Call for Tenders - Grant Agreement SA/CEN/GROW/EFTA/515/2016-02

Volume 2 - Contract terms and Conditions

Request for tenders for 22 project team leaders, up to 88 technical experts and 1 technical reviewer, in response to Mandate M/515 phase 2 tasks for the development of the 2nd generation of EN Eurocodes

Launch: 19 December 2016  Deadline for tenders: 6 February 2017

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OVERVIEW OF ALL DOCUMENTS FOR THE CALL FOR TENDER-GRANT AGREEMENT CEN/2016-02

The complete list of documents available to Tenderers contains the following elements:

- **Volume 1 (available separately): Instructions to Tenderers** – This volume provides full instructions on how the Tender Process shall be organized and how and when Tenderers should submit their responses to the questions contained within and to the award criteria;

- **Volume 2 (this document): Contract terms and Conditions** - This Volume contains the documentation for Contracts and general terms and conditions;

- **Volume 3 (available separately): The Specification** – This volume contains the scope/brief, outlining the requirements.

- **Volume 1 Annex 2 (available separately): Template for quality submission** – This word document provides the template for the quality submission

- **Volume 1 Annex 3 (available separately): Template for financial submission** – This excel document provides the template for the financial submission

All the volumes can be found on [www.nen.nl/eurocodes2020](http://www.nen.nl/eurocodes2020).
Table of contents

1 General.................................................................................................................................................. 4
Annex A The Contract.................................................................................................................................. 5
Annex B General terms and conditions for the provision of technical services to NEN ......................... 8
   B.1 Applicability..................................................................................................................................... 8
   B.2 Notices ............................................................................................................................................ 8
   B.3 Amounts payable ............................................................................................................................. 8
   B.4 Subcontracting, employing and hiring .............................................................................................. 9
   B.5 Termination....................................................................................................................................... 9
   B.6 Technical reference authority .......................................................................................................... 10
   B.7 Liability ........................................................................................................................................... 10
   B.8 Transferability ................................................................................................................................. 10
   B.9 Choice of law .................................................................................................................................... 11
   B.10 Jurisdiction ..................................................................................................................................... 11
   B.11 Invoicing ...................................................................................................................................... 11
   B.12 Duty to keep documents and obligation to provide information ..................................................... 12
   B.13 “Force Majeure” and Severance .................................................................................................... 12
   B.14 Entire Agreement and variation ....................................................................................................... 13
   B.15 Confidential Information ................................................................................................................ 13
   B.16 Provisions relating to fiscal and social security charges ............................................................... 13
Annex C Assignment of exploitation rights ............................................................................................... 15
1 General
This document contains:

Annex A: The Contract

Annex B: General terms and conditions for the provision of technical services to NEN

Annex C: Assignment of exploitation rights

Tenderers should note that this information will form part of the contract that is awarded to members of the Project Team. The information in this document should be considered carefully by the Tenderer.
Annex A  The Contract

Contract related to CEN/TC 250 Mandate M/515 Phase 2

between

Stichting Nederlands Normalisatie-instituut Vlinderweg 6, 2623 AX Delft, The Netherlands

"NEN"

and

[Contractor’s details]

“Contractor”

Contractor provides to NEN for this Agreement the services of:

[Contractor’s Nominated expert’s name]

“Consultant”

Considering

NEN and the Contractor wish to run the work by an Engagement Contract exclusively as referred to in Article 7:402 of the Dutch Civil Code, where NEN is free to provide instructions in relation to the assignment, while Contractor nevertheless performs the Contract independently and is in that sense free to determine the order in which it is executed.

It is explicitly not the intention of NEN and Contractor to enter into an Employment Agreement according to Article 7:610 of the Dutch Civil Code. In those situations where the work is provided by home workers or similar, as defined in Articles 2b and 2c of the Dutch Income Tax Act of 1965 and Articles 1 and 5 of Decision December 24th 1986, Stb. 1986, 655, NEN and Contractor decide not to apply - and engage in a fictitious employment.

NEN and Contractor therefore have concluded this agreement to record the work, relationship and terms and conditions in signed writing before payment takes place.
A.1. Agreed terms

SD  Start Date of the Project: January 1st 2017
EC  European Commission
EFTA  European Free Trade Association
CEN  European Committee for Standardization
TC  Technical (standardization) Committee

A.2. General

A.2.1 Following the Contractor’s reply to the Call for Tender-Grant Agreement SA/CEN/GROW/EFTA/515/2016-02, NEN hereby assigns the [Project Team Role] for Project Team [Project Team designation] to the Consultant, starting on the Start Date plus 7 months.

