

PART II OF THE TENDER DOCUMENTATION NS 8407

**Conditions of contract
Contract: E3 Sea Barriers
Project: 540026 Protection Operational Part**

The Norwegian Defence Estates Agency's General Conditions of Contract for Design and Build Contracts Based on NS 8407

Appendices:

- Template for the contract document
- Guarantee declaration
- Guarantee declaration for advances
- Insurance certificate – property insurance
- Insurance certificate – liability insurance
- Notification forms

The aforementioned documents are only intended as guidance for the bidders, and they shall thus not be completed in connection with the submission of a tender.

TABLE OF CONTENTS

GENERAL CONDITIONS OF CONTRACT FOR CONTRACTS BASED ON NS 8407.....	3
1 General conditions of contract.....	3
2 Definition of the term "builder" (NS 8407, section 1.1)	3
3 Communication between the parties (addition to NS 8407)	3
4 Notices and claims (NS 8407, section 5).....	3
5 Parties' provision of security (NS 8407, section 7)	3
6 Design and build contractor's insurance (NS 8407, section 8)	3
7 Parties' representatives (NS 8407, section 9)	4
8 Agents and independent contractors (NS 8407, section 10)	4
9 Assignment of contractors. Construction site management etc. (NS 8407, section 12)	5
10 Engineering, advisory services etc. (NS 8407, section 16)	5
11 CONDITIONS ON THE CONSTRUCTION SITE (NS 8407, section 18).....	6
12 Ethical requirements.....	6
13 Progress status and notification (NS 8407, section 21.3).....	8
14 Builder's right to inspect (NS 8407, section 20.2).....	8
15 Right to order changes (NS 8407, section 31.1).....	9
16 Special notice of increased expenses for rigging and operations, etc. (NS 8407, section 34.1.3)	9
17 Disagreement on changes (NS 8407, section 35).....	10
18 Preparation for handover (NS 8407, section 36)	10
19 Trial operation (NS 8407, section 38.2).....	10
20 Delays (NS 8407, section 40).....	12
21 Repairs (NS 8407, section 19.3)	12
22 Use of documents / project-related information (addition to NS 8407)	12
23 Norwegian Defence Estates Agency's ethical requirements	12
24 Contracts subject to security restrictions (addition to NS 8407)	12
25 NATO work (addition to NS 8407)	13
26 Disputes (NS 8407, section 50).....	13
APPENDICES.....	14

General conditions of contract for contracts based on NS 8407

1 General conditions of contract

NS 8407:2011 *General conditions of contract for design and build contracts* applies as the general conditions of contract, with the additions, clarifications and changes stated below.

The clarifications and changes to NS 8407 are stated in chronological order with references to the relevant provision in the standard.

The Norwegian Defence Estates Agency's own form is used as the contract document. The template for the contract document has been enclosed.

2 Definition of the term "builder" (NS 8407, section 1.1)

The Norwegian Defence Estates Agency is the builder. The builder's clients, tenants and users are regarded as third parties in relation to this contract. Therefore there is no identification between the builder and these parties.

3 Communication between the parties (addition to NS 8407)

Unless otherwise agreed, all communication between key persons in the project shall take place in Norwegian.

4 Notices and claims (NS 8407, section 5)

The following is added to NS 8407, section 5, first paragraph: The Norwegian Defence Estates Agency has prepared a form, the "Design and Build Contractor's Form" for the submission of notices and claims. The form is enclosed with Part II of the tender documentation and can be downloaded electronically from <http://www.forsvarsbygg.no/For-leverandorer/Kontraktsbestemmelser/>.

5 Parties' provision of security (NS 8407, section 7)

The design and build contractor's provision of security in accordance with NS 8407, section 7, shall be documented within 14 days after entering into the contract by completing and submitting the enclosed form, *Guarantee Declaration*, unless otherwise specified below.

When the contract sum does not exceed NOK 250,000, the design and build contractor is not required to furnish security during the execution and warranty period.

6 Design and build contractor's insurance (NS 8407, section 8)

The property insurance shall be in force until all the work related to the entire building, facility and/or project has been handed over to the builder.

The design and build contractor's insurance in accordance with NS 8407, section 8, shall be documented within 14 days after execution of the contract by completing and submitting the enclosed forms, *Insurance Certificate for Property Insurance and Insurance Certificate for Liability Insurance*.

7 Parties' representatives (NS 8407, section 9)

The project manager is the builder's representative, cf. (NS 8407, section 9).

The builder's clients, tenants and users cannot impose obligations on the builder without special authorisation. The same applies to contracted advisers and consultants.

8 Agents and independent contractors (NS 8407, section 10)

8.1 Selection of agents and independent contractors (NS 8407, section 10.1)

The provision shall be completed with the following text:

Duties

The work shall be performed by the design and build contractor and the contractor's employees in a contractual employment relationship, alternatively by subcontractors and their employees, or by means of legally contracted manpower. The builder may determine that subcontract agreements with sole proprietorships or the use of contracted manpower shall be approved in writing by the builder. The builder's approval does not change the design and build contractor's obligations in relation to the builder.

The design and build contractor may not have more than two levels of subcontractors below it in a chain.

To enter into contracts relating to underlying contracts and contractual employment relationships or the contracting of personnel (hereinafter referred to as subcontractors), the design and build contractor shall obtain a Certificate for Tax and Value-Added Tax (RF-1316) from subcontractors. From subcontractors with business addresses in EEA countries other than Norway, the corresponding certificates shall be obtained as described in section 20-12 (3) of the Public Procurement Regulations.

The design and build contractor shall also require a HSE self-declaration for underlying supplier relationships upon entering into contracts for projects with a value in excess of NOK 500,000 excl. VAT. The HSE self-declarations must conform to the template in the contract, Part I of the Tender Documentation.

The design and build contractor must be able to document at any given time that the manpower used satisfies the conditions of contract, including that subcontractors/contracted personnel have fulfilled their obligations to the tax authorities. This documentation duty also encompasses the subcontractor and their personnel. A ring binder with the aforementioned tax certificates and HSE self-declarations shall be available at any given time on the construction site.

