

This declaration only needs to be provided for the participants in the SPV (in the process of incorporation), not for the Significant Subcontractors.

3.13 Technical and organisational ability

3.13.1 Project management experience requirement

The Candidate must show that it can indeed avail itself of the following experience in carrying out the Project:

In the preceding five years (counted from the deadline for submitting a request to participate; see paragraph 3.4), the Candidate must have been responsible for the project management of a project. This project must comply with the following requirements:

- a. Infrastructure project in groundwork, road and hydraulic engineering (GWW) with regard to (line) infrastructure, or in residential and non-residential construction (B&U), water purification, water production or water distribution;
- b. integrated execution of design and construction work carried out under certified quality assurance (based on the NEN-EN-ISO-9001 standard or equivalent);
- c. The total value of the design and construction work indicated in b. shall be at least EUR 35,000,000 (thirty-five million euros) (in real euros, excluding VAT);
- d. at the time of submitting the request to participate, the construction work must be at least 25% completed in the judgement of the commissioning party.

Project management in the sense of this suitability requirement is defined as the demonstrable assumption of responsibility at the level where the design and construction work was integrated or which required involvement in an executive capacity with regard to all of the following tasks:

- i. the day-to-day execution of activities;
- ii. risk management;
- iii. quality management;
- iv. financial management;
- v. scheduling;
- vi. implementation of modifications.

3.13.2 Project management experience requirement

The Candidate must show that it can indeed avail itself of the following experience in carrying out the Project:

The Candidate must have been involved to a significant extent in at least one signing of a financial agreement between a project company and debt capital providers for purposes of financing a project having a contract value of at least EUR 35,000,000 (thirty-five million euros) to be paid by the Contracting Authority (in real euros, VAT not included), where the facilities made available to the project company must have amounted to at least 50% of the contract value cited in this context. If applicable, a reference project presented in the context of 3.13.1 may also be presented.

The requisite experience may have been acquired on the part of the project company or on the part of the providers of external capital, also as financial advisers.

3.13.3 Information to be submitted

The Candidate must show that it meets the requirements cited in Paragraphs 3.13.1 and 3.13.2 with regard to experience in the areas of project management and project financing by means of the model statement enclosed as schedule 2.5. A separate statement is to be submitted for each reference project.

3.14 Verification by the Contracting Authority

The Contracting Authority reserves the right to verify the reliability of references presented. The Candidate is obliged to cooperate in this regard.

3.15 Evaluation of request to participate - invitation to Dialogue

The Contracting Authority shall invite Candidates to participate in the Dialogue according to the absence of any grounds for their exclusion under paragraph 3.11 and on condition that they meet the suitability requirements as specified in paragraphs 3.12 and 3.13. Paragraph 2.3 applies to decisions by the Contracting Authority to not invite Candidates to the Dialogue. If a Candidate objects to this decision, it must notify the Contracting Authority of these objections in writing within ten calendar days after the mailing date of the decision.

schedule 1: Definitions

Candidate	An SPV, or one or more (legal) persons who will participate in, and act on behalf of, an SPV which is in the process of incorporation and which has registered for participating in the present tender procedure.
Ceiling Price	The amount determined by the Contracting Authority indicating uppermost limit under which the actual value of a Tender must remain in order to be valid.
Confidential Clarification	Confidential information in accordance with paragraph 2.10.
Contract Close	The moment of signing the DBFM Contract.
Contracting Authority	The State of the Netherlands, The Ministry of Infrastructure and the Environment, Directorate General for Public Works and Water Management, Large Projects and Maintenance
Data Room	The digital archive containing documents and data related to the tender procedure for the Project.
Data Room Regulations	The regulations in which access to and use of the Data Room are set forth.
DBFM Agreement	The (draft) Design, Build, Finance and Maintain Agreement as enclosed in schedule 3, including all Schedules.
Dialogue	The First and Second Phases of Dialogue in combination.
Financier	Every legal entity which concludes a Financing Agreement and which: (a) is not an institutional investor and who is supervised by a regulatory authority; or of a regulatory body of another member state; or a regulatory body of a state that is not a member state and that at least sets equivalent requirements as a regulatory body of a members state (all which as defined in Section 1.1. of the Dutch Financial Supervision Act); (b) an institutional investor; or (c) is an entity that is not a legal person as referred to in (a) or (b), but regarding whom the obligations are guaranteed as his or her own obligation by a legal person who is a legal person as referred to in (a) or (b).
First Phase of Dialogue	The phase of the tender procedure described in the Tender and Assessment Instructions, which starts the dialogue.
General Clarification	Information supplied to Candidates by the Contracting Authority as per paragraph 2.10.
Original Financial Model	The financial model to be submitted by Tenderers at the time of submission of the Tender.
Project	All work, deliveries and services that must be carried out under the DBFM Contract.
Second Phase of Dialogue	The final phase of Dialogue, described in the Tender and Assessment Instructions.
Selection Instructions	The separate instructions according to which the Contracting Authority selects the

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	Candidates who participate in the Dialogue.
Selection Phase	The phase of the tender procedure described in Chapter 3 of the Selection Instructions.
Self-declaration	The Self-declaration for tender procedures of contracting authorities or the Third-party Declaration on grounds for exclusion, together with the Supplementary self-declaration referred to in paragraph 3.11.3.
Self-declaration for tender procedures of contracting authorities	The declaration established in accordance with Article 2, paragraph 2 of the Dutch Public Procurement Decree of 11 February 2013 ⁴ included in schedule 2.3A
Shareholder	A (legal) person who has a holding in the Candidate.
Short-listing criteria	Criteria based on the MEAT criteria that are used to decide during the First Phase of Dialogue which Candidates will be allowed to participate in the next phase of the Dialogue.
Short-listing product	The product submitted by Candidates during the First Phase of Dialogue, evaluated on the basis of the Short-Listing Criteria and used as a basis for selecting Candidates to continue to the next phase of the Dialogue.
Significant Subcontractor	A (legal) person whose technical competence is employed by a Candidate for purposes of fulfilling technical expertise requirements.
SPV	Special Purpose Vehicle organised in the form of a private company with limited liability under Dutch law (besloten vennootschap).
Successful Tenderer	The Tenderer with whom the Contracting Authority intends to sign the DBFM Agreement.
Supplementary Self-declaration	The supplementary self-declaration in schedule 2.3B.
Tender	The submission tendered by the Candidates that are invited to do so upon conclusion of the Dialogue In case of phased submission of parts of the Tender, the "date of Tender" is the date on which the last parts of the Tender are and have to be submitted.
Tender and Assessment Instructions	The instructions that cover the period in the tender procedure from Invitation to Participation in the First phase of Dialogue up to and including the submission of a Tender.
Tender Documents	The Selection Instructions, the Tender and Assessment Instructions, the DBFM Agreement, the General and Confidential Clarification, invitations to participate in a (subsequent) phase of the tender procedure, and all other documents supplied to Candidates by the Contracting Authority in the context of the tender procedure and designated as such.

⁴ see the website: <http://www.rijksoverheid.nl/documenten-en-publicaties/formulieren/2013/03/22/eigen-verklaring-aanbestedingsprocedure-aanbestedende-diensten.html>

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Tenderer	An SPV, or one or more (legal) persons who shall participate in, and act on behalf of, an SPV which is in the process of incorporation and which has submitted a Tender.
Third-party Declaration on grounds for exclusion	The declaration that is included as schedule 2.6 and must be completed by the Significant Subcontractor in accordance with paragraph 3.11.3 of the Selection Instructions.

schedule 2: Model forms for request to participate

schedule 2.1: Model form for request to participate

A. Candidate Information⁵

Name	
Legal form of the company	
Location of registered seat	
Country of registered seat	
Office address	
E-mail	
Fax	
Telephone no.	
Name of lead party (where applicable)	

B. Shareholder information (to be supplied by each Shareholder)

Name	
Legal form of the company	
Location of registered seat	
Country of registered seat	
Office address	
E-mail	
Fax	
Telephone no.	
Percentage of (future) holding in Candidate	

⁵ If an SPV is involved, the information requested under A. must be provided by the SPV, and all the information requested under B. must be provided by the participants (or Shareholders) in the SPV. In the case of an SPV in process of incorporation, all the (legal) persons (joint parties) acting on behalf of the SPV in process of incorporation must supply the requested information and one of them shall be designated as the lead party. The lead party can be listed under A. as "acting on behalf of the SPV in process of incorporation".

C. Significant Subcontractor(s) information (to be supplied by each Significant Subcontractor)

Name	
Legal form of the company	
Location of registered seat	
Country of registered seat	
Office address	
E-mail	
Fax	
Telephone no.	

