

Annex E

1.	Legal Considerations for the Tender Procedure	2
1.1	Lot division	2
1.2	Variants.....	2
1.3	Tender procedure	2
1.4	Choice for the tender procedure	2
2.	Practical Additions to the Tender Procedure	3
2.1	Additional information submitting questions and comments	3
2.2	Opening of the requests to participate	3
2.3	Verification	3
2.4	Fewer than three (3) candidates	4
2.5	About the Dialogue in the Bidding Phase.....	4
3.	Additional information submitting RFP.....	5
3.1	Submitting with Subcontractors.....	5
3.2	Registering in a Collaboration	5
3.3	Submitting in accordance with the Tender Documents	5
3.4	Submitting under conditions.....	6
3.5	Submitting a Partial Tender.....	6
3.6	Signing of the UEA and of the Tender (or ESPD)	6
3.7	Number of times to register	6
3.8	Contradictions, ambiguities or imperfections in the Registration.....	6
4.	Regulations and conditions	7
4.1	Use of the Tender Platform	7
4.2	Reservations of the Contracting Authority	7
4.3	Applicable law	7
4.4	Cooperation with investigation.....	7
4.5	Status information in the Tender Documents.....	7
4.6	Brand names.....	7
4.7	Intellectual property.....	8
4.8	Providing prices, rates and costs.....	8
4.9	Manipulative registration	8
4.10	Validity period of the Registration	8
4.11	Exclusion of Applicants	8
4.12	Exclusion as a result of cessation of business activities or takeover	8
4.13	Notification of the award decision (bidding phase).....	9
4.14	Legal remedy	9
4.15	Complaints handling.....	9

1. Legal Considerations for the Tender Procedure

1.1 Lot division

The Assignment is not divided into Lots because we believe that the Assignment and the functional coherence of the work do not lend themselves to a division into lots. We wish to contract a single party that will be responsible for the delivery, installation, after sales-support and maintenance of the thermoplastic sheet consolidation equipment.

1.2 Variants

A variant is a tender that does not conform to the specifications, i.e. a different solution to the need than requested in the Tender Documents. Allowing the offering of variants means that the Descriptive Document must clearly describe how the offered variants will be assessed and how the variants will be assessed in relation to the options that meet the Program of Requirements and the Award Criteria. Variants are not permitted.

1.3 Tender procedure

We follow a competitive procedure with negotiation in accordance with the Public Procurement Act 2012. As criterion for awarding the contract, we use the most economically advantageous bid based on the best price-quality ratio.

The competitive procedure with negotiation consists of a selection phase and a bidding phase with negotiation. During the selection phase we select six (6) Interested Parties based on the Requests for participation. These selected parties are then invited to submit a first Bid during the bidding phase on the basis of the Award Guidelines.

1.4 Choice for the tender procedure

The reasons to choose for the competitive procedure with negotiation are:

- The Assignment concerns innovative equipment for a highly innovative market sector. It is not standard equipment that many different suppliers in the market offer. The ability to have a dialogue with a potential supplier about their first Bid guarantees that the Bid serves the needs of Cato Composites B.V. and is expected to have a positive influence on the partnership during the implementation phase;
- The competitive procedure with negotiation contributes to an improved quality of bids for Cato Composites B.V. and to the selection of a suitable partner.

2. Practical Additions to the Tender Procedure

2.1 Additional information submitting questions and comments

We request that you do not use company names, product names or other names related to your company in your questions. We publish the questions asked without mentioning the name of the person asking the question and we reserve the right to modify questions for that purpose. We do not guarantee anonymity, for example because the identity of the person asking the question can be deduced from necessary technical questions.

If you have any questions or comments that are (commercially) confidential in nature, these questions can be answered outside the Q&A Documents. You can submit a motivated request to have a question answered confidentially by stating with your question: 'Commercially confidential – Do not answer in the Q7A Document'. We will assess this carefully. If we believe that a question is not (commercially) confidential in nature, we will inform you of this. You can then 1) withdraw the question or 2) have us answer it in the Q&A Document.

The information in the Q&A Documents is binding and leading and prevails over the original information in the Tender Documents.

We publish the Q&A Documents on the Tender Platform. We do not send a notification of this; you must ensure that the information reaches you. TenderNed offers the possibility to do this by means of a button on the Tender Platform (Keep me informed of this tender).

We use the principle that an Interested Party first asks a question before filing a complaint. If you are not satisfied with a specific explanation in the Q&A Document, you can file a complaint. See paragraph 8.28 for more information about complaint handling.

2.2 Opening of the requests to participate

As soon as possible after the closing date and time has passed, we will open the electronic safe with all the requests to participate. You cannot be present at the opening of Registrations.

2.3 Verification

During the verification phase, during the stand-still period, we may request evidence to verify the information you have provided in the context of this tender procedure.

To reduce the administrative burden, a contracting authority may initially request only the European Single Procurement Document (ESPD) from candidates at the time of application, instead of all supporting documents. An exception applies to reference projects and registration in the national professional and trade register, which you must include with your Request to Participate. The other supporting documents covered by the ESPD are generally only requested if you qualify for the tendering phase. We request these documents when announcing the selection decision. You must submit the requested documents within a short period, usually within a term of five working days.

Exclusion after verification

If the verification of the evidence shows that you as selected party:

- do not meet the requirements, or
- cannot provide sufficient evidence, or
- has provided incorrect information,

you will no longer be eligible for selection. We will then generally withdraw the selection decision, declare the Request to Participate invalid, and exclude you from further participation in the procurement procedure. We will then invite the next eligible candidate to submit a tender.

2.4 Fewer than three (3) candidates

If fewer than three suitable candidates apply, or if fewer than three suitable candidates remain after the verification, evaluation, and assessment of the Requests to Participate, we will reconsider whether to continue the procurement procedure. We are not obligated to proceed with the procedure. We may decide (for reasons of our own) to terminate the procedure.

2.5 About the Dialogue in the Bidding Phase

- We invited the selected Interested Parties to submit their first – and, if necessary, subsequent – Bids. We may engage in negotiations with the Bidders to improve the content of their Bids. Or rather, we can engage in *dialogue*, as there is no real negotiation involved. We will elaborate on this below.
- **If the initial Bids are of such quality that we do not find it necessary to enter into a dialogue with the Bidders to improve the content of the bids, we reserve the right to forgo the dialogue and award the contract based on the initial bids.**
- If we do not proceed with the award immediately, we will enter into a dialogue with the Bidders about their initial Bid and each subsequent Bid—except for the final Bid—to improve its content. We will conduct the dialogue in as many negotiation rounds as we deem necessary. For now, we anticipate a maximum of one rounds.
- In the meantime, we may eliminate Bidders by applying the award criteria, which will be described in more detail in the Award Guidelines. A bidder who has submitted an initial bid of such low quality that the likelihood of them winning is minimal or nonexistent will be informed of this in writing after the initial bid. The bidder may then decide whether to withdraw from the tender procedure.
- The negotiation procedure is not a completely open procedure; the possibilities for real negotiation are limited. The procedure does not allow us to negotiate on the minimum requirements and the award criteria.
- During the negotiation procedure, we adhere to the principles of transparency, proportionality, equal treatment, and the prohibition of favoritism (level playing field). Individual trade-offs are not possible: the requirements, the award criteria, and the contract are the same for all bidders.
- For illustration; possible topics for the dialogue could include asking all bidders, after the initial bid, to submit a revised implementation plan or an adjusted price in a subsequent bid.

3. Additional information submitting RFP

You are responsible for submitting the request for participation on time and in full. The Contracting Authority and the Tender Platform provider are not responsible for this. We consider a request for participation that is not submitted on time as not having been submitted and will therefore not process it. The risk of not receiving the request for participation on time is entirely your responsibility. Therefore, if in doubt, consult the helpdesk of the Tendering Platform.