All agreements relating to the subcontractor relationship must contain provisions concerning the execution of the works, conditions on the construction site and execution of subcontractors that are identical to those in this document.

The builder's refusal to approve the design and build contractor's choice of subcontractors/agents and independent contractors pursuant to this provision does not entitle the design and build contractor to remuneration of any extra costs it may incur in this connection.

Sanctions

Breaching the duty to obtain HSE self-declarations or tax certificates entitles the builder to require the design and build contractor to replace the subcontractor or contracted personnel concerned with another subcontractor or other contracted personnel who can submit the required information. The same applies if information in tax certificates or obtained self-declarations shows that the subcontractor or contracted personnel have not fulfilled

their obligations to the tax authorities and other authorities. Costs attributed to terminating the subcontractor's or agent and independent contractor's contract shall be borne by the design and build contractor.

The builder may request payment of daily liquidated damages if the design and build contractor itself or any of its subcontractors are using illegal workers or workers that do not comply with the contract and this situation has not been rectified within a reasonable period specified in a written notice from the builder. The liquidated damages remain in force from the expiration of the deadline until the situation has been rectified. The liquidated damages shall be equivalent to one thousandth of the contract sum, but no less than NOK 10,000 per weekday. The liquidated damages shall be paid in addition to any daily liquidated damages for delay.

Failure to rectify the defect by the expiration of the deadline will be regarded as a material breach that can be claimed by the builder as grounds for termination for a period of 1 month after the expiration of the deadline.

8.2 The builder's entry into contracts with subcontractors/subsuppliers etc. (addition to NS 8407, section 10)

The builder is entitled to accede to the contractor's contracts with subcontractors, subsuppliers or other agents and independent contractors in cases where the design and build contractor materially breaches the existing contract or the contract with a subcontractor, subsupplier or other agent and independent contractor, stops payments, becomes insolvent or goes bankrupt.

The design and build contractor is obliged to secure this right for the builder by including clauses that protect these rights in the contracts with the contractor's own subcontractors, subsuppliers or other agents and independent contractors.

9 Assignment of contractors. Construction site management etc. (NS 8407, section 12)

9.1 Assignment of side contractors (NS 8407, section 12.2)

Since the builder is a state entity, it is not required to furnish security pursuant to sections 7.1, 7.3, 35.1 and 42.3 of NS 8407. For the assignment of side contractors, the design and build contractor is nevertheless required to furnish security in relation to the side contractor in accordance with these provisions.

9.2 Mark-up rates

Unless otherwise agreed:

- the mark-up rate for assignment is 10% (NS 8407, section 12.2.4)
- the mark-up rate for construction site management and progress control is 5% (NS 8407, section 12.4.2)

10 Engineering, advisory services etc. (NS 8407, section 16)

10.1 Engineering (NS 8407, section 16.1)

10.1.1 Requirements for handing over engineering materials

Drawings, descriptions and calculations shall be handed over in triplicate. This applies both to drawings prepared during the construction phase and the drawings that are to be delivered upon completion ('as-built' drawings). The latter drawings shall also be delivered in an electronic format, in accordance with detailed specifications from the builder. This also applies to descriptions and calculations if required by the builder.

10.1.2 Requirements for the engineering function

Unless otherwise stated in Part I or Part III of the tender documentation, the following requirements apply:

- a) The engineering shall be performed by a complete engineering group.
- b) The people who carry out the engineering must be well qualified and experienced in engineering installations/buildings of equivalent scope and complexity.

10.2 Public permits (NS 8407, section 16.3)

The design and build contractor shall have the right to accept responsibility for the task and the part of the project encompassed by the contract in the enterprise classification that is required by the project, including any function as a responsible applicant. The design and build contractor is required to apply for such rights to accept responsibility as soon as possible after entering into the contract.

The lack of the right to accept responsibility is regarded as a material breach of contract, which entitles the builder to terminate the contract, as well as to make claims for damages in accordance with the rules in NS 8407, section 46.

If the design and build contractor is not the responsible applicant, it is required to assist the responsible applicant in connection with the necessary applications and permits pursuant to the Planning and Building Act.

11 CONDITIONS ON THE CONSTRUCTION SITE (NS 8407, section 18)

11.1 Safety, health, working environment and external environment (addition to NS 8407, section 18)

In Part III-B of the Tender Documentation, the contractor is responsible for a number of duties to safeguard the requirements pertaining to safety, health, the working environment and the external environment. If these duties are not fulfilled, the builder is entitled to stop the work if it finds this to be necessary.

The builder may claim daily liquidated damages if these duties are breached and the matter is not rectified within a reasonable deadline set by written notice from the builder. The liquidated damages remain in force from the expiration of the deadline until the situation has been rectified. The liquidated damages for weekdays shall be equivalent to a thousandth of the contract sum, but no less than NOK 1,500. The liquidated damages shall be paid in addition to any daily liquidated damages for delay.

Failure to rectify the matter by the expiration of the deadline is regarded as a material breach that can be claimed by the builder as grounds for termination in a period of 1 month after the expiration of the deadline. For the breach of such duties that cannot be rectified, a fine of NOK 10,000 is incurred for each instance.

12 Ethical requirements

12.1 Employee rights

12.1.1 ILO core conventions

For all contracts that exceed NOK 1,000,000, excl. VAT, the design and build contractor shall comply with the following basic requirements:

- a) Ban on child labour (UN Convention on the Rights of a Child, Article 32, ILO Convention Nos. 138 and 182): Children are entitled to protection from economic exploitation in work and from performing any work that is likely to diminish the child's opportunities for education and development. The minimum age must not under any circumstances be below the age of 15 (14 or 16 in certain countries). Children under the age of 18 must not carry out any work that can jeopardise their health or safety, including night work. If such child labour is practised, efforts shall be made to quickly phase out such labour. Provisions should also be made to ensure that the children are given a means of subsistence, and opportunities for education until they are no longer of compulsory school age.

