Royal Netherlands
Meteorological Institute
*Ministry of Infrastructure
and Water Management*

Purchase and supply Agreement (ARIV- 2018 & ARVODI-2018)

Precipitation Gauges and 3rd line maintenance

Date: 18-06-2024

Reference number: TN 472117

Draft Agreement Precipitation gauges and 3rd line maintenance
Agreement number and obligation number / purchase order number /

The undersigned:

1. The State of the Netherlands, its registered office in The Hague,
represented on this occasion by the State Secretary for Infrastructure and Water Management,
On behalf of,
the KNMI Director-General, Prof. Dr. Maarten van Aalst,
hereinafter referred to as: Purchaser,

and

2. [full name and legal form of Supplier],
(registered) at ....,
represented for this purpose by
.... (and ....) [name of signatory]
hereinafter referred to as: Supplier,

WHEREAS:

Organization and procurement needs of Purchaser,

(a) Purchaser, the Royal Netherlands Meteorological Institute (KNMI) is the national institute for weather, climate and seismology;
(b) In the performance of its duties, Purchaser needs to procure a new solution to measure the amount of precipitation (and to derive intensity and duration from it) in an automated network that has been operational since 1992;
c) Purchaser wishes to replace current Precipitation gauges on the mainland;
d) Purchaser evaluated the Supplier's offer as the most economically advantageous offer;
e) This Agreement sets forth the terms and conditions applicable to all services to be performed by the Supplier during the term of this Agreement.

Conduct of the Tender

f) Purchaser, in connection with what is contemplated above under a to e proceeded to tender for Precipitation gauges and 3rd Line maintenance through a European public tender;
g) on XXXXXX a notice was sent by or on behalf of Purchaser to the Supplement to the Official Journal of the European Union (hereinafter: Official Journal) and that this notice was published under number XXXXXXXX;
h) Purchaser wishes to award the Agreement to Supplier on the date of signature of this Agreement;
i) Purchaser will verify through verification process, as included in Annex XXX, that the Precipitation gauges meet the specifications.

Index

AGREE:

In this Agreement, a number of terms are used with an initial capital letter. These terms shall have the meaning given to them in Article 1 of the General Government Procurement Conditions 2018 (ARIV-2018) and General Government Procurement Conditions for Services (ARVODI 2018).

1. Object of the Agreement.

1.1 Purchaser hereby purchases Precipitation gauges, as described in the Program of Requirements, included as Annex 4 to the Descriptive Document. The Supplier hereby sells the Precipitation gauges to Purchaser and meets the requirements as described in the Tender Documents and associated attachments, which consists of:

#	Subject of Agreement	Method of payment	Applicable purchasing terms
A	• Purchase of the type of offered gauge • LRU's or spare sensor for repair • Calibration sets and tools	Fixed Price – for initial order	ARIV-2018
B	Additional Products (standpoles/windscreens)	Optional costs	ARIV-2018
C	Training	Fixed price – for initial sessions	ARVODI-2018
D	3rd line maintenance	Price per year, fixed during 10 years	ARVODI-2018

1.2 The following documents collectively constitute the Agreement. To the extent these documents contradict each other, the previously mentioned document shall prevail over the later:

1. This document;
2. The Information Memoranda;
3. the Descriptive Document including all its attachments;
4. The ARIV-2018 and the ARVODI-2018;
5. The Tender of <date>, submitted by the Supplier to the Purchaser.

2. Entry into force of the Agreement

2.1 This Agreement shall enter into force as of the date of signature of this Agreement by both Parties.

2.2 The Agreement ends at the earliest seven (7) years after signing the Agreement by both Parties. Successful completion of Verification Phase is mandatory for continuation of the Agreement.

2.3 Purchaser may renew the Agreement on equal terms twice (2). Firstly for a maximum term of three (3) years and secondly for a term of two (2) years. The total (foreseen) maximum regular duration of the Agreement will therefore be 12 years, the Verification Phase included. The renewal of the Agreement will enter into force automatically after the initial period ends. During the initial term of the Agreement and the first renewal, the Agreement may not be terminated by the Supplier. The second renewal option may be refused by Supplier and also has the possibility to be terminated by Supplier on a 12 months' notice.

2.4 If, in the opinion of Purchaser, the service provided does not meet its desired Requirements, Purchaser reserves the right to terminate this Agreement prematurely or give a fine (as described in Article 6) . Purchaser will only do so after a minimum of two written notices regarding the inadequacy of the delivered service and a mutually agreed recovery period to still meet the desired Requirements.

2.5 If remedial action is not taken, a formal notice of default procedure may be initiated by the Purchaser with the ultimate consequence of the extrajudicial full or partial dissolution of the Agreement with the Supplier.

2.6 This Agreement may be prematurely terminated by the Purchaser at any time, without giving reasons, by registered letter subject to the following notice periods, depending on the duration of the Agreement that has already expired:
- term between 0 and 2 years: 3 months;
- term after 2 years: 6 months.

If the Agreement is terminated prematurely as referred to in this paragraph, the Purchaser and the Supplier shall settle on the basis of the costs reasonably incurred by the Supplier in connection of the execution of the Agreement and orders of the Product already placed in accordance with Article 3 which still have to be delivered to the Purchaser after the end of the Agreement. The Purchaser shall not be obliged to indemnify the Supplier in any other way for the consequences (if any) of the termination of the Agreement.

2.7 The terms and conditions of this Agreement shall continue to apply after termination of this Agreement in respect of orders of Products already placed prior to the termination in accordance with Article 3 of this Agreement which are still to be delivered to the Purchaser after the termination of this Agreement.

3. Delivery

3.1 Products will be delivered at the request of Purchaser where an estimate of the roll-out has been provided in Annex 1B of the Verification Phase and Delivery document. **Supplier must be able to deliver the first requested batch of Products no later than 4 weeks after Agreement signing**. Delivery shall be in accordance with the schedule included in Annex 1B Verification Phase and Delivery. During the term of this Agreement, orders for the delivery of the Products shall be placed by the Purchaser in writing via e-mail mentioning the Purchaser's Agreement number.

3.2 If the verification of the Precipitation gauges cannot be finalized in the initial given period of time as stated in the Annex 1B Verification Phase and Delivery document, the Verification Phase period will be extended for the time needed.

3.3 All deliveries under this Agreement are as per Delivered Duty Paid KNMI and under Incoterms 2020:

Royal Netherlands Meteorological Institute (KNMI)
T.a.v. Kalibratielab (calibration laboratory)
Utrechtseweg 297

3731 GA De Bilt
Netherlands

3.4 Products and related services are delivered in accordance with the Program of Requirements (Annex 4 of the Descriptive Document).

3.5 Spare parts, or compatible products meeting the same Requirements and capable of replacing original parts, are available for the duration of the Agreement, with a minimum of twelve (12) years. Interim changes in hardware, LRUs or firmware are not permitted without the written consent of the Purchaser. The changes or modifications and consequences have to be explicitly explained and outlined. In the event of a change, it will be necessary to test whether the changed Precipitation gauge is in accordance with the stated specifications.

3.6 The Supplier will maintain the firmware and software that are needed to configure and operate the gauge for the entire duration of the Agreement at no cost, and will also conduct all necessary settings and upgrades/repairs and provide correctly functioning parts to replace defective ones.

3.7 The Supplier will provide escrow.

3.8 The escrow must include all non-public domain information reasonably required by the Purchaser to remedy malfunctions and maintain and manage the software in such a way that the agreed use remains possible. The escrow must fulfil the conditions normally applicable in the Dutch market for escrow at the time when the arrangements are made.

3.9 The Supplier will prove at the Purchaser's first request that the escrow is in compliance with the relevant provisions of the Agreement, or make such an arrangement.

3.10 Any costs incurred in establishing an escrow arrangement will be borne by the Supplier.

3.11 Deviations from the Products offered by the Supplier can only be made unilaterally by the Purchaser. The Supplier must at all times be able to deliver as quoted.

4. Price and other financial provisions

4.1 The agreed prices for the provisions of clause 1.1 are set in Annex 9 of the Agreement. The prices related to all Products and Services to be provided under this Agreement are excluding VAT.

4.2 Notwithstanding the provisions of article 10.1 of the ARIV-2018, the costs for assembly or installation work related to the Precipitation gauges are not included in the agreed price. These costs shall be borne by the Purchaser.

