

Draft CONTRACT

Geophysical Survey Nederwiek Wind Farm Zone, Seabed Survey and 2D-UHRS Campaign at Nederwiek Wind Farm Zone (NWWFZ)

Contract number: WOZ2220040

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs and Climate Policy, legally represented in this matter by Barto Piersma, Director of National programmes of the Netherlands Enterprise Agency, 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,

together referred to as the 'PARTIES' and individually as a 'PARTY',

WHEREAS:

1. The CONTRACTING AUTHORITY wishes, in relation to the execution of WORK for the Geophysical Survey at the IJmuiden Ver Wind Farm Sites V and VI (IJ56) Nederwiek Wind Farm Zone (NWWFZ), to agree fixed terms for a certain period with one CONTRACTOR;
2. To this end, the CONTRACTING AUTHORITY wishes to conclude an agreement, hereafter referred to as CONTRACT, laying down the conditions applicable to the execution of WORK to be awarded by the CONTRACTING AUTHORITY during the said term;
3. An EU tender procedure for the selection of a party to this CONTRACT has been conducted on the basis of the TENDER DOCUMENT and subject to the Public Procurement Act 2012 (amended per 1 July 2016);
4. The CONTRACTING AUTHORITY has judged the CONTRACTOR's bid to be the most economically advantageous bid,

AGREE AS FOLLOWS:

A number of terms in this CONTRACT are written with full capitals. The meanings of these terms are defined in article 1 of the Conditions of Contract (Contract Section II). In derogation therefrom or in addition thereto, the following terms are defined as follows:

CONTRACT: The Contract Geophysical Survey at the Nederwiek Wind Farm Zone (NWWFZ)

CONTRACTING AUTHORITY: The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs and Climate Policy. In the Conditions of Contract the term "CLIENT" is used.

CONTRACTOR: a tenderer selected to be Party to the CONTRACT relating to the execution of the WORK.

TENDER: the offer dated [...], ref. [...], submitted by the CONTRACTOR on the basis of the TENDER DOCUMENT in the context of the EU tender procedure dated [...], ref. [....]

TENDER DOCUMENT: the CONTRACTING AUTHORITY's document dated [date], ref. [...] which describes and explains participation in the CONTRACT for the execution of WORK during a certain period, the tender procedure to be followed and the selection and award criteria.

WORK: the work that the CONTRACTOR is to execute for the CONTRACTING AUTHORITY under the terms of this CONTRACT.

1. Object of the CONTRACT

1.1 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 (I);
2. the Memorandum of information, issued by CONTRACTING AUTHORITY on [.....].
3. the following sections:
 - (II) Conditions of Contract
 - (III) Remuneration
 - (IV) Scope of Work
 - (V) Health, Safety & Environment (HSE) Requirements
 - (VI) Quality Requirements & Administrative instructions (QA)
4. the TENDER DOCUMENT
5. CONTRACTOR's Letter of confirmation of vessels and equipment
6. the TENDER issued by the CONTRACTOR to the CONTRACTING AUTHORITY

2. Formation and duration of the Contract

2.1 This CONTRACT is formed once it has been signed by both Parties.

2.2 The WORK will be performed in the period from [.....] To [.....]

2.3 The SCHEDULE OF KEY DATES is specified in Annex [4]– Cycle time and Prices Geophysical Survey.

3. Price and other financial provisions

- 3.1 The CONTRACTOR will execute the WORK on the basis of this CONTRACT under applicable terms and the CONTRACT PRICE as specified in Annex [6] - Section III – Remuneration (Contract Price).
- 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 the WORK 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, with the exception that the CONTRACTOR is eligible to receive payment from the CONTRACTING AUTHORITY for a part of its fuel costs under the following conditions:
- Calculation of the fuel costs for which the Tenderer can send a payment application:
 - The baseline fuel bunkering price, as measured by the Rotterdam Bunker Prices LSMGO index[1] in \$ per m³ at the date of the Tender submission deadline, is defined as [A]
 - The actual fuel bunkering price, as measured by the Rotterdam Bunker Prices LSMGO index[1] in \$ per m³ at the date of the actual fuel bunkering for the WORKS, is defined as [B]
 - The amount of fuel (in m³) used during the days for the offshore WORKS as confirmed by the Tenderer in Annex [4] is defined as [C]. For any days that the offshore WORKS take longer, CONTRACTING AUTHORITY will not pay any fuel cost.
 - For clarity, the CONTRACTOR is eligible for payment of fuel cost which, at the time of actual bunkering for the WORKS, exceeds [A] plus 20% during the offshore WORKS period as in Annex [4], resulting in the following formula: $([B] - [A]) \times C$; under condition that [B] is larger than $[A] \times 1.3$
 - The actual LSMGO fuel bunkering price is evidenced by bunkering certificates and bills;
 - The actual fuel usage during the offshore WORKS is evidenced;
 - The fuel bunkering takes place at the port from which the WORKS are executed.
- 3.5 The agreed Contract Price will not be subject to indexation.
- 3.6

For companies established in the Netherlands

The Contractor must submit invoices electronically in the manner prescribed in the tender

document.

Please send the invoices electronically to:

RVO-energie

Overheidsidentificatienummer (OIN): 00000004000000163000

Please send them through

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

For more information: <https://www.helpdesk-efactureren.nl/e-facturen-versturen>. For questions regarding e-invoicing via the portal, please contact helpdesk-efactureren@rvo.nl, 088-0424400, option 2.

For questions regarding e-invoicing via an accounting program (Peppol), please contact operations@peppolautoriteit.nl, 020-3697653.

The following reference number should be stated on the invoices: WOZ2220040

For companies not established in the Netherlands

Notwithstanding the provisions on electronic invoicing, the CONTRACTOR will send the invoice(s) to the CONTRACTING AUTHORITY by e-mail. The CONTRACTOR will send the invoice(s), quoting the above-mentioned contract number and purchase order number WOZ2220040, to: energie.roermond.facturen@rvo.nl.

4. Contacts / project managers

4.1 The CONTRACTING AUTHORITY's contact is [...] The CONTRACTOR's contact is [...]

4.2 At least two times per year, the contacts of the two PARTIES will hold consultations on the way in which this CONTRACT is being implemented (interim evaluation(s)).

4.3 The contacts named above cannot make legally binding agreements on the PARTIES' behalf.

4.4 In addition to Clause 3.1 of Section II Conditions of Contract;

- the CONTRACTING AUTHORITY's REPRESENTATIVE is [...]
- the CONTRACTOR's REPRESENTATIVE is [...]

5. Time and place

- 5.1 The WORK will be executed at the WORKSITE and in the period as specified in Annex [6] Section IV (Scope of Work).

6. Other Terms and Conditions

- 6.1. As referred to in Clause 10.2(b) of the Conditions of Contract; the Defects Liability Period is two years, commencing at the agreed date at which the WORK or the relevant part of the WORK was completed.
- 6.2 As referred to in Clause 13.8 of the Conditions of Contract; the period of suspension is 14 days.
- 6.3 As referred to in Clause 14.3 of the Conditions of Contract; the latest time for receipt of invoices is thirty (30) days.
- 6.4 As referred to in Clause 17.4 of the Conditions of Contract; such rights shall vest in CONTRACTING AUTHORITY
- 6.5 As referred to in Clause 20.2 of the Conditions of Contract; insurance by the CONTRACTOR: employers liability is [amount], general third party is [amount], marine hull and machinery insurance is [amount] and protection and indemnity insurance is [amount].
- 6.6 As referred to in Clause 29.6 of the Conditions of Contract; the addresses for the service of notices are:
- CONTRACTING AUTHORITY: [...]
- CONTRACTOR: [...]
- 6.7 As referred to in Clause 31.1(b) of the Conditions of Contract; the nominees for the resolution of disputes are:
- CONTRACTING AUTHORITY: [...]
- CONTRACTOR: [...]
- 6.8 As referred to in Clause 22.5 of the Conditions of Contract; the penalty for CONTRACTOR for breaching its duty of confidentiality is €50,000 per breach. For the purposes of this Clause, "Third parties" also refers to parties with an own legal entity, with whom the CONTRACTOR has a group relationship.

7. 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.

8. Final provisions

- 8.1 Any derogations from this CONTRACT are binding only if they have been expressly agreed by the PARTIES in writing.
- 8.2 Any written or oral agreements previously made by the PARTIES about the WORK 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 Economic Affairs and
Climate Policy, commissioned by
B. Piersma, Director of National
Programmes of the Netherlands
Enterprise Agency:

For [Contractor's name]

[signatory's name]

[signatory's name]

[signatory's position]

[signatory's position]

Schedule(s):

- the Memorandum of information, issued by CONTRACTING AUTHORITY dated [...], ref. [...]
- the following sections:
 - (II) Conditions of Contract
 - (III) Remuneration
 - (IV) Scope of Work
 - (V) Health, Safety & Environment Requirements
 - (VI) Quality Requirements & Administrative instructions
- the TENDER DOCUMENT
- Letter of confirmation of vessels and equipment
- the TENDER issued by the CONTRACTOR to the CONTRACTING AUTHORITY