

BARCELONA DE SERVEIS MUNICIPALS, SA.

STANDARD CONTRACT

**INNOVATION CHALLENGES TENDER FOR BARCELONA DE SERVEIS
MUNICIPALS, S.A., IN TWO STAGES, TO IMPLEMENT INNOVATIVE
TECHNOLOGY-BASED SOLUTIONS FOR AFFORDABLE CHARGING
POINTS AT UNDERGROUND CAR PARKS MANAGED BY BSM**

FILE NUMBER: 2022PGIS068CP

Barcelona,

BY AND BETWEEN

The first party, Ms _____, of legal age, whose Tax ID Number (NIF) is _____, and whose address for the purposes of this contract is Carrer Calàbria 66, 08015, Barcelona.

And the other party, Mr _____, of legal age, whose Tax ID Number (NIF) is _____, and whose address for the purposes of this contract is _____.

ACTING

The former, in the name and on behalf of the Trading Company 'BARCELONA DE SERVEIS MUNICIPALS, SA' (hereinafter, BSM), head office in Barcelona (Spain), Carrer Calàbria 66, 08015. Barcelona, with Tax ID (NIF) _____, registered with the Barcelona Mercantile Registry in Volume _____, Folio _____, Sheet No. _____, Entry _____. Ms _____ acts in her capacity as _____ of the Company, in accordance with the appointment _____, according to the deed of appointment and established acceptance of the post executed by the Barcelona civil-law notary, Mr _____ on _____, bearing the number _____ of his notarial protocol, and exercising the powers granted to him under Article ____ of the Company's Articles of Association.

The latter, in the name and on behalf of the Trading Company, _____, (hereinafter, the Contractor or Successful Bidder), head office at _____, with Tax ID (NIF) constituted according to the deed granted before the civil-law notary of _____, registered with the _____ Mercantile Registry in Volume _____, Folio _____, Sheet number. _____, Entry _____. Mr _____ acts in his capacity as _____ of the Company, and specifically empowered by this and by virtue of the power of attorney authorised by the civil-law notary, Mr _____.

WHEREAS

I. BARCELONA DE SERVEIS MUNICIPALS, SA is a Barcelona City Council company that manages various facilities in the city of Barcelona.

II. In accordance with its Articles of Association, BSM's purpose, among other things, is to manage and operate various municipally owned facilities.

III. **BSM** has announced a procedure for the award of the **INNOVATION CHALLENGES TENDER FOR BARCELONA DE SERVEIS MUNICIPALS, S.A., IN TWO STAGES, TO IMPLEMENT INNOVATIVE TECHNOLOGY-BASED SOLUTIONS FOR AFFORDABLE CHARGING POINTS AT UNDERGROUND CAR PARKS MANAGED BY BSM** by means of a restricted tender for projects, and the relevant notice has been published in the entity's Contracting Party's Profile.

IV. On _____ BSM's contracting body decided to award the specified contract to the company _____.

V. The Contractor has demonstrated to BSM its capacity and personality to be contracted and undertake obligations and, in particular, to be awarded this contract. It has also demonstrated it has the technical, professional, economic and financial solvency called for in the Specific Clauses governing this tender (hereinafter referred to as the Clauses) and has set up the bond required by the Clauses, which has been deposited at the disposal of BSM for the purposes envisaged in this contract.

VI. Both parties mutually recognise they have sufficient capacity to act and hereby sign the contract, which is subject to the following:

CLAUSES

1. SUBJECT MATTER

The purpose of this contract is to lay down the terms and conditions governing the award of the contract regarding the **INNOVATION CHALLENGES FOR BARCELONA DE SERVEIS MUNICIPALS, S.A., IN TWO STAGES, TO IMPLEMENT INNOVATIVE TECHNOLOGY-BASED SOLUTIONS FOR AFFORDABLE CHARGING POINTS AT UNDERGROUND CAR PARKS MANAGED BY BSM**, with the description and characteristics set forth in the Technical Specifications.

The services that are the subject matter of this contract will be provided in accordance with BSM's instructions and the supervision BSM may carry out for that purpose.

In any event, this work will be carried out under BSM's supervision and control in accordance with any directives that BSM may issue to ensure compliance with applicable legislation and in conformity with the Technical Specifications. Journeys, allowances, labour and any material necessary for the provision of this service are included in the subject matter of the contract.

This contract shall be executed pursuant to the following documentation attached hereto:

- The Tender Specifications, as Annexe 1.
- The Technical Specifications, as Annexe 2.
- The Financial Bid submitted by the Successful Bidder, attached hereto as Annexe 3.
- The Technical Bid submitted by the Successful Bidder, attached hereto as Annexe 4.
- Copy of the Bid Bond, as Annexe 5.
- Civil Liability Policy, as Annexe 6.
- Declarations of compliance, as Annexe 7.

Both parties hereby declare they have an exact copy of the above-mentioned documents defining the subject matter of this contract, all of which have been signed by the parties and are an integral part of the contract.

Should there be a discrepancy or contradiction in the content of these contractual documents, this contract shall apply in preference, followed by the annexed documents in their numerical order.

