



Ministerie van Infrastructuur
en Waterstaat



Autoriteit Nucleaire Veiligheid en
Stralingsbescherming

Annex 4

Draft ARVODI-2018

Service Agreement

Subject : **Nucleaire Adviesdiensten ANVS 2021**

According to a : **Public European Tender Procedure**

Reference no. : **TN-303693**

Date : **July 7, 2021**

Version : 0.1 (July 5, 2021)



Public service contract (ARVODI 2018) (Date: May 2018)

Contract number: ...

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague,
represented by the Minister of / State Secretary for [*name of portfolio*],
legally represented in this matter by
[*signatory's name and position*],
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:

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- The Contracting Authority requires ...;
- The Contracting Authority has asked [*name of company*] to issue a quotation for this purpose;
- [*Name of company*] issued a quotation on [*day month year*];
- The Contracting Authority has accepted this quotation;
- [*Name of company*] 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;
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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 (*if necessary, briefly describe the Services or the nature of the activities*) as



described in the quotation submitted by the Contractor on [date] (ref. ..., see Schedule ...) based on the request for quotations issued by the Contracting Authority on [date] (ref. ..., see Schedule ...), 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 ARVODI 2018;
 3. the request for quotations;
 4. the other Schedules;
 5. the Quotation issued by the Contractor to the Contracting Authority on [date], ref ...
- 1.3 **<OPTIONAL>** In addition to or in derogation from the provisions of article 1.1 of this Contract, the following Services will be performed:
- 1.4 **<OPTIONAL>** The results of the Services will be delivered in the form of or concluded with the submission of a final report. The final report will in any event contain a description of the results achieved, the methods and techniques used to generate them, and the conclusions derived from them. [Number] copies of the final report will be supplied. The final report must be submitted in electronic form. [Number] hard copies must also be supplied.
- 1.5 **<OPTIONAL>** The final report will be preceded by a draft report, of which [number] copies will be supplied.
- 1.6 **<OPTIONAL>** 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] **OR** [all] Parties.
- 2.2 The agreed Services must be completed by [date].

OR

- 2.2 The agreed Services will be performed in the period from [date] to [date].
- 2.3 **<OPTIONAL>** If the Services have not been performed in full in accordance with the Contract within the agreed or extended term, the Contractor will immediately pay a penalty of 0.1% of the total or maximum price specified in the Contract for each day that it fails to perform the Services as agreed, up to a maximum of 10% thereof. If, other than through force majeure, the Contractor is permanently unable to perform the Services as agreed, the penalty will be immediately payable in full.
- The penalty will be payable to the Contracting Authority, without prejudice to all other rights and claims, including:
- a. the right to demand that the Services be performed as agreed;
 - b. the right to damages.



The penalty will be set off against amounts payable by the Contracting Authority regardless of whether the claim for payment of such amounts has been transferred to a third party.

3. Price and other financial provisions

- 3.1 The Contractor will invoice retrospectively, based on the number of [*days/hours*] per month actually worked and a [*daily/hourly*] rate of €... (excluding VAT and including travel, accommodation and any other costs). **<OPTIONAL>** The maximum sum to be invoiced by the Contractor is €... (excluding VAT); the Contractor guarantees that this sum will not be exceeded.

OR

- 3.1 The Contractor will perform the Services for a fixed aggregate fee of €... (excluding VAT and including travel, accommodation and any other costs).
- 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.

OR

- 3.4 After [*date*], the rates may be adjusted once a year as of [*day, month*] in line with the price index published by Statistics Netherlands for hourly rates of pay including special remuneration established under collective labour agreements in the business services sector. For this purpose, the figure for the preceding month [(*month*)] will be used, with the index for [*month, year*] being set at 100%.
- 3.5 Payment will be made once the results of the Services have been accepted.

OR

- 3.5 Up to 80% of the total amount will be paid monthly. The remainder will be paid after the final report has been accepted.

OR

- 3.5 Payment will be made as follows:
- a sum of €... (excluding VAT) after this Contract has been signed [, on submission of the bank guarantee referred to in the Terms and Conditions] / [see alternative in article 6.6 of this Contract];
 - a sum of €... (excluding VAT) after ... [*instalment*] has been accepted;
 - the remainder will be paid after the results of the Services have been accepted.



- 3.6 The Contractor must submit invoices electronically in the manner prescribed in the request for quotations.

OR

- 3.6 **<OPTIONAL>** Notwithstanding the provisions of article 17.1 of the ARVODI 2018 on electronic invoicing, the Contractor will send the invoice(s) to the Contracting Authority on paper. The Contractor will send the invoice(s), quoting the above-mentioned contract number and commitment number / purchase order number / resource expenditure number [*delete where applicable*] ..., to:

Ministry of ...
(Directorate-General for ...)
... Department, room ...
Postbus ...
... Den Haag

- 3.7 **<OPTIONAL>** The Contractor will claim expenses which are eligible for reimbursement under the Contract, less the VAT it has already paid on those expenses. The Contractor may charge the applicable VAT rate on that net amount to the Contracting Authority.

4. Contacts / project managers

- 4.1 The Contracting Authority's contact is ... The Contractor's contact is ...
- 4.2 **<OPTIONAL>** The Contracting Authority's project manager is: ... The Contractor's project manager is: ...
- 4.3 **<OPTIONAL>** 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 [Contracting Authority's] [and/or] [the Contractor's] offices.

OR

- 5.1 The Services will be performed in [*place*].
- 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) [(see Schedule ...)], [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 **<OPTIONAL>** Notwithstanding the provisions of article ... of the ARVODI 2018, the following provision applies to ...:
- 6.3 **<OPTIONAL>** Without prejudice to the Contractor's duty, as defined in article 9 of the ARVODI 2018, to report to the Contracting Authority on the progress of the Services as often as and in such a manner as the Contracting Authority deems fit, the Contractor is in any event obliged to report in writing/orally on [date].
- 6.4 **<OPTIONAL>** A supervisory or steering committee has been formed in accordance with article 11 of the ARVODI 2018, whose duties and powers are laid down in Schedule [...] to this Contract.
- 6.5 **<OPTIONAL>** 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 €..... per event.
- 6.6 **<OPTIONAL>** Article 19 of the ARVODI 2018 does not apply. (**Instructions:** bank guarantee not required in the case of a public body.)
- 6.7 **<OPTIONAL>** Notwithstanding article 21.3 of the ARVODI 2018, a Party that imputably fails to discharge its obligations to the other Party is liable for any loss incurred by the other Party.

OR

- 6.7 **<OPTIONAL>** Notwithstanding article 21.3 of the ARVODI 2018, the liability referred to in that article is limited to €..... per event and €..... for each year or part of a year that the Contract has been in force.
- 6.8 **<OPTIONAL>** Notwithstanding the provisions of article 26.1 of the ARVODI 2018, at the Contracting Authority's first request the Contractor will take out and retain insurance that is appropriate and customary by prevailing standards in respect of the following risks:
- 6.9 **<OPTIONAL>** 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. If the Contracting Authority wishes to publish explanatory notes or a commentary to coincide with the publication of the final report, it will consult the Contractor before doing so.
- 6.10 **<OPTIONAL>** 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. 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.

- 6.11 **<OPTIONAL>** 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*.
- 6.12 **<OPTIONAL>** 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.
- 6.13 **<OPTIONAL>** Articles 6.1 and 6.2 of the ARVODI 2018 do not apply. The Contractor may replace persons charged with implementing the Contract. The Contracting Authority may not refuse the replacement staff.
- 6.14 **<OPTIONAL>** The Parties agree, as the occasion arises, to exclude application of the deemed employment relationship of homeworkers or persons treated as such as referred to in articles 2b and 2c of the Salaries Tax Implementation Decree 1965 and articles 1 and 5 of the Working Relationship (Designation as Employment) Decree (Decree of 24 December 1986, Bulletin of Acts and Decrees 1986, no. 655).

7. <OPTIONAL> User rights

- 7.1 Articles 24.1, 24.5 and 24.6 of the ARVODI 2018 do not apply.
- 7.2 The Contractor grants the Contracting Authority a non-exclusive, irrevocable right for an indefinite period to publish or reproduce the results of the Services, or have them published or reproduced, which right the Contracting Authority accepts, such in the widest possible sense, regardless of the method of use or reproduction and regardless of whether such use or method of reproduction is known when this Contract is signed.

8. <OPTIONAL> Conditions applicable to non-policy-oriented research

- 8.1 General



- a. The Contracting Authority will not use the research methods developed by the Contractor under the latter's own management without the Contractor's permission.
- b. The Contracting Authority itself may at any time analyse or otherwise process the research data, or have such analysis or processing carried out, or complete the research, or have it completed.

8.2 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.

9. <OPTIONAL> Retention of material

- 9.1 Unless otherwise agreed in writing, the Contractor will retain the research material referred to in this Contract for the Contracting Authority for four years free of charge, starting on the date on which the Contract is signed.
- 9.2 The Contractor must replace the material referred to above free of charge for as long as it is in its possession, if all or part of the material, for whatever reason, becomes unusable, is destroyed or is disposed of. This provision applies in so far as replacement is possible and desired by the Contracting Authority.
- 9.3 Once the four-year period has ended the Contractor will make the material available to the Contracting Authority or will destroy it free of charge at the latter's request. If the Contractor does not notify the Contracting Authority of the end of the period referred to, the retention of the material will be tacitly continued until one of the two Parties gives written notice of its discontinuation.

10. 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.

11. Final provisions

- 11.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.
- 11.2 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 on the later of the two dates stated below and signed in duplicate.



The Hague, [*date*]

[*place, date*]

For the Minister of / State Secretary for
[*name of portfolio*]

For [*Contractor's name*]

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

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

[Annex: - ARVODI 2018]

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