



First Memorandum of Information European tender 'Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow programme'

Date: 18 September 2023

In this First Memorandum of Information, the Tendering Authority provides answers to the questions asked and remarks posted in the context of the above-mentioned European tender. This Memorandum of Information forms an integral part of the Tender Document "Invitation to tender in accordance with the European open procedure for the procurement of Services of a Knowledge partner for the Knowledge component assignment of the Reversing the Flow programme", reference 202306120, dated 28 August 2023.

Question	Chapter/Paragraph from Tender Document/Annex	Question	Answer
1.	Section 4.2 Tender Document	If a consortium has already provided the evidence for the "European Single Procurement Document" in the previous RtF call, are they required to do so again? For example documents such as the tax statement.	In the "European Single Procurement Document" a Tenderer declares that he complies to all exclusion grounds and suitability criteria. Because the content of the previous tender according to the restricted procedure (with reference number 202203038 and published 6 January 2023) differs from the current tender according to the open procedure (with reference number 202306120 and published 28 August 2023) you cannot use the same ESPD's as submitted for the previous tender. In section 4.2 in the text with the grey underlay it is stated that the tax statement is "no older than 6 months counted from the closing date of submission of the Tender". The deadline for submitting the Tender is 10 October 2023. This means that the tax statement must be no older than 10 April 2023. The evidence had to be submitted in February 2023. Therefore you cannot use the same tax statements as submitted for the previous tender.
2.		We are preparing a submission as a consortium. Can we adjust the annex10 Prices and rates template to reflect possible differences in rates for consultants/experts for the different participating partners (if any)?	No, you are not allowed to adjust Annex 10 and offer different rates. In section 3 of the Tender Document, page 35, requirement 3.3.3 is stated: "(...). The maximum hourly rate for a consultant / expert of the proposed team is EUR 75 excluding VAT (and including all local taxes and costs). This maximum rate is based on a mixed team of local consultants / experts (from the Hub countries) and international

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			consultants / experts. The maximum hourly rate of the team leader is EUR 150 excluding VAT (and including all local taxes and costs).” Section 5.3 states the same and asks Tenderers to fill in Annex 10. The hourly rate for the consultant / expert will be assessed; the hourly rate for the team leader will not be assessed. The hourly rates the Contracting Authority has stated in section 5.5 reflect the hourly rates for a mixed team. This means that for the expert/consultant you have to provide only one hourly rate which is used for all consultants / experts whether they are local or international or from one or the other participating consortium partner. For the team leader the same is applicable: only one hourly rate whether the team leader is local (from the Hub countries) or international. It is up to the consortium itself to make financial arrangements amongst the participating partners of the consortium. The consortium itself is seen as “one Tenderer” and therefore has to offer only one hourly rate for invoicing for the consultant/expert as well as for the team leader. Because the Contracting Authority expects mixed teams, participating partners can compensate tariffs/rates among each other.
3.	Appendix 10 Prices and rates	We are unclear about what should be covered out of the fee for the expert/consultant and the team leader: does this concern only costs related to passport and visa (i.e. travel documents) or does this also include travel and accommodation costs (air tickets, etc)?	See sections 3.1.17, 3.3.3, 3.3.4, 3.3.7, 3.3.8, 3.3.9, 3.3.10 of the Tender Document.
4.	Subcontracting	We are unsure about the allowed or preferred constellation of applicants. Is sub-contracting allowed; are other forms than single applicant or consortium foreseen?	It is allowed to submit your Tender in collaboration with other organisations (see two ways for this in section 7.3.17 of the Tender Document) or submit a single Tender (section 7.3.18 of the Tender Document).
5.	Annex B Work Packages	Can you confirm that the relation between the knowledge partner and the hub is one where the knowledge partner depends on requests for support by the hub (demand-driven is mentioned repeatedly in the workpackages) and this support is never technical? And if yes, what will RVO do in case the hub is comfortable to do the work independently and has no need for support?	Yes, we can confirm that the relation between knowledge partner and the hub is one where the knowledge partner depends on requests for support by the hub for certain work packages. However, every situation is different and the demand of the hubs will differ. Some hubs will need more support than others. Cooperation between hubs and the knowledge partner will be stimulated by RVO. And the knowledge partner will pro-actively contact the hub on potentially observed gaps. However, as RtF is locally-led we expect the hub to be in the lead of the

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			process. Technical support in the fields of water resources management, climate change adaptation, or other fields of local measures is not part of the assignment of the knowledge partner. However, if the knowledge partner appears to be the best advisor on a certain technical topic, the hub can make a request for this out of their own budget.
6.	Tender document 2.1.5	Could you reflect on the reasons for the changes in the choice of countries? So why relatively safe countries (Mozambique, Jordan, Malawi) were kept outside the call in favour of three countries with civil war or disruptive conflict (Ethiopia, Sudan, Burkina Faso)? How do you see RtF being implemented, including the role of the knowledge partner, in countries and regions heavily affected by conflict where work may be halted due to this?	Interest of the respective Netherlands embassy has been the first criteria for RVO to start RtF in that country. RVO has been approached by the Netherlands embassies of these final 5 countries to start the RtF programme. For your last question, see the answer to question 10.
7.	Tender Document paragraph 5.2	The process was cancelled due to administrative procedural complications, however, the ToR changed considerably in content in terms of the required competencies (expertise in LLA, IWRM and landscape approach no longer needed, levels in knowledge management no longer mentioned, etc). Could you reflect on the reason for these content changes?	Since the public announcement of the restricted procedure on TenderNed on 7 January 2023 and the assessment of the request to participate until 13 February 2023 a lot of time had passed till 22 June 2023 (date of stopping the restricted procedure). Since that time the Tendering Authority got new insights compared to what was stated in the initial document, published on 7 January 2023. These new insights led to essential and material changes according to article 2.163g, sub 3 Dutch Procurement Law 2012. The essential and material changes concern among other things the following topics: - A change in budget. - A change in the duration of the contract. - A change in the type of contract. - A change in the number of countries and hubs. Because the Tendering Authority still has the need for the described services, the mentioned essential and material changes forced the Tendering Authority to stop this restricted procedure and start a new public procurement procedure.
8.	Tender document RtF section 3.3.3, 5.3, 5.5, Appendix 10, Appendix 03	In section 3.3.3 it is mentioned that the maximum hourly rate for a consultant/expert of the proposed team is Eur 75, and that this maximum rate is based on a mixed team of local consultants/experts and international consultants/experts. We assume that what is meant here	No, the maximum hourly rate is EUR 75 for a consultant/ expert and EUR 150 for a team leader. See also the answer to question 2.

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	Draft Agreement article 4.6	is that the maximum AVERAGE hourly rate for the whole team of experts/consultants (except the teamleader) is Eur 75. This would imply that the hourly rate of international consultants could be higher than Eur 75, as long as the average of all fees does not exceed Eur 75. Please confirm that our interpretation is correct	
9.	Tender document RtF section 3.3.3, 5.3, 5.5.	In section 3.3.3 it is mentioned that the offered rates have to reflect market rates. In case our interpretation of 3.3.3. is not correct (see our previous question with ref. nr. 15) and the hourly fee of any individual consultant/expert has to be 75 max, then it will not be possible for many international consultants to comply with the requirement of market rates, as these rates are usually much higher than Eur 75/hour. Please explain.	You are right. The new text of requirement 3.3. will be: "The Tenderer will provide its hourly rates excluding VAT for award criterium Price. The hourly rates offered have to be based on the following maximum hourly rates: ○ The maximum hourly rate for a consultant / expert of the proposed team is EUR 75 excluding VAT (and including all local taxes and costs). This maximum rate is based on a mixed team of local consultants / experts (from the Hub countries) and international consultants / experts. ○ The maximum hourly rate of the team leader of the proposed team is EUR 150 excluding VAT (and including all local taxes and costs)." Also in section 5.5 the sentence "The offered rates have to reflect market rates." will be deleted.
10.	Tender document RtF 2.1.5 Table 1	There is a confirmed Hub in Sudan. But given the current situation in Sudan and the instruction by BUZA to not travel to Sudan (red code), what are the options to carry out project activities there?	RtF is a locally-led programme. The hub identified in Sudan has resumed the programme after a short delay. RVO expects the knowledge partner to serve the partner in Sudan like the others. This can be done in different ways. It is up to the tenderer to propose how to support the Sudanese hub. International travel to red areas is not required.
11.	Tender document RtF 3.3.6, Appendix 03 Draft Agreement: article 4.8	The document states that the first request for indexation can only be submitted in 2025. However, as the project will start in 2024, we believe that the first request for indexation can already be done in October 2024 (for the year 2025). Please confirm.	Section 3.3.6 of the Tender Document and article 4.8 of Annex 03 state that prices are fixed until 1 January 2026. The first request for indexation can be offered in the month of October 2025.

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12.	Tender document RtF 4.3.2	Project references must be signed by the referee / client. In the past we sometimes experienced problems to obtain the signature, for example, when the contact person of the client left the organization. What could be done in such case, if this happens again?	Project references have to be submitted together with the Tender and have to be signed by the referee. This is a requirement which all Tenderers have to meet. If the contact person of the client left the organization, its replacement in person and function should sign the reference project. This is possible because this suitability requirement looks at the Tenderer and not at a particular person.
13.	Tender document RtF 3.1 and 4.3.2, appendix 03 Draft Agreement: article 5.3	We would like to know the status of the list of requirements in section 3.1. In order to meet all these requirements it would be necessary to include a range of local consultants. Would you require to see all CV's of the consultants necessary to cover all requirements in section 3.1, or would you focus only on the more concise list of core competences mentioned in section 4.3.2?	The requirements stated in section 3.1 and section 4.3.2 are different. All the requirements mentioned in section 3.1 of the Tender Document must be met by the proposed team. The criteria have to be met for the award criteria and during the execution of the assignment. Not every team member has to meet all the requirements. The proposed team as a whole has to meet the requirements of section 3.1. Section 4.3.2 is about suitability requirements regarding to reference data (technical qualifications). The core competences will be assessed in Annex 2. Tenderer has to supply the requested information and the assessment team will assess if the information in Annex 2 meets the description of the core competence or not (binary review). With regard to article 5.3 Annex 03: if a team member (either the team leader or a consultant/expert) has to be replaced the Contracting Authority has to authorize this replacement, also to secure the proposed team still meets the requested requirements.
14.	Budget	The scope of services is very extensive while the budget available rather limited for the duration and geographical coverage of the project. Would there be scope to increase the budget? If this is not the case would the RVO be open to receiving bids with a proposal for a reduced scope of services to align with the available budget?	There is no option to increase the budget for phase 1. The budget for phase 1 is a maximum budget and the budget for phase 2 still has to be confirmed in a political decision making process (see section 2.8.1 Tender Document). Tenderers have to submit their proposal/Tender for the scope as requested in the Tender Document. Reduced scopes are contrary to the principle of equal treatment of all Tenderers and will be excluded from the tendering process. After all, if Tenderers determine their scope for the same budget available, equal assessment of offers/Tenders is not possible.
15.	Budget	On page 35 it is stated that "The maximum hourly rate for a consultant / expert of the proposed team is EUR 75	No, see the answers to questions 2, 8 and 9.

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		excluding VAT (and including all local taxes and costs). This maximum rate is based on a mixed team of local consultants / experts (from the Hub countries) and international consultants / experts." Can you confirm the maximum hourly rate of 75 EURO is applied to the average rate of the expert team and not to specific individuals?	
16.	precedent tender	We note that this tender was preceded by a so called European "restricted procedure" "Reversing the Flow" which has been cancelled after assessing the requests for participation. Can you provide further information on the number of proposals the RVO received and provide the reasons why the previous process was cancelled?	Seven applicants/tenderers submitted a request to participate. For the reasons to stop the procedure see the answer to question 7.
17.	Deadline asking Questions Second Memorandum of Information	What is the deadline for asking questions for the Second Memorandum of Information: 22 September 2023, 12.00 CET noon or midnight?	22 September 2023, 12.00 CET which means Dutch noon time. The same applies to submitting your Tender: 10 October 2023, 12.00 CET Dutch noon time.
18.	Tenderdocument, page 15 onder table 1 "Note"	"Note: The information in Fout! Verwijzingsbron niet gevonden. dates from August 2023. <i>During the procurement procedure, Fout! Verwijzingsbron niet gevonden. will be updated with actual status information in the First and/or Second Memorandum of Information."</i>	Tendering Authority has updated Table 1. See Annex 1 Updated table 1 belonging to the First MoI. The yellow marked text is updated.

