

## Notulen Tenderboard Vervoer 20 juni 2001

CONCEPT

Datum vergadering 20 juni 2001  
09.00 – 12.00

Betreft vergadering Tenderboard Vergadering

Aanwezig H. Huis in 't Veld, J.Janssen (vz.), W. Korf, P. van Kleunen,  
R. Postulart , B. Roelofs.

Gasten R. Testroote

Afwezig B. van Os, M. Dullaert, D. van de Velde

Kopie Archief

Locatie Westraven, k. 16.05

Datum  
20 juni 2001

Kenmerk  
Notulen TB (20-06-  
2001)

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### 1. Actielijst

- Stukken en agenda worden vanaf nu weer 1 week van tevoren worden toegezonden (P. van Kleunen).
- Het pro-actief uitwerken van (risico) interfaces tussen IP en Vervoer en daar in standpunt bepalen (P. van Kleunen, B.J. Kouwenhoven).
- W. Korf praat P. van Kleunen bij over zijn gesprekken met RWS, Taakorganisaties, Stuurgroep HSL en anderen in relatie met de complementering HSL\_Zuid.
- Opstellen van een risicolijst en een strategie aangaande de Haagse ontwikkelingen met mogelijke effecten op de HSL-Zuid (W. Korf, P. van Kleunen).
- Eindrapportage(s) van de reviewteams (TOC en RoSt) aan TB toezenden (evenals t.z.t. het verslag van de audit door Lloyds) (P. van Kleunen).
- R.Testroote zal de (soms) mondelinge afspraken met de afgevallen consortia alsnog schriftelijk (laten) vastleggen .
- Versturen definitieve versie MoU aan TB (R. Testroote) op uiterlijk dinsdag en zo mogelijk eerder.

### 2. Analyse van de problematiek van de implementatie-overeenkomst

- NS heeft middels bod/protocol de integrale verantwoordelijkheid aanvaard voor implementatie (en dus voor regelen interfaces).

- In de relatie met de IP verdient het aanbeveling (risicovolle) interfaces pro-actief verder uit te werken en daar in standpunt bepalen (zie actie)
- 3. De situatie rondom de Taakorganisaties wordt als een risicovolle interface beschouwd, gezien de schuivende ideeën in Den Haag. Indien de opvattingen significant verschuiven zal de HSL steeds de effecten van de wijzigingen het HSL-Zuid contract(en) aan dienen te geven B.J. Kouwenhoven stelt voor om een task force TO op te richten. Leden zouden zijn: P. van Kleunen, W. Korf en B.J. Kouwenhoven. Een eerste actie van de task force zou het opstellen van de risicolijst & strategie zijn (zie actie punt 2 laatste bullet) .
- Invloed HSL-HRN: geconstateerd wordt dat de zakelijkheid van de HSL de HRN-contractering kan aan scherpen en dat de beide contracten niet op (alle aspecten) vooraf afgestemd moeten worden. Een voorbeeld: indien de HSL-operator (een SPV) bijvoorbeeld door zou willen rijden naar Eindhoven dan dient hierover een contract gesloten te worden tussen de HSL-Zuid vervoerder en de HRN-vervoerder.

### 3. Evaluatie Stagecoach

- Nalv: R. Testroote zal de (soms) mondelinge afspraken met de afgefallen consortia alsnog schriftelijk (laten) vastleggen.
- Stagecoach bevestigde dat de 100 mio euro haalbaar was:
- De bidmanager Stagecoach is bereid om advies te geven over de opzet van het contractbeheer. Dit lokt overigens een discussie over vertrouwelijkheid uit, en eventueel belang van Stagecoach . Geadviseerd wordt om dit aspect goed te doordenken alvorens tot uitnodiging over te gaan.

### 4. Overige

- J. Janssen ziet een risico in de betrokkenheid van de hoogst-verantwoordelijken binnen het consortium en vraagt zich af hoe een en ander gewaarborgd is. R. Testroote en W. Korf geven uitleg.
- Vrijdag 22 juni dient er een MoU in concept gereed te zijn. Dinsdag 25 juni wordt de definitieve versie verwacht. Deze zal zo snel mogelijk (indien een acceptabel niveau) worden verzonden aan de TB (Actie: R. Testroote).

