

Concept agreement of General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022) on the Supply, Management and Maintenance of Radars for water levels and wave heights with case number 31193656 Lot 2 Inland Waterway Radars

The undersigned:

1. The State of the Netherlands, having its registered office at the Ministry of Infrastructure and Water Management in The Hague, represented by the Director of Data Collection & Data Analysis of the Central Information Service of the Directorate-General of Rijkswaterstaat, Mr F.J. van der Bas, hereafter referred to as the: "Client",

and

2. <full name and legal form of the contracting party>, having its registered offices in <place name>, represented by <position> <name of signatory> hereafter referred to as: Other Party,

The Client and Other Party hereafter jointly referred to as the 'Parties' and separately as the 'Party'

Taking into consideration that:

Organisation and procurement needs of the Client

- a. The Client is responsible for Rijkswaterstaat's Corporate Instruments Stock (*Corporate Instrumentenbestand, CIB*). The CIB lends the instruments to users, particularly to the Permanent Measuring Networks Teams and Mobile Measuring of the RWS Central Information Service (RWS CIS);
- b. In the context of exercising its duty, the Client needs a supply of Radars for water levels and wave heights including product parts accessories, maintenance, support and consultancy services;

Procedure of the call for tenders

- c. In view of the considerations under a and b above, the Client has proceeded with the call for tenders for the Supply, Management and Maintenance of Radars for water levels and wave heights by means of a public European tender;
- d. on <date>, a notice was sent by or on behalf of the Client to the Supplement to the Official Journal of the European Union (hereafter referred to as the: Official Journal) and this notice was published under number <S-number>;
- e. <description of further progress depending on the tendering procedure followed>;
- f. The Client awards the Contract to the Other Party on <date>.

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Agree to:

1. Definitions

A number of definitions are used with initial capital letters in the Agreement. The meaning of these definitions is as provided for in the Terms and Conditions.

In addition, the following definitions, if used with an initial capital letter, will mean:

- 1.1. Sufficiently determinable: Product/the Products are described, specified and documented in the Technical Information Form, supplemented with Product leaflets and Specifications sheets.
- 1.2. Technical Information Form: Description of Product features at least in accordance with the features and aspects described in the Functions and Aspects of the Tender Specification requirements.
- 1.3. Options: As an option, the quantity of a Product/the Products can be increased by the Client (contract amendment according to Section 2.163c of Procurement Act [Aanbestedingswet]), in which the Client is entitled to order the Other Party to Deliver on a call-off basis. For this purpose, use is made of the Model Amendment Agreement ARBIT 2022.
- 1.4. Price List: Product, Maintenance and Support are shown in the Price List, from which the Client will also call for Delivery of the Options.

2. Object of the Agreement

- 2.1 The Parties hereby enter into an Agreement in which the Other Party undertakes to implement the Performance as described in the Specifications for a Fee as meant in section 7, which essentially consists of:

- the supply of the Product/Products:

	Topic of Lot II Inland waterway	Quantity
A1	Inland Waterway Radar	48
A2	Inland Waterway Radar options	86

- To implement the Contract/Contracts:

	Topic	Quantity
B1	Consultation services, Support, and Maintenance	1

- The granting of one or more Rights of Use:

	Topic	Quantity
C1	n/a	n/a
C2	n/a	n/a

This is to enable the Client to make use of the agreed use.

- 2.2 The following documents together, constitute the Agreement. Insofar as these documents contradict each other, the aforementioned document will prevail over the subsequently mentioned document:

- 1) this document;
- 2) the Terms and Conditions (ANNEX Terms and Conditions);
- 3) the Specifications (ANNEX Tender Specification);
- 4) the other Annexes

- 5) the quotation of <date> submitted by the Other Party to the Client, with reference (<reference number>).
3. Contacts and reporting
- 3.1 The contacts involved in the implementation of the Agreement are listed in the ANNEX Contacts.
- 3.2 Other Party reports in accordance with the Tender Specification requirements about the performance of the Agreement.
4. Entry into force and term of the Agreement
- 4.1 The Agreement will enter into force at the time of its signature by both Parties.
- 4.2 The Agreement has a duration of ten (10) years and ends on <xx July 2034> with an option to extend 2x maximum five (5) years. This option to be exercised unilaterally by the Client.
5. Delivery and Completion
- In the case of Products*
- 5.1 The Other Party will take care of Delivery of the Products at the time and place indicated in the table below. The dates mentioned are strict deadlines.

	Topic	Delivery address	Delivery date
A1	18 units Inland Waterway Radar	Derde Werelddreef 1, 2622 HA Delft	xx November 2024
A1	15 units Inland Waterway Radar	Derde Werelddreef 1, 2622 HA Delft	February - June 2025
A1	15 units Inland Waterway Radar	Derde Werelddreef 1, 2622 HA Delft	2026

- 5.2 The Other Party will take care of Completion in the manner, and at the time and place indicated in the table below. The dates mentioned are strict deadlines.

	Topic	Method of Completion	Address and date
B1	Consultation services, Support, and Maintenance	Completion methods and completion dates are yet to be determined prior to granting the contract.	Derde Werelddreef 1, 2622 HA Delft and/or RWS sites in the Netherlands

- 5.3 The services will commence on the date set out in the table below.

	Topic	Commencement date
B1	Maintenance according to the Guarantee, and restoration of Deficiencies	after Acceptance for the duration of twelve (12) months

6. Acceptance

6.1 Acceptance of the Performance takes place as follows:

	Topic	Acceptance	Deadline of notification of Acceptance or Non-Acceptance
A1	Inland Waterway Radar	According to RWS CIS Acceptance Procedure	30 days after Delivery (11.1 ARBIT)
B1	Consultation services, Support, and Maintenance	According to RWS CIS Acceptance Procedure	30 days after Delivery (11.1 ARBIT)

6.2 If the Client accepts the Performance despite the presence of one or more Deficiencies, the Client will withhold an amount of 10% from the Fee until the Deficiencies have been restored.

7. Fee

7.1 The Parties agree on the following Fee:

	Topic	Price	Price including VAT
A1	The Fee for the Product to be delivered will be the:	price per Product	fee per Product
B1	The Fee for Consultation services, Implementation, Installation, Support and Maintenance amounts to:	Fixed hourly rate	Fee fixed hourly rate

7.2 The agreed Fees will be adjusted once a year as of 1 January after 1 January 2026;

Products (A1 and A2) will be adjusted by an annual rate adjustment to a maximum according to the 'Statistics Netherlands Producer Price Index (PPI) PRODCOM C 26 Information Products, Electronics'. The monthly figure for the previous month of <August> will be maintained, according to the calculation method below: $(\text{index figure [new month]} - \text{index figure [old month]}) / \text{index figure [old month]} \times 100\%$.

Consultation services, Maintenance and Support (B1) will be adjusted by a percentage to a maximum according to the 'Statistics Netherlands Services Price Index (DPI) 6202 Computer Consulting'. The quarterly figure for the previous quarter <quarter 2> will be maintained, according to the calculation method below: $(\text{index figure [new quarter]} - \text{index figure [old quarter]}) / \text{index figure [old quarter]} \times 100\%$.

The most recent month/quarter is maintained as the new month/quarter of which the first published index figure is known. As the old one, the same month/quarter of the previous year is taken. The month/quarter chosen for indexation should also be maintained for the following indexations. The indexation period therefore always covers a whole year. A request for indexation must be submitted in writing to the Client's Contract Manager at least thirty (30) days before the commencement date. Any new Fee will take effect upon written approval by the Parties.

- 7.3 If Performance, as a result of an attributable shortcoming on the part of the Other Party, does not comply with the Service levels, rebates will apply to the Fee in accordance with the following table:

Service levels	Standard	Rebate
After phasing out the Product, it remains supported by the manufacturer for at least five (5) years. Spare parts must be available for that period and repairs can be carried out.	Product Delivery Date	25% rebate on Product and Maintenance Fee
Maintenance lead time	maximum of four (4) months	10% rebate on Maintenance Fee
Delivery of Product within a maximum lead time of five (5) months after call-off.	time of call-off – agreed receipt at release location of supplies	25% rebate on Product Fee
Calibration is not permitted within ten (10) years of commissioning the system.	Product Delivery Date	10% rebate on Maintenance Fee
The Contractor must support the users telephonically and by email during the term of the Agreement. This includes substantive remote technical support in Dutch or English about operating, mounting, settings and troubleshooting. The topic is confined to the scope of the systems delivered. The questions will initially be harmonised within the maintenance department and will only be submitted to the Contractor in the second instance (and thus in incidental cases).	The response time may not exceed two (2) working days.	50% rebate on Maintenance Fee
Up-to-date documentation of the Products delivered must be available. In any case, the documentation provides instructions for installation, operation, maintenance and handling. Documentation is available digitally and is written in Dutch or English.	Product Delivery Date	5% rebate on Product and Maintenance Fee
User training at 'senior secondary vocational' level of education with regard to installation, maintenance, operational controls and primary troubleshooting. Making required materials available in the Dutch or English language. The group size per training has a maximum of 10 people.	Contract implementation date	25% rebate on Maintenance Fee
Social Return through the RWS <i>Groeituin</i> , additional 4% or 5% Social Return value.	Three (3) years after signing the Agreement	2% resp. 3% rebate for each Fee

7.3. If the Performance has not been Completed or Delivered at the agreed date due to an attributable shortcoming on the part of the Other Party, an amount of 1% will be rebated on the Fee for each day that the delay in Completion or Delivery continues, to a maximum of 25%.

7.4. If the Completion or Delivery Performance is rejected by the Client, an amount of 1% will be rebated on the Fee for each day that recovery of Deficiencies found have not been remedied, to a maximum of 25%.

8. Invoicing, liability to pay and payment

8.1 The Fee referred to in section 7 is due and payable after Acceptance.

8.2 An invoice must contain the following data:

- invoice date
- amount of the Fee
- VAT payable
- Case ID number: 31195208
- SAP order number: 4500xxxx pos xx: Delivery of Product
- SAP order number: 4500xxxx pos xx: Consultation services, Support, and Maintenance.

8.3 The Other Party invoices electronically in the prescribed manner.

8.4 In accordance with Article 14.2 of the General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022), the Contractor sends the invoices which include details as meant in section 8.2, in a PDF format (without encryption of the file) to the following email address: efacturen@rws.nl

To this end, the following applies:

- The Contractor does not send summary invoices that relate to several invoices;
- A separate invoice must be sent per order (xx or xx);
- any reminders/demand for payment should be emailed to kcc@rws.nl.

9. General and special conditions

9.1. Any general and special conditions of the Other Party or of third parties involved by the Other Party in implementation of the Performance are excluded, unless deviation is explicitly agreed to in the Endorsement to the agreement.

9.2. Acceptance of general or special conditions for use of the Performance requirement, such as for "shrink-wrap" and "click-wrap" licenses, does not bind the Client. The Other Party indemnifies the Client that such acceptance does not result in any restriction on the agreed use.

9.3 Supplemental to section 23 of the Terms and Conditions applies that if the Other Party wants to make use of the services of third parties in the performance of the Agreement, either by way of

subcontracting, or by hiring staff, it will be authorised to do so only after obtaining consent in writing from the Client. The client may, in any event, refuse such consent (but not limited to the cases below) if:

- a) there could be a risk that data may end up with individuals or organisations in countries with laws that make it possible for the intelligence services of those countries to consult this data;
- b) a strong (strategic) dependency could arise for a market party or its subcontractors controlled by a foreign government, resulting that in case of a conflict, there is a possibility that the Client could be put under pressure by the Other Party (whether or not commissioned by a foreign government actor);
- (c) the possibility of espionage arises or exacerbates.

8.4. A copy of the Terms and Conditions has been attached to the Agreement.

10. Other provisions

10.1. The Other Party will make every effort to provide transparency regarding the presence of conflict minerals in the supply chain.

10.2. The Other Party applies the latest version of the Dutch Government Information Security Baseline (BIO) in its formulation of control measures relating to data security, taking into account the environment(s) in which the data security risks apply.

10.3 The Other Party will make every effort to support the reuse of Products and to prolonging the use of Products by way of repair.

10.4 After the conclusion and amendment of the agreement, the Other Party agrees to submit a proposal (plan of action) for establishing, implementing or developing a social return *Groeituin* for 2% of the contract sum, within thirty (30) days of a request from the client.

10.5 If the Other Party has not given effect to the additional 4% or 5% social return value within three (3) years after conclusion of the Agreement, a rebate of 2% and 3% respectively will be applied for each Fee during the period during which the shortcoming is upheld. This provision is not covered simultaneously by the provisions of sections 7.3 and 7.4

Thus agreed on <date> and signed in duplicate by:

CLIENT

OTHER PARTY

Name:
Mr F.J. van der Bas

Name:

Position:
Director of Data Collection & Data
Analysis

Position:

Signature*:

Signature:

Date:*

Date:

*This document has been signed
digitally

ANNEX Annex 7 Technical Information; Product leaflets or radar type specification sheets and any additional electronic units.

ANNEX Contacts

Client

The <position>, currently held by <name>, is authorised to bind the Client insofar as it concerns performance of the Agreement.

Other Party

The <position>, currently held by <name>, is authorised to bind the Other Party insofar as it concerns performance of the Agreement.

ANNEX Terms and Conditions

GENERAL GOVERNMENT TERMS AND CONDITIONS FOR IT CONTRACTS 2022 (ARBIT-2022)

Adopted by decree of
the Prime Minister,
Minister of General Affairs,
of 22 August 2022, no. 3771053

ANNEX Service Level Agreement (SLA)

The SLA forms part of the Maintenance Agreement and standardises the agreed level of service. A proper harmonisation of the SLA to the Terms and Conditions, requires that the service levels most important to the Performance be incorporated into the Agreement. Important Service levels are at least those on the basis of which a rebate is withheld on the Fee in accordance with section 7.3. Finally, the definitions below as set out in Article 68 of the General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022) should be used in the SLA:

Availability: the period during which the Performance is free of Deficiencies.

Corrective Maintenance: the detection and repair by the Other Party of Malfunctions, which the Client has reported to it or which has otherwise become known to the Other Party. This concerns the services that are meant to restore the instruments into a good condition after becoming faulty. The radars are returned for this purpose, services are not performed at the measuring site.

Function recovery time: the period, expressed in Service hours, between the time when a Malfunction is reported to the Other Party and the time when it is rectified.

Innovative Maintenance: the making available by the Other Party of New versions or newly developed components of Products and/or new Documentation to the Client.

Preventive Maintenance: the taking of measures by the Other Party to prevent Malfunctions and other related forms of service. Preventative maintenance is only permitted on site. This remains confined to inspection and cleaning.

Response time: the time within which the Other Party's personnel must respond adequately to a notification of a Malfunction by the Client and other Client requests for service.

Service levels: in terms of the performance of Maintenance and other agreed forms of service set out in the requirements in the Agreement.

Service hours: the hours that fall within the agreed service period.

Malfunction: a technical problem that occurs when making use of the Performance.

Service levels	Standard
After phasing out the Product, it remains supported by the manufacturer for at least five (5) years. Spare parts must be available for that period and repairs can be carried out.	Product Delivery Date
Maintenance lead time Service: The response time is two (2) working days. The time required for a diagnosis is ten (10) working days. Maintenance or repair, depending on size and quantity, takes place within four (4) months. The diagnosis determines the planning.	Response time: two (2) working days. Diagnosis: ten (10) working days Maintenance or repair: a maximum of four (4) months
Delivery of Product within a maximum lead time of five (5) months after call-off.	time of call-off – agreed receipt at release location of supplies
Calibration is not permitted within ten (10) years of commissioning the system.	Product Delivery Date
The Contractor must support the users telephonically and by email during the term of the Agreement. This includes substantive remote technical support in Dutch or English about operating, mounting, settings and troubleshooting. The topic is confined to the scope of the systems delivered. The questions will initially be harmonised within the maintenance department and will only be submitted to the Contractor in the second instance (and thus in incidental cases).	The response time may not exceed two (2) working days.
Up-to-date documentation of the Products delivered must be available. In any case, the documentation provides instructions for installation, operation, maintenance and handling. Documentation is available digitally and is written in Dutch or English.	Product Delivery Date

User training at 'senior secondary vocational' level of education with regard to installation, maintenance, operational controls and primary troubleshooting. Making required materials available in the Dutch or English language. The group size per training has a maximum of 10 people.	Contract implementation date
Social Return through the RWS <i>Groeituin</i> , additional 4% or 5% Social Return value.	Three (3) years after signing the Agreement

ANNEX Price List

The Price List must at least contain the following items:

- The system price for the initial supply (corresponding to the Quotation Form)
- The system price for subsequent supplies (corresponding to the Quotation Form)
- Specific radars
- Specific electronic units (if applicable)
- Specific cables between the radar and unit in 3 lengths with a maximum of 10 metres
- The mounting frame
- Relevant and optional additional accessories
- Relevant components for Corrective maintenance
- Transportation costs for Corrective maintenance
- Hourly rate for Corrective maintenance
- Hourly rate for Support