D. Authorised representative information of the natural person that signs the request to participate on behalf of the Candidate⁶.

Name of natural person authorised as representative	
Date and place of birth	
Position	
Name of legal person represented	

⁶ In the case of an SPV, the information requested under D. is to be supplied by the SPV and the designated natural person (or persons) is to sign this request to participate on behalf of the SPV. In the case of a SPV in process of incorporation, all (legal) persons (joint parties) acting on behalf of the SPV in process of incorporation are to supply the information requested under D. and the natural person designated by said legal persons (joint parties) is to sign this request to participate on their behalf.

E. Candidate's declaration regarding the procedure and accuracy of information

[name of Candidate] declares that:

1. It has read the Selection Instructions and is in unconditional agreement with the procedure set forth therein;
2. All information it has provided or shall provide to the Contracting Authority within the context of this tender procedure is accurate.

Signed in [place], [date]

Name [Candidate⁷]

On behalf of

[name of natural person or persons cited under D.]

[signature of natural person or persons cited under D.]

⁷ In the case of an SPV, the natural person (or persons) cited under D. is to sign this request to participate on behalf of the SPV.
In the case of an SPV in process of incorporation, the natural persons referred to under D. are to sign this request to participate on behalf of the (legal) persons (joint parties) acting on behalf of the SPV in process of incorporation. .

schedules to request to participate:

Tab A: Request to participate

A request, completely filled out and validly signed by the Candidate, to participate in accordance with the model enclosed in **schedule 2.1**, with:

- A copy of a valid proof of identity of the natural person or persons acting as authorised representative(s) in signing the request to participate on behalf of the Candidate.
- Contingent (special) power of attorney granted the aforementioned natural person for the purpose of validly signing the request to participate. Said power of attorney is only required if the signatories' authorisation of representation is not fully demonstrated by the extracts from the trade register. In such a case a copy of a valid proof of identity of the person(s) signing the authorisation for the power of attorney must also be submitted.
- If necessary a power of attorney from the other (legal) persons to the lead party, if the request is submitted by more than one legal person acting on behalf of the SPV in process of incorporation.

Tab B: Statement of availability of Significant Subcontractors (paragraph 3.8)

A statement of availability, completely filled out and validly signed by each Significant Subcontractor, in conformity with the model supplied in **schedule 2.2**, including:

- A copy of a valid proof of identity of the natural person or persons acting as authorised representative in signing the statement of availability of the Significant Subcontractor on behalf of that Significant Subcontractor.
- Contingent power of attorney granted the aforementioned natural person for the purpose of validly signing the statement of availability of the Significant Subcontractor. Said power of attorney is only required if the signatories' authorisation of representation is not already demonstrated by the register of companies. In such a case a copy of a valid proof of identity of the person(s) signing the authorisation of the power(s) of attorney must also be submitted.

Tab C: BIBOB Self-declaration(s) (Subsection 3.11)

8A Self-declaration which has been completed and validly signed by the Candidate and each Significant Subcontractor, consisting of the Self-declaration for tender procedures of contracting authorities (Candidate)(schedule 2.3A) or a Third-party Declaration on grounds for exclusion (Significant Subcontractor)(schedule 2.6) (see paragraph 3.11.3) and the Supplementary Self-declaration (**schedule 2.3B**)

The Self-declaration must be submitted along with:

- A copy of a valid proof of identity of the natural person or persons acting as authorised representative in signing a Self-declaration on behalf of the SPV, the relevant participant in the SPV in process of incorporation or the Significant Subcontractor.

⁸ In the case of an SPV in process of incorporation, all (legal) persons (joint parties) acting on behalf of the SPV in process of incorporation and/or future shareholders of the SPV in process of incorporation, must fill in the Self- declaration for tender procedures of contracting authorities.

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- Contingent power of attorney granted to the aforementioned natural persons for the purpose of validly signing a Self-declaration. Said power of attorney is only required if the signatories' authorisation of representation is not already demonstrated by the register of companies. In such a case a copy of a valid proof of identity of the person(s) signing the authorisation of the power(s) of attorney must also be submitted.

