

JHS 166 Terms and Conditions of Public IT Procurement

Annex 6. Special Terms and Conditions for Consulting Services (JIT 2015 – Consulting)

Version: 2.2

Published: 25 June 2018

Valid until: until further notice

INSTRUCTIONS FOR USE

These Special Terms and Conditions for Consulting Services (*JIT 2015 – Consulting*) are intended to be used for consulting and expert services. These are not intended to be used for employee leasing. Employee leasing refers to an arrangement where a person employed by the supplier works in the client's premises under the client's supervision. *JYSE 2014 Services* terms and conditions may, for example, be applied to employee leasing.

In the agreement on consulting services the object of procurement is specified and the operating procedures are agreed upon. The client will decide on the publicity of consulting results during and after the consulting process. The client is bound by, among others, *the Act on the Openness of Government Activities (621/1999)* and *the Administrative Procedure Act (434/2003)*.

Generally, with a consulting service, the client and the supplier agree on an assignment, on the basis of which a specific end result is produced, such as a report or a plan, which is then reviewed by the client. However, these terms and conditions may also be used in a situation where the consulting covers consulting and advisory services for the client without there being an end result subject to a separate acceptance. In this case, there will be no end results separately handed over and reviewed by the client.

In the agreement on consulting services, special attention should be paid to the rights concerning the results, as consulting assignments differ greatly from one another. Under these terms and conditions, the client will receive very extensive, open rights that permit the client to modify the results of the work and also freely transfer them further to third parties. This allows the re-utilisation of the results of the work also for purposes other than those of the procurement agreement. On the other hand, the supplier, being the holder of the rights, will also have the possibility to utilise the results in its activities.

If the supplier processes personal data on behalf of the client, it is recommended that the *JIT 2015 – Special Terms and Conditions for the Processing of Personal Data (JIT 2015 – Personal Data)* be attached to the agreement.

It is not recommended that these terms and conditions be applied to procurement of an application. There are separate terms and conditions for application procurement in Annexes 2, 3 and 4.

These use instructions do not form part of the agreement.

Agreement date and no.: _____

Annex no.: _____

JIT 2015: Special Terms and Conditions for Consulting Services

Contents

1Scope of application.....	1
2Definitions.....	1
3Provision of the consulting service.....	2
4The client's obligations and responsibilities.....	2
5Joint obligations.....	3
6Rights.....	3
7Acceptance of the results.....	3
8 Delays.....	4
9Transferring the client's material to the client.....	4
10Term and termination of the agreement.....	4

1 Scope of application

(1) These Special Terms and Conditions for Consulting Services are applied when public procurement units procure consulting services for a fixed term, until further notice, or for the performance of a specific task, if these terms and conditions have been referred to in the agreement and to the extent they have not been otherwise agreed upon in writing.

(2) These Special Terms and Conditions are used together with the General Terms and Conditions of Public IT Procurement. In case of any conflict, these Special Terms and Conditions take precedence over the aforementioned General Terms and Conditions of Government IT Procurement with regard to their corresponding provisions.

(3) A consulting service may be an assignment, the results of which are the end results agreed on in the agreement. Consulting may also cover consulting and advisory services for the client without producing any end result subject to a separate acceptance.

2 Definitions

In addition to the following definitions of the Special Terms and Conditions, the definitions of *JIT 2015 General Terms and Conditions* shall be applied.

handover

fi luovutus

the handover of the end result of the service to the client for review

3 Provision of the consulting service

- (1) The agreement specifies the content of the consulting service, the results to be handed over to the client and the schedule. The persons who provide the consulting service may also be specified in the agreement.
- (2) The supplier is responsible for ensuring that the consulting service is provided in compliance with the agreement, with care and at a high professional level in compliance with good consulting practices.
- (3) Unless otherwise agreed, the consulting services shall be provided using the supplier's working methods and processes which the supplier may freely change, if such changes do not cause any additional costs or delay for the client.
- (4) In the consulting service, the supplier shall use persons who, by their qualifications and experience, are suitable for the task. The supplier is responsible for ensuring that they are available to the client in the extent necessary for the task. If the persons who provide the consulting service have been named in the agreement, the supplier is not entitled to replace the persons named in the agreement during the agreement period without the client's consent. If a person named in the agreement is not available for the provision of the consulting service in accordance with the agreement for reasons independent of the supplier, the supplier is obligated to appoint a new person with corresponding qualifications and professional skills and who is accepted by the client. The client may not refuse its acceptance without a justified reason. The supplier is not entitled to charge any costs arising from replacement and induction.
- (5) The supplier commits, upon the client's request, without delay and free of charge, to replace a person who, according to the client's justifiable view, is not suitable for the task in question. If the supplier is unable to appoint a person accepted by the client for the use of the client, the client shall have the right to terminate the agreement with respect to the undelivered part of the work.
- (6) The supplier is responsible for ensuring that all persons taking part in the provision of the consulting service are committed to confidentiality in accordance with the agreement. The use and possible working of the personnel providing the consulting service in the client's premises shall always be subject to the client's security and data protection guidelines as well as any general codes of conduct and any other reasonable guidelines and directions issued by the client. The client shall notify the supplier in advance of all such procedure obligations that are to be followed by the supplier's personnel.
- (7) If the supplier uses citizens of a third country as referred to in the Aliens Act for the provision of the service, the supplier shall be responsible for ensuring that these persons have a residence permit for an employed person as referred to in the Aliens Act or another document providing the right of residence.
- (8) The supplier shall provide the client with information about the progress of the task or hours worked in writing at agreed intervals in the manner specified in the agreement. Unless otherwise agreed, the supplier shall provide the information at least once a month and in conjunction with the handover of the final report.