### 5. Volgende vergadering

De volgende Tenderboard-vergadering zal plaatsvinden op **woensdag 27 juni** van 20.00 tot 21.30 uur bij Twijnstra en Gudde Den Haag (Babylon). Deze vergadering zal compleet gewijd worden aan het becommentariëren van de MoU. De daarop volgende vergadering is gepland op 10 juli (Westraven)

Datum

20 juni 2001

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**INVITATION TO DIRECT NEGOTIATIONS**

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## **To the Preferred Tenderer**

### **Guidelines for reading the Invitation to Direct Negotiations (ITDN)**

The Invitation to Tender (ITT), handed over to you on 15 December 2000, forms the basis on which the Tenderers have submitted their Bids to the State in May of this year. Whilst entering into the Negotiation Phase, the ITT will remain the basis on which the Bids have been submitted to the State, as most of the information in the ITT will remain unchanged. Additions and changes to the ITT glossary are included in this Invitation to Direct Negotiations (ITDN), see Annex II.

Please note that different than foreseen in the ITT no Invitation to Negotiate (ITN) is issued. The State has decided to enter into direct negotiations with you as the preferred Tenderer. This ITDN will provide additional information, terms and conditions for such negotiations in addition to the ITT. Therefore, the ITT, Addenda (dated 28 February 2001 and 23 March 2001) and Clarifications based on the ITT will remain valid, unless the information contained therein is replaced by this ITDN.

### **Important Notice**

For the purpose of this ITDN references in the important notice to the ITT or the Bidding Phase should read as references to this ITDN or the Negotiation Phase. Furthermore, the following text should be read in addition:

As stated in the cover letter, the State is of the opinion that the binding, complete and compliant Bid on the Base Case of the Preferred Tenderer, in combination with the Bid on Variant 6, could lead to an attractive offer to the State, both from a financial and qualitative perspective. However, in taking this position, the State does not take over any responsibility for the contents of the binding offer of the Preferred Tenderer, the relevant binding Bid, or the feasibility thereof. The Preferred Tenderer will remain ultimately responsible for the contents and the feasibility of its offer and the relevant Bid, as well as for the contents and feasibility of any amendment that will be made thereto as a result of the outcome of the negotiations.

During the evaluation process the State has sent out Requests for Clarifications in respect of compliance issues and the Preferred Tenderer has provided the State with answers thereto. In sending this ITDN the State does not take over any responsibility for the contents of these answers.

The text of this chapter 'to the Preferred Tenderer' will form an integral part of this ITDN.

### **Structure of the ITDN**

This ITDN continues with complementary information compared to the ITT, followed by four Annexes.

## 1. Introduction

During the evaluation procedure the State has sought clarification from your consortium both regarding the Bid submitted on 2 May 2001, as well as the potential for direct negotiations, should the State invite you for such negotiations. The text of this ITDN reflects the points of agreement between the State and yourselves.

## 2. Purpose of the ITDN

The purpose of this ITDN is to enter into direct and exclusive negotiations for a long-term concession for HSL-Zuid transport services .

In entering into constructive negotiations with the Preferred Tenderer on the basis of this ITDN, the State is aiming to conclude the following documents in due course:

- (a) a Memorandum of Understanding (MoU), comprising the main principles of the Concession Agreement to be drafted, the procedural elements to be followed by the State and the Preferred Tenderer, as well as the Enhanced Specifications of the State.
- (b) a Concession Agreement as described in the ITT, as well as arrangements for the implementation phase on the basis of further elaboration by the Preferred Tenderer of the subjects and elements mentioned in the MoU.

## 3. Basis for Negotiations

Negotiations will be based on the following documents:

- (a) the ITT, dated 15 December 2000, including its Annexes, as well as the clarifications and addenda;
- (b) the binding offer of the Preferred Tenderer, dated 1 May 2001, including (but not limited to) the Business Plan to the Base Case and the Bid on Variant 6; and
- (c) this ITDN.

## 4. Timetable

This paragraph describes the next steps (indicative timetable) in the Tender Procedure.

<i>Invitation to Direct Negotiations ("ITDN")</i>	15 June 2001
<i>Acknowledgement of Receipt of the ITDN</i>	19 June 2001
<i>Memorandum of Understanding ("MoU")</i> (including approval procedures set out in paragraph 7 of this ITDN)	28 June 2001 Ultimately 26 July 2001
<i>Concession Agreement and arrangements for Implementation Phase</i>	12 October 2001
<i>Finalisation State's decision procedures</i>	12 December 2001

Immediately upon acceptance by the Preferred Tenderer of this ITDN, the Parties shall agree on a detailed working planning. The Parties shall do their utmost to ensure that the indicative timetable in the foregoing table will be met. The State has the right to extend the terms of the indicative timetable with a maximum of two weeks (MoU), two months (Concession Agreement and arrangements Implementation Phase) and three months (finalisation State's decision procedures).

In case the Parties will not succeed in meeting the aforementioned timetable, the State has the right to continue the Tender Procedure in accordance with the provisions of the ITT under 'Negotiation Phase'. In case the Parties will not succeed in meeting the aforementioned timetable as a consequence of

circumstances attributable to the Preferred Tenderer, the State has the right to continue the Tender Procedure by inviting another Tenderer to enter into direct and exclusive negotiations, or to execute the fall back position as described in the ITT.

## 5. Subjects of Negotiations

During the negotiations the Parties shall elaborate on the following limitative list of subjects. The list will have a limitative character, which means that subjects not comprised by the list never can lead to amendments to the binding offer of the Preferred Tenderer and/or the basis for negotiations as laid down in this ITDN, nor to the MoU yet to be agreed, except in case the Parties will reach mutual agreement to the contrary. The limitative list is divided into two three categories, namely:

1. 'Working Assumptions';
2. 'Upward Potential'; and
3. 'Enhanced Specifications and Minimum Requirements'.

### *Ad 1. Working Assumptions*

The realisation of the Working Assumptions as described in Annex A4 of the ITT and the Addenda thereto (A1.3 until and including A1.7) will be the sole responsibility of the Preferred Tenderer, except for the items as mentioned hereunder:

- (a) **Start of Concession**  
Concerning the start of the Concession, it herewith is stipulated that this will be agreed in the MoU, taking into account the indicated terms for availability of the infrastructure preceding that date.
- (b) **SNCF**  
The situation in which SNCF will not be prepared to co-operate with the Preferred Tenderer, at least insofar set out in its Position Statement as included in Annex A3 of the ITT (e.g. if, despite of the efforts by the Preferred Tenderer, less than 12 train paths to Paris will be available, taking into account a sufficient division during the day. The possible consequences this difference will have on the Concession Payment will be made transparent by the preferred Tenderer).
- (c) **Planned maintenance infrastructure**  
It herewith is stipulated that the availability set out in this Working Assumption will have to be realised in accordance with the Implementation Agreement, between the State and the Infraprovider.
- (d) **Stations**  
In particular with respect to the turnaround facilities at the platforms at Rotterdam CS and The Hague CS, it is stated that the State shall guarantee these return facilities in case the concession for the main rail network in the Netherlands will be granted to another party than one of the members of the consortium of the Preferred Tenderer.
- (e) **Legislation and institutional arrangements in the Netherlands**  
It remains the responsibility of the State to get into force the mentioned legislation before the date as stipulated in this Working Assumption.

During the evaluation procedure your consortium has clarified the financial impact on your Bid resulting from the transfer of the risks of realisation of the remaining working assumptions.

### *Ad 2. Upward Potential*

During the negotiations both Parties shall do their utmost in order to achieve optimisations as described under a and b of this paragraph.

- (a) **Optimisations for the exclusive benefit of the State**
  - amendment of the financial security as stated in the Performance Bond;
  - a decrease of the lease-costs through an agreement comparable with the 'Direct Agreement' in the United Kingdom, as a consequence whereof the risk for the remaining value of the Rolling Stock can be lowered.

- (b) Optimisations for the benefit of both Parties, to be divided equally
- the potential use of an existing Rolling Stock type;
  - the potential benefit arising from through trains on the main rail network in the Netherlands;
  - arrangements with the Infrastructure Provider which will lead to a decrease in the integral costs of the transportation system (infrastructure, Rolling Stock and operations).