BARCELONA DE SERVEIS MUNICIPALS, S.A. may, during the performance of the work or service contracted, expand it, in accordance with the Clauses of this contract.

In such cases, the Successful Bidder shall be under an obligation to perform the above-mentioned work or services, in accordance with the provisions set out in this contract, and may not without justifiable cause slacken the pace of or interrupt the work or services.

The work and services which, in their turn, are hired shall be assessed in accordance with the provisions set out in the Clause 2.1.

2. PRICE

The overall maximum price of the contract is set as a flat-rate item:

- (i) Fixed, total, flat-rate amount for the finalist in first position and winner of the Tender..... €57,851.23 (EXCLUDING VAT).

The price indicated shall be increased by the corresponding percentage of VAT in force.

There is no price review established in this contract.

All the amounts necessary for carrying out the corresponding work will be understood to be included in the price. The following list, merely for information purposes, includes but is not limited to:

- Taxes and Social Security contributions.
- Insurance policies of every kind.
- Expenditure and taxes arising from the contract, except for Value Added Tax.
- Journeys or transport necessary for delivering the service.
- Staff subsistence and allowances, where necessary.

3. Should the work or services forming the subject matter of this contract be increased, in accordance with what is provided for under it, this increase shall be assessed in accordance with the prices governing this contract.

3. INVOICING AND METHOD OF PAYMENT

3.1. INVOICING

The Successful Bidder shall invoice the services in the following manner, in accordance with the provisions of the Technical Specifications:

The Successful Bidder shall issue four invoices during the lifetime of the contract, using the following invoicing system:

- The first, dated on the date of signing of the contract, for 20% of the total award price.
- The second, once the technical documents for the project development stage have been validated by the Monitoring Committee, for 40% of the total award price (end of Stage 2).
- The third, once the technical documents for the pilot project implementation stage have been validated by the Monitoring Committee, for 20% of the total award price (end of Stage 3).
- The fourth, once the results assessment report has been validated and the Monitoring Committee has decided that the maintenance plan is correct and consistent with the solution and results for 20% of the total award price (end of Stage 4).

The Successful Bidder shall invoice the services by specifying the services carried out. For an invoice to be considered correct, it must include a description of the services carried out, the period in which they were provided, the number of hours for each type and the order number that BSM will provide. The invoice may only include those services that have previously been validated by BSM.

3.2 METHOD OF PAYMENT

The invoices shall be sent in electronic PDF format to the following email address: facturabsm@bsmsa.cat, with the word 'Invoice' in the subject box and one PDF attached per invoice. The invoice must include the order number and contract references that BSM will provide.

Effective payment of the services performed shall be made within a maximum period of 30 calendar days from the date BSM approves the invoice.

BSM will pay for the services once they have been partly or fully performed and once the invoice has entered its register. Under this parameter, no advance payment of all or part of the contract price is envisaged.

Granting or endorsement of any invoice shall require BSM's prior agreement. Should BSM fail to meet its obligations, and if the Successful Bidder so requests, the amounts owed will be subject to the legal interest established in Article 1108 of the Civil Code.

4. TERM

4.1. The contract completion term is set for 15 MONTHS starting on the day following its signing, in accordance with the provisions of the Tender Specifications and the targets envisaged in the Technical Specifications. Accordingly, the partial deadlines will be as follows:

Stage 1. Pilot project launch

Deadline: 1 week

Initial meeting: the Successful Bidder will hold an initial meeting with the project managers and leaders in order to define the approach.

Stage 2. Development of the solution

Deadline: 20 weeks

This is the **period for developing the solution in the challenge** in order to have the project ready to implement the solution. This entails successfully testing the proposed solution at the Successful Bidder's facilities.

Stage 3. Implementation and performance of the pilot

Deadline: 24 weeks

This is the **implementation and execution period for the solution** to the challenge in BSM car parks. It involves successfully testing the installed solution.

The successful bidder must supply 10 charging points. The pilot must include the installation of five affordable charging points in a single car park.

Stage 4. Monitoring and assessment of the results

Deadline: 15 weeks

Monitoring implementation: The Successful Bidder (in the operating stage, shadowing) must monitor the solution implemented in the BSM car parks to ensure it is operating correctly for 15 weeks and provide support if an issue arises. In addition, it must collect data to analyse and evaluate the results.

Evaluation of the results: In the first four weeks of this stage, the Successful Bidder must collect the necessary data to draw up the evaluation report on the results of the pilot.

Validation of project objectives and KPI compliance: The Successful Bidder will draw up and provide the necessary documentation for determining the results obtained by implementing the solution and evidence that all the goals and objectives decided at the start of the project have been achieved.

4.2. This contract may not be extended.

5. GUARANTEES AND INSURANCE POLICIES

5.1. The contract shall be performed at the risk of the Successful Bidder.

5.2. Given the nature of this contract, a guarantee period of ONE YEAR is established in relation to the service.

5.3. During the term of the contract, the Successful Bidder undertakes to take out and maintain in force, as appropriate, a General Liability policy covering such liability as may be incurred in connection with the performance of this contract, in accordance with the provisions of Annexe 6.

