

CONTRACT CONCERNING
PEMS Project- Nox Tampering



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1 CONTRACTING PARTIES

This contract has been entered into between the following parties:

Ministry of Environment and Food of Denmark – Environmental Protection Agency
Tolderlundsvej 5
DK-5000 Odense
CVR 25798376

(hereinafter referred to as “the customer”)

and

[The name of the supplier]
[Address of the supplier]
[Postal code and town]
[Company registration number (VAT-number)]

(hereinafter referred to as “the supplier”)

2 CONTENT OF THE CONTRACT

This contract has been entered into on the basis of the customer’s advertising concerning PEMS Project- Nox Tampering.

The content of the contract consists of the following documents:

- The contract (this document)
- Annex 1 – Questions, answers and changes to the procurement documents
- Annex 2 – The Contracting Authority’s Description of the Task Customer’s (requirements specification)
- Annex 3 – Supplier’s offer (including any list of offers)
- Annex 4 – Notification of processing of personal data

If there is an inconsistency between the contract and the annexes, the contract takes precedence over the annexes. If there is an inconsistency between the annexes, an annex with a lower number takes precedence over an annex with a higher number.

However, any modifications, additions or amendments to the services that are agreed between the parties after the conclusion of this contract will take precedence over the other documents.

Suppliers’ standard terms and conditions do not form part of the contract.

3 CONTRACT SCOPE

3.1 Scope

The contract covers the performance of Investigation of real drive measurement for exhausting gas measured by PEMS for trucks and vans when engine is cooling off in urban areas for the customer. The services are described in more detail in Annex 2 og 3.



Only the following of the customer's departments and institutions are covered by the contract: Danish Environmental Protection Agency, Tolderlundvej 5, DK-5000 Odense.

3.2 Changes to the contract scope

To the extent that this does not contravene the applicable procurement rules, the customer may request changes to contract scope.

The customer's change request must be submitted in writing. The supplier shall then, if so requested by the customer, prepare a draft amendment annex describing any requirements for changes in the contract in regard to price, time and safety or security as a result of the change.

Any amendment to the contract takes effect only once the parties have entered into a written amendment annex to the contract. The supplier is not entitled to additional payment, unless a written amendment annex to the contract entitles the supplier to additional payment.

4 THE TERM OF THE CONTRACT

The contract comes into force when it is signed by both parties and expires when delivery has been made, cf. section 5.

The customer has no option to extend the contract.

5 DELIVERY

Delivery shall be performed in accordance with Annex 2.

6 QUALITY

The services covered by the contract shall comply with all applicable directives, laws, other regulatory requirements and industry standards at the time when the contract is entered into and throughout the term of the contract.

The services shall comply with the requirements specification and be in accordance with the supplier's offer throughout the term of the contract.

7 PRICES AND PRICE ADJUSTMENT

7.1 Price

The prices of the services covered by the contract are specified in Annex 2.

Prices are exclusive of VAT, but inclusive of all forms of fees, charges, disbursement, travel expenses, secretarial assistance, duplication and other office expenses, etc., unless otherwise stated in the offer list and/or the requirements specification.



7.2 Price adjustment

The prices are fixed throughout the term of the contract (including any extensions),

7.3 Bonuses for the customer and the customer's employees

The turnover for this contract shall not form the basis for any payment of bonuses, discounts or any other form of compensation for the customer or the customer's employees.

8 INVOICING

The supplier may request payment once the task has been completed and approved as described in the requirements specification.

Invoicing shall conform to applicable rules concerning electronic settlement with public authorities.

Invoices shall be submitted electronically to the requesting department/institution (cf. EAN number 5798000860810).

The invoice shall include:

- Issue date (invoice date)
- Invoice number (number for identifying the invoice)
- The supplier's VAT number
- The supplier's name and address as well as the name and address of the customer
- The customer's recipient
- Contract or order number (if exists)
- Description of the services provided – each service is described at its own line in the invoice
- Quantity and nature of the services provided
- Price exclusive of VAT
- VAT percentage and amount
- Latest timely payment date

The customer is entitled to reject invoices that are not received electronically, in which the above information is insufficient, or if the invoice is otherwise not in compliance with the Danish Act regarding Public Payments (in Danish: "lov om offentlige betalinger").

9 PAYMENT TERMS

The invoiced amount is due for payment 30 days after a satisfactory invoice has been submitted electronically, cf. section 8.

If the payment date does not fall on a banking business day, the payment date is postponed until the next banking day.



In case of late payment, the supplier is entitled to request interest in accordance with the provisions of the Danish Act regarding Interest on Overdue Payments (in Danish: “renteloven”).

10 COOPERATION

Each of the parties appoints the employees who are responsible for day-to-day contact in relation to the contract.

The supplier’s responsible persons must keep the customer’s responsible persons informed regularly about the progress of the services covered by the contract.

The parties shall notify each other if during the performance of the contract there arises any uncertainty concerning the conditions, purpose or performance of a service.

The parties shall also notify each other if there is dissatisfaction with the other party’s efforts, work performance or quality of the work.

At a party’s request there shall be conducted a joint evaluation of the cooperation between the supplier and the customer.

11 STAFF

The supplier shall appoint the employees (both their own and those of any subcontractors), as specified in the supplier’s offer for performance of the services.

The supplier shall as far as possible avoid replacing employees or making significant changes in the roles of the employees during the performance of the services.

The supplier shall, in case of replacement of an employee, explain the reason for the replacement and appoint a new employee with at least the same professional qualifications as those possessed by the former employee. The supplier shall present a complete and detailed CV for the new employee to document the employee’s professional qualifications.

The supplier’s replacement of employees must not affect the performance of the services and must not lead to additional costs or delays for the customer. This means, for example, that the customer shall not pay for a new employee to gain insight into the services and the customer’s needs, corresponding to the level of the replaced employee. The customer may reject a new employee if he/she is deemed not to have the same professional qualifications as the original employee.

At the customer’s request, the supplier must replace an employee if the request is reasonably justified.

12 SUBCONTRACTORS

The supplier will use the following subcontractors in the performance of the contract:

- [enter name and company registration no. (VAT no.) of the subcontractors specified in the offer]
- [etc....]



If the supplier has based specific parts of its offer on a subcontractor's technical and professional capabilities, this subcontractor must perform these specific parts of the services, cf. section 144(3) of the Danish Public Procurement Act.

The supplier shall not without the prior written consent of the customer assign the performance of the contract or parts thereof to subcontractors, replace a subcontractor or change the roles between the supplier and a subcontractor.

When using subcontractors, the supplier guarantees and is liable for the subcontractor's services to the same extent as the supplier guarantees and is liable for the supplier's own circumstances.

Under this contract, subcontractors cannot raise any claims against the customer, including claims for payment or compensation.

13 PERSONAL DATA

13.1 The supplier's handling of personal data

If the supplier handles personal data on behalf of the customer as part of the performance of the contract, the supplier is obliged to ensure that the supplier's handling of personal data complies with the personal data laws applicable in Denmark at any time – currently in particular the General Data Protection Regulation¹ and the Danish Data Protection Act (in Danish: “databeskyttelsesloven”)².

The supplier and its employees are obliged to handle personal data in such a way that guarantees sufficient security and confidentiality, hereunder protects against unauthorized access or use of the personal data, to which the supplier gains access in connection with the performance of the contract. The supplier shall hereunder ensure that personnel, which are authorized to handle personal data in connection with the performance of this contract, are committed to confidentiality or are under a lawful obligation to appropriate duty of confidentiality, cf. section 14.1.

The supplier is not entitled to process personal data independently as part of the performance of the contract for the supplier's own purposes or to disclose information to third parties, unless such use or disclosure is explicitly required by EU-law or national law.

14 DUTY OF CONFIDENTIALITY AND SECURITY CLEARANCE

14.1 Duty of confidentiality

The customer is as a public authority subject to applicable public administrative regulations, hereunder the duty of confidentiality, which follows from section 27 of the Danish Act on Public Administration (in Danish: “forvaltningsloven”). When performing tasks for a public authority, the supplier shall undertake a similar duty of confidentiality, cf. section 152a of the Danish Criminal Code (in Danish:

¹ 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).

² Act no. 502 of 23 May 2018 on supplementary provisions for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).



“straffeloven”). The supplier shall notify the personnel, which are engaged in the performance of the contract, of this duty of confidentiality.

The customer is furthermore subject to the rules of public access in the public administration, hereunder the rules of public access to documents. After the circumstances, the customer can be entitled and obliged to grant public access to the extent that follows from relevant regulation.

15 PUBLICITY

The supplier is entitled to include the customer in a simple reference list, after the performance of the delivery. Any other publicity regarding the content of this contract requires prior written consent of the customer.

With the limitations that follows from section 14.1 regarding the duty of confidentiality, the parties can publish the results of the services after the performance of the delivery.

16 SUPPLIER'S IMPARTIALITY

The supplier guarantees that the supplier has not undertaken, and will not undertake, any task that may cause reasonable doubt about the supplier's ability to duly perform the services under this contract.

The supplier may in the performance of the services and without being obliged to inform the customer thereof provide advice to or provide services to other customers whose interests may be in conflict with those of the customer, provided that no conflicts of interest arise for the supplier as regards the tasks to be performed for the customer.

The supplier may not engage employees if there is reasonable doubt as to their ability to fully protect the customer's interests in connection with the performance of the contract. Similar requirements apply to the any of the supplier's subcontractors and their employees.

