



Energistyrelsen

Contract regarding consultant service regarding analysis of the correlations between the competitive situation and the investment level on the Danish mobile and broadband market

Office/department
Centre for Telecoms

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/thm /djg

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Appendix 1: Task description and requirements concerning the deliveries

Appendix 2: Supplier's description of the solution

Appendix 3: Timetable and activity plan

1. THE PARTIES

This Contract has been concluded between

The Danish Energy Agency
Amaliegade 44
DK-1256 Copenhagen K
Denmark
CVR-no.: 59 77 87 14
EAN Number: 5798000020009
(hereinafter referred to as the “Agency”)

and

[...]
[...]
[...]

CVR-no.: [...]
(hereinafter referred to as the “Supplier”)

(individually referred to as the “Party” and collectively as the “Parties”)

2. DEFINITIONS

Working day means Monday to Friday excluding public holidays, Christmas Eve, New Year’s Eve and Constitution Day.

Day means calendar day.

Contract means this contract and appendices along with all subsequent amendments and supplements.

3. SUPPLIER’S SERVICES

3.1 The contents and scope of the task

The Supplier is obligated to provide the services that are stated in the Contract. The Supplier must carry out the tasks described in the Contract as well as any tasks that are a natural part of it. The task description is included as Appendix 1 to this Contract and outlines the task that the Supplier must manage.

If in duration of the Contract, doubt arises as to the scope of the task, the Supplier is obligated to immediately notify the Agency in writing thereof.



4. PLACE OF DELIVERY

Deliveries upon fulfillment of the Contract must be delivered electronically to the Agency at djg@ens.dk with CC: tsm@ens.dk and pjo@ens.dk.

Timely delivery is acknowledged with a receipt from the Agency.

The Supplier must appear before the Agency and/or a third party to the extent necessary to perform the tasks covered by the Contract.

5. SCHEDULE

The supplier must perform the task in accordance with the overall time frame of the Agency's task description, cf. 0.

The Supplier may not make changes to the schedule without prior written agreement with the Agency.

6. SUPPLIER'S STAFFING

6.1 General

The Supplier is obliged throughout the duration of the Contract to maintain the necessary capacity and knowledge of its staffing in the performance of the task. The Supplier must ensure that the necessary resources will be provided at all times for the fulfillment of Contract.

[Entry of assigned persons and description of their task and participation in fulfillment of Contract]

The Supplier must provide [the assigned person(s)] for the performance of the task.

If the Supplier does not solve tasks with adequate quality and in compliance with agreed deadlines, the Supplier must adjust the staffing of the task, see item 12.

6.2 Replacement of employees

The Supplier must for the continuity and the quality of work as far as possible avoid the replacement of persons assigned to the task. Assigned persons of the Supplier may only be changed with the Agency's approval. The Supplier must, upon the Agency's request, replace an assigned person if the Customer's request is reasonably justified.

When replacing an assigned person, the new individual must have at least the same qualifications as the replaced person. This is demonstrated by presenting the resume of the new person. The replacement must not incur costs for the Agency and may not lead to delays in fulfillment of the Contract.

7. COOPERATION AND THE AGENCY'S INVOLVEMENT

7.1 Cooperation

The Agency's contact person is Daniel Gonn (djg@ens.dk) regarding the part of the task that cover the broadband market, while Peter Johnson (pjo@ens.dk) is the Agency's contact person regarding the part of the task that cover the mobile market.

The Supplier's contact person is [insert name].

The Agency must continuously be informed about the progress of the consultancy task and must be presented with the preliminary results from the research that is conducted in connection with the task.

The Supplier is obliged to immediately notify the Agency if, during the work, doubt arises regarding the conditions, objectives and implementation of the task.

7.2 The Agency's participation

The Supplier can only expect that the Agency contributes to carrying out the task to the extent expressly stated in the Contract. However, the Agency is to a reasonable extent available for answering the Supplier's questions in connection with the carrying out of the task.

In addition, the Agency assists the Supplier with contact to other authorities in connection with obtaining data for the analytical work. The Agency will also be available for clarifying questions regarding the task, expectations in connection to carrying out the task, as well as stakeholder involvement.

8. COMPETENCE

Due to the independence, credibility and reliability in performance of the task, the Supplier is obliged to ensure that neither the Supplier nor its liable and participating employees provide or have provided consultancy to clients in connection with tasks that could lead to doubts as to the Supplier's competency.

Similarly, the Supplier is obliged to ensure that the proprietary interests and similar interests of the Supplier and its employees in the companies and firms should not lead to doubts as to the Supplier's competency.

The Supplier must immediately notify the Agency if circumstances arise that may bring about doubt on the Supplier's independence and competency.



9. REGULATORY REQUIREMENTS AND LABOUR CLAUSE

9.1 Regulatory requirements

The Supplier guarantees that the Supplier's services meet all relevant regulatory requirements that exist at the time of the signing of the Contract and later.

9.2 Labour clause

The Supplier must ensure that employees of the Supplier and any subcontractors that participate in the fulfilment of the Contract are guaranteed wage (including additional benefits), working hours and other working conditions that are not less favourable than those established for work of the same kind in regard to a collective agreement concluded for the field in question that is most representative of the unions and employers' organisations in Denmark and that is applied throughout the Danish territory. The Supplier and any subcontractors must ensure that the employees receive information on the terms under the labour clause. The fulfilment of the Contract constitutes work carried out in Denmark with the aim of fulfilling the Contract.

The contracting entity may at any time request relevant proof that wages and working conditions for workers meet the requirements that the labour clause sets. The contracting entity may therefore require that the Supplier with a written notice within 30 working days obtains the relevant documentation such as pay stubs, time sheets, payroll and employment contracts from both its own as well as any employees of subcontractors. If the Supplier does not deliver the mentioned document, or the document is missing one or more relevant conditions, the contracting entity may require an in depth account from the supplier with a deadline of an additional 30 working days. If the supplier does not provide satisfactory proof, the contracting entity may terminate the contract.

The contracting entity may seek advice from relevant employers and/or employee organisations in its assessment of whether the Supplier or the subcontractor has complied with the clause.

If the Supplier fails to meet its obligations in conjunction with the labour clause, and if this leads to a legitimate claim for additional wages from the employee, the Contracting Entity may withhold payment in order to satisfy such claim.

10. REMUNERATION

The total remuneration for the consultancy task amounts to DKK [specify the agreed amount] excluding VAT.

The remuneration includes all the Supplier's costs, including any expenses for travel, food and accommodation, office supplies and materials, etc. The Supplier is not entitled to additional remuneration other than what is stated in this Contract.

11. INVOICING AND PAYMENTTERMS

Invoicing must be in accordance with current regulations on electronic settlement with public authorities.

Invoicing occurs one month in arrears based on the submission of a satisfactory invoice. Invoices are sent to the Agency.

The remuneration is due for payment 30 days after the Supplier has sent a satisfactory invoice. In any case, the remuneration cannot be due until the final report has been submitted to and approved by the Agency.

12. GUARANTEES

The Supplier guarantees that the Supplier in the performance of its services meets all the requirements under the Contract as well as requirements of good practice within the industry, and that the services will be performed at a professional and qualified level that the Agency with justification can expect under the Contract.

The Supplier guarantees throughout the contract period to maintain the necessary capacity and knowledge in the performance of the task, including qualified staff.

The Supplier furthermore guarantees for its competence in accordance with item 8 of the Contract.

The Supplier guarantees that current legislation for employees, including legislation on residence permits, proof of employment and tax, are adhered to by all employees engaged in executing the Contract. The Supplier furthermore guarantees that all services covered by the Contract also fulfill all relevant statutory requirements and regulations, including rules on work environments that exist at the time of the signing of the Contract and later, see item 9.

The Supplier guarantees that the Supplier in fulfilling the Contract does not infringe on third party rights, including property rights or intellectual property rights. The Supplier must indemnify the Agency against any claim that may be raised by a third party for alleged infringement of patents, licenses, brand and design protection, copyright, know-how and similar intellectual property rights, see item 18.

The Supplier guarantees that it will handle all received material and information on the task with absolute discretion. The Supplier is obliged to comply with the safety procedures etc., which are developed and/or agreed between the Parties in connection with the solution of the task, see item 20.

13. BREACH OF CONTRACT

13.1 General

If there are no other provisions in this Contract, Danish law on remedies are applicable in connection with the breach of contract by a Party, including rules on proportionate reduction.

13.2 Delay

There is a delay if the Supplier exceeds the deadline specified in Appendix 1.

If the Supplier anticipates that there is a risk of delay, the Supplier must immediately notify the Agency of this and its reasons as well as the expected time delay.

When delays occur, or a delay is expected, the Supplier must immediately take effective steps to overcome the delay or – if it is not possible – to limit it.

If the Supplier's work is delayed as a result of inadequate involvement by the Agency, the Supplier is obliged to immediately notify the Agency of this. If the Agency is not notified immediately, the Supplier forfeits the right to object on grounds of delays caused by this condition.

13.3 Deficiencies of the Supplier's services

A deficiency exists if the Supplier's performance of the task under the Contract does not meet the requirements stated in the Contract, or does not otherwise correspond to what the Agency may reasonably expect.

In the event of deficiencies, the Supplier must take necessary steps to remedy the deficiencies as soon as possible.

The Agency may require that there must be a proportionate reduction in the total remuneration that the Supplier is entitled to under this Contract, if the Supplier does not make the effort to remedy the deficiencies as soon as possible.

13.4 Termination

The Agency may immediately terminate the Contract in whole or in part if there is substantial breach of contract.

The following conditions, but not limited to, are always considered as substantial breach of contract that grants the Agency to terminate the Contract:

- 1) If the Supplier does not fulfill the guarantees under item 12, and the Supplier has not remedied the deficiencies within a reasonable time after receiving a written notice hereof.



- 2) If the breach of contract that individually does not constitute as substantial breach of contract is overall significant for the Agency.
- 3) The Supplier's bankruptcy, unless the bankruptcy estate is not on the basis of a written application from the Agency without undue delay indicates that the estate appears in the Contract.
- 4) The Supplier is undergoing debt restructuring.
- 5) Opening negotiations on arrangements by the Supplier or significantly deteriorated economic conditions in general that brings the proper fulfillment of the Contract in jeopardy.
- 6) The Supplier ceases to conduct business relating to the Contract, or occurrence of any other events that bring the Contract's proper fulfillment in grave jeopardy.

In the event of a termination of the Contract by the Agency, the Supplier must reimburse the remuneration already received with a deduction of remuneration for services that are approved by the Agency, and with a deduction to the extent the Agency decides to fully or partially take over the completed work at that point with the aim of completing the task, possibly with assistance from a third party, see item 22.

14. SUPPLIER'S LIABILITY

The Supplier is liable to the Agency in accordance to Danish law. The liability does not include operating loss, loss of profit or other indirect losses.

The Supplier's liability is maximised to an amount equal to the total remuneration, see item 10.

The restriction also applies only if the loss is not attributable to gross negligence or willful conduct by the Supplier.

15. INSURANCE

The Supplier has employers' liability in accordance with Danish law for the employees assigned to the task.

The Supplier must, throughout the duration of the Contract, maintain liability insurance that covers the Supplier's liability.

Any assigned person that, under the Contract, performs work for the Agency, regardless of whether the person is employed by the Supplier, a subcontractor or working freelance, etc., must be covered by liability insurance. The Supplier is obligated to ensure that this coverage is in place at all times.

The supplier must, at the request of the Agency, prove that the requirements for liability insurance are fulfilled.

16. AGENCY'S CONDITIONS

A breach of contract by the Agency is subject to Danish law. Operating loss, loss of profit or other indirect losses are not compensated.

If the Agency defaults on its payment obligations under this Contract, the Supplier is entitled to interest in accordance with the regulations of the Overdue Payments Interest Act.

The Supplier is also entitled to terminate the Contract in part to the Agency with effect for future payments if the Supplier has submitted a demand in writing to the Agency that the Agency has in a specified way defaulted on its payment obligations and that failure to pay within 30 days will result in the termination of the Contract with the Agency, if the Agency does not fulfill its payment obligations by the deadline.

The Agency's liability is maximised in the same way as the Supplier's liability, see item 14.

17. FORCE MAJEURE

Neither the Supplier nor the Agency must, under this Contract, be deemed responsible to the other Party to the extent the liability is due to circumstances beyond the control of the Party and which the Party at the signing of the Contract should have taken into consideration, nor should have avoided or overcome. Conditions of the Supplier as this which can be avoided with normal and reasonable preparation is not considered as force majeure, including with regard to internal strikes and illness.

Delay due to force majeure may only be claimed for the number of working days while the force majeure situation exists. If a deadline for the Supplier is postponed due to force majeure, the payments related thereto are deferred accordingly without the Supplier's entitlement to interest.

Force majeure may only be invoked if the Party in question has given written notice about this to the other Party within 10 Work Days after the force majeure has occurred.

The Party not affected by the force majeure situation is entitled to terminate the Contract if an agreed deadline is exceeded by 20 Work Days due to the force majeure situation. In the event of such termination, the Supplier is entitled to payment for services already provided before the force majeure situation arose. After that no further claims exist between the Parties under the Contract.



18. RIGHTS

18.1 Customer specific creations

The agency acquires full ownership of the data that the Supplier stores in connection with the fulfillment of the Contract.

The Agency acquires property rights, copyright and any other rights for analysis, designs, reports, documents and programs that the Supplier produces for the Agency in connection with the Contract, unless otherwise agreed between the Agency and the Supplier. The Supplier may not publish, in whole or in part, material produced as part of the Contract without prior consent from the Agency.

Similarly, the Agency retains all rights to domain names, e-mail addresses, telephone numbers as well as correspondence, minutes, internal working papers, applications, etc. including electronic versions that are received or drawn up by the Supplier in connection with the fulfillment of the Contract.

The Supplier is entitled to use the acquired general knowledge as well as the developed general methods and tools, etc. in connection with its tasks for other customers.

18.2 Agency's material

All material made available to the Supplier of the Agency belongs to the Agency.

Upon termination of the Contract, the Supplier must hand over all relevant material that the Agency has ownership of.

The Supplier must, however, store the material as long as and to the extent as outlined by mandatory regulations. The Supplier is also entitled to keep one copy of the material for documentation purposes.

The Supplier is not entitled to exercise a lien on material that the Agency has acquired ownership of, or in any way deny its delivery.

19. ASSIGNMENT

The Agency has the right to assign its rights and obligations under this Contract in whole or in part to another public institution or an institution owned by the government or significantly operated by public funds.

The Supplier may not without the written consent of the Agency assign its rights and obligations under this Contract to a third party. The Supplier pays for any of its own expenses that may be associated with the assignment.



20. CONFIDENTIALITY AND ACCESS TO DOCUMENTS

The Supplier, its staff and any subcontractors as well as their staff must observe absolute confidentiality with regard to the information that they are entrusted with in the performance of this Contract. The Agency may require that each individual employee must sign the usual confidentiality agreement.

Certain information will be covered by regulations on access to documents for authorities within public administration. This means that the press, citizens, competitors, etc. may request access to documents that are processed by public authorities. Request for access to documents must in some cases be met by the contracting entity. However, it includes in the assessment of this whether the company that has provided the information has requested that parts of the submitted information should be kept confidential and in this connection has indicated which information/elements in the submitted information should be kept confidential.

If there is information that for business reasons needs to be exempt from disclosure, the Party is asked to indicate this. The contracting entity will, regardless of declaration on confidentiality, be entitled and obliged to grant access to documents to the extent that is required by legislation.

The Supplier may not in any other part of its business use information that the Supplier may acquire in connection with the performance of the tasks under the Contract, and the Supplier may not make the information available to third parties without prior written permission of the Agency.

The Supplier may not use the Agency as a reference without prior written permission of the Agency. However, the Supplier is entitled to include the Agency on a simple reference list.

The Supplier may not broadcast this Contract or its contents to the public without a prior written permission of the Agency.

The rules for employees in public administration apply to the Agency's staff. Consultants and others who assist the Agency are subject to similar professional secrecy. The information that the Agency, Agency's advisers or others that assist the Agency acquire on the Supplier's state will be subject to these rules.

Confidentiality is also valid after the termination of the Contract, regardless of the reason for the termination.

21. DURATION AND TERMINATION

The Contract will enter into force upon signing and will continue until 1 May 2019.

The Agency is entitled at any time in writing to terminate the Contract in whole or in part with four weeks' notice. Upon termination, the Supplier receives payment calculated on the terminated portion from time spent until the time when the termination is in effect.

22. OBLIGATIONS UPON TERMINATION

Upon termination of the Contract regardless of reason – the Agency is entitled to decide in whole or in part and against a proportional remuneration to assume the completed work until then in the form of e.g. written material, data, etc. with the aim of completing the task with the possible assistance of third parties, see item 13.4.

The termination of the Contract will not affect the validity of the contractual terms (on liability, confidentiality, etc.) that aims to apply even after the termination of the Contract.

The Supplier is in connection with the termination of the Contract for whatever reason obliged to assist the Agency to a reasonable extent in relation to facilitating the basis for a possible implementation of renewed offer of services that the Contract includes.

Furthermore, the Supplier is obliged to cooperate as necessary with any new supplier as to the transition of the task to the new supplier.

The Supplier will not receive additional remuneration for these tasks.

23. CHANGES AND INTERPRETATION

This Contract may be amended only by written agreement between the Agency and the Supplier that is attached to the Contract as an addendum.

Provisions in the Supplier's offer during correspondence prior to the conclusion of the Contract that are not repeated in this Contract may not be invoked subsequently as the basis for interpretation.

Reference to the Contract or the provision herein also includes the appendices to the Contract that are relevant to the provision in question.

In case of discrepancies between the Contract and the Appendices, the Contract will prevail.

24. DISPUTES

The legal conditions according to the Contract and its interpretation will be governed by Danish law.

If a dispute arises between the Parties in connection with the Contract, the Parties will seek a solution through negotiation.

If a solution is not reached through negotiations, the dispute will be settled by the courts.

25. SIGNATURES

The Contract is signed in two copies, of which one is kept by the Agency and one is kept by the Supplier.

Place:

Date:

For the Agency:

Place:

Date:

For the Supplier: