



Memorandum of information European tender

The third-party review of a feasibility study as preparation for the construction of two new nuclear power plants

Date: May 14, 2024

In this memorandum of information, the contracting 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 (with reference 202311142).

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
1.	Chapter 1	<i>Introduction: The Tender Document at hand contains information regarding this invitation to tender conducted in accordance with the European open procedure for a third-party review to check the results of the two parts of a feasibility study, namely a technical feasibility study and a Market Consultation, and to combine these results as part of the preparation for the construction of two new nuclear power plants in the Netherlands.</i> Could you please describe more detail documents mentioned above (names and pages)	The Review concerns: 1: The Market Consultation as conducted by EY. Volume: 181 slides. 2: Three Technical Feasibility Studies conducted by the Technology suppliers. Volume: See the appendices to the Technical Feasibility Studies found at Technische haalbaarheidsstudies Plannen van het kabinet Kernenergie in Nederland (overkernenergie.nl) at the bottom of the page (Document 2-6).
2.	Chapter 1, Paragraph 1.2	It is described that the study consists of three feasibility studies and a market consultation for each technology provider. If understood correctly, the feasibility study includes three technical feasibility studies and three different market consultations (one for each technology provider)? Should every feasibility study/market consultations be reviewed on a stand-a-lone basis?	The Third-party Review validates the data from one Market Consultation and three Technical Feasibility Studies. All four studies will be evaluated stand alone, save for an analysis and the mending of inconsistencies in the technical data from the three Technical Feasibility Studies on one hand and Market Consultation on the other.
3.	Chapter 1, Paragraph 1.2	The tender document, page 7, first para states:	1. See answer to question 2. One Market Consultation was conducted by EY, in cooperation with the three technology

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		"This study bifurcates into three Technical Feasibility Studies and a Market Consultation for each technology provider. • Technical Feasibility Study: This segment is driven by the technology suppliers to ascertain the compatibility of their proposed designs with the specific Dutch context, encompassing technical, legal, and spatial considerations. • Market Consultation: Conducted in parallel with the Technical Feasibility Studies, the Market Consultation aims to gauge the conditions and prerequisites under which market parties are willing to finance nuclear energy projects in the Netherlands. It also seeks to determine the extent and manner of State involvement in the project's financing, given the established need for State participation in funding nuclear energy ventures. " 1. We understand from this that each technology provider will be asked to provide a technical feasibility study AND a Market Consultation? Is that right so that we will be reviewing: 3 Technical Feasibility Studies and 3 Market Consultations 2. What aspects does the term "spatial considerations" include? E.g. are the aspects of infrastructure and electrical grid included? 3. What aspects does the "Market Consultation" include?	suppliers. The three Technical Feasibility Studies were conducted by the technology suppliers separately. 2. Spatial considerations include - but are not limited to - grid connections, heat sink designs, spatial planning, industrial hazards and transportation. 3. See section 2.1 in the Tender Document, under 3 for the aspects of the market consultation to be addressed.
4.	Chapter 1, Paragraph 1.2	Can you provide an indication or insight into the volume of documents to be reviewed (table of contents and/or number of documents/pages)?	Regarding volume, see answer to question 1. Regarding table of contents: - For Technical Feasibility Studies: See the publicised tender document for the technical feasibility studies, as found on Technische haalbaarheidsstudies Plannen van het kabinet Kernenergie in Nederland (overkernenergie.nl) under 'Document 1'. - For Market Consultation: The assignment consisted of two parts: Detailed Financing Models, and Market Consultation and interdepartmental planning.
5.	Chapter 1, Paragraph 1.3	Given the complex character of this tender, we seek to form a consortium of experts to address especially this project. This will take us some extra time. We request you prolong the deadline for the receipt of tenders with three weeks, until 17 June 2024 before 13:00.	Three weeks of extension does not fit the schedule. However, we are prepared to give all the parties some extra time. Therefore, We move the deadline for submitting a proposal to May 30, 2024 before 14:00 PM (note: Dutch time). See the new timetable in the annex: notification times schedule.

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6.	Chapter 1, Paragraph 2.1	We understand from the bifurcates that each technology provider will be asked to provide a technical feasibility study AND a Market Consultation? Is that correct so that in practice we will be reviewing: 3 Technical Feasibility Studies and 3 Market Consultations.	See answer to question 2.
7.	Chapter 2,Paragraph 2.1	How long after the final report is delivered, is the third-party reviewer expected to remain available to assist the Contracting Authority in answering the questions of the parliament?	See paragraph 2.3 of Tender Document: Advisory capacity will be maintained until 10 th of January.
8.	Chapter 2,Paragraph 2.1	Are the local protective measures and community expectations already researched/will they be provided to the third party reviewer or should it be researched?	Community expectations and conditions are defined in the Borssele Voorwaarden (Borssele Voorwaarden 2023.pdf (borsele.nl)). Local protective measures should include legal limits, which have not yet been sufficiently determined. The Third Party reviewer is to properly research this.
9.	Chapter 2,Paragraph 2.1	It is described that the in-depth evaluation of technical feasibility studies includes an analysis on the suitability of designs for the designated location. Should other locations be considered/researched by the third party reviewer?	The designs are made for the preferred location of Borssele. During the process, the third party reviewer might be asked to evaluate on a high level the suitability of the design for other locations as support for the Strategic Environmental Assessment.
10.	Chapter 2,Paragraph 2.1	Please can the Contracting Authority confirm if the output from tasks 2 & 3 needs to be fully complete including review and approval before task 4 can commence?	Both can run concurrently, insofar as stage 4 represents a general advisory capacity. The political aspect of this advisory capacity (answering parliamentary questions) can only commence upon completion of the Review report.
11.	Chapter 2,Paragraph 2.1	Section 2.1 refers to the feasibility studies and market consultations as on-going – Please can the contracting authority clarify if these will be complete, reviewed and accepted by the time the work begins?	The Market Consultation will be complete, reviewed and accepted by the time the Third-party Review starts. The Technical Feasibility Studies (TFS) are scheduled to last 6 months, with starting dates of January 8th for EDF and KHNP and February 18th for Westinghouse. Foreseen completion dates will thus be July 8 th and August 18 th without unforeseen delays. This means, parts of the technical feasibility studies may not be finished yet.
12.	Chapter 2,Paragraph 2.1	Please can the Contracting Authority confirm that our understanding is correct. The third-party review consists of a Market Consultation per Vendor (Is this one or three reports) developed on the instructions of the Contracting Authority?	Your statement is not confirmed. Third Party Review (TPR) consists of validation of the results of both one Market Consultation and three Technical Feasibility Studies. The Market Consultation was conducted on the instructions of Contracting Authority.
13.	Chapter 2,Paragraph 2.1	Please can the Contracting Authority clarify under who's instruction (Contracting Authority or the vendors or both?) are the three technical feasibility studies executed?	The TFS are executed by the vendors, under the instruction of the Contracting Authority with help of consultants.

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14.	Chapter 2,Paragraph 2.1	The tender document state, page 9, chapter 2.1. 2. In-depth evaluation of Technical Feasibility Studies: • "Communication with technology suppliers: You are required to engage in close collaboration with the technology suppliers in instances where you identify any issues concerning the feasibility of the technology supplier's design. This collaboration should be initiated promptly and effectively whenever you recognize potential challenges or concerns related to the practicality, functionality, or compliance of the proposed design. " 1. What format is envisaged for the collaboration (e.g. face to face - if so where will that be or will it be virtual)? What material will be available/ used by the Consultant, and how soon after the project start can collaboration start? 2. Will the Technical Feasibility Studies and Market Consultation reports be provided at the project start and will this be via a secure project portal hosted by the Ministry, or is this expected as part of the tenderer's duties? 3. Will the technology providers responses to the Consultants be available as part of the background material? (Thus enabling, if needed, a means to clarify interpretation of submitted technology material). 4. Is the kick-off meeting with the Ministry in The Hague? What duration? What preliminaries are envisaged, e.g. Export Control, Security clearances, etc? How will this communication work in practice? 5. Will it be an established protocol for the submission of 'Technical Queries', e.g. like the RAI (request for additional information) process in nuclear regulatory environment? 6. What are the timelines for this process of Q&A?	1. Collaboration will be virtual, unless both technology vendors and Contractor agree to a face-to-face meeting, without Contracting Authority providing a location or compensating travel expenses. The technical data from the Market Consultation and most of the data yielded by the Technical Feasibility Studies (also see answer to question 4). The collaboration will start as soon as possible. 2. Technical Feasibility Study data will be provided by the technology supplier after an NDA between technology supplier and Contractor has been signed. The data will be hosted on a secure platform hosted by the technology suppliers. The Market Consultation data will be provided by Contracting Authority. However, this sharing of data must also be covered by the technology supplier/Contractor NDA. 3. Clarification/Instruction logs, comment sheets and answers produced in the TFS will be made available. 4. Note requirement 3.1.5.3: the kick-off meeting will be held at the Ministry of Economic Affairs and Climate Policy in the Hague. The duration will be at most (part of) one day. Security Clearance is not required. Existing export control procedures shall be maintained. 5. Communication protocols with technology providers are established. 6. 2 weeks unless otherwise specified.

