

## **Private law permission for additional facilities at motorway service areas**

For the construction of an additional facility at a motorway service area as referred to in the Rijkswaterstaat Notification of 22 March 2004 'Facilities at service stations along national roads' (Government Gazette 2004, 56, last amended 17 May 2022 (Government Gazette 2022, 7852)) the party must hold a licence under the Public Works Management Act (Wbr permit). In addition, the party must also obtain a private law permit from the State, as the owner of the service area, to use the relevant plot for the construction and maintenance of the additional facility. This private law permit should be applied for in writing to the *Rijksvastgoedbedrijf* (Central Government Real Estate Agency), submitting the relevant Wbr permit.

Using the criteria described below, the Rijksvastgoedbedrijf will assess whether the State can grant a private law permit. The permit is then registered in an agreement, usually a lease. The term of this agreement will in principle be the same as the term of the Wbr permit, with the understanding that the lease term will never exceed 15 years. If the lease term of the primary facility associated with the additional facility is shorter than the term of the permit, then linkage with the (remaining) lease term of the primary facility will be sought.

### **Assessment criteria**

1. The Rijksvastgoedbedrijf will assess whether the permit holder has submitted a written request for a private law permit for the construction and maintenance of the additional facility on State-owned land, submitting the relevant Wbr permit.
2. The Rijksvastgoedbedrijf will assess whether the applicant holds a valid Wbr permit for the construction and maintenance of an additional facility at a motorway service area. If more than one party holds a valid Wbr permit for the same plot of land at a service area, the request of the party that first submitted a complete Wbr permit application shall take priority. If the party enjoying priority meets the set criteria and therefore receives permission from the Rijksvastgoedbedrijf, permission will be denied to the other party.
3. The Rijksvastgoedbedrijf will check that granting permission does not conflict with laws or regulations, in particular the Law on the auctioning of certain motor fuel sales points.
4. The Rijksvastgoedbedrijf will also check that granting a private law permit does not violate third-party rights, or whether, for example, the State has already granted the land to a third party.

### **Procedure**

#### *Publication*

If a request for a private law permit meets the above-mentioned criteria, the Rijksvastgoedbedrijf will announce through a notification on [www.biedboek.nl](http://www.biedboek.nl) that the State intends to enter into an agreement concerning an additional facility at a service area.

The publication will report at least:

- a. the name of the service area with the road number and the name of the municipality in which the service area is located
- b. the cadastral description of the plot on which the additional facility will be constructed
- c. the type of additional facility that it concerns
- d. the type and duration of the agreement
- e. the finding that the request meets the assessment criteria described above.

If no other bidders have come forward after 20 working days of publication, the Rijksvastgoedbedrijf will proceed with the contract.

Parties applying as potential candidates to the Rijksvastgoedbedrijf within 20 working days of publication must indicate in writing, giving reasons and submitting documentary evidence, that they also meet the above assessment criteria. The Rijksvastgoedbedrijf will then notify its decision in writing to the candidate(s) within two weeks of the close of the response period. If a party disagrees with this decision, it can file an interim injunction before the preliminary relief judge of the District Court of The Hague. Initiating such proceedings has no suspensive effect.

#### *Private law permission without publication*

If it appears that the State has already issued to the licence holder the entirety of the land on which the additional facility is proposed, the State will confirm the private law permission by letter to the licence holder/tenant immediately upon the request meeting the other criteria. This permission will not be reported on [www.biedboek.nl](http://www.biedboek.nl).

#### **Effective date**

The assessment and procedure for granting private law permission as described above will apply to Wbr permits for additional facilities at motorway service stations issued on or after 1 October 2023.