



**BIDDING SPECIFICATIONS**

**CALL FOR TENDERS TO PROCURE THE DRAFTING OF THE PRELIMINARY PROJECT FOR THE EXTENSION AND RENOVATION OF THE MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) IN THE CONVENT DELS ÀNGELS AND, IF REQUIRED, THE DRAFTING OF THE BASIC AND EXECUTIVE PROJECTS AND THE TECHNICAL SUPPORT FOR THE CONSTRUCTION MANAGEMENT**

**NORMAL APPLICATION PROCESS**

**RESTRICTED DESIGN TENDER PROCEDURE (Articles 183 et seq. of the LCSP)**

<b>Contract Code:</b>	Exp.2020-04	<b>Contract Description:</b>	CALL FOR TENDERS TO PROCURE THE DRAFTING OF THE PRELIMINARY PROJECT FOR THE EXTENSION AND RENOVATION OF THE MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) IN THE CONVENT DELS ÀNGELS AND, IF REQUIRED, THE DRAFTING OF THE BASIC AND EXECUTIVE PROJECTS AND THE TECHNICAL SUPPORT FOR THE CONSTRUCTION MANAGEMENT
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<b>Initial Bidding Budget:</b>	108.395,46 EUR (excl. VAT) 131.158,51 EUR (incl. VAT)	<b>Contract Class:</b>	SERVICES	<b>CPV Codes:</b>	71220000-6 71000000-8
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<b>*Contracting Authority:</b>	MANAGING DIRECTOR OF MACBA
<b>*Finance Department:</b>	ARCHITECTURE
<b>*Recipient:</b>	ARCHITECTURE

\* This information must be included on each of the invoices submitted by the successful bidder.

## I. GENERAL PROVISIONS

### Clause 1. Object and legal regime of the Contract

#### **1. Object of the Contract**

The purpose of these Specifications is to establish the terms and conditions that will govern the restricted tender for the selection of the project for the expansion and renovation of the Museu d'Art Contemporani de Barcelona (MACBA), which will be entrusted to a JURY responsible for choosing the most suitable proposal in accordance with the criteria set out in these Specifications; for the awarding to the successful bidder of the service contract relating to the DRAFTING OF THE PRELIMINARY DRAFT OF THE EXTENSION OF MACBA; as well as for the awarding of potential subsequent works, described as "possible subsequent awards" in Clause 2 of these Specifications, in accordance with the requirements and conditions established in Articles 168.d) and 183 et seq. of Spanish Law 9/2017 of 8 November on Public Sector Contracts (LCSP) and Articles 17 and 18 of Spanish Law 12/2017 of 6 July on Architecture.

In accordance with Article 99.3 of the LCSP and for the reasons expressed in the Technical Report included in the record, the object of the Contract has not been split into lots.

The services described as "possible subsequent awards" in Clause 2 of these Specifications may be awarded to the successful bidder (the winner of the tender) through a negotiated procedure without prior publication, in accordance with the provisions of these Specifications and of Articles 168.d) and 185.4 of the LCSP.

<b>Possible subsequent awards (168.d LCSP)</b>
Basic Project
· Basic Project
· Health and safety report (Basic)
· Environmental licensing project
Executive Project
· Executive Project
· Installation project plan
· Health and safety report (Executive)
· Energy performance certification
Construction management and closure

This potential awarding of additional services does not give any rights to the winner of the tender.

In the event that the negotiated procedure indicated above does not result in the award of the contract, for the reasons stated in the corresponding file, MACBA reserves the right to contract, by means of the relevant contracting procedure, the works described in Clause 2 of these Specifications as "possible subsequent awards".

**The object of this Contract may be co-funded by the European Regional Development Fund (ERDF) of the EU, as part of the ERDF Operational Program for Investment in Growth and Employment in Catalonia 2014-2020.**

## **2. Legal Regime**

The Contract is classified as an administrative contract and is subject to these Specifications; the Technical Specifications (TS) and their attached documentation; as well as to the LCSP and the current development regulations.

This call for tenders has been put out in accordance with the rules of restricted procedure for Project Tenders and in the terms laid out in Article 183 of the LCSP, under the modality established in paragraph 2.a) for "design contests organized as part of a procurement procedure for services, which may entail the award of prizes or payments". The winner of each of the corresponding service contracts may be subsequently awarded, if required, the drafting of the Basic and Executive Projects, as well as the construction management services.

The application to this tender implies the unconditional acceptance by the participants of the contents of these Specifications and of all the documentation included in this invitation to tender, without qualification or exception. Ignorance of this documentation in any of its terms, as well as of any other contractual documents that may be applicable during the execution of the agreed service, shall not exempt the Awardee from complying with it.

In accordance with the Estimated Value of the Contract (EVC) and the provisions of Articles 19 and 22 of the LCSP, this Contract is considered subject to Harmonized Regulation.

The contractual documentation included in the record is comprised of the present Administrative Specifications, the Technical Specifications and the annexed supplementary documentation. The Awardee shall carry out the contracted service in accordance with the applicable law governing this matter.

The measures of environmental, social or innovative nature that may be included in the specifications will be regulated, among other laws, by the Mayoral Decree of 24 April 2017 on Sustainable Public Procurement, published in the *Gaceta Municipal* of 28 April.

The Contract is also subject to the Mayoral Decree of 19 May 2016 [FBL1], which stipulates as an essential clause of public contracts that all tenderers, whether contractors or subcontractors, subsidiary companies or interposed companies, shall have no illegal economic or financial relationship with any country considered a tax haven.

The Contract is also subject to the following regulations:

- The Technical Instruction for the Application of Environmental Sustainability Criteria in Exhibitions
- General regulations on the prevention of occupational risks, specifically Law 31/1995 of 8 November, and Royal Decree 171/2004, of 30 January, which expands upon Article 24 of the Law on the Prevention of Occupational Risks with regard to the coordination of business activities
- Law 12/2017 of 6 July on Architecture
- The standards and legislation referred to in the Technical Specifications
- Any other legislative provisions that may be applicable

## Clause 2. Base tender budget and Estimated Value of the Contract

1. This tender provides for the payment of a participation bonus to the finalist projects (participants in Phase 2) for a maximum amount of 5,000 EUR per participant (excl. VAT), which means a maximum total of 25,000 EUR excluding VAT (30,250 EUR incl. VAT).

IMPORTANT: The successful bidder awarded the contract for drafting the Preliminary Project will not receive the bonus of 5,000 euros (excl. VAT).

2. In accordance with the provisions of Article 100 of the LCSP, the base budget of the tender is **131,158.51 EUR** and is broken down as follows:

- **108,395.46 EUR** for net budget
- **22,763.05 EUR** for Value Added Tax (VAT) at a tax rate of 21%

The tender base budget has been set at **25,000 EUR** excl. VAT, comprising participation bonuses for the finalist teams that comply with the requirements established in these Specifications. Applying the current VAT of 21% (5,250 EUR) the tender base budget amounts to a gross total of **30,250 EUR**.

This maximum budget, which includes all the costs arising from the execution of the object of the Contract, corresponds to the following item(s):

YEAR	DESCRIPTION	BASE	VAT	AMOUNT	ITEM
2020	Bonuses	25,000.00 €	5,250.00 €	30,250.00 €	D/62200 New investments for services in buildings and other constructions
	Preliminary Project	83,395.46 €	17,513.05 €	100,908.51 €	
	<b>TOTAL</b>	<b>108,395.46 €</b>	<b>22,763.05 €</b>	<b>131,158.51 €</b>	

This budget is based on a survey of comparable tenders and takes into account both the budgets of previous contracts for services with similar objects and the estimated budget for the construction project (5.485.100,00 EUR excl. VAT).

The tender base budget has been drawn up taking into account all the assessment factors and expenses that, according to the contractual documents and applicable laws, are to be borne by the Awardee, as well as all the fiscal obligations, including the Value Added Tax.

As set out in Clause 1.1, only services actually performed in accordance with the amounts established in these Specifications shall be invoiced.

3. The **Estimated Value of the Contract (EVC)** is set at **833,954.60 EUR** excl. VAT.

Description	Amount (excl. VAT)	Potential changes
<b>Tender Base Budget:</b>		
Preliminary Project	83,395.46 €	16,679.09 €
Bonuses	25,000.00 €	

<b>Possible subsequent awards (168.d LCSP)</b>		
Basic Project	166,790.92 €	33,358.18
· Basic Project		
· Health and safety report (Basic)		
· Environmental licensing project		
Executive Project	166,790.92 €	33,358.18 €
· Executive Project		
· Installation project plan		
· Health and safety report (Executive)		
· Energy performance certification		
Construction management and closure	277,984.87 €	55,596.98 €
<b>TOTAL potential changes<sup>1</sup></b>	<b>138,992.43 €</b>	
<b>ESTIMATED VALUE</b>	<b>858,954.60 €</b>	

The Estimated Value of the Contract does not include Value Added Tax. The total value has been estimated in accordance with Articles 101 and 183.4 of the LCSP and is the sum of all participant bonuses and all possible awarded contracts, including their potential changes, in the terms established in these Specifications.

### Clause 3. Contract period

The maximum periods to perform the contracted services are the following:

<b>TASKS</b>	<b>PERIOD</b>
Drafting of the Preliminary Project	1 month
<b>Possible subsequent awards</b>	
Drafting of the Basic Project	4 months
Drafting of the Executive Project	3 months
Construction management	18 months, subject to duration of works

The Awardee will be obliged to deliver the work to the MACBA offices.

Given the nature of the Contract, the periods may not be consecutive, without it entailing any additional cost or expense for MACBA.

The duration of this Contract will be counted from the date of its formalization or of the official commencement of the project, were it to start later. The aforementioned periods are applicable for the purposes of delivering the model of the corresponding document to MACBA, and do not include the time required to carry out the reviews by the municipal and MACBA technicians involved, the audit, and the technical and administrative processing of the project.

<sup>1</sup> In accordance with Article 101 of the LCSP, the amount for potential modifications indicated is provided in order to calculate the Estimated Contract Value (ECV) and to determine whether or not the bidding procedure is subject to harmonized regulation. In application of Article 204 of the LCSP, the maximum amount for all the modifications foreseen during the execution of the contract will be the result of applying the percentage of the initial price of the contract set in QuadreResum (up to 20%).

## Clause 4. Contracting Authority and Contractor Profile

1. The Contracting Authority is the Managing Director of MACBA. His delegate regarding this Contract will be Christian Leibenger, reachable by e-mail at [cleibenger@macba.cat](mailto:cleibenger@macba.cat) and or by post at Plaça dels Àngels nº 1 - 08001 Barcelona.

2. The Contractor Profile can be found on the Platform of Public Procurement Services of the Generalitat de Catalunya:

[https://contractaciopublica.gencat.cat/ecofin\\_pscp/AppJava/perfil/macba](https://contractaciopublica.gencat.cat/ecofin_pscp/AppJava/perfil/macba)

## Clause 5. Record of procurement and award procedure

1. The record of procurement will be subject to ordinary processing by means of a juried design tender (Art. 183 et seq. of the LCSP).

2. The award procedure will follow the guidelines outlined in Article 183 et seq. of the LCSP, with a juried competition and various award criteria.

3. The Jury will make its decisions with complete independence, selecting the proposal which, presented anonymously, obtains the best score according to the assessment criteria established in Clauses 9 and 12 of these Specifications.

