



Rijkswaterstaat
Ministerie van Infrastructuur en Milieu

External Report Market Consultation

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Market orientation procurement shipping capacity Dutch Caribbean

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1 Introduction

In October 2010 the Minister of Infrastructure and the Environment was assigned responsibility for dealing with maritime incidents in the Dutch Caribbean based on the BES Maritime Management Act (for the islands of Bonaire, Saba and Sint Eustatius). An important component of this is containing any potential oil spill. The minister is responsible for setting up a maritime emergency response organization to this end.

In recent years Rijkswaterstaat has set up the emergency response organization, has drawn up an emergency response plan and a contingency plan, has acquired materials available in the Dutch Caribbean for oil containment, and has contractually arranged for the supply of supplementary material with a third party (OSRL). The local employees of the Port Authorities on the islands have also been trained to deal with oil containment duties. Rijkswaterstaat is now focusing on making shipping capacity available to be able to deploy the materials at sea should there be an oil spill.

The entire package of measures must eventually ensure that an adequate maritime emergency response organization has been established which can contribute to limiting any damage to the islands by oil pollution.

From 28th July until 15th November 2014, Rijkswaterstaat conducted a market consultation relating to the procurement of shipping capacity. In this market consultation, an explicit search was conducted for solutions generating added value for Rijkswaterstaat. The market consultation consists of a written and an oral round. This report presents the results of the overall market consultation.

2 Consultation and follow-up process

On 28th July 2014, Rijkswaterstaat announced the market consultation on Tendered. The market consultation was also announced in various local media and trade journals. In addition, a number of companies were invited per e-mail to take part in the market consultation. For a complete overview, please refer to Appendix 1.

In the period to 1st September 2014, parties were able to participate in the written round by submitting a completed questionnaire. Eleven parties responded to this. Rijkswaterstaat then decided to conduct an oral round. In response to the results of the written round, its design was changed in relation to the published process: The planned plenary session at the Caribbean location was replaced by individual interviews in Rijswijk. The decision to conduct the oral round and the altered design were published on 15th September 2014. The individual interviews were conducted in the period from 8th to 16th October. The report was published within four weeks of the completion of the market consultation. This formally completes the market consultation.

Rijkswaterstaat would like to thank all parties for their input. Based on the information provided, Rijkswaterstaat will make a procurement assessment and prepare its decision-making¹.

¹ A market consultation is not a tender. Participation in this market consultation was non-binding and does not give special rights to the participants. Participation in this market consultation is not required to participate in any tender procedure.

3 Background and purpose of the market consultation

3.1 Background and ambition

The ambition of the Minister of Infrastructure and the Environment formulated in 2012, is the basis on which the maritime emergency response organization has been set up. This will be continued for the procurement of shipping capacity. This means that sufficient shipping capacity must be available to fulfil this ambition, in combination with the available oil containment materials.

In the ambition a term of 48 hours was included within which the maritime emergency response organization needs to be in action. Further scenario-analyses have shown that for a number of vulnerable areas, the formulated term of 48 hours is too broad. Depending on the chosen scenario and prevailing conditions it is now known that these areas could suffer damage within a shorter period. Rijkswaterstaat wishes to consider with the market the extent to which narrowing on this point is achievable, and at what cost.

3.2 Purpose

The purpose of the market consultation is to be able to set up a purchase request for tenders:

- in which the level of fulfillment of the Minister's ambition is as high as possible;
- which can be supplied by the market;
- that is in line with the available budget;
- in which the accompanying conditions and requirements that Rijkswaterstaat must set are clear.

The central theme was: "Which purchase request can Rijkswaterstaat best make to the market so that it retains sufficient suppliers and remain within budget? Distinction is made between:

- o Minimum interpretation (small spills up to 16 m³ in the TZ and sensitive areas);
- o Scaling (large spills of 16-12,000 m³ in the TZ / EEZ).

4 Results of the market consultation

4.1 Level of realization

The information received from the market parties shows that fulfillment of the ambition requires qualification. Rijkswaterstaat has various possibilities for meeting its needs. There are also possibilities here for increasing the realization of the ambition. The market parties report that a shorter response time is possible in certain cases. This applies for the minimum realization defined by Rijkswaterstaat. It was also stated that the envisaged response time cannot always be guaranteed for larger spills and spills in the Exclusive Economic Zone (EEZ). This will depend on the precise location of the spill, the size of the spill and the nature of the contamination. These elements determine the nature of the vessels and equipment required. Depending on the availability and the sailing distance of the vessels and the equipment, the response time may amount to more or less than 48 hours. The market parties are considering only an effort obligation for upscaling. For cases of this kind, guarantees for response times and availability cannot be defined in advance.

Most parties state that providing a guarantee throughout the year within the budget is a difficult challenge. Vessels must always undergo maintenance and will not be available during that period. The parties cannot or can only barely absorb such absences within the frameworks of the present Rijkswaterstaat requirements.

All parties state that working with Vessels of Opportunity entails risks for Rijkswaterstaat in relation to guarantees and commitment. Rijkswaterstaat creates a dependent position in this way and the question is whether this is what it wants to do. The parties advise Rijkswaterstaat not to perform the 'broker function' necessary to realize the Vessels of Opportunity itself. They recommend placing this function in the market, so that a party can be selected in advance and the network of market parties can be deployed. Agreements on the working method, approach and implementation can then also be reached in advance. This also offers Rijkswaterstaat the opportunity to obtain the commitment of the most suitable party.

According to the market parties, the realization for which Rijkswaterstaat can invite tenders can be divided into contracting:

- Shipping capacity on call (broker function)
- Shipping capacity
- Shipping capacity with crew
- Shipping capacity with crew for oil containment
- Oil containment service provision in a broad sense (total care, including vessel)
- Oil containment service provision in a broad sense (coordination without vessel)

For large spills, Rijkswaterstaat's possibilities lie in service provision in a broad sense. Rijkswaterstaat has more options for small spills.

The parties advise Rijkswaterstaat to be aware that the local conditions are different from those in the Netherlands in both physical and cultural terms, which may also require a different approach from that in the European Netherlands. They state that local familiarity is an important success factor if oil containment is to succeed.

In the interviews, Rijkswaterstaat sought possibilities for expanding the service package. The parties state that in the event of large spills, oil removal and storage will be the crucial factor in the operation. It is advisable to reach clear agreements in advance on who will be responsible for this task. Some market parties recom-

mend leaving this to the market, while others do not express any preference in that regard. Contracting a number of 'pilot light' agreements with oil vessels could be considered, in line with the European Maritime Safety Agency (EMSA) model. The parties have also stated that they can manage and maintain the existing Rijkswaterstaat equipment.

4.2 Deliverable by the market

In principle, there are several parties that could supply Rijkswaterstaat with shipping capacity. However, the volume of shipping capacity available in the region is limited. Rijkswaterstaat will have to be creative to facilitate clearance in this market.

The form in which the shipping capacity is provided may vary. It depends on the working method Rijkswaterstaat selects during the execution of a contract. Some parties suggest that Rijkswaterstaat draw up its request in functional terms and include various oil pollution scenarios in its request for tenders, as it were, for which market parties can then bid on a differentiated basis. Despite the scarcity in the region, there are parties that can make bids to Rijkswaterstaat for every form, to a greater or lesser extent. The parties report that the chance of finding shipping capacity outside the region is very small with the present response times.

4.3 Available budget

The parties state that Rijkswaterstaat can make certain choices in the final approach, which will lead to solutions within the available budget. These solutions are aimed at clearing small spills in the zones close to the islands.

All market parties state that the Emergency Towage Vessel (ETV) function is not a realistic option within the given budget. This function is of an entirely different order in terms of budget. If Rijkswaterstaat decides to invite tenders for an ETV function, it is advised to set very sharp requirements for this function.

The parties state that Rijkswaterstaat could combine the oil containment function with other institutions. Entering into partnerships would enable the costs to be shared and more solutions would probably become available. Some parties report that Rijkswaterstaat enjoys considerable interest among the regional partners for raising incident control in the greater Caribbean region to a higher level.

A number of parties advise Rijkswaterstaat to calculate its request in more detail in order to see whether a feasible business case can be produced for the market parties. If this is not the case, Rijkswaterstaat runs the risk of being unable to find any companies to bid for the tenders.

4.4 Conditions and requirements

The parties have stated that Rijkswaterstaat could invite 'ordinary' tenders. The parties are almost all familiar with European tenders and the way in which these work. Some parties have no experience with this, but state that they could deploy assistance to respond to the invitation for tenders. The parties have expressed a clear desire for the tendering process to be designed as simply as possible, to avoid unnecessary effort on both sides.

Rijkswaterstaat is advised to use standard contracts which are available in the sector (e.g. BIMCO Supply 2005) wherever possible. This could also save time and trouble for both Rijkswaterstaat and the market party.

The parties stated that reaching contractual agreements and agreeing sanctions for non-compliance are open to discussion. This applies only for the smaller spills. The most that can be achieved for larger spills is the contracting of an effort obligation.

The parties stated that a contract term of 5 to 10 years is preferred. This gives the parties a good basis for development and commercial security. It will give Rijkswaterstaat a party that starts with a longer-term focus and can therefore serve Rijkswaterstaat interests more effectively.

Depending on Rijkswaterstaat's final choice for the invitation for tenders, a start-up period will be necessary in certain cases. This ranges from a few weeks to one year.

All parties stated that the success of a containment operation will depend on clear (working) agreements between all the parties concerned. Rijkswaterstaat plays an important role in this by informing in advance just how the (working) process should proceed. It is important for Rijkswaterstaat to choose here between 'overall management' and 'management of operations'. Generally speaking, intermediate variants tend to be counter-productive. Some parties said that Rijkswaterstaat could consider the deployment of its own equipment by the parties on a non-mandatory basis.

The existing equipment is not the most suitable for controlling oil spills in all cases. It is recommended that this be treated flexibly. A number of parties are more explicit in this regard and express a clear preference regarding the realization of the work(ing process). They state that they are only willing to work with their own equipment, personnel and (operational) training. This reduces risks during the actual operation and allows the parties to guarantee service-provision to a greater extent. They state that in similar cases, they take over responsibility for proper containment of the spill and wish to use their own equipment and people for that purpose. The people who will contain the spill must have practiced this and must be thoroughly familiar with the equipment and the other people in order to be successful.

Some parties stated that Rijkswaterstaat could consider including the organizational issue in the invitation for tenders as a start-up activity. In this way, the market parties can support Rijkswaterstaat in the entire issue on the basis of the essentials, and more potential solutions could arise. This allows more effective management of the risk of yet another new party joining the alliance. At present, Rijkswaterstaat, the local authorities and the OSRL company must already work together, and a fourth party will join them. The fourth party must be incorporated into the existing structure. It is important for the parties that choices in work process are made and are clear at the start of the procurement.

Appendix 1 Information on announcement

Announcement

The announcement including the associated documentation can be found at:

www.tenderned.nl

and

http://www.rijkswaterstaat.nl/zakelijk/zakendoen_met_rws/marktconsultaties_en_marktdagen/marktconsultaties/geplande_marktconsultaties/index.aspx

Invitation

The following companies will be invited by e-mail to participate in this market consultation:

Name	Name
Acta Marine	Hebo
Aruba Ports Authority	Hornbeck Offshore Services
Boluda	Husky
Bopec	INNOVA N.V
Borinken	Intertug
Bourbon Offshore Trinidad	KTK Tugs
Caribbean Netherlands Science Institute	Kustwacht Carib
Clean harbours	L&M Botruc
Curoil	MSRC
Damen Trading	NRCC
Delta Logistics	Nustar
Desmi	Remoldom
Ecoloss	Resolve Salvage
Government Aruba Directorate of Shipping	Rocargo
Government Aruba Harbor Master	SeaContractors

Government Bonaire Harbor Master	Seacor Marine
Government Curacao Maritieme Zaken	SeaHarbor Transport
Government Sint Maarten Directie scheepvaart	Smit Lamnalco
Government Sint Maarten Harbor Master	Substation Curacao
Government St. Kitts & Nevis Maritime & Civil Aviation Affairs	Svitzer
Government The Netherlands Rijksrederij	Tidewater
Government The Netherlands Staatstoezicht Op De Mijnen	TNO Aruba
Gulf Mark Offshore	Worldwise Marine Brokers

Table 1 List of invited companies

Advertisement

An advertisement has been placed in a number of media to invite companies to this market consultation.

Newspapers
Antiliaans Dagblad
Amigoe
Daily Herald
South Florida Business Journal
Journals
JOC
Marine News
Marine Reporter
Workboat
Online
AAPA
JOC
Lloyd's list
LinkedIn
MarineLink.com
TED
Tendered
Twitter
Workboat

Table 2 List of media