

Memorandum of Information European Tender 'Supply of metocean data at IJmuiden Ver IA' reference 202109062-63/TN328326

Date: November 1, 2021

In this Memorandum of Information, tendering authority provides answers to the questions asked and remarks posted in the context of the above-mentioned European Tender. This Memorandum of Information forms an integral part of the Tender Documents.

The following 3 documents are published together with this Memorandum of Information:

IJV_2021129_Annex 5 - Section II Remuneration

Example monthly data availability calculation with monthly fee calculation

IJV_persistence_table_2021-10-20

No.	Location in Tender Documents	Question	Answer
1.	Annex 5 – Section III	On page 11 of Annex 5 – Section III, a tolerance radius of $\pm 100\text{m}$ is specified around the target locations. How does this hold in the case of two buoys per location (LiDAR buoy with separate wave measurement buoy), especially regarding safe operation of two buoys in vicinity of each other?	It is up to the tenderer to propose an acceptable distance in case of two separate systems to ensure safe operations. Micrositing will be part of the execution phase of the project.
2.	Annex 5 Section III – Scope of work - 3.2.2 Permits	This specification is interpreted as the acceptance by the Contractor to accept responsibility for (the costs of) obtaining licenses and permits required for its own personnel and equipment as e.g. the communication license, including relevant permissions and fees necessary for access and safety arrangements to harbours). The notice to mariners is included as part of this responsibility. It is assumed that the permits to deploy the equipment and make use of the seabed and offshore area is responsibility of the Contracting Authority. Please clarify if this interpretation is not correct and list any permit that is expected to be responsibility of the Contractor.	Your understanding is correct. The current state of knowledge is that no further (environmental) permits are required. If any further permit is required to deploy and operate the buoys, this will lie with the Contracting Authority. The responsibility for the notice to mariners, and informing the Dutch Coastguard and Hydrographic Service for operations lies with the Contractor.
3.	Annex 5 Section III – Scope of work - 3.3 and ARVODI 2018 Contract 3.6	It is specified that The Contractor is responsible for removing all equipment from the site after completion of the Work. It is interpreted and assumed that it refers to Contractor's equipment and as such, Contractor can only accept the obligation to remove lost equipment from the seabed in such cases where the dropped or lost item is of such nature that it is obstructing and/or creating a hazard to the operations of the Employer and/or as may be required by statutory requirements. If equipment is lost on the seabed due to a third party incident, the removal costs should not be for the account of Contractor.	In principle all (sub)Contractor's (lost) equipment should be removed. Please state in tender proposal which mitigation measures are in place to assure the identification and removal of the (lost) equipment. Third parties are not parties subcontracted by Contractor.

