



Market Consultation Foreign Claims and Litigation

Publication date: 15 April 2021
Status: Final

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1 Introduction

1.1 Market Consultation

With this market consultation, the Netherlands Enterprise Agency ("NEA") intends to consult the market about which parties have the knowhow and means to carry out this assignment. In addition, NEA wants to receive input and information with regard to a number of assignment related questions. These questions can be found in chapter 3. Depending on the input and answers to the questions in this market consultation, NEA will decide whether or not to start a procurement procedure.

1.2 Organisation

The Netherlands Enterprise Agency (also known as "Rijksdienst voor Ondernemend Nederland" or "RVO") is a governmental agency which operates under the auspices of the Ministry of Economic Affairs and Climate Policy of the State of the Netherlands. It also operates on behalf of the Ministry of the Interior or of Internal Affairs, the Ministry of Foreign Affairs and the Ministry of Infrastructure and Water Management of the State of the Netherlands and the European Union. The NEA supports entrepreneurs, NGOs, knowledge institutions and organizations, with an aim to facilitate entrepreneurship, improve collaborations, strengthen positions and help realise national and international ambitions with funding, networking, know-how and compliance with laws and regulations. Amongst others, the NEA is governed by the strict regulations of the "Algemene wet bestuursrecht" (General Legislation on Administrative Law).

Within this area, NEA executes and monitors certain Contribution Programmes under strict Ministerial regulations, whereby she can allot contributions for certain projects if the applicant companies fulfil all the pre-prescribed conditions; all in adherence to the General Administrative Law Act (see Appendix I: Unofficial translation Dutch Administrative Law Act). An applicant agrees in advance with these strict requirements and regulations when applying for a contribution. If they meet the criteria, NEA writes an official administrative decision (contract) granting the contribution under certain conditions to the applicant company. After proof of the predetermined results and conditions, NEA writes an official administrative decision in which the final amount that the applicant is due or that the applicant needs to repay is determined. NEA allows for advance payments for the realisation of the project and subsequently monitors the projects. The responsible applicant company must, after being allotted the project contribution, provide proof of the projects results, otherwise the contribution must be (partially) paid back.

Initially, NEA will do a brief investigation into the assets and liquidity ratio of the responsible applicant. In case of a positive result, NEA will consider further steps towards claims and litigation.

1.3 Description of Assignment

The assignment involves the reclaiming of advance payments (i.e. 90% of the contribution amount is made as advance payments under the condition that results are met at the end of the project period) by applicants established abroad (which are often non-Dutch companies). These applicants have received a project contribution allotted under certain pre-prescribed conditions that need to be met within a certain project timeframe. The NEA administrative decision, formally a decision by the Dutch Ministry of Foreign Affairs, allots these advance payments to the contribution in order to get the project started. This decision then executed and

monitored by NEA and governed by requirements as stated in the decision, the programme regulations and the "Algemene wet bestuursrecht" (Dutch General Legislation on Administrative Law). If the conditions of the contribution scheme are not (sufficiently) met, advances already paid must be (partially) refunded. Claiming these refunds often has to be done in accordance with the legal system of the country where the applicant/company is established.

However, the laws of the foreign countries in which these applicant reside, do not always recognize the formal Dutch Administrative decision of the final determination of the contribution as sufficient to lay claim. This is the reason why we need outside expertise on how to lay claim to the advance payments that need to be refunded.

In light of the foregoing, the law firm must, therefore, be able to give an indication of the feasibility of the claim in the country concerned (including, if necessary, a more extensive assets and liquidity ratio investigation), provide a clear indication of the costs, as well as an indication of the (procedural) time it will take to actually obtain the claim (i.e. the refund of (part of) the advance payments via a decision of the foreign court) from the responsible applicant company via litigation or other means within the legal system of the country where the responsible applicant is established.

Furthermore, the law firm must, ideally, also be able to provide NEA insight into which documents (dossier and if relevant the particular format) they deem necessary for a successful claim in the relevant country. The documents that can be provided at any rate are the following:

- the relevant applicable rules and regulations that apply to this construct
- the project proposal (application)
- the administrative decision granting the contribution and allotment of advance payments (often signed digitally)
- the administrative decision on the final determination of the contribution (often signed digitally)
- relevant correspondence admonishing to start communicating/paying, as well as proof of receipt of said correspondence.