A.2.2 The following documents form part of this Contract:

1. Volume 2, Annex B: General terms and conditions for the provision of technical services to NEN
2. Volume 2, Annex C: Assignment of exploitation rights
3. Volume 3: Technical Specifications
4. Responses to Tender queries
5. Contractor’s Tender submission

A.2.3 NEN and the Contractor agree to an Engagement Contract as referred to in Article 7:400 of the Dutch Civil Code.

A2.4 The Contractor is free to work for third parties in addition to this Contract.

A.3. Budget and declarations

A.3.1 This Contract is time based with a budget ceiling. Payments will be handled after acceptance of the work by the Technical reference authority after specific milestones defined in the table in A.3.6.

A.3.2 The budget is restricted to the time spend on the work by the Consultant.

A.3.3 Invoices should follow the provisions in B.11 and should be sent to NEN, by email to M515Eurocodesphase2@nen.nl, with reference to the CEN/TC 250 [Project Team designation] and Purchase Order number [PO-number] for the year 2017 (Milestone 0). NEN will provide you with a new Purchase Order number per year (per Milestone).

A.3.4 The maximum budget excluding VAT for this Contract is: [Costs]

A3.5 The agreed rate per 8 hour day during the Contract period is: [Dayrate]. All expenses (including travel and lodging costs) incurred in the context of this project are included in this rate.
A.3.6 The milestones for invoicing are:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date *</th>
<th>Maximum amount to invoice</th>
<th>Note b</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Start Date (SD) + 9 months</td>
<td>25% (prefinancing)</td>
<td>25 % upfront at start of Project Team</td>
</tr>
<tr>
<td>1</td>
<td>SD + 16 months</td>
<td>+17,5% minus amount previously invoiced</td>
<td>Invoice from SD to SD + 16 months based on all actuals up to that point.</td>
</tr>
<tr>
<td>2</td>
<td>SD + 28 months</td>
<td>+32,5% minus amounts previously invoiced</td>
<td>Invoice based on all actuals from previous milestone to current.</td>
</tr>
<tr>
<td>3</td>
<td>SD + 40 months</td>
<td>+25% minus amounts previously invoiced (balance)</td>
<td>See milestone 2</td>
</tr>
</tbody>
</table>

* NEN’s milestones for interim reporting to EC/EFTA are SD + 20 months and SD + 32 months. NEN’s deadline for a final report to EC/EFTA (including full audits) is SD + 44 months.

b Payments of invoices follows upon approval by the Technical reference authority. The delay between the receipt of the deliverables from the experts and NEN being in a position to issue the payment may be in the order of several months.


A.4.1 On behalf of NEN, [NEN Project Leader’s Name], is the M/515 Phase 2 project leader.

A.4.2 The NEN/NEC travel policy for subcontractors is applicable.

A.4.3 The Contractor agrees with the assignment of exploitation rights as given in Annex C.

A.4.4 The terms and conditions of this Contract are subject to Dutch law.

Signatures

For NEN, For the Contractor

[NEN Legal Representative] ..................

Done at Delft, on ...................... Done at .........................., on ......................

In duplicate in English
Annex B  General terms and conditions for the provision of technical services to NEN

B.1  Applicability
B.1.1  The terms and conditions contained in this Annex are applicable to any Contractor for AGREEMENT FOR THE PROVISION OF TECHNICAL SERVICES TO NEN, the Netherlands Standardization Institute, a foundation registered in the Netherlands.

B.2  Notices
B.2.1  Any notice required or permitted to be given under the present Agreement by one party hereto to the other shall be in writing and shall be deemed to have been given as of the second business day following the date of mailing if mailed to the party to whom notice is to be given, by registered or certified mail, postage prepaid and properly addressed.

B.3  Amounts payable
B.3.1  A maximum expense allowance (i.e. maximum budget) for this work is specified in Article A.3 of the Contract. This maximum expense allowance limit may apply in two different kinds of, not mutually exclusive, circumstances:

- The maximum expense allowance for the services covered by this Contract depends upon a budgetary envelope made available for this work. Therefore no extension whatsoever of the work undertaken, even if perfectly justified by the circumstances, can implicitly or automatically lead to an expense allowance increase.

- The maximum expense allowance for the services covered by this Contract depends on the progress or completion of the activity to the satisfaction of EC/EFTA and notification thereof to NEN. (EC/EFTA has the obligation to respond within 60 man-days, additional enquiries by EC/EFTA may result in suspensions to this timeframe, such suspensions will end when the required information has been provided by NEN). Provided NEN has received notification of satisfactory completion from EC/EFTA, correct and undisputed invoices for the services shall be paid by NEN to the Contractor within 15 workdays.