4.3 Supplied gauges for the Verification Phase, as named in Annex 1B 'Verification Phase and Delivery', will be 50% pre-paid after delivery and the remaining 50% after successful passing the Verification phase (Annex 1B of this Agreement).

4.4 After the Verification Phase every batch of gauges will be paid 100% when the batch has successfully passed the acceptance as described in Annex 1B of this Agreement. Purchaser has the unilateral right to return one (1) or more gauges in a batch with a problem. New gauges or a new invoice will be requested for the remaining gauges that have been accepted. Payment will concede after acceptance.

4.5 The Supplier is obligated to provide training as described in Annex 4; Program of Requirements. The training costs are fixed for the amount of training session mentioned in the Pricing sheet (Annex 9). Indexation may take place for the first time per the january 1st that follows after two full years have passed after signing of the Agreement.

4.6 The prices for maintenance for the first ten years are included in Annex 9; the Pricing sheet. Indexation may take place for the first time per January 1st after ten full years. Both Purchaser and the Supplier may index the prices referred to in article 4.1 of this Agreement Document in accordance with the provisions of article 4.8 of this Agreement Document.

4.7 If a Party wishes to index, it shall announce the indexation in writing to the other Party no later than three months prior to the relevant indexation. If an indexation is not announced in time, it will not be implemented even as part of a subsequent indexation. Indexation has no retroactive effect.

4.8 Indexation as of January 1st of year n takes place on the basis of the indices included in articles 4.9 and 4.11 of this Agreement Document, with a maximum of the percentage determined according to the calculation method below:

The indexation percentage shall be according to the following formula:

$$\text{index \% new year (n+1))} = \frac{\text{(index current year (n)-index previous year (n-1)}}{\text{(index previous year (n-1))}}$$

1) The current year is the December year in which the indexation is set for the new year (n+1).
2) Here the determined index figure is the provisional index figure of the previous year, When indexing for the first time, once the determined is the final figure of the previous year.
3) One should be aware that this link can change and go to a default value. If this is the case then start the website https://opendata.cbs.nl/statline/#/CBS/nl/ set accordingly what is stated above for the respective table.

4.9 The index figure referred to in 4.8 of this Agreement Document will be determined using the following index/base year: **Wages** 2010=100, where the index figures will be used as available annually and described below.
Index Prices for Services: This index is applicable to the third line maintenance, after the first 10 years of the Agreement and training sessions after the initial order and 24 months.
Website: https://opendata.cbs.nl/statline/#/CBS/nl/
Website Setup according to those items listed below or via directly with the "Link":
Topics: - Labor and Social Security;
- Labor and labor market;
- Wages, CAO wages and labor costs;
- Wages and CAO wages;
- CAO wages, contractual labor costs and labor hours; Indices (2010=100);
Industries/branches (SBI 2008):
- Industries 1st digit;
- F Construction industry;
Subject: - Index figures CLA wages per month incl. extra pay;
CLA sectors: - Total CLA sectors;
Version: - Current grades;

Periods: - Provisional index of December of the current1) year n and the established2) index of December of the year n-1;
Link3): https://opendata.cbs.nl/statline/#/CBS/nl/dataset/82838NED/table?dl=6817B

4.10 The agreed prices for Products are fixed for the initial total order (50 pieces) and for the first two years. When an additional order is made by Purchaser the Price can be adjusted according to the price index based on the formula in 4.8 and the index as described in 4.11, but only after two years.

4.11 The index figure referred to in 4.8 of this Agreement Document will be determined using the following index/base year: **Material** 2015=100, which will use the indices as available annually and described below.
Index Prices for Material: This index is applicable on the solution offered, for example the gauges and additional products after initial orders and after 24 months the Agreement went into force.
Website: https://opendata.cbs.nl/statline/#/CBS/nl/
Website Setup according to those items listed below or via directly with the "Link":
Topics: - Producer Prices;
- Industry;
- Producer prices PPI; output, import, consumption prices, index 2015=100;
Industries/Branches (SBI 2008):
- Industries 1st digit
- Industries 1st digit;
- F Construction;
Subject: - Indexes CLA wages per month incl. extra pay;
CLA sectors: - Total CLA sectors;
Version: - Current figures;
Periods: - Preliminary index figure from August of the current1) year n and the established2) index figure from August of the year n-1;
Link3): https://opendata.cbs.nl/statline/#/CBS/nl/dataset/82838NED/table?dl=6817B

4.12 If an additional Precipitation gauge is purchased during the implementation of this Agreement, this will be established in writing and will automatically be subject to the conditions of this Agreement.

