

Procurement Guide

For the European open Tender for Metal Backend Evaporation system

Contracting Authority:

The Netherlands Organisation for Applied Scientific Research (TNO)



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Definitions

In this Procurement Guide, words written with an initial capital, both singular and plural, shall have the following meanings. Terms not mentioned in this list but defined in the Dutch Public Procurement Act [*Aanbestedingswet*] have the meaning assigned to them in the Procurement Act.

Annex(es)	: The Annexes to the Procurement Guide, namely: • A01 to A05 - i.e. the formats to be used by the Tenderer in preparing and submitting its Tender, • B01 to B03 - i.e. the formats to be used by the intended beneficiary for the purpose of submitting supporting documents relating to the ESPD at the request of TNO, • C01 to C04 - i.e. documents and (additional) information, which form part of the Procurement Guide and are not intended for submission by the Tenderer or the intended beneficiary.
Announcement	: the Notice of Procurement Procedure at www.TenderNed.nl
Award criterion	: the criterion used by TNO in the assessment and ranking of Tenders for the purpose of awarding the Contract, as referred to in Section 6.
Award decision	: the written communication of TNO's choice of the Tenderer with which it intends to conclude the Contract or its choice not to conclude a Contract.
Combination	: an alliance of enterprises tendering jointly as a single Tenderer, each of the Combination members being jointly and severally liable for the performance of the Contract.
Contract	: the Contract concluded with the Contractor pursuant to the outcome of the Procurement Procedure. The Contract is concluded after it has been signed by TNO and the Contractor.
Contracting Authority	: TNO, Netherlands Organisation for applied scientific research
Contractor	: Tenderer with which the Contract is concluded.
Dutch Public Procurement Act	: Dutch Public Procurement Act 2012 (hereinafter: "Procurement Act" or "Aw") concerning the implementation of procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU
European Single Procurement Document	: the declaration as referred to in Article 2.84(1) of the Procurement Act, which TNO has attached to the Procurement Guide as Annex A01 (hereinafter: ESPD).
Grounds for Exclusion	: grounds for exclusion from participation in the Procurement Procedure, which – depending on the provisions of the Procurement Documents – relate to circumstances concerning the (person of the) Tenderer, the (person of the) Third Party and/or the (person of the) Subcontractor
Information Notice	: the document containing further information about the Procurement Procedure and/or the Procurement Documents and in which TNO presents and answers the Tenderers' questions in anonymised form.
Minimum Requirements	: the requirements set by TNO regarding the manner in which the Contractor must perform the Contract.
Procurement Documents	: all documents prepared by or on behalf of TNO for the purpose of the Procurement Procedure.
Procurement Guide	: the present document describing the Procurement Procedure.
Procurement Procedure	: the present European public Procurement Procedure by which the conclusion of the Contract is tendered.
Suitability Requirements	: the requirements imposed by TNO on Tenderers not excluded on the basis of the Grounds for Exclusion, which Tenderers must meet as a minimum in order to be

eligible for the award of the Contract, on penalty of invalidation, as described in Section 5.

Tender : an offer/quotation made by a Tenderer.

Tenderer : an entrepreneur submitting a Tender

Third Party : natural persons on whom, or legal entities on which, a Tenderer may rely in order to meet the Suitability Requirements of financial and economic standing and/or technical and professional competence, irrespective of the legal nature of its links with said Third Party.

1 Contracting Authority and Contract

1.1 TNO

TNO, Netherlands Organization for applied scientific research, hereinafter referred to as "TNO", is a modern unit-driven Research & Knowledge organisation, established by law in 1932 to make scientific research applicable to enterprises, government bodies and civil-society organisations and thereby strengthen innovative capacity.

TNO is a public-law legal entity and operates under the ministerial responsibility of the Dutch Minister of Economic Affairs but, as an organisation, performs its tasks independently.

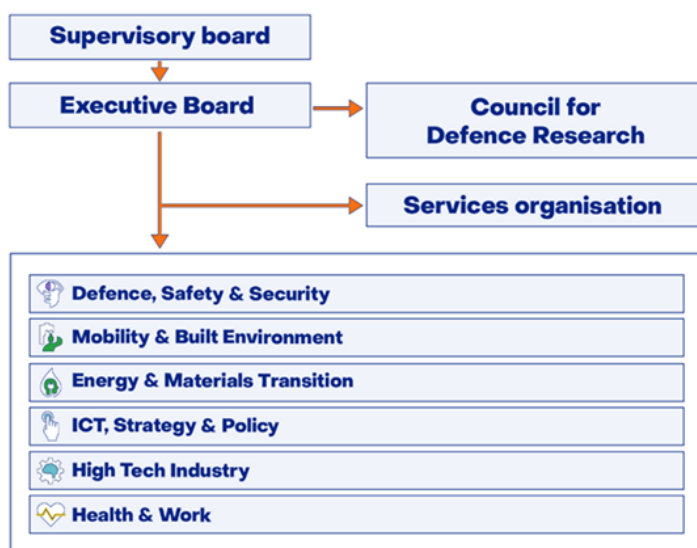
Every day, TNO's employees are working on the development and application of innovative research. TNO provides contract research and specialist consultancy and licenses patents and specialist software. TNO starts up new enterprises to bring innovations to market.

TNO's strength lies in its ability to combine diverse fields of science to create ground-breaking, sustainable solutions. Increasingly, TNO does so by collaborating with government bodies, industry, other knowledge institutions and civil-society organisations, both nationally and internationally. Through its work, TNO stimulates economic growth and social innovation.

TNO's mission is to create impactful innovations that contribute to the sustainable wellbeing and prosperity of society. The way TNO fulfils this mission is outlined in its strategic plan for 2026–2029. The strategy is built around three key priorities: placing greater focus through dynamic portfolio management by doing what we excel at; increasing impact through valorisation by bringing science to market; and enhancing customer and market centricity. TNO's overarching goal is to connect, change, and accelerate: Innovation for Life. For more information see: www.TNO.nl.

1.2 The TNO organisation

With TNO's highly ambitious approach comes an organisational form that effectively facilitates this ambition and a culture that challenges employees to innovate and collaborate. The TNO organisation has a unit structure as shown below:



The six organisational units (Units) are market-oriented and recognisable to TNO's customers and partners. The Units are based across the Netherlands with a total of 21 locations/research facilities. The head office is in The Hague and accommodates the central staff bodies (Shared Services Organisation) and from where the entire TNO organisation is supported and managed.

1.2.1 Procurement department

The Procurement department is executing the procurement on behalf of TNO, in close collaboration with Holst Centre, a department within TNO's High Tech Industry unit. Procurement, as part of the Finance, Procurement & Legal (FPL) department, is responsible for organising and executing procurement processes and ensuring that these processes are in line with the TNO objectives.

1.2.2 PIXEurope - pilot line for photonic chips

TNO is tasked with the establishment and operation of a 6-inch indium phosphide (InP)-based pilot production line. This facility represents a central element of the broader PIXEurope initiative, which is part of the Chips Joint Undertaking (Chips JU). At the end of this year, TNO will begin constructing the pilot manufacturing line for photonic chips at the High Tech

Campus in Eindhoven. This new factory will enable industrial-scale production of InP-based photonic chips, with the transition from 4-inch to 6-inch wafers enhancing production efficiency.

TNO is collaborating with the Photonic Integration Technology Centre (PITC), Eindhoven University of Technology, and the University of Twente. InP photonic chips, which use light to transmit data, are notable for their compact size due to high integration levels. Their high speed, low energy consumption, and large bandwidth make them ideal for improving data center performance and enabling new generations of smart devices. These chips are essential for advanced applications such as AI, 6G networks, medical diagnostics, and defence systems, and are considered a key enabling technology for the future.

The pilot line will serve as a hub connecting knowledge institutions and companies, playing a central role in the expanding Dutch integrated photonics ecosystem. The Eindhoven facility will also be integrated into PIXEurope, a European collaboration involving institutions from 11 countries. This initiative aims to establish a network of pilot manufacturing lines to strengthen the entire European value chain for integrated photonics.

PIXEurope is one of five pilot lines under the Chips JU, designed to create a standardized ecosystem for photonic integrated circuits (PICs). As PICs evolve—mirroring the trajectory of electronic integrated circuits (EICs)—they are expected to revolutionize sectors such as communications, artificial intelligence, and healthcare. Upon project completion, the PIXEurope pilot line is intended to be transferred to an industrial partner, as TNO's long-term strategic roadmap does not include continued operation of the facility.



Figure 1 - Map of PIXEurope's partners, including hosting and non-hosting sites, showing the centralised structure with a Gateway at ICFO, the coordinator.

1.3 Purpose of the Tender

The purpose of the Tender is TNO's intention to enter a Contract with one (1) Contractor for the supply and delivery of one Metal backend Evaporation system, herein after "equipment", capable of full-automatic e-beam evaporation of several metal layers on 6" InP wafers for the purpose of making high-quality electrical contacts to the semiconductor material. This supply and service shall be performed in accordance with the requirements as set out in the Procurement Documents.

1.4 Objective, scope and content of the proposed Contract

The Contract to be entered into provides for the supply of products and the provision of services, as specified in detail in the Programme of Requirements (Annex A04).

Following the present Procurement Procedure, TNO intends to award a contract for the purchase of the equipment as outlined in this Procurement Guide.

