

Procedure and Participation Conditions

Tolling Agreement for Battery Storage, Energiepark Meerstad Noord



Procedure offering room for competition; not a public procurement procedure

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Reading guide and relationship to the other documents

This document sets out the legal framework of the procedure by which Batterij Meerstad Noord B.V. selects a toller for the battery storage at Energiepark Meerstad Noord. It is supplementary to, and does not replace, the other documents of the procedure:

- the Announcement, in which EBG publicly announces its intention and which sets out the conditions for participation, the award criteria and the outline planning;
- the Request for Proposal BESS Tolling, which contains the project information, the requested proposal, the mandatory reference case and the prescribed bid format;
- the Tolling Agreement Assessment, the evaluation matrix in which each main theme is broken down into sub-criteria, each with its own weighting and scoring scale;

In the event of any inconsistency between this document and the Request for Proposal, this document prevails for the procedural and legal aspects, and the Request for Proposal prevails for the project information and the bid format.

The tolling agreement will be concluded between Batterij Meerstad Noord B.V. (Chamber of Commerce no. 94449856) and the selected toller. Where this document refers to EBG, that company is meant.

This procedure is conducted via TenderNed. The procedure is made public by means of a publication on TenderNed. Interested parties can request the Request for Proposal by sending the signed NDA via a TenderNed message. The interested party will then receive the RfP and must submit the documents requested in chapters 2 and 3.

1. Nature and principles of the procedure

1.1 Not a public procurement procedure

Entering into a tolling agreement is not a purchase of works, supplies or services by EBG. Under a tolling structure, the counterparty pays EBG and bears the market risk. There is therefore no public contract within the meaning of Article 1.1 of the Dutch Public Procurement Act 2012 (Aanbestedingswet 2012), nor a concession contract. Consequently, this procedure is not a public procurement procedure and the principles of public procurement law do not apply to it.

1.2 Application of the Didam principles

The tolling right is, however, an exclusive and economically valuable right for which several serious candidates can be expected in the market. In the Didam judgments, the Supreme Court of the Netherlands (Hoge Raad) held that a public body, when entering into private-law agreements, is bound by the general principles of good administration, including the principle of equality, and must provide room for competition where there are, or can be expected to be, several serious candidates (HR 26 November 2021, ECLI:NL:HR:2021:1778, and HR 15 November 2024, ECLI:NL:HR:2024:1661). Those judgments concerned the sale of real estate.

EBG applies these principles by analogy. The starting point is that the selection criteria, their relative weighting and the method of evaluation are determined and recorded before the call starts and are not changed during the process, so that EBG can afterwards account, in a reasoned and reconstructable manner, for why the contract was awarded to a particular party. In addition, EBG publishes an appropriate announcement in advance, so that potential candidates can take note of the procedure and register their interest.

The application of these principles does not imply that EBG submits to any statutory procedural regime or that the Dutch Public Procurement Act 2012 applies to this procedure.

Outline of the procedure:

1. Registration by the candidate via TenderNed.
2. After receipt of the registration and a validly signed non-disclosure agreement (NDA), the candidate receives via TenderNed the relevant documentation for preparing a proposal. In addition, the Supplier Code of Conduct and the Statement on Compliance and Sanctions must be validly signed before admission to the Request for Proposal (RfP) is granted. As long as one or more of these documents have not been received validly signed, the candidate will not be admitted to the next phase of the procedure.
3. The proposals submitted are evaluated on the basis of the evaluation criteria described in chapter 3 (longlist).
4. The process continues towards a binding offer with the three highest-ranked bidders (shortlist).

Award and contracting take place with the bidder that submitted the best-rated offer

1.3 Market conformity

A public procedure in which the fee is established through competition also helps to ensure that the agreed fee is in line with the market. This is important in view of State aid law and the rules of conduct for public authorities that carry out economic activities.

Prior to the binding bid round, EBG determines a minimum fee. This minimum fee is not disclosed and is recorded in a document dated before the opening of the bids. A bid below the minimum fee will not be included in the evaluation and will result in exclusion from further participation. If no bid reaches the minimum fee, EBG may decide not to proceed to contracting.

2. Participation in the procedure

2.1 Who may participate

Parties that express their interest in response to the announcement and that meet the conditions for participation set out in this chapter will be admitted to the Request for Proposal. In addition, EBG identifies, on the basis of public information and market knowledge, which parties are active in the tolling and offtake market. This inventory is strictly internal and serves to ensure that no serious candidate is overlooked; it does not determine access to the procedure.

2.2 Conditions for participation

A party is eligible to participate only if it meets all of the conditions below. These conditions are objectively verifiable and are applied equally to all parties. A party that does not meet one or more of these conditions is eliminated without further substantive evaluation. The list was established before the Request for Proposal was sent; it cannot be supplemented or amended thereafter.

- The party offers a fixed fee (fixed toll) or at least a structure with a minimum fee (floor). An offer based solely on exposure to the market price does not fit EBG's financing profile.
- The party has demonstrably participated in the imbalance, congestion or flexibility markets in the Netherlands or in another Member State of the European Union for at least twelve (12) consecutive months.
- The party has a demonstrable track record in battery storage, consisting of at least one operational or contracted battery project with a cumulative capacity of at least 50 MW.
- The party has sufficient financial capacity and is able to provide acceptable payment security, such as a parent company guarantee, bank guarantee, letter of credit or a comparable instrument. In addition, it has an appropriate credit rating or otherwise demonstrates that it can meet its financial obligations.
- The party and the companies belonging to its group are free from integrity and reputational risks. This means that they are not listed on a sanctions list of the European Union or the United Nations, that no final sanction has been imposed on them and no proceedings are pending against them for fraud, corruption, cartel formation, sanctions violations, or human rights or environmental violations, and that there is no substantial negative publicity on such matters that the party cannot adequately refute. In view of EBG's public anchoring and the involvement of the Municipality of Groningen, this applies as a condition for participation and not as a weighting factor.
- The party is able to contract within the required timeline, with a view to the intended financial close.

2.3 Documents to be signed

Participation in the Request for Proposal is only possible after signing the following documents:

- a non-disclosure agreement;
- EBG's Supplier Code of Conduct;



In addition, the party must demonstrate that it complies with the relevant standards in the field of quality, information security and compliance, including at least the certifications and standards below, where applicable.

Quality management system:

ISO 9001 or equivalent, it being the responsibility of the party relying on equivalence to demonstrate such equivalence.

Data security:

Managed and maintained in accordance with security measures in line with ISO/IEC 27001, IEC 62443, the requirements arising from NIS2 and any subsequent laws and regulations, insofar as relevant to the obligations of the Toller.

Information security and security of operational technology (OT):

The candidate has and maintains a management system for information and OT security that is set up in accordance with the principles of ISO/IEC 27001 and IEC 62443 and is appropriate for compliance with the obligations incumbent on the candidate under NIS2 and any subsequent laws and regulations.

The non-disclosure agreement is signed before EBG provides project information, i.e. immediately after the expression of interest. The Supplier Code of Conduct and the Statement on Compliance and Sanctions are signed prior to admission to the Request for Proposal. As long as any of these documents has not been received validly signed, the party will not be admitted to the next step.

2.4 Evidence and verification

Upon registration, the party declares, by signature of an authorised representative, that it meets the conditions for participation. At EBG's request (via a TenderNed message), it shall submit the underlying supporting documents within seven (7) calendar days of that request. These include in any event:

- an extract from the trade register or a comparable register, not older than six (6) months at the time of submission;
- the annual accounts for the last three (3) financial years or, if the party is part of a group, the consolidated annual accounts of that group, and the most recent auditor's report;
- a current credit rating of the party or of the intended provider of the security or, in the absence thereof, substantiation showing that the financial obligations can be met;
- a letter of intent from the intended provider of the security, stating the nature and amount of the security to be provided;
- an overview of the battery projects on which the track record is based, stating for each project the power in MW, the storage capacity in MWh, the status (operational or contracted), the period of involvement and the role of the party;
- substantiation of participation in the imbalance, congestion or flexibility markets for at least twelve (12) months, stating the markets concerned, the period and the country, and of recognition as a balance responsible party (BRP) or the manner in which access to a balance responsible party has been arranged;
- a declaration of integrity, including confirmation that the party and the companies belonging to its group are not listed on a sanctions list of the European Union or the United Nations and that no final sanction or pending proceedings exist as referred to in the conditions for participation;



EBG is entitled to verify the information provided, including by making enquiries with the clients or contracting parties specified and with the provider of the security. EBG may request clarification or completion of minor or subordinate missing, incomplete or unclear information. If the requested evidence is not provided within the set period, or if it appears that the party does not meet a condition for participation, it will be excluded from further participation.

3. Evaluation and award

3.1 Award criteria and weighting

The substantive evaluation of the proposals is based on six main themes. The weighting is binding and will be communicated to the participating parties together with the Request for Proposal.

Your proposal consists of 10 chapters, using a maximum of one (1) A4 page per chapter, structured according to the criteria in the Excel document entitled 'Tolling Agreement Strategic Assessment':

1. Guaranteed Revenue Offer
2. Profit-Sharing Mechanism
3. Net Present Value (NPV) of Expected Revenues
4. Revenue Optimization Capability
5. Operational Track Record
6. Reporting and Transparency
7. Contract Term Alignment
8. Compatibility with Financing Requirements
9. Compatibility with Other Project Agreements
10. Grid Fees, Energy Taxes & Capacity Restriction Treatment

3.2 Evaluation process

The proposals are evaluated by an evaluation committee consisting of three members with the following roles: Project manager, Legal counsel, Financial specialist

The committee is chaired by the procurement advisor, who has no vote in the evaluation.

The evaluation proceeds as follows. The committee first establishes whether the conditions for participation have been met. Each member then evaluates the proposals individually, per sub-criterion of the evaluation matrix, using the scoring scale in the Excel document entitled 'Tolling Agreement Strategic Assessment'. If any part of the bid does not comply or is rated as insufficient, the bid will not be eligible for award. The committee then meets, discusses the individual evaluations and reaches a joint final assessment per sub-criterion. Members may adjust their individual ratings on the basis of that discussion. If any part of the bid does not comply or is rated as insufficient, the bid will not be eligible for award.

The final assessment is recorded in writing per sub-criterion and accompanied by a brief rationale. A ranking of the proposals is drawn up on the basis of the weighted total scores. On the basis of this ranking, the shortlist is compiled in accordance with section 4.2. The record per sub-criterion forms the basis for the award decision and enables EBG to account afterwards, in a reasoned and reconstructable manner, for why the contract was awarded to a particular party.

The outcome of this first evaluation round and the clarification round with the shortlisted parties proceed as described in section 4.2.

After the clarification round, the shortlisted parties submit their binding offer. A party may improve its offer once at that stage. An improvement may not be less favourable to EBG than the original offer in any respect. If any part of the binding offer is nevertheless less favourable, EBG will evaluate that part on the basis of the original offer and the party remains bound by that original part. A party that does not submit a binding offer within the set period will no longer participate in the procedure.

The binding offers are evaluated by the same evaluation committee, in the same manner and using the same evaluation matrix as in the first round. The final assessment is again recorded in writing and substantiated per sub-criterion, resulting in a final ranking of the binding offers.

The party with the highest weighted total score is eligible for award. On the basis of the final ranking, EBG takes an intended award decision and communicates it in accordance with section 4.4. Once the award decision has become final, EBG designates that party as the preferred party and the exclusivity period commences, as described in section 4.3.

3.3 Tied final scores

If, after completion of the evaluation, two or more parties achieve the same weighted total score and this affects the ranking, the party with the highest score on the criterion of commercial terms takes precedence. If that score is also equal, the party with the highest score on the criterion of bankability takes precedence.

If those scores are also equal, the ranking will be determined by drawing lots. The draw will be conducted by a civil-law notary or an independent official who has not been involved in the evaluation. The parties concerned will be informed in good time of the time of the draw and may attend.

4. Course of the process

4.1 Phasing

The process comprises the following phases: a proposal round with non-binding bids, a shortlist with a clarification round, a round of binding bids, the designation of a preferred party with exclusivity, and financial close. The planning below is the planning currently envisaged.

Step	Date
Publication of announcement	16 October 2026
Deadline for expressions of interest	not specified
Submission of questions on the RfP	30 October
Registration and non-binding bids	20 November 2026, 16:00
Shortlist and clarification round	November 2026
Notification of shortlist (10 calendar day period)	not specified
Binding bids	22 December 2026
Intended award decision (20 calendar day period)	not specified
Preferred party and exclusivity	January 2027
Financial close	Second quarter of 2027
Commercial operation date of the battery	Fourth quarter of 2028

Table 3: Planning

4.2 Shortlist and clarification round

After receipt of the non-binding bids, EBG evaluates those bids on the basis of the award criteria in chapter 3. A maximum of three parties will be placed on the shortlist, being the parties with the highest weighted total score. If fewer parties meet the conditions for participation, correspondingly fewer parties will be shortlisted.

All parties that have submitted a non-binding bid will be informed simultaneously and in writing whether they have been shortlisted. Each party will receive a reasoned notification stating its own scores and the rationale per sub-criterion. Information on the bids of other parties will not be provided.

A clarification round takes place with the shortlisted parties. In that round, EBG holds a separate meeting with each party in which the feedback on its own bid is explained. The purpose of that round is to resolve any ambiguities in the bids and to establish the basis for the binding bids. Questions and answers relevant to all shortlisted parties are shared with them equally. The clarification round does not lead to any change in the award criteria or their weighting. After the clarification round, the shortlisted parties submit their binding bid in accordance with section 3.3.

4.3 Preferred party and exclusivity

After evaluating the binding bids, EBG designates the party with the highest weighted total score as the preferred party. Exclusive negotiations on the conclusion of the tolling agreement will be conducted with that party for eight (8) weeks after the designation. EBG may extend that period once by [four (4) weeks].

During the exclusivity period, EBG will not negotiate with other parties on the tolling agreement. During that period, the preferred party will cooperate in good faith and expeditiously in concluding the agreement and in the necessary coordination with the financiers. Designation as the preferred party does not oblige EBG to conclude the agreement.

If no agreement is reached within the exclusivity period, including any extension, the exclusivity lapses. In that case, EBG may designate the second-ranked party as the preferred party, on the same terms, or decide not to proceed to contracting.

4.4 Notification of the outcome and legal protection

Notification of the outcome and legal protection proceed in accordance with the following steps.

- Step 1:** Intended award decision. EBG takes an intended award decision and notifies all parties that have submitted a binding bid simultaneously and in writing. The unsuccessful parties receive a reasoned notification stating at least their scores per criterion and the reason why their bid was ranked lower.
- Step 2** Period for legal protection. After the intended award decision has been sent, the unsuccessful parties have twenty (20) calendar days to challenge it by initiating summary proceedings (kort geding). If a party does not object within this period, it loses the right to challenge the intended award decision.
- Step 3** Final award decision. If the period of twenty (20) calendar days has expired without a writ of summons having been received, the intended award decision becomes final and EBG proceeds to designate the preferred party and to the exclusivity period.

The same system applies to the notification of placement on the shortlist, on the understanding that the period for legal protection in that case is also twenty (20) calendar days.

4.5 Questions and information

During the process, there is an opportunity to ask questions. Questions and answers are shared equally with all parties participating in the process.

Questions may only be submitted in writing via the Q&A module.

Questions submitted late will in principle not be answered. Only if EBG considers a question so essential that answering it is relevant to all participating parties will that question still be answered. All questions submitted in time will be answered in anonymised form in a memorandum of information (nota van inlichtingen), which will be provided equally to all participating parties and forms a binding part of the documentation of this procedure. Any changes and additions arising from it prevail over this document.

During this procedure, it is not permitted to communicate about the procedure in any other way with directors, shareholders, employees or advisors of EBG. Acting in breach of this may lead to exclusion from participation.

5. Other provisions

5.1 Confidentiality

The participating party shall treat all documentation and other information provided to it in the context of this procedure as confidential and regard it as secret. It shall make that information available only to its employees and advisors, insofar as necessary for participation in the procedure. This provision applies without prejudice to the separately signed non-disclosure agreement.

5.2 Status of the information provided

The participating party acknowledges that the provision of documentation by EBG does not constitute an offer. The specifications of the battery are provisional; the final specifications are expected in the first quarter of 2027 and will follow from the ongoing BESS tender. The participating party is asked to share its technical and economic view on those specifications, so that maximum synergy can be achieved between the tolling process and the contracting of the battery.

5.3 Cooperation in contract formation

The tolling agreement will be entered into between EBG and the selected toller. The toller is expected to provide timely input on the technical characteristics and performance parameters of the battery, insofar as required for contract formation and optimisation.

5.4 Costs

Any costs incurred by a participating party in connection with this procedure are entirely at its own expense. Participating parties are not entitled to reimbursement of costs or loss of income, not even if EBG suspends or terminates the procedure or does not proceed to contracting.

5.5 Reservations

EBG reserves the right at all times to suspend or terminate the procedure, to amend the planning unilaterally or not to proceed to contracting. In that case, EBG shall in no way be obliged to reimburse any costs incurred or loss of income of participating parties, nor to enter into an agreement or continue negotiations thereon.

5.6 Ambiguities and inconsistencies

If a participating party considers that the documentation of this procedure contains ambiguities, inconsistencies or inaccuracies, or that the method of evaluation is unclear or impermissible, it must report this as soon as possible and in any event before the deadline for submitting questions expires. If it fails to do so, it can no longer invoke this at a later stage.

5.7 Governing law and competent court

This procedure is governed by Dutch law. Disputes arising from it shall be submitted at first instance to the competent court of the District Court of Northern Netherlands (rechtbank Noord-Nederland), Groningen location.

5.8 Language

The announcement is published in English. This document and the Request for Proposal are provided in English. Proposals and accompanying documents may be submitted in Dutch or in English. Evidence drawn up in another language must be accompanied by a translation into Dutch or English.