4. If the service involving the drafting of the Preliminary Project, the Basic Project and the Executive Project, as described in Clause 1 of these Specifications, is awarded, the participation bonus received in accordance with Clause 2.1 of these Specifications will be discounted from the amount thereof.

## Clause 6. Advertising of the tender

The tender notice will be sent to the Publications Office of the European Union for publication in the Official Journal of the European Union (OJEU) and a notice will be published in the Contractor Profile.

From the day of the tender notice's publication, interested parties may obtain the specifications of this tender through MACBA's Contractor Profile.

The Specifications will be published in Catalan, and translated into Spanish and English. **In any case, the provisions of the original Specifications in Catalan will prevail.**

The procurement specifications shall include the following documents:

Documentation for Phase 1:

- Technical Specifications for the drafting of the Preliminary, Basic and Executive Projects and, if required, the technical support for the construction management
- These Administrative Specifications
- The standard form of the European Single Procurement Document (ESPD), to be completed by tenderers in XML format
- Photographic documentation

The teams selected for Phase 2 will be provided with the following documentation to prepare their proposal:

- Blueprints
- Planimetric survey, in an editable PDF file
- Technical Instruction for the Application of Sustainability Criteria in Construction Projects
- Other supporting documentation to be provided with the invitation, if required.

Notwithstanding the foregoing, bidders selected to participate in Phase 2 may be provided with other documentation considered necessary for the preparation of their proposal. This documentation, if required, will be specified in the invitation letter.

All this documentation will be of a contractual nature.

## Clause 7. Competence and soundness requirements

Eligible for contracting shall be all natural or legal persons, Spanish or foreign, who have full capacity to act and are not ineligible for or banned from public procurement as established in the applicable laws, in accordance with the provisions of Articles 65 and 71 of the LCSP.

As per the provisions of Articles 65 and 66 of the LCSP, the object of the Contract must be included in the scope of activity mentioned in the statutes or founding rules of those bidders that are legal persons.

Tendering companies must have a sufficiently large organization for the proper execution of the Contract. Similarly, where appropriate, they must have the respective business or professional authorization necessary to perform the activity or service which constitutes the object of the Contract.

Foreign companies from a member state of the European Union or assigned to the European Economic Space are eligible to demonstrate their competence, soundness and ability to act as established in Article 84 of the LCSP.

### **Social measure:**

As per the Mayoral Decree of 19 May 2016, the companies participating in the execution of this public Contract, whether they be contractors or subcontractors, subsidiary companies or intermediaries, may not carry out financial operations in tax havens (according to the list of countries drawn up or validated by the European institutions or, in their absence, by the Spanish state) nor may they carry out operations outside these countries, which could be considered criminal under the legally established terms, such as money laundering, tax fraud or any other offense against the Public Treasury.

This Contract may be awarded to a joint venture set up for this purpose on a temporary basis.

Companies classified in a group and/or sub-group of business activities corresponding to the services that are the object of the Contract may prove their solvency either by means of this classification or by complying with the following specific requirements, in accordance with the provisions of Article 92 of the LCSP. This correspondence will be determined by the CPV code.

Temporary joint ventures must give evidence of this classification or prove the professional abilities demanded in these Specifications as required by the applicable laws and regulations and in accordance with the provisions of Article 69 of the LCSP.

If the bidder is a temporary joint venture, all parties involved must demonstrate their own individual competence and soundness, accumulating the proven achievements of each of its member companies in order to assess the joint venture's overall reliability.

All bidders must meet the following minimum requirements regarding their economic and professional soundness and their technical or professional competence:

**A) ECONOMIC AND FINANCIAL SOUNDNESS:**

- A civil liability insurance policy that covers professional risks, which is valid at least until the deadline of the submission of tenders, for an amount equal to or greater than the estimated price of the Contract for the drafting of the Basic and Executive Projects and the construction management to be carried out as a result of this tender (833,954.60 EUR), as well as the commitment to renew or extend it to guarantee its coverage during the execution of said Contract

OR:

- A binding commitment signed by the candidate or the company's representative, when the candidate is a legal entity, to take out, in the event of winning the tender, an indemnity insurance policy covering professional risks for an amount equal to or greater than the estimated price of the Contract for the drafting of the Basic and Executive Projects and the construction management to be carried out as a result of this tender (833,954.60 EUR), valid at least until the end of the period of execution of said Contract. This insurance should take effect within the period of ten working days, as stated in section 2 of Article 150 of the LCSP.

**A) TECHNICAL OR PROFESSIONAL COMPETENCE:**

The technical complexity of the object of this tender requires the Awardee's commitment to form a team with a high level of knowledge and skills in the museum field and in the rehabilitation of historical buildings. The technical team assigned to the Contract must therefore include the following professional profiles:

Author:

- 1 person coordinating the team who is responsible for the project design and the construction management, has a master's degree in architecture or similar qualifications, and has been certified by the competent authorities. Were the candidate a natural person, the author would have to be the tenderer himself.

Team:

- 1 expert in building installations
- 1 expert in sustainability and energy efficiency
- 1 expert in structural design
- 1 expert in measurements, budgets, cost and scheduling
- 1 expert in construction planning and processes
- 1 specialist in restoration and/or an art historian with a degree in Preservation and Restoration, Fine Arts or Art History

Each of the aforementioned experts, including the author, may be assigned up to a maximum of TWO (2) areas of expertise, provided that their qualifications, knowledge and experience can be shown to meet the specifications of this tender and they are sufficiently committed to each of these tasks.

In accordance with the provisions of Article 150.2 of the LCSP, the successful bidding team of this tender will be required to formally prove the effective use of these resources and the qualifications of each of its members.

Similarly, all bidders must state that they remain committed to joining the minimum required technical team in case they are awarded the Contract. This statement shall be submitted with a list of the technical team members responsible for drawing up the project in the event of winning the tender, as well as certified copies of the diplomas attesting their qualifications.

The collaborating technicians must be qualified in their own area of expertise and legally authorized to perform their required functions.

All collaborators and experts are allowed to compete with different bidders.

## II. TENDER PROCEDURE

### Clause 8. Selection phase procedure (Phase 1)

8.1. After the deadline for submission of applications has passed, the general documentation contained in Envelope 1 will be validated. If any material defects are found in the documentation, the interested party will be notified and this notification will be recorded in the file, granting a period of no more than 3 working days for its amendment.

Bidders who have submitted proposals with irremediable defects or have not amended the defects in their proposal within the allotted time frame will be excluded from the competition.

Within a period of no more than seven calendar days from the date the administrative documentation of Envelope 1 is opened, Envelope 2 will be opened at a public event at the time and place indicated in the notice published in the Contractor Profile, during which the information resulting from the opening of Envelope 1 will be provided.

The documentation of interested parties excluded from this tendering procedure due to non-compliance with the competence and solvency requirements of these Specifications will not be opened.

8.2. The selection of bidders invited to Phase 2 is entrusted to the Jury of this competition, which will make its recommendation to the Contracting Authority. With the reports it deems appropriate to request, the Jury will study, assess and rate the documentation contained in Envelope 2.

The criteria governing the selection of tenderers invited to participate in Phase 2 of this competition are set out in Clause 9. In any event, a minimum score of FIFTY (50) POINTS in the assessment of Envelope 2 will be required for a tenderer to be selected.

8.3. The Jury will proceed to classify the participants in descending order according to the score obtained, recommending whenever possible a minimum of 3 and a maximum of 5 participants for Phase 2. The participants selected will have exceeded the minimum score required and have obtained the highest scores, according to the order of classification.

8.4. The Jury will submit to the Contracting Authority a reasoned proposal for the selection of participants, as set out in the previous point. In view of this proposal, the Contracting Authority shall proceed to issue the corresponding resolution, naming the successful bidders and inviting them to participate in Phase 2 of this project competition.

8.5. The Contracting Authority will decide on the list of participants to be selected for Phase 2. The Contracting Authority will notify all tenderers of its decision, which will be published in the Contractor Profile. Those selected will then be formally and simultaneously invited to submit their proposals for Phase 2 of this competition, in the manner and with the documentation specified in these Rules and in the invitation.

## Clause 9. Selection criteria (Phase 1).

The maximum score in this phase is 100 points. Any tenderer with a score beneath 50 points will not be eligible to enter the second Phase.

A minimum of three and a maximum of five projects will be selected for the second phase. The selection will include the projects that have obtained the highest score among the ones with a minimum score of 50 points. If none of the proposals submitted achieves a score of 50 points or more, the Jury will declare the tender procedure unsuccessful.

In the event of a tie, the bidder with the best score in criterion 1 will take priority; if the tie remains, the bidder with the best score in criterion 2 will take priority, and so on with criteria 3, 4 and 5.

The Jury will select the finalists according to the following criteria:

- 1. Accredited references of projects with a strike price equal to or higher than 2,000,000 EUR carried out in the past 20 years involving the construction of new buildings or the comprehensive renovation (\*1) of historical buildings of heritage value, when these buildings house or are intended to house museums (up to 45 points)**

A maximum of 15 points will be awarded for each of the projects submitted, with a maximum of 3 projects. Each one will be evaluated according to the following:

- Construction of the project: up to 3 points (3 points if the project has been built and 1 point if it has not).
- Degree of authorship or participation of the bidder: up to 3 points (3 points for 100% authorship; 1.5 points for 50% authorship and 0.75 points for less than 50% authorship).
- The architectural relevance and quality of the project, and the project's adequacy for museum uses: up to 9 points:
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability

- and distribution of uses and functional connections with an **excellent** level of coherence and adequacy.....9.0 points
- A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **good** level of coherence and adequacy.....6.75 points
- A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with an **average** level of coherence and adequacy.....4.5 points
- A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **minimum** level of coherence and adequacy.....2.25 points
- A project deemed **irrelevant** in this regard.....0 points

**2. Accredited references of projects with a strike price equal to or higher than 2,000,000 EUR carried out in the past 20 years involving the comprehensive renovation (\*1) of historical buildings of heritage value for use in the tertiary sector (\*2), when these buildings are not intended to house museums (up to 24 points)**

A maximum of 8 points will be awarded for each of the projects submitted, with a maximum of 3 projects. Each one will be evaluated according to the following:

- Construction of the project: up to 1.6 points (1.6 points if the project has been built and 0.6 points if it has not).
- The bidder's degree of authorship or participation: up to 1.6 points (1.6 points for 100% authorship; 0.8 points for 50% authorship and 0.4 points for less than 50% authorship).
- The relevance and architectural quality of the project: up to 4.8 points:
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with an **excellent** level of coherence and adequacy.....4.8 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **good** level of coherence and adequacy.....3.6 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with an **average** level of coherence and adequacy.....2.4 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **minimum** level of coherence and adequacy.....1.2 points
  - A project deemed **irrelevant** in this regard.....0 points

**3. Accredited references of projects with a strike price equal to or higher than 2,000,000 EUR carried out in the past 20 years involving the construction**

**of new public buildings for the tertiary sector (\*2), when these buildings are not intended to house museums (up to 24 points)**

A maximum of 8 points will be awarded for each of the projects submitted, with a maximum of 3 projects. Each one will be evaluated according to the following:

- Construction of the project: up to 1.6 points (1.6 points if the project has been built and 0.6 points if it has not).
- The bidder's degree of authorship or participation: up to 1.6 points (1.6 points for 100% authorship; 0.8 points for 50% authorship and 0.4 points for less than 50% authorship).
- The relevance and architectural quality of the project: up to 4.8 points:
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with an **excellent** level of coherence and adequacy.....4.8 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **good** level of coherence and adequacy.....3.6 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with an **average** level of coherence and adequacy.....2.4 points
  - A project that develops the volumetric proposal, the relationship of the building with its environment and/or its architectural integration, the building's sustainability and distribution of uses and functional connections with a **minimum** level of coherence and adequacy.....1.2 points
  - A project deemed **irrelevant** in this regard.....0 points

(1\*) Comprehensive renovation: Any intervention in a whole or part of an existing building, as long as it involves a minimum floor space of 1,500 m<sup>2</sup> and is comprehensive, operating at all or most construction levels (enclosures, structure, installations, finishes, etc.).

