

CONCEPT agreement under the General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022) for the Supply, Management and Maintenance of Flow Measurement Instruments under case number 31204225 ADM

The undersigned:

1. The State of the Netherlands, having its registered office at the Ministry of Infrastructure and Water Management in The Hague, represented by the Director of Data Collection & Analysis of the Central Information Service of the Directorate-General of Rijkswaterstaat, <name signatory>, referred to below as the 'Client',

and

2. <full name and legal form of the contracting party>, having its registered office in <place name>, represented by <position> <name of signatory> referred to below as the 'Other Party',

The Client and the Other Party are jointly referred to below as the 'Parties' and separately as the 'Party'

Taking into consideration that:

Organisation and procurement needs of the Client

- a. The Client is responsible for Rijkswaterstaat's Corporate Instruments Stock (*Corporate Instrumentenbestand, CIB*). The CIB lends the instruments to users, particularly to the Permanent Measuring Networks Team and the Mobile Measuring Team of the RWS Central Information Service (RWS CIV);
- b. For the purpose of performing its duties, the Client needs Flow Measurement Instruments, specifically ADMs, including product parts and accessories, maintenance, support and consultancy services;

Call for tenders procedure

- c. In view of the considerations under a and b above, the Client has proceeded with the call for tenders for the Supply, Management and Maintenance of ADMs by means of a public European tender;
- d. On *xx Month 202x*, a notice was sent by or on behalf of the Client to the Supplement to the Official Journal of the European Union ('the Official Journal') and this notice was published under number *BP/S number*;
- e. The Other Party submitted a tender before the deadline of *xx Month 202x*;
- f. The Client awarded the Contract to the Other Party on *xx Month 202x*.

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Agree to:

1. Defined terms

A number of defined terms are used with initial capital letters in the Agreement. These defined terms have the meaning as provided for in the Terms and Conditions.

In addition, the following defined terms, if used with an initial capital letter, mean:

- 1.1. Sufficiently Determinable: the Product(s) is/are described, specified and documented in the Technical Information Form, supplemented with Product Brochures and Specification Sheets.
- 1.2. Technical Information Form: a description of Product features at least in accordance with the features and aspects described in the Functions and Aspects of the Tender Specification requirements.
- 1.3. Option: as an option, the Client may increase the quantity of a Product/the Products (contract amendment under Section 2.163c of the Public Procurement Act [Aanbestedingswet]), in which case the Client is entitled to have the Other Party Deliver on a call-off basis. The Model Amendment Agreement ARBIT 2022 is used for this purpose.
- 1.4. Price List: Product, Maintenance and Support are shown in the Price List, based on which the Client will also call for Delivery of the Options.

2. Object of the Agreement

- 2.1 The Parties hereby enter into an Agreement under which the Other Party undertakes to render the Performance as described in the Specifications for a Fee as referred to in Clause 7, which essentially consists of:

- the supply of the Product/Products:

	Flow meter (ADM)	Quantity
A1	ADM location Bunde	1
A2	ADM location Driel	1
A3	ADM location Genemuiden	1
A4	ADM location Hagestein	1
A5	ADM location Megen	1
A6	ADM location Sint Pieter	1
A7	ADM location Venlo including installation and delivery	1
A8	ADM location Wieldrecht	1
A9	Option(s) ADM	2

- the performance of the Contract/Contracts:

	Item	Quantity
B1	Consultancy Services, Support and Maintenance	1

all to enable the Client to use it as agreed.

2.2 The following documents jointly constitute the Agreement. Insofar as these documents contradict each other, the earlier mentioned document will prevail over the subsequently mentioned document:

- 1) this document;
- 2) the Terms and Conditions (ANNEX Terms and Conditions);
- 3) the Specifications (ANNEX Tender Specification);
- 4) the other Annexes
- 5) the tender of xx Month 202x submitted by the Other Party to the Client.

3. Contacts and reporting

3.1 The contacts involved in performing the Agreement are listed in the ANNEX Contacts.

3.2 The Other Party reports on how the Agreement is performed in accordance with the Tender Specification requirements.

4. Entry into force and term of the Agreement

4.1 The Agreement will enter into force once it has been signed by both Parties.

4.2 The Agreement has a term of ten (10) years and ends on xx Month 20xx with the option to extend it once by five (5) years. This option can only be exercised by the Client.

5. Delivery and Completion

5.1 The Other Party is responsible for the Delivery of the Products on the date and at the place specified in the table below. The specified dates are strict deadlines.

	Item	Delivery address	Delivery date
Ax	x ADMs	Derde Werelddreef 1, 2622 HA Delft	on or before xx Month 2026
Ax	x ADMs	Derde Werelddreef 1, 2622 HA Delft	2027
Ax	x ADMs	Derde Werelddreef 1, 2622 HA Delft	20xx

5.2 The Other Party is responsible for Completion in the manner and on the date and at the place specified in the table below. The specified dates are strict deadlines.

	Item	Method of Completion	Address and date
B1	Consultancy Services, Support and Maintenance	Completion methods and completion dates are to be determined before the contract is awarded.	Derde Werelddreef 1, 2622 HA Delft and/or RWS sites in the Netherlands

5.3 The services will commence on the date specified in the table below.

	Item	Commencement date
B1	Maintenance according to the Warranty, and repair of Deficiencies	after Acceptance for the duration of twelve (12) months

6. Acceptance

6.1 Acceptance of the Performance occurs as follows:

	Item	Acceptance	Deadline for notification of Acceptance or Non-Acceptance
A1	ADM	In accordance with the RWS CIS Acceptance Procedure	30 days after Delivery (11.1 ARBIT)
B1	Consultancy Services, Support and Maintenance	In accordance with the RWS CIS Acceptance Procedure	30 days after Delivery (11.1 ARBIT)

6.2 If the Client accepts the Performance despite the presence of one or more Deficiencies, it will withhold an amount of 10% from the Fee until the Deficiencies have been repaired.

7. Fee

7.1 The Parties agree on the following Fee:

	Item	Price	Price including VAT
A1	The Fee for the Product to be delivered amounts to:	price per Product	fee per Product
B1	The Fee for Consultancy Services, Implementation, Installation, Support and Maintenance amounts to:	fixed hourly rate	fee at a fixed hourly rate

7.2 After 1 January 2028, the agreed Fees will be adjusted once a year on 1 January;

Products (A1 and A2) will be adjusted by an annual rate adjustment capped at the 'Statistics Netherlands Producer Price Index (PPI) PRODCOM C 26 Information Products, Electronics'. The monthly figure for the previous month of xxxxxxxx will be used each time, according to the calculation method below: $(\text{index figure [new month]} - \text{index figure [old month]}) / \text{index figure [old month]} \times 100\%$.

Consultancy Services, Maintenance and Support (B1) will be adjusted by a percentage capped at the 'Statistics Netherlands Services Price Index (DPI) 6202 Computer Consulting'. The quarterly figure for the previous quarter will be used each time, according to the calculation method below: $(\text{index figure [new quarter]} - \text{index figure [old quarter]}) / \text{index figure [old quarter]} \times 100\%$.

The most recent month/quarter of which the first published index figure is known will be used as the new month/quarter. The same month/quarter of the previous year will be the old month/quarter. The month/quarter chosen for indexation must also be used for the following indexations. This ensures that the indexation period will always cover a whole year. A request for indexation must be submitted in writing to the Client's Contract Manager at least thirty (30) days before the commencement date. Any new Fee will take effect upon written approval by the Parties.

- 7.3 If the Performance does not comply with the Service levels as a result of an attributable failure of the Other Party, rebates will apply to the Fee in accordance with the following table:

Service levels	TSP requirement	Standard	Rebate
Prompt and correct delivery of the ADM	IM100	Time of call-off -/- time of receipt at delivery location	25% rebate on Product Fee
Up-to-date documentation supplied with the ADM	IM120	Product Delivery Date	5% rebate on Product and Maintenance Fee
User training completed in accordance with requirements	IM130	Contract performance date	25% rebate on Support Fee
Lead time for Factory Maintenance on ADM	IM520	Maximum of four (4) months	10% rebate on Maintenance Fee
Manufacturer support after phase-out	IM530	Product Delivery Date	25% rebate on Product and Maintenance Fee
Malfunction and incident response time	OS130 BO010	Maximum of 72 hours in normal circumstances and maximum of 24 hours in special circumstances	50% rebate on Support Fee

- 7.3. If the Performance has not been Completed or Delivered by the agreed date due to an attributable failure of the Other Party, an amount of 1% will be rebated on the Fee for each day that the delay in Completion or Delivery continues, subject to a maximum of 25%.
- 7.4. If the Client rejects the Completed or Delivered Performance, an amount of 1% will be rebated on the Fee for each day that Deficiencies found have not been remedied, subject to a maximum of 25%.

8. Invoicing, liability to pay and payment

- 8.1 The Fee referred to in Clause 7 is due and payable after Acceptance.

- 8.2 Invoices must contain the following details:
- RWS's invoicing address; Rijkswaterstaat's government identification number: 00000001821699180000
 - the Contractor's details (name, address and place of residence)
 - the Contractor's invoice reference or number
 - the invoice date
 - the invoice amount excluding VAT and including VAT
 - the amount of VAT payable
 - the Contractor's IBAN and bank details
 - the Contractor's VAT number
 - the Contractor's Chamber of Commerce number
 - the order reference; the SAP order number consists of 10 digits and always starts with '4500'
 - the case ID number: 31204225
- 8.3 The Other Party will invoice electronically in the prescribed manner.
- 8.4 In accordance with Article 14.2 of the General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022), the Contractor will send the invoices including the details as referred to in Clause 8.2. The Other Party must use e-invoicing to submit the invoices.
- The e-invoice must be submitted by using one of the following methods:
- administration software;
 - the supplier portal.
- For more information on e-invoicing, refer to the following website:
<https://www.helpdesk-efactureren.nl>.
9. General and special terms and conditions
- 9.1. Any general and special terms and conditions of the Other Party or of third parties involved in the Performance by the Other Party are excluded, unless explicitly agreed otherwise in the Endorsement to the Agreement.
- 9.2. The acceptance of general or special conditions required for using the Performance, such as for 'shrink-wrap' and 'click-wrap' licences, does not bind the Client. The Other Party guarantees the Client that such acceptance does not result in any restriction on the agreed use.
- 9.3 In addition to Article 23 of the Terms and Conditions, if the Other Party wants to use third-party services for performing the Agreement, either by way of subcontracting or by hiring staff, it will be authorised to do so only after having obtained the Client's written consent.
- The Client may always refuse to give such consent (including in, but not limited to, the cases below) if:
- a) there could be a risk that data ends up with individuals or organisations in countries with laws that make it possible for the intelligence services of those countries to consult that data;
 - b) a strong (strategic) dependency could arise on a market party controlled by a foreign government or its subcontractors, as a result of which in case of a conflict, there is a possibility that the Client could be put under pressure by the Other Party (whether or not on the instruction of a foreign government actor);
 - c) the possibility of espionage arises or increases.
- 8.4. A copy of the Terms and Conditions has been attached to the Agreement.

10. Other provisions

10.1. The Other Party will make every effort to provide transparency regarding the presence of conflict minerals in the supply chain.

10.2. The Other Party applies the latest version of the Government Information Security Baseline ('GISB') to its formulation of control measures relating to data security, taking into account the environment(s) in which the data security risks apply.

10.3 The Other Party will make every effort to support the reuse of Products and to prolong the use of Products by way of repair.

Agreed on xx month 202x and signed by:

CLIENT

OTHER PARTY

Name:

Name:

Position:

Director of Data Collection & Analysis

Position:

Signature*:

Signature:

Date:*

Date:

*This document has been signed
digitally

ANNEX Technical Information; Product brochures or specification sheets for the ADM

ANNEX Contacts

Client

The <position>, currently held by <name>, is authorised to bind the Client insofar as it concerns performance of the Agreement.

Other Party

The <position>, currently held by <name>, is authorised to bind the Other Party insofar as it concerns performance of the Agreement.

ANNEX Terms and Conditions

GENERAL GOVERNMENT TERMS AND CONDITIONS FOR IT CONTRACTS 2022 (ARBIT-2022)

Adopted by decree of
the Prime Minister,
Minister of General Affairs,
of 22 August 2022, no. 3771053

ANNEX Service Level Agreement (SLA)

The SLA forms part of the Maintenance Agreement and stipulates the agreed service level. A proper alignment of the SLA with the Terms and Conditions requires that the most important service levels for the Performance are included in the Agreement. Important Service levels are at least those on the basis of which a rebate is withheld from the Fee under Clause 7.3. Finally, the definitions below as set out in Article 68 of the General Government Terms and Conditions for IT Contracts 2022 (ARBIT-2022) must be used in the SLA:

Availability: the period during which the Performance is free of Deficiencies.

Corrective Maintenance: the detection and repair by the Other Party of Malfunctions, which the Client has reported to it or which have otherwise become known to the Other Party. This concerns the services that are meant to restore the instruments to a good condition after becoming faulty. The acoustic flow meters (ADMs) are returned for this purpose; services are not performed at the measuring site.

Function recovery time: the period, expressed in Service hours, between the time when a Malfunction is reported to the Other Party and the time when it has been remedied.

Innovative Maintenance: the provision by the Other Party of New versions or newly developed components of Products and/or new Documentation to the Client.

Preventive Maintenance: the taking of measures by the Other Party to prevent Malfunctions and other related forms of service. Preventive maintenance is only permitted on site and only includes inspection and cleaning.

Response time: the time within which the Other Party's personnel must respond adequately to a notification of a Malfunction by the Client and other Client requests for service.

Service levels: requirements set out in the Agreement regarding the performance of Maintenance and other agreed forms of service.

Service hours: the hours that fall within the agreed service period.

Malfunction: a technical problem that occurs when using the Performance.

Service levels	TSP requirement	Standard
Prompt and correct delivery of the Flow Measurement Instrument	IM100	Time of call-off -/- time of receipt at delivery location
Up-to-date documentation supplied with the Flow Measurement Instrument	IM120	Product Delivery Date
User training completed in accordance with requirements	IM130	Contract performance date
Lead time for Factory Maintenance on Flow Measurement Instrument	IM520	Maximum of four (4) months
Manufacturer support after phase-out	IM530	Product Delivery Date
Malfunction and incident response time	OS130 BO010	Maximum of 72 hours in normal circumstances and maximum of 24 hours in special circumstances

ANNEX Price List

The Price List must at least contain the following items:

- The system price for the initial supply (corresponding to the Quotation Form)
- The system price for subsequent supplies (corresponding to the Quotation Form)
- The separate acoustic flow meter (ADM)
- The separate electronic unit (if applicable)
- The separate cable between the acoustic flow meter (ADM) and the National Water Monitoring Network (LMW) connection point in x lengths subject to a maximum of xx metres
- The mounting frame
- Relevant and optional additional accessories
- Relevant components for corrective maintenance
- Transportation costs for corrective maintenance
- Hourly rate for corrective maintenance
- Hourly rate for Support