

Ministry of Infrastructure and the
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Enclosure(s)

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Disclaimer

This letter and the annex are translated from their original Dutch versions. The translations are a courtesy to stakeholders, other governments and the market. The original versions in Dutch form the basis for the next phases and decision making. In case of debate on interpretations or translations the original Dutch versions are always the leading documents.

Date 31 March 2015
Subject Contours of the procurement and contracting strategy
ERTMS

Dear Chairman,

1. Introduction

The new railway and train protection system ERTMS (European Rail Traffic Management System) will be phased in within the Netherlands from 2016. Once the scope had been determined as a result of the Preference decision and the debate in your House in June 2014, work was started on creating a collective programme organisation encompassing employees from I&M, NS and ProRail. Further information about the progress of the programme in the period between 1 July and 31 December 2014 can be found in the second Progress Report ERTMS that was issued to your House at around the same time. Until 2016, work will be carried out within the so-called Plan Elaboration Phase in the run up to the procurement of ERTMS.

The ERTMS programme has been given Major Project status by your House. It is a complex programme that will last for many years and which encompasses an important ICT component. As I indicated earlier, I will involve your House in the process as effectively as I can. This also, specifically, applies to the creation of the procurement and contracting strategy.

Also for these reasons, you are informed through this letter how the procurement and contracting strategy will be drawn up. It includes the initial, important investigations and analyses that have already been initiated. The letter before you also outlines the current situation on the basis of current insights. This specifically concerns the initial contours of the strategy¹, however these may still change as a result of new or supplementary investigations and insights. So far, in terms of drawing up this strategy, no decisions or irreversible steps have been taken. Only when the definitive strategy has been shared with you by the end of this year, a go/no go moment will be presented to you.

The creation of a procurement and contracting strategy for a programme such as ERTMS is no easy task. Firstly, we are talking about large sums of money, i.e.

¹ When this letter refers to 'the strategy', we are referring to the procurement and contracting strategy for the ERTMS programme.

€2.57 billion. Furthermore, this relates to the replacement of a train protection system in the existing railway network, whereby passengers and freight transporters must encounter as little inconvenience as possible. And finally, it involves a cohesive system, which is partly made up of ICT and partly of different, other components which must be built into both the train and the track. These components must also be able to communicate with one another flawlessly². The experiences from the parliamentary investigation into ICT, the parliamentary Fyra enquiry and similar, other relevant projects both at home and abroad will be included in the creation of this strategy. Experiences from the past with similar projects, such as the Betuweroute and the HSL-Zuid, have shown that it is vital to pay specific attention to the procurement and contracting strategy.

In order to create the procurement and contracting strategy, fourteen components have been distinguished; together, these must lead to the strategy. Important elements include, for example, questions about:

- Purchasing objectives
- The number of contracts that are issued to the market
- Procurement experiences at home and abroad
- Possible contract forms (e.g. private financing)
- Risks.

The elaboration of some elements has begun already while work on others is yet to start. The fourteen different elements are further explained in Chapter 2.

Over the past few months, a joint team from I&M, NS and ProRail has been working on the strategy. They have been supported by input from experts from Rijkswaterstaat (executive agency of I&M), foreign countries, the European Union and independent legal advisers. Over the past few months, research has been conducted into the aforementioned points and an external bureau has carried out a Public-Private Comparator. I refer you to the various chapters of this letter for the results of these investigations and an overview of the work still to be completed. An independent Tender Board has been set up; this board has provided advice to the programme director with regard to these interim products set up by the joint procurement and contracting strategy team. This Tender Board will also provide advice about the definitive strategy.

Some elements of this strategy have been developed considerably, while others are yet to start. There is an element of interdependency between the various elements and the team is engaging in an iterative process for this reason. At the moment, no irreversible steps have been taken. The fourteen elements together will ultimately form a procurement and contracting document. Since this document will contain items such as strategic considerations and assessment criteria it will remain largely confidential. I will, of course, provide your House with information that is as comprehensive as possible. This can take place by means of supplementary (confidential) technical briefings.

