



Gasunie tendering regulations

Version 1.6

N.V. Nederlandse Gasunie
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1. Tendering

N.V. Nederlandse Gasunie (Gasunie) is a special-sector company in accordance with the Dutch Public Procurement Act 2012 (Dutch Public Procurement Act). All contracts subject to the Dutch Public Procurement Act are awarded by Gasunie in accordance with this Act.

Unless expressly stated otherwise, Gasunie applies Tendering Regulations for the Utilities Sectors 2016 (ARN²⁰¹⁶) to European, national and private tendering procedures, as contained in Ariba eSourcing including the additions and amendments stated in Gasunie's tendering regulations. In the event of any conflict between them, the provisions of Gasunie's tendering regulations shall prevail over the provisions laid down in ARN²⁰¹⁶.

Where Gasunie makes use of standard models and/or forms as part of its tendering process these shall be contained in Ariba eSourcing.

2. Amendments and additions to ARN²⁰¹⁶

Gasunie applies the following modifications to ARN²⁰¹⁶:

- a. article 5 has been replaced by; 'The official language and the language in which the documents that form part of the tendering procedure must be submitted is Dutch or English, unless the special-sector company specifically states otherwise in the registration documents';
- b. article 13.4 is not applicable;
- c. article 13.5 is not applicable;
- d. article 13.6 has been replaced by: 'A possible entitlement to participate in the tendering procedure shall expire if preliminary relief proceedings are not brought before the competent interim relief judge, under Article 21 Par. 1, within a period of 10 calendar days'
- e. article 16.2 is not applicable;
- f. article 18.6 is not applicable;
- g. article 18.7 is not applicable;
- h. article 18.9 has been replaced by; 'In the event of a European tendering procedure:
A possible entitlement to the performance of the contract shall expire if preliminary relief proceedings are not brought before the competent interim relief judge, under Article 21 Par. 1, within a period of 20 calendar days.

In the event of a national tendering procedure:

A possible entitlement to the performance of the contract shall expire if preliminary relief proceedings are not brought before the competent interim relief judge, under Article 21 Par. 1, within a period of 10 calendar days;

- i. Article 18.10.b is not applicable.

3. Conditions of tendering or application

1. These tendering regulations are applicable to Gasunie's tendering procedures, to private, national, public and non-public tenders as well as to negotiation procedures involving prior selection, insofar as this is made known in the tendering documents and/or the announcement.
2. Gasunie's tendering regulations apply exclusively to the tendering procedure, including ARN²⁰¹⁶ as contained in Ariba eSourcing. The applicant or tenderer shall not specify any of its (own) conditions to be applicable to the application, tender and/or any agreement which may arise from this; these are already hereby explicitly rejected if this situation arises.
3. By applying or tendering, the applicant or tenderer is agreeing with the procedure, as well as the content, provisions, technical specifications and execution conditions as laid down in the tendering and contract documents.
4. All forms which must be signed by the applicant or the tenderer in the context of this tender must bear valid signatures.
5. The applicant or tenderer must treat the tender and contract documents with which it has been provided as confidential and may only submit these to third parties for inspection insofar as such action is necessary for preparing a tender. All information or documentation offered by the applicant or tenderer as part of the application and/or tender shall become Gasunie's property and shall not be returned.

6. Applications or tenders not submitted on time and applications or tenders submitted by post or email shall be deemed to have not taken place. The applicant or tenderer bears the risk of not submitting applications or tenders on time or submitting incomplete applications or tenders.
7. Gasunie accepts only realistic tenders. If for this contract tenders are put forward which, in relation to the work to be performed, seem to be abnormally low, Gasunie can ask the tenderer to provide the clarification deemed necessary by Gasunie with regard to the breakdown of the tender concerned.
8. If, despite this clarification, the suspicion of an abnormally low tender has, in Gasunie's opinion, still not been removed, Gasunie is authorised to reject the tender.

4. Communication

1. All communication relating to this tender will take place via the Ariba eSourcing platform. The invitation, the provision of the tendering documents as well as the offer and Note of Information will be published via this system.
2. During the tendering period, the applicant or tenderer may ask for supplementary information and clarification by using the "message board" on the Ariba eSourcing platform.
3. The person who is registering on behalf of the applicant or tenderer must be authorised to submit the company's application and/or to bid for the tender. This authority also relates to the declarations requested as part of the selection procedure.
4. Technical systems-related questions about the Ariba eSourcing process may be emailed to the contact person for the tender concerned.
5. Any questions relating to the use of Ariba eSourcing may be raised via Ariba's helpdesk; telephone number 0800 0200 582 or there are a number of manuals available for you to consult on www.gasunie.nl/leveranciers.
6. In the unlikely event that, due to a system malfunction, the Ariba eSourcing platform is not available (or not available in time) to the tenderer to submit a tender, the tenderer shall make this known by email to the contact person for the tender concerned before the closing date, and shall inform the contact person for the tender concerned of this by telephone immediately thereafter. Tenderers will forfeit their rights when they do not inform Gasunie of the (alleged) malfunction in good time.
7. Using the Ariba Network for the purpose among ordering an invoicing billing is required for tenderer(s).

5. Confidentiality

1. By applying or tendering the applicants or tenderers state that they will observe absolute secrecy in the manner described below with regard to all information obtained by them in the context of the preparation of an application or tender for the work, delivery or service to be provided to Gasunie and in the context of any agreement which may arise from this.
2. The parties (Gasunie and the applicant or tenderer) will keep secret all confidential information that is, in the context of the tender and any agreement which may arise from this, made known by or on behalf of the parties and will also ensure that staff members, who have been or are involved (by one of the parties) in the performance of the tender and any agreement which may arise from this, will respect the confidentiality of such documents. The party who is disclosing the confidential information will stipulate that the third party who is receiving such information will respect the confidentiality of such information, as laid down in this article.
3. The parties may not, without written permission from the other party, disclose confidential information in any way to anyone other than for the purpose for which this information has been supplied.
4. 'Confidential information' means all knowledge, data and information which, in the context of the tender and any agreement which may arise from it, is disclosed at any time by or on behalf of one party to the other party in writing, or which is directly or indirectly obtained from a party in the form of drawings, computer programs or in any other form whatsoever, as well as knowledge, data and information derived from this. 'Confidential information' does not mean knowledge, data and information that, at the time of disclosure or acquisition are already in the rightful possession of the party who receives them, or are generally known or are mentioned in literature or are marked by the party making them available as "not confidential" or words to that effect.
5. Without prejudice to the provisions of this article, Gasunie is authorised to disclose confidential information to its holdings and partners. The parties apply the definition in article 2:24c of the

Dutch Civil Code for the term 'holding'. 'Partner' means a (legal) person with whom Gasunie has one or more joint holdings.

6. In the event of supplying confidential information to the receiving party, the parties have the right to ask for a confidentiality declaration. The receiving party shall ensure that confidential information from the supplying party cannot come to the attention of individuals who have not signed a similar declaration and shall indemnify the supplying party against any claims for damages.
7. If and insofar as confidential information must be made accessible to certifying authorities, government bodies, public authorities and/or insurance inspectors, the parties will provide written notice of the confidential nature of such information. The parties will ask these authorities to observe confidentiality. The parties will inform each other about this in writing.
8. After the conclusion of any possible agreement, the parties will, within a reasonable period of time, return all confidential information that they have obtained from the other party. All copies made will be destroyed.
9. If the receiving party infringes the obligation of confidentiality, this party shall be liable for any damages suffered by the supplying party.
10. The obligations arising under this article will continue to apply after the end of the tender and any agreement which may arise from this.

6. Questions and/or ambiguities

1. The tender documents have been compiled with care. Nevertheless, should applicants or tenderers find ambiguities and/or deficiencies and/or inconsistencies in these documents, or could, reasonably, have found such issues, or if they have other objections to the contract, the procedure, the provisions and/or the requirements, then the applicants or tenderers must inform Gasunie of this in writing, on the occasion of the information round/Note of Information as referred to in this paragraph.
2. If applicants or tenderers do not make use of the opportunities offered then this shall be at their own risk and both Gasunie and the other applicants or tenderers may justifiably assume that the applicants or tenderers have no objection to the tender procedure, the provisions, the requirements or the other contents of the tender documents. Raising objections and/or pointing out ambiguities only after tendering has taken place shall lead (by virtue of mandatory legal effect) to inadmissibility of such objections and/or ambiguities.
3. Questions about the tender documents may only be raised in electronic form (via the 'Messages' function), stating "questions Note of Information". Applicants or tenderers must use the 'Model for submitting questions for obtaining information' for this purpose. This model is contained in Ariba eSourcing. Questions will be answered in one or more Note of information's.
4. If applicants or tenderers have a question which, for reasons of justifiable economic interest, they do not want answered in the Note of information, they shall act as follows:
 - a. When submitting the question (no later than the deadline for submitting questions as stated in Ariba eSourcing and by using the 'Model for submitting questions' contained in the system) applicants or tenderers must make it very clear that it relates to an "individual question with justifiable economic interest".
 - b. By doing this, applicants or tenderers are automatically requesting that Gasunie does not answer the question in the Note of Information. Applicants or tenderers must enclose with this the reasons why they believe that answering the question in the Note of Information will cause damage to their justifiable economic interests.
 - c. According to its own insights and based on the reasons supplied by the applicant or tenderer, Gasunie will then assess whether the applicant's or tenderer's request is justified.
 - d. If Gasunie accepts the applicant's or tenderer's request, Gasunie shall answer the relevant question in an 'individual Note of Information' to be sent to the applicant or tenderer concerned alone.
 - e. However, if Gasunie is of the opinion that answering the question, reasonably, will not cause any damage to a justifiable economic interest and the answer to the question belongs in the Note of Information, Gasunie will inform the applicant or tenderer concerned thereof. The applicant or tenderer then has the choice of either withdrawing the question or of allowing Gasunie to answer the question in the Note of Information. If the applicant or tenderer does not respond to this in time, this implies that the applicant or tenderer does not allow Gasunie to answer the question in Note of Information. Gasunie is not liable to the applicant or tenderer in any way in this matter.