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4.	Annex 5 Section IV – ARVODI 2018 - Confidentiality	The confidentiality obligation needs to be limited in time. Can the contract limit the confidentiality obligation to a maximum of two years after completion of the services?	The confidentiality obligation ends when the Contract is terminated and all survey results are published.
5.	Annex 5 Section IV – ARVODI 2018 - 16.2 Contract variations	This clause is interpreted as the contract allows variations as noted in the wording of the clause. It is also interpreted as that any extra work that does not fall under the agreed scope of work is also assumed under this clause. Can you confirm that this interpretation is also accepted under this clause 16.2?	A certain variation may fall under the scope of Article 16.2 ARVODI 2018. Article 16.2 ARVODI 2018 must, however, be interpreted within the established legal frameworks of the Public Procurement Act. In many cases, contracts for activities that do not fall under the scope of a European tender cannot simply be awarded. It will then have to be determined on a case-by-case basis whether an additional work assignment can also be awarded in conformity with procurement law.
6.	Annex 5 Section IV – ARVODI 2018 - 16.3 and 16.4 Contract variations	Based on 16.3 it is assumed that if there is any additional work that constitutes an upward contract variation, such variation will address also the amendment of the time schedule accordingly. Can you clarify how the time schedule will be addressed under this clause? Is it correct the interpretation of Clause 16.4 as the acceptance of the work order and not of the cost, and that it will be compensated in addition according to the additional work?	If additional work requires time modifications, the time schedule will also be amended. It is also conceivable that additional work does not affect the time schedule. That is correct. It concerns acceptance of the work order. Compensation will be in accordance with the additional work but subject to the provisions of the Contract.
7.	Annex 5 Section IV – ARVODI 2018 - 21.3 Limitation of liability	Based on the company legal policy the Contractor cannot accept a liability cap that is higher than 100% of the contract price in total (also, this cap should be a total cap and should not apply per event/year). Furthermore, indirect damages/consequential loss and loss of profit should be excluded. Is the Contracting Authority willing to negotiate those limitation of liability terms to find a position more balanced between the Parties?	Not agreed. According to the Contracting Authority the clause concerning liability contains reasonable and proportionate provisions which limit the liability of the Contractor in several ways. Furthermore the clause in Arvodi 2018 is less stringent than the provisions under Dutch Law.
8.	Annex 5 Section IV – ARVODI 2018 - 24.1 - IP	Please clarify that clause 24.1 does not apply to any intellectual property that Contractor already owned prior to the commencement of the services under this Contract (such IP should remain the exclusive property of Contractor and cannot be assigned to Contracting Authority).	That's correct. In this case, the Contracting Authority refers to Article 24.3 ARVODI 2018, which stipulates that Contractor, if necessary, grants a right of use of certain information to the Contracting Authority.

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9.	Annex 5 Section IV – ARVODI 2018 - 24.4	Please note that Contracting authority cannot sign documents on Contractor's behalf, that is unacceptable. Contractor can accept an obligation to cooperate in place of this stipulation. Can you clarify your thoughts and position about this comment?	In order to prevent the Contractor from withholding its cooperation in drawing up a necessary deed and signing it, this authorization is included in this article. Given the nature of the work, the Contracting Authority does not expect that a deed will be required for the realization of the transfer of intellectual ownership as referred to in Articles 24.1 and 24.2 ARVODI-2018. If the Tenderer guarantees its cooperation with the signing of said deed, the said authorization need not be exercised by the Contracting Authority either. In that case, the Contracting Authority will not proceed with a signature on behalf of the Contractor. But, all in all, the Contracting Authority thinks it is very unlikely that such a situation, in which a deed is necessary, would occur. In the opinion of the Contracting Authority, therefore, an amendment to the said article is not necessary.
10.	Annex 5 Section IV – ARVODI 2018 - 26.2- Insurance	Please note that we want to clarify that Contractor can provide insurance certificates to Contracting Authority, not policies.	Insurance certificates are acceptable.
11.	Annex 5 Section II - Remuneration 3.1.5.4 - LD cap	The Contractor considers that a total cap on liquidated damages for delays in delivery of 20% is too high, and according to the company contractual policy will be a challenge to be accepted. We propose a total cap of 10% of the contract price and include that this will be the sole and exclusive financial remedy for delays. Is the Contracting Authority willing to discuss and negotiate the total cap on LD for delays?	Contracting Authority is willing to cap the LDs to 15% in total (delays, availability etc.).
12.	ANNEX 5 - Section II REMUNERATION	In the 3.1.7 Example of monthly payment calculation, the malus is calculated for the system number 2. The result is 1,280 Euro. Trying to redo the calculation, we found 640 Euro. Could you please clarify if it is a mistake? If not, could you please provide us with more information on how to calculate the malus?	1,280 Euro is a miscalculation. The malus for system 2 with an availability of 83% is 640 Euro. Annex 5, section II (Remuneration) is updated accordingly, and uploaded to TenderNed. An additional, second example calculation of the mala /

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			bonus is provided in the "Example Monthly Data Availability Calculation with monthly fee calculation" spreadsheet.
13.	Annex 5 - Section VI HSE REQUIREMENTS & Section V QUALITY REQUIREMENTS	ISO certification We have noted that the contractor shall have a HSE management system in place that is certified with ISO 14001 and a Quality Management System in place that is certified with ISO 9001. Our systems are in the process of being certified to ISO 45001:2018, ISO 14001:2015 and ISO 9001:2015. The final certification audit (phase 2) is in December 2021. Is this an exclusion factor in responding to your tender?	Tenderer and/or subcontractor is required to have the certification at the time of submission.
14.	ANNEX 5 - Section III SCOPE OF WORK, 2.4.1.3 Unit Validation Pre-deployment	Incident definition Could you please clarify what is included in the term "incident" (measurement interruption, etc)?	'Incident' is defined as any event affecting performance of the system where it is necessary to assess whether changes to the system are required to rectify the performance issues. An example of an incident is damage to a buoy through impact by a ship or during a storm.
15.	ANNEX 5 - Section III SCOPE OF WORK, 2.4.1.2 Type validation of LiDAR measurement system	Type validation If any changes have been made to the system of any nature since the Type validation, would a notification in the prevalidation report be sufficient?	As per section 3.1 of the OWA Roadmap, any changes must be assessed by a suitably qualified and experienced, independent 3rd party organisation. A short report or note from this 3rd party organisation should confirm that changes in the system are acceptable and leading to the same conclusions as in the Type Validation report. This short report or note can be provided as a separate document or as an updated chapter in the type validation report. Please note that Contracting Authority has defined Type Validation and Unit Validation (Annex 5 – Section III, Scope of Work) and has not defined 'prevalidation report'
16.	ANNEX 5 - Section III SCOPE OF WORK, 2.4.1.1 General requirement	Could you please clarify this point: "4. Proposal for validation of system performance and accuracy during deployment phase." ?	The Contractor is asked to provide a proposal for how the performance and accuracy of the system will be monitored and validated during the measurement campaign. Examples are comparisons

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			of the measurements from each buoy against each other and, optionally, comparisons against any other available reference sources. Please provide details in your proposal.
17.	ANNEX 5 - Section III SCOPE OF WORK	Excursion radius Is there a restriction on the excursion radius of the buoys?	There is no hard restriction to the excursion radius of the buoys. From a nautical safety point and to avoid hindrance to other uses, the excursion should be minimized, but Tenderer has to specify which excursion radius of the buoys is expected for their proposed system.
18.	ANNEX 5 - Section III SCOPE OF WORK, 2.1.2 Provision of meteorological data	Inflow angle Could you please clarify what is the meaning of "inflow angle" and provide us with an explaining scheme? Should it be calculated with the 10-min LiDAR data or the 1Hz data?	'Inflow angle' is defined as the angle, above or below horizontal, of the wind flow. Inflow angle should be reported as part of the 10 min data from the lidar.
19.	ANNEX 5 - Section III SCOPE OF WORK	UXO study Has there ever been an UXO study on the offshore site? And if so, could we please have access to this study?	Geophysical data (including magnetometer survey data) will be provided for the area pertaining to the target location of lot 1. There is no geophysical data yet for the target location of lot 2. Please note that a tender is out for geophysical works in the IJV 5-6 WFZ. If geophysical data can be acquired by Contracting Authority for the target locations of measurement systems for Lot 2, the Contracting Authority will liaison with Contractor on this. Please note that UXO clearance remains the sole responsibility of the Contractor.
20.	ANNEX 5 - Section III SCOPE OF WORK	Offshore prevalidation campaign For buoy offshore prevalidation campaign, does the reference measurement system have to be a fixed mast or can it be a trusted LiDAR?	A trusted LiDAR is accepted. It is Contractor's responsibility to demonstrate that the LiDAR is trusted by means of a third party verification.
21.	ANNEX 5 - Section VI HSE REQUIREMENTS, 3.2 Occupational Health and Safety	Occupational Health and Safety It is noted that "Where appropriate, staff and subcontractors shall undergo assessment to ensure their fitness for work". Could you please clarify what type of assessment they should undergo?	Seafarers medical certificate or an equivalent and Basic Offshore Safety Induction and Emergency Training certificate or an equivalent is an example of an assessment.