*Ad 3. Enhanced Specifications and Minimum Requirements*

- (a) The MoU shall comprise, amongst others, the Enhanced Specifications to be specified by the State, as well as the mechanisms which shall be used by the Preferred Tenderer to submit its Enhanced Bid, in addition to its binding Bid on Variant 6. The Enhanced Specifications shall include potential amendments to the service level, the Minimum Requirements and potential tariff restrictions.
- (b) With regard to the service level, it is the State's position that both Parties may propose amendments thereto, taking into account the following restriction. The service to The Hague (according to the Bid on Variant 4 as already submitted by the Preferred Tenderer) and the service to the smaller Belgian stations (according to the Bid on Variant 5 as submitted by the Preferred Tenderer, but with a maximum of 8 times each direction per day) shall be offered by the Preferred Tenderer without further financial impact in relation to the Concession Payment to the State. Services to Amsterdam Centraal and/or Zuid WTC shall not be dealt with in the MoU. The Preferred Tenderer may integrate these services, without further financial impact in relation to the Concession Payment to the State, at a later stage, taking into account the available capacity and discussions thereto with the international partners of the Preferred Tenderer and the Capacity Manager.
- (c) The Minimum Requirements shall comprise (quality) aspects as foreseen in the business plan integrated in your offer to the State, in the Tender documentation (as of the Registration Document of June 1999), as well as in (proposed) legislation. As a basis, the MoU shall contain the relevant proposals as laid down in the aforementioned business plan, taking into account the flexibility as required by the Preferred Tenderer. In case the State, during the negotiations, will ask for additional or stronger requirements that will lead to decreased earnings, increased costs or to a significantly deteriorated risk profile for the Preferred Tenderer / SPC, the State will be prepared to enter into arrangements with the Preferred Tenderer / SPC in order to determine the financial impact thereof on the Concession Payment to the State in a transparent way.
- (d) With regard to potential tariff restrictions (Domestic Services) it is the State's position that, in case these restrictions may lead to a tariff level which is comparable to, or lower than, the tariff level as proposed by the Preferred Tenderer, the Preferred Tenderer will get the opportunity to submit to the State a proposal wherein the integral effects of the proposal, including but not limited to the financial impact, will be made explicit and transparent.

## **6. Performance Regime**

Parties shall endeavour to realise an effective performance regime together with the Infrastructure Provider, Rail Infra-Beheer (RIB) and other Train Operating Companies with the purpose to end up with a view to improve punctuality and reliability of services.



## 7. Approval Procedures MoU

In accordance with the indicative timetable in paragraph 1.3 of this ITDN, the final text of the MoU shall be ready on 28 June 2001. As a condition to signing, the internal approval procedures applicable to both Parties (taking into account the terms of the indicative timetable) shall have to be finalised within 4 weeks after that date at the maximum. It is assumed that these approval procedures will comprise the following:

- (a) to the State: approval by the Advisory Board and the Ministers of Transport and Finance;
- (b) to the Preferred Tenderer: approval by the Supervisory Board and the 'Centrale Ondernemingsraad'.

## 8. Applicable Law and Binding Advice Procedure

### *Applicable law*

This ITDN and the negotiations to be carried out on the basis thereof will be governed by Dutch law.

### *Binding advice procedure*

The stage of the negotiations will determine the way in which disputes between the Parties will be resolved:

- (a) until the moment of signing of the MoU, no specific dispute resolution method will be applicable;
- (b) during the period between signing of the MoU and signing of the Concession Agreement disputes will be resolved in accordance with the method set out in this paragraph below;
- (c) upon signing of the Concession Agreement disputes will be resolved in accordance with the relevant provisions in the Concession Agreement.

Ultimately upon signing of the MoU the Parties jointly shall appoint two advisors. Disputes arising out or in connection with the MoU shall be submitted to the joint advisors. During a period of one week upon submission of the dispute, the advisors shall act as mediators in order to try to get the dispute resolved by the Parties themselves. If the Parties will not reach a settlement of their dispute within the aforementioned period, the advisors shall submit a unanimous decision within a period of two weeks, which will be binding upon the Parties. The dispute resolution procedure can be determined by the joint advisors. Each of the advisors may unilaterally decide not to come to a decision, in which case each party may decide to submit the dispute to the competent court in The Hague.