In general terms, the contract involves:

- The equipment
- Two-year warranty including maintenance and services
- (Critical) Design review
- Factory Acceptance Test (FAT)
- Site Acceptance Test (SAT)
- Installation on site
- Delivery according to Incoterm®2020 'Delivered Duty Paid' (DDP Location TNO Eindhoven, the Netherlands (further specified on PO))

Facility and Construction Timeline

The facility designated for the installation of the equipment specified in this Tender is currently under construction. The build is being executed under the responsibility of the High Tech Campus Eindhoven, from whom TNO will lease the facility. Completion and handover are anticipated in February 2027. Given the inherent complexity of large-scale construction projects, Tenderers are advised to anticipate potential delays due to unforeseen circumstances. Accordingly, Tenderers are expected to incorporate flexibility and adaptability into their planning to accommodate possible shifts in the timeline.

Delivery and Acceptance of Equipment

The earliest possible delivery date for the equipment is 20 November 2026. However, acceptance testing will not commence immediately upon delivery. These tests may only begin once the facility reaches mechanical completion, which is currently scheduled for early March 2027. Further details regarding the testing timeline and facility readiness will be communicated as they become available. TNO expects to obtain more clarity on this within the next eight weeks. In the event of a contract award, TNO will coordinate these aspects in further detail with the Tenderer to whom TNO intends to award the contract.

Coordination and Responsibilities

Following contract award and throughout the preparation and execution phases, open and transparent communication will be maintained between TNO and the Contractor. This is to ensure alignment of plans and, where necessary, the implementation of appropriate measures.

The Contractor is expected to adhere to the proposed schedule. In the event of delays in the facility's readiness, the Contractor must arrange for temporary storage of the equipment - either at their own premises or in suitable external storage - until installation is feasible. This must be done without incurring additional costs for TNO.

1.5 Maintenance/Services Contract

The primary objective of maintenance and services activities is to extend the operational lifespan of the equipment, minimize downtime, enhance productivity and safety, and ensure the continuity of efficient operations. Unplanned system downtime may result in missed opportunities and potential revenue loss. TNO expects that the Tenderer proposes a Maintenance and Services schedule that fits the requirements to the equipment in terms of productivity and quality of output.

The scope of maintenance and services included in the warranty, is defined in Annex A04-requirement series R-4000. In order to compare Tenders equally, Annex C04 with a framework of maintenance and services is used in specifying prices in Annex A03 Price sheet.

TNO wants to have the possibility to continue the maintenance and services as applied during the warranty period in the form of a contract with the following characteristics:

- a) At concluding the contract, the initial period will be one year with the option of yearly prolongation;
- b) Both at concluding and prolonging the contract, TNO may adjust the scope of the maintenance and services;
- c) Prices offered for maintenance and services as well as equipment components and consumables may be indexed towards the moment of concluding the contract and every year onwards;
- d) The management of spare parts will be addressed in the contract: fast-moving and critical components (A-parts) should be stored in a designated warehouse, either on-site at TNO or, preferably, at the Tenders' facility. TNO expects an initial proposal that can be developed collaboratively at a later stage;
- e) The maintenance and services schedule in the draft contract is to be considered (and priced) as individual, possibly reoccurring, on-demand activities.

The Tenderer is asked to conduct a draft maintenance and services contract, considering both the requirements series R-4000 and points a) to e) above, and to submit this as Annex A05 to his Tender. The Tenderer can apply his own format for maintenance and services in Annex A05 provided that the priced items in Annex A03 are still recognizable and priced accordingly.

1.6 Optional second Metal-Backen Evaporation system

TNO may intend to purchase a second Metal-Backen Evaporation system - under the same or substantially similar requirements and as outlined in Annexes A04- within a period of three years following the final award decision, the signing of the contract and acceptance of the equipment. Such a purchase will be conducted under the same Tender conditions. Therefore, the Tenderer is requested to complete the relevant line numbers in Annex A03.

2 Procurement Procedure

The procurement procedure is carried out in accordance with the relevant regulations stipulated under the Dutch Public Procurement Act.

TNO has opted for the public procedure. TNO has chosen this procedure because the assignment is relatively complex, leading to limited competition, which makes the open procedure an efficient and cost-effective method. This Tender has been published on and will proceed through TenderNed, www.TenderNed.nl.

2.1 Schedule for the Procurement Procedure

The proposed schedule for the Procurement Procedure is as follows:

No.	Action points	Date
1.	Publication of Announcement of Contract (at www.TenderNed.nl)	03-12-2025
2.	Closing date for submission of questions by Tenderers	17-12-2025; 10:30 hrs.
3.	Issue of (final) Information Notice	24-12-2025
4.	Closing date and time for submission of Tenders	22-01-2026; 14:00 hrs.
5.	Notification of Award Decision	10-02-2026
6.	Closing date for submission of supporting documents by intended beneficiary	18-02-2026
7.	Closing date for submission of challenges	03-03-2026
8.	Final award/Contract signing	Close after: 04-03-2026

The dates are indicative. TNO reserves the right to change the dates, subject of course to the minimum periods as laid down in the Dutch Public Procurement Act [*Aanbestedingswet*]. Affected enterprises will be notified of any change in the schedule via TenderNed.

2.2 Tender conditions

As part of the Procurement Procedure, TNO applies the following conditions.

2.2.1 Agreement

Submission of the Tender implies that the Tenderer agrees to the terms and conditions of the Procurement Procedure and agrees to the contents of the Tender Documents, including any unwelcome answers in the Information Notice.

2.2.2 Formats

The Tenderer should use the formats as included in the Annexes to this Procurement Guide. It is expressly not permitted to make changes to these formats, unless TNO has expressly stated otherwise.

2.2.3 European Single Procurement Document (ESPD)

The Tenderer must submit an ESPD as specified in the instructions given below. The Tenderer must use the ESPD as appended in Annex A01.

To access and complete the ESPD electronically, the Tenderer must only use the Adobe Reader software program, preferably the latest version. Opening the ESPD in a program other than Adobe Reader may result in the ESPD appearing different from the version pre-filled by TNO and/or showing errors. Submission of an ESPD that differs from the version as provided by TNO with the Procurement Documents will render the Tender invalid, unless TNO considers this disproportionate in a specific case. The responsibility for opening the ESPD in the prescribed manner and submitting the correct version thereof rests with the Tenderer.

For legally valid signature of the ESPD, see Section 2.2.20 of this Procurement Guide.

2.2.4 Precedence of Procurement Documents

In the event of discrepancies between the contents of the various Procurement Documents, the following order of precedence applies during the Procurement Procedure, in descending order of prevalence:

- Information Notice(s): from most recent to least recent;
- Procurement Guide with Annexes:
 - o Programme of Requirements (Annex A04);
 - o The Price Sheet (Annex A03);
 - o References (Annex A02);
- Announcement.

2.2.5 Contact person and communication

All communication relating to the Procurement Procedure will take place via TenderNed only and in the manner specified in this Procurement Guide.

If direct contact with TNO is specified/necessary, communication will take place exclusively with the TNO contact person stated below, in writing always, via the TenderNed messaging module.

Tenderers cannot derive any rights from oral statements, undertakings and suggestions made by TNO employees and/or consultants in relation to the Procurement Procedure and/or the Procurement Documents. Tenderers may only rely on information provided in writing by or on behalf of TNO.

On penalty of exclusion, enterprises may not contact persons other than the contact person with regards to the Tender, unless TNO considers this disproportionate in a specific case. Nor is it permitted, on penalty of exclusion, to communicate with the contact person in any way other than via TenderNed, unless TNO considers this disproportionate in a specific case.

An instruction regarding digital procurement via TenderNed can be found by selected bidders in TenderNed's support environment (<https://www.TenderNed.nl/cms/help>). If you have any questions or are unclear about the operation of TenderNed (for example, if you are unable to log in or submit documents) or if TenderNed malfunctions, the TenderNed service desk can be contacted from 8.30 a.m. to 4.30 p.m. on working days on 0800 - 836 33 76 or via servicedesk@TenderNed.nl.

2.2.6 Language

Tenders must be written in the English language. Tenders in languages other than English will be excluded from participation. Official documents that cannot be submitted in the English language may be written in the language of the document's country of origin. Upon request, the Tenderer shall arrange a translation by a sworn interpreter-translator. The costs incurred shall be borne by the Tenderer.

2.2.7 Single Tender

An enterprise may only be involved in one (1) Tender: either as an independent Tenderer, a member of a Combination, or a subcontractor or Third Party. With regard to enterprises belonging to the same group as referred to in Sections 2:24b and 2:24c of the Dutch Civil Code, more than one company from the group may submit a Tender, provided that the enterprises demonstrate, at TNO's request, that the Tenders have been drawn up independently and autonomously.

Where this cannot be demonstrated by all the Tenderers concerned, all the Tenders emanating from enterprises belonging to the same group will be excluded.

2.2.8 Combination

A Combination of enterprises may submit a Tender jointly as a single Tenderer. To do so, the following conditions must be met.

- All members of the Combination shall submit their own completed and validly signed ESPD. This states that registration takes place in Combination and, if selected, registered.
- The ESPD specifies which member of the Combination will fulfil the role of coordinator. The coordinator is the only member with which TNO corresponds regarding the Procurement Procedure and, where applicable, the Contract. The coordinator must have the power to legally bind all members of the Combination in respect of the Procurement Procedure and, where applicable, (the award of) the Contract.
- All members of the Combination must individually declare in their own ESPD whether they are subject to Grounds for Exclusion (see Section 5.1). The members of the Combination will each be assessed individually against the Grounds for Exclusion. If one or more Exclusion Grounds apply to one or more members, the entire Combination will be excluded.
- The Combination all together will be assessed against the Suitability Requirements, subject to any exceptions referred to in Section 5.2. In the ESPD, the Combination members declare how the Combination meets the Suitability Requirements. If the Combination all together does not meet all Suitability Requirements, the submission of the Combination will be laid aside.