- c) Ban on forced/slave labour (ILO Convention Nos. 29 and 105): There must not be any form of forced labour, slave labour or involuntary labour. Workers must not pay a deposit or surrender identity papers to employers, and they shall be free to end their employment upon a reasonable period of notice.
- d) Ban on discrimination (ILO Convention Nos. 100 and 111): There shall be no discrimination in working life based on ethnic affiliation, religion, age, disability, gender, marital status, sexual orientation, trade union membership or political affiliation.
- e) Freedom of organisation and the right to collective bargaining (ILO Convention Nos. 87 and 98): Workers shall without exception be entitled to join or establish trade unions of their own choosing, and to bargain collectively. If these rights are restricted or under development, the contractor shall contribute towards the employees being able to meet with management to discuss wages and working conditions, without this having negative consequences for the workers.

12.1.2 Provisions in national legislation – social dumping

The design and build contractor is required to ensure that the labour laws and legislation at the site where production takes place are adhered to. Particularly relevant matters to emphasise include wage and working time rules, health, safety, and the environment, statutory insurance and social schemes, as well as ordinary conditions of employment, including employment contracts.

The design and build contractor shall ensure that employees in its own organisation, and employees of subcontractors that directly contribute to fulfilment of the contract, have wage and working conditions in accordance with this provision.

In areas encompassed by the regulations relating to a general collective agreement, wage and working conditions shall be in accordance with the applicable regulations. In areas not encompassed by the regulations relating to a general collective agreement, the wage and working conditions shall be in accordance with the applicable collective bargaining agreement for the industry in question.

Wage and working conditions are defined in this context as provisions relating to

- a) minimum working hours,
- b) wages, including overtime pay, shift and rota supplements and inconvenience allowances, and
- c) reimbursement of travel, board and lodging expenses, to the extent that such provisions follow from the collective bargaining agreement.

All agreements that are entered into by the design and build contractor that involve the performance of work under this contract shall contain corresponding provisions.

If the design and build contractor fails to comply with this provision, the builder is entitled to withhold parts of the contract sum until documentation is provided that the matter has been rectified. The builder can withhold an amount corresponding to approximately twice the savings for the employer.

On request, the design and build contractor must present documentation of the wage and working conditions that are in effect. The design and build contractor must also present documentation of the wage and working conditions of the subcontractors.

12.1.3 Common provisions

The design and build contractor is identified with its subcontractor in the event of breach of contract with regard to the aforementioned requirements.

All agreements that are entered into by the design and build contractor that involve the performance of work under this contract shall contain provisions corresponding to those mentioned in this provision.

The person in charge of the contractor's operations is responsible for ensuring that these conditions of contract are complied with.

12.2 Follow-up

The design and build contractor shall ensure that employees' rights in section 12.1 are observed in its own organisation and by the subsuppliers/subcontractors that contribute to fulfilment of the contract. This shall be documented at the builder's request by:

- Self-reporting, and/or
- Follow-up interviews, and/or
- An inspection of the working conditions by an independent party, and/or
- Third-party certification, such as SA8000 or similar.

The design and build contractor has the burden of proof that the goods and materials that are delivered do not entail a breach of section 12.1 above.

12.3 Breach

A breach of sections 12.1 or 12.2 entails a breach of the contract. In the event of such a breach, the design and build contractor is required to rectify the defects identified, regardless of the costs of such rectification, by the deadline determined by the builder, as long as the deadline is not unreasonably short. The rectifications shall be documented in writing in the manner determined by the builder.

If the breach is not rectified, a fine of up to 10% of the contract sum may be incurred per breach at the discretion of the builder. Failure to rectify is regarded as a material breach, and the builder may also terminate the contract. The design and build contractor will also be responsible for the losses incurred by the builder due to the defect. Any compensation will be in addition to the aforementioned fine.

13 Progress status and notification (NS 8407, section 21.3)

The design and build contractor shall revise the work schedule when required to by the builder in accordance with NS 8407, section 21.3, last paragraph. The revised schedule shall be received by the builder no later than one week after the design and build contractor received the request.

14 Builder's right to inspect (NS 8407, section 20.2)

The builder, or whoever is authorised by the builder, shall be entitled to inspection of

- the design and build contractor's quality and environmental management system
- performance of the contractual work
- the production process
- those parts of the design and build contractor's other management systems (such as finance, external environment, HSE) and accounting, that may be of importance to the design and build contractor's fulfilment of the contract.

The right of inspection encompasses auditing and verification, including interviews, inspections, supervision and document review, among other things. The design and build contractor shall provide reasonable assistance with such inspections free of charge. The right of inspection is limited to three years after the final payment has been made.

The design and build contractor shall ensure that the builder has a corresponding right of inspection of the contractor's direct and indirect agents and independent contractors, unless the delivery is clearly of minor significance to the contractor's ability to fulfil its obligations to the builder.

15 Right to order changes (NS 8407, section 31.1)

Unless otherwise stipulated in the tender documentation, the builder may not order the design and build contractor to make changes in excess of a 25% net addition to the contract sum.

16 Special notice of increased expenses for rigging and operations, etc. (NS 8407, section 34.1.3)

The requirements for special notice in NS 8407, section 34.1.3, third paragraph, do not apply to payment adjustments for capital outlays, rigging, operations and dismantling.

The following standardised provisions apply to payment adjustments for capital outlays, rigging, operations and dismantling:

Adjustment with an unchanged construction period:

If the price of the net payment adjustments due to the conditions described in NS 8407, sections 34.1.1 and 34.1.2, does not exceed 10% of the contract sum, no compensation is provided.

If the price of the payment adjustments exceeds 10% of the contract sum, compensation is provided in accordance with the following formula:

$$\frac{0.5 A (B - 1.1 C)}{C}$$

A = agreed price in the original rigging and operating chapter, excluding VAT.

B = contract value of the work performed at the time of the original final deadline, excluding VAT.

