



EINDHOVEN

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Selection Guidelines for “The Smart Way Towards Sustainable Municipal Buildings”

European tender

Land & Property, Construction and Maintenance

July 2014

Publication details

Issued by

Municipality of Eindhoven
Land & Property, Construction and Maintenance

Date

July 2014

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Definitions

In these Selection Guidelines, any references to the definitions listed below are capitalised.

Contracting Authority

Municipality of Eindhoven (hereinafter: the “Municipality”)

Application

The full set of documents the Candidate submits to the Contracting Authority in compliance with the contents of these Selection Guidelines and in order to assess the suitability requirements and selection criteria.

ARW (in full: ‘AanbestedingsReglement Werken 2012’)

The Dutch regulatory framework for procurement of works that is part of the Public Procurement Act 2012, which applies to this procurement procedure.

Tenderer’s Statement (for tenders from contracting authorities)

Written statement, required under the law, in which the Tenderer certifies that it complies with the grounds for exclusion, eligibility requirements and terms and conditions of implementation set. The Tenderer’s Statement has been appended to the tender documents on TenderNed as Annex A.

Candidate

The company or partnership of companies which, by submitting an Application, has requested to be admitted to the tender procedure.

Summary of additional information and changes

Document containing anonymised questions and answers to questions from Candidates, along with any amendments to the Selection Guidelines.

Tenderer

The company which, based on the selection and results of the competitive dialogue, is invited to submit a formal proposal (tender) to the Contracting Authority.

Contractor (once the award of the contract has been confirmed)

Tenderer to which the Contracting Authority will grant the contract as part of this Tender.

Selection Guidelines

This document, including Annex A (Tenderer’s Statement), containing information relevant to submitting an Application as part of the tender to which this document relates.

SPEA

The EU programme “Smart Procurement European Alliance”, whose purpose is: (quotation) “to implement a public procurement of innovative solutions in the area of energy efficiency in municipal buildings in the partner cities: Barcelona, Eindhoven and Birmingham, increasing, thereby the demand for innovation in this field and enhancing innovation of public services in relation to the improvement in quality/efficiency of public services, providing opportunities to SMEs to get involved in public procurement as direct beneficiary/client of a purchasing authority” (end of quotation).

Introduction

These Guidelines describe the initial phase of the tender to improve, in a series of stages, the sustainability of 7 to 9 municipal buildings owned by the Municipality of Eindhoven. A crucial aspect of this tender is a “smart yet innovative strategy”, which facilitates the Municipality of Eindhoven as much as possible in achieving its objectives, not only and exclusively in relation to sustainability, but also in terms of building management and building operation, the Municipality’s role in setting an example, improving the quality of life in the city centre, etc.

The tender was preceded by an exhaustive market survey and consultation, designed to mobilise innovative businesses of all sizes and to establish partnerships between businesses in order to take maximum advantage of the knowledge of market players. All information regarding the preliminary stage of the tender is available on the website www.sustainablebuildings.eu. This website also publishes the ideas of all the market players involved. Businesses intending to participate in the tender are requested to read this information and, where necessary and possible, enter into a partnership with parties submitting ideas and suggestions.

The procurement method is designed to add maximum value. For more information, please see Section I.

The first stage of the tender is aimed at selecting five market players with which the Municipality intends to prepare the proposal stage of the tender in consultation. Section 2 describes the selection process (including the regulations) in terms of planning, communications, the submission and processing of Applications, and options and limitations relating to the submission of complaints and formal objections.

The Municipality has set a number of terms and conditions for participation in this tender, to ensure that the correct expectations are met and the appropriate behaviour is facilitated. These terms and conditions are listed in Section 3;

Section 4 sets out the requirements with which the participants in the selection process must in any event comply (i.e. prerequisites). These requirements relate primarily to the circumstances and behaviours of the business or businesses in case of a partnership. These represent the “grounds for exclusion” under the law. Additionally, a minimum number of eligibility requirements have been drafted, in order to ensure that virtually no business will be excluded on these requirements. The underlying idea is that businesses are primarily responsible

themselves for determining their eligibility to perform the contract. Furthermore, the company’s level of eligibility is also evident from the ranking once the criteria for eligibility (see Section 5) have been assessed and, at a later stage of the tender, based on the procurement method used, which, as noted above, is aimed at adding and determining value as much as possible. This ensures that the threshold for businesses to participate in this tender is kept as low as possible.

I Information

1.1 Contracting Authority

The Contracting Authority in this European Public Procurement process is the Municipality of Eindhoven (hereinafter: the “Municipality”). With a population of 218,000, Eindhoven is the fifth-largest city in the Netherlands.

As of 1 January 2013, the Municipality’s organisation consisted of 19 sections, plus Van Abbemuseum, which is managed by the Board of Directors. In the sections, the municipal duties are divided into the following areas: services (to residents, businesses, etc.), urban development, urban companies, administrative support and internal services. The section responsible for this tender is Land & Property

Additional information about the Municipality is available on the website www.eindhoven.nl

1.2 Contract

1.2.1 Introduction

The Municipality of Eindhoven must have completed the renovation of the City Hall Tower by 2017 on a sustainable basis, as well as transform the adjacent City Hall into a sustainable building.

The Municipality aims to promote and use innovation in order to achieve objectives related to societal and other issues. It is important, in this context, that the municipal office buildings are developed and converted in line with changing needs and, if possible, new users.

A second issue concerns the development of Eindhoven into a sustainable, energy-neutral, attractive and inspiring city which is managed on a flexible basis. The development, use and management of municipal property must contribute to this in a way that sets the stage for future trends. The Municipality has therefore decided to participate in a reference project as part of the EU programme “Smart Procurement European Alliance” (acronym: SPEA). This reference project is designed to improve the energy efficiency of government buildings on an innovative basis, and objective which will be achieved through this tender.

The required innovative sustainability is coupled with a financial optimisation issue, since the available resources for making municipal property more sustainable are limited.

In light of these issues, the Municipality has decided to expand the scope of the project described above, in order to contribute to achieving the goals and objectives below.

– *First priority* –

- ◆ Maintaining seven municipal office buildings located in the city centre, in order to improve the sustainability of these buildings by means of a “system strategy”, using potential synergy and economies of scale.
- ◆ The optimisation of the portfolio of office buildings, taking into account the effects of a changing municipal government (i.e. one that is becoming more flexible); and

– *Second priority* –

- ◆ Outsourcing the day-to-day management of the seven office buildings
- ◆ Maintenance and day-to-day management of the Van Abbemuseum and the Designhuis (Design House).
- ◆ Supporting and demonstrating innovations relating to the development, management and operation of real estate holdings (i.e. leading by example; and
- ◆ Increasing the appeal of the city centre to all users (i.e. the working population, visitors and residents)

If two priorities are recognised simultaneously, this is related to the fact that no budget is allocated in advance within this tender for achieving second-priority goals. However, this does not mean there is no room in the budget or that such room cannot be created. The availability of additional budget resources depends on the schedule relating to these points within the tender process. This schedule is linked primarily to, and assessed based on, the synergy to be achieved with the first-priority goals and the benefits which can be achieved as a result. This therefore provides applicants with the opportunity to schedule the second-priority goals, and, where possible, see them honoured. There are three possible ways in which this may be accomplished:

1. A contribution to achieving a second-priority goal can be accommodated within the financial scope offered for achieving first-priority goals, and the proposal is offered on this basis.
2. The realisation of one or more second-priority goals is considered essential by the Tenderer for drafting an appropriate proposal. In that case enlarging the budget is put on the agenda of the dialogue preceding the tender.
3. A contribution to achieving a second-priority goal does not fit within the financial scope offered for first-priority goals, is neither essential for the

planning by the Tenderer, and is included in the proposal as an “opportunity”.¹

The scope of the contract is set out in the sub-paragraphs below in the form of a series of objectives, which are in line with the procurement method to be used; see paragraph 1.3. The activities included under the first priority are detailed Annex 1.

1.2.2 Primary objective

The primary objective of the tender (i.e. the contract) is defined as follows:

“The development and construction of sustainable administrative buildings in Eindhoven’s city centre based on a solid business case, in light of the transition to the ‘New World of Work’, in terms of building layout(s) and procedures”.

1.2.3 Objectives

The details of the contract are incorporated into the following specific goals to be achieved:

- ◆ Renovation of the City Hall Tower in Q1 2017, based on the following requirements;
 - Redesigned access/connection to City Hall
 - Preservation of architectural value(s)
- ◆ Achieving the largest possible sustainability gains based on the current maintenance and operational budgets for administrative buildings, for the (first) 10-year contract period. The highest value is assigned to sustainability gains related to achieving energy-neutrality. The top priority is improving the sustainability of the City Hall tower – alongside the renovation thereof.
- ◆ Sustainability measurements and sustainability gains must be made explicit and be communicated, generating maximum publicity in the process.
- ◆ Portfolio flexibility: keep office space and building stock aligned with the current requirement for workspaces and building use as much as possible, in view of the projected reduction in the number of jobs, job changes and the required improvement of interaction with members of the public and other stakeholders of the Municipality.
- ◆ Making building maintenance more systematic and streamlined in terms of structure and execution. The maintenance relates to:
 - The owner and user maintenance of the buildings owned by and used by the Municipality.
 - Owner maintenance of the leased buildings (see paragraph 3)
 - User maintenance of the leased building (i.e. Stadskantoor)

¹) The term “opportunity” refers to the structure and layout of proposals in accordance with the “Best Value Procurement” method – see paragraph 1.3.

- ◆ User satisfaction: adjusting the indoor climate as much as possible to functional and/or individual user needs, and ensuring it remains that way.
- ◆ Achieving second-priority objectives (see paragraph 1.2.1)

1.2.4 Contract negotiation

The contract term has been fixed at 10 years; this term is adapted to the ROI periods of (profitable) investments in sustainability. The contract may be renewed, and in addition there is an option to purchase investments which have not yet been earned back on expiry of the contract period in accordance with terms and conditions to be agreed. We will provide further details on this during the tender stage.

Given the long-term contract to be entered into, trust between the Municipality and its future partner will be the key to the future success of the partnership, and creating such trust and building the partnership are therefore key considerations in designing the tender.

Performance serves as a criterion for the value assigned to the partnership and, by extension, to its continuation and possible extension. Determining the value of this performance in the perception of users and stakeholders is therefore essential. For this reason, a performance contract is aimed at, in which accountability is linked to user's satisfaction. The applied procurement method (see Section 1.3) is directed towards this aim.

1.3 Procurement method

The complexity, scope and price of the contract have resulted in the choice of the “competitive dialogue” tender procedure, as regulated in section 4 of the ARW. This document describes the selection stage of the competitive dialogue. The selection will result in the invitation of the five Candidates who have attained the highest score in the selection criteria set, to participate in the dialogue and the subsequent tender.

The dialogue is expected to be conducted in two rounds (and more if necessary). The main objective of these dialogue rounds is to balance supply and demand as effectively as possible, so that the appropriate legal-financial, organisational and technical solutions can ultimately be realised and the best three Candidates (out of the five selected) can be invited to submit a proposal.

‘Awarding based on value’ will be applied in the dialogue and tender rounds, in accordance with the principles of “Best Value Procurement” (referred to as

“BVP”). At a given budget limit², this method and these principles will help determine the value of:

- ◆ The scope of the offer, in response to the scope of demand determined after the negotiation stage.
- ◆ The opportunities acknowledged to contribute, outside the scope of the offer, to the realisation of the project objectives
- ◆ The identified risks falling outside the remit of the Contractor, and the quality of the proposed control measures
- ◆ The measurable competencies, at the individual level, of the proposed implementation organisation

The winning proposal will be further detailed in the BVP setup, prior to the contract being granted. The level of detail involved should give the Municipality the confidence and trust that the expectations created by the proposal will be met. If the latter turns out not to be the case, the second-ranked Tenderer will be given the opportunity to crystallise its offer. This more detailed version will therefore form the basis of the trust between the Municipality and its partner and, as such, constitutes the main part of the contract.