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15.	Chapter 2,Paragraph 2.1	The tender document, page 10, chapter 2.1. point 4. Merging the results of the Technical Feasibility Studies and the Market Consultation states: “The third party review will focus on reviewing the feasibility of the proposed governmental support packages and its potential implication on next steps in the process (tender, permitting, construction);” 1. What aspects does the “governmental support packages” include? Is it a description included in the Market Consultation report? 2. Who will manage the performance of the parties, providing such information in a timely manner to allow the third party review to conclude in the 6 month timeframe?	1. It is discussed extensively in the market consultation report. To introduce them here briefly, it broadly refers to combinations of 5 typical market requirements: - o Government equity / Owner Financial Support - o Government debt or guarantees - o Revenue support - o Risk allocation - o Indemnities (e.g. political risk, nuclear liability) 2. Contracting Authority will manage the timely deliverance of necessary data, where necessary in collaboration with Contractor and the Technology Providers.
16.	Chapter 2,Paragraph 2.1	The tender document, page 10, chapter 2.1. 2.1 Description and objective of the assignment. Point 2. In-depth evaluation of Technical Feasibility Studies 1. Please indicate the headings/contents planned for the Reports to be assessed and indicate the number of pages for each chapter/section? 2. Can the specification for the Feasibility Studies be shared (to further understand the scale and depth expected of the assessments, and hence team resourcing and programme)? 3. This section talks about communication/close collaboration with technology suppliers. Will there be an established protocol for the submission of 'Technical Queries' and time for response?	1. See answer to question 4. 2. See answer to question 1. 3. See answer to question 14(5) and 14(6).
17.	Chapter 2,Paragraph 2.1	The tender document, page 10, chapter 2.1. Point 5. Drafting the final conclusion: “Upon completion of the evaluation of both the Feasibility Studies and Market Consultation outcomes, you will draft the final conclusions regarding the data supplied by both the technical Feasibility Study and the Market Consultation. This will be an interactive process; Contractor will involve the Contracting Authority during six rounds dedicated to giving feedback.”	1. Although regular contact is expected between Contracting Authority and Contractor to keep Contracting Authority apprised of the progress made (see 3.1.5.1.), the six rounds of feedback are intended to allow Contracting Authority to comment on the work done and formulate additional/amended points of focus where deemed necessary. These six rounds consist of a virtual meeting discussing the concept material. 2. The timeline for these rounds of feedback is part of Contractors proposal to ensure compatibility with the general planning.

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		1. Please, explain what this interactive process looks like in practice? 2. What are the timelines for this process of Q&A? This refers to talks of 6 rounds of feedback to Ministry. 3. Are these to occur within the 6 month project period? And at a schedule to be proposed by the Tenderer (i.e. key points in the programme)? Or are the 6 rounds applicable to months 4 - 6 only? 4. Will such feedback be face to face? And if so, where? Or virtual? And over what duration? 5. Will the final presentations be in the Hague? And for what duration?	3. The rounds of feedback are part of drafting the final rapport. As such, the rounds of feedback are to occur during drafting of the final report, which is scheduled to occur within months 1-3. Barring the delay of delivering the Review results, it is intended for Contractor to serve in an advisory capacity during months 4-6 post Review conclusion. 4. Feedback rounds are intended to be virtual. They can be face-to-face at the Contracting Authorities office, but note that related travel expenses are not reimbursed. 5. Note the answer to question 14(4). The same applies to the final presentations as does for the kick off meeting.
18.	Chapter 2,Paragraph 2.1	The tender document, page 10 states: "The final report will primarily be directed towards parliament in order to make a political decision to determine whether the Dutch nuclear program has a mandate to proceed with preparations for new nuclear power plants. In this context, members of parliament can pose related questions. You are to remain available after the final report to assist the Contracting Authority with answering these questions." For what period of time this availability shall be ensured?	See answer to question 7.
19.	Chapter 2,Paragraph 2.1	The tender document, page 10 states: "2.3 Assignment Period Stages 1 through 4 of the assignment must be completed within a 3-month period, starting on July 11, 2024, and ending on October 11, 2024. While deviations from this timeline are permissible, they should not extend beyond the designated scope of the assignment. Following this initial period, an additional 3 months, ending on January 10, 2025, will be allocated for completing stage 5 in month 4 and any further technical advisory services the Contracting Authority may require related to stage 5."	Contracting Authority considers the specifically mentioned source of delay unlikely to occur due to contractual obligations imposed on the technology providers. Regardless, should the execution of the Third-party Review suffer delay due to the untimely provision of material, the Contracting Authority will allow the Contractor to extend the Review period into months 4-6. See also answer to question 18 under Remarks regarding General Terms ARVODI-2018.

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		Please, explain the approach to the schedule in case of delayed input data i.e. if the technology supplier reports are delayed?	
20.	Chapter 2,Paragraph 2.1	Stage 5, Drafting the final conclusion: This refers to talks of 6 rounds of feedback to Ministry. Are these to occur within the 6 month project period? And at a schedule to be proposed by the Tenderer (i.e. key points in the programme)? Or are the 6 rounds applicable to months 4 - 6 only?	See answer to question 17.
21.	Chapter 2,Paragraph 2.1	Stage 5, Drafting the final conclusion: "Upon completion of the evaluation of both the Feasibility Studies and Market Consultation outcomes, you will draft the final conclusions regarding the data supplied by both the technical Feasibility Study and the Market Consultation. This will be an interactive process; Contractor will involve the Contracting Authority during six rounds dedicated to giving feedback". Please explain what this interactive process looks like in practice?	See answer to question 17.
22.	Chapter 2,Paragraph 2.1	Stage 4: Merging the results of the Technical Feasibility Studies and the Market Consultation Who will manage the performance of the parties, providing such information in a timely manner to allow the third party review to conclude in the 6 month timeframe?	See answer to question 15.
23.	Chapter 2,Paragraph 2.1	"Communication with technology suppliers: You are required to engage in close collaboration with the technology suppliers in instances where you identify any issues concerning the feasibility of the technology supplier's design. This collaboration should be initiated promptly and effectively whenever you recognize potential challenges or concerns related to the practicality, functionality, or compliance of the proposed design."	1. See answer to question 14(5). 2. Requests for clarifications/instructions/technical queries shall be logged in e.g. an excel file. Also note the answer to question 61.

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		1. This section talks about communication/close collaboration with technology suppliers. Will there be an established protocol for the submission of 'Technical Queries' and time for response? 2. How will this communication work in practice? Will it be a transparent process?	
24.	Chapter 2, Paragraph 2.1	Stage 2: in-depth evaluation of Technical Feasibility Studies: 1. Please indicate the headings/contents planned for the Reports to be assessed and indicate the number of pages for each chapter/section? 2. Can the specification for the Feasibility Studies be shared (to further understand the scale and depth expected of the assessments, and hence team resourcing and programme)? 3. This section talks about communication/close collaboration with technology suppliers. Will there be an established protocol for the submission of 'Technical Queries' and time for response?	See answers to question 16.
25.	Chapter 2, Paragraph 2.1	1. What format is envisaged for the collaboration (e.g. face to face - if so where will that be or will it be virtual)? 2. What material will be available/ used by the Consultant, and how soon after the project start can collaboration start? 3. Will the Technical Feasibility Studies and Market Consultation reports be provided at the project start and will this be via a secure project portal hosted by the Ministry, or is this expected as part of the tenderer's duties? 4. Will the technology providers responses to the Consultants be available as part of the background material? (Thus enabling, if needed, a means to	See answers to question 14.

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		clarify interpretation of submitted technology material). 5. Is the kick-off meeting with the Ministry in The Hague? What duration? What preliminaries are envisaged, e.g. Export Control, Security clearances, etc?	
26.	Chapter 2, Paragraph 2.3	It is unclear why specifically January 10, 2025 is chosen as the end of the assignment period. Please clarify.	This date concludes a six-month period, starting from 11 th of July.
27.	Chapter 2, Paragraph 2.3	It is stated that "deviations from this timeline are permissible", but the extent of this deviation is not described. Please clarify.	The extend of the deviation will be determined based on the magnitude and nature of the circumstances necessitating the delay. Also note the answer to question 19.
28.	Chapter 2, Paragraph 2.3	It is our experience, based on previous similar projects, that it takes approximately 6 months to perform stages 1-4 as described in your tender document. We therefor believe the time given - 3 months - is highly ambitious to deliver the high quality standards you described. Especially because half of these 3 months are during the period of annual leave. We can bring up a high quality team and will move heaven and earth to deliver the first phase in 4 months, however, because of the annual leave we will need 5 months to complete this in. <i>We request you prolong the assignment period with 2 months.</i>	See the answer to question 27. Contracting Authority is not prepared to grant a prolongation at this time. However, should concrete and valid circumstances warrant an extension to the six month period, Contracting Authority will discuss this matter with Contractor.
29.	Chapter 2, Paragraph 2.3	How will this work if the technology supplier reports are delayed?	See answer to question 19.
30.	Chapter 2, Paragraph 2.4	Citation: 'The maximum assignment value is not include a provisional sum of (at most) € 200.000 (exclusive of VAT).' Probably 'is' should be 'does' ?	Correct.
31.	Chapter 3, Conflict of Interest 3.1.2	Please can the Contracting Authority confirm that the current consultants are conflicted out of bidding for this work as it's an independent third-party review?	<i>This answer has already been shared on 8 May 2024.</i> According to the Contracting Authority, it is plausible that there are conflicts of interest with the consultants that are directly and consistently involved and preparing the Technical Feasibility Studies and the Market Consultation for the Contracting Authority . These parties may therefore be excluded from the assignment. However, in line with the Public Procurement Act, parties still have the opportunity to justify in the European Single Procurement Document, that competition will not be

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			adversely affected and that sufficient measures have been taken to comply with the requirement set out in Chapter 3, 3.1.2.1 of the tender document. The Contracting Authority will then review their justification in order to conclude whether they meet the requirements or not.
32.	Chapter 3, Conflict of Interest 3.1.2	Please can the Contracting Authority confirm that the technology vendors and their direct supply chain for the completion of the feasibility study reports are conflicted out of bidding for this work?	<i>This answer has already been shared on 8 May 2024.</i> Note the answer on question 31. Also, we confirm that the three technology suppliers cannot meet the requirement in chapter 3, 3.2.1.1 and are therefore excluded for this tender. For other parties in their direct supply chain, in case of any form of involvement in the Feasibility Study for the Dutch NPP project, the party in question should justify this in the European Single Tender Document and describe the nature of this involvement, and why this is deemed not to compromise the independence and impartiality of said party in the role of Third-party Reviewer. The Contracting Authority will then review their justification in order to conclude.
33.	Chapter 3, Conflict of Interest 3.1.2	What is the view of the Contracting Authority on the participation of a party to the 3rd party review consortium, when this party has provided data, information or analysis to either the vendors or their consultant for the preparation of the TFS?	<i>This answer has already been shared on 8 May 2024.</i> See previous answers on questions 31 and 32.
34.	Chapter 3, Conflict of Interest 3.1.2	In the Tender Document Section 3.1.2 - Conflict of Interest it is stated that the Contractor shall "...maintain complete impartiality and independence from the technology providers involved in the execution in the Third-party Review." and it is noted that "...conducting this review does not bar the Contractor from participating in tenders for succeeding preparatory steps." 1. Please, could you confirm whether participating in the Third-party Review will prevent the contractor to participate in the design, construction and/or commissioning of the future NPP directly for the selected Technology Vendor? 2. As the answer to this question will be crucial to clarify whether the aforementioned conflict of interest exists or not and, subsequently, for the Tenderers to decide whether to bid or not, please, could you make an exception and provide the answer to this question before the publication of the Memorandum of Information on May 14th?	<i>This answer has already been shared on 8 May 2024.</i> 1. We confirm that conducting the Third-Party Review does not exclude parties from subsequent tenders for the Dutch new nuclear power plant construction project. 2. Agreed. Answers regarding the independence of parties will be provided in advance, hereby.

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35.	Chapter 3, Paragraph 4.3.1	As a global firm we have presence in different countries. These country firms (group members) have their own legal structure. Is it allowed to use references of group members (other country firms), without the group member firm (other country firm) to act as a different sub-contractor.	No, it is not allowed to use references of these other firms (other country firms) who have their own legal structure, without the group member firm to act as a different sub-contractor.
36.	Chapter 3, Requirement 3.1.1.1	Citation: 'However, since the third party review must be based on data supplied by the Technical Feasibility Studies, Market Consultation and the consultants involved, deviations from a three month term must remain within the scope of using those supplied data (see also chapter 2.3).' This is an incomprehensible statement. Please clarify.	This requirement means to ensure Contractor will limit the Review to the fixed scope of validating the technical data produced by the Feasibility Study and processing the validated data into a final report. Contractor should not broaden the scope of the Review without explicit approval of Contracting Authority.
37.	Chapter 3, Requirement 3.1.1.2	"No deviations from the three months term must stem from the repetition of (parts of) the feasibility study". Please explain what this means in practice?	See answer to question 36.
38.	Chapter 3, Requirement 3.1.1.2.	The tender document, page 11, states: "3.1.1.2. No deviations from the three months term must stem from the repetition of (parts of) the feasibility study." Please, explain what this means in practice	See answer to question 36.
39.	Chapter 3, Requirement 3.1.3	With regard to Article 3.1.3 Non-disclosure agreement technology suppliers', can EZK provide a copy of the proposed NDAs for review.	This is not possible. Technology suppliers must provide the proposed NDAs. See also answer to question 2 under Remarks regarding Public contract. NDAs is a condition of the technology suppliers in their contract(s) for the THS, as confidential business information is shared.
40.	Chapter 3, Requirement 3.1.3	Please can the Contracting Authority indicate whether there will be a standard confidentiality agreement or if it is up to the contractor to negotiate an NDA with the technology suppliers? If there is a standard NDA, could this be provided to review if it is acceptable for the contractor.	See answer to question 39. This must be discussed with the technology suppliers.
41.	Chapter 3, Requirement 3.1.3	Can Contracting Authority confirm signing the non-disclosure agreement with the technology suppliers does not exclude contractor from bidding in other (international) tenders	The NDA in question will be signed between the Contractor and the Technology Supplier and concern the proper handling of sensitive data and Intellectual Property. It is not the purpose of an NDA to impose a non-competition clause.
42.	Chapter 3, Requirement 3.1.5	If applicable, how should the third party reviewer handle confidential or proprietary information obtained (other than from the technology suppliers) during the review process?	This is a matter of later discussion, to be included either in an NDA between Contractor and Contracting Authority, or a dedicated clause in the Third-party Review contract.
43.	Chapter 3, Requirement 3.1.5	Please can the Contracting Authority confirm that arrangements have been made for client staff and	Confirmed.

