



DRAFT Public service Agreement (ARVODI-2018) belonging to the open European tender procedure for the procurement of Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow programme

IUC number: 202306120

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs for Economic Affairs and Climate Policy, legally represented in this matter by [signatory's name and position], 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 and position], hereinafter referred to as the Contractor,

WHEREAS:

- The Contracting Authority requires Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow Programme;
- The Contracting Authority has published a Tender Document in accordance with the European open procedure on TenderNed for this purpose on 28 August 2023 with reference and on Tenders Electronic Daily with reference 2023/S;
- Contractor submitted a Tender on [day] October 2023;
- The Contracting Authority has awarded the Contract to the Contractor based on this Tender;
- The Contractor has sufficiently familiarised itself with what the Contracting Authority wishes to achieve;
- The Parties wish to lay down the ensuing legal relationship in a written Contract.

AGREE AS FOLLOWS:

A number of terms in this Contract are written with initial capitals. The meanings of these terms are defined in article 1 of the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018) and / or in the "Definition of terms" published in the Tender Document.

1. Object of the Contract

- 1.1 The Contracting Authority hereby commissions the Contractor to perform services as described in the Tender submitted by the Contractor on [day October 2023] based on the Tender issued by the Contracting Authority on 28 August 2023, in so far as this Contract does not contain any provisions to the contrary. The Contractor hereby agrees to perform these Services according to all terms and conditions belonging to this Contract.
- 1.2 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, including the Data Protection Agreement [date 2023];
 2. the Memorandum of Information dated 29 September 2023;
 3. the memorandum of Information dated 19 September 2023;
 4. the Tender Document with all its associated Annexes, dated 28 August 2023;

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5. the ARVODI 2018;
6. the Tender issued by the Contractor to the Contracting Authority on [day] October 2023].

2. Formation and duration of the Contract

- 2.1 This Contract comes into effect on 15 January 2024. It has an initial contract period (phase 1) which lasts from 15 January 2024 up to and including 31 December 2028 with a unilateral option for the Contracting Authority to extend the Contract from 1 January 2029 up to and including 31 December 2033 under the same conditions (phase 2). The option to extend the Contract will be based on the go / no go decision based on the criteria mentioned in section 2.7.3 of the Tender Document.

The Contracting Authority will notify Contractor in writing no later than on 31 October 2028 if it intends to exercise its option to extend the Contract or not. If the Contracting Authority does not want to exercise its unilateral option to extend the Contract, it will end automatically by operation of law after the initial contract period has ended.

- 2.2 Phase 1 consists of an inception phase for the Contractor which lasts from 15 January 2023 up to and including 30 June 2024. At the end of the inception phase a go / no go decision takes place based on the criteria mentioned in section 2.7.2 of the Tender Document.

If the Contracting Authority decides to continue the assignment (go decision) at the end of the inception phase, then the Contractor can start to implement the assignment as approved by the Contracting Authority. Contractor will be notified in writing at the latest on 30 June 2024.

If the Contracting Authority decides not to continue the assignment (no go decision) at the end of the inception phase Contractor, the Contracting Authority has the right to terminate the Contract. The Contractor will be notified in writing at the latest on 30 June 2024. The assignment will end as of 1 July 2024. In that case Contracting Authority will invoke the Waiting room Agreement. Contractor has the obligation to transfer work to the Contracting Authority as well as to the new Contractor. Arrangements how to do this, will be made if it is appropriate.

3. Evaluations and (prematurely) cancelling or termination of the Contract

- 3.1 Yearly evaluation and mid-term evaluation will take place as described in section 2.4.3, 2.7.3 and 2.7.4 of the Tender Document.
- 3.2 If the Contractor is not performing well in the inception phase, the Contracting Authority will discuss the performance with the Contractor. If the discussion will not lead to improvement, the Contracting Authority will first give an official warning. A second warning may lead to a reconsideration of the Contract, which can mean (prematurely) termination or cancellation of the Contract.
- 3.3 If the Contractor is not performing well after the inception phase in phase 1 or in phase 2, the Contracting Authority will discuss the performance with the Contractor. If the discussion will not lead to improvement, the Contracting Authority will first give an official warning. A second warning may lead to a reconsideration of the contract, a third warning means (prematurely) termination or cancellation of the Contract.

- 3.4 Contracting Authority is entitled to (prematurely) terminate or cancel this Contract in phase 1 or 2 without any form of compensation according to the conditions described in section 2.7.4 of the Tender Document.

