

Aanbesteding: Feasibility study leveraging flood protection for resilience in Khulna, Bangladesh
Aanbestedende Dienst: Invest International Public Programmes B.V.
Referentie: D2B20BD01

Toelichting:

Deadline for the receipt of the Tenders:

Deadline for submission of proposals is 12 pm on the 30th of May

Communication:

Only information received from IIPP is relevant for this Tender Process.

Terms and Conditions:

The comments that have been raised by the [Potential Bidders] on the General Purchase Terms and Conditions for the group of Invest International, version January 2022, have led to the assessment by [the Contracting Authority] that the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018) are more suitable for the tender. In order to facilitate the contracting process, it has been decided that the ARVODI 2018 will apply.

Content:

"In reference to question 24 from Memorandum of Information from 26 April 2022, the following clarification applies:

Reference should be made to RS1, whereby the bidder is required to provide time and cost specifications. A sample format is included in Annex 3 (of the updated Model Agreement) and bidders are highly encouraged to provide these specifications in their technical approach."

Price:

RP5 should read as follows "Only contractors costs for travel and accommodation, and for the venue of (feedback) sessions with stakeholders can be presented separately as additional cost in the time and cost specification (see Annex 3 of the updated Model Agreement). These costs should be included in the total contract budget provided in Annex 2 ."

Content:

In reference to section 5.2.1. please note that one additional point will be given to "The extent to which knowledge transfer and capacity building are incorporated into all phases of the project (from design to implementation)." This increases the total for this assessment aspect criteria from 3 to 4 points. The total for the award criteria relating to the approach remains 43 points.

Ref.nr.

63

Onderwerp:

Question #58 NvI #1 Annex 4 Terms and conditions Invest International jan. 2022.pdf Clause 5.2

Vraag:

Can you please answer the question what the reason is not to refer to clause 6:119b BW.

Antwoord:

In ARVODI 2018 reference is made to 6:119b BW. By application of the ARVODI 2018, 6:119b BW applies.

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

64

Onderwerp:

Section 2.1.6. page 18

Vraag:

Here is stated: “Definition of a procurement strategy for the Works, Goods and Services included in the Project formulation. With respect to the civil works, this includes determining the type of service agreement that would be appropriate for commissioning the works and the supervision thereof. Reference is to be made to the 2017 FIDIC Suite of Contracts (i.e. red book for works designed by / on behalf of the contracting authority; or yellow book for commissioning design and construction under a single contract);”. It is assumed that only the procurement strategy will be defined and not the preparation of associated documents like FIDIC based tender and bidding documents; is this assumption correct?

Antwoord:

A procurement strategy should be defined, but the preparation of tender and bidding documents is not within the scope of this contract.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.

65

Onderwerp:

Section 2.1.6. page 17

Vraag:

Project Implementation Guidance: Here is stated: “This includes the provision of specifications and preliminary design drawings that would enable the Contracting Authority (KCC) to commission site surveys and to prepare / commission the preparation of the requisite tender documents”. The latter implies that detailed designs will have to be prepared which is conflicting with the title of this para stating “guidance” and the limited period envisaged for this stage. Please confirm that detailed designs are not required as part of this Khulna Feasibility Study (as a note the following: the preparation of feasibility designs in Bangladesh is equal to preparation of detailed designs in, say, West Europe. Hence, the approving authority will expect detailed designs and not feasibility level designs).

Antwoord:

Indeed, the preparation of feasibility designs in Bangladesh is equal to preparation of detailed designs in West Europe. Since this project will be conducted in Bangladesh, we expect detailed designs that can be used for such feasibility studies in Bangladesh.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.

66

Onderwerp:

Section 2.1.6. page 17

Vraag:

Here is stated "Definition of the Works, Goods and Services that need to be procured to successfully implement the Project". It is assumed here that definition means in broad terms and not in terms of technical specifications as included in detailed tender and bidding documents.

Antwoord:

A procurement strategy should be defined, but the preparation of tender and bidding documents is not within the scope of this contract.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.

67

Onderwerp:

Section 2.1.6. page 16

Vraag:

Who will be the Competent Authority approving the selection of interventions and measures for the "proposed investments". E.g. KCC self, or BWDB and/or LGED?

Antwoord:

The advisory committee (informed by the technical committee) will approve the selection of interventions and measures for the "proposed investments", see annex 11.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.

68

Onderwerp:

General

Vraag:

Who will be the Competent Authority approving the selection of interventions and measures and associated pre-feasibility designs of programme of infrastructure measures? E.g. KCC self, or BWDB and/or LGED?

Antwoord:

The advisory committee (informed by the technical committee) will approve the selection of interventions and measures for the "proposed investments", see annex 11.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
69

Onderwerp:

Section 2.1.5 page 12

Vraag:

“Proposed interventions”: What is the expected lifetime of the to-be-developed project and associated safety levels against flooding and water logging?

Antwoord:

The expected lifetime and safety levels of the project will depend on the selected infrastructure interventions. Evaluation of risks (probability x impact) should be modelled and accounted for when establishing acceptable safety levels against flooding and water logging.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
70

Onderwerp:

Section 2.1.5 page 12

Vraag:

On this page is mentioned “Phase 2 – Feasibility. This phase determines the feasibility of the preferred combination of investments and accompanying actions and produces basic designs of the infrastructure”. It is assumed here that these basic designs have a level of detail needed for a feasibility study implying that they will be used to estimate quantities and volumes needed for feasibility level cost estimates.

Antwoord:

Since this project will be conducted in Bangladesh, we expect detailed designs that can be used for such feasibility studies in Bangladesh.

Beantwoord op: 16-05-2022
Label: Inhoud

Ref.nr. 71
Onderwerp: Section 3.7 Environmental requirements

Vraag:
3) 3.7 “The tenderer must possess all environmental permits....” Can you confirm that no such permits are required for Bangladesh?

Antwoord:
The tenderer needs to be able to obtain the required permits in Bangladesh for Environmental and Social Surveys (e.g., if such permits are required for test drilling in certain areas and periods).

Beantwoord op: 16-05-2022
Label: Juridisch

Ref.nr. 72
Onderwerp: Section 3.7 Environmental Requirements

Vraag:
3.7. To which environmental permits are referred to? Dutch or Bangladeshi permits?

Antwoord:
The tenderer needs to be able to obtain the required permits in Bangladesh for Environmental and Social Surveys (e.g., if such permits are required for test drilling in certain areas and periods).

Beantwoord op: 16-05-2022
Label: Juridisch

Ref.nr. 73
Onderwerp: Section 2.1.6, page 17

Vraag:
Even though disclosure of the ESIA (and Scoping Report) is not strictly required by Bangladesh law, it is a part of the IFC PS requirements. Hence, we assume that both the ESIA and the Scoping Report will need to be disclosed. Usually, the project proponent (in this case KCC) is responsible for disclosure as well as organizing public meetings etc. to discuss the disclosed document with stakeholders. Can you confirm that this is also the

case for this assignment and that KCC will organize accordingly?

Antwoord:

The ESIA and Scoping Report will need to be disclosed. KCC will invite stakeholders for the consultations. The Consultant is expected to provide the required support for arranging venue, providing workshop materials and presentations, amongst others.

Beantwoord op: 16-05-2022

Label: Proces

Ref.nr.
74

Onderwerp:

Annex 4 Terms and conditions Invest International Jan. 2022.pdf Clause 11.5

Vraag:

The manner of limiting consultant's liability (in accordance with a graduated scale) is unreasonable for doing business outside the Netherlands. Doing business in a foreign country is more risky and tricky for consultants than doing business in the Netherlands where consultants are familiar with the local customs. Could you please amend the limitation of consultant's liability in such way that the total liability of the consultant for all matters arising under or in connection with the agreement is limited to one time the total fee or € 2.500.000 whichever is the lesser amount. This is in line with the standards terms and conditions of international financial institutions (e.g. World Bank, ADB etc.). If not, could you please clarify why this is not unreasonable.

Antwoord:

"The set of terms and conditions as included in ARVODI 2018 are generally accepted and deemed to be suitable for the tendered services"

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
75

Onderwerp:

Document paragraph 2.4

Vraag:

" Tender document paragraph 2.4 - Can you please provide more information or clarity which changes the tenderer should take into account (regarding budgets, services) on the basis of paragraph 2.4? "

1. is there a certain range (regarding budgets phase 2 and 3) which may vary

2. In case the budgets for phase 2 or 3 are smaller than currently indicated, is it correct that the services required will be adapted in line with these budgets

?

3. when will the budgets and/or scope of services be final? What is the expectation as to when this will be finalised during which phase of the tender?

Antwoord:

1. The values shown per phase (1-3) are indicative amounts without a fixed range. They are based on our best estimates at this time, given the required scope of services. However, the total budget is capped at EUR 770,000 total.

2. The values shown per phase (1-3) are indicative amounts. The bidder is expected to allocate the budget deemed necessary per phase to deliver all the required services as described in chapter 2 of the tender document.

3. The scope of services is final as described in chapter 2 of the tender document. The budgets shown per phase are indicative amounts and based on our best estimates at this time, given the required scope of services. The bidder is expected to allocate the budget deemed necessary per phase to deliver these required services.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
76

Onderwerp:
Model Agreement

Vraag:

Model agreement - Please indicate, as far as possible, whether the 'optional' provisions in de model agreement apply.

Antwoord:

The Model Agreement is amended with the correct optional provisions.

Beantwoord op: 16-05-2022

Label: Contract

Ref.nr.
77

Onderwerp:
Model Agreement

Vraag:

Model agreement - Please adjust time and place of the Services in the model agreement. The model agreement states that the services will be performed in Uganda.

Antwoord:

The Model Agreement is amended. The services will be performed in Bangladesh

Beantwoord op: 16-05-2022

Label: Contract

Ref.nr.
78

Onderwerp:

Model Agreement

Vraag:

Model agreement clause 3.6 - Final payment should be 5 % of the Contract value instead of 10 % of the Contract value. Is this correct?

Antwoord:

The Final Payment will not be less than 10%.

Beantwoord op: 16-05-2022

Label: Contract

Ref.nr.
79

Onderwerp:

Model Agreement

Vraag:

Model agreement clause 3.6 - When are the Services accepted according to the Contracting Authority: what is the procedure for this?

Antwoord:

Paragraph 2.1.9 of the tender document describes the procedure for the acceptance of deliverables.

Beantwoord op: 16-05-2022

Label: Contract

Ref.nr.
80

Onderwerp:

Model Agreement

Vraag:

Model agreement clause 1.2 - The Summary of Additional Information' is part of the contract documents. Can you please provide this document?

Antwoord:

The Model Agreement is amended. The summary of additional information has been omitted.

Beantwoord op: 16-05-2022
Label: Contract

Ref.nr.
81 **Onderwerp:**
Model Agreement

Vraag:
"Model agreement clause 1.2 - Are the schedules mentioned in clause 1.2 is the payment schedule or are there also other schedules?
Will these schedules be agreed upon by mutual consent?"

Antwoord:
The Model Agreement is amended with the correct optional provisions.
These schedules will be agreed upon mutual consent

Beantwoord op: 16-05-2022
Label: Contract

Ref.nr.
82 **Onderwerp:**
Model Agreement

Vraag:
Model agreement clause 2.1 - Can you indicate the duration of the agreement? is the duration of the agreement 15 months as noted in the tender document?

Antwoord:
The duration of the Agreement is 15 months as stated in the tender document.

Beantwoord op: 16-05-2022
Label: Contract

Ref.nr.
83 **Onderwerp:**
Terms & Conditions clause 10.1

Vraag:
"Terms and conditions clause 10.1 - Tenderer should be given an opportunity to rectify any shortcomings in its obligations within a reasonable period, before any consequences are put into effect.
Therefore we would like to suggest the following adjustment in clause 10.1. terms and conditions (in red). "

As stated in the T&C

"If Supplier fails to fulfil one or more of its obligations under the Agreement or any other agreements arising from it, or fails to do so properly or in good time, it shall be in default by operation of law.

In these cases Invest International has the right to suspend execution of the Agreement with immediate effect, without further notice of default, by means of a Written notification, without Invest International being liable to pay any compensation, all this without prejudice to its other rights."

Adjustment:

"If Supplier fails to fulfil one or more of its obligations under the Agreement or any other agreements arising from it, or fails to do so properly or in good time, it shall be in default after a written notice of default.

In these cases Invest International has the right to suspend execution of the Agreement with immediate effect, without further notice of default, by means of a Written notification, without Invest International being liable to pay any compensation, all this without prejudice to its other rights."

Please inform us if the Contracting Authority is willing to accept this amendment and if not please motivate why not.

Antwoord:

The mechanics of ARVODI 2018 apply, mitigating the concerns connected to this comment.

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

84

Onderwerp:

Terms & Conditions clause 10.2

Vraag:

Terms and conditions clause 10.2 - Tenderer should be given an opportunity to rectify any shortcomings in its obligations within a reasonable period, before any consequences are put into effect. Furthermore, Dutch law Dutch law is based on the principle that if the shortcoming is of minor importance, it cannot justify termination.

Therefore we would like to suggest the following adjustment in clause 10.2. terms and conditions (in red).

as stated in the T&C:

"Without prejudice to the provisions in the first paragraph of this Clause 10, should Supplier fail to fulfil any of his obligations under the Agreement or any other agreements resulting from it, or fail to fulfil them on time or adequately, Invest International is entitled to terminate (in Dutch: ontbinden) the Agreement in part or in full with immediate effect, without further notice of default or judicial intervention, by means of a Written notification,

without Invest International being liable to pay compensation for damages, without prejudice to its other rights."

Adjustment:

"Without prejudice to the provisions in the first paragraph of this Clause 10, should Supplier fail to fulfil any of his obligations under the Agreement or any other agreements resulting from it, or fail to fulfil them on time or adequately, Invest International is after Invest International issues a written notice of default entitled to terminate (in Dutch: ontbinden) the Agreement in part or in full with immediate effect, by means of a Written notification, without Invest International being liable insofar as the imputable shortcoming justifies the termination to pay compensation for damages, without prejudice to its other rights."

Please inform us if the Contracting Authority is willing to accept this amendment and if not please motivate why not.

Antwoord:

The mechanics of ARVODI 2018 apply, mitigating the concerns connected to this comment.

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.
85

Onderwerp:

Tems & Conditions 10,4

Vraag:

Terms and conditions clause 10.4 - We would like to suggest the following adjustment in clause 10.2. terms and conditions (in red).

as stated in the T&C:

"All claims that Invest International may have or acquire against Supplier in the cases described in this Clause 10 shall be immediately due and payable in full."

Adjustment:

"All claims that Invest International may have or acquire against Supplier in the cases described in this Clause 10 shall be immediately due and payable in full unless otherwise agreed between Parties."

Please inform us if the Contracting Authority is willing to accept this amendment and if not please motivate why not

Antwoord:

This comment is already mitigated by operation of Dutch law (parties can always agree differently than initially agreed upon in a contract).

Beantwoord op: 16-05-2022
Label: Juridisch

Ref.nr.
86

Onderwerp:
Terms & Conditions 10.7

Vraag:

Terms and conditions clause 10.7 - Supplier can be liable for shortcomings after the end of the agreement. The same applies to infringements of intellectual property rights. In both cases the agreement and law determine when a claim is no longer admissible. Clause 10.7. may lead to claims for an indefinite period of time, which is not acceptable. Furthermore, clause 14 is not relevant because of the NDA. Therefore, please delete clause 10.7 terms and conditions.

Antwoord:

ARVODI 2018 is applicable, outdating the issue connected to other terms & conditions.

Beantwoord op: 16-05-2022
Label: Juridisch

Ref.nr.
87

Onderwerp:
Terms & Conditions 11.2

Vraag:

Terms and conditions clause 11.2 - Please delete clause 11.2. Tenderer does not indemnify for claims of third parties.

Antwoord:

The set of terms and conditions as included in ARVODI 2018 are generally accepted and deemed to be suitable for the tendered services.

Beantwoord op: 16-05-2022
Label: Juridisch

Ref.nr.
88

Onderwerp:
Terms & Conditions 11.5

Vraag:

Terms and conditions clause 11.5 - Please amend Clause 11.5 in line with Tenderer's policy that liability for direct damage is limited with a maximum sum equal to three times the order amount

“- for Agreements whose total value is greater than €500,000: €3,000,000 per event and €5,000,000 for each year or part of a year that the Agreement has been in force”

Antwoord:

"The set of terms and conditions as included in ARVODI 2018 are generally accepted and deemed to be suitable for the tendered services"

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

89

Onderwerp:

Terms & Conditions 11.5

Vraag:

Terms and conditions clause 11.5 - Can you explain the interpretation of the following phrase, namely Clause 11.5: second part of the sentence?

Supplier's liability shall be limited to the following amount:
for Agreements whose total value is greater than €500,000: €3,000,000 per event and €5,000,000 for each year or part of a year that the Agreement has been in force”

Antwoord:

If the Agreement will reach its termination date during a calendar year (e.g. 1st July), the limitation of EUR 5,000,000.- will still be applicable. The amount will not be decreased by 50% (equivalent of 6 months per 12 months).

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

90

Onderwerp:

Terms & Conditions 11.6

Vraag:

Terms and conditions clause 11.6 - Please make clause 11.6. reciprocal:

As stated in the T&C

“In any event, Invest International shall be liable for indirect damage, such as consequential damage, damage due to delays, and lost profits or turnover”

Adjustment:

“In any event, neither party shall be liable for indirect damage, such as

consequential damage, damage due to delays, and lost profits or turnover”

Tenderers policy is that tenderer shall not be liable for indirect damage and liability with a maximum sum equal to three times the order amount. Please inform us if the Contracting Authority is willing to accept this amendment and if not please motivate why not

Antwoord:

ARVODI 2018 is applicable, outdating the issue connected to other terms & conditions. The set of terms and conditions as included in ARVODI 2018 are generally accepted and deemed to be suitable for the tendered services.

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

91

Onderwerp:

Terms & Conditions 14.4

Vraag:

"Terms and conditions clause 14.4 - Please include in the model agreement that clause 14 is excluded. Reason is that parties enter into an NDA. We consider the ranking arrangement of the contract documents in the model agreement to be insufficient. Please inform us if the Contracting Authority is willing to accept this amendment"

Antwoord:

ARVODI 2018 is applicable, outdating the issue connected to other terms & conditions.

Beantwoord op: 16-05-2022

Label: Juridisch

Ref.nr.

92

Onderwerp:

Feasibility

Vraag:

What happens if the result of phase 2 should be that the preferred combination of investments is not feasible?

Antwoord:

If the preferred combination of investments is deemed not feasible at the end of phase 2, a decision will be made by the Competent Authority and the Contracting Authority, in consultation with the Advisory Committee.

Beantwoord op: 16-05-2022
Label: Uitvoering

Ref.nr. 93
Onderwerp: Proposed Interventions

Vraag:
There is no clear phase or workflow indicated for the preparation of (final) designs of the proposal interventions. Is our assumption correct that this work is considered to be part of phase 2?

Antwoord:
This assumption is correct.

Beantwoord op: 16-05-2022
Label: Uitvoering

Ref.nr. 94
Onderwerp: Cost Benefit Analysis

Vraag:
"Is a cost benefit analysis (CBA) part of the scope? It is clear that a financing plan is within the project scope, but a clear overview of benefits and methods to monetize benefits is missing.
Can you indicate if there is a prescribed method of assessing the benefits of interventions?"

Antwoord:
A CBA is included as part of the scope and the consultant is expected to propose an appropriate method for assessing the benefits of interventions across the full project life-cycle. For further details, see p. 17, bullet 2 "full economic and financial assessment".

Beantwoord op: 16-05-2022
Label: Inhoud

Ref.nr. 95
Onderwerp: Table 5.4.

Vraag:
Since section 5.4 is deleted from the tender (see NvI ref 25), can you explain how the points will be granted for 5.2.1 5.2.2, 5.2.3, 5.2.4 and 5.2.5 since only a maximum no of points is mentioned. Is it one-out-all-out and therefore 0 points if one items is no compliant, or will the assessment table

of 5.4 be applicable on the max points?

Antwoord:

The assessment of quality award criteria under section 5.2 will be done according to the 10 point scale presented in the table in 5.4. Instead of "Quality of the budget specification" this table in 5.4 should read "Quality of Assessment Aspects offered".

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
96

Onderwerp:
References

Vraag:

Can references be used from the group of entities of a consortium partner?

Antwoord:

See paragraph 4.3.2 Reference data.

Beantwoord op: 16-05-2022

Label: Inhoud

Ref.nr.
97

Onderwerp:
Section 4.3.2.

Vraag:

4.3.2 page 30 it is mentioned that “assignments including one or more subcontractors can only be used as reference assignments if the subcontractor in question will be involved in the fulfilment of the Contract”. Often local subcontractors are needed /used for international ESIA/EIA but these subcontractors are not working/experts in Bangladesh. Therefore several international references would not be acceptable. Can this criterium be erased (or simplified) so also references can be acceptable where subconsultants are used but whose are not part for this tender, for example by demanding that the value of the “part of the consultant(s) for this Contract” is at least 100.000 EUR.?

Antwoord:

These criteria are upheld.

Beantwoord op: 16-05-2022

Label: Inhoud