

Aanbesteding SURFnet8 Photonic Layer
Aanbestedende Dienst: SURFnet B.V.
Referentie:

Omschrijving:

SURFnet is searching for a Partner that can provide a solution for the SURFnet8 photonic layer. The aim of the Tender Procedure is to award a Contract to a Partner that can provide the requested hardware, software and support.

For the next generations of the SURFnet network, SURFnet requires a new photonic layer. This Tender aims to renew the bandwidth providing photonic layer, which is used for SURFnet's domestic services and potentially the Cross Border Fiber (CBF) systems.

The scope of the Contract for delivering the SURFnet8 photonic layer consists of;

1. Hardware, i.e. the physical equipment including installation related materials;
2. Software and licenses (including software interfaces (APIs)) for planning, performance monitoring, troubleshooting, fault detection, provisioning, security and accounting, automation, and programmability;
3. Layer 0 and layer 1 control plane functionality;
4. Training and periodic training sessions for current staff and staff to be hired in the future, and external personnel;
5. A migration scenario from our existing Ciena CPL and DWDM layer to a new solution. This may include field service support and the provision of temporary hardware;
6. High level design activities for migration, introduction of new features or equipment, and complex changes;
7. M&S (Maintenance and Support). SURFnet will stock its own spares;
8. Installation and de-installation procedures for equipment and software;
9. Delivery and setup of a test bed.

Toelichting:

Please find herewith the answers to the additional questions received so far, concerning the SURFnet8 Photonic Layer tender. Insofar this information notice contains modification and/or additions to the Request for Proposals Document and/or previous information notices (Nota van Inlichtingen), the text in this notice prevails. Please take note of this document in preparing your response.

Kind regards,

Jac Kloots
SURFnet

Nr:

Categorie Bestek/beschrijvend document

Betreft n.a.

70

Vraag

Surfnet requires a spectrum of 4.4THz and support of 88 waves. Is the support of 4THz and 80 waves also considered sufficient? If not, why is support of the extended C-Band a Must requirement?

Antwoord**Vrijgegeven:** 01-09-2016

No, 4 THz (80 waves on a 50GHz grid) is not considered sufficient for the following reasons (not-exhaustive):

- Legacy and Migration: SURFnet has deployed a system supporting 88 waves (50GHz grid) for more than 5 years. Supporting less than 88 waves complicates migration.
- Innovation: SURFnet considers supporting less spectrum a step back with respect to innovation. Internationally there is a trend to support more spectrum and not less.
- Operation: In SURFnet8 SURFnet implements L0/L1 restoration. This requires more spectrum. In addition, SURFnet builds on leased dark fibre. The less spectrum is available; the sooner additional investments in leased dark fibre must be made.
- RfI: SURFnet received many responses to the RfI. By far the largest group supports 88 waves or more, with a large number of vendors even supporting 96 waves and more.
- Cross-Border-Fibres: SURFnet operates three CBFSSs, and transports waves of other NRENs on these fibres (Aliens Waves). The more spectrum we have available, the more flexible SURFnet is in hosting Alien Waves as well as having SURFnet waves hosted by a different NREN.
- Technology: Fibre Non-Linearity mitigation can be achieved by implementing guard bands (loss of spectrum) around signals known to be responsible for causing non-linear impairments. For this reason, SURFnet considers 88 waves to be the minimum (assuming a 50GHz grid).

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement 2.2 page 7

71

Vraag

We suggest the following modification: Any additional terms included on a PO which conflict with the terms of this Contract should also be explicitly excluded

Antwoord**Vrijgegeven:** 01-09-2016

We see no need for such modification since the clause already sees to all general terms and conditions of Partner, irrespective of the document that holds such terms, unless art. 2.3 and 2.4 applies to such terms.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** RFP Photonic layer - MR 20 All photonic nodes must be connected using an Optical Supervisory Channel

72

Vraag

Supplier products support Optical Supervisory Channel (OSC) for DWDM links, but uses the General Communication Channel (GCC) for CWDM links for management, in line with the G.709 General Communication Channel (GCC) standard. Is this acceptable for Surfnet?

Antwoord**Vrijgegeven:** 01-09-2016

Yes, this is acceptable. Only the DWDM layer requires an OSC.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement 7.4 page 11

73

Vraag

We do not collect defective equipment as customer typically send defective equipment to us and we will send back repaired equipment. Is this a doable approach?

Antwoord**Vrijgegeven:** 01-09-2016

Not agreed.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement 6.2 page 10

74

Vraag

Regarding: The Services to be provided by Partner.

We request the following modification: Services, Equipment, and Software being purchased.

Antwoord**Vrijgegeven:** 01-09-2016

Partly agreed. We will change the text to “ The Services and/or, Equipment, and/or Software to be provided by Partner.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Page 28 Clause 5.3.1

75

Vraag

Would it be acceptable for SURFnet and in case of a detailed request, to receive an audited balance sheet and not a bank statement?

Antwoord**Vrijgegeven:** 01-09-2016

In case of a detailed request, as stated in paragraph 5.3.1, sub b, it would also be acceptable to provide an audited balance sheet instead of a bank statement.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement

76

Vraag

Art. 13.10. Proposal to add the following text to the last sentence of this article “or use of other than the most current release of the products, unless the infringing portion is also in that release, or use of the products in combination with products of another manufacturer, unless approved in the product documentation.”

Antwoord**Vrijgegeven:** 01-09-2016

Not agreed.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement

77

Vraag

Art. 17.4 sub d. Request to add the following text to this article “except in case due to force majeure circumstances of the manufacturer or supplier of the materials or resources”.

Antwoord**Vrijgegeven:** 01-09-2016

Not agreed. This could lead to endless discussions with regard to force majeure within the chain of (sub)contractors. Partner is responsible for its sub-contractors, especially since SURFnet has no control over such sub-contractors-supplier nor can SURFnet influence or check the circumstances they are in, or operate under.

Nr:**Categorie** Bestek/beschrijvend document**Betreft** Annex_F_Draft_agreement

78

Vraag

Art. 18.2. Request to add that the maximum duration of exit assistance will be 3 months after the termination/expiration of the contract. Partner can invoice SURFnet for this additional exit assistance.

Antwoord**Vrijgegeven:** 01-09-2016

Partly agreed. We will change 18.2:

Partner will provide the services as meant under art. 18.1 against the terms and conditions of this Contract including the prices stated therein. In the absence of relevant prices, Partner will provide the services as meant under 18.1 against market conform prices. Partner is not entitled to the aforesaid remuneration if SURFnet terminates this Contract under art. 17.2 , 17.3.1 or 17.3.2 if termination under 17.3.2 is due to Partner.

Parties will endeavour to perform the services meant under 18.1 within a period of 3 months after termination of the Contract, however if necessary, the services will be performed within a longer period with a maximum of 6 months after termination of the Contract. Partner will however not be entitled for any compensation for the actual transfer of the required data, files, documentations, documents or other material needed to achieve a smooth and effective transition.

- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
 79 Art. 17.4 sub a. Request to change the term “strikes” into “internal strikes”. National strikes will be force majeure circumstances.
Antwoord **Vrijgegeven:** 01-09-2016
 Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
 80 Art. 20.3 sub i. Request to lower the limitation in liability to a more reasonable and proportional amount of 1 million euro per event of damage and 2 million euro per year
Antwoord **Vrijgegeven:** 01-09-2016
 Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
 81 Art. 17.2. Request to change the term “Purchase Order” into “relevant Purchase Order”.
Antwoord **Vrijgegeven:** 01-09-2016
 Agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
 82 Art. 17.3.2 sub b. request to delete this sub b. This is not a valid reason for termination.
Antwoord **Vrijgegeven:** 01-09-2016
 Since SURFnet had to comply with Dutch public procurement law this is a valid ground for SURFnet.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
 83 Art. 19.3. Because supplier is part of an international group of companies and its insurances are kept at the group level it is not possible to provide full insurance documents and proofs of payment of premiums. Request to provide a certificate of insurance as an alternative.
Antwoord **Vrijgegeven:** 01-09-2016
 Partly agreed: only if such certificate provides proof of the coverage and sufficiency of coverage as meant in art. 19.1 and 19.2.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft MR17
Vraag
 84

It is stated that it is required for all 8 CWDM channels to be added or dropped in a node type E. In the example drawing it is shown that it is in fact less.
Can we verify that we need to A&D 8 CWDM channels in site type E for TCO calculation purposes?

Antwoord

Vrijgegeven: 01-09-2016

MR17 states that one CWDM wave must be added and dropped on a type E node in an access ring (to and from each of the two directions). The add and drop wavelength could be any of the eight different CWDM wavelengths mentioned in MR17. This does not imply that all 8 CWDM waves must be dropped on the same type E node in an access ring. (If a node is capable of dropping 8 CWDM waves, the site would be functionally a Type E termination node).

For the TCO calculations:

- Main POP1 and Main Pop2 must be capable of dropping 8 CWDM waves in case no DWDM wave is present or 7 CWDM waves if at least one DWDM wave is present (Type E termination node).

- Sites A, B, and C (Type E sites in the access ring) must each add and drop one wave per direction.

Nr:

Categorie Bestek/beschrijvend document

Betreft MR15, MR16

85

Vraag

In MR16 the desired DWDM channels filter should be 50Ghz, however in MR15 it is either 50 or 100Ghz. Is the 50GHz filter a hard demand for both MR15,16 or can we use a 100GHz filter also for MR15, MR16 site type D?

Antwoord

Vrijgegeven: 01-09-2016

MR16 should also have included the possibility for 100GHz filters. This omission is a mistake. Tenderer may use 50GHz or 100GHz filters in MR16.

Nr:

Categorie Bestek/beschrijvend document

Betreft 3.6.4 Format of the Proposal

86

Vraag

According to 3.6.4. Format of the Proposal we need to follow Annex A. One of the items in Annex_A is Annex_F. Do we need to upload Annex_F which is a given from Surfnet? (only the party who will be awarded the contract at the end of the RFP process will need to sign the final version)

Antwoord

Vrijgegeven: 01-09-2016

No, this is a mistake in Annex A. The draft agreement does not have to be added to Tender's Proposal. The final version of the contract will be published on TenderNed before or at the final deadline of the publication of clarifications on 1 September 2016. Tenderer must agree to this final version by indicating compliance to MR 80 in the MR and AR input form provided as Annex G.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 16.1 page 18

87

Vraag

Can this be amended such that: Will repair defects in goods that are notified and returned during the applicable product warranty period stated in 15.2

Antwoord

Vrijgegeven: 01-09-2016

Not agreed. See 15.3 Partner should be able to remedy Defects during 5 years. In the warranty period of 15.2 remedy of Defects is at no expense for SURFnet.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 17.4.d page 18

88	Vraag Can this be amended or deleted as late delivery could be caused by a force majeure event Antwoord Not agreed. Vrijgegeven: 01-09-2016
Nr:	
89	Categorie Bestek/beschrijvend document Betreft PARAGRAPH 11 - ACCEPTANCE Vraag This paragraph 11 deals with acceptance procedure – we wish to offer the following adjustments/clarifications: (a) Please explain what sort of acceptance tests and/or procedures are being taken by SURFnet? Antwoord Vrijgegeven: 01-09-2016 The acceptance procedure involves: - Verification of the delivery. The delivery must be complete and optically undamaged. - In case new (first introduction in SURFnet's network) components or equipment is supplied the items will be functionally tested in SURFnet's test lab. If possible, performance requirements and specifications will be verified. - In case of existing components (i.e. components already installed in the field) SURFnet will perform a random selection of component and functionally test the component in SURFnet's test lab. If possible, performance requirements and specifications will be verified. - In case of spares and special components and equipment (used only on a very few locations) the items will be functionally tested in SURFnet's test lab. If possible, performance requirements and specifications will be verified. - New software will be verified in SURFnet's test lab. Acceptance does not mean M&S does not apply in case devices turn out DOA or contain some defect. The procedure does not waive any claim with respect to warranty.
Nr:	
90	Categorie Bestek/beschrijvend document Betreft Annex_C Vraag For Annex_C we can check reference 1 to 5 (reference no.). However we need at least 1 reference for core item 1, 5 references for core item 2, and 1 for core item 3. It may be overlapping, but this is not a must. So total number of references can become 7 and there is only room for 5 reference case in Annex_C. Please explain how to handle if total goes over 5 references. Antwoord Vrijgegeven: 01-09-2016 It is also allowed to fill in one reference per core competence, so in case of core competence item 2, it is also allowed to provide minimal 5 references of contributions to scientific journals through one reference (using the 'Short description of the project' box in the lower part of the form).
Nr:	
91	Categorie Bestek/beschrijvend document Betreft Annex_F_Draft_agreement 20.2 page 20 Vraag We request English to be changed to "gross negligence" to reflect the Dutch concept. Also can SURFnet add also any damages arising from infringement of the other party's intellectual property rights Antwoord Vrijgegeven: 01-09-2016 Both agreed.
Nr:	
	Categorie Bestek/beschrijvend document

92 **Betreft** Annex_F_Draft_agreement 20.3 i and ii page 20
Vraag
Can the following be added: "in the aggregate" before "per calendar year"
Antwoord **Vrijgegeven:** 01-09-2016
Not agreed.

Nr:

93 **Categorie** Bestek/beschrijvend document
Betreft PARAGRAPH 9 - MARKET CONFORMITY AND BENCHMARK
Vraag
Since this paragraph 9 awards SURFnet disproportionate authorities as per the choice of the Benchmark and in light of undefined factors regarding the price comparisons – we wish to offer the following adjustments/clarifications:

(a) Choosing the identity of the benchmarker will be a joint decision between the parties.
(b) The Benchmark shall be a qualified third party, with a deep understanding of the international telecommunication market and the services regarding this Agreement.
(c) The Benchmark will consider all aspects in his evaluation, in such way that all relevant price comparisons will be analyzed in an equal manner, taking into account that the partner might be a foreign entity.
(d) With accordance to the benchmarker results, the parties will discuss in good faith and evaluate the possibility of lowering prices by agreed percentage within agreed time frame.
(e) Any benchmarker procedure will take place, if any, no more than once every calendar year.

Antwoord **Vrijgegeven:** 01-09-2016
Not agreed. If Partner has reasonable objections to a Benchmark, SURFnet shall select another Benchmark. The conditions and guarantees as set out in clause 9 are deemed sufficient to guarantee an objective outcome of the benchmark.

SURFnet has no set idea as to the frequency of the benchmark, and only wishes to reserve the right to undertake such benchmark if the prices of Partner give rise to doubts as to the market conformity thereof.
We will however add to 9.1: The frequency of the benchmark is, if any, not more than once every year, with the exception of special circumstances, in such case SURFnet reserves the right undertake additional benchmarks. SURFnet will not unreasonably undertake such additional benchmark(s).

Nr:

94 **Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement 5.2.1 page 10
Vraag
Regarding: Throughout the term of the Contract Partner is responsible for providing to SURFnet each then current New Release of the Software that Partner or Partner's superior licensor offers to its customers.

We want to state that: limited to during the period for which Partner has purchased Software support for the Software.

Antwoord **Vrijgegeven:** 01-09-2016
Software support is part of M&S services. Partner is responsible for providing new releases as long as SURFnet purchases M&S services.

Nr:

95 **Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement 13.7-13.9 page 15-16
Vraag
We request deletion of clause 13.7, 13.8 and 13.9 as we are not aware of designing or creating any products specifically for SURFnet as such.

Antwoord **Vrijgegeven:** 01-09-2016
Not agreed.

- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 12.1 page 14
- 96 **Vraag**
- We seeks clarity on obligation to provide spare parts after EOL - is Partner still obligated if reason for EOL is due to change in applicable law that makes continued?
- Antwoord** **Vrijgegeven:** 01-09-2016
- Yes, Partner must provide the same parts as spare, or if this is not possible for legal reasons, provide a reasonable alternative.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 7.5 page 11
- 97 **Vraag**
- We request title and risk to pass as the same time.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed. Its customary for the risk to pass upon delivery and the title to pass on full payment by SURFnet.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** 20.3 Liability
- 98 **Vraag**
- In the years after deployment (in maintenance mode), the liability cap is disproportional to the annual turnover, supplier proposes to limit this liability to 50% of the annual turnover in a given year.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Surfnet Requirement: MR40 – Size and volume of the photonic equipment, MR42 – Size and volume of the transponder equipment (2), AR23 – Combining photonic and transport equipment
- 99 **Vraag**
- If photonic and electric can be consolidated in 1 shelf, can tenderer assume MR42 is fulfilled? If not, is this because Surfnet foresees locations without photonic equipment where only small transponder shelves are required?
- Antwoord** **Vrijgegeven:** 01-09-2016
- No, Tenderer cannot assume this. MR42 must be met. SURFnet foresees to implement small transponder shelves both at customer locations with passive DWDM add and drop multiplexers and at customer locations without add and drop multiplexers (dark fibre with a single 100G DWDM wave).
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement
- 100 **Vraag**
- Art. 15.2.2. The warranty period on software products is 3 months after delivery. Request to change the period of 12 months into 3 months.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.

- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement
- 101 **Vraag**
- Art. 9. It is not reasonable that benchmarking rights are not limited in time. We propose to limit the right to perform a benchmark to once per year and only after the first year of the contract term.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** PARAGRAPH 13 - IPR AND RIGHTS TO USE THE SOFTWARE
- 102 **Vraag**
- As per the usage of software – we wish to offer the following adjustments/clarifications:
- (a) Software usage is subject to EULA terms and conditions.
 - (b) Clauses 13.7 until 13.9 – Not clear. Any IPR created and/or related to Partner shall remain the sole property of the Partner. Please confirm.
 - (c) Clauses 13.10 & 13.11 – Can you change those in order to make them mutual applicable?
- Antwoord** **Vrijgegeven:** 01-09-2016
- (a) Not agreed since we can not agree in advance agree on terms we have not seen and reviewed. However we are willing to discuss such additional terms on a per case basis at the time SURFnet orders such Software provided however that any additional terms do not conflict with our interest, the terms of the Contract and our Intended Use. SURFnet explicitly reserves the right not to agree on any such additional terms.
 - (b) Not agreed. If SURFnet pays for development of such Software, SURFnet should acquire the rights therein, since not having such rights Contractor could exploit such Software having already been paid which is in our opinion not reasonable. IPR shall in such case vest in SURFnet.
 - (c) Not agreed. They are not equally applicable since Partner provides the Services to SURFnet and should make sure such Services do not infringe the rights of others. If SURFnet does not comply with its rights of use of the Services as stated in subclauses 13.1 – 13.6 SURFnet shall be liable subject to the relevant provisions of the Contract.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Paragraph 3.5 (Request for Proposals)
- 103 **Vraag**
- In case Tenderer formally joins forces as a Consortium and/or through subcontracting, please explain which information must be provided.
- Antwoord** **Vrijgegeven:** 01-09-2016

In case of a Consortium, Candidate must:

- Specify in section 1.5 of the Self-declaration form (Annex B) what the names are of the other members of the Consortium.
- Each member (Participant) of the Consortium must complete a separate Self-declaration.
- Clarify how the co-operation within the Consortium will be organized in order to achieve the expected results (i.e. what each Participant's role will be).
- Clarify which Participant will be assigned to act on behalf of the Consortium and to carry out all the contacts with SURFnet.
- The joint submission has to be signed by all Participants. Alternatively, Participants may issue a power of attorney to another Participant. In that case the relevant declaration must be attached to the Qualification Submission.

Furthermore, please take note of any other conditions in as sated in paragraph 3.5.1.

In case of Subcontracting, Candidate must:

- Clearly describe the roles, activities and responsibilities of subcontractor(s).
- Include a signed letter of intent by each subcontractor stating its intention to collaborate with the Tenderer if he wins the Contract.

Furthermore, please take note of any other conditions in as sated in paragraph 3.5.1.

Tenderer is also allowed to combine both approaches (in other words, collaborate with one or more other Participants in a Consortium while employing other partners as subcontractors), thereby taking into account the conditions and providing the requested information of both approaches.

In the case of a Tenderer relying on a consortium partners and/or on one or more sub-contractors (e.g. a vendor) to fulfil suitability requirements (e.g. technical and professional capacity), please refer to the answer on question 1.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement

104

Vraag

Art. 10.3. Request to invoice the costs for M&S per quarter upfront.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement

105

Vraag

Art. 2.4. Request to let the proposal of partner prevail over the RFP document in the rank order.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed.

Nr:

Categorie Bestek/beschrijvend document

Betreft PARAGRAPH 20- LIABILITY:

106

Vraag

As per the liability paragraph 20, the liability mechanism and the sums specified in clause 20.3 seems unreasonable especially in the start of the project – We wish to offer the following adjustments/clarifications:

(a) The maximum liability will be limited to amount paid by SURFnet to Partner in the last calendar year.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed.

- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** PARAGRAPH 15 - WARRANTIES ("GARANTIES")
- 107 **Vraag**
- As per Partners warranties – we wish to offer the following adjustments/clarifications:
(a) In case a virus is discovered, Partner will replace the infected software with a “clean” (similar) version of the software.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed, see paragraph 15.1.3 of the Contract.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** 5.2.2
- 108 **Vraag**
- 5.2.2.
In case no agreement can be reached, Surfnet can impose any SLA = this is outside any control of the supplier. Is it possible to include a clause referring to current market standards or relative to other existing NREN contracts within the EU ?
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed. If agreement can not be reached SURFnet will impose a SLA including at least the aspects and requirements as specified in the Request for Proposal, it has no intention to impose an unreasonable SLA .
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 28 page 23
- 109 **Vraag**
28. MISCELLANEOUS: 27.1 this is a too broad statement.
- Can this be amended as we are indeed responsible for products and activities explicitly set out in the Contract but for example Surfnet is responsible for providing site access.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed. For liability Partner has to be in default, so we do not agree this statement is too broad. If SURFnet is at fault for Partner not able to perform its obligation under the Contract or Purchase Order, Partner shall not be liable. If site access is necessary it shall be provided subject to (reasonable) site access rules and regulations which Partner has to comply with.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 6.3 page 11
- 110 **Vraag**
- We want to add that should be an explicit right to reject if there are additional items in the PO that have not been expressly agreed
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 4.2 page 9
- 111 **Vraag**
- We wish to include the following statement: subject to SURFnet notifying Partner of any claims for which it is seeking an indemnity, not making any admission as to liability in respect of such claims and allowing Partner sole control over the defense and settlement of such claims at Partner's cost.
- Antwoord** **Vrijgegeven:** 01-09-2016

Not agreed. We may by law have to react to such a claim ("bezwaar" maken). We will however inform Partner of such claim and leave the defence, and settlement to Partner, and at Partners cost, all insofar as SURFnet can do so without being held accountable for not reacting to such claim. If SURFnet has to react to such claim by law, it will however consult with Partner prior to such reaction

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex E SLA requirements - 2.3 Repair

112

Vraag

"Hardware that is collected by the Partner for repair shall be repaired and returned by the Partner within 25 business days (including shipment) after notification for at least 90% of all defective equipment notified in a year (critical performance indicator)."

Supplier standard processes are 60 calendar days for Repair and Return, otherwise the more expensive Advance Exchange service is needed. Is 60 calendar days Repair and Return acceptable?

Antwoord

Vrijgegeven: 01-09-2016

The 25 business day requirement is related to a single spare solution. However, Tenderer may propose increased sparing as an alternative solution to virtually reduce the 60 days to arrive at the required 25 days. In case of an alternative solution, the financial impact must be visible in the TCO calculations.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement

113

Vraag

Art. 14.1. Request to delete the last sentence of this article. It is not clear which third parties this relates to.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed. These third parties will not just be any other party but an essential supplier of SURFnet that provides services, assistance, etc. to manage and maintain its infrastructure.

Nr:

Categorie Bestek/beschrijvend document

Betreft PARAGRAPH 10 - INVOICING AND PAYMENT

114

Vraag

Clause 10.6 enables SURFnet to defer disputed amounts (with no reference to time frame) while Partner is obligated to continue regular services – we wish to offer the following adjustments/clarifications:

(a) How can SURFnet expect to receive regular services from Partner in such case? Please explain. Please set a reference regarding limited time frame for any deferment.

(b) Please revise Clause 10.2 - "20% of the total amount after Acceptance of the Equipment and/or Software by or on behalf of SURFnet", but no more than 90 days from delivery of the Equipment and/or Software.

(c) Please revise Clause 10.5 – "SURFnet shall pay the invoices as mentioned in 10.3 & 10.4 within 30 (thirty) days of the date of receipt thereof".

Antwoord

Vrijgegeven: 01-09-2016

a) SURFnet will not just defer payment, but only if invoices give rise for such suspension. Deferment will be as long as it reasonably takes SURFnet to verify the correctness of the invoice, however we will strive to verify a disputed invoice within 30 days of receipt thereof. We will add to this clause "SURFnet shall not defer such disputed amounts any longer than is as reasonably necessary for SURFnet to verify the disputed invoice. SURFnet will strive to verify the disputed invoice within 30 days of receipt thereof.

b) Not agreed. Acceptance of Services is a condition for payment, since services may be delivered with Defects. Please also see paragraph 11 for the timeframe for SURFnet to accept the services.

c) 10.5 applies to all clauses in paragraph 10 if the conditions for invoicing and payment as stated therein have been met (such as Acceptance).

- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 13.2 page 15
- 115 **Vraag**
- We seek clarification to the clause. The second statement of the clause stating "minimum period of at least 15 years" conflicts with the first statement saying "perpetual".
- Antwoord** **Vrijgegeven:** 01-09-2016
- This is indeed an omission, meant is a minimum of 15 years. We will change the text of 13.2.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 13.1 page 15
- 116 **Vraag**
- Can this be amended to: all patents, copyrights, design rights in the Equipment and Software shall remain vested in the Partner
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** Annex_F_Draft_agreement 11.2 page 14
- 117 **Vraag**
- We wish to make the following modification: Services and Equipment should be deemed accepted after 15 days if SURFnet fails to notify Partner of any defects. After Acceptance Surfnet should not have the right to reject the products but can require that Partner repair or replace Products that are defective provided it notifies the Partner of the defects during the warranty and the defects are covered under the warranty.
- Antwoord** **Vrijgegeven:** 01-09-2016
- Not agreed.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** RFP Photonic layer - MR 32: Virtualization of Type II DWDM interfaces on the NMS
- 118 **Vraag**
- Currently supplier does not see any traction of the Blacklink standard in the market, and sees this as a pre-SDN standard. We see the market of open optical terminal devices moving to the direction of the openconfig.net initiative. Based on YANG models, this is supported by the wider optical industry as can be seen on the website.
- Since these YANG vendor-neutral data models are in a flux state, we cannot yet commit on a fixed time line for implementation of this model, we are willing to work with Surfnet for future implementation of these models. Is this acceptable?
- Antwoord** **Vrijgegeven:** 01-09-2016
- Yes, this is acceptable. However, Tenderer must commit to the timeline (one year after contract signature) as outlined in MR32 for implementing an interface even if such first implementation supports only a first data-model.
- SURFnet has not specified a specific Service Platform interface, only a suggestion what can be expected. SURFnet wants to cooperate with an innovative vendor on this topic to manage and control DWDM interfaces residing both on transponder and service platform equipment.
- Nr:**
- Categorie** Bestek/beschrijvend document
- Betreft** RFP Photonic layer - MR 36: L0 and L1 control plane – restoration capabilities
- 119 **Vraag**