² To give you an idea: In terms of infrastructure, there must be consideration of cables and pipes, railway systems (including embankment safety, external elements and GSM-R) and, in terms of rolling stock account must be taken of items such as On Board Units and GSM-R).

So far, most of the attention has been paid to issues such as:

- purchasing objectives;
- the number of contracts;
- the issue of which part of the Public Procurement Act 2012 applies;
- characteristics of the market and market players;
- options with regard to public/private financing;
- procurement experiences.

A more in-depth examination is currently taking place of the expertise that is currently available regarding these elements, as we make our way to a strategy that must be available by the end of 2015.

Other elements will be picked up in the coming months. This concerns, for example:

- an analysis of applicable contract forms;
- the question as to which lots may be possible;
- the structure of the procurement organisation(s);
- selection and award criteria;
- planning and risks.

As part of the iterative process, there will be a continuous review of whether new information should lead to the adjustment of previous assumptions. This should prevent tunnel-vision developing as much as possible.

2. Contents

The elaboration of the Preference decision in order to make programme decisions in 2016 requires technical development as well as the development of a procurement and contracting strategy. This letter concerns the contours of this strategy. Information on the planning for and progress of the other work can be found in the six-monthly progress reports.

Central in the definitive strategy is the issue of which contract form and which types of contract are most suitable for procuring and realising the implementation of ERTMS most effectively, according to the Preference decision. In essence, this centres on the fact that tax-payers and passengers have to get 'value for money', i.e. a reliable ERTMS system that fulfils the objectives of the Preference decision in all trains and on EU mandatory corridors and as many of the PHS routes as possible.

Given the complexity and importance of an effective procurement and contracting strategy for ERTMS, progress and quality have to be assured. This can be realised by involving market players, the Tender Board and by learning lessons from (inter)national experiences. More information on this area can be found later in this letter.

Chapter 3 focuses on the realisation of the strategy. In Chapter 4, I will focus on the most important purchasing objectives and, in Chapter 5, the issue of how a decision will be taken regarding how many contracts will be issued and how they

will be structured. Chapter 6 follows with the research into possible contract forms and the way in which procurement will take place. I will elaborate as much as is currently possible on the various elements. Chapters 7 and 8 will provide answers to questions on the relevant aspects of procurement legislation and applicable procurement procedures. Chapter 9 provides an insight into the market and the upcoming market scan while Chapter 10 will elaborate upon procurement experiences both at home and abroad. Chapter 10 will shed some light on contact with the market and stakeholders about strategy and Chapter 12 will focus on assuring the quality of the process. The letter closes with the subsequent steps in relation to the definitive strategy.

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3. Creation of the procurement and contracting strategy

There is a difference between procurement and contracting. The procurement strategy concerns the what (description of the task) and how (choice of procurement procedure, the number of tenders, etc.) the procurement process takes place. The contracting strategy concerns the way in which the task is contracted (type of contract form) and encompasses elements such as the number of contracts awarded, contract forms and the division of risk after contracting took place.

More specifically, the procurement and contracting strategy for the ERTMS programme will probably comprise fourteen elements, i.e.³:

- 1) Purchasing objectives
- 2) Choice between one or multiple contracts
- 3) Which part of the Public Procurement Act 2012 applies and who leads the procurement process
- 4) Analysis of applicable procurement procedures
- 5) Analysis of applicable contract forms
- 6) Investigation of options relating to private financing
- 7) Procurement experiences at home and abroad
- 8) Analysis of European ERTMS market and the extent of competition
- 9) Results from the market consultations which are to be held and contacts with stakeholders
- 10) If more than one contract, an analysis of the number of necessary tenders and possible lots
- 11) General choice of evaluation procedure (including the set up of selection and award criteria)

³ The elements and order are not identical to the chapters of this letter, given that a number of elements must be further elaborated.

- 12) Creation of organisation for the procurement (including who will lead the tenders)
- 13) Rough planning and duration times for main tender(s) and (any) smaller, less time-critical tenders
- 14) Procurement, realisation and operational risks and control measures

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As mentioned earlier in this letter, examination into some aspects has progressed further than for others and some are yet to be started. There is a sense of dependency between the elements and, as such, the process is iterative.

At the moment, work is taking place on the (further) substantiation of the various elements. The current substantiation for all elements is still conditional upon the further elaboration of the entire strategy. As indicated, further research must be carried out, primarily via a new market scan, market consultation and updating the PPC⁴. I will go into further details on this later in my letter. I will include your House in the process, as well as stakeholders and market players. This in conformity with the programme's aims to achieve transparency and share as much as possible with other parties, the Major Project status and the programme-wide motto to prioritise caution over speed. A technical briefing could be an option, for example at the same moment that your House is provided with information by letter.

The technical elaboration is also important in terms of substantiating the procurement and contracting strategy. In order to ensure sufficient progress with regard to programme decisions in 2016, a strategy is already being outlined for some elements on the basis of current knowledge. This type of pathway will allow further elaboration of that element, in advance of the definitive strategy. These provisional pathways are specifically based on expert judgement, experiences from abroad, lessons learnt from the past, quick-scan research or previous investigations. They are only selected for the purposes of content-based work and do not, of course, involve any irreversible steps with respect to the further elaboration of the procurement and contracting strategy. As already mentioned, regular reviews will establish whether new insights should lead to adjustments in terms of the assumptions made along these development paths. This should prevent a situation whereby particular directions are taken and there is no critical review of whether this was, in fact, the appropriate pathway.

The definitive strategy will be established in its entirety at the end of this year and presented to your House by letter as a go/no go moment. The strategy itself will, to the extent possible, be provided to your House in confidence so that the procurement process is not adversely affected.

In a follow-up to this letter, I will notify you of the state-of-play with respect to the various elements and how we are consciously working towards the definitive strategy.

4. Purchasing objectives

The Preference decision that was made in April 2014 sets out the policy objectives

⁴ Public-Private Comparator, see later on in this letter.

that would be achieved with the ERTMS programme. Alongside safety, this concerns interoperability, speed, capacity gains and reliability. These policy objectives were set out simultaneously in the basic report⁵. In addition to policy objectives, it is also necessary to set out purchasing objectives for the ERTMS programme. This concerns price but also quality and manageability. There is thus a relationship with the technical elaboration within the programme. Purchasing objectives play an important role in the creation of the strategy: they serve to ensure that focus remains on the programme objectives. They also offer support in terms of considering choices that still have to be made regarding procurement and contracting.

More specifically, the purchasing objectives also provide direction to decision-making regarding to what type of packages of cohesive ERTMS components are put out to tender, and what criteria apply to these tenders and the contracts to be signed with the contractors. They can also be useful when determining the most optimum scenario for the rollout of ERTMS. Purchasing objectives also offer, on a highly aggregated level, an insight into the desired scope and conditions of the procurement process and the way in which the relationship between the ERTMS programme and the principals, users, customers and suppliers must be set up. For the various purchasing strategies, risks (e.g. technical and financial and specifically where the interfaces lie) will be identified and, where possible, mitigating measures will be identified. The findings will then be included with any other risks when determining the most effective scenario.

Transparency regarding the nature and realisation of purchasing objectives is important. For the time being, two categories of purchasing objectives have been defined for the programme:

- Purchasing objectives regarding content:
 - Realising an all-encompassing transport system with ERTMS that performs better with respect to safety and interoperability than the current transport system with ATB and which also offers benefits in terms of reliability, speed and capacity.
 - Spending the available budget as effectively and efficiently as possible, i.e. achieving the best price/quality ratio for the money spent during the life-cycle of the system.
 - Refurbishing rolling stock and infrastructure efficiently; this may involve a combination of short refurbishment times, low levels of inconvenience for passengers, train operators and freight transporters, and the avoidance of unnecessary costs.
- Purchasing objectives regarding process:
 - Retaining the manageability of the procurement process and then doing the same for the programme's contractual phase(s).
 - Good cooperation between all of the players, both in the preparation for procurement and the realisation and operation.

