

DRAFT CONTRACT

THE ROYAL LIBRARY
NATIONAL LIBRARY OF
DENMARK AND
COPENHAGEN UNIVERSITY
LIBRARY



J.no. 16/01209

Draft CONTRACT

re

Purchase of book cradle scanners

November 2016
Draft contract – Book
cradle scanners



1. The Parties

Between

The Royal Library
Søren Kierkegaards Plads 1
DK-1016 Copenhagen K

hereinafter referred to as KB

and

.....
CVR no.

hereinafter referred to as the Supplier

as of today's date the following agreement has been established concerning the upgrading of KB's Cumulus system.

The contract consists of this document with the following Annexes:

- Annex 1 – Signed bill of quantities, including the completed questionnaire (Annex1A)
- Annex 2 - Tender Conditions, including Specification of Requirements, Annex 2

2. Service

The service concerns

Purchase of [X] book cradle scanners

3. Contact persons and organisation

Each party has designated a project officer who also serves as the contact person:

Project officer for the Supplier:

.....

Project officer for KB:

Peter Thiesen, Digitisation Manager
E-mail: pett@kb.dk
Tel.no.: +45 91 32 48 47



The day-to-day communication concerning the purchase under this contract will take place between the Supplier and KB's project officer.

At KB's request, the Supplier must replace any project officer at KB's reasonable request.

4. Commencement and termination

4.1. This contract concerning the purchase and setting up of [X] book cradle scanners will enter into force when it is signed.

4.2. Delivery and setting up of [X] book cradle scanners must take place as soon as possible after the contract is signed.

5. Payment and invoicing

5.1. The contract sum for [X] book cradle scanners is agreed as a fixed price of DKK [*insert price here*], including all possible costs, including the cost of meetings and transport, etc. The price is in DKK excluding VAT.

5.2. The contract sum will be invoiced directly to KB when [X] book cradle scanners have been delivered, installed and tested and approved by KB.

5.7. Invoicing must be to KB, subject to due compliance with the Act on Public-Sector Payments, etc. (Consolidation Act no. 798 of 8 June 2007 concerning public-sector payments, etc. with subsequent amendments), and the rules issued or to be issued pursuant to the Act.

5.8. E-invoices fulfilling the requirements in the aforementioned provisions, with any documentation attached, must be sent to KB, to EAN number 5798 000795297.

5.9. KB will be entitled to reject invoices which are not submitted in accordance with the aforementioned.

5.10. In the event of delayed payment, the Supplier will be entitled to calculate interest in accordance with Consolidation Act no. 743 of 04/09/2002 "Promulgation of the Act concerning late payment interest, etc. (Interest Act)".

6. Amendment of the contract

Additions or amendments to the contract may only be made by written agreement between the parties. Amendments or additions must be numbered consecutively, signed by both parties and attached to the contract.



7. Subsuppliers

7.1. Without KB's prior written consent, the Supplier may not use subsuppliers for the Task. In the same way, without KB's prior written consent the Supplier may not replace subsuppliers that have already been accepted.

7.2. The Supplier will be liable for its subsuppliers in the same way as for its own affairs.

8. Rights to the Task

8.1. With due respect for the limitations of the Danish Copyright Act, KB will gain the exclusive right to the book cradle scanners delivered to KB by the Supplier as part of the fulfilment of this contract. KB will furthermore be entitled to hand over the equipment or parts thereof to a third party for the purpose of sale.

8.2. The Supplier guarantees that the equipment delivered by the Supplier under the contract does not infringe the rights of any third party, including copyright, and must indemnify KB for any claim or cost in that respect.

9. Assignment of rights

9.1. KB will be entitled to assign its rights and obligations under this contract to another public institution when the tasks so far undertaken by KB are transferred to this other institution.

9.2. Without KB's written consent, the Supplier may not assign its rights and obligations under this contract to any third party. However, KB may not refuse such consent without objective grounds.

10. Confidentiality

10.1. The Supplier and its personnel must observe an unconditional duty of secrecy concerning any information with regard to KB or other parties' circumstances disclosed to them in connection with the fulfilment of this contract. The Supplier will impose the same obligation on all subsuppliers and other parties that assist the Supplier.

10.2. The duty of secrecy does not concern publicly available information, as well as information disclosed to KB by a third party which legally holds such information, and which is not subject to any confidentiality obligation.

11. Marketing

The Supplier may not use KB in its marketing, including on the Supplier's website, in reference lists, etc. without KB's prior written consent.



12. Delay

12.1. In the event of circumstances that can be expected to entail that delivery in accordance with the agreed time schedule cannot be complied with in full or in part, as soon as such delays can be foreseen the Supplier will be obliged to inform KB in writing thereof immediately and without undue delay, together with the reason(s) for the delay, and details of when delivery is expected to be able to take place. The Supplier will also be obliged to offset or reduce the consequences of the delay in the best possible way, and– on request – inform KB of the measures taken to remedy the delay. KB must likewise notify the Supplier if KB is unable to fulfil its obligations in relation to the time schedule.