For Type 1 services, restoration for L0 and L1 can be offered. For Alien Type 2 services the control plane based restoration is not supported, would it be allowed to use predefined Protection for these Alien Type 2 services waves?

Antwoord

Vrijgegeven: 01-09-2016

Up to one year after contract signature restoration of Alien Type 2 waves is only required if the NMS supports virtualization of the Alien Type 2 DWDM interface. Once DWDM interfaces can be virtualized in the NMS the control plane must also control these interfaces because access to e.g. wavelength and power control is possible and is needed for restoration.

Nr:

Categorie Bestek/beschrijvend document

Betreft RFP Photonic layer - AR 33 TCO Calculation

120

Vraag

For the Access Ring 1 Model 2 – CWDM&DWDM. Given the earlier answer on question 24 “CWDM multiplexers may be replaced with DWDM multiplexers”, is it acceptable to add amplifiers for this model to avoid regeneration and offer a pure DWDM solution?

Antwoord

Vrijgegeven: 01-09-2016

Answer 24 relates to 100G Waves for which CWDM multiplexers are to be replaced by DWDM multiplexers. For Ring 1 (a small city ring) SURFnet requires, during incremental upgrades of customers in support of 100G services, that the 10G CWDM waves remain for customers remaining on 10G. Amplifiers may only be introduced in such a way that this does not impact the remaining 10G CWDM waves.

Nr:

Categorie Bestek/beschrijvend document

Betreft RFP Photonic layer - MR 55 Portfolio includes 100G, 40G, and 10G client interface types

121

Vraag

40G interfaces are phased out rapidly in the market. Supplier still supports the 40GBASE LR4 but does not support the 40GBASE SR4 variant (also not planned). Is the 40GBASE LR4 sufficient for Surfnet?

Antwoord

Vrijgegeven: 01-09-2016

No, LR4-only is not sufficient. However, if the transponders support the acceptance of foreign SR4 pluggable modules, SURFnet is prepared to perform acceptance tests. To this end, Tenderer must indicate the form factor and applicable mechanical and electrical standards (incl. heat dissipation) to which the pluggable module must comply and provide a possible manufacturer / type number / ordering code, or verify if a, by SURFnet selected pluggable module, meets Tenderer's electrical and mechanical specifications (incl. heat dissipation).

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex E SLA requirements - 1 Introduction

122

Vraag

“For critical performance indicators (marked as such in these requirements), a service credit scheme in the case of non-compliance. The scheme should be set up so that a substantial non-compliance on these indicators will result in a credit of at least 20% of the M&S costs in that year.”

Supplier sees this percentage as fairly high, and suggest to reduce this to 10% per year?

Antwoord

Vrijgegeven: 01-09-2016

No, not agreed. SURFnet claims credit only in case of a “substantial” non-compliance, therefore SURFnet considers a substantial credit of 20% reasonable as an incentive to the Partner to improve itself.

Nr:

Categorie Bestek/beschrijvend document

Betreft PARAGRAPH 22 – RE-EXPORT:

123	Vraag As per the term re-export – We wish to offer the following adjustments/clarifications: (a) Please further explain the meaning for Surfnet of this paragraph. What does Surfnet wants to achieve with this Article? Antwoord Vrijgegeven: 01-09-2016 In some countries export of Software/Equipment may be regulated such as under the condition of having clearance or a license. If SURFnet wishes to export software/equipment to such countries (subject to the terms and conditions of the Contract and/or Purchase Order) it shall comply with such regulations as applicable to the export.
Nr:	
124	Categorie Bestek/beschrijvend document Betreft PARAGRAPH 17 -TERM AND TERMINATION Vraag As per termination of the agreement – we wish to offer the following adjustments/clarifications: (a) Clause 17.2 – Not clear. Please explain and define the term “default”. (b) Clause 17.3.1 (a) Please define and detail + please delete Clauses 17.3.1 (c) and 17.3.1 (e). (c) Clause 17.3.2 – Can you consider to delete those? Partner has no influence on those. Antwoord Vrijgegeven: 01-09-2016 (a) Failure to perform any obligation under the Contract or a Purchase Order. (b) This is not a term where a definition can be given. Meant is a suspension for payment of debts under the law applicable to such Party, (for a Dutch company this would be a “surseance” and such right to suspend payment of debts would be given by the applicable court or applicable governmental body), the other Party is entitled to terminate the Contract or Order. Suspension for payment of debts will mostly result in bankruptcy. Sub c and e shall not be deleted since this circumstances may effect a Parties ability to perform its obligations under the Contract or Order. See also answer to question 46. (c) Not agreed.
Nr:	
125	Categorie Bestek/beschrijvend document Betreft RFP Photonic layer - MR 48: Fans and cooling Vraag Supplier supports the cold/warm corridors. But the remark on “in- and outlet directions configurability irrespective of the depth” is unclear to us, could Surfnet explain this in more detail? Supplier could maybe solve this with mechanical configurability inside the rack? Antwoord Vrijgegeven: 01-09-2016 SURFnet has 19” racks of different depth. Equipment may be placed in the front and the rear of the rack, therefore, inlet and outlet airflows must be managed to meet cold/warm corridor configurations. Equipment external, but rack internal add-on passive solutions to direct airflow are acceptable, provided they are compatible with 19” racks.
Nr:	
126	Categorie Bestek/beschrijvend document Betreft Annex_F_Draft_agreement Vraag Art. 8.3.3. Proposal to add a cap on products which can be removed quarterly from the Installed Base. Proposal to agree on a cap of maximum 15% of the quarterly value of the then current Installed Base. Antwoord Vrijgegeven: 01-09-2016 Not agreed.
Nr:	
	Categorie Bestek/beschrijvend document Betreft Annex_F_Draft_agreement 1 page 5-7