4.13 Supplier guarantees that the delivered and accepted Precipitation gauges complies with the Agreement, is free of defects and is suitable for the purpose for which the gauges are intended. The Supplier guarantees that it will repair any defects at its own expense during a period of 24 months after Acceptance.
The Supplier shall deal with a warranty claim within 40 working days at the latest and shall make every effort to deal with it promptly.

4.14 This Agreement is subject to an e-invoicing requirement. This requirement follows from the General Government Procurement Conditions (ARVODI and ARIV). For more information on e-invoicing : https://www.helpdesk-efactureren.nl/ here you will also find the Handreiking factuur Rijk (Handbook of Invoicing Government).

4.15 Purchaser shall make use of E-invoicing. You can submit your invoice(s) as an E-invoice with the following mandatory data:
- Reference: 45xxxxxxxx (SAP order number);
- Name supervisor: XXXXXX;
- A clear description of the delivery or service .

When addressing the E-invoice, you can use the following Organizational Identification Number (OIN*): 00000001821693992000

Invoice requirements can be found on the website of the Ministry of Infrastructure and Water Management. Invoices must contain the correct details. Invoices submitted without the requirements listed above will not be processed.

4.16 Exceeding a payment term by the Purchaser or non-payment of an invoice on the grounds of suspected inaccuracy of its content or in the event of faulty Products invoiced does not entitle the Supplier to suspend or terminate deliveries.

4.17 Supplier is responsible for all (extra) costs in case of any deviation from specified parameters of the Requirements for first and second line (specifically for calibration and MTBF) maintenance.

5. Acceptance

5.1 Acceptance of deliveries shall take place in accordance with Annex 1B Verification Phase and Delivery. Given in section 4.2 – Delivery acceptance of Annex 1B.

5.2 In the case of a deviation in any of the phases mentioned under 4.2 of the Verification Phase and Delivery Document (Annex 1B of this Agreement), the gauge will be returned with an indication of the corresponding problem. When the delivery has passed all three phases successfully, the gauges are ready for deployment.

5.3 A gauge is accepted with reservations in case of minor defects. These minor defects need to be remedied before a specified date that has been agreed upon.

5.4 Purchaser remains the right to put the ordering process on hold if there is reasonable justification for doing so. The deliveries will be stopped when problems have been detected during the deployment of the gauges in the field or when more than three(3) gauges are returned after delivery. Delivery will resume when both the Supplier and the Purchaser agree that the underlying problem has been resolved.

6. Mandatory service and quality levels

6.1 The Precipitation gauge shall be able to operate in the field at all sites for at least 1 year in between 1st line maintenance jobs. This Requirement excludes preventative measures as described in paragraph 1.1.3 of the Descriptive Document.

6.2 The calibration interval of the Precipitation gauge shall be at least 1 year.

6.3 The availability of measurements made by the gauge that meet the specifications in this document shall be 99.98% or better.

6.4 The Mean Time Between Failure (MTBF) of the Precipitation gauge shall be at least 43 830 hours (=60 months), based on all environmental conditions in the Netherlands and continuous 24/7 operation.

6.5 Supplier must have a helpdesk with skilled personnel fluent in English shall be available Monday to Friday and reachable during working hours (9:00-17:00 CET) by telephone and e-mail. During the Verification phase and the duration of the Agreement, helpdesk personnel shall reply with a satisfactory answer to the question(s) within two working days. In the event of a "bug" in the operation of The offered Solution, a fix shall be available within 1 week.

6.6 An offered Solution (or parts) that has been sent to the Tenderer for repair shall be returned after repair or replaced within 2 months (including FAT and transport).

6.7 The mandatory Requirements mentioned above in 6.1 to 6.6 will be monitored and evaluated in a yearly Contract meeting between Purchaser and Supplier.

6.8 On request, the Supplier will periodically (once a year in December) submit reports to the Purchaser on the progress of the work in the context of articles 6. 1 to 6.6 of this Agreement to the contact person of Purchaser.

6.9 If the mandatory Requirements stated above in 6.1 to 6.6 are not complied with, the Purchaser may reclaim or offset an amount of up to 100% of the annual 3rd-line maintenance fee. The percentage will increase progressively from 0 to 100%, with steps of 10%. This will be monitored and reported as stated in 6.7 and 6.8.

6.10 After written notices as stated in Article 2.4 the Purchaser reserves the right to terminate this Agreement prematurely. In the absence of recovery, a consultation is scheduled at a strategic level and is taken into account requested again for repair. If repair is not made, the Purchaser can initiate a formal notice of default procedure will be initiated, ultimately resulting in an out-of-court settlement full or partial termination of the Agreement with the Supplier.

7. Contacts

7.1 Contact person for Purchaser is ....

7.2 Contact person for Supplier is ....

7.3 Notwithstanding the provisions of Article 10.2 of the ARVODI-2018, the named contact persons shall not bind the Parties.

8. Security and Privacy conditions

8.1 Supplier should regularly verify that the Parties and sub-suppliers engaged by them meet the stated Requirements.

8.2 Supplier shall, where applicable, keep conclusive records of hardware and software for the agreed services.

8.3 All changes in the hardware and software of information systems should be handled and recorded according to established procedures (Change Management). Also, if applicable, all Windows and e-mail systems should have up-to-date antivirus software. A daily backup should be made to another physical location. Restore procedures should be tested annually after relevant changes.

8.4 Measures should be taken to secure ICT components against attacks. Accessible systems and applications should be periodically tested for vulnerabilities through penetration tests and/or web application scans and/or vulnerability tests.

8.5 Organisation of Supplier should have a formally defined process for handling security incidents. Also, the Supplier should maintain a prioritization in turnaround time of incident resolution or escalation based on information classification.

8.6 Supplier should have a defined and tested fallback procedure in case of emergencies.

9. Other Conditions

9.1 This Agreement is exclusively governed by the "General Conditions of Government Procurement 2018 (ARIV-2018)" and the General Conditions of Government Procurement for Services (ARVODI-2018), to the extent not deviated from in this Agreement. The applicability of the Supplier's general and special terms and conditions (if any) is excluded.

9.2 The other rights and claims referred to in Article 13.3 of the ARIV-2018 may be exercised as an alternative to or in addition to the rights and claims of Article 13.2.

9.3 The Supplier carries out due diligence, in accordance with the conditions as described in the Appendix International Social Conditions (Annex 6 of the Descriptive Document), to identify the risks in the field of labour and human rights in its own (production) chain. Based on this analysis, the Purchasers contract manager shall consult with the Supplier on what can reasonably be expected from the Supplier to reduce the risks of labour and human rights violations in its international chain.

10. Integrity Statement

Supplier declares that in order to obtain the order he has not offered, given, caused to be offered or caused to be given any advantage to personnel, subordinates or auxiliary persons of Purchaser. He shall not do so in order to induce such persons to perform or refrain from performing any act.

11. Final provision

11.1 Deviations from this Agreement are only binding insofar as they have been expressly agreed between the Parties in writing.

11.2 By signing this Agreement all previous verbal and written Agreements made by Parties concerning the order(s) placed in accordance with this Agreement for the Delivery of the Precipitation gauges and the 3rd line maintenance will be cancelled.

11.3 The applicable law for this Agreement shall be Dutch law.

11.4 When an amicable resolution cannot be reached the competent court in The Hague, The Netherlands, will settle all disputes.

Thus agreed and signed in duplicate on the latter of the two dates mentioned below,

De Bilt, [date]	[Place], [date]
THE STATE SECRETARY OF Infrastructure and Water Management	[Supplier]
On behalf of this, KNMI Director-General	
Prof. Dr. M. van Aalst	[Position and name of signatory)

Annexes

1 Contacts
2 Information Memoranda
3 Descriptive Document
4 The ARIV-2018 and the ARVODI-2018
5 Annex Pricing sheet
6 The Tender of <date>, submitted by the Supplier to the Purchaser.