



DRAFT Public service contract (ARVODI 2018)

IUC number: 202101036

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the State Secretary of Economic Affairs and Climate Policy, legally represented in this matter by drs. M.R. Leijten, Member of the Board of the Netherlands Authority for Consumers and Markets, hereinafter referred to as the Contracting Authority,

and

2. [Contractor's full name and legal form], which has its registered office in ..., legally represented in this matter by ... [and ...] [signatory's name], hereinafter referred to as the Contractor,

WHEREAS:

- The Contracting Authority requires cost efficiency benchmarks of gas and electricity transmission system operators;
- The Contracting Authority has published a tender document for this purpose;
- The Contractor submitted a tender on [day month year];
- The Contracting Authority has awarded the contract to the Contractor based on this tender;
- The Contractor has sufficiently familiarised itself with what the Contracting Authority wishes to achieve;
- The Parties wish to lay down the ensuing legal relationship in a written Contract.

AGREE AS FOLLOWS:

A number of terms in this Contract are written with initial capitals. The meanings of these terms are defined in article 1 of the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018).

1. Object of the Contract

- 1.1 The Contracting Authority hereby commissions the Contractor to perform services as described in the quotation submitted by the Contractor on [date] (ref. 202101036 see Schedule ...) based on the tender issued by the Contracting Authority on [date] (ref. 202101036), in so far as this Contract does not contain any provisions to the contrary. The Contractor hereby agrees to perform these Services.
- 1.2 The following documents are an integral part of this Contract. In the event of inconsistencies, a higher ranked document takes precedence over a lower ranked document:
 1. this document;
 2. the Memorandum of information dated;
 3. the tender document dated ... Reference 202101036, including schedules;
 4. the ARVODI 2018;
 5. the tender issued by the Contractor to the Contracting Authority on [date], ref ...

- 1.3 In addition to or in derogation from the provisions of article 1.1 of this Contract, the following optional elements of the assignment can be performed:
Optional Module A – Frontier shift analysis;
Optional Module B – Additional support.
- 1.4 The results of the Services will be delivered in the form of the reports prescribed in the tender document, a set of reports for electricity and a set of reports for gas. The final reports must be submitted in electronic form.
- 1.5 The Parties will consult with a view to deciding on the format of the final report. The final report will in any event state that the Contracting Authority is the copyright owner.

2. Formation and duration of the Contract

- 2.1 This Contract is formed once it has been signed by both Parties.
- 2.2 The agreed Services will be performed in the period from 15 June 2021 – 31 December 2022, with an option to extend the Contract by the Contracting Authority for a period of 1 year if modules A and B will be performed, unless parties agree otherwise in writing.

3. Price and other financial provisions

- 3.1 The Contractor will perform the Services for a fixed aggregate fee of €... (excluding VAT and including travel, accommodation and any other costs). Optional modules will be charged against the price as stated in the quotation.
- 3.2 It is expressly agreed that if the Contractor does not charge VAT but some or all of the Services are not exempt from VAT, the Contracting Authority will not be liable to pay the VAT in question.
- 3.3 The fee covers all Services to be performed by the Contractor under this Contract, plus any materials needed for this purpose.
- 3.4 The agreed rates are fixed and invariable during the term of this Contract.
- 3.5 The following payment schedule applies: 30% directly after Phase A, 40% directly after Phase C, and 30% directly after Phase D after acceptance of the services.
The optional modules will be paid after acceptance of the services.
- 3.6 The Contractor must send the invoices electronically to:
Authority for Consumers and Markets (ACM)
Government identification number: 00000004000000152000
attn. financiële administratie

The general terms and conditions that apply to this contract prescribe/contain a provision that invoices must be sent electronically (not in pdf). This can be done in 4 different ways:

- The invoicing portal of the Dutch government;
- Link with Digipoort;
- E-invoicing with your own (accounting) software package through Simplerinvoicing;
- E-invoicing through a service provider.

For more information: <https://www.helpdesk-efactureren.nl/e-facturen-versturen>

For questions regarding e-invoicing via the portal, please contact helpdesk-efactureren@rvo.nl, 088-0424400, option 2.

For questions regarding e-invoicing via an accounting program (Simpler invoicing), please contact info@simplerinvoicing.org, 020-3697653.

- 3.7 The paragraph concerning e-invoicing does not apply to companies located outside of the Netherlands.
You must state the order number on your invoice. You can send your invoice by e-mail in PDF format to crediteuren@acm.nl.
BTW number ACM is NL00.31.66.946.B43.

4. Contacts / project managers

- 4.1 The Contracting Authority's contact is
The Contractor's contact is ...
- 4.2 Notwithstanding the provisions of article 10.2 of the ARVODI 2018, the contacts named above cannot make legally binding agreements on the Parties' behalf.

