



Ministerie van Infrastructuur
en Waterstaat

Information Memorandum no. 2
associated with
Public European Tender
Advice and specific expertise Aviation (2)
Reference number 331485
22 April 2022

This Memorandum of Information is an integral part of the Descriptive Document. The questions included in this Memorandum of Information are taken verbatim as they were asked.

The Memorandum of Information has been/will be made available at www.tenderned.nl



Deadline for submission of Tenders, no later than: 3 May 2022, 12.00 a.m. (GTM, local The Hague time)

The following Annexes are attached to this Information Notice No. 2:

- Appendix 1 Mandatory completion forms - version 1.1 dated April 22, 2022 (the 'old' version 1.0 is hereby superseded!)

Regarding the questions asked

Nr.	Pagina / Document	Paragraaf	Vraag	Antwoord
101.	Annex 1 – p. 18	5.2.1.	Multiple partial references are permitted for Lots 1 and 5 however certain other Lots also involve diverse aspects, including Lot 3 (noise vs emissions) and Lot 6 (policy vs project design; local vs national level). Might multiple partial references also be permitted for these Lots?	No See also the answer to questions 30 and 34 from the Note of Information No. 1.
102.	37, TenderNe d	Descriptive document, section 5.3	On Tendered, some of the requirements state under Requirements: evidence: self-declaration. When answering, there is an opportunity to tick "yes" and to upload a document. Question: Is it necessary to add/upload a separate "Eigen Verklaring"? This seems to be a duplication with the UEA where it must already be filled out whether these requirements are met. The other option is to add the UEA to each lot, this seems undesirable to us.	In addition to the UEA, the Tenderer must complete and attach to the Tender Annex 1 Mandatory Completion Forms. The self-declaration is part of Annex 1 Mandatory completion forms - see also question 31 from the Memorandum of Information No. 1 and par. 4.5.6 which you must attach to the Tender.



			In summary, there is no need to document be added there, or do you want us to attach the UEA as a piece of evidence each time?	
103.	NvI-1, answer to question 62	References	You indicate in your response that cyber security is part of the required competencies in Lot 1. We can provide such a reference, but due to the confidentiality (classification) of the contract we are only allowed to do so anonymously. We can of course facilitate contact between IenW and our client to verify the reference. Could you please indicate whether such a reference is permitted?	Contracting Authority agrees with your proposal for Lot 1 to deliver the reference anonymously in case of confidentiality (classification) of the contract (in the field of cyber security).
104.	NvI-1, answer to question 30/54	References	You indicate in the Information Memorandum that one reference per core competency is allowed for lots 2 through 8. According to the descriptive document, this reference must be 75% invoiced. For one of the lots we would like to include a reference for a contract that is almost completely finished. This contract has not yet been invoiced. Can you indicate how we can use such a reference, and if not, why not?	According to Appendix 1 Required Completion Forms, the reference job must be 75% invoiced. The order does not have to have been completed yet. A completed order that is not yet complete or at least 75% invoiced does not meet this requirement.
105.	NvI-1, answer to question 38	Invoicing by Combinants	We ask you to reconsider your position on invoicing by combinants. By making it possible for consortia to invoice their part separately, the administrative burden for parties is kept to a minimum.	Contracting authority is assuming invoicing by the contractor/principal contractor for the time being, but will take your suggestion into consideration in discussions with new framework contractors.
106.	NvI 1, answer to	Programs of	Social Return, requirement SR-1: In the market it is customary for Social Return	In order to meet this requirement, the Contractor must clearly show the gross and net amounts



	question 80/81/98	Requirements, Social Return	to be reported separately. We assume that this is also your intention in this contract. However, requirement SR-1 contains the sentence: "(as already factored into the invoices sent)". Can you explain what you mean by this?	invoiced. Of the gross amount, 2.5% must be used for SROI activities as listed in the tender documents. The following is included as an indication in a report: - Gross amount: 100 - Net amount: 121 - SROI contribution: 2.5 2.5 has been spent on the following activities; << to be completed by the Contractor >>.
107.	NvI 1, answer to question 80/81/98	Programs of Requirements, Social Return	Social Return, requirement SR-6: It is our experience that in the market Social Return amount is always calculated excluding VAT. In order to be in line with the market, we would like to request you to modify requirement SR-6 to exclude VAT. Can you agree to this? If not, can you explain why you have chosen for a Social Return amount including VAT?	See the answer to question 106.
108.	NvI 1, response to question 22	Article 2.1 of the service agreement.	Article 2.1 of the Service Agreement contains a unilateral renewal option for the Client. This article does not provide an option for the Contractor not to agree to the extension. In our opinion, the Contractor should have that option (e.g. for reasons of changes in personnel or business operations, financial situation, etc). Can you therefore agree to the addition to this article of the Contractor's option of not agreeing to the extension, subject of course to the observance of a	Contracting authority does not agree.