The supplier shall immediately notify the customer of any matter, which may question the impartiality of the supplier or any subcontractors.

17 RIGHTS

To the extent that the supplier's services result in protected intellectual property material, the customer acquires the right of use to this material.

The right of use is acquired as the material is produced, provided that the supplier receives remuneration in accordance with the terms of the contract.

The remuneration for the right of use is included in the remuneration for the services that result in the material protected by intellectual property.

The customer's right of use is not restricted in terms of time, geography or quantity. Qualitatively, the customer's right of use include any internal and external use of the material in connection with the



customer's activities. For example, the customer may use the material, hereunder in connection with customer's tender for services similar to the supplier's services under this contract.

The customer also has the right to freely process, hereunder maintain and further develop the material and the right to use the results thereof in the same way as the original material.

The customer may transfer its right of use, wholly or in part, in accordance with section 27. The customer can furthermore - notwithstanding section 14.1 - transfer the right of use to a third party to the extent that a third party assists the customer in relation to the customer's activities. Such third party shall also comply with the provisions in section 14.1.

If a third party has rights to (part of) the material, the supplier guarantees that these rights are fully clarified in such a way that the customer is granted the rights specified in this section.

The supplier shall indemnify the customer for any claim that may arise as a result of the third party's rights not being fully clarified as set forth in this section.

In addition, in the event of violation of any third-party rights, the supplier is obliged, at the supplier's own expense and by agreement with a third party or by changing or replacing material, to provide the customer with the rights specified in this section.

The customer's legal position pursuant to this clause does not change, regardless of whether – and if so how – the contract is terminated.

18 LABOUR CLAUSE

The supplier shall ensure that employees of the supplier and of any eventual subcontractors, which contribute to the fulfilment of the contract, are secured wages (including special benefits), work hours, and other working conditions that are not less beneficial than those that apply to work of equivalent nature in accordance with a collective agreement made between, within the given field, the most representative parties of the labour market in Denmark, and which applies in all of Denmark's territory. "Contribute to the fulfilment of the contract" means work performed in Denmark for the purpose of fulfilment of the contract.

The supplier must ensure that employees of the supplier and of any subcontractors, which contribute to the fulfilment of the contract, are informed of the terms set out in the labour clause.

The customer may at any time request relevant documentation that the wages and working conditions of the employees comply with the obligations stipulated in the labour clause.

The customer may require that the supplier upon written request provides relevant documentation within 10 working days, such as pay slips and time sheets, payroll accounts and employment contracts, from both the supplier's own and any subcontractors' employees.

The customer may seek advice from relevant employers' and/or employees' associations in connection with the customer's assessment of whether the supplier or subcontractors comply with the labour clause.

If the supplier fails to comply with its obligations under the labour clause and this results in a justified claim for additional wages, etc. from the employees, the customer may withhold the supplier's remuneration in order to settle such claims.



The supplier may also be required to pay a penalty of 5 percent of the contract price if the labour clause is not complied with.

19 TERMINATION

19.1 Termination of the contract for convenience

The customer may terminate the contract with 1 month's notice, upon the customer's payment to the supplier for the work performed until the termination comes into force.

In such a case, the supplier must transfer the materials and data produced in connection with the task to the customer.

Payment to the supplier will be made on the basis of a specified statement of time spent. The supplier will not be entitled to any other form of remuneration or compensation, including compensation for operating losses, loss of profits or other indirect losses, other remuneration or the like.

19.2 Termination as a result of a finding or judgement

If a court or the Danish Complaints Board for Public Procurement:

- annul the customer's decision to award this contract to the supplier,
- declares this contract "ineffective",
- considers an amendment to this contract to be an amendment to the substantial elements that would have required a new contract notice, or
- otherwise orders the customer to terminate this contract, wholly or in part,

this contract may be terminated at any time during the contract term, wholly or in part, by the customer with 30 days' notice up to the 1st day of a month. [*Antal dage kan afvige afhængig af det konkrete område.*]

Regardless of when the contract is terminated as a result of a finding or a judgement, the supplier cannot claim compensation in such a case.

20 INDEPENDENT AGREEMENT

The parties agree that section 19.2 of the contract constitutes an independent agreement between the parties, which is in force, regardless of whether the contract is otherwise declared to be ineffective.

21 CONTINUED VALIDITY

All provisions of the contract, which by their nature shall continue notwithstanding termination of the contract, regardless of the grounds for termination, including, but not limited to, provisions regarding liability, rights and duty of confidentiality, shall continue to be in force after the termination of the contract.



22 BREACH OF CONTRACT

Each party is required to immediately notify the other party in writing of any breach that has occurred or when a breach is expected to occur and to specify the reason for the breach and the time when the breach is expected to be remedied.

If a party substantially or repeatedly, without each breach being substantial, breaches its obligations under this contract, the other party may terminate this contract in writing.