## **Annex I – Changes to the ITT**

### **1. The Business (ITT, Chapter 1)**

For the purpose of this ITDN, no changes have been made to the text of this chapter of the ITT.

### **2. The Contractual Framework (ITT, Chapter 2)**

For the purpose of this ITDN, no changes have been made to the text of this chapter of the ITT. As far as the Concession Agreement is concerned, reference is made to paragraph 5 hereunder with regard to the revised summary of the Concession Agreement.

### **3. The Tender Procedure (ITT, Chapter 3)**

For the purpose of this ITDN, reference is made to 'To the Preferred Tenderer' of this document, in which it is stated that no ITN is issued. The information in the ITT regarding the ITN may be disregarded for the purpose of this ITDN.

The indicative timetable for the remaining phases of the Tender Procedure will be amended as set out in paragraph 4 ('Timetable').

### **4. The Bid (ITT, Chapter 4)**

For the purpose of this ITDN, no changes have been made to this chapter.

### **5. Summary Concession Agreement (ITT, Annex A1)**

This Annex A1 has been replaced by the revision dated 9 April 2001.

### **6. Draft Contract SNCB (ITT, Annex A2)**

For the purpose of this ITDN, no changes have been made to this Annex.

### **7. Draft Agreement SNCF (ITT, Annex A3)**

For the purpose of this ITDN, no changes have been made to this Annex. Reference is made to paragraph 5 here above ('Subjects of Negotiations'), comprising the State's position with respect to the Working Assumptions.

### **8. Working Assumptions (ITT, Annex A4)**

Reference is made to paragraph 5 here above ('Subjects of Negotiations'), comprising the State's position with respect to the Working Assumptions.

**9. Bid Format (ITT, Annex B1)**

For the purpose of this ITDN, no changes have been made to this Annex.

**10. Data Room Procedure (ITT, Annex B2)**

For the purpose of this ITDN, no changes have been made to this Annex.

**11. Process Agreements (ITT, Annex B3)**

For the purpose of this ITDN, no changes have been made to this Annex.

**12. Additional Process Agreement NS (ITT, Annex B4)**

For the purpose of this ITDN, no changes have been made to this Annex.

**13. Process Agreement Schiphol (new Annex to the ITDN)**

For the purpose of this ITDN, a new Process Agreement will be added to this Annex. The Process Agreement between the State and N.V. Luchthaven Schiphol will be attached to this ITDN as Annex III.

**14. Supporting Documents (ITT)**

For the purpose of this ITDN, no changes have been made to the Supporting Documents as comprised in the ITT.

## Annex II – Glossary

In this glossary additions and changes to the ITT glossary are presented.

<b>Addenda</b>	Additions and/or amendments to the ITT <u>and/or the ITDN</u> .
<b>Annexes</b>	Documents that are enclosed with the ITT and that form an integral whole with the main text of the ITT <u>and/or the ITDN</u> .
<b>Draft Contract SNCB</b>	The draft contract, appended in Annex A2 <u>of the ITT</u> , which will be signed by SNCB en HSL-Zuid TOC before Contract Award. This contract forms the base for a Co-operation Agreement between the SNCB and the Concessionaire.
<b>Draft Agreement SNCF</b>	The draft agreement, appended in Annex A3 <u>of the ITT</u> , on which Tenderers can base their Bid.
<b>Enhanced Bid</b>	A proposal, which conforms with the requirements of the Enhanced Specifications, submitted by a Tenderer which is selected to enter the Negotiation Phase, <u>or by the Preferred Tenderer as the case may be</u> .
<b>Enhanced Specifications</b>	The specifications and requirements on which the Tenderers are invited for the Negotiation Phase, <u>or which will be subject to negotiations upon issue of the ITDN</u> .
<b>HSL-Zuid Train Operating Company</b>	The party to be selected by the State in, <u>or upon entering into the Negotiation Phase that will enter into the Concession Agreement with the State</u> .
<b><u>ITDN</u></b> <b><u>Minimum Requirements</u></b>	<u>Invitation to Direct Negotiations (this document)</u> <u>The State's minimum requirements relating to service level and safety, to be determined in the MoU and the Concession Agreement.</u>
<b><u>MoU</u></b>	<u>Memorandum of Understanding as ment in this ITDN.</u>
<b>Negotiation Phase</b>	The second phase of the Tender Procedure, following the ITN <u>or the ITDN</u> .