			reasonable period of time in the light of the need for the Client to contract with another party?	
109.	NvI, Answer to question 30	Descriptive document p.38	With regard to the core competencies Lot 8 Environmental Management, at 1 it is stated: Tenderer has demonstrable knowledge and experience in managing or process directing large, complex and politically sensitive projects in the field of environmental management, stakeholder management and communication in the aviation sector. To what extent are tenders considered that do meet the requested competencies, but not specifically in the aviation sector?	Requested assignments are specifically within the aviation sector. A reference assignment that was not performed within the requested industry does not qualify.
110.	NvI 1, response to question 88	Article 21.3 ARVODI	In our profession, it is customary to limit liability whereby the maximum liability is in reasonable proportion to the fee involved in the engagement. We refer in this context to Rule 3.9 D of the Guide to Proportionality issued by the Ministry of Economic Affairs and Climate Change (revised) in June 2020. This Regulation 3.9 D states that the Contractor's liability must be limited, taking into account the limitation of liability that is customary in the relevant industry. The limitation of liability included in Article 21.3 of the ARVODI is not in line with this, because it concerns a limitation of liability based on a graduated scale determined in advance,	Contracting authority does not agree to this. There is no deviation from the liability provisions of the ARVODI in this case.



			as a result of which the maximum liability depending on the value of the order is many times higher than the limitation of liability that is customary in our sector. With due observance of the foregoing, we propose to include the following provision, which is in line with the market, in the contract. Can you agree to this? "Article 21.3 ARVODI is replaced by the following provision. Contractor shall perform its work to the best of its ability, exercising the care that may be expected of it. If an error is made because the Principal has provided the Contractor with inaccurate or incomplete information, the Contractor shall not be liable for any damage resulting from this. The total liability of the Contractor to the Client for any errors that would have been avoided if the Contractor had acted with due care shall be limited to a maximum of three times the amount of the fee paid and/or still owed by the Client for the specific work carried out under the assignment from which the errors arose. If the assignment has a duration of more than twelve months, the total liability under the assignment will be limited to a maximum of three times the amount of the fee paid and/or still owed by the client to the accountant over the last twelve months for the specific work carried out under the assignment from which the errors arose. Related errors are thereby	
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			regarded as one error. The limitation of liability will not apply in the event of intent or deliberate recklessness on the part of the contractor and/or if mandatory national or international legislation or professional rules and regulations do not permit such a limitation. The contractor is not liable for consequential, indirect, commercial or punitive damages and/or loss of profits". If you cannot agree to this, could you please explain why?	
111.	NvI 1, answer to question 20/51/90	Article 24 ARVODI	Article 24 of the ARVODI is not enforceable due to the specific nature of the services in question. This article entails that the client acquires the (intellectual) property right to the results of the assignment and that the contractor waives his personality rights in this respect (including the right to take action against any editing/adaptation of the product). We cannot transfer the intellectual property right. If the intellectual property rights of the products developed by the accountant or consultant were to be transferred to the client, this would imply that the client has the right to edit/adapt and exploit the independent advisory reports of the contractor. An independent advisory report is thus worth nothing because it could be changed. Given the nature of an independent advisory report, it cannot be that the client is entitled to adapt it and	Naturally, the Contracting Authority will not make changes to a report or change the content of the report. The contract/general terms and conditions do not need to be amended for this. Article 24 (6) of the ARVODI does not relate to the Contractor's right to oppose "any deformation, mutilation or other impairment of the work that might prejudice the honour or name of the author or his value in this capacity". This also applies to changing the content (without prior consent) of a research or consultancy report. The paragraph of the article also does not have the effect of relinquishing the Client's right to oppose the publication of the work under a name other than his own.



		(further) distribute it freely. Note: We bear the technical responsibility for our statements and other reports from our discipline. We obviously cannot bear this responsibility if we transfer the rights to our statements. A right of use of the client on our report should be sufficient at this point, with reference to the last 2 sentences of the Guide Proportionality issued in June 2020 by the Ministry of Economic Affairs and Climate (revised). Therefore, we ask you to reconsider your answer to question 20 of NvI 1 and to include the following provision in the contract, in derogation of article 24 ARVODI-2018. "(Intellectual) property rights already owned (or licensed to one of them) by the Client or the Contractor prior to the date of this Agreement shall remain vested in the original possessor (or licensor, as the case may be). The Contracted Party will reserve all rights of (intellectual) property with regard to the products of the mind which it uses or has used and/or develops and/or has developed as part of the execution of the assignment, and with regard to which it holds the copyrights or other rights of (intellectual) property or can assert these rights. The Client has the right to use the results of the assignment for its own internal use, insofar as this is	
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			appropriate to the purpose of the assignment."	
112.	NvI 1, answer to question 21/22/23 /24	Missing provisions	Can you agree to the additional inclusion of the following provisions in the agreement to be concluded? These provisions are common in our industry. It is important that these provisions are agreed upon, as it enables the contractor to perform the work in a timely manner and properly, while respecting the rules of conduct and profession. Indemnification Client shall indemnify Contractor at all times against all third party claims arising from or related to work performed by us in relation to the agreement and/or the performance, except if and to the extent that there is intent or deliberate recklessness on the part of Contractor. Confidentiality Article 13 of the ARVODI exclusively regulates the Contractor's duty of confidentiality. It is reasonable that the Principal is also subject to a duty of confidentiality, unless of course the law (including the Government Information (Public Access) Act) or a court decision obliges the Principal to disclose. Taking the above into account, can you agree to the inclusion of the following provision in the agreement to be concluded? "In addition to Article 13 of the ARVODI, the following shall apply. The Client shall	Contracting Officer does not agree to include these additional provisions in the Framework Agreement to be concluded.



		have a duty of confidentiality in respect of the content of reports, recommendations or any other statements made by the Contractor, written or otherwise, without prejudice to the Client's right to reproduce the aforementioned documents for its own internal use. An exception to the obligation of both parties to observe secrecy will be made if any statutory provision (including the Government Information (Public Access) Act), professional rule or court order compels the party in question to disclose." IT service providers. The (draft) agreement contains a duty of confidentiality with respect to information we receive in the context of the assignment. Based on the laws and (professional) regulations applicable to our organization, we need your explicit permission to share the information concerned with IT (cloud) service providers. For (the execution of) its services and so-called "back office" the contractor uses cloud applications, email providers and other supporting IT (cloud) service providers, including for our document management systems, where files and (client) information are stored in the cloud. For the very limited cases that these IT (cloud) service providers, in connection with necessary technical support, have limited access to the	
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		confidential (client) information, strict confidentiality agreements apply. For the record, we emphasize that the support of our internal business processes by the IT (cloud) service providers concerned is necessary for the performance of our services, whereby we accept responsibility for the use of these IT (cloud) service providers and the (maintenance of the) confidentiality of the (customer) information. Based on the foregoing, we request that you include the following text proposal in the agreement to be concluded. Without your express consent, we cannot perform the work. Can you agree to the inclusion of the following provision in the agreement? "For the purpose of (the execution of) the Assignment, the Principal and the Contractor may communicate with each other by electronic means and/or make use of electronic storage (including cloud applications), whereby the Contractor is permitted to provide confidential information to IT (cloud) service providers, on a confidential basis and solely for the support of the Contractor's business operations. Contractor remains responsible to Client for the confidentiality of the confidential information by the relevant IT (cloud) service providers." Collection of electronic data	
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		1. Client gives Contractor permission, in the context of the Agreement and/or performance, to access and process all data present on the electronic media to be provided by Client. Client also gives Octrooibureau Novopatent permission to make copies of the data to the extent necessary in the context of the investigation to be conducted by Octrooibureau Novopatent. Client warrants that Contractor, by executing the agreement / performance, does not violate the General Data Protection Regulation, or any other similar legislation in any other jurisdiction. 2. Unless otherwise agreed during the performance of the contract, Contractor shall destroy data collected by it after seven years. 3. The parties explicitly agree that the Engaged Firm will inform the Client immediately if, for the execution of the Agreement and/or the performance, it appears necessary to engage a third party to assist the Engaged Firm in collecting electronic data. The Contractor will then consult with the Client about the confidentiality aspects; the Contractor will request the Client to agree in advance in writing to the working method chosen by the Contractor. Data and documents made available The Client will make all information and documents which the Contractor requires	
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			for the correct and timely execution of the granted order available to the Contractor in time and in the form and manner desired by the Contractor. The Client warrants the accuracy, completeness and reliability of the data and documents made available to Octrooibureau Novopatent, even if they originate with or from third parties. Professional rules Octrooibureau Novopatent shall carry out its assignment with due observance of the applicable laws and regulations, including the applicable rules of professional conduct. The Contractor shall never be obliged to act or refrain from acting in a manner that is contrary to or incompatible with the aforementioned laws and regulations.	
113.	p. 17	Question #33	In your answer to question 33 you indicate that the references should cover all areas of interest. Some of these focus areas are so specific that it is difficult for us to imagine that there are enough parties who, either in collaboration or not, could provide suitable references for all the focus areas. Are you prepared to adjust the required core competency for Lot 1 accordingly?	No. See the answer to question 30 and 120. Herein it is indicated that it is permitted, in order to meet the core competency for lot 1, to submit multiple (partial) references.
114.	P. 18	Question #38	In your answer to question 38, you indicate that you will enter into the framework agreement under "this	The condition that invoicing is done by penciller/principal contractor.



			condition". What condition are you referring to here?	See also the answer to question 105.
115.	P. 18	Question #38	If enrolled as a Combination, are all Combinants "Contractor" or is only the Treasurer of the Combination the "Contractor" with whom further agreements can be entered into?	The Combination with which is registered is the Contractor. If the Combination has registered with the Chamber of Commerce as a specific entity/legal form, then this Combination is the "Contractor", if not then the Treasurer of the Combination is the "Contractor". Contracting Authority realizes that this will entail the necessary administrative arrangements for any Combinations, but expects that the benefits (such as the need for mutual consultation and the ability to keep the entire Framework Agreement transparent for Contracting Authority) will prevail over the administrative arrangements.
116.	-	-	The Memorandum of Information has been provided in both Dutch and English. Does the Client allow references and/or answers to the award criteria to be submitted in English?	No. See the Descriptive Document on page 31 of 47 under Communication. See also PO-8 in the Program of Requirements (Appendix 3a through h).
117.	7	Question #16	Is it true that for all plots 'supporting visual material (if included separately) does not count towards the maximum number of A4?	Yes
118.	17	Question #30	You indicate that 1 reference per core competency may be submitted. Under section 5.3 of Appendix 1 'Mandatory Completion Forms', the core competency(s) are displayed for each plot. The representation for Lot 5 is as follows: Tenderer has demonstrable	Candidate probably means Section 5.2 of Appendix 1.



			knowledge of and experience with issues of a more economic, political-administrative/governance nature, specifically within aviation, as well as issues in the field of design and management and use of airspace and environmental aspects. Nb. Each (sub)reference must meet the minimum requirements. - Is it correct that Lot 5 refers to multiple core competencies? If so, is it correct that 1 reference may be submitted per core competency (which de facto means that more references can be submitted for Lot 5)? - Can you clarify which different core competency(s) you specifically distinguish for Lot 5 - Can you indicate which key competencies you would like to have demonstrated (as a minimum) by references for Lot 5?	No. <u>Multiple (partial) references</u> may be offered to meet the core competency of Lot 5 to address the issues within this core competency. The core competency for Lot 5 requires demonstrable knowledge and experience that addresses the following issues of: - more economic, political-administrative/governance nature, specifically within aviation; - as well as in the field of design, management and use of airspace and environmental aspects.
119.	30	Question #17	From the description of the core competencies for each lot, Tenderers could conclude that several core competencies are requested for a lot. For example, Lot 2 asks for 'knowledge and experience of aviation economic analyses and/or international accessibility analyses'. The 'and/or' here potentially creates confusion. Must both focus areas be demonstrated with a reference assignment or is a reference assignment that addresses one of the focus areas	And/or in the description of core competency <u>lot 2</u> means that the Candidate can submit a reference order that complies with at least one of the focus areas. The reference order may also satisfy both areas of focus. See also the answer to question 131.



			sufficient?	
120.	30	Question #17	For lot 6 the impression may arise that experience in the various political-administrative environments (local, regional and national) must be demonstrated by means of several reference projects. Because the titles of the lots mention 'core competency(s)', we would like to ask you to indicate for each lot which core competencies should be demonstrated?	For Lot 6, the Candidate must demonstrate knowledge and experience with one reference assignment. This also applies to lots 2, 3, 4, 6, 7 and 8. For lots 1 and 5, several (partial) references may be submitted in order to meet the stipulated core competency. Appendix 1 Mandatory Completion Forms has been updated and clarified with respect to Lot 1 and 5. The form is attached to this Note.
121.		Question #23	Tenderer intends to submit a tender in which it relies in part on the competence of a foreign subcontractor. When submitting a winning tender, verification documents must be submitted including a Statement of Conduct in Tendering and a Statement of Payment History. With regard to the GVA, the Descriptive Document includes a provision for foreign bidders. Can you confirm that a comparable statement from the country of origin or a statement made under oath before a civil-law notary can also be invoked for the Statement of Payment History? If not, can you explain how a foreign party can meet this requirement?	Yes, this is agreed.
122.	9	Question #18	In your answer to this question you indicate that you maintain article 7.3. The consequence of this would be that, in the unlikely event of an attributable shortcoming, third-party claims would be	Contracting authority maintains the answer to question 18.