127	Vraag (a) "Documentation": Can we suggest following wording: means documentation describing the Equipment and/or Software and its installation, implementation, operation, management and maintenance provided by the Partner. (b) "Equipment": We want to have clarification if "firmware" is "software". (c) "Services": we have the following suggestion: Definition of Services should not include the supply Equipment and Software. Perhaps this can be amended to installation and commissioning of Equipment and Software. (d) "Software": Does the definition of "Software" cover network management? (e) "Specification(s)": We want to request the following modification: Specification should be the Manufacturer's published technical and functional specifications for the Equipment and Software. Antwoord Vrijgegeven: 01-09-2016 (a) Not agreed. (b) Yes firmware is also Software. (c) Not agreed. (d) Yes, Software covers all Software delivered as part of the solution, including network management. (e) Not agreed.
Nr:	
128	Categorie Bestek/beschrijvend document Betreft RFP Photonic layer - AR 33 TCO Calculation Vraag Ring 1 Model 2 and Ring2 Model 2 and 3: does supplier understand it correctly that these models should include the cost for the 100G Transponder in the TCO sheet? Antwoord Vrijgegeven: 01-09-2016 Yes, this is correct.
Nr:	
129	Categorie Bestek/beschrijvend document Betreft RFP Photonic layer - MR 43 Installation related materials must be included Vraag (a) Should supplier deliver the ODF? (b) Should supplier deliver the Rack? (c) What is the average length of the patch cords towards the ODF supplier should take into account? Antwoord Vrijgegeven: 01-09-2016 (a) Tender must include fibre management trays and ODFs as stated in MR43. (b) Tender must not include racks. (c) Tenderer may assume an average patch cord length of 3m from the equipment to the ODF.
Nr:	
130	Categorie Bestek/beschrijvend document Betreft 20.3.i Vraag 20.3.i proposed level for direct damages = 100% of annual turnover under the contract iso 2.5M

Antwoord

Not agreed.

Vrijgegeven: 01-09-2016

Nr:

Categorie Bestek/beschrijvend document

Betreft 13.5 and 13.6

131

Vraag

13.5 and 13.6

Can this clauses be amended with = "after written agreement from Partner, which not shall not unreasonably withheld" .

Antwoord

Vrijgegeven: 01-09-2016

13.5 not agreed. This conflicts with SURFnet's right of the ownership of such Equipment (see art. 7.5).

13.6 Not agreed. 13.6 already stated that for Equipment related software the intended buyer has to enter into a license with Partner.

Nr:

Categorie Bestek/beschrijvend document

Betreft 13.11

132

Vraag

13.11

deletion of "asserted" in first sentence since too broad.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 9.1 page 12-13

133

Vraag

We do not comply to this clause as this is a competitive tender. There is no obligation on SURFnet to purchase any Services from partner. There are no minimum volumes. We are not aware of what prices other vendors may offer to supply their products and services to SURFnet and cannot commit to match those prices. Our prices are set out in Addendum A.

Antwoord

Vrijgegeven: 01-09-2016

The clause on market conformity is amongst others to prevent strategic pricing at the time of the Tender and for example -though not limited to situations as meant in clause 12- deemed necessary by SURFnet to make sure pricing will remain market conform. See also question 59.

Nr:

Categorie Bestek/beschrijvend document

Betreft Chapter 5.3.2 - Core competence #2

134

Vraag

Can Surfnet please confirm that Core competence #2 applies to the vendor that is proposed by Tenderer and not to Tecchnical and professional capacity of Tenderer himself?

Antwoord

Vrijgegeven: 01-09-2016

No, core competences apply to the Tenderer. However, it is allowed that Tenderer is a consortium and/or relies on one or more subcontractors (e.g. a vendor) to fulfil suitability requirements (e.g. technical and professional capacity). Depending on the type of collaboration, Tenderer must complete the relevant parts of chapter 8 of the Self-declaration form (Annex B). There it should describe which suitability requirement (e.g. a core competence) is satisfied by each consortium partner and/or subcontractor. For conditions and requested information in case of collaboration with other parties, please refer to the answer in question 103.

In the specific case of core competence #2, Tenderer must describe how he or its partner with whom he formally joins forces, plays an active role in the research and standardization community on photonic transport and optical communication. This must be demonstrated by providing minimal 5 references of contributions to scientific journals (min. 1), (European) research projects (min. 1), Conferences (min. 1), and Standardization Bodies (min. 1) in the field of photonic transport and optical communications.

