



# COPENHAGEN METRO M1+M2

## Agreement Asset Condition Assessment

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**Pages:** 13

## Table of attachments

App. no.	Title/Subject
1	Schedule of Prices
2	Code of Conduct incl. front page

## Revision summary

Version	Date	Scope of revision	Change description
0.1	21-02-2017	First edition	

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## Asset Condition Assessment of selected assets within the Copenhagen Metro M1+M2

### 1 Parties

Between

Metroselskabet I/S  
Metrovej 5  
DK-2300 København S  
Denmark

Reg.No. 30823699

in the following called the 'Employer'

and

[...]

in the following called the 'Consultant'

has reached the following agreement on Asset Condition Assessment of selected assets within the Copenhagen Metro M1+M2.

The Employer is represented by O&M Design & Project Manager Dorte-Lene Bacher. The Consultant is represented by [insert title+name] who can make binding decisions and arrangements regarding the project on behalf of the Consultant.

The Consultant has assigned with the following subcontractors:

[insert subcontractors if any ]

The Consultant's use of further subcontractors is subject to the Employer's prior approval.

### 2 Services

The services to be delivered by the Consultant include an asset condition assessment of selected assets as further described in Scope of Services doc. no. MS-X-DA-INVEST STRAT-0110.

Specific key employees are appointed and registered at the List of Key Employees below [below table to be updated cf. tender]:

Employee	Function	Employee name	CV no.

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If resignation or illness necessitates replacement of one or more key functions, the Consultant must immediately replace the key employee with another key employee whose skills and qualification shall, as a minimum, be the same.

If, based on the reasonable assessment of the Employer, cooperation with one of the Consultant's appointed employees does not work satisfactorily, the parties must as soon as possible start discussions on substituting the employee in question.

### 3 Basis for Agreement

For this Agreement the following documents shall apply. In event of discrepancies the documents prevail in the below listed order of priority:

1. The present Agreement incl. Appendixes
2. Negotiation Protocol, [doc ID+ver] dated [ dd-mm-yyyy] (if any)
3. Correction/Clarification Sheet(s), [doc ID+ver] dated [ dd-mm-yyyy] (if any)
4. ABR 89 (in ABR 89 read Client as Employer)
5. Scope of Services, [doc ID+ver] dated [dd-mm-yyyy]
6. Employer's Time Schedule, [doc ID+ver] dated [dd-mm-yyyy]
7. Consultant's tender, [doc ID+ver] dated [ dd-mm-yyyy] including:
  - 7.1. Proposed Methods and Tools
  - 7.2. List of Key Employees
  - 7.3. CV's for Key Employees
  - 7.4. Detailed Time Schedule

Any change to the Agreement can only be made by a written agreement.

If the Consultant is of the opinion that a specific circumstance involves a change in the Agreement, including in the agreed scope of services, the Consultant must without any delay, notify the Employer hereof in writing. Furthermore, the Consultant must specify any consequences in terms of time and/or price, which the Consultant believes that the circumstance in question will involve.

## 4 Services provided by the Consultant

The services (incl. option if called upon by the Employer) to be provided by the Consultant are described in the documents listed in section 3 *Basis for Agreement*.

The Consultant must be able to be represented on a qualified level at meetings at the Employer's address in accordance with the Employer's Time Schedule and the Detailed Time Schedule.

Should the Consultant while performing the services inspect the assets on the Employer's address, the Consultant is obliged to comply with any health and safety requirements applicable for the specific address.

The Consultant is obliged to comply with the Employer's Code of Conduct.

### 4.1 Options

The below options are subject to the Employer's right but not obligation to call off the options. The options are valid until 31.12.2017. The maximum budget, unit rates etc. are in accordance with Appendix 1 Schedule of Prices.

Option 1: Maintenance Status in accordance with Scope of Service, Section 2.1.1.

Option 2: Additional assets in accordance with Scope of Service, Section 2.1.2.

All other conditions in the Agreement and Agreement documents cf. Section 3 apply for the options.

Should the Employer choose to call off one or both options the Employer and the Consultant shall agree upon a detailed time schedule.

## 5 Services provided by the Employer

The services to be provided by the Employer are described in the following documents cf. Section 3 *Basis for Agreement*.

- Document no. 2, Negotiation Protocol (if any)
- Document no. 3, Correction/Clarification Sheet(s) (if any)
- Document no. 4, ABR 89
- Document no. 5, Scope of Services incl. appendices

## 6 Time Schedules

The Consultant shall commence the services upon signing of the Agreement and shall then proceed with the services with due expedition and without delay in accordance with the Detailed Time Schedule.