5. Time and place

- 5.1 In principle, the Services will be performed at the Contractor's offices.
- 5.2 If the Services are performed at the Contracting Authority's offices, the Contracting Authority will give the Contractor's Staff access to the place where the Services are to be performed and will enable the Contractor's Staff to perform the Services in working conditions that reflect the Party's usual practice and during normal office hours.

6. Other Terms and Conditions

- 6.1 This Contract is governed exclusively by the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018) of which the Parties have already received a copy, in so far as this Contract does not contain any provisions to the contrary. Any general and special terms and conditions drawn up by the Contractor do not apply to this Contract.
- 6.2 In addition to the provisions in ARVODI 2018, the following applies with regard to force majeure. Disruptions or delays in the execution of orders as a result of the pandemic caused by Covid-19 are in principle not regarded by the client as a form of force majeure, unless these disruptions or delays arise directly and demonstrably from the central government of the country where the activities must be performed, measures taken containing travel restrictions or transport restrictions that were not foreseeable in advance.
- 6.2 If the duty of confidentiality imposed on the Contractor and its Staff under article 13 of the ARVODI 2018 is breached, the Contractor will be liable to pay the Contracting Authority a penalty of € 10.000 (ten thousand euros) per event.
- 6.3 Article 19 of the ARVODI 2018 does not apply.
- 6.4 In addition to article 21 of the ARVODI 2018, the Contractor indemnifies the Contracting Authority against any claims for damages brought by third parties as a result of its failure to discharge its obligations as referred to in article 21.3 of the ARVODI 2018. The liability amounts set out in article 21.3 of the ARVODI 2018 apply *mutatis mutandis*.
- 6.5 In addition to the provisions of article 22 of the ARVODI 2018, the Contracting Authority may cancel this Contract forthwith out of court by registered letter, without giving any warning or notice of default, in the following cases:
- a. if the Contractor has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code; or

- b. if a member of the Contractor's Staff has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code and that staff member is on the Contractor's executive, management or supervisory board or has representative, decision-making or audit powers.

In the cases set out under (a) and (b) the right to cancellation expires three years after the judgment becomes unappealable.

- 6.6 In addition to article 24 of the ARVODI 2018, the Contracting Authority has sole authority to publish reports or parts thereof. The Contractor will be cited as the implementing organisation if the Contracting Authority decides to do so.
- 6.7 In addition to article 24 of the ARVODI 2018, the Contractor may use, for the purpose of academic research and education, information obtained in the course of performing the Services, with the exception of personal information of a confidential nature, actual/named TSO data, or statistics/calculations derived from the actual/named TSO data by means of which TSOs can be identified or actual/named TSO data can be reconstructed. In doing so, the Contractor will not act contrary to the Contracting Authority's interests. In case of doubt, the Contractor will consult with the Contracting Authority in advance. If the Contracting Authority decides not to publish the results of the Services, the Contractor may submit a written request to the Contracting Authority, asking for permission to publish the results itself. This permission should be given in writing, and will not be withheld without good reason. The Contracting Authority may attach certain conditions to its permission.

7. Conditions applicable to non-policy-oriented research

- 7.1 General
The Contracting Authority itself may at any time have the work of the Contractor completed by a third party in case, for whatever reason, if the Contractor is not able to do so any longer. The Contracting Authority can terminate the Contract under the terms of the ARVODI-2018. In this case the Contractor is obliged to co-operate in transferring all data and knowledge to this third party, without receiving additional payments for it.
- 7.2 Transfer of title to research material
The Contractor transfers to the Contracting Authority, which transfer the Contracting Authority accepts, the title to all the material received, acquired and/or produced and processed by the Contractor for the purpose of the research, in so far as the Contractor has that material at its disposal and in so far as it records data that is part of the research. The transfer takes place by virtue of the fact that both Parties hereby declare that the Contractor will keep the material referred to for the Contracting Authority. The material to which the title is to be transferred does not include the material that records the addresses used for the purpose of the research, unless this material was obtained through or on the instructions of the Contracting Authority.

8. Retention of material

- 8.1 Unless otherwise agreed in writing, the Contractor will destroy any confidential information used to produce the project results, no later than six months after the end of the assignment. Confidential information includes at least all actual TSO data and all calculations and statistics based on the actual TSO data.

9. Declaration of integrity

The Contractor hereby declares that it has not offered or given members of the Contracting Authority's Staff any benefit in order to obtain the contract nor arranged for them to be offered or given any such benefit. It undertakes not to do so in the future with a view to inducing any members of the Contracting Authority's Staff to perform or refrain from performing any act.

10. Final provisions

- 10.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.
- 10.2 Any written or oral agreements previously made by the Parties about the Services that are the object of this Contract are nullified by the signature of this Contract.

Done and signed in duplicate.

The Hague,
[date]:

[place],
[date]:

For the State Secretary of
Economic Affairs and Climate Policy,
and commissioned by
[Contractor's name][name of portfolio]

[name Contractor]

Jan van Spronsen MSc.
Unit Manager Procurement Office

[signatory's name]
[signatory's position]