



# **Tender Guidelines**

## **Prequalification Version**

DBFMO Agreement for Lines 1 and 2 and possible additional contracts (including the concession pursuant to the Dutch Passenger Transport Act 2000 for the public transport to be provided)

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# 1 Introduction

## 1.1 Welcome to the Project

This document contains the Tender Guidelines, prequalification version, for the DBFMO Agreement for the design, building (including the supply of Rolling Stock), financing, maintenance and operation of public transport for tram lines 1 and 2 to be newly constructed in the Municipality of Groningen as the gateway to a regional tram and light rail network. Within that context, the Project provides for possible additional contracts at a later stage, which will be discussed in more detail in Section 1.5.2 of these Guidelines.

The Groningen-Assen Region is the economic driver of the North. The City of Groningen plays a key role in the region: it is home to the University of Groningen, Hanze University Groningen, the University Medical Center Groningen (UMCG), the Martini Hospital and other major hubs in the city's economic and cultural life. It accommodates 125,000 jobs, more than half the entire region's number. Every day more than 160,000 people travel to the city to study, work, shop or relax. This number is increasing. A recent study forecasts that the number of daily visitors will rise to 215,000 by 2020.

Approximately 75% of current visitors travel to the city by car. As a result of its successful 'compact city' policy, the majority of jobs and facilities are located in Groningen's city centre, making it the key destination for visitors. The consequences are obvious: congested roads and overcrowded car parks. City centre car traffic will soon reach its growth limits, with public transport – in its current form – likewise being helpless in the face of continued growth. The number of trains serving the city still allows for further growth – an inevitable development – but city traffic is coming to a standstill. There is no room for more buses. If this situation is allowed to continue, Groningen will become inaccessible, which will harm the economy and quality of life in the city and the region.

The RegioTram is one measure that may turn the tide. A tram in Groningen is an excellent alternative to overcrowded buses. Trams are cleaner, quieter and faster than buses, with much greater capacity. Other cities that have introduced or reintroduced the tram saw the number of people using their public transport services soar, thanks to the reliability and sophisticated appearance of modern trams. The introduction of the RegioTram will ensure that the city will continue to be accessible in the future. Buses will disappear from Grote Markt, creating a more attractive city centre. In combination with the Oostwand renovation at Grote Markt and the construction of the Forum, the introduction of the tram will be a major impetus for the heart of the Groningen-Assen Region.

It is for these reasons that the Municipal Council and the Provincial Executive, together with the Groningen-Assen Region, have decided to arrange a tendering procedure for two tram lines, which will be constructed and operated in the Municipality of Groningen. Line 1 will run from Groningen Central Station to Zernike, whereas Line 2 will run to Kardingje.

Thank you for your interest in this tendering procedure. We wish you every success in your preparations. These Guidelines will inform you of the subsequent steps in the tendering procedure.

Mr. M.J. Olman  
Director of the RegioTram Project

## 1.2 Tender Guidelines

These Tender Guidelines describe the tendering procedure for the RegioTram Groningen Project. This document contains the Tender Guidelines, Prequalification Stage version. The Contracting Authority may update the Tender Guidelines at any stage of the tendering procedure by issuing an updated version. The Contracting Authority anticipates that the following updated versions will be used after the Prequalification Stage version:

- the Outline Proposal version;
- the Consultation version;
- the Dialogue version;
- the Tender version.

The Contracting Authority may supplement or change any Tender Guidelines on the basis of the information available to the Contracting Authority at the time and at its discretion.

The tendering procedure is modelled on the competitive dialogue as referred to in Directive 2004/18/EC. The Contracting Authority is aware that the part pertaining to new development, financing and supply of Rolling Stock is governed by Directive 2004/17/EC, which does not provide for any competitive dialogue, and that the public transport part is governed by the provisions of the Dutch Passenger Transport Act (*Wet personenvervoer 2000*) and the Dutch Passenger Transport Decree 2000 (*Besluit personenvervoer 2000*). Under Article 37 (1) of the Passenger Transport Decree 2000, the tendering procedure for public transport can be organised according to a competitive dialogue. Setting up the procurement process as a competitive dialogue within the meaning of Article 29 of the Dutch Public Procurement (Tendering Rules) Decree (*Besluit aanbestedingsregels voor overheidsopdrachten*, hereinafter: 'BAO') ensures that this process also complies with the negotiated procedure with a prior call for competition as referred to in Directive 2004/17/EC as well as with the provisions of Section 2 of the Passenger Transport Decree 2000.

## 1.3 Definitions

Capitalised terms used in these Tender Guidelines will be defined in the DBFMO Agreement yet to be issued or, if they are not defined in the DBFMO Agreement, in these Tender Guidelines. Please refer to Appendix 1 for a list of definitions.<sup>1</sup>

This English version of the Tender Guidelines is being provided solely for information purposes. Only the Dutch version of the Tender Guidelines is binding.

## 1.4 Contracting Authority

The Contracting Authorities are the Municipal Council of Groningen and the Provincial Executive of Groningen. They have jointly set up the RegioTram Project, which will coordinate the tendering procedure and project preparation on behalf of the Contracting Authorities. At some point before Contract Close, the Contracting Authorities will establish a Public Body (Openbaar Lichaam) RegioTram Project, which will act as the Authority, or designate another public entity as Authority. The administrative body acting for the public transport concession will be the relevant public body, OV-Bureau Groningen-Drenthe or the Provincial Executive of Groningen, to be determined prior to the closing of the DBFMO Agreement and furthermore from time to time during the term of the DBFMO Agreement.

The Municipal Council and the Provincial Executive of Groningen will warrant performance of the Authority's obligations under the DBFMO Agreement to the Contractor throughout the term of the DBFMO Agreement. OV-Bureau Groningen-Drenthe's responsibilities include the coordination and

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<sup>1</sup> Most of these definitions have been included in the Directorate-General for Public Works and Water Management (RWS) DBFM AGREEMENT, Standard 2.0 (<http://www.ppsbijhetrijk.nl/dsresource?objectid=808&type=org>), or the Dutch version of that document, published on the same website.

development function of the public transport to be commissioned as part of the DBFMO Agreement. OV-Bureau Groningen-Drenthe will support the RegioTram Project as regards the relevant aspects of the tendering procedure and the DBFMO Agreement.

The Dutch Ministry of Transport, Public Works and Water Management are making a financial contribution to the Project from *Regiospecifiek Pakket Zuiderzeelijn*. The Groningen-Assen Region will also provide financial support.

Please send all correspondence regarding this tendering procedure to the Contracting Authorities at:

Projectbureau Regiotram  
Oosterstraat 56a  
9711 NX GRONINGEN  
The Netherlands  
Telephone: +31 (0)50 402 35 50  
Fax: +31 (0)50 402 35 60

All documents to be submitted by the Candidates (not including the documents to be submitted by e-mail) must be sent to the contact person at the following address:

Contact person: Ms B.C. Lont  
Office address: Oosterstraat 56a  
9711 NX GRONINGEN  
The Netherlands

All documents to be submitted by the Candidates by e-mail must be sent to the contact person at the following address:

Contact person: Ms B.C. Lont  
E-mail: [tender@regiotram.groningen.nl](mailto:tender@regiotram.groningen.nl)

Candidates may only contact the Contracting Authority, or directors and officials employed at the government bodies involved - the Municipal Council, the Provincial Executive and OV-Bureau Groningen-Drenthe - regarding the Project in the manner described in the Tender Documents.

## **1.5 Project – Additional Contracts**

### **1.5.1. Project**

The history of the proposed construction of tram lines 1 and 2 is available on the RegioTram Project website, [www.regiotram.nl](http://www.regiotram.nl). That website (at <http://www.regiotram.nl/bibliotheek/>) also includes a large number of documents containing more background information on the Project, financial aspects, the decision-making process and the tender method. However, the text of these Guidelines, as modified for each Project stage, is binding in the relationship with Candidates. For details on the Project scope, please refer to the report *De RegioTram op Hoofdlijnen; Tracé, ontwerp, financiering en aanbesteding van Lijn 1 en 2*, available at <http://www.regiotram.nl/bibliotheek/20100915-de-regiotram-op-hoofdlijnen.pdf>.

In summary, the Project comprises all work and services to be provided under the DBFMO Agreement ensuing from this tendering procedure in relation to the design, building, financing, maintenance and operation of the complete systems, comprising RegioTram Lines 1 and 2 in the Municipality of Groningen, including the required Tram Infrastructure, Rolling Stock and the Public Transport to be provided with those materials within the meaning of the Passenger Transport Act 2000, as well as the design and construction of the Municipal Infrastructure located within the work boundaries and modifications to other Municipal Infrastructure resulting from the introduction of the tram lines. Municipal Infrastructure will not require management and maintenance to the extent that it is located outside the system boundaries of the respective tram lines and to the extent that this exceeds ordinary maintenance and warranty obligations. The Contracting Authority will provide a

Preliminary Design and a Final Design for Municipal Infrastructure. Requirements of the Output Specification and a reference design will be available for the other components.

Ownership of the Tram Infrastructure – i.e. the area within the system boundaries: tramway, tram stops, servicing platforms, depot, overhead wires, substations, safety precautions, signalling systems and communication facilities – will rest with the governments involved, in this case the Municipal Council of Groningen. Ownership of Rolling Stock will, in principle, rest with the Contracting Authority or an entity to be designated by the Contracting Authority. After transfer, ownership of the complete systems will, in any event, rest with one of the governments involved, which systems will then have to meet the transfer requirements to be established.

As far as can presently be determined, no businesses will be transferred, as the public transport service is new, which means that no aspects of employment law are involved. Such aspects may become relevant, however, upon expiry of the DBFMO Agreement.

Agreements with various companies are currently in effect for outdoor advertising within the Municipality of Groningen. The Contracting Authority will determine its position early on in the procedure – probably during or shortly after the Consultation Stage – with regard to the degree to which these agreements could affect aspects of the DBFMO Agreement to be concluded.

A Preliminary Design with descriptions (reference design) has been prepared for Line 1. Such a design for Line 2 will follow shortly after the Prequalification Stage. That design should be regarded as a reference design. The Zoning Plans required for Routing Sections I and II will be established before the Dialogue Stage. Those required for Routing Sections III and IV are expected to be available on 30 May 2012 at the latest.

The final scope of the Project will be announced in subsequent versions of the Guidelines.

The expected estimated investment costs to be borne by the Contractor, including costs for equipment, total more than € 250 million (price level of 1 January 2010, excluding VAT).  
The expected estimated maintenance and operation costs to be borne by the Contractor total more than € 150 million (price level of 1 January 2010, excluding VAT).  
The expected estimated present value of Availability Payments and projected lump-sum payment (3.2%, 1 January 2010, excluding VAT) is € 450 million - € 500 million.

The Contracting Authority intends to apply an Availability Period of 22.5 years as from the Scheduled Availability Date (the date on which the Rolling Stock and the Infrastructure must have been made available and must have been successfully put into operation and tested), in which respect different Service Commencement Dates, but the same Expiry Date, may apply for Line 1 and Line 2.

The Contracting Authority is aware that Article 24 of the Passenger Transport Act 2000 currently allows concessions of only up to 15 years, and only after dispensation has been obtained from the Minister of Transport, Public Works and Water Management. On 3 December 2009, the PSO Regulation came into effect. Under Article 4 (3) and (4) of the PSO Regulation, the maximum duration of a tram concession can be 22.5 years. On 27 April 2010, the Cabinet submitted a bill to amend the Passenger Transport Act 2000 (Parliamentary Document 32376), providing for a maximum concession duration for the present DBFMO Agreement of 22.5 years from the Availability Date, in a new Article 24 (1) of the Act. The Explanatory Memorandum to this bill notes that the PSO Regulation already has direct effect on this point. The Ministry of Transport, Public Works and Water Management confirmed to the RegioTram Project that the maximum concession permitted for this Project is 22.5 years.

### **1.5.2 Possible Additional Contracts**

The Contracting Authority does not rule out the possibility that changes may be stipulated during the term of the DBFMO Agreement. These changes can relate to the following aspects:

1. Periodic changes to the Lines 1 and 2 timetables;

2. Allowing third parties to use Lines 1 and 2, whether or not with simultaneous termination of the O-component of Lines 1 and 2, according to a user fee method to be determined in advance;
3. Possible infrastructure expansion for Lines 1 and 2, possibly to new lines (within specific boundaries);
4. Continuation of public transport in the Region after termination of the tramway concessions;
5. Acquisition of new equipment at the Contracting Authority's request;
6. Other changes.

The modification processes to be laid down in the DBFMO Agreement as a result of such changes will be extensively discussed during the tendering procedure.

## 1.6 Key Result Areas

During the Project preparations, the Contracting Authority formulated a number of Key Result Areas. The purpose of this tendering procedure is to conclude a DBFMO Agreement with the party capable of performing the ensuing commitments in such a manner as to fulfil the Key Result Areas to the greatest extent possible ('outstanding performance'). This is also the purpose of the minimum requirements that have been drawn up and the award criteria to be announced in subsequent guidelines.

The main Key Result Areas are:

### 1. Quality

- a. Transport
  - i. Affordable, fast, safe, comfortable and reliable transport for a growing number of passengers
  - ii. Integration within the current public transport network and practically easy to expand
  - iii. System/infrastructure
- b. Surroundings
  - i. Integration with due regard for aesthetics and the immediate surroundings
  - ii. Infrastructure
  - iii. Effective coordination with other public works in the public area.  
The system construction and operation should not create any nuisance, or at least as little as possible, to local residents, entrepreneurs and visitors to the Municipality of Groningen and System users. In other words, accessibility to the System's immediate surroundings must be guaranteed at all stages of the Project and the construction and operation must create as little nuisance as possible to the surroundings as regards noise, vibrations and foul smell, while damage to the surroundings must be prevented to the greatest extent possible.
- c. Sustainability and Social Return
  - i. Environment
  - ii. Future-proof
  - iii. Innovative
  - iv. Preferably, the Project can achieve a percentage yet to be determined of the wage bill to be applied throughout the term of the contract, so as to offer employment to people at a distance from the labour market.
- d. Reputation
  - i. Meeting all Key Result Areas, the system must have an excellent reputation that will reflect on the underlying governments.

### 2. Safety

- a. System
- b. Traffic
- c. Community relations and environment
- d. Public safety

The system design, construction and operation must be safe for construction workers, traffic, passengers and personnel.

### **3. Availability**

#### **a. Time**

The two tram lines must be operational in 2016. The two tram lines will be permitted to use the route via Oostersingel at that time. The section between Zuiderdiep via Grote Markt to Bloemsingel must be put into operation on the second or third Sunday of July 2016 at the latest.

The concession term starts on the Service Commencement Date. Accordingly, if the Service Commencement Date is prior to the second or third Sunday of December 2015, the term will likewise start on that same date.

#### **b. Transport ('opening hours')**

#### **c. Sustainability (in the sense of low maintenance)**

### **4. Controllability**

#### **a. Money/finance**

The Project must be completed within the budget to be made available for that purpose by the Parties and third parties and the application of funds must be transparent and legitimate; the facilities must be affordable to passengers; provided that the Contractor properly performs its work, regarding which financial incentives will be included, it is entitled to a fair reward for that work.

#### **b. Risks**

The RegioTram Project must be able to control the Project risks within the limits of the law and the DBFMO Agreement.

#### **c. Flexibility**

The Project must take sufficient account of the changes currently foreseeable; other changes must be discouraged as much as possible.

#### **d. Collaboration**

The Project must be performed in proper collaboration between the Authority, the Contractor and the other stakeholders, in which regard any disputes that may arise and cannot be prevented will be solved without help from third parties to the greatest extent possible.

These objectives may be rephrased at a later stage.

In Systems Engineering terms, these Key Result Areas are the Project's 'Top Requirements'. The Contracting Authority will translate them into a number of system requirements – for Infra and Municipal Infrastructure, for Rolling Stock and for Public Transport – and subsystem and object requirements, which will also include process requirements. The Participants in the tendering procedure must use them as a basis for developing their proposals. As for the Candidate to whom the contract will be awarded, its resulting proposal linked to the requirements will constitute the Project's Output Specifications.

## **1.7 Critical Success Factors**

The Key Result Areas serve, among other things, to formulate Critical Success Factors (CSFs) for the Outline Proposal Stage of the competitive dialogue. Following prequalification, the Outline Proposal Stage is the first stage of the Dialogue. At this stage, chosen Candidates must prepare an Outline Proposal, including detailed proposals for - in the Project Management Office's view - four Critical Success Factors named by the Contracting Authority. On the basis of the assessments of the Outline Proposals, the number of Candidates will be reduced to three for the subsequent stages of the tendering procedure. This reduction is important in order to keep transaction costs for both public and private parties to a minimum. The assessment method will be announced in subsequent versions of the Guidelines.

Since the Candidates have had little time to prepare drawings and perform calculations at this early stage of the tendering procedure, the initial stage will focus primarily on the process and far less on content. Therefore, based on the Key Result Areas the following CSFs must be detailed in the Outline Proposal to be prepared in the next stage of the tendering procedure (subject to change):

### ***CSF 1: Management Plan and Collaboration***

A description of the most elementary processes the Candidate will design and execute in order to warrant that (a) it will successfully complete the tendering procedure and (b) it will perform the DBFMO Agreement such that the Key Result Areas can be achieved as much as possible in close cooperation with the Contracting Authority and the stakeholders involved, with due observance of all interests involved. CSF 1 forms the basis of the Management Plan to be prepared by the Candidate (which must be based on ISO 15288). As a result, this CSF - at least at the Outline Proposal Stage - is the main one, because all processes the Candidates will design to successfully complete all stages of the Project will be based on the Management Plan. The Management Plan is, so to speak, the SPV's operating system. This element also requires Candidates to pay attention to meeting sustainability and social-return demands.

### ***CSF 2: Transport Quality***

A description - in the form of a basic management plan based on the ISO 15288 system - of the processes the Candidate will use to implement and operate a transport system that best meets the Key Result Areas for the entire term of the DBFMO Agreement, particularly in the fields of sustainability, reliability, safety, comfort, capacity, availability, provision of information to passengers and the local residents and businesses, disabled access and complaint handling (see Article 33 of the Passenger Transport Decree 2000).

### ***CSF 3: Community and Environment***

A description of the processes the Candidate will use to design, build and operate a system that satisfies the following requirements both during construction and during operation: (a) maximum access to local residents and businesses, (b) as little nuisance as possible or no nuisance at all (including vibrations, noise, foul smell and other nuisance) for local residents and businesses, and (c) the system must merge into the public area as much as possible.

### ***CSF 4: Interface Management and Flexibility***

A description of the processes the Candidate will use to design, build and operate a system, whilst controlling all interfaces with internal and external factors as much as possible. Special attention deserve the interfaces with public areas and interfaces with potential network expansions, all this as described in several variants in Section 1.5.

The Contracting Authority is considering having the Outline Proposal submitted anonymously. It is also considering a prior stipulation for some elements of the Outline Proposal that they may be disclosed, with the Contracting Authority being free to draw from the Outline Proposals when drafting the Tender Documents in more detail. This will primarily involve elements in which the Candidates propose ways to formulate Project questions, in response to the Contracting Authority's request to that effect. Naturally, any confidential solutions brought forward by Candidates will be treated in confidence.

At the subsequent stages of the tendering procedure, the Candidates must use the solutions provided in the plans they developed and may only depart from these after they have obtained the RegioTram Project's prior permission. Such permission can only be given on account of compelling reasons, i.e. that unaltered execution of a plan described in an Outline Proposal proves to be objectively impossible.

## **1.8 DBFMO Agreement**

The draft DBFMO Agreement will be provided to Candidates that qualify for participation in the Outline Proposal Stage of the Dialogue. To some extent, the DBFMO Agreement will be similar to the government-wide model DBFM Agreement (which can be found at [www.ppsbijhetrijk.nl](http://www.ppsbijhetrijk.nl)), supplemented by or amended for provisions for Rolling Stock and the operation of Public Transport, as well as some changes and improvements that the Contracting Authority deems relevant for the Project.

In the course of the tendering procedure, the following elements of the draft DBFMO Agreement will be completed using the Dialogue results:

- a. the draft Requirements of the Output Specification will be incorporated in the DBFMO Agreement;
- b. other Dialogue Products developed by the Candidate during the tendering procedure will be added to the DBFMO Agreement as appendices.

## **1.9 Payment Regime and Project Financing**

During the term of the DBFMO Agreement, the Contractor will receive a performance-related periodic availability payment, consisting of a fixed and a variable component, in addition to one or more lump-sum payments. The Availability Payment will become due immediately after the respective Availability Dates for Line 1 and Line 2. Upon the Availability of Lines 1 and 2, the Contractor may also receive one or more lump-sum payments and - during construction - a number of milestone payments related to the progress of the Municipal Infrastructure. The payment regime includes incentives to optimise the availability and quality of the services to be provided, for example in connection with safety, complaint handling, quality, punctuality, etc. The period between the Scheduled Availability Date and the Transfer Date is 22.5 years. Intermediate Availability Dates may be introduced for putting tram Routing Sections into operation.

Depending on the variant opted for, the Contractor will additionally receive a user fee for the use by third parties of Tram Infrastructure it makes available.

The Contractor must secure financing for the Project, including any EIB financing for - on the Availability Date - at least a percentage of the funds required that is yet to be determined; the Authority will finance the rest by means of one or more Lump-Sum Payments. The precise prefinancing amount will be determined after the Consultation Stage. The financing structure must be set up such that financial institutions will make loan capital available to the Contractor, or at least will guarantee the same, based on Project Financing principles. These financial institutions must have a Long-Term Issue Credit Rating issued by Standard & Poor's or an equivalent internationally recognised, independent rating agency of at least investment grade (BBB- or an equivalent rating). The Authority will conclude a Direct Agreement with the Contractor and the relevant financiers and, upon request, will cooperate in pledging the Net Availability Payment. A draft Direct Agreement will be added to the DBFMO Agreement as an appendix.

## **1.10 Tendering Procedure - Brief Description**

### ***1.10.1 Tendering Procedure Stages and Project Execution***

The tendering procedure will include a number of stages, which are presented in the table below. It also includes the provisional milestones for the Project itself and the progress with regard to the zoning plans for Lines 1 and 2.

The dates given are subject to change and indicative and can be changed during the tendering procedure.

Contract notice	08/12/10
Kick-off meeting	16/12/10
Submission of Requests for Participation	03/03/11
Assessment	03/03/11 - 17/03/11
Period to challenge the selection decision	18/03/11 - 01/04/11
1st dialogue stage (Outline Proposal stage)	08/04/11 - 22/07/11
Submission of Outline Proposals	22/07/11
Assessment of Outline Proposals	22/07/11 - 02/09/11
Period to challenge the selection decision	05/09/11 - 19/09/11
2nd dialogue stage (consultation stage)	19/09/11 - 02/01/12
3rd dialogue stage (dialogue stage)	30/01/12 - 30/04/12
Period to challenge the selection decision	01/05/12 - 15/05/12

Invitation to Tender	18/05/12
Submission of Tenders	29/06/12
Assessment of Tenders	29/06/12 - 27/07/12
Provisional award of contract	01/08/12
Period to challenge the selection decision	02/08/12 - 17/08/12
Final award/contract close	12/10/12
Financial close	07/12/12

### **1.10.2 Procedure Description**

#### **Prequalification Stage**

The initial stage of the tendering procedure is the Prequalification Stage. Prequalification takes place on the basis of an assessment on grounds for exclusion and criteria for qualitative selection. The Contracting Authority will invite Candidates to which no grounds for exclusion apply and that satisfy the criteria for qualitative selection to participate in the Dialogue. The Prequalification Stage is described in more detail in Chapter 3.

#### **Dialogue**

The Contracting Authority avails itself of the option offered in Article 29 (4) of Directive 2004/18/EC to provide for the Dialogue to take place in successive stages. In this tendering procedure, the Dialogue comprises the following three stages:

- Outline Proposal Stage
- Consultation Stage
- Dialogue Stage.

To the extent that more than three Candidates turn out to satisfy the minimum requirements, at the Outline Proposal Stage the number of Candidates invited to the subsequent stages of the tendering procedure will be reduced to three. This is done by assessing the Candidates' Outline Proposals based on qualitative award criteria yet to be announced, i.e. the scores they can achieve for the respective elements (Critical Success Factors) of their Outline Proposals. The assessment will be made by the advisory committees to be named in the Outline Proposal Guidelines, according to an assessment method also to be announced in those Guidelines.

When submitting their Outline Proposals, the Candidates must state that they have no reasons to assume that they will be unable to execute the Project below the indicative Ceiling Price. The indicative Ceiling Price will be announced in the invitation to the Outline Proposal Stage.

The Contracting Authority will invite the three Candidates it selected based on an assessment of their Outline Proposals to participate in the Consultation Stage. No selection will be made during the Consultation Stage. The Contracting Authority will use the results from the Consultation Stage to review the Tender Documents, which are the same for all Candidates.

During the Dialogue Stage, the Contracting Authority will consult with the three Candidates to prepare the DBFMO Agreement, including the Listed Risks to be allocated, the Requirements of the Output Specification, Options and other Dialogue Products, such that the Candidates can submit Tenders in that respect. No selection will be made during the Dialogue Stage.

#### **Tender Stage**

Following completion of the Dialogue Stage by the Contracting Authority, the Tender Stage will commence.

The Project will be awarded on the basis of the most economically advantageous tender criterion. The Tender must be lower than the Ceiling Price set for a Candidate. The Ceiling Price depends on the allocation of the Listed Risks: the more Listed Risks are allocated to the Contracting Authority, the lower the Ceiling Price.

## Tendering procedure diagram

The tendering procedure is presented in a diagram in Figure 1.