Please note that, as stated in the input format in Annex C, Tenderer must describe how a core competence is fulfilled, thereby elaborating on each of the elements of a core competence as described in the third column of Table of subsection 5.3.2 of Request for Proposals.

- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
135 Art. 17.4 sub b. Request to add the following text to this article “except in case there is a force majeure circumstance of that third party”.
Antwoord **Vrijgegeven:** 01-09-2016
Not agreed. See answer to question 77.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
136 Art. 13.2 till 13.4. Request to add to these articles that the license terms and conditions of the manufacturer apply to the use of the software by SURFnet. In case of conflict between article 13 and the license terms and conditions of the manufacturer, the license terms and conditions of the manufacturer will prevail.
Antwoord **Vrijgegeven:** 01-09-2016
Not agreed. See answer to question 102.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft Annex_F_Draft_agreement
Vraag
137 Art. 9. It is common that only the prices for products can be benchmarked. It is not usual that prices for services will be benchmarked. We propose to apply the benchmarking clause only to prices of hardware and software products.
Antwoord **Vrijgegeven:** 01-09-2016
Not agreed. See answers to questions 93, 59 and 133.
- Nr:**
- Categorie** Bestek/beschrijvend document
Betreft 11.1 Acceptance
Vraag
138 Could Surfnet describe the mentioned acceptance procedure?
Antwoord **Vrijgegeven:** 01-09-2016

See answer to question 89.

Nr:

Categorie Bestek/beschrijvend document

Betreft 5.2.1

139

Vraag

5.2.1

addition to text on bullet 2

• Throughout the term of the Contract "and subject to the Partner ordering Maintenance and Support", Partner is responsible for providing to SURFnet each then current New Release of the Software that Partner or Partner's superior licensor offers to its customers.

Antwoord

Vrijgegeven: 01-09-2016

Please refer to the answer on question 94.

Nr:

Categorie Bestek/beschrijvend document

Betreft 11.1

140

Vraag

11.1

proposal change of first sentences

11.1 SURFnet shall accept Equipment and/or Software when it functions according to the Specification This will be subject to an acceptance procedure to be agreed upon between the Parties.

Antwoord

Vrijgegeven: 01-09-2016

11.1 not agreed. See question 89.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 18 page 19

141

Vraag

Can this be amended as we do not see an exit procedure as applicable to the scope of work as this isn't an outsourcing contract. This would only relate to services as another entity could not manufacture our products.

Antwoord

Vrijgegeven: 01-09-2016

See answer to question 78.

Nr:

Categorie Bestek/beschrijvend document

Betreft 18 Exit procedure

142

Vraag

18 Exit procedure

18.1 "If applicable, Partner will on"

Antwoord

Vrijgegeven: 01-09-2016

18.1 Not agreed. This would lead to discussion as to the applicability. It is at the discretion of SURFnet to decide whether exit services are necessary. However see also question 14 SURFnet shall modify this article as to duration and remuneration.

Nr:

Categorie Bestek/beschrijvend document

Betreft 9.1.C

143

Vraag

9.1.C
proposal to add text to align benchmarking party upfront. this would replace 9.1.D.

c) The Benchmarker shall be a qualified third party to be mutually agreed on between the Parties in writing;

Can the frequency be restricted to once per year ?

Can the first benchmark be performed 12 months after effective date at the earliest ?

Antwoord

Vrijgegeven: 01-09-2016

Not agreed. See also answer to question 93. Some adjustment as to the frequency shall be made.

Nr:

Categorie Contractvoorwaarden

Betreft 1 Definitions

144

Vraag

1 Definitions

propose text : ""Defect" means any deviation of the performance of the Service from the Specification or Documentation.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 20.4 page 20

145

Vraag

Can this be reworded to: reword to: other than SURFnet's liability to pay for the products and Services supplied under this Contract or for breach of intellectual property rights in no event shall either party be liable to the other under or in connection with this Contract for loss of contracts, loss of goodwill, loss of profits, loss of revenue, loss of anticipated savings, loss of data or network downtime or for any indirect or consequential loss or damages.

Antwoord

Vrijgegeven: 01-09-2016

Not agreed. See answer to question 44.

Nr:

Categorie Bestek/beschrijvend document

Betreft Annex_F_Draft_agreement 14.1 page 16

146

Vraag

We want to add that: Any sublicensing to additional suppliers should require Partner's approval. There should be no need for other suppliers to have a sublicense to use the software

Antwoord

Vrijgegeven: 01-09-2016

Not agreed. SURFnet already has to request Partner for such sublicensing. See also question 113.

Nr:

Categorie Nota van Inlichtingen 01-09-2016

Betreft Question 130 and answer

147

Vraag

The actual question is missing for question 130 and there seems to a wrong refrence to a previous answer.

Antwoord

Vrijgegeven: 01-09-2016

The question must be:

In case Tenderer formally joins forces as a Consortium and/or through subcontracting, please explain which information must be provided.

The reference in the last sentence must read: ..please refer to the answer on question 134.

Nr:

Categorie Nota van Inlichtingen 01-09-2016

Betreft Question 147 and answer

148

Vraag

Rectification of question and answer 147.

Antwoord

Vrijgegeven: 01-09-2016

The reference to question 130 is not correct, this must be question 103. Also the actual question in 103 is not missing.

The remaining answer 'The reference in the last sentence must read: ..please refer to the answer on question 134.' is correct.