4 The client's obligations and responsibilities

- (1) The client shall provide the supplier with sufficient and correct information for the consulting service in the agreed format and according to the agreed schedule.
- (2) The client is responsible for the information, instructions and directions it has issued to the supplier.

5 Joint obligations

- (1) Both contracting parties shall reserve, on their own part, the work premises and tools required for the performance of the assignment.
- (2) Each contracting party is responsible for ensuring that it makes the decisions required for the implementation of the consulting service without delay.
- (3) Each contracting party is obligated to contribute to the implementation of the consulting service in situations and contexts that can be controlled or regulated by the contracting party.

6 Rights

- (1) Copyright and intellectual property rights to documents and other results generated as the end result of the assignment belong to the supplier, unless otherwise agreed. Without being limited by the supplier's copyright, other intellectual property rights and business secrets, the client shall have an irrevocable, royalty-free, geographically unlimited and otherwise free right to use, copy, modify and distribute the documents and other results, either in modified or unmodified form, for an unlimited period of time. The client's right covers all purposes of use, both currently known and any new purposes of use possibly generated in the future. Furthermore, the client shall have the right to further assign this right or a more restricted right.
- (2) The right of ownership and intellectual property rights to the client's material belong to the client or a third party, and they are not assigned to the supplier. The supplier shall have the right to process the client's material only for purposes pertaining to the fulfilment of the agreement.
- (3) Unless otherwise agreed or stipulated by law, the client shall decide on the transfer of the end results to third parties.

7 Acceptance of the results

- (1) The supplier shall hand over the interim and end results of the work and other agreed material to the client in accordance with the agreement.
- (2) Unless otherwise agreed by the client and the supplier, the client shall review the results of the work and other material within fifteen (15) weekdays of the handover. The client shall notify the supplier in writing of any errors, defects or other deviations from the agreement it has identified within fifteen (15) weekdays of the actual delivery date of the results of the work. The time reserved for the review shall be extended by the time which the client reasonably requires in order to review and accept the error corrections carried out by the supplier.
- (3) Unless otherwise agreed by the client and the supplier, acceptance reviews in phased deliveries are performed in phases. The client shall review the interim phases of the work within seven (7) weekdays after the supplier has handed over an interim result and notified in writing that the review process may be started. The acceptance of an interim phase will not release the supplier from liability for any errors identified during the review of any later phases or prevent the client from referring to an error in the results of the work, provided that the error could not have been reasonably detected during the review of the interim phase. Unless otherwise agreed, the acceptance of an interim phase is a precondition for the commencement of the following phase.
- (4) The client shall be deemed to have accepted the results of the work or an interim result, if the client has not issued a written notification within the afore-mentioned deadline of fifteen (15) days or, with regard to phased deliveries, within the deadline of seven (7) weekdays. If the service does not include the handover of

JUHTA – The Advisory Committee on Information Management in Public Administration

the results of the work, the service shall be deemed to have been accepted if the client does not issue a written notification within fifteen (15) weekdays after the service has been completed.

(5) Any minor errors and defects in the delivery do not prevent the results of the work from being accepted. However, the supplier is obligated, without any additional charge or undue delay, to correct also such errors and defects.

(6) Each contracting party is responsible for its own costs arising from the performance of the acceptance review.

8 Delays

(1) If a contracting party finds that it will be delayed in its delivery or in its performance of an obligation or considers such delay probable, the contracting party must, without delay and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the agreement. The contracting parties shall agree upon a new delivery time, if required.

(2) If the delivery is delayed due to a reason under the responsibility of the supplier, the supplier shall pay a contractual penalty to the client for every commencing period of seven (7) days by which the supplier exceeds the due date agreed for the delivery or its part under the agreement. The penalty for each above-mentioned period shall be 0.5 per cent of the purchase price of the delayed object of delivery. However, the maximum penalty is 7.5 per cent of the afore-mentioned price. The amount of damage caused by the delay does not affect the amount of the penalty.

(3) The supplier shall not be entitled to receive a contractual penalty due to the client's delay.

9 Transferring the client's material to the client

(1) Insofar as an expert service is used to produce an information system or its part which involves the storage of the client's data material, the supplier shall commit to properly propose to the client that a data description be prepared and that the client's material be stored in accordance with the data material openness requirement. If the client's material is stored in another manner, the supplier commits, during the consulting work and at most for one (1) year after its termination, to providing the client, upon its request, with additional work in order to prepare a data description and store the client's material in accordance with the openness requirement. The hourly rates applied during the consulting work or, if none have been agreed upon, the supplier's customary hourly rates shall be applied to such additional work. This commitment also covers work related to the preparation of a data description in accordance with the openness requirement.

10 Term and termination of the agreement

(1) The agreement shall remain in force for the fixed period of time agreed upon in the agreement and until all of the contractual obligations have been fulfilled. The agreement may also be agreed to remain in force until further notice.

(2) Unless otherwise agreed upon, the client may terminate an agreement valid until further notice with a two (2) weeks' period of notice, and the supplier may terminate it with a six (6) months' period of notice. The notice of termination must be issued in writing.