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22.	Possible technical deviations	Possible technical deviations Is there a dedicated document to note any possible technical deviations?	RVO does not provide a template document. Technical deviations not meeting the requirements in the Scope of Work are not acceptable.
23.	ANNEX 5 - Section III SCOPE OF WORK	Raw data transmission - Do the raw data have to be provided and analyzed every month or every 6 months? - Do the LiDAR data 1Hz and the wave height data 2Hz must be transferred to shore in real time or close to real time?	-Every six months the raw data should be downloaded, analyzed and provided as a minimum. -No, the Lidar 1Hz data and wave height 2Hz data do not have to be transferred in real time or close to real time. Only the 10 min data needs to be transferred close to real time.
24.	ANNEX 5 - Section III SCOPE OF WORK	Spare system Could you please clarify if the spare system have to be a fully equipped and validated buoy or if it can it be a set of important parts?	The spare system has to be a fully equipped and validated system, equal (same design, using same measurement equipment, same firmware, same data processing chain) to the 2 measuring systems.
25.	ANNEX 5 - Section III SCOPE OF WORK	Relocation - Exchange of buoys In case the campaign is extended, would you be willing to exchange the buoys in place for other prevalidated buoys? (maintenance of the LiDAR after 2 years of offshore measurement campaign)	Yes buoys may be exchanged for other buoys (provided the replacement is of the same design and uses the same measurement equipment, same firmware, same data processing chain). Pre-deployment validation reports must be provided for any replacement buoys prior to deployment.
26.	Annex 5 Section III – Scope of work - 2.5	Based on the specifications in section 2.5 it is noted that the water temperature it is only referred for the intercomparison between the two buoys and not as a parameter for the validation with a nearby reference station (not the other floating lidar system). Please can you confirm or clarify if this interpretation is correct?	This interpretation is correct. For all parameters an intercomparison needs to be performed between both buoys. For temperature it is not specifically required to compare against a reference station or model. Though, where possible, all measurements should be compared against a reference station or model.
27.	Annex 5 Section III – Scope of work - 2.2.1	It is stated that “The two floating Lidar systems should be deployed close together to allow for gap filling if required and achieve the required redundancy. For validation of the wave and current models, it will be preferable to measure at both a deep and shallower water location (on a sand bank).” . Please note that the depth differences do not allow for the gap filling of the wave and current measurements. Can you clarify or amend this specification considering our comment?	Gap filling is intended primarily for the wind measurements. It is noted and agreed that depth differences may not allow for gap filling of the wave and current measurements.