I.4 SPEA

The EU programme “Smart Procurement European Alliance” aims at (quotation) “to implement a public procurement of innovative solutions in the area of energy efficiency in municipal buildings in the partner cities: Barcelona, Eindhoven and Birmingham, increasing, thereby the demand for innovation in this field and enhancing innovation of public services in relation to the improvement in quality/efficiency of public services, providing opportunities to SMEs to get involved in public procurement as direct beneficiary/client of a purchasing authority” (end of quotation). For further information, see the website www.speaproject.eu

The participation in SPEA has led to a maximum effort to mobilize and use the knowhow of the market to shape the task to make the municipal office buildings more sustainable. At the start, a state-of-the-art report has been made on basis of interviews of 10 experts, to develop the proper approach. The main conclusions directed towards the application of a system approach in conjunction with a long term horizon. As a next step, an extensive market survey and consultation has been set up. A brainstorm organized in five subsequent sessions gave better insight how to inform and involve market parties and gave a boost to knowledge sharing and cooperation between market parties. Also, training in the BVP-method of procurement and cooperation mechanisms’ has been organized, the latter with help of the SBRCURnet, the Dutch knowledge provider in the building sector.

² The budget limit will be communicated during the next stage of the tender, using the Guidelines for Application

All information given and ideas (outline proposals) that have been submitted – together with their submitters – have been disclosed on the website www.sustainablebuildings.eu . Applicants are advised to take note of this information and, taking the selection process and the criteria applied hereto into account, benefit from it.

The implementation of SPEA is coordinated in conjunction with Eindhoven’s partner cities Barcelona and Birmingham. This coordination consists of adapting the procurement method, the input of experts in the evaluation or assessment of tenders and, for Applicants, creating opportunities for the international exchange of knowledge and creating opportunities for businesses to tender.

Barcelona is preparing a tender worth approx. € 700.000 of investment in the management of energy efficiency of 10 libraries in several districts of the city. 100 companies have contributed energy-efficient techniques in the consultation phase preceding the call for tenders, which helped to define the scope of this project. The tender will be set up as a contest and will be launched by mid September. The companies submitting the three best energy-efficient proposals will be invited to enter into negotiations with the contracting authority. The negotiations will result in one contract with the overall-winner by December 2014. The European call for tenders will be advertised on www.ojeu.eu . Information will be also be spread through www.speaproject.eu and www.bcn.cat/ (to be reached through a search query on the site using the term ‘profile contractor’)

The strategy of the City of Birmingham is directed towards improving the energy-efficiency of three buildings, viz. the Council House, Lifford House en 67 Sutton New Road. It is expected that their project cannot be launched before December 2014.

2 Selection process

2.1 General information

On 17 July 2014, the Municipality of Eindhoven posted an announcement of this Tender on the website www.tenderned.nl. Additional information about the tender is available on the website www.eindhoven.nl.

2.2 Schedule

The table below contains the overall schedule.

Stage of the tender process:	Date:	Time:
Publication date of announcement of contract	17 July 2014	N/A
Summary of additional information and changes: - deadline for submission of questions:	25 August 2014	00:00am / midnight
- deadline for answering questions:	4 September 2014	
Deadline for submission of Application:	15 September 2014	11:00a.m.
Assessment of Applications completed	23 September 2014	N/A
Communication regarding selection decision	29 September 2014	N/A
10-day standstill period ending	10 October 2015	
Date of announcement of final selection	13 October 2014	

The dates and times listed above are approximate only; they do not form part of any contract and should not be relied upon as statements of fact. The Contracting Authority reserves the right to amend the time schedule indicated, with the exception of deadlines established under the law. In the event the time schedule is amended, Candidates and potential Candidates will be notified in a timely manner.

2.3 Information exchange

2.3.1 Communications and Summary of additional information and changes

All communications relating to this Tender will be in writing using the TenderNed messaging service, addressed to the following contacts: J. Strating – Procurement department

Users of these Guidelines will have the opportunity to ask questions,³ in relation to the tender, in terms of the procedure and contents involved. A form for the purpose of submitting questions (Question Form) has been added separately as an annex to be completed (Annex B); it is appended to the documents relating to this tender. This Annex B to be completed must be appended to the message to be posted on TenderNed.

Please submit any technical questions you may have regarding the system directly to the TenderNed administrator – see www.tenderned.nl.

The questions and answers will be anonymised, which means they cannot be traced back to the party that submitted the question. They will be incorporated into a Summary of additional information and changes and published on www.TenderNed.nl. Any announcements, commitments or agreements which have not been set out in a Summary of additional information and changes will not be binding on the Contracting Authority.

The Summary of additional information and changes forms an integral and binding part of this Tender and its contents will prevail over the Selection Guidelines plus Annexes. It is therefore recommended that you submit the Tender only after the Summary of additional information and changes stage has been completed and any amendments have been announced.

Candidates are prohibited from approaching any (other) employees of the Municipality or otherwise contacting any party regarding this Tender other than through the channels specified above. The Municipality of Eindhoven shall be entitled to exclude from participation any Candidates that violate this prohibition.

2.4 Submission of Application – Application deadline

The Application may only be submitted in electronic format using TenderNed, and no later than the time and date specified in paragraph 2.2. The manual to be downloaded at the link below, *In zes stappen digitaal inschrijven op overheidsopdrachten via TenderNed* [“Electronic registration in six steps for government tenders using TenderNed”] explains how you can register electronically.

Link:

http://www.tenderned.nl/sites/default/files/In%20zes%20stappen%20digitaal%20inschrijven%20op%20overheidsopdrachten%20via%20TenderNed_0.pdf

The Municipality of Eindhoven would like to receive your Application in PDF and Word formats, with the PDF version taking precedence.

³) as well as provide feedback, detect any inaccuracies and submit proposals for changes

Please note: the application will only be final once the text transaction code has been entered and sent using the TenderNed system.

The application deadline specified in paragraph 2.2 should be regarded as a strict deadline. Since TenderNed will be locking the safe at this time, the entire application process through TenderNed must have been completed by then. The risk of exclusion of the Application due to late submission – e.g. due to the time of electronic transmission – will be fully borne by the Candidate.

Applications received by email, post or through any medium other than those specified above will not be considered.

2.5 Opening of Applications

Applications submitted within the deadline will be opened as soon as possible after the electronic safe on the TenderNed website has been closed, based on the “two-man rule”. A formal report of opening will be drafted once Applications have been opened; this report will be published on TenderNed. No Applicants will be invited to the opening.

2.6 Stages

The selection process includes the following stages:

1. Inspection of:
 - ◆ procedural requirements;
 - ◆ grounds for exclusion;
 - ◆ eligibility requirements;
2. Assessment based on:
 - ◆ Selection criteria
3. Selection of Candidates based on the assessment results
4. Announcement of selection decision and final selection

If more than three Candidates are eligible for admission due to having attained the same score (rounded up to a full point), it will be determined by lots which ones will be accepted for selection. The parties having achieved the same score will be notified in a timely manner where, when, how and by whom the lots will be drawn. They will be authorised to attend the lottery in person or send a proxy in their place.