These purchasing objectives are provisional and could be expanded. Prioritisation will also be applied to the purchasing objectives before they are set out with the definitive strategy.

⁵ See paragraph 1.2 of the basic report

5. Number and structure of contracts

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One of the most important elements of the procurement and contracting strategy concerns the number of contracts used in order to implement ERTMS in line with the Preference decision.

On the basis of expert judgement and experience with (major) tenders at home and abroad, a collective working group involving procurement experts from I&M, NS, ProRail and external legal expertise, used the Delphi-method⁶ to look into possible scenarios with respect to the number of contracts. This concerns the scenarios used to differentiate between the possible splits⁷ in terms of tasks for infrastructure and rolling stock and then infrastructure or rolling stock. The five⁸ scenarios, which essentially contain the possible combinations for procuring ERTMS in infrastructure and rolling stock, are as follows:

1. One integrated contract for infrastructure and rolling stock
2. One integrated contract for infrastructure and one integrated contract for rolling stock
3. One integrated contract for infrastructure and multiple contracts for rolling stock
4. One integrated contract for infrastructure and one integrated contract for rolling stock
5. Multiple contracts for infrastructure and multiple contracts for rolling stock.

During evaluation of these scenarios, the experts looked at issues such as the manageability of contracts, the likelihood of budget overruns and the feasibility of the plans set out in the Preference decision. There was also a review of experiences with these scenarios with respect to major infrastructural (railway) projects with an ICT component in the Netherlands and within major ERTMS projects abroad. The managers of the various projects were thus questioned about these projects and the choices that were made regarding the number and structure of the relevant contracts.

The analysis shows that the four scenarios in which the infrastructural work was put out to tender separately to the work for rolling stock achieve better scores than the scenario in which one contract is created (scenario 1 from the list above). If one large integrated contract is chosen for both infrastructure and rolling stock, the responsibility for one interface is largely passed to the market. Such a huge contract, however, leads to problems regarding manageability, free-market processes, price increases and vendor lock-in⁹. As far as we know, there have been no procurement experiences with scenario 1 for nationwide rollout.

In the scenario with multiple contracts, the scenarios in which the infrastructural work is contracted in parts (scenario 4 and 5) are better than those where this is not the case (scenarios 2 and 3). Scenarios 4 and 5 are very much in line with the procurement strategy that has been used in countries such as Denmark, Belgium

⁶ In the Delphi-method, various experts provide an opinion in a structured manner. Regular feedback and a structured flow of information are thus used to seek an answer to a research question.

⁷ Separate procurement

⁸ Another scenario has been created in which there are integrated contracts for infrastructure and rolling stock per corridor. Due to the network-wide use of NS rolling stock, this scenario is a sub-variant of scenario 4 or 5 and has not therefore been further evaluated.

⁹ In short, 'vendor lock-in' means that the contracting party is dependent upon the original supplier for contract extension and/or supplementary supplies.

and Switzerland. Combining all infrastructural work that arises as a result of the Preference decision will also involve a substantial contract which will correspond to the same disadvantages as scenario 1 but to a slightly lesser extent. Splitting up the infrastructural work will also create flexibility in terms of learning from previous experiences and combinations with other projects. Interfaces between contracts must be assured, for example by obliging players to agree to a collaborative agreement for the implementation phase. ERTMS is, after all, an integral system.

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This analysis seems to show that the implementation of ERTMS can best be procured by using multiple contracts for infrastructural work and one or more contracts for the work required for rolling stock (scenario 4 or 5). The results of this analysis using the Delphi-method are supported by the ERTMS governance group¹⁰ and Tender Board ERTMS¹¹. They indicate, however, that the results cannot yet be linked to any definitive conclusion, given the abstract and general nature of the analysis. To achieve this, further insight is required into the features of the market (players) who could carry out this work and the purchasing objectives. Important research for the further elaboration of the procurement and contracting strategy includes the completion of a new market scan, updating the PPC and further consideration and substantiation of purchasing objectives. On the basis of this research the scenarios for the number of contracts can, once again be critically reviewed and then, after the market consultation, a definitive choice can be made regarding the number and structure of contracts.

6. Investigation into contract forms and options relating to private financing

Within the National Government, infrastructure projects above €60 million are reviewed to ensure that innovative/integral contract forms provide added value. These considerations are made on the basis of the Public-Private Comparator (PPC). The PPC provides an insight into the advantages and disadvantages relating to the structure of a major government project, i.e. a public or private variant or other (mixed) forms. To this end, the PPC compares the various contract forms and assesses which contract form is most likely to efficiently realise the intended (policy) objectives.

For the purposes of the ERTMS programme, over the past few months the first version of the PPC has been carried out by an external bureau that specialises in public/private partnerships. Contract forms that are reviewed and compared in this context could, for example, include the DBFM¹² and the DBM¹³ variants. Within these contract forms, to a greater or lesser extent, use can be made of innovative instruments such as risk-transfer, performance incentives and private financing in order to realise the intended (policy) objectives.

The first version of the PPC for ERTMS looked at the advantages and disadvantages of executing the programme in a public or private variant or in other

¹⁰ See Chapter 12 of this letter (safeguarding)

¹¹ The Tender Board ERTMS forms the contracting party discussion forum for the programme and comprises directors from NS, ProRail and I&M.

¹² Design, Build, Finance and Maintain. The principal is responsible for design, build, (pre) finance and maintenance for a specified time.

¹³ Design, Build and Maintain.

(mixed) forms, as discussed above. The analysis for the investigated scenarios, with respect to the number of contracts, showed that the DBM contract form, compared to the DBFM form for example, would provide the best chance of positive added value for rolling stock, infrastructure (which may or may not include underground infrastructure) as well as an integrated contract. In terms of the cases examined, the DBM contract form seems to offer more certainty regarding positive added value, whereas the added value from the DBFM contract form is still less certain; this could turn out to be both positive and significantly negative. The most important reason for this lies in the longer and more complex preparatory period and the corresponding costs for DBFM contracts, while the added value from private financing is zero in all cases. A summary of the results from the PPC can be found in the annex. It must be noted that the PPC that was completed provides the first overview of possible added value for the scenarios examined.

Once further insights have been gained into the characteristics of the market (players) and the analysis of the number and structure of the contracts (the scenarios) has been further substantiated, a more in-depth PPC will be conducted around summer. The PPC update will allow conclusions to be drawn regarding the contract forms and the options for private financing.

Aside from the PPC, an analysis of all possible contract forms will be conducted in the same period, once there is greater clarity with respect to section 5 of this letter, i.e. the number and structure of the contracts. This analysis will also be broader than just the financial aspects which formed the focus areas of the PPC. The conclusions from the analyses, as well as more recent analyses such as those from the Parliamentary Committee on Government ICT projects (Elias Committee) (see chapter 9) and the Fyra enquiry, will be included in the run-up to the definitive strategy.

7. Relevant section of the Public Procurement Act 2012 and leader of the tender

When choosing the procurement and contracting strategy, it is important to ascertain whether procurement will involve application of Part 3 of the Public Procurement Act 2012¹⁴. This is an option in relation to the ERTMS programme because the tenders correspond to public services in the context of transport by train¹⁵. Part 3 of the Public Procurement Act 2012 also offers flexibility in terms of choosing procurement procedures. Procurement will therefore take place under the application of Part 3.

