



Explanatory Notes on the Model Framework Agreement (ARVODI 2025)

I Introduction

General

These are the Explanatory Notes on the Model Framework Agreement ('Model'). The Model contains a number of standard provisions that apply to all Framework Agreements. 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 framework agreement. Once it has been signed by the Contracting Authority and the Contractor it becomes the Framework Agreement.

In a procurement procedure, the draft framework agreement must be sent to potential tenderers 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 Framework Agreement. The content of these Explanatory Notes can help resolve any doubts about the meaning and/or interpretation of the Model Framework Agreement. The Explanatory Notes do not affect what has been agreed by the Parties in a specific case.

Application

It is recommended that the ARVODI be declared applicable to all contracts drawn up on the basis of the Model Framework Agreement. The Model is based on the ARVODI and no arrangements contrary to the ARVODI may be made without these being included in the Framework Agreement.

The Model is also suitable for research services performed using non-academic methods. A separate Model Research Framework Agreement is 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 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 Framework Agreement is signed in a legally valid manner. The minister or state secretary concerned is always authorised to act independently in signing the Framework Agreement (on the basis of the Government Accounts Act 2016). If the Framework Agreement 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 Framework Agreement 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 1 Object of the Framework Agreement

- 1.1 This article provides that the Contracting Authority may issue Requests for Quotations during the term of the Framework Agreement. The Contractor is obliged to submit a Quotation when requested and, upon being awarded the contract, to perform the Services.
- 1.2 The second paragraph states explicitly that the Framework Agreement is governed exclusively by the ARVODI. If the Contractor has stated that its tender or quotation is subject to the Contractor's own general terms and conditions, the conclusion of the Framework Agreement renders the latter inapplicable.
- 1.3 This paragraph lists the documents that form an integral part of the Framework Agreement, in order of precedence. The Tender Documents rank higher than the Tender submitted by the Contractor, as the Tender Documents contain the Contracting Authority's requirements, which have primacy.

If the Contractor processes personal data for the Contracting Authority, the Parties must conclude a data processing agreement. In certain cases, one data processing agreement that applies to all Call-off Contracts is sufficient. This data processing agreement is then concluded at the level of the Framework Agreement. In other cases, a data processing agreement must be concluded for each Call-off Contract. It is recommended that a privacy expert be involved when choosing between these options.

1.6, 1.7, and 1.8

Article 1.6, 1.7 and 1.8 are optional and only of importance if the final result has to be delivered in the form of reports. If that is not the case, the preamble to the Framework Agreement is sufficient to indicate the Services to be provided by the Contractor under a Call-off Contract. The Services will be described in more detail in a Quotation issued on the basis of a Request for Quotations. The Request for Quotations and the Quotation will then form part of a Call-off Contract as Schedules.

Article 2 Duration of the Framework Agreement and Call-off Contract

Article 2 states when the Framework Agreement is formed and what its duration is. No work should be performed before the Parties have signed the Framework Agreement. If problems arise in the performance of the Services, there must be clear agreements from which the Parties can derive their rights and obligations.

- 2.1 Under the Public Procurement Act 2012, the term of a framework agreement, including renewal options, is in principle limited to four years. A longer term may be agreed only in

exceptional circumstances. Good reasons must be given for any decision to agree a longer term. Optional years cannot be included if the original term of the Framework Agreement itself is already four years.

The two optional provisions must be included if renewal options are being included.

- 2.4 The maximum value and/or quantity for the Framework Agreement must be stipulated in the Tender Documents. According to the case law on the maximum value of framework agreements, a framework agreement has no further legal effect once the maximum value and/or quantity has been reached. It is therefore important each time a Request for Quotations is issued under the Framework Agreement to establish first of all that it does not entail reaching the maximum value and/or quantity permitted under the Framework Agreement. Otherwise the contract cannot be arranged under the Framework Agreement. The Contracting Authority may terminate the Framework Agreement in writing or by email with immediate effect if the maximum value and/or quantity has been reached or may be exceeded by the next contract award.
- 2.5 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 Framework Agreement imposing a penalty for failure to comply with obligations in a timely manner. Article 2.5 contains an optional penalty clause for obligations not regulated in the Call-off Contract. The penalty may for example be set as a percentage of the value of the Framework Agreement or as a fixed amount, and a maximum must be filled in.

Although the law assumes that any contractually agreed penalty replaces the obligation to pay compensation, it is possible to make a different arrangement by contract. Because the threat of a penalty, for the Contractor, is primarily an incentive to fulfil obligations under the Framework Agreement 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 Price and other 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.
- 4.4 A choice can be made between three different versions of this provision on rates.

The first option is to work with fixed rates that do not change during the term of the contract. This is a good option in the case of short-term contracts.

The second option offers the possibility of adjusting the rate based on a proposal from the Contractor. At the start of the Framework Agreement, the Contracting Authority factors in the possibility that the rate may change after a certain period of time. Any such adjustment will be based on the price index published by Statistics Netherlands that is referred to.

The third option is similar to the second except that a different (more suitable) price index can be selected. It is recommended that expert advice be sought for this purpose. The price index figure can be consulted on the website of Statistics Netherlands (www.cbs.nl, <https://opendata.cbs.nl/#/CBS/nl/dataset/82838NED/table?dl=6B06E>).

The adjusted rates are applicable to new Call-off Contracts. If it is desirable for the adjusted rates to be applicable to existing Call-off Contracts as well, the optional provision can be included for this purpose.

- 4.5 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 4.5 should be completed and included.

- 4.6 No bank guarantee is required if no advance payment is made or if the Framework Agreement is being concluded with another public body. In that case, this paragraph (4.7) can be included.
- 4.7 The Contractor may only charge VAT once.

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

Contacts

- 5.1 It is important to be absolutely clear about the relationship between the Contracting Authority and the Contractor, and the role played by contacts in this respect. 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. It is recommended that contacts be designated who have sufficient authority to enter into agreements with the Contractor.

Duty to provide information

- 5.2 Article 7 of the ARVODI imposes a general duty on the Contractor to provide information on progress. 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 Framework Agreement. Any changes in personnel can then be made more easily by amending the Schedule.

Article 7 Intellectual property rights

Article 23 of the ARVODI provides that copyrights and database rights are assigned to the Contracting Authority. This default position was chosen in the context of the central government policy on fostering greater openness and transparency ('open government'). The results of the Services that lend themselves to this approach can therefore be made available to society at large in the form of open data. The Contracting Authority can also further develop the results (or have them further developed).

The Copyright Contract Law (Enhanced Protection) Act provides that, in certain cases, agreements about copyrights must be included in the contract itself. The basic principle laid down in article 23 of the ARVODI is therefore reiterated in article 6.

In certain cases it is not necessary for the Contracting Authority to acquire the copyrights and database rights, while it can be very much in the Contractor's interest to acquire them. In cases of this kind the Parties may agree that the copyrights and database rights are retained by the Contractor and that the Contracting Authority is granted a right of use (also called a licence). The optional provision can be used for this purpose.

If the option of granting a right of use is chosen, it is important that it includes, at a minimum, the right to publish and reproduce. It is therefore recommended that this optional provision be included in full in the Framework Agreement.

If the optional provision is used, articles 23.1, 23.4 and 23.5 of the ARVODI do not apply. In article 23.5, the Contractor renounces any personality rights vested in it. It is not customary to ask that personality rights be renounced in the case of a right of use. This optional article therefore assumes that this will not happen. It is recommended that the legal department be contacted if it is important to regulate this.

RECOMMENDATION: For every contract, it is advisable to identify the Party that can best acquire the copyrights and database rights. It should be recognised in this regard that having copyrights and database rights assigned can affect the price charged by the Contractor. If it is not clear how best to proceed, it is recommended that the legal department be consulted.

Article 8 <OPTIONAL> Obligation to supply information and audit obligation

For various reasons, the Contracting Authority may require certainty (or additional certainty) concerning compliance with the Framework Agreement and/or Call-off Contract and the associated legislation.

The Contractor can provide this certainty on its own initiative in the framework of quality assurance. Quality assurance is an element of quality management systems (cf. ISO 9000) and is designed to give the client confidence that quality requirements are being met.

The Contracting Authority may also take the initiative by making a request for the provision of information or taking the more serious step of requiring an audit. An audit generally costs time and money. It may therefore be expected of the Contracting Authority that an audit will only be required if there is specific cause for this.

That cause may be a statutory obligation, a certain form of supervision, or a special duty of accountability. An audit may for example be necessary in order to comply with:

- remedial action ordered by the Data Protection Authority;
- the obligation to provide information requested by the Houses of the States General on the basis of article 68 of the Constitution.

- 8.1 This paragraph emphasises the importance of quality management and places an obligation on the Contractor to take quality assurance measures in this connection.
- 8.2 It can be in the Contracting Authority's interest for the Contractor to demonstrate that it is fulfilling its obligations under the Framework Agreement and/or Call-off Contract and will continue to do so. To this end, the Contracting Authority may perform an audit (or have an audit performed), but this costs both Parties time and money, and a less onerous means sometimes suffices. The request to provide information as referred to in paragraph 2 is a less onerous means.
- 8.3 Paragraph 3 permits the Contracting Authority to perform an audit (or have an audit performed) to verify compliance with the Framework Agreement and/or Call-off Contract and the associated legislation. The Contractor must cooperate with such an audit. An audit of this kind may concern contractual and statutory obligations, such as observance of the GDPR, legislation on working conditions, or information security requirements. An audit costs time and money and may require access to commercially confidential information. It is recommended that the decision to require an audit not be made for trivial reasons and that the Contractor be consulted beforehand about the content and design of the audit.

Article 9 <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 must be used.

- 9.1 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 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 10 <OPTIONAL> Other terms and conditions

Duty of confidentiality

- 10.1 A penalty can be set for breach of a duty of confidentiality. This option can be selected if, for example, sensitive information is shared with the Contractor (and its Staff) in the performance of the Framework Agreement and/or Call-off Contract.
- A penalty must have an adequate deterrent effect. But the size of the penalty must also be reasonable. It is recommended that the legal department be consulted when determining the size of the penalty.

Liability

- 10.2 The general rule set out in the ARVODI is that liability is limited to a maximum of four times the contract value per event up to a maximum of €3,000,000 per event. Liability is also limited to six times the contract value for each year or part of a year that the Contract has been in force, up to a maximum of €5,000,000 for each year or part of a year in which the Contract has been in force (see article 19, paragraph 2 of the ARVODI). In certain cases it may be desirable to include different limits on liability. This optional provision can be used for this purpose.

Please note: it is not advisable to limit liability to only certain types of damage, such as direct damage (and exclude indirect damage). This is because the law does not define direct or indirect damage and the ARVODI already limit liability. Limiting liability to the value of the contract is also strongly discouraged. This is because the value of the contract is usually far lower than the extent of any damage, so that a large part of the damage would not be reimbursed. It is recommended that the advice of the legal department be sought if a departure from the ARVODI is contemplated.

Insurance

- 10.3 This clause allows the Contracting Authority to depart from the fairly general insurance clause in the ARVODI and explicitly list the risks the Contractor is required to insure itself against.

Indemnity

- 10.4 There may be reasons to include an indemnity in the Framework Agreement. An indemnity entails the Contractor protecting the Contracting Authority against claims from third parties; any such claims are, as it were, taken on by the Contractor. The Contractor ensures that a defence is put forward against the claim and bears all the associated costs. As this would have a big impact on the business risk to which the Contractor is exposed and could affect insurability, this optional provision must only be included in exceptional cases and after consulting the legal department.

Discrimination

- 10.5 Central government is committed to combating discrimination in the labour market. An optional provision has therefore been included in the Model which allows the Contracting Authority to cancel the Framework Agreement if the Contractor, or a member of its Staff in a managerial or decision-making role, has been convicted of discrimination by final and unappealable judgment. Under the Public Procurement Act 2012 and the Proportionality Guide, this provision can only be included if it is proportionate in view of the nature of the contract. This requires an assessment of whether the provision is in reasonable proportion to the object of the contract. For Framework Agreements involving employment relationships

(such as a Framework Agreement for temporary employment agency services, for the provision of staff, or relating to facilities services) this will usually be the case and it is therefore reasonable to include this optional provision in the Framework Agreement. For other types of Framework Agreement, it will not usually be proportionate and the optional provision should not be included.

General provision departing from the ARVODI

10.6 This is a general provision for departures from the ARVODI and must be used only in exceptional cases. Central government aims to maximise uniformity in contracting. In principle, no changes should therefore be made other than those presented in the Model as alternative or optional provisions. If nevertheless it is desired to depart from the Model in certain exceptional circumstances, it is recommended that the legal department be consulted beforehand.

Document details

These instructions were drawn up under the responsibility of the Corporate Legal Advisory Committee. Further information may be obtained from the CBA Secretariat (contact details available on Rijksporaal).

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