

Part B - Tender conditions The NIC

These tender conditions (Part B of the descriptive document/selection guide) apply to this tender, unless otherwise specified in Part A (descriptive document/selection guide). Where this document refers to 'tender', this should be read as 'tender/request to participate' in the case of a restricted tender procedure. In the restricted procedure, the descriptive document is referred to as the 'award guidelines'.

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1. **Descriptive document/selection guide**

- You may only use the documents and information made available to you in the context of this tender for the purpose for which they were provided.
- In connection with intellectual property rights, it is not permitted to make the descriptive document/selection guide available to third parties or to reproduce it for any purpose other than that for which it was provided.
- Information notes form an integral part of the descriptive document/selection guide.
- The contracting authority assumes that there are no ambiguities with regard to the parts about which no questions have been asked.
- In the event of any discrepancies between the information note and the descriptive document/selection guidelines, the provisions of the information note shall prevail. If there are several information notes, the provisions of the most recent information note shall prevail in the event of any discrepancies between the information notes.

2. **Contact and questions**

- The contracting authority wishes to communicate with you as tenderer/candidate via the NIC through a single contact person and a single substitute for this contact person from your organisation. The details of the (first) contact person must be stated on the European Single Procurement Document.
- The names, addresses and telephone numbers of the contact person and his/her substitute must be stated in Part IIB of the European Single Procurement Document. Both persons must be authorised to represent the organisation.
- It is not permitted to contact employees of the contracting authority directly during the procedure with regard to this tender, other than as stated in the descriptive document/selection guidelines.
- Questions must be received no later than the date and time specified in the section '*Deadline for submitting questions regarding this descriptive document/selection guide*' under 'Planning'.
- The answers to these questions will be made available to all tenderers by means of a note of information no later than ten (10) days before the date of receipt of the tenders.

- Telephone enquiries will not be answered.
- The descriptive document/selection guide, including appendices, has been compiled with care. If you nevertheless encounter any inaccuracies, procedural errors or contradictions, please report these in writing as soon as possible, but no later than the date and time specified in the section '*Deadline for submitting questions regarding this descriptive document/selection guide*' under 'Planning', stating any consequences and/or proposed corrections.
Candidates/tenderers are expected to take a proactive approach. This means that a candidate/tenderer cannot validly invoke any inaccuracies, procedural errors or contradictions that they have not raised within the aforementioned period, even if this would have been reasonably possible. In that case, the candidate/tenderer will have forfeited their rights to lodge an objection (in law) with regard to these shortcomings or contradictions.
- Any objections to (parts of) the descriptive document/the selection guidelines (e.g. with regard to the contractual conditions, criteria, deadlines, working method) must be submitted to the NIC in writing as soon as possible, but no later than the date and time specified in the Planning section under '*Closing date for submitting questions regarding this descriptive document/the selection guidelines*'.
Candidates/tenderers are expected to take a proactive approach. This means that a candidate/tenderer cannot validly invoke objections that were not raised within the aforementioned period, even if this would have been reasonably possible. In that case, the candidate/tenderer will have forfeited their right to invoke these objections (in court).
- If, after submission, the descriptive document/selection guide is found to contain inaccuracies or contradictions that have not been reported by the tenderer, this will be interpreted in favour of the contracting authority.

3. Opening

- The opening will take place within the tendering platform.
- The 'official report of the opening' will be made available via the tendering platform.

4. After registration: Verification, questions and objections

- After evaluating the tenders/requests to participate and prior to the award decision/selection decision, the contracting authority may ask the best-scoring tenderer(s)/candidate(s) to explain the tender/request to participate in a verification interview.
- If the verification interview reveals that the explanation is not in accordance with the tender submitted, this may lead to an adjustment of the score for the relevant award criterion. If the verification interview reveals that one or more requirements are not met, this will result in the rejection of the tender.
- If the verification interview reveals that the explanation is not in accordance with the submitted request to participate, this may result in exclusion from further participation in the procedure.
- The award decision does not constitute an agreement.
- In the event of rejection of a tender/request to participate, the relevant reasons for the rejection will be stated.
- From the date of dispatch of the selection decision, a waiting period of 15 calendar days will be observed before the invitation to tender is sent. During this waiting period, you may ask questions and express your objections to this selection decision by serving a summons on the contracting authority and sending a copy of this summons to the NIC contact person. The contracting authority requests that you

to submit your questions as soon as possible, preferably within 7 calendar days of the date of notification of the selection decision, so that they can be answered well before the end of the 15-calendar-day period.

- From the date of dispatch of the award decision, a waiting period of 15 calendar days will be observed before the contract is concluded. During this waiting period, you will have the opportunity to ask questions and raise any objections you may have regarding this award decision by serving a summons on the contracting authority and sending a copy of this summons to the NIC contact person. The contracting authority requests that you submit your questions as early as possible, preferably within 7 calendar days of the date of notification of the award decision, so that they can be answered well before the end of the 15-calendar-day period.
- The period referred to in the previous indent is a strict deadline. No objections can be lodged after this period has expired. In that case, tenderers will have forfeited their rights to lodge an objection (in court) against the award decision. Service of the summons will then result in the claim being inadmissible.
- If a tenderer brings summary proceedings against an award decision, the original winner of the tender must intervene in these summary proceedings, on pain of forfeiting the right to challenge any amended award decision.
- If no objections have been lodged after the expiry of this period of 15 calendar days, contract negotiations will commence with the tenderer(s) with whom the (framework) agreement is expected to be concluded.

5. Conditions for the tender/request to participate

- Submitting a tender means that you agree to the provisions in the descriptive document.
- Submitting a request to participate means that you agree to the provisions in the selection guidelines.
- To avoid mistakes, you should submit your application in full accordance with the descriptive document and accompanying documents.
- To avoid mistakes, you should submit the request to participate in full accordance with the selection guidelines and accompanying documents.
- The risk of missing information or answers, for example due to incorrect or incomplete copying of overviews, data and statements, rests with you and may lead to negative consequences for the assessment of the criteria set or to exclusion.
- The tender must have a period of validity (standing period) of 90 days from the closing date of the tender period. If summary proceedings have been instituted against the award decision, the standing period will be extended so that it ends 8 days after the judgment in summary proceedings has been rendered.
- Registrations/requests to participate that are not submitted via the tendering platform will not be accepted.
- The risk of late submission and timely receipt of the registration/request to participate lies with the tenderer.
- Tenders/requests to participate that do not meet the conditions will not be evaluated. If this is the case, you will be informed in writing, stating the reason.
- Your tender/request to participate must be signed by an authorised person, as must all statements that form part of your tender as attachments.
- Your tender/request to participate must be free of charge for the contracting authority and the NIC.
- Your registration/request to participate must be submitted in English. Correspondence, contacts and contracting will also be conducted in English.

- The submission of variants or alternatives is not permitted, unless the public contract notice indicates that this is permitted. In that case, the tender documents will specify the requirements that these variants must meet and how they must be submitted. If variants are permitted, the tender documents will also indicate whether a tender that is not a variant must also be submitted.

6. General terms and conditions

- If one tenderer submits multiple tenders (per lot), none of these tenders will be considered, unless they are variants for which the public contract notice specifies that the submission of variants is permitted. Only one group of companies may submit multiple tenders for the contract (independently, in partnership or as a subcontractor) if, at the request of the contracting authority, they can demonstrate that they have each prepared their tender independently of the other tenderers belonging to the same group and have observed confidentiality in this regard. If one of the tenderers concerned cannot demonstrate this, all tenders submitted by the group concerned will be excluded.
- Your general terms and conditions of sale, industry terms and conditions or other terms and conditions are expressly excluded.
- All information relevant to this tender will be provided in writing. No rights can be derived from verbal communications.
- The contracting authority reserves the right to temporarily or permanently suspend all or part of the tendering procedure until the agreement is signed. Furthermore, the contracting authority is under no obligation to award the contract. If the contracting authority decides not to award the contract, it will inform the tenderers as soon as possible, stating the reasons for its decision. By submitting a tender, you declare that you agree to the reservation and the provisions set out above.
- If changes occur or are likely to occur in your business operations that may affect the progress and completion of the tender, you must notify the NIC contact person as soon as possible.
- In the event that your company ceases the business activities relevant to the tender during the tendering procedure, the contracting authority reserves the right to set aside your registration for that reason and not to evaluate it further.
- The NIC will treat all documents, data and other information submitted by you in the context of the tender as confidential.
- The information you provide will not be returned after the tender procedure.
- The contracting authority does not have a preference for a particular supplier, service provider or contractor, nor for particular brands, types, makes, origins, etc. If a requirement or preference in the descriptive document relates (or appears to relate) to a specific make, origin or particular method of working, a brand, a patent or a type, a specific origin or a specific production, thereby favouring or eliminating certain companies or certain products, this should be read as 'or equivalent'.
- Any contract will be based on the contractual provisions that form an integral part of the descriptive document, as well as any amendments to the contractual provisions that have been announced by means of a note of information.
- Unconditional acceptance of the above contractual provisions, including amendments, is a prerequisite for eligibility for the contract. By submitting a tender, you agree to the aforementioned provisions and confirm this by signing the 'declaration regarding the tender', which is attached to the descriptive document.

7. Tender in collaboration with other companies

In order to better meet the qualification requirements set out in the descriptive document/selection guidelines, you may submit a tender in collaboration with other companies.

Registration in collaboration with other companies is possible in three ways:

- Either as a partnership
- Either as a joint venture/subcontractor for construction
- Or by relying on third-party data

Registering as a consortium

If a tender is submitted by a consortium, each member of the consortium must sign a declaration, to be submitted on request, stating that all companies belonging to the consortium accept joint and several liability for the fulfilment of the obligations arising from the tender and the possible execution of the contract. It must also be indicated who is in charge of the partnership and who acts as the authorised representative vis-à-vis the contracting authority.

If a tender is submitted by a partnership, all requested documents, including the European Single Procurement Document, must be submitted separately by the participants in the partnership, stating the organisation from which they originate. The descriptive document/selection guide shall specify for each qualification criterion how the criterion for a partnership will be assessed.

Registering as a main contractor with subcontractor(s) or as a partnership with subcontractors.

In this construction, the main contractor or the consortium is the tenderer. If this tenderer calls on subcontractors for one or more suitability requirements, the name of the subcontractor called upon must be entered in the European Single Procurement Document for each requirement, together with the extent to which that subcontractor meets the requirement.

In this arrangement, the tenderer is fully liable for the performance of the obligations arising from the tender and for the performance of the contract, if any. The tenderer is also liable for the performance of the obligations of the subcontractor(s) engaged by it.

If the tenderer uses information from one or more subcontractors to qualify for the contract or agreement, all requested documents must be submitted by the tenderer on request, stating the organisation from which they originate. The tenderer must also demonstrate that it can actually make use of the subcontractor(s) in question in the performance of the contract.

Tender with data from third parties

In order to be able to (better) meet the qualification requirements set out in the descriptive document/selection guidelines as a company or partnership, you can rely on the financial and economic capacity and technical competence of other natural persons or legal entities. A condition is that you demonstrate that you actually have access to the resources of those natural persons or legal entities. You can do this, for example, by attaching a holding statement or a guarantee, or by attaching an agreement with the natural person or legal entity concerned, or by attaching a statement from the subcontractor concerned in which they undertake to cooperate in the performance of the contract.

Such statements must be submitted on request.