An example:

An applicant can submit an application for a Private Sector Investment Programme contribution for their investment project. The objective of the Private Sector Investment Programme ("PSI", see also: [PSI | RVO.nl](#)) is to support private sector development projects in about 60 countries. This was done by subsidizing investment projects which were executed by applicant companies together with local partners. The applicant company that is awarded the contribution, carries the responsibility for the project results and has to be either a company from The Netherlands or from another country, not being the project country. If the project results as agreed upon are not met (in part) at the end of the project, the contribution will be duly (partially) rescinded. Because the PSI contribution is transferred by means of advance payments, it is accompanied by strict obligations that need to be adhered to and fulfilled by the responsible applicant company. One such obligation is timely project progress reports. Another, is the obligation to inform NEA on time of any changes that occur regarding project implementation/realization, NEA requires open and timely communication, especially regarding issues/changes that might endanger project results, so that it can act upon it.

Unfortunately, if an applicant does not realise the project result as agreed upon, or if the company stops communicating with NEA altogether during project implementation (meaning: no reports are sent, nor does NEA receive any requests for extra time to submit a report), NEA has to take steps given her responsibilities as a government agency.

In general, NEA tends to be quite lenient when it comes to granting extra time to submit reports, as long as the responsible applicant companies continue to communicate with us. Before taking necessary steps, NEA will try all communication channels exhaustively and will send several reminders, (formal) letters as well as emails, and will check whether communications have reached the responsible applicant company.

If, however, no refund payments are made after a decision on the final determination of the contribution by NEA, or if no response follows for quite an extended period of time, and no new information is provided nor substantiation given (afterwards) as to why there was no payment or no communication possible during this period by the responsible applicant company, NEA will close the project based on the information available at that time, and will subsequently write the decision for final determination of the amount to be contributed. The amount mentioned in such a decision, therefore, refers to a refund of the advance payments in light of undelivered project results, for which the applicant company has accepted full responsibility.

Such a decision is formally an administrative decision within the meaning of the Dutch General Administrative Law Act, against which a notice of objection can be lodged within 6 weeks of the decision. An extension of this term can also be requested. Therefore, apart from the leniency that NEA can administer, if so requested, an applicant company has the right, within a certain timeframe, to officially object to the decision on the final determination of the amount to be contributed (this right is clearly stated in the decision); thereby creating the opportunity to submit issues of force majeure, additional project progress reports, etc., leading to a possible lower or no refund necessary of the advance payments that were made.

If no objection is made, however, the decision becomes final (*res judicata*). If all these opportunities are not taken advantage of, the matter is decided. In such a case, the responsible applicant company can contact our Credit Management Department to discuss a suitable payment arrangement by providing information on assets and liquidity ratio's.

For further information on the Contribution Programme described above, see: [PSI programme: Private Sector Investeringsprogramma \(PSI\) | RVO.nl | Rijksdienst](#)

1.4 Minimum Requirements

Interested suppliers must meet the following criteria:

- Worldwide and/or regional knowledge, network and experience with regard to foreign claims and litigation.
- The interested suppliers must be registered at the (local) Chamber of Commerce (or comparable national body).
- Knowledge of the legal system, language, culture of the countries where the foreign claims and litigation will take place.

- The lawyers within the organization or the network of the interested supplier must be a member of the local Bar Association (or comparable national body), where the claims and litigation takes place.

1.5 Scope of the Assignment

The scope of the assignment is approximately between 40 and 70 cases, with claims ranging from € 20.000 tot € 800.000,-.

The claims and litigation must take place in het following regions, whereby the mentioned countries are currently of interest, but you are welcome to indicate a broader scope:

- Europe: Belgium, Cyprus, Italy, France, Germany, Poland.
- Asia: Israel, Jordan, Kingdom of Saudi Arabia, Libanon, South Korea, United Arab Emirates.
- North America: USA.
- Central America: El Salvador, Panama.
- South America: Argentina.
- Africa: Congo, Egypt, Ethiopia, Mauritius, Kenya, Uganda.

It is possible that during the assignment the claims and litigation must take place in more countries than in the above mentioned countries.

2 Procedure Market Consultation

2.1 General

You are invited to indicate whether you are competent and interested in carrying out this assignment. Furthermore, you are kindly requested to answer the questions as stated in chapter 3. This market consultation is explicitly not part of a tendering procedure.

2.2 Communication and Submitting Market Consultation Answers

Please send all communications to the following contact person for this market consultation: Paula Mol (paula.mol@rvo.nl) and Gea Strootman (gea.strootman@rvo.nl).

2.3 Planning

The following schedule applies:

16 April 2021	Publication market consultation
23 April 2021	Deadline for asking questions about the market consultation
30 April 2021	Publication answers on the questions
7 May 2021	Deadline for submitting answers (chapter 3) on the questions

You will be informed timely of any changes in this schedule.

Questions about the market consultation:

Interested suppliers can submit questions about the market consultation via e-mail to the contact person. The deadline for submitting questions can be found in the schedule under 2.3. All questions and answers will be anonymized by TenderNed/TED before being communicated.

2.4 Additional Information

Apart from our interest in your answers to the questions as stated in chapter 3, if you have any other relevant information NEA can use in an additional tendering procedure, please feel free to provide us therewith.

2.5 Market Consultation Results

NEA will be allowed and intends to use the collected information in an additional tendering procedure.

Interested suppliers must realise that the information provided may be used (albeit in an anonymized form) in an additional tendering procedure.

NEA wants to be able to use the submitted information without any reservation. By participating in this market consultation the interested suppliers agree to this condition. If NEA decides to start a tendering procedure there will be no difference made between suppliers who participated in this market consultation and suppliers who did not participate.

2.6 Disclaimer

This market consultation is held without any obligation to any of the parties involved, nor will this market consultation create any (legal) rights, obligations or commitment to enter into any legal relationship.

No rights can be derived or construed from participating in this market consultation, nor from any information supplied in or for this market consultation.

3 Questions

Supplier is asked answer the below standing questions as complete as possible.

Name of the organisation:	
Name contact person and function:	
Tel. number: contact person:	
E-mail contact person:	
Visiting address:	
Post address:	
Question number:	Questions and answers general
Question 1:	Are you able to fulfil the assignment as mentioned in chapter 1? Please motivate why or why you cannot (in full or in part) fulfil the assignment?
Answer:	
Question 2:	If you cannot fulfil the assignment (in full). What changes in the procedure are necessary, whereby you would be able to fulfil the assignment?
Answer:	
Question 3:	Chapter 1.5 refers to the regions/countries where the assignment must take place. For which regions and/or countries are you able to fulfil the assignment? If you cannot fulfil the assignment in all the regions/countries mentioned, please state if you have partners (and which partners), who can participate in (part of) this assignment? Applicant companies can be located anywhere in the world", so please indicate other regions/countries that you are active in".
Answer:	
Question 4:	Can you fulfil the minimum criteria stated in chapter 1? Please motivate why or why not?
Answer:	
Question 5	Can you indicate which information you will need in order to give us an indication of the feasibility of these claims in the countries concerned (including if it is necessary to do a more extensive assets and liquidity ratio investigation)? What will be the cost to give such an indication?

Answer:	
Question number:	Questions and answers price
Question 6	Can you provide an indication of the costs as well as an indication of the (procedural) timeframe it will take to actually obtain the claim (i.e. the refund of (part of) the advance payments via a decision of the foreign court) from the responsible applicant company via litigation or other means within the legal system of the country where the responsible applicant is established?
Answer:	
Question 7:	Can you, based on your current regional/country knowledge, provide insight into which documents (dossier and if relevant the particular format) will be necessary for an indication of feasibility of the claim and/or for a successful claim in the relevant countries.
Answer:	
Question 8:	If a tendering procedure is started, how would you advise the organization to pay for your services in light of the different countries? (e.g. collection rate, on the basis of an hourly rate, based on a max percentage part of the claim, a previously agreed upon total sum, on a no cure no pay basis, or other? Please be aware that the services involved in this market consultation contain many different components (indication feasibility, collection costs, court costs, translation costs, etc.). You are, therefore, requested to indicate clearly how the remuneration is built up (detailing the costs for the different components of the requested remuneration)
Answer:	

4 Appendix

Appendix 1: Unofficial translation Dutch General Administrative Law Act.