- In case (an) initially foreseen payment(s) from the EC/EFTA to NEN is (are) not executed due to the failure to deliver (entirely) the foreseen deliverable(s), the Contractor will no longer have the right to claim the related payment(s), even in those cases where the failure to deliver is caused by factors outside the will of the Contractor.

B.3.2  The Contractor will be informed completely and as soon as possible about any disruption in the processes, possibly affecting the payments under this Contract and the corresponding tasks to be executed.
B.4 Subcontracting, employing and hiring
B.4.1 The Contractor is prohibited from subcontracting to third parties for the services provided under this Contract.

B.5 Termination
B.5.1 The Contract may be terminated without compensation by either party to the Agreement upon three months' prior written notice to the other party.

The Contractor shall be entitled to accrued and unpaid compensation due to Contractor as of the date of termination payable, corresponding only to the part of the Agreement fulfilled, after deduction of advance payments.

B.5.2 The Contract may, at the option of the CEN/TC 250 Management Group be immediately terminated, without prior notice:

I. upon the death of the Consultant or if the Consultant shall be rendered incapable by illness or any other valid cause from complying with the terms or provisions of the Contract for a period of time NEN determines to be unreasonable;
II. if the Contractor materially breaches any of the terms or provisions of the Contract;
III. if the Contractor habitually neglects the duties as contemplated under the Contract;
IV. if the Contractor is adjudged bankrupt or applies for judicial or extra-judicial bankruptcy or liquidation or dissolution or otherwise discontinues business or if a receiver, administrator, custodian, liquidator or the like is appointed to administer property or assets of the Contractor. In the event of termination under this provision, the termination shall be effective as of the date of notice of termination.

B.5.3 In the event of failure by the Contractor, duly notified by registered letter from NEN, to fulfil the obligations of the Contractor under this Contract, the Contractor will be given three weeks to resolve the failure.

If no acceptable solution takes place in these three weeks, the Contract may be terminated by registered letter without prior notice or payment of any compensation whatsoever by NEN, notwithstanding NEN’s possibility to recover all damages caused by Contractor.

B.5.4 If the total of advance payments made before the date of termination exceeds the sum finally due, the Contractor shall repay the excess in full to NEN within 60 man-days upon receipt of a request for repayment.

B.5.5 In the event the Contractor’s services are no longer provided to NEN, the Contractor agrees to deliver promptly to NEN all documents, memoranda, reports, files, samples, correspondence, lists, or other written or graphic (digital) records, and the like, relating to NEN’s business, which are or have been in possession of the Contractor or under control of the Contractor. Such materials shall be and remain NEN’s sole property, regardless of who actually prepared...
the original materials. A copy of the work done by the Contractor may be kept by the Contractor for educational or research purposes only.

B.6 Technical reference authority

B.6.1 The technical reference authority, EC/EFTA and CEN, is referred to in Article A.3.1 of the Contract and may also play a role in the judgment of delivery and amounts payable as mentioned in Article B.3.1 of this Annex.

B.6.2 This authority is the entity normally participating in the technical judgement of deliveries resulting from the work in which the Contractor is involved.

B.6.3 In practice the responsibility of the technical reference authority is delegated by EC/EFTA and CEN to:

1. The CEN/TC 250/Management Group with regards to the performance of CEN/TC 250 Subcommittee chairpersons and CEN/TC 250 Working Group Convenors;
2. The relevant CEN/TC 250 Subcommittee chairpersons and CEN/TC 250 Working Group Convenors with regards to the performance of Project Team leaders;
3. The respective Project Team Leaders with regard to the performance of individual Project Team members.

B.6.4 The Project Team Leader has overall leadership responsibility for successful delivery of the task to NEN, and the individual Project Team members should accept the instructions of the Project Team Leader to this end. For the avoidance of doubt the Project Team Leader shall have no liability for the work undertaken by the Project Team members.

B.7 Liability

B.7.1 The services shall be performed with skill, care and diligence in accordance with normal professional engineering and consulting standards and practices.

B.7.2 Neither NEN nor the Contractor nor their Directors or Employees may under any circumstances or for any reasons whatsoever be held liable to each other or to each other’s personnel for damage sustained during the performance of the Contract.

B.7.3 Neither NEN nor the Contractor is responsible to the other for insuring the other Party.

B.7.4 NEN indemnifies the Contractor and the Consultant against all claims from third parties on account of damage or loss suffered by these third parties resulting from the application or use of the result of their work by CEN or by another person to whom NEN or CEN has made available the said result, unless there is a question of intent or gross negligence on the part of the Contractor or Consultant with respect to the assigned activities.

B.8 Transferability

B.8.1 The rights and obligations vested upon the Contractor and Consultant are personal obligations and are as such not transferable without the prior written consent of NEN.
B.9 **Choice of law**
B.9.1 The Contract and the rights and obligations of the parties there under shall be governed by and construed in all respect in accordance with the laws of the Netherlands.

B.10 **Jurisdiction**
B.10.1 Any difference or disputes arising in relation to the Contract shall be settled by an amicable effort in good faith by the parties.

B.10.2 An attempt to arrive at settlement shall be deemed to have failed as soon as one of the parties so notifies the other in writing.

B.10.3 In the event of any dispute between the contracting parties that cannot be resolved by mutual agreement, both parties may agree to mediation. Either party may propose a procedure and person(s) for mediation to the other party within 10 workdays after notification of the failed attempt to settlement, to which the other party will reply within 10 workdays. The mediation attempt may be considered a failure when no agreement can be reached between both parties on a procedure for mediation within 40 workdays after the initial proposal for mediation.

B.10.4 If an attempt as settlement has failed, the courts of the Netherlands shall have exclusive jurisdiction to determine any dispute arising between the contracting parties in the performance of the Contract in accordance with Dutch law.

B.10.5 No claim, demand, action, proceeding, arbitration, litigation, hearing, motion or lawsuit arising with respect to the Contract shall be commenced or prosecuted in any jurisdiction other than in the jurisdiction of the Netherlands, and any judgement, determination, finding or conclusion reached or rendered in any other jurisdiction shall be null and void between parties.

B.11 **Invoicing**
B.11.1 With regards to Article B.3, only the following categories of costs are eligible under this Contract:

- The costs of the Consultant.

B.11.2 A specific Purchase Order (P.O.-number) shall be provided by NEN to the Contractor. Invoices shall mention this P.O.-number, the Project Team designation, the Grant Agreement SA/CEN/GROW/EFTA/515/2016-02 and should be sent to NEN according to the schedule provided with this Contract. Invoices that do not contain these requirements, or are addressed incorrectly, or do not correspond to the invoicing schedule may be considered invalid and may be disregarded.

B.11.3 Clearly readable time sheets shall be provided to NEN.

B.11.4 Incomplete invoices from the Contractor, or missing time sheets, may cause delays in payment.
B.11.5 The invoice may not exceed the maximum of 8 hours per day, nor exceed the tendered pricing per hour. Declarations may not exceed the assigned budgets given in the Contract unless overspending the assigned budgets is granted in writing by NEN.

B.11.6 Invoices from outside the Netherlands should not include VAT.\(^1\)

**B.12 Duty to keep documents and obligation to provide information**

B.12.1 The Contractor shall keep all original documents, especially accounting and tax records, including receipts from travel expenses made for this Contract, stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance for the action concerned.

B.12.2 This five years period shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the Contract. In such cases, the Contractor shall be informed by NEN and the Contractor shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

B.12.3 The Contractor shall provide any information, including information in electronic format, requested by NEN, or by any other outside body authorised by it, in the context of technical and financial checks, audits or evaluations in relation to the use of this Contract.

**B.13 “Force Majeure” and Severance**

B.13.1 “Force Majeure” shall mean any circumstance beyond the reasonable control of the party affected thereby, which party shall not be considered in breach of Contract or under any liability whatsoever.

B.13.2 Without prejudice to the generality of the foregoing and without limitation, the following shall be regarded as such circumstances:

I. Acts of God, explosion, flood, lightning, tempest, fire or accident;
II. war, terrorism, hostilities (whether war be declared or not), invasion, act of foreign enemies;
III. rebellion, revolution, insurrection, military or usurped power of civil war;
IV. riot, civil commotion or disorder;
V. acts, restrictions, regulations, bylaws, refusals to grant any licenses or permissions, prohibitions or measures of any kin on the part of any governmental authority;
VI. import or export regulation or embargoes;
VII. strikes, lock-outs or other industrial actions or trade disputes of whatever nature.

B.13.3 If either of the parties is prevented from performing its obligations under this Contract as a result of events or circumstances outside its reasonable control (”force majeure”) then it shall not be in breach of this Contract by reason thereof and time for performance shall be

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1 in most cases reverse charge applies
extended by a period equivalent to that during which performance is so prevented, provided that if such prevention of performance persists for more than 8 weeks then the party not affected by such circumstances of force majeure shall be entitled to terminate this Contract forthwith by notice in writing on the other party.