7. Reliance on third party or collaborative partnership

If an applicant or tenderer relies on the financial capacity and/or competence of a third party (nominated subcontractor as referred to in ARN²⁰¹⁶) or of a participant in the collaborative partnership, the following is applicable:

1. If the applicant or tenderer does not itself meet one (or more) of the minimum requirements with regard to financial and economic capacity and relies on the financial capacity of one or more third parties for this (including parent, fellow subsidiary or subsidiary companies as well as any other third party), then the tenderer must state this in Form A ('Self Declaration') when applying or tendering.

After applying or tendering, Form X ('Reliance on the financial capacity of a third party') must be supplied upon request. This form must be completed and signed by both the applicant or tenderer and by the third party (parties) on whom reliance is being claimed. With this Form X, signed by both applicant or tenderer and third party (parties), the applicant or tenderer indicates that it can actually make use of the third party's resources necessary for the performance of the contract.

2. If the applicant or tenderer does not itself meet one (or more) of the minimum requirements with regard to technical or professional competence and relies on the competence of one or more third parties for this (including parent, fellow subsidiary or subsidiary companies as well as any other third party), then the applicant or tenderer must state this in Form A ('Self Declaration') when applying or tendering.

After applying or tendering, Form Y ('Reliance on the competence of a third party') must be supplied upon request. This form must be completed and signed by both the applicant or tenderer and by the third party (parties) on whom reliance is being claimed. With this Form Y, signed by both applicant or tenderer and third party (parties), the tenderer demonstrates that it can actually make use of the third party's competences necessary for the performance of the contract. The applicant or tenderer also hereby declares that it will, for the purpose of the work relating to the requirement for which it is reliant on a third party, employ the aforementioned third party for the performance of such work if it is awarded the contract.

3. Without prejudice to the provisions set out in subparagraphs 1 and 2 above, a collaborative partnership (construction consortium) may, in the context of the minimum requirements with regard to financial and economic capacity and/or technical or professional competence as referred to in the tender documents, if the collaborative partnership itself does not meet one or more of the minimum requirements, claim to rely upon the financial capacity or competence, respectively, of one or more participants of the collaborative partnership who do meet the minimum requirements concerned.

In such cases, the participant in the collaborative partnership who does meet the minimum requirement(s) shall give notice of that when applying or tendering by completing the minimum requirements concerned in the 'Self Declaration' (Form A).

By ensuring that Form A is signed by every participant in the collaborative partnership, the collaborative partnership, as well as the relevant participant in the collaborative partnership who meets the requirement, is declaring that it can actually make use of the resources necessary for the performance of the contract.

8. Award decision

The following provisions apply when announcing the award decision:

1. The tenderer to whom Gasunie intends to award the contract may (simultaneously) receive the written request to provide, within 7 calendar days, the supporting evidence as referred to in the tender documents. The supporting evidence must confirm the accuracy of the Self declaration (Form A). In the restricted or negotiated tenders previous will take place during the selection phase;
2. If Gasunie makes a request as referred to in paragraph 1 and if an assessment of the supporting evidence received in that regard, shows that the tenderer to whom Gasunie intends to award the contract, nevertheless does not comply with the criteria concerning grounds for exclusion and/or fitness, Gasunie will revoke the award decision in writing;
3. In the event of a situation as referred to in paragraph 2, Gasunie will re-determine which tenderer has made the economically most advantageous tender. Gasunie will then announce a new award decision and, if necessary, repeat the aforementioned steps;
4. Tenderers who cannot agree with the award decision (and/or with the reasons for exclusion and/or rejection as referred to in the tender documents) and wish to appeal against such decisions, must, within the period of 20 calendar days after the award decision, have commenced interlocutory proceedings with the provisional rulings judge of the North Netherlands District Court, located in Groningen.
5. In case termination of the (framework) agreement with the economically most advantageous tender occurs within a period of 6 months, for reasons other than within the Gasunie sphere of influence, because tenderer does not or can not fulfil its obligations, and unjustified contract award can be concluded, Gasunie retains the right to revoke the award decision in writing and re-determine the bidder who submitted the most economically advantageous tender. Gasunie will then announce a new award decision and, if necessary, repeat the previous steps. This does not apply when a fall back contract is in place.