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28.	Annex 5 Section III – Scope of work - 2.5	With reference to the request " the quality flagged system to be used", it is understood that this is referring to the quality flag system applied for the measurements. Can you clarify or describe what do you expect from this specification?	Yes, the quality flag system is applied for the measurements. As a minimum the quality flagging system should identify data filtered from the 10 min dataset due to any automated filtering (e.g. out of range values, duplicates, low packet count, etc.), missing data or manually filtered.
29.	Annex 5 Section III – Scope of work - 2.5	With reference to "the data availability per main parameter for the whole measurement campaign up to the specific month and the specific month itself". Please note that this may lead to inconsistencies in case the sets of the previous months are not yet final. Should it be assumed that the sets of the previous months are already final?	It is noted and agreed that there may be inconsistencies if the previous months are not finalized. It is not required to update monthly reports if availability is updated in the 12 or 24 month report.
30.	Wave sample	Can the wave sample be 2048 points at 2 Hz (duration 17 minutes) every 30 minutes?	Yes, that is acceptable.
31.	Sampling HZ	Would 1 Hz wave sampling be acceptable (instead of 2 Hz)?	No, that is not acceptable.
32.	Spare buoys	Given the current high demand in the market for LiDAR buoys in the OWF sector, and the level of redundancy proposed by RVO, (i.e. 2 buoys at each site) will RVO accept slightly later delivery of whole spare units quayside without monthly penalty if no data loss is incurred during that interim period and spares were not required?	No, that is not acceptable.
33.	Change of planning	Would RVO consider a proposal or alternative to deploy buoys at the same time for both Lot1 and Lot2?	The buoys for lot 2 are accepted to be deployed earlier if the latest deployment times are met for both lot 1 and lot 2. This is in line with 3.3 Requirements relating to the starting date (Tender Document). At '5.2.4 Preferences with respect to the time schedule and starting date' the text ' (Tender Document) The preferred starting date for Lot 2 is as soon as possible in Q2 2022, but ultimately 31st of August 2022 at the latest' should now read 'The preferred starting date for Lot 2 is as soon as possible in 2022, but ultimately 31st of August 2022 at the latest'.

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34.	Starting time	Could you explain why RVO have chosen to start the campaigns at two different times?	This has to do with project management and hardware (availability of systems) capacity at Contractor and Contracting Authority .
35.	Annex 5, Section IV 26.2	Could you change the "policies and proof of payment of the premium" to "certificates of currency." Due to confidentially reasons we can't share our insurance policies. If you do not agree, could you motivate why?	Insurance certificates are also acceptable (Please see the answer to question 10).
36.	Annex 5, Section IV 21.7	"Please insert new clause; "Neither party will be liable to the other for loss of actual or anticipated revenue or profits, increased capital or financing costs, or increased overheads or operational costs or any other indirect, special, consequential, or punitive damages or loss arising from or in connection with the Services or this Contract and howsoever arising under any indemnity, statue, contract, tort (including negligence), or otherwise at law" Comment: [Our company] accepts that it has professional liability for the services it delivers and agrees to accept liability for losses that are a direct consequence of our failure to meet or perform its services. However, consequential losses are generally unable to be properly identified and managed at the commencement of the contract so appropriate mitigation strategies cannot be adopted. This leaves the Contractor exposed far beyond what could be considered reasonable in light of the fee and scope"	Not agreed. The Contracting Authority applies the basic principle that the party that imputably fails to fulfill its (contractual) obligations, must also be able to be held liable for the damage that has arisen. The Contractor is the party that delivers the core performance: the execution of an assignment against payment. The Client has a minimal, if not a negligible, role in this. The risk is a business risk. In addition, article 21 ARVODI-2018 contains limitations of liability that already limit the risk for the Contractor.
37.	Annex 5 - Section II Remuneration 3.1.5.2	The Mala in place seems disproportionate . If a LiDAR stopped working and the buoy was replaced in a few weeks, the data return might be 95% and 40%, calculating payment of 30,400, which is less than the working buoy and spare. Can the Malus of each buoy be limited to the revenue associated with that buoy? If not, please motivate why.	Contracting Authority considers the mala proportionate from a cost/benefit point of view to undertake necessary actions a) to timely plan maintenance and b) in case of unforeseen circumstances.
38.	Annex 5 - Section II Remuneration 3.1.5.2	On the proposed scheme for a monthly fee of €80,000, we calculate that data return of 95% and 0% (for example one buoy wiped out in vessel collision) would achieve a negative payment for the month of 8000. Would the negative value carry over to future revenue or is the monthly fee capped at zero?	The negative value will carry over to the next month, only the total mala are capped.
39.	Annex 5 - Section II Remuneration 3.1.5.2	"To obtain the wind resource assessment data at effectively one site, the Contracting Authority has the expense of 2 buoys operational and 1 spare. The way the Mala on availability is presented, poor performance on one buoy can eliminate the payment on the other buoy operating perfectly and	Please see the answers to question 37 and 38.

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		the spare. Can the Malus of each buoy be limited to the revenue associated with that buoy?	
40.	Annex 5 - Section II Remuneration 3.1.7.	Please confirm there an error in the example calculation, we think you have added the Malus 1280 instead of subtracting, correct amount is 76,480	Please see the answer to question 12. The malus is 640 Euro. The total payment sums up to $98\% * 32,000 + 83\% * 32,000 + 3,840 - 640 + 16,000 = 77,120$ Euro The remuneration annex has been updated accordingly and has been uploaded to TenderNed. An additional, second example calculation of the mala / bonus is provided in the "Example Monthly Data Availability Calculation with monthly fee calculation" spreadsheet.
41.	Annex 5 - Section II Remuneration 3.1.1	Instruments such as LiDARs and Current Profilers always lose some data or generate incorrect data to be flagged bad due to the environmental conditions (e.g. rain or fog). Can the payment weighting be 100% pay for QC'd data availability above 90%, and pro-rated to zero for zero below? Without this flat line buffer, the payment scheme encourages passing of data of doubtful quality, and doesn't give the contractor full pay when everything was working to the best of its capabilities.	Not agreed
42.	Annex 5 - Section II Remuneration 3.1.5.4	"Does the Mala limit of 20% of contract value include all sources of Mala listed 3.1.5? Although not listed as Mala, the contractor is also penalised according to the monthly fee is pro-rated on post QC data availability. Does this penalty also count as Mala in determining the Mala 20% limit? "	Yes, the availability figures accounting for the monthly fee also count to the total mala limit, which is reduced to 15% (see answer on question 11).
43.	Annex 5 - Section II Remuneration Table 1	Is the Unit rate to relocate for one LiDAR Buoy or one Lot consisting of 2 buoys.	The unit rate is for relocation of one system per Lot.
44.	Annex 5 Section II - Remuneration 3 - Pricing Table 1	Since the Lots can be awarded independently or it is possible to bid to one or to two Lots, is it possible to present a separate table for the pricing for each Lot?	Yes, it is required to provide a separate annex 4 for each lot.
45.	Annex 5 Section III – Scope of work - 2.7.3.2	The review of draft and final documents and data delivered is giving a period of 8 weeks including the review time by Contracting Authority. The specification of "5 working days for each revision thereafter" is not limited. To be reasonable, the number of revisions after the first shall be limited.	Contracting Authority aims to have the complete set of reviewed items ready in the first review. It is up to the Contractor to reduce the number of revisions

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		Please, will be this amended in the scope? the criteria for acceptance of the deliverables are already agreed prior starting the campaign so it is difficult to see why the deliverables would not be accepted after addressing any comment from the first review.	required. Contracting Authority aims and will steer for an efficient and effective process.
46.	Annex 5 Section III – Scope of work	The scope of work makes reference to "supporting experts" (3.1.2) regarding the latest day for approval of obtained and/or corrected data. The supporting experts, same as the Client Representatives (3.2.2), shall not be a Contractor competitor or be working during the duration of the Service contract with a Contractor's competitor. It is assumed that the support experts accept the scope and proposal agreed between the Contracting Authority and the Contractor meaning that any request or specification beyond the ones agreed will be treated as a variation order. The number of support experts should be reasonable. Can the number of support experts be indicated?	For avoiding conflicts of interest all experts have to sign a non-disclosure agreement. The supporting experts are contracted by the Contracting Authority and are bound to the contract between the Contracting Authority and the Contractor. It is up to Contracting Authority to define an efficient and effective set of support experts.
47.	Annex 5 Section III – Scope of work - Table 2, 2.7.1	Can the directional frequency spectrum in table 2 be provided not in real time?	Yes, that is acceptable.