

**Invitation to tender:  
CEER Consultancy Project on  
Dynamic Regulation**

**Terms and Conditions**

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**Article 1 – Definitions**

- Client: CEER (Council of European Energy Regulators ASBL) with its registered office at cours Saint-Michel 30a, 1040 Brussels, Belgium and with company number 0861.035.445 (Register of Legal Entities Brussels).
- Service Provider: As selected by CEER following a negotiated tender procedure
- Project: the subject of the contract to which these Terms and Conditions apply.
- Result: an outcome of the implementation of a project to which these Terms and Conditions apply, which is made available to the Client by the service provider, irrespective of the form.

**Article 2 – General**

**2.1. Governing provisions**

This contract is subject to the Belgian Public Procurement Act of 24 December 1993 and to the Royal Decrees of 8 January 1996 and 26 September 1996 regarding public procurement, including the general terms and conditions which constitute Annex 1 to the Belgian Royal Decree of 26 September 1996 (the “**GTC**”)

However, this contract derogates from the following articles of the GTC:

- Article 5-9 of the GTC (obligation for the service provider to issue a performance guarantee of 5%): no performance guarantee applies to this contract because this is uncommon for services as requested under this contract and in view of the amount of the contract price;
- Article 10 of the GTC (cf. clause 19 – Sub-contracting);
- Article 14 of the GTC (cf. clause 16 – Intellectual rights);
- Article 74 § 2 of the GTC (cf. clause 15 – Acceptance of the final results).

## ***2.2. Other documents governing the contract***

The contract shall also be governed by the following documents:

- Terms of Reference on CEER consulting project on “Dynamic Regulation” (ref. C21-RBM-31-03)
- Invitation letter to tender (dated: 27 July 2021).

The service provider’s own general terms and conditions shall not apply to this contract.

## ***2.3. Description of the subject of the contract***

The subject of the contract is described in the enclosed terms of reference; see reference in section 2.2 above.

## ***2.4. Award procedure***

In line with Article 17(2) of the Belgian Public Procurement Act of 24 December 1993, the Client shall award the contract on the basis of a negotiated procedure without prior notification.

## ***Article 3 - Offers***

Any and all offers made by the service provider must be valid for at least two months.

## ***Article 4 – Establishment of the contract***

All contracts should be entered into in writing and shall be drawn up in as many copies as there are parties thereto.

The contract shall come into being as soon as it has been signed by all the contracting parties.

Verbal or written undertakings given by and agreements entered into with Client members of staff shall only be binding upon the Client once and to the extent that, these have been confirmed in writing by Mr Charles Esser, Secretary General of the Council of European Energy Regulators.

## ***Article 5 – Modifications and additions to the contract***

The contract may only be modified or supplemented by means of a written rider to the contract signed by all contracting parties, notwithstanding Article 8.A below.

## **Article 6 - Price**

The contracting takes place at a fixed price of 40,000 Euros (without VAT), as per the budget of 48,400 Euros, including 21% Belgian VAT. This price is deemed to cover the correct completion of the tasks taken on in the framework of the contract. The contract shall contain a list of all separate cost price elements.

In accordance with Article 67 of the GTC, all costs and levies imposed on the services (VAT exclusive) shall be deemed to be included in the fixed price. Furthermore, the fixed price shall be deemed to include the following items:

- administration and secretarial costs;
- travel, transport and insurance costs;
- costs regarding documentation as to the services and documentation required by the Client;
- costs regarding the delivery of documents or records which are associated with the performance of the services;
- toll and excise duties regarding the equipment used and the products;
- packaging costs;
- testing and acceptance costs.

All costs should be included in the price.

Under no circumstances may the service provider claim a higher amount, without a written rider to the contract signed by all the contracting parties.

## **Article 7 – Billing and payment**

Except for an agreement to the contrary, the billing shall follow the following invoicing plan:

- 20% upon signing of the contract
- 30% upon delivery of the first provisional results  
(*presentation of interim results at an internal CEER workshop*)
- 50% upon delivery of the final results (*final report*).

Invoices shall be payable within 50 days of the invoice date, with the exception of the last invoice, which shall be paid after submission by the service provider of a statement of expenses and fees and after the Client's acceptance of the final results.

Invoices may only validly be addressed to:

CEER ASBL: Charles Esser, CEER Secretary General, Cours Saint-Michel 30a/F,  
B-1040 Bruxelles, Belgique.

### **Article 8.A – Additional services**

The service provider is not entitled to carry out any additional services unless these were granted to him by the Client in accordance with the statutory conditions.

Every award of additional services must be made in writing and at a fixed price.

### **Article 8.B – Extension of the contractual delays**

The service provider can apply with the Client for an extension of the contractual delays pursuant to Article 16 of the GTC (unforeseen circumstances), and subject to the conditions thereof.

### **Article 9 - Confidentiality**

1. “Confidential information” shall be understood to mean all information which is supplied, in whatever form, to the service provider in order to make the assignment possible, as well as the content of all results obtained and preparatory documents, analyses and calculations, with the exception of information which is in the public domain, without this having been the result of blameworthy or negligent action on the part of the service provider.
2. The service provider undertakes to keep confidential information secret both during and after the period covered by the contract. Any violation of the foregoing shall lead to the Client receiving compensation in full.
3. The service provider shall only grant access to the information to employees and subcontractors to the extent that the disclosure of and access to the information are absolutely necessary in order for the obligations vis-à-vis the Client to be fulfilled.

The service provider shall ensure that the aforementioned parties have recognised the confidential and secret nature of the information before it is disclosed, and shall see to it that their contracts with the service provider guarantee confidentiality.

The service provider accepts full liability and shall protect the Client against any prohibited disclosure or use of the confidential information by employees or subcontractors.

4. The service provider undertakes to use the confidential information solely and exclusively for the Client project. Any other use is expressly prohibited, except subject to the prior written consent of the Client.
5. The service provider acknowledges and accepts that the information provided is of such a nature as to be regarded as property, and could be eligible for intellectual protection rights.

The service provider hereby expressly renounces the possibility of advancing any right in this regard and using the information to make an application for an intellectual protection right.

### **Article 10 – Return of the material**

After the project, the service provider undertakes, barring written consent from the Client, to return all the material that was given by or is the property of the Client. This material consists, *inter alia*, in all documents, plans, drawings, specifications, memos and copies.

### **Article 11 - Liability**

The service provider shall be liable for any faults and mistakes in the performed services, as set out amongst others in Article 72 of the GTC.

The Client shall under no circumstances be liable for damage caused to persons or goods which is indirectly or directly the consequence of the activities carried out by the service provider, employees of the service provider or third parties working under the authority of the service provider, with regard to the implementation of the project. The service provider shall protect the Client against any claim for compensation by third parties in this respect.

### **Article 12 – Obligations incumbent upon the parties**

The Client shall at all times provide the service provider with all data or information useful and necessary for an adequate implementation of the contract, and shall provide its full co-operation.

Whenever the Client so requests, the service provider shall inform the Client immediately of the state of its activities and shall submit a provisional result.

The service provider shall make every effort to carry out the project to the best of its ability, in a professional manner, in accordance with the written arrangements and procedures agreed with the Client.

The service provider shall address all correspondence and reports relating to the contract to ([charles.esser@ceer.eu](mailto:charles.esser@ceer.eu)) Mr Charles Esser, cours Saint-Michel 30a/F, B-1040 Brussels, Belgium.

### **Article 13 - Delivery**

The provisional and final project results shall be delivered, in hard copy and in electronic (Word) version, in accordance with the schedule determined in the contract, with said delivery being deemed to have taken place at the time the Client is physically in possession thereof. The Client may agree to accept only an electronic version per discussion with the consultant.

### ***Article 14 – Delivery lead-times***

The service provider undertakes to supply the provisional and final results within the agreed lead times, except where the delay is solely attributable to the Client.

Delay in performance shall lead to compensation to the Client of the amount equal to 0.07% of the contract value per calendar day of delay, with a maximum of five percent of the contract value.

### ***Article 15 – Acceptance of the final results***

After delivery of the final results of the project, the Client shall have a period of 30 days in which to approve or reject these.

The approval should be given in writing and should be unambiguous.

If the Client rejects the final results, the service provider shall have to supply new final results that take into account the comments made by the Client. The service provider shall not be entitled to charge any supplement for this.

These new final results should again be submitted for approval by the Client, with the same approval deadline being applicable.

Partial payment of the price by the Client may under no circumstances be regarded as acceptance of the final results.

### ***Article 16 – Intellectual rights***

1. Intellectual rights comprise copyright, brand names, drawings, models, and patents.
2. The parties agree that the intellectual rights that a party holds at the moment the contract comes into being shall remain each party's exclusive property. These intellectual rights are referred to hereinafter as "the existing intellectual rights".

The service provider shall grant the Client a worldwide, perpetual, non-exclusive and non-transferrable right of use in respect of the service provider's existing intellectual rights that are used in the implementation of the project, to the extent that this is necessary in order for the results of the project to be used.

The Client shall grant the service provider a non-exclusive and non-transferrable right of use in respect of its existing intellectual rights for the duration of the project, and to the extent that the service provider has to dispose thereof for the implementation of the project.

3. However, the service provider undertakes to transfer exclusively to the Client all intellectual rights to all results, preparatory documents or other items developed or made available pursuant to the contract which ensue directly or indirectly in any manner whatsoever from the project, for an undetermined period and for the whole world, including all competencies that the law attributes thereto both now and in the future.

The Client shall also decide independently whether it makes reference to the service provider's name in the use it makes of the results ensuing from the project.

4. The service provider undertakes to protect the Client from any claims lodged against the Client, on the grounds of an infringement or alleged infringement of any intellectual right on the part of a third party on account of the use of the results made available.

If the Client is forced to discontinue the use of the supplied item on the grounds of such a claim or a sentence resulting from that, the service provider shall, at its own expense and in mutual consultation with the Client:

- either acquire the right for the Client to continue to use the supplied item,
- or adapt or replace the supplied item so that the infringement is brought to an end,
- or take back the supplied item and credit the Client for the amounts paid pursuant to the contract,
- this without prejudice to the Client's right to full compensation for the damage it has suffered.

### **Article 17 - Termination**

The Client may terminate the contract by means of a registered letter with acknowledgement of receipt, in which it establishes the period of notice which shall be a maximum of one month counting from the date of receipt of this letter:

- a) when there are important technical and economic reasons which have a detrimental effect on the project;
- b) when the possibilities of making use of the results of the project have appreciably diminished.

In such case the Client shall compensate the service provider in proportion to the time already spent on the contract.

### **Article 18 – Default, unilateral measures and dissolution**

#### **18.1. Default**

In accordance with Article 20 of the GTC, the service provider shall be deemed to be in default:

- when the services are not fully completed within the time delay as envisaged in clause 14 of this tender document;

- when the works are not advancing in such a way that they shall be fully completed within the established delays;
- when it has not complied with the validly given written orders of the Client;
- when the services are not provided in compliance with the terms of the contract.

If such an event occurs, the default on behalf of the service provider shall be established in a report by the Client. A copy of such report shall immediately be sent to the service provider.

The service provider must remedy its default without any delay.

If it wishes to do so, the service provider can defend itself by sending a registered letter to the Client, addressed to the Client. This letter must be sent within fifteen calendar days following the posting date of the letter containing the aforementioned report. After the expiry of this delay, silence will be considered as an acknowledgement of the default.

If the default of the service provider is established, the Client can proceed to the following measures:

- the unilateral dissolution of the contract;
- the performance of the complete or a part of the unperformed contract under the Client's own management (at the expense and the risk of the service provider in default);
- the entry into one or several contracts for the account of the service provider in default in order to have the contract, or part thereof, performed (at the expense and the risk of the service provider remaining in default).

The decision to proceed to such measures shall be notified to the service provider remaining in default.

### ***18.2. Other grounds for dissolution of the contract***

In accordance with Article 21 of the GTC, the service provider can dissolve the contract if one of the following events occurs:

- bankruptcy of the service provider or an analogous event as a result of a similar procedure;
- placement under guardianship on the ground of prodigality [does not apply to legal entities];
- declaration of incapacity, temporary administration order or placing under guardianship due to mental deficiency [does not apply to legal entities];
- placing under observation or interment by application of the Statute of 1 July 1964 for the protection of society [does not apply to legal entities];



- sentencing of the service provider to an unconditional term of imprisonment of one month or more, due to the committal or attempt committal of one of the following criminal offences: (i) crimes or offence against the security of the State; (ii) crimes or offence against the public trust; (iii) conspiracy of officials; (iv) extortions and embezzlements committed by officials; (v) bribery of officials; (vi) obstruction of the execution of public works; (vii) crimes and offences of the suppliers and (viii) crimes and offences against properties.

In case of dissolution of the contract on one of the grounds listed above, the services already performed shall be settled, taking into account the value of the services already performed.

### ***Article 19 – Transfer of rights and obligations; Sub-contracting***

Neither of the parties may transfer the rights accruing to it or the obligations incumbent upon it ensuing from the contract to a third party without the prior written consent of the other party.

The service provider may not conclude any subcontracting contract for the fulfilment of part or all of the contract, without the prior written consent of the Client.

### ***Article 20 – Waiver of rights***

The failure by one of the parties to claim a right or to apply a sanction does not in any way imply a waiver of rights.

### ***Article 21 – Competent courts and applicable law***

Except for agreement to the contrary, in the event of a dispute resulting from a matter to which these conditions are wholly or partly applicable, solely the courts of the legal district of Brussels shall have jurisdiction, and solely Belgian law shall be applicable.

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