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		technology vendor staff to be available throughout the envisaged duration of the project which includes the summer holiday period?	
44.	Chapter 3, Requirement 3.1.5	Will the Contracting Authority organise a site visit – this is currently missing from the familiarization task.	A site visit can be organized by Contracting Authority.
45.	Chapter 3, Requirement 3.2.1.1.	Is our assumption correct that "the consultants currently assisting the Contracting Authority" are excluded from this specific tender?	See the answer to question 31.
46.	Chapter 3, Requirement 3.2.2.9	Can you give us an indication of the quality-level you mean with " [...] meets high-quality standards [...]" ?	Contracting Authority follows FIDIC standards regarding the level of quality.
47.	Chapter 3, Requirement 3.2.3.	Can you share the original scope of work for market consultation and for the technical feasibility studies? This would help us understand anticipate the kind of analyses and findings we can expect in the reports.	Regarding the Technical Feasibility Studies, see the tender document as referenced in the answer to question 4. Regarding MC, EY performed desk research and a market consultation to present possible government support packages. We focused on state participation options through equity, lender support and revenue support. Please also see the answer to question 15.
48.	Chapter 3, Requirement 3.2.3.1.	"You are expected to ascertain whether the findings of the Market Consultation are feasible and therefore comply with the Dutch legal context" Is legal compliance the only feasibility criterion envisioned or does feasibility need to be assessed wider? If the latter, what dimensions of feasibility are relevant (i.e. financial, legal, political etc)?	We don't expect a very comprehensive analysis that results in an additional report. We're looking to consolidate the findings of the market consultation and the technical feasibility study when it comes to aspects such as risk allocation and delivery model. We also need the Third-party Reviewer to confirm whether the findings of the market consultation and the presented possible government support packages are legally feasible, given the current Dutch legal context and recent examples. The financial or political feasibility are not part of this assignment.
49.	Chapter 3, Requirement 3.2.3.1.	Is our assumption correct that 'current Dutch legal context' is meant? Could you indicate what you understand to be the minimum under the current legal context and which regulations fall under this?	We mean any Dutch legal restrictions to the presented government support packages. It is the task of Contractor to ascertain the relevant legal context.
50.	Chapter 3, Requirement 3.2.3.2	The tender document, page 13, states 3.2.3.2 You are expected to critically assess the professional advisory report on various components of a Government Support Package and the mapping of the preferences and dependencies of the technology suppliers when it comes to financing structures. Does this requirement mean that an extra report is required?	No, we don't need an extra report about government support packages. Please also see the answer to question 48.
51.	Chapter 3, Requirement 3.2.3.2	Does this requirement mean that an extra report is required?	See answers to questions 48 and 50.

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52.	Chapter 3, Requirement 3.2.3.7	Can you explain which relevant Dutch standards and regulations you are referring to with regard to performing a market consultation?	See the answers to questions 48 and 49.
53.	Chapter 3, Requirement 3.2.4.5	Citation: "You will review the deliverables provided by three technology providers, with a maximum of 100 man-months available for posing questions to each technology provider". Please explain 100 man-months?	The workload for the technology provider on answering the Contractors question should not exceed 100 man months, that is 17.360 manhours.
54.	Chapter 3, Requirement 3.2.4.5	Please clarify amount of needed man-hours needed to be reserved for posing questions to each technology provider?	See answer to question 53.
55.	Chapter 3, Requirement 3.2.5.1	"You are expected to formulate the final conclusions drawn from the integrated results of the Technical Feasibility Studies and Market Consultations." Can you specify what type of conclusions are expected? Is the expectation that we draw third party review conclusions on the quality, consistency and completeness of the existing reports, or is the expectation that we go beyond mere review and advice, based on synthesis of the existing reports, on the implications for the procurement process?	Both assumptions are correct. We also interpret the second option as aiding Contracting Authority in writing the Bid Specifications for the tendering process for the NPPs.
56.	Chapter 3, Requirement 3.3.3	Would you expect this role to be fulfilled by a legal firm who gives a formal legal opinion?	This is not required.
57.	Chapter 3, Requirement 3.3.4	Please confirm whether nuclear project experience is a specific requirement for the Stakeholder engagement manager role?	This is not required as the stakeholders involved are not unique to an NPP project. Any large-scale infrastructure project with an impact on local communities and the environment similar in scope will suffice, although note the preference for experience with a negative public opinion.
58.	Chapter 3, Requirement 3.3.4.	The tender document, page 15 states: "3.3.4. Stakeholder engagement manager: Has experience with successful stakeholder management in large scale infrastructure projects, especially in a cases with a sensitive (and possibly adverse) public opinion. Also has skill in communicating a technically complex subject matter to non-specialist audiences (illustrate in CV).	The question is missing. Should the matter pertain to experience of the stakeholder engagement manager with nuclear projects, see the answer to question 57.
59.	Chapter 3, Requirement 3.6.1	We suggest that - if for whatever reason the planning of the project be delayed - the terms of payment are being made discussable again, given that specific situation.	This is permissible, should the specific circumstance give rise to need to amend the terms of payment in the event of delay for which Contractor does not bear the responsibility.
60.	Chapter 3, Requirement 3.6.1	We propose an invoicing system up to 85% of the maximum total price and 15% after delivery and approval of the final result.	Proposal denied.
61.	Chapter 3, Requirements 3.2.1.4	Is the duration for the gap analysis process defined and is it aligned with the project schedule for the Contractor? Shall	Initial contact between technology vendors/Consultants and Contractor shall be through the Contracting Authority. During execution Contractor

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
		the Contractor communicate with the Consultant through Contracting Authority, or will be authorized to communicate directly?	might be authorized to communicate directly on specific (technical) issues for efficiency.
62.	Chapter 3, Requirements 3.2	In multiple requirements we are requested to assess the process (e.g. "assess how the study accelerates the tendering process", "assess the effectiveness of the market consultation process), are these assessments merely focusing on identifying GAP's in the current process or also expected to identify the impact for the next phases of the project?	They are also expected to identify the impact for the next phases.
63.	Chapter 3, Requirements 3.2.1	1. What is the amount (and type) of data used in the technical feasibility study and market consultations that should be reviewed? 2. Is all data and information delivered in English?	1. Regarding amount: see answer to question 1. The type will be technical data. 2. All data and information will be delivered in English.
64.	Chapter 3, Requirements 3.2.1	In 3.2.1.4 states that the consultant is to be involved in the gap analysis. Later in 3.2.2.6 it is stated the consultant is expected to assess the gap analyses. Please can the contracting authority confirm if it is correct?	Note the answer to 62. For existing gap analyses: previous consultants & vendors have executed gap analysis on the available Site data. Contractor is expected to assess these gap analyses.
65.	Chapter 3, Requirements 3.2.2	Will the contractor provide the third party reviewer access to Dutch and European regulations and safety standards?	Contracting Authority will provide access to standards and regulations provided to vendors in the TFs. Contractor should ensure the completeness of this data and fill any identified gaps.
66.	Chapter 3, Requirements 3.2.4.4.	Shall the Contractor communicate with technology providers through Contracting Authority, or will be authorized to communicate directly?	See answer to question 61.
67.	Chapter 3, Requirements 3.2.4.5.	1. Is communication channel already established for posing questions to each technology provider? 2. Shall the Contractor communicate with technology providers through Contracting Authority, or will be authorized to pose questions directly?	1. Yes. 2. See answer to question 61.
68.	Chapter 3, Requirements 3.2.5	Is there a pre-defined format or structure for the comprehensive report that the third-party reviewer is expected to produce?	No.
69.	Chapter 3, Requirements 3.3	Besides the expected knowledge and (comparable) project experience, are there any expected certifications required for the third-party reviewer or review team?	No.
70.	Chapter 3, Requirements 3.3	1. Please can the Contracting Authority clarify what is meant by legal context in section 3.2.3.1.? 2. What type of specific legal knowledge is required? Is a legal advisor necessary?	1. See the answer to question 48 and 49. 2. We do not think a specific legal advisor is necessary regarding the legal context meant in requirement 3.2.3.1, aside from the legal advisor as required in 3.3.3.

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
71.	Chapter 3, Requirements 3.3	Could you explain in which of these roles the financial expertise is expected given the focus of the market consultation?	We especially need the capability to understand the risks and the financial implications of the risks, in order to merge the technical feasibility study and the market consultation outcomes. A specific financial advisor won't be necessary.
72.	Chapter 3, Requirements 3.4	Referring to Section 3.4.3. Please can the Contracting Authority clarify in the case that the contractor hires a subcontractor. Is it sufficient that those costs are incorporated as an out-of-pocket expense for the main contractor?	Note Articles 8 and 27 of the ARVODI 2018. Expenses from subcontracting can be incorporated as out-of-pocket expenses, but Contractor must be transparent in their proposal regarding the parties subcontracted, the FTE involved and the working hours expended. Also, those expenses must be market conform and reasonable.
73.	Chapter 4, Paragraph 4.3.1/ Annex 4	Is tenderer allowed to submit a separate client satisfaction letter as evidence for the references instead of a signed Annex 4?	This is allowed. However, it should be clearly indicated which core competence is addressed with the reference and all information from Annex 4 must be described..
74.	Chapter 4, Paragraph 4.3.1/ Annex 4	In Annex 4 is stated that "the reference's must only signed by the referee as requested by the Tendering Authority)". Can you confirm that tenderer need to submit unsigned references with the tender and that only the winning tenderer need to submit the (by referee) signed references on request of the Tendering Authority?	Confirmed. A signed reference may be required from the winning tenderer as evidence at the request of the contracting authority (optional). As a tenderer, you can now submit an unsigned reference.
75.	Chapter 4, Paragraph 4.3.1/ Annex 4	We suggest that also a reference is requested, regarding economic expertise concerning nuclear power plants. Is this not relevant, or should this be added?	Suggestion denied. Core competencies are fixed for the transparency of the tendering process and can no longer be added or removed.
76.	Chapter 4, Paragraph 4.3.1/ Annex 4	We suggest that the requested "Dutch legislation and regulatory frameworks" are applicable to nuclear in general, and not only tot Nuclear Power plants.	Suggestion denied. To ensure expertise with the specific context of nuclear energy as opposed to other nuclear projects, legal knowledge pertaining to Nuclear Power Plants should be present within the proposed team.
77.	Chapter 4, Paragraph 4.3.1/ Annex 4	Are multiple references per competence accepted, to demonstrate experience and knowledge with the services requested? If so, what is the maximum number of references?	No this is not desirable and is not seen as adding value. One reference per core competency is sufficient to demonstrate. It is also permitted to provide one reference for several core competences; if one reference demonstrates several competences that meet the applicable requirements, you can use the same reference for these different core competences. See also section 4.3.1. of the Tender Document.
78.	Chapter 4, Paragraph 4.3.1/ Annex 4	You are demanding that the reference forms be signed by the referee. To ease administrative burden on both ourselves and our clients, we kindly request that you do not make it mandatory for the reference to be signed. Of course, if you wish, you can contact clients by phone for verification. Do you agree with this? If not, please provide your explanation.	See the answer to question 74. It is not mandatory to provide a signed reference upon registration. A signed reference may be required from the winning tenderer as evidence at the request of the contracting authority (optional). As part of your tender, you can now submit an unsigned reference.
79.	Chapter 5,	In the Tender Documentation Section 5.2 – Quality criteria is defined. Please, could you clarify whether	The award criteria will be assessed individually and separately by every member of the assessment team, after which consensus follows. See

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
	Paragraph 5.2	the scoring of the Quality of the Team and the Plan Approach will be established based on a comparison between different Tenderers proposal or, on the contrary, will they be evaluated totally separate?	more information on chapter 6 'Assessment of the Tender' of the Tender document.
80.	Chapter 5, Paragraph 5.2.1	In the Tender Documentation Section 5.2.1 – Award criteria relating to Quality of the project team it is defined. Please, could you confirm whether this criteria shall be met only by the Team of experts established in Section 3.3 - Requirements for the team or, in case the Tenderer consider that some other roles may be necessary, this criteria shall be also met by any other Team profile/roles proposed by the Tenderer?	Section 3.3 is the minimum to be met with the proposed team. Additional roles may be proposed. 5.2.1 is judging the quality of the proposed team, which can hold more roles than the minimum, but the minimum should be present.
81.	Chapter 5, Paragraph 5.2.1	In the Tender Documentation Section 5.2.1 – Award criteria relating to Quality of the project team it is stated "Relevant projects might include (descending from most desired):" and then a list of projects is included (i.e. category A, B, C, D, E and F). Please, could you confirm whether, at least, one relevant project per category shall be presented?	The overview in paragraph 5.2.1. gives examples of relevant projects and should be seen as a guideline for Contractor; it is not written as an all-encompassing list. Projects experience will be taken into account in the integral evaluation of the project team. e.g. a civil expert with recent experience in a HPC (A.II) will be ranked higher than a civil expert with recent experience in a feasibility study for a final repository for nuclear waste (E)
82.	Chapter 5, Paragraph 5.2.1	In the Tender Documentation Section 5.2.1 – Award criteria relating to Quality of the project team it is stated "Relevant projects might include (descending from most desired):" and then a list of projects is included (i.e. category A, B, C, D, E and F). Regarding categories A, B and C, there are subcategories depending on the country of origin of the project. Please, could you confirm whether projects developed in the Netherlands, in the EU and outside the EU will be equally scored independently of the region?	Confirmed.
83.	Chapter 5, Paragraph 5.2.1	In the Tender Documentation Section 5.2.1 – Award criteria relating to Quality of the project team it is stated "Relevant projects might include (descending from most desired):" and then a list of projects is included (i.e. category A, B, C, D, E and F). On the other hand, in the same section, a table listing the weighting percentage and the quality of the response team is included. Nevertheless, it is not clear for us how the relevant projects will be scored.	Note the answer to question 81. The team will be integrally graded on the assessment aspects. For each team member, relevant projects can underpin their experience level for their subject.

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
		For example, will a Tenderer presenting 6 relevant projects of category A obtain higher score than a Tenderer presenting 1 relevant project of each of the categories (also 6 projects in total)? Please, could you elaborate more on this scoring criteria?	
84.	Chapter 5, Paragraph 5.2.1.	Citation: ""A description of how, through the composition of the team to be deployed, the quality level of the assignment." Probably some words are missing here?	Correct. ""A description of how, through the composition of the team to be deployed, the quality level of the assignment is raised ." Forms the full sentence.
85.	Chapter 5.2.1.	Could you please confirm whether the CVs included in the offer are binding?	The CVs are not binding. Team members can be added or removed, provided Contracting Authority is consulted beforehand and there are valid stated reasons for the changes to the team in question. However , the prospect new team member must meet the requirements associated with the position they are proposed to fill.
86.	Chapter 5.2.2	With regard to Article 5.2.2 Award criteria relating to the Plan approach', can EZK confirm if the 'schedule that aligns with each stage, providing a clear timeline for deliverables and critical milestones' is included within the 20 pages or is separate?	This schedule is included in the 20 pages count, but this number of pages is an indication; not a hard limit. Exceeding 20 pages will not impose a penalty on the evaluation of the plan approach.
87.	Chapter, Paragraph 5.2.2	"It is stated that ""Indicatively, the guideline is that the number of pages to be devoted to the plan of action should be is twenty (20)."" The term ""indicative"" suggests that the number of pages is only a guideline and not a strict rule, while the use of ""should be"" indicates that the number of pages is mandatory. Do you mean that the PoA should consist of at least 20 pages, but can be longer? Or that it is up to us to draft a PoA which is around 20 pages in length ?"	See answer to question 86. '20' is an indication, neither a minimum nor a maximum. However, in order to not greatly burden the assessment of the PoAs, we ask that the indication is followed as much as possible.
88.	General	Who are in the assessment committee?	Several members of Contracting Authority aligned with the dossier of nuclear energy.
89.	General for exclusion	Will the winning consultant of this tender be excluded in future assignments regarding the new nuclear powerplants?	No. See the answer to question 34.
90.	General for layout	Please can the contracting authority clarify should the proposal be in a specific format, font or within a word limit? Should a specific margin size be used? Pdf or word format?	See answer to question 86 and 87 regarding a limit to proposal length. The proposal must be submitted in PDF format.
91.	General for layout	Please can the contracting authority clarify if graphics would be included in the page count, or should they be included as appendix?	See answer to question 86 and 87: an appendix is not necessary.