B.13.4  Should any paragraph or provision of these General terms and conditions be held to be void, invalid or inoperative, it shall not affect any other paragraph or provision thereof, and the remainder of the Contract and the General terms and conditions shall be effective as though such void, invalid, or inoperative paragraph or provision had not been contained therein.

B.14  Entire Agreement and variation
B.14.1  This Contract (including the Annexes) contains the entire agreement and understanding between NEN and the Contractor.

B.14.2  This Contract may not be changed, modified, or discharged other than with the written agreement of both parties signed by the Contractor and by NEN.

B.15  Confidential Information
B.15.1  Any property including intellectual property and Confidential Information provided by NEN to the Contractor or to the Consultant in connection with this Contract shall remain the property of NEN and shall only be used in the execution of the services to be provided under this Contract and for no other purpose without the prior written consent of NEN.

B.15.1  During the term of this Contract and for a period of five (5) years after termination howsoever arising, the Contractor or the Consultant shall disclose such Confidential Information only to those people who are directly engaged in carrying out the technical services.

B.15.1  For the purposes of this clause, Confidential Information shall not include information that is already in the public domain, is otherwise lawfully known to the Consultant at the time of disclosure, is obtained lawfully from a third party or independently developed by the Contractor or Consultant, or which is required to be disclosed in order to comply with a legal requirement.

B.16  Provisions relating to fiscal and social security charges
B.16.1  Any corporate or personal tax formalities or social security charges resulting from this Contract for the Contractor or Consultant will be solely born and paid by the Contractor or the Consultant. The Contractor or Consultant shall indemnify NEN.

B.16.2  NEN and the Contractor explicitly declare that they do not intend to enter into an Employer/Employee relationship between NEN and Consultant. NEN and the Contractor commit to performing their mutual contractual obligations in accordance with those prevailing for an Engagement Contract.
B.16.3 If the Contractor and the Consultant are the same individual:

I. The Contractor certifies that he is covered by a social security scheme in the capacity of both Contractor and Consultant, and that he has taken adequate provision to cover the professional risks related to the performance of the present Contract.

B.16.4 If the Consultant is an employee of the Contractor:

I. The Contractor declares that the Consultant is an employee of the Contractor and shall perform his obligations under this Contract without any bound of subordination to NEN and shall therefore not be deemed to be an employee of NEN.

II. The Contractor shall continue to fulfil all legal obligations of an employer (e.g. social service contributions and charges, medical insurance contributions, fiscal charges and other charges which are to be borne by any employer) and in addition shall ensure that adequate provision is made, whether by insurance or otherwise, to compensate the Consultant for any injury or illness suffered by him in the course of the performance of the present Contract.
Annex C  Assignment of exploitation rights

C1. In the framework of the Berne Convention for the protection of literary and artistic works:
   
a) By signing this Assignment of Exploitation Rights, the Contractor and the Consultant assign solely, exclusively and irrevocably to Comité Européen de Normalisation (CEN) for the benefit of its national members the exploitation rights in such of their intellectual contributions as are reproduced in the publications resulting from the technical work of CEN, as defined in paragraph 1.2 of CEN Internal Regulations Part 2. This assignment is granted free of charge, and covers the forms of exploitation specified below, throughout the world, for the total duration provided for by law. They accept that exploitation will take place without mention of their name.

b) The Contractor and the Consultant experts accept that this assignment does not preclude them from continuing to exploit their own copyrightable contribution for their own purposes provided that such exploitation does not adversely affect the exploitation of the publications specified in (a) above.

C2. Should the Contractor or the Consultant offer intellectual contributions for which they do not personally hold the copyright, they undertake to declare this to CEN or an appropriate official of one of its member bodies and to name the holder of the copyright if known to them.

C3. These Terms and Conditions are subject to Dutch law.

FORMS of EXPLOITATION  The assigned exploitation rights cover the right to reproduce, to adapt, distribute, sub-distribute, adjust, translate, rent, lend, derive revenue from duplication and loan, communicate to the public in total or in part, in summary or with comments, transfer all exploitation licences and authorize all sub-distribution. The exploitation rights cover all languages and covers all forms of exploitation known at present, in particular and non-restrictively: publication by all means and all graphical support systems, by print, press, photocopy, microfilms, and via all magnetic, computerised and numerical support systems, memory cards, CD-Roms (CD digital compact discs), films, photographs, slides, teledistribution, cable, satellite, diskettes and on-line document servers and networks

For acceptance

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