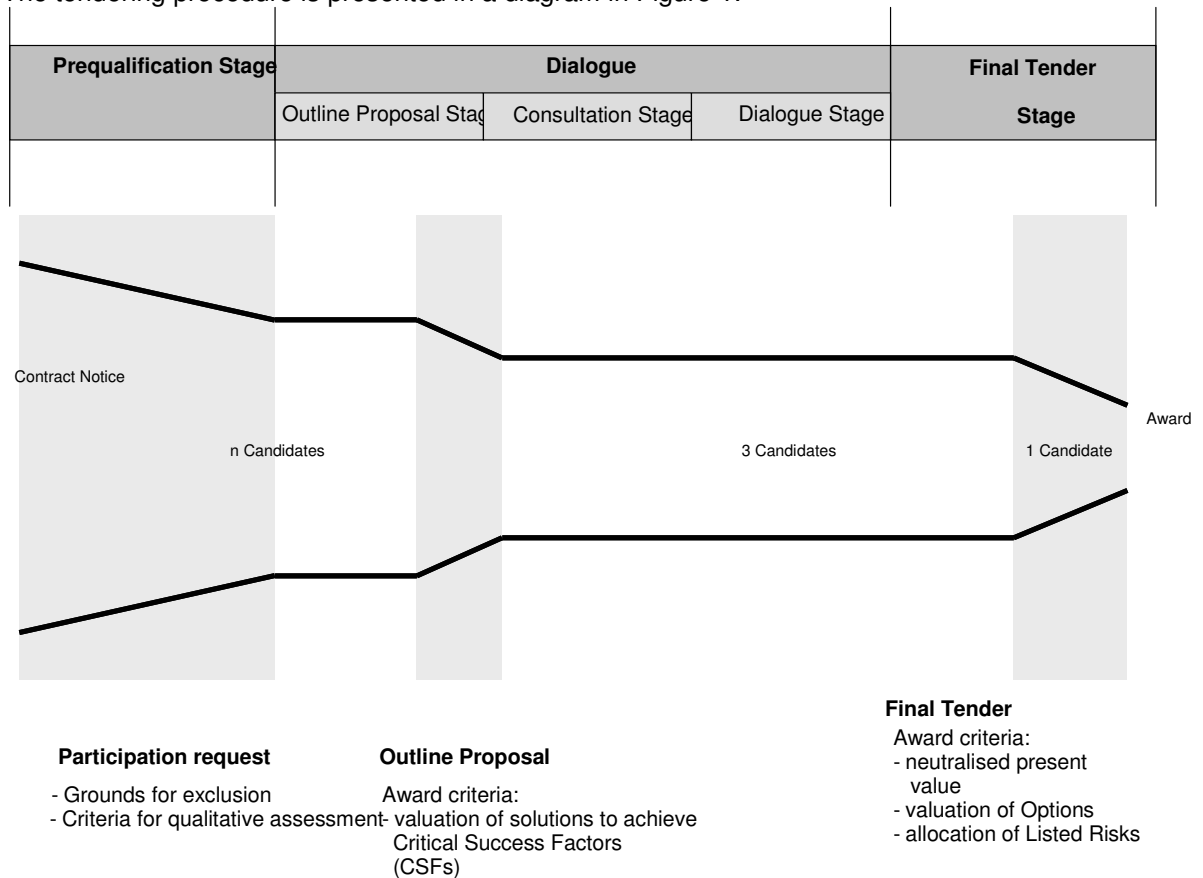


Figure 1: Diagram of tendering procedure stages

### 1.11 Planning procedures

Two separate zoning plans must be adopted for the Project, which are currently being drawn up (see also the table in Section 1.10.1). Further information will be given after the Prequalification Stage.

The ultimate results of the planning procedures may affect the further progress of the tendering procedure and the precise Project content. Candidates should bear this in mind.

## 2 General Information

### 2.1 Candidates' Approval

Participation in this tendering procedure constitutes the Candidates' unconditional approval of the tendering procedure described in these Tender Guidelines.

### 2.2 Applicable Regulations

The tendering procedure will be conducted as a competitive dialogue (Article 29 of Directive 2004/18/EC, Article 29 of the Public Procurement (Tendering Rules) Decree and Chapter 4 of the Dutch Works Procurement Regulations 2005 (*Aanbestedingsreglement Werken 2005*)). Under the Passenger Transport Act 2000, the Contractor of the DBFMO Agreement must also be granted a concession for the provision of public transport as referred to in the Passenger Transport Act 2000. At subsequent stages of the tendering procedure, more details will be provided in respect of compliance with the provisions under or pursuant to the Passenger Transport Act 2000 regarding the granting of the RegioTram concession to the Contractor.

The following laws and regulations apply to this tendering procedure, in so far as these Tender Guidelines do not depart from them:

- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114, 30 April 2004);
- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;
- The Dutch Act Implementing Legal Remedies Directives Concerning the Award of Public Contracts (*Wet implementatie rechtsbeschermingsrichtlijnen aanbesteden*, 'Wira'), Dutch Bulletin of Acts and Decrees 2010, 38;
- The Dutch Decree of 16 July 2005 establishing rules concerning the procedures for the award of public works contracts, public supply contracts and public service contracts (*Besluit aanbestedingsregels voor overheidsopdrachten*, 'BAO'), Dutch Bulletin of Acts and Decrees 2005, 408 (subsequently amended in Dutch Bulletin of Acts and Decrees 2007, 313), on the basis of the Dutch Framework Act on EEC Public Procurement Rules (*Raamwet EEG-voorschriften aanbestedingen*);
- The Dutch Decree of 16 July 2005 establishing rules concerning the procedures for the award of contracts in the water and energy supply, transport and postal services sectors (*Besluit aanbestedingen speciale sectoren*, 'BASS'), Dutch Bulletin of Acts and Decrees 2005, 409, on the basis of the Framework Act on EEC Public Procurement Rules;
- The Dutch Works Procurement Regulations 2005 (*Aanbestedingsreglement werken 2005*, 'ARW 2005');
- The Dutch Public Administration (Probity Screening) Act (*Wet bevordering integriteitsbeoordelingen door het openbaar bestuur*, 'BIBOB Act') and Policy Rules on Probity and Exclusion in Tendering Procedures in BIBOB Sectors (*Beleidsregels integriteit en uitsluiting bij aanbestedingen in BIBOB-sectoren*, 'BIBOB Policy Rules');
- The PSO Regulation;
- The Dutch Passenger Transport Act 2000;
- The Dutch Passenger Transport Decree 2000.

### 2.3 Legal Protection – Choice of Forum

The Contracting Authority will inform the relevant Candidates in writing of any decisions intended to have legal effect within the meaning of Article 1 (1) of Directive 89/665/EEC in the context of the tendering procedure.

If a Candidate has any objections to such a decision, it must institute preliminary relief proceedings against the Contracting Authority's decision within 15 calendar days of dispatch of the decision by the Contracting Authority. The proceedings will be pending from the date of summons (Article 125 of the Dutch Code of Civil Procedure).

This term has a deadline, meaning that if a Candidate fails to actually institute preliminary relief proceedings within 15 calendar days of dispatch of the decision, the Candidate in question loses its right to object to the decision in preliminary relief proceedings. In that case, the Contracting Authority is free to act on the decision.

The civil court in Groningen has exclusive jurisdiction to examine any disputes between the parties involved in the tendering procedure arising as a result of the tendering procedure governed by the Tender Guidelines.

## **2.4 Procedure Termination – Candidates' Withdrawal**

The Contracting Authority may terminate the tendering procedure before completion.

If the Contracting Authority decides to terminate the tendering procedure after the Prequalification Stage, the Contracting Authority will pay the Candidates reasonable compensation, to be determined by the Contracting Authority, for the costs incurred by the Candidates, depending on the stage of the tendering procedure and the efforts made by the Candidates up to that point. See also Section 7.6 of these Tender Guidelines.

The Candidates may withdraw from the tendering procedure until submission of their Tenders without being liable to pay compensation to the Contracting Authority. Candidates who are invited to participate in a subsequent stage of the tendering procedure, but who withdraw nevertheless, are not entitled to any allowance for (tendering) costs. The Contracting Authority may depart from this rule under special circumstances, for example if the decision to withdraw was made due to the Contracting Authority changing the Tender Documents to such an extent that the Candidate involved cannot reasonably be expected to continue the tendering procedure or if the Contracting Authority benefits from the Dialogue Products submitted by the Candidate up to that point.

## **2.5 Contract Notice and Announcement**

On 11 November 2010 and 7 December 2010, the pre-information notice and the contract notice, respectively, were submitted to the Publications Office of the European Union (TED). The pre-information notice was published on TED on 16 November 2010, with reference number 2010/S 222-339762. The tendering procedure was also announced online at [www.aanbestedingskalender.nl](http://www.aanbestedingskalender.nl).

## **2.6 Language**

The language used in this tendering procedure is Dutch. The Contracting Authority will make a number of documents available in English for information purposes only. The Dutch text of the Tender Guidelines is binding. In so far as the Contracting Authority does not indicate otherwise, all documents submitted to the Contracting Authority by the Candidates must be drawn up in Dutch.

Information regarding reference projects may be provided in English.

## **2.7 Ceiling Price**

The Ceiling Price for performance of the DBFMO Agreement will be disclosed in the Outline Proposal version of the Guidelines.

The Contracting Authority points out that the actual allocation of risks will be established for each Candidate during the Dialogue Stage of this tendering procedure, based on the Listed Risk

procedure. As a result, certain Listed Risks may ultimately be the responsibility of the Contractor in full or in part. The Ceiling Price will be adjusted for each Candidate on the basis of the individual allocation of risks. To the extent that the Ceiling Price for each Candidate changes as a result of this individual allocation of risks, the Contracting Authority will notify the Candidate in good time, in the Invitation to Tender at the latest.

In addition to individual adjustments of the Ceiling Price based on the above, the Contracting Authority reserves the right to make a generic adjustment to the Ceiling Price during the subsequent stages of the tendering procedure. The Candidates will always be notified in good time.

Upon submission of its Outline Proposal, the Candidate must declare that, in its view, it is possible to submit a Tender, the present value of which – calculated on the basis of parameters announced in advance, including the discount rate – is below the Ceiling Price referred to above.

The Tender may not exceed the Ceiling Price indicated in the Invitation to Tender. Tenders deviating from this requirement are invalid.

## **2.8 Provision of Information**

### **2.8.1 Website**

The Contracting Authority will launch an extranet site at the Outline Proposal Stage for the purpose of this tendering procedure. It will also include a virtual data room, the use of which will be governed by the Data Room Rules. Before that stage, information will be communicated at [www.aanbestedingskalender.nl](http://www.aanbestedingskalender.nl) and by e-mail (see the following section).

### **2.8.3 Electronic Communication**

In this tendering procedure, the Candidates and the Contracting Authority will have the option of electronic communication.

Information exchanged between the Contracting Authority and the Candidates by electronic communication must be in PDF format. Information in Word or Excel will only be permitted after a decision to this end is made by the Contracting Authority at the Candidates' request or at its own discretion.

## **2.9 Confidentiality and Intellectual Property Rights**

### **2.9.1 Confidentiality to Be Observed by the Candidates**

By participating in the tendering procedure, the Candidates undertake to observe confidentiality with regard to all information they will receive from the Contracting Authority and not to disclose such information to third parties, in so far as this information is not part of the public domain. However, they are allowed to provide such information to their contractors involved in the tendering procedure, provided that they impose this confidentiality clause on those contractors. This obligation does not apply if the contrary explicitly ensues from the Tender Guidelines or other notices communicated by the Contracting Authority.

### **2.9.2 Confidentiality to Be Observed by the Contracting Authority and Intellectual Property Rights**

The following information is considered confidential:

- a. Reference data, Outline Proposals, Dialogue Products and Tenders;
- b. Confidential Clarifications as referred to in Section 2.10.2;
- c. All other information that is confidential by nature.

Confidential information will be treated as such by the Contracting Authority. Accordingly, the Contracting Authority will not disclose any confidential information to third parties, including other Candidates, except when the Contracting Authority is reasonably obliged to do so under a statutory obligation or in the context of legal proceedings. Before providing third parties with confidential information in such situations, the Contracting Authority will first consult the relevant Candidate to

agree on a method of disclosure that is least objectionable to the latter, without prejudice to compliance with the aforementioned obligations by the Contracting Authority.

Participation in the tendering procedure will not entail a transfer of the Candidates' intellectual property rights to the Contracting Authority, unless agreed otherwise.

## **2.10 General and Confidential Clarifications**

Candidates may ask the Contracting Authority for further clarifications on the Project and the Tender Documents throughout the tendering procedure. Requests for clarifications may lead to General and Confidential Clarifications being provided by the Contracting Authority.

The Contracting Authority may also decide on its own accord to provide information to the Candidates.

For each stage of the tendering procedure, the Contracting Authority will state the deadline for submitting requests for clarifications.

### **2.10.1 General Clarifications**

In principle, the Contracting Authority will respond to requests for clarifications by providing General Clarifications. General Clarifications are changes, elaborations and explanations, or other kinds of information regarding the Project or the Tender Documents, that are the same for each Candidate and apply equally to all Candidates.

If the Contracting Authority responds to a Candidate's request for clarifications by providing General Clarifications, the Contracting Authority will anonymise this request for clarifications and answer it in a manner accessible to all Candidates.

### **2.10.2 Confidential Clarifications**

If treating a Candidate's request for clarifications as General Clarifications leads to the disclosure of confidential information on the solutions envisaged or proposed by the Candidate or any other confidential business information, the Candidate may submit a substantiated request to the Contracting Authority to treat that request as Confidential Information. The Contracting Authority will decide on any such request.

If the Contracting Authority grants this request, it will provide only the relevant Candidate with information by means of Confidential Clarifications.

If the envisaged or proposed solutions are only possible by modifying the Project or the Tender Documents and the Contracting Authority considers such a modification to be in its interest, the Contracting Authority may provide General Clarifications entailing a modification of the Project or the Tender Documents. The Contracting Authority will consult the Candidate that submitted the request for clarifications about the formulation of the General Clarifications. The Candidate may then propose to the Contracting Authority how to formulate the General Clarifications.

If those consultations do not result in consensus on the formulation of the General Clarifications to be provided, the relevant Candidate will be allowed to withdraw its request for clarifications and the Contracting Authority will not provide any Confidential or General Clarifications in response to the request withdrawn, unless the request for clarifications pertained to an error in the Tender Documents, regarding which the Contracting Authority must inform the other Candidates.

## **2.11 Advisory Committees**

The Contracting Authority may establish one or more advisory committees at the various stages of the tendering procedure.

The composition of those advisory committees can be different at each stage. The members' names will be announced if the Contracting Authority establishes an advisory committee.

The Candidates are not permitted to contact the members of the advisory committees in the context of this tendering procedure and, vice versa, the members of the advisory committees are not permitted to contact the Candidates regarding the tendering procedure.

## **2.12 Tender Board**

The Contracting Authority will avail itself of the advice and assistance of a Tender Board throughout the decision-making process in respect of the tendering procedure. The Tender Board comprises the following individuals:

Rob Joghems (former director at Fluor Daniel b.v.), Chairman, also Probity Officer;

Patrick Buck (infrastructure projects director at Prorail), also chairman of the Management Plan Advisory Committee;

Jan Hoogland (former senior engineer-director at the Directorate-General for Public Works and Water Management – North Netherlands), also chairman of the Transport Quality Advisory Committee;

Francesco Veenstra (partner and architect at Mecanoo Architecten), also chairman of the Community & Environment Advisory Committee;

Jan Ochtman (partner at Twynstra Gudde), also chairman of the Interface Management & Flexibility Advisory Committee.

The Candidates are not permitted to contact the members of the Tender Board in the context of this tendering procedure and, vice versa, the members of the Tender Board are not permitted to contact the Candidates regarding the tendering procedure.

## **2.13 Probity Officer**

The Contracting Authority has appointed an independent Probity Officer, who will ensure that all stages of the tendering procedure, from prequalification up to and including award, will be completed correctly and fairly to warrant equal opportunities for all Candidates to be awarded the Project. This Probity Officer is Rob Joghems.

## **2.14 Contact with Local Parties**

Throughout the Dialogue, the Candidates may not discuss the present tendering procedure with other provincial or municipal divisions, or with OV-Bureau Groningen-Drenthe, or with the Groningen-Assen Region or other interested parties without the Contracting Authority's prior written consent. Candidates must submit requests for granting this written consent to the Contracting Authority as a request for clarifications.

## **2.15 Protocol to Prevent Conflicts of Interest**

A number of external persons and parties are involved in the RegioTram Project to prepare all stages that will ultimately lead to the award of the contract. Under Recital (8) of Directive 2004/18/EC, contracting authorities may seek or accept advice which may be used in the preparation of the specifications provided, however, that such advice does not have the effect of precluding competition. In so far as any external parties (persons or their employers) should consider acting for market parties in the tendering procedure, it must be established to what degree this could result in an unauthorised preclusion of competition. In this context, the Contracting Authority has drawn up a Protocol to Prevent Conflicts of Interest, which can be obtained from the Contracting Authority upon request.

This Protocol contains a number of model statements. Below is a summary of the Protocol.

1. External parties or their employees who have assisted in the preparations and who wish to be eligible for participation in the tram procurement on the market side will be granted permission, provided that they sign Model Statement A.
2. External parties assisting in the tendering procedure are not permitted to also assist in the tendering procedure for market parties, except in the situations described below. This prohibition applies to all sister companies or subsidiaries belonging to a particular group of companies.
3. In principle, the RegioTram Project does not give permission to companies involved in the tendering procedure on the PMO side that also wish to act on the market side. This permission will only be given in urgent cases, if the unavailability of that consultant to the market unavoidably results in a lack of skilled consultants on the market side, possibly limiting competition. In addition, it will have to be established that (a) the employees involved will not have any contact during the tendering procedure, neither physically (such as working at the same office, jointly being involved in internal or external projects, membership of the same committees, etc.), nor by e-mail, telephone, the information network, or otherwise, (b) the company involved has established adequate Chinese walls on its networks and in document management systems, such to the RegioTram Project's satisfaction, and (c) the company and all employees involved (the persons working at the RegioTram Project and those working at the market party) have signed a statement attached as Model Statement B, with submission of a copy to the Project Management Office.
4. The RegioTram Project allows employees of companies that only operate on the market side to perform work for more than one Candidate, provided that the former companies are not Shareholders or Relevant Subcontractors.
5. Individuals who worked for the RegioTram Project during the tendering stage and, as a result of a job change, take up employment at a company referred to under 3) during the tendering procedure must sign a Model Statement B and may not be further involved in the Project tendering procedure on the market side.
6. If it has been established that a Personal Relationship<sup>2</sup> exists between an employee of a company participating in the tendering procedure (and that employee is involved in the tendering procedure) and a member of the Tender Board, an Award Advisory Committee or an employee at the RegioTram Project, the two individuals must sign a Model Statement C.

## **3 Prequalification Stage**

### **3.1 General**

At this stage, Candidates can qualify for participation in the Outline Proposal Stage of the Dialogue. To this end, the Contracting Authority will assess the Candidates submitting a request for participation on the basis of the grounds for exclusion and criteria for qualitative selection described in this chapter.

The Candidates must satisfy the requirements laid down in this chapter and complete the forms included in Appendix 2. Failure to provide all details requested may result in exclusion from participation.

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<sup>2</sup> Personal Relationship: (a) family relationship up to the third degree, or a brother-in-law or sister-in-law, (b) friends/acquaintances with chances of meeting one-to-one at least three times a year, (c) members of the same board, committee, sports team or special-interest group including drama, music, nature, cultural or scientific groups with chances of meeting one-to-one at least three times a year.

### **3.2 Registration**

Interested parties may register, following which they will receive the Tender Guidelines, Prequalification Version. Interested parties can register with the Contracting Authority by e-mail at [tender@regiotram.groningen.nl](mailto:tender@regiotram.groningen.nl) or by post at the address given in Section 1.4 until the 28<sup>th</sup> of January 2011. The Contracting Authority will send the General Clarifications to be provided in connection with the Prequalification Stage to all registered parties.

### **3.3 Kick-Off Meeting**

The Contracting Authority will organise a joint kick-off meeting for all interested parties and registered parties, which will take place at Het HeerenHuis, Spilsluizen 9, 9712 NR Groningen on 16 December 2010.

Registered parties will be free to attend.

Due to the limited space available at the location, if there are too many registrations and furthermore to limit the number of participants for each party, the RegioTram Project may decide to allow entry only to parties that can meet the minimum requirements yet to be announced.

### **3.4 Requests for Participation**

The Candidates must present their request for participation, stating 'DBFMO-RegioTram', to the Contracting Authority at the office address given in Section 1.4 between 1 p.m. and 3 p.m. on Thursday 3 March 2011. The Contracting Authority will give the Candidates the option of presenting their request for participation at an earlier time or date. The Candidates must make an appointment with the Contracting Authority by e-mail.

The request for participation must comprise one original of all the documents to be submitted in accordance with the tab-by-tab overview included in Appendix 2.1. In addition, all the original documents must be accompanied by two copies.

The structure of the request for participation must be in line with the model prescribed in Appendix 2.1. The request for participation must be signed by an authorised representative.

Requests for participation not received by the Contracting Authority on or before the deadline referred to in this Section are invalid and will not be considered by the Contracting Authority.

### **3.5 Single Involvement of Legal Entities and Natural Persons – Exclusivity**

Legal entities and natural persons may only register as Candidate once and may only be involved as Relevant Subcontractor or Shareholder through one Candidate, the Relevant Subcontractor not being the Candidate itself. To the extent that the Candidates wish to use the expertise of parties, but not as Relevant Subcontractor within the meaning of these Guidelines, such parties are permitted to provide their expertise to more than one Candidate. However, those parties must then ensure that the Candidates cannot exchange information through those parties.

For the purposes of this provision, legal entities are in any event regarded as one legal entity if they meet the following conditions:

- a. legal entities affiliated in a manner as referred to in Book 2, Article 24a of the Dutch Civil Code; or
- b. legal entities united in one group as referred to in Book 2, Article 24b of the Dutch Civil Code; or
- c. legal entities affiliated under foreign law in a manner similar to a. or b.

Accordingly, the Contracting Authority does not prescribe any exclusivity of Public Transport Operators or suppliers. However, if a Candidate registers together with a Public Transport Operator or supplier as Shareholder or Relevant Subcontractor, it may not also register as Shareholder,

Relevant Subcontractor, supplier or Public Transport Operator as part of other Candidates. If such a Candidate is not selected for the subsequent stages of the tendering procedure after the Outline Proposal Stage, this prohibition will lapse and the Public Transport Operators or suppliers that are part of the relevant Candidate as Shareholders or Relevant Subcontractors will be free to join other Candidates.

Candidates may also obtain proposals or quotations from several Public Transport Operators or suppliers, provided that no Public Transport Operators or suppliers act as Shareholders for the relevant Candidate.

At the Dialogue Stage, the Candidates must submit a Public Transport proposal (together with one or more transport operators) and a Rolling Stock proposal (with one or more suppliers), which will be assessed and rated prior to the Tender. The Candidates/Tenderers can use those ratings when selecting the parties and the proposal for their Tender, also considering the other award criteria, the financial aspects of which will be key to the Candidates/Tenderers. Upon tendering, they must give a final statement as to which proposal and which Public Transport Operator and supplier they will use, which may be only one Public Transport Operator and one supplier of Rolling Stock.

### **3.6 Clarifications**

The Candidates may submit requests for clarifications to the e-mail address given in Section 1.4 until 3 February 2011 at the latest. The rules contained in Section 2.10 will apply to such information.

Late requests will, in principle, not be considered by the Contracting Authority.

In response to requests submitted in time, the Contracting Authority will provide General Clarifications on or before 17 February 2011.

### **3.7 Candidates: SPVs, SPVs under formation**

The Contractor must be an SPV (Special Purpose Vehicle). The DBFMO Agreement will be closed with that SPV.

The following parties may register as Candidates:

- (a) the SPV, if it has already been established; or, if the SPV has not yet been established,
- (b) one or more legal entities or natural persons (alliance partners) acting on behalf of the SPV under formation.

If, in the situation referred to under (b), two or more legal entities (alliance partners) register on behalf of the SPV under formation, one of them must be designated as main contractor at A in the Model Form with Request for Participation included as Appendix 2.1. The main contractor must be in a position to duly represent the other legal entities who have registered and act on behalf of the SPV under formation on all occasions regarding this tendering procedure. The Candidate will guarantee the lawful representation to the Contracting Authority.

In the situation referred to under (b), the SPV must be established and must confirm the legal acts performed on its behalf by the legal entities and natural persons referred to under (b) on the day before Contract Close at the latest. Without any request to this end, the Contracting Authority must receive copies of evidence showing the incorporation and confirmation immediately after said establishment and confirmation.

The SPV will preferably be a public company (*naamloze vennootschap*) or private company (*besloten vennootschap*) incorporated under Dutch law or a similar legal entity incorporated under another legal system within the European Community.

### **3.8 Article 6 of the Dutch Competition Act (*Mededingingswet*)**

Perhaps unnecessarily, the Contracting Authority would like to remind the Candidates that it is not permitted to enter into agreements aimed at or resulting in a prevention, limitation or distortion of competition on the Dutch market or any part thereof.

With regard to Candidates whom the Contracting Authority suspects of having entered into an agreement for the Project, having contributed to a decision of an employers association or having coordinated their actual conduct with one or more companies in violation of the Competition Act, the Contracting Authority reserves the right to report this to the Netherlands Competition Authority and exclude these Candidates from further participation in the tendering procedure.

### **3.9 Demonstration of Technical Ability**

The Candidates must demonstrate that they meet the criteria for qualitative selection laid down in Sections 3.13.1 and 3.13.2, if necessary with reliance on the technical ability and experience of one or more third parties. If a Candidate relies on one or more third parties – the Relevant Subcontractors – in its request for participation, it must demonstrate upon submitting its request for participation that and how it will actually be able to use this third-party experience, for which purpose the relevant Relevant Subcontractors must complete and sign the Model Statement included in Appendix 2.2.

#### ***3.9.1 Reliance on Third Parties: Relevant Subcontractors***

Legal entities and natural persons on whose technical expertise a Candidate relies in order to meet one or more requirements laid down in these Guidelines with regard to technical expertise will be considered Relevant Subcontractors.

Relevant Subcontractors must be deployed in the Tender preparations and, to the extent applicable, during Project execution.

In this context, see also Section 3.4 above.

#### ***3.9.2 Experience Gained in an Alliance***

A Candidate may only rely on experience gained in an alliance – either independently or through one or more Relevant Subcontractors – if that Candidate or that Relevant Subcontractor was in fact involved in the performance of the work that is relevant in light of the criteria for qualitative selection laid down in Sections 3.13.1 and 3.13.2.

### **3.10 Changes to the Composition of Candidates, Relevant Subcontractors and Shareholders**

Candidates may propose changes to their composition, the designation of other Relevant Subcontractors (not being Candidates themselves) or the designation of Shareholders.

Such changes require the Contracting Authority's explicit written consent. This consent may be subject to conditions. The Contracting Authority will not unreasonably withhold its consent.

In any event, consent will only be granted if the Candidate demonstrates that those changes will not affect compliance with the requirements imposed on the Candidates, Relevant Subcontractors (not being Candidates themselves) and Shareholders in the context of this tendering procedure.

Consent for changes after the end of the Dialogue Stage will only be granted in the event of special circumstances, including impending or actual bankruptcy, merger, acquisition or the Candidate's inability to submit a promising Tender in its original composition.

### **3.11 Information to Be Submitted**

Requests for participation must be accompanied by the following information regarding the Candidate itself, the Relevant Subcontractors and Shareholders:

- Request for participation including all accompanying documents (Appendix 2.1);
- Statement of availability of Relevant Subcontractor (Section 3.9) including all accompanying documents (Appendix 2.2);
- Personal Tendering Statement (Section 3.12) including all accompanying documents (Appendix 2.3);
- Statement of Economic and Financial Standing (Section 3.13) including all accompanying documents (Appendix 2.4);
- References regarding project management experience (Section 3.14.1) including all accompanying documents (Appendix 2.5);
- References regarding Public Transport (Section 3.14.2) including all accompanying documents (Appendix 2.5);
- References regarding Rolling Stock (Section 3.14.3) including all accompanying documents (Appendix 2.5);
- References regarding project financing experience (Section 3.14.4) including all accompanying documents (Appendix 2.5).

An overview of the documents to be submitted is included in the tab-by-tab overview in Appendix 2.1.

### **3.12 Grounds for Exclusion and the BIBOB Act**

The Contracting Authority refers to Article 4.8 of the ARW 2005.

#### **3.12.1 Personal Tendering Statement**

As evidence of the non-existence of any ground for exclusion, it is as yet sufficient for Candidates, Relevant Subcontractors and Shareholders to complete and submit the Personal Tendering Statement attached as Appendix 2.3. The Candidates, Relevant Subcontractors and Shareholders are obliged to comply with the statement throughout the tendering procedure.

A completed Personal Tendering Statement constitutes a personal statement from the relevant Candidate, Relevant Subcontractor or Shareholder. The evidence referred to in the Personal Tendering Statement does not need to be submitted until requested by the Contracting Authority. Only the documents referred to under Tab C of Appendix 2.1 must be submitted along with the request for participation.

All information requested in the Personal Tendering Statement must be provided.

#### **3.12.2 Advice from Bureau BIBOB**

If, according to the Contracting Authority, there are indications that a Candidate, Relevant Subcontractor or Shareholder is in one or more of the situations referred to in Article 45 (1) and (3) of the BAO, but it has insufficient information at its disposal to substantiate the exclusion from participation or further involvement, the Contracting Authority may seek advice from Bureau BIBOB (see Article 8 of the BIBOB Act). The Candidate, Relevant Subcontractor or Shareholder regarding which information is requested will be informed of the substance of that advice by the Contracting Authority.

#### **3.12.3 Exclusion**

If the Contracting Authority decides to exclude a Relevant Subcontractor or Shareholder from involvement in this tendering procedure, the relevant Candidate will be given an opportunity to propose changes to the Contracting Authority within 15 calendar days, as referred to in Section 3.10, to replace the relevant Relevant Subcontractor or Shareholder.

#### **3.12.4 Subcontracting**

The Contracting Authority points out that, as regards subcontractors – not being Relevant Subcontractors – the Contractor must submit a Personal Tendering Statement completed by that subcontractor as prescribed in Parts 1, 2 and 3 of Appendix 2.3 to the Authority if the value of the contract component being outsourced by means of the agreement exceeds the applicable threshold

value referred to in Directive 2004/18/EC. The Contracting Authority is willing to follow that procedure during the Dialogue Stage with regard to those subcontractors, not being Relevant Subcontractors, that the Candidate did not mention at an earlier stage of the tendering procedure, if the threshold value will be exceeded.

The Candidate must obtain the Contracting Authority's prior written consent before entering into the subcontracting agreement.

Sections 3.12.1 through 3.12.4 apply *mutatis mutandis* to the aforementioned subcontractors, not being Relevant Subcontractors.

The Public Transport Operator proposed by the Candidate during the Dialogue Stage must meet the requirements in the areas of reliability, creditworthiness and professional skills referred to in Chapter 2 of the Passenger Transport Decree 2000.

### **3.13 Economic and Financial Standing**

#### **3.13.1 Economic and Financial Standing Requirement**

The Candidate must demonstrate that the Shareholders are willing and able to provide at least € 35 million to the SPV in the context of the Project, in the form of equity capital (guarantees, subordinated loans, payment on shares).

#### **3.13.2 Information to Be Submitted**

As evidence of their meeting the economic and financial standing requirement, Candidates must submit a statement fully drawn up according to Appendix 2.4, signed by an authorised representative of a financial institution under regulatory control in the country of origin. This financial institution must have a Long-Term Issue Credit Rating issued by Standard & Poor's or an equivalent internationally recognised, independent rating agency of at least BBB- or an equivalent rating. This statement only needs to be issued with regard to the Candidate itself and not with regard to other parties whose experience the Candidate wishes to rely upon during prequalification.

### **3.14 Technical Ability**

#### **3.14.1 Project Management Experience Requirements**

The Candidate must demonstrate that it can in fact rely on the following experience during Project execution:

The Candidate must have conducted the project management of at least two infrastructure projects in the past five years, calculated from the deadline for submission of a request for participation, see Section 3.4.

Each of these projects must satisfy the following requirements:

- i. integrated performance of at least design, construction and maintenance work, performed under certified quality assurance based on the ISO-9001 standard or an equivalent;
- ii. the total value of the design and construction work referred to in i. must be at least € 50 million (excluding VAT, based on the price level of 1 January 2010);
- iii. the total value of the maintenance work referred to in i. must be at least € 5 million (excluding VAT, based on the price level of 1 January 2010), with a minimum maintenance period of 5 years;
- iv. construction work must have been completed for at least 50% at the time of submission of the request for participation, such to the relevant commissioning party's satisfaction.

In addition to civil engineering projects with regard to infrastructure, infrastructure projects within the meaning of this criterion for qualitative selection also include projects with regard to building construction, water purification, water production and water distribution.

Project management within the meaning of this criterion for qualitative selection includes demonstrable responsibility for, or involvement in a managerial capacity in, the following tasks in the reference projects stated by the Candidate, at the level where the design and construction works were integrated:

- i. day-to-day management of the work;
- ii. risk management;
- iii. quality management;
- iv. financial management;
- v. the time schedule;
- vi. coordination of the internal interfaces involved;
- vii. implementation of changes.

### **3.14.2 Public Transport Requirement**

The Candidate must demonstrate that it can in fact rely on the following experience during Project execution:

In the past five years - calculated as from the deadline for submission of a request for participation, see Section 3.4 - the Candidate must have been involved, on the part of a contracting government or government charged with the provision of public transport, on the part of a consultancy firm in the field of public transport, or on the part of a public transport operator, in the creation of two timetables that were actually implemented (in use for more than six months), including at least one mode of Public Transport (tram, train, bus, underground, light rail) and one interface in the network with another mode of Public Transport, with a minimum of, on average, 40,000 passengers for both timetables jointly on an average business day. The Candidate is not required to add a Public Transport Operator to the SPV to this end. If the Candidate does this nevertheless, the Contracting Authority refers to the provisions of Section 3.5.

### **3.14.3 Rolling Stock Requirement**

The Candidate must demonstrate that it can in fact rely on the following experience during Project performance:

In the past ten years - calculated as from the deadline for submission of a request for participation, see Section 3.4 - the Candidate must have been involved in a key position (taking the decisions that were most important to the project for that party) on the part of a Public Transport Operator or on the part of a supplier of Rolling Stock in the area of rail or light rail (including train, tram, underground, etc.) in the purchase of at least two new systems, each of at least five articulated or other carriages. The Candidate is not required to add a supplier of Rolling Stock to the SPV to this end. If the Candidate does this nevertheless, the Contracting Authority refers to the provisions of Section 3.5.

### **3.14.4 Project Financing Experience Requirement**

The Candidate must demonstrate that it can in fact rely on the following experience during Project execution:

The Candidate must have been involved in a key position in concluding Project Financing agreements between an SPV and providers of loan capital in at least one project, with the contract value of the fees to be paid by the commissioning party totalling at least € 50 million (current price level, excluding VAT), in which regard the facilities provided to the SPV had an aggregate value of at least 50% of said contract value. Under certain circumstances, the reference projects presented in connection with Section 3.14.1 may also be presented in this context.

The experience required may have been gained on the part of the SPV, on the part of the providers of loan capital, or as financial consultant.

### **3.14.5 Information to Be Submitted**

The Candidate must demonstrate, using the Model Statement attached as Appendix 2.5, that it satisfies the requirements referred to in Sections 3.14.1 through 3.14.4 with regard to experience in the areas mentioned there. One separate Model Statement must be used for each reference project.

### **3.15 Verification by the Contracting Authority**

The Contracting Authority reserves the right to verify the reliability of the references provided. The Candidate is obliged to cooperate in this regard.

### **3.16 Explanation of Rejection**

At the rejected Candidates' request, the Contracting Authority will explain to them in a one-to-one conversation why their registration did not satisfy the Minimum Requirements.

## **4 First Stage of the Dialogue - Outline Proposal**

### **4.1 Object**

The Outline Proposal Stage is the first stage of the Dialogue. At this stage, chosen Candidates must prepare an Outline Proposal, including detailed proposals for four Critical Success Factors (CSFs) identified by the Contracting Authority. On the basis of the assessments of the Outline Proposals, the number of Candidates will be reduced to three for the subsequent stages of the tendering procedure. At present, the Contracting Authority proposes for the chosen Candidates to submit an Outline Proposal also if the number of chosen Candidates is three or less. In that event, the Outline Proposal is submitted not with a view to the selection process, but for the purpose of adequately preparing the Consultation Stage.

Details of the CSFs will be given in the Outline Proposal Stage Guidelines, possibly with amendments and/or replacements.

For the time being, the Contracting Authority will assume that the CSFs listed in Section 1.7 will need to be elaborated in the Outline Proposal.

### **4.2 Building on the Outline Proposal**

The elaborations of the CSFs in the Outline Proposal will be adhered to in the subsequent stages of the tendering procedure. This means that the CSFs must form the basis for Dialogue Products to be submitted by Candidates. In addition, the CSFs are partly linked to one or more Listed Risks and/or Options.

If an amendment of the Tender Documents or another development renders it necessary or desirable that Candidates depart from the Outline Proposals they submitted, this is permitted after they have obtained the Contracting Authority's explicit prior written permission. Such approval will in any event be subject to the relevant Candidate's proof that the changed proposal is at least equal to the original proposal.

### **4.3 No Compensation for Tendering Costs**

The Contracting Authority will not pay any compensation for tendering costs to Candidates who submitted a valid Outline Proposal but are not invited to the Consultation Stage.

### **4.4 No 'Waiting Room'**

Rejected Candidates will not be asked to wait in a 'waiting room'; they may dissolve their teams and they, including their subcontractors, will be free to join other Candidates, such within the limits set in these Guidelines.

## **5 Second Stage of the Dialogue - Consultation Stage**

### **5.1 Object**

The object of the Consultation Stage is:

- a) to discuss the Candidates' Outline Proposals;
- b) to introduce optimisations of the Tender Documents that are the same for all Candidates, so that these can serve as a basis for the Dialogue Stage; and
- c) to arrive at a definitive description and valuation of Listed Risks; and
- d) to arrive at a definitive description and valuation of the EMVI Dialogue Products and Options.

This stage will be fleshed out in the Consultation Stage Guidelines.

### **5.2 End of the Consultation Stage**

At the end of the Consultation Stage, the Contracting Authority will decide on the contents of the Tender Documents for the Dialogue Stage, including the definitive description and valuation of the Listed Risks, the definitive description and valuation of the EMVI Dialogue Products and the definitive description and valuation of the Options. The Contracting Authority will also establish what information in the Data Room will be considered Project Data within the meaning of the DBFMO Agreement. The Contracting Authority may regard additional information as Project Data during the Dialogue Stage as well.

In this respect, the Contracting Authority will establish:

- Whether the Municipal Infrastructure will be contracted out as part of the DBFMO Agreement or separately;
- How long the period during which tenders are binding will be;
- What part of the bid must be committed (or that the degree of commitment offered will be considered with the award criteria);
- How transport to the region will be expanded.

## **6 Third Stage of the Dialogue - Dialogue Stage**

### **6.1 Object**

The object of the Dialogue Stage is:

- a. to offer Candidates the opportunity to consult with the Contracting Authority concerning the Dialogue Products they are to submit;
- b. to assess the Dialogue Products submitted by the Candidates, including the Public Transport proposal and the Rolling Stock proposal, and discuss the outcome of the assessment with the Candidates;
- c. to allocate any Listed Risks;
- d. to inform each of the Candidates of the surcharges the Contracting Authority will apply in the assessment of their Tender in connection with the valuation of the Options not fulfilled and the allocation of the Listed Risks;
- e. to inform each of the Candidates of the Ceiling Price adjustment the Contracting Authority will apply in the assessment of their Tender in connection with the allocation of the Listed Risks;
- f. to establish together with each of the Candidates the contents of the DBFMO Agreement, including all accompanying appendices, with the exception of elements that will be established on or after the Tender, such as the Gross Availability Payment, Scheduled Availability Date, Scheduled Service Commencement Date and Indexation Formula.

This stage will be fleshed out in the Dialogue Stage Guidelines.

### **6.2 Assessment of Dialogue Products**

The Contracting Authority will assess every definitively submitted Dialogue Product in terms of whether it satisfies the requirements set in the Tender Documents. Dialogue Products that do not meet the requirements set will be declared invalid. Section 2.3 will apply to the Contracting Authority's decision to that end.

Candidates may submit no more than three Public Transport proposals with no more than three Public Transport Operators and no more than three Rolling Stock proposals with no more than three types of Rolling Stock (so also no more than three Rolling Stock suppliers). The Contracting Authority will assess these according to the procedure proposed in the relevant Guidelines and inform the Candidates of their scores. Candidates may decide on the basis of these scores what Public Transport proposal (and what corresponding Public Transport Operator) and what Rolling Stock proposal (and what corresponding supplier) they will use to submit a Tender.

### **6.3 Listed Risks**

#### **6.3.1 Structure and Risk-Allocation Approach**

During the Dialogue Stage, the Contracting Authority will establish in consultation with the Candidates whether and, if so, how certain risks, i.e. the Listed Risks, will be divided between the Authority and the Contractor in the DBFMO Agreement. The draft description of the Listed Risks will be included in the Tender Guidelines, Outline Proposal version. The Tender Guidelines, Dialogue version, include the definitive description of the Listed Risks - if any - as established by the Contracting Authority at the end of the Consultation Stage.

The DBFMO Agreement system involves that risks may rest with:

- a. the Contractor (Contractor's Risk, no separate treatment in the DBFMO Agreement);
- b. the Authority (Compensation Event or Delay Event); or
- c. the risk is divided: as (i) a Delay Event or (ii) a Force Majeure Event.

Force Majeure Events - an exhaustive list of which is included in the DBFMO Agreement - will be established by the Authority. These events do not form part of the risk allocation process during the Dialogue.

### **6.3.2 Establishment of Risk Allocation**

The Ceiling Price prior to the allocation of the Listed Risks will be based on the premise that all Listed Risks are a Compensation Event. Where applicable, the Candidate may opt for a different allocation of Listed Risks, which is subject to the following two parameters:

1. the value of the Listed Risks to be borne by the Authority, expressed in a surcharge to be applied to the Tender;
2. an adjustment of the Ceiling Price resulting from a different risk allocation as compared to the premise. The Contracting Authority may decide not to make such an adjustment.

The Contracting Authority uses the value of the Listed Risks to be borne by the Authority (surcharge) to express how a chosen allocation of Listed Risks is valued in determining the most economically advantageous Tender. A risk allocation in which the Candidate bears many Listed Risks will result in a low surcharge applying to the Tender. Conversely, an allocation in which many Listed Risks remain with the Authority will result in a high surcharge applying to the Tender. When determining the surcharges, the Contracting Authority may include social aspects in addition to financial aspects.

Any Ceiling Price adjustment will indicate how a different risk allocation may affect the Ceiling Price. A risk allocation in which the Candidate bears one or more Listed Risks in full or in part may result in a higher Ceiling Price for that Candidate.

The Contracting Authority will inform the Candidates of the final surcharges and Ceiling Price adjustments at the start of the Dialogue Stage. The Contracting Authority applies the same surcharge and Ceiling Price adjustment for every Listed Risk for each Candidate.

Subsequently, the Candidate will choose for each of the Listed Risks in which of the following three categories it wishes to classify that Listed Risk:

- a. a Delay Event;
- b. a Compensation Event; or
- c. a Contractor's Risk.

A Candidate cannot classify a Listed Risk in more than one of the three categories stated above, although a Compensation Event as a result of which a Critical Delay arises will also be a Delay Event under the DBFMO Agreement.

For specific Listed Risks, the Contracting Authority may reduce the number of categories to two.

The Listed Risks will be allocated based on the choices made by the Candidates. The Contracting Authority will incorporate the allocation of Listed Risks thus created in the DBFMO Agreement on which the Tender is to be based.

Based on the Consultation Stage, the Contracting Authority may decide not to designate any Listed Risks and assume a fixed allocation of risks.

## **6.4 Award Criteria: Options**

### **6.4.1 Introduction**

The Dialogue Stage Guidelines will describe the Contracting Authority's Requisition for Options in relation to the Project, which are to be included as award criteria. The Contracting Authority will determine the final Requisition for Options following the end of the Consultation Stage.

Candidates may be required to meet a minimum percentage of the Options. The manner in which a Candidate translates Options into a Dialogue Product will be part of the DBFMO Agreement, in such a manner as will be stated for the relevant Dialogue Product in the Dialogue Stage Guidelines.

### **6.4.2 Relation to Tender Assessments**

The Contracting Authority will value the degree to which a Candidate satisfies an Option in accordance with the provisions of the Dialogue Stage Guidelines.

Before the end of the Dialogue Stage, the Contracting Authority will announce its decision to determine the surcharges in connection with the valuation of the Options satisfied in full or in part.

The Contracting Authority will add the adjustments in connection with the valuation of the Options satisfied in full or in part to the neutralised present value of the Tender.

As regards the Rolling Stock proposal and the Public Transport proposal, Candidates may propose more than one type of equipment or Public Transport Operator (never more than three) during the Dialogue Stage, as long as these satisfy at least the requirements set for them. Based on the scores to be assigned by the Contracting Authority in that respect, Candidates may decide what (one) equipment and what (one) transport operator they will use to submit a Tender.

#### **6.5 European Investment Bank**

If the Project is eligible for financing by the European Investment Bank, the Contracting Authority - if so desired - will allow the Candidates to consult with the European Investment Bank during the Dialogue in order to prepare for the Tender. The Contracting Authority itself will take care of the initial contacts and introductions. All this will be detailed in the subsequent stages of the procedure.

#### **6.6 Recording in Dialogue Report - Invitation to Tender**

The Contracting Authority will record the results of the Dialogue Stage in a written Dialogue Report, which will in any event include the DBFMO Agreement laid down by the Contracting Authority and the Candidate, the surcharges resulting from the allocation of the Listed Risks, the surcharges arising from the valuation of the Options not satisfied and the Ceiling Price applying to the Candidate. The Candidate must base its Tender on the Dialogue Report.

After the Dialogue, the Contracting Authority will invite the eligible Candidates to submit their Tenders.

## **7 Tender**

### **7.1 Object**

The object of this stage is to designate the Chosen Candidate.  
This stage will be fleshed out in the Guidelines, Tender version.

### **7.2 Tender Content**

The Tender must probably consist of the following components:

1. a statement of the Gross Availability Payment (fixed component, variable component); the price level is yet to be determined, excluding VAT;
2. a statement of other flows of payments, including a user fee (VAT on permanent railway charges);
3. a statement of the complete indexation formula;
4. a statement of the Scheduled Availability Date, as well as the Scheduled Availability Date for Line 2 if such an option is included as an Option;
5. a statement of the type of Rolling Stock and the supplier;
6. a statement of the Public Transport Operator;
7. the Original Financial Model
8. a document describing the changes to the Original Financial Model compared to the Dialogue Product - Original Financial Model Format;
9. a Shareholder's letter of support from each of the Shareholders;
10. a letter of support from the financial consultant;
12. a letter of support from the provider(s) of loan capital (Mandated Lead Arranger);
13. to the extent applicable: a letter of support from the European Investment Bank;
14. a Bid Bond;
15. a model K-statement from each of the Candidate's Managing Directors.

### **7.3 Assessment of Tenders**

#### **7.3.1 Validity**

The Contracting Authority will first of all verify that the Tenders are valid.

#### **7.3.2 Award Criterion**

The award criterion is that of the most economically advantageous tender. The most economically advantageous tender is the Tender with the lowest price, which will be determined as follows.

The Contracting Authority will determine the price of a valid Tender by adding:

- a) the neutralised present value of the Tender;
- b) the surcharges for the Listed Risks remaining with the Contracting Authority in full or in part;
- c) the surcharges in connection with the valuation of the Options not satisfied in full or in part.

### **7.4 Clarification by the Candidate**

At the Contracting Authority's request, the Candidate having the most economically advantageous tender may be asked to clarify aspects of its Tender or confirm the commitments included in its Tender, on the condition that this clarification/amendment will not essentially change the substantive aspects of the Tender or the contract notice and will not lead and is not likely to lead to unfair competition or discrimination.

### **7.5 Provisional Award of the Contract**

The Candidate having the most economically advantageous Tender will be designated as the Chosen Candidate.

The Contracting Authority will not return Bid Bonds submitted by Candidates who are not designated as Chosen Candidate, nor the ones submitted by the Candidate that is chosen, until after Financial Close.

The Contracting Authority reserves the right not to award the contract.

#### **7.6 Compensation for (Tendering) Costs**

The Contracting Authority will pay to a Candidate submitting a valid Tender but not being designated as the Chosen Candidate compensation for (tendering) costs amounting to 50% of the actual costs incurred, which must be demonstrated, for example by an accountant's statement. If the actual costs exceed € 4,000,000, a maximum of € 2,000,000, excluding VAT, will apply as compensation for the costs incurred. The Contracting Authority will pay the compensation after the Chosen Candidate has reached Financial Close.

## **8 Final Award / Contract Close and Financial Close**

### **8.1 Object**

The object of this stage is to reach Contract Close and Financial Close. No amendments to the DBFMO Agreement are allowed at this stage.

This stage will be fleshed out in the Invitation to Tender.

## Appendix 1: Definitions

### **Contracting Authority**

The Public Body (Openbaar Lichaam) RegioTram Project ('RegioTram Project') yet to be established and, at the stage prior to its establishment, the Provincial Executive of Groningen and the Municipal Council of Groningen jointly.

### **Tender Documents**

The Tender Guidelines in the various versions, the DBFMO Agreement, the General and Confidential Clarifications, the invitations to specific tendering procedure stages and all other documents the Contracting Authority will provide to the Candidates and will designate as such within the context of the tendering procedure.

### **Tender Guidelines / Guidelines**

The present tender guidelines or the subsequent versions of the same.

### **Shareholder**

A legal entity or natural person registered with the SPV or SPV under formation as a shareholder or future shareholder.

### **General Clarifications**

The information the Contracting Authority provides to all Candidates in accordance with Section 2.10 of the Tender Guidelines.

### **BAO**

*Besluit aanbestedingsregels voor overheidsopdrachten* ('Dutch Public Procurement (Tendering Rules) Decree'), Dutch Bulletin of Acts and Decrees 2005, 418.

### **BASS**

*Besluit aanbesteding speciale sectoren* ('Dutch Tendering (Special Sectors) Decree'), Dutch Bulletin of Acts and Decrees 2005, 419.

### **Relevant Subcontractor**

A legal entity or natural person whose technical ability a Candidate relies on in order to satisfy the requirements with regard to technical ability.

