

CONTRACTING INTERNAL REGULATIONS

STATEMENT OF LEGAL GROUNDS

On 30th October 2007, it was published at the BOE (Boletín Oficial del Estado, Spanish legal compilation) the Law 30/2007, governing the Public Sector Contracts (hereinafter referred to as LPSC). The main object of this Law is to regulate the contract procedure in the public sector, with the aim of guaranteeing the compliance with the principles of liberty of access to tenders, publicity, transparency of the procedures and non-discrimination and equal treatment amongst tenderers.

This Law implements Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The Private Foundation Institute for Research in Biomedicine is a private Foundation subject to the laws of the Generalitat de Catalunya (Autonomous Government of Catalonia), and, where appropriate, to the State legislation; it has legal personality and capacity to act within the powers set out in its Articles of Association and in the applicable Laws. The said foundation was incorporated with the following contributions: The Universitat de Barcelona (University of Barcelona), the Foundation Parc Científic de Barcelona (Barcelona Science Park) and the Generalitat de Catalunya (Autonomous Government of Catalonia).

Amongst other things, the said foundation aims to boost, start-up and manage an institute for research in biomedicine equipped with human and material infrastructures which are necessary for the development of basic research tasks and development of new technologies or techniques in the field of biomedicine research.

The Board, as the highest organ for the government, decision making and representation of the foundation, comprises representatives from the Universitat de Barcelona, the Parc Científic de Barcelona and the Generalitat de Catalunya.

Up to this date, the contract regime of the said Foundation was subject to article 2.1 and to the Sixth Additional Provision of the Law of public Administration Contracts approved by Royal Decree 2/2000, of 16th June.

The Private Foundation Institute for Research in Biomedicine shall form part of the public sector and be deemed a contracting authority, from the coming into force of the LCSP and in accordance with article 3 of the said law.

Having regard to the new legal framework and the legal form of the entity, it is necessary to proceed to the adaptation of the current contract procedures in order to fit in with the new Law, differentiating between those contracts which are subject to harmonized regulation and those which are not.

Contracts subject to harmonized regulation are those awarded by the entity and laid down in article 13 of the LCSP, and which have a value estimated to be equal to or greater than the following thresholds:

- EUR 5,150,000 for public works contracts.
- EUR 206,000 for public supply contracts and public service contracts.

Contracts under the above-mentioned thresholds will be subject to non-harmonized regulation and, consequently, their processing and awarding will be governed by the present Contracting Internal Regulations (hereinafter, IIC), in accordance with article 175 of the LCSP.

Contracts governed by these IIC are private ones, that is, contracts entered into by entities of the public sector that are not included in the definition of Public Administration, according to the LCSP. Private contracts subject to these IIC concluded by the entity shall be governed, having regard to the European Community regulations and to the LCSP, by these IIC as to the preparations and award of the contracts; the private-law rules being only of subsidiary application. Notwithstanding the above, the effects and termination of contracts regulated under these IIC, shall be exclusively governed by private-law.

Therefore, these Regulations aim at governing the contracting procedures of works, supplies and services under the aforementioned thresholds, with the purpose of ensuring the effectiveness of the principles of advertising, competition, transparency, confidentiality, equal treatment and non-discrimination and to ensure that the contract is awarded to the candidate that submits the most economically advantageous tender. With the purpose of ensuring that these

principles are fulfilled, in particular the advertising principle, the Contractor Profile shall be of great importance, and it shall contain information about the tenders of contracts governed by these Regulations; it shall be deemed that, by means of this public dissemination, the requirements arising from the principle of advertising shall be met.

These principles are guaranteed by means of contracting procedures governed by these IIC and, for this purpose, the following are herein regulated:

- Open procedure
- Restricted procedure
- Negotiated procedure with publication of a contract notice on the web
- Negotiated procedure for other reasons
- Contract award procedure by direct procurement by reason of the amount
- Contract award procedure by direct procurement for other reasons

For these purposes, Article 175 (c) of the LCSP provides that the requirements of the advertising principle shall be fulfilled by inserting in the Contractor Profile the information relating to the tender of contracts above the threshold of EUR 50,000. Furthermore, Article 121 (2) of the LCSP lays down the requirement to draw up contract's documents and specifications governing the contracts exceeding the aforementioned threshold. Consequently, the advertising principle provided in the LCSP shall not be required for contracts with an amount under the aforesaid threshold, and such contracts may be awarded by direct procurement.

These IIC have been adopted by the competent body of the corporation, acting as its governing body.

These IIC are arranged as follows:

Title One: Entitled "General Provisions". This Title is arranged in three Chapters. Chapter One contains the subject matter and the scope of these IIC, and defines the contracts governed by these IIC, the methods for calculating the estimated value of the contracts, their minimum contents and their governing rules. Chapter Two defines the governing principles, the effectiveness of which is to be guaranteed with the adoption of these IIC, as well as the minimum contents of the Contractor Profile, as a means to fulfill many of the activities regulated by these IIC. Chapter Three of this Title One regulates the contracting and assistance bodies in the contracting procedures governed by these IIC.

Title Two: Entitled “On the contractors”. This Title is structured in two Chapters. Chapter One contains the rules that govern the contractors’ capacity. Chapter Two provides the rules that govern the economic and financial standing and the technical and professional capabilities of the candidates and their assessment, as well as the prohibitions to contract.

Title Three: Entitled “Preliminary proceedings of the contracts”. This Title is arranged in two Chapters, being the first one divided in two Sections. Chapter One contains the provisions that are common to all contracts governed by these IIC. Section One of this Chapter regulates the content of the contracting dossier and Section Two, the Specific Administrative Terms and Conditions and Technical Specifications. Chapter Two regulates the general rules on advertising, the minimum content of the notices and the time limits for participation regarding contracts governed by these IIC.

Title Four: Entitled “Contract award procedures”. This Title is arranged in three Chapters. Chapter One regulates the different contracting procedures by which contracts under these IIC may be awarded. Four different procedures are set: Open procedure, restricted procedure, negotiated procedure and contract award procedure by direct procurement. This Chapter defines each of these procedures, establishes the circumstances under which each procedure is to be followed and regulates the conduct and stages of each procedure.

Chapter Two regulates the submission of documents and tenders or proposals of tenderers in the different procedures set in these IIC, as well as the form of submission and their evaluation. The evaluation of the proposals and the circumstances under which tenders shall be opened in public are also foreseen, with reference to the disproportionate or abnormal tenders. Finally, this Chapter also provides the contract award criteria that shall be the base for the evaluation of tenders.

Last, Chapter Three of this Title regulates the award of contracts, their effects and their formalization.

These IIC finish with four Final Provisions.

TITLE ONE: GENERAL PROVISIONS.

Chapter I. Subject matter and scope.

Article 1. Subject matter of the Contracting Internal Regulations (IIC)

These IIC, in compliance with the provisions of article 175 of the LCSP, aim to regulate the contracting procedures in order to ensure the effectiveness of the principles of advertising, competition, transparency, confidentiality, equal treatment and non-discrimination, as well as the awarding of the contract to the most economically advantageous tender.

These IIC, pursuant to LCSP, do not aim to regulate the effects and termination of the contracts, which will be governed by private-law.

Article 2. Scope.

These IIC shall apply to contract award procedures non-subject to harmonized regulation that are described below.

There will be considered as contracts non-subject to harmonized regulation the works contracts which have an estimated value lower than EUR 5,150,000, the supply contracts which have an estimated value lower than EUR 206,000, service contracts described in Annex II (categories 1 to 16) of the LCSP which have an estimated value lower than EUR 206,000, and the rest of service contracts mentioned in the said Annex II regardless of their amount.

These threshold amounts shall be amended automatically and without prior approval in the event a rule shall set out other amounts.

Contracts described in article 13.2 of the LCSP shall not be subject to harmonized regulation either.

Article 3. Definition of the contracts governed by these IIC

1. A work means the outcome of building or civil engineering works taken as a whole which is sufficient by itself to fulfill an economic or technical function the object of which is immovable property. For this purpose, works contracts are contracts having as their object either the execution of works or the activities

within the meaning of Annex 1 of the LCSP. Furthermore, works contracts are also contracts having as their object both the design and the execution of the works.

2. Supply contracts are contracts having as their object the purchase, the leasing or the rental, with or without option to buy the products or movable property.

3. Service contracts are contracts having as their object the execution of an activity or the achievement of a result other than a work or a supply. For the purpose of these IIC, service contracts are divided in the categories referred to in Annex II of the LCSP.

Article 4. Mixed contracts

Mixed contracts are contracts containing provisions falling under two or more contracts of those governed by these IIC. For the purposes of applying the rules laid down in these IIC relating to the publication and awarding of these contracts, it shall be considered to be principal the provision of greatest economic value, calculated in the terms provided in the following article.

Article 5. Evaluation of the contracts estimated amount

Unless otherwise indicated, whenever these IIC refer to the amount of the contracts, such amounts shall not include VAT.

The calculation of the estimated value of a contract must be based on the total amount payable, net of VAT. In determining this calculation, there will be required to aggregate the estimated total amount payable, including any form of possible option, as well as any possible renewal of the contract and, where appropriate, the premiums or payments to candidates or tenderers.

The timing for calculating the estimated value will be the publication of the contract notice or, if this was not necessary, the moment at which the contracting procedure starts.

Where a proposed work or a contract of services or supply may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated

contract value shall be as follows: If the term of the contract is less than or equal to 12 months, the total estimated value for the term of the contract. If the term of the contract is greater than 12 months, the total value including the estimated residual value.

In the case of public contracts without a fixed term, the contract estimated total value shall be the monthly value multiplied by 48 months.

In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the contract estimated value shall be based on the following: (i) either the total actual value of the successive contracts of the same type awarded during the preceding financial year or during the preceding 12 months, or (ii) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

Article 6. Contracts' minimum requirements.

Contracts subject to these IIC shall be, necessarily, formalized in writing, except for those contracts which are awarded by direct procurement by reason of their amount.

Contracts subject to these IIC shall include, at least, the following aspects:

- a. The identification of the parties and the evidence of the signatories' capacity for the purposes of subscribing the contract.
- b. The definition of the subject-matter of the contract.
- c. The numbering of each of the documents forming part of the contract, amongst which, there shall necessarily be included the Specific Administrative Terms and Conditions and the Technical Specifications, where appropriate. In the case of works contracts, the project shall be numbered.
- d. The price of the contract or the manner to determine it, and the conditions of payment.
- e. The term of the contract or the estimated dates of commencement and completion, as well as the term of any renewals, should these be envisaged.
- f. The conditions for the receipt, delivery or admission of the works carried out or the services provided.
- g. The imposing of penalties, where appropriate.
- h. The causes for termination and their consequences.
- i. The submission to jurisdiction or arbitration.

Article 7. Competent jurisdiction and Law governing the contracts.

Contracts subscribed by the entity which are subject to the present IIC shall be deemed private contracts, and the civil jurisdiction shall be competent to decide the discrepancies and/or claims arising out of or in connection with the award, the formalization and the execution of the said contracts.

Article 8. Arbitration.

The entity's contracting body may provide, in the Specific Administrative Terms and Conditions, the submission to Arbitration, in accordance with Law 60/2003, of 23rd December, of arbitration, governing the resolution of discrepancies arising in connection with the effects, performance and expiry of contracts subscribed under these IIC.

Chapter II. Contractor Profile and governing Principles.

Article 9.- Contractor Profile.

The entity shall divulgate through its official web page the Contractor Profile, duly identified under the words "Contracting: Contractor Profile", which shall be accessible by all eventual tenderers who access the web page through Internet.

The Contractor Profile shall include at least the following:

1. These IIC.
2. The following information, separately addressing supply, services and works contracts:
 - i. Contract notices.
 - ii. Specific Administrative Terms and Conditions and Technical Specifications, where appropriate.
 - iii. Standard contract.
 - iv. Stages of the contract award procedure.
 - v. Table with the evaluation of tenders.
 - vi. Contract award.

The entity must be able to prove in a reliable way the time of commencement of public dissemination and the duration of the publication of any information

included in the Contractor Profile, establishing technical mechanisms and systems that allow it.

Article 10.- Principle of advertising

The principle of advertising shall include all those measures carried out by the entity to enable tenderers to know about the entity's contracting procedures and the contracts concluded by the entity. For these purposes, Article 175.C of the LCSP shall be followed, in so far as it provides that the principle of advertising shall be complied with by means of inserting on the Contractor Profile the information relating to the tendering for those contracts with amounts greater than 50,000 Euros; their conditions shall be specified on the Specific Administrative Terms and Conditions.

With this aim, the present IIC shall regulate the conditions which will ensure the compliance with the advertising requirements for the different contract procedures, by inserting notices on the Contractor Profile or on other means, which will qualify as prior information notices, contract notices and contract award notices.

Prior information notice shall be defined as the notice by means of which the entity makes known the possible contracts that it intends to award over the following 12 months. The said notice shall be optional for the entity and shall not bind it. It shall further allow the shortening of time limits for the submission of tenders.

A contract notice shall be defined as the notice by means of which the entity makes known the start of a contracting procedure for the award of a contract regulated by these IIC. This contract notice shall be mandatory for the entity in those procedures regulated in these IIC, which thus provide for it.

A contract award notice shall be defined as the notice by means of which the entity makes known the contracts which have been awarded in the cases indicated in these IIC.

Likewise, and in accordance with the principle of advertising, the entity shall publish and make known through the Contractor Profile these IIC, necessarily informing about its existence on the different notices being published.

Article 11.- Principle of competition

For the purposes of these IIC, the principle of competition shall include all those measures carried out by the entity to guarantee free access, in those procedures which thus provide for it, from all those candidates capable of properly performing the object of the contract.

In the negotiated procedures by reason of the amount, which are subject to these IIC, the principle of competition shall be guaranteed by inviting to negotiate a minimum of three candidates, provided this is possible; such candidates shall be previously selected by the entity and shall be fully capable of executing the contract.

Exceptionally, the entity may award a contract by direct procurement in those contracts which, by reason of their amount, it is thus established in these IIC, in accordance with the provisions of article 175 C, in relation to article 121.2, both of the LCSP. Likewise, the entity shall be able to award a contract by direct procurement when the causes laid down in these IIC are met and after the drawing up of a legal report and of a reasoned technical report.

When these IIC refer to time limits specified in days, it shall be deemed calendar days, unless expressly stated that they refer to working days, which shall be counted in accordance with administrative legislation.

Article 12.- Principle of Transparency

For the purposes of these IIC, the principle of transparency shall refer to all those measures carried out by the entity with the aim to make known its contracting processes and enable third parties to know about the different requirements of the contracting procedures subject to these IIC; it shall further include those measures that enable tenderers who have been rejected to know about the reasons justifying their rejection or failure to be awarded through the procedure laid down in these IIC.

Article 13.- Principle of Confidentiality

For the purposes of these IIC, the principle of confidentiality shall be defined as the obligation of the entity, its contracting bodies and different persons involved in the contracting processes, not to release the information submitted by the candidates which has been designated as confidential by them. Particularly, this



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confidentiality nature shall be assigned to the technical or commercial secrets and the confidential aspects of the tenders that are expressly indicated by the tenderer.

It shall not be considered confidential that documentation or information that the entity needs to make public in order to guarantee compliance with the principles regulated in the present IIC.

Contractors will have to observe the confidential nature of all that information they may have access to during the performance of the contract if it is thus required in the Specific Administrative Terms and Conditions or in the contract or when it is thus indicated by the entity, or when due to its own nature it has to be treated as such. The minimum period of the said confidentiality duty shall be 5 years, unless the Specific Administrative Terms and Conditions or the contract provide for a longer period.

Article 14. Principles of equal treatment and non-discrimination.

The contracting procedures regulated in these IIC shall guarantee equal treatment and non-discrimination of all tenderers, and they shall not permit to carry out any actions that aim at favoring one of the tenderers or prejudicing others.

The Specific Administrative Terms and Conditions and the Technical Specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the free competition between enterprises.

Under no circumstances shall the technical specifications refer to a specific make or source, or a particular process, with the effect of favoring or eliminating certain undertakings or certain products, unless such technical specifications are essential for the definition of the subject-matter of the contract. In particular, technical specifications shall not refer to trade marks, patents, types or a specific make or source, with the exceptions laid down in these IIC for technical or artistic reasons, or for reasons connected with the protection of exclusive rights. Notwithstanding the above, the said references shall be permitted if accompanied by the word “or equivalent” in cases where it is not possible to define the subject-matter of the contract by means of sufficiently precise or intelligible technical specifications.

Any clarification on the contract documents, terms and conditions, etc. shall be made known to the tenderers through the Contractor Profile.

Chapter III. Contracting bodies and assistance.

Article 15.- Contracting bodies.

Contracting bodies of the entity are those which are thus established in its Articles of Incorporation or rules of incorporation and delegation of authority.

