



Annex 3b Draft Framework Agreement

Framework Agreement (Arvodi 2018) relating to professional services by a technical support organisation ('TSO')

IUC number: 202409075

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister Climate Policy and Green Growth, legally represented in this matter by [signatory's name and position], hereinafter referred to as the Contracting Authority,

and

2. [Contractor's full name and legal form], which has its registered office in ..., legally represented in this matter by ... [and ...] [signatory's name], hereinafter referred to as the Contractor,

WHEREAS:

1. The Contracting Authority wishes, in relation to the performance of services, termed the execution of Task Orders, in the area of Technical support, to agree fixed terms for a certain period with one (1) service provider;
2. To this end, the Contracting Authority wishes to conclude a Framework Agreement having a term of two years, with three optional extensions of one year (hereafter referred to as: 'the Framework Agreement'), laying down the conditions applicable to all contracts for the execution of Task Orders/Further Agreements to be awarded by the Contracting Authority during the said term;
3. An EU contract award procedure for the selection of Parties to this Framework Agreement has been conducted on the basis of the Tender Document and subject to the Public Procurement Act 2012;
4. The Contracting Authority has judged the Contractor's Tender, to offer the best price-quality ratio;
5. This Framework Agreement lays down the conditions that apply to all Further Agreements for the execution of Task Orders that the Contracting Authority intends to award during the term of this Framework Agreement.

AGREE AS FOLLOWS:

A number of terms in this Framework Agreement are written with initial capitals. These terms are defined in article 1 of the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018). In derogation therefrom or in addition thereto, the following terms are defined as follows for the purposes of this Framework Agreement:

Tender Document: the Contracting Authority's document dated [date], ref. 202409075, which describes and explains participation in the Framework Agreement for the performance of Task Orders during a certain period, the tender procedure to be followed and the selection and award criteria.

Task Order: the work that the Contractor is to perform for the Contracting Authority under the terms of a Further Agreement concluded on the basis of this Framework Agreement for work as defined in the Tender Document.

Tender: the tender dated xxx, submitted by the Contractor on the basis of the Tender Document in the context of the EU contract award procedure dated ...

Further Agreement: the contract between the Contracting Authority and the Contractor in accordance with the request for offer of which the Contracting Authority may award the Contractor contracts for the execution of Task Orders during the term of this Framework Agreement.

Quotation: an offer to perform a Task Order submitted by the Contractor to the Contracting Authority in response to a Request for Quotations under this Framework Agreement.

Request for Quotations: an invitation by the Contracting Authority under this Framework Agreement to the Contractor to submit a Quotation for a Further Agreement.

Contractor: a Tenderer selected to be Party to the Framework Agreement relating to the performance of Task Orders as defined in the tender documentation.

1. Object of the Framework Agreement

- 1.1 During the term of this Framework Agreement the Contracting Authority may issue Requests for Quotations for Further Agreements to perform Services. In response to the Request for Quotations, the Contractor must submit a Quotation that is not less favourable than the Tender submitted by the Contractor. If the Further Agreement referred to in the Request for Quotations is awarded by the Contracting Authority to the Contractor the Contractor must perform that Further Agreement in accordance with the conditions of this Framework Agreement. To this end, the Contractor must in that case conclude a Further Agreement with the Contracting Authority.
- 1.2 The following documents are an integral part of this Framework Agreement. In the event of inconsistencies, a higher ranked document takes precedence over a lower ranked document:
 - 1.2.1 this document including attachments;
 - 1.2.2 second Memorandum of Information, [date];
 - 1.2.3 first Memorandum of Information, [date];
 - 1.2.4 the Tender Document, dated [date], ref. 202409075;
 - 1.2.5 the ARVODI-2018;
 - 1.2.6 the Tender issued by the Contractor to the Contracting Authority on [date], ref ...
- 1.3 The Contracting Authority is entitled but not obliged to award contracts for the performance of Services during the term of this Framework Agreement. The Contractor cannot therefore claim any right whatsoever to be awarded contracts for the performance of Services during the term of this Framework Agreement.
- 1.4 The terms of this Framework Agreement apply in full to all Further Agreements concluded during the term of this Framework Agreement between the Contracting Authority and the Contractor concerning contracts for the performance of Services specified in a Request for Quotations, unless a Further Agreement expressly departs from this Framework Agreement.

- 1.5 A Further Agreement states its duration and the specific Task Order that needs to be executed.

2. Duration of the Framework Agreement

- 2.1 This Framework Agreement comes into effect on <<datum>> and has an initial contract period of two year with three times an option to extend this Framework Agreement, to be exercised unilaterally by the Contracting Authority, under the same conditions, each time with a maximum period of one year. The total duration of the Framework Agreement is therefore maximum five years including extension options.
If the Contracting Authority does not wish to make use of an extension option, he will notify the Contractor in writing of this no later than three (3) months before the expiry of the initial or current contract period. In that case, the Framework Agreement will end by operation of law after the initial contract period or the contract period applicable at that time. In the absence of such a message from the Contracting Authority, an option to extend takes effect automatically, if and insofar as such an option is still open.
- 2.2 Termination of this Framework Agreement for whatever reason does not affect rights and obligations resulting from Further Agreements. The terms of this Framework Agreement continue to apply to any Further Agreements remaining in force after this Framework Agreement has ended, unless substantiated otherwise by Contracting Authority.
- 2.3 The duration of any Further Agreements awarded to the Contractor under this Framework Agreement will be stipulated in the individual Further Agreements for each contract for the execution of Task Orders.
- 2.4 Contracting authority is entitled to terminate this framework agreement prematurely as soon as the maximum value and/or amount of the contract is reached, or is threatened to be exceeded, without any further compensation. Contracting authority shall inform Contractor as soon as possible if and when he wants to invoke this right and he will observe a reasonable notice period.
- 2.5 If Task Orders have not been performed in full in accordance with the Further Agreement within the agreed or extended term, the Contractor will immediately pay a penalty of 1.5% of the total or maximum price specified in the Further Agreement for each day that it fails to execute Task Orders as agreed, up to a maximum of 20% thereof. If, other than through force majeure, the Contractor is permanently unable to execute Task Orders as agreed, the penalty will be immediately payable in full.

The penalty will be payable to the Contracting Authority, without prejudice to all other rights and claims, including:

- a. the right to demand that Further Agreements be executed as agreed;
- b. the right to damages.

The penalty will be set off against amounts payable by the Contracting Authority regardless of whether the right to such amounts has been assigned to a third party.

3. Awarding further agreements

- 3.1 The Contractor must submit a Quotation, having regard to the provisions of this Framework Agreement, within fifteen working days of receipt of a standard Request for Quotations and seven working days in the case of an urgent request from the Contracting Authority. The Contracting Authority will not be required to pay to obtain a Quotation.
- 3.2 The Quotation, including the fee, must comply with and may not be less favourable than the Tender submitted.

4. Price and other financial provisions

- 4.1 The maximum value/amount of the Framework Agreement is xxxx euro/...
- 4.2 For Task Orders performed under a Further Agreement that have been accepted by the Contracting Authority the Contractor must invoice as indicated in the further request for tender. All Further Agreements will state that the Contractor guarantees that the maximum total price referred to in the Further Agreement for the execution of the Task Orders will not be exceeded. Annexes 2a and 2b to this Framework Agreement set out the maximum fee paid by the Contracting Authority for the deployment of the Contractor's staff. Contractor may offer lower rates in its Quotation.
- 4.3 It is expressly agreed that if the Contractor does not charge VAT but the execution of some or all of the Task Orders are not exempt from VAT, the Contracting Authority will not be liable to pay the VAT in question.
- 4.4 The price referred to in article 4.1 of this Framework Agreement relates to the execution of all Task Orders to be performed by the Contractor under the Further Agreement in question. It includes the cost of any materials needed for that purpose, any travel and accommodation costs, and any additional costs. It does not include VAT.
- 4.5 The agreed rates as attached to this Framework Agreement are in any case fixed until January 1, 2027.

Indexation requests can only be made once a year, only in October. Before and after this month, indexation requests for the next year will no longer be accepted. Indexation requests should be sent to the following email address: contractmanagement@rvo.nl.

The prices and rates can be adjusted in accordance with the CBS Collective Labor Agreement (*Collectieve arbeidsovereenkomst*) wages per hour including special rewards, category business services. The monthly figure of the most recent published month is used for this, whereby the index figure of the month of the commencement date of the Contract is set at 100%.

The Contractor must submit the application specified with a printout from the CBS-Statline and make a reference in the application to the relevant Contract with the Client. The application includes a statement of the previous versus the new prices and rates.

After receipt of the request, the Client will confirm to the Contractor whether this request has been approved.

- 4.6 Invoicing by the Contractor must submit invoices electronically in the manner prescribed in the Request for Quotations.
- 4.7 A Further Agreement will state how payments will be made.

5. Contacts / Project managers

- 5.1 The contact person of the Contracting Authority is xxx
The contact person of the Contractor is xxx
Contractmanager of the Contracting Authority is xxx
- 5.2 In the event that two or more entrepreneurs have submitted a joint bid, whereby each participant in the consortium is individually and jointly liable for the fulfilment of the obligations arising from the Submission as well as the execution of the Framework

Agreement, the entrepreneurs shall appoint a lead party who will act as the point of contact for the Contracting Authority.

Notwithstanding the above, Contracting Authority is entitled to seek, and engage in, contact other consortium members than the point of contact for transparent and substantiated purposes.

- 5.3 At least once per year, the contacts of the two Parties will hold consultations on the way in which this Framework Agreement is being implemented.
- 5.4 At the discretion of Contracting Authority, Further Agreements can stipulate moments of contact, incidental or structural, between contacts of the two Parties, either defined in 5.1 or defined otherwise in the Further Agreement, during the Further Agreement duration.
- 5.5 Contracting Authority is entitled to commission audits of Further Agreements results. The Contractor and its personnel and/or subcontractors will cooperate with auditing parties in good faith, where the good execution of an audit of Further Agreements results require such.
- 5.6 Notwithstanding the provisions of article 10.2 of the ARVODI 2018, the contacts cannot make legally binding agreements on the Parties' behalf.

6. Time and place

- 6.1 The work relating to the Task Order specified in a Further Agreement will be carried out at the place(s) stipulated in the Further Agreement.
- 6.2 Each Party undertakes to give the other Party's Staff access to the place where the work relating to the Task Orders specified in the Further Agreement must be performed and also to enable such Staff to perform the work in working conditions that reflect that Party's usual practice and in normal office hours. The Parties undertake to instruct their Staff to abide by the house, security and confidentiality rules applicable at the place where the work is to be carried out.

7. Contract transfer

- 7.1 Contracting Authority is entitled to transfer this Framework Agreement and all rights, obligations and Further Agreements derived from this Framework Agreement to an organisation yet to be incorporated as an independent state owned company: Nuclear Energy Organisation Netherlands ("NEO NL"), releasing the Ministry of Climate Policy and Green Growth and all legal successors from all rights and obligations stipulated in this Framework Agreement and all Further Agreements transferred as per this article, as of a date to be determined.
The Contracting Authority shall inform the Contractor in writing of such a transfer.

8. Other Terms and Conditions

- 8.1 This Framework Agreement and a contract for the performance of Task Orders in accordance with a Further Agreement are governed exclusively by the ARVODI 2018 (*already in the Parties' possession*), in so far as this Framework Agreement does not depart therefrom. Any general and special terms and conditions drawn up by the Contractor do not apply.
- 8.2 Cessation of the Dutch nuclear newbuild programme caused by a change in political will regarding nuclear energy shall be regarded as being a form of force majeure ex article 22.2 of the ARVODI.

- 8.3 In addition to the provisions of article 22 of the ARVODI 2018, the Contracting Authority may cancel this Contract forthwith out of court by registered letter, without giving any warning or notice of default, in the following cases:
- a. If the Contractor has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code; or
 - b. If a member of the Contractor's Staff has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code and that staff member is on the Contractor's executive, management or supervisory board or has representative, decision-making or audit powers.
- In the cases set out under (a) and (b) the right to cancellation expires three years after the judgment becomes unappealable.
- 8.4 Notwithstanding article 21.3 of the ARVODI 2018, a Party that imputably fails to discharge its obligations to the other Party is liable for any damage incurred by the other Party.
- 8.5 In addition to article 21 of the ARVODI 2018, the Contractor indemnifies the Contracting Authority against any claims for damages brought by third parties as a result of its failure to discharge its obligations as referred to in article 21.3 of the ARVODI 2018.
- 8.6 If the duty of confidentiality imposed on the Contractor and its Staff and/or subcontractors under article 13 of the ARVODI 2018 is breached, the Contractor will be liable to pay the Contracting Authority a penalty, the amount of which will be determined based on the severity of the breach and the impact of the incident.
- 8.7 In addition to article 24 of the ARVODI 2018, the intellectual property rights relating to information obtained from third parties for the purpose of performing a Further Agreement for the execution of Task Orders will remain the property of the same third parties. The Contractor will make suitable arrangements for the Contracting Authority to make use of the information in question.
- 8.8 At any time after two (2) years have expired since the Framework Agreement has entered into force, as part of and during the course of Contractor's performance of the Work, the Contracting Authority may identify and undertake a structured transfer of certain Contractor's Personnel into a direct contractual or employment relationship with the Contracting Authority, subject to the consent of such Contractor's Personnel (such personnel, the "Transferring Personnel"), without creating an obligation for the Contracting Authority to pay indemnities.
- 8.8.1 The Contractor shall fully cooperate and use all reasonable endeavours in the transfer of Transferring Personnel.
 - 8.8.2 This Contract shall not modify in any employment or consulting agreements between the Contractor and Transferring Personnel, except that Contractor shall waive applicable portions of any non-compete provisions to facilitate this section 8.5.
 - 8.8.3 Notwithstanding the above regarding indemnities, the Contracting Authority shall provide three (3) months' prior written notice ("Transfer Notice Period") to the Contractor of its intention to hire directly any of the Contractor's Personnel as Transferring Personnel ("Transfer Notice").
 - 8.8.4 Following delivery of a Transfer Notice, the Contracting Authority shall continue to pay the Contractor for the Transferring Personnel during the Transfer Notice Period on a full time basis at a rate agreed between the Parties at the time of delivery of such notice.
 - 8.8.5 If the transfer of any Transferring Personnel in accordance with this Section A affects Contractor's ability to complete the Work by a Critical Milestone Date or the Scheduled Completion Date of a Task Order, the Contractor may request an adjustment to such Critical Milestone Date or the Scheduled Completion Date under

the affected Task Order in accordance with provisions of the Contract regarding Extensions of Critical Milestone Dates and Scheduled Completion Date.

9. Declaration of integrity

- 9.1 Contractor affirms that it has not offered or given members of the Contracting Authority's Staff any benefit in order to be selected to be party to this Framework Agreement or in order to obtain Further Agreements for the performance of Services, nor arranged for them to be offered or given any such benefit, nor will it offer or give any such benefit or arrange for any such benefit to be offered or given. It undertakes not to do so in the future with a view to inducing any members of the Contracting Authority's Staff to perform or refrain from performing any act.

10. Final provisions

- 10.1 Any derogations from this Framework Agreement or a Further Agreement are binding only if they have been expressly agreed by the Parties in writing.
- 10.2 Any written or oral agreements previously made by the Parties about the award of contracts for the performance of Services, whether under a Further Agreement or not, are nullified by the signature of this Framework Agreement.

Thus agreed and duly signed by both parties,

The Hague,
[date]:

[place],
[date]:

For the Minister of Climate Policy and Green Growth,
and commissioned by
[Contractor's name][name of portfolio]

[name Contractor]

[signatory's name]
Team manager Procurement Office

[signatory's name]
[signatory's position]

Attachments:

- Price schedules 2a and 2b
- ARVODI-2018 (*already in possession*)
- the Memorandum of Information (*already in possession*)
- Tender Document (*already in possession*)
- the Tender issued by the Contractor to the Contracting Authority (*already in possession*)