### **BIBOB Policy Rules**

*Beleidsregels integriteit en uitsluiting bij aanbestedingen in BIBOB-sectoren* ('Policy Rules on Probity and Exclusion in Tendering Procedures in BIBOB Sectors'), subsequently amended in Dutch Government Gazette 2005, 251.

### **Availability Date**

The day on which the first timetable for Line 1 or Line 2 takes effect.

### **Bid Bond**

The bank guarantee to be added to the Tender.

### **Consultation Stage**

The tendering procedure stage described in Chapter 5 of the Tender Guidelines.

### **Contract Close**

The date on which the DBFMO Agreement is signed.

**Data Room**

The integrated system comprising a connection with one of the Contracting Authority's servers and software running on this server that the Candidates use to gain access to the digital archive including documents and data related to the Project tendering procedure.

**Data Room Rules**

The rules that provide for Data Room access and use.

**DBFMO Agreement**

The draft or final Design, Build, Finance, Maintain and Operate agreement for the execution of the Project.

**Dialogue**

The Outline Proposal Stage, Consultation Stage and Dialogue Stage jointly.

**Dialogue Stage**

The tendering procedure stage described in Chapter 6 of the Tender Guidelines.

**Dialogue Products**

The draft and final proposals to be submitted by the Candidates during the Dialogue Stage, drawn up on the basis of questions formulated by the Contracting Authority.

**Dialogue Report**

The recording of the discussions between the Contracting Authority and the Candidate during the Dialogue. The Dialogue Report must at least contain an exhaustive list of all documents forming the basis of the Tender, surcharges resulting from the allocation of Listed Risks, surcharges arising from the valuation of EMVI Dialogue Products and the Options not satisfied in full or in part and the Ceiling Price applicable for the Candidates.

**Personal Tendering Statement**

The statement referred to in Section 3.13.3.

**Financial Close**

The date on which the finance agreements are signed.

**Candidate**

An SPV or one or more legal entities or natural persons acting on behalf of an SPV under formation that registered for participation in the present tendering procedure.

**Municipal Infrastructure**

The area within the Municipality that forms part of the Project and is managed by the Municipal Council.

**Scheduled Availability Date**

The date - to be included in the Agreement - on which the service commences.

**Chosen Candidate**

The Candidate with whom the Contracting Authority intends to conclude the DBFMO Agreement.

**Infrastructure**

The area within the system boundaries: tramway, tram stops, servicing platforms, depot, overhead wires, safety precautions, signalling systems and communication facilities.

**Tender**

The ultimate tender submitted by a Candidate invited to do so pursuant to Chapter 7 of the Tender Guidelines.

**Critical Success Factors (CSFs)**

The draft and final proposals to be submitted by the Candidates, drawn up on the basis of questions formulated by the Contracting Authority during the Outline Proposal Stage.

**Listed Risks**

The risks that will be divided among the Contracting Authority and the Candidates in the Dialogue Stage according to the procedure included in Section 6.3 of the Tender Guidelines.

**Authority**

The Contracting Authority after Contract Close and the owner of the DBFMO Agreement.

**Contractor**

The party with whom the Authority enters into the DBFMO Agreement.

**Public Transport**

The public transport by tram to be provided on Line 1 and Line 2 and, at a later stage, in the region.

**Public Transport Operator**

The party providing the Public Transport.

**Ceiling Price**

The amount to be determined by the Contracting Authority from time to time serving as the maximum amount for the net present value of the Tender, such on pain of invalidity.

**Outline Proposal**

The proposal referred to in Chapter 4 of the Tender Guidelines in which the Candidates propose ways for dealing with a number of Critical Success Factors specified by the Contracting Authority for the success of the Project.

**Outline Proposal Stage**

The tendering procedure stage described in Chapter 4 of the Tender Guidelines.

**Prequalification Stage**

The tendering procedure stage described in Chapter 3 of the Tender Guidelines.

**Probity Officer**

The officer as referred to in Section 2.13.

**Project**

All deliveries to be made and all work and services to be provided under the DBFMO Agreement.

**Project Financing**

The manner of financing a special purpose vehicle, in which respect the providers of loan capital have no means of recovery other than the SPV's assets.

**PSO Regulation**

Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

**Rolling Stock**

The equipment (trams) to be supplied by the Contractor, which the Public Transport Operator will use to provide the Public Transport.

**SPV**

A Special Purpose Vehicle organised in the form of a private company.

**Consultation Invitation**

The document the Contracting Authority uses to invite the chosen Candidates to participate in the Consultation Stage.

**Invitation to Participate in the Dialogue Stage**

The document the Contracting Authority uses to invite the chosen Candidates to participate in the Dialogue Stage.

**Invitation to Tender**

The document the Contracting Authority uses to invite the chosen Candidates to submit their Tender.

**Confidential Clarifications**

The confidential information the Contracting Authority provides to a Candidate in accordance with Section 2.10.2 of the Tender Guidelines.

**Options**

Optional Dialogue Products.

**BIBOB Act**

*Wet bevordering integriteitsbeoordelingen door het openbaar bestuur* ('Dutch Public Administration (Probity Screening) Act').

## Appendix 2: Model Forms with Request for Participation

### Appendix 2.1: Model Form with Request for Participation

#### A. Candidate's details<sup>3</sup>.

Name	
Legal form	
Registered office	
Office address	
E-mail	
Fax	
Telephone	
Trade Register registration number	
Name of main contractor, if any	

#### B. Shareholder's/Shareholders' details (to be provided for each Shareholder)

Name	
Legal form	
Registered office	
Office address	
E-mail	
Fax	
Telephone	
Trade Register registration number	
Stake (%) in SPV	

<sup>3</sup> If the Candidate is an SPV, the details requested in A. must be provided by the SPV. If the Candidate is an SPV under formation, all legal entities and natural persons (alliance partners) acting on behalf of the SPV under formation must provide the details requested in A. and one of them must be designated as main contractor (see Section 3.7 of the Tender Guidelines).

**C. Details of Relevant Subcontractor/Relevant Subcontractors (to be provided for each Relevant Subcontractor)**

Name	
Legal form	
Registered office	
Office address	
E-mail	
Fax	
Trade Register registration number	
Telephone	

**D. Details of authorised natural person who signs this request for participation on the Candidate's behalf<sup>4</sup>.**

Name of authorised natural person	
Place and date of birth	
Position	
Name of legal entity represented	

Thus signed in [city] on [date].

**Name [Candidate<sup>5</sup>]**

on whose behalf,

[name of natural person or persons named in D.]

[signature/signatures of natural person or persons named in D.]

<sup>4</sup> If the Candidate is an SPV, the details in D. must be provided by the SPV and the natural person (or persons) named must sign this request for participation on the SPV's behalf.

If the Candidate is an SPV under formation, all legal entities and natural persons (alliance partners) acting on behalf of the SPV under formation must provide the details in D. and the natural persons named by these legal entities must sign this request for participation on their behalf.

<sup>5</sup> If the Candidate is an SPV, the natural person (or persons) named in D. must sign this request for participation on the SPV's behalf.

If the Candidate is an SPV under formation, the natural persons named in D. must sign this Registration Form on behalf of the legal entities or natural persons (alliance partners) acting on behalf of the SPV under formation.

## **Appendices to request for participation**

### **Tab A:**

A request for participation in accordance with the model included in Appendix 2.1, completed and duly signed by the Candidate, including:

- Extracts from the Trade Register concerning the Candidate, Relevant Subcontractors and Shareholders. If the Candidate is an SPV under formation, all legal entities and natural persons (alliance partners) registering on behalf of the SPV under formation must submit Trade Register extracts.
- A copy of a valid identity document of the authorised natural person or authorised natural persons signing the request for participation on the Candidate's behalf.
- Any powers of attorney provided to said natural persons to allow them to duly sign the request for participation. Such a power of attorney is only required if the signatories' powers of representation are not fully evident from the Trade Register extracts supplied. In that event, the signatory of the power of attorney must also submit a valid identity document.
- If appropriate, powers of attorney issued by the other legal entities or natural persons to the main contractor, if several legal entities are acting on behalf of the SPV under formation.

### **Tab B: Statement of availability of Relevant Subcontractors (Section 3.9.1)**

A statement of availability of Relevant Subcontractors in accordance with the model included in Appendix 2.2, completed and duly signed by every Relevant Subcontractor, including:

- A copy of a valid identity document of the authorised natural person or persons signing the statement of availability of Relevant Subcontractors on behalf of the Relevant Subcontractor.
- Any powers of attorney provided to said natural persons to allow them to duly sign the statement of availability of Relevant Subcontractors. Such a power of attorney is only required if the signatories' powers of representation are not fully evident from the Trade Register extracts supplied. In that event, the signatory or signatories of the power of attorney must also submit a valid identity document or documents.

### **Tab C: Personal Tendering Statement/Statements (Section 3.12.7)**

A Personal Tendering Statement in accordance with the questionnaire included in Appendix 2.3, completed and duly signed by every Relevant Subcontractor and every Shareholder. The Personal Tendering Statement must also be fully completed and duly signed by every subcontractor - not being a Relevant Subcontractor - if this follows from Section 3.12.4 of the Tender Guidelines.

The Personal Tendering Statement must be submitted along with:

- Trade Register extracts for every subcontractor - not being a Relevant Subcontractor - if this follows from Section 3.12.4.
- A copy of a valid identity document of the authorised natural person or persons signing the Personal Tendering Statement on behalf of the relevant Candidate, Relevant Subcontractor, Shareholder or other subcontractor if no copy of the authorised natural person's valid identity document was submitted earlier.
- Any powers of attorney provided to said natural persons to allow them to duly sign the Personal Tendering Statement. Such a power of attorney is only required if the signatories' powers of representation are not fully evident from the Trade Register extracts supplied. In that event, the signatory or signatories of the power of attorney must also submit a valid identity document or documents.

### **Tab D: Statement of Economic and Financial Standing (Section 3.13)**

A statement of economic and financial standing in accordance with the model included in Appendix 2.4, completed and duly signed by the financial institution referred to in Section 3.13.2 of the Tender Guidelines, including:

- A Trade Register extract from the financial institution.

- A copy of a valid identity document of the authorised natural person or persons signing the statement of economic and financial standing on behalf of the financial institution.
- Any powers of attorney provided to said natural persons to allow them to duly sign the statement of economic and financial standing. Such a power of attorney is only required if the signatories' powers of representation are not fully evident from the Trade Register extracts supplied. In that event, the signatory or signatories of the power of attorney must also submit a valid identity document or documents.

**Tab E: Statement of technical ability (Section 3.14)**

A credential in accordance with the model included in Appendix 2.5, completed and duly signed by the Candidate for each reference project, including per reference project:

- A copy of a valid identity document of the authorised natural person or persons signing the credential on behalf of the Candidate if no copy of the authorised natural person's valid identity document was submitted earlier.
- Any powers of attorney provided to said natural persons to allow them to duly sign the credential. Such a power of attorney is only required if the signatories' powers of representation are not fully evident from the Trade Register extracts supplied. In that event, the signatory or signatories of the power of attorney must also submit a valid identity document or documents.
- A testimonial from the relevant commissioning party.

## Appendix 2.2: Model Statement of Availability of Relevant Subcontractor<sup>6</sup>

Relevant Subcontractor's details

Name

Legal form

Address

E-mail

Fax

Telephone

Trade Register registration number

[Relevant Subcontractor's name] states:

1. that it has taken note of the Tender Guidelines [Prequalification version] for this tendering procedure and irrevocably consents to the procedure laid down therein;
2. that all information it has provided and will provide to the Contracting Authority in the context of this tendering procedure - either directly or indirectly - is correct and that it is aware that any inaccuracies identified by the Contracting Authority may give rise to the Candidate's exclusion from further participation in this tendering procedure;
3. that, if the Project is awarded to [Candidate's name], [Candidate's name] will have at its disposal the knowledge, experience and means for executing the Project that the undersigned has at its disposal. In this respect, it agrees that the experience of the undersigned is regarded as the Candidate's own experience.

Thus signed in [city] on [date].

[Relevant Subcontractor],

[name of authorised natural person]

[position]

[signature]

---

<sup>6</sup> To be completed by every Relevant Subcontractor on whose experience the Candidate relies.

## Appendix 2.3: Personal Tendering Statement Model

This form is to be completed and signed by the Candidate, every Shareholder and every Relevant Subcontractor. If the Candidate is an SPV under formation, all legal entities and natural persons (alliance partners) requesting participation on behalf of the SPV under formation must submit a completed and signed Personal Tendering Statement. Sections I (General questions), II (Questions to establish whether any of the grounds for exclusion listed in the European procurement directives apply) and III (Questions regarding inside information and conflicts of interest) must also be completed and signed by every subcontractor if this follows from Section 2.15 of these Guidelines.

The Contracting Authority reserves the right to have Bureau BIBOB conduct a further investigation into the Candidates, Shareholders, Relevant Subcontractor or any other subcontractors to the extent that this is permissible within the limits of Directive 2004/18/EC.

