

PARQUE TECNOLÓGICO – TEKNOLOGI ELKARTEGIA, S.A.
INTERNAL CONTRACTING
INSTRUCTIONS

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1. AIM AND APPROVAL

PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. 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**”). Nevertheless, PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. does not have the power to award contracts in accordance with article 3.3.b) of the LCSP.

These internal contracting instructions (hereafter, the “**ICI**”) are aimed at regulating PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.’s internal procedures for awarding contracts, 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 economically favourable tender, fully complying with the mandate in article 176.3 of the LCSP.

The ICI were approved in an agreement between the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.’s Board of Directors in a meeting held on 29 October 2008, after Uria and Menéndez’s report dated 13 June 2008. They will come into effect the day after publication in the “CONTRACTOR PROFILE” WEB, foreseen for the 1 November, 2008, and contracting records started after that date will be applied.

The ICI are legally binding in the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.’s internal sphere. Likewise, they should be given to all parties interested in taking part in the procedures for awarding contracts regulated by them and published in the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.’s contractors profile.

2. ICI INTERPRETATION

For the purpose of these ICI, the terms established starting with a capital letter will have the meaning defined in them and the ones not defined in the ICI will have 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.

3. CONTRACTS SUBJECT TO THE ICI

The ICI will be applied to all onerous contracts signed by PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A., whatever their legal nature, except for the following:

- (a) Business and legal relations listed in article 4 of the LCSP.
- (b) 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 176 of the LCSP.

In order to guarantee observance of the principles stated in the previous paragraph, in contracting procedures dealt with by PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. 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 fulfilled 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 PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. contractual information and allow for opening the market up for 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 can know the rules applicable to the contract to be awarded beforehand, and be 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 economically favourable tender.
- d) The principle of confidentiality will be observed with PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. assuming the obligation of not disclosing the information provided by the entrepreneurs 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:
 - 1. 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 mark, patent, type, origin or production, except if a reference of this type is suitably justified and accompanied by “or equivalent”.
 - 2. No conditions will be imposed representing direct or indirect discrimination against potential bidders from other European Union Member States.
 - 3. 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.

4. 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.
5. In contracts where more than one supplier or purveyor takes part in the awarding process, PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. will guarantee that they all have the same information on the contract in identical conditions.

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

Contracts signed by PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A., in any case, are considered as private contracts in accordance with article 20.1 of the LCSP.

PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. contracting, regulated in the ICI will be subjected, in any case, to 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 the LCSP's Book I ("*General configuration of public sector contracting and contract structural elements*"), that, given its content, are applicable to PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. in its condition as a public sector member, not classifiable as a Public Administration, or awarding power.

6. CONTRACTING ENTITIES

Contracting entities are determined in each case in accordance with the Statutes and other regulations applicable to PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A., without detriment to the delegations or delegations of authority that could be validly bestowed on other organs.

7. EMPLOYER CAPACITY AND SOLVENCY

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, what is determined in the corresponding tender with a view to the circumstance and characteristics of the contract, and stipulations in articles 64 and 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 entrepreneur may be requested to accredit its solvency, where appropriate, with the corresponding classification.

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

7.3. List of qualified operators

PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. may have a qualification system for contracting not subject to harmonised regulation, created using a transparent and open procedure, in which any interested company and professional may voluntarily register, with no discrimination whatsoever.

If it decides to create it, it should be published in the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.'s contracting profile and it will be governed by the following principles:

- a. The system will establish invitation mechanisms that guarantee the equality of all the companies included in it, when the contracting procedure does not have a public announcement, inviting market agents interested in the contracting involved.
- b. Merely being included in the system does not imply any recognition of the capacity to contract with PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. This should be accredited in the awarding process, except when homologation formulae are established for the corresponding documentation and specifications authorise participation of tenders just declaring the validity of the data included in the system.

- c. PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. contractors should register in the qualification system and remain registered during the validity of their contracts.
- d) Inclusion in the qualification system favours transparent relations with the entrepreneurs and professionals interested in taking part in PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. contracting procedures, making it easier for them to take part in the bids and have information on the situation of their tenders and, where appropriate, invoices sent for the awarding and execution of the contract.
- e. The PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.'s qualification system will operate, where appropriate, without detriment to other electronic bidder and contractor lists from the Public Administrations or other awarding authorities or public sector entities.

8. REQUIRED GUARANTEES

In view of the contract's circumstances and characteristics, the contracting entity may require a guarantee from bidders or candidates to maintain their tenders until the awarding, as well as a guarantee from the successful bidder 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.

The requested guarantees will be constituted with a bank guarantee from a prestigious financial institution and according to the model detailed in the specifications.

9. CONTRACT PREPARATION

Awarding the contracts referred to in the ICI requires the preliminary drafting of specifications when it exceeds 50,000 euros. The specifications will have the content indicated in article 121.2 of the LCSP and concurrent regulations, and article 104 of the LCSP will also be applicable.

Additionally, 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 entrepreneurs 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 under three.
- (f) Technical and economic criteria to be assessed to determine the economically most favourable tender the contract will be awarded to.
- (g) The constitution of an assessment organ to rate the presented documentation, assess tenders and submit an awarding proposal, when the contracting entity considers it necessary.

- (h) Guarantees bidders or selected bidder, when appropriate, should constitute.
- (i) Information that, when appropriate, proceeds in accordance with article 194 of the LCSP on subrogation conditions in labour contracts.
- (j) Objective and temporary extension of confidentiality that, where appropriate, is imposed on the entrepreneur.
- (k) Deadlines that, where appropriate, are applicable to obtain additional information from the bidders and deadlines for tender presentation or, where appropriate, participation requests, and for correcting the presented documents when considered necessary by the contracting entity.
- (l) Deadline for formalising the contract, when a different deadline to the ten calendar days is intended.
- (m) In Level 3 contracts defined in section 10.3 of these II, justification of the awarding procedure selected by the contracting entity in the terms foreseen in these ICI.

Notwithstanding the above, when the amount of the tender is between 50,000 and 200,000 euros, drafting specifications shall also be advisable, although, its content may be limited to sections a), c), f), h) and j).

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 to an estimated value under 50,000 euros are subject to this Level, whatever the type of contract they are.
- b) Level 2. Contracts with an estimated value from 50,000 euros and the following amounts:
 - 1,000,000 euros if they are labour contracts.
 - 100,000 euros in other types of contracts.
- (c) Level 3. Contracts with an estimated value over those included in the previous Level 2.

10.2. Advertising

Regardless of the contract Level in question, when the estimated value exceeds 50,000 euros, information regarding the tender should be entered in the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.'s contracting profile. Nevertheless, additional dissemination means may be used when considered necessary in view of the circumstances and characteristics of the contract, including the possibility of resorting to official gazettes, local publications or the Official Journal of the European Union. Likewise, if considered necessary, preliminary announcements may be published on the contracts to be awarded in each financial year or in a 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 negotiated and restricted procedures), as well as economic and technical aspects that are going 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 get in touch with PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. 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.

Without detriment to the stipulations in the previous paragraphs, advertising may be dispensed with in the cases of negotiated procedure application contained in articles 154 to 159 of the LCSP that, in accordance with the indications of article 161 in this legal text, should not be advertised.

10.3. Awarding procedures

PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. will award contracts observing, at least, the guarantees listed for each Level below.

(a) Level 1 Contracts: Direct awarding

Level 1 contracts may be directly awarded to any entrepreneur with the capacity to work and with the necessary professional authorisation to carry out the service, with a tender request to just one entrepreneur in an order letter.

In view to the circumstances and characteristics of the contract, the awarding rules foreseen for any of the higher levels may be applied to Level 1 contracts.

(b) Level 2 Contracts: Negotiated procedure

Level 2 contracts are awarded after negotiation, subject to the following rules:

1. Whenever possible, PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. will request a tender from, at least, three companies qualified to carry out the contract. Among the companies invited to present tender, companies that have shown an interest in taking part in the bid in the deadline foreseen to this effect will be included. Nevertheless, if the contracting entity considers it necessary, objective solvency criteria may be established for the choice of candidates invited to present proposals from those who have shown interest. Likewise, a maximum number of candidates may be established to invite to tender, which should not be less than three. These objective criteria, which may be included in the contract announcement, should at least be included in the corresponding specifications.
2. The contracting entity may opt to constitute an assessment entity when it considers it necessary due to the technical complexity or special circumstances or characteristics of the contract, 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.
3. PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. may negotiate any aspect of the contract with the bidders, in accordance with the stipulations, where appropriate, in the corresponding specifications, and during the negotiation process it will ensure that all the bidders receive the same treatment and will not provide any information in a discriminatory fashion.

4. The contract will be awarded in any case to the economically most favourable tender, in accordance with the economic or technical criteria established in the Specifications.
5. PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. will record the invitations made, the tenders received and the reasons for acceptance or rejection.

In view of the circumstances and characteristics of the contract, open and restricted awarding procedures, foreseen and developed in points (c) of Level 3 Contracts, may be applied to Level 2 Contracts.

(c) Level 3 Contracts: Open, restricted, negotiated or competitive dialogue procedures

The contracting entity will specify the awarding procedure chosen in view of the contract's characteristics in the specifications, in accordance with the rules foreseen in the following paragraphs.

The exceptional awarding procedure in this Contract Level will be negotiated, applying, in this case, the rules foreseen for Level 2 contracts.

In general, the application of the open or restricted procedure should be decided on in the following cases:

- (a) When services that are going to be contracted are defined with the necessary accuracy, and negotiating technical or economic aspects is not necessary.

- (b) In contracts in which, given their special economic relevance, the contracting entity considers that the open or restricted procedures fulfil compliance of the principles defined in section 3 of these ICI better.

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, 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 may opt to constitute an assessment entity when it considers it necessary due to technical complexity or special circumstances or characteristics of the contract, 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 an experts committee will not be applicable.

When assumptions of article 163 of the LCSP concur, the application of the competitive dialogue procedure may be decided, which will be governed by articles 163 to 167 of the LCSP, with the same adaptations established in the previous paragraphs regarding open or restricted procedures.

10.4. Contractor selection

In any of the previous cases, contractor selection will be notified to the participants in the procedure and published in the PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.'s contracting profile, except when decided on otherwise in view of the circumstances and characteristics of the contract.

10.5. Contract formalisation

Except when they are included, where applicable, in the corresponding specifications, contracts subject to the ICI signed by PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. have to 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) Contract aim definition.
- d) Reference to legislation applicable to the contract.
- e) List of the 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 order agreed on will be used to determine the respective prevalence, if there are any contradictions between the different documents.
- f) The true price or way to determine it.
- g) Contract duration or estimated dates for its start and finish, as well as the extension or extensions date(s), if foreseen.
- h) Service reception, delivery or admission conditions.
- i) Payment conditions.
- 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 thirty calendar days from contractor selection, as long as a different deadline has not been determined in the corresponding specifications or tenders.

PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A.'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, PARQUE TECNOLÓGICO - TEKNOLOGI ELKARTEGIA, S.A. 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 these ICI refer to.