3.1 Submitting with Subcontractors

In addition to the requirements for submitting a Subcontractor(s), the following applies. If the Tenderer calls upon (a) Subcontractor(s) in order to meet (a) Eligibility Requirement(s), the Tenderer must indicate (i) which Subcontractor(s) this concerns and (ii) for which part of the Assignment this Subcontractor(s) will be engaged or for which Eligibility Requirement(s) the Tenderer calls upon this Subcontractor(s). After the notification of the award decision, proof of registration in the national professional/trade register must be submitted at the first request of the Contracting Authority for all Subcontractors.

After registration, the composition of the main contractor with one or more Subcontractors may only be changed after prior written approval from the Contracting Authority.

The Subcontractor(s) will implement certain regulations on behalf of and under the responsibility of the Contractor. In this construction, the main contractor is fully liable for the fulfilment of the obligations arising from the Tender, as well as any implementation thereof. The main contractor is also liable for the fulfilment of the obligations of the Subcontractor(s) engaged by him. The Contractor must also actually use the relevant Subcontractor(s) in the execution of the Assignment and accordingly. In the event that the Contractor calls upon the relevant Subcontractor(s) in order to be able to meet (a) Eligibility Requirement(s), the main contractor must demonstrate that he can actually use the necessary resources (knowledge, people, equipment) of the relevant Subcontractor(s) in the execution.

It is not permitted to use a subcontractor to whom an Exclusion Ground applies, unless the Contracting Authority explicitly grants permission for this for one or more of the reasons mentioned in Articles 2.86a, 2.87a and 2.88 of the Public Procurement Act 2012. At the first request of the Contracting Authority, the Tenderer shall demonstrate by means of evidence that no Exclusion Grounds apply to its Subcontractors.

3.2 Registering in a Collaboration

All members of the Partnership declare by submitting a Tender that they are liable, both in the context of the Tender and in the context of carrying out the Assignment. The Tender must indicate in the Tender which (legal) person is the point of contact during this procedure and acts as the lead partner during the contract period. Parties in a Tender cannot also submit a Tender separately or in another combination. If this is the case, all relevant Tenders are invalid.

Changes in the composition of the Tender after submission of the Tender, without written permission from the Contracting Authority, will generally lead to exclusion.

By registering, the members of a Partnership declare that they are prepared to adopt a legal form, upon award of the contract, according to which the members of the Partnership are jointly and severally liable for the full and correct fulfilment of all obligations towards the Client. During the Tender and execution of the Assignment, a Partnership appoints a lead partner who is authorised to act on behalf of the Partnership.

3.3 Submitting in accordance with the Tender Documents

The Tenderer must base his Tender on the Tender Documents. If a Tenderer has not provided the requested information, has not provided it completely and/or has not provided it correctly, this will generally result in the Tender being invalid and exclusion from further participation in the Tender.

The Contracting Authority defines 'incorrect' as changing information in the Tender Documents or not using a prescribed appendix or form.

3.4 Submitting under conditions

A Tender to which conditions are attached or to which reservations are made will generally be considered invalid and will be excluded from further participation in the Tender.

3.5 Submitting a Partial Tender

Submitting a Tender for a part of the Assignment is not permitted.

3.6 Signing of the UEA and of the Tender (or ESPD)

A signature under the UEA (ESPD) also applies as a signature of the Tender. You do not therefore have to sign the Tender itself and documents and declarations with the Tender separately.

The UEA must be legally signed by a natural person authorised to do so. The legally valid authority of the signatory is evident from the extract(s) from the Chamber of Commerce or the registration in the national professional or trade register in the country of establishment or, if this is not the case, another proof as referred to in Article 2.98 of the Public Procurement Act 2012. A signatory who is not registered as a person authorised to represent in the professional or trade register must be authorised by a person who does have the authority to represent. The authorisation must be added to the Tender. The signatures must be placed on the document in pen.

Please note – The form is an interactive PDF. The form automatically fills in the positive answers for the Tenderer several times. It is the responsibility of the Tenderer to verify whether this is correct.

Please note – An incomplete and/or incorrectly completed UEA and/or an invalidly signed UEA will generally lead to exclusion from further participation in the Tender.

3.7 Number of times to register

A Tenderer (a (legal) person or company) may only register once, either as an independent Tenderer or as a member of a Partnership. A legal person or company that acts as a Subcontractor for a Tenderer may not also register as an independent Tenderer or as a member of a Partnership.

3.8 Contradictions, ambiguities or imperfections in the Registration

The absence of requested information, statements and/or documents generally leads to exclusion. If there are contradictions, ambiguities or imperfections in a Tender and this is considered by the Contracting Authority to be an obvious and correctable omission, the Contracting Authority reserves the right to ask the Tenderer for clarification and/or an addition. This clarification and/or addition may not entail a material change to the Tender. If the Contracting Authority believes this to be the case, it will not include these clarifications and/or additions in the assessment.

4. Regulations and conditions

This chapter contains the terms and conditions that apply within the framework of this Tender. This chapter also contains regulations according to which all Tenders must be drawn up and submitted in order to be processed. This is to guarantee fair competition between the Tenderers.

Tenders that are submitted in a different manner and Tenders that do not meet the conditions are generally invalid and will not be assessed further. In that case, you will receive written notification stating the reason.

4.1 Use of the Tender Platform

We make all Tender Documents available via the Tender Platform. You can only submit your Tender via the Tender Platform. The Contracting Authority is in no way responsible for the use of the Tender Platform and expressly rejects any form of liability..

To the extent that descriptions on the Tender Platform and in the Descriptive Document contradict each other, the descriptions in the Descriptive Document prevail over the descriptions on the Tender Platform.

4.2 Reservations of the Contracting Authority

The Contracting Authority reserves the right to suspend the Tender in whole or in part, to temporarily or permanently discontinue it and/or not to conclude the Agreement. In that case, you will be notified in writing stating the reason.

4.3 Applicable law

This Tender is exclusively governed by Dutch law.

4.4 Cooperation with investigation

The Contracting Authority reserves the right to (further) investigate the accuracy of the statements, documents and data submitted by the Tenderer, as well as the financial and economic capacity, expertise and/or integrity of the Tenderer. The Tenderer is obliged to fully cooperate with such (further) investigation by the Contracting Authority (in every phase of the Tender, as well as after the award of the Order).

4.5 Status information in the Tender Documents

Without prejudice to the other reservations as included in the Tender Documents, Interested Parties may only derive rights with regard to the Tender from information included in the Tender Documents. The Contracting Authority is not liable for the incorrectness and/or incompleteness of information about the Assignment obtained by the Interested Party via other channels. Interested parties must, where they deem this necessary or desirable, inform themselves themselves and at their own expense and risk of, among other things, the technical aspects, the public law framework and everything they deem relevant in connection with their participation in the Tender.

4.6 Brand names

If the Tender documents refer to a specific make, origin, special method, reference to a brand, patent, type, origin or production in connection with technical specifications, this is only intended as an example. In such cases, the Interested party must read the notification or reference with the addition of the words 'or equivalent', if this is not stated.

4.7 Intellectual property

The intellectual property rights of the tender documents are vested in the Contracting Authority. It is not permitted to duplicate or distribute these documents without the express permission of the Contracting Authority.

4.8 Providing prices, rates and costs

The prices, rates and costs provided by the Tenderer must be in line with market conditions, reasonable and realistic.

4.9 Manipulative registration

The Tenderer is not permitted to submit a manipulative tender. In this context, this means using an improper means to avoid competition from fellow Tenderers, or abusing the announced criterion for assessing the most economically advantageous tender, thereby frustrating the assessment methodology used by the Contracting Authority. The Tenderer may not submit an offer that is not in line with the market or is not plausible according to objective business economic standards, or that is otherwise manipulative in nature. A Registration is in any case manipulative if one or more rates frustrate the formula used or if there are negative or zero rates. It is also not permitted to change the format of the quotation form.

The Tenderer who violates this provision will generally be excluded from further participation in the Tender.

Influencing the assessment

The Interested Party or the Tenderer is not permitted to contact a member or members of the assessment committee, employees of the Contracting Authority or other parties involved in the Tender for any information regarding the Tender. Any influencing, in whatever way, of employees involved in this Tender will generally lead to exclusion from participation in the Tender.

4.10 Validity period of the Registration

The Registration is an irrevocable offer within the meaning of Article 6:219 paragraph 1 of the Civil Code. The Tenderer must honour the Tender for at least three months from the date of receipt of the Tender. If summary proceedings are instituted against the award decision, the term of validity is at least six weeks after the irrevocable ruling in summary proceedings. The Contracting Authority may request an extension of the term of validity. The Tenderer cannot derive any claim to the Contract from such a request.

4.11 Exclusion of Applicants

At the time of (i) submitting a RFP and (ii) the award, the Tenderer must be able to demonstrate that the Exclusion Grounds do not apply to him, that he meets the Eligibility Requirements and that he meets/can meet the requirements set out in the program of requirements. Failing this, the Tenderer will generally be excluded from further participation in the Tender and will not be eligible for award of the Contract.

If during the tender procedure an Exclusion Ground becomes applicable to the Tenderer, or if the Tenderer no longer meets or can meet the Eligibility Requirements or the requirements of the Programme of Requirements, the Tenderer must immediately notify the Contracting Authority of this fact in writing. If at any time it appears that the Tenderer has provided incorrect information about this, he will generally be excluded from further participation in the Tender.

4.12 Exclusion as a result of cessation of business activities or takeover

If, during the Tender, a Tenderer or a Partnership must cease the business activity(ies) relevant to this Tender or the company is taken over, the Tenderer must inform the Contracting Authority immediately. In that case, the Contracting Authority reserves the right to exclude this Tenderer from participation in the Tender.

4.13 Notification of the award decision (bidding phase)

Pursuant to Article 2.129 of the Public Procurement Act 2012, the notification of the award decision does not imply acceptance of an offer from a Tenderer. During a suspensive period of at least twenty calendar days after sending the notification of the award decision, the Contracting Authority is not permitted to enter into the Agreement with the winning Tenderer. If summary proceedings have been instituted within this suspensive period – which must be evident from sending a copy of the writ of summons – the Contracting Authority will not award the Agreement until a judgment has been rendered in summary proceedings. The aforementioned period of twenty calendar days is a limitation period. If no summary proceedings have been instituted within this period, the rejected Tenderers can no longer object to the decision after this period has expired, nor subsequently institute summary proceedings or substantive proceedings to claim damages, and they have fully forfeited their rights in this regard. This does not mean that the offer of the winning Tenderer has been accepted after the automatic expiry of the suspensive period. The Contracting Authority accepts the offer of the winning Tenderer after a verification phase.

4.14 Legal remedy

If the Tenderer objects to the (reasoning of the) award decision, he must initiate summary proceedings at the Court in Arnhem within the suspensive period of twenty calendar days (starting on the day after the date of dispatch of the award decision), by serving a summons. In the interest of rapid and proper progress, a copy of the summons must then be sent to the Contracting Authority as soon as possible via the Tender Platform.

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

- the Tenderer forfeits the right to object to the outcome and the further course of the Tender;
- the Tenderer also forfeits any rights to claim certain (legal) acts and/or damages afterwards in substantive proceedings or summary proceedings from the Contracting Authority after this period has expired.

The Contracting Authority will, provided that it has not (interim) withdrawn in writing its award decision, award the Contract to the Tenderer when the aforementioned suspensive period has expired without summary proceedings having been instituted. The Contracting Authority expressly reserves the right to withdraw the award decision if it deems there to be reason to do so. If summary proceedings against the award decision or rejection have been instituted in a timely manner, the Contracting Authority will not award the relevant Plot until the provisional relief judge in the first instance has rendered a ruling. In the event that summary proceedings are instituted, other Tenderers have the opportunity to intervene in the proceedings. If the choice is made not to intervene in the proceedings, the Tenderer cannot subsequently object to decisions taken by the Contracting Authority due to (the outcome of) the summary proceedings.

4.15 Complaints handling

It may happen that an entrepreneur is dissatisfied with how the Contracting Authority acts or has acted during the procedure. This can lead to a complaint. Every (potential) Tenderer who has an interest in the Tender can submit a motivated complaint via the Tender Platform. An Interested Party or Tenderer is well advised to submit his complaint at the earliest possible stage.