The application of Part 3 of the Public Procurement Act 2012 means that train operators, such as NS, but also ProRail and the ministry (on behalf of train operators/ProRail or as so-called purchasing bodies) can take on execution of the procurement process. A choice in this context has not yet been made. This choice depends principally on the elaboration of other aspects of the strategy. A decision regarding the leadership of the tender shall be made, following discussions with your House, when establishing the entire procurement and contracting strategy.

¹⁴ In short, Part 3 of the Public Procurement Act 2012 covers special sector companies (formerly known as utilities); Part 2 of this act covers other organisations/institutions that must use the procurement process.

¹⁵ Article 3.4 / Public Procurement Act 2012.

8. First analysis of applicable procurement procedures

On the basis of insights gained in the previous section, a choice of the best, applicable procurement procedures can be made. Not every theoretically possible procedure is suitable for a programme such as ERTMS. In this context, the complexity of the programme, the effort that is expected of procurement parties during the procurement process, the quantity of components that are to be bought and the number of players involved all need to be taken into account. The ultimate choice with respect to the number and structure of contracts is also important. Therefore, there are at present a limited number of applicable procurement procedures. The various procedures will be reviewed after further elaboration of the elements and will then be assessed as to which is the most suitable.

For this element of the strategy, procurement experts from NS, ProRail and I&M, together with external experts, have conducted an analysis of the various possible procurement procedures governed by the utilities rules. In short, this analysis showed the following:

- If a decision is made to use a procurement process for one, substantial, integrated contract, the negotiated procedure with publication of a contract notice and the competitive dialogue may be used as procurement procedures¹⁶.
- If procurement involves multiple different contracts, for each contract the most suitable procedure can be assessed. Applicable procedures in this case are: the open procedure, the restricted procedure and also the negotiated procedure with publication of a contract notice and the competitive dialogue.¹⁷

As indicated, this consideration of possibly applicable procedures must be reviewed again in the run up to the definitive procurement and contracting strategy, in the summer. In this context, further insight is required into the characteristics of ERTMS, the number of contracts, the characteristics of the market players, developments in the relevant markets and programme prerequisites.

9. Market players and market scan

When it comes to tenders for the purposes of implementing ERTMS, various types of market players are important. This includes ERTMS suppliers, so-called Notified Bodies¹⁸, engineering bureaus and contractors. Contact has already been made with many players during the Exploratory Phase. Three market meetings have been held and extensive 1-to-1 discussions have taken place with a range of players¹⁹. Since September 2014, the programme has also actively sought contact with new (inter)national players. In the first half of 2015, new market meetings

¹⁶ Competitive dialogue is also explicitly included for utilities rules (speciale sector opdrachten) in the 2014/25/EU Directive and will, after implementation, be included within the Public Procurement Act 2012.

¹⁶ Directives 2014/24/EU and 2014/25/EU.

¹⁷ See note 15.

¹⁸ A Notified Body is a testing/inspection institution that tests products and which has been appointed by a Member State.

¹⁹ See also annexes Railway Map 2.0 and 3.0 in the first progress report

will be held during which the first contours of the strategy from this letter will be discussed.

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An important element for further elaboration of the various elements of the procurement and tendering strategy is the so-called market scan. This scan must provide further insight into the characteristics of the market and the market players for ERTMS tenders. It concerns, for example, the scope of the market, references and quantities/quality of experiences gained by market players in the context of ERTMS, but also the size of tasks that market players or consortia can take on. These insights are important in terms of choosing the size of contracts, for example, updating the PPC and the procurement procedures.

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An outline market scan was conducted for the Start Decision (Railway Map 1.0²⁰) at the beginning of 2013. This showed that the implementation of ERTMS in the Netherlands was an important and interesting task for the various (inter)national ERTMS market players. There is also, therefore, a good chance that multiple players will compete for the various contracts.

With respect to procurement and contracting strategy, a market scan that is more detailed and comprehensive than the one conducted in 2013 is required. That is why a new market scan will be carried out in the run-up to the summer; the call for players to carry out this scan has already been published on TenderNed. The updated characteristics of the market (players) can thus be included. These can change e.g. as a result of the economic crisis, take-overs, new players and other large ERTMS tenders.

10. Procurement experiences at home and abroad

Of particular importance to a good structure for the procurement and contracting strategy, are experiences that have already been gained in relation to procurement for major projects and ERTMS specifically. For this reason, the programme has sought contact with programme managers of large infrastructural (railway) projects in the Netherlands, with an ICT component (such as HSL, Betuweroute, Hanzelijn, Tweede Coentunnel, Anders Betalen voor Mobiliteit and A15 Maasvlakte-Vaanplein); there has also been frequent contact with procurement experts for ERTMS projects in other European countries (such as Germany, Belgium, Denmark, Switzerland and Austria). Questions have been put to them about the choices made regarding procurement for the relevant project/in the relevant country and the considerations that were made in this context. The answers from these players are being and will be used when elaborating the strategy. Their experiences were included when determining the provisional direction in terms of the number of contracts. We will also draw upon these experiences in the further elaboration and, where necessary, supplementary information will be requested for the contracts indicated.

Previous experience of procurement is also included in another way in the programme and the development of the procurement and contracting strategy. This concerns various studies and reviews that have been conducted and the

²⁰ Parliamentary Documents II, 2012-2013 sessions, 29 No. 984 and No. 385.

corresponding recommendations. An important example of this is the 34 recommendations from the Elias Committee²¹, which completed an investigation of government ICT projects in October 2014. These recommendations contained many focus areas for procurement and contracting ICT projects. The minister of Housing and the Central Government Sector responded to this on 30 January 2015.

Given the important ICT component in the ERTMS programme, these recommendations will be included as far as possible within the procurement and contracting strategy. The annex to the second progress report, which will be sent to your House at around the same time, sets out the response from the programme organisation to each recommendation. The BIT-check²², as recommended by the Elias Committee, has now also been carried out by the programme. Recommendations from earlier research by the Netherlands Court of Audit, the Parliamentary Committee on Railway Maintenance and Innovation (Kuiken Committee) and reviews of the programme are incorporated as much as possible.

During the further elaboration of the strategy, if research, reviews or experiences elsewhere provide new recommendations or insights, these will be justified and included where possible. Attention will also be paid to how such issues can also be considered in the later phases of the programme.

11. Results from the market consultations to be completed and contact with stakeholders

In the Exploratory Phase of the ERTMS programme, there was a great deal of contact with the various market players and stakeholders. The contact with market players primarily focussed on the provision of two-way information from the players regarding the programme and direction of the programme. Discussions were also held with them on proven technology, vendor lock-in and Level 2 and GSM-R at stations/nodes, for example. The content and results of these meetings can be found in the (annexes to) Railway Map 2.0 and 3.0 and the first progress report²³.

For a successful procurement process, it is important that sufficient (inter)national market players submit tender(s). They will only do so, however, if the contracts are not excessively large (or too small) and/or too risky. In order to gauge this before the procurement process begins, market consultations will be held at various moments along the way towards the definitive strategy. In this context, elements of the draft procurement and contracting strategy will be presented to market players and they will then be asked whether they would compete in the procurement process as outlined in the strategy. Market consultations can also be used for other purposes, such as discussions about the degree of specification, the desired contract forms and specific (innovation) issues. Work is currently taking place on defining the precise aims and content of market consultations.

In order to stimulate innovative initiatives from the market throughout the programme, an innovation desk has been set up according to the procedure that

²¹ Parliamentary Documents II, 2014-2015 sessions, 33326 No. 4 'Naar grip op ICT – Parlementair onderzoek naar ICT-projecten bij de overheid' (Towards an understanding of ICT - Parliamentary research into ICT projects for the government).

²² Bureau ICT testing.

²³ Parliamentary Documents II, 2013-2014 sessions, 33652 no. 28.