C = original contract amount (contract sum, excluding VAT)

When calculating the contract value of the work performed at the time of the original final deadline, excluding VAT (the "B" in the formula), the following shall not be taken into account

- adjustment of the contract sum due to wage or price inflation,
- payment of mark-ups due to the administration of side contractors or the assignment of construction/engineering contracts,
- compensation for cancellation,
- payments already made for adjustments included in rigging and operations, and
- compensation for increased rigging and operations for an extended construction period.

The amount of adjustment in accordance with this provision shall be subject to wage and price adjustment based on the agreed index, calculated in months from the tender date to the height of production during the construction period.

Adjustment with an extended construction period:

If the design and build contractor is entitled to an extension of the deadline in accordance with NS 8407, section 33.1, the payment adjustment for capital outlays, rigging, operations and dismantling shall be compensated based on the following formula:

$$0.7 A (Z)$$

Y

A = agreed price in the original rigging and operating chapter, excluding VAT.

Y = original construction period.

Z = extension beyond the original construction period.

If the deadline extension is only granted for portions of the work, A shall be reduced proportionately.

The amount of adjustment in accordance with this provision shall be subject to wage and price adjustment based on the agreed index, calculated in months from the tender date to the height of production during the construction period.

17 Disagreement on changes (NS 8407, section 35)

NS 8407, section 35.2 a) no longer applies.

18 Preparation for handover (NS 8407, section 36)

18.1 Testing and initial adjustment of technical installations (NS 8407, section 36.1)

The design and build contractor shall provide all the instruments, apparatuses and materials, as well as the necessary expert personnel, in order to carry out functional testing. Documentation from the functional testing shall be prepared and delivered in accordance with the builder's detailed specification and procedures. The design and build contractor must, as soon as these functional tests are completed, give the builder written notice to this effect.

18.2 Delivery of MOM documentation (NS 8407, section 36.2)

In addition to the requirements described in NS 8407, section 36.2, the MOM documentation shall satisfy the requirements described in Part III of the tender documentation.

Unless otherwise agreed, the builder shall receive the contractual documentation no later than three weeks prior to the start-up of trial operation.

Training

The design and build contractor shall, both prior to the handover/start-up of trial operation and during any trial operation period, give the operating personnel and users sufficient instruction and training in the operation and maintenance of technical facilities/installations, building elements and outdoor facilities. The framework for the training programmes is otherwise determined by agreement between the parties. The training shall take place in accordance with the builder's detailed specifications and procedures.

Unless otherwise agreed, the necessary training shall be completed prior to the start-up of trial operation.

19 Trial operation (NS 8407, section 38.2)

It is evident from Part III of the tender documentation whether there is an agreed trial operation period for all (or possibly some) of the technical facilities/installations (hereinafter shortened to "technical installations") delivered by the design and build contractor.

Trial operation

The trial operation period is defined as an agreed period in which the technical installations are tested under normal operating conditions, including coordination and, if necessary, integrated system testing, with other technical installations, during which the builder has the right of control as mentioned below.

The start-up of the trial operation period takes place prior to the handover, but after the final inspection has been made and when the functional tests have been completed and verified (completion). For the final inspection and right to deny approval of the final inspection, the rules for the handover transaction in NS 8407, sections 37.1 to 37.4 apply correspondingly. The builder must receive a complete draft of the MOM documentation and the agreed training must be completed before the trial operation period can start.

The start-up of the trial operation period entails the following:

- a) The builder is entitled to use the technical installations and rest of the subject-matter of the contract.
- b) The risk for the subject-matter of the contract passes to the builder, cf. NS 8407, section 19.1.

The intent of trial operation is to

- verify that the installations function satisfactorily,
- demonstrate that functions and installations are stable over time,
- have follow-up inspection and adjustment of the (adjustment) functions based on operational experience,
- verify that the installation is otherwise in accordance with the functional requirements of the contract,
- provide operating personnel training and operational experience together with the supplier of individual installations/the design and build contractor, and
- rectify errors and defects that are identified during the trial operation period.

Adjustment of the length of the trial operation period

The design and build contractor shall, in consultation with the builder, have an opportunity to take technical installations out of service for shorter periods of time for improvement or repair against a corresponding extension of the trial operation period.

If the builder can demonstrate that the technical installations do not fulfil the contract's functional requirements continuously during the last four weeks of the trial operation period, or if the trial operation period has not functioned as intended due to other reasons during the same period, the builder reserves the right to require an extension of the trial operation period until these requirements have been satisfied. Such an extension of the trial operation period does not give the design and build contractor grounds for additional claims.

Duties of the design and build contractor

During the trial operation period, the design and build contractor is responsible for the operation and maintenance of the technical installations, and for keeping the necessary technical personnel at the installation in this connection. The design and build contractor shall perform maintenance on their installations during the trial operation period in accordance with the design and build contractor's own maintenance specifications and cover all of the maintenance costs, including consumables, in this connection. The design and build contractor shall also make regular visits to the site in order to fulfil the aim of the trial operation, cf. above.

During the trial operation period, the design and build contractor is required to immediately implement necessary measures, if faults or defects are detected or identified.

Documentation from the trial operation shall be prepared by the design and build contractor and surrendered in accordance with the builder's detailed specification and procedures.

Duties of the builder

The builder's operating personnel carry out daily inspections of the technical installations. This does not relieve the design and build contractor of any of its duties, cf. above. Energy costs during the trial operation period are covered by the builder.

Handover

The handover transaction shall be held within a reasonable period of time after the expiration of the trial operation period. The handover of the subject-matter of the contract does not take place until after the expiration of the trial operation period and completion of the handover transaction.

20 Delays (NS 8407, section 40)

20.1 Deadlines subject to daily liquidated damages (NS 8407, section 18.2)

In addition to the final deadline, the following deadlines are also subject to daily liquidated damages:

- a) the design and build contractor's deadline for preparation and submission of the work schedule, cf. NS 8407, section 21.2,
- b) the design and build contractor's deadline for revising the work schedule, cf. section 12 of this document,
- c) deadline for the start-up of work at the construction site,
- d) deadline for the delivery of MOM documentation,
- e) any deadline for the start-up of trial operations, as well as
- f) deadlines that are specified as subject to daily liquidated damages elsewhere in the contract documents.

If the design and build contractor has incurred daily liquidated damages for a partial deadline for the start-up of trial operations, the amount of liquidated damages shall be deducted from the daily liquidated damages that are incurred for exceeding the final deadline.

20.2 Amount of the daily liquidated damages (NS 8407, section 40.3)

Daily liquidated damages for exceeding the deadlines specified in section 20.1, letters a, b c and d of this document are NOK 1,500 per weekday.

The daily liquidated damages for exceeding the deadline for the start-up of trial operations is a thousandth of the contract sum.

21 Repairs (NS 8407, section 19.3)

Repair work shall be performed by agreement and with the understanding of the builder. If consideration for the builder's use of the subject-matter of the contract, including its tenants' use, makes it necessary to perform work outside of ordinary working hours, the design and build contractor is obliged to do so without overtime pay.

22 Use of documents / project-related information (addition to NS 8407)

The design and build contractor is obliged not to make public any form of project-related information without having obtained written approval from the builder in advance.

23 Norwegian Defence Estates Agency's ethical requirements

The design and build contractor is obliged to familiarise itself with and observe the ethical requirements and guidelines that apply to the Norwegian Defence Estates Agency. The ethical requirements and guidelines can be read at www.forsvarsbygg.no/For-leverandorer.

24 Contracts subject to security restrictions (addition to NS 8407)

Ref. Part III-D

If the project entails the design and build contractor gaining access to sensitive information or objects, the design and build contractor has a duty to comply with the Act relating to Protective Security Services (Security Act).

The design and build contractor is responsible for ensuring that all of the personnel who will be used during the execution of the project have the necessary security clearance and authorisation.

If the design and build contractor and/or subcontractor(s) will store, process or produce sensitive information on their premises, a prior security agreement must be entered into between the builder and the individual company. The security agreement will stipulate further details about the company's responsibilities and obligations under the Security Act.

No costs incurred by fulfilling the provisions of, or provisions authorised by, the Security Act and signed security agreement shall be paid by the builder, unless otherwise has been explicitly agreed in the security agreement.

The design and build contractor is responsible for ensuring compliance with the security provisions in its own company and in subcontractors that contribute to the classified procurement. Breaches of security provisions will be regarded as a material breach of the design and build contractor's contractual obligations.

25 NATO work (addition to NS 8407)

The following provision applies to NATO-financed projects (will be specifically stated in the tender documentation if this is the case):

In accordance with the current rules, only companies from NATO countries can be contractors/suppliers, including subcontractors/manufacturers. The ban also applies to suppliers of materials and equipment.

The contractor's use of companies/persons/materials etc. in violation of the aforementioned provision is always regarded as a material breach in accordance with NS 8407, section 46. This is a clarification of NS 8407, section 46.

26 Disputes (NS 8407, section 50)

26.1 Preliminary decision by an arbitrator (NS 8407, section 50.3)

This provision only applies if both of the parties agree in each individual case that the dispute shall be brought before an arbitrator.

26.2 Dispute resolution (NS 8407, section 50.4)

For contracts where the construction site is abroad, Oslo is agreed on as the court of venue.

Disputes are always resolved based on the procedural and material rules that apply in Norway.

Appendices

- 1 Template for the contract document**
- 2 Guarantee declaration**
- 3 Guarantee declaration for advances**
- 4 Insurance certificate – property insurance**
- 5 Insurance certificate – liability insurance**
- 6 Forms to be used for notifications and changes**

CONTRACT DOCUMENT**DESIGN AND BUILD CONTRACTS PURSUANT TO NS 8407**

Project name:	
Address:	
Contract no.:	

1. THE PARTIES AND THEIR REPRESENTATIVES

Client		
Name:	Organisation no.:	
State of Norway, represented by the Ministry of Defence, represented by the Norwegian Defence Estates Agency	975 950 662	
Address:		
Representative:	Tel.:	Email:

Design and build contractor		
Name:	Organisation no.:	
Address:		
Representative:	Tel.:	Email:

2. CONTRACT DOCUMENTS. INTERPRETATION RULES

The following documents are included as part of this contract:

1. This contract document
2. Minutes and other materials from negotiations and clarifying discussions, which are approved by both parties

3. Design and build contractor's tender
4. Minutes from inspections/conferences
5. Norwegian Defence Estates Agency's tender documentation
 - 5.1 Descriptions and bills of quantities
 - 5.2 Drawings
 - 5.3 Other elements
6. NS 8407:2011 General conditions of contract for design and build contracts

In the event of any contradiction, the documents are ranked in the above order. If this does not resolve the contradiction, then special provisions shall take precedence over general provisions.

3. ABOUT THE PROJECT

Enter a brief description of the project

4. FEE

The subject-matter of the contract shall be delivered for:

Tender sum:	NOK		excl. VAT
└ Any adjustment +/-	NOK		excl. VAT
└ Any adjustment +/-	NOK		excl. VAT
Total	NOK		excl. VAT
Value added tax	NOK		
Contract sum	NOK		incl. VAT
Written out as			

5. OPTIONS

The client has the right, but no obligation, to order the following additional benefits from the design and build contractor:

Description of the option	Deadline for ordering	Price

Ordering an option shall be formalised in a separate agreement. The "Amendment Agreement" form may be used.

6. DEADLINES

In addition to those evident from NS 8407 and Part II of the tender documentation, the following binding deadlines have been agreed on:

Description of activity / milestone:	Deadline:	Daily liquidated damages?

7. INSURANCE

The following insurance applies to the contract:

Property insurance:

Insurance company:

Policy number:

Liability insurance:

Insurance company:

Policy number:

8. SIGNATURES

This contract document has been executed in two (2) identical counterparts, one for each of the parties.

Date: Place:	Date: Place:
Signature of the Norwegian Defence Estates Agency _____	Signature of the design and build contractor _____
Name Position	Name Position

GUARANTEE DECLARATION

Guarantee number:

Guarantor	
Name:	Organisation no.:
Address:	Tel.:

Contractor	
Name:	Organisation no.:
Address:	Tel.:

The guarantor hereby acts as an absolute guarantor in relation to the builder, the Norwegian Defence Estates Agency, for the contractual obligations the contractor has had in accordance with the contract:

Contract number: _____

Contract concerns: _____

The guarantee applies to the contractor's contractual obligations, including interest on overdue payments and collection costs in the event of a default during the performance period or the warranty period. The guarantee during the performance period also applies to the contractor's liability for delayed completion.

The guarantee is limited to

NOK _____, which represents 10% of the contract sum, for claims against the contractor submitted no later than when the contractual work is taken over.

The guarantee will be reduced thereafter to

NOK _____, which represents 3% of the contract sum, for claims against the contractor submitted during the three first years of the warranty period.

The guarantee during the performance period and warranty period is limited overall to no more than 10% of the contract sum. The guarantee during the warranty period is limited overall to no more than 3 % of the contract sum.

The guarantee is valid for three years from the handover and in any case until claims that the builder has against the contractor, which have been submitted within three years from the handover, have been satisfied. In the event that partial handovers have taken place, the three years from the most recent handover transaction apply.

The guarantor shall always be notified if the contract between the client and contractor is terminated.

Disputes concerning this guarantee shall be brought before the ordinary courts for resolution.

_____, _____ 20____

Signature of the guarantor

GUARANTEE DECLARATION FOR ADVANCES

Guarantee number:

Guarantor	
Name:	Organisation no.:
Address:	Tel.:

Contractor	
Name:	Organisation no.:
Address:	Tel.:

The guarantor hereby acts as an absolute guarantor in relation to the builder, the Norwegian Defence Estates Agency, for the contractual obligations the contractor has had in accordance with the contract:

Contract number: _____

Contract concerns: _____

This guarantee remains in force until the Norwegian Defence Estates Agency has given written notice that the amount of the advance has been settled.

_____, _____ 20____

Signature of the guarantor

INSURANCE CERTIFICATE – PROPERTY INSURANCE

The undersigned insurance company hereby confirms that property insurance has been taken out in accordance with NS 8407, section 8.1, with the policy number, insured location, sum insured, period of insurance and conditions of insurance listed below.

During the period of insurance, the insurance company can be relieved of its liability in accordance with this insurance certificate

1. by notifying the Norwegian Defence Estates Agency at least 30 days prior to the termination of such insurance cover in the event that it is terminated or expires for whatever reason.
2. by the Norwegian Defence Estates Agency receiving a satisfactory insurance certificate corresponding to the existing certificate from the insurance company that takes over the insurance cover.

Policyholder:

Name:.....

Address:.....

Organisation no.:

Coinsured: Norwegian Defence Estates Agency

Insurance certificate no.:

Insured location:

Project number and name:

Building's address:

Sum insured:

The insurance is covered on a first-risk basis. The insurance company does not assume any risk with regard to whether the sum insured is adequate.

Insurance period: The insurance shall be in force until all the work related to the entire building, facility and/or project has been handed over to the builder.

The insurance covers:

- Materials, engineering documents and that which has been performed of the subject-matter of the contract at any given time.
- Materials, engineering documents the builder has paid for in advance.
- Materials, engineering documents the builder has surrendered to the design and build contractor's possession.

Insurance's scope of cover:

The insurance is covered according to the following conditions
(for example, Insurance Company NN's Project Insurance Conditions of 2009), which includes the following general exceptions:

1. Damage that is directly or indirectly related to war, rebellion or serious disturbances of public order.
2. Nuclear damage – regardless of the cause – from nuclear substances, with the exception of damage caused by radio isotopes, the use of which is permitted by law.

3. Damage that is caused by subsidence of the ground or failure of a foundation.

4. Loss from shrinkage, embezzlement and theft without a break-in.

In relation to the Norwegian Defence Estates Agency as the coinsured, no other exceptions from the insurance cover will be made beyond what is expressly stated on this insurance certificate.

.....
Place/Date

.....
Insurance company

.....
Signature

INSURANCE CERTIFICATE – LIABILITY INSURANCE

The undersigned insurance company hereby confirms that liability insurance has been taken out in accordance with NS 8407, section 8.2, and the requirements listed below.

During the period of insurance, the insurance company can be relieved of its liability in accordance with this insurance certificate

1. by notifying the Norwegian Defence Estates Agency at least 30 days prior to the termination of such insurance cover in the event that it is terminated or expires for whatever reason.
2. by the Norwegian Defence Estates Agency receiving a satisfactory insurance certificate corresponding to the existing certificate from the insurance company that takes over the insurance cover.

Policyholder

The insurance company confirms that(the design and build contractor) has taken out liability insurance.

Insurance policy no.

Sum insured

The sum insured is at least 150 G [G = National Insurance base amount] per claim.

Insurance period

The insurance will remain in force until all contractual work, including warranty work, has been completed.

Scope of the insurance:

A contract has been entered into between the Norwegian Defence Estates Agency and the design and build contractor for performance of the following contract:

.....

Project no.:

Address:

This insurance covers liability for damages for any personal injury or property damage that the design and build contractor or its agents and independent contractors can inflict on the builder or a third party in connection with performance of the contract.

Reservations

The insurance company hereby confirms that the insurance contract does not contain provisions that

- reduce the builder's right to claim insurance settlement directly from the company, or
- can reduce the builder's claim due to the insured's circumstances **after** the insurance event has occurred, or
- reduce the rights of the injured party in relation to the insurance company with regard to what follows from the optional provisions of the Insurance Contracts Act.