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### Personal Tendering Statement

#### 1 GENERAL QUESTIONS

- 1.1 N/A
- 1.2 N/A
- 1.3 N/A
- 1.4 N/A
- 1.5 N/A
- 1.6 N/A
- 1.7 N/A
- 1.8 N/A
- 1.9. N/A
- 1.10 N/A

#### 2 QUESTIONS TO ESTABLISH WHETHER ANY OF THE GROUNDS FOR EXCLUSION LISTED IN THE DUTCH WORKS PROCUREMENT REGULATIONS 2005 AND THE EUROPEAN PROCUREMENT DIRECTIVE APPLY

- 2.1 Has the company been found guilty by irrevocable judgment in the four years prior to this tendering procedure on the basis of Article 140, 177, 177a, 178, 225, 226, 227, 227a, 227b or 323a, 328ter (2), 416, 417, 417bis, 420bis, 420ter or 420quater of the Dutch Penal Code or a similar criminal-law provision effective in another country?

Yes / no (delete as appropriate)

If yes, state the offence and the penalty or measure imposed.

If the Contracting Authority makes a request to this effect, a certificate of good conduct (*Verklaring omtrent het gedrag*) of the company or the decision in which the issue of such a certificate is refused or a comparable certificate or decision from the country of origin must be submitted, which must not be older than 6 months. An original copy of this certificate or decision or a copy certified by the issuing institution must be submitted. The company

guarantees that this certificate at the moment of submission accords with the actual situation in which the company finds itself at that time.

- 2.2 Is the company bankrupt, in liquidation, has it been granted a suspension of payments or has it reached a composition with creditors, or has the company ceased operations or is it in some other similar situation as a result of a similar procedure under national statutory regulations?

Yes / no (delete as appropriate)

If yes, state the particular situation.

If the Contracting Authority makes a request to this effect, a declaration by the clerk of the court or a comparable declaration from the country of origin must be submitted, which must not be older than 6 months. The company guarantees that this declaration at the moment of submission accords with the actual situation of the company at that time.

- 2.3 Has an application been made to order the bankruptcy of the company or have proceedings been instituted in a court against the company for liquidation, suspension of payments or a composition with creditors or a similar procedure as provided for in national statutory regulations?

Yes / no (delete as appropriate)

If yes, state the particular situation.

If the Contracting Authority makes a request to this effect, a declaration by the clerk of the court or a comparable declaration from the country of origin must be submitted, which must not be older than 6 months. The company guarantees that this declaration at the moment of submission accords with the actual situation of the company at that time.

- 2.4 In the four years prior to this tendering procedure, has the company been found guilty in any final and irrevocable judicial ruling of an offence that compromises the professional ethics of the company as referred to in Article 5 of the Policy Rules on Probity and Exclusion in Tendering Procedures in BIBOB Sectors?

Yes / no (delete as appropriate)

If yes, state the nature of the offence and the penalty or measure imposed. If the Contracting Authority makes a request to this effect, a certificate of good conduct (*Verklaring omtrent het gedrag*) of the company or the decision in which the issue of such a certificate is refused or a comparable certificate or decision from the country of origin must be submitted, which must not be older than 6 months. The company guarantees that this declaration at the moment of submission accords with the actual situation of the company at that time.

- 2.5 Has the company committed any serious errors in its professional practice as described in Article 6 of the Policy Rules on Probity and Exclusion in Tendering Procedures in BIBOB Sectors in the four years prior to this tendering procedure?

Yes / no (delete as appropriate)

If yes, state the nature of the error and the penalty or measure imposed, if any.

- 2.6 Has the company fulfilled its obligations with respect to payment of social insurance contributions in accordance with the statutory provisions in force in the country where it is registered and in the Contracting Authority's country?

Yes / no (delete as appropriate)

If the Contracting Authority makes a request to this effect, a declaration from the tax collector to which the company is subject for collection of taxes or a comparable declaration from the country of origin must be submitted, which must not be older than 6 months. The company guarantees that this declaration at the moment of submission accords with the actual situation of the company at that time.

- 2.7 Has the company fulfilled its obligations with respect to payment of taxes in accordance with the statutory provisions in force in the country where it is registered and in the Contracting Authority's country?

Yes / no (delete as appropriate)

State any arrangements for payments currently in force.

If the Contracting Authority makes a request to this effect, a declaration from the tax collector to which the Candidate is subject for collection of taxes or a comparable declaration from the country of origin must be submitted, which must not be older than 6 months. The company guarantees that this declaration at the moment of submission accords with the actual situation of the company at that time.

- 2.8 Has the company been guilty to a serious degree of making false declarations when providing information that may be required in accordance with the criteria for the qualitative selection or the Grounds for Exclusion, or has the company failed to provide this information?

Yes / no (delete as appropriate)

If yes, state the nature of the above and the penalty or measure imposed, if any.

**3 QUESTIONS REGARDING INSIDE INFORMATION AND CONFLICTS OF INTEREST**

- 3.1 Has the company, prior to this tendering procedure, performed any work or provided any services in preparation of the contract, or has the company been involved or is it still involved - either directly or indirectly - in the contract preparations in any other way?

Yes / no (delete as appropriate)

If yes, state the nature of the relevant work or services or the involvement.

.....  
.....  
.....

- 3.2 Is the company part of another company or a group?

Yes / no (delete as appropriate)

If yes, have any of the other companies that are part of the company or the group, prior to the tendering procedure, performed any work or provided any services in preparation of the contract, or have any of the other companies been involved or are they still involved - either directly or indirectly - in the contract preparations in any other way?

Yes / no (delete as appropriate)

If yes, state the name(s) and address(es) of the relevant company or companies and also state the nature of the relevant work or services or the involvement.

.....  
.....  
.....

## Statement

The undersigned states

- that he has answered the questions completely and truthfully and that the information provided on this questionnaire is consistent with reality and is correct and complete.
- that, at the Contracting Authority's request, he will submit the official proof demonstrating that the grounds for exclusion listed in European Procurement Directive 2004/18/EC do not apply to him.

Thus signed in [city] on [date].

[Candidate/Relevant Subcontractor/Shareholder/subcontractor - not being the Relevant Subcontractor - as referred to in Section 3.12.4 of the Tender Guidelines]

[name of authorised natural person]

[position]

[signature]

## Appendix 2.4: Model Statement of Economic and Financial Standing

This statement must be signed by an authorised representative of a supervised financial institution in the country of origin. This financial institution must have a Long-Term Issue Credit Rating issued by Standard & Poor's or an equivalent internationally recognised, independent rating agency of at least investment grade (BBB- or an equivalent rating).

The following statement must be submitted on the financial institution's letterhead.

---

To the Contracting Authority  
Attn. [name]  
[address]  
[postal code] [city]

The undersigned, [name of financial institution], having its registered office in [city], states the following in connection with the tendering procedure arranged by the RegioTram PMO of the RegioTram Groningen Project, hereinafter referred to as "the Project".

On the basis of the information currently known to [name of financial institution], the undersigned states that [Candidate's name] must be considered to be able to raise € 35 million as equity capital, either by availability in equity/share capital/paid-in share premium or by availability as a subordinated loan.

This statement does not entail a guarantee by [name of financial institution] to the Contracting Authority. This statement was made following a careful examination by [name of financial institution] of the information provided to [name of financial institution] by the Candidate, in particular the information regarding the Project and the financial situation of [names of those involved with the Candidate].

[name of financial institution] is aware that the Contracting Authority will use this statement to establish whether [Candidate's name] satisfies the minimum financial-economic requirement.

Thus signed in [city] on [date].

[name of financial institution]

[name of authorised natural person]

[position]

[signature]

## Appendix 2.5: Model Statement of Project Management, Rolling Stock, Public Transport and Project Financing Experience

The Candidate must complete and sign this statement. A separate statement must be completed, signed and submitted for each reference project.

The Contracting Authority reserves the right to request further information from the commissioning party's contact named on this form.

REFERENCE PROJECT		
Reference project name		
Tender amount (in euros, excluding VAT)		
Execution location		
Execution period		
Commissioning party	Name	
	Address	
	Contact's name	
	Telephone	
	E-mail	
Contractor <sup>7</sup>		
Description of reference project (maximum 500 words)		
The Candidate uses this reference project to demonstrate that it does indeed have experience in the following area or areas at its disposal when executing the Project: Project Management / Project Financing / Project Management & Project Financing <sup>8</sup> .		
<b>A. Project Management</b>		
Infrastructure project	Is it an infrastructure project within the meaning of Section 3.14.1 of the Tender Guidelines? [The Candidate must have conducted the project management of at least two infrastructure projects in the past five years, calculated from the deadline for submission of a request for participation, see Section 3.4.  Each of these projects must satisfy the following requirements: i. integrated performance of at least design, construction and maintenance work, performed under	Yes / No

<sup>7</sup> The contractor must be the Candidate (or one of the Candidate's alliance partners) or a Relevant Subcontractor.

<sup>8</sup> Delete as appropriate.

	<p>certified quality assurance based on the ISO-9001 standard or an equivalent;</p> <p>ii. the total value of the design and construction work referred to in i. must be at least € 50 million (excluding VAT, based on the price level of 1 January 2010);</p> <p>iii. the total value of the maintenance work referred to in i. must be at least € 5 million (excluding VAT, based on the price level of 1 January 2010), with a minimum maintenance period of 5 years;</p> <p>iv. construction work must have been completed for at least 50% at the time of submission of the request for participation, such to the relevant commissioning party's satisfaction.</p> <p>In addition to civil engineering projects with regard to infrastructure, infrastructure projects within the meaning of this criterion for qualitative selection also include projects with regard to building construction, water purification, water production and water distribution.</p> <p>Project management within the meaning of this criterion for qualitative selection includes demonstrable responsibility for, or involvement in a managerial capacity in, the following tasks in the reference projects stated by the Candidate, at the level where the design and construction works were integrated:</p> <p>i. day-to-day management of the work;</p> <p>ii. risk management;</p> <p>iii. quality management;</p> <p>iv. financial management;</p> <p>v. the time schedule;</p> <p>vi. coordination of the internal interfaces involved;</p> <p>vii. implementation of changes.]</p>	
Project management	Has the aforementioned commissioning party conducted the project management - within the meaning of Section 3.14.1 of the Tender Guidelines - of this reference project in the past five years, calculated as from the deadline for submission of request for	Yes / No

	participation?	
Integrated performance	Does this reference project include integrated performance of at least design, construction and maintenance work, performed under certified quality assurance based on the ISO-9001 standard or an equivalent?	Yes / No
Value	a. Does the total value of the design and construction work amount to at least € 50 million, excluding VAT?	Yes / No
	b. Does the total value of the maintenance work amount to at least € 5 million, excluding VAT, with a minimum maintenance period of 5 years?	Yes / No
Construction completion	Has at least 50% of the construction work for this reference project been completed at the time the request for participation is submitted?	Yes / No
Proper performance	Has the construction work so far been performed to the commissioning party's satisfaction?	Yes / No
<b>B. Public Transport</b>		
Public transport project	Is the project a public transport project as referred to in Section 3.14.2 of the Guidelines? [In the past five years - calculated as from the deadline for submission of a request for participation, see Section 3.4 - the Candidate must have been involved, on the part of a contracting government or government charged with the provision of public transport, on the part of a consultancy firm in the field of public transport, or on the part of a public transport operator, in the creation of two timetables that were actually implemented (in use for more than six months), including at least one mode of transport in the field of Public Transport (tram, train, bus, underground, light rail) and one interface in the network with another mode of Public Transport, with a minimum of, on average, 40,000 passengers for both timetables jointly on an average business day. The Candidate is not required to add a Public Transport Operator to the SPV to this end. If the Candidate does this nevertheless, the Contracting Authority refers to the provisions of Section 3.5.]	Yes / No

Duration	Operational for more than six months	Yes / No
Number of passengers	40,000 per business day	Yes / No
C. Rolling Stock		
	<p>Is the project a rolling stock project as referred to in Section 3.14.3 of the Guidelines?</p> <p>[In the past three years - calculated as from the deadline for submission of a request for participation, see Section 3.4 - the Candidate must have been involved in a key position (taking the decisions that were most important to the project for that party) on the part of a Public Transport Operator or on the part of a supplier of Rolling Stock in the area of rail or light rail (train, tram, underground, etc.) in the purchase of at least two new systems, each of at least five articulated carriages or combinations of the same.]</p>	Yes / No
D. Project Financing		
Infrastructure or similar project	Is the project an infrastructure project within the meaning of Section 3.14.1 of the Tender Guidelines or a similar project?	Yes / No
Contract value	Is the contract value at least € 50 million, excluding VAT?	Yes / No
Project financing	Has the commissioning party been involved in a major role in the conclusion of the Project Financing agreement(s) between a special purpose vehicle and providers of loan capital, in which respect the facilities provided to the SPV had an aggregate value of at least 50% of the present value?	Yes / No

Thus signed in [city] on [date].

[Candidate/Relevant Subcontractor]

[name of authorised natural person]

[position]

[signature]