



Explanatory Notes on the Model Call-off Contract relating to the general Model Framework Agreement (ARVODI 2025)

I Introduction

General

These are the Explanatory Notes on the Model Call-off Contract. The Model Call-off Contract is intended for public service contracts awarded under a general Framework Agreement to which the ARVODI are applicable.

The Model contains a number of standard provisions that apply to all Call-off Contracts. It also includes optional elements which can be used if the specific situation so requires. These elements are marked <OPTIONAL> and OR. When these elements have been selected as appropriate, the other provisions have been completed and the articles have been numbered consecutively, the result is a draft call-off contract. Once it has been signed by the Contracting Authority and the Contractor it becomes the Call-off Contract.

In a procurement procedure, the draft call-off contract must be sent to potential tenderers along with the draft framework agreement, since it contains requirements and conditions that they must take into account when drawing up a tender.

These Explanatory Notes are in the public domain, but are not part of the Call-off Contract. The content of these Explanatory Notes can help resolve any doubts about the meaning and/or interpretation of the Model Call-off Contract. The Explanatory Notes do not affect what has been agreed by the Parties in a specific case.

Application

This model Call-off Contract is designed to be used with the model general Framework Agreement and the ARVODI. It is therefore advisable to use each of these documents in conjunction with one another. Any departures from the ARVODI must be included in the Call-off Contract. The Model can be completed by filling in the relevant details of a specific contract, including any relevant optional provisions.

The Model is also suitable for research services performed using non-academic methods. A separate model framework agreement and call-off contract are available for research carried out in accordance with academic standards (that is to say, in accordance with the European Code of Conduct for Research Integrity (ALLEA code of conduct)). There is also a model framework agreement and model call-off contract on hiring. If it is not clear which model should be used, it is recommended that the legal department be consulted.

Signature

It is important that the Call-off Contract is signed in a legally valid manner. The minister or state secretary concerned is always authorised to act independently in signing the Call-off Contract (on the basis of the Government Accounts Act 2016). If the Call-off Contract is signed on behalf of

(rather than by) the minister or state secretary concerned, it is important to check that the signatory is authorised for this purpose. The ministry's power of attorney and/or mandate regulations should be consulted in this regard.

The authority of the Contractor's signatory to sign the Call-off Contract in a legally valid manner can be checked with reference to an extract from the commercial register (possibly in combination with a power of attorney).

II Notes on individual articles

This section contains explanatory notes only on those articles that may give rise to queries.

Article 2 Object of the Call-off Contract / further details concerning the Services

- 2.1 Here the object of the Call-off Contract should be stated. This can be done briefly by referring to the Quotation.
- 2.2 This paragraph lists the documents that form an integral part of the Call-off Contract, in order of precedence.

The highest-ranking document is the Call-off Contract. It is followed successively by the Data Processing Agreement (if applicable), the Framework Agreement on the basis of which the Parties conclude the Call-off Contract, the ARVODI, the Request for Quotations, the other Schedules and the Quotation.

It was decided to rank the Call-off Contract higher than the Framework Agreement because the former contains the most specific agreements concerning the performance of the Services. It is important to note, however, that deviating from the Framework Agreement in the Call-off Contract is not always permitted. This is because the Framework Agreement is in most cases preceded by an (EU) contract award procedure and the scope for amending such an agreement is limited (see sections 2.163a to 2.163g inclusive of the Public Procurement Act 2012).

The Request for Quotations ranks higher than the Quotation submitted by the Contractor, as the Request for Quotations contains the Contracting Authority's requirements, which have primacy.

Article 3 Duration of the Call-off Contract

Article 3 states when the Call-off Contract is formed and what its duration is. No work should be performed before the Parties have signed the Call-off Contract. If problems arise in the performance of the Services, there must be clear agreements from which the Parties can derive their rights and obligations.

- 3.3 The ARVODI do not contain a standard penalty clause. If it is crucial that the Services are performed in full before a certain date, a clause can be included in the Call-off Contract imposing a penalty for failure to comply with obligations in a timely manner. The size of the penalty is linked to the contract value and is subject to a ceiling.

Although the law assumes that any contractually agreed penalty replaces the obligation to pay compensation, it is possible to make different arrangements by contract. Because the threat of a penalty, for the Contractor, is primarily an incentive to fulfil obligations under the Call-off Contract and not to fall short in this regard, it was decided in the Model to entitle the Contracting Authority, in addition to the penalty, to performance and compensation.

With the Contracting Authority's consent, the Contractor is entitled to assign (i.e. transfer) its rights to payment to a third party. In that case it can be difficult to set off a penalty against amounts payable by the Contracting Authority. For this reason, it should be ensured that the Contracting Authority is entitled to deduct any penalties from payments owed regarding the Contractor's invoices, even if the right to payment of the invoice amount has been transferred to a third party.

Article 4 Financial provisions

This article contains the arrangements concerning the price and other financial provisions.

4.1 A choice must be made here between a fixed total price and a price based on the amount of time actually worked.

4.2 There are various options as regards invoicing.

Option 1 is that the Contractor will invoice once the Services have been performed in full. In most cases this option is recommended.

Option 2 is that the Contractor will invoice at regular intervals.

Option 3 is based on fixed instalments and can be used for large contracts.

In certain circumstances it is possible to pay advances. The relevant conditions are set out in article 17 of the ARVODI and its explanatory notes.

Under option 4, it is possible to agree that the Contractor will invoice only once the Contracting Authority has assessed and accepted the Services. An assessment period must be specified, starting from the moment the Services have been performed in full. In this case, statutory interest will only become payable 30 days after the assessment and acceptance of the Services or after the assessment period has ended (in accordance with article 6:119b, paragraph 2 (c) of the Civil Code).

Option 5 can be used if different arrangements are made regarding invoicing.

4.3 Article 15.1 of the ARVODI obliges the Contractor to submit an e-invoice in the manner prescribed in the Contract. The Contractor must in any event include the order reference and the Contracting Authority's digital address (Organisation Identification Number (OIN)) in the e-invoice. More information about submitting e-invoices to central government is available at www.helpdesk-efactureren.nl/en or in financial instructions specific to the Contracting Authority.

If the Contractor is unable to send an e-invoice, the second option offered by article 4.3 should be completed and included.

- 4.4 No bank guarantee is required if no advance payment is made or if the Contract is being concluded with another public body. In that case, this paragraph (4.4) can be included.

Article 5 Contacts/ <OPTIONAL> Consultation/ <OPTIONAL> Reporting/ <OPTIONAL> Project managers/ <OPTIONAL> Supervisory committee/steering committee

Contacts

- 5.1 It is recommended that contacts be designated who have sufficient authority to enter into agreements with the Contractor.
The assumption is that contacts can bind the Parties in so far as the performance of the Services is concerned (see article 8 of the ARVODI). If this is not the intention, article 5.4 must be included.

Duty to provide information

- 5.2 Article 7 of the ARVODI imposes a general duty on the Contractor to provide information on the progress of the work. This duty can be set out in more detail in article 5.2.

Supervisory committee or steering committee

- 5.5 Article 5.5 can be included if there is a need to set up a supervisory committee or a steering committee. It is recommended that the committee's tasks and responsibilities be set out clearly (see also the notes above on contacts). This should preferably be done in a Schedule to the Contract. Any changes in personnel can then be made more easily by amending the Schedule.

Article 6 <OPTIONAL> Research material (non-academic research)

If the Model is used for non-academic research (that is to say, research conducted using non-academic methods) it is advisable to make agreements concerning the material that the Contractor collects in the course of the research.

NB: If academic research is to be conducted (that is to say, research using academic methods), the Model Research Framework Agreement and the accompanying Call-off Contract must be used.

- 6.1 The research material may be useful to the Contracting Authority. In that case, the Contracting Authority may opt to have title to the research material transferred by including the first option in the Call-off Contract. If the Contracting Authority has no interest in the material, the Contractor can remain the owner of it and the second option can be included in the Contract.

Research material means the material used by the researchers while conducting research. Examples are survey forms and interview reports. Templates and software developed by research consultancies at their own expense are not considered to be research material.

Article 7 <OPTIONAL> End of the Call-off Contract (exit)

- 7.1 It may be that the Contracting Authority still needs the Contractor in the context of the end of the Call-off Contract. For example, the Contracting Authority may itself have to perform

services that it thought it had contracted out or enable a new contractor to perform those services. It is in the interests of both the Contracting Authority and the new contractor that the performance of the services is not impeded as a consequence of inadequate cooperation on the part of the former Contractor. If desired, the exit arrangements can be elaborated in the Call-off Contract.

- 7.2 If the Call-off Contract ends 'normally', the Contractor's cooperation is covered by the price to be paid by the Contracting Authority. If the Call-off Contract is cancelled due to an imputable failure on the part of the Contractor this cooperation is part of the duty to limit damage and the Contracting Authority does not pay for this.

7.3 and 7.4

If the performance of the Call-off Contract involves the processing of data of or for the Contracting Authority, the optional provisions set out in paragraphs 7.3 and 7.4 can be used. These paragraphs do not relate to personal data if specific rules apply to this kind of data under a separate data processing agreement.

Articles 7.3 and 7.4 relate to various categories of data:

- data received from the Contracting Authority
- data generated on the Contracting Authority's instructions
- other data (for example: interview reports drawn up by the Contractor with a view to delivery of a research report).

In article 7.3 it is possible to stipulate how soon after the end of the Call-off Contract the data must be returned or erased. If necessary a penalty can be set for non-compliance with this obligation.

In article 7.4 it is possible to stipulate the form (for example: in writing or electronically, stating the file format) and manner (for example: by email, in person or by post) in which data is to be returned. The second option in article 9.4 can be used if the Contracting Authority already knows, when the Call-off Contract is entered into, the form and manner in which it wishes data to be returned.

Article 8 <OPTIONAL> Other terms and conditions

8.1 and 8.2

If the Model is used for the provision of services by a self-employed person without employees, the Contracting Authority must determine whether the contractual relationship that the Parties are entering into qualifies as employment. If so, the Contracting Authority must withhold salaries tax and social insurance contributions from the pay of the self-employed person without employees and remit these to the Tax Administration, as it does for staff employed on the basis of a permanent or temporary appointment.

New model provisions are being drawn up on the hiring of self-employed persons without employees. In the meantime, the optional articles 8.1 and 8.2 can be included in the Call-off Contract if the self-employed persons without employees are freely replaceable.

Publication details

These instructions were drawn up under the responsibility of the Corporate Legal Advisory Committee (CBA).

Further information may be obtained from the CBA Secretariat (contact details available on Rijksoportaal).

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