.....
Place/Date

.....
Insurance company

.....
Signature

Forms to be used for notifications and changes:

- **Design and build contractor's form**

This form can be downloaded electronically from the Norwegian Defence Estates Agency's website <http://www.forsvarsbygg.no/For-leverandorer/Kontraksbestemmelser/>

- **Variation request**

- **Amendment Agreement**

- **Builder's variation order**

- **Builder's response**

Prosjekt: <input type="text"/>	Kontrakt: <input type="text"/>	Varsel/kravnr: <input type="text"/>
Totalentreprenør: <input type="text"/>	Arkivreferanse: <input type="text"/>	Revisjonsnr: <input type="text"/>

Veiledning i bruk av skjemaet:

Totalentreprenøren (TE) oppfordres til å lese all veiledningstekst i skjemaet, samt de aktuelle bestemmelser i standarden, før skjemaet benyttes.

Skjemaet pkt. 1 brukes når TE vil varsle om at han krever utstedt endringsordre eller varsle om medvirkningssvikt fra byggherren (BH), se nærmere i veiledningen til skjemaet pkt. 1. Dersom BH har utstedt en endringsordre skal skjemaet pkt. 1 ikke benyttes.

Derimot benyttes pkt. 2 og 3 i alle de tre ovennevnte situasjonene dersom TE skal varsle/kreve vederlagsjustering eller fristforlengelse, eller svare på BHs svar knyttet til disse situasjonene. Se nærmere i veiledningen til skjemaets pkt. 2 og 3.

Det er ulike tidspunkter for når fristene for fremsettelse av varsel/krav/svar begynner å løpe etter NS 8407. Det vil si at TE kan ha behov for å benytte skjemaet flere ganger for samme forhold. I så fall brukes et nytt skjema hver gang påført varsel/kravnummer til det opprinnelige varselet/kravet/svaret, samt nytt revisjonsnummer.

Skjemaet benyttes ikke ved avvik som skyldes TE selv, eller hvor TE foreslår alternative løsninger

Er det tidligere korrespondanse knyttet til dette varselet?

 Nei

 Ja:

 Byggherrens endringsordre nr.:
 Byggherrens endringsordre i byggemåtereferat nr. pkt.
 Byggherrens svar nr.:
 Annet, spesifiser:

1. Varsel med beskrivelse av situasjonen

Dette punktet fylles ut når TE vil varsle om enten:

- at han krever utstedt endringsordre som følge av instruks, tegninger og beskrivelser, jfr. NS 8407 pkt. 32.2. E fyller ut alt. A, eller
- forhold som vil kunne forstyrre TEs gjennomføring av arbeide under kontrakten jfr. NS 8407 pkt. 25.1, som for eksempel at det fysiske arbeidsgrunnlaget eller forhold ved grunnen ikke er slik TE kunne forvente etter kontrakten. E fyller ut alt. B.

Alt A. Krav om utstedelse av endringsordre, jfr. NS 8407 pkt. 32.2

Totalentreprenøren anser at følgende pålagte ytelse(r) ikke er en del av hans plikter etter kontrakten:

Eventuelle vedlegg:

-
-

Alt B. Varsel om byggherrens medvirkningssvikt, jfr. NS 8407 pkt. 25.1

Totalentreprenørens beskrivelse av medvirkningssvikten:

Eventuelle vedlegg:

-
-

2. Konsekvensvarsel/krav

Dette punktet fylles ut når TE vil fremme varsel/krav om vederlagsjustering eller fristforlengelse som følge av:

- endringsordre fra BH
- forhold nevnt i skjemaets punkt 1
- force majeure, jfr. NS 8407 pkt. 33.3 (kun fristforlengelse)

Varsel om vederlagsjustering fremmes iht. NS 8407 pkt. 34.1.2, 34.1.3, 34.3.3 og 34.4.

Varsel om fristforlengelse fremmes iht. NS 8407 pkt. 33.4 Spesifiserte krav fremmes iht. NS 8407 pkt. 33.6, og det skal fremgå hvilken eksakt dato fristen kreves forlenget til.



Vederlagsjustering, jfr. NS 8407 pkt. 34

Det fremsettes følgende varsel/krav om vederlagsjustering:

█

Begrunnelse for varset/kravet:

█

Eventuelle vedlegg:

1. █
2. █

Fristforlengelse, jfr. NS 8407 pkt. 33.4 og 33.6

Det fremsettes følgende varsel/krav om fristforlengelse:

█

Begrunnelse for varset/kravet (begrunnelsen skal angi hvilken frist varset/kravet knytter seg til):

█

Eventuelle vedlegg:

1. █
2. █

3. Totalentreprenørens svar

Dette punktet fylles ut når TE vil svare på varsel/krav/svar fra BH. TE må svare dersom han:

- vil påberope at BHs varsel/krav/svar er for sent fremsatt (NS 8407 pkt. 5)
- har innsigelser mot BHs varsel/krav om fristforlengelse eller varsel om justering av enhetspriser (NS 8407 pkt. 33.7 og 34.3.3)
- har mottatt en forespørsel etter NS 8407 pkt. 33.6.2, og han mener det ikke foreligger grunnlag for å beregne tidligere varset/krav på fristforlengelse

Totalentreprenørens svar:

█

Eventuelle vedlegg:

1. █
2. █

Signatur

Dato: █

(signatur)

Navn: █

Rolle: █

Kopi til:

█

Endringsforespørsel (NS 8407)

 Prosjekt:

 Kontrakt:

 Endringsforespørsel nr.:

 Totalentreprenør:

 Arkivreferanse:

 Revisjonsnr.:

Denne endringsforespørselen gjelder ikke som bestilling

Veiledning i bruk av skjemaet:

Skjemaet benyttes når byggherren (BH) ønsker å be om et tilbud fra totalentreprenøren (TE) for utførelse av endringsarbeider. Oversendelse av dette skjemaet gjelder ikke som en bestilling. Ønsker BH å bestille arbeidene skal skjema «Byggherrens endringsordre» normalt benyttes.

