



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

Annex 1A Waiting Room Agreement

Subject : Purchase and 3rd Line maintenance of
Precipitation gauges

Procedure : Public European tender

TenderNed Reference : TN 472117

Date : 18-06-2024

Version : 1.0



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Waiting Room Agreement

The undersigned:

1. The State of the Netherlands, Royal Dutch Meteorological Institute, an agency of the Ministry of Infrastructure and Water Management, having its statutory seat at Utrechtseweg 297, 3731 GA, De Bilt, hereinafter referred to as the "Purchaser," represented by Prof. Dr. Maarten van Aalst, Director-General,

and

2. XXXXXXXXXXXX, (statutory) based in XXXXXXXX, legally represented by XXXXXXXX, XXXXXXXXXXXX, hereinafter referred to as the 'Supplier',

Hereinafter collectively referred to as the 'Parties',

WHEREAS:

1. The Purchaser wishes to enter into an agreement for Purchase and 3rd Line maintenance of Precipitation gauges.
2. Next to the selected Tenderer that will be contracted, a Waiting Room Agreement with the duration of the Verification phase will be concluded with all other accepted valid Tenderers.
3. The Purchaser, based on the aforementioned need, published a European public tender for the "Purchase and 3rd Line maintenance of Precipitation gauges" on DATE, with reference number: TN-472117
4. The Supplier submitted its offer on the date of dd-mm-2024 with respect to the aforementioned tender.
5. The Purchaser has awarded the Contract to XXXXXXXX initially for a duration of seven (7) years, with the option to firstly extend for a maximum of three (3) years and secondly for a term of two (2) years. The start date is dd-mm-2024.
6. The Supplier, based on its offer dated dd-mm-2024, has ranked second (2nd) or lower in the selection.
7. The aforementioned tender has opted for the use of a Waiting Room construction, resulting in this Waiting Room Agreement.
8. The Supplier has declared its willingness to extend the validity of its offer for the duration of this Waiting Room Agreement and, in case the Agreement with the original supplier ends prematurely, to enter into an Agreement with the Purchaser in accordance with the provisions of this Waiting Room Agreement.
9. In light of these circumstances, the Parties enter into this Waiting Room Agreement under the following terms and conditions.



AGREE AS FOLLOWS:

Article 1. Definitions

In this agreement, the following terms shall have the following meanings:

1. Agreement: the Agreement entered into with the Supplier for the Purchase and 3rd Line maintenance of Precipitation gauges.
2. Waiting Room Agreement: this agreement pursuant to which the Supplier, in the event of Article 2, paragraph 1, (possibly) becomes eligible for the requested Services as described in the procurement procedure for the Purchase and 3rd Line maintenance of Precipitation gauges.

Article 2. Commencement

1. The Purchaser has the right to terminate the Agreement with the original Supplier prematurely if the Supplier is unable to provide the requested services in accordance with the Tender documents, the executed Agreement, or the submitted offer, or if it does not perform (properly) due to bankruptcy, merger, breach of contract, or for other reasons for early termination/dissolution. In cases as described in the Contract and/or ARIV/ARVODI, after the respective original or following Supplier is in default, the Waiting Room Agreement can be used.
2. The Waiting Room Agreement must be performed in accordance with the draft agreement appended to this Guide as Annex 1. The Agreement is governed by the terms and conditions of the ARIV 2018 (for the delivery of the gauges, refer to Annex 2 and the ARVODI 2018 (for 3rd line maintenance, refer to Annex 3)
3. The Purchaser determines whether or not to use this Waiting Room Agreement. In the event of the early termination of the Agreement with the original or following supplier, the Purchaser may also decide to (re-)tender (in a European context).
4. The runner-up Tenderer will be firstly designated as a reserve in the event that the Agreement with the first or following Supplier is dissolved prematurely. If this Tenderer also does not pass the Verification Phase, the next ranked Tenderer will be approached and so on.
5. The runner up Tenderer that is granted a Waiting Room Agreement will – at first - only be requested to deliver two gauges for testing and will afterwards remain in the 'Waiting Room' for the event that the Agreement between the first (or following) ranked Tenderer and the Purchaser is dissolved within the Verification Phase.
6. No rights for orders or turnover can be derived from entering the Waiting Room Agreement.
7. If the Purchaser only receives one suitable and valid Tenderer, then Purchaser will not enter a Waiting Room Agreement.
8. In case the situation arises where the Tenderer, who finished following, offers an identical Solution to the winner or Tenderer earlier in the ranking, Tenderer will not be asked to deliver two solutions for testing at the start of the Verification phase.



9. In case the situation arises where the Tenderer, who finished following, offers an identical gauge to the winner or Tenderer earlier in the ranking, testing could still take place with both sensors side by side.
10. Following ranked Tenderer will be given the opportunity to demonstrate that the identical gauge offered does meet the requirements and Desirables offered on which the identical gauge of the earlier finished Tenderer was rejected. If this situation occurs Purchaser will first contact the following ranked Tenderer to give the opportunity to provide verifiable evidence of the suitability of their offered identical gauge and consult the need of testing.
11. In case the following Tenderer cannot prove that the gauge meets the requirements and offered Desirables the Purchaser reserves the right not to designate this following Tenderer as the reserve-party, but to award the reserve-position to the next Tenderer in the ranking that does not supply the same type of gauge.
12. The Supplier is willing, in case of the circumstances mentioned in paragraph 1, to execute the Agreement.
13. If, in accordance with the previous paragraph, the Waiting Room Agreement is used, an Agreement will be concluded as attached to the Descriptive Document for the remaining duration of the contract period, including any extension(s) after a successful completion of the Verification phase.
14. Once the Purchaser invokes the Waiting Room Agreement, the Supplier shall be granted a reasonable period of four (4) weeks to take the necessary measures to execute the Agreement.

The following documents are part of the Waiting Room agreement:

- A. Draft Agreement;
- B. The Descriptive document with the information memorandums;
- C. The ARIV/ARVODI 2018;
- D. The offer of Supplier.

To the extent that these documents conflict with each other, the aforementioned documents prevails over the later. The information memorandum prevails within the tender documents.

Article 3. Duration and termination of Waiting Room agreement

1. Takes effect when Purchaser winning Supplier enter a Contract into force and expires automatically after a successful Verification Phase of the delivered Precipitation gauges according to Annex 4 Verification Phase and Delivery document.
2. The Waiting Room Agreement can be canceled with immediate effect if:
 - a. The Supplier has been declared bankrupt or has applied for a suspension of payments;
 - b. The Supplier does not or does not fully comply with its obligations regarding the payment of social insurance premiums and payroll tax



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- c. the Supplier's company is liquidated or taken over if it ceases its current business, a significant part of the Supplier's assets are seized or the Supplier is otherwise no longer reasonably expected to be able to fulfill the obligations under this Waiting Room Agreement.

Article 4. Price and price changes

1. With regard to the rates that the Purchaser owes to the Supplier if he invokes this Waiting Room Agreement, Article 4 of the (draft) Agreement applies, in the understanding that for the adjustment of the rates the starting date of the Contract with the original Supplier is decisive.
2. If the Waiting Room Agreement is in force more than two (2) years the Supplier has a right to indexation of the prices according to the formula in Annex 1 - The draft Agreement.

Article 5. Conditions

The general terms and conditions of delivery and payment of the Supplier, or other general or special terms and conditions, do not apply. Application of these conditions is expressly rejected.

Done in duplicate and signed by

De Bilt, dd-mm-2024

XXXXXXXX, dd-mm-2024

Royal Dutch Meteorological Institute

XXXXXXXXXXXXXX

on behalf of the Client,
Director-General KNMI

on behalf of the Contractor,
XXXXXXXXXX

Prof. dr. Maarten van Aalst

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