4. Price and other financial provisions

- 4.1 The total budget for this Contract including extension, is an estimated budget of EUR 2.100.000 excluding VAT, including all local taxes and costs and indexation. This budget is an indication because only the budget for phase 1 is confirmed. Therefore, Contractor cannot derive any rights from the estimated budget.
- 4.2 Phase 1 has a confirmed budget of EUR 1.000.000 excluding VAT, including all local taxes and costs and including indexation. This budget is a so called "ceiling budget" which means that this budget amount cannot be exceeded / overrun by the Contractor. If this in any case might happen, then the Contracting Authority will not pay for the additional work. Exceeding the available budget is for the Contractor's risk and accounting. It is the responsibility of the Contractor to monitor this well.
- 4.3 The intended phase 2 has a budget indication of EUR 1.100.000 excluding VAT, including all local taxes and costs and including indexation. If Contracting Authority wants to exercise its option to extend the Contract, the budget amount for phase 2 will be announced as well. Contracting Authority will inform Contractor at the latest 31 October 2028. Therefore, Contractor cannot derive any rights from this budget amount. The budget for this phase also will be a ceiling budget for which the same applies as in phase 1 (see article 4.2).
- 4.4 Opportunities have to be realized within the available budget per phase during the duration of the Contract.
- 4.5 The opportunities file will be managed by Contractor during the entire duration of the Contract and will be discussed with the hubs and the Contracting Authority if an opportunity occurs. The Contractor offers a substantiated proposal for (not) effectuate the opportunity so a considered decision can be mutually taken by the Contractor, Contracting Authority and hubs. If the annual budget might be exceeded if an opportunity is granted, it is possible to compensate budget with another year during that same phase as long as the maximum budget per phase is not exceeded. It is the responsibility of the Contractor to monitor this well.
- 4.6 The hourly rates Contractor has offered in his Tender (Annex 10) are:
- EUR ... excluding VAT (and including all local taxes and costs) for the consultant / expert of the proposed team;
 - EUR ... excluding VAT (and including all local taxes and costs) for the team leader of the proposed team.
- 4.7 Contracting Authority offers the possibility to request indexation (see article 4.8). The payment of the indexation is included in the ceiling budget for phase 1 and phase 2. This means that the ceiling budgets are excluding VAT, including all local taxes and costs and including indexation.
- 4.8 The agreed hourly rates are fixed until 1 January 2026.

Requests for indexation can be submitted only once a year, exclusively in the month of October. Before and after this month requests for indexation for the upcoming year will not be considered. This means the first request for indexation can be submitted in October 2025. Requests for indexation must be sent to the following email address:
contractmanagement@RVO.nl.

Hourly rates may be adjusted in line with the price index published by Statistics Netherlands for hourly rates of pay, including special remuneration established under collective labour

agreements, in the business services sector. For this purpose, the figure for the preceding month September will be used, with the index for the starting date of the Contract (15 January, 2024) being set at 100%.

Contractor must submit a specified request for indexation together with a print of the information form Statistics Netherlands and make reference to the Contract with Contracting Authority concert. The request will contain the old prices/rates versus the new prices and rates.

Upon receipt of the request Contracting Authority will send a confirmation to the Contractor if the request is granted.

- 4.9 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.
- 4.10 The ceiling budget covers all Services to be performed by the Contractor under this Contract, plus any materials needed for this purpose.
- 4.11 The Contractor may invoice every three (3) months for Services performed and accepted / approved by the Contracting Authority. Contractor submits his invoice after acceptance / approval of the performed Services at the latest on the 7th day of the month following the quarter (e.g. at the latest 7 April, 7 July, 7 October, 7 January of the following year).
- 4.12 The Contractor must submit invoices electronically in the manner prescribed in the Tender Document (section 3.5).

OR

- 4.11 <<E-invoicing>>
The Contractor must send the invoices electronically to:
<<dienstonderdeel>>
Government identification number: <<OIN nummer>>
attn. <<financiële administratie>>, <<contactpersoon>>.

The general terms and conditions that apply to this contract prescribe/contain a provision that invoices must be sent electronically (not in pdf). This can be done in 4 different ways:

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

See "Brochure e-factureren" (Annex 6).

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 (Simpler invoicing), please contact info@simplerinvoicing.org, 020-3697653.

OR

- 4.11 The paragraph concerning e-invoicing does not apply to companies located outside of the Netherlands.
You must state the order number on your invoice. You can send your invoice by e-mail in PDF format to pdfacturen@minezk.nl.
- 4.12 The requirements described in sections 3.3, 3.4 and 3.5 of the Tender Document are applicable in the execution of this assignment.

5. Contacts / project managers and changes in the proposed team

- 5.1 The Contracting Authority's contact is ...
The Contractor's contact is ...
- 5.2 Notwithstanding the provisions of article 10.2 of the ARVODI 2018, the contacts named above cannot make legally binding agreements on the Parties' behalf.
- 5.3 If during the duration of the Contract the team leader, experts and/or team members have to be replaced for whatever reason, the Contractor has to replace these people by equivalent team leader, experts and/or team members. Contracting Authority has to authorize these replaced team leader, experts, team members.

6. Time and place

- 6.1 The Services will be performed at the Contractor's offices outside the selected Hub countries and in the selected Hub countries (Bangladesh, Burkina Faso, Ethiopia, Kenya, Sudan, and may be an extra country) and the respective Hubs and / or landscapes.
- 6.2 If the Services are performed at the Contracting Authority's offices, the Contracting Authority will give the Contractor's Staff access to the place where the Services are to be performed and will enable the Contractor's Staff to perform the Services in working conditions that reflect the Party's usual practice and during normal office hours.

7. Other Terms and Conditions

- 7.1 This Contract is governed exclusively by the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018 of which the Parties have already received a copy, in so far as this Contract does not contain any provisions to the contrary. Any general and special terms and conditions drawn up by the Contractor do not apply to this Contract.
- 7.2 In addition to article 21 of the ARVODI 2018, the Contractor indemnifies the Contracting Authority against any claims for damages brought by third parties as a result of its failure to discharge its obligations as referred to in article 21.3 of the ARVODI 2018. The liability amounts set out in article 21.3 of the ARVODI 2018 apply *mutatis mutandis*.
- 7.3 In addition to the provisions of article 22 of the ARVODI 2018, the Contracting Authority may cancel this Contract forthwith out of court by registered letter, without giving any warning or notice of default, in the following cases:
 - a. if the Contractor has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code; or
 - b. if a member of the Contractor's Staff has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code and that staff member is on the Contractor's executive, management or supervisory board or has representative, decision-making or audit powers.In the cases set out under (a) and (b) the right to cancellation expires three years after the judgment becomes unappealable.
- 7.4 In addition to article 24 of the ARVODI 2018, the Contracting Authority has sole authority to publish reports or parts thereof. The Contractor will be cited as the implementing organisation if the Contracting Authority decides to do so. If the Contracting Authority wishes to publish explanatory notes or a commentary to coincide with the publication of the final report, it will consult the Contractor before doing so.

- 7.5 In addition to article 24 of the ARVODI 2018, the Contractor may use, for the purpose of academic research and education, information obtained in the course of performing the Services, with the exception of personal information of a confidential nature. In doing so, the Contractor will not act contrary to the Contracting Authority's interests. In case of doubt, the Contractor will consult with the Contracting Authority in advance. If the Contracting Authority decides not to publish the results of the Services, the Contractor may submit a written request to the Contracting Authority, asking for permission to publish the results itself. This permission should be given in writing, and will not be withheld without good reason. The Contracting Authority may attach certain conditions to its permission.
- 7.6 The Parties agree, as the occasion arises, to exclude application of the deemed employment relationship of homeworkers or persons treated as such as referred to in articles 2b and 2c of the Salaries Tax Implementation Decree 1965 and articles 1 and 5 of the Working Relationship (Designation as Employment) Decree (Decree of 24 December 1986, Bulletin of Acts and Decrees 1986, no. 655).

8. User rights

- 8.1 The Contractor grants the Contracting Authority a non-exclusive, irrevocable right for an indefinite period to publish or reproduce the results of the Services, or have them published or reproduced, which right the Contracting Authority accepts, such in the widest possible sense, regardless of the method of use or reproduction and regardless of whether such use or method of reproduction is known when this Contract is signed.

9. 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.

10. Final provisions

- 10.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.
- 10.2 Any written or oral agreements previously made by the Parties about the Services that are the object of this Contract are nullified by the signature of this Contract.

Done and signed in duplicate.

The Hague,

[place],

[date]:

[date]:

For the Minister of Economic Affairs and
Climate Policy and commissioned by

[name Contractor]

[name][name of portfolio]

[name]

[signatory's name]

Team Manager Procurement Office

[signatory's position]

Schedules (already in possession of Parties):

- Data Protection Agreement dated [date 2023];
- the Memorandum of Information dated 29 September 2023;
- the memorandum of Information dated 19 September 2023;
- the Tender Document with all its associated Annexes, dated 28 August 2023;
- the ARVODI 2018;
- the Tender issued by the Contractor to the Contracting Authority on [day] October 2023].