



Memorandum of Information 2 European Tender for 'Geological Desk Study for Search area 6/7 and Search area 3 in the Dutch North Sea', reference 202501052/ WOZ2250200

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In this Memorandum of Information, the Contracting Authority provides answers to the forgotten questions raised by Tenderers concerning the Tender. This Memorandum of Information forms an integral part of the Tender Document and the Contract.

Announcements

No.	Subject	Information
1	Time planning	The planning has been changed. See the planning in TenderNed for the correct dates.

Remarks regarding ARVODI-2018

No.	Article from ARVODI	Reason for objection	Textual suggestion	Answer
1	Annex 5 - Section III ARVODI - Clause 28.2	We will be able to confirm that at the date of signing the agreement, to the best of our knowledge after making diligent inquiries, no conflict of interest exists with regard to our ability to perform the Services or is likely to arise during performance. Please could you confirm if this is sufficient to discharge our obligations under 28.2?		Agreed.
2	Annex 5 - Section III ARVODI - Clause 24.6	Please could you confirm that clause 24.6 only applies in relation to materials arising out of the provision of the Services (i.e. does not apply to background Intellectual Property)?		Agreed. Clause 24.6 refers to rights as referred to in the Copyright Act. For background Intellectual Property rights, see clause 24.3.

3	Annex 5 - Section III ARVODI - Clause 24.4	Would the following minor amendment be acceptable?	"In so far as a separate instrument needs to be executed for the assignment of the rights referred to in articles 24.1 and 24.2, the Contractor hereby irrevocably authorises the Contracting Authority to draft such an instrument and will not unreasonably refuse to sign it, without prejudice to the Contractor's obligation to cooperate with the assignment of these rights as soon as the Contracting Authority requests it to do so, without attaching any conditions to its cooperation."	Not agreed.
4	Annex 5 - Section III ARVODI - Clause 24.3, 24.9	Please confirm that the "non-exclusive and irrevocable right of use for an indefinite period" applies only to uses directly in relation to the Contracting Authority's use of Intellectual Property in relation to the Services .		Not agreed.
5	Annex 5 - Section III ARVODI - Clause 22.2	Please could you clarify events which constitute force majeure under this contract? Typically we would expect these to include, for example: (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; (b) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;		The Civil Code states: "A shortcoming cannot be attributed to the debtor if it is not actually his fault, nor by law, legal act or in traffic, exclusively his responsibility." Article 22.3 ARVODI-2018 provides some limitation here by stating

		(c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's personnel; (d) munitions of war, explosive materials, ionising radiation or contamination by radio activity except as may be attributable to the Contractor's actions; (e) inclement weather, flood, drought, fire or natural catastrophe such as earthquake, hurricane, typhoon or volcanic activity; (f) disease outbreak, epidemic, pandemic or public health emergency; and/or (g) restrictions imposed at law in response to Force Majeure, including embargo, quarantine or travel restrictions.		what is in any case not understood as force majeure (a non-attributable shortcoming). The examples are circumstances in which the contracting parties each have influence for themselves, either by taking measures in advance to prevent it, or by taking measures in response to the situation that has arisen.
6	Annex 5 - Section III ARVODI - Clause 21	Please could you confirm that the liability of the Contractor for any breach of this Contract, or arising in any other way out of the subject-matter of this Contract, will not extend to any incidental or consequential damages or losses or any loss of profits, loss of data, loss of contracts or opportunity, even if the Contracting Authority has advised the Contractor of the possibility of those losses or if they were within the Contractor's contemplation?		Not agreed.
7	Annex 5 - Section III ARVODI - Clause 21.3 d	We cannot agree to unlimited liability in respect of data protection, particularly as we will not be processing personal data. Please could you confirm if this clause could be removed?		Not agreed.

8	Annex 5 - Section III ARVODI - Clause 21.3	Please clarify if the "€5,000,000 for each year or part of a year that the contract has been in force" is an aggregate limit of liability that resets at the beginning of each year (i.e. the maximum aggregate liability in any one year is €5,000,000). We note in the main tender document (Section 2.2) that the Contract Period extends to 31 December 2025, however could be extended by one year, which would trigger significant additional liability with potentially no additional contract value. Could you confirm if the limit of liability in 21.3 of Annex 6-III could be replied by a single aggregate limit of liability linked to the Contract Price (e.g. set the limit of liability at the Contract Price)?		Not agreed.
9	Annex 5 - Section III ARVODI - Clause 18.3	One of our proposed sub-contractors is a UK publicly funded body and subject to the scrutiny of the National Audit office, with its accounts being presented to Parliament annually. It is therefore not possible for them to provide full accounts to other parties to audit. Please could you confirm that in an event an audit is required it is sufficient that, upon reasonable request by the Contracting Authority the Contractor will provide copies of all relevant financial documentation		Agreed for sub-contractors who are UK publicly funded.

End of Memorandum of Information