Tab D: Statement of economic and financial strength (paragraph 3.12)

A statement of economic and financial standing, completely filled out and validly signed by the financial institution – in the sense of paragraph 3.12.2 Selection Instructions – in conformity with the model supplied in **schedule 2.4**, including:

- Extract from the register of companies for the financial institution.
- A copy of a valid proof of identity of the natural person or persons acting as authorised representative in signing the statement of economic and financial standing of availability of the Significant Subcontractor on behalf of the financial institution.
- Contingent power of attorney granted to the aforementioned natural persons for the purpose of validly signing the statement of economic and financial standing. Said power of attorney is only required if the signatories' authorisation of representation is not already demonstrated by the register of companies. In such a case a copy of a valid proof of identity of the person(s) signing the authorisation of the power(s) of attorney must also be submitted.

Tab E: Declaration of technical and organisational expertise (Subsection 3.13)

One reference project, completely filled in and validly signed by the Candidate in accordance with the model enclosed in **schedule 2.5, subsections A and B**, including for each reference project:

- A copy of a valid proof of identity of the natural person or persons acting as authorised representative in signing the reference on behalf of the Candidate, should a copy of valid proof of identity of the natural person signing not already have been submitted.
- Contingent power of attorney granted to the aforementioned natural persons for the purpose of validly signing the reference. Said power of attorney is only required if the signatories' authorisation of representation is not already demonstrated by the register of companies. In such a case a copy of a valid proof of identity of the person(s) signing the authorisation of the power(s) of attorney must also be submitted.

schedule 2.2: Model statement for availability of Significant Subcontractor⁹

Significant Subcontractor information

Name

Legal form of the company

Address

E-mail

Telephone no.

[Name of Significant Subcontractor] declares:

1. that it is familiar with the Selection Instructions for this tender procedure, and that it is in unconditional agreement with the procedure set forth therein;
2. that all information it has supplied and shall supply to the Contracting Authority in connection with this tender procedure is accurate, and that it is aware that possible inaccuracies detected by the Contracting Authority may lead to the exclusion of the Candidate from further participation in this tender procedure.
3. that [name of Candidate], if the Project is awarded to [name of Candidate], will have access, for the implementation of the Project, to the knowledge, experience and means that are available to the undersigned and that the work related to the requirements for which the undersigned has been hired, will be performed by the undersigned. In this connection it agrees that the experience of the signatory shall be designated as being the experience of the Candidate.

Signed in [place], [date]

[Significant Subcontractor],

[Name of natural person with authority to represent]

[Job title]

[Signature]

⁹ To be completed by each Significant Subcontractor on whose experience the Candidate draws

schedule 2.3A: a Self-declaration for tender procedures of contracting authorities

Is included separately.

schedule 2.3B: Model Supplementary Self-declaration

(To be submitted with the Self-declaration for tender procedures of contracting authorities or with the Third-party Declaration on grounds for exclusion)

All participants in the SPV (in process of incorporation) must submit a completed and signed *Supplementary Self-declaration*.

Significant Subcontractors should only submit a completed and signed *Supplementary Self-declaration* for the section "Questions about insider trading and conflicts of interest".

The Contracting Authority reserves the right to instigate a closer examination by the BIBOB Bureau of Candidates, Shareholders, Significant Subcontractors, or other subcontractors, to the extent that such is permissible under the limitations set forth in Directive 2004/18/EG.

Company refers to the Candidate or Significant Subcontractor that fills out the declaration

SUPPLEMENTARY SELF-DECLARATION

In connection with the tender procedure for the N18 Groenlo - Enschede contract
Name and address of the company:

.....

Registration number in the Chamber of Commerce (registration number in the trade register or a similar registration from the country in which the company is established)

.....

Contact person of the organisation (name, email, telephone number):

.....

1. QUESTIONS REGARDING INSIDE INFORMATION AND CONFLICTS OF INTERESTS

- 1.1. Prior to this tender procedure, has the company carried out work or services in preparation of the Project, or is/was the company in some other way directly or indirectly involved in the preparation of the Project?

Yes/no (please cross out the answer that does not apply)

If yes, please indicate the nature of the respective work or services or the nature of the involvement.

.....
.....
.....

- 1.2. Prior to this tender procedure, have people working in the company carried out work or services towards preparing the Project, or are there people working in the company in some other way directly or indirectly involved in the preparation of the Project?

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Yes/no (please cross out the answer that does not apply)

If yes, please provide the following information for each person:

- a. the name and position within the organisation;
- b. the nature of the relevant work or services, or the involvement.

.....
.....
.....

- 1.3. With regard to this tender procedure, has the company hired subcontractors who have carried out work or services in preparation of the Project, or is/was the company in some other way directly or indirectly involved in the preparation of the contract?

Yes/no (please cross out the answer that does not apply)

If yes, please provide the following information for each subcontractor:

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

.....
.....
.....

- 1.4. With regard to this tender procedure, has the company hired advisers (both natural and legal persons) who have carried out work or services in preparation of the Project, or is/was the company in some other way directly or indirectly involved in the preparation of the contract?

Yes/no (please cross out the answer that does not apply)

If yes, please provide the following information for each consultant:

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

.....
.....
.....

Is the company allied to one or more other companies and/or does the company form part of a group, in the context of Articles 2: 24a, 2:24b and 2:24c of the Netherlands Civil Code, or comparable legal forms under foreign law?

Yes / no (delete as applicable)

If yes, have one or more of the affiliated or group companies performed work or services in preparation of the Project prior to the tendering procedure or has one or more of the companies been in some other way directly or indirectly involved (or is currently involved) in the preparation of the Project?

Yes/no (delete as applicable)

If yes, specify for each company:

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

.....
.....
.....

2. QUESTIONS REGARDING THE FORMATION OF CONSORTIUMS FOR PLACING TENDERS OR APPLICATIONS BY MEANS OF JOINT ENTREPRENEURIAL VENTURES*)

) These questions need only be answered if Submission or applications are made by means of a joint business venture (a consortium), whether the latter is an ordinary partnership or not, or as a Special Purpose Vehicle (SPV). All (future) participants in the SPV (in process of incorporation) must answer these questions individually. Significant Subcontractors and other subcontractors do **not need to answer these questions.*

- 2.1. Please indicate which factors prevent the company from being able to place a submission for the Project individually.

.....
.....
.....

- 2.2. Please indicate why the nature and scope of the joint entrepreneurial venture (consortium) formed is necessary with regard to the nature and scope of the contract to be executed, taking the significance and capacity of each operator in the joint venture into consideration.

.....
.....
.....

- 2.3. Please indicate which part(s) of the Project shall be executed by the company itself.

.....
.....
.....

DECLARATION

The undersigned declares that:

- the questions in this questionnaire have been answered in a complete and truthful manner;
- it has signed the completed questionnaire of its own free will, without the fear of threat, coercion, or undue influence being placed upon it; it understands that providing false or incomplete information may be regarded by the contracting authority as a misrepresentation and that this may result in outright exclusion from the remainder of this tender procedure;
- no changes have been made to the text of this questionnaire;
- this questionnaire is signed by a duly authorised representative, as revealed by the trade register or a similar registration from the country in which the company is established:

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Name(s), authorised signatories:

.....

Date :

Signature: :

schedule 2.4: Model declaration of financial and economic standing

This declaration must be signed by an authorised representative of a financial institution which:

- (a) is not an institutional investor and which is under the supervision of a regulatory body or a regulatory agency of another member state, or of a regulatory agency from a state that is not a member state but imposes at least comparable requirements as a regulatory agency of a member state (all the above as defined in Article 1.1 of the Dutch Financial Supervision Act); or
- (b) is an institutional investor under the supervision of a regulatory body or a regulatory agency of another member state, or of a regulatory agency from a state that is not a member state but imposes at least comparable requirements as a regulatory agency of a member state (all the above as defined in Article 1.1 of the Dutch Financial Supervision Act).

The statement below must be issued on the financial institution's institutional stationary.

To the Contracting Authority

Ministry of Infrastructure and the Environment
Rijkswaterstaat Large Projects and Maintenance
N18 Project Organisation
Attn. Mr J.P.M. van der Meer
Eusebiusbuitensingel 66
6828 HZ Arnhem

The undersigned, [name of financial institution], with registered seat at [place], declares as follows in connection with the call to tender issued by the State of the Netherlands (Ministry of Infrastructure and the Environment, Rijkswaterstaat Construction and Maintenance Projects) for the N18 Project, hereinafter referred to as "the Project".

The undersigned declares, on the basis of facts known at the present time to [name of financial institution], that [name of the legal person] is to be considered capable of raising the sum of EUR 15,000,000 (fifteen million euros) as a capital base, available either from its own funds/share capital/share premium, or by way of a subordinated loan.

This statement does not constitute a guaranty on the part of [name of financial institution] vis-à-vis the Contracting Authority. This statement has been prepared on the basis of careful consideration on the part of [name of financial institution] of the information made available to [name of financial institution] by the Candidate, in particular as regards the Project and the financial situation of [names of parties involved with the Candidate].