Remarks regarding Annex 3 Draft Public Service Agreement, Annex 3a Draft Data Processing Agreement and ARVODI-2018, Annex 4 ARVODI-2018, Annex 5 Draft Waiting Room Agreement

No.	Article from draft Public Service Agreement/ draft Data Processing agreement/draft Waiting Room Agreement/ ARVODI-2018	Reason for objection / question	Textual suggestions	Answer
1.	Appendix 03 Draft Agreement: Article 2	The project will start 15/01/24. If the contract will be signed by both parties after 15/01/24, are costs made on or after		Costs can only be made as of the date the Public Service Agreement comes into effect. This date is expected to be 15

		15/01/24 but before signing of the contract by last person (e.g. 1/2/2024) eligible?		January 2024. If there is a delay, this will become a later date.
2.	Appendix 03 Draft Agreement: article 2.1 and 4.3	The Contracting Authority has a option to unilaterally extend the contract for phase 2. Will the Contractor by entering in to the agreement for phase 1 be obliged to accept such extension, or does Contractor have the right to decline such extension and end the agreement after phase 1?		Article 2.1 states that the Contracting Authority has a unilateral option to extend. If the option to extend is awarded, than Contractor is obliged to accept the extension.
3.	Appendix 03 Draft Agreement: article 2.2	In the first sentence: 15 January 2023 should probably be 15 January 2024? Please confirm		Thank you for noticing this error. 15 January 2023 should be 15 January 2024. Tendering Authority will repair this for the contract award.
4.	Appendix 03 Draft Agreement: article 3.4	Paragraph 2.7.4 clarifies the right to (prematurely) terminate the agreement without compensation with the explicit exception for Services performed and accepted by Contracting Authority. Can this explicit exception added to article 3.4 of the Draft Agreement?		It is not necessary to mention this because article 3.4 explicitly refers to section 2.7.4 of the Tender Document. For every reader therefore it is clear what is meant.
5.	Appendix 03 Draft Agreement: optional articles 4.11 and 4.12	There are three options for article 4.11, whereas two for article 4.12, there seems to be some mismatch in the numbering. Please elaborate which article 4.12 combines with which article 4.11		There is an error in the numbering in 4.12. After the first 4.12 'OR 4.11' must be 'OR 4.12' and the second 'OR 4.11' must be 'OR 4.12'. The 4.12 following the two times 4.11 must be 4.13. The Tendering Authority will repair this for the contract award.
6.	Appendix 03 Draft Agreement: Article 6.1	Article 6.1 seems to be implying that the Contractor must have a physical office in the selected Hub countries. Can you confirm? And in that case, do we comply with this requirement if one of the Consortium Partners is based in one or more of the selected Hub countries and with a physical office there, while that or another of the Consortium Partners has a physical office outside the selected Hub countries?		Article 6.1 does not imply Contractor should have a physical office in the selected Hub Countries. That is up to the Contractor. The text of article 6.1 will be: "The services will be performed at the Contractor's offices outside the selected Hub countries and/or in the selected Hub countries (Bangladesh, Burkina Faso, Ethiopia, Kenya, Sudan, and may be an extra country) and the respective Hubs and / or landscapes".

				The Tendering Authority will repair this for the contract award.
7.	Appendix 03 Draft Agreement: Article 6.1	We assume one office per hub-country suffices even when that hub-country has two hubs/landscapes? Please confirm		It is up to Contractor how to organize his work. It is not obliged to have one office per Hub country. See also the answer to question 6 in this block. It is also not obliged for all consortium partners to be present in a hub country.
8.	Annex 03a DPA schedule 1 Appendix 03 Draft Agreement, article 1.2 Annex 05 Waiting Room Agreement article 2.4	Annex 03a - DPA: Schedule 1 states: 'The Contractor may process the personal data of involved parties of the Reversing the Flow programme in order to execute their assignment for the Reversing the Flow knowledge component.' Even though there might, and will, be personal data involved in the performance of the Services required for the knowledge Component, the Services do not encompass processing activities by the Contractor for the Contracting Authority. Any processing by the Contractor needed for the performance of the Services is under the sole responsibility of the Contractor himself. Therefore, in our opinion, a DPA between the Contracting Authority and the Contractor is not in order and would be misplaced. There might be sharing of personal data in order to be able to contact/invite persons, however that will be data sharing between Contracting Authority and Contractor, not Processing and therefore a DPA is also not applicable.		Contracting Authority does not agree with you. Data as first and last name, email, and phone number are considered to be personal data according to article 4 GDPR and will be processed as data.

		Please confirm. If you can not confirm inapplicability of a DPA, Please elaborate why the process described has to be qualified as actual Processing for the Contracting Authority.		
9.	Arvodi 2018: Article 31		Proposal: Article 31 also applies to the Contracting Authority	Tendering Authority does not agree. For publications it is sometimes necessary that the name of the Contractor is mentioned. RVO.nl does not use marketing with regard to publications.
10.	Arvodi Article 26.2		Proposal: Article 26.2, first sentence to be: "Upon request by the Contracting Authority, the Contractor will present insurance certificates for the insurances referred to in paragraph 1".	Article 26.2 first sentence states: "At the Contracting Authority's request, the Contractor will immediately present either the original or certified copies of the policies and proof of the payment of premium for the insurances referred to in paragraph 1 or a statement from the insurer to the effect that these policies exist and the premium has been paid." This means that Tenderer should be able to present on first request of the tendering Authority that he has a sufficient level of professional and/o for the fulfilment of this assignment and that in the event the Contract is being awarded to him, he will remain sufficiently insured throughout the duration of the assignment (compare section 4.3.1 item d, page 40 Tender Document). The Tenderer who has been provisionally awarded the Contract will receive this request. It is allowed to submit copies of the original evidence or comparable pieces of evidence. In case the Tendering Authority has doubts about the submitted evidence, it will request the original or certified copies.

				Therefore the Tendering Authority does not agree to change the text of the first sentence of article 26.2.
11.	Arvodi Articles 24.1 and 24.6		Proposal: Articles 24.1 and 24.6 are not applicable.	Tendering Authority does not agree that articles 24.1 and 24.6 are not applicable. Contracting Authority has an interest in the undisturbed use of copyrights arising from the execution of the assignment.
12.	Arvodi Article 24.7		First sentence also applies to the Contracting Authority and in last sentence: "Parties are obliged to take reasonable actions"	Tendering Authority does not agree because Contracting Authority is only dealing with Contractor and not with third parties. Therefore the first and last sentence will remain as they are.
13.	Arvodi Article 24.3		Proposal: Article 24.3 will be: "The Contractor will remain the owner of all knowledge and intellectual property that he owned before the start of the Services, as well as the knowledge and intellectual property developed outside the framework of the Services. Methods and techniques, as well as improvements thereof, will remain the property of the Contractor".	Tendering Authority does not agree. The proposed text for a big part is already covered: • <i>Contractor will remain the owner of all knowledge and intellectual property that he owned before the start of the Services --> see article 24.3 which already takes care of the knowledge and intellectual property that Contractor already owned before he started the Services.</i> • <i>as well as the knowledge and intellectual property developed outside the framework of the Services. --> see article 24.1 which states that it only concerns the results of the Services that relate to the agreement in question (Public Service Agreement, Annex 03).</i> • <i>Methods and techniques, as well as improvements thereof, will remain the property of the Contractor --> this is correct so</i>

				far as it concerns existing methods and/or methods which have been obtained outside of the particular agreement (Public Service Agreement, Annex 03) (After all see articles 24.1 and 24.3).
14.	Arvodi Articles 21.3 and 24		Proposal: Article 21.3 will also be applicable to Article 24.	Tendering Authority does not agree. For the reasons why concerning article 21.3 sub c, see the answer to question 16.
15.	Arvodi Articles 22.2 en 22.3		Article 22.2 and 22.3 will not be applicable. Instead, the statutory provisions regarding force majeure will apply.	Tendering Authority does not agree. Article 6:75 BW (Dutch Civil Code) states about force majeure as follows: "a shortcoming cannot be attributed to the debtor, as far as this shortcoming is not at his expense because it is not due to his fault, nor by law, legal act or prevailing juridical views." Article 22.3 by mentions what is among other things not be considered as force majeure (a non-attributable shortcoming). The examples mentioned are circumstances which can be influenced by each Party itself by using mitigation measures either for preventing or solving the particular circumstance. If one Party is unable to fulfill the obligations under the Public Service Agreement because of force majeure, it is not reasonable that the other Party is obliged to maintain the Agreement. Therefore articles 22.2 and 22.3 will remain applicable. Besides, a Party has the right to terminate /cancel an agreement; it is not an obligation. In practice it rarely occurs that

				an agreement is terminated/cancelled because of force majeure.
16.	Arvodi Article 21.3		Proposal: article 21.3 sub c is not applicable.	Tendering Authority does not agree. In the event of a breach of intellectual property rights the liability can be extremely high. If Contracting Authority would make concessions this may lead to an enormous damage item. Besides Contracting Authority has no insight in possible violations of intellectual property rights by Contractor. On the other hand, it is eminently Contractor himself who is capable of preventing violations of intellectual property. Therefore it is very acceptable that the risk remains where it belongs, namely with the Contractor.
17.	Arvodi Article 13.3		Proposal: to introduce a time limit of maximum 6 months after the presentation of an interim report or final report.	Tendering Authority does not agree. See also article 7.5 of the Public Service Agreement (Annex 03).
18.	Arvodi Articles 13.1 en 13.2		Proposal: Articles 13.1 and 13.2 are also applicable to the Contracting Authority.	Tendering Authority does not agree to reciprocity of articles 13.1 and 13.2. The confidentiality sees to, among other things, the facts, data, information which comes to the attention of Contractor during the execution of the assignment. Only Contractor is executing the assignment, not the Contracting Authority.
19.	Arvodi Article 6.2	.	Proposal: article 6.2 last sentence is not applicable if this person is replaced by someone with more expertise or experience or by a more senior researcher.	Tendering Authority does not agree. Contracting Authority always has to authorize the replacement of consultants/experts and/or the team leader. Compare requirement 3.1.15 in section 3 of the Tender Document. Also see the answer to question 13 of the first block.

20.	Arvodi Article 5		Proposal: addition of the following text: "provided that the Contractor will make every reasonable effort to meet the deadlines and delivery dates stated."	Tendering Authority does not agree. A best-effort obligation is too casual, too non-committal. Contracting Authority must be able to rely on certain results being reached within the arrangements Contracting Authority and Contractor have made in the Plan of Action and the yearly plans.
22.	Arvodi Article 3.1		Proposal: replace the word "guarantees" with the words "has a best effort obligation"	Tendering Authority does not agree. Requirements always have to be met. Contractor has a performance obligation, an obligation to achieve results. A requirement is not a best effort obligation.
23.	Reserve Contractor Agreement (Annex 5)	Is a Tenderer by submitting a Proposal committed to and obliged (if he fulfils the minimum of 60 points criterium) to enter into a reserve contractor agreement upon being ranked second?		Yes, the Tenderer who is ranked second after assessment and having scored at least 60 points, is obliged to sign the Waiting Room Agreement. Article 2.3 of the Waiting Room Agreement states: "If the Contracting Authority proceeds to the provisions as set out in article 2.1 Waiting Room Agreement, the CONTRACTOR guarantees to execute these Services and guarantees that these Services will meet the conditions mentioned in the Tender Document and the Contract."
24.	Annex 05 Waiting Room Agreement article 2.3, 2.4, 2.9, 2.10	Contracting Authority unilaterally decides whether to execute the provisions in the Warranty Room Agreement or not in case the contract with Contractor 1 ends after the inception phase. Does Contractor have the right not to enter into contract for the remainder of the contract term with the Contracting Authority?		No, see the answer to question 23.