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
92.	General for layout	Does the Contract Authority have a preferred format for the Proposal and CVs of the project personnel, or is the Tenderer at liberty to choose?	There is no preference. The Tenderer has a free choice.
93.	General for layout	Does the Ministry have a preferred format for the Proposal and CVs of the project personnel, or is the Tenderer at liberty to choose?	See answer to question 92.
94.	General for processing	Please share the list of local standards applicable to this project for further processing.	See answer to question 65.
95.	General for processing	In order to quote for our services related to the tender, we would be grateful if you would provide us with the table of contents of both the Feasibility Study and the Market Consultation.	See answer to question 4.
96.	General for processing	Regarding the Technical Feasibility Studies and a Market Consultations, can EZK provide tenders with details of the scope provided to each technology provider to prepare these documents. This will allow tenderers to understand the quantum and scale of these reports.	See answer to question 47.
97.	General for processing	Please can the Contracting Authority confirm the names of the "current consultants" firm(s) as set out in the ITT?	The current consultants are: EY for the Market Consultation, Assystem for the Technical Feasibility Studies and Deltares for conducting a study regarding cooling water.
98.	General for processing	Please can the Contracting Authority indicate which parties are currently the exact legal entities, the technical advisors and financial advisors?	See answer to question 97.
99.	General for processing	In multiple articles of the tender document, there are mentioned consultants to be involved. E.g. Page 9, chapter 2.1., point 1:"the Contracting Authority's current consultants" Page 10, chapter 2.1, point 4 ": ...(technology suppliers and consultants)" Page 11, chapter 3.1.1.1.: ..."However, since the third party review must be based on data supplied by the Technical Feasibility Studies, Market Consultation and the consultants involved" it right to consider there four different consulting parties; one for the Contract Authority, and one for each of the three technology vendors?	See answer to question 98.
100.	General for processing	How will the Contract Authority undertake oversight of the Project during its execution, and what reporting is expected from the third party reviewing team?	Contracting Authority expects weekly virtual meetings with Contractor to take note of the progress made. See also the answer on question 17(1).
101.	General for processing	A list of input documents for the review would be appreciated.	See answer to question 1.

Question	Chapter and Paragraph/requirement from the tender document	Question	Answer
102.	General for processing	How will the Ministry undertake oversight of the Project during its execution, and what reporting is expected from the third party reviewing team?	See answer to question 100.

Remarks regarding General Terms ARVODI-2018

No.	Article from ARVODI-2018	Reason for objection	Answer
1.	Article 3	"Of course, we want to fulfil our obligations under the Contract in cooperation with the Contracting Authority, but only insofar as our professional rules - including independence rules - allow this cooperation. This is because the Contractor is part of a group to which an accountancy firm also belongs, which means that rules regarding independence affect it. We therefore propose to add the following to this article: ""The Contractor shall carry out the assignment in accordance with the applicable laws and professional regulations. the Contracting Authority will always fully respect the obligations arising from this for the Contractor. The Contractor shall never be obliged to commit any act or omission that is contrary to or incompatible with the aforementioned rules."" Can you agree to this text? If not, why not?"	Proposal denied. Under article 3, the Contractor guarantees that the Services provided by it or on its behalf meet the requirements laid down in the Contract and will be performed in a professional manner.
2.	Article 3.1	With regard to Article 3.1 could we request that "guarantees" are deleted and replace with "uses reasonable endeavours to ensure" otherwise this implies a fitness for purpose obligation which is uninsurable.	Proposal denied. See answer on question 1.
3.	Article 4	"Articles 4.1 to 4.5 do not fit the specific nature of the Services that the Contractor will provide, where the added value consists of an intellectual service. The expertise that the Contractor has, in addition to the Contracting Authority's own knowledge, is difficult to assess by the Contracting Authority itself. In addition, we want to prevent the independent position of the Contractor, as a professional service provider, from being compromised. However, we can imagine that the Contracting Authority wants to test the deliverables/results of the Services against the agreed criteria and wants to keep that control in its own hands. We therefore propose the following alternative text: ""The Contracting Authority will check the deliverables for all material aspects and agreed criteria as laid down in the Contract and communicate the outcome of such an inspection to the Contractor within 5 working days after delivery of the deliverables, failing which the Contracting Authority will consider the delivery to be accepted."" If the deliverables do not comply with the Contracts, we propose to fall back on the legal provisions and remedies available to the Contracting Authority. In the event that this text is not acceptable, can you change the text to a form that is acceptable to you? Can you further confirm that, in the context of the	Proposal denied. The query does not provide sufficient grounds for a deviation from the ARVODI terms.

		Contract, reference is made to the definition of inspection as proposed by us in this column?"	
4.	Article 6.1 and 6.2	"In view of the nature of the services, which involve the performance of an intellectual service, it must be possible for the Contractor to replace the persons charged with the performance of the work if the Contractor deems this necessary for the correct performance of the work. We therefore propose that Articles 6.1 and 6.2 be replaced by the following: ""The Contractor shall be entitled to temporarily or permanently replace persons in charge of the performance of the services. In order to maintain continuity, the Contractor will deploy the same persons as much as possible, so that the burden on the Contracting Authority is kept to a minimum. If the Contracting Authority is reasonably of the opinion that a person charged with the performance of the services lacks one or more of the qualifications mentioned in the invitation to tender, or does not perform the work properly in the opinion of the Contracting Authority, the parties will consult about replacing the person in question. The parties will try to reach a solution in all reasonableness. The basic principle is that persons who have comparable expertise, training and experience (in accordance with the requirement in the invitation to tender) are made available."	Proposal denied. The question does not give sufficient reason to deviate from the ARVODI terms.
5.	Article 8.1	Are you prepared to give permission in advance for the Contractor to engage specific expertise that has been invested in subcontractors?	Proposal denied. The proposed text directly contradicts the spirit of the provisions of Article 8 ARVODI. See also the answer on question 7.
6.	Article 13	Article 13 of the ARVODI-2018 exclusively regulates the Contractor's duty of confidentiality. It is reasonable that the Client is also subject to a duty of confidentiality, unless of course the law (including the Government Information (Public Access) Act) or a court ruling to order the Client to disclosure mandatory. Subject to the foregoing, you may agree to the inclusion of the following Provision in the assignment letter? "In addition to Article 13 of the ARVODI-2018, the following applies. The Client has a duty of confidentiality with regard to the content of reports, opinions or other reports, whether or not written statements by the Contractor, which does not detract from the fact that the Client reproduction of documents for their own internal use. On the duty of confidentiality of both Exceptions shall be made in the event that any statutory provision (including the law open government), rule of appeal or court order to the relevant party publication is mandatory."	Proposal denied. This is contrary to the scope of the assignment, moreover, the final report will consist of a public section, intended for publication, in addition to a confidential section. See also Chapter 2.
7.	Article 13.1 up to 13.3	"Please reciprocate provisions 13.1 to 13.3. The Contractor also has an interest in the confidentiality of the (confidential)	Proposal denied. The proposed extension of the exception is unacceptably broad. Further: The Contract Authority is a public

		information provided. Can you amend the provisions along those lines? Of course, the results of the Services can be used in the manner agreed in the Contract itself. Finally, Article 13.1 does not provide for all necessary and customary exceptions to the duty of confidentiality for the Contractor. We would like the last part of this article to be amended as follows: ""(...), except insofar as 1) necessary for the performance of the Contract, 2) a court ruling, application of a statutory provision or other (professional) rules obliges the Contractor to disclose or disclosure is necessary for the Contractor to defend its own interests in or out of court."" Can you agree to that? If not, why not?"	authority and handles Contractor's confidential and/or competitively sensitive information with integrity.
8.	Article 13.2	With regard to Article 13.2 could we request that "guarantees" is deleted and replace with "uses reasonable endeavours to ensure". We cannot "guarantee" the actions of staff although Jacobs will obviously be liable for any breaches of confidentiality. Jacobs staff are also under a general obligation of confidentiality through their employment contracts.	Proposal denied. The Contract Authority expects from the Contractor guarantees for the confidentiality of his own staff.
9.	Article 18.5	It seems unreasonable to us that the Contractor can be forced to continue to work in the event that it is not paid for the work. We propose to declare this provision inapplicable, so that the Parties fall back on what is regulated by law with regard to suspension and termination. Can you agree to that? If not, why not?	Proposal denied. Discussion of the incorrectness and/or unsoundness of an invoice should be separate from the interest in the undisturbed continuation of ongoing work.
10.	Article 21	"If and to the extent that the results of the Services are shared with third parties, we cannot assume any liability risks towards these third parties, because we have no possibility to limit the liability towards the third party, as the third party is not known to the Contractor in advance. We would therefore like to agree on an indemnification for claims from those third parties. After all, the Services provided by the Contractor are provided for the benefit of the Contracting Authority and the Contractor does not wish to take the Contracting Authority's risk in that context. In addition, it is common practice to agree an indemnity for third-party claims in connection with the provision of services. We therefore propose that the following provision be added to Article 21: ""The Contracting Authority indemnifies the Contractor against all claims by third parties arising from or in connection with the work to be performed or performed for the benefit of the Contracting Authority, unless the Contracting Authority demonstrates that the claims are not related to culpable acts or omissions on the part of the Contracting Authority or are caused	Proposal denied. Adaption of the article is not necessary. If a Party fails to discharge any of its contractual obligations (also referred to as 'non-performance'), it is obliged to compensate the other Party for the damage thus caused, unless the failure is not attributable to the defaulting Party.

		by gross negligence or wilful misconduct on the part of the Contractor."" Can you agree to this? If not, why not?"	
11.	Article 21 (New Article)	We would like to propose a new mutual clause excluding consequential loss as follows; New Article 21.7 Neither Party shall have any liability under, arising out of or in connection with this Contract, whether by way of breach of contract, breach of duty, tort (including but not limited to negligence), indemnity or otherwise, for (i) any loss of profit, loss of goodwill, injury to reputation, loss of income, loss of use, loss of revenue, loss of contracts, loss of product, loss of production, loss of business opportunity, loss of savings or anticipated savings, third party losses, loss of use of capital, business interruption, interest or increased financing charges, rental charges or other like risks and in each case whether direct or indirect or (ii) any indirect, special or consequential loss or damage whether or not foreseeable at the date of execution of this Agreement or at any time.	Proposal denied. The Contracting Authority sees no reason to include the article you claim.
12.	Article 21.3	With regard to the liability as set out in Article 21.3 of the ARVODI-2018, we note that that it is customary in our profession to limit liability, whereby the maximum liability is reasonably proportionate to the amount of the contract fee. The limitation of liability as currently set out in Article 21.3 of the ARVODI-2018 is not fully in line with this, at least in so far as it restricts the liability on the basis of a scale, which has the effect of maximum liability, depending on the value of the contract, may exceed an amount that is equal is three times the fee (the cap that is customary within our industry). In view of the above, can you include in the assignment letter that, contrary to the provisions of Article 21.3 of the ARVODI-2018, the Contractor's total liability will be limited up to a maximum of three times the contract value, as follows: Article 21.3 ARVODI-2018 is replaced by the following provision: "The Contractor will perform the work to the best of its ability, taking into account the care required by the Contractor that is to be expected. If a mistake is made because the Client has	Proposal denied. Under the law, parties are in principle liable without limitation for damage they cause. The ARVODI-2018 has nevertheless chosen to limit liability in a balanced manner, as evidenced by the graduated scale in Article 21.3. Given the nature and scope of this assignment, the Principal sees no reason to limit liability further.

		provided the Contractor incorrect or incomplete information, the Contractor is not liable for the damage caused as a result. The Contractor's total liability towards Client for any errors that would have occurred if the Contractor acted with due care, is limited to a maximum of three times the amount of the fee that the Client has paid and/or still due for the specific work carried out under the contract from which the error arises. If the contract has a duration longer than twelve months, In that case, the total liability in the context of the assignment is limited to a maximum of three times the amount of the fee paid by the Client to the Contractor and/or for the last twelve months for the specific activities carried out under the contract from which the fault arises. The Contractor's limitation of liability does not apply if there is intent or deliberate recklessness on his part and/or if any mandatory (inter)national law or (professional) regulations do not permit such a restriction."	
13.	Article 21.3	With regard to Article 21.3 Liability. We would propose that liability is capped at the value of Services provided over the term of the Contract i.e. 1.75-2.0 M Euros.	Proposal denied. See the answer to question 12.
14.	Article 21.3	"The liability provisions included in Article 21.3 raises several questions. It is only after the amount of the 'value of the contract' has been determined that it is possible to assess whether that provision is acceptable or not, because the amounts vary widely. When assessing which limitation of liability is proportionate, the usual liability requirement in the relevant sector or for the relevant assignment in terms of nature and scope must in any case be taken into account. In addition, with regard to the duration, the liability must be linked to a percentage of the contract value of one year. In order to clarify the provision, to bring the liability in line with our role and responsibilities in the context of this assignment and to align with what is customary in our industry, we propose a new provision instead of the current article 21.3: ""The Contractor shall only be liable to the Contracting Authority up to a maximum of three (3) times the amount of fees paid by the Contracting Authority to the Contractor pursuant to this Contract in the relevant calendar year. The Contractor shall never be liable for restrictions in the use and loss of data, commercial agreements, goodwill, turnover or profit (regardless of whether this is to be regarded as direct or indirect damage or consequential damage) nor for any other indirect or consequential loss in connection with the Contract. The Contractor is not liable for damage resulting from false, misleading or incomplete information from the Contracting	Proposal denied. See the answer to question 12.

		Authority or third parties." Can you agree to this? If not, why not?"	
15.	Article 21.3	Article 21.3(d) of the ARVODI-2018 states that the limitation of liability does not applies to (violation of) the Data Processing Agreement. Such unlimited liability is very unusual in our industry. The risk that is borne by the Contractor in this way disproportionate. Can you agree to the inapplicability of article 21.3 sub d of the ARVODI-2018 in the engagement letter, so that damage as a result of (violation of) the data processing agreement is also under the limitation of liability as referred to above.	For this assignment, the Parties will not conclude a processor agreement as referred to in Article 14 (2) ARVODI-2018, referred to in Article 21 (3) (d). The Contracting Authority and the Contractor will each handle data protection properly.
16.	Article 21.3	Addition to section 21.3. We propose the following change to this section: <i>The liability is limited to two times the total fees paid for the assignment, indirect and consequential damages are excluded, and the liability period is limited to the duration of the assignment.</i>	Proposal denied. See the answer to question 12.
17.	Article 21.3a	With regard to Article 21.3a, we would kindly ask that this clause is amended so as to be negligence based. Our insurance will only apply to acts where we are negligent. Following "personal injury" please add "caused by the Contractor's negligence".	Proposal denied. This Article 21.3a states a normal exception. The Contract Authority does not intend to limit this article to negligence.
18.	Article 22.3	<i>The term 'force majeure' is in any event understood not to include: staff shortages, strikes, staff illness, shortages of raw materials, transport problems, late delivery or the unsuitability of items required for the performance of the work, liquidity or solvency problems on the part of the Contractor or failures on the part of third parties engaged by the Contractor.</i> "We would like to supplement this article 22.3 with: ""In the execution of the work, the Contractor is dependent on the timely delivery of the - correct - required data and documents. If the Contracting Authority fails to do so, the Contractor cannot be held accountable."" Can you agree to this? If not, why not. "	Proposal denied. We do not consider this necessary or needed to be added. Force majeure involves non-attainable failure. In such a situation, the Contractor is not accountable.
19.	Article 22.6	Are you prepared to add a one-month notice requirement to this provision?	Proposal denied. The Contract Authority reserves the right to terminate the agreement prematurely. If applicable, this shall be subject to a notice period determined in fairness and reasonableness.
20.	Article 24	Article 24 provides for the full transfer of intellectual property rights and copyrights and thereby also that the Contractor waives all personality rights with regard to the results of the assignment. This means that the Ministry has the right to review the results of the assignment, can share the assignment with third parties	Proposal denied. This provision concern the intellectual property rights of the contract. The Contracting Authority considers it essential to enforce this provision in the ARVODI.

		and/or to change it publicly and/or substantively, without prior consent from the Contractor. As a result, the contractor loses control over both the content and the dissemination of those results, which is particularly problematic where this concerns documents that bear the Contractor's company name and/or logo. It is not possible for us to remain fully responsible for the completion of a report after delivery of a report if we lose control of it. In view of the above, can you agree to the disapplication of Article 24 of the the ARVODI-2018 by including the following provision in the engagement letter? Article 24 of the ARVODI-218 is replaced by the following: "(Intellectual) property rights that have already been transferred to the Client or the Client before the date of this Agreement owned by the Contractor (or licensed to one of them) remain subject to the original owner (or licensor). The Contractor reserves all (intellectual) property rights in respect of the products of the mind which he used or has used and/or develops and/or has developed in the context of the execution of the contract, and in respect of which he has the copyright or other rights of (intellectual) property or can assert it. The Client has the right, for its own internal use, to use the results of the contract, appropriate within the purpose of the contract. The Client is not permitted to share any information without the prior written consent of the the Contractor and/or to change the content of the reports to be delivered by the Contractor and/or share or disclose them externally (outside your own organisation) with third parties (other than obliged to do so on the basis of a WOB request), unless (i) the Client has assumed as being its own, therefore under its own name and logo and (ii) these expressions do not reflect the name of the Contractor or other information that the Contractor could identify as the source. In the event that the Client receives a request at any time on the basis of the Government Information Public Access Act (WOB request) with regard to the written statements of Contractor, the Client shall notify the Contractor without delay (in any event prior to the the decision to be taken on the WOB request and therefore prior to any publication) in writing and will give the Contractor the opportunity to express its views on the WOB request, in	
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		anticipation of the decision to be taken by the Client on the WOB request.	
21.	Article 24.1 – 24.6 and 24.9	Removal of sections 24.1-24.6 and 24.9 and replacement with: ○ 24.1 The Contractor shall retain sole and exclusive ownership and all intellectual property rights (including but not limited to copyright) of all (a) know-how, computer software, computer programs, drafts, documents, information, material, inventions, patents or designs owned by the Contractor which the Contractor may use to provide the Services, and (b) the Work Product. The Contracting Authority shall have a non-transferrable, non-exclusive, royalty-free and perpetual license to use any and all Work Product developed pursuant to this Agreement for its internal business purpose for which the Services were initially commissioned, which shall include the use by the Contracting Authority's Affiliates, provided that such use is in compliance with this Agreement. ○ 24.2 The Contracting Authority shall retain sole and exclusive ownership of all know-how, computer software, computer programs, drafts, documents, inventions, copyrights, patents or designs owned by the Contracting Authority which the Contractor may use to provide the Services ("Contracting Authority's Intellectual Property") ○ 24.3 The Contractor indemnifies the Contracting Authority against all claims brought by third parties in respect of any breach of their intellectual property rights, including equivalent claims relating to knowledge, unlawful competition and suchlike. The Contractor is obliged to take any action that may help to prevent stagnation and to limit the additional costs and/or damage incurred as a result of such breaches, and to do so at its own expense.	Proposal denied. See the answer to question 20.

		○ 24.4 Without prejudice to the above provisions, the Contracting Authority may, if a third party holds the Contractor liable for a breach of its intellectual property rights, cancel the Contract in writing, in full or in part, out of court, without prejudice to its other rights vis-à-vis the Contractor, such to include but not limited to any right to compensation. The Contracting Authority will not exercise its right to cancel the Contract until it has first consulted the Contractor. Except where explicitly identified within the scope of this engagement, any Services delivered to the Contracting Authority shall be for the benefit of the Contracting Authority only, and it shall not be copied, referred to or disclosed, in whole or in part, to a third party without the prior written consent of the Contractor.	
22.	Article 24.1 t/m 24.6 + 24.9	"The nature of the work to be performed and the resulting work products precludes the transfer of all intellectual (property) rights thereto to the Contracting Authority. The Contractor bears the professional and technical responsibility for the content of drawn up reports, work products and the like. The Contractor, as a professional service provider, cannot (continue to) bear that responsibility if the rights to reports and work products have to be transferred. After all, the Contractor must be able to retain control over the content and distribution of their work products. In addition, an extended right of use is sufficient instead of the transfer of intellectual property. On the other hand, we understand that the Contracting Authority does not want to be dependent on the Contractor with regard to the work products made for it. In order to do justice to the position of both the Contracting Authority and the Contractor, we propose a different provision for the articles mentioned on the right: ""Intellectual property rights that already existed before the performance of the work and insofar as they were contributed and used by the Contractor for the performance of the Services and insofar as they are included in the results of the Services, as well as intellectual property rights to reports and work products to be issued by the Contractor (""Underlying Intellectual Property Contractor""). The Contractor grants the Contracting Authority a non-exclusive, unconditional, irrevocable, royalty-free, perpetual, worldwide right of use and reproduction with regard to the	Proposal denied. See the answer to question 20.

		Underlying Intellectual Property of the Contractor insofar as it is incorporated in the results of the Services, so that these results can be used as intended without entering into the Contract. The basic principle is that the results of the Services can be used for the purpose for which the results of the Services were provided. Editing of the results of the Services and/or external use by the Contracting Authority is only permitted after written permission has been obtained from the Contractor."""	
23.	Article 27.3 and 27.4	Can you indicate the relevance of this article in relation to requested services? We see our terms of employment as an internal operational management issue over which clients have no direct influence. Moreover, it is not permitted by law to provide access to individual Contracts made with employees, insofar as this is the intention at all. Can you explain which employment conditions Contracts you are referring to? Is it sufficient for you to provide a letter from the tax authorities, showing that we meet our obligations for the payment of social security contributions? Or is the provision intended in such a way that other data can also be requested? Laws and regulations could preclude such a request from the Contracting Authority. We therefore request that this article not be declared applicable. Can you agree to this? If not, why not?	Proposal denied. The paragraphs (27.2 en 27.3) are included in connection with the provisions of the Sham Employment Arrangements Act (WAS), such as the vicarious tax liability system introduced in the Civil Code (whereby the main contractor is liable for any salaries tax and social insurance contributions that subcontractors fail to pay).
24.	Extra	Please can the contracting authority confirm that brokers' certificates will be accepted as proof of insurance policies held (rather than actual policy documents). This has previously been accepted for other works that we have undertaken under the ARVODI T&C.	Agreed. Note; you don't have to provide this as evidence. This is only of the Contracting Authority request.
25.	Extra	We note that no nuclear indemnity is available in the contract. Could a Nuclear Indemnity be provided?	Proposal denied. Nuclear Indemnity is applied in limited situations for carrying out work or maintenance on the construction of nuclear power plants. It is not applicable for this assignment.
26.	Extra (Article specific grounds for termination)	"Because the Contractor or its Subcontractors is part of an organisation that is subject to various forms of supervision, it is subject to specific regulations with regard to independence. In that context, an additional article must be agreed with regard to termination of the Contract. Are you prepared to include the following in the Contract? ""The Contractor is entitled to terminate the Contract immediately by means of a written notification to the Contracting Authority, if the Contractor finds that (a) the government, a supervisory body, a professional organization or an administrative body has introduced new laws or regulations, decisions, policies or instructions or has amended existing laws or regulations, decisions, policies or instructions as a result of which the performance of the Contract would be illegal in whole, partially illegal, otherwise unlawful or would be in breach of the	Proposal denied. For conflict with laws and regulations, the addition is not necessary, for internal professional rules, the addition is not acceptable.

		independence or professional rules, or if (b) circumstances have changed in such a way that the performance of the Contract by the Contractor would be wholly or partly contrary to the law, otherwise unlawful or would be in conflict with the independence or professional rules."	
27.	Extra (Losses and Legal Disputes)	Is the Contracting Authority willing to indemnify us for any losses caused by any legal disputes arising from the participation of such organisation in the consortium?	No. Contracting Authority is unwilling to do so.
28.	Extra (Losses, societal/brand discussion)	Is the Contracting Authority willing to indemnify us for any losses caused by societal/brand discussions regarding (perceived) CoI arising from the participation of such organisation in the consortium?	No. Contracting Authority is unwilling to do so.

Remarks regarding Public contract

No.	Article from Public contract	Reason for objection	Answer
1.	Article 1.2	Deviations from the Contract can be agreed in the Memorandum of Information and the documents associated with the tender are also nuanced, therefore we propose to explicitly add the Memorandum of Information to the top of the order of precedence included in Article 1.2 of the Contract. Can you agree to this? If not, why not?	Relevant adjustments arising from the Memorandum of Information will be included in the contract.
2.	Article 7	As opposed to what is laid down in Article 7, is it an option to receive the confidential information from the technology suppliers - as a professional advisor to the Contracting Authority - under an NDA between Contracting Authority and said parties? That way the conclusion of separate NDAs is not necessary.	Not agreed. Confidentiality between the Contracting Authority and the Contractor is governed by the ARVODI-2018. Separately, an NDA must be entered into between the vendors and the Contractor. This has been agreed with the vendors as business confidential information is shared.
3.	Article 9	We are legally obliged to retain data and documents relating to the work carried out/our services. We will therefore have to continue to have a copy of all the information and documents for a period longer than four years, as set out in Article 9. We assume that you can agree to this. Is that correct?	We think you meant Article 8, 8.3 of the public contract. Agreed, this term will be adjusted to a maximum of 10 years.