ProRail uses for Unsolicited Proposals²⁴. Market players can submit their initiatives for the elaboration of the ERTMS programme here. This could involve innovative solutions for outstanding issues, such as; the practical applicability of Level 2 on large stations/nodes and GSM-R on large stations/nodes and the issue of whether pilots must be conducted, the installation/refurbishment of OBUs (on-board units) in rolling stock and the installation/replacement in infrastructure. The programme assesses these initiatives according to the aim and added value of the ERTMS market initiative; what efforts are expected from the ERTMS programme with reference to development, investment or intellectual property rights and the problem that is being solved; and whether the initiative is backed up by examples, results or experiences. It is also important that the initiative is accompanied by a provisional business case including risks, necessary investments and financing constructions. A decision will then be made as to whether the initiatives will be implemented within the programme. After completion of the initiative, the results will be shared with all market players so as to ensure a level playing field for all. Finally, as stated previously, specific input from the market will be requested.

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12. Safeguarding

Given the complexity and the importance of effective realisation of the procurement and contracting strategy, the issue of how this can be safeguarded will be considered from various perspectives.

Primarily, as is the case for the rest of the programme, we will apply the motto 'caution over speed'. The process will also involve a great deal of attention being paid to experiences that are being/have been gained both at home and abroad. In all elements of the strategy, there will be a review of how this knowledge can be included in the elaboration in order to use lessons learnt as effectively as possible. The strategy will then (in parts) be presented to the existing, independent Tender Board ERTMS. This committee will advise the programme on elements of the procurement and contracting strategy. The Tender Board will also provide advice about the definitive strategy. At a later stage, they will also play a role in the elaboration of the strategy for specific contracts. Advice issued by the Tender Board is taken very seriously by the programme.

The aim is to create a good strategy for those leading the procurement process. It is also important that the ultimate procurement process attracts sufficient market players of the required quality, which can provide competitive and, where possible innovative products/services. In order to safeguard this, the market players are and will be included in the programme and this strategy via market consultation.

As is the case for the rest of the programme, it is important to focus on risks, opportunities and control measures when it comes to the procurement and contracting strategy. Specific risk sessions in relation to procurement will therefore be organised within the further elaboration process. Control measures will also be set out. These will then be continuously monitored, as will the programme-wide risks. The elimination of uncertainties/risks could lead to the current item contingency being reduced, as was the case in the Social Cost-Benefit Analysis.

²⁴ See also the 'protocol ERTMS initiative' on <http://www.rijksoverheid.nl/onderwerpen/openbaar-vervoer/veiligheid-spoor/ertms>

With these different instruments for quality assurance, and the existing structure of governance and reviews, the risk of tunnel-vision and setbacks will be kept to a minimum and will be learnt from previous experiences.

**Ministry of Infrastructure
and the Environment**

Our reference
IENM/BSK-2015/10338

13. Follow up

With this letter, I hope I have provided you with an insight into the first contours of the procurement and contracting strategy. These contours are beginning to take shape with respect to several of the contours however, important investigations are still required in order to be able to make well-founded and robust decisions. The degree of interdependency also plays a role herein. At the end of the year, choices that have to be made will be presented to you in a go/no go moment.

In order to end up with a definitive strategy, the necessary steps will be taken between now and the summer. This primarily concerns the new market scan, updating the PPC and market consultations. The results of these steps will enable all elements of the strategy to be completed and collectively determined. In the run-up to this, the Tender Board will be regularly consulted on the elements and will ultimately assess the entire strategy.

The procurement and contracting strategy is an important step along the way towards the programme decisions in 2016. This also marks the beginning of the procurement procedures that are expected to last around 2 years, depending on the nature and scope of the tasks and/or if there is a procurement form that involves dialogue with market players.

I am, of course, always willing to provide a technical briefing regarding the first contours of the procurement process as outlined in this letter.

Yours faithfully,

THE STATE SECRETARY OF INFRASTRUCTURE AND THE ENVIRONMENT,

Wilma J. Mansveld