12.2. If the Supplier finds that a delay can be attributed to KB's actions, the Supplier must notify KB thereof immediately. In the notification the Supplier must describe which conduct by KB is found by the Supplier to be the reason for the delay. The Supplier must loyally minimise any extra time which the Supplier finds it necessary to use in order to perform the task for KB. The Supplier may only require payment for extra time if the Supplier can document which tasks the time has been spent on, that this was necessary to ensure the progress of the task, and that the Supplier has kept the time spent to a minimum.

12.3. If an agreed delivery date is exceeded by more than ten working days, and the delay cannot be attributed to KB's circumstances, this will be considered to be material breach and KB may terminate the contract in full or in part, cf. item 14.

13. Defects

13.1. A Solution will be defective if it does not fulfil the requirements set in this contract, or if the Solution does not correspond to what KB could reasonably expect.

13.2. KB must complain in writing to the Supplier within a reasonable time after KB has found that a Solution is defective.

13.3. Without undue delay after receipt of the written complaint, the Supplier must rectify the defect.

13.4. If the defects in a Solution are such that KB cannot reasonably use the item delivered and the Supplier either recognises that further rectification is not possible, or has sought to rectify the defects for more than ten working days, KB may terminate the contract in full or in part, at its own discretion, cf. the provisions in item 14.

13.5. In addition to the aforementioned, the ordinary rules of Danish law concerning compensation and proportional reduction will apply.

14. Termination of contract

14.1. In addition to the provisions of this contract, either Party will be entitled to terminate the contract in full or in part in the event of the other Party's material breach of its obligations pursuant



to the contract. This termination will not prevent the terminating Party from also achieving compensation.

14.2. If the Supplier is in a force majeure situation, cf. item 16, which prevents the Supplier from handling the task, KB will be entitled to terminate the contract if the force majeure situation has lasted for more than ten working days.

14.3. Where this is not contrary to the rules of the Danish Bankruptcy Act, KB may terminate the contract if the Supplier files for compulsory liquidation, suspends payments or initiates scheme of arrangement proceedings, or the Supplier's capital and assets are such that it must be assumed that the Supplier will not be able to fulfil the contract. The same applies if the Supplier terminates the activities which the contract concerns, or in the event of other circumstances which jeopardise the due fulfilment of the contract.

14.4. The Supplier will be obliged to hand over material to KB concerning the Solutions(s) which is(are) not terminated, in such a form that it can be immediately passed on to a new supplier in order to complete the task. Such termination will not limit the Supplier's obligations concerning tasks previously undertaken under the contract.

15. Compensation

The Parties will hold liability in accordance with the ordinary rules of compensation under Danish law. Neither of the parties will be liable, however, for operating losses, loss of profits or other indirect losses.

16. Termination ordered by a public authority

If KB is ordered to terminate the contract by a public authority, KB will be entitled to do this. In this case the Supplier's highest claim for compensation will be equivalent to negative contract interest. The Supplier will have no other claims on KB.

17. Force majeure

17.1. Neither of the Parties will be liable to the other Party for any matters which, on the establishment of the contract, they could not have expected, or could not have avoided or overcome, including legal strikes and/or lockouts (force majeure).

17.2. In the event of force majeure which prevents the Supplier's performance of the task, the Parties' obligation will lapse to the extent and for as long as the force majeure situation exists. No payment will be made for the period in which force majeure applies.

17.3. The Party wishing to invoke force majeure must notify the other Party in writing as soon as force majeure is found to apply, and in this notification must state the expected extent and duration of the force majeure situation.



1.7.4. The Supplier will be liable for any extra costs incurred by KB in relation to unlawful strikes and lockouts where the Supplier does not perform the work.

18. Disputes, governing law and legal venue

18.1. Disputes will not give any right to stop the work.

18.2. An amicable resolution to any dispute arising in conjunction with the fulfilment of this contract must first be sought by the Parties.

18.3. If no amicable resolution to the dispute can be found, the dispute will be settled under Danish law before the Danish Maritime and Commercial Court, if the conditions for this are fulfilled, and otherwise before the Court of Copenhagen.

19. Option

The bidder accepts that within a period of two years from the signing of the contract, The Royal Library will be able to purchase a third, equivalent scanner for the same price as stated in item 1, all inclusive.

20. Interpretation

The headings above the provisions in this contract are solely inserted for practical reasons. These headings must be disregarded on interpreting the contract.

Any reference to this contract, or to a provision therein, will also include the annexes to the contract, or the annexes which are relevant to the provision in question.

21. Commencement

The contract with annexes has been created in duplicate, as two duly signed originals, of which each party has received one.

Place:
Date2016

Place:
Date2016

Supplier

National Library

Pernille Drost

Deputy Director General/Head of the

The Royal Library