

**Aanbesteding:** Semarang Urban Flood Resilience  
**Aanbestedende Dienst:** Invest International Public Programmes B.V.  
**Referentie:** D2B21RI05

**Toelichting:**

2 modifications to the answers below:

Question 5: Answer to the first part of the question is:

No, we don't intend to request the certificates of conduct.

Question 7 - The answer to question 6 has been given here again by mistake. The answer to question 7 is:

We agree to the following:

"The Contractor indemnifies the Contracting Authority against any claims by any tax authority for any taxes, levies or contributions considered equivalent to taxes or levies, whether originating in the Netherlands or outside the Netherlands, to the maximum amount as stated in cl. 21.3 ARVODI 2018."

Attachments to this MoI:

1. New version of the model contract "Appendix C - Model Contract-2"; amended on the basis of the questions raised and our replies.
2. Confidentiality agreement (NDA)

**Ref.nr.**                      **Onderwerp:**  
1                                      Regarding the ARVODI-2018:

**Vraag:**

Article 27.4 ARVODI-2018 states that the Contractor provides the Contracting Authority access to the agreements on employment conditions. We can hand over these agreements, assuming that the Contracting Authority is aware of the GDPR (AVG) and ensures that the Contractor does not act in conflict with the GDPR by providing this personal data. Are you willing to add this to the last sentence of Article 27.4 ARVODI-2018: 'in compliance with the provisions of the GDPR?'

**Antwoord:**

Yes, we will add a sentence in the contract that Article 27.4 ARVODI 2018 applies to this contract with the following extension: in compliance with the provisions of the GDPR.

**Beantwoord op:**                      19-08-2022

**Label:**                                      Juridisch

**Ref.nr.**                      **Onderwerp:**  
2                                      Regarding the ARVODI-2018:

**Vraag:**

Article 26.2 ARVODI-2018 states that at the request of the Contracting Authority, the Contractor must immediately submit (an authenticated copy of) the policies and proof of payment of the insurance payments or a statement from the insurance company regarding the applicable policies and payment. Due to the confidential nature we rather not provide access to our insurance policies. However, we can provide the Contracting Authority copies of insurance certificates which also contains proof that we meet the insurance requirements of Article 26.2. Is a copy of the insurance certificate sufficient to meet the insurance requirements?

**Antwoord:**

Yes, a copy of the insurance certificate is sufficient to meet the insurance requirements.

**Beantwoord op:** 19-08-2022

**Label:** Juridisch

**Ref.nr.**

3

**Onderwerp:**

Regarding the ARVODI-2018:

**Vraag:**

Article 21 ARVODI-2018 does not contain an expiry of the limitation period for liability, which means the limitation period of article 3:310 of the Dutch Civil Code applies to this situation. Liability can therefore continue for up to 20 years after the damaging event. However, our advice is based on the current circumstances and science and this is constantly evolving. It may occur that our advice no longer fits the new situation. The applicability of the advice depends on changes in the situation that occur in the course of time and we consider it is disproportionate to follow this limitation period. We therefore kindly request that we follow the regulations that are customary within the sector (such as the DNR 2011). We would like you to consider a limitation period of 5 years after the completion of the Services both parties agreed upon. Is it possible to add this provision to Article 21?

**Antwoord:**

Yes, we will add a sentence in the contract that Article 21 ARVODI 2018 applies to this contract with the following extension: with a limitation period of 5 years after the completion of the Services agreed by both parties.

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4

**Onderwerp:**

Regarding the ARVODI-2018:

**Vraag:**

Article 21.3 ARVODI-2018 states that liability is limited to 3.000.000 per event and 5.000.000 per contract year, which is more than three times the total contract sum for this project.

We kindly request you to take into account what is customary in the sector for this contract, in accordance with the advice of the Committee of Tenderexperts (Commissie van Aanbestedingsexperts) number 154, inter alia: consideration 6.2.14).

Are you willing to limit the liability regarding the contract to a maximum of three times the total contract sum, which equals EUR 2.850.000?

**Antwoord:**

No, we will not limit the liability. This is according to the ARVODI drawn up for the performance of services.

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**Label:** Juridisch

**Ref.nr.**

5

**Onderwerp:**

Regarding the ARVODI-2018:

**Vraag:**

Article 15.2 ARVODI-2018 states that certificates of conduct for the Contractor's staff may be required. Because applying for and obtaining these certificates will take some time, we would like to take this into account. Do you intend to request these statements?

In accordance with Article 19 ARVODI-2018, the client may require an on-demand bank guarantee, which will entail additional costs for the Contractor and should therefore be included in the pricing. Do you intend to require an on-demand bank guarantee?

**Antwoord:**

No, we don't intend to require an on-demand bank guarantee.

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**Label:** Juridisch

**Ref.nr.**

6

**Onderwerp:**

Regarding Tender document D2B21RI05

**Vraag:**

Question: in par. 2.2. of the tender invitation is mentioned that the Contractor should deliver a "viable" infrastructure intervention. Please confirm that this obligation concerns a reasonable endeavor. As a consultant

we cannot commit to fit-for-purpose obligations.

**Antwoord:**

No, the word viable has to be considered as equivalent to feasible. The outcome of the D2B study should result in 'tender-ready' infrastructure interventions that are financially, economically, and technically feasible to be implemented in Semarang.

**Beantwoord op:** 19-08-2022

**Label:** Juridisch

**Ref.nr.**

7

**Onderwerp:**

Regarding the Model Contract D2B21RI05

**Vraag:**

Art. 6.3: Contractor indemnifies the Contracting Authority against any civil /tax claim that is not mentioned in the Tender. (this indemnification is also incorporated in the Tender document) The liability in connection with this indemnification appears not to be limited. We suggest that you remove this clause and agree on the following:

”The Contractor indemnifies the Contracting Authority against any claims by any tax authority for any taxes, levies or contributions considered equivalent to taxes or levies, whether originating in the Netherlands or outside the Netherlands, to the extent that the claims have been caused by the Contractor and to the maximum amount as stated in cl. 21.3 ARVODI 2018.”

**Antwoord:**

No, the word viable has to be considered as equivalent to feasible. The outcome of the D2B study should result in 'tender-ready' infrastructure interventions that are financially, economically, and technically feasible to be implemented in Semarang.

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**Onderwerp:**

ToR - Paragraph 22 'ESIA', page 26 Paragraph 4.1 'assumptions', page 28

**Vraag:**

Nevertheless, this project will need to apply an ESIA or AMDAL....'  
'..full ESIA/AMDAL not triggered'..

We would like to point out that there is no such thing as a 'limited' AMDAL. There is only a 'full' AMDAL procedure, which is an elaborate,

formal procedure, requiring a series of environmental studies and surveys, a consultation and the creation of an AMDAL commission.

An AMDAL requires 1) stable and approved DED-designs and 2) a project proponent (Invest International) who will be responsible for requesting an AMDAL procedure and submitting project documents. Changing DED designs during an AMDAL procedure may invoke a repetition of previous AMDAL steps.

The AMDAL can therefore only start late in Phase 2, after DED designs are stable. The (full) AMDAL procedure will take at least 8 (eight months), but often close to a year, which is way beyond the duration of the project.

Q: Given the reasons mentioned above, we suggest the Invest International to consider limiting the AMDAL procedure in this project to the first phase of an AMDAL (the so-called Terms of Reference) This ToR phase will take around 3 months of procedure time.

Note: this will not affect the quality of decision making as the ESIA will already address the key environmental and social concerns, based on international standards.

**Antwoord:**

We agree to limit the AMDAL procedure in this project to the first phase of an AMDAL (ToR). The Consultant is expected to make the preparations for the AMDAL procedure (ToR), identify the party that will finalise the AMDAL procedure (including the involvement of government), indicate what technical and financial resources may be required to finalise the AMDAL, and provide a realistic timeline to finalise the AMDAL procedure. The Consultant is expected to ensure that the AMDAL procedure can be finalised by the responsible party and/or their consultant.

As the aim of the D2B assignment is to deliver a 'tender-ready' project, a clear perspective on finalising the AMDAL needs to be in place. It is understood that the ESIA, based on IFC Performance Standards and the World Bank's ES Safeguards, will encompass a larger scope than what may be required for the AMDAL. In addition, it is expected that the ESIA can be delivered within the maximum 18 months timeframe of this assignment.

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**Label:** Inhoud

**Ref.nr.**

9

**Onderwerp:**

ToR - Paragraph 9. 'Development of supporting hydrologic...' Page 21

**Vraag:**

A DED is requested matching the requirements of the APBN. This is a high

level of detail which requires, among other, solid (land) levels, hydraulic data, geotechnical data (for foundation design), alignments of canals, construction designs of existing infrastructure, etc, etc.

In previous projects we experienced that such data is often not available and /or highly unreliable. Levels of canals in the coastal areas, for instance, are often outdated and unreliable due to land subsidence and retrofits. Water flow data are also often based on secondary and tertiary sources.

However, Invest International expects no surveys in the project.

Q: We propose to allow at least some, basic surveys (levels, topography) at selected sites to meet the DED requirements of the APBN. Does Invest International agree with this?

**Antwoord:**

In principle, much data is available that may be used as input to the DED including from the government. However, to meet the APBN requirements for the DED, there may be a need to conduct limited studies in the field. At the same time, the project will comprise a refined set of measurements, which together provide substantial improvements. It is not the task of the Consultant to consider extended measurements for many kilometers of canals; if this is prioritized at the end of phase 1, it is BBWS-PJ that will be responsible to execute such studies including the wider surface/spatial studies underpinning such large infrastructure.

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**Label:** Inhoud

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10

**Onderwerp:**

ToR - Paragraph 1.6.3 'Existing studies', Page 9

**Vraag:**

The documents can be made available after submission of a NDA'

Q: Does Invest International have a template for such an NDA, or is a NDA statement letter from the consultant sufficient?

**Antwoord:**

Invest International has a NDA template, it will be added as attachment to this Memorandum of Information.

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