

# **CONTRACT ON THE ADVERTISEMENT OF A LEGAL ANALYSIS ON PHASING OUT FOSSIL FUEL IN INDI- VIDUAL HEATING**



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# 1. Parties to the Contract

This Contract was made between the following parties:

The Danish Energy Agency  
Carsten Niebuhrs Gade 43  
1557 Copenhagen  
CVR (Danish central business register): 59 77 87 14

(the “Customer”)

and

[ ]  
[ ]  
[ ]  
[ ]

(the “Supplier”)

## 2. Contractual framework

The contractual framework consists of the following documents:

- Questions, answers and changes in general to the advertisement material
- The Contract (this document)
- Annex 1 – Customer’s task description
- Annex 2 – Supplier’s tender
- Annex 3 – Customer’s advertisement conditions

In the event of any discrepancy between the Contract and the annexes, the Contract will prevail. In the event of any discrepancy between the annexes, an annex with a lower number will prevail over an annex with a higher number.

Any adjustments, additions or changes to the deliverables agreed between the parties after the conclusion of the Contract will, however, prevail over the other documents forming part of the contractual framework.

The standard terms and conditions of the Supplier do not form part of the contractual framework.

## 3. Scope of the Contract

### 3.1 Scope

The contract covers the purchase of a legal analysis on phasing out fossil fuel in individual heating by the Customer. The services are described in more detail in annex 1.

### 3.2 Changes to the scope of the Contract

To the extent it does not interfere with applicable procurement rules, the Customer may demand changes to the scope of the Contract.



Any demands for changes by the Customer must be made in writing. If requested by the Customer, the Supplier must subsequently prepare a draft amendment annex, in which any demands for modifications of the Contract with respect for price, time or security, as a result of the change, are described.

Amendments to the Contract will not become effective until the parties have signed a written addendum to the Contract. The Supplier is not entitled to additional payment, unless a written addendum to the Contract to that effect has been entered into.

## 4. Terms of the Contract

The Contract commences when signed by both parties and remains in effect until 31 May 2021 but can be extended if the option to extend the contract is enforced by the Customer. Then the contract remains in effect until 31 July 2021.

## 5. Delivery

Delivery must be made in accordance with the task description and the terms of advertisement.

Delivery of the task is considered complete when the legal analysis is completed.

The deadline for delivery of a draft legal analysis is set at 31 May. However, if changes in the EU-regulation that is to be revised during May-July 2021, uncovers that alterations to the legal analysis are necessary in order to achieve the wanted results, the DEA will enforce the option to extend the contract until 31 July 2021, and will not consider the delivery to be completed until 31 July 2021.

## 6. Quality

The services covered by the Contract must comply with applicable EU-regulation, applicable national Danish regulation, here under executive orders and other regulatory requirements, as well as industry standards applicable at the time of signing of the Contract and throughout the term of the Contract.

The services must conform to the specifications of requirements and be in accordance with the Supplier's tender throughout the entire term of the Contract.

## 7. Prices and price adjustments

### 7.1 Price

The prices of the services covered by the Contract are stated in annex 2.

Prices exclude VAT, but include any form of fees, taxes and duties, outlays, travel costs, secretarial services, copying and other office expenses, etc., unless otherwise provided in the price list and/or the specifications of requirements. Travel costs are subjective to the evaluation as mentioned in annex 1.

### 7.2 Price adjustments

Prices remain fixed for the term hereof, including any periods of extension.



## 7.3 Bonus payable to the Customer and the Customer's employees

Revenue from this Contract must not form the basis for any payment of bonus, discounts or other form of compensation to the Customer or the Customer's employees.

## 8. Invoicing

The Supplier may request payment when the service has been performed, and the deliverable is approved as described in the specifications of requirements.

Invoicing must be effected according to the rules on electronic invoicing of public authorities applicable from time to time.

Invoices must be sent electronically to the person who placed the order (under EAN number 5798000020009).

The invoice must state:

- Date of issuance (invoice date);
- Invoice number (number to identify the invoice);
- Company registration number of the Supplier (CVR number/SE number);
- Supplier's name and address and the Customer's name and address;
- Name of the person placing the order;
- Contract or order number (if available);
- An informative description of the services supplied – each service must be described on a separate line on the invoice;
- Quantity and unit of the services supplied;
- Price excluding VAT;
- VAT rate and VAT amount;
- Final payment date.

The Customer may reject invoices that are not received electronically or that lack any of the above mentioned information, or if invoicing is generally not in compliance with the Danish Act on Public Payments etc.

## 9. Payment terms

The invoiced amount is due for payment 30 days after electronic submission of a proper invoice, see clause 8 for details.

If the final payment date is not a banking day, the payment date will be deferred to the next banking day.

In the event of late payment, the Supplier is entitled to charge interest under the provisions of the Danish Interest Act.

## 10. Collaboration

The parties will jointly ensure the implementation of the Contract with the Customer, as per the task description in annex 1.

Each of the parties will appoint employees to be in charge of the day-to-day contact in relation to the Contract.

The Supplier's employees in charge of the day-to-day contact must keep the Customer's employees in charge of the day-to-day contact up to date on the progress of the service/services covered by the Contract.



The Parties must notify one another in the event of any doubt as to the conditions for, the purpose of, or performance of a deliverable.

The parties are also under an obligation to notify one another in the event of dissatisfaction with the other party's performance, work or quality of the work.

At the initiative of either party, a joint evaluation of the collaboration between the Supplier and the Customer must be performed.

## 11. Staffing

The Supplier will make the employees (its own as well as employees of subcontractors) stated in the tender available for the provision of the services.

To the extent possible, the Supplier must not replace employees or make any significant changes to the distribution of roles between the employees during the performance of the services.

In the event that an employee is replaced, the Supplier must explain the reason for the replacement and appoint a new employee having at least the same professional qualifications as the former employee. This must be substantiated in the form of a complete and detailed CV for the new employee.

The Supplier's replacement of employees must not affect the services or result in additional costs to or delays for the Customer. For example, the Customer must not pay for a new employee being instructed on the services and the Customer's needs to reflect the level of knowledge of the employee who was replaced.

The Customer may reject a new employee who is not deemed to have the same professional qualifications as the original employee.

At the Customer's request, the Supplier must replace an employee, provided the request is reasonably justified.

## 12. Subcontractors

The Supplier must not without prior written consent of the Customer assign the performance of the Contract or any part thereof to subcontractors, replace a subcontractor or change the distribution of roles between the Supplier and the subcontractor.

If subcontractors are used, the Supplier guarantees and is liable for the subcontractors' services in the same way as for its own supplies and services.

Subcontractors are not entitled to raise any form of claim against the Customer under this Contract, including claims for payment or damages.



## 13. Personal data

### 13.1 The Supplier's processing of personal data

If the Supplier processes personal data as part of the performance of the Contract, the Supplier is required to ensure compliance with Danish data protection legislation applicable from time to time in respect of the Supplier's processing of data, and in particular the General Data Protection Regulation<sup>1</sup> and the Danish Data Protection Act<sup>2</sup>.

The Supplier and its employees are required to process personal data in a manner that ensures appropriate security and confidentiality of the personal data, as well as the prevention of unauthorised access to or use of personal data to which the Supplier gains access in connection with the performance of the Contract. Furthermore, the Supplier must ensure that persons authorised to process personal data in connection with the performance of this Contract have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality, see clause 14.

The Supplier is not entitled to independently process personal data disclosed as part of the performance of the Contract for its own purposes or to disclose data to any third party, unless otherwise expressly provided under EU law or national law.

## 14. Confidentiality

The Customer is subject to the rules of administrative law, including section 27 of the Danish Public Administration Act on confidentiality. In connection with performance of the task for a public authority, the Supplier must observe a similar duty of confidentiality, see section 152a of the Danish Criminal Code. The Supplier must inform employees engaged in tasks under the Contract thereof.

Furthermore, the Customer is subject to the rules on open administration, including rules on access to documents. Depending on the circumstances, the Customer is entitled and obliged to grant access to documents to the extent prescribed by law.

## 15. Publication

The Supplier will be entitled to state the name of the Customer on a list of references once delivery has been made. Except for the foregoing, any marketing by the Supplier of the service is subject to the Customer's consent.

## 16. The Supplier's independence

The Supplier guarantees that it has not undertaken and will not undertake any other task which would raise reasonable doubts as to the Supplier's ability to fully provide the service under this Contract.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>2</sup> Act no. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Danish Data Protection Act).





In accordance with the performance of its services, the Supplier may, without being required to inform the Customer thereof, be an adviser or provide services to other customers whose interests may conflict with those of the Customer, provided that no conflict of interests arise on the part of the Supplier, with respect to the services provided to the Customer.

The Supplier must not use employees if reasonable doubt could be raised as to their ability to perform the service under this Contract. The same requirement applies to any subcontractors of the Supplier and their employees.

Under this Contract, the Supplier must immediately notify the Customer of any matter which may give rise to doubt as to the Supplier's or any subcontractors' independence.

## 17. Rights

The Customer will acquire the right of ownership, copyright and any other intellectual property rights in anything brought into existence by the Supplier in the performance of the services, including reports, interim reports, data, annexes and related documents and material reviewed. The Customer will acquire the rights gradually as the Supplier completes the preparation of the material.

The Customer will decide whether to publically make the reporting available, and the Customer has an exclusive right to decide whether to publicise the results and may further use the material and the results in whole or in part in any context deemed relevant by the Customer.

The Supplier has the right of usage of general competences acquired with the performance of the services for the contract.

The Supplier must secure the necessary rights and licences required for the services. The Supplier warrants that the performance of this Contract will not infringe any third-party rights, including any property rights or intellectual property rights. The Supplier must indemnify the Customer for any claim that may arise as a result of infringement of third-party rights.

## 18. Labour clause

The Supplier must ensure that employees of the Supplier and subcontractors, if any, that contribute to the performance of the Contract are guaranteed wages (including special payments), working hours and other conditions of labour that are not less favourable than those applicable to work of the same character, pursuant to a collective agreement entered into by the most representative social partners in Denmark within the trade and industry concerned and which apply to the entire territory of Denmark. The definition of "contribute to the performance of the Contract" means work performed in Denmark for the purpose of performing the Contract.

The Supplier must ensure that employees of the Supplier and subcontractors, if any, who contribute to the performance of the Contract are informed of the terms of the labour clause.

The Customer may at any time request relevant documentation showing that salary and working conditions meet the obligations under the labour clause.

The Customer may request that the Supplier, upon written demand, obtains relevant documentation, e.g. payslips, timesheets, payroll accounts and employment contracts, for the employees of the Supplier and subcontractors, if any, within ten working days.

For the purpose of assessing whether the Supplier or subcontractors have complied with the labour clause, the Customer may seek advice from relevant employers' or workers' organisations.

If the Supplier fails to meet its obligations under the labour clause, and if this results in a justified claim for additional pay from the employees, the Customer may withhold fees for the purpose of accommodating such claim.



# 19. Termination

## 19.1 Termination of the Contract

Subject to 1 months' notice, the Customer may terminate the Contract against payment to the Supplier for the work performed up until the effective date of termination. In such event the Supplier must hand over to the Customer any material and data produced in accordance with the deliverable.

The Supplier will not be entitled to any other form of compensation or damages, including damages for business interruption, loss of profit or other indirect loss, other remuneration, etc.

## 19.2 Termination pursuant to an order or a judgment

If a court of law or the Complaints Board for Public Procurement:

- cancels the Customer's decision to award this Contract to the Supplier;
- declares this Contract null and void;
- considers an amendment to this Contract to constitute a change of fundamental elements which would have necessitated a new contract notice; or
- otherwise orders the Customer to terminate this Contract in whole or in part,

this Contract may be terminated by the Customer in whole or in part at 14 days' notice to the first day of any month. Regardless of the date of termination, the Supplier is not entitled to claim damages as a consequence of termination.

# 20. Separate agreement

The parties agree that clause 19.2 of the Contract constitutes a separate agreement between the parties and will remain in force regardless of whether the Contract is declared null and void.

# 21. Continued validity

Any provisions of the Contract which will continue naturally after the Contract is terminated, regardless of the reason for termination, including, but not limited to, provisions on liability in damages, rights and confidentiality, will remain in force after the termination of the Contract.

# 22. Breach

In the event of actual or anticipated breach, either party is required to notify the other party in writing of the breach, the reason for breach and the date where the breach is expected to be remedied.

If a party has to a significant degree or repeatedly breached its obligations under the Contract or an order, but is not as such in material breach hereof, the other party may terminate the Contract or the order in writing without notice.

The following matters will always be deemed to be a material breach entitling the Customer to terminate the Contract with immediate effect by written notice to the Supplier:

- Matters falling within the scope of section 185(2)(ii) of the Danish Public Procurement Act;
- The Supplier initiates reconstruction negotiations or the financial situation of the Supplier is generally significantly impaired, thereby jeopardising the proper performance of the Contract;



- The Supplier enters into bankruptcy, provided the estate does not, based on a written enquiry from the Customer, declare that the estate will affirm the Contract;
- The Supplier discontinues the business activities to which the Contract relates, or other circumstances occur, thereby jeopardising the performance of the Contract;
- Non-compliance with provisions on quality, see clause 6;
- Non-compliance with the duty of confidentiality, see clause 14;
- Non-compliance with the provision on collaboration, see clause 10;
- Non-compliance with the provision on personal data, see clause 13.

The above-mentioned examples are non-exhaustive.

Furthermore, the general rules of Danish law on breach apply, including the general rules on delayed delivery and non-delivery. If, as a result of delay, the Customer cancels an order in whole or in part, the Customer is entitled to make substitute purchases on the Supplier's account. Any additional costs in relation to substitute purchases may be deducted against any claim from the Supplier.

The Supplier's services will always be deemed to be defective if the service does not comply with this Contract and its annexes, or if the service is not what the Customer could reasonably expect.

At the Customer's request, the Supplier must as soon as possible remedy any defects of which notice has been given.

If remedial action is not possible, or if the Supplier has made repeated unsuccessful attempts to remedy a defect, the Customer may instead claim a proportionate reduction of the payment to the Supplier. The proportionate reduction will be fixed, taking into consideration the scope and the nature of the defect, but will not exceed the payment for the supply.

## 23. Force majeure

Neither party will be deemed to be liable to the other party under this Contract if the liability arises out of matters beyond the party's control and which the party ought not have considered when signing this Contract or avoided or overcome after the signing of this Contract.

The party wishing to claim force majeure must submit written notification thereof without undue delay; however, no later than five working days after the force majeure event occurred.

If a force majeure situation persists for more than 20 working days, or if the force majeure situation is of a nature or duration rendering the final performance of the Contract impossible, the other party may terminate this Contract without notice. Neither party may raise any claim against the other party in that respect.

## 24. Liability in damages and insurance

The parties are liable in damages in accordance with the general rules of Danish law.

However, the parties are not entitled to claim damages for business interruption, loss of profit or other indirect loss, and the total liability in damages of each party under this Contract will not exceed a maximum amount corresponding to two times the fee payable for the specific order, including the fee for any unexercised options. These limitations of liability in damages do not apply to grossly negligent or wilful acts or omissions giving rise to liability.

Throughout the term of the Contract, the Supplier must maintain third-party liability insurance covering damage, injury or loss caused by employees in accordance with the deliverables as well as insurance covering faulty advice if the Contract comprises advisory services.

The coverage of the Supplier's insurances must be in line with the Contract and industry standards.



Furthermore, the Supplier must have taken out any other compulsory insurance, including industrial injuries insurance covering the employees.

## 25. Assignment

Subject to compliance with the procurement rules applicable, the Customer may assign its rights and obligations under this Contract in whole or in part to another public authority if the responsibility for services comprised by the Contract is transferred in whole or in part to that authority.

The Supplier is not entitled to assign its rights or obligations under this Contract in whole or in part to any third party, unless the Customer has consented thereto in writing.

## 26. Governing law and venue

This Contract is governed by Danish law.

In the event of a dispute between the parties regarding this Contract, the parties must in a positive, cooperative and responsible spirit endeavour to initiate negotiations for the purpose of settling the dispute. If necessary, the negotiations will be escalated to the highest level of management in the parties' organisations.

If the parties are unable to reach a solution through negotiation within 30 days of the initial contact, either party may start legal proceedings before the courts of law.

The venue is the Customer's home court.

## 27. Signatures

**For the Customer:**

Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title and name of signatory

Date

**For the Supplier:**

Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title and name of signatory



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Signature

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Title and name of signatory

