Memorandum of Information European Tender 'Debt and capital advisory support' with reference 202406190

Date of publication: September 3, 2024

In this first Memorandum of Information, the Contracting Authority provides answers to the questions concerning the Tender Document. This Memorandum of Information forms an integral part of the Tender Document.

A second round of questions and Memorandum of Information has been added to this procedure. Therefor the revised time schedule below applies.

original date	Revised date	Description
August 5, 2024	August 5, 2024	Issuing of publication, start of tendering period.
August 20, 2024. 17 PM. CEST.	August 20, 2024. 17 PM. CEST.	Closure of round of questions: deadline for the Tenderer to submit questions regarding this Tender Document and the Contract (including the general terms and conditions) and/or proposals for textual amendments to the draft Contract (including the general terms and conditions).
August 30, 2024	September 3, 2024	Issuing of first Memorandum of Information
	September 16, 2024. 11 AM. CEST.	Closure of second round of questions: deadline for the Tenderer to submit questions regarding this Tender Document and the Contract (including the general terms and conditions) and/or proposals for textual amendments to the draft Contract (including the general terms and conditions).
	September 25, 2024	Issuing of second Memorandum of Information
September 16, 2024. 13 PM CEST.	October 9, 2024. 11 AM CEST.	Deadline for the receipt of Tenders and opening of Tenders by the Tendering Authority.
Week 38 up to and including week 39.	Week 41 up to and including week 43.	Assessment of Tenders.
September 30, 2024	October 23, 2024	Announcement of the award of the Contract.
October 21, 2024	November 13, 2024	Deadline for asking questions and/or filing an application for a preliminary injunction in relation to the announcement of the award of the Contract.
October 15, 2024	November 7, 2024	Deadline for the winning Tenderer to provide the evidence requested by the Tendering Authority.
October 22, 2024	November 14, 2024	Starting date of the Contract.

nr.	Subject	Question	Answer
1	Tender document	Question regarding the nature of the report(s): will the report(s) be on RVO's letterhead or is the Contractor expected to submit a Contractor-branded report?	The reports may be a Contractor-branded report.
2	Tender document	You mention an average commitment of 2 days per week during the term of 12 months. We expect the commitment to be higher in round 1 and lower in rounds 2-4. Is there a minimum commitment you expect for round 2-4 from our end?	Because of the unpredictable nature of negotiations, it is difficult to make any predictions regarding timelines. Therefore, it is not possible to ask a minimum commitment.
3	Tender document	Section 5.3 mentions "For pricing purposes, the Tenderer must assume a term of 12 months and an average commitment of two days per week during this period." and "Tenderer then adds up all prices of each negotiation round to a total price for the Contract." Do you expect a total contract volume of 104 days (2 days for 52 weeks) for pricing purposes? How would you like us to specify in case we expect to spend more days for rounds 1-4?	Yes, a total contract volume of 104 days is foreseen. This number is an estimate by Contracting Authority. If the tenderer anticipates that more days are necessary for the first round, the tenderer must offer more hours/days for this and less hours/days for the next rounds.
4	Tender document	You expect a total negotiation time per round of 3 months. Upon receipt of the TSN proposal, how long do you expect the report-writing period to be for the Contractor?	The duration of 3 months is indicative and relatively unpredictable, due to the nature of the negotiation process. The Contracting Authority expects that, at various times during the negotiation round, interim presentation/reports will be provided by the Contractor to the negotiation team. At the end of the negotiation round, these interim presentations will then be compiled into a final report. The Contracting Authority does not expect that much time will be required for final reporting.
5	Tender document	Do you expect each negotiation round to start with a concrete proposal by TSN?	This is not necessarily the case: the negotiation process is quite unpredictable and therefore a negotiation round can also start in a different way as well.

6	tender document debt and capital advisory support, page 8	"The document describes that there is a request to determine what the optimal financing structure is. In practice, we notice that tax considerations are an important driver in determining what the optimal financing structure is. To what extent should the client take tax considerations into account when determining the optimal financing structure? And which types of taxes should be considered in this regard (for example, corporate income tax)?"	All relevant considerations that determine the optimal financing structure must be taken into account. This includes the relevant tax impacts of a particular financial structure, insofar as they materially affect the optimal financing structure.
7	Arvodi - 24.1 t/m 24.6 + 24.9	"The nature of the tasks to be performed and the resulting work products prevent all intellectual (property) rights from being transferred to the Client. The Contractor bears the professional and technical responsibility for the content of prepared reports, work products, and the like. As a professional service provider, the Contractor cannot (continue to) bear this responsibility if the rights to reports and work products must be transferred. The Contractor must retain control over the content and dissemination of their work products. Moreover, article 3.9.1.2 of the Proportionality Guide January 2020 stipulates that an extensive usage right can suffice instead of the transfer of intellectual property. On the other hand, we understand that the Client does not want to be dependent on the Contractor concerning the work products created for him. To do justice to the positions of both the Client and the Contractor, we propose a different provision for the articles mentioned alongside, which also aligns with paragraph 3.9.1.2 of the Proportionality Guide: "Intellectual property rights that already existed before the execution of the work and to the extent introduced and used by the Contractor for the performance of the Services and to the extent included in the results of the Services, as well as intellectual property rights on reports and work products to be delivered by the Contractor, remain the property of the Contractor ('Underlying Intellectual Property of the Contractor'). The Contractor grants the Client a non-exclusive, unconditional, irrevocable, royalty-free,	The Contracting authority does not agree with the suggested proposal. As stipulated in Arvodi – 24.3, the contractor remains owner of all knowledge and intellectual property rights it had in possession before delivery of the Services. Full transfer of the intellectual property rights on the deliverables of the service as intended in article 24 Arvodi 2018 does not mean that the client is entitled to modify these results.

		perpetual, worldwide right to use and reproduce the Underlying Intellectual Property of the Contractor as included in the results of the Services, so that these results can be used as intended with the conclusion of the Agreement. The principle is that the results of the Services can be used for the purpose for which the results of the Services were provided. Modification of the results of the Services and/or external use by the Client is only permitted after obtaining written permission from the Contractor."	
8	Arvodi	"If and insofar as the results of the Services are shared with third parties, we cannot assume liability risks towards these third parties, as we have no possibility to limit the liability towards the third party, since the third party is not known to the Contractor in advance. Therefore, we wish to agree on an indemnification for claims from these third parties. After all, the Services that the Contractor performs are for the benefit of the Client, and the Contractor does not wish to take on the Client's risk in this context. Moreover, it is customary to agree on an indemnification for claims from third parties related to the services. Therefore, we propose to add the following provision to Article 21: 'The Client indemnifies the Contractor against all claims from third parties arising from or related to the work to be performed or performed for the benefit of the Client, unless the Client demonstrates that the claims are not related to culpable acts or omissions of the Client or are caused by intent or deliberate recklessness of the Contractor.' Can you agree with this? If not, why not?	The Contracting authority does not agree with the suggested proposal. The situation described in the question does not apply to this contract. For this this contract it is clear that TSN/TSL are the third Parties.
9	Arvodi - Art 21.3	"Paragraph 3.9.1.1 of the Proportionality Guide January 2020 prescribes that in assessing which limitation of liability is proportional, regard must at least be given to the usual liability requirement in the relevant industry or for the relevant assignment in terms of nature and scope. Additionally, paragraph 3.9.1.1 indicates that, concerning	Under the Dutch law, the Parties are in principle liable without limitation for the damage they cause. Nevertheless, in the ARVODI-2018, it was decided to limit the liability of the Parties.

		duration, liability should be linked to a percentage of the contract value for one year. To clarify the provision, align the liability with our role and responsibilities within the context of this assignment, and conform to the Proportionality Guide and what is customary in our industry, we propose a new provision to replace the current article 21.3: 'The Contractor shall only be liable to the Client up to an amount of a maximum of three (3) times the amount of fees that the Client has paid to the Contractor under this Agreement in the relevant calendar year. The Contractor shall never be liable for limitations in use and loss of data, commercial agreements, goodwill, revenue, or profit (regardless of whether this is considered direct or indirect damage or consequential damage) nor for other indirect or consequential damage in connection with the Agreement. The Contractor shall not be liable for damage resulting from false, misleading, or incomplete information provided by the Client or third parties.' Can you agree with this? If not, why not?"	The Contracting Authority is prepared to limit this liability for the present assignment even further, but does not consider it appropriate to do so to the extent that you propose. The Client will limit the liability of Article 21.3 as follows: Unless otherwise agreed, the Party that is culpably in breach of its obligations towards the other Party is liable for the damage suffered or to be suffered by the other Party, provided that the liability is limited to three times the Contract value for each year or part of a year that the Contract has been in force. The limitation of liability referred to above will not apply in cases a to d of article 21.3 of the ARVODI-2018.
10	Tender document section 2.1	Do we understand correctly that the Projects mentioned in the documents are Projects aimed specifically at enhancing sustainability of current processes, and are not stand-alone new expansions/investments that are carbon-neutral/net-zero?	Yes, this is correct.
11	Tender document section 2.1	Also, do we understand correctly that the Projects are separately identifiable investments/projects to be developed, constructed and operated in 100% TSN/TSL-owned SPVs?	Yes, it is correct that the projects will basically be developed, constructed and operated by TSN/TSL. The exact financial construction used to structure the projects has yet to be determined.
12	Tender document section 2.1	Do the Projects relate (for a significant portion) to the development of Hydrogen-related assets? If so, we can engage relevant Hydrogen-specialists within our organisation.	No not at this time. No hydrogen production is currently planned as part of the projects. However, hydrogen economics and market fundamentals can play a role as part of the business case.

13	Tender document section 2.4	In 2.4, the max. Contract value is capped at EUR 600k, whilst the "aankondiging" (TN478300 - EF16 Aankondiging van een opdracht - algemene richtlijn, standaardregeling 20240805200555) prescribes a max. of EUR 1m in 5.1? Do we understand correctly that the Tender document prevails?	Yes, the Tender document prevails.
14	Tender document section 3.1	TSN/TSL is responsible for the financing of the Projects. The Contractor from this Tender will support the Dutch State in assessing/negotiating the Project proposals. Do we then understand correctly that the Dutch State will only review proposals, but not put forward a view from the Contractor as a (counter-)proposal towards TSN? Or, will the development of our (i.e., the Dutch State's) own financing proposals to pro-actively pitch to TSN/TSL be part of the scope of works? Or, does TSN/TSL submit their Projects on an unlevered basis, and is it up to the Dutch State (and by extension the Contractor) to propose a financing package/structure?	Yes, it is correct that TSN/TSL remains responsible for financing its projects. However, as part of the negotiations with TSN/TSL it may be necessary to assess these financing plans and come up with alternative financing plans. Contractor will advise the Dutch State in these situations.
15	Tender document section 3.1	Do we understand correctly that coordinating and facilitating a debt raise is also out of scope for this Contract?	Yes, coordinating and facilitating a debt raise is out of scope of this Contract.
16	Tender document section 3.1	In case certain financing scenarios or elements are contemplated/envisaged that cannot be accommodated by the financial model as is, who will be responsible for amending/extending the financial model to allow for these scenarios/elements?	A separate Contractor has been engaged for modelling analyses. Necessary analyses on the financial model should be performed by this Contractor.
17	Tender document section 3.1	What are the expectations with regards to physical working location?	Contractor can execute most of its work at its own offices, but can be requested to attend physical meetings.

18	Tender document section 3.1	Will the Contractor deal with the Dutch State only, or is it expected that it shall attend meetings directly with TSN/TSL as well	No, the Contractor will not be asked to directly negotiate with TSN or TSL. However Contractor can be asked to present the results of its analyses to TSN/TSL.
19	Tender document section 3.1	What guarantees can the Dutch State provide i.r.t. non-disclosure of any materials, reports, etc.?	The Dutch Law for Disclosure of public information ("Wet Open Overheid") governs the rules and regulations around which information needs to be disclosed and which information cannot be disclosed. Upon a public disclosure request ("WOO verzoek") under this law the government may be obligated to disclose the report. However under this law any company confidential information is protected from disclosure. This means that when the government is obliged to disclose the final report company sensitive information is removed from the report. Under this law the government is also obliged to request any stakeholder (which would be in this case also be the contractor) for feedback on the disclosure before this disclosure will happen.

End of first Memorandum of Information