Selection stages 1 and 2 are further detailed in sections 4 and 5 in relation to the information Applicants are required to provide and the manner in which this information is to be assessed.

2.7 Complaints procedure, selection decision and objection period

2.7.1 Complaints procedure

As described elsewhere in this document, all stakeholders will be given the opportunity to ask questions regarding the Tender. The Municipality will answer these questions based on its experience and expertise. If the party submitting the question(s) does not agree with the answer and would like to express this in the form of a complaint or if a stakeholder otherwise has a complaint regarding the tender, the following steps are to be taken:

- 1) Complaints must be communicated to the following email address: aanbestedingen.meldingen@eindhoven.nl. The Municipality of Eindhoven will handle the complaint and will immediately inform the party of the name of the person handling the complaint and the date by which the complaint is expected to be handled.
- 2) If the party submitting the complaint does not agree with the Municipality's ruling regarding the complaint submitted, it must contact the Board of Tender Experts [Commissie van Aanbestedingsexperts] instituted by the Minister of Economic Affairs, Agriculture and Innovation (see Section 4.27 of the Public Procurement Act 2012). If a complaint relating to this tender process is submitted to this Board of Tender Experts, the party submitting the complaint will be requested to submit a copy of the complaint to the Municipality contact specified in paragraph 2.3.1.

In addition, the procedure is open to appeal in accordance with the legal proceedings described below.

Any complaints submitted do not have a suspensive effect on this Tender. Any opinions of the Board of Tender Experts will not be binding on the Municipality, unless a court decision is subsequently handed down which renders it enforceable.

2.7.2 Selection decision / objection period

Simultaneously with the disclosure of the selection decision to the selected Candidates, the rejected Candidates will be informed of this decision by email and post. These Candidates will receive a letter containing the reason for the

rejection plus the names of the selected Candidates. All stakeholders are free to contact the Municipality for information.

It is possible to appeal the selection decision by instituting summary proceedings at the District Court for East Brabant in Den Bosch. This is subject to a period of 10 business days following the date on which this decision was announced. This 10-day period will commence on the date the email was sent.

If, within this period:

- a) no appeal has been brought (in the manner specified above), or
- b) the Municipality has not reneged on its selection decision in writing prior to the expiry of the period,

the Municipality will be authorised to commence the next (negotiation) stage of the tender.

Interested parties (Candidates) that fail to institute summary proceedings in a timely manner will forfeit their rights to protest the further progress of the tender (in a court of law). Failure to comply with the deadlines specified above also entails that the interested party (i.e. the Candidate) will forfeit any and all rights it may have to institute proceedings on the merits in order to successfully claim that the Contracting Party take specific actions (legal or otherwise) and/or pay compensation (successfully).

Even if an interested party (Candidate) objects to the (incomplete) reasons for the rejection and/or the commencement and/or expiry of the above-mentioned period of 10 business days, it will therefore forfeit any and all rights if it has failed to (also) subpoena the Contracting Authority in summary proceedings within ten business days following the rejection in the summary proceedings.

If summary proceedings are brought within the 10-day period, the tender will be suspended until the decision has become irrevocable. This decision will then serve as the basis for any further decisions made by the Municipality regarding the selection.

If no summary proceedings are brought (or are not brought in a timely manner) and/or the decision in the first instance of temporary summary proceedings does not object to the selection decision, any appeal and/or proceedings on the merits can never result in any liability whatsoever (e.g. regarding expenses incurred or profits lost) of the Contracting Party in relation to a (beneficiary and/or losing) Candidate.

3 Terms and Conditions

3.1 Inaccuracies and conflicts

Suppliers are required to report any manifest or suspected conflicts and/or inaccuracies and/or irregularities in the Selection Guidelines and their Annexes to the Municipality prior to the publication of the (most recent) Summary of additional information and changes (see the date listed in paragraph 2.2).

Following publication, suppliers may only address such conflicts, inaccuracies, irregularities and any (irresolvable) disputes in response to the answers provided in the (most recent) Summary of additional information and changes by submitting a complaint and/or – subject to forfeiture of rights – serving a summons for summary proceedings on the Contracting Party no later than three business days prior to the deadline for submission of the Application (see paragraph 2.2).

Following the expiry of the period for submitting the Application, Candidates or interested third parties can no longer claim any conflicts, inaccuracies, irregularities or irresolvable disputes. If and where necessary, any conflicts, inaccuracies, irregularities and disputes will be interpreted in favour of the Contracting Authority.

The Municipality reserves the right to disregard, or only partially process, any comments and suggestions without stating reasons.

3.2 Agreement

In submitting an Application, Candidates certify that they agree to all terms and conditions set by the Municipality and provided for in these Selection Guidelines. Any implicit or explicit rejection of the terms and conditions will result in exclusion from the Tender.

3.3 Confidentiality

The content and information relating to these Selection Guidelines – including the Annexes appended thereto and any further information to be provided – must be treated confidentially by the Candidate and may only be disclosed to employees and any third parties that are directly involved in the Tender.

The Municipality will likewise treat the data and information received confidentially, except in cases in which the Municipality is required by law to disclose such information. In such situations, the Municipality will not disclose information and data provided by Candidates to any other Candidates or third parties without the written consent of the Candidate concerned.

Demonstrable loss as a result of failure to comply with this condition will be recovered from the non-compliant party.

3.4 Accuracy and completeness of Application

Candidates are required to provide accurate and complete information in their Application. If it can be demonstrated that this is not the case, this may result in exclusion from the Tender.

If and where appropriate – to be determined at the discretion of the Municipality – Candidates may be requested to complete missing information or for verification of information. However, the Municipality will be under no obligation to do so. Candidates are requested to provide the information requested within five working days following the request from the Municipality. Failure to comply with this deadline may result in exclusion from the Tender. If the information provided is contrary to the contents of the Application, Candidates will be excluded, without reservation, from further participation in the Tender.

3.5 Reservation by the Municipality

The Municipality reserves the right to modify the Tender procedure and/or alter the nature and scope of the contract. Furthermore, the Municipality reserves the right to complete and/or amend the information included in these Selection Guidelines. If this provision is applied, the Municipality will comply with the applicable laws and regulations.

The Municipality reserves the right to terminate all or part of the Tender or refrain from awarding the Contract to any party, for any reason whatsoever.

3.6 Reimbursement of expenses

There is no right to compensation of any costs for Candidates that participate in the **selection phase**.⁴

⁴) For participation in the negotiation and award stages, an amount in design compensation will be provided to the parties selected (not including the party that is awarded the contract). This will be communicated by means of the Guidelines for tendering, dialogue phase

3.7 Partnership or appeal to (a) third party/parties

3.7.1 Appeal to financial and economic capacity (pursuant to Section 2.92 of the Public Procurement Act)

If a Candidate, in order to comply with the requirements for financial or economic capacity, claims the performance of a “third party” (generally the group or holding company of which the Candidate’s company forms part), the Candidate must indicate this in the Tenderer’s Statement in point 8.2.

Any claim to the performance of a “third party” is subject to the condition that such “third party” acts as a financial guarantor fully and unconditionally, in order to ensure compliance with the obligations arising from the agreement to be signed on the award of the contract. If requested, this must be jointly confirmed by the Candidate and the “third party” (this is often the holding company) on the award of the contract by means of a duly signed declaration.

3.7.2 Appeal for technical or professional expertise (pursuant to Section 2.94 of the Public Procurement Act)

In order to comply with the requirements for technical or professional expertise (i.e. eligibility requirements), Candidates may claim the competence of other natural persons or legal entities, irrespective of the legal nature of their relationship with such persons or entities. The two procedures available for making such an appeal are described below.

A: Application as a partnership (joint application)

Partnerships of businesses have the option to collectively submit an Application as a single Candidate, subject to the following terms and conditions:

- A1. Point 1.5 of the Tenderer’s Statement must list the businesses included in the partnership. The participant(s) from the partnership must each individually submit a Tenderer’s Statement.
- A2. The partnership must designate a single lead partner in point 1.6 of the Tenderer’s Statement. Please note: The lead partner will be the sole point of contact for any communication conducted with the partnership. The lead partner must be authorised to legally commit the partnership to any obligations relating to the Tender and the performance of the agreement. The lead partner must first be authorised for this purpose by all members of the partnership.
- A3. All members of the partnership must specify in point 8.1 of the Tenderer’s Statement what specific eligibility requirements it satisfies. The partnership as a whole shall comply with all the requirements set.
- A4. Individual members of the partnership will not be entitled to submit another individual Application or an Application submitted in conjunction with another partnership, in addition to an Application as a member of a

partnership. Failure to comply with this provision will result in the invalidity of all Applications submitted by the Candidate in question or of the combination(s) of which it forms part.

- A5. Each member in the partnership shall observe its obligations resulting from the agreement for services after it has been contracted. For this purpose, all partnership agreements, responsibilities and mutual liability must be laid down in a transparent partnership agreement that requires the approval from the client. Note This is a topic which will, along with the distribution of risk, be discussed during the negotiation stage.

B: Use of subcontractors

In order to satisfy one or more competence requirements, Candidates are entitled to engage the services of subcontractors, subject to the following terms and conditions:

- B1. The Candidate must specify under point 8.2 of the Tenderer's Statement for which competence requirement(s) it is engaging the services of (a) third party/third parties. In such an event, the Candidate (i.e. the main contractor) will submit all information upon verification of his proposal in the awarding phase of the contract.
- B2. As stated in point 1.4, the subcontractor(s) in question will not complete the Tenderer's Statement.
- B3. On the award of the contract, the Candidate (i.e. the main contractor) will be required to use the services of the subcontractor(s) in question for the work to which the competence requirement(s) relate, which only the subcontractor(s) satisfies/satisfy.
- B4. At the request of the Contracting Authority, the Candidate will subsequently submit documentary evidence of the involvement of the subcontractor(s).
- B5. The Candidate, as the main contractor, shall be fully liable for the work performed by the subcontractor(s), based on its responsibility for the correct performance of the contract agreement.

4 Procedural requirements, grounds for exclusion and eligibility requirements

4.1 General information

The following paragraphs specify what information Candidates are required to provide for the purpose of the assessment of the Application, based on procedural requirements, grounds for exclusion and eligibility requirements.

4.2 Procedural requirements

The Applications will initially be assessed for compliance with the procedural requirements, consisting of the rules for submission specified in Section 2 and the conditions set in Section 3.

Compliance of the Application with the procedural requirements will be assessed based on the completeness of the documents submitted and the content of the data and information provided, including, in particular, the information and data contained in Annex A to the Tenderer’s Statement for Tenders. Entering the required fields; valid signature⁵ and submission as part of the Application is required, subject to exclusion of the Application in the event of non-compliance with this procedural requirement.

Non-compliant Applications *may* (or – in the event of non-legally valid signature – *must*) be declared invalid. Although this constitutes, to some extent, an “optional provision”, Candidates must be aware that the Contracting Authority will be likely to decide to exclude them from further participation in the Tender in order to exclude unequal treatment of Candidates.

4.3 Grounds for exclusion

In the second instance, Applications will be assessed based on binding and optional grounds for exclusion, as specified in sections 2.86 and 2.87 of the Public Procurement Act, respectively.

⁵) i.e. signed by the director(s) authorised to represent the Candidate. (For Candidates domiciled in the Netherlands, this must be the director(s) listed in the Commercial Register of the Chamber of Commerce)

In signing the Tenderer’s Statement for tenders in accordance with the model contained in Annex A to this document, the Candidate certifies that the above-mentioned mandatory and optional grounds for exclusion do not apply to the Candidate. The Municipality reserves the right to verify the statements made for accuracy prior to making a final selection. In such an event, the Candidate will be required to submit the documentary evidence specified in Section 2.89 of the Public Procurement Act at the Municipality’s request. If the contents of this documentary evidence do not match the contents of this statement, the Candidate will be excluded from participation in the Tender.

PLEASE NOTE:

If an Application is submitted by a partnership (i.e. jointly), each individual member of such partnership is required to sign the Tenderer’s Statement in accordance with Annex A.

If one or more grounds for exclusion apply to the Candidate, the Application will be rejected and the Candidate will be excluded from participation in the Tender, unless the Municipality rules that the statement included in point 7.1 of the standard Tenderer’s Statement is sufficient or if, based on case law, exclusion is not possible.

4.4 Eligibility requirements

Candidates are subject to a number of eligibility requirements (also referred to as “minimum requirements”). Candidates are required to certify, using the Tenderer’s Statement included in Annex A, that they comply with the eligibility requirements and, if they are appealing to a “third party” to this end, they must specify to what requirement/part of the requirement this applies, along with the name of the “third party”. The applicable terms and conditions in relation to the above are detailed in paragraph 3.7. Prior to the final selection process, the Contracting Authority will verify the contents of the Tenderer’s Statement by requesting documentary evidence.

Failure to comply with one or more eligibility requirements will result in exclusion from participation in the Tender, unless the reason(s) provided in the Tenderer’s Statement included in Annex A (point 7.1) can be deemed to constitute compelling reasons.

4.4.1 MR 1: Professional competence

ME 1.1 Proof of registration in the Professional or Commercial Register

The Candidate certifies that its company or each individual company of a partnership submitting an Application is registered in its country’s national professional or commercial register in accordance with the requirements applicable in the country in which its company is located.

Prior to the decision of a final selection, the Contracting Authority may request recent proof of registration or a statement to be submitted under oath, in compliance with article 4.10.1 ARW. For Candidates domiciled in the Netherlands, an extract of registration in the Commercial Register of the Chamber of Commerce will suffice. “Recent” here refers to valid proof of registration issued no more than six months ago at the time the Application is submitted.

PLEASE NOTE:

If the Application is submitted by a partnership, each individual member of the partnership will be required to submit recent proof of registration of the company in the Commercial Register.

4.4.2 MR 2: Financial and economic capacity

The financial and economic capacity of the Candidate is subject to the requirements set out below.

MR 2.1 Continuity requirement

The annual financial statements of the past three financial years and the results of any interim audits conducted thereafter must not give evidence of any substantial risk or demonstrate that the continuity of the Candidate’s business operations is being compromised, has been compromised or may pose a risk in the immediate future.

By way of proof, the Candidate must, on the Municipality’s request, provide an audit report prior to the final selection in which this is officially confirmed.

PLEASE NOTE:

- ◆ If an Application is submitted by a partnership, each individual member of such partnership must satisfy this requirement and, accordingly, submit the evidence specified above.
- ◆ If a company fails to satisfy the requirement, only and exclusively because it has not yet been in existence for three financial years, this must be specified as a reason in the Tenderer’s Statement contained in Annex A (under point 7.1). This reason shall be regarded as valid.

MR 2.2 Insurance

On the award of the contract, the Candidate must be sufficiently insured against the risk of being held liable by the Municipality or any third parties in connection with attributable failure in the performance of the contract.

The following requirements apply:

1. Professional liability insurance providing cover against financial loss resulting from a professional error, subject to a minimum cover of €1,000,000 per claim and €2,000,000 per insurance year. No clause may be inserted into any insurance contract by linking to terms and conditions of sale, which provides that, in practice, actual cover is lower than the amounts stated.
2. A statutory liability insurance policy, including insured liability against injury and death, subject to a minimum sum insured of €2,500,000 per event.

Candidates are required to submit the following evidence prior to the final selection process:

1. A certified copy of the insurance policy or policies or a declaration provided by the insurer clearly specifying the following details:
 - ◆ the insurance cover;
 - ◆ maximum cover per claim and per insurance year, and
 - ◆ the term of the policy.

OR:

2. Written statement provided by the Candidate's insurer satisfying the requirements specified above which confirm its willingness to take out the insurance on the award of the contract. Note In such an event, the submission of the evidence referred to in point 1 forms part of the verification prior to the final award of the contract.

The Candidate to which the contract is awarded is contractually obliged to maintain the insurance policy – which satisfies the requirements – subject to the same terms and conditions and with the same sums insured or higher, during the full contract period.

PLEASE NOTE:

- ◆ The Candidate is required to submit the above-mentioned proof required prior to the final selection process. If the Candidate, at that time, is not yet in possession of an insurance policy which satisfies the requirements, a statement from its insurance company confirming that insurance may be taken out on award of the contract will be sufficient.
- ◆ If an Application is submitted by a partnership, each individual member of such partnership must satisfy the insurance requirements set and, accordingly, must submit the evidence specified above prior to the final selection process. This does *not* apply if the members wish to agree on

liability after the liability process has been completed, so that they can satisfy the requirements set collectively. In this case – invoking condition A5 of paragraph 3.7.2 – this must be specified as a reason in the Tenderer's Statement contained in Annex A (under point 7.1). This reason shall be regarded as valid.

4.4.3 MR 3: Professional competence

Based on the Best Value Procurement philosophy applied, we assume that the Tenderer is itself responsible for demonstrating that it possesses all the professional skills required to perform the Contracting Party's contract. Consequently, we have not included any minimum requirements for the various professional skills required, with the exception of the exception below relating to workplace health and safety. During the development stage, the Contracting Authority will also verify the Contractor's Application based on professional competency.

The requirement below has a signalling role. This requirement will only be satisfied during the development stage of the tender.

ME 3.1: Safety of implementation: The business unit or units or members of a partnership who will be responsible for carrying out the renovation and for managing and maintaining the technical systems must satisfy the requirements for workplace health and safety as set under the VCA** (two stars) standard. This requirement is satisfied if the Candidate is in possession of a valid VCA** certificate or an equivalent certificate for staff and work processes. The certificate must have been issued by a certification body which complies with the European series of standards for certification (in the Netherlands, by accreditation by the Accreditation Board [Raad voor Accreditatie]). Proof of certification (i.e. a copy of the certificate) must be submitted prior to the final selection.

PLEASE NOTE:

If work relating to the renovation and/or the management and maintenance of technical systems is subsequently subcontracted to third parties, the Candidate will undertake to ensure that solely subcontractors that meet the requirements set will be placed in charge of the work.

5 Selection criteria

The degree of suitability of Candidates is expressed in the list of criteria (i.e. selection preferences, abbreviated as “SPs”) below, including the corresponding score awarded for each criterion. The table below shows the maximum score which can be awarded for each selection criterion.

Par.	Code	Description of selection criterion	Max. score
5.1	SW 1	Technical and organisational skills to facilitate a significant improvement in the <i>energy efficiency</i> of real-estate properties.	40
5.2	SW 2	Competency to make real estate properties more sustainable by means of a <i>system-based approach</i> .	30
5.3	SW 3	<i>Organisational flexibility</i> in order to add value on a sustainable basis to the partnership with the Municipality.	30
Total			100

The criteria are related to the goals the Municipality has set for itself and the goals aspired to by the European Union as part of the SPEA programme. The paragraphs below contain further details on these criteria, the information required, and the method used to assess this information and the corresponding award of points.

5.1 SW 1: Increasing energy efficiency

There are three reasons why increasing the energy efficiency plays a central role in the project “The Smart Way Towards Sustainable Municipal Buildings”. The direct contribution to the (sustainability) goal of an energy neutral city by 2045 is expected to be highest. An additional factor is that increasing energy efficiency is a key source of efficiency and, by extension, a key source of financing of the project objectives. Finally, it is also the core of the challenge set by SPEA. The technical, financial-economic and organisational capacity of the Candidate and its organisation is regarded as being vitally important to the successful performance of the contract. This selection criterion assesses to what extent the Candidate’s organisation is equipped for the core of the contract (i.e. increasing energy efficiency) from a technical, financial-economic and organisational perspective.

Candidates are requested to describe, using Annex C and a maximum of three A4 pages, the available technical, financial-economic and organisational capacities (i.e. competencies, organisational structure and resources) and how these may be used to increase the energy efficiency of the municipal buildings in the broadest sense. Annex C must be uploaded in TenderNed when giving the answer to selection criterion 1.

Assessment:

The description/report will be assessed based on dominance⁶ of the information provided, using two assessment criteria:

- 1) The completeness of the available disciplines and facilities (technical, financial-economic and organisational), (weight factor: 50%).
- 2) The correlation between a) know-how and results achieved (i.e. in relation to increasing energy efficiency), evidenced by, for example, completed contracts and references⁷) or research conducted (weight factor: 50%)

The assessment will be prepared in consensus by an evaluation committee with a diverse composition; this committee will be comprised of field experts and individuals involved in the actual project. The committee will use the evaluation scale shown below.

Assessment:	Score
Dominantly excellent	10
Dominantly good	8
Neutral; not dominant	6
Dominantly mediocre	4
Dominantly unsatisfactory	0

The ultimate score (expressed as a single figure) represents the average of the two scores. The table below shows the corresponding score (in points).

Average score	% of points to be awarded	Point allocation
10	100%	40
9	90%	36
8	80%	32

⁶) Dominant information is brief, clear, logical and to-the-point, simple and verifiable and contains as much quantifiable data as possible. In other words, dominant information is “abundantly clear”, and a layperson should be able to understand it simply using his or her common sense. The use of dominant information reduces the necessity to use personal experience and professional expertise in order to understand the information.

⁷) Please note: references must relate to contracts completed within the past five calendar years. The Contracting Authority reserves the right to verify the accuracy of the data submitted with the contracting authorities/clients in such benchmark projects.

Average score	% of points to be awarded	Point allocation
7	70%	28
6	60%	24
5	50%	20
4	40%	16
3	30%	12
2	20%	8
0	0%	0

5.2 SW 2: system-oriented sustainability strategy

The challenge of sustainability benefits from a system-based, rather than an aspect-based, approach. From a sustainable perspective, the system related to this contract is larger and more complex than the buildings to be made sustainable within the scope alone. The use of the buildings, now and in the future, forms part of the system as well, and on account of the central location of the buildings, the options for use and the upgrading of the interstitial public space and “degrees of freedom” in future developments (e.g. with regard to the ownership and redevelopment of the buildings), a system-based development approach is the most desirable perspective. Accordingly, knowledge of, and experience with, such an approach is one of requested competencies of the future contractor. This is translated into a selection criterion below.

Candidates are requested to use the model contained in Annex D to describe their knowledge of an experience with a system-based approach of development of sustainable or more sustainable real estate holdings, based on a single reference project⁸ which must have been accepted and/or completed within the past three years. Annex D must be uploaded in TenderNed when giving in the answer to selection criterion 2.

Assessment:

The reference will be assessed based on the following four dimensions of complexity of the sustainability challenge:

- A. the *size and scope* of the system, to be measured based on the number of “system components”, i.e. the number of real-estate properties and other components listed in the system (which affect sustainability), including energy generation, control systems, etc.
- B. The *diversity* of the system components distinguished, i.e. the diversity in real-estate properties and other components included in the system (which affect sustainability)

⁸) The Contracting Authority reserves the right to verify the accuracy of the data submitted with the contracting authorities/clients for the benchmark project in question

- C. The operation of the system linked to the *level of ambition* of the sustainability challenge, i.e. the level of sustainability achieved or to be achieved in relation to the targets and objectives set.
- D. The underlying *financial structure*

The assessment will be prepared in consensus by an evaluation committee with a diverse composition; this committee will be comprised of field experts and individuals involved in the actual project. The committee will use the evaluation scale shown below.

Assessment:	Score
Dominantly excellent	10
Dominantly good	8
Neutral; not dominant	6
Dominantly mediocre	4
Dominantly unsatisfactory	0

The ultimate score (expressed as a single figure) represents the arithmetic mean of the four scores (rounded off to a whole number). The table below shows the corresponding score (in points).

Average score	% of points to be awarded	Point allocation
10	100%	30
9	90%	27
8	80%	24
7	70%	21
6	60%	18
5	50%	15
4	40%	12
3	30%	9
2	20%	6
1	10%	3
0	0%	0

5.3 SW 3: Organisational flexibility

The contract is complex due to the proposed system-based approach to sustainability and the proposed flexibility of the buildings, in terms of the future use of buildings and the office stock to be maintained. An additional factor is that the contract is a long-term contract. These combined factors contribute to the risk of suboptimal contract performance due to a lack of ability to exploit new insights and available innovations. Small businesses, after all, are key change drivers, and yet, because they tend to have a limited focus or limited financial resources, they are not eligible to perform the contract. In line with the SPEA

objective, the Municipality aims to resolve this paradox by encouraging the involvement of innovative small- and medium-sized enterprises in the performance of the contract in the short and long term. This requires organisational flexibility on the part of the Candidate (and future Contractor) in the planning and implementation stages; this, in turn, makes it possible to incorporate innovation into the contract based on a growth model. Candidates are therefore requested to set out their ideas on how to organise this flexibility on a maximum of three A4 pages of text, using the model of Annex E. This Annex E must be uploaded in TenderNed when giving in the answer to selection criterion 3.

These ideas will be assessed on the following aspects:

- A. Commitment to innovation thanks to short-term and long-term cooperation
- B. The proposed method in which potential barriers to cooperation can or will be overcome now and in the future (or were overcome in the past).
- C. The extent to which organisational flexibility can be made measurable (i.e. “accountable”) for the contract period during the performance of the contract, e.g. by proposed KPIs.
- D. The extent to which points A-C are supported by examples, experiences and agreements regarding cooperation.

The scoring method is identical to the method described in paragraph 5.2

Annex 1: Specification of the scope

Building portfolio

The municipal office buildings listed below are located in or in the vicinity of Eindhoven’s city centre and are included in the primary objective of the tender.

1. Stadhuisstoren/GGD-toren (City Hall Tower), Stadhuisplein 2 (owned by the Municipality)
2. City Hall, Stadhuisplein 1 (owned by the Municipality)
3. Stads kantoor, Stadhuisplein 10 (owned by the Municipality)
4. Herman Wittehuis Stadhuisplein 6 (owned and leased by the Municipality)
5. TIO building, Begijnenhof 8-14 (owned and leased by the Municipality)
6. Mercado, Smalle Haven 109 (owned by the Municipality)
7. Office building located on former NRE site, Nachtegaallaan 15 (owned by the Municipality)

The municipal office buildings listed below are included in the secondary objective of the tender.

8. Van Abbemuseum, Bilderdijklaan 10 (owned by the Municipality)
9. Designhuis, Stadhuisplein 3 (owned and leased by the Municipality)

Additional information about these buildings is available on the website www.eindhoven.nl/duurzamegebouwen.

Van Abbemuseum and Designhuis are located in the immediate vicinity of the other municipal buildings, which means they offer opportunities for creating a system solution. However, the added value of the addition of these two buildings to the contract must be clarified in the proposal, see Section 1.2.1

Short-term trends and developments

The Municipality is currently in the process of implementing the vision for Administrative Buildings in the short term, which has already been adopted. Specifically, the “New World of Work” will be implemented in all buildings in which civil servants are employed. This implementation includes a “functional installation package” (consisting of counters, walls and ceilings). This vision will also need to be applied to the layout of the City Tower.

The Municipality is currently developing a vision for Administrative Buildings in the long term; this is expected to be formally adopted in early 2015.

Since ownership, lease and actual use will all become more dynamic in the immediate future, plans for implementing a more dynamic property portfolio has

been included in the project objectives. This might include, for example, changes of use, double use, contraction, growth, and so on.

Specification of activities and services

Design and execution of the renovation of the City Hall Tower

- a. Replacement, where necessary or desired, of building-specific mechanical and electrical systems (including burglar alarm, fire safety, transport system and wall installation), with the option of reuse if possible.
- b. Essential work on the foundation structure: roof, floors, outer walls, windows, solar control features, etc. (e.g. wall insulation, replacement of frames, and smart solutions for existing thermal bridges).
- c. New installation package in line with the “New World of Work”, based on the blueprint for the work environment provided by the Municipality. The package includes interior walls, ceilings, floor and wall finishing, fixed fittings (i.e. permanently attached), light resistance, etc.
- d. Required user systems: IT (data cables, patch cabinets, Main Equipment Room / Secondary Equipment Rooms and cooling systems) plus audiovisual equipment.
- e. Adjustments to the building connecting City Hall and the City Hall Tower.
- f. Desired state of maintenance: 3, in accordance with NEN 2767

Prerequisites:

- ◆ Use of municipal blueprint for office environment for the “New World of Work”.
- ◆ Any architectural changes to the exterior of the building are subject to advice from the Committee on the Quality of the Public Realm [Commissie Ruimtelijke Kwaliteit] and formal approval.

Sustainability and optimisation of City Hall

Please note: the use and the systems are linked to the City Hall Tower.

- a. Optimising all building-specific mechanical systems in the building and replacing them if necessary or desired, providing for the option of reuse if possible.
- b. Limited adjustments to the electrical systems (including burglary and fire safety systems)
- c. Essential work on the foundation structure: roof, floors, outer walls, windows, solar control features, etc. (e.g. wall insulation, replacement of frames, smart solutions for existing thermal bridges, and building acoustics).

- d. Limited functional changes to the installation package. In addition, there are the structural changes relating to the renovation, including repair in the original state.
- g. User systems: limited changes to IT and audiovisual equipment. This does not include separate devices (e.g. mobile phones, PCs, etc.)
- h. Desired state of maintenance: 2, in accordance with NEN 2767

Prerequisites:

- ◆ Any architectural changes to the exterior of the building are subject to advice from the Committee on the Quality of the Public Realm [Commissie Ruimtelijke Kwaliteit] and formal approval.

Maintenance services

The contract concerns the technical maintenance of between seven and nine buildings: corrective, preventive and replacement maintenance. This includes the following:

- a. All building-specific mechanical and electrical systems (including burglar alarms, fire safety, transport systems and wall installations).
- b. Foundation structure: roof, floors, outer walls, windows, solar control features, etc.
- c. Maintenance on the installation package.
- d. Limited number of user facilities (e.g. kitchen appliances)
- e. Improvements to foundation structure and/or systems for the purpose of sustainability, to the extent that these form part of the building plan and contract under this tender
- f. Specifically for Van Abbemuseum and Designhuis: maintenance of user systems such as light and audio systems
- g. Desired state of maintenance: 3, in accordance with NEN 2767

Prerequisites:

- ◆ For the Stadskantoor (no. 3): Only the elements belonging to the tenant section of the ROZ [Real Estate Council] lease are included in the scope.
- ◆ For the TIO building (no. 5): Only the elements belonging to the owner section of the ROZ [Real Estate Council] lease are included in the scope.
- ◆ It is important to take into account the different expiry dates of existing maintenance contracts for each building.
- ◆ Maintenance of the separate fixtures and fittings, customer support system, etc. is not included in the maintenance objective.

Management and operational services

Management and operation of the buildings may result in the desired sustainability of the buildings and, as such, serve the project objectives. Management is understood to refer to day-to-day management (i.e. cleaning, surveillance, security, window cleaning and interior care)

Sustainable operation is aimed at ensuring the long-term value of the buildings by responding in a timely manner to, and adapting to, changing needs of use and user needs and options.

The inclusion of management and operational services in the contract depends on the planning during the tender stage.

The prerequisites will be determined and communicated during the tender stage.