6. BID BOND SYSTEM

1. This contract incorporates, as Annexe 5, a copy of the Bid Bond deposited by the Successful Bidder, in accordance with the Tender Specifications, the original being retained by BSM, guaranteeing full compliance with the obligations and other responsibilities that it assumes, arising from this contract.

2. The Bid Bond shall answer for all the Successful Bidder's debts arising from the contract; for its performance or its possible termination; for the reimbursement of all the amounts which, where appropriate, BSM might have paid in excess following the final settlement; for the compensation for any harm and loss arising from its failure to meet its obligations, including any damages that may be sought against BSM by third parties and, in particular, by the Public Administration under the terms governing this contract and, generally, for meeting all its obligations.

3. Should any of the cases arise that are contemplated in Clause 9.1, unless by mutual accord, BSM may freely and by its own exclusive decision proceed to enforce the deposited bond, and use the amounts that it covers.

All the above notwithstanding any legal actions, claims or appeals that the Successful Bidder believes it is assisted by, which will not in any case stop the free use of the Bid Bond by BSM, the latter's only obligation being to reimburse in due course the amounts used, where appropriate.

4. This Bid Bond shall be returned once the contract has been settled and all the relevant certificates and documents returned to BSM's full satisfaction.

7. EMPLOYMENT AND TAX OBLIGATIONS

1. The Successful Bidder shall be up to date throughout the lifetime of the contract with any obligations that correspond to it as a company in terms of taxation, employment, Social Security, trade unions and health and safety. It shall be strictly and rigorously liable, on an exclusive basis and at no charge to BSM, for any breach of these obligations.

Likewise, the Successful Bidder undertakes to provide BSM with the certificate of up-to-date Social Security payments on a monthly basis.

Should it fail to comply with this requirement, BSM shall be exempt from liability in accordance with Article 42 of the Workers' Statute.

2. Under Act 54/2003, of 12 December, on the Reform of the Regulatory Framework for Occupational Risk Prevention and under Royal Decree 171/2004, of 30 January, implementing Article 24 of Act 31/1995, of 8 November, on Occupational Risk Prevention, the Successful Bidder shall be required to comply with the regulations in force on occupational risk prevention and accordingly undertakes to provide BSM with the following documents:

- i. Assessment of the occupational risks and general and specific measures for the work to be carried out in BSM's facilities.
- ii. Occupational Risks Plan.
- iii. List of equipment, machinery and tools that will be used for carrying out the work.
- iv. A list of workers that will have access to the BSM facilities.
- v. Proof that these workers have been trained in and informed of the risks they are exposed to and the protective measures that they have to take into account.
- vi. Medical aptitude reports on the workers regarding the work to be carried out or, in their absence, a certificate reporting that the risks

detected in its Risk Assessment are not regulated by any legal provision relating to protection from specific risks and especially dangerous activities and that the work conditions therefore have no negative effects on workers' health.

- vii. Contract with the Occupational Accidents and Illness Insurer.
- viii. Monitoring of the delivery of personal protective equipment. Documentary proof of delivery of personal protective equipment to workers.

The Successful Bidder declares that, before signing this contract, BSM has provided it with the documents corresponding to risk prevention in the facilities, and that they are as follows:

- i. Assessment of the risks relating to the places where the activity is planned to take place.
- ii. Prevention plan for controlling any detected risks.
- iii. Prevention and protection measures that the Promoter's staff shall have to take into account regarding these risks.

3. The Successful Bidder shall provide BSM with a document issued by the Public Administration certifying that it is up to date with its tax obligations, for the purposes of complying with Article 43(1)(f) of General Tax Act 58/2003 of 17 December, at any time it is so required.

4. Likewise, the Successful Bidder shall provide, each month, a stamped copy of the Social Security contribution forms (TC1 and TC2) of all the staff. It is the sole responsibility of the Contractor to provide the staff who will make up the work team assigned to perform the contract, ensuring they meet the necessary qualification and experience requirements and notwithstanding verification of compliance with those requirements by the Contracting Body.

8. SPECIFIC OBLIGATIONS OF THE SUCCESSFUL BIDDER, BREACHES AND PENALTIES

- 1. The contract shall be performed at the risk of the Successful Bidder.
- 2. The Successful Bidder shall be required to fulfil the subject matter of this contract, in accordance with the Tender Specifications, Technical Specifications and other documents that are annexed to this contract.
- 3. The Successful Bidder undertakes to comply with the current legislation in force throughout the lifetime of the contract.
- 4. The Successful Bidder also undertakes to perform the contract in accordance with BSM's instructions.

5. Inspection and control of the services is the sole responsibility of the contracted company, notwithstanding BSM's entitlement to carry out any service checks it deems appropriate.

6. This contract establishes a specific system of qualitative breaches and penalties, in addition to the breaches provided for in applicable legislation, which will be classified as minor, serious and very serious, as appropriate and in accordance with the following weighting:

Minor:

- ✓ Failure to collaborate with the Contracting Body's staff.
- ✓ Failure to inform the Contracting Body of the inclusion of new members of staff or changes to the staff assigned to the contract.
- ✓ Breach of Occupational Risk Prevention regulations, classed as minor under their specific regulations.

Serious:

- ✓ Refusal to adhere to the requirements stipulated by the Contracting Body or failure to respect them.
- ✓ Non-compliance with the obligations set out in these Clauses and the contract.
- ✓ Partial breach of the services defined in this contract which does not constitute a very serious breach.
- ✓ Failure to have substitute staff available for a given service.
- ✓ Facilitating, by action or omission, access to the Contracting Body's premises by persons not assigned to the contracted service.
- ✓ Failure to provide, in due time and form, all information concerning the provision of the service as requested by the Contracting Body.
- ✓ Recurrence of minor breaches, understood to mean more than two breaches.
- ✓ Lack of cover of the service for a period of time owing to a lack of substitute staff or other reasons, provided that this is not a very serious breach.
- ✓ Breach, when this does not constitute a very serious breach, of the obligations arising from general regulations on Occupational Risk Prevention and, especially, those of the health and safety plan for the provision of services, classed as serious by the corresponding specific regulations.

Very serious:

- ✓ Failure to provide the service, whether due to abandonment or other causes which give rise to damages for the Contracting Body
- ✓ Passivity, neglect or indifference in the provision of the service.
- ✓ Refusal to adhere to the requirements stipulated by the Contracting Body, or failure to respect them, if this leads to very serious harm in the performance of the contract.

- ✓ Using work systems, elements, materials, machinery or staff other than those provided for in the Specifications or in the Successful Bidder's bids, where appropriate, when this leads to very serious harm.
- ✓ Failure to provide sufficient staff to cover the minimum services established.
- ✓ Very serious breach of the provisions relating to subcontracting, where applicable.
- ✓ Falsification of the services stated by the Successful Bidder in its invoice.
- ✓ Recurrence of serious breaches.
- ✓ Incorporating staff who lack knowledge of their obligations or prior training.
- ✓ Breach of regulations on Occupational Risk Prevention, classed as very serious by their specific corresponding regulations and especially the health and safety plan in the provision of services.
- ✓ Breach of the instructions for the safety of third parties in the provision of services.
- ✓ Recurrence of serious breaches, understood to mean more than two breaches.

Penalties of a **specific nature** that contracted service providers may incur, in accordance with the Tender Specifications and the Technical Specifications, which shall be automatic, additional and accumulative, and which BSM may apply should the Successful Bidder fail to fulfil or does not properly fulfil the obligations undertaken in the bid submitted in this procurement procedure.

When conducting the penalty proceedings, the Successful Bidder shall be given a hearing to submit any arguments it deems necessary and the BSM contracting body will make a decision on them.

Irrespective of compensation for harm, where the breach does not lead to the termination of the contract, BSM may apply the following penalties, graded according to the degree of harm, danger and/or repetition:

- VERY SERIOUS breaches: 5% of the contract value
- SERIOUS breaches: 3% of the contract value
- MINOR breaches: 1% of the contract value

7. Rebates:

Should the Successful Bidder not be penalised during a monthly billing period, 50% of the penalty in the previous month shall be returned for all the cases outlined in Section 6 of this Clause.

8. Penalties may be paid by deducting their values from the bill(s) payable to the Successful Bidder.

BSM reserves the right to terminate the contract for repeated shortcomings in the performance of the service where more than three of the penalties stated in the sections above apply.

In the event of a repeat offence of the same kind, the penalty will be that which corresponds to multiplying the result obtained by applying the percentage indicated above, for the repetition.

Should the Successful Bidder commit three or more acts that are classified as very serious breaches, BSM may agree to terminate the contract, without the Successful Bidder being entitled to receive any compensation or indemnity for this reason and with BSM only required to notify it of this fact.

In any event, BSM will have the right to be reimbursed for this fact, as well as to collect the corresponding penalties, by means of a deduction in the invoice.

BARCELONA DE SERVEIS MUNICIPALS, S.A. shall decide the classification of breaches, following the procedure described in the next point.

In the event of any of the incidents described in this contract, the procedure to be followed will be as follows:

- BARCELONA DE SERVEIS MUNICIPALS, S.A. shall notify the Successful Bidder in writing of the incident/breach that occurred, its severity and its characteristics.
- The Successful Bidder shall be given a maximum of 10 calendar days to present the allegations it deems relevant, indicating what measures it has taken to prevent the occurrence of a new incident/breach.
- BARCELONA DE SERVEIS MUNICIPALS, S.A. shall notify the Successful Bidder of the resolution adopted, taking into account the allegations presented and, where applicable, the imposition of the corresponding penalty.

Should any aspect of the Successful Bidder's conduct be classified as a breach, the penalty system described will be applied.

In any event, and as stated, BARCELONA DE SERVEIS MUNICIPALS, S.A. may deduct the amount required to be paid in penalties applied to the Successful Bidder for breaches from the corresponding invoice, notwithstanding the guarantee responding to the effectiveness of the same, in accordance with the stipulations of Article 110 of Act 9/2017, dated November 8, on Public Sector Contracts [LCSP in Spanish/Catalan].

9. Apart from the obligations contained in the applicable regulations and those deriving from this contract and the documentation attached to it, the specific obligations of the Successful Bidder are to:

- i. Submit, at all times to the instructions and observations issued by BARCELONA DE SERVEIS MUNICIPALS, S.A.
- ii. Satisfy all taxes, fees and duties levied on the exercise of the activity for which the contract is intended.
- iii. The company will be obliged, and will be fully responsible in relation to its employees, for the fulfilment of the obligations derived from the labour (labour, Social Security and Risk Prevention), fiscal and any other applicable general obligations, being solely responsible for the obligations that the applicable regulations impose on it.

In addition, BARCELONA DE SERVEIS MUNICIPALS, S.A. may at any time require the Successful Bidder to provide proof of compliance with its obligations.

- iv. Provide all the necessary staff sufficient for performance of the contract, in accordance with the conditions established in the contractual specifications, and with responsibility for performing the contract to the full satisfaction of BARCELONA DE SERVEIS MUNICIPALS, S.A.
- v. Compliance with all the services established in the contractual terms and conditions.
- vi. Comply with the instructions given by BARCELONA DE SERVEIS MUNICIPALS, S.A. for the provision of the service.

9. TERMINATION AND RESCISSION

1. Grounds for terminating the contract:

- a) The unexpected death or incapacity of the Successful Bidder, where it is a natural person (i.e. individual business person), or the extinction of the Successful Bidder, where it is a legal personality (i.e. corporation). In the former case, BARCELONA DE SERVEIS MUNICIPALS, S.A. may agree to continue the contract with the deceased person's legal successors, provided that the necessary technical and financial guarantees are met.
- b) A mutual agreement between BARCELONA DE SERVEIS MUNICIPALS, S.A. and the Successful Bidder.
- c) Assigning the contract or subcontracting or transferring the services to a third party where it exceeds the relevant provisions established in this regard in this document, within the limits set down by the Act.
- d) The loss of validity of the insurance policy.
- e) Committing three or more breaches, in accordance with the provisions of Clause 9 of this contract regarding penalties.

- f) Any breaches of the essential contractual obligations by the Successful Bidder included in the special performance conditions of the contract with the character of essential contractual obligations.
- g) Serious shortcomings in the work commissioned or the technical specifications.
- h) Failure to deliver the certificate relating to Article 43(1)(f) of the General Tax Act.
- i) The other reasons established in the Tender Specifications, this contract or in its annexed documents.
- j) The reasons specified in the regulations that apply to this end.
- k) The Successful Bidder's falling foul of any of the procurement prohibitions provided for in the LCSP.

2. BARCELONA DE SERVEIS MUNICIPALS, S.A.'s dissolution or extinction, whatever the reasons for either, shall likewise be a ground for the contract's termination.

3. The occurrence of any of the grounds stated in this clause shall have immediate effect as soon as it is communicated by one of the parties, without prejudice to the legal actions, claims or appeals to which the other party believes it is entitled.

4. BARCELONA DE SERVEIS MUNICIPALS, S.A. may rescind this contract at any time on its own account, refunding the Successful Bidder all the money that it may have been credited and, in addition, compensation calculated at ten per cent (10%) of the remaining value of the contract at the time when the rescission is declared.

5. Should any of the aforementioned grounds for termination arise, BARCELONA DE SERVEIS MUNICIPALS, S.A. may choose to terminate the contract or continue it under the terms and conditions agreed to, for the purposes of ensuring the resolution of any harm or loss caused by the breach of the Contractor and that the latter shall not commit any further breaches.

6. The contract's termination for any of the aforementioned grounds, unless by mutual agreement, shall have the following effects:

- BARCELONA DE SERVEIS MUNICIPALS, S.A. may continue the service through the procedure it deems most appropriate.
- BARCELONA DE SERVEIS MUNICIPALS, S.A. will enforce the Bid Bond, for as much as it covers, to compensate any harm and loss caused to it that are attributable to the Successful Bidder, by informing it of the relevant list and settlement, without undermining BARCELONA

DE SERVEIS MUNICIPALS, S.A.'s rights to claim from it any excess that is not covered by the Bond or rights to commence the legal actions, claims and appeals it deems will assist it against the settlement reported by BARCELONA DE SERVEIS MUNICIPALS, S.A.

Should BARCELONA DE SERVEIS MUNICIPALS, S.A. fail to pay the Successful Bidder two or more invoices consecutively or accumulatively, the latter may opt to terminate the contract, paying in that case the money credited to it up to that time, plus compensation calculated at ten per cent (10%) of the remaining value of the contract, or continue it under the terms and conditions agreed to.

10. ASSIGNING AND SUBCONTRACTING

This contract may not be assigned to third parties.

The Successful Bidder may subcontract, in accordance with the provisions of Clause 31 of the Tender Specifications and Articles 215. 216 and 217 of the LCSP.

The Successful Bidder shall inform the Contracting Body in writing, after the contract has been awarded and, at the latest, when it starts to be performed, of its intention to subcontract its work; state the part of the service that it intends to subcontract as well as the subcontractor's identity, contact details and legal representative(s); provide sufficient proof of its aptitude for performing that part of the service by reference to the technical and human resources it has at its disposal and to their experience; and confirm that this does not fall foul of the procurement prohibition of Article 71 of the LCSP.

Under the 51st Additional Provision of the LCSP, the Contracting Body may make direct payments to subcontractors where the payment terms established in Article 216 of the LCSP are not met. Payments made by the Contracting Body shall be understood as having been made by the main contractor. Under no circumstances shall any delay in payment be attributable to BSMSA where that delay results from the main contractor's failure to meet the invoice presented by the Subcontractor.

The Contractor may not under any circumstances subcontract services to natural or legal persons affected by any incapacity or prohibition from contracting with the public sector that are determined by the current legislation in force.

Third parties subcontracted by the contractor shall not conduct financial transactions in tax havens – according to the list of countries prepared or endorsed by the European Institutions or, failing that, by the Spanish State – or outside tax havens, that are deemed criminal, under legally established terms, for example, for money-laundering, tax fraud and crimes against the Public Treasury.

If the subcontracted third parties have legal relations with tax havens, the Successful Bidder must inform the Contracting Body of those relations (which it will publicise on the Contracting Body Profile) and present it with documents detailing the financial transactions and all information relating to these activities of the subcontracted companies.

11 DATA PROTECTION

In accordance with Framework Act 3/2018, of 5 December, on the Protection of Personal Data and the Guaranteeing of Digital Rights [LOPDGDD in Spanish/Catalan], and (EU) Regulation 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of this data, and repealing Directive 95/46/EC, which regulates the right of information in the collection of personal data, you are hereby notified of the following:

- a. The documents required as part of this bidding process that contain personal data are a necessary requirement to participate in this contract.
- b. As regards documents submitted by bidders which contain personal data on natural persons (workers, technical staff, collaborators, etc.), the bidder guarantees that it has obtained the prior consent of the persons concerned/affected to provide this information to BSM for the purposes of bidding in this process.
- c. Documents submitted by bidders which contain personal data shall be deposited in BSM offices, located at Carrer Calàbria, 66, 08015, Barcelona, where they shall be processed by BSM for the purposes of classifying, appraising and comparing bidders' proposals and ensuring compliance with the purposes established in the public procurement regulations that apply to BSM. The recipients of this information shall be the Contracting Body, any third parties that carry out auditing tasks or any third parties that necessarily have to access the data in the performance of the contract.
- d. Submission of the bid and the documents requested implies that the bidder authorises the Contracting Body to process the corresponding information under the terms set out and, in the event they are successful, within the framework of performing the contract.
- e. BSMSA may keep the personal data during the period it needs them for complying with its legal and/or administrative obligations. When the data are no longer needed they shall be deleted from the information systems or anonymised so they can no longer be identified.
- f. The individuals concerned/affected may exercise their rights to access, rectify, delete, limit, object to and transfer their data by writing to BSM, as the data controller, at the address stated in point (c) above, attaching a copy of their National Identity Document or other official document that proves the identity of the person exercising their right. The data subject may also file a claim before the competent control authority.
- g. In accordance with General Data Protection Regulation (GDPR) Article 13, the BSMSA DPO's contact details are given below: protecciodades@bsmsa.cat.

Processing of personal data by the Successful Bidder

In the event that the contract entails processing of personal data or access by the contractor or subcontractor to data of this type, additional provision 31 of the LCSP will be applicable. In this case, access to this data will not be considered data communication, when the prescriptions described in current regulations are fulfilled.

In relation to the processing of data of a personal nature, the Successful Bidder remains subject to the following obligations:

- a) To process data solely in accordance with the instructions of the CONTRACTING BODY and/or Barcelona City Council, and not use them for purposes other than the contracted provision.
- b) Not to communicate data, even for their conservation, to other persons, with the exception of Public Bodies or Private Entities in which they have to be managed in strict compliance with the Law or the functions entrusted to them by the CONTRACTING BODY

Notwithstanding the above, and provided that the Specification permits outsourcing, the CONTRACTING BODY expressly authorises the Successful Bidder to subcontract with third parties in the terms indicated, acting in this case in the name of and on behalf of the CONTRACTING BODY to the exclusive effects of what is foreseen in the data protection regulations.

The processing of data carried out by any subcontractor will comply with the instructions issued by the CONTRACTING BODY and/or Barcelona City Council, committing the Successful Bidder to comply, with each one of them, in accordance with the terms set out in Article 12 of the LOPDGDD. The Successful Bidder is obligated to provide the CONTRACTING BODY with a copy of the data processing contract formalised with any subcontractors within a maximum period of 10 days from its formalisation.

- c) The Successful Bidder is obliged to adopt the measures necessary to guarantee the security of the data determined in Article 9 of the LOPDGDD and section VIII of the RLOPD. Specifically, the security measures established for the medium level will be applied.

The bidders will be able to request information from the CONTRACTING BODY about the security measures that must be implemented for the treatment of the personal data object of the present tender.

Any personal data processing that may be carried out by the Successful Bidder will require the prior consent of CONTRACTING BODY

Additionally, the Successful Bidder will monitor and implement the necessary means to control the improper dissemination of the personal data contained in files of Barcelona City Council that may occur as a result of a negligent implementation of security measures by the Successful Bidder, and undertakes

to notify the CONTRACTING ENTITY of any incident that may affect the security of the personal data processed.

The CONTRACTING BODY reserves the right to perform checks during the period of validity of the contract in order to verify compliance with the established security measures, and to take the appropriate corrective measures if applicable. Likewise, the CONTRACTING BODY reserves the right to request documentation accrediting fulfilment of the current regulations regarding data protection from the Successful Bidder, which must be delivered within 7 days of the request.

- d) The Successful Bidder will provide, whenever the CONTRACTING BODY so requests, access to the personal data being processed during the term of the contract.
- e) In the event that the Successful Bidder provides, generates or uses applications or computer services of any type, where the treatment of personal data responsibility of Barcelona City Council is carried out, it undertakes to comply with the stipulations in the unique additional disposition of the RLOPD.
- f) The Successful Bidder, and all the staff involved in the provision of the service that is the object of this contract are obliged to comply with the duty of confidentiality referred to in Article 10 of the LOPDGDD. This duty will last even after the contract has ended, whatever the reason.
- g) In those cases, where international data transfers must be made outside the European Economic Area (EEA) by the Successful Bidder for the performance of the services provided indicated in these Specifications, prior authorisation from the CONTRACTING BODY will be necessary.
- h) Upon completion of the service provision contemplated in this contract and in the event that they exist, the Successful Bidder must return the personal data subject to processing stored in their equipment and/or media to the CONTRACTING BODY. They must proceed in the same way with regards to any media or document in which they appear, in the format and condition, on the date of the aforementioned resolution, proceeding immediately thereafter to their deletion.

However, should there be a legal obligation to safeguard the information or to conserve it in order to deal with possible legal responsibilities, the Successful Bidder will not proceed to its destruction and will keep a blocked copy of that data until the corresponding period ends.

- i) Likewise, and in addition to the aforementioned obligations, the Successful Bidder undertakes to sign each and every one of the documents required by the CONTRACTING BODY, in order to ensure compliance with data protection regulations.

- j) In the event that the Successful Bidder should fail to fulfil any of these obligations, the Successful Bidder will be considered the Data Controller, and will be liable in all cases for any infringements it may have committed. The Successful Bidder will indemnify the CONTRACTING BODY for any losses, claims, responsibilities or procedures, including fines and penalties, that may derive from a failure to comply with the personal data protection regulations, including those derived from third parties or competent bodies.

12. INTELLECTUAL PROPERTY RIGHTS

The tender winner, i.e., the Successful Bidder awarded the contract, will maintain ownership of all the work that is part of the subject matter of the contract, assigning to Barcelona City Council and the CONTRACTING BODY during the lifetime of the contract, but not exclusively, the exploitation rights that derive from authorship of the subject matter of the contract.

In particular, the winner transfers the rights of reproduction, distribution, public communication and transformation, in any medium or support.

The Successful Bidder declares it is the holder of the intellectual property rights relating to the solution that is the subject matter of this contract and that this solution is original. Accordingly, the Successful Bidder is answerable to Barcelona City Council and the CONTRACTING BODY for the authorship and originality of the work and for the peaceful exercise of the exploitation rights granted by virtue of this contract. It guarantees that those rights are not subject to any obligations or encumbrances of any kind which may undermine the rights granted to Barcelona City Council and the CONTRACTING BODY.

Barcelona City Council and/or the CONTRACTING BODY have the right to recourse against the Successful Bidder for any liability that may be demanded in terms of actions, claims, fines or conflicts brought by third parties in relation to the rights of use under this contract.

If Barcelona City Council and/or BSM plan(s) to subsequently acquire ownership of the work resulting from the pilot in order to carry out the charging points described in the Technical Specifications, it may start a non-publicised negotiated procedure with the Successful Bidder and/or the other finalists, as provided in Article 185(4) of the LCSP and regardless of whether the Successful Bidder is required to manufacture 10 points and install five of them as set forth in the purpose of the tender in the technical and legal documents.

13. CONTRACTUAL AMENDMENTS

1. The system set forth in Title I, Chapter I, Section 3(4) of the LCSP shall apply to any possible contractual amendments that may be made, depending on whether or not specific grounds for amendment have been envisaged.

2. The grounds that may give rise to conditions for amending the contract are as follows:

Subjective:

- A. Total or partial succession of the original contractor as a result of a corporate restructuring process, complying with the requirements and conditions set out in Article 98 of the LCSP, provided that this does not involve any other substantial amendments to the contract and is not aimed at circumventing the application of the Directive.
- B. Replacement of the original contractor as a result of the assignment of the contract to a third party, under the terms provided for in Article 214 of the LCSP. This case requires the Contracting Body's express prior authorisation for assigning the contract, as well as the assignee to have full capacity to enter into contracts with the public sector, to have the solvency required in the Specifications and not to be subject to any cases of incapacity for or prohibition from entering into contracts with the public sector, as determined by current legislation in force. The assignee of the contract shall be subrogated in all the rights and obligations corresponding to the assigner.

Objectives:

- No contractual amendment causes are envisaged.

3. The procedure for amending the contract, should a legally envisaged cause arise, will be as follows:

- Explanatory report from the contract manager, stating the need to proceed with the contract amendment.
- Legal Report from the Contracting Department indicating the cause, as applicable.
- Hearing procedure for the Contractor for a period of ten working days and appearance in which it declares it has been informed of the scope of this new work.
- Approval of the amendment and award by the competent Contracting Body at the proposal of the contract manager with budget approval.
- Readjustment of the final tender bond.
- Formalisation of the contract amendment between the Contracting Body and the Successful Bidder.

4. Legal amendments that are approved shall be binding on the Contractor. The Successful Bidder consequently accepts any amendment to the contract proposed by the Contracting Body which complies with what is provided for in these Specifications or the contract and undertakes to carry it out once the corresponding agreement has been adopted.

In such cases, the Contractor shall be required to continue with the work subject to strict compliance with the rules that are consequently established, without the

right to claim any compensation and without being able for any reason to slow down or halt the work.

5. In any event, the contract will be subject to the provisions of Article 205 of the LCSP.

14. ORGANISATION AND SERVICE

The Successful Bidder shall supply the personnel required for performing the services that are the subject matter of the contract and will be responsible for satisfactorily carrying out the services. Organisation of the service and disciplinary authority over the staff is the exclusive responsibility of the Successful Bidder.

All the personnel assigned to the service awarded will, to all intents and purposes, depend solely on the Successful Bidder, without any employment relationship between that personnel and BSM or its sole partner, Barcelona City Council. Therefore, prior to initiating performance of the contract, and for legal purposes, the Contractor must specify the persons who will carry out the services and show that they are registered with the Social Security. During the lifetime of the contract, any substitution of or modification to those staff members must be reported beforehand to BSM with proof that their work situation complies with the law.

For its part, the Successful Bidder shall appoint a Service Manager to monitor the work, service quality and assigned personnel, who will act as its representative in dealings with the persons responsible for this contract appointed by BSM.

BSM may request at any time that the Successful Bidder replace a person assigned to this service who, according to their criteria, is not performing the tasks assigned to them satisfactorily. The Successful Bidder must comply with this requirement within the maximum term established in the Technical Specifications or, in its absence, 48 hours following receipt of the request.

The Successful Bidder will, as far as possible, ensure the assignment of a stable workforce to BSM, with low staff turnover, except in those cases where it is considered necessary to replace certain persons for a justified reason, a requirement of BSM or the Successful Bidder(s). Successful Bidders will be responsible for organising one week's training and learning prior to assignment of the service to be provided.

15 SPECIAL PERFORMANCE CONDITIONS

- The Contractor's payment of the invoices from its subcontractors and/or suppliers arising from the performance of the work forming the subject matter of these Specifications shall have to be completed within the term provided for in Act 3/2004 of 29 December, establishing measures for

combating late payment in commercial transactions. Furthermore, and in line with the provisions of the contract, the Contractor shall submit the documents that justify effective compliance with the deadlines for payment to subcontractors, where required by the Contract Manager and, in any case, once the work has been completed.

- The commitments on sustainable public procurement undertaken by the Successful Bidder in its bid.
- To maintain, during the lifetime of the contract, the working and social conditions employed in performing the contract established in the collective bargaining agreement at the time of submitting the bid, unless it is by agreement between the company and the workers' representatives.
- Compliance with there being no illegal economic and/or financial relationship with a country regarded as a tax haven.
- The environmental obligations that are established in these Specifications and in the standard contract.
- In compliance with social and labour regulations in the production process and commercial distribution, bidders must comply with the social and labour regulations in force in Spain and the European Union or established by the International Labour Organisation.
- In compliance with effective exercise of the right of people with functional diversity, as well as universal accessibility and universal design, or design for all criteria, bidders must comply with the regulations established by the International Convention on the Rights of People with Functional Diversity, approved by the United Nations (UN) General Assembly on 13 December 2006, ratified by Spain on 3 December 2007 and which came into force on 3 May 2008, as well as the universal accessibility and universal design, or design for all criteria, as defined by Royal Legislative Decree 1/2013, of 29 November, approving the Consolidated Text of the General Act on the Rights of Persons with Functional Diversity and their Social Inclusion.

16. SIGNING OF THE CONTRACT AND LEGAL EFFECTS

The parties shall sign the contract through digital media which BSM puts at their disposal for these purposes.

The contract will enter into force on the date specified in Clause 4, when delivery of the service starts.

17. COMPETENT JURISDICTION AND LEGAL SYSTEM

The contract is private and subject to applicable Spanish commercial, civil and procedural legislation.

For the purposes of resolving any discrepancy arising from the interpretation or performance of this contract, both parties expressly submit to the jurisdiction of

the courts and tribunals of Barcelona city and waive any other jurisdiction that may apply to them.

In witness thereof, the parties sign this document electronically in the location in the heading.