			more eligible for compensation than damage suffered by the client. This is because the obligation to pay claims of third parties is regulated through an indemnity and damage of the Principal is regulated through the generic liability law in the Civil Code. Contractor cannot imagine that this is the intention of this article. Or do you mean to refer to claims which the third parties in question could also recover directly from the Contractor, but choose to turn to the Principal?	
123.	9	Question #19	You indicate in your answer to this question that you cannot invalidate this article on the basis of personal interests. In asking the question, Tenderer is not so much concerned with its personal interest, but much more with the fact that it is of the opinion that the Contractor is not to be regarded as a processor within the meaning of the AVG with regard to the services in question. Can you confirm that it will be determined for each order whether or not the Contractor will be regarded as a processor and, if so, a processor's agreement will be concluded between the parties?	Yes, this can be confirmed by Contracting Authority.
124.	11	Question #20	If the intellectual property does not remain with the contractor, then the name of the contractor cannot be attached to the advice concerned either. After all, the intellectual property right	Contracting authority maintains the answer to question 20. See also the answer to question 111 The author's name will not be changed.



			has then been transferred to the contractor. If this is not the intention, then we kindly ask you to reconsider your earlier answer.	
125.	13	Question #20	Reports and advice are always drawn up in response to a specific request from the client. If the subject of that report or advice possibly concerns third parties, it is inherent in this that the third parties in question will not always agree with the report or advice. Since the contractor has exposure to these third parties through its report or recommendation, it is important that it is clear for whose risk any claims from these third parties will fall. It is undesirable to leave this risk with the contractor because it must always be able to arrive at its reports and recommendations independently. In view of the above, are you prepared to reconsider your answer?	No
126.	42	Question #100	You indicate that orders should not be older than 2019. In the last two years, as a result of the Corona epidemic, the aviation sector has been hit hard and relatively few assignments have been started and/or completed. We would like to ask that this circumstance be taken into account and that you reconsider whether to extend the maximum period in which the reference must be completed to 5 years?	Contracting Authority shall maintain the requirements as set forth in Appendix 1 Mandatory Completion Forms.



127.	36	5.1	Descriptive document Is it permissible to provide the UEA with a digital signature?	Yes
128.	10-11	1.2 in Annex 3 ^e (Plot 5)	To what extent does I&W see the relationship between, and the roles and functions of, airports/pilots as an already established starting point, versus that these relationships, roles and functions are still part of important (strategic) discussions and decision making, which should also have a place within the plan of action in this case study? (Context: In the case study, within the Main Component Cooperation, there is a request for 'attention to the vision of the function of the airports', and the search for a 'balance between a possible system approach and the regional incorporation of airports', but on the other hand, there is of course also a lot already decided/established about the roles and functions in the Aviation Memorandum 2020-2050, as also outlined in the Introduction on p.10 of Appendix 3e)	This is a new question that is not linked to any question in the Memorandum of Information No. 1 and therefore will not be answered. See also the answer to question 29 from the Note on Intelligence No. 1.
129.	11-12 – Question #74	1.2 in Annex 3 ^e (Plot 5)	The two main parts of the case, Cooperation and Route Change, while related, can also be approached more separately (with route changes partly resulting from roles, functions and cooperation between airports). In this case study, I&W is really looking for one fully interwoven plan of action for the	Contracting Authority requires Tenderer to respond to the two main components with different elaboration of plans: 1) a plan that addresses strengthening cooperation on a more strategic level (see also the answer to question #73) 2) a plan for a route change with a route, fictitious



			combination of Cooperation and Route Change, or is a pragmatic/layered approach where these are two trajectories (which do touch each other and run partly simultaneously in the case study) also conceivable?	or otherwise. The route is not the most important here - it is about the process of how things are done, how the interests are considered, etc.
130.	12	1.2 in Annex 3 ^e (Plot 5)	The following applies to the Action Plan: "You should elaborate on the above in no more than 6 A4. There is also room for the use of supporting visual material such as tables or (process) pictures etc.". Is it correct that these tables and (process) pictures may be added on top of the 6 A4 as appendices, and do limits or guidelines apply to this? (e.g. for the amount of text in the tables or (process) pictures in the attachment).	See the answer to question 16, 39, 67, 72 about the number of pages A4 incl. tables and (process) pictures.
131.	38	5.3 (Descriptive Document)	Descriptive Document 5.3 Eligibility Requirements <u>Supplementary to Memorandum of Information 1 - question #30</u> <i>You indicate that one reference per core competency per lot may be submitted. From the description of the core competences per tender (section 5.2.1 Appendix 1 'Mandatory completion forms') it can be concluded that several core competences are requested for a tender</i> <u>Lot 2</u> "Tenderer has demonstrable knowledge of	A reference that has at least 1 of the 2 aspects in



			and experience with aviation economic analysis and/or international accessibility analysis". <i>Can you confirm that a reference that covers either of these aspects is sufficient?</i> <u>Lot 5</u> "Tenderer has demonstrable knowledge of and experience with issues of a more economic, political-administrative/governance nature, specifically within aviation, as well as issues in the field of design of management and use of airspace and environmental aspects." <i>Is our assumption correct that several core competencies are described here, and can you indicate what distinction in core competencies should be made (and with how many reference assignments may be submitted)?</i>	it satisfies, hence 'or'. See the answer to question 118 and 120.
132.	6 Question #47	7.3 (Annex 4)	Annex 4 Draft Framework Agreement 7. Other Conditions <u>Supplementary to Memorandum of Information 1 - question #47</u> <i>The broad nature of the indemnity clause will include losses that are not the natural result of our failures and will cause us problems with insurance coverage. It is unreasonable for you to require us to indemnify them for all losses unrelated to the negligent performance of our</i>	Contracting Authority does not agree with this revised modification of earlier proposal at question 47.



			services. <i>We ask that you reconsider the proposed changes to Article 7.3: "This indemnification shall apply to all mitigated third party claims for damages arising out of the contractor's negligent performance of the services."</i> <i>These changes ensure that the liabilities we agree to are insurable risks.</i>	
133.	2	3.1, 3.2 (Annex 5)	Appendix 5 ARVODI Article 3 Guarantees of the Contractor <u>Supplementary to Memorandum of Information 1 - question #48</u> <i>The standard of care to which professional consulting firms are held is the exercise of reasonable skill and care, which is market-based. Advisers' insurance does not usually cover professional diligence obligations and these items will be a risk in any advisers' insurance. We can agree to comply with the Agreement in accordance with Article 3.1 as long as the amendment below is made to Article 3.2. We therefore request that you reconsider our request and include the following wording in Article 3.2: "Notwithstanding any other provision of this Agreement, the Contractor shall guarantee that the Services to be performed by them or on their behalf will</i>	Contracting authority does not agree with the proposed adjustment.



			<i>be performed in accordance with reasonable skill and care and in a professional manner.</i>	
134.	10-11	24.1-24.3, 24.9 (Annex 5)	Annex 5 ARVODI Article 24 Intellectual property rights <u>Supplementary to Memorandum of Information 1 - question #51</u> a. <i>There is no definition of "pre-existing intellectual property rights" in the ARVODI and given Article 24.5, we cannot risk that this is not clearly stated in the contract. We request that you confirm that "pre-existing intellectual property rights" means both the intellectual property that we possessed prior to entering into the contract and the intellectual property that we create independent of the contract.</i> b. <i>Pre-existing intellectual property is critical to our ability to provide services and it is critical that there be clarity about, and restrictions on, its future use. We request that you confirm that any license we grant you with respect to our existing intellectual property rights is for the sole</i>	a. The Contracting Authority does not consider the question relevant, because Article 24, paragraphs 1 and 2 of the Arvodi only relate to the intellectual property rights that rest on the "results" of the Services to be provided. This already implies that pre-existing IP rights do not fall within the scope of these paragraphs. After all, these rights cannot be regarded as the 'result' of the Service to be provided. In the event of a conflict, the Contractor will have to prove that he owns the IP Rights. Art. 24, paragraph 5, Arvodi will then apply. b. Sometimes the Contractor uses existing copyrights for the creation of the results, which usually belong to third parties. These IP rights have therefore not arisen in the context of the results to be delivered. In most cases, transfer of the said IP rights is not an issue. It will then be sufficient to grant the Contracting Authority a non-exclusive right of use that is valid for an indefinite period of time. The intention is that the Contracting Authority is not restricted in



			<i>purpose of completing the project and its further use under a Further Agreement.</i>	the use of the results of the contract (Article 24, paragraph 3, Arvodi). After all, the Contracting Authority has paid for this.
135.	12	27.3, 27.4 (Annex 5)	Appendix 5 ARVODI Article 27 Terms and conditions of employment <u>Supplementary to Memorandum of Information 1 - question #53</u> <i>To be clear, we cannot provide copies of our staff's employment contracts as they are not only commercially sensitive but also confidential between company and staff. Can you confirm that this does not apply to our employment contracts?</i>	The answer to question 53 indicates to competent authorities. For the avoidance of doubt, the Candidate is not required to provide the Contracting Authority with copies of the employment contracts of your staff. Contracting Authority will/may not ask for this. Article 27 from the ARVODI 2018 will remain in place.
136.	12	5.2.1 (Annex 1)	Appendix 3f RP and Sub-award criteria Lot 6 1.2 Sub-award criteria <u>Supplementary to Memorandum of Information 1 - question #76</u> <i>In this case study, an air cab route between Amsterdam and Schiphol Airport is envisaged, while the relevant stakeholders mentioned include the municipalities of The Hague, Rotterdam and Delft and the province of South Holland. For the sake of clarity: is our assumption correct that stakeholders such as the municipalities of Amsterdam and Haarlemmermeer and the province of North Holland are meant instead, or can you indicate why precisely these</i>	This is correct. The stakeholders are indeed municipalities of Amsterdam, Haarlemmermeer and the province of North Holland.



			<i>stakeholders are mentioned?</i>	
137.	19	5.2.1 (Annex 1)	Appendix 1 Mandatory Completion Forms 5.2.1 GE2 - References <u>Supplementary to Memorandum of Information 1 - question #100</u> <i>You have indicated that the end date of the reference order should not be more than 3 years ago (03/05/2019). Would you consider extending this deadline to 5 years, since due to the pandemic, fewer assignments have been started/completed in the last few years?</i>	See the answer to question 126.
138.	General	General	Our firm specializes in strategic process guidance and participation. We carry out these process-oriented activities with global knowledge of the content of what is going on in the aviation domain, but are not substantive experts in aviation-related disciplines. The lots in this call for tenders are organized by content themes. In fact, our process-oriented services can add value to each of the lots. However, it is impractical to submit a tender for each lot or to enter into a combination with a substantive expert agency. In theory, strategic process guidance and participation would fit well into the Environmental Management concept. a. Is the interpretation that process guidance and participation is part of	This is a new question that is not linked to any question in the Memorandum of Information No. 1 and therefore will not be answered. See also the answer to question 29 from the Note on Intelligence No. 1.



			environmental management an idea supported by the Ministry? b. Do the Ministry assignments that, in terms of content, fall under lots 1 to 7, but mainly consist of a strategic process component, to the Environmental Management lot? c. Is it possible to refrain from bidding on a further call for tenders after admission to a lot on substantive grounds?	
139.	General	General	It is our experience in the current framework contract that further requests concern both defined consultancy projects and work on a secondment basis. Our firm is a consulting firm and not a secondment firm. a. Is it permitted to refrain from bidding on a request for further clarification based on the nature of the request for clarification (consultancy contract or secondment)? b. If not, what is your proposal to avoid having to comply with the tender requirement by submitting a non-complying tender?	This is a new question that is not linked to any question in the Memorandum of Information No. 1 and therefore will not be answered. See also the answer to question 29 from the Note on Intelligence No. 1.
140.	Question #39	1.2.1	Subject: Drawing from the ESPD Label: ESPD Plot: 1 through 8 The answer to question #39 on signing the ESPD states that "a digital signature by a legal representative is allowed." However, if a digital ESPD is completed	Question #39 of the Note of Inquiry No. 1 does not return a question on the topic: Signing the ESPD. Question #39 addresses the length of cases (essays) submitted. This is a new question that is not linked to any



			through the Negometrix platform, it cannot be digitally signed. Is it mandatory to attach an additional signed version of the digital UAE? If so, how can this be attached?	question in the Intelligence Note No. 1 and therefore will not be answered.
141.	Question #63	3.3.1 (Related to answer 63 in NvI) Plot 1	The description of Lot 1: Safe Aviation states that safety has four focus areas: a) Ensuring national safety, b) Ensuring secure airspace, c) Ensuring flight safety and d) Ensuring national environmental safety. Section 5.2.1 of Appendix 1: Mandatory Completion Forms lists the following focus areas: 1) aviation safety management, 2) bird strike prevention, 3) (cyber) security, and 4) health emergencies. Does a) correspond to 4)? (I.e., Should or should we limit ourselves to health emergencies when giving references?) Does b) correspond to 3)? (I.e., Should or may we limit ourselves to security when giving references?) Does c) correspond to 1)? (I.e., Are we or are we not supposed to limit ourselves to security management when giving references?) Are we or are we not supposed to give a reference in the area of environmental security focus? Are we or are we not supposed to give a reference in the focus area of bird strikes? (I.e.: in that specific area, in addition to a more generic reference in the area of flight safety?)	The areas of focus in the plot description are consistent with the Aviation Memorandum. The core competencies 'aviation safety management' and 'preventing bird strikes' fall under the focus area 'ensuring flight safety' of the plot description. The core competency '(cyber) security' falls under the focus area 'Ensuring secure airspace and airports'. The core competency 'health emergencies' falls under the focus area 'Ensuring national security'. To comply with all the above-mentioned key competences, it is permitted to submit multiple (sub)references - see the answer to question 120. No core competence has been defined under the focus area 'Ensuring environmental security'. A reference related to this area of interest is not part of the assessment on GE2. You are expected to include a reference to the key competence 'prevention of bird strikes'.



142.	Question #63	3.3.1 (In relation to answer 63 in NvI) (page 15) Plots 1 to 6	In the reply to question 63 in the Memorandum of Information, it is stated that the focus area Safeguarding National Security is limited to the theme "public health and health emergencies". It is also stated that this focus area will not be further addressed as award criteria because it concerns specific expertise that is generally not relevant to the majority of the contracts issued under the Aviation Framework Agreement. What area of interest is meant in the answer to that question? Why is a reference requested for competence in the area of health emergencies?	This area of concern was not included in the case study. The answer to question 63 may have inadvertently created the suggestion that the 'health emergencies' topic is not part of the assessment. However, it is the explicit intention that the Candidate includes one (partial) reference in the Tender for this requested core competency as part of the assessment of eligibility requirement GE2. See also the answer to question 141.
143.	Question #15, #33, #34, #100	References (In relation to answer to questions 15, 33, 34, 100 in NvI) (page 42) Plots 1 to 6	In the credentials entry forms, there is a field, "Performed by:". Does that ask for the implementing organizations, the names of employees, or both?	To the executive officer of the applicant's organization.
144.	Question #15, #33, #34, #100	References (In relation to answer to questions 15, 33, 34, 100 in NvI) (Annex 1,	In the context of the Privacy Act: should the description of the assignment in the "candidates" section include the "names of individuals" or is the "company name" sufficient?	Name of the person(s) who performed the assignment.



		page 21)		
		Plots 1 to 6		
145.	Question #97	Appendix 1: Mandatory completion forms (Related to answer 97 in NvI) (page 19) Plots 3 and 8	You are asking for a reference assignment in the aviation sector specifically to meet core competency plot 8 - environment management. May we also submit a reference assignment within large, complex and politically sensitive projects within other public infrastructure such as roads or (light)rail in the area of environmental management, stakeholder management and communication?	No, see also the answer to question 109.
146.	Question #11	In relation to answer 11 in NvI - Plot 7	You ask in the submission for the 3 biggest management risks and the 3 biggest opportunities for the Aviation Directorate in the period 2022-2025. Should these risks relate specifically to the blue for policy domain within the Aviation Directorate or should these risks relate to the Aviation Directorate as a whole (over the 2022-2025 period)?	These risks should be specifically related to the Blue for Policy domain within the Aviation Directorate.
147.	Question #40	6.3 (In relation to answer 40 in NvI) (page 42)	In the credentials entry forms, there is a field, "Performed by:". Does that ask for the implementing organizations, the names of employees, or both?	See the answer to question 143.
148.	Annex 3F pag. 11 Question	1.2	Under section 1.2. (Sub-award criteria) of the appendix, the case questions are addressed. The first case question under 'elaboration' on p. 11 states: 'In this case	Yes. The response to question 44 provides further clarification on what is meant by layout. See also the link in Memorandum of Inquiry No. 1



	#44		study, IenW is considering contracting out a contract to arrive at a consideration for a U-space layout for unmanned aircraft, where tests can also be conducted with innovative aircraft'. Do I understand correctly that the consideration referred to above relates to whether or not a U-space facility should be created?	- Lot 6 Innovation and unmanned aviation.
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