Each of the following situations shall always be considered as a substantial breach that entitles the customer to terminate the contract by means of written notice to the supplier with immediate effect:

- Conditions covered by section 185(1), no. 2 of the Danish Public Procurement Act.
- The supplier enters into restructuring negotiations, or there is other significant degradation of the supplier's financial situation which jeopardizes the proper performance of the contract.
- The bankruptcy of the supplier, if the bankruptcy estate does not indicate that it will enter into this contract within 10 working days after receiving a written request from the customer.
- The supplier terminates the activities to which the contract relates, or if there are other circumstances that jeopardize the proper performance of the contract.
- Failure to comply with the provisions regarding on quality, cf. section 6.
- Failure to comply with the duty of confidentiality, cf. section 14.1.
- Failure to comply with the provision on cooperation, cf. section 10.
- Failure to comply with the provisions regarding personal data, cf. section 13.

The above situations are not exhaustive.

Furthermore, the general rules of Danish law on breach of contract apply, including the general rules on delayed or failed delivery. Should the customer choose to terminate the contract for cause, wholly or in part, as a result of delay, the customer is entitled to procure services covered by the contract from third parties (compensatory purchase) at the supplier's expense. Any additional costs relating to compensatory purchases may be offset any claim against the supplier.

Any failure of the service to fulfil this contract and its associated annexes, or if the service is not as the customer may rightly expect, will in any event constitute a defect in the supplier's service.

The supplier is obliged, at the customer's request, to remedy identified defects as soon as possible. If it is not possible to remedy the defect or the supplier has tried in vain and repeatedly to remedy a defect, the customer may instead choose to demand a proportionate reduction in payment to the supplier. The proportionate reduction is determined by the extent and nature of the defect, but cannot exceed the payment for the delivery.

23 FORCE MAJEURE

Under this contract, a party is not liable to the other party insofar as the matter is due to circumstances beyond the control of the party and which the party should not have foreseen at the time of the conclusion of this contract, nor could have avoided or overcome after the conclusion of the contract.



The party, who wishes to invoke this force majeure provision, shall notify the other party without undue delay, but no later than 5 working days after the force majeure event has occurred.

If a force majeure situation lasts for more than 40 working days or if the force majeure situation is of such a nature or duration that fulfilment of the contract is considered impossible, the other party is entitled to terminate this contract without notice. None of the parties is liable towards the other party for termination due to force majeure.

24 LIABILITY AND INSURANCE

The parties are liable for damages under the general rules of Danish law.

However, the parties are not liable for operating losses, loss of profits or other indirect losses and each party's total liability under this contract is limited to 2 times the contract price including the price for utilized options. These limitations of liability do not apply if liability is caused by acts or omissions of gross negligence or willful misconduct.

For the entire duration of the contract, the supplier shall maintain a liability insurance covering any damages that employees may cause in connection with the performance of this contract and be insured against erroneous advice if the contract comprises an advisory task.

The scope of coverage of the supplier's insurance shall correspond to the contract scope and the industry standard.

The supplier shall also have taken out any other statutory insurance, including occupational injury insurance for the employees.

The customer can at any time request documentation of insurance coverage.

25 TRANSFER

The customer has the right to transfer its rights and obligations under this contract, wholly or in part, to another public authority.

The supplier may not transfer its rights or obligations under this contract, wholly or in part, to a third party without the written consent of the customer.

26 APPLICABLE LAW AND JURISDICTION

This contract is subject to Danish law.

In the event of disagreement between the parties in connection with this contract, the parties shall, with a positive, cooperative, and responsible attitude seek to initiate negotiations aimed at resolving the dispute. If necessary, negotiations shall be escalated to the highest level in the organizations of the parties.

If the parties are unable to reach a settlement by negotiation within 30 days of the first inquiry, on the request of a party, the dispute shall be attempted resolved by mediation led by a mediator appointed by the parties. If the parties have not reached an agreement on the choice of mediator within 10 working



days after one of them has requested mediation, any of the parties may apply to the Danish Mediation Institute to appoint a mediator. Mediation shall be conducted in accordance with the rules for handling cases at the Danish Mediation Institute.

Mediation is initiated by one of the parties submitting a written request for mediation to the other party, copying in the Danish Mediation Institute. The mediator shall be appointed within 8 working days after the Danish Mediation Institute has received a request for mediation. At a minimum, the parties are obliged to attend the first meeting called by the mediator. However, each of the parties is entitled to initiate legal proceedings if postponement thereof may lead to forfeiture, for example due to obsolescence.

If, after attempting mediation, the parties are unable to find a solution, each party may at its discretion, initiate litigation. The place of jurisdiction is the customer's domicile.

27 SIGNATURES

On behalf of the customer

Date

Signature

Title and name of signatory

On behalf of the supplier

Date

Signature

Title and name of signatory