(2\*) Tertiary sector buildings: Buildings that are intended to provide services to the public. The tertiary sector does not include residential or industrial buildings.

Each project submitted as an achievement under criteria 1, 2 and 3 must be documented as follows:

- Information and description sheet, filled out in accordance with the model shown in Annex II to these guidelines. This sheet may not exceed one A3 single-sided page.
- Certifications of satisfactory execution for each of the projects presented. These certifications must be issued or endorsed by the natural or legal person, public or private, who contracted the services of drafting the project and/or managing the execution of the work (final acceptance certificate or official certificate of completion issued by the competent authorities). In the case of private construction projects or construction projects carried out abroad, equivalent documents must be provided.
- Affidavit attesting to the degree of authorship of the work.

- Bibliographic references such as photocopies of publications related to each of the projects presented. A maximum of three DIN A4 double-sided sheets will be assessed for each performance.

All documentation not submitted in accordance with these guidelines will not be assessed.

**4. Duly accredited national and international prizes and distinctions won by the competitors for projects with objects similar to that of this competition (up to 7 points)**

Prizes and honorable mentions of both new building projects and renovation projects will be assessed as long as their objects are similar to the object of this competition.

A maximum of 3.5 points will be awarded for each submitted project, with a maximum of 2 projects. Each one will be assessed as follows:

- National\* or international\*\* architecture prize awarded to the author for his/her professional achievements or for a specific executed project (in this section only the first prize will be assessed and neither finalists nor honorable mentions will be taken into account).....3.5 points
- First prize in building design competitions (in this section only the first prize will be assessed and neither finalists nor honorable mentions will be taken into account).....2.5 points
- Other awards in architecture competitions (in a broad sense of the concept) or non-national awards.....1.5 points
- Other work providing no relevant information.....0 points

In the event that the work presented falls into two different categories, it will be assessed only for the one yielding the highest score.

(\*) National awards are defined as those which accept projects and/or works from within a single country. Local, regional or provincial awards will not be assessed.

(\*\*) International awards are defined as those which accept projects and/or works from more than one country.

Achievements presented under criterion 4 shall be proven by documentary evidence of the award or honorable mention. An information and description sheet shall be provided for each project, in accordance with the template in Annex II to these Specifications. The length of each sheet may not exceed one single-sided DIN A3 sheet.

If the bidder is a team or joint venture of different professionals or companies, the achievements of each of them under any of these criteria will be assessed cumulatively, except when these achievements refer to the same work or award, which cannot be assessed twice.

All documentation, except for original certificates of achievements, must be submitted in Spanish or Catalan. All original documents in other languages or certified photocopies of them must be accompanied by the corresponding sworn translation into Spanish or Catalan. Documents that are not submitted in Spanish or Catalan or are not accompanied by a sworn translation will not be assessed.

In order to weigh criteria 1, 2 and 3, the achievements claimed must be presented in accordance with the template provided in Annex II to these Specifications. If another format is used, it must include all the information and comply with all the indications of that template.

## Clause 10. Documentation to be submitted by the tendering companies in the Selection Phase (Phase 1)

To participate in this tender, companies must submit **two sealed envelopes, labeled on the outside with the name of the procedure to which the application is being submitted, as well as the information of the entrepreneur or tendering company, including the phone number and e-mail address for notification purposes, and signed by the tenderer or the person representing him/her.**

Applications must be typewritten or printed with any other type of mechanical or computer device. The Jury will not accept any handwritten documents or documents with omissions, errors or amendments, which hinder the application and technical documentation from being assessed clearly.

In accordance with the General Data Protection Regulation (GDPR) of the EU, personal data will be added to the MACBA Third Party file in order to manage them properly. The data (name and contact details) will only be shared with the Technical Secretariat of the Administrative Procurement Consultative Board of the Generalitat de Catalunya and will be added to the "Public Procurement Services Platform" (PPSP) database in order to publish this information in the PPSP (Bidder Profile); these data are provided in order to register the contact details of all suppliers (companies and individuals) of the Catalan contracting authorities who use the PPSP (Bidder Profile) and its electronic tendering tools. The submission of proposals implies consent to the processing of data for these purposes.

With regard to the Third Party file, the rights of access, rectification, cancellation and opposition may be exercised by submitting the corresponding request in writing to MACBA (Pl. dels Àngels 1, 08001 Barcelona) and clearly indicating in the subject line "Ejercicio del Derecho LOPD". As far as the PPSP file is concerned, these rights can be exercised by submitting a request in writing, either by post to the offices of the Technical Secretariat of the Administrative Procurement Advisory Board, located at Gran Via de les Corts Catalanes, 635, 08010 Barcelona, or by e-mail to [protecciodedades.eco@gencat.cat](mailto:protecciodedades.eco@gencat.cat).

Each envelope submitted by the tendering company must only contain the documentation specifically assigned to it. If any information found inside an envelope provides the Jury with advance knowledge of any part of the tender and therefore violates its secrecy, this will result in the exclusion of the tender.

If the proposals are sent by post before the deadline, the tenderers must provide proof that the date and time for processing the dispatch at the Post Office are, at the latest, those indicated in the invitation, and communicate them to MACBA in an e-mail (to [contractació@macba.cat](mailto:contractació@macba.cat)), which must be received before the proposal submission deadline.

If both requirements are not met and the proposal is received by MACBA after the deadline specified in the notice, the proposal will not be accepted.

If the proposal sent by post has not been received by MACBA 10 calendar days after the end of the submission period, the proposal will not be accepted under any circumstances.

### **ENVELOPE 1 (PHASE 1)**

The outside of the envelope must be labelled as follows: "Sobre núm 1. Documentación administrativa, expediente núm. 2020-04, CONCURSO DE PROYECTOS RESTRINGIDO PARA LA REDACCIÓN DEL ANTEPROYECTO DE AMPLIACIÓN Y REFORMA DEL MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) EN EL CONVENT DELS ÀNGELS Y, SI PROCEDE, LA REDACCIÓN DEL PROYECTO BÁSICO Y EJECUTIVO Y LOS SERVICIOS DE ASISTENCIA TÉCNICA DE DIRECCIÓN DE OBRA, tramitado por el Departamento de Arquitectura del MACBA, presentada por la empresa [name of the company] con NIF [VAT number] y con domicilio, a efectos de comunicaciones, en [address], teléfono [phone number], fax [fax number], e-mail [e-mail address]".

A hard copy of the documentation must be submitted with the original signatures.

The inside of the envelope shall contain, on a separate sheet of paper, a list of its contents in numerical order and signed by the natural person or the legal representative of the tendering company, if it is a legal person.

Each bidder may submit only one application to the tender. If the bidder does so individually, he or she may not be part of any other tendering team.

The envelope must contain:

#### **1. The ESPD.**

To obtain the ESPD, the tendering company must download the XML file that will be uploaded to the Contractor Profile, save the file to its computer, access the European Commission's online service and indicate that it is an economic operator and wants to import an ESPD, at which point it must attach the document in XML format and follow the instructions given by this online service (you can consult the Catalan guide "DEUC: guia d'ús per als licitadors" in the Contractor Profile).

In part IV of the ESPD, "Selection criteria", tenderers should respond solely to the question of whether they fulfill all the necessary selection criteria and meet all the financial and technical soundness requirements by checking the box "yes" or "no". THE INFO SECTIONS ABOUT THE SELECTION CRITERIA SHOULD NOT BE FILLED IN.

Tendering companies shall also indicate in the ESPD, where appropriate, the information concerning the person or persons authorized to represent them in this tendering procedure.

If the tenderer is a joint venture, each of its member companies must submit their own ESPD. In addition to this ESPD, they must provide a document certifying their commitment to form a joint venture if they are awarded the Contract.

If the tendering company uses the capabilities of other companies to accredit its economic and/or technical soundness, it must make note of this circumstance in the ESPD (in part II, section C) and provide a separate ESPD for each of the companies, in accordance with the provisions of Articles 75 and 140.1.c) of the LCSP.

#### **2. An affidavit of liability (Annex I)** shall be attached to the submission of the ESPD, stating whether the company it represents:

- carries out financial operations in tax havens.
- has legal relations with tax havens. In this case, the tenderer must attach a descriptive summary of the specific financial activities and the information relating to such operations. The fact that the company admits to having a financial relationship with tax havens will be published in the Contractor Profile.

**3. An affidavit of liability of the company representative and commitment of the author.**

A signed affidavit must be provided by the representative of the tendering company (or the participant, if he or she is the Author of the project) with the express commitment to have the architect in question as the Author (and signatory) of the Project.

A signed declaration shall also be included in which the Author of the project states his/her agreement and willingness to act as such, and undertakes to carry out the services that are the object of this competition in the event of winning the tender. It must include the identity of the Author (name, surname(s) and VAT number) and his or her license number.

In accordance with Article 140.1.f) of the LCSP, if the bidding company is foreign and the contract is to be executed in Spanish territory, the Awardee, as any other bidder participating in the tender, shall be subject to the jurisdiction of the competent Spanish courts and tribunals for all the incidents that may directly or indirectly arise from the Contract, waiving thereby, where appropriate, any foreign jurisdiction that may correspond to the bidder. The tenderer must submit the corresponding statement of consent.

MACBA may ask the tenderers to submit all or part of the documentation demonstrating compliance with the prerequisites, should it be required for the proper advancement of the procedure. However, tenderers registered in the Electronic Register of Tenderers (RELI: Registre Electrònic d'Empreses Licitadores) of the Generalitat de Catalunya, in the Spanish Official Register of Tenderers and Classified Public Sector Companies (ROLECE: Registro Oficial de Licitadores y Empresas Clasificadas del Estado) or in any free official list of economic operators of a member state of the European Union are not obliged to submit these documents or any other documentary evidence contained in these registers.

If the bidder relies on the solvency or resources of other entities or intends to subcontract the services, the bidder must indicate this intention in the ESPD and submit a separate, signed ESPD for each of the companies it intends to contract or to whose capacity it will resort.

**IMPORTANT:** Within a maximum period of FIVE (5) working days from the day following the receipt of the request and, at all events, before awarding the Contract, the Contracting Authority may require the tenderers to present all or part of the documentation to demonstrate their compliance with the prerequisites established in Article 140 of the LCSP and detailed in these Specifications, in accordance with the provisions of Article 140.3 of the LCSP.

If this documentation is not provided within the period indicated by MACBA or it does not prove that the tenderer meets all the capacity and solvency requirements, the tenderer shall be excluded from this procedure.

Bidders who are members of a tendering joint venture may not compete individually in the same procedure or be part of more than one tendering joint venture.