Article 16.- Functions of the Contracting body.

The functions of the Contracting body shall include, without limitation, the following:

- a. Approval of the Specific Administrative Terms and Conditions and Technical Specifications.
- b. Appointment of the members of the Contracting Committee, Technical Committee and other advisory bodies.
- c. Exclusion of disproportionate or abnormal tenders.
- d. Contract awarding.
- e. Contract award resolution.
- f. Interpretation of the contract.

Once the contract has been awarded by the competent contracting body, the director / manager of the entity shall be automatically authorized to formalize the said contract.

Article 17. Contracting Committee or Technical Committee.

The contracting body shall be assisted by a Contracting Committee or Technical Committee of the contract, in accordance with the terms of the Specific Administrative Terms and Conditions, except for those contracts awarded by means of a negotiated procedure with publication of a contract notice on the web or those awarded by direct procurement. The Contracting body shall designate the members of the Contracting Committee and the members or member of the Technical Committee of the contract, who may be assisted by a Commission of experts.

As regards negotiated procedures with publication of a contract notice on the web or contracts awarded by direct procurement, the Contracting body or the Specific Administrative Terms and Conditions may lay down a Contracting Committee or Technical Committee of the contract.

The designation of the members of the Committee may be made on a permanent basis or specifically for the awarding of one or more contracts. If it is permanent or if the Committee has been conferred functions for a plurality of contracts, its composition shall be published on the Contractor Profile of the entity.

Article 18. Functions of the Contracting Committee or the Technical Committee.

The following are functions of the Contracting Committee or the Technical Committee:

- a) The assessment of the documentation proving the personality and, if appropriate, the representation and capacity of the tenderers to enter into contracts, as well as the assessment of the documentation relating to the reasons for their rejection.
- b) The checking of the economic and financial standing, technical or professional capabilities of the tenderer.
- c) Notification of correctable errors and adoption of decision regarding economic operators accepted to the contract procedure.
- d) The assessment of the technical proposal. The Contracting /Technical Committees may request, before formulating the awarding proposal, those technical reports they may consider necessary, in cases in which, they need to take into consideration criteria different from the price for the purposes of assessing the proposals. Those reports may also be requested whenever it is necessary to check whether the proposals comply with the Technical Specifications.
- e) The public opening of economic proposals and the settlement of any incidents therein.
- f) The assessment of abnormal or disproportionate proposals, following the procedure laid down in the present IIC.
- g) The submission of the contract award proposal to the contracting body.
- h) Any other functions which are necessary for the assessment of the proposals, as well as for the drawing up of a contract award proposal and those which are conferred to it by the present IIC or the contracting body of the entity.

Members of the Contracting Committee are guaranteed their right to express their opinion when it opposes the majority's and that their reasoned opinion appears in the minutes.

Article 19. Assessment of proposals and contract award proposal when a Contracting Committee or Technical Committee has not been set up.

In contract award procedures where a Contracting Committee or Technical Committee has not been set up, the suitability of submitted tenders shall be checked by the technical services, designated by the contracting body, in accordance with the criteria of economic and financial standing, and of professional and technical capabilities. In cases where there is a shortage of technical personnel, the said reports shall be issued by at least two members of the staff who is in charge of activities related to the subject-matter of the contract or who have been directly involved in the contracting procedure. They shall also formulate the contract award proposal, following the issue of technical reports assessing the tender, should they deem it necessary.

Article 20. Contract award proposals.

The contract award proposals drawn up under the present IIC, shall mention the order of precedence of the tenderers who have been considered, with the weighting for each of them. No rights shall arise out of the contract award proposals, until the contract award resolution has been passed.

Title II. On the contractors

Chapter I. Contractors' capacity

Article 21. The contractors.

1. Contracts regulated under these IIC may be entered into by natural persons or legal entities, of public or private nature, with Spanish or foreign nationality, with full capacity to act, providing evidence of their economic and financial standing and their technical or professional capabilities, and not being included in any of the events of prohibition to contract in accordance with the present IIC. All the said requirements shall be met at the expiry of the period for submission of tenders.

2. The entity may contract with tenderers or candidates that participate in a group. This participation shall be implemented by means of a private document in which it is mentioned the intent of the tenderers to submit a joint tender, the interest percentage of each of them, as well as the designation of a representative or power of attorney with powers to exercise the rights and fulfill the obligations arising out of the contract until its expiry. Contractors participating jointly in a contract shall be jointly and severally liable in respect of the obligations undertaken.

Article 22. Contractors' capacity to act.

1. Contractors shall provide evidence of their capacity to act and their representation in all the contract award procedures regulated under these IIC. The way to provide such evidence shall be the one laid down in the LCSP.

The submission of the relevant invoice shall be deemed as evidence of the entrepreneur's or professional's capacity to act provided such invoice contains the data and meets the requirements laid down in the rules governing the issuance and delivery of invoices. In any event, the entity may at any time require the contractor to furnish evidence of his capacity.

2. Contractors wishing to take part in a contract procedure may be requested, to prove their enrolment on one of the professional or trade registers that enables them to carry out the activity, which is the subject matter of the contract, in cases where the specific legislation thus prescribed.

3. In the event of non-Spanish companies incorporated in a Member State of the EU or of the European Economic Area, where the specific legislation prescribes the enrolment on one of the professional or trade registers, it will be sufficient proof of enrolment, the provision of a declaration on oath or a certificate as described in Annexes IX A, IX B or IX C of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as prescribed in their Member State of establishment.

4. Legal entities may only be awarded contracts regulated under these IIC when the works carried out or the services provided therein are included within the aims, object or activity of such entities, according to their Articles of Incorporation or incorporation rules.

5. Contractors who have assisted the entity in the drawing up of the technical specifications or contracts' preparatory documents shall not take part in a contract procedure, whenever such assistance may cause restrictions to free competition or may imply a privileged treatment with respect to the remaining tenderers.

Article 23. Companies not belonging to the European Union and principle of reciprocity.

Companies established in countries not belonging to the European Union or to the European Economic Area, in addition to giving proof of their capacity to act, as prescribed in their State of establishment, and their economic and financial standing and technical or professional capabilities, they must justify, by means of a report issued by the relevant Spanish representative office, that the foreign company's State of establishment accepts, on its turn, the participation of Spanish companies in public procurement, in substantially analogous conditions. Such certificate must be enclosed with the documentation submitted. For works contracts, it shall be further necessary that such companies have a branch in Spain, with designation of representatives or proxies for their operations and that such branch is registered on the Register of Commerce.

Chapter II. Economic and financial standing and technical or professional capabilities and prohibitions to contract

Article 24. Economic and financial standing of the candidate.

1. Tenderers must prove their economic and financial standing for the execution of the contract, meaning the adequate economic and financial situation of the company with the aim to guarantee the correct execution of the contract.

2. The level of economic and financial standing shall be specific for each contract and its demand shall be adequate and proportionate to the characteristics of the works contracted. The contracting body shall be entitled to choose the references that tenderers must furnish to prove their economic and financial standing from those laid down in the LCSP or those that it considers appropriate. In any event, the references to be furnished to prove the economic and financial standing must be set out in the relevant Specific Administrative Terms and Conditions.

3. If, for any valid reason, the tenderer is unable to provide the references requested by the entity, he may prove his economic and financial standing by any other document which the entity considers appropriate.

Article 25. Technical or professional capabilities.

Tenderers must prove their technical or professional capabilities for the execution of the contract, meaning the technical or professional ability to perform the contract, thanks to either having previous experience in similar contracts or sufficient technical resources and personnel available to them.

The level of economic and financial standing shall be specific for each contract and its demand shall be adequate and proportionate to the characteristics of the works contracted. The contracting body shall be entitled to choose the references that tenderers must furnish to prove their economic and financial standing from those laid down in the LCSP or those that it considers appropriate. In any event, the references to be furnished to prove the economic and financial standing must be set out in the relevant Specific Administrative Terms and Conditions.

The entity shall be entitled to require the classification of the contractors in accordance with the provisions of public procurement regulations; such requirement must be laid down in the Specific Administrative Terms and Conditions and in the contract notice, where appropriate.

Article 26. Evaluation of the economic standing and technical capabilities of the tenderer with reference to other companies.

Tenderers shall be entitled to furnish proof of their economic or technical capabilities, claiming those capabilities of other companies, regardless of the legal nature of the relationship between them. In the case of undertakings controlling a group of companies, they may claim the capabilities of the companies belonging to the group, provided the said undertakings prove that they have at their disposal the resources, belonging to such companies, necessary to execute the contracts. If the said capabilities are proved by means of subcontracting, the tenderer must furnish a document showing the existence of a formal commitment with the subcontractors for the execution of the contract, adding up in this case the capabilities of all of them. It shall further be proved, in the form and conditions laid down in the present IIC, that the subcontractors have at their disposal the necessary resources to execute the contract.

Article 27. Definition of related undertaking.

For the purposes of these IIC, related undertaking shall mean any undertaking over which the contractor exerts, whether directly or indirectly, a dominant influence as a result of ownership, financial participation or the rules which govern it, or, as a result of the undertaking which exerts a dominant influence on the contractor. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it: a) holds a majority of the undertaking's subscribed capital; b) controls a majority of the votes attached to the shares issued by the undertaking; or c) can appoint more than half of the undertaking's administrative, management or supervisory body.

Article 28. Quality assurance certificates

1. Should the contracting body of the entity require the production of certificates drawn up by independent bodies attesting the compliance of the tenderer with certain quality assurance standards, it shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

2. The contracting body shall also accept certificates from recognised bodies established in other Member States of the European Union. It shall further accept other evidence of equivalent quality assurance measures from tenderers who do not have access to the certified ones or have no possibility to produce them within the time limit fixed.

Article 29.- Prohibitions to contract.

The persons who fall under any of the prohibitions to contract laid down in the LCSP shall under no circumstances contract with the entity, being excluded from taking part in the contract procedures.

Title III. Contracts' preliminary proceedings

Chapter I. Common provisions to contracts regulated in the IIC

Section I. On the contracting dossier

Article 30. Commencement and content of the dossier

1. All contracts governed by these IIC shall be preceded by the processing of a contract dossier, which shall be composed of the documents mentioned in the provisions regulating each of the procedures and in which it shall be justified the need and advisability of the works to be carried out or the services to be provided by virtue of the contract.

2. With the exception of contracts awarded by direct procurement by reason of the amount, in which it shall not be necessary the processing of a contract dossier, for the rest of the contracts awarded following these IIC, the contract dossier shall commence with the following information:

- a. A reasoned request, stating the need, characteristics and estimated value of the works or services that are the object of the contract.
- b. The Specific Administrative Terms and Conditions approved by the contracting body.
- c. The standard contract.
- d. The Technical Specifications.
- e. Where appropriate, the appointment of the bodies which assist the contracting body.

Section II. Specific Administrative Terms and Conditions and Technical Specifications.

Article 31. Specific Administrative Terms and Conditions

1. With the exception of contracts awarded by direct procurement by reason of the amount, each contract procedure shall commence with a document laying down the terms and conditions defining the legal and economic aspects of the rights and obligations of the parties, which shall be referred to as Specific Administrative Terms and Conditions.

2. The Specific Administrative Terms and Conditions shall set out the contract award criteria and may specify whether one of the said criteria is essential or whether it requires a minimum weighting, under which the tender shall be excluded.

3. The Specific Administrative Terms and Conditions shall indicate the weighting given to each of those criteria.
4. The Specific Administrative Terms and Conditions shall be approved by the contracting body.
5. The Specific Administrative Terms and Conditions shall be available to the interested parties and shall be published at the entity's contractor profile.
6. The Specific Administrative Terms and Conditions shall always be considered as part of the contract, which shall comply with their content.

Article 32. Specific Administrative Terms and Conditions minimum content.

The Specific Administrative Terms and Conditions must include, at least, the following content:

1. Definition of the subject-matter of the contract.
2. Contract's basic characteristics.
3. Specific rights and obligations of the parties in the contract.
4. Economic, legal and technical essential conditions which shall govern the contract procedure and the contract.
5. Contract award form and procedure.
6. Documents to be submitted by tenderers, as well as form and content of the proposals.
7. Manners of receipt of tenders.
8. Contract award criteria and their weighting.
9. Technical and economic aspects object of negotiation in the negotiated procedures.
10. Authorization regime regarding variants or alternatives.
11. Provision of guarantees, where appropriate.
12. Information on the conditions of subrogation in the employment contracts, where appropriate.
13. System of revision of prices, where appropriate.

Article 33. Technical Specifications.

1. The Technical Specifications shall be drawn up by the entity's technical staff responsible for the control of the contract execution, and they shall include the technical specifications required for the execution of the contract.

2. Technical Specifications shall mean the technical demands that define the required characteristics of a work, material, product, supply or service, and that allow defining them objectively in a manner that is adequate to the specific use by the entity. These technical requirements may include the quality, the performance, the safety or the dimensions, as well as the requirements applicable to the material, product, supply or service as refers to quality assurance, terminology, symbols, tests and testing methods, packing, branding and labeling.

3. With respect to works contracts, technical specifications may also include the criteria on definition and calculation costs, tests, control and reception of works and techniques or methods of construction, as well as all the remaining conditions of technical nature that the contracting entity may prescribe, according to general or specific rules, in relation to completed works and the material or elements composing them.

4. Technical specifications may include environmental requirements. Where the entity lays down environmental requirements, it may use detailed specifications, or, if necessary, parts thereof, as defined by European or multinational or national eco-labels, or by any other eco-label, provided that: those specifications are appropriate to define the characteristics of the services that are the object of the contract, and the requirements for the label are drawn up on the basis of scientific information and are available to all interested parties.

The products and services bearing the eco-label are presumed to comply with the environmental requirements laid down in the technical specifications.

Article 34. Prohibitions of obstacles to the free competition.

1. The contracts' technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the free competition between enterprises.

2. Under no circumstances shall the technical specifications refer to a specific make or source, or a particular process, with the effect of favoring or eliminating certain undertakings or certain products, unless such technical specifications are essential for the definition of the subject-matter of the contract. In particular, the technical specifications shall not refer to makes, patents, types or a specific origin or source. Notwithstanding the above, the said references shall be permitted if accompanied by the word "or equivalent" in cases where it is not possible to

define the subject-matter of the contract by means of sufficiently precise or intelligible technical specifications.

Article 35. Social and environmental requirements

The Specific Administrative Terms and Conditions may include detailed social or environmental requirements on the way to perform the contract, such as: the return or reuse of bottles, packaging or used products; the energetic efficiency of the products or services; the supply of products in recycled containers; the collection and recycling of waste materials or products used on the account of the contractor; the obligation to employ long time unemployed people; the organization by the contractor of training activities for young and unemployed people; the implementation of measures to promote equal treatment or measures to integrate immigrants and the obligation to employ a specific number of handicapped people and other similar requirements.

In case of non-compliance with these requirements, the entity may either terminate the contract due to breach of the same by the contractor or resume its execution with the imposing of penalties laid down in the specifications or in the contract.

Chapter II. Rules on advertising and competition periods.

Article 36.- Rules on advertising.

1. The tender procedures, with the exceptions described below, shall be advertised on the entity's Contractor Profile, maintaining the contract notice up to the contract award, thus guaranteeing the principle of advertising.

The contract information shall remain public for at least 1 month after the date of the contract award.

Likewise, the entity may advertise on the Contractor Profile the prior information notice which shall remain public for the following 12 months. For the purposes of shortening the periods of competition laid down in these IIC, the prior information notice must be published with a minimum of 20 days prior to the relevant contract notice.

2. The contract notices may also be published at the daily press. Likewise, the contracting body may decide to publish the contract notice in the Official Journal of the European Union or other official Journals.

Contract notices described in this section shall be made only for information purposes, without having any legal effects with regard to establishment of time limits or submission of tenders or applications.

3. The contracts awarded by direct procurement by reason of the amount or by reason of other grounds regulated in these IIC shall not require any type of contract notice.

4. The awards of contracts regulated in these IIC, with the exception of contracts awarded by direct procurement by reason of the amount, shall be published at the entity's Contractor Profile within a period of 15 days from the date of the award of each contract.

Article 37. Content of prior information notices, contract notices and contract award notices.

In those cases established in these IIC where the entity may prepare a prior information notice, such notice shall be published in accordance with the form laid down in Annex I of these IIC, which shall regulate the minimum content of the notice.

In those procedures thus regulated in these IIC, the entity shall proceed to publish a contract notice in accordance with the form set out in Annex II of these IIC, which shall further regulate the minimum content of the contract notice.

All the contracts awarded under these IIC, with the exception of those awarded by direct procurement by reason of the amount, shall be published in the entity's Contractor Profile in accordance with the form set out in Annex III of these IIC, which shall further regulate the minimum content of the award notice.

Article 38.- Periods of competition.

1. In open procedures, the minimum period for submitting tenders shall be 12 days for supply and service contracts and 16 days for works contracts, from the date of publication of the contract notice.

2. In restricted procedures, the minimum period for submitting the requests to participate shall be 12 days from the date of publication of the notice. In these procedures, the minimum period for the selected candidates to submit their tenders shall be 10 days from the date on which the invitation to tender was sent.
3. The time limits laid down in the two previous points may be reduced to half in the event of duly justified urgency; such urgency must be motivated at the contract dossier.
4. In the event the entity publishes a prior information notice, the time limits may be reduced to 4 days.
5. In the negotiated procedures, the time limit for consultation and submission shall be specified, on a case by case basis, at the Specific Administrative Terms and Conditions and at the invitation to tender to the selected candidates. In any event, it shall be necessary to establish a time limit which is sufficient to guarantee competition, equal treatment and non-discrimination of the tenderers.

TITLE IV.- CONTRACT AWARD PROCEDURES

Chapter I. Contract award procedures.

Article 39. Contract award procedures.

1. The contracts regulated in these IIC shall be awarded in accordance with one of the following procedures:
 - a. Open procedure
 - b. Restricted procedure
 - c. Negotiated procedure
 - c1. Negotiated procedure with publication of a contract notice on the Contractor Profile.
 - c2. Negotiated procedure for other reasons.
 - d. Contract award procedure by direct procurement
 - d1. Contract award procedure by direct procurement by reason of the amount.
 - d2. Contract award procedure by direct procurement by reasons other than the amount.

2. In general terms and, provided it is not required to award the contract by means of another procedure regulated in these IIC, it will be mandatory to award the contracts by applying the open or restricted procedure when the contract estimated value is greater than EUR 100,000 in supply and service contracts, and EUR 1,000,000 in works contracts.

3. A contract may be awarded by means of a negotiated procedure with publication of a contract notice on the web by reason of the amount, when the contract estimated value is greater than EUR 50,000 and less than EUR 100,000 in supply and service contracts, and greater than EUR 50,000 and less than EUR 1,000,000, in works contracts.

4. A contract may be awarded by direct procurement by reason of the amount when the contract estimated value is less than EUR 50,000, or for the reasons specified in these IIC.

Article 40. Open procedure

Open procedure means those procedures whereby any interested tenderer, meeting the requirements of capacity and the economic and technical capabilities laid down in the Specific Administrative Terms and Conditions, may submit a tender. Negotiation of the terms, conditions and requirements of the contract with the tenderers shall not be possible.

Article 41. Conduct of the open procedure

The open procedure shall comply with the following requirements:

- a. Report of commencement of dossier.
- b. Drawing-up of the Specific Administrative Terms and Conditions and Technical Specifications.
- c. Contract notice in the terms laid down in these IIC, where it will be indicated that the Specific Administrative Terms and Conditions and Technical Specifications, where appropriate, and other documentation necessary for the execution of the contract are available to interested tenderers.
- d. Opening of administrative documentation.
- e. Public opening of tenders.
- f. Assessment of tenders.
- g. Contract award proposal by the Contracting Committee or the Technical Committee.

- h. Contract award resolution by the contracting body.
- i. Publication of the contract award on the Contractor Profile.
- j. Formalization of the contract.

Article 42. Restricted procedure.

Restricted procedure means those procedures in which any entrepreneur or professional may request to participate and whereby only those entrepreneurs or professionals selected by the entity and complying with the selection criteria laid down in the Specific Administrative Terms and Conditions are invited to submit a tender, in the terms and conditions set out in the invitation.

The selection of companies must be in the number specified by the contracting body in the contract dossier and the minimum shall be three.

The contract dossier must include a legal and technical report justifying the procedure to be used and the selection criteria for the candidates; such criteria shall be indicated at the Specific Administrative Terms and Conditions.

The restricted procedure shall have two different stages: The stage of selection of candidates and the stage of selection of the successful tenderer.

a. The stage of selection, or first stage, shall consist in the selection of entrepreneurs which will be invited to submit a tender. This selection shall be carried out in accordance with the criteria for the “selection of candidates” laid down in the Specific Administrative Terms and Conditions, which must be strictly fulfilled. The minimum period for the receipt of requests to participate shall be 12 days from the publication of the contract notice on the Contractor Profile.

b. The second stage will consist in the dispatch simultaneously and in writing of the invitations to the selected candidates to submit their tenders. Such dispatch may be done by fax, letter or electronic means. Simultaneously, the invitation shall also be published on the Contractor profile, indicating the companies which have been selected. The minimum time limit for the receipt of tenders from the selected companies shall be 10 days from the date on which the invitation is sent. This stage shall be conducted in accordance with the rules of the open procedure laid down in the previous article.

Article 43. Conduct of the restricted procedure.

The restricted procedure shall comply with the following requirements:

- a. Report of commencement of dossier.
- b. Drawing-up of the Specific Administrative Terms and Conditions and Technical Specifications.
- c. Selection and contract notice in the terms laid down in these IIC, where it will be indicated that the Specific Administrative Terms and Conditions and Technical Specifications, where appropriate, and other documentation necessary for the performance of the contract are available to interested tenderers.
- d. Receipt of the requests to participate and analysis of the same.
- e. Determination by the contracting body of the selected entrepreneurs.
- f. Dispatch of the invitations to the selected candidates and publication on the Contractor Profile.
- g. Receipt of the tenders from the candidates.
- h. Opening of the administrative documentation, amendment of the correctable errors in the period of 3 days and admittance of the tenderers meeting the requirements laid down in the Specific Administrative Terms and Conditions.
- i. Public opening of tenders.
- j. Assessment of tenders.
- k. Contract award proposal by the Contracting Committee or the Technical Committee.
- l. Contract award resolution by the contracting body.
- m. Publication of the contract award on the Contractor Profile.
- n. Formalization of the contract.

Article 44. Negotiated procedure by reason of the amount with publication of a contract notice on the contractor profile.

This negotiated procedure is a contract award procedure where the entity may consult and negotiate the conditions of the contracts with some entrepreneurs of his choice, and selects the tender justifying it and in accordance with the criteria laid down in the Specific Administrative Terms and Conditions.

In this procedure, whenever possible, the entity must invite to negotiate at least three candidates suitable to perform the contract.

In this procedure, the entity shall award the contract to the company submitting the most advantageous offer, amongst all the offers received, taking into consideration the award criteria laid down in the Specific Administrative Terms and Conditions.

Article 45. Conduct of the negotiated procedure by reason of the amount with publication of a contract notice on the Contractor Profile.

The award of the contracts by means of this procedure shall comply with the following requirements:

- a. **Commencement:** Technical report of commencement of dossier.
- b. **Drawing-up of the Specific Administrative Terms and Conditions:** The Specific Administrative Terms and Conditions shall include the economic, legal and technical essential conditions, specifying those which shall be object of negotiation, the basic characteristics of the contract and the Technical Specifications, where appropriate, as approved by the contracting body.
- c. **Contract notice:** The contract notice may limit the number of candidates that will be invited to submit offers. In any event, the minimum number of invitations shall be three.
- d. **Submission of requests:** The interested parties must submit their requests to participate through the Contractor Profile or by means of the procedure laid down in the Specific Administrative Terms and Conditions or in the notice.
- e. **Selection of entrepreneurs to be invited:** In the event the entity has not limited the number of tenderers, it must invite all tenderers to submit offers. Notwithstanding, in the event the number of tenderers has been limited, the entity shall only invite the number of tenderers indicated in the notice, amongst all the requests to participate, without having to justify its choice.
- f. **Capacity to act:** Verification of the capacity to act and the professional suitability of the selected entrepreneurs, for the purposes of performing the object of the contract.
- g. **Invitations:** Invitations must be dispatched simultaneously, by electronic mail or other means in writing, to all selected entrepreneurs, stating the deadline and place for the submission of offers, attaching the Specific Administrative Terms and Conditions or stating the place where such Terms and Conditions can be obtained. Simultaneously, the invitation shall also be published on the Contractor Profile, indicating the companies which have been selected. In the contracting dossier, there must be evidence of the dispatch and receipt of the invitations, as well as the offers received and the assessment of the same.

- h. **Submission of offers:** The selected entrepreneurs shall submit their offers in the conditions and time limit indicated in the invitation.
- i. **Receipt of offers:** The negotiated procedure shall start once the proposals or offers have been received, ensuring the fair treatment of all tenderers. In particular, the entity shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. Notwithstanding the above, if the contract notice has mentioned it, the essential conditions may be amended assuming the solutions or proposals submitted by the tenderers and proceeding to a new negotiation with the same.
- j. **Contract award proposal:** Once the negotiation has finished, the Contracting Committee or Technical Committee, where appropriate, shall formulate the contract award proposal and the contracting body shall issue the contract award resolution.
- k. **Publication:** Publication of the contract award on the Contractor Profile.
- l. **Contract:** Formalization of the contract.

Article 46. Negotiated procedure for other reasons.

- 1. This procedure may be used in those cases where no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered.
- 2. In such cases, the entity shall, whenever possible, invite all tenderers and only them, and, if this was not possible, a minimum of three, and shall comply with the requirements laid down in the following article.

Article 47. Conduct of the negotiated procedure for other reasons.

The award of the contracts by means of this procedure shall comply with the following requirements:

- a. **Commencement:** Technical and legal report justifying the existence of causes that enable the entity to apply this procedure.
- b. **Drawing-up of the Specific Administrative Terms and Conditions:** The Specific Administrative Terms and Conditions shall include the economic, legal and technical essential conditions, specifying those which shall be object of negotiation, the basic characteristics of the contract and the Technical Specifications, where appropriate, as approved by the contracting body.
- c. **Advertising:** Information on the Contractor Profile.

- d. **Selection of entrepreneurs to be invited:** The entity shall invite all tenderers to submit their tenders in an open procedure. If this was not possible, the entity shall invite a minimum of three tenderers that comply with the criteria of capacity, economic and financial standing and technical and professional capabilities laid down in the Specific Administrative Terms and Conditions.
- e. **Invitations:** Invitations must be dispatched simultaneously, by electronic mail or other means, to all selected entrepreneurs, stating the deadline and place for the submission of offers, and attaching the Specific Administrative Terms and Conditions or stating the place where such Terms and Conditions can be obtained. Simultaneously, the invitation shall also be published on the Contractor profile, indicating the companies which have been selected. In the contracting dossier, there must be evidence of the dispatch and receipt of the invitations, as well as the offers received and the assessment of the same.
- f. **Submission of offers:** The selected entrepreneurs shall submit their offers in the conditions and time limit indicated in the invitation.
- g. **Receipt of offers:** The negotiated procedure shall start once the proposals or offers have been received, ensuring the fair treatment of all tenderers. In particular, the entity shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. Notwithstanding the above, if the contract notice has mentioned it, the essential conditions may be amended assuming the solutions or proposals submitted by the tenderers and proceeding to a new negotiation with the same.
- h. **Contract award proposal:** Once the negotiation has finished, the Contracting Committee or Technical Committee, where appropriate, shall formulate the contract award proposal and the contracting body shall issue the contract award resolution.
- i. **Publication:** Publication of the contract award on the Contractor Profile.
- j. **Contract:** Formalization of the contract.

Article 48. Contract award by direct procurement by reason of the amount.

The entity may award works contracts, supply contracts and services contracts by direct procurement in cases where the amount of the same is no greater than EUR 50,000 and the term of the contract does not exceed one year.

Article 49. Conduct of contract award by direct procurement by reason of the amount.

The contract award by direct procurement by reason of the amount shall comply with the following requirements:

- a) **Commencement of the contract procedure:** The procedure will start with the purchase application or internal request by the Department of the relevant entity, stating the amount of the expenditure and the selected entrepreneur or entrepreneurs.
- b) **Capacity to act:** The submission of the relevant invoice shall be deemed as evidence of the entrepreneur's or professional's capacity to act provided such invoice contains the data and meets the requirements laid down in the rules governing the issuance and delivery of invoices. In any event, the entity may at any time require the contractor to furnish evidence of his capacity.
- c) **Completion:** The contract shall be completed with the approval of the invoice by the entity's competent body, approving thus the expenditure.

Article 50. Contract award by direct procurement by reasons other than the amount.

The entity may proceed to award a contract by direct procurement by reasons other than the amount in the following cases:

1. General causes applicable to all type of contracts:

- a. When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular entrepreneur or professional.
- b. When, for reasons of extreme urgency brought about by events unforeseeable and not attributable to the entity, the contract requires an immediate handling.

2. Causes applicable to works contracts:

- a. In cases in which additional works not included in the concession project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein without modifying it, and their performance has been entrusted to the contractor of the original work in accordance with the prices governing the original contract, or, where appropriate, the prices freely negotiated by the parties, provided that the following requirements are met:
 - i. That the additional works cannot be technically or economically separated from the initial contract without major inconvenience to the entity, or when, such works, although separable from the performance of the initial contract, are strictly necessary for its completion.

- ii. That the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the original works contract.
- b. When the works consist in the repetition of similar works awarded by an open or restricted procedure to the same contractor by the contracting body, provided that: i) such works are in conformity with a basic project for which the original contract was awarded according to the said open or restricted procedure, ii) the possibility of using this procedure is indicated in the contract notice, and iii) the amount of the new works has been taken into account when calculating the total amount of the contract. This procedure may be used only during the three years following the conclusion of the original contract.

3. Causes applicable to services contracts:

- a. In cases in which additional services not included in the project initially considered or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the services described therein without modifying them, and their performance has been entrusted to the contractor of the original service in accordance with the prices governing the original contract, or, where appropriate, the prices freely negotiated by the parties, provided that the following requirements are met:

- i. That the additional services cannot be technically or economically separated from the initial contract without major inconvenience to the entity, or when, such services, although separable from the performance of the initial contract, are strictly necessary for its completion.
 - ii. That the aggregate value of contracts awarded for additional services may not exceed 50 % of the amount of the original services contract.

- b. When the services consist in the repetition of similar services awarded by an open or restricted procedure to the same contractor by the contracting body, provided that: i) such services are in conformity with a basic project for which the original contract was awarded according to the said open or restricted procedure, ii) the possibility of using this procedure is indicated in the contract notice, and iii) the amount of the new services has been taken into account when calculating the total amount of the contract. This procedure may be used only during the three years following the conclusion of the original contract.

4. Causes applicable to supply contracts:

- a. When the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs.

- b. When it involves additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting body to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. This procedure may be used only during the three years following the conclusion of the original contract.
- c. When it involves the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure.

Article 51. Conduct of the contract award procedure by direct procurement by reasons other than the amount.

The award of the contracts by means of this procedure shall comply with the following requirements:

- a. Drawing-up of a report, by the Technical Department of the contracting entity, describing the needs that the contract intends to meet, as well as the existence of the causes justifying this procedure.
- b. Drawing-up of a legal report.
- c. Drawing-up of the Specific Administrative Terms and Conditions which set out the economic, legal and technical essential conditions, the basic characteristics of the contract and the Technical Specifications, where appropriate, as approved the contracting body.
- d. Verification of the capacity to act and the professional suitability of the selected entrepreneur, for the purposes of performing the object of the contract.
- e. Invitation to the tenderer, dispatched by electronic mail, and submission of the economic and technical proposal by the invited entrepreneur.
- f. The Contracting Committee or Technical Committee, where appropriate, shall formulate the contract award proposal and the contracting body shall issue the contract award resolution.
- g. Publication of the contract award on the Contractor Profile.
- h. Formalization of the contract.

Chapter II. On the submission of proposals.

Article 52. Form of submitting the documentation in the procedures regulated in these IIC.

1. In the open and restricted procedures regulated in these IIC, tenderers shall submit their documentation and tenders in **three envelopes** in accordance with the requirements and instructions set out in the Specific Administrative Terms and Conditions.

2. In the other procedures regulated in these IIC, entrepreneurs must submit the documentation pertaining to their capacity, economic standing and technical capabilities, where appropriate, in only one envelope, except when it is otherwise stated in the relevant Specific Administrative Terms and Conditions.

3. No tenderer may submit more than one tender, without prejudice to the possibility of submitting variants, if it is thus provided in the Specific Administrative Terms and Conditions and in the notice. Tenderers may neither submit a tender participating jointly with other tenderers if they have done so individually, nor may they take part in more than one group. Failure to comply with these requirements shall trigger the exclusion of all tenders submitted by such tenderer.

Simultaneous submission by related undertakings shall also imply the exclusion of such tenders.

4. The period of validity of the tenders shall be determined in the Specific Administrative Terms and Conditions.

5. Tenders may be submitted to the entity's offices or may be dispatched by post within the stipulated time limit. Under no circumstances shall be considered tenders submitted out of the deadline (day and hour) stipulated in the contract notice or in the invitation to tender.

6. In the event the tenders are sent by post within the time limit, tenderers shall justify that the date and hour of the delivery to the Post Office are, as maximum, those indicated in the contract notice and they shall announce them to the entity by means of telegram, telefax or electronic mail, which must be received by the entity within the same time limit. The announcement to the entity by electronic mail shall only be valid if there is evidence of the dispatch and receipt, of their

data and of the full content of the communications and if the announcement clearly identifies the sender and the receiver. If the above-described requirements are not met, the tender shall not be considered if it is received by the entity after the deadline stipulated in the notice. A tender dispatched by post shall under no circumstances be considered, if it has not been received by the entity after 10 calendar days from the expiry of the time limit for submission of tenders.

7. All tenderers need to provide at the time of submission of their tenders, in addition to their postal address, an electronic mail address, for the purposes of communications and relations in general arising in connection with the tender or that may concern the tenderer in any way.

Article 53. Documentation proving the capacity, standing and capabilities.

Envelope number 1 or single envelope shall include the documentation proving the capacity, standing and capabilities, and it shall contain at least the following:

1. The documentation proving the contractor's legal capacity and his representation.
2. The documentation proving the tenderer's economic and financial standing and technical or professional capabilities and that he does not fall under any of the prohibitions to contract.
3. The documentation proving that the tenderer has fulfilled his obligations with the Tax Authorities and Social Security.
4. Any other documentation required by the Specific Administrative Terms and Conditions.
5. Documentation proving the provision of guarantees when it is required by the Specific Administrative Terms and Conditions.
6. In the event of a tender submitted by a grouping of economic operators, document stating its undertaking to assume a specific legal form.

The Specific Administrative Terms and Conditions may lay down that the initial submission of documentation indicated therein be replaced with a solemn declaration by the tenderer stating his compliance with the conditions required to enter into the contract and specifying the existence of the required

documentation; the signature in such declaration must be legalized by a Notary. In this case, the tenderer to which the contract was awarded shall submit the required documentation in the time limit laid down in the Specific Administrative Terms and Conditions.

In the event that the required documentation is not submitted within the specified deadline due to circumstances attributable to the contractor, the entity may annul the award, with seizure of the guarantees provided for the tender and with an additional compensation for damages exceeding the guaranteed percentage.

Likewise, the entity shall be entitled to seize the relevant guarantee and claim responsibilities and compensation for damages should the contractor or any other tenderer submit uncertain or false data. In the case of the contractor, it shall further cause the annulment of the award.

In those cases, the entity may award the contract to the next most economically advantageous tender.

Article 54. Form of submitting the technical and economic proposals.

The proposals submitted by the interested parties will be secret in relation to the other tenderers until their opening, and they must be submitted in writing, and in compliance with the requirements and conditions laid down in the Specific Administrative Terms and Conditions and the Technical Specifications.

Technical Proposal:

Tenderers shall submit the technical proposal, which shall not be opened in public, in an independent envelope (envelope number 2) for the open and restricted procedures and in the single envelope for the rest of the procedures. If the entity considers that the proposal submitted lacks clarity and detailed information, it may request clarifications but always complying with the principle of equal treatment and non-discrimination of tenderers, who may under no circumstances modify it. The time limit for replying shall not exceed 10 days.

Economic proposal:

The proposals submitted by the interested parties will be secret until their opening, and they must be submitted in writing, and in compliance with the

requirements and conditions laid down in the Specific Administrative Terms and Conditions.

The economic proposal shall be submitted in an separate envelope (envelope number 3) in accordance with the model laid down in the Specific Administrative Terms and Conditions for the open and restricted procedures; for the rest of the procedures, the economic proposal shall be submitted in the single envelope. For the open and restricted procedures, the economic proposal shall be opened and read in public.

When the economic proposal shows discrepancy between the amount indicated in words and the one in numbers, the amount shown in words shall prevail. Likewise, in the event the economic proposal does no refer to the Value Added Tax, it will be deemed that the economic proposal does not include VAT.

The entity may only request clarifications regarding the economic proposal when the offered price is calculated with a formula, equation or similar, and, in doing so, it shall always comply with the principle of equal treatment and non-discrimination of tenderers, who, under no circumstances, may modify their proposals. If the entity considers that the proposal needs to be clarified, it may request clarifications, in compliance always with the said principles. The time limit for replying shall not exceed 10 days.

Article 55. Provisional guarantees.

The entity may require in the Specific Administrative Terms and Conditions the provision of guarantees for the amounts specified therein, which shall never exceed 5% of the tender amount, in order to make the requests to participate and the tenders more reliable; such guarantees shall be at the disposal of the interested parties for their withdrawal in the period of 30 days from the date of publication of the award on the Contractor Profile; the guarantees pertaining to the successful tenderer shall be retained up to the delivery of the performance guarantee, if appropriate.

Guarantees may be provided in any of the forms laid down in the Specific Administrative Terms and Conditions, including in cash.

Article 56. Evaluation of documentation, correctable errors and omissions.

The following procedure shall be followed for the evaluation of documentation submitted by the tenderers:

a. The administrative documentation submitted by tenderers shall be evaluated by the Contracting Committee or Technical Committee, or by the person or committee designated by the entity's contracting body, whether in public or not, through the opening up of the relevant envelope. The contract dossier must include evidence of the documents' list submitted by each tenderer.

b. If correctable errors or omissions were detected in the documentation submitted, it will be notified in writing to the relevant tenderers, giving them a period not exceeding 3 days for their amendment before the Contracting Committee or Technical Committee.

Likewise and for the purposes of verifying the possible application of a prohibition to contract, the entity may demand the tenderer to submit additional certificates and documents or clarifications of the same. This demand shall be fulfilled within a maximum of 3 days.

c. The tenderers with non-correctable errors or who have not amended them within the stipulated time limit shall be rejected from the tender procedure.

d. Once the documentation has been evaluated and the errors or omissions, where appropriate, have been amended, the entity will proceed to determine the companies meeting the selection criteria laid down in the Specific Administrative Terms and Conditions, issuing an express decision on the tenderers who have been admitted or rejected, and the causes for their rejection.

e. The contract dossier must include evidence of the proceedings conducted.

Errors consisting of failure to comply with the prescribed requirements shall be considered non-correctable, whereas errors consisting of failure to give proof of the said requirements shall be considered correctable.

This article shall apply to both the cases where it is required the submission of the envelope number 1 with the relevant documentation, as well as to those cases where the Specific Administrative Terms and Conditions set out the possibility to replace such documentation with a solemn declaration by the tenderer. In this

latter case, the documentation shall be evaluated once the contract has been awarded.

Article 57. Evaluation of the proposals and public opening of the economic proposal.

In the open and restricted procedures regulated in these IIC, the Contracting Committee or Technical Committee shall proceed to the public opening of the economic proposals, ensuring compliance with the principle of transparency.

In the open and restricted procedures regulated in these IIC, the entity's Contracting Committee or Technical Committee shall proceed to the assessment of the technical and economic proposal submitted by the tenderers, in accordance with the award criteria laid down in the Specific Administrative Terms and Conditions. In the rest of the procedures, the said assessment shall be carried out by the person or committee designated by the entity's contracting body.

The Contracting Committee shall reject a proposal, by means of a reasoned resolution, if it falls under one of the following cases: i) it does not show concordance with the documentation examined and admitted, ii) it exceeds the tender base budget, iii) it varies substantially from the model set out, iv) it implies obvious error in the amount of the proposal, and v) it contains an error or inconsistency that makes it non-viable, as acknowledged by the tenderer. On the contrary, the change or omission of some of the words of the model, provided neither one alter their meaning, shall not constitute sufficient reason for rejecting the proposal.

Article 58. Disproportionate or abnormal proposals.

In the event that the entity considers a proposal to be potentially disproportionate or abnormal, it will grant the tenderer, prior to its decision on the said issues, a maximum of 10 days for the purposes of furnishing information about the reasons for the same. The Contracting body shall decide on its admission or rejection, once it has received, by means of a report, the explanation from the tenderer.

The criteria for the consideration of abnormally low proposals shall be laid down in the Specific Administrative Terms and Conditions.

The contracting body shall be the one accepting or rejecting the disproportionate or abnormal proposals, after the relevant technical report.

It shall be indispensable, for the purposes of admitting to the tender a proposal initially evaluated as abnormal or disproportionate, that the tenderer formulating it, submits a report proving that the economic proposal does not prejudice the strict compliance of the project's technical and security requirements. This report must be expressly accepted by the entity's technical services.

Article 59. Application of the award criteria.

The criteria used for the award of the contracts subject to these IIC, including but not limited to, will be the following:

- a. Exclusively the offered price. The lowest price shall be awarded the maximum weighting. Under no circumstances, the arithmetic mean of the economic proposal may be awarded the maximum weighting, or
- b. In all other cases, for determining the most advantageous tender it will be used the price and the criteria linked to the subject-matter of the contract, for example, quality or its monitoring mechanisms, technical merit of the tender, option of spare parts, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery period or other similar.

Criteria linked to the economic standing and technical and professional capabilities of the tenderer may, under no circumstances, be used as award criteria, and in particular, experience, availability of resources for developing the works, and quality systems used by the tenderer to ensure the quality of the services (such as ISO, UNE), may not be valued.

The award criteria and their weighting, where appropriate, shall be determined by the contracting body and shall be described, necessarily, in the Specific Administrative Terms and Conditions, and may, also, be published in the notice and on the Contractor Profile.

When more than one award criteria is taken into consideration, the Specific Administrative Terms and Conditions need to indicate the relative weighting given to each of the award criteria, which may be expressed by providing for a range with an appropriate maximum spread. The award criteria shall be described in descending order of importance, if the weighting cannot be established in advance, in duly justified cases.

Article 60. Exception for the contract award procedures by direct procurement by reason of the amount.

The rules and requirements laid down in this Chapter and in the following one shall not apply to the award procedures by direct procurement by reason of the amount, regulated in these IIC.

Chapter III. On the award of contracts.

Article 61. Contract award

In the contract award procedures where the criteria used is only the offered price, the contract shall be awarded within a maximum period of 15 days, except when the Specific Administrative Terms and Conditions provide for a greater period, which must be justified, starting from the day following the public opening of tenders, where appropriate, or from the deadline date for the receipt of tenders in the rest of the procedures.

In the procedures where the tender is valued with more than one criteria, the contracting body shall award the contract within the maximum period of two months, except when the Specific Administrative Terms and Conditions provide for a greater period, which must be justified, starting from the day following the public opening of tenders, where appropriate, or from the deadline date for the receipt of tenders in the rest of the procedures.

Tenderers shall be entitled to withdraw their proposal and request the return or cancellation of the guarantee, without any compensation whatsoever, should the above-mentioned award periods have elapsed and no award resolution has been passed. Nevertheless, the contracting body may request the tenderers to maintain their offer for a greater period, after communication to the tenderers and publication on the Contractor Profile, and the tender shall resume with those tenderers who accept the extension.

The entity's Contracting body shall decide on the award, and shall be entitled to either award the contract to the most economically advantageous tender or declare the tender void.

The contract award resolution must be justified by reference to the award criteria laid down in the Specific Administrative Terms and Conditions, and must specify

the reasons for the rejection of an application or a tender and the characteristics and advantages of the selected tender, indicating the total and partial weightings, obtained by all the companies admitted to the procedure, with regards to each of the award criteria, and shall be notified to all the tenderers. The award resolution shall be deemed sufficiently justified if the contracting body accepts and assumes the content of the assessment technical report.

If the contracting body does not follow the contract award proposal, it must justify the reasons of the resolution.

The contracting body may declare the contract procedure to be void, when factual or legal circumstances occur which, in a logical and reasonable manner, prescribe the prevalence of public interest in the light of the needs the contract intends to fulfill; the contracting body may also waive or discontinue the tender by reasons of public interest, duly justified at the dossier.

The result of the award shall be notified, providing the reasons, to the successful tenderer and to the rest of the tenderers, within a maximum period of 10 days, and will be published on the Contractor Profile within the same time limit.

If it is thus decided by the entity's contracting body, contract awards may also be published in the daily press and in the Official Journal of the European Union or other official journals, only for information purposes, without having any legal effects.

Art. 62. Contract award effects.

Whatever the procedure or contract award form used, contracts take effect upon their signature.

Non-successful tenderers are entitled, within a maximum period of 10 days from the notification of the award, to submit a written request to the contracting body concerning the reasons why their application has been rejected, not selected or not awarded. For this purpose, the contracting body shall, within a maximum period of 20 days after the request, make known to the tenderer requesting for it, the reasons why the application has been rejected, not selected or not awarded.

Article 63. Contract formalization.

1. The contract must be formalized in writing, by means of a private document, which must be signed by the parties, within a maximum period of 30 days from the date of the award's notification, and after submission of the documentation required by the contracting body.
2. The entity may proceed to terminate the contract award, after giving the interested party a period of 10 calendar days for comments, in the event the successful tenderer i) does not fulfill the demand of the entity, ii) does not comply with the requirements for execution of the contract or iii) prevents its formalization within the said period. In this event the guarantee shall be seized and the entity may require compensation for damages. In those cases, the entity may award the contract to the next most economically advantageous tender.

Article 64. Provision of performance guarantees

The Specific Administrative Terms and Conditions may require the provision of performance guarantees prior to the contract formalization. The amount and form of such guarantees shall be laid down in the Terms and Conditions, and they shall under no circumstances exceed 12% of the award amount and, in the case of unit prices, 12% of the tender amount.

Guarantees shall secure the performance of the contract by the contractor until the expiry of the guarantee period which is regulated in the contract and, in particular, they shall secure the payment of the penalties, as well as the repair of possible damages caused by the contractor during the performance of the contract.

Guarantees may be provided in any of the forms laid down in the Specific Administrative Terms and Conditions, including in cash or by retention of the prices.

Article 65. Transfer to bodies or Public Registers.

In any event, the entity shall proceed to communicate the contracts that formalizes to the relevant Public Registers and other monitoring organizations, in accordance with the provisions of the LCSP.



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FINAL PROVISIONS.

First Final Provision:

These IIC have been drawn up in order to comply with the obligations set out in article 175 of the LCSP and the principles laid down therein.

Notwithstanding the above, the entity's competent bodies may decide to apply the rules laid down in the LCSP for the harmonized procurement, to the contracts regulated in these IIC, further complying in this manner with article 175 of the LCSP.

Second Final Provision:

The approval of these IIC before the 30th April 2008, complies with the requirements of the LCSP's Sixth Transitional Provision.

Third Final Provision:

The amendments of the LCSP carried out by way of a national or Community legal provision that concern these IIC, shall form part of these IIC, and shall be ratified by the entity's governing body at its first session.

Fourth Final Provision:

These IIC shall come into force on 30 April 2008, once they have been approved by the entity's competent body, in compliance with the Twelfth Final Provision of the LCSP.

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ANNEX I. PRIOR INFORMATION NOTICE

Resolution of _____, of _____, by means of which it is made public the prior information notice of the contracts of _____-of _____, to be concluded during the year _____

TEXT

1. Contracting entity and address from which information can be obtained:

- a) Organization:
- b) Address:
- c) Town and Postal Code :
- d) Telephone:
- e) Fax:

2. Object of the contracts and scheduled date for start of award procedures. General description of the object and scheduled date:

- a) Object:
- b) Estimated cost of the contracts:
- c) Scheduled dates for start of award procedures:

3. Other information:

Date:
Signed:



ANNEX II. CONTRACT NOTICE

NOTICE FOR THE CONTRACTING OF

REFERENCE NUMBER

- 1. Contracting entity:**

- 2. Object of the contract:**
 - a) Description of the object:
 - b) Place of delivery:
 - c) Date of delivery:

- 3. Type of processing, procedure and contract:**
 - a) Processing:
 - b) Procedure:
 - c) Type:

- 4. Tender base budget:**

- 5. Provisional guarantee:**

- 6. Information and documentation can be obtained at:**

- 7. Contractor's specific requirements:**

- 8. Submission of tenders:**
 - a) Deadline for submission:
 - b) Required documentation:
 - c) Address to which tenders must be submitted:
 - d) Date for the public opening of the economical proposals:
 - e) Minimum time frame during which the tenderer must maintain the tender:
 - f) Will variants be accepted:

- 9. Advertising expenses:**

Date:

Signed:



ANNEX III. CONTRACT AWARD NOTICE

**RESOLUTION OF THE CONTRACT AWARDING ENTITY ON THE AWARD OF A CONTRACT
OF**

Resolution of _____, by means of which it is made public the definitive award of the contract of _____

By means of this resolution it is made public the final award resolution of the contracting procedure which is indicated below:

- 1. Contracting entity:**

- 2. Object of the contract:**

- 3. Type of processing, procedure and contract:**
 - a) Processing:
 - b) Procedure:
 - c) Type:

- 4. Contract award**
 - a) Date:
 - b) Successful tenderer:
 - c) Nationality:
 - d) Amount of the award:

Date:

Signature: