

DRAFT Waiting Room 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:

1. The Contracting Authority requires Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow Programme;
2. 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;
3. The Contracting Authority has awarded the Contract to [the Contractor's name], hereinafter referred to as 'the Contractor 1', for the duration of 4 years and 11½ months including an option to extend the contract by 5 years given the fact that the Contractor offered the Economically most advantageous tender. The Contract for this Tender is supposed to enter into force on [15 January 2024];
4. The Contracting Authority has the right to unilaterally end the Contract with the Contractor 1 during phase 1, i.e. following the Contractor's inception phase, as stipulated in Article 2.2 of the Contract;
5. The CONTRACTOR has submitted his Tender [day October 2023], for which the CONTRACTOR was ranked second in this tender procedure;
6. The Contracting Authority wants to reserve the right the Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow programme to be performed by the CONTRACTOR without conducting a new European procurement procedure;
7. Against this background, the Parties enter into this Waiting Room Agreement with each other subject to the following terms and conditions.

AGREE AS FOLLOWS:

A number of terms in this Waiting Room Agreement 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 and/or as described in Article 1.

Article 1 Definitions

In this Agreement the following terms are defined as stated below:

- 1.1 The Contractor 1: the winning Tenderer in the tender procedure and with which the (original) Contract has been concluded.
- 1.2 The CONTRACTOR: the Tenderer which was ranked second in the tender procedure and with which this Waiting Room Agreement has been concluded.
- 1.3 Contract: 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.
- 1.4 Waiting Room Agreement: this agreement.

Article 2 Subject of this Waiting Room Agreement

- 2.1 The Contracting Authority reserves the right, when the Contracting Authority ends the Contract with the Contractor 1 after the inception phase (as stipulated in Article 2.2 of the Contract), to have the Services executed by the CONTRACTOR without conducting a new European procurement procedure.
- 2.2 The Contracting Authority is not obliged to invoke its right to execute the Services as set out in article 2.1 by the CONTRACTOR. If the Contracting Authority decides not to invoke its right, the Contracting Authority will not be liable for compensation of costs and/or damages towards the CONTRACTOR.
- 2.3 If the Contracting Authority proceeds to the provisions as set out in article 2.1, the CONTRACTOR guarantees to execute these Services and guarantees that these Services will meet the conditions mentioned in the Tender Document and the Contract.
- 2.4 If the Waiting Room Agreement is invoked, a new contract will be drawn up for the remaining term of the contract period, equivalent to the Contract with Contractor 1 except for the CONTRACTOR's specific conditions (for example: Plan of Action, prices and rates). Also a Data Protection Agreement will be concluded for the remaining term of the contract period.
- 2.5 In the new contract CONTRACTOR will, like Contractor, start with an inception phase of maximum 5½ months.
- 2.6 Upon awarding the new Contract, the Contracting Authority will request evidence from the CONTRACTOR according to section 6.5 of the Tender Document.
- 2.7 If the CONTRACTOR fails to meet the conditions mentioned in section 6.5 of the Tender Document, the Contracting Authority will not be liable for compensation of costs and/or damages towards the CONTRACTOR.
- 2.8 The Contracting Authority informs the CONTRACTOR in writing of its decision whether or not to invoke this Waiting Room Agreement on [30 June 2024] at the latest.
- 2.9 By signing the Waiting Room Agreement, the CONTRACTOR agrees to all terms and conditions set out in this Waiting Room Agreement and irrevocably waives its right to judicially or extrajudicially object to the provisions of this Waiting Room Agreement.
- 2.10 The CONTRACTOR upholds its Tender from the closing day of receipt of Tenders [day October 2023] up to and including 6 months and 14 calendar days after the entry into force of the Contract.

Article 3 Formation and duration of the Waitingroom Agreement

- 3.1 The Waiting Room Agreement comes into effect after both Parties have signed it. The Waiting Room Agreement lasts from [15 January 2024] up until [14 July 2024].

- 3.2 The Contracting Authority will notify CONTRACTOR in writing at the latest on [30 June 2024] if he wants to invoke the Waiting Room Agreement or not.
- 3.3 The Waiting Room Agreement ends by operation of law after expiration of the period mentioned in article 3.1.
- 3.4 If the Waiting Room Agreement is invoked, the new contract will come into effect on [15 July 2024].

Article 4 Amendment and dissolution of the Waiting Room Agreement

- 4.1 If the Waiting Room Agreement needs to be amended due to changes in legislation and regulations or case law that could not have been foreseen at the time of signing this Waiting Room Agreement, the Contracting Authority will consult with CONTRACTOR.
- 4.2 If one or more provisions of this Waiting Room Agreement appear to be invalid or are declared null and void, the other provisions remain in full force. The Parties will enter into consultation on how the purport of the void or invalid provisions should be formulated.

Article 5 Transfer of rights and obligations

- 5.1 The CONTRACTOR cannot transfer its obligations under the Waiting Room Agreement to a third party, except in the case of reorganisations within the CONTRACTOR's group of companies, for which the Contracting Authority has given its prior written consent.

Done and signed in duplicate.

The Hague,
[date]:

[place],
[date]:

For the Minister of Economic Affairs and
Climate Policy and commissioned by
[name][name of portfolio]

[name CONTRACTOR]

[name]
Team Manager Procurement Office

[signatory's name]
[signatory's position]