

Agreement RDW – [...]

Advice and supervision regarding the new RDW test center/proving ground (MITC)

RDW contract number [...]

The undersigned:

A.

De Dienst Wegverkeer (RDW),
a Dutch governmental organization, having its registered office at
Europaweg 205, 2711 ER Zoetermeer, the Netherlands
represented by [...]
hereinafter referred to as 'Client' or 'RDW',

and

B.

[...]
represented by [...]
hereinafter referred to as 'Contractor' or '[...]',

hereinafter referred to both as; 'Parties'

PREAMBLE:

1. RDW is the Dutch Vehicle Authority in the mobility chain and owns a test track (/proving ground). RDW has set out to develop a new test track (MITC) in Marknesse in the Netherlands.
2. [...] is a company specialized in providing services in relation to the design and engineering of test facilities.
3. RDW has organized a tender procedure in which the contractor has submitted the offer with the best price-quality ratio.
4. Parties are willing to engage into an agreement in order to formalize the conditions governing the execution of advice and guidance services (evaluation of the offers of the executing parties, assessing the design, supervision during implementation activities) regarding MITC.
5. RDW, being a Governmental organization, is committed to neutrality under public law. The execution of this agreement by [...] does not grant [...] any favorable position in regards to future assignments in any way, shape or form.
6. Parties agree to cooperate in a spirit of mutual respect and good conduct and undertake to act with respect to each other's legitimate interests.

DECLARE TO HAVE AGREED AS FOLLOWS:

1. Subject of the Agreement

- 1.1 The subject of the Agreement is the provision of advice and supervision for the purpose of the development and construction of a new test track for the RDW (further: Project) by RDW. The new test track will be situated near Marknesse, in the Netherlands.
- 1.2 The realization (start expected: 2024) of the Project is managed by the RDW being the sole owner of the new test track. RDW will conclude an Design&Build agreement with a party that will be responsible for the elaboration of the current design and (subsequent) the realization/implementation.
- 1.3 A team comprised of [...], third party contractors and RDW employees (further: Assessment Team) is responsible for reviewing and supervising the activities of the party referred to in paragraph 2. [...] will actively participate in this Assessment Team.
- 1.4 The following documents are part of the Agreement and the assignment:
 1. Nota van Inlichtingen 1 [date]
 2. Request RDW, containing:
 - a. 20230726 Offerteaanvraag Advies Begeleiding Testbaantechniek Testcentrum MITC
 - b. Overzicht werkpakketten MITC RDW
 - c. Demarcatie/kruisjeslijst 26-07-2023
 - d. ARVODI_2018-mei 2018 incl. aanvullende voorwaarden RDW versie 1.1
 - e. Programma van eisen voor de opdracht
 3. ARVODI_2018-mei 2018 incl. aanvullende voorwaarden RDW versie 1.1
 4. Offer [...] [date]

If the above-mentioned documents contradict each other, the order of priority in which the documents are mentioned above will apply, in deviation from what may have been determined elsewhere in this regard.

- 1.5 The Client is entitled to issue additional assignments, provided that these additional assignments do not conflict with the principles of public procurement. To this end, the Client will provide a quotation request. The Contractor is not obliged to accept these assignments, provided there are compelling reasons for doing so.

2. Requested services

- 2.1 RDW would like to request the following services from [...];
 1. Evaluation of the offers of the executing parties
 - a. The procurement of the executing party started in July 2023 and is expected to end in Q2 2024
 2. Assessing the design of the executing party (DO and UO)
 3. Supervision during realization/implementation activities of the executing party

The exact work and demarcation between third party work follows from the documents:
20230726 Offerteaanvraag Advies Begeleiding Testbaantechniek Testcentrum MITC,
Overzicht werkpakketten MITC RDW and Demarcatie/kruisjeslijst 26-07-2023.

- 2.2 [] is willing to execute the above-mentioned services.

3. Assignment, Conditions and Pricing

- 3.1 The deliveries and the communication of [] will be in English. Materials/documents of the executing party and RDW will be in Dutch.
- 3.2 RDW is entitled to check/verify the activities of the Contractor at any time.
- 3.3 RDW will receive complete and exclusive ownership of the intellectual property of the work/deliveries of the Contractor.
- 3.4 It concerns an assignment whereby the Contractor is entitled to invoice the hours worked on a monthly basis, with a maximum of €100.000,- excluding applicable VAT in total. For each phase, Parties make an estimate of the required hours in advance. This estimate applies as a maximum per phase, whereby the Contractor requires prior approval to exceed the amount. The following hourly rates (excluding applicable VAT) are applied:

Junior Engineer Civil Works	€[]
Senior Engineer Civil Works	€[]
Junior Engineer Proving Grounds	€[]
Senior Engineer Proving Grounds	€[]

- 3.5 For travel and accommodation for a visit to Lelystad of Marknesse (2 persons minimum 1 overnight stay), applies a rate of €[] excluding applicable VAT.
- 3.6 The P.O. number to be included on the invoices will be sent via a separate RDW confirmation. The Contractor will send the invoice/invoices stating the P.O. number to crediteuren@rdw.nl. Payment takes place after 30 days after receipt of an invoice by RDW.
- 3.7 The Contractor itself bears the responsibility for the necessary coordination with (related authorities such as) the task authorities regarding the performance of cross-border activities.

4. Terms

- 4.1 The ARVODI 2018 (including additions from RDW) applies to the Agreement.
- 4.2 The Agreement shall come into force after the last Party has signed the Agreement.
- 4.3 This Agreement automatically expires 3 months after completion of the services without this requiring separate termination.
- 4.4 RDW has the right to terminate this Agreement on any ground, subject to a prior written notice to be sent at least within one month in advance. The Contractor will be reimbursed for all the

services provided by the Contractor at the date of early termination and for all the costs which have verifiably have been made up to the moment of the date of early termination and which have not been paid for by RDW yet.

- 4.5 Considering the nature of the Agreement, Article 19 of the ARVODI 2018 shall not apply.
- 4.6 The Contractor agrees to indemnify RDW against claims form this parties with regard to infringement of intellectual property rights of those parties, comparable claims such as claims with regard to know-how and unauthorized competition.
- 4.7 The Contractor agrees to indemnify RDW against liability for, or in respect of, any claims, demands, actions, casts, expenses, losses and damages arising out of or in connection with or as a consequence of any of the acts or omissions from the Contractor in relation to the Agreement. Such liability is limited according to article 21.3 of the ARVODI 2018 (General Government Terms and Conditions for Public Service Contracts 2018). In addition, the liability is limited to an amount equal to three times the value of this Agreement.
- 4.8 The Parties are mutually obliged to maintain confidentiality with regard to all information that they have obtained in the context of concluding and executing the Agreement.

5. Level Playing Field

- 5.1 Parties acknowledge that maintaining a level playing field in regards to future tenders (i.e. equal chances for all interested parties) is in the interest of themselves as well as (unknown) third parties.
- 5.2 To the extent possible, the Contractor will be obliged to participate in proposed actions by RDW in order to create a level playing field.
- 5.3 RDW is at liberty to devise actions in order to create a level playing field. This can either be done by actions within the tender itself and/or actions in regards to making information public.
- 5.4 If a level playing field can't be established, the Contractor will be excluded from relevant future tenders and accepts this decision (made by RDW) without any (legal) objection.

6 Closing provisions

- 6.1 Each Party shall nominate a liaison officer who shall be responsible for coordinating all activities in connection to this Agreement:

Liaison officer for RDW	[name] Mail: [email] Phone: [number]
Liaison officer for [...]	[name] Mail : [email] Phone: [number]

Each Party / liaison officer can initiate a discussion which much take place within ten (10) working days.

- 6.2 Any amendments and additions to this Agreement must be made in writing and mutually accepted.
- 6.3 Parties are not at liberty to transfer any rights and/or obligations arising from this Agreement to third parties without written consent of the other Party.
- 6.4 If any provision of this Agreement is found to be invalid, either in part or as a whole, this shall not affect the validity of the remaining provisions of the Agreement.
- 6.5 Expressions of the Contractor with regard to the Agreement, whether or not with aim of generating publicity, will be agreed in advance with the Client.
- 6.5 The Agreement is based on mutual trust. In the event of any dispute, the Parties shall endeavor to settle the matter amicably. If they are unable to settle the matter in this way, exclusive jurisdiction shall lie with the responsible courts of Den Haag, The Netherlands.
- 6.6 This Agreement is governed by the law of The Netherlands.

As agreed upon and signed by:

RDW



Name:

Name:

Function:

Function:

Place:

Place:

Date:

Date:

Signature:

Signature:

Attachments :

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