[Name of financial institution] is aware that this statement shall be used by the Contracting Authority to determine whether [name of the Candidate] meets the minimum financial and economic requirements placed upon it.

Signed in [city], [date]

[Name of financial institution]

[Name of natural person with authority to represent]

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[Job title]
[Signature]

schedule 2.5: Model declaration of technical and organisational ability

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

The Contracting Authority reserves the right to request further information from the contact person of the contractor as indicated on this form.

REFERENCE PROJECT FOR SELECTION		
Name of reference project		
Contract amount (in euros, not including VAT)		
Place of execution		
Time period of execution		
Client	Name	
	Address	
	Name of contact person	
	Telephone no.	
	E-mail	
Contractor ¹⁰		
Description of reference project (maximum 500 words)		
With this reference project Candidate proves that, for the purpose of executing the project, it can indeed avail itself of experience in the area of: Project management / Project financing ¹¹ .		
A. Project management		
Infrastructure project	Is it a case of an infrastructure project in the meaning of paragraph 3.13.1 of the Selection Instructions?	Yes/no
Project management	In the preceding five years, counted as of the deadline date for submitting a request to participate, has the aforementioned contractor executed the project management – in the meaning of paragraph 3.13.1 of the Selection Instructions - for this project?	Yes/no
Integrated Execution	Does the reference project at least comprise an integrated execution of design and construction work carried out under certified quality assurance (based on standard NEN-EN-ISO 9001	Yes/no

¹⁰ The Contractor must be (a participant in and/or (future) Shareholder of) the Candidate or, if applicable, a Significant Subcontractor.

¹¹ Cross out the inappropriate answer.

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	or equivalent)?	
Value	Is the total value of the design and construction works at least EUR 35,000,000 (thirty-five million) (in real euros, not including VAT)?	Yes/no If yes, what is the value of the design and construction work?
Completion of construction work	Has the 25% of the construction work referred to in the reference project been completed at the time of submitting the request to participate?	Yes/no
Satisfactory execution	Has the construction work (as of the present) been executed to the satisfaction of the principal?	Yes/no
B Project financing		
Infrastructure or analogous project	Is it a case of an infrastructure project in the meaning of paragraph 3.13.1 of the Selection Instructions?	Yes/no
Contract value	Is the contract value of the compensation to be paid by the contracting party at least EUR 35,000,000 (thirty-five million) (in real euros, not including VAT)?	Yes/no
Project Financing	Was the contractor involved in a significant way in the signing of the financing agreement(s) for purposes of project financing between a project company and providers of external capital, whereby the facilities made available to the project company had a combined value of at least 50% of the contract value?	Yes/no

Signed in [place], [date]

[Candidate / Significant Subcontractor],

[Name of natural person with authority to represent]

[Job title]

[Signature]

schedule 2.6: Third-party Declaration on grounds for exclusion

(To be submitted by all parties who are not one of the Candidates (SPV or SPV in process of incorporation), but who are called on by the Candidate to meet the suitability requirements)

Name and address of the company:

...

Registration number in the Chamber of Commerce (registration number in the trade register or a similar registration from the country in which the company is established):

...

Contact person of the organisation (name, email, telephone number):

...

The undersigned declares that:

1. Neither the company nor any of its directors has been convicted in a conclusive judicial ruling due to involvement in a criminal organisation in the four years preceding the submission of this declaration; this includes the following actions:
 1. conduct by any person who, with intent and with knowledge of either the aim and general criminal activity of the organisation or the intention of the organisation to commit the offences in question, actively takes part in:
 - a. activities of a criminal organisation, whereby a criminal organisation shall mean a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences that are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such crimes or offences are an end in themselves or a means of obtaining material benefits and, if necessary, of improperly influencing the operation of public authorities, even where that person does not take part in the actual execution of the offences concerned and, subject to the general principles of the criminal law of the Member State concerned, even where the offences concerned are not actually committed;
 - b. The organisation's other activities in the further knowledge that his participation shall contribute to the achievement of the organisation's criminal activities as set out above.
 2. Conduct by any person consisting in an agreement with one or more persons that an activity should be pursued which, if carried out, would amount to the commission of the above-mentioned offences, even if that person does not take part in the actual execution of the activity.
2. Within the four years preceding the submission of the application for participation or the Tender, neither the company nor any of its directors has been the subject of a judgement which has the force of res judicata for corruption; corruption being defined as the deliberate action of promising or giving, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his function in breach of his official duties; or in the private sector, promising, offering or providing, directly or through an intermediary, an undue

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advantage of any kind whatsoever to an individual or a third party with regard to his business activities, for him to perform or refrain from performing an act, in breach of his duties;

- 3 Within the four years preceding the submission of application for participation or the Tender, neither it nor any of its directors has been the subject of a judgement which has the force of *res judicata* for fraud; fraud shall mean fraud in respect of expenditures and revenues. In other words, any intentional act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, or, non-disclosure of information in violation of a specific obligation, with the same effect, or, the misapplication of such funds for purposes other than those for which they are originally granted.
- 4 Within the four years preceding the submission of application for participation or the Tender, neither it nor any of its directors has been the subject of a judgement which has the force of *res judicata* for money laundering, whereby money laundering shall mean:
 1. the conversion or transfer of property, with the knowledge that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the origin of the property or assisting a person involved in criminal activity;
 2. concealing or disguising the true nature, source, location, disposal, movement, right over or the ownership of property with the knowledge that such property is derived from criminal activity or any participation therein;
 3. acquiring, possessing or using property with the knowledge that such property is derived from criminal activity or any participation therein;
 4. any attempt at or complicity in any of the above matters or activities.
- 5 It is not bankrupt or being wound up, under liquidation, subject to suspension of payments or a moratorium and has not ceased its business operations and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- 6 Within the four years preceding the submission of application for participation or the Tender, neither it nor any of its directors has been convicted of an offence concerning its professional conduct by a judgement which has the force of *res judicata*;
- 7 Neither it nor any of its directors has been guilty of grave professional misconduct within the four years preceding the submission of application for participation or the Tender;
- 8 It has fulfilled all its obligations relating to the payment of social security contributions and taxes in accordance with the legal provisions of the country in which it is established;
9. It is not guilty of misrepresentation in supplying the information required by the contracting authority or of failing to supply this information during the tender procedures.

Declaration

The undersigned declares that:

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- It has signed this declaration without any conditions or reservations; it understands that providing false or incomplete information may be regarded by the contracting authority as a misrepresentation in the sense of section 9 of this self-declaration and that this could lead to outright exclusion from the remainder of this tender procedure or participation in the contract;
- It has not made any changes to the text of this declaration;
- The declaration is signed by a duly authorised signatory, as revealed by the trade register or a similar registration from the country in which the company is established:

Name(s), authorised signatories:

.....
.

Date:

Signature(s):

schedule 3: Draft DBFM Agreement

Is included separately.

schedule 4: EMAS

Criterion	Subcriterion	Maximum quality value	Assessment score	Quality value obtained	Totals
1. Tender product	1. Perception of inconvenience	EUR 20,000,000.00			
	2. Support and Image	EUR 20,000,000.00			
	3. Minimum control effort	EUR 12,000,000.00			
2. DuboCalc		EUR 9,000,000.00			
Total quality value					
Neutralised present value of the Tender					
Deduction in relation to CO2 performance scale					
Fictitious Tender price	("Neutralised present value of the Tender" minus "Deduction in relation to CO ₂ performance scale" minus "Total quality value")				

Quality and performance criteria and maximum quality value

A distinction is made between quality and performance criteria in the work sheet. The achieved quality value is calculated immediately with regard to a performance criterion via a multiplication of the number of performance units included in the tender by the value of the performance unit, therefore, without the quality assessment. This is impossible with regard to quality criteria and the achieved quality value is obtained via an assessment score. The EMAS work sheet specifies what the maximum achieved quality values are. They have been made visible on the level subcriterion.

Quality value obtained

An assessment score is given for each (sub)criterion for which the maximum quality value has been made visible. The maximum quality value is assigned for the assessment score of 10. The relationship between "Assessment Score" and "Achieved Quality Values" is linear. The table below includes an overview of the assessment scores with the related quality values.

Assessed score	Scoring	% of the maximum quality value
10	Excellent	100
9	Perfect (high level of added value)	75
8	Good (considerable added value)	50
7	More than satisfactory (clearly demonstrable added value)	25
6	Neutral (no added value)	0

The linear relationship: "Obtained quality value" = ("Assessed Score" – 6) / 4) x "Maximum quality value".

schedule 5: Policy Document on Separation of Interests

Is included separately.