

EUROPEAN TENDER PROCEDURE
SUPPLY OF EMU ROLLING STOCK FOR THE NETHERLANDS
14 DECEMBER 2014

Selection Guidelines

TABLE OF CONTENTS

Nr	Title	Page
1.	INTRODUCTION.....	2
1.1.	General.....	2
1.2.	Contracting Authority	2
1.3.	Background	2
1.4.	Procedure	3
1.5.	Questions/additional information.....	3
1.6.	Timeline	4
2.	REQUEST FOR PARTICIPATION	4
2.1.	Time and location for submitting Requests for Participation.....	4
2.2.	Contents of the Request for Participation	5
2.3.	Language.....	5
3.	EVALUATION OF THE REQUESTS FOR PARTICIPATION	5
3.1.	Formalities	5
3.2.	Self-declaration, Grounds for Exclusion and Suitability Criteria	6
3.3.	Selection.....	6
3.4.	Suitability Criteria.....	6
3.5.	Award criteria.	7
3.6.	Contract terms and provisions.....	7
4.	CONSORTIA / THIRD PARTIES / COLLUSION	8
4.1.	Consortia, third parties.....	8
4.2.	Submission of one offer	8
5.	VARIOUS PROVISIONS.....	8
5.1.	Duty to report irregularities etc., information	8
5.2.	Disclaimer.....	9
5.3.	Applicable law and disputes.....	9
5.4.	Compensation.....	9
5.5.	Exclusion.....	9

Appendix A	Definitions
Appendix B	Model form Request for Participation
Appendix C	Model form Self-declaration

1. INTRODUCTION

1.1. General

These are the Selection Guidelines "*Tender procedure Supply of EMU rolling stock for The Netherlands*". For the Tender Procedure a Notice ("*Aankondiging*") has been published at www.tenderned.nl.¹

Capitalized terms in these Selection Guidelines shall have the meaning as defined in Appendix A. The interpretation of these Selection Guidelines is subject to the provisions of Appendix A.

1.2. Contracting Authority

The contracting authority is Syntus B.V. (hereafter: "**Syntus**").

Syntus' contact person for all communications in connection with the Tender Procedure shall be:

Syntus B.V.
Att. Mr C.M. Uijl
E-mail: tenderteam@syntus.nl

It is prohibited to contact any other Syntus' employee or Syntus' advisor in connection with the Tender Procedure. Non-compliance with this provision shall in principle lead to exclusion from the Tender Procedure.

1.3. Background

With the Tender Procedure Syntus aims to award a contract to a Supplier for the manufacture and supply of railway vehicles for Syntus' operation of the public transport concessions for the train services Zwolle - Enschede and Zwolle - Kampen (ZWENZWOKA) (the "**Concessions**"). The Concessions are at this moment being tendered by the Provincie Overijssel and Regio Twente. Reference is made to the notice and documents published by the Provincie Overijssel and Regio Twente at www.tenderned.nl in connection with the award of the Concessions.²

It is Syntus' intention to submit an offer for the award for the Concessions. In order to adequately do so, Syntus must, *inter alia* (in short):

- substantiate that the order, supply and admission of trains and related equipment is completed and operation will start in time (before 1 November 2017). Syntus must provide a Supplier's confirmation stating that the admission and operation shall be completed/start in time;
- substantiate that the trains and related equipment is suited for the train services in accordance with the requirements related to the award of the Concessions; and

¹<https://www.tenderned.nl/tenderned-web/aankondiging/detail/samenvatting/akid/ca94b0ad4bfccc23625f84f5c11e070d>

² <https://www.tenderned.nl/tenderned-web/aankondiging/detail/samenvatting.xhtml?aankondigingId=45200>

- provide a detailed delivery and homologation plan.

Only new vehicles “direct from the manufacturer” will be considered: electrically driven, multiple-unit train sets (EMU). The train sets must in particular fulfill the requirements and network access criteria of Prorail as well as the homologation criteria for passenger rail vehicles in The Netherlands, stated by the authority *Inspectie Leefomgeving en Transport* (ILT) (<http://ilent.nl/>). The scope of the contracts can vary depending upon the requirements related to the Concessions, ranging between approx. 15 and 25 train sets per order in different configurations. The train sets must be homologated and ready for operation in The Netherlands on 1 November 2017. Syntus shall provide further information in this respect in the Invitation to Tender.

It is crucial that the Supplier manufactures and delivers the train sets, cooperates and performs its obligations under the Supply Contract in order to enable Syntus to comply with the requirements in connection with the Concessions.

Please note: Participants must take into account that Syntus will not award the Supply Contract if the Concessions will not be awarded to Syntus. Reference is also made to paragraph 5.2 of these Selection Guidelines.

1.4. Procedure

The Supply Contract qualifies as a supply contract ("*opdracht voor leveringen*") within the meaning of Directive 2004/17/EC, implemented in The Netherlands in the Public Procurement Act 2012 ("*Aanbestedingswet 2012*"), in particular part 3 of the Tender Procurement Act 2012.

This Tender Procedure is a negotiated procedure with a prior call for competition as referred to in clauses 3.32 and 3.35 of the Public Procurement Act 2012. The Tender Procedure shall include the following phases:

- selection phase: Candidates may submit a Request for Participation in accordance with the provisions set forth in the Tender Documents and in order to receive an Invitation to Tender.
- tender phase: All Candidates that receive an Invitation to Tender may submit an Offer in order to compete for the award of the Supply Contract.

In the tender phase, Syntus shall provide further information with respect to the specifications and conditions of the Supply Contract, the requirements for the submission of Offers and the award criteria.

1.5. Questions/additional information

Questions and requests for additional information in connection with the Tender Documents must be submitted within the deadline set forth in paragraph 1.6 of these Selection Guidelines and via e-mail exclusively to:

Mr C.M. Uijl
E-mail: tenderteam@syntus.nl

Questions and requests for additional information must refer to the related paragraph, page or section of the Tender Documents and must be submitted in English.

Syntus shall respond to the requests by means of an information memorandum ("*nota van inlichtingen*"). This information memorandum, which shall include all the questions and related answers, shall be made available to all Participants without stating any Participant's name or contact details.

Questions and requests for additional information submitted after the deadline stated in paragraph 1.6 of these Selection Guidelines, may not be considered or answered.

1.6. Timeline

With respect to the Tender Procedure the following timeline shall apply:

Publication of the Notice	Thursday 11 December 2014
Deadline for submitting questions and requests for additional information (selection phase)	Thursday 18 December 2014, 17.00 hours
Publication of the information memorandum (selection phase)	Tuesday 23 December 2014
Deadline for submitting the Requests for Participation	Monday 29 December 2014, 17.00 hours
Invitation to Tender	Friday 2 January 2015
Deadline for submitting questions and requests for additional information (tender phase)	Monday 12 January 2015, 17.00 hours
Publication of the information memorandum (tender phase)	Friday 16 January 2015
Deadline for submitting Offers	Thursday 22 January 2015, 17.00 hours
Preliminary award decision	Monday 2 February 2015
Award of the Supply Contract	Tuesday 24 February 2015
Start of execution of the Supply Contract	Wednesday 1 April 2015

This timeline is provisional and no rights can be derived from it. Syntus reserves the right to adjust the timeline unilaterally from time to time. Candidates shall be informed about changes of the timeline.

2. REQUEST FOR PARTICIPATION

2.1. Time and location for submitting Requests for Participation

Requests for Participation must be received by Syntus within the deadline set forth in the paragraph 1.6 of these Selection Guidelines. Candidates must deliver their Request for Participation and all related documents via e-mail within said deadline on the following address:

Syntus B.V.

Att. Mr C.M. Uijl

E-mail: tenderteam@syntus.nl

With reference: Request for Participation Tender Procedure supply of EMU rolling stock for The Netherlands

Candidates are solely responsible for the correct and timely submission of their Request for Participation and all related documents. Requests for Participation that Syntus has not received within the deadline set forth in paragraph 1.6 of the Selection Guidelines, shall not be accepted or evaluated. Risks of late or incorrect delivery are solely for the account of the Candidates, regardless the reasons of such incorrect or late delivery.

Upon delivery of the Request for Participation on the aforementioned location, a conformation of receipt shall be provided by e-mail.

2.2. Contents of the Request for Participation

The Request for Participation must be submitted in accordance with the form provided in **appendix B**. Candidates must fill in this form correctly and completely. The form must be signed by a duly authorized representative. An evidence of power of representation must be included.

The Candidate must attach to the form a prove of its enrolment, as prescribed in its European Union member state of establishment, on one of the professional or trade registers (for The Netherlands: the trade register of the Chamber of Commerce).

Furthermore, the Candidate must include a correctly and completely filled in Self-declaration ("Eigen Verklaring") (clauses 3.64 and 2.85-2.85 Public Procurement Act 2012) in accordance with the form provided in **appendix C**. By means of this Self-declaration, the Candidate states that no Grounds for Exclusion ("Uitsluitingsgronden") shall apply to it and the Candidate fully complies with the Suitability Criteria ("Geschiktheidseisen").

Incomplete and/or incorrect filled in Self-declarations shall in principle lead to exclusion of the Candidate concerned. Submitting a conditional Request for Participation is not permitted.

2.3. Language

Request for Participation and all related documents must be submitted in the English language, unless Syntus states otherwise in the Tender Documents. Documentary of evidence issued by official authorities in order to assess if Grounds for Exclusion apply to a Candidate and if a Candidate complies with the Suitability Criteria, may also be provided in Dutch or German language.

3. EVALUATION OF THE REQUESTS FOR PARTICIPATION

3.1. Formalities

Syntus shall first assess whether the Requests for Participation are submitted in accordance with the requirements set forth in the Tender Documents, in particular these Selection Guidelines and the information memorandum referred to in paragraph 1.5 of the Selection Guidelines. In the event a

Request for Participation is not submitted in accordance with these requirements, the Candidate concerned shall in principle be excluded from the Tender Procedure.

3.2. Self-declaration, Grounds for Exclusion and Suitability Criteria

Subsequently, Syntus shall assess if the Grounds for Exclusion apply to the Candidates. The Grounds for Exclusion as referred to in clause 2.68 as well as clause 2.87 Public Procurement Act 2012 shall apply, please refer to the model form for the Self-declaration in **appendix C**. Furthermore, Syntus shall asses if the Candidate complies with the Suitability Criteria set forth in paragraph 3.4 of the Selection Guidelines.

This assessment shall primarily be based on the Candidate's Self-declaration. Syntus however may request a Candidate to provide additional evidence that the Grounds for Exclusion do not apply to the that Candidate and/or the Candidate in fact meets the Suitability Criteria and/or any other information provided by that Candidate is in fact correct. Syntus may make such request at any time during the tender procedure. If the Candidates concerned fails to provide the requested information within 14 calendar days, that Candidate shall in principle be excluded from further participation.

Candidates must take into account that it may take more than the aforementioned 14 calendar days to obtain means of evidence. Consequently, Candidates should ensure that the relevant documents and information are available to them even if Syntus has not, or not yet, requested such evidence.

3.3. Selection

All Candidates that submitted a Request for Participation in accordance with the requirements set forth in the Tender Documents, to whom no Grounds for Exclusion apply, and that fully comply with the Suitability Criteria, shall receive an Invitation to Tender.

3.4. Suitability Criteria

Candidate must fully comply with the following Suitability Criteria in order to qualify for receiving an Invitation to Tender:

Aspect	Criterion	Means of evidence
3.4.1 (Economic and financial standing)	Candidate's annual turnover over the last three closed financial years (counting from the date of the Notice of this Tender Procedure) was on average at least € 100 million exclusive of VAT.	Self-declaration Please note: Syntus may request additional evidence, see paragraph 3.2 of these Selection Guidelines. Such additional evidence shall be the documentation as referred to in clause 2.91 section 1 Public Procurement Act 2012.
3.4.2 (Technical ability)	Candidate realized at least one reference project concerning the manufacture and supply of trains sets. This reference project must meet all of the following	Self-declaration Please note: Syntus may request additional evidence,

	<p>criteria:</p> <ul style="list-style-type: none"> - The reference project was realized, managed (Candidate carried out the project management) and monitored by the Candidate. - The Candidate was ultimately responsible towards the reference project's principal for the proper realization of the reference project. - The reference project concerns newly manufactured electrically driven, multiple-unit train sets (EMU) for passenger transport. - The reference project concerns at least 10 train sets that have been delivered and are in operation. - The reference project was realized within the European Union. - The reference project's contract for the manufacture and supply of the train sets concerned, was entered into on or after 1 January 2004 (Please note: contractual options for additional supplies shall not qualify as such a contract). 	<p>see paragraph 3.2 of these Selection Guidelines. Such evidence shall be a certificate of satisfactory execution, issued by the relevant authority/reference project's principal.</p>
--	--	---

3.5. Award criteria

The evaluation of the Offers in the tender phase shall be based on the economically most advantageous offer ("*economisch meest voordelige inschrijving*"). Further information as to the award criteria ("*gunningscriteria*") shall be provided in the Invitation to Tender.

3.6. Contract terms and provisions

Syntus shall include a draft for the Supply Contract in the Invitation to Tender. Candidates should take into account that the draft contract may, without limitation, include provisions with respect to:

- a payment mechanism including payment in installments;
- guarantees to be provided by the Supplier, for example a parent company guarantee and/or a bank guarantee;
- the transfer or taking over of Syntus' rights and obligations under the Supply Contract to a

- leasing or financing provider; and
- insurances.

Detailed information will be provided in the Invitation to Tender.

4. CONSORTIA / THIRD PARTIES / COLLUSION

4.1. Consortia, third parties

Economic operators may submit a Request for Participation as a Consortium. If one or more Grounds for Exclusion apply to one or more members of a Consortium, that Consortium shall be excluded from the Tender Procedure. At least one of the members of a Consortium must comply with the Suitability Criteria. All members of a Consortium are jointly and severally liable towards Syntus for the correct performance of the Supply Contract. Changes of Consortia members after submission of an Offer and prior to the award of the Supply Contract, shall lead to exclusion.

Candidates may rely on the capacities of other entities in order to comply with the Suitability Criteria. The Candidate shall be fully liable towards Syntus for the correct performance of such third parties with respect to the obligations under the Supply Contract.

In the event a Consortium submits a Request for Participation and/or a Candidate relies on one or more third parties in order to meet the Suitability Criteria, the relevant sections and documents in connection with Consortia and/or third parties, as stated in the forms in **appendices B and C**, must be filled in/attached correctly.

4.2. Submission of one offer

Every Candidate may submit only one Request for Participation.

If a legal entity that is part of a group within the meaning of clause 2:24b of the Dutch Civil Code ("*Burgerlijk Wetboek*") submits a Request for Participation (whether individually or as a member of a Consortium), other legal entities of that group may not also submit a Request for Participation, nor individually nor as a member of a Consortium nor as a subcontractor of a Candidate, unless those entities would prove that completion is not adversely affected by the participation of more than one entity from a group in the same tender.

5. VARIOUS PROVISIONS

5.1. Duty to report irregularities etc., information

If a Participant is of the opinion that information or a provision in the Tender Documents is incorrect or irregular, that Participant must report such alleged incorrectness or irregularity in writing to Syntus as soon as possible and at least within three calendar days after the receipt of the relevant information or provision by that Participant. If a Participant has not informed Syntus accordingly, that Participant shall have lost any right in connection with the alleged incorrectness or irregularity.

By asking questions or requesting additional information in accordance with paragraph 1.4 of these Selection Guidelines, and/or by submitting a Request for Participation, a Participant unconditionally

accepts the Tender Procedure, its terms and conditions, as set out in the Tender Documents, as well as the timeline set out in paragraph 1.6 of these Selection Guidelines.

Participants must acknowledge, for their own account and expense, the Tender Documents, the commercial and technical aspects in connection with the Tender Procedure, the relevant public law framework, and all other aspects relevant in connection with their participation in the Tender Procedure and/or the submission of a Request for Participation. Syntus does not warrant nor is liable for the completeness and correctness of information received from Syntus or third parties (including other public and semi-public entities).

Participants must treat all information provided by Syntus in connection with the Tender Procedure as strictly confidential.

5.2. Disclaimer

Syntus reserves the right not to award a contract, not to enter into an agreement and/or to cancel or suspend the Tender Procedure for any reason at any time. In such events Participants shall not be entitled to any form of compensation by Syntus.

Syntus reserves the right to amend the Tender Procedure and/or Tender Documents from time to time. Participants shall receive a notification of such amendments.

Syntus cannot enter into any agreement or contract without the prior consent of Syntus' board of directors, which consent the board may withhold at its discretion.

5.3. Applicable law and disputes

The Tender Procedure and all relations between Syntus and the Participants are governed exclusively by the law of the Netherlands, disregarding any 'conflict of law' provisions. Any dispute shall be adjudicated, in the first instance, by the District Court of The Hague.

5.4. Compensation

Candidates shall not receive a compensation for the submission of a Request for Participation nor for the submission of an Offer.

5.5. Exclusion

A Participant that, in Syntus' opinion, acts in breach of the provisions set forth in the Tender Documents shall in principle be excluded from further participation in the Tender Procedure.

In the event and at any moment it appears that a Participant has provided incorrect information, that Participant shall in principle be excluded from further participation in the Tender Procedure.

Appendix A - Interpretation and Definitions

In the Tender Documents, unless otherwise specified:

- (a) references to one gender include all genders;
- (b) references to "include" and "including" shall be treated as references to "include without limitation" or "including without limitation";
- (c) references to time periods shall be continuous periods;
- (d) "day" means calendar day.

Definitions in these Selection Guidelines:

- (a) Candidate: a legal entity (including a Consortium) that submitted a Request for Participation.
- (b) Concessions: the public transport Concessions in connection with train services Zwolle – Enschede en Zwolle – Kampen (ZWENZWOKA).
- (c) Consortium: two or more legal entities that jointly submit a Request for Participation.
- (d) Grounds for Exclusion: the circumstances set out in clauses 2.86 en 2.87 of the Public Procurement Act 2012, that, if applicable to a Candidate, lead to exclusion of that Candidate.
- (e) Invitation to Tender: Syntus' invitation to a Candidate to submit an offer in connection with the award of the Supply Contract.
- (f) Notice: the notice published by Syntus in connection with the Tender Procedure on TenderNed on 11 December 2014 at <https://www.tenderned.nl/tenderned-web/aankondiging/detail/samenvatting/akid/ca94b0ad4bfccc23625f84f5c11e070d>.
- (g) Offer: an offer in response to an Invitation to Tender.
- (h) Participant: a legal entity (including Candidates) that have requested the Selection Guidelines and/or submitted questions as referred to in paragraph 1.5 of these Selection Guidelines.
- (i) Public Procurement Act 2012: "*Wet van 1 november 2012, houdende nieuwe regels omtrent aanbestedingen*".
- (j) Request for Participation: a response to the Notice and Selection Guidelines by a Candidate in order to receive an Invitation to Tender.
- (k) Selection Guidelines: this document, the "*Tender procedure Supply of EMU rolling stock*

for The Netherlands" including its appendices.

- (l) Self-declaration: the form in **appendix C**.
- (m) Suitability Criteria: de criteria set out in paragraph 3.4 of these Selection Guidelines, that Candidates must comply with in order to qualify for receiving an Invitation to Tender.
- (n) Supplier: the contractor under the Supply Contract.
- (o) Supply Contract: the contract for the supply manufacture and supply of railway vehicles for Syntus' operation of the Concessions.
- (p) Syntus: Syntus B.V., registered with the trade register of the Chamber of Commerce number 09102634, having its statutory seat in Doetinchem, The Netherlands.
- (q) Tender Documents: the Selection Guidelines, information memoranda and all other information and documents provided and to be provided by Syntus to the Participants in connection with the Tender Procedure.
- (r) Tender Procedure: this European tender procedure for the award of the Supply Contract.

Appendix B - Model form Request for Participation

Reference: *Tender procedure Supply of EMU rolling stock for The Netherlands*

Date: [date]

Dear sir/madam,

By means of this form we [name Candidate] hereby submit our Request for Participation for the "Tender procedure Supply of EMU rolling stock for The Netherlands".

As stated hereunder, this form is signed by the duly authorized representative of [name Candidate] [as well as all consortium members [names]]³.

[Signature, title]

Information (if a Candidate is a Consortium or relies on third parties in order to meet the Suitability Criteria, the Consortium must fill in the requested information for each member of the Consortium or relevant third party)	
Company name (as registered in the Trade Register / Commercial Register)	
Legal form of the company	
Trade Register number / Commercial Register number	
City and country of statutory seat	
Office adres	
E-mail	
Fax number	
Telephone number	
Name and title of Candidate's duly authorized representative in connection with the Tender Procedure	
Address, e-mail, name and title of Candidate's contact person in	

³ To include if the Candidate is a Consortium.

connection with the Tender Procedure	
Candidate has attached to this form an evidence of power of representation of the Candidate's representative (If a Candidate is a Consortium or relies on third parties in order to meet the Suitability Criteria, evidence of power of representation must be provided by each Consortium member or relevant third party)	Correct <input type="checkbox"/>
Candidate has attached to this form a complete and correct filled in Self-declaration in accordance with appendix C to the Selection Guidelines (If a Candidate is a Consortium, each Consortium member must fill in and attach a separate Self-declaration form. A third party that a Candidate relies on in order to meet the Suitability Criteria, does not need to fill in a separate Self-declaration form)	Correct <input type="checkbox"/>
Candidate has attached to this form a proof of enrolment in the relevant professional or trade register. (If a Candidate is a Consortium or relies on third parties in order to meet the Suitability Criteria, proof of enrolment must be provided for each Consortium member or relevant third party)	Correct <input type="checkbox"/>

Appendix C - Model form Self-declaration

Provided separately