## Annex III – Process Agreement Schiphol

Staat- NV Luchthaven Schiphol

24 april 2001

STAAT - NV LUCHTHAVEN SCHIPHOL

**De ondergetekenden;**

1. DE STAAT DER NEDERLANDEN, (hierna te noemen; "de Staat") waarvan de zetel is gevestigd te 's-Gravenhage te dezen vertegenwoordigd door de Projectdirecteur HSLZuid, ir. W. Korf  
  
en
2. De naamloze vennootschap NV LUCHTHAVEN SCHIPHOL (hierna te noemen: "Schiphol"), te dezen vertegenwoordigd door de Executive vice president and chief operations officer, ir. M.E. van Lier Lels.

**Nemen het volgende in aanmerking:**

- a. De Staat is voornemens door middel van een openbare tender (hierna: "de Tender") één of meer spoorvervoerondernemingen te selecteren voor de exploitatie van nationaal en internationaal hogesnelheidsvervoer over het traject HSL-Zuid (hierna: "het HSL-Vervoer"). Deze voornemens zijn nader omljnd in het Kwalificatie Document d.d. 17 juli 2000 en de Invitation to Tender van 15 december 2000.
- b. De Staat ziet het als zijn taak te verzekeren, dat de spoorvervoerondernemingen zo veel mogelijk op basis van gelijke kansen aan de Tender kunnen deelnemen, en dat na selectie van één of meer spoorvervoerondernemingen een vervoersaanbod tot stand komt dat zoveel mogelijk beantwoordt aan de door de Staat nagestreefde substitutiedoelstellingen van luchtvervoer en autovervoer door spoorvervoer (hierna: "de Substitutie-doelstellingen"). Bepalende factoren daarvoor zijn, dat er gedurende het tenderproces wordt samengewerkt tussen de Staat en Schiphol, en dat na selectie van één of meer spoorvervoerondernemingen wordt samengewerkt tussen deze

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spoorvervoersonderneming(en) en Schiphol.

- c. Schiphol stelt zich ten doel de mainport-functie van Schiphol te versterken door middel van vergroting van het vervoersvolume, onder meer door de ontwikkeling van een intermodaal netwerk van een hoge vervoerskwaliteit. Bepalende factoren daarvoor zijn eveneens: (i) dat gedurende de Tender wordt samengewerkt tussen de Staat en Schiphol, (ii) dat na selectie van één of meer spoorvervoersondernemingen wordt samengewerkt tussen deze spoorvervoersonderneming(en) en Schiphol.

**Artikel 1 De samenwerking tussen partijen gedurende de biedfase van de Tender**

- 1.1 Schiphol zal op verzoek van de Staat de aan laatstgenoemde door bieders gevraagde gegevens verstrekken aan alle bieders over toegang en/of medegebruik van voor het vervoer relevante faciliteiten op Schiphol.
- 1.2 Schiphol zal de Staat gedurende de biedfase van de Tender adviseren omtrent (de beoordeling van) onderdelen van de biedingen die betrekking hebben op de Substitutiedoelstellingen.
- 1.3 De Staat zal daarbij slechts geanonimiseerde gegevens aan Schiphol verstrekken. Mocht Schiphol bij het uitvoeren van haar adviestaken bekend raken met de identiteit van eenieder dan zal zij deze geheimhouden. Schiphol zal zich in deze fase onthouden van contacten met de bieders voor zover deze contacten betrekking hebben op de Tender.
- 1.4 Onderdelen van biedingen waarmede een (toekomstige) prestatie van Schiphol gemoeid is, zullen door de Staat aan Schiphol worden voorgelegd alvorens een definitieve beoordeling daarvan zal plaatsvinden.
- 1.5 Alle verrichtingen van Schiphol als adviseur van de Staat in de Tender zullen door de Staat worden geprotocolleerd teneinde de transparantie van de Tender te waarborgen.
- 1.6 De positie van Schiphol alsmede de door haar gegeven adviezen in haar hoedanigheid

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van onafhankelijk adviseur, kunnen nimmer tegen haar worden gebruikt in een later stadium van de Tender.

**Artikel 2 De samenwerking tussen partijen gedurende de Onderhandelingsfase**

- 2.1 Met Onderhandelingsfase is bedoeld de fase van de Tender waarin er nog sprake is van twee bidders.
- 2.2 De tot de Onderhandelingsfase toegelaten bidders leggen ieder aan Schiphol één of meerdere voorstellen voor gericht op een samenwerking tussen Schiphol en de bidders, hierna het Airrail-pakket, met het oog op het realiseren van de Substitutiedoelstellingen van de Staat
- 2.3 Het Airrail-pakket is zodanig uitgewerkt dat de biedende partijen kunnen onderhandelen over de invulling van dit pakket met Schiphol om te komen tot concept-overeenkomsten tussen Schiphol en iedere individuele bidder.
- 2.4 Tijdens de Onderhandelingsfase zal de Staat Schiphol gelegenheid bieden met de tot de Onderhandelingsfase toegelaten bidders te spreken omtrent verdere uitwerking van het Airrail-pakket. Bij deze besprekingen zal een notulist van de Staat steeds aanwezig zijn. Schiphol zal zich onthouden van contacten met voornoemde bidders buiten aanwezigheid van de notulist van de Staat.
- 2.5 Het Airrail-pakket wordt betrokken in de selectie van de bidder aan het einde van de Onderhandelingsfase en kan daarmee van positieve of negatieve invloed zijn op de prijsvorming in de Onderhandelingsfase. Schiphol wordt niet betrokken bij deze selectie.
- 2.6 Schiphol onthoudt zich tot en met deze fase van deelname aan een consortium waaraan een bidder deelneemt of zal deelnemen.
- 2.7 Overeenstemming bereikt tussen een bidder en Schiphol zal door de Staat in het kader van een transparante uitvoering van de Tender schriftelijk worden vastgelegd.

Staat- NV Luchthaven Schiphol

### **Artikel 3 Samenwerking tussen partijen na Contractering**

- 3.1 Met Contractering is bedoeld het sluiten van de Concessie overeenkomst tussen de Staat en de te selecteren concessiehouder voor het vervoer over de HSL-Zuid (hierna: HSL Zuid Vervoermaatschappij), waarbij de Staat de HSL Zuid Vervoermaatschappij onder meer de meerjarige rechten op het vervoer over de HSL Zuid verleent.
- 3.2 Schiphol neemt de verplichting op zich om de HSL-Zuid Vervoersmaatschappij toegang en/of medegebruik van voor het vervoer relevante faciliteiten op Schiphol, voor zover in eigendom en/of beheer van Schiphol, te bieden op transparante, marktconforme en non-discriminatoire voorwaarden (prijzen daaronder begrepen).
- 3.3 Na Contractering staan de HSL-Zuid Vervoermaatschappij en Schiphol vrij met elkander regelingen overeen te komen in aanvulling op het Airrail-pakket en/of de overeenkomst zoals bedoeld in artikel 2.7. Met het Airrail-pakket strijdige afwijkingen behoeven evenwel de voorafgaande goedkeuring van de Staat, met het oog op het realiseren van de Substitutiedoelstellingen.

### **Artikel 4: toepasselijk recht en geschillenbeslechting**

- 4.1 Op deze overeenkomst is het Nederlands recht van toepassing. Geschillen tussen partijen omtrent deze overeenkomst zullen worden voorgelegd aan de bevoegde rechter te Den Haag.

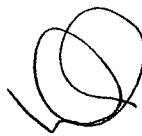
Aldus in tweevoud opgesteld te Amsterdam en getekend op .....1 mei..... 2001.

DE STAAT DER NEDERLANDEN

N.V. LUCHTHAVEN SCHIPHOL



ir. W. Korf



mw. ir. M.W. van Lier Lels



## **Annex IV – Acknowledgement of Receipt**

### **FORMAT FOR ACKNOWLEDGEMENT OF RECEIPT OF THE INVITATION TO DIRECT NEGOTIATIONS (“ITDN”)**

To: Projectorganisatie HSL-Zuid  
Mr. Roel Testroote  
PO Box 43  
3500 AA UTRECHT  
The Netherlands

We accept this Invitation to Direct Negotiations.

Place:..... Date:.....

NS Reizigers - KLM

Name of Authorised Officer: