



Draft Standby Agreement (Arvodi 2018) concerning the procurement of experts for the CBI project Kenya Fresh Fruits and Vegetables, focusing on a just transition to sea freight

Lot 1. Fresh Fruits and Vegetables sector expert for sea freight development, business coaching and market development

Lot 2. Systems change expert for ecosystem development

Lot 3. Local (sector) expert for local project management and implementation support

IUC reference number: 202502028

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs, legally represented in this matter by Ms. Judith Arends, Managing Director CBI of the Netherlands Enterprise Agency (RVO), hereinafter referred to as the 'Contracting Authority',

and

2. [name company], registered in [address, city], legally represented in this matter by [name], [position], hereinafter referred to as 'Contractor 2',

The Contracting Authority and the Contractor 2 are hereinafter jointly referred to as the 'Parties'.

WHEREAS:

1. The Contracting Authority requires expertise for the execution of the CBI project Kenya Fresh Fruits and Vegetables, focusing on a just transition to sea freight;
2. The Contracting Authority has therefore published a Tender Document with three (3) lots for this purpose in accordance with the European open procedure on TenderNed on [date], under reference [TN number], and on Tenders Electronic Daily under reference [S number];
3. The Contracting Authority has awarded the Contract for lot [1/2/3] to [name Contractor 1], hereinafter referred to as 'Contractor 1', for a duration of two (2) years, with two (2) optional extensions of each one (1) year, given that Contractor 1 submitted the most economically advantageous tender based on best price-quality ratio. The Contract resulting from this Tender enters into force on [Contract start date];
4. Contractor 2 has submitted its Tender for lot [1/2/3] on [date], for which the Contractor 2 was ranked second in this tender procedure;
5. The Contracting Authority wishes to reserve the right to have the Services required for the CBI project — Kenya Fresh Fruits and Vegetables, focusing on a just transition to sea freight regarding lot [1/2/3] — carried out by Contractor 2 without conducting a new European procurement procedure;
6. Against this background, the Parties enter into this Standby Agreement with each other subject to the following terms and conditions.

AGREE AS FOLLOWS:

A number of terms in this Standby Agreement are written with initial capitals. The meanings of these terms are defined in Article 1 of the General Government Terms and Conditions for Public Service



Contracts 2018 (ARVODI 2018) and/or in the 'Definition of terms' published in the Tender Document and/or as described in Article 1.

Article 1 Definitions

In this Agreement the following terms are defined as stated below:

- 1.1 Contract: Framework Agreement (ARVODI-2018) for lot [1/2/3] belonging to the open European tender procedure for the procurement of experts for the execution of the CBI project for the execution of the CBI project Kenya Fresh Fruits and Vegetables, focusing on a just transition to sea freight.
- 1.2 Contractor 1: the winning Tenderer in the tender procedure for lot [1/2/3] and with which the (original) Framework Contract has been concluded.
- 1.3 Contractor 2: the Tenderer which was ranked second in the tender procedure for lot [1/2/3] and with which this Standby Agreement has been concluded.
- 1.4 Services: the work Contractor 2 is to perform for the Contracting Authority under the terms of the Contract.
- 1.5 Standby Agreement: this agreement.

Article 2 Subject of this Standby Agreement

- 2.1 The Contracting Authority reserves the right, in the event that the Contract with Contractor 1 for lot [1/2/3] is terminated for whatever reason, to have the Services performed by Contractor 2 under the conditions of the Tender document without the need to conduct a new European procurement procedure. Should the Contracting Authority wish to exercise this right, the parties shall enter into discussions with the objective to conclude an agreement. Contractor 2 guarantees that its Tender shall remain valid for the duration of the first year of the Contract, commencing on [Contract start date]. Contractor 2 shall enter into an agreement for lot [1/2/3] with the Contracting Authority for the remaining of the Contract.
- 2.2 The Contracting Authority is not obliged to invoke its right to execute the Services as set out in article 2.1 by Contractor 2. If the Contracting Authority decides not to invoke its right, the Contracting Authority will not be liable for compensation of costs and/or damages towards Contractor 2.
- 2.3 If the Contracting Authority decides to exercise its right as set out in Article 2.1 and an agreement is reached between the Contracting Authority and Contractor 2, Contractor 2 guarantees that it will perform the Services in accordance with the terms and conditions of the Tender Document, the draft Framework Agreement, and its submitted Tender for lot [1/2/3].
- 2.4 If the Standby Agreement is invoked, a new contract for lot [1/2/3] — based on the Draft Framework Agreement, including any amendments (if applicable) as set out in the Memorandum of Information provided during the tender process — will be concluded for the remainder of the contractual period. Also, a Data Protection Agreement will be concluded with Contractor 2 for the remaining term of the contract period.



- 2.5 By signing the Standby Agreement, the Contractor 2 agrees to all terms and conditions set out in this Standby Agreement and irrevocably waives its right to judicially or extrajudicially object to the provisions of this Standby Agreement.
- 2.6 The Contracting Authority shall at all times have the right – before using the Standby Agreement and therefore concluding a Contract with Contractor 2 – to (have) an investigation carried out as to whether Contractor 2 (still) meets the exclusion grounds, suitability requirements, implementation conditions and can still meet the (sub) award criteria and the requirements to the assignment as included in the Tender Documents. Contractor 2 shall be obliged to cooperate in such an investigation without compensation and to provide the relevant data immediately.

Article 3 Formation and duration of the Standby Agreement

- 3.1 The Standby Agreement for lot [1/2/3] comes into effect after both Parties have signed it. The Standby Agreement lasts (retroactively) one (1) year, starting from [Standby Agreement start date] up and including [Standby Agreement start date].
- 3.2 The Contracting Authority will notify Contractor 2 in writing at the latest on [Standby Agreement notification date] if the Contracting Authority wants to invoke the Standby Agreement or not.
- 3.3 The Standby Agreement ends by operation of law after expiration of the period mentioned in article 3.1.
- 3.4 If the Standby Agreement is invoked, the new contract for lot [1/2/3] shall enter into force on the date agreed upon by the parties.

Article 4 Amendment and dissolution of the Standby Agreement

- 4.1 If the Standby Agreement needs to be amended due to changes in legislation and regulations or case law that could not have been foreseen at the time of signing this Standby Agreement, the Contracting Authority will consult with Contractor 2.
- 4.2 If one or more provisions of this Standby Agreement appear to be invalid or are declared null and void, the other provisions remain in full force. The Parties will enter into consultation on how the purport of the void or invalid provisions should be formulated.

Article 5 Transfer of rights and obligations

- 5.1 Contractor 2 cannot transfer its obligations under the Standby Agreement to a third party, except in the case of reorganisations within the Contractor's 2 group of companies, for which the Contracting Authority has given its prior written consent.
- 5.2 If Contractor 2 proposes (a) different expert(s) than those originally included in its tender for lot [1/2/3], the replacement expert(s) must possess qualifications that are at least equivalent to those of the originally proposed expert(s). The Contracting Authority reserves the right to reject any replacement expert(s). In the event of such rejection, the Contracting Authority shall not be liable for any costs and/or damages incurred by Contractor 2 as a result.

Done and signed.

The Hague,
[date]

[place]
[date]



For the Minister of Economic Affairs
and commissioned by
Ms. Judith Arends, Managing Director CBI of
the Netherlands Enterprise Agency (RVO):

On behalf of [name company]:

Jan van Putten
Team Manager Procurement Office

[name]
[position]