Når TE mottar en slik forespørsel skal han iht. NS 8407 pkt. 34.2.1 utarbeide et spesifisert tilbud på utførelse av endringsarbeidene. Tilbudet skal merkes med referanse til endringsforespørsel nr.

Er det tidligere korrespondanse knyttet til denne forespørselen?

- Nei
 Ja, spesifiser:

Endringsforespørsel

Bakgrunnen for endringsforespørselen:

Beskrivelse av endringen:

Eventuelle vedlegg/webhotell el. hvor endringen er nærmere beskrevet. Husk nøyaktig angivelse av tegningsnr., rev.nr. og rev.dato:

1.
2.



Byggherrens eventuelle syn på vederlagsjustering og fristforlengelse:

Eventuelle vedlegg/ webhotell el. hvor byggherrens syn fremkommer:

1.
2.

Totalentreprenøren skal utarbeide et tilbud som inneholder alle konsekvenser for vederlag og fremdrift. Tilbudet ønskes oversendt innen , med kopi til .

Signatur


 Dato:

_____ (signatur)

 Navn:

 Firma/rolle:

Kopi til:

		Endringsavtale (NS 8407)
Prosjekt: []	Kontrakt: []	Endringsavtalenr.: []
Entreprenør: []	Arkivreferanse: []	

Veiledning i bruk av skjemaet:

Skjemaet benyttes når byggherren (BH) og totalentreprenøren (TE) er enige om hvilket arbeid som skal utføres, samt alle konsekvenser for vederlag og fremdrift.

Er det tidligere korrespondanse som leder frem til denne endringsavtalen?

- Nei Ja:
 - Tilhørende endringsforespørsel nr.: []
 - Tilhørende varsel/krav fra totalentreprenøren (totalentreprenørens skjema) nr: []
 - Annet, spesifiser: []

Partene er enige om at følgende endringer skal utføres, samt alle konsekvenser for vederlag og fremdrift:

Beskrivelse av endringen:
[]

Eventuelle vedlegg/webhotell el. hvor endringen er nærmere beskrevet. Husk nøyaktig angivelse av tegningsnr., rev.nr. og rev.dato.

- []
- []

Vederlagsjustering
Med mindre annet fremgår uttrykkelig av avtalen utføres endringene til en fastpris inkl. lønns- og prisstigning, men eks nya på kr:
[]

Eventuelle vedlegg/ webhotell el.

- []
- []



Fristforlengelse
Med mindre punktet er fylt ut anses endringene å være uten fremdriftskonsekvens. Angi eksakt dato fristen forlenges til:
[]

Eventuelle vedlegg/ webhotell el.

- []
- []

Signatur

Denne avtalen med vedlegg er utferdiget i to eksemplarer hvorav partene beholder hvert sitt.

Dato: []

Dato: []

_____(signatur)

_____(signatur)

Navn: []


Navn: []

Firma/rolle: []

Firma/rolle: []

Kopi til:

[]

 Forsvarsbygg		Byggherrens endringsordre (NS 8407)	
Prosjekt: []	Kontrakt: []	Endringsordrenr.: []	
Totalentreprenør: []	Arkivreferanse: []	Revisjonsnr.: []	
Denne endringsordren gjelder som bestilling			

Veiledning i bruk av skjemaet:

Skjemaet benyttes når byggherren (BH) vil pålegge en endring jfr. NS 8407 pkt. 31.1 til 31.3.

Når totalentreprenøren (TE) mottar denne endringsordren, blir han forpliktet til å utføre endringsarbeidet. Dersom TE mener å ha krav på vederlagsjustering eller fristforlengelse pga. endringsordren må han varsle om dette, samt spesifisere kravet, iht. NS 8407 pkt. 33 og 34. TEs varsel/krav fylles inn i «Totalentreprenørens skjema».

Er det tidligere korrespondanse knyttet til denne endringsordren?

Nei

Ja:

Tilhørende endringsforespørsel nr.: []

Tilhørende varsel/krav fra totalentreprenøren (totalentreprenørens skjema) nr.: []

Annet, spesifiser: []

+ **Endringsordre**

Beskrivelse av endringen:

[]

Eventuelle vedlegg/webhotell el. hvor endringen er nærmere beskrevet. Husk nøyaktig angivelse av tegningssnr., rev.nr. og rev.dato.

1. []
2. []

Byggherrens eventuelle syn på vederlagsjustering og fristforlengelse:

[]

Eventuelle vedlegg/ webhotell el. hvor byggherrens syn fremkommer:

1. []
2. []

Signatur

Dato: []

(signatur)

Navn: []
Firma/rolle: []

Kopi til:

[]

Prosjekt:

 Kontrakt:

 Arkivreferanse:

 Totalentreprenør:

 Referanse til totalentreprenørens skjema - varsel/krav nr.:

Veiledning i bruk av skjemaet:

Skjemaet benyttes når byggherren (BH) vil svare på mottatt skjema fra totalentreprenøren (TE). BH må svare dersom han:

- Vil påberope at TEs varsel/krav/svar er for sent fremsatt
- Er uenig i TEs krav om utstedelse av endringsordre
- Har innsigelser mot TEs varsel/krav om vederlagsjustering eller fristforlengelse

Er det annen tidligere korrespondanse knyttet til dette varselet?

 Nei

 Ja, spesifiser:

Byggherrens svar


 BH mener at TEs varsel/krav/svar er for sent fremsatt, jfr. NS 8407 pkt. 5. Eventuell begrunnelse kan angis her:
 BH er helt eller delvis uenig i TEs krav om utstedelse av endringsordre, jfr. NS 8407 pkt. 32.3. Angi begrunnelse her:
 BH har følgende innsigelser til varsel/krav om justering av enhetspriser, jfr. NS 8407 pkt. 34.3.3:
 BH har følgende innsigelser til varsel/krav om fristforlengelse, jfr. NS 8407 pkt. 33.7:
 Annet, spesifiser:

Eventuelle vedlegg:

1.
2.

Signatur

 Dato:

_____ (signatur)

 Navn:

 Firma/rolle:

Kopi til: