

PARQUE TECNOLÓGICO – TEKNOLOGI ELKARTEGIA, S.A.
INTERNAL CONTRACTING
FOR CONTRACTING NOT SUBJECT TO HARMONISED
REGULATION

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1. AIM AND APPROVAL

The internal contracting instructions (hereinafter the "**ICI**") apply to Parque Tecnológico – Teknologi Elkartegia, S. A. (hereinafter "**the Company**").

The Company forms part of the public sector in the terms of article 3.1.d) of Law 30/2007, dated 30 October, on Public Sector Contracts ("**LCSP**"). Thus the Company has the power to award contracts in accordance with article 3.3.b) of the LCSP.

These ICI are aimed at regulating the Company's internal procedures for awarding contracts not subject to harmonised regulation, so that the effectiveness of the principles of advertising, concurrence, transparency, confidentiality, equality and non-discrimination are guaranteed, as well as the contract being awarded to whoever presents the most favourable tender, fully complying with the mandate in article 175.b) of the LCSP.

The ICI have been approved by the Company's Board of Directors, after a report from the legal advisors. They will come into effect on 17 December 2010 and shall be applicable to those contracting records started after that date.

The coming into effect of these ICI supposes the automatic repeal of any other contracting procedure used to date.

2. INTERPRETATION OF THE ICI

For the purposes of these IIC, the terms established starting with a capital letter shall assume the meaning established for these terms in the LCSP.

When by virtue of the ICI, an LCSP adapted rule should be applied, or is not totally or partially applicable, references to this rule made in other articles in the LCSP that, in accordance with these ICI, if applicable, should be understood to be carried out with these adaptations or repeals.

The estimated value of contracts will be calculated in accordance with the rules foreseen in article 76 of the LCSP and will not include Valued Added Tax.

The amounts indicated in sections 9 and 10 of these ICI and the amounts beyond which the contracts by the Company are considered to be subject harmonised regulation are considered to have been updated, where applicable, in accordance with those established by the European Commission in the terms given in the Fourteenth Additional Clause of the LCSP.

3. CONTRACTS SUBJECT TO THE ICI

The ICI will be applied to all onerous contracts signed by the Company, whatever their legal nature, except for the following:

- a)** Business and legal relations listed in article 4 of the LCSP.
- b)** Contracts subject to harmonised regulation in accordance with article 13 and concurrent articles of the LCSP, the award of which is governed by that established in article 174 of the LCSP.
- c)** Contracts and Business regulated or specifically omitted by applicable sector regulations, awarded in accordance with these regulations' stipulations.

4. GENERAL PRINCIPLES OF CONTRACTING REGULATED BY THE ICI

Contracts resulting from the application of these ICI will be governed by the principles contained in article 1 of the LCSP, and their awarding will be subject, in any event, to the principles of advertising, concurrence, transparency, confidentiality and non-discrimination, in accordance with article 175 of the LCSP.

In order to guarantee observance of the principles stated in the previous paragraph, in contracting procedures dealt with by the Company, according to the ICI, the intervention of the contracting entities will, in any case, be directed at fulfilling the established principles.

These principles will be understood to have been complied with the observance of the rules foreseen in the following sections of these ICI, and the following action guidelines will be observed for their application and interpretation:

- a)** The advertising principle will be understood to have been fulfilled with the application, in the interests of all potential bidders, of suitable and sufficiently accessible dissemination or disclosure means, that provide contractual information about the Company and allow the market to be opened to the competition.
- b)** The principle of transparency will be understood as fulfilled with the dissemination or disclosures, before awarding the corresponding contract, of suitable information that enables all potential bidders to be in the condition to show their interests in taking part in the tender. Likewise, this principle implies that all the participants have prior access to the rules applicable to the contract to be awarded, and are sure that these rules are applied in the same way to all the companies.

- c) The necessary measures will be adopted, according to these ICI that facilitate access and participation to potential bidders, with the aim of awarding the contract to the most favourable tender.
- d) The principle of confidentiality will be observed with the Company assuming the obligation of not disclosing the information provided by the businesses that they have designated as confidential, as long as this is justified, and, especially, technical or commercial secrets and conditional aspects of the tenders. Likewise, the application of this principle will require the contractors to observe the confidential character of the information they have access to on the occasion of contract execution given this treatment in the specifications or in the contract, or which due to its own nature should be treated as such.
- e) To guarantee the principle of equality and non-discrimination, necessary measures will be adopted to guarantee impartiality and fairness in the procedures. These measures will include, at least, the following:
 - (i) The aim of the contracts will always be described in a non-discriminatory way, without referring to a given manufacture or origin, or specific products or refer to given a specific make, patent, type, origin or production, except if a reference of this type is suitably justified and accompanied by “or equivalent”.
 - (ii) No conditions will be imposed representing direct or indirect discrimination against potential bidders from other European Union Member States.
 - (iii) If the candidates are requested to present degree certificates, certificates or other types of supporting documents, documents from other Member States should be accepted in accordance with the principle of mutual recognition of degree certificates, certificates and other diplomas.
 - (iv) The deadlines awarded to show interest or present a tender will be suitable for allowing companies from other Member States to make a suitable assessment and present a tender.
 - (v) In contracts where more than one supplier or purveyor takes part in the awarding process, the Company will guarantee that they

all have the same information on the contract in identical conditions.

5. NATURE AND LEGAL REGIME APPLICABLE TO CONTRACTS REGULATED IN THE ICI

Contracts signed by the Company in any case, are considered as private contracts in accordance with article 20.1 of the LCSP.

The contracting of the Company, regulated in the ICI will be subjected, in any case, to those obligatory regulations for public sector entities that sign contracts not subject to harmonised regulations, in accordance with the LCSP. In particular, this implies the application of the rules contained in Book 1 of the LCSP ("*General configuration of public sector contracting and contract structural elements*") that, given their content, are applicable to the Company with respect to the awarding power of a member of the Public Sector not classifiable as a Public Administration.

6. CONTRACTING ENTITIES

Contracting entities are determined in each case in accordance with the Statutes and other regulations applicable to the Company, without detriment to the delegations or delegations of authority that could be validly bestowed on other organs.

7. CAPACITY AND SOLVENCY OF THE BUSINESS

7.1. Competence for contracting

Contracts regulated in these ICI may only be signed with people who fulfil the conditions established in article 43 of the LCSP and concurrent rules applicable to all public sector entities. Specifically, contracts cannot be signed with people who coincide with any of the prohibitions for contracting defined in article 49.1 of

the LCSP. Nor can they be signed with companies that, due to the people who govern them or other circumstances, it may be presumed that they are a continuation of or derive from, due to conversion, merger or transformation, merger or inheritance of other companies where they have coincided.

Minimum capacity and solvency requirements required in each case should be binding for the contract and be proportional to it.

7.2. Accreditation of competence for contracting

Without detriment to the LCSP regulations applicable to all public sector entities, the accreditation of economic and financial and technical or professional solvency to contract will be carried out in accordance with, in each case, that which is determined in the corresponding tender with a view to the circumstance and characteristics of the contract, and stipulations in articles 64 to 68 of the LCSP may be applicable if considered appropriate by the contracting entity.

Likewise, in accordance with article 54.5 of the LCSP, in view of contract circumstances and characteristics, the business may be requested to accredit its solvency, where appropriate, with the corresponding classification.

The minimum solvency requirements the business should comply with and the documents required for accreditation will be specified in the contract specifications, if they are required in accordance with the ICI.

7.3. List of approved contractors

The Company shall have a list of contractors approved for contracting not subject to harmonised regulation defined in Levels 1 and 2 of article 10.1 of these ICI.

This list shall be created using a transparent open procedure, and all interested businesses and professionals who meet the capacity and solvency requirements established for this purpose may be entered in the list, without discrimination.

The creation of the list of approved contractors shall be published in the contractor profile of the Company and the functioning shall be governed by the following principles:

- a)** All businesses and professionals meeting the established requirements are guaranteed the right to be included in the list in equal conditions.
- b)** The Company contractors shall remain on the list of approved contractors for the effective length of their contracts.
- c)** The existence of a list of approved contractors enhances transparent relations with interested businesses and professionals who take part in the Company's contracting procedures, enabling their participation in the tenders and knowledge of the situation of their bids.
- d)** The list of the Company's approved contractors shall operate without prejudice to other electronic records of tendering businesses and contractors from Public Administration or other public sector entities.
- e)** The list shall be unique and centralised at SPRI, S.A., for all the Companies belonging to the Subdepartment of Infrastructures of the SPRI Group.

8. REQUIRED GUARANTEES

With respect for the circumstances and characteristics of the contract, the contracting body may require the successful bidder to provide a guarantee in order to ensure the correct execution of the service.

The amount of this guarantee will be established in each case in view of contract circumstances and characteristics.

Required guarantees may be presented in any of the forms established in article 84 of the LCSP.

9. CONTRACT PREPARATION

The preparation of contracts for services included in categories 17 to 27 of Attachment II of the LCSP for amounts equal to or greater than 193,000 Euros shall be in line with that established in article 121.1 of the LCSP and concurrent clauses.

For the remaining contracts referred to by the ICI, a specifications sheet should be prepared when the amount is more than 50,000 Euros, with the content indicated in article 121.2 of the LCSP and concurrent clauses, and that established in article 104 of the LCSP is also applicable.

Additionally, the specifications will contain information that, where appropriate, is necessary in accordance with the concurrent sections in the ICI.

That is, taking into account article 121.2 of the LCSP and concurrent sections of the ICI, the Specifications will have to include the following mentions, without detriment to additional matters considered necessary by the contracting entity:

- a)** Basic contract characteristics.
- b)** Variation acceptance system.
- c)** Tender reception methods.
- d)** Minimum capacity and solvency requirements for businesses interested in taking part in the tender.
- e)** When considered appropriate by the contracting entity, the objective solvency criteria in accordance with which the candidates will be chosen to be invited to present proposals, and the maximum number of candidates who will be invited to present a tender, may not be less than three.
- f)** Technical and economic criteria to be assessed to determine the economically most favourable tender to which the contract will be awarded.
- g)** The constitution of an assessment organ to rate the documentation submitted, assess the tenders and submit an awarding proposal, when the contracting entity considers it necessary.
- h)** Guarantees bidders or selected bidder, when appropriate, should constitute.
- i)** The information that, when appropriate, proceeds in accordance with article 104 of the LCSP on subrogation conditions in labour contracts.
- j)** The objective and temporary extension of confidentiality that, where appropriate, is imposed on the business.
- k)** The deadlines that, where appropriate, are applicable for obtaining additional information from the bidders and the deadlines for tender presentation or, where appropriate, participation requests, and for correcting the presented documents when considered necessary by the contracting entity.
- l)** The deadline for formalising the contract, when a different deadline to the ten calendar days is intended.

10. CONTRACTOR SELECTION AND CONTRACT AWARDING

10.1. Contract levels

To apply these ICI and establish the procedures and requirements applicable for the awarding of each contract, the following levels are distinguished (hereafter, only one the “**Level**”, and together the “**Levels**”).

a) Level 1

Contracts with an estimated value of less than:

- 50,000 € if they are works contracts.
- 18,000 € for all other contracts.

b) Level 2

Contracts with an estimated value between:

- 50,000 € and 200,000 € if they are works contracts.
- 18,000 € and 50,000 € for all other contracts.

c) Level 3

Contracts with an estimated value between:

- 200,000 € and 2,000,000 € if they are works contracts.
- 50,000 € and 100,000 € if they are service contracts.

d) Level 4

Contracts with an estimated value higher than that of level 3 and which are not subject to harmonised regulation, i.e. contracts with an estimated value between:

- 2,000,000 € and 4,845,000 € if they are works contracts.
- 50,000 € and 193,000 € if they are supply contracts.
- 100,000 € and 193,000 € if they are service contracts.
- Service contracts listed in categories 17 to 27 of Attachment II of the LCSP for amounts equal to or more than 193,000 Euros

10.2. Advertising

For Level 3 and Level 4 contracts, information relating to the tender should be included in the Company contracting profile, and in two of the most widely read newspapers in the Basque Country. Nevertheless, additional means of diffusion may be used if considered necessary in accordance with the circumstances and characteristics of the contract, including the option of Official Gazettes or similar.

Thus, the Company contracting profile shall advertise notices relating to the contracts which are expected to be awarded in each year or multiannual period.

The tender announcement will at least contain the following information:

- a)** A short description of the essential contract details.
- b)** The contract awarding procedure, indicating the deadline for tender presentation (in the open procedure) or participation request (in restricted procedures), as well as economic and technical aspects that are to be negotiated with the companies (in the negotiated procedure).
- c)** When considered necessary by the contracting entity, the objective solvency criteria in accordance with which the candidates will be chosen to be invited to present proposals, indicating in this case the deadline for the presentation of the participation applications.
- d)** An invitation to contact the Company with the aim of obtaining additional information.

In any case, if the circumstances and characteristics of the contract make it advisable, the content of the announcement may be extended or additional information incorporated in the contractor's profile.

10.3 Awarding procedures

In those cases where the open or restricted procedure is applied, the stipulations in articles 141 to 152 of the LCSP will be applicable with the following adaptations:

- a) Deadlines regarding information to be provided by the bidders or deadlines regarding proposal or participation request presentation will not be applicable, and . in general, any other deadlines, which will be replaced by the deadlines determined in the announcement or, where appropriate, in the specifications. The determined deadlines will be, in any case, adapted to allow for all possible bidders, including companies from other Member States of the European Union, making a suitable assessment and presenting an offer.
- b) The contracting entity shall appoint an assessment committee as necessary, indicating this in the specifications. This entity will be responsible for qualifying the documentation presented, assessing the tenders and making an awarding proposal to the contracting entity, and stipulations in article 134.2 of the LCSP regarding the intervention of a committee of experts will not be applicable.

The Company will award contracts observing, at least, the guarantees listed below for each Level.

a) Level 1 Contracts: Direct awarding

Level 1 contracts for amounts less than 6,000 Euros shall be awarded directly, and are not subject to the instructions listed below.

Level 1 contracts for amounts equal to or more than 6,000 Euros shall be awarded to the most favourable tender selected from among three tenders that businesses or professionals with the capacity to work are requested to submit.

The invitation to present the three tenders shall be made, wherever possible, from the list of approved contractors. In addition, any business or professional may ask to be included in the list at any moment, following confirmation that they met the conditions required in the announcement.

The list of approved contractors is continuously updated with the invitations to submit tenders that arise, and should therefore be of a rotational nature. Therefore, after three businesses or professionals have been invited to submit a tender, they will not be re-invited until their turn is reached again on the list.

On receipt of the three tenders, the contract is awarded to the most favourable offer.

If the contractor does not complete the work satisfactorily, they may be removed from the list of approved contractors.

b) Level 2 Contracts: Negotiated procedure

Level 2 contracts are awarded to the most favourable tender from an economic and technical view point.

Therefore, wherever possible, all the businesses and professionals registered on the list of approved contractors are invited to tender.

On receipt of the tenders, if necessary, negotiations are held with the three most favourable bidders, and then the contract is awarded.

If the contractor does not complete the work satisfactorily, in terms of quality, price or time limits, they may be removed from the list of approved contractors.

The Assessment Committee may negotiate aspects of the contract with the invited bidders. Care shall be taken during negotiations to ensure that all bidders receive the same treatment and no information is provided in a discriminatory manner.

C) Level 3 Contracts: Restricted procedure

The award procedure is divided into two stages:

Phase 1:

An invitation to tender will be issued, based on a specification which establishes the required technical and economical solvency, together with the criteria for awarding the contract.

On receipt of the documentation submitted by the bidders, the solvency is examined and those that do not meet the minimum requirements established in the specifications are rejected, where these defects cannot be repaired or have not been repaired within the time limit established to this effect.

All bidders are notified of the result of the above.

Phase 2:

Those bidders who have passed the previous phase are invited to tender.

The assessment committee examines the rest of the documentation and assesses the tenders according to the criteria given in the specifications.

The assessment committee shall put forward an award proposal based on the award criteria in the specifications and this is submitted to the contracting entity.

Bidders are notified individually of the result of the award.

d) Level 4 Contracts: Open procedure

The award process has only one phase.

An invitation to tender will be issued, based on a specification which establishes the required technical and economical solvency, together with the criteria for awarding the contract.

On receipt of the documentation submitted by the bidders, the solvency is examined and those that do not meet the minimum requirements established in the specifications are rejected, where these defects cannot be repaired or have not been repaired within the time limit established to this effect.

All bidders are notified of the result of the above.

The assessment committee examines the rest of the documentation and assesses the tenders according to the criteria given in the specifications.

The assessment committee shall put forward an award proposal based on the award criteria in the specifications and this is submitted to the contracting entity.

Bidders are notified individually of the result of the award.

10.4. Contractor selection

For Level 3 and 4 contracts, participants in the procedure are notified of the selection of the contractor, which is also published in the Company contractor profile and in two of the most widely distributed newspapers in the Basque Country, unless otherwise established in view of the circumstances and characteristics of the contract and provided that this is justified for reasons of confidentiality.

The cost of the announcements in the press shall be borne by the successful bidder.

10.5. Contract formalisation

Except when they are included, where applicable, in the corresponding specifications, contracts subject to the ICI signed by the Company shall include the following mentions, in accordance with article 26 of the LCSP:

- (a)** Identification of the parties involved.
- (b)** Accreditation of the capacity of the signatories to sign the contract.
- (c)** Definition of the contract objective.
- (d)** Reference to legislation applicable to the contract.
- (e)** List of documents making up the contract. If so stated in the contract, this list may be hierarchical, ordered according to the priority agreed between the two parties. In this case, and except for manifest error, the agreed order will be used to determine the respective prevalence, in the event of any contradictions between the different documents.
- (f)** The true price or method of determining it.
- (g)** Contract duration or estimated start and finish dates, as well as the extension or extensions date(s), if foreseen.
- (h)** Service reception, delivery or admission conditions.

- (i) Conditions of payment.
- (j) Assumptions when resolution is applicable.
- (k) Objective and temporary extension of confidentiality that, where appropriate, is imposed on the contractor.

In general, the contract will be formalised in a maximum deadline of ten calendar days from contractor selection, as long as a different deadline has not been determined in the corresponding specifications or tenders.

The Company's contractual consent is manifested in the formalisation of the contract, understanding the contract completed in this way.

11. TECHNICAL RATIONALISATION RULES

To rationalise and order the awarding of their contracts, the Company may hold electronic auctions, conclude framework agreements, formulate dynamic systems or centralise works, services and supplies contracting in services or other companies or entities in accordance with articles 132 and 178 to 191 of the LCSP, and the adaptations resulting from these ICI will apply in each case.

12. COMPETENT JURISDICTION

Civil jurisdiction will be competent jurisdiction to resolve disputed matters regarding the preparation, awarding, effects, compliance and termination of contracts to which these ICI refer.