**ENVELOPE 2 (PHASE 1)**

The outside of the envelope must be labelled as follows: "Sobre núm 2. Criterios para la selección de candidatos para el CONCURSO DE PROYECTOS RESTRINGIDO PARA LA REDACCIÓN DEL ANTEPROYECTO DE AMPLIACIÓN Y REFORMA DEL MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) EN EL CONVENT DELS ÀNGELS Y, SI PROCEDE, LA REDACCIÓN DEL PROYECTO BÁSICO Y EJECUTIVO Y LOS SERVICIOS DE ASISTENCIA TÉCNICA DE DIRECCIÓN DE OBRA, expediente 2020-04, tramitado por el Departamento de Arquitectura del MACBA, presentada por la empresa [name of the company] con NIF [VAT number] y con domicilio, a efectos de comunicaciones, en [address], teléfono [telephone number], fax [fax number], e-mail [e-mail address]".

**A hard copy of the documentation must be submitted with the original signatures. A memory stick (pen drive) with a copy, in PDF format, of all the documentation included in the envelope should also be attached.**

In case of doubt or inconsistency, the hard copy will take precedence. Anything that is not included on paper in the envelope shall be considered not to have been delivered (if an electronic copy of the documentation is also requested, it is only to facilitate the work of the Contracting Authority, without prejudice to the predominance, for all purposes, of the hard copy).

The inside of the envelope shall contain, on a separate sheet of paper, a list of the envelope's contents in numerical order, signed by the natural person or the legal representative of the tendering company, if it is a legal person.

**This envelope must contain the supporting documentation concerning the selection of the finalist candidates, clearly linked to the assessment criteria indicated in Clause 9, "Selection Criteria (Phase 1)", of these Specifications.**

## Clause 11. Proposal phase procedure (Phase 2).

11.1. The participants selected for Phase 2 (finalists) shall submit their proposal by the deadline indicated in the invitation, which shall not be earlier than 30 calendar days after the date the invitation was sent.

The candidates selected for Phase 2 will be simultaneously and electronically notified of the invitation to submit their proposals, which must comply with the requirements set out in these Specifications. **This phase will be governed by the principle of anonymity** as per Article 187.4 of the LCSP. For a project to be anonymously submitted, it must not mention the name of its author(s) or contain any data or indications of any kind which would allow the Jury to know indirectly the identity of its author(s).

Proposals submitted after the deadline will not be accepted under any circumstances.

**If the proposal is submitted by post, in order to guarantee the anonymity that governs this phase, the post office receipt sent by e-mail to contractació@macba.cat may not contain any data that might identify the bidder; therefore, the sender's data on the postal receipt must be hidden and it must be sent from an anonymous e-mail address composed with the proposal's title.**

**All correspondence must be carried out using the proposal's title, as long as it preserves the bidder's anonymity. Otherwise, the proposal will be rejected and**

**the bidder will not be allowed to continue participating.** As established in Article 187.4 of the LCSP, for a project to be considered anonymously submitted it must not only leave the name of its author(s) unmentioned, but also not contain data or indications of any kind that would allow the Jury to know its author(s) identity indirectly.

11.2. Competitors must submit their proposals in accordance with the instructions of these Specifications and the requirements specified in the letter of invitation.

The technical proposal and the documentation referred to in this Clause **shall be presented anonymously** in order to guarantee the secrecy of authorship, with a **title** chosen freely by the tenderer. Tenderers must pay particular attention to this rule, since the inclusion of the name of the tenderer or any other indication that allows him or her to be identified will result in immediate exclusion from the tender.

The Secretary of the Jury will ensure that the rules and anonymity of the tender are respected at all times.

11.3. The documentation that the bidders must present in Phase 2 will be contained in two envelopes (Envelope 3: "Technical proposal" and Envelope 4: "Identity of the bidder").

The envelopes must be opaque, sealed shut and labeled on the outside with the name of this tender and an explicit reference to the title of the proposal; it must not include any other type of identification.

11.4. Opening of technical proposals - Envelope 3

Once the proposals from the bidders have been received, within the period established in the invitation, MACBA will announce via its Contractor Profile the public act of opening Envelope 3, containing the graphic proposal and the rest of the required documentation indicated in these Specifications. The originals of the proposals will be made available to the members of the Jury, so that they can carry out their assigned tasks.

Before the documentation is submitted to the Jury, the Contracting Authority of MACBA will decide if any proposals must be excluded because they have been submitted late or have violated the principle of anonymity.

11.5. Disclosure of identities - Envelope 4

Once the Jury has issued its Opinion and classified the proposals, the score obtained by the proposals contained in Envelope 3 of the selected participants will be announced. Tenderers who have been excluded or whose proposals have been rejected shall also be made public, along with the reasons for the exclusion or rejection.

The Contracting Authority will then proceed to declare the winning proposal and inform the bidders of the date and time of the public event in which Envelope 4 will be opened, disclosing the identity of those bidders who have been admitted to the tender. This date will also be made known through the Contractor Profile. On the date and time communicated in due course, Envelope 4 of all accepted proposals will be opened.

## Clause 12. Assessment criteria for the technical proposal (Phase 2).

The maximum score a proposal can obtain is 100 points. The Jury may declare the tender procedure unsuccessful if none of the submitted proposals achieves a minimum score of 60 points.

The technical proposal must be submitted as follows:

- Two (2) panels mounted on foam core board in size DIN A2, printed on one side only and including at least the following contents, in the order, distribution and composition that the bidder considers most adequate:
  - **Integration of the project in its urban environment:** Main ideas for the urban development measures involved in the proposal and, in particular, for the communication between and the external relationship of the buildings that currently make up the museum.
  - **Architectural proposal:** It shall include the preliminary architectural plans that the bidder deems necessary to define the proposed concept; it must indicate the basic layout of uses and areas and try to maximize the net floor space.
  - **Access and circulation proposal:** It will include the location of the main entryway; the museum's reception area; a space for temporary exhibitions and the space for incoming cultural goods. The proposal should also indicate how it intends to organize the flow of people, cultural goods and supplies.

The panels will be illustrated with all the graphic information that the bidder deems relevant: plans, drawings, infographics, photographs of models, diagrams, etc.

- The submitted report must include the following sections:
  - General description of the proposed concept.
  - General description of the criteria behind the projected intervention in the historic building and particularly of the criteria aimed at enhancing its architecture.
  - Description of the urban integration criteria.
  - A reduction to DIN A3 format of all the plans and drawings included in the panels, folded into DIN A4, for ease of reference. The report may not include more drawings than those contained in the panels.
  - Table of uses and areas.
  - Proposed schedule for the drafting of the project, including milestones and critical points and, if deemed appropriate, the corresponding explanations and justifications. This schedule may be submitted in DIN A3 format, folded into DIN A4.
  - Proposed schedule for the extension and restoration work, including milestones and critical points and, if deemed appropriate, the corresponding explanations and justifications. This schedule may be submitted in DIN A3 format, folded into DIN A4.
  - Estimated budget for the execution of the work, broken down by lines and including, if necessary, the justifications of the amounts obtained. The

estimated value may not under any circumstances exceed the maximum investment indicated in these Specifications. If the cost of the projected work exceeds that limit, the proposal shall be rejected and the tenderer or candidate disqualified.

This report may not exceed ten (10) DIN A4 sheets, printed only on one side, in Arial 11 or a similar typeface.

The proposal's title must appear in each panel and in the header or footer of each page of the report.

None of the documents included in the technical proposal (neither the panels nor the documents that make up the report) may bear any form of identification other than the proposal's title. Failure to comply with this obligation shall be grounds for automatic exclusion from the tender.

The evaluation of the technical proposal will be carried out according to the following assessment and scoring criteria:

**1. Architectural quality of the proposal (up to 50 points)**

In order to assess the architectural quality of the proposal, the Jury will pay particular attention to the following aspects:

- Architectural quality: The Jury will assess the overall architectural proposal, taking into account the proposed visual and functional relationships.....10 points
- Quality of the interior spaces: The Jury will assess the different features related to the spatial and environmental quality of the interior and other aspects such as its comfort, composition, proportion, materiality and ambient light.....10 points
- Functionality of uses and pathways: The Jury will assess the optimization of the various spaces of the museum and their interrelationship.....10 points
- Intervention in the listed building: The Jury will assess the intervention strategy, which should be directed at enhancing the original and heritage value of the listed building.....10 points
- Integration: The Jury will assess the integration of the new building in its relation to the Convent dels Àngels as well as to the architectural complex of Plaça dels Àngels and especially to the Meier building.....10 points

These evaluation criteria will be applied in line with the information in the Master Plan provided to the selected bidders at the beginning of Phase 2.

**2. Effective use planning (up to 20 points)**

Assessment of the functional program's organization solution, taking into account the functional relations described in the Master Plan and giving special importance to:

- The clarity of the distribution, up to 5 points.
- The circulation of visitors and the access points, up to 5 points.
- The relationship of the interior spaces, up to 5 points.
- The relationship between the use plan and the protected building, up to 5 points.

These evaluation criteria will be applied in line with the information in the Master Plan provided to the five selected bidders at the beginning of Phase 2.

### **3. Energy efficiency and life cycle of materials (up to 20 points)**

The Jury will assess the logic and technical justification behind the strategies to maximize the sustainability of the building with regard to its design, construction systems, architectural integration, installation systems and materials, as well as its use and future maintenance.

In this respect, proposals should set out the concepts, criteria and approaches that the project will develop concerning the following aspects:

- Reduction of energy requirements (climate, lighting, etc.) and water consumption during the lifetime of the building. Structural and environmental solutions to minimize future maintenance costs, up to 5 points.
- Use of strategies to minimize the environmental costs during construction and at the end of the building's lifetime, up to 5 points.
- Integration of self-generated energy systems using renewable energies, justified as suitable for the site and the building, up to 5 points.
- Solutions promoting the connection of urban green space (urban green corridors), the renaturation of the city and the growth of urban green biodiversity on all scales, up to 5 points.

Special recognition will be given to solutions aimed at integrating these systems into the new design of the building and enhancing the heritage elements.

Proposals must take into account that the future building must comply with the Technical Instruction for the Application of Sustainability Criteria in Construction Projects of the Barcelona City Council, and have at least a level A energy certification.

These evaluation criteria will be applied in line with the information in the Master Plan provided to the five selected bidders at the beginning of Phase 2.

### **4. Construction cost review (up to 5 points)**

The following criteria shall be taken into consideration: detail and development of the review, justification of the cost estimate and compliance with the maximum investment foreseen for the execution of the works, as indicated in Article 14 of this report.

### **5. Schedules (up to 5 points)**

Schedules will be assessed on the basis of their detail and programming, as well as their identified milestones and critical points.

**Clause 13. Documentation to be submitted by the tenderers for the Proposal Phase (Phase 2).**

In this second phase, **the proposals submitted to the competition will remain anonymous**, in accordance with the provisions of Article 187.4 of the LCSP.

In order to guarantee anonymity, the finalists selected as indicated above must present the documentation in **two separate envelopes, closed and labelled on the outside with a title that prevents the direct or indirect identification of the participants**, without any indication or reference to names, signatures or activities that could reveal the authorship of the finalist proposal. The title shall consist of a word, phrase or alphanumeric combination and may not be accompanied by any graphic element that would allow said identification.

**Failure to comply with these obligations will result in automatic exclusion from the competition.**

If the proposals are sent by post before the deadline, the tenderers must provide proof that the date and time for processing the dispatch at the Post Office are, at the latest, those indicated in the invitation, and communicate them to MACBA in an e-mail (to [contractació@macba.cat](mailto:contractació@macba.cat)), which must be received before the proposal submission deadline.

If both requirements are not met and MACBA receives the proposal after the deadline specified in the notice, the proposal will not be accepted.

If the proposal sent by post has not been received by MACBA 10 calendar days after the end of the submission period, the proposal will not be accepted under any circumstances.

If the proposal is submitted by post, in order to guarantee the anonymity that governs this phase, the post office receipt sent by e-mail to [contractació@macba.cat](mailto:contractació@macba.cat) may not contain any data that might identify the bidder; therefore, the sender's data on the postal receipt must be hidden and it must be sent from an anonymous e-mail address composed with the proposal's title.

### **ENVELOPE 3 (PHASE 2)**

The outside of the envelope must be labelled as follows: "Sobre núm 3. Propuesta técnica, expediente núm. 2020-04, CONCURSO DE PROYECTOS RESTRINGIDO PARA LA REDACCIÓN DEL ANTEPROYECTO DE AMPLIACIÓN Y REFORMA DEL MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) EN EL CONVENT DELS ÀNGELS Y, SI PROCEDE, LA REDACCIÓN DEL PROYECTO BÁSICO Y EJECUTIVO Y LOS SERVICIOS DE ASISTENCIA TÉCNICA DE DIRECCIÓN DE OBRA, tramitado por el Departamento de Arquitectura del MACBA."

The outside of the envelope must also include an **anonymous e-mail address** to which questions from the Jury will be sent to clarify any aspect of your proposal. In order to guarantee the principle of anonymity, the e-mail address will be limited to indicating the title of the proposal. If the chosen title was "chapel", for instance, the e-mail address could be chapel@gmail.com or chapel@hotmail.com, etc.

Any element, data, indication or information that allows the identification of the bidder and infringes the principle of anonymity will result in the automatic disqualification of the bidder from the tender by the Jury, which will proceed to consider the remaining proposals. This will be the case if, for example, the name of the company is included in the e-mail address given (e.g. capilla@arquitectesmacba.com) or if the company's signature is included when answering the questions of the Jury.

The contents of the envelope must be included on a separate sheet of paper, in numerical order.

A hard copy of this documentation must be submitted.

This envelope must include the following documents:

- Technical documentation that defines the architectural proposal in its preliminary phase:
  - o Two (2) panels mounted on foam core board in size DIN A2, printed on one side only
  - o A report of a maximum of ten (10) A4 sheets, printed on one side only, in Arial 11 or similar typeface, that presents the contents detailed in Clause 12, showing the essential aspects of the intervention in the museum proposed by the tendering team.
  - o A memory stick (pen drive) with a copy, in PDF format, of all the contents of the envelope, both the documents on paper and the panels

In case of doubt or inconsistency, the hard copy will take precedence. Anything that is not included on paper in the envelope shall be considered not to have been delivered (if an electronic copy of the documentation is also requested, it is only to facilitate the work of the Contracting Authority, without prejudice to the predominance, for all purposes, of the hard copy).

This envelope shall contain nothing but the documentation stated above nor any model.

**The inclusion of any information (digital or otherwise) enabling participants to be identified directly or indirectly shall be grounds for automatic exclusion from the tender procedure.**

#### **ENVELOPE 4 (PHASE 2)**

The outside of the envelope must be labelled as follows: "Sobre núm 4. IDENTIDAD LEMA, expediente núm. 2020-04, CONCURSO DE PROYECTOS RESTRINGIDO PARA LA REDACCIÓN DEL ANTEPROYECTO DE AMPLIACIÓN Y REFORMA DEL MUSEU D'ART CONTEMPORANI DE BARCELONA (MACBA) EN EL CONVENT DELS ÀNGELS Y, SI PROCEDE, LA REDACCIÓN DEL PROYECTO BÁSICO Y EJECUTIVO Y LOS SERVICIOS DE ASISTENCIA TÉCNICA DE DIRECCIÓN DE OBRA."

The outside of the envelope must also include an **anonymous e-mail address** to which questions from the Jury will be sent to clarify any aspect of your proposal. In order to guarantee the principle of anonymity, the e-mail address will be limited to indicating the title of the proposal. If the chosen title was "chapel", for instance, the e-mail address could be chapel@gmail.com or chapel@hotmail.com, etc.

Any element, data, indication or information that allows the identification of the bidder and infringes the principle of anonymity will result in the automatic disqualification of the bidder from the tender by the Jury, which will proceed to consider the remaining proposals. This will be the case if, for example, the name of the company is included in the e-mail address given (e.g. capilla@arquitectesmacba.com) or if the company's signature is included when answering the questions of the Jury.

This envelope must include the following documents:

- Declaration that states the identity of the person or persons, natural or legal, competing under the adopted title, with the complete contact details of the tendering company and its representative, for the purposes of location and identification.

## Clause 14. Composition and functions of the Jury

The Jury shall be composed of the members listed below, who will have the right to delegate their functions or seek a replacement in case of absence. At least two-thirds of the members of the Jury will have the qualifications required to participate (Art. 187.3 of the LCSP) and at least one third of them will be accredited professionals chosen at random from the pools established for this purpose by professional associations or colleges (Art. 14.2 of the Law on Architecture).

Once all the parties have designated the people who will make up the Jury for the competition, its definitive composition will be published in the [Contractor Profile](#).

### **1. The Jury will be composed as follows:**

#### **Chairman:**

- Joan Subirats, Deputy Mayor of the City of Barcelona, or his authorized delegate

#### **Members:**

- Mariàngela Vilallonga, Councilor for Culture of the Generalitat de Catalunya, or her authorized delegate
- Elsa Ibar, Director-General of Heritage of the Generalitat de Catalunya, or her authorized delegate, an Architect from the Departament de Cultura de la Generalitat
- Laia Grau Balagueró, Head of Urban Planning of the City Council of Barcelona, or her authorized delegate
- Xavier Matilla, Chief Architect of the City Council of Barcelona, or his authorized delegate
- Marc Aureli Santos, Director of Urban Architecture and Heritage Services of the Joint Municipal Management of the City Council of Barcelona, or his authorized delegate
- Jordi Rabassa i Massons, District Councilor of Ciutat Vella, or his authorized delegate
- Javier García Fernández, Secretario General de Cultura of the Spanish Ministry of Culture, or his/her authorized delegate
- Román Fernández-Baca, General Director of Fine Arts for the Spanish Ministry of Culture, or his authorized delegate, an Architect from the Ministerio de Cultura.
- Ainhoa Grandes, Chair of the MACBA Foundation, or her authorized delegate
- Architect of the MACBA Foundation, or his/her authorized delegate
- Ferran Barenblit, Director of MACBA, or his authorized delegate
- Isabel Bachs, Architect of MACBA, or his authorized delegate
- Representative of FAVB (Federació d'Associacions de Veïns i Veïnes de Barcelona)
- Expert architect of COAC (Association of Architects of Catalonia), or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her

- Expert architect appointed by COAC, or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her
- Expert architect appointed by COAC, or the person standing in for him/her

**Secretary**, participating in an advisory capacity but without a vote:

- Josep M. Carreté, Managing Director of MACBA, or his authorized delegate

This Jury will be established for the project tender, acting as the body responsible for evaluating and classifying the graphic or technical proposals presented, in order to determine the most appropriate proposal to achieve the object of the tender in accordance with the evaluation criteria set out in Clauses 9 and 12 of these Specifications. The Jury will adopt its decisions or assessments with complete autonomy and independence, on the sole basis of the projects presented in an anonymous manner and in exclusive accordance with the criteria set out in Clauses 9 and 12 of these Specifications.

Once the Jury has issued its decision, it will share it with the Contracting Authority so that the latter can proceed with the awarding of the project to the tenderer with the highest ranking.

## **2. Procedures**

The Jury shall be considered to have a valid quorum when two-thirds of its members are present at the first meeting or half of its members plus one at the second meeting. The Jury will be established at the second meeting if, 30 minutes after the failed attempt to establish it at the first meeting, the quorum of half of the jurors plus one required for the second meeting is reached.

The Jury's decisions will be taken by a simple majority after evaluating the proposals submitted in accordance with the criteria set out in these Specifications. The Jury will have full autonomy and its members will enjoy absolute independence. In the event of a tie, the President shall have the casting vote.

The members of the Jury will adapt their conduct to the guidelines and criteria indicated in the Barcelona City Council's Code of Ethics, as set out in the additional provision of said Code, published in the *Gaceta Municipal* on 13 December 2017, and will expressly declare at the first meeting that they have not engaged in any conflict of interest. Any juror with a conflict of interest must resign and be replaced by another juror who meets the same requirements of experience and suitability.

In this regard, it is worth remembering that the causes of incompatibility provided for in the LCSP will apply and that, in accordance with Article 14.5 of the Law on Architecture, the members of juries of project tenders for architectural processes and urban planning instruments are subject to the same regulations on incompatibilities and recusal as all public authorities and officials involved in contracting procedures.

The members of the Jury are obliged to keep the deliberations and decisions of the Jury secret until the opening of the envelopes containing the identities of the bidders.

Once the Administrative Documentation (Envelope 1) has been analyzed by the MACBA Contracting Department, notification will be given as to the actions carried out in the first call to the Jury.

The Jury will then proceed to open the Envelopes 2 that were selected for the next phase, and will apply the selection criteria established in Clause 9 of these Specifications, issuing the corresponding decision with the results of its appraisal.

After the proposal submission deadline of Phase 2, the Jury will be established on the date and time indicated in the announcement (or in the Contractor Profile, in case it has been postponed) and the Envelopes 3 will be opened in public session.

The functions of the Jury will be:

**A) Selection phase (PHASE 1)**

- Analysis and assessment of the documentation contained in Envelope 2 to evaluate and select, according to the selection criteria set out in Clause 9 of these Specifications, the participants invited to submit their bids in PHASE 2. In order to carry out the analysis, assessment and selection of candidates, the Jury may delegate this task to its best qualified members and use the human and material resources that are considered necessary for its fulfillment. The result of this analysis will be submitted to the Jury for approval.
- Formulate the proposal for the selection of the participants who may be invited to Phase 2 of the procedure (issuing of the selection decision).

**B) Proposal evaluation phase (PHASE 2)**

- Analysis of the documentation and final admission of the projects (Envelope 3)
- Justified proposal for the exclusion of non-accepted projects, which will be recorded in the minutes.
- Analysis of the proposals submitted and the appraisal thereof based on the non-automatic assessment criteria set out in Clause 12 of these Specifications.
- Monitoring and enforcement of the strict anonymity of the documentation examined.
- Formulation of the classification of proposals according to the assessment criteria, including eventual honorable mentions (delivery of the criteria assessment opinion).

The Jury will agree on an evaluation procedure based on the quantity and quality of the proposals presented, systematically discussing each one and discarding those that do not meet the requirements. The Jury may opt to use a voting system if deemed appropriate; if in this case there is a tied vote, a new vote shall be taken. Only in the event of three (3) tied votes shall the President have a casting vote. In any case, the discussions and decisions of the Jury will be based on the criteria indicated in Clauses 9 and 12 of these Specifications.

Once the Jury has made its decision, the interested parties will be notified and the public opening of Envelope 4 will be convened to reveal the identity of the successful tenderer.

The Jury, in the exercise of its duties, may provide itself with the human and material resources it considers necessary for the performance of its duties.

MACBA may require the successful tenderer to make the changes to the project suggested by the Jury or to make detailed and/or programmatic variations of the proposal in line with the needs and objectives established by MACBA at the time of contracting for technical, economic, functional or other reasons, provided that such variations do not substantially alter the winning idea. The partial development of the project or the omission of one of its uses or activities will not be considered a substantial alteration of the idea. Failure by the

successful tenderer to accept the changes imposed by MACBA shall result in the successful tenderer's withdrawal from the Contract, without the right to any type of compensation.

## Clause 15. Award of the Contract

1. In view of the Jury's decision and once the identity of the tenderers is known, the Contracting Authority will approve the classification of the selected and accepted proposals in descending order of score, according to the assessment criteria set out in the Specifications, and will require the winning tenderer to provide the following documentation within a maximum period of 10 working days from the date of notification.

Tenderers who are registered in the RELI or the ROLECE or any other free official list of economic operators of a member state of the European Union, are not obliged to submit the supporting documents or any other documentary evidence of the data contained in these registers.

The following is the documentation that will be required of the winning tenderer:

- Certificates of compliance with all tax and social security obligations established in the current legislation. The municipal tax collection software will be consulted to check that the company proposed as the Awardee is up to date with its tax obligations to the Barcelona City Council. A hard copy of this enquiry will be incorporated into the record.
- Documentation certifying that the tenderer possesses the personal and/or material resources indicated in these Specifications and undertakes to use them for the execution of the Contract.
- Document certifying the valid incorporation of the company, whose official purpose must be compatible with the tender.
- Document certifying the due representation of the signatory to submit the proposal.

The documents which, where appropriate, the tenderer must provide to prove compliance with the competence and solvency requirements are:

- A civil liability insurance policy that covers professional risks, which is valid at least until the deadline of the submission of tenders, for an amount equal to or greater than the estimated price of the Contract for the drafting of the Basic and Executive Projects and the construction management to be carried out as a result of this tender (868,038 EUR), as well as the commitment to renew or extend it to guarantee its coverage during the execution of said Contract.
- Official certificates proving the academic qualifications of the personnel assigned to the Contract, as indicated in Clause 7 of these Specifications.

Equivalent certificates issued by bodies established in any member state of the European Union shall be recognized, as will other equivalent guarantees of quality performance.

The corresponding certificates may be issued digitally, and shall be accepted within the time limits indicated in these Specifications.

If the winning tenderer does not provide the above-mentioned documentation within the specified period, he shall not be awarded the Contract. In this case, MACBA will request the relevant documentation from the next ranked bidder, as established in Article 150 of the LCSP.

2. In accordance with Article 150.3 of the LCSP, once the required documentation has been presented and the definitive guarantee has been constituted, the Contract will be awarded within 5 working days upon receipt of the documentation.

In accordance with Article 150.2 of the LCSP, if the tenderer does not present the required documentation or provide the definitive guarantee within the indicated period, the bid shall be considered withdrawn and MACBA will proceed to request the same documentation from the tenderer with the next highest score.

In the event of false statements in the ESPD or in the declaration of responsibility submitted by the company proposed as the Awardee, the latter will be automatically excluded from the tender procedure and the competent authorities will initiate and process the corresponding contracting ban. The Board may also decide to re-evaluate the bids.

In the occurrence of the circumstances set out in Article 152 of the LCSP, the Contracting Authority may choose not to award the Contract or to relinquish the award procedure.

3. Once the submitted documentation has been checked, the MACBA Contracting Authority may award the services referred to in Clause 1 to the successful bidder, with the prices and conditions indicated in these tender Specifications.

If the Contract is not awarded due to financial discrepancies or failure to meet the contractor's approach, or for other unexpected reasons which, in the opinion of MACBA, make it impossible to continue, the successful tenderer will not be entitled to any additional compensation for loss of earnings.

## Clause 16. Bid security

In accordance with the provisions of Article 107.1 of the LCSP, the successful bidder will have to provide a bid security amounting to 5 percent of the price offered excluding VAT. This security must be provided within 10 working days from the date of receipt of the request, as established in Article 150 of the LCSP.

If the selected tenderer chooses the option of withholding the price to provide the security, the total amount of said security will be withheld from the first or single payment of the Contract. If the first payment is not sufficient to cover the entirety of this security, the remaining amount will be withheld from the price in the next payment, and so on until the entirety of the bid security is covered.

If the Contract sets provisional prices, the amount of the bid security will be determined on the basis of the maximum price established.

Securities that are not constituted by withholding the price must be deposited at the Caixa General de Dipòsits de la Generalitat de Catalunya, Gran Via de les Corts Catalanes, 639, 08010 Barcelona, Spain, in cash, in public or private securities of legal tender or through a bank guarantee or a surety bond. The proof of its deposit may be done by digital means.

## Clause 17. Notification of the award and formalization of the Contract

1. In accordance with the provisions of Article 151 of the LCSP, the awarding of the Contract shall be announced by digital means to the tenderers and shall be published in the Contractor Profile within a period of maximum 15 days.

2. The Contract may not be concluded until 15 working days have elapsed from the date on which the Contracting Authority notifies the tenderers. If, once this period has expired, no special appeal implying the suspension of the procedure has been lodged, as set out in Article 44 of the LCSP, or it has been agreed to lift said suspension, the Awardee will be required to formalize the Contract within a period of no more than 5 days from the date following the receipt of the request.

In the event that a joint venture is named the Awardee, it must be formally established as a temporary joint venture prior to the conclusion of the Contract.

In accordance with Article 153.4 of the LCSP, if for reasons attributable to the Awardee the Contract has not been formalized within the indicated period, the bid shall be considered withdrawn and MACBA will request the documentation from the tenderer with the next highest score. If pertinent, MACBA may claim compensation from the company that has withdrawn the offer.

3. The Contract shall take effect after its formalization as an administrative document, which will be sufficient to access any public registry. The Contract may be converted into a public deed if requested by the Awardee, who shall bear the costs incurred in granting it.

4. In accordance with Article 154 of the LCSP, the formalization and the contractual document itself will be published in the Contractor Profile within a period of no more than 15 days from the completion of the Contract. In the ESPD the formalization will be announced within a period of no more than 10 days.

## Clause 18. Contract execution

The execution of the Contract will begin on the day following its formalization, in accordance with the terms established in Clause 3 of these Specifications.

## Clause 19. Payments to the Contractor

In accordance with Article 102 of the LCSP, the contract price is compensation for the service provided.

The price will be set in euros.

The Contract price shall be determined on the basis of the units executed as set out in Clause 2 of these Specifications and with the unit amount of each of them.

The Contractor must present the invoice for the services performed, as required. The invoice will be reviewed and authorized within a maximum of ten days. In the event of disagreement, the invoice will be returned to the Contractor, who will be given a period of ten days upon receipt to make comments or submit a new invoice with the relevant corrections.

The evaluated reports of the work, together with the certifications, will be sent to the Contractor once the units established in the Specifications have been correctly executed, so that the Contractor can approve it or communicate any observations, and issue the corresponding invoice for the price of the certification within a maximum period of ten working days. Once this period has passed, the documents shall be deemed accepted by the Contractor for processing purposes.

Once the certification has been issued, a copy will be sent to the contracting company so that it can present the invoice for the certification price within ten working days. The invoice(s) must include the following information, as indicated in the header of these Specifications:

- Contract Code
- Contracting Authority
- Finance Department
- Recipient Body

MACBA will pay the Contract price by bank transfer, in accordance with the requirements of Article 198 of the LCSP.

Invoices must be issued digitally.

## Clause 20. Price revision

According to the provision of Article 103 of the LCSP, the Contract price may not be revised throughout the entire duration of the contract, potential extensions included.

## Clause 21. Contract Manager

The unit in charge of the supervision and ordinary execution of the Contract will be MACBA's Architecture Department.

Christian Leibenger has been appointed as the person responsible for this Contract. He will supervise its execution, take decisions and issue the necessary instructions to guarantee the correct performance of the agreed service, in accordance with the provisions of Article 62.1 of the LCSP.

## Clause 22. Special conditions of performance and obligations of the Contractor.

### 1. Special conditions of performance

In accordance with Article 202 of the LCSP, the Contract will be governed by the following special conditions of performance:

- 1.1 Preserving the employment conditions of the staff assigned to the Contract for the entire contractual period.

The Contractor must maintain, during the validity of the Contract, the working and social conditions of the workers employed in the execution of the Contract. Such conditions will be established at the time of submission of the tender, according to the applicable agreement.

This condition shall be considered an essential contractual obligation and failure to comply with it may lead to penalties, as a very serious infringement, or be grounds for termination of the Contract.

The Contract Manager may require the Contractor to formally declare that this obligation has been fulfilled. The Contract Manager or the Contracting Authority may also request information on this subject from the employees' representative bodies.

### 1.2 Compliance with national and European Union data protection regulations

The obligation of the Contractor to comply with national and EU regulations on data protection is established as a special condition of performance. This obligation shall be considered an essential contractual obligation.

## 2. General conditions of performance

- The Contractor shall be bound by the offer he submitted, the compliance with which, in all respects, shall be considered an essential contractual obligation.
- The requirements of these Specifications have the character of essential contractual obligations.
- The effective dedication or commitment to the execution of the Contract of the personal means indicated in the offer has the character of an essential contractual obligation.

## 3. Obligations of the Contractor:

In addition to complying with the obligations set out in the LCSP, the Contractor undertakes:

- a. To comply with all obligations mentioned in the Technical Specifications.
- b. To comply with the applicable collective agreement with regard to the employees' wage conditions.
- c. To comply with all information and communication obligations, as stipulated in Annex XII, section 2.2 of Regulation (EU) No. 1303/2013, which sets out the responsibilities of beneficiaries with regard to information and communication measures for the public. This obligation shall be incorporated as a Clause in the Contract.
- d. To fully comply with data protection obligations established in national and European Union regulations.
- e. To assume responsibility for the indicated tasks and undertake to carry them out effectively.
- f. To maintain at all times the confidentiality befitting a position of trust, and therefore, to keep secret any information and technical or other knowledge revealed in order to carry out the task effectively.

- g. To ensure that the employees assigned to the Contract comply with the rules and instructions of MACBA. In the event of non-compliance with or faulty adherence to these instructions, the Awardee must make, at MACBA's request, the necessary personnel changes for the proper execution of the Contract.
- h. To present, before the formalization of the Contract, if it requires the processing of personal data by the Contractor, a statement indicating where the servers will be located and where the corresponding services will be provided.
- i. To communicate any change that occurs during the life of the Contract in the information provided in the aforementioned statement.
- j. To provide the information indicated in Law 19/2014 of 29 December on transparency, access to public information and good governance.
- k. To designate a person who will be responsible for the work's progress and the good behavior of the staff, and who will also act as a liaison with the Contract Manager.
- l. To have a valid civil liability insurance policy covering any risk that may arise from the execution of the Contract.
- m. To follow at all times the Contract Manager's indications regarding regulations and operating systems.
- n. To make a correct environmental management of the service, taking the necessary measures to minimize the impact that the service may have, in compliance with the applicable laws.
- o. To solve and amend, within three working days of the MACBA's request, any situation in which the Awardee has not fulfilled his obligations.
- p. To specify the persons who will provide the services and attest, before the beginning of the execution of the Contract, to their proper registration with the Spanish social security system (Seguridad Social). The Awardee will also be obliged to provide photocopies of models TC1 and TC2, made by the entity in which the corresponding salary contributions were paid. If these documents are not available, the invoice for the corresponding month will be withheld until payment is confirmed. The Awardee must also provide, on a quarterly basis, a copy of the payment letter corresponding to the personal income tax statements of the staff assigned to the Contract. Any falsehood, breach or omission in the presentation of this documentation may be grounds for termination of the Contract.
- q. To notify MACBA in advance of any modification to the staff assigned to the Contract during its entire period of validity and to prove that their employment situation complies with the law.
- r. To respect confidentiality regarding any non-public data or background information related to the object of the Contract of which the Awardee has become aware while performing the Contract, and to comply with these confidentiality obligations for a minimum period of five years, as established in Article 133.2 of the LCSP. The Awardee and its staff must, in all cases, observe the provisions of the LCSP and the General Data Protection Regulation, as well as the rules arising from these. The Contractor will be in charge of the processing of said data and shall be continuously subject to the security

instructions from the City Council of Barcelona. To this end, and without prejudice to the requirements set out in the Technical Specifications, the Contractor must also:

- ◆ Maintain the confidentiality of the personal data to which the Awardee has had access or contact in connection with the execution of the Contract. To this end, the Awardee must state that he has implemented and/or will adopt, before the start of the Contract, the necessary technical and organizational measures to guarantee the security of the stored data and prevent its alteration, loss or unauthorized processing, in line with the current state of technology, the nature of the data stored and the risks to which they are exposed, and in strict compliance with the applicable legislation on data privacy. The security measures implemented must be effective and applicable to files, processing centers, premises, equipment, systems and programs, as well as to the people involved in the processing of the data, under the terms established in the aforementioned regulations.
  - ◆ Treat the personal data only in accordance with the instructions of MACBA and in a confidential manner. These data may not be transferred, disseminated, published or used for purposes other than those established in these Specifications. This obligation shall remain in force once the Contract has been terminated by the fulfillment of its object, the end of its period of validity or any other cause established in these Specifications or pursuant to the applicable law.
  - ◆ Return to MACBA, in all cases of contractual termination, all personal data as well as all media or documents containing any processed personal data.
  - ◆ Ensure appropriate confidentiality of all information and documentation obtained or prepared in connection with the performance of the Contract. Such documentation may not be reproduced, transferred, disseminated, published or used for purposes other than those set out in these Specifications, even after the Contract has expired.
- s. To deliver in Catalan all the necessary documentation for the fulfillment of the Contract.
- t. To provide at any time the documentation requested by the Contract Manager about the effective fulfillment of the obligations and commitments assumed by the Contractor with regard to the Legislation for the Integration of Disabled People, the hiring of personnel with particular difficulties in entering the labor market and the subcontracting of special work centers and/or occupational integration companies, as well as the environmental requirements and obligations of the Contract established in these Specifications. By default, this documentation shall be provided on an annual basis.
- u. To comply with general regulations on the prevention of occupational hazards, as well as with the applicable laws on copyrights or intellectual property. Any infringement committed in the course of the project that leads to fines, penalties or claims for compensation from MACBA shall be assumed by the Contractor.
- v. To comply with all the obligations established in these Specifications.

## Clause 23. Amendment of the Contract

In accordance with the provisions of Articles 203 et seq. of the LCSP, once the Contract has taken effect the Contracting Authority may amend it for the reasons specified below. In no case may the total amount of the amendments increase the initial price of the Contract by more than 20%, as established in Article 204 of the LCSP. Each amendment will require a prior report from the Contract Manager.

Once the Contract has taken effect, the Contracting Authority may only amend the Contract for the following reasons:

1. To reflect changes or adjustments to the constructive or structural solution or in the technical criteria, which are not due to errors or omissions and have been requested after the delivery of any document, in whole or in part, at any stage of the project.
2. To reflect changes or adjustments to the urban planning, accessibility, security or technical specifications, or updates to regulations approved after the Contract has been awarded.

Any agreed amendment to the Contract shall not alter the essential conditions of the tender or the awarding of the Contract, nor go beyond the changes that are strictly necessary to address the objective issue in question. Any such amendment shall be binding for the Contractor. The procedure for this amendment will require a hearing with the Contractor and, if necessary, the involvement of the project drafter or the author of the Technical Specifications, as well as its formalization in an administrative document.

The Contract can be amended for the unforeseen causes determined in Articles 205.2 and 206 of the LCSP, with the legally established conditions and requirements.

## Clause 24. Acceptance and guarantee period

1. The verification of the correct execution of the services and their subsequent acceptance will be carried out by means of a certificate of approval issued within a period of one month upon delivery or execution, if said services have been carried out to the satisfaction of MACBA, in accordance with the provisions of Article 210 of the LCSP.
2. The settlement of the Contract will take place within thirty calendar days upon issue of the certificate of approval, in accordance with the provisions of Article 210.4 of the LCSP.
3. Given the nature and characteristics of this Contract, and in line with the reasoned report included in the record of procurement, there shall be no guarantee period.

## Clause 25. Subcontracting

The Awardee may partially subcontract the performance of the service to third parties, provided that the requirements and obligations established in Articles 215 and 216 of the LCSP are met. Failure to comply with these legal stipulations will have the consequences established in section 3 of Article 215 of the LCSP.

Subcontractors may not carry out financial operations in tax havens (according to the list of countries drawn up or validated by the European institutions or, in their absence, by the Spanish state), nor may they carry out operations outside these countries, which could be

considered criminal under the legally established terms, such as money laundering, tax fraud or any other offense against the Public Treasury.

If the subcontracted third parties have legal relations with tax havens, the Awardee must inform the Contracting Authority (which will publish them in the [Contractor Profile](#)) and submit a descriptive summary of the subcontractor's financial activities and operations.

The Awardee must pay the subcontractors the agreed price within a period that cannot be more unfavorable than that provided for in Law 2/2004 of 29 December, which establishes the measures to combat late payment.

The Contract Manager may, during the execution of the Contract, require verification of payment of the agreed price to the subcontractors.

In addition, once the execution period has expired and before proceeding with the settlement, the company that has been awarded the Contract must present a document certifying that the deadlines for payment to the subcontractors have been met.

The subcontractors' obligations will only be to the main Contractor, who shall assume total responsibility for the execution of the Contract before the Administration, in accordance with all the Specifications and the terms of the Contract, including compliance with the environmental, social or labor obligations set out in Article 201 of the LCSP and with the requirements set out in the last paragraph of section 1 of Article 202 of said law regarding compliance with national and European Union regulations on data protection.

Furthermore, if the Contract requires the processing of personal data by the Contractor on behalf of the processor, tenderers are obliged to indicate in their tender whether they intend to subcontract the servers or the services associated with the servers, as well as the name or business profile of the subcontractors who will be entrusted with this task.

## Clause 26. Transfer of the Contract

Due to the characteristics and technical specificities indicated in the Specifications, the transfer of this Contract is prohibited.

## Clause 27. Delayed performance

1. The Contractor is obliged to fulfill the Contract in full and, if necessary, within the interim deadlines set for its completion.

2. The Contractor's delay in performing the Contract does not require prior notice from the Administration.

3. If the Contractor, for reasons attributable to him, were to incur a delay in meeting the final deadline, the Administration may opt to terminate the Contract or to impose daily penalties at a rate of 0.60 EUR per 1,000 EUR of the Contract price excl. VAT, in accordance with the provisions of Article 193.3 of the LCSP. Whenever the penalties for delay reach a multiple of 5 percent of the Contract price excl. VAT, the Contracting Authority may terminate the Contract or decide to agree on its continuation after imposing new penalties.

4. The Contractor may suspend performance of the Contract for non-payment of the supplied services, provided that the delay exceeds four months.

5. If the Contractor, for reasons attributable to him, is late in meeting the partial deadlines, the Administration may opt to terminate the Contract or impose the penalties provided for in Article 193 of the LCSP.

## Clause 28. Responsibility for the execution of the Contract

The Contractor is subject to the responsibilities and penalties established in general terms in the LCSP and, in particular, those prescribed in Article 201 concerning social, environmental and labor obligations. punishable

Furthermore, punishable infringements shall be classified as follows:

### a) Very serious infringements:

- Any false statement of the Contractor or subcontractor regarding having no economic or financial relations with any country deemed a tax haven or the legality of such relation, as established by the Mayoral Decree of 19 May 2016.
- Failure to comply with the essential contractual obligations set out in these Specifications.
- Non-compliance or defective compliance with the obligations and/or conditions of performance established in these Specifications and in the Technical Specifications, when it causes very serious damage and is not grounds for termination of the Contract.
- Non-compliance with the signage and safety regulations of third parties in the performance of the contracted services.
- Very serious non-compliance with the obligations laid out in the general regulations on the prevention of occupational risks.
- Any activity that, by action or omission, generates serious environmental risks, as established in current legislation.
- Resistance to or non-compliance with MACBA's requirements, which would cause very serious damage to the performance of the Contract.
- All those infringements defined as such elsewhere in these Specifications.

### b) Serious infringements:

- Non-compliance or defective compliance with the obligations and/or conditions of performance established in these Specifications and in the Technical Specifications, when it does not cause very serious damage.
- Non-compliance with municipal reporting regulations.
- Non-compliance with the obligations laid out in the general regulations on the prevention of occupational risks, where it is not considered a very serious infringement.
- Non-compliance with the special contractual obligations set out in these Specifications, where these obligations are not considered essential to the Contract.
- Resistance to or non-compliance with MACBA's requirements.
- All those infringements defined as such elsewhere in these Specifications.

### c) Minor infringements:

- Non-compliance or defective compliance with the obligations and/or conditions of performance established in these Specifications and in the Technical Specifications, when it does not cause serious or very serious damage.

- Non-compliance with the formal or documentary obligations stipulated in the regulation on the prevention of occupational risks, where it is not considered a serious or very serious infringement.
- All those infringements defined as such elsewhere in these Specifications.

Contractual penalties:

The deadline for imposing the corresponding contractual penalty or sanction shall be three months from the date the respective file is opened.

Regardless of the compensation for damages, when non-compliance does not result in the termination of the Contract, MACBA may apply the following penalties, classified according to the damage, danger and/or reiteration:

- a) Very serious infringements: a fine of up to 10 percent of the Contract price, understood as the awarded amount or the base tender budget, where the total price is determined on the basis of unit prices.
- b) Serious infringements: a fine of up to 6 percent of the Contract price.
- c) Minor infringements: a fine of up to 3 percent of the Contract price.

During the processing of the file, the Contractor shall be given a hearing to submit arguments within five working days. The Contracting Authority shall decide on said arguments, after issuing the relevant reports.

Collection of penalties for delay or other infringements

The penalties for delay or other infringements may be collected by deducting them from the accounting document/s recognizing the obligation, notwithstanding the liability of the bid security to make the penalties effective under the terms provided for by law.

MACBA may apply the amount or delay the payment of invoices, in full or in part, in compensation for the Contractor's debts incurred during the performance of the Contract and regardless of any damages that may be claimed.

The deadline for imposing the corresponding contractual penalty shall be three months from the date the respective file is opened.

By virtue of the prerogatives established in Articles 190 and 196 of the LCSP, the Contracting Authority, following a hearing with the Contractor, may declare the Contractor liable for damages to third parties or to MACBA itself as a result of the execution of the Contract. In such an event, the Contracting Authority may determine the amount to be paid by way of compensation for such damages and proceed with the total or partial execution of the bid security.

## Clause 29. Intellectual Property Rights

MACBA will hold all the rights over the proposals presented by the tenderers selected for Phase 2, and may present and display these proposals in public if deemed appropriate, notwithstanding any other limitation that may arise from or be determined by the applicable legislation on copyright protection.

Likewise, the successful tenderer (the Awardee) shall confer to MACBA, free of charge and in a non-exclusive manner, the worldwide exploitation rights derived from the authorship of the object of this Contract for the maximum period of time stipulated in the legislation on intellectual property.

The Author expressly authorizes the potential publication of the "Work" in the MACBA digital repository, thus allowing this "Work" to be distributed, copied and exhibited as long as its authorship is cited, it does not generate any commercial profit and no derivative works are produced from it.

The Author declares that he is the owner of the intellectual property rights in relation to the "Work" that is the object of this Contract, that the "Work" is original and that, in the event of having previously transferred the rights to the "Work" to third parties, these rights can be lawfully transferred with respect to the object of this Contract. In this regard, each of the Authors is liable to MACBA for the authorship and originality of the "Work" and for the quiet enjoyment of the exploitation rights that are transferred by this Contract, guaranteeing that there are no commitments or encumbrances of any kind that could infringe the rights transferred to MACBA by this Contract. MACBA may file a claim against the Author for any penalty resulting from actions, complaints, fines or disputes brought by third parties in relation to the exploitation rights associated with this Contract.

The Author is solely responsible for obtaining the rights to the images and illustrations that may appear in the Work. In any case, the full indemnity of MACBA is established with regard to any claims made by third parties in relation to the aforementioned rights.

The Awardee may not make any use of or disclose the results and documents drawn up in connection with the execution of the Contract, whether in full or in part, directly or in excerpts, without the authorization of MACBA. The Awardee may use the "Work" for internal and promotional uses of its professional activity.

All bidders undertake to submit original technical proposals whose authorization of use or transfer to MACBA, as provided for in this Clause, shall not affect the rights of third parties, whatever their nature, or infringe upon the regulatory provisions. Therefore, the tenderers shall assume, entirely at their own expense, any cost and/or pecuniary charge by third parties that may result from any actions, claims or conflicts derived from the failure to comply with the obligations established in this Clause, holding MACBA harmless.

The requirements of the tenderers established in this Clause shall also be binding for their employees and collaborators, both external and internal, and for their subcontractors, so that MACBA shall hold the tenderer accountable if its employees, collaborators or subcontractors infringe on any of these obligations.

The tenderer undertakes to formalize or, where appropriate, to guarantee that all collaborators of this project will formalize all the documents needed for carrying out the transfer of rights established in this Clause as smoothly and effectively as possible.

## Clause 30. Termination of the Contract

1. This Contract may be terminated for any of the reasons established in Articles 211 and 313 of the LCSP.

2. Specific grounds for termination, in addition to those established elsewhere in these Specifications, include:

- a) Delayed start of the services.
- b) Failure to comply with the obligations set out in the general regulations on prevention of occupational hazards.
- c) Failure to comply with municipal reporting regulations.
- d) Failure to comply with any of the environmental requirements set out in these Specifications and the Technical Specifications.
- e) Failure to comply with the essential terms and obligations of the Contract, including the special conditions of performance, where this failure has been classified as a serious infringement and there is fraud, negligence or misconduct with malicious intent on the part of the Contractor; and, in the case of essential terms, where this has given rise to the imposition of penalties or compensation for damages.
- f) The Contractor's illegal relationship with countries considered tax havens, as established in the Mayoral Decree of 19 May 2016.
- g) The Contractor's legal ban on contracting during the execution of the Contract.
- h) The impossibility of performing the service on the initially agreed terms or the real possibility of serious harm to the public interest in case of continued performance of the service on such terms.
- i) Any other causes legally established by this type of contract.
- j) All those causes that have been established in these Specifications.

## Clause 31. Legal resources of the tenderers

1. The actions referred to in Article 44.1 of the LCSP are subject to special appeal with regard to procurement.

This appeal is optional and shall be lodged with the Catalan Court of Public Sector Contracts.

Alternatively, a judicial appeal may be filed in accordance with Law 29/1998 of 13 July, which regulates administrative jurisdiction.

Ordinary administrative appeals are inadmissible against acts subject to special appeal.

2. Against the acts adopted by the Contracting Authority related to the effects, fulfillment and extinction of this Contract, which are not subject to special appeal with regard to contracting, the Contractor may lodge the appropriate ordinary administrative appeal, in accordance with the provisions of Law 26/2010 of 2 August, which regulates the legal and procedural regime of the public administrations of Catalonia and the basic legislation on common administrative procedure; or the corresponding judicial appeal, in accordance with the provisions of Law 29/1998 of 13 July, which regulates administrative jurisdiction.

However, the acts of the Contracting Authority related to the effects, fulfillment and extinction of this Contract, which are not subject to special appeal with regard to contracting, shall be subject to action before the civil court.

## Clause 32. Transparency, integrity and conflict of interest

### 1. Transparency.

Sharing of information for active advertising purposes: The Awardee is obliged to provide information on activities directly related to the exercise of public functions, the management of public services and the withholding of public funds established in Title II of Law 19/2014 on Transparency, Access to Public Information and Good Governance.

Remuneration of management personnel: The Awardee is obliged to report the remuneration received by its management personnel if the turnover of the company related to activities carried out on behalf of the public administration exceeds 25 percent of the total turnover of the company. Should this not be the case, the Awardee is obliged to present a statement indicating the estimated percentage that the activities directly related to the public administration have represented in the turnover of the company in the last completed financial year.

Assigned staff: The Awardee must provide, at the beginning of the Contract and annually until its completion, the list of positions of the staff assigned to the Contract with regard to any activity, service or work of a permanent nature in a public agency or establishment, as well as the form of employment (full-time or part-time) and the tax regime of said staff and the tasks they perform.

Right of access to public information: In compliance with the applicable obligations of transparency, the Contractor undertakes to provide all information that is requested in order to guarantee the right of public access with relation to the contracted service, and to do so within the time period and under the conditions established upon each request.

Quality of public services: Tendering companies must submit a pledge that explicitly states the conditions and obligations by which they abide with regard to the quality, accessibility and requirements of the service, the rights and duties of its users, and the associated powers.

### 2. Integrity and conflicts of interest.

In municipal public procurement processes, the bidders and contractors, subcontractors and external suppliers and resources shall adapt their behavior to reflect the general principles and values established in the Barcelona City Council's Code of Conduct, in accordance with the provisions of Article 3.2 of said Code, published in the *Gaceta Municipal* on 13 December 2017.

All of this is in accordance with Articles 1.3 and 64 of the LCSP, which establish the principle of integrity and define conflicts of interest, performance criteria, and the code of conduct.

In this regard, MACBA's bidders and contractors must:

1. Adapt their conduct to the public procurement reporting principles, avoid any existing or potential conflicts of interest, report any irregularities or conflicts of interest in which they find themselves or of which they become aware during the tendering of the Contract or its execution, and collaborate with the Contracting Authority in their disclosure and solution.
2. Respect the principles of equality, free competition, transparency and integrity.
3. Avoid any conduct that may lead to a distortion of the competition.
4. Not perform any act which is intended, directly or indirectly, to influence for their own benefit public offices or public employees during the awarding of the contracts or their execution.
5. Refrain from making any kind of valuable gift or present, or performing any sort of favor or service to the members of the Contracting Authority or to the staff of MACBA or their relatives, such as the spouse or person with whom they live in an analogous relationship, or relatives of the fourth degree of consanguinity or second degree of affinity.
6. Facilitate compliance with the Barcelona City Council's Code of Ethics and Conduct and with the rules relating to conflicts of interest on the part of anyone involved in the procurement procedure.
7. Communicate as soon as possible to the Contracting Authority any existing or potential irregularities or conflicts of interest in which they find themselves or of which they become aware during the tendering procedure for the Contract or during its execution.

#### Consequences of non-compliance

The bidders' failure to comply with the rules of conduct defined in this Clause may result in a ban on contracting if the requirements of Article 71 of the LSCP are met. With regard to the Contractor, the subcontractors, suppliers and auxiliary resources, the rules of conduct defined in this Clause are considered essential contractual obligations and their violation is a very serious infringement if it involves fraud, fault or negligence on the part of the company, which may result in the imposition of penalties according to the provisions of Article 192.1 or in the termination of the Contract, as established in Article 211.1.f) of the LCSP, as well as a potential ban on contracting, according to the provisions of Article 71.2.c) of said law.

Barcelona,

Managing Director,  
Signed:



**ANNEX I: AFFIDAVIT OF LIABILITY TEMPLATE**

The undersigned, Mr./Ms. ...., with DNI/NIE/ID no. ...., on my own behalf / as the legal representative of the natural / legal person ....., with NIF/VAT no. .... and the following e-mail address to receive electronic communications (@) ..... for the purpose of tendering in the procedure for the award of ....., Contract no. ...., Procurement Record no. ....

**DECLARES UNDER HIS/HER RESPONSIBILITY**

That the entity he/she represents, or its subsidiaries or affiliates:

Do/does not carry out financial operations in tax havens (according to the list of countries drawn up or validated by the European institutions or, in their absence, by the Spanish state) or anywhere outside these countries, which could be considered criminal under the legally established terms, such as money laundering, tax fraud or any other offense against the Public Treasury.

Has legal relations with tax havens (to be published in the Contractor Profile) and presents in this envelope the descriptive documentation of financial operations and all information relating to these actions:  
.....

(name, date and stamp of the company or entity submitting the tender)



**ANNEX II: PROJECT SHEET TEMPLATE (ACHIEVEMENT ASSESSMENT - PHASE 1)**

PROJECT PRESENTED AS ACHIEVEMENT TO THE PROJECT TENDER FOR THE SELECTION  
OF THE PROPOSAL FOR THE EXTENSION AND RENOVATION OF THE MUSEU D'ART  
CONTEMPORANI DE BARCELONA (MACBA)

CRITERION NUMBER <sup>(1)</sup>

SHEET NUMBER <sup>(2)</sup>

NAME OF THE PROJECT OR WORK  
LOCATION  
PROJECT DEVELOPER  
NAME/S OF THE AUTHOR/S  
TENDERER'S PERCENTAGE OF AUTHORSHIP  
PROJECT DESIGN DATE  
WORK COMPLETION DATE  
TENDER BUDGET  
FINAL CONSTRUCTION BUDGET  
TOTAL BUILT AREA  
BRIEF DESCRIPTION <sup>(3)</sup>  
BLUEPRINT OR PHOTOGRAPH

(Location, date and signature)

(1) Indicate whether the project corresponds to criterion 1 (Projects involving the construction of new buildings or the renovation of buildings for museum use); criterion 2 (Projects involving the renovation of historic buildings not intended to house museums); or criterion 3 (Projects involving the construction of new public buildings not intended to house museums)

(2) Number the sheets for each criterion (up to a maximum of 3 per criterion)

(3) No more than two hundred words