To demonstrate suitability requirements, you may only rely on another natural person or legal entity if no grounds for exclusion, as referred to in the descriptive document/selection guide, apply to that natural person or legal entity. If a natural person or legal entity is subject to a ground for exclusion, you must ensure that they are replaced immediately. If the natural person or legal entity in question is subject to a

grounds for exclusion apply, the contracting authority may request immediate replacement. If you rely on another natural person or legal entity to demonstrate your financial and economic capacity, they may be held jointly and severally liable for the performance of the contract. Where such joint and several liability is required, this shall be explicitly stated in the tender documents. If you rely on another natural person or legal entity to demonstrate the relevant professional experience, this natural person or legal entity must perform the works or services for which that competence is required.

8. Information about obligations of tenderers

Information about the obligations regarding the provisions on taxation, environmental protection, labour protection and working conditions that apply in the Netherlands and that apply to the tenderer's performance during the term of the (framework) agreement is available from:

- For provisions relating to taxation: the Tax and Customs Administration; www.belastingdienst.nl
- For provisions relating to environmental protection: the Ministry of Infrastructure and Water Management; <https://www.rijksoverheid.nl/ministeries/ministerie-van-infrastructuur-en-waterstaat>
- For provisions relating to labour protection and working conditions: the Ministry of Social Affairs and Employment; <https://www.rijksoverheid.nl/ministeries/ministerie-van-sociale-zaken-en-werkgelegenheid>

9. Suitability criteria

At a later stage of the tender procedure, the successful tenderer(s) will be asked to demonstrate the suitability of their company by means of supporting documents. If this is necessary for the proper conduct of the procedure with regard to the selection guidelines, supporting documents may also be requested at an earlier stage. This request will specify which supporting documents must be submitted. The evidence must be submitted within seven calendar days of the date of dispatch of the request.

Environmental management measures

If the suitability requirement is that tenderers have taken environmental management measures, tenderers can demonstrate compliance in the following manner:

1. a valid Environmental Certificate, drawn up by an independent body, NEN ISO 14001:2015 or equivalent (a copy is sufficient), on the closing date of the tender submission period for this tender; or
2. If you do not have a certificate and are not currently undergoing certification, it is sufficient to submit your own environmental manual. This must be a current and valid environmental manual that includes the measures your organisation takes to minimise the environmental impact of your business operations and a description of how compliance with these measures is monitored, accompanied by a policy statement from management confirming that management endorses and monitors these measures. (you can simply add a copy of a tailored table of contents of the environmental manual, a description and the policy statement). You must also include a description of why the measures included in your environmental manual are equivalent to the standard set; or
3. if you do not yet have or no longer have a valid certificate but are in the process of obtaining certification, you can simply provide proof of the stage of the new certification process (you can simply add a copy of a tailored table of contents of the environmental manual, a description and the policy statement, as well as a certification schedule agreed with the certifying body)

Assessment. The assessment determines whether the company takes sufficient measures to protect the environment, insofar as this is relevant to the subject of the tender.

In the event of registration by a partnership, the environmental management measures will be assessed for the entire partnership.

Quality assurance measures

If the suitability requirement is that tenderers have taken quality assurance measures, tenderers can demonstrate compliance in the following manner:

1. a Quality Certificate issued by an independent body, NEN ISO 9001:2015 or equivalent, valid on the closing date of the registration period for this tender (you only need to add a copy of the certificate); or
2. if you do not have a certificate and are not currently undergoing a certification process, it is sufficient to submit your own quality manual. This must be a current and valid quality manual, which includes the measures taken by your organisation to guarantee and monitor quality, accompanied by a policy statement from management confirming that management endorses and monitors these measures (you can simply add a copy of a tailored table of contents of the quality manual, a description and the policy statement). You must also include a description of why the measures included in your quality manual are equivalent to the standard set; or
3. If you do not yet have a valid certificate or no longer have one, but you are in the process of obtaining certification, you can simply provide proof of the stage you have reached in the new certification process. (you can simply add a copy of a tailored table of contents of the quality manual, a description and the policy statement, as well as a certification schedule agreed with the certifying body).

Assessment. The assessment determines whether the company takes sufficient measures to guarantee quality in relation to the requirements set out in the descriptive document/selection guidelines.

In the case of registration by a partnership, the measures taken to guarantee quality are assessed for the entire partnership.