

CONTRACT CONCERNING

An analysis of the market for online advertising in Denmark

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1 CONTRACTING PARTIES

This contract has been entered into between the following parties:

The Danish Competition and Consumer Authority/Konkurrence- og Forbrugerstyrelsen
Carl Jacobsens Vej 35
2500 Valby
Business number: 10294819

(hereinafter referred to as “the customer”)

and

[Name of supplier]
[Address]
[Zip code and city]
[VAT-number.]

(hereinafter referred to as “the supplier”)

2 BASIS OF CONTRACT

The basis of the contract consists of the following documents:

- The contract (this document)
- Appendix 1 – Customer's advertised material
- Appendix 2 – Questions, answers and any changes to the advertised material
- Appendix 3 – Supplier's offer (including any list of offers)

If there is a discrepancy between the contract and the appendixes, the contract takes precedence over the appendixes. If there is a discrepancy between the appendixes, an appendix with a lower number takes precedence over an appendix 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 in the basis of the contract.

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

3 CONTRACT SCOPE

3.1 Scope

The contract covers the performance of a descriptive analysis of the market for online advertising in Denmark and a literature survey of related relevant literature for the customer. The services are described in more detail in appendix 1-3.

3.2 Options

The contract also covers the following options: An analysis or a product that is innovative, useful and/or timesaving for the DCCA in a possible sector inquiry of the competition situation in the market for online advertising in Denmark.

3.3 Changes to the contract scope

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

The customer's change request must be submitted in writing. The supplier will then, if so requested by the customer, prepare a draft amendment 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 supplement to the contract. The supplier is not entitled to additional payment, unless a written supplement to the contract has been entered into.

4 CONTRACT TERM

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

5 DELIVERY

Delivery must be performed in accordance with dates set up in the advertisement of the analysis. In the advertisement of the analysis it is apparent that the analysis as well as any option must be completed on December 17 2019.

6 QUALITY

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

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

7 PRICES AND PRICE ADJUSTMENT

7.1 Price

The prices of the services covered by the contract are shown in appendix 3.

Prices are exclusive of VAT, but inclusive of all forms of fees, charges, outlay, 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 contract term (including any extension term), but adjustments may be made in accordance with section 7.3.

7.3 Fees

The parties may at any time request that prices be adjusted by the economic net consequence of changes in fees that become known after the contract is entered into and which are imposed or removed from the services covered by the contract.

7.4 Bonuses for the customer and the customer's employees

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

8 INVOICING

The supplier may request payment once the assignment has been completed and approved as described in the advertising material.

Invoicing must conform to the rules applicable at any time concerning electronic settlement with public authorities.

Invoices must be submitted electronically to the requesting department/institution (cf. EAN number 5798000018006).

The invoice must include:

- Issue date (invoice date)
- Invoice number (number for identifying the invoice)
- The supplier's CVR/SE number (business number)
- The supplier's name and address as well as the name and address of the customer
- Quantity and nature of the services provided
- Price exclusive of VAT
- The person at the customer who requested the order
- Latest payment date

The customer is entitled to reject invoices that are not received electronically, in which the above information is missing, or if the invoicing is otherwise not in compliance with the Danish Public Payments Act, etc.

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 latest 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 apply interest in accordance with the provisions of the Danish Interest on Overdue Payments Act (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 are obliged to notify each other if any uncertainty should arise during the work concerning the necessary conditions, purpose or performance of a service.

The parties are also required to notify each other if there is dissatisfaction with the other party's efforts, work performance or quality of work.

A party may initiate a joint evaluation of the cooperation between the supplier and the customer.

11 STAFF

The supplier must make the employees (both their own and those of any subcontractors), as specified in the offer, available for the performance of the services.

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

In the event that an employee is replaced, the supplier must explain the reason for this and appoint a new employee with at least the same professional qualifications as those possessed by the former employee. This is established by presenting a complete and detailed CV for the new employee.

The supplier's replacement of employees must not affect the services, and replacement of employees must not lead to additional costs or delays for the customer. This means, for example, that the customer should not have to 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 has assigned the following subcontractors to the contract:

- [enter name and CVR no. of the subcontractors specified in the offer]
- [etc...]

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

Without the prior written consent of the customer, the supplier may not entrust the performance of the contract or parts thereof to subcontractors, replace a subcontractor or change the distribution of roles between the supplier and the subcontractor.

By using subcontractors, the supplier guarantees and is liable for the subcontractor's services in the same way as for the supplier's own circumstances.

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

13 PERSONAL DATA

13.1 The supplier's processing of personal data

If the supplier processes personal data on behalf of the customer, the supplier, as the data processor, is obliged to ensure compliance 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 (databeskyttelsesloven)².

14 DUTY OF CONFIDENTIALITY AND SECURITY CLEARANCE

14.1 Duty of confidentiality

The supplier, the supplier's employees, any subcontractors and their employees, if any, are subject to section 152a of the Danish Criminal Code, since they carry out assignments by agreement with a public authority. According to this provision, it is unlawful to disclose or make use of confidential information to which the relevant person has gained access. This also applies after the termination of this contract, regardless of the grounds for termination.

In the case of the customer, the rules for public administration employees apply.

The supplier must inform the customer if the supplier is asked to provide information regarding circumstances pertaining to the customer or others to which the supplier has gained access in connection with the performance of this contract. The supplier must inform the customer of this before any information is provided.

Should the customer so request, the supplier must sign a separate non-disclosure agreement.

The supplier may not use the customer as a reference without the prior written consent of the customer. However, the supplier is entitled to include the customer in a simple reference list.

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).

The supplier may not send out public notices regarding this contract or publish anything about the content of the contract without first informing the customer.

15 SUPPLIER'S IMPARTIALITY

The supplier guarantees that the supplier has not undertaken, and will not undertake, any assignment which may cause reasonable doubt as to the supplier's ability to fully protect the customer's interests.

The supplier may 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 in connection with this assignment.

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

Pursuant to this contract, the supplier is obliged to immediately notify the customer of any matter that may call into question the impartiality of the supplier or any subcontractors.

16 RIGHTS

The customer acquires right of ownership, copyright and any other intellectual property rights to matter produced by the supplier in connection with this contract, including reports, any sub-reports, data, supporting documents and survey material. The customer's acquisition of the rights takes place on an ongoing basis as the supplier prepares the material.

The customer decides whether the reported material should be published. The customer has the exclusive right to publish the results and may also use the material and the results, wholly or in part, in all contexts in which the customer considers it relevant.

The supplier retains right of use relating to the general expertise developed in connection with performance of the assignment.

The supplier must secure the necessary rights and permits that are a prerequisite for the services. The supplier is responsible for ensuring that fulfilment of this contract does not violate any third party rights, including ownership or intellectual property rights. The supplier shall indemnify the customer against any claim that may arise as a result of a violation of third-party rights.

17 LABOUR CLAUSE

The supplier must ensure that employees of the supplier and any subcontractors helping to fulfil the contract are assured wages (including special benefits), work hours and other working conditions that are not less favourable than those that apply to equivalent work, in accordance with a collective scheme entered into by the most representative social partners within the respective professional field in Denmark and which applies to the entire Danish territory. "Helping to fulfil the contract" means work performed in Denmark for the purpose of fulfilling the contract.

The supplier must ensure that employees of the supplier and any subcontractors helping to fulfil the contract are informed of the terms set out in the labour clause.

At any time, the customer may request relevant documentation that the wage and working conditions of the employees fulfil the obligations stipulated by the labour clause.

The customer may require the supplier, upon written request, to provide 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.

For the customer's assessment of the supplier's or subcontractors' compliance with the labour clause, the customer may seek advice from relevant employers' and/or employees' associations.

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

18 TERMINATION

18.1 Termination of the contract

The customer may terminate the contract with 1 month's notice, conditional upon paying the supplier for the work performed up to the time of termination.

In such a case, the supplier must transfer the materials and data produced in connection with the assignment to the customer. Payment is made to the supplier on the basis of an itemised timesheet. The supplier will not be entitled to any other form of remuneration or compensation in addition to this, including compensation for operating losses, loss of profits or other indirect losses, other remuneration or the like.

18.2 Termination as a result of a finding or judgement

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

- cancels the customer's decision to award this contract to the supplier,
- declares this contract “without effect”,
- considers an amendment to this contract to be an amendment to the basic 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. Regardless of the time of termination, the supplier cannot claim compensation as a result of the termination.

19 INDEPENDENT AGREEMENT

The parties agree that section 18.2 of the contract constitutes an independent agreement between the parties, which is in force, regardless of whether the contract is otherwise declared to be without effect.

20 CONTINUED VALIDITY

All provisions of the contract which, by their nature, will survive termination of the contract, regardless of the grounds for termination, including, but not limited to, provisions for liability, rights and professional confidentiality, shall continue to apply after the termination of the contract.

21 BREACH OF CONTRACT

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

If a party has been in breach of their obligations under this contract on a significant scale or repeatedly without there having been one specific case that qualifies as a material breach, the other party may terminate this contract in writing.

The following conditions shall always be considered a material breach that entitles the customer to terminate the contract by means of written notice to the supplier with immediate effect:

- The supplier enters into restructuring negotiations, or there is other significant deterioration of the supplier's financial situation which jeopardises the proper performance of the contract.
- The bankruptcy of the supplier, providing that the estate does not indicate that it will enter into this contract within 10 working days from receiving a written request from the customer.
- The supplier terminates the activities to which the contract relates, or if there are other circumstances that jeopardise the proper performance of the contract.
- Provisions on quality are not complied with, cf. section 6
- Failure to comply with the duty of confidentiality, cf. section 14.1
- Failure to comply with the provision on cooperation, cf. 10

The above conditions 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 cancel, wholly or in part, as a result of delay, the customer is entitled to make compensatory purchases at the supplier's expense. Any additional costs relating to compensatory purchases may be offset against any claim against the supplier.

Any failure of the service to fulfil this contract and its associated appendixes, 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 defects that are pointed out as soon as possible. If remediation is not possible 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.

22 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 cannot be expected to have taken into account at the conclusion of this contract, nor to have avoided or overcome after the conclusion of the contract.

Anyone wishing to invoke force majeure must provide written notice of this without undue delay, but no later than 5 working days after the force majeure has occurred.

If a force majeure situation lasts for more than 30 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. This shall not be grounds for either party to pursue a claim.

23 LIABILITY AND INSURANCE

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

However, the parties cannot claim compensation for operating losses, loss of profits or other indirect losses.

For the entire duration of the contract, the supplier must maintain a liability insurance policy covering damage that employees may cause in connection with performance of the services and be insured against erroneous advice if the contract comprises an advisory assignment.

The scope of coverage of the supplier's insurance must be commensurate with the contract scope and correspond to the standard in the industry.

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

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

24 TRANSFER

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

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

25 APPLICABLE LAW AND PLACE OF JURISDICTION

This contract is subject to Danish law.

In the event of disagreement between the parties in connection with this contract, the parties must, with a positive, cooperative and responsible attitude, seek to initiate negotiations aimed at resolving the dispute. If necessary, negotiations must be sought at the highest level in the organisations 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 must be 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 is 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 must be appointed within 8 (eight) business days of the Danish Mediation Institute receiving a request for mediation. At a minimum, parties are obliged to attend the first meeting called by the mediator. However, parties are 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 their discretion, bring legal action. The place of jurisdiction is the customer's domicile.

26 SIGNATURES

On behalf of the customer

On behalf of the supplier

Date

Date

Signature

Signature

Title and name of signatory

Title and name of signatory