The Detailed Time Schedule is based on the Employer's Time Schedule and completed negotiations.

Specific milestones and other conditions are described in the Employer's Time Schedule.

If external conditions, which are not or should not be known by the Consultant, change the scope of services resulting in changes in price and/or time, it is the responsibility of the Consultant without any delay to give the Employer written notice hereof, including specification of the conditions in question and consequences in terms of time and price estimated by the Consultant. Subsequent adjustments of time and price must be agreed on by the parties.

Any additional service to be provided by the Consultant under the Agreement, due to the Employer's changed requests shall be submitted in writing to the Employer for approval and acceptance before the Consultant implements any additional services. An extension of the agreement due to additional services may effect time and price.

Disagreements on whether a service is additional or on adjustments of time or price, do not entitle the Consultant to refuse to perform the service in question. Disagreements may ultimately be solved in accordance with section 15 *Disputes and Legal Framework*.

## **7 Prices**

### **7.1 Budget and Deadlines**

Commencement of the Agreement occurs upon signing of the Agreement. Completion of services shall be upon the completion date in accordance with the Employer's Time Schedule.

Specific deadlines and other conditions are described in the Employer's Time Schedule.

The Consultant shall complete all services within the maximum budget of EUR 135,000 excl. options in accordance with Appendix 1 Schedule of Prices.

If external conditions, which are not or should not be known by the Consultant, change the scope of service resulting in overrun of time and/or max. budget(s), it is the responsibility of the Consultant without any delay to give the Employer written notice hereof, including specification of the conditions in question and consequences with respect to the time and budget estimated by the Consultant. Subsequent adjustments of time and/or max. budget(s) must be agreed upon by the parties.

Any additional service to be provided by the Consultant under the Agreement, due to the Employer's request shall be submitted in writing to the Employer for approval and acceptance before the Consultant implements any additional service.

Disagreements on whether a service is additional or adjustments of time or max. budgets do not entitle the Consultant to refuse to perform the service in question. Disagreements may ultimately be solved in accordance with Section 15 *Disputes and Legal Frameworks*.

## **7.2 Fee**

The Fee is specified on consumed hours on the project and the below instructions.

The Fee is calculated by multiplying the hours spent by employees on the task with the relevant rate for each employee in accordance with Appendix 1 Schedule of Prices.

The Consultant shall register hours spent on a daily basis showing how many hours any employee has spent on the services agreed upon in the Agreement. The documentation for hours spent shall be submitted as attachments to the invoice and shall be submitted to the Employer upon Employer's request.

Time spent on correcting errors made by the Consultant cannot be charged.

Time used for travelling within normal working hours from the Employer's office at Metrovej, Copenhagen or any other of the Employer's site(s) to meetings, workshops etc. cannot be charged.

## **7.3 Unit rates**

The unit rates stated in Appendix 1 Schedule of Prices are fixed during the entire Agreement period.

Overtime and working on odd hours are accounted on hourly rates equal to normal working hours.

Travel expenses (cf. ABR 89 (3.2.2 a)):

- All travel expenses, excluding local transportation and expenses for accommodation, are reimbursed.

The Employer pays expenses in accordance with the provisions in ABR 89 (3.2.2 c), d) and e) excluding management expenses, cf. ABR 3.2.3.

Expenses for printing and reproduction are not refunded.

Any cost of additional service(s) and/or adjustment(s) to scope of services are subject to the Employer's approval prior to commencement in accordance with the requirements stated in above section 6 *Time Schedules*.

## **8 Payment**

Fee and expenses are paid monthly as per account rendered. Payment will be at the latest 30 days after the Employer's receipt of correct invoice.

All invoices shall state the Employer's project number and a review-list of all employees on the project, hourly rates, and hour consumption divided into employee categories incl. travel expenses (if any) shall be attached.

Invoices covering expenses shall have copies of expense receipts attached.

Fee invoices, expense invoices and credit notes are submitted digitally to the Employer. The described attachments and copies of original invoices are submitted separately by e-mail to the contact person cf. Section 1.

EAN number: 57900016633940

## **9 Intellectual Property Rights**

The provisions in ABR 89 (4.1) and (4.2) do not apply and are replaced with the following:

The Employer has the entire and unrestricted right of use of the material. This includes the right to change the material (including background material), which the Consultant is preparing in connection to this project including all intellectual property rights attached to this material.

Similarly the Employer has the entire and unrestricted right of use, including the right to change, to ideas, knowhow etc., which the Consultant has developed in connection to this project – even if those ideas/that knowhow etc. may be patentable or protectable by other means.

It is specified that the Employer's right of use also applies in relation to other projects including projects where the Employer acts as a consultant for a third party in relation to construction, operation or maintenance of Metro systems.

Any other intellectual property right to the prepared material and ideas remains with the Consultant.

The Consultant is obliged to enter into agreements with his subcontractors (if any), which ensures that the Employer obtains the same legal position in every aspect to any material prepared by the subcontractors, as stated in section 10, section 14, 3<sup>rd</sup> subsection, and section 15. The Consultant shall upon the Employer's request document those agreements.

The Consultant shall hold the Employer harmless for any costs incl. legal fees raised by third party for breach of intellectual property rights.

## **10 Confidentiality**

The parties are mutually obliged to keep all information brought to their knowledge as part of their contractual relationship provided the information is not generally known or generally accessible, confidential.

The Employer will lead on any and all public relation activities concerning the project. Any statement regarding the Consultant will be stated loyally.

If the Consultant exceptionally has the need to address the public or the media to protect his own vital interests, the content and form of such statements must be reviewed by the Employer in advance.



Further, the Consultant cannot at the time of signing this agreement be in a position as described in ABR 89, section 1.1.3, or at any time during execution of this agreement put himself into such a position.

The Consultant recognises that the Employer is entitled to provide access to documents to the extent laid down in the Danish Public Information Act (*offentlighedsloven*) or the Danish Public Administration Act (*forvaltningsloven*).

## **11 Liability**

Approvals by the Employer do not limit the responsibility of the Consultant.

The liability period expires five years after completion of scope of services, cf. ABR 89, section. 6.2.3.1.

## **12 Insurance**

The Consultant is obliged to cover his responsibilities under the Agreement through below mentioned insurances and coverages:

- i. Professional indemnification insurance with a minimum coverage of EUR 1,300,000,
- ii. Third party liability insurance with a minimum coverage of EUR 1,300,000, and
- iii. Employer's liability insurance.

The Consultant is obliged to maintain the above mentioned insurances at all times and shall submit insurance policies upon request from the Employer.

The insurance company of the Consultant is obliged to pay compensation directly to the Employer, if the Employer is the injured party.

## **13 Postponement and Termination for Convenience**

The provisions in ABR 89 (7.1.1) and (7.2.1) do not apply and are replaced with the following:

The Employer has the right to postpone or terminate the project for convenience at any time with a 4 week notice without paying financial damages, except if explicitly stated otherwise in this section. The Employer pays the Consultant for the performed services agreed with the Employer until the point of postponement or standstill.

In case of termination for convenience, the Employer is entitled to use the material prepared by the Consultant as stated in section 10 *Intellectual Property Rights* without compensation.

The conditions also apply for partial postponement or partial termination for convenience.

## 14 Termination

Examples of non-performance where the provisions of ABR 89 section 8 apply are:

1. If an agreed budget is significantly exceeded without prior notice
2. If the Consultant repeatedly does not provide agreed upon services within agreed upon time
3. If the Consultant repeatedly provides services of reprehensible quality
4. If the Consultant violates the Employer's Code of Conduct

If the agreement is terminated due to pin 1), or 4), the first sentence of ABR 89 section 8.3 does not apply.

Regardless of the reason for termination, a termination of the agreement has no impact on the Employer's right to material already prepared by the Consultant cf. section 10 *Intellectual Property Rights*.

## 15 Disputes and Legal Framework

Disputes are processed as specified in ABR 89, section 9, however the reference to AB 72 is changed to AB 92 § 47. Arbitration will take place in Copenhagen and the process language is English.

If the Employer, based on the services provided by the Consultant, initiates proceedings or is sued in the ordinary courts in Denmark or in another court or arbitration, and the dispute relates to the present agreement, the Employer may demand that the Consultant joins the proceedings. The same applies if the Employer in the ordinary courts in Denmark or in another court of arbitration initiates an expert witness procedure, or if the Employer is involved in an expert witness procedure in the ordinary courts in Denmark or in another court of arbitration.

On demand the Consultant must provide documentation that the above provisions are also included in the contract with subcontractors (if any).

The relationship between the parties is governed by Danish laws.

### 16 Signatures

<i>For Metroselskabet I/S:</i>	<i>For [insert name of Consultant]:</i>
Name:	Name:
Title:	Title:
Date:	Date:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Signature:	Signature:

# Appendix 1

## Schedule of Prices

[insert agreed prices cf. ITT, Appendix C]

## **Appendix 2**

### **Code of Conduct (front page only)**