By submitting the Tender, the Combination members declare that all the participants in the Combination are jointly and severally liable for the fulfilment of the obligations arising from the Procurement Procedure, as well as from any performance of the Contract. By submitting the Tender, the Combination members declare that the coordinator is authorised to validly represent the Combination and the individual Combination members in all matters relating to the Tender and, in the event of the award of the Contract, the Contract.

2.2.9 Subcontracting

A Tenderer may use one or more subcontractors to carry out the work. A cooperative venture in the form of a main contractor and subcontractors may tender as single Tenderer. The main contractor shall always remain responsible and liable for all work, including any work performed by a subcontractor.

TNO recognises the following subcontractors:

Reliance on subcontractor to meet Suitability Requirements

Where the Tenderer relies on the financial and economic standing and/or technical and professional competence of a subcontractor to meet the Suitability Requirements, said subcontractor shall also be deemed a Third Party. In this case, the Tenderer must follow the instructions as described in Section 2.2.10 concerning reliance on the resources of a Third Party or Parties. All Third Parties must be listed in Section IIC of the ESPD (Annex **A01**).

Deployment of subcontractor to perform the contract

Where a Tenderer meets the specified Suitability Requirements independently but wishes to use one of more subcontractors to carry out the work, the Tenderer need not disclose the identity of the subcontractor(s) in the Tender. While the Tenderer must tick the box in its ESPD, Part IID, to indicate that it intends to use subcontractors, their names need not be disclosed at this time. However, the Tenderer must do so not later than seven (7) calendar days after the provisional award, as TNO must pre-approve the subcontractors to be used. If the Contractor wishes to replace a subcontractor during performance of the Contract, this will only be possible subject to TNO's prior consent in writing.

If a Tenderer wishes to use a subcontractor, a completed ESPD (Annex **A01**; parts IIA, IIB and III) must be submitted not later than seven (7) calendar days after the provisional approval of said subcontractor, as well as the supporting documents relating to the Grounds for Exclusion (Section 5). Where a subcontractor is subject to one or more Grounds for Exclusion and said subcontractor has not given convincing reasons in the ESPD why it should nevertheless not be excluded (see Section 5), the subcontractor will not be approved. Otherwise, approval of a subcontractor will not be unreasonably withheld.

If a Tenderer intends to use multiple subcontractors, a completed and duly signed ESPD (Annex **A01**) must be submitted from each subcontractor. The subcontractor has only to complete parts IIA, IIB and III of the ESPD. These ESPDs will be appended to the Tender.

The subcontractor's ESPD (Annex **A01**) must be duly signed. For signing authority, please refer to Section 2.2.20.

If the Tenderer does not intend to use subcontractors

The Tenderer should indicate its intention not to use subcontractor(s) by ticking only the "no" box in Part II D of the ESPD (Annex **A01**).

2.2.10 Reliance on Third Party resources?

The Tenderer may rely on the financial and economic standing and/or technical and professional competence of a Third Party or Parties.

If the Tenderer relies on the financial and economic capacity of a Third Party or Parties, both the Tenderer and the Third Party or Parties on whose financial and economic capacity the Tenderer relies will be jointly and severally liable for the obligations arising from the Procurement Procedure and for the obligations arising from the performance of the Contract, if awarded to the relevant Tenderer.

If the Tenderer relies on the technical and professional competence of a Third Party or Parties, said Third Party or Parties should also be involved in the performance of the Contract, if awarded to the relevant Tenderer.

No reliance on Third Party resources

If the Tenderer does not rely on the financial and economic standing and/or technical and professional competence of a Third Party or Parties, it should complete Part II C of the ESPD (Annex **A01**) to indicate that it does not rely on the financial and economic standing and/or technical and professional competence of a Third Party or Parties, by ticking the "no" box.

Reliance on Third Party resources

A) Requirements for submitting a Tender

If the Tenderer does rely on the financial and economic standing and/or technical and professional competence of a Third Party or Parties, the Tenderer should complete Part II C of the ESPD (Annex **A01**) to indicate:

1. that it is relying on the financial and economic standing and/or technical and professional competence of a Third Party or Parties, by ticking the "yes" box
2. the Suitability Requirements for which it relies on the Third Party or Parties and,
3. for each stated Suitability Requirement for which it relies on a Third Party or Parties, and the Third Party or Parties it relies on for that purpose.

In addition, if the Tenderer relies on the financial and economic standing and/or technical and professional competence of a Third Party or Parties, it shall submit the following:

4. a separately completed and duly signed ESPD (Annex **A01**) from each Third Party on whose financial and economic standing and/or technical and professional competence it relies, in which the Third Party completes Parts II A, II B and III in respect of the Third Party itself. The ESPDs of the Third Party or Parties must be duly signed as referred to in Section 2.2.20.

Additional requirement for submitting a Tender in the event of reliance on technical and professional competence of a Third Party or Parties

5. If and insofar as the Tenderer relies on the technical and professional competence of a Third Party or Parties, the Tenderer must submit a list of reference projects completed by the Third Party or Parties on whose technical and professional competence the Tenderer relies, in addition to any list of its own reference projects to be submitted by itself with its Tender. If and insofar as the Tenderer submits reference projects of a Third Party or Parties, it must also use the format for reference projects (Annex **A02**) for this purpose.
- B) Requirements for intended beneficiary relying on a Third Party or Parties
The Tenderer to which TNO intends to award the Contract based on the Award Decision and which relies on the financial and economic standing and/or technical and professional competence of a Third Party or Parties must submit at TNO's request within the period specified in Section 7.1 of the Procurement Guide:
1. a declaration by said Third Party or Parties stating that the Tenderer can access the resources of the Third Party or Parties relied upon. If the Tenderer relies on the financial and economic standing of a Third Party, it shall submit a declaration in the format provided in Annex **B01**. If the Tenderer relies on the technical and professional competence of a Third Party, it shall submit a declaration in the format provided in Annex **B02**;
 2. any evidence as referred to in Section 5.1, which allows the Third Party or Parties whose suitability the Tenderer relies on to demonstrate that the Grounds for Exclusion do not apply to the Third Party.

Additional requirement for intended beneficiary in the event of reliance on financial and economic standing of a Third Party or Parties

3. The Tenderer to which TNO intends to award the Contract on the basis of the Award Decision and which relies on the financial and economic standing of a Third Party or Parties must, at TNO's request, submit within the period specified in Section 7.1 of the Procurement Guide, in addition to the documents referred to above under B) (regarding "*Requirements for the Intended Beneficiary*"): the documents that will be substituted for those that the Tenderer must submit to prove that it meets the Suitability Requirements regarding financial and economic standing.

2.2.11 Variants

Offering variants and/or alternative Tenders is not permitted and they will therefore be disregarded.

2.2.12 "Or equivalent"

The technical specifications are formulated as much as possible based on EU and other standards, performance requirements and functional requirements. Where the Procurement Documents, including the Annexes, nevertheless refer to brand names, patents, types, manufacturing processes, etc., the Tenderer should read "or equivalent" after the relevant phrase.

Tenderers are free to provide an equivalent product, service or type of work. If they do so, the Tenderers must justify in or with their Tender reasons why they are offering an equivalent product, service or type of work. It is up to TNO to assess whether the latter are equivalent. TNO reserves the right to have their equivalence assessed by a third party if necessary.

2.2.13 Rights reserved by TNO

1. TNO reserves the right to stop the entire Procurement Procedure temporarily or permanently. If TNO decides to discontinue the Procurement Procedure, legal protection is guaranteed in accordance with paragraph 2.4 of the Procurement Guide.
2. TNO always reserves the right to subject the data and statements provided by Tenderers to further investigation and verify their accuracy (or have them verified), as well as to approach any references provided, without prior notification thereof to Tenderer. The results thereof will be considered in the assessment of the Tender.

The Tenderer is aware that if at a later stage it is found that incorrect and/or incomplete information has been provided and/or that requirements set out in the Procurement Documents are not or no longer being met, the Tenderer will be excluded from further participation in the Procurement Procedure(s) or agreements already made may be cancelled and contracts dissolved. In such cases, TNO cannot be held liable for the consequences thereof for the relevant Tenderer and TNO will not be obliged to reimburse any costs and/or any loss or damage of any kind.

2.2.14 Confidentiality

The Tenderer will observe strict confidentiality in respect of all information that is or becomes known to it through TNO. It will not make the information available to Third Parties and will only disclose it to its staff, including consultants, subcontractors and Third Parties, insofar as this is necessary for the submission of the Tender or – if and insofar as applicable – the performance of the Contract.

TNO acknowledges the confidentiality of the Tenderer's Tender and will not disclose to Third Parties any information known to it from this source. It will be necessary to disclose information from the Tender, where appropriate, in the context of justifying the Award Decision. The Tenderer recognises this and agrees accordingly.

2.2.15 Distortion of competition

Distortion of competition will result in exclusion. If TNO suspects that distortion of competition has occurred, it will give the relevant Tenderer(s) the opportunity to demonstrate that it has not been guilty of distorting competition. If TNO deems

that the Tenderer has failed to do so, the Tenderer will be excluded from further participation in the Procurement Procedure.

2.2.16 Withdrawal by Tenderer

Any Tenderer who has submitted a Tender may withdraw it until the closing date for Tenders. After that moment, the period of validity starts. The Tender is irrevocable during the period of validity.

2.2.17 Period of validity

The Tenderer upholds its bid at least one hundred twenty (120) calendar days from the closing date for submission of the Tender (Section 2.1). The period of validity is automatically extended until the conclusion of the Contract with the first-ranked Tenderer.

If summary proceedings are instituted against the Award Decision, the period of validity will be automatically extended by a period of thirty (30) calendar days from the date of the decision of the preliminary relief judge.

TNO may request Tenderers to extend the period of validity. Tenderers cannot derive from this any right to be awarded the Contract.

2.2.18 Contract terms

The Contract will be awarded in accordance with:

- Contract entitled 'PURCHASE AGREEMENT TNO – [name Contractor]', the draft version of which is included in Annex C02;
- A Purchase Order, and starts with 3100., and is mainly intended for administrative handling;
- Purchasing Conditions for Goods TNO, February 2022, as included in Annex C03, except insofar as they are explicitly departed from in the Procurement Documents.

In accordance with Section 2.3 of this Procurement Guide, Tenderers may submit text and amendment proposals for this Contract and the Purchasing Conditions for Goods TNO. The final Information Notice will respond to these proposals or add the final Contract and the Purchasing Conditions for Goods TNO.

The general terms and conditions (including terms of supply) or terms and conditions of Third Parties (including subcontractors and auxiliary persons) used by the Tenderers, both during this Procurement Procedure and also, in the event of award, during the performance of the final Contract and any contracts to be concluded under its terms, are expressly rejected by TNO. If they declare their own terms and conditions applicable, this will render their Tender invalid.

In the final Information Notice, TNO will indicate where final changes have been made.

Acceptance of these amendments to the Framework Agreement/Acceptance of the Final Contract and the Purchasing Conditions for Goods TNO is a minimum requirement. Failure to comply with these conditions will result in the Tenderer's exclusion from further participation in the procedure.

2.2.19 Conditional Tender

TNO will exclude conditional Tenders from further participation in the Procurement Procedure.

2.2.20 Legally valid signature

The Tender must be validly signed. "Validly signed" means that the ESPD has been signed by the duly authorised representative(s) of the Tenderer as stated in TenderNed. A validly signed ESPD means that the Tender fully has been validly signed, unless a separate valid signature is required for one or more documents. TNO would point out that the trade register may state that two or more persons are joint authorised representatives, or that a representative is authorised only up to a certain monetary value. This has implications for the authority to sign, and Tenderers should anticipate this. The authority to sign should be evidenced by an extract from the trade register. It is also possible for the Tender to be signed by a proxy. In this case, a power of attorney must be issued by a legally authorised representative of the Tenderer, as evidenced by the trade register, or the power of attorney must be recorded in the trade register.

The extract or the power of attorney need only be issued to TNO if a request to that effect has been made by TNO, as specified in the requirements set out in Section 7.1 of the Procurement Guide.

A Tender not validly signed shall be deemed not to have been made and shall be invalid.

This provision also applies to the ESPD submitted by members of a Combination and/or for the Third Party or Parties on whose standing/experience/resources the Tenderer relies. In their case too, only the ESPD need be validly signed, and this signature will also serve as a valid signature for other documents completed and submitted by them.

Electronic signature

Signature in the form of an electronic signature is also permitted. The following requirements apply in this regard: an E-recognition tool ("eHerkenning" in Dutch) with at least security level 4 (EH4) must be used.

2.2.21 Reimbursement of expenses incurred in submitting the Tender

Any expenses incurred by Tenderers in preparing and submitting the Tender will not be reimbursed.

2.2.22 Statement of prices and expenses

Prices and costs must be stated in euros excluding VAT and will be fixed for the term of the Contract unless otherwise specified. TNO hereby explicitly states that no price negotiations will be entered into as part of this Procurement Procedure.

2.2.23 Publicity

No publicity will be given to the Procurement Procedure by the Tenderer or by partners and/or subcontractors to be engaged by the Tenderer except with TNO's consent in writing. All information on the Tender will be treated confidentially by Tenderer and the parties to be engaged by them.

2.2.24 Intellectual property

Subject to exceptions as specified in the Dutch Copyright Act [*Auteurswet*], no part of the Procurement Documents may be reproduced (other than for the purpose of submitting a Tender) in any manner whatsoever without TNO's consent in writing. Tenders and all Annexes submitted by Tenderers as part of the Procurement Procedure will become TNO's property upon receipt.

2.2.25 TNO logo

The TNO logo may not be copied, altered or otherwise used on documents submitted by the Tenderer as part of the Procurement Procedure.

2.3 Further information (questions)

The Procurement Documents shall be prepared with the utmost care. Tenderers may request further information on the Procurement Procedure and/or the Procurement Guide up to the closing date and time "closing date for submission of questions" as stated in the schedule in Section 2.1. Said further information may, for example, address any lack of clarity, ambiguities, discrepancies. Further information should be requested within the time limit and in the manner described in this section. Questions and comments not submitted on time and/or correctly will in principle not be dealt with in the Information Notice, except in cases where this is deemed necessary and/or desirable at TNO's sole discretion.

Moreover, at the time of the above deadline, Tenderers will have the opportunity to ask reasoned questions on, or propose text or amendments to, the draft contract, as included in Annex **C02** and in the Purchasing Conditions for Goods TNO, Annex **C03**. Text proposals will serve only to improve the Contract and must not affect its essence. TNO would point out that it always reserves the right to accept or not to accept these text or amendment proposals.

If the Tenderer fails to raise questions about and/or challenge to (lack of clarity, ambiguities or discrepancies in) the Procurement Procedure and/or the Procurement Guide and/or in the manner described in this section, or does not do so in a timely manner, it will forfeit its right to challenge any deficiencies identified at a later stage, e.g. in interlocutory proceedings.

Questions and/or comments should be communicated **exclusively** to the TNO contact person (see Section 2.2.5) using the "Standard Template for Tenderer Questions" in Annex **C01** ("editable" MS Excel file) prepared by TNO. Using the "pull-down" menu in this Excel file, the Tenderer should indicate which section of the Procurement Guide the question relates to. Once completed, Annex **C01** should be submitted via [the TenderNed messaging module](#).

TNO is therefore **not using the question module in TenderNed**. Questions submitted in this question module will not be considered.

The TNO contact person will compile the questions and/or comments, along with their responses, in anonymised form within one or more Information Notices. The final date for asking questions is included in the schedule in Section 2.1. The Information Notices will be published at www.TenderNed.nl as per the schedule in the table in Section 2.1.

All the questions and their answers should be considered an integral part of this Procurement Guide. The basic premise is that the Procurement Guide will be deemed final after publication of the last Information Notice.

TNO may decide to hold one or more additional briefing rounds. Parties will be informed of this in the Information Notice. Questions and comments submitted as part of an additional briefing round may relate solely to the contents of the immediately preceding Information Notice. Questions and comments that do not relate to the immediately preceding Information Notice may be disregarded by TNO – without notice.

The responsibility for submitting questions and/or comments in a timely and correct manner rests with the Tenderer. Questions raised after the expiry of the deadline will in principle not be answered in the Information Notice unless answering is necessary, in TNO's opinion, for the submission of a proper Tender.

TNO would advise Tenderers to wait until the last Information Notice is published before submitting their Tender as the Information Notice may contain further clarifications and amendments to the Procurement Guide that are relevant to the preparation of the Tender.

TNO would expressly remind Tenderers that it can answer their questions in confidence (Section 2.53(3) Aw). If a Tenderer does not wish to have a question answered in the Information Notice, the Tenderer must give reasons as to why a public answer would damage its legitimate economic interests. TNO will take a decision on whether to answer a question in confidence based on these reasons or not. If TNO decides not to do so, it will notify the questioner, accordingly, giving reasons. The questioner will then have the option of withdrawing or submitting its question for the Information Notice.

2.4 Applicable law and disputes

This Procurement Procedure is governed by the laws of the Netherlands. The Preliminary Relief Judge at the District Court of The Hague shall have exclusive jurisdiction to settle disputes relating to the present Procurement Procedure. Tenderers should bring their challenges to all or part of the Procurement Procedure, to all or part of the information provided or to other aspects relating to the Procurement Procedure to the attention of the TNO contact person (see Section 2.2.5) at the shortest possible notice.

The period within which legal action must be taken against the Award Decision and/or the Procurement Procedure is twenty (20) calendar days from the date of the Award Decision. Any summons should be served within this period, which is a (contractual) expiry date, at TNO's address. If this objection period, also expiry date, is exceeded without legal proceedings having been commenced by service of a summons, any right to do so shall (inadmissible) lapse. The standstill period is automatically extended to the next working day if the standstill period ends at the weekend, on a public holiday or a so-called "notice-free day" [when bailiffs cannot issue writs].

A Tenderer wishing to initiate summary proceedings is requested to request foreclosures from TNO.

If a summons has been served within the standstill period, the relevant Tenderer is requested to send a copy of the served summons via TenderNed to the contact person for the Procurement Procedure no later than two (2) working days after service. This is because the processing of documents within TNO can lead to delays in processing the summons.

If a Tenderer institutes summary proceedings in a timely and valid manner in respect of the Award Decision and/or the Procurement Procedure, the Tenderer to which the contract has been provisionally awarded shall intervene in the summary proceedings. If the Tenderer to which the Contract has been provisionally awarded does not intervene, said Tenderer shall exercise the right to institute court proceedings or third-party proceedings in the event of the judgment in the first-instance summary proceedings orders the amendment or revocation of the Award Decision. This is because it is important for all the parties to obtain clarity as soon as possible and put all the arguments on the table in the first instance. If the standstill period is exceeded, this situation cannot be remedied.

Any Tenderer that has instituted summary proceedings is obliged to provide a copy of the summons when requested to do so by other Tenderers so that said Tenderer(s) can determine whether intervention is appropriate. Of course, it is up to the Tenderer that initiated the summary proceedings to determine whether confidential business information will be disclosed or not at that stage and, if so, which. If the Tenderer that initiated the summary proceedings does not (expeditiously) provide a copy of the summons to the Tenderer requesting it, TNO reserves the right to provide a copy of the summons itself. In doing so, TNO will determine at its own discretion whether confidential business information will be deleted and, if so, which.

If summary proceedings have been instituted in a timely and legally valid manner and the judgment does not oppose the conclusion of the Contract, TNO will be free to conclude the Contract. TNO is not obliged to await any appeal or proceedings on the merits. In other cases, TNO will consider the next steps to be taken based on the judgment in first instance.

2.5 Submission of the Tender

2.5.1 Digital tendering

The Tender consists of the completed and, where necessary, validly signed Annexes **A01 to A04**, the formats of which are appended as Annexes to the Procurement Guide. When the ESPD is validly signed, the Tender as such is also validly signed. The absence of a legally valid signature on the ESPD will render the Tender invalid.

For legally valid signatures, see Section 2.2.20.

For this Tender, TNO is using a digital procurement system via TenderNed. The Tender must be uploaded to the TenderNed digital vault not later than the date and time specified in the schedule in Section 2.1 under "Closing date for submission of Tenders". After uploading, the Tenderer will receive a transaction code via SMS. This code must be entered in TenderNed. The Tender is not actually submitted until the correct transaction code has been entered. The SMS code must therefore be entered within the tendering period for the Tender to be deemed complete and correct.

Tenders received late and/or Tenders not deposited in the digital vault and/or Tenders submitted by means other than via TenderNed will not be considered and will therefore be excluded from participation. Tenderers will always remain solely responsible for submitting their Tender on time and in the correct manner.

Tenderers are strongly advised to take careful note of the guide provided by TenderNed for the digital submission of Tenders, particularly as regards placing documents in the digital vault. In doing so, uploading should be completed with the tendering wizard (authorisation by SMS code).

Tenderers are advised to start uploading documents in good time. If a Tenderer experiences problems with the system due to a malfunction of TenderNed, the TNO contact person (Section 2.2.5) and TenderNed should be contacted without delay. In the event that a TenderNed malfunction actually occurs, as a result of which the submission of Tenders is not possible, shortly before the closing date and TNO has not taken note of Tenders that have been uploaded to the TenderNed digital vault on time despite the malfunction, TNO will extend the closing date for submission of Tenders pursuant to Section 2.109 Aw.

TNO further advises Tenderers to take note of the content of Section 2.109a Aw and, in accordance with the provisions of that section, to be prepared to submit the encrypted version of their Tender in a timely manner if occasioned by TenderNed malfunctioning.

2.5.2 Sending and grading Tender

The Tender consists of the following documents. Documents in **Part A** relate to the Tenderer. Documents in **Part B** relate to either Third Party(ies) whose experience/resources the Tenderer appeals to under the Eligibility Requirements and/or the Declaration of Willingness of Tenderer for the required insurance. The documents under **Part B** need to be submitted only if Third Party(-ies) are invoked or if Tenderer is not (yet) in possession of either the insurance company's policy or satisfactory statement within the stipulated timeframe.

Part A Submission of the Tender

The Tender, under penalty of invalidity, must consist of the following components.

- Annex A01** European Single Procurement Document (Tenderer, if applicable: all individual Combination members; the individual Third Party or for the benefit of one or more subcontractors to be used for the work).
- Annex A02** Format for reference projects
- Annex A03** Price sheet
- Annex A04** Answers to Program of Requirements and informative questions.
- Annex A05** Maintenance / Services

The above sheets must be completed in full. Only the ESPD need be validly signed.

Gather the pdf files, Annexes **A01** to **A05**, as separate "loose" files into a compressed file (zip file) named: "....." **_part A**. The Tenderer should replace the dotted line with all or part of its company name. Upload this compressed file to TenderNed's digital vault.

Part B Submission of supporting documents

- Annex B01** Format for Declaration as to Reliance on Financial and Economic Standing of Third Party or Parties
- Annex B02** Format for Declaration as to Reliance on Technical and Professional Competence of Third Party or Parties
- Annex B03** Format for Statement of Policy/Declaration as to Insurance

The above sheets must be completed in full. Only the ESPD need be validly signed.

Gather the pdf files, Annexes **B01** to **B03** as separate "loose" files into a compressed file (zip file) named: "....." **_part B**. The Tenderer should replace the dotted line with all or part of its company name. Upload this compressed file to TenderNed's digital vault.

3 Assessment of Tenderers and Tenders

3.1 Assessment team

A team of subject-matter and purchasing experts has been constituted to conduct an assessment of the Tenders, including submitted documentation by the Tenderer that substantiates answers to the programme of requirements.

TNO assesses and ranks the Tenders based on the Award Criterion Lowest total price, see Section 6 in this regard

3.2 Assessment procedure

The assessment procedure is as described in the following sections.

- Section 4** : concerns the assessment of the timeliness, formal requirements and completeness of the Tender submitted.
- Section 5** : concerns requirements formulated in respect of Grounds for Exclusion and Suitability Requirements. If one or more Grounds for Exclusion apply and/or if a Tenderer fails to meet the Suitability Requirements, the Tenderer will be excluded/the Tender will be invalid.
- Section 6** : concerns the description of the assessment by TNO of the Tenders against the Award Criterion. The Award Criterion is assessed by allocating points to the Tender.
- Section 7** : concerns the assessment of supporting documents and other documents requested by TNO from the intended beneficiary.
- Section 8** : gives an explanation of the Programme of Requirements (Annex 04):

TNO may ask the Tenderer for clarification with regards to the submitted Tenders up to the end of the Procurement Procedure in two ways:

- The Tenderer is deemed to be willing and able to answer questions within 48 hours of sending the questions. If questions are not answered (in a timely manner), TNO may interpret the Tender in any manner it sees fit, based on the documents known to it;
- In case of requirements that represent a high risk of failure TNO may desire tangible evidence of the intended winner before the decision is made on provisional award of the contract. This evidence can be in the form of :
 - a demonstration using the equipment Tenderer is offering or highly compatible to that;
 - processing a sample provided by TNO;
 - otherwise.

TNO will decide on the response time of Tenderer within reason, but under the restriction that changing the timetable (see section 2.1.) will be seen as a last resort. Failing to produce the evidence asked (in a timely manner) will lead to exclusion from further participation in this tendering procedure.

4 Assessment of timeliness, formal requirements and completeness

4.1 Assessing timeliness of submission

The Tender must be submitted in a timely manner, i.e. within the tendering period (see Section 2.1). Tenders not submitted in a timely manner are invalid and TNO will discard them.

4.2 Assessing for other formal requirements and completeness

Tenders submitted by means other than through TenderNed will not be assessed and will be discarded. The foregoing is subject to any malfunctions of TenderNed, recognised as such by TenderNed.

The Tenders will be assessed as regards completeness and the formal requirements applicable in the Procurement Procedure, including at all events the legally valid signature. Tenders that are incomplete and/or fail to meet all the formal requirements will be declared invalid by TNO and discarded. Missing answers, documents, or data will result in exclusion if there is no rectifiable omission. Tenderers are reminded that TNO is not obliged to have deficiencies rectified. TNO has the discretionary power to offer a rectification option.

If – for whatever reason – a question cannot be answered or the requested data cannot be submitted in full or at all, this must be explicitly stated at the time of the Tender, together with reasons. Depending on the nature of the deficiency, TNO will assess whether the Tender is invalid, in which case it will be discarded, or whether the deficiency is amenable to rectification.

Deficiencies for which TNO offers a rectification option must be rectified within the timeframe as stated in the relevant request from TNO. If a deficiency is not rectified within the notified period or at all, the Tender will be invalid after all.

5 Assessment of Grounds for Exclusion and Suitability Requirements

5.1 Assessing Grounds of Exclusion

The Tenderer will be assessed in terms of the Grounds for Exclusion listed in the ESPD (Section III). The Tenderer declares in the ESPD whether the Grounds for Exclusion used are applicable or not at the time of tendering. Where one or more Grounds for Exclusion apply, the Tenderer will generally be excluded. The Tenderer will have the opportunity to give reasons in the ESPD why it should not be excluded after all because of self-cleansing measures or at least why exclusion would be disproportionate. TNO will take these reasons into account in its decision on the final exclusion of the Tenderer. The reasons must be included in or appended to the ESPD. Tenderers may not continue to submit and/or alter the reasons once the tendering period has elapsed.

If the Tenderer is a Combination and a Ground for Exclusion applies to any of the participants in that Combination, the Combination all together will be excluded. Each Combination member must submit its own legally signed ESPD.

If the Tenderer relies on the suitability of a Third Party or Parties as described in Section 2.2.10 of the Procurement Guide and a Ground for Exclusion applies to one or more Third Parties, TNO will reject its reliance on the suitability of the Third Party or Parties in question. If the Tenderer, whose reliance on a Third Party or Parties has been rejected, fails – after having been given the opportunity to do so by TNO – to rely (in a timely manner) on the resources of a substitute Third Party or Parties, or if the Tenderer does rely on a substitute Third Party or Parties but fails to comply fully or at all with the requirements set for that purpose, the Tenderer will be excluded from participating in the Procurement Procedure. The substitute Third Party or Parties must be proposed within seven (7) calendar days of a request to that effect from TNO, submitting all the documents requested in the Procurement Documents for that purpose. Proposing a substitute Third Party is not considered an amendment to the Tender. If a Tenderer is permitted to propose a substitute Third Party, the Tenderer may only substitute the Third Party while submitting the relevant documents in this connection. Other parts of the Tender, including, but not limited to, the elaboration of the award criteria remain unchanged.

The completed and validly signed ESPD will suffice in the first instance as evidence that the Grounds for Exclusion do not apply to the Tenderer. At TNO's request, the Tenderer to which TNO intends to award the Contract will provide – by the date specified in Section 7.1 of the Procurement Guide – the supporting documents referred to in section 7.1. If the Tender is submitted in Combination, all the Combination members must submit the supporting documents listed below. If the Tenderer relies on the standing/resources/experience of one or more Third Parties, then the supporting documents listed below from each Third Party should be submitted.

Tenderers are reminded that it may take several weeks to obtain some supporting documents. Tenderers are therefore advised to request the supporting documents at the earliest possible stage so that they can be supplied in a timely manner – in response to any request from TNO. TNO would point out that any Tenderer relying on a Third Party is itself responsible for the timely submission of supporting documents in respect of the Third Party's ESPD. TNO therefore advises Tenderers to inform, in a timely and appropriate manner, Third Parties on whose suitability they rely which documents may be requested by TNO in the event of award to the Tenderer and the time required to obtain these documents.

Failure to obtain supporting documents in a timely manner or at all remains at the Tenderer's risk. If the supporting documents are not supplied in a timely manner and/or complete, the Tenderer will still be excluded. If a supporting document has not been obtained in a timely manner but has been requested in good time and the failure to obtain it is not due to a circumstance within the Tenderer's sphere of risk, the Tenderer will not be excluded. To this end, the Tenderer must demonstrate that the relevant supporting document has been requested not later than two (2) working days after publication of the announcement of the Procurement Procedure.

5.2 Assessing Suitability Requirements

The Tenderer must, at the time of Tendering, possess a certain minimum level of expertise and ability to perform the contract: the Suitability Requirements.

The Tenderer will be assessed on the Suitability Requirements. If the Tenderer relies on the suitability of a Third Party or Parties as referred to in Section 2.2.10 of the Procurement Guide, TNO will assess whether the Third Party or Parties meets the specified Suitability Requirements, for which the Tenderer relies on said Third Party or Parties.

The Suitability Requirements refer to the required financial and economic standing, technical and professional ability and professional competence that the Tenderer must meet to be eligible to submit a Tender.

The Tenderer must meet all the Suitability Requirements at the time when the Tender is submitted. If the Tenderer fails to meet all the Suitability Requirements, with or without relying on one or more Third Parties, the Tender will be invalid.

If tendering in Combination, the Combination all together must meet the Suitability Requirements and in principle not all the individual Combination members. However, this may be different for a specific Suitability Requirement.

5.2.1 Financial and economic standing

The Tenderer shall maintain valid insurance coverage for both business liability and professional liability, with a minimum coverage amount of €1,250,000 per occurrence or series of related occurrences, and an annual aggregate limit of no less than €2,500,000. In the absence of such coverage at the time of Tender submission, the Tenderer shall demonstrate the ability and express the willingness to procure the required insurance coverage upon receipt of a notice of Intention to Award. The Tenderer is responsible for ensuring that, if awarded Contract, it remains insured at least in accordance with this requirement during the term of the Contract. The Contractor will inform TNO without delay of any changes to the insurance policies. If the Contractor's insurance does not or no longer meets this Suitability Requirement during the term, TNO will be entitled to dissolve the Contract without notice of default or judicial intervention and without being liable to pay compensation to the Contractor.

Ticking the "yes" box in Part IV of the Tenderer's ESPD (Annex **A01**) will suffice in the first instance as evidence that the Tenderer meets this requirement.

At TNO's request, the Tenderer whose Tender was ranked first will provide the evidence of insurance within the set timeframe as referred to in Section 7.1. This supporting document comprises a policy showing the required insurance cover, the insurance contract, the policy schedule or a satisfactory declaration from the insurance company showing that the Tenderer is insured as required in the Procurement Documents. If a group policy is submitted, the Tenderer must supply a copy thereof to demonstrate that it is jointly insured.

If the Tenderer does not (or not yet) have the insurance company's policy or satisfactory declaration in its possession within the set timeframe, it should sign a Declaration of Readiness instead (Annex **B03**). By signing this declaration, the Tenderer declares that it will provide a copy of the policy or of a satisfactory statement by the insurance company within seven (7) calendar days after the notification by TNO that it intends to enter into the Contract with the Tenderer under the suspensive condition of the required insurance, based on the assessment of the supporting and other documents already submitted (see Sections 7.1 and 7.2). Said notification will be issued by TNO only after the standstill period has expired without summary proceedings being instituted or – where summary proceedings have been instituted – the relevant judgment states that the Award Decision can be upheld. The Contract is not entered into until such time as evidence of the Tenderer being adequately insured has been received. If the Tenderer is unable to provide the required insurance policy or a satisfactory declaration from the insurance company within the set timeframe, the Contract will not be concluded and TNO will retain the right to award the Contract to the Tenderer which would be ranked in first place after the number one was eliminated in accordance with the assessment system, and which has stood by its Tender.

5.2.2 Technical competence

Competence requirements state the degree to which Tenderers may be considered capable of performing the actual activities under the present Contract as required.

The Tenderer should demonstrate experience in the required core competences by providing details of reference projects. The Tenderer should cite one reference project for each core competence. The Tenderer may cite the same reference project to fulfil the different core competences.

As evidence that the Tenderer has experience in the core competences listed below, the Tenderer shall cite the required reference projects immediately upon submission of the Tender. To this end, the Tenderer should submit a fully completed Annex **A02** for each core competency. If the Tenderer uses one reference for multiple core competences, then a completed Annex **A02** must be submitted for each core competence. The completed Annex **A02** must show that the reference project cited fulfils all aspects of the core competence. Additions or amendments to the details in Annex **A02** are not permitted after the expiry of the Tender date.

If the Tenderer relies on the technical and professional competence of a Third Party or Parties, the Tenderer shall submit for each core competence for which it relies on the relevant Third Party or Parties an Annex **A02** fully completed by said Third Party or Parties.

If a project is cited that has not yet been (fully) completed, only the actual results achieved may be stated and a forecast of results is not sufficient.

TNO has identified the following core competences that correspond to the desired experience in key areas of the present Tender.

Core Competence 1: The Tenderer possesses demonstrated experience in delivering fully automated e-beam evaporator systems used for 6" wafers at an industrial production scale.

Reference project: The Tenderer must have delivered a project demonstrating Core Competence 1 within the past three years from the date of Announcement of this Procurement Procedure, and whose contract value was at least € 600,000 excluding VAT. The project should have been delivered in accordance with the conditions agreed at the time, including the completion date and budget.

Core Competence 2: The Tenderer has demonstrated expertise in fabricating evaporator tools that can handle InP and/or other compound semiconductor materials at an industrial production scale.

Reference project: The Tenderer must have delivered a project that fulfils Core Competence 2 within the past three years from the date of Announcement of this Procurement Procedure. The project should have been delivered in accordance with the conditions agreed at the time, including the completion date and budget.

Core Competence 3 - The Tenderer has demonstrated the capability to develop and implement standardised cleaning and maintenance schedules applicable during high-volume production of photonics devices, ensuring strict adherence to tight product specifications and maintaining high uniformity at intra-wafer, wafer-to-wafer, and run-to-run levels.

Reference project: The Tenderer must have delivered a project that fulfils Core Competence 3 within the past three years from the date of Announcement of this Procurement Procedure.

TNO reserves the right to check references with the referee without involving the Tenderer. TNO assumes that the Tenderer has informed the referees accordingly. The information obtained by TNO from the referent will be taken into consideration in the assessment of the Tender.

If the Tenderer has not demonstrated in his Tender that he has the required experience in all the core competences, this will result in the Tender being rendered invalid.

5.2.3 Professional competence

By completing the ESPD (Annex A01) and ticking the "yes" box in Part IV, the Tenderer declares that it is registered in the professional or trade register in accordance with the regulations of the Member State in which it is based.

At TNO's request, the Tenderer to which TNO intends to award the Contract within the period specified in Section 7.1 of the Procurement Guide will provide relevant evidence:

- for enterprises based in the Netherlands, an extract from the trade register of the Chamber of Commerce must be submitted, which is not more than six months old at the time of submission of the Tender. For enterprises based outside the Netherlands, a similar document should be appended in accordance with the applicable regulations of the relevant country in which the enterprise is based;
- where the Tenderer is a partnership or general partnership, the Tenderer shall submit the extracts of those that form the partnership/general partnership (if recorded in the trade register) as well as a declaration signed by all the partners showing the power of representation for the purposes of this Tender;
- where the Tenderer is a Combination, the Tenderer shall submit extracts from all participants in that Combination, and;
- where the Tenderer submits a Tender relying on the standing/capacity/experience of one or more Third Parties, the Tenderer shall submit extracts from all Third Parties or subcontractors.

5.2.4 Legal suitability to perform an assignment

On 8 April 2022, the EU adopted a fifth sanctions package regarding the Russian war in Ukraine (Council Regulation 2022/576). This reference includes all prior and future sanctions packages adopted by the EU in this context, which shall be considered equally applicable. In that package, contracting authorities are prohibited from granting assignments to (1) natural persons with Russian nationality or legal entities established in Russia, (2) legal entities that are owned for 50% or more by one of the natural persons or legal entities referred to under (1), and/or (3) natural persons or legal entities acting in the interests or on the instructions of a natural person or legal entity referred to under (1).

TNO applies the above requirements as a suitability condition for this Procurement Procedure. A Tenderer will be legally unsuitable to perform the assignment (Section 2.90(4) of the Dutch Public Procurement Act (*Aanbestedingswet*)), and its Tender will be invalid, if:

- 1) the natural persons have Russian nationality, or the legal entities are domiciled in Russia; and/or
- 2) they are legal entities that are owned for 50% or more by natural persons or legal entities referred to under (1); and/or
- 3) they are natural persons or legal entities acting in the interests or on the instructions of a natural person or legal entity referred to under (1).

The Tenderer must therefore demonstrate in its Tender that:

- 1) the Tenderer does not have Russian nationality and/or is not domiciled in Russia; and
- 2) the Tenderer is not owned for 50% or more by a natural or legal person referred to under (1); and
- 3) the Tenderer is not acting in the interests or on the instructions of a natural or legal person referred to under (1), including the payment of monies to a natural or legal person referred to under (1), whether or not it is legally obliged to do so and whether or not it is actually possible at present.

If one or more of the above three (3) requirements cannot be demonstrated, the Tender will be invalid.

Where the Tenderer tenders in Combination, this requirement shall apply to all the individual Combination members. Where the Tenderer relies on the standing/resources/experience of one or more Third Parties, this requirement shall also apply to the Third Parties on whose standing/resources/experience the Tenderer relies. If the Tenderer wishes to use one or more subcontractors during the performance of the Contract, the Contractor will have to demonstrate – for that subcontractor – that it meets this requirement at the time a subcontractor is presented to TNO for approval.

Ticking the "yes" box in Part IV of the Tenderer's ESPD (Annex **A01**) will suffice in the first instance as evidence that the Tenderer meets this requirement.

To this end, the Tenderer to which TNO intends to award the Contract within the set timeframe as referred to in Section 7.1, shall provide the means of proof relating to this Suitability Requirement. This concerns the following documents:

- a) a recent (not older than six (6) months from date of Tender) extract from the trade register reflecting the most recent state of affairs; and
- b) an up-to-date report on the holding structure (where the Tenderer is part of a holding structure) showing the direct and indirect ownership relationships of the Tenderer; and
- c) a copy of the Tenderer's current articles of association.

In addition, the Tenderer shall declare categorically not to supply products - including semi-finished and finished products - listed in Annex XVII of the European Commission Regulation (EC) No 833/2014 on Russia Sanctions. When supplying products covered by this Annex XVII, the Tenderer shall provide as proof a Mill Test Certificate (MTC), or similar certificate such that it meets the requirements and obligations to establish the country of origin.

The Tenderer must continue to meet the Suitability Requirement. TNO will be entitled to verify this during the term of the Contract. If it becomes apparent during the term of the Contract that the Contractor does not meet – or no longer meets – the Suitability Requirement, TNO will be entitled to terminate the Contract with immediate effect, without being liable to pay damages to the Contractor and without the necessity of a notice of default or judicial intervention.

5.2.5 Exclusion of Economic Operators from Non-GPA or Non-Equivalent Trade Agreement Countries

TNO reserves the right to exclude Tenders submitted by economic operators established in third countries that are not parties to the WTO Government Procurement Agreement (GPA) or to an equivalent trade agreement with the European Union. This exclusion is based on a risk assessment concerning national security and strategic autonomy.

Economic operators that are subject to influence by states or governments pursuing political or strategic objectives that diverge from those of the Netherlands—where such influence constitutes a credible risk—shall likewise be deemed ineligible for contract award. The assessment will be conducted based on, among other things, the extract from the commercial register or an equivalent national register to be submitted by the Tenderer.

6 Contract Award

6.1 Award criterion

TNO ranks the Tenders based on the Award Criterion: Total Lowest Price (equipment and maintenance & services contract). This award criterion follows from the fact that the equipment is accurately specified in Annex 04 (a, b and c). Hence, there are no quality criteria relevant to TNO by which Tenderers can distinguish themselves.

The decision to award the contract based on the criterion of 'lowest price' is driven by the nature of the assignment, which does not allow for qualitative differentiation between bids. The assignment is sufficiently defined by minimum, objectively verifiable requirements. Quality is therefore safeguarded through these requirements and contractual provisions. In this context, TNO considers the use of the lowest price as an award criterion to be proportionate, transparent, and efficient.

If the prices are equal, a draw will be held among the Tenderers with equal prices which are eligible for award. The protocol for the draw, if any, will be shared with the Tenderers among which lots will be drawn.

If, after the provisional award, the Tenderer with the lowest price nevertheless proves to be invalid/is excluded from the procedure, the Tenders will be reassessed on the basis of the lowest price Criterion. TNO will award the Contract again based on this reassessment.

To determine the award criterion: TP (Total Lowest Price), TNO asks the Tenderer to use the Price Sheet prepared by TNO (in MS Excel) according to Annex **A03** for its price proposal. This Price Sheet should be completed and appended to the Tender. The Tenderer should strictly follow the outline of the Price Sheet and complete it in full. If the Price Sheet has not been submitted in full and/or correctly or at all, TNO will declare the Tender invalid and exclude it from further participation in the Procurement Procedure. Changing the format and layout of the Price Sheet (Annex **A03**) will also invalidate the Tender.

A summary of pricing items is given below:

Criterion
Price TP 1 – equipment, this includes: - Two-year warranty including maintenance and services; - (Critical) Design review; - Factory Acceptance Test (FAT); - Site Acceptance Test (SAT); - Installation on site; - Delivery according to Incoterms®2020 Delivered Duty Paid (DDP) (location: TNO Eindhoven, the Netherlands).
Price TP 2 – Maintenance/Services A one-year contract for maintenance and services, commencing after the initial two-year contractual period and subsequently renewable on an annual basis for a maximum total duration of three years. The scope of this Maintenance and Services contract also applies to the warrant period.

Total TP = TP1 + TP2

When completing the Price Sheet, the following Minimum Requirements apply:

- 1) Prices and expenses should be stated in euros excluding VAT, and to two (2) decimal places;
- 2) The prices/rates listed in the Price Sheet are all-inclusive. This means that all the costs/services/obligations/etc. required for the performance of the Contract in accordance with the contract terms have been factored into the prices and rates. During the performance of the Contract, the Contractor shall not be entitled to any other and/or additional remuneration other than that in accordance with the Price Sheet;
- 3) The Price Sheet should include a price proposal on all the required items. The Tenderer shall use the Price Sheet prepared by TNO unchanged;
- 4) The Tenderer is solely responsible for stating figures and adding them correctly;
- 5) The prices quoted by the Tenderer should be based on the Procurement Documents without reservations of any kind;
- 6) Specific Minimum Requirements or additional instructions relating to the Price Sheet are included in the "additional instructions" tab and are accepted by the Tenderer reservations of any kind;
- 7) The prices and rates quoted in the Tender shall apply in the event of final award on commencement of the Contract and shall be fixed for the first two years of the Contract. Two months prior to the expiration of this Contract, TNO will receive a proposal for a new Maintenance and Services Contract, based on the same terms and conditions. Pricing will be determined in accordance with the rates specified in TP2, with TNO accepting the applicable and prevailing indexation at that time;

The value of the lowest TP (Total Price) is determined based on the cumulative costs in the Price Sheet defined by TNO.

6.2 Award Conditions

The following conditions shall be met under penalty of exclusion from this tendering procedure:

- The Total Lowest Price does not exceed the estimated contract value as indicated in TenderNed;
- The Price (TP2) of the Maintenance and Services contract for one year, shall not exceed 4% of the purchasing value of the equipment (TP1);
- The price for maintenance and services (TP2) may be indexed once the contract becomes effective following the expiration of the warranty period. For this purpose, it is recommended to use the Services Price Index (DPI) published by Statistics Netherlands (Centraal Bureau voor de Statistiek - CBS). In case the DPI is no longer published or significantly revised, a comparable index from CBS may be applied.
- Chips JU's approval of the Tender in question.

6.3 Notification of the Award Decision

All Tenderers will receive from TNO, expectedly on the date referred to in the schedule under Section 2.1, the notification of the result of the assessment of the Tenders and the intended Award Decision.

In this notification of the Award Decision, TNO will indicate the Tenderer to which it intends to award the Contract, as well as, for unsuccessful Tenderers, reasons for their rejection.

6.4 Challenge

If a Tenderer disagrees with the Intention to Award as notified by TNO, it will be given the opportunity to challenge the Intention to Award within twenty (20) calendar days after the date of publication of the Intention to Award in the manner described in Section 2.4 of the Procurement Guide.

6.5 Final award

Once the standstill period has expired without summary proceedings having been instituted or, if summary proceedings have been instituted in a timely manner, the judgment in first instance does not oppose final award, TNO will contact the successful Tenderer as soon as possible to proceed with the award, except where a situation exists in which summary proceedings have been instituted in a timely manner. No final award will be made until the Contract has been validly signed by both Parties. If this is not the case, there is no question of TNO being bound in any way.

6.5.1 Kick-off meeting

TNO may intend to hold a kick-off meeting before the final Contract is awarded. The Kick-off meeting objective is to cross-check and clarify (if any need) the Contractor proposed design including the complete set of compliance against customer applicable documentation at the issue that is relevant for the Contract/kick off.

6.5.2 Digital Signature of Contract

To this end, TNO signs its Contracts using a so-called advanced digital signature tool, known as ValidSign. **On receipt of the provisional award, the Tenderer is requested to provide the e-mail address and personal mobile phone number of the organisation's authorised signatory.** The telephone number is needed to make the Contract legally binding (using SMS authentication).

On receipt of the final award, the Tenderer receives an e-mail containing a link to the documents to be digitally signed and clicks on "sign the documents" and is automatically redirected to ValidSign where the signature fields are visible. To sign, the Tenderer clicks "click to sign" and then "confirm". Once the documents have been digitally signed by the Tenderer and TNO, the Tenderer can download the digitally signed documents within a timeframe of thirty (30) days.

6.5.3 Progress meetings

After the Contract award, the Tenderer is required to participate in regular progress meetings. These meetings shall be held on a weekly or biweekly basis. The purpose of these progress meetings is to ensure effective communication, monitor the progress of the Contract, address any issues or concerns, and deadlines are being met. Each progress meeting shall include, but is not limited to, the following agenda items:

- Review of the status
- Discussion of completed and upcoming tasks
- Identification and resolution of any issues or risks
- Review of timelines and milestones
- Any other relevant topics as agreed upon by both parties

The Tenderer must ensure that key personnel, including the project manager and relevant team members, attend these meetings. TNO will also designate representatives to attend the meetings.

Minutes of each meeting shall be recorded and shared with all attendees within 48 hours. These minutes should include a summary of discussions, decisions made, action items, and deadlines. The frequency and format of the progress meetings may be adjusted based on mutual consent between TNO and the Tenderer, depending on the Contract's needs and progress.

7 Assessment of supporting and other documents from intended beneficiary

7.1 Requesting supporting and other documents from intended beneficiary

The Tenderer to which TNO intends to award the Contract must submit the supporting documents for the ESPD and any other documents and/or data within seven (7) calendar days after the date of TNO's request.

The following supporting documents must be supplied to TNO by the Tenderer to which TNO intends to award the Contract within seven (7) calendar days after the date of the request:

- Certificate of Conduct for Procurement (not more than two years old as at the date for submission of the Tender): The Tenderer, where applicable: all individual Combination members; all individual Third Parties;
- Declaration of Payment Behaviour from the Dutch Tax and Customs Administration (not more than six months old as at the date for submission of the Tender): The Tenderer, where applicable: all individual Combination members; all individual Third Parties;
- Extract from trade register (not more than six months old as at the date for submission of the Tender): The Tenderer, where applicable: all individual Combination members; all individual Third Parties;
- ISO 9001 Certification or similar measures;
- ISO 14001 Certification or similar measures;
- Insurance policy or Declaration of Readiness as to insurance (Annex **B03**);
- If applicable: Declaration as to Reliance on Financial and Economic Standing of Third Party or Parties (Annex **B01**);
- If applicable: Declaration as to Reliance on Technical and Professional Competence of Third Party or Parties (Annex **B02**).

Certificate of Conduct

The Certificate of Conduct (GVA; Dutch: Gedragsverklaring Aanbesteden) is a statement from the Minister of Security and Justice. The GVA indicates that an investigation into the natural or legal person concerned has not resulted in any objections in connection with the application and tendering for public contracts, special sector contracts, concession agreements for public works and/or services or competitions. After a provisional award, the provisionally awarded Tenderer(s) must submit a valid GVA as proof that the grounds for exclusion do not apply to them.

TNO will request the intended beneficiary to submit the supporting documents. TNO will assess the following aspects of these documents:

- ascertain whether supporting documents submitted by Tenderer are submitted in a timely manner
- assess whether all the supporting documents requested by TNO have been submitted and whether the supporting documents received are complete. The absence of all or part(s) of supporting documents and/or other data will result in exclusion if there is no rectifiable omission. Depending on the nature of any deficiency, TNO will assess whether, because of that deficiency in the supporting documents, the Tender is invalid after all and will be disregarded, or whether the deficiency is amenable to rectification. The offer of rectification is a discretionary power of TNO and not a (legally enforceable) obligation.
- assess whether the Tenderer demonstrates through the supporting documents submitted that it complies with what it has declared through its Tender.

If the supporting documents are not, not completely and/or not timely received, or if the supporting documents show that the information in the Tender is incorrect, the Tenderer will be excluded after all/the Tender will be disregarded after all. The Contract will be provisionally awarded to the Tenderer with the then applicable lowest price.

TNO is also entitled to verify the Tender from the Tenderer to which it intends to award the Contract. If this verification shows that the Tender contains inaccuracies or cannot be fulfilled, the Tenderer will be excluded after all/the Tender will be disregarded after all. The Contract will be provisionally awarded to the Tenderer with the then applicable lowest price.

7.2 Contract subject to condition precedent

If the Tenderer is unable to provide a copy of the policy, nor a satisfactory statement from the insurance company, within the timeframe referred to in the previous section, but has signed the Declaration of Readiness in accordance with Annex **B03** then TNO will notify the Tenderer after a positive outcome of the assessment of the other (supporting) documents and after the standstill period has expired without summary proceedings having been instituted or – where summary proceedings have been instituted within the standstill period – the relevant judgement shows that the Award Decision can be upheld, that TNO will enter into the Contract with the Tenderer subject to a condition precedent. This condition precedent implies that the Contract will only actually be entered into if, after a timeframe of seven (7) calendar days (see Section 7.1), the Tenderer provides TNO with a copy of the required insurance policy or a satisfactory statement from the insurance company showing that the Tenderer is insured as required in the Procurement Documents. The Contract will not be entered into until after receipt of either document.

If the Tenderer is unable to provide the required insurance policy or a satisfactory statement from the insurance company within the set timeframe, the Contract will not come to fruition and TNO will retain the right to award the Contract to the Tenderer which would be ranked in first place after the number one which was eliminated in accordance with the assessment system.

8 Programme of Requirements

TNO assesses the Tenders against the Programme of Minimum Requirements and performance Requirements (PoR).

The Minimum Requirements must be met on penalty of invalidity at the time of submission of the Tender, performance Requirements must be met at the time of performance of the Contract TNO has the right, but not the (legally enforceable) duty, to ask for clarification as regards meeting the Minimum Requirements and how the Tenderer expects to meet the Minimum Requirements.

The PoR also contains open questions where the Contract Authority is interested in.

Any changes to the PoR that may occur during the performance of the Contract will be implemented in accordance with the conditions of the Contract. In this regard, TNO will ensure that no material amendment will be made to the Contract.

The objective and scope of the Contract (including this PoR) as well as a description of the current conditions have been described in Section 1.

Underneath follows an explanation of abbreviations, used in column D of Annex **A04**.

Definitions validation method

Test (T)	The operation of the system, or part of the system, using instrumentation or other special test equipment to collect data for later evaluation.
Demonstration (D)	The operation of the system, or a part of the system that relies on observable functions, does not require the use of the instrumentation, special test equipment, or subsequent analysis.
Analysis (A)	The processing of accumulated data obtained from other qualification methods. Examples are reduction, interpolation, or extrapolation of test results.
Inspection (I)	The visual examination of system components, documentation, etc.
Certification (C)	A declaration by a designated stakeholder, usually the Contractor or developer.
Review (R)	Detailed review of the specification received from the Contractor or developer on the (sub-)system.

Moment of validation

Tender Documentation (TD) Minimum requirements	Compliance to requirements should lead from documentation submitted as part of the Tender.
Customer Demo (CD) Minimum requirements	Compliance to requirement should be confirmed during Customer Demonstration at Tenderer's site (or other site where similar system is installed and accessible) after all documentation has been submitted.
FAT Performance Requirements	Compliance to requirement should be confirmed at Factory Acceptance Test*
SAT Performance Requirements	Compliance to requirement should be confirmed at Site Acceptance Test*

Notes:

- A blank cel in column D of Annex **A04** means that there is currently no reason to validate the requirement;
- * The moment (FAT or SAT) may be discussed at the Critical Design Review.

9 List of Annexes

All the Annexes appended to the Procurement Documents are published with the Procurement Guide at www.TenderNed.nl.

The Annexes are divided into three (3) main groups, namely:

A) Submission of Tender:

- Annex A01** The Tenderer's ESPD, "European Single Procurement Document" (ESPD)
 - *If applicable, this format should be multiplied in proportion to the number individual Combination members; the individual Third Party or for the benefit of one or more subcontractors to be used for the work).*
- Annex A02** Format for Reference Projects
- Annex A03** Format for Price Sheet
- Annex A04** Program of Requirements and informative questions
- Annex A05** Maintenance / Services Contract

B) Submission of supporting documents:

- Annex B01** Format for Declaration as to Reliance on Financial and Economic Standing of Third Party or Parties
- Annex B02** Format for Declaration as to Reliance on Technical and Professional Competence of Third Party or Parties
- Annex B03** Format for Statement of Policy/Declaration as to Insurance

C) Additional information:

- Annex C01** Standard Template for Tenderer Questions
- Annex C02** Draft Contract
- Annex C03** Purchasing Conditions for Goods TNO, February 2022.
- Annex C04** TNO Definition of maintenance and services

Additional note on Section 2.2.2 Formats

Some of these Annexes are accessible in "editable" MS Excel or MS Word versions. This is with the aim of simplifying the preparation of a Tender by the Tenderer and therefore also forms the basis for the assessment procedure as described in Section 3. Some documents may be, partially, secured to prevent inadvertent and unintentional changes being made to the documents and texts (including format texts).

Changes to the formats are not permitted. The premise for these documents is that the text (including format text) as contained in the Procurement Guide and published on www.TenderNed.nl will always be the authoritative text.