

APPENDIX 4

RULES DURING THE TENDERING PROCESS

A. Disregarding the tender

Tenders will be disregarded if they are deemed to be irregular, unacceptable or unsuitable. Tenderers will only be considered for the assignment if they satisfy the requirements stated in the tender documents both at the time of submitting the tender as well as on the day the contract is awarded. The tender must be complete and consistent. Should it become apparent information is missing, or should it come to light that the information provided isn't consistent with the corresponding documentation or appendices, or if it deviates from the further information which has been acquired from the tenderer or publicly available market information, the municipality will reserve the right to exclude a tenderer from further participation with the procedure. Tenderers must exercise due diligence when preparing their tender, when filling in and attaching the appendices and when (legally) signing the documents. The municipality is authorised to offer an opportunity for the tenderer to implement corrections in case of minor issues.

B. Openness regarding the quoted prices

The municipality is regularly asked to provide information regarding the quoted prices by tenderers, once they have been notified of the awarding decision. Partly because this allows them to check the scores and partly because the tenderers want to know how their own tender is positioned in the market where the price is concerned. In order to meet this need for openness where the prices are concerned, we will announce the points of the (sub) awarding criterion total and provide this information when announcing the awarding decision.

C. Confidentiality and copyright

All documentation and information which is being provided within the context of the tender is confidential. The tenderer will guarantee this confidentiality in relation to all documentation and information. The tenderer acknowledges that the relationship with the municipality within the context of this tender has a confidential character. The tenderer will not disclose

the existence and content of this relationship to third parties. Tenderers will also impose these confidentiality obligations to any employees, parties and advisors they wish to involve. Tenderers will ensure people will only have documentation and information made available to them if this is necessary within the scope of submitting a tender. The municipality holds the copyright for the documentation.

The municipality always reserves the right to disclose the documentation. The municipality is not obliged to disclose internal (tender) documents, including evaluation results, advice regarding qualification and awarding to tenderers. However, the tenderer is aware that the municipality is bound by the obligations derived from the Freedom of Information (Law). Compliance with one or several of these obligations will not result in a breach of secrecy or confidentiality.

D. Tenderers' claims for awarding or compensation

Tenders are submitted free of charge. The municipality is not obliged to award. Tenderers can't make a claim on the contract or the reimbursement of registration fees, loss of reference, lost profits or other damage against the municipality in relation to its decision not to award the contract and a request to provide further information regarding the tender, or with reference to other announcements or conduct by the municipality before the awarding decision. The tenderers have no claim against the municipality for compensation of their costs for participating with the tender procedure. The municipality always reserves the right to stop the tender procedure without the need to give any reason.

E. Applicable law and disputes

Dutch law is exclusively applicable to the tender procedure, the awarding, the contract and any possible disputes. Disputes between the parties involved with

the tender, which have arisen as a result of this tender, must be presented to a competent court in the district of Amsterdam.

F. Disputes during the tender process

This quotation request, with all the associated documents, has been compiled with the greatest of care. However, should the tenderer still come across any inconsistencies, inaccuracies, misunderstandings, etc in this document, or indeed in the announcement or follow-up document in the procedure or in the procedure itself (including the choice for the applicable procedure), the municipality must immediately be informed in writing, before the tender submission date, via the contact named in chapter 2. Any inaccuracies etc found after this time, which the tenderer therefore didn't disclose on time, are at the tenderer's risk. This can subsequently no longer be challenged in court, nor in interlocutory or main proceedings. This involves a loss of rights, which the tenderer agrees with by submitting his tender.

If the municipality and tenderer have a difference of opinion regarding inaccuracies etc and therefore do not implement a change or addition, tenderers can only initiate legal proceedings in interlocutory or main proceedings immediately after being informed of this. This will again involve a loss of rights, which the tenderer agrees with by submitting his tender.

G. Disputes after the contract has been awarded

A tenderer who wishes to legally challenge the awarding decision must – under penalty of inadmissibility and forfeit of any claim – initiate interlocutory proceedings with the court in Amsterdam within 20 days of the awarding decision announcement.

If an unsuccessful tenderer doesn't initiate interlocutory proceedings within 20 days of the awarding decision announcement, the municipality of Almere will assume the unsuccessful tenderer doesn't feel he can lay a claim on being awarded the contract and therefore doesn't

have any objections where the implementation of the aforementioned awarding decision is concerned. If a tenderer submits a dispute to the court, the party awarded with the contract must include himself in the dispute, otherwise he will lose the right to submit disputes (based on the outcome of the initial dispute) in case of a possible changed awarding decision.

H. Information and clarification

The municipality reserves the right to check all information provided for accuracy. Providing inaccurate information can result in exclusion. Tenderers will need to clarify or provide more information regarding the evidence and documents provided within the context of the awarding, when requested to do so by the municipality.

I. Competition

The tenderer will refrain from any conduct which limits the competition between tenderers. In particular, the tenderer will:

- not limit the municipality in its efforts to reach agreement regarding the awarding of the contract with another tenderer or a third party;
- not exchange any information regarding his tender or the discussions with the municipality with other tenderers or with third parties.

J. Termination of the contract

The municipality is entitled to immediately terminate the contract with the tenderer who has been awarded the contract, if a judgement by a court results in the awarding decision being unlawful or that the contract is invalid, the contract is declared (partially) ineffective, or the duration of the contract is reduced, or that the products will need to be tendered again for whatever reason. The tenderer awarded with the contract can't make any claims against the municipality for compensation of registration fees, loss of reference, lost profits or other damage as a result of such a termination decision, (partial) ineffectiveness or reducing the duration of the contract.

K. Legal succession

If there is a case of general legal succession during the implementation of the contract in the position of the tenderer/contractor, as a result of a restructuring of the company or insolvency, this can be replaced by another contractor, providing the latter satisfies the initially established criteria for a qualitative selection and this won't result in any other substantial modifications in the assignment/activities to be carried out.

L. Complaints from (a) tenderer(s) regarding the municipality of Almere

Tenderers or subcontractors of tenderers who wish to make a complaint regarding the tender procedure can submit this complaint by providing notification via the Digital Counter on www.almere.nl. Industry associations and complaints offices can also submit a complaint on behalf of tenderers connected to them.

The following must minimally be included when submitting a complaint:

- Name of the organisation submitting the complaint (hereinafter to be referred to as "submitter") and a contact person;
- Characteristic of the tender;
- Nature of the complaint and a possible solution (direction).

Preconditions when submitting a complaint:

- The complaint must be concretely and specifically applicable to this tender procedure;
- Anonymous complaints are not permitted;
- The complaint will be submitted in a timely fashion;
- Questions/comments or complaints which are more suitable for including in the Information Notice must be filed there first. The tenderer will still be able to submit a complaint if he doesn't agree with the answer provided in the Information Notice;
- The complaint must be properly justified;
- Complaints may not be applicable to the general tender policy;

- A complaint will not stop the tender procedure.

Any complaints received will immediately be sent off to an employee at the municipality of Almere who is not involved with the tender (complaints handler). This employee will establish contact with the submitter as soon as possible, in order to make arrangements to discuss the complaint. A complaint can be presented to the Commission of Tender Experts in The Hague (see next paragraph) for mediation or advice. The submitter will receive a reaction from the municipality of Almere after the discussion between the complaints handler and the submitter:

- If it's decided that the complaint is justified, the submitter and the other tenderers will be informed via an Information Notice as soon as possible;
- If the complaint is rejected, the submitter will receive a justified response.

The submitter has the option of contacting the Commission of Tender Experts in The Hague if he subsequently feels his complaint hasn't been dealt with satisfactorily. The municipality would like to point out that any advice provided by this Commission is not binding. The possibility of initiating interlocutory proceedings is not related to the complaints procedure described and can therefore be organised in parallel or as a separate option.

M. Complaints from the municipality about (a) tenderer(s)

If the municipality has a complaint about one or several tenderers, the municipality can notify the tenderer(s) about this complaint. The tenderer will need to confirm receipt of the complaint by return, will subsequently study this urgently and provide the municipality with a justified response to the complaint.