



Laboratori de
Referència
de Catalunya



**SPECIFIC ADMINISTRATIVE CLAUSES FOR CONTRACTING A SUPPLY FOR LABORATORI DE
REFERÈNCIA DE CATALUNYA BY OPEN PROCEDURE**

LRC 1/2025-PO

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INDEX

I.-GENERAL PROVISIONS

- 1.-CONTRACTING ENTITY
- 2.-CONTRACTING BODY
- 3.-PURPOSE
- 4.-NATURE AND LEGAL REGIME
- 5.-ESTIMATED VALUE OF THE CONTRACT, TENDER BUDGET AND PRICE
- 6.-EXISTENCE OF CREDIT
- 7.-TAXES
- 8.-DURATION OF THE CONTRACT
- 9.-COMMUNICATIONS AND USE OF ELECTRONIC MEANS
- 10.-ABILITY TO CONTRACT
- 11.- SOLVENCY OF THE BIDDING COMPANIES
- 12.-UNION OF ENTREPRENEURS

II.- PROVISIONS RELATING TO THE BIDDING, AWARDING AND FORMALIZATION OF THE CONTRACT

- 13.-BIDDING PROCEDURE AND FORM
- 14.-DEADLINE FOR SUBMISSION OF PROPOSALS
- 15.- BIDDERS' PROPOSALS: GENERAL RULES
- 16.- CONTENT OF THE PROPOSALS: DOCUMENTATION
- 17.- SAMPLE PRESENTATION
- 18.- NON-ADMISSION OF BIDS
- 19.-COMPETENT BODIES FOR THE PROCESSING OF THE PROCEDURE
 - CONTRACTING TABLE
 - COMMITTEE OF EXPERTS
- 20.-PROVISIONAL GUARANTEE.
- 21.-OPENING OF ADMINISTRATIVE DOCUMENTATION
- 22.-OPENING OF THE PROPOSALS OF ECONOMIC AND TECHNICAL CONDITIONS
- 23.-AWARD AND TIE-BREAKING CRITERIA
- 24.-DETERMINATION OF THE BEST OFFER VALUE FOR MONEY AND REQUIREMENT OF DOCUMENTATION
- 25.-AWARD
- 26.-RESIGNATION OR WITHDRAWAL
- 27.-DECLARATION OF THE PROCEDURE VOID
- 28.-DEFINITIVE WARRANTY
- 29.-FORMALIZATION OF THE CONTRACT
- 30.-PUBLICITY OF THE FORMALIZATION OF THE CONTRACT

III. PROVISIONS RELATING TO THE PERFORMANCE OF THE CONTRACT

- 31.-SPECIAL CONDITIONS OF EXECUTION



- 32.-EXECUTION AND SUPERVISION OF THE CONTRACT
- 33.-WORK PROGRAM
- 34.-COMPLIANCE WITH DEADLINES AND CORRECT EXECUTION OF THE CONTRACT
- 35.-SANCTIONS AND PENALTIES FOR NON-COMPLIANCE
- 36.-QUALITY ANALYSIS
- 37.-PERSON RESPONSIBLE FOR THE CONTRACT
- 38.-INCIDENT RESOLUTION
- 39.-SUBSIDIARY ENFORCEMENT

IV. PROVISIONS RELATING TO THE RIGHTS AND OBLIGATIONS OF THE PARTIES

- 40.-LIABILITY OF THE CONTRACTOR COMPANY
- 41.-ETHICS CLAUSE
- 42.-CLAUSES OF A SOCIAL NATURE
- 43.-SPECIAL RULES REGARDING THE CONTRACT COMPANY'S PERSONNEL
- 44.-CONFIDENTIALITY OF INFORMATION
- 45.-PROTECTION OF PERSONAL DATA
- 46.-INTELLECTUAL AND INTELLECTUAL PROPERTY
- 47.-WARRANTY PERIOD
- 48.-TRANSPARENCY
- 49.-MODIFICATION OF THE CONTRACT
- 50.-PAYMENT AND INVOICING SYSTEM

V.- PROVISIONS RELATING TO THE ASSIGNMENT, SUBCONTRACTING AND REVISION OF PRICES

- 51.-SUBCONTRACTING
- 52.-SUCCESSION AND ASSIGNMENT OF THE CONTRACT
- 53.-PRICE REVIEW

VI.- PROVISIONS RELATING TO THE TERMINATION OF THE CONTRACT

- 54.-RECEPTION AND SETTLEMENT
- 55.-RETURN OF THE WARRANTY
- 56.-TERMINATION OF THE CONTRACT: CAUSES AND EFFECTS

VII.- PROVISIONAL MEASURES AND SPECIAL CASES OF NULLITY LITAT

- 57.-APPEALS REGIME
- 58.-PROVISIONAL MEASURES
- 59.-JURISDICTION



SPECIFIC ADMINISTRATIVE CLAUSES FOR CONTRACTING A SUPPLY FOR LABORATORI DE REFERÈNCIA DE CATALUNYA BY OPEN PROCEDURE

The administrative clauses and technical prescriptions, the table of specific characteristics as well as the rest of the attached documentation that regulate this tender, are available at the Internet address: <https://contractaciopublica.gencat.cat/>, in the Contractor Profile section – Laboratori de Referència de Catalunya

I. GENERAL PROVISIONS

FIRST.- CONTRACTING ENTITY

Laboratori de Referència de Catalunya is a public sector commercial company with full legal personality and independent of that of its members, with all the legal capacity of public and private law required to achieve its own objectives, registered in the Mercantile Registry of Barcelona, in volume 22119, sheet B 31619, Folio 156, 1st inscription.

SECOND.- CONTRACTING AUTHORITY

The competent body of Laboratori de Referència de Catalunya for the Contracting of works, services and supplies is the Manager, as provided for in the Agreement of the Board of Directors dated November 6, 2019, before the notary of Barcelona, Mr. Ricardo Ferrer Marsal, with no. 2,264 of its protocol.

THIRD.- PURPOSE

The object of this contract is the supply indicated in the **table of specific characteristics**.

The subject matter of the contract corresponds to the nomenclature of the Common Contract Vocabulary (CPV), approved by Commission Regulation (EC) No. 213/2008, of 28 November 2007, which appear in the **table of specific characteristics**.

In the case of a procedure subject to harmonised regulation, the Nomenclature of Territorial Statistical Units (NUTS), approved by Commission Regulation (EC) No 868/2008 of 8 August 2014, which appears in the table of specific characteristics, should be indicated.

The description and characteristics of the contract are listed in the Technical Specifications that are incorporated into these Specifications. These Specifications of Specific Administrative Clauses and the Technical Prescriptions and the table of specific characteristics will be contractual in nature, so they must be signed by the successful bidder at the time of formalisation of the contract.

The objective of this tender is to cover the specific needs of the entity - described in the needs report, published in the contractor's profile - which have been configured in accordance with the guiding principles of public procurement regulated in article 1 of the LCSP and with the aim of selecting the best value for money offer.



In the event that it is a continuous supply, in accordance with the nature of the contract, the needs specified for each of the articles and products in the technical specifications are estimates. This estimate is made on a single calendar year. The quantities indicated will be subject to variations according to the needs of Laboratori de Referència de Catalunya.

If so indicated in the **table of specific characteristics**, the tendering entrepreneur, if it deems it appropriate, may propose variations in the supply subject to tender, provided that these offer advantages in its use, due to new technologies, a greater number of features and other characteristics that may be advantageous for its use by Laboratori de Referència de Catalunya, which will be duly justified in the technical documentation of the proposal.

The submission of proposals by the bidders will presume the unconditional acceptance by the bidders of the content of the Specific Administrative Clauses, the table of specific characteristics and the Technical Specifications delivered by Laboratori de Referència de Catalunya, their sufficiency and conformity.

In the event that the object of the contract is susceptible to division into lots, it will be specified in the **table of specific characteristics**.

In the event that the contract is divided into lots, the Contracting Authority may, on the one hand, limit the number of lots in which the same bidder may submit a bid and/or limit the number of lots that may be awarded to each tenderer. All these circumstances will be included, where appropriate, in the **table of specific characteristics**.

Likewise, in the event that it is not susceptible to division into lots, the reasons will be set out in the initial documents and specifically in the justifying report of the contract that is published in the contractor's profile. Information that also appears in the table of specific characteristics that is part of these standard specifications of particular administrative clauses.

FOURTH.- NATURE AND LEGAL REGIME.

The contract that is the subject of these specifications is a supply contract, is administrative in nature and is governed by these administrative clauses, by the table of specific characteristics and by the technical specifications, the clauses of which are considered to be an integral part of the contract.

With regard to the preparation, tendering and award procedure, the parties are expressly subject to the following regulations, in their consolidated version:

a) Law 9/2017 of 8 November 2017 on Public Sector Contracts, which transposes into Spanish law the directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014 (hereinafter LCSP).

(b) Directive 2014/14/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

(c) Commission Implementing Regulation (EU) 2016/07 of 5 January 2016 laying down the standard form for the European Single Procurement Document.

d) Decree-Law 3/2016, of 31 May, on urgent measures in the field of public procurement.

e) Royal Decree 817/2009, of 8 May, which partially implements Law 30/2007, of 30 October, on public sector contracts.

f) Royal Decree 1098/2001, of 12 October, approving the General Regulations of the Law on Public Administration Contracts, in all matters not modified or repealed by the two provisions mentioned above.

g) Law 19/2013, of 9 December, on transparency, access to public information and good governance.

h) Law 19/2014, of 29 November, on transparency, access to public information and good governance.

i) Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights.

j) Regulation (EU) 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 such data, and repealing Directive 95/46/EC.

k) Order PDA/21/2019, of 14 February, which determines the electronic notification system of the Administration of the Generalitat of Catalonia and its public sector. Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means.

o) Law 12/2017, of 6 July, on architecture, in all that is applicable.

In addition, it is also governed by the rules applicable to public sector contracts in Catalonia and by its applicable sectoral regulations.

With regard to the effects and termination, the contract is governed by Private Law and by the rules referred to in Article 319 of the LCSP in environmental, social or labour matters, special conditions of execution, payment period, modification of the contract, assignment and subcontracting, and the cause for termination of the contract referring to the impossibility of performing the service under the terms initially agreed. when it is not possible to modify the contract in accordance with articles 204 and 205 of the LCSP. For this reason, apart from the cases mentioned in this paragraph, when these specifications in the execution phase refer to specific articles of the LCSP, they do so by express desire to submit only with the scope and for the purposes indicated in the specifications themselves.

Ignorance of the clauses of the contract in any of its terms, of the other contractual documents that are part of it and also of the instructions or other rules that are applicable in the execution of the agreed thing, does not exempt the successful bidder from the obligation to comply with them.

The interpretation of the contract and any discrepancies regarding its application shall be made taking into account in the first place these specifications, the technical specifications and the table of specific characteristics.



In the event that these specifications are translated into other languages, in the event of a discrepancy, the Catalan version will prevail.

FIFTH.- ESTIMATED VALUE OF THE CONTRACT, TENDER BUDGET AND PRICE

The estimated value of the contract, for the purposes of determining the award procedure and advertising, is expressed in the **table of specific characteristics**, an amount that does not include Value Added Tax (VAT). For the purposes of its calculation, Article 101 of Law 9/2017, of 8 November, on Public Sector Contracts (hereinafter the LCSP) has been taken into account. This value is the sum of the budget of the contract to be awarded according to the estimates of the contracting authority, as well as any extensions and modifications, under the terms established in these specifications.

The maximum procurement budget for the entire supply is that shown in the **table of specific characteristics**. Bidders that exceed the tender amount indicated in the **table of specific characteristics** will not be accepted. Bids from bidders exceeding this maximum price will be automatically rejected and excluded from this tendering procedure.

In the event that the quantity of products is indeterminate, the unit prices of each of the budgeted items must be included, as well as the percentage of VAT applied.

Consequently, the bidders must bid the unit price of each of the products in relation to which they submit their proposal, the contract price being reduced by applying the unit price offered and awarded to the units effectively supplied.

These consumption quantities and the tender budget correspond to the annual forecasts for each item that have been obtained from historical consumption in accordance with the consumption forecasts of the last financial year, so that in the course of the execution of the contract there may be variations in the quantity depending on the units actually supplied. In any case, this budget is indicative and non-binding.

In the event that there are lots of goods, bids may be made for all the lots or for one or some of them, in accordance with the budget for each lot that appears in the **table of specific characteristics**.

In the event that a tenderer submits a joint tender of several lots, where appropriate, this may not exceed the total sum of the lots tendered, nor each of the individual amounts of the lots tendered in the joint tender.

In the event that the budget is broken down by annuities, the distribution will be as indicated in the **table of characteristics of the contract**.

The budget has been approved by the competent body of Laboratori de Referència de Catalunya.

The successful bidder is obliged to maintain its bid throughout the term of execution of the contract, without being able to claim any additional expense and/or cost.

The contract price is the award price and must include, as a separate item, Value Added Tax. The price



includes taxes, fees, fees of any kind that may be applicable, as well as all expenses arising as a result of the obligations established in these specifications and that must be complied with during the execution of the contract.

SIXTH.- EXISTENCE OF CREDIT

All the regulatory procedures have been complied with to ensure the existence of credit for the payment of the contract. The budget item to which this credit is allocated is the one mentioned in the **table of specific characteristics**.

If this contract is formalised in the year prior to the start of its execution, the budgetary credit (advance processing) will be conditional on the approval or extension of the corresponding budgets.

The corresponding award will be subject to the condition precedent of the existence of adequate and sufficient credit, in accordance with the provisions of Article 117 of the LCSP.

SEVENTH.- TAXES

Both the bids made by the bidders and the award budget shall be understood to include, for all purposes, taxes of any kind levied on the subject matter of the contract,

The successful bidder will be responsible for the expenses, taxes and fees levied on the object of the contract, its formalization, and any others that may be applicable, according to the provisions in force in the form and amount indicated therein.

EIGHTH.- DURATION OF THE CONTRACT

The term of execution of the contract is that established in the **table of specific characteristics**. The execution of the contract will be carried out in accordance with the specifications established in the Technical Specifications. All deadlines begin to run from the day stipulated in the contract.

If the file that gives rise to this contract has been declared to be of urgent processing, the execution of the contract may be initiated before its formalization provided that a definitive guarantee has been constituted.

In accordance with the provisions of Article 29 of the LCSP, the contract may be extended if this has been provided for in the **table of specific characteristics**.

The extension will be agreed by the contracting authority and is mandatory by the contractor, provided that the notice is given 2 months before the end of the initial duration of the contract. However, this notice will not be required in the case of contracts whose duration is less than 2 months.

The extension of the contract must be express.



NOVENA.- COMMUNICATIONS AND USE OF ELECTRONIC MEANS

9.1. The specifications of particular administrative clauses, the table of specific characteristics and technical prescriptions that regulate this tender, are available at the address: <https://contractaciopublica.gencat.cat> within the contractor profile of Laboratori de Referència de Catalunya.

9.2. In accordance with the Fifteenth Additional Provision of the LCSP, the processing of this tender entails the practice of notifications and communications that derive from exclusively electronic means.

However, oral communication may be used for communications other than those relating to the essential elements, i.e. specifications and tenders, leaving the content of the oral communication duly documented, for example, by means of written or audio files or summaries of the main elements of the communication.

9.3. Communications and notifications made during the procurement procedure and during the term of the contract will be made by electronic means through the e-NOTUM notification system, in accordance with the LCSP, Law 39/2015, of 1 October, on the common administrative procedure of public administrations and Order PDA/21/2019, of 14 February, which determines the electronic notification system of the Administration of the Generalitat of Catalonia and its public sector. To this end, notices of the availability of notifications and communications will be sent to the email addresses and mobile phones that the companies have provided for this purpose in the ESPD, in accordance with the provisions of clause sixteen of these specifications. Once the e-mail(s) have been received and, in the event that mobile phones have also been provided, the SMS, indicating that the corresponding notification has been made available in the e-NOTUM, must be accessed by the designated person(s), through the link that will be sent for this purpose. In the virtual space where the notification is deposited, it is possible to access said notification with a digital certificate or password.

The time limits from the date of notification shall be calculated from the date of dispatch of the notification notice, if the act to be notified has been published on the same day in the contracting authority's contractor profile. Otherwise, the deadlines will be calculated from the receipt of the notification by the company to which it is addressed. However, the deadlines for the notifications made on the occasion of the special appeal procedure by the Catalan Contracts Tribunal are calculated in any case from the date of sending the notification notice.

9.4. On the other hand, in order to receive all the information relating to this tender, the companies that wish to do so and, in any case, the tendering companies must subscribe as interested parties in this tender, through the subscription service to the news of the virtual tender space that is made available for this purpose at the web address of the contracting authority's contractor profile, accessible to the Public Procurement Services Platform of the Generalitat:

<https://contractaciopublica.gencat.cat/> Laboratori de Referència de Catalunya

Companies that, in accordance with clause 15.1. of these specifications, activate the offer with the Digital Envelope tool and will register in the tender automatically.

This subscription will allow you to receive immediate notice to the email addresses of the subscribers of any news, publication or notice related to this tender.

Likewise, certain communications that must be made on the occasion of or as a result of the bidding procedure and award of this contract will be made through the notice board associated with the virtual bidding space of this tender of the Public Procurement Services Platform. This electronic notice board, which provides a reliable record of the authenticity, completeness and date and time of publication of the information published, will also publish information relating to both the tender and the contract.

In addition, bidding companies can also register in the Bidder's Profile, subject to the required authentication. The Bidder's Profile is made up of a set of services aimed at bidding companies with the aim of providing each bidding company with its own space, with a series of tools that facilitate access and management of procurement files of interest. To register, you must "click" on the "Bidder profile" section of the Public Procurement Services Platform and have the required digital certificate.

On the Public Procurement Services Platform, companies have at their disposal a "bidder's guide".

It should be noted that the personal data of the tendering companies, obtained by the contracting entity when subscribing to the tender and/or when registering in the Tenderer's Profile, will be processed by the unit responsible for the processing activity for the purpose or purposes identified in Annex 2 of these specifications, on the Basic information on the protection of personal data of bidders.

9.5. Digital certificates:

In accordance with the first additional provision of DL 3/2016, the use of advanced electronic signatures based on a qualified or recognised electronic signature certificate will be sufficient under the terms provided for in Regulation (EU) 910/2014/EU, of the European Parliament and of the Council, of 23 July 2014, on electronic identification and trust services for electronic transactions in the internal market and repealing the Directive. 1999/93/EC. Therefore, this is the minimum level of security required for the electronic signature certificate supported for the signature of the ESPD and the offer.

With regard to EU foreign certificates, qualified certificates will be accepted in any country of the European Union in accordance with Article 25.3 of Regulation (EU) 910/2014/EU on electronic identification and trust services, which provides that "a qualified electronic signature based on a qualified certificate issued to a Member State shall be recognised as a qualified electronic signature in the rest of the Member States".

TENTH.- ABILITY TO CONTRACT



Spanish or foreign natural or legal persons who have legal personality and full capacity to act, in accordance with the provisions of article 65 of the LCSP, are authorised to sign this contract with Laboratori de Referència de Catalunya; whose activity, indicated in its statutes or founding regulations, is directly related to the object of the contract, and proves its economic, financial and technical and/or professional solvency in accordance with articles 87 and 89 of the LCSP, and is not incurred within any of the causes of prohibitions to contract established in article 71 of the LCSP; or in any of the causes of incompatibility for hiring established by Law 53/84, of 26 December, on incompatibilities of personnel in the service of public administrations, as well as Law 21/1987, of 26 November, on incompatibilities of personnel in the service of the Administration of the Generalitat, Law 13/2005, of 27 December, of the regime of incompatibilities of senior officials in the service of the Generalitat and Law 3/2015, of 30 March, regulating the exercise of senior office in the General State Administration.

Companies that are subject to any of the prohibitions on contracting provided for in current regulations and that present evidence that they have adopted measures to demonstrate their reliability may not be excluded from the procurement procedure if such evidence is considered sufficient by the contracting authority, by virtue of the provisions of article 72.5 of the LCSP. To this end, the tenderer shall demonstrate that it has paid or undertaken to pay the appropriate compensation for any damage caused by the criminal offence or misdemeanour, that it has clarified the facts and circumstances in a comprehensive manner by actively cooperating with the investigating authorities and that it has taken specific technical, organisational and personnel measures, appropriate to avoid new criminal offences or misdemeanours. These measures will be evaluated taking into account the seriousness and particular circumstances of the criminal offence or misdemeanour. Where the measures are considered insufficient, the contracting authority shall give reasons for the decision.

Likewise, it is necessary that the purpose of the activity of the companies is directly related to the object of the contract, as it results from their statutes or founding rules, and is duly accredited. Companies must also have an organisation with sufficient personnel and material elements to correctly execute the contract.

Where a tenderer or candidate, or a company related to them, has advised the contracting authority or has participated in any way in the preparation of the procurement procedure, the contracting authority shall take the appropriate measures to ensure that the participation of that tenderer or candidate does not distort competition. Such measures shall comply with the provisions of Article 115 of the LCSP and 41 of Directive 2014/24/EU.

ELEVENTH.- SOLVENCY AND CAPACITY OF THE BIDDING COMPANIES

Companies must prove that they meet the minimum solvency requirements detailed in the **table of specific characteristics**, through the means of accreditation listed therein.

- **The capacity of foreign companies must be accredited by the following means:**
 - The capacity to act of non-Spanish companies from Member States of the European Community shall be accredited as specified in Article 9 of the Regulation of the Law on Public Administration Contracts.



- The capacity to act of the remaining foreign companies will be accredited as determined by Article 10 of the Regulations of the Law on Public Administration Contracts.
 - Natural or legal persons belonging to States that are not part of the European Community and are not signatories to the World Trade Organisation's Agreement on Government Procurement must also submit a report from the Spanish diplomatic representation in their State attesting that the State of origin of the foreign company also admits the participation of Spanish companies in contracting with the Administration. in a substantially analogous way.
- **Companies registered in the Register of Bidders of the Generalitat de Catalunya or in the Official Register of Bidders and Classified Companies of the State:**

In the event that the company is registered in the Register of Bidders of the Generalitat de Catalunya or ROLECE, the fact of providing a copy of the registration certificate will replace the provision of the documents of capacity and personality to contract, representation, professional qualification, economic solvency and business classification, as long as the information is current.

In accordance with the provisions of article 7.1 of Decree 107/2005, of 31 May, on the creation of the Electronic Register of Tendering Companies of the Generalitat of Catalonia or ROLECE, companies registered in this Register must not provide the documents and data contained therein. The contracting authority will consult ex officio, at the corresponding procedural stage, whether there is registry information on the companies that tender in the award procedure in progress. Registered companies are exempt from physically delivering the documentation that accredits: legal personality; the capacity to act and representation; business classification; registration with the Economic Activities Tax, and receipt of the last payment or, where appropriate, the exemption declaration; the declaration according to which he is not in any of the circumstances that give rise to the prohibition of contracting established in article 71 of the LCSP and has not been deregistered from the registration of the tax on economic activities and, especially, according to which he is up to date in compliance with both tax and Social Security obligations; the data and documents accrediting economic, financial and technical or professional solvency requested in this award procedure that appear in the aforementioned Register. A responsible declaration must be provided that the data in the Register are in force.

- **Integration of solvency with external means:**

In compliance with the provisions of Article 75 of the LCSP, the bidding companies may resort to the capacities of other entities for the execution of the contract, regardless of the legal nature of the links they have with them, in order to prove their economic, financial and technical and professional solvency, provided that these entities are not prohibited from contracting and that the bidding companies demonstrate that throughout the the duration of the execution of the contract of the company of the LCSP company, the tendering companies may resort to the capacities of other entities for the execution of the contract, regardless of the legal nature of the links they have with them, in order to prove their economic and financial and technical and professional solvency, provided that these entities are not prohibited from contracting and that the bidding companies demonstrate that during the entire duration of the

execution of the contract of the company of the LCSP company of the LCSP, the bidding companies demonstrate that during the entire duration of the execution of the contract of the company of the LCSP of the LCSP, the tendering companies demonstrate that during the entire duration of the execution of the LCSP contract of the LCSP, the tendering companies may resort to the capacities of other entities for the execution of the contract, regardless of the contract will effectively have the necessary resources by submitting the written commitment of the aforementioned entities to this effect.

However, with regard to the criteria relating to educational and professional qualifications and professional experience, companies may only draw on the skills of other entities if they provide the services for which those skills are required.

Under the same conditions, UTEs may draw on the capacities of the participants in the union or of other entities.

- **Personal or material resources to be subscribed to in the contract:**

In the event that technical complexity so requires, the tenderers must submit a commitment indicating that they will allocate the personnel and material resources in the contract indicated in the **table of specific characteristics**.

The Community certificates of entrepreneurs authorised to hire referred to in Article 97 of the LCSP constitute a presumption of aptitude in relation to the qualitative selection requirements contained therein.

In joint ventures, all the companies that are part of it must prove their solvency, in the terms indicated in section seven of the table of characteristics. In order to determine the solvency of the temporary union, the solvency accredited by each of its members is accumulated.

TWELFTH.- UNION OF ENTREPRENEURS

Laboratori de Referència de Catalunya may contract employers' unions that are temporarily constituted for this purpose (UTE), and their constitution in a public deed is mandatory in the event that the contract is awarded in its favour.

Each of the entrepreneurs participating in the UTE will be jointly and severally bound with respect to Laboratori de Referència de Catalunya and must appoint a sole representative or representative of the UTE with sufficient power of attorney to exercise the rights and comply with the obligations arising from the contract until its termination.

For the purposes of the tender, the entrepreneurs who wish to participate as part of a temporary union must indicate the names and circumstances of those who constitute it and the participation of each one, as well as that they assume the commitment to formally constitute themselves in a temporary union if they are awarded the contract. The document formalising this commitment must be signed by the representative of each of the companies that make up the union.



Each of the employers of the UTE must provide the personal documentation required in clause sixteen of the same.

The duration of temporary joint ventures must coincide with that of the contract until its termination.

In the event that the Contracting Board, or in its absence, the contracting authority finds possible indications of collusion between companies that compete as a group in a temporary union, the companies will be required to justify expressly and reasoned the reasons for competing as a group within 3 days from the day following the communication.

When the contracting committee or body, considering the justification made, considers that there are well-founded indications of collusion between them, it will transfer it to the National Commission on Markets and Competition or, where appropriate, to the corresponding regional competition authority, so that it can make a decision.

If during the processing of the tender and before the formalisation of the contract there is a change in the composition of the temporary joint venture, it will be excluded from the procedure. However, the alteration of the participation of the companies will not be considered a modification of the composition provided that the same classification or solvency required is maintained. Likewise, the temporary union of companies will be excluded from the tender as soon as one or more of the companies that make it up are incurred in any of the prohibitions on contracting provided for in article 71 of the LCSP.

II.- PROVISIONS RELATING TO THE BIDDING, AWARDING AND FORMALIZATION OF THE CONTRACT

THIRTEENTH.- PROCEDURE AND FORM OF TENDERING.

The award of the contract will be carried out through an open procedure, by virtue of the provisions of articles 21 (when it is a procedure subject to harmonised regularisation), 116.4, 131.2, and 156 of the LCSP.

The type of processing will be that indicated in the **table of specific characteristics** and in accordance with the provisions of articles 116 and following of the LCSP.

The selection of the best value for money offer will be made in accordance with the criteria set out in the **table of specific characteristics** and in accordance with article 145 of the LCSP.

In the case of urgent processing, in accordance with article 119 of the LCSP, the deadlines for tendering, awarding and formalising the contract will be reduced by half, with the following exceptions:

- The period of 15 working days for the formalisation of the contract, in the event that the amount of the tender is susceptible to filing a special appeal in procurement matters.
- The deadline for submission of tenders in the case of a harmonised dossier, in this case, the deadline for submission of tenders may not be less than 15 days from the date of dispatch of the contract notice.



The tender will be announced in accordance with the provisions of Article 135 of the LCSP, in the contractor's profile and in the Official Journal of the European Union (D.O.U.E.), in the case of a procedure subject to harmonised regulation and only to the contractor's profile in the case of a procedure not subject to harmonised regulation.

FOURTEENTH.- DEADLINE FOR SUBMISSION OF PROPOSALS

The tenderers must submit their proposals in the manner established in the following clause, **before the date and time** specified in the **table of specific characteristics**.

FIFTEEN.- BIDDERS' PROPOSALS: GENERAL RULES

Each tenderer may submit a single bid in this procurement procedure, either individually or jointly with other companies, except in the cases indicated (where appropriate) in the **table of specific characteristics** in which variants or integrating offers are admitted.

The submission of more than one bid by a tenderer, individually or jointly with other undertakings, shall result in the non-admission and, therefore, rejection of all tenders in which the offending tenderer has been submitted and exclusion from this tender procedure.

Tenders shall relate to the supply as a whole or to the lot for which the tenderer submits a tender, and partial tenders shall not be admitted.

The envelopes must include only the documentation specified in the specifications that govern this tender.

Proposals will be submitted by applying the digital envelope, within the admission period as established in the **table of specific characteristics**.

Likewise, the proposals must be signed by the legal representatives of the bidding companies and, in the case of companies that concur with the commitment to constitute a joint venture if they are awarded, they must be signed by the representatives of all the companies that make it up. The person or persons signing the offer must or must be the person or one of the signatories of the ESP.

In accordance with article 23 of the RGLCAP, foreign companies must submit the documentation officially translated into Catalan and/or Spanish.

The inclusion in the A-envelope of documentation to be included in the B-envelope or C-number envelope, or in the B-number envelope information from the C-number envelope and/or other possible combinations, so that part of the bid is known in advance when it is not yet appropriate, will lead to the exclusion of the bidder for breach of the secrecy of the bids that is in force until the time of their opening, as long as it is assessed that real contamination has occurred.

In accordance with the provisions of article 138.3 of the LCSP, the additional information requested by the bidding companies on the specifications and documents that are part of the tender must be provided at least 6 days before the deadline set for the submission of bids, provided that it has been requested at least 12 days before that date. In this regard, the **table of specific characteristics** will indicate the maximum date for the formulation of consultations.

Notwithstanding what is indicated in the previous paragraph, in procedures that have been classified as urgent the period of 6 days is reduced to 4.

In the event that a tenderer requests additional information or complementary documentation sufficiently in advance, under the terms provided for in the preceding paragraph, and this is not provided by the contracting authority within six days prior to the end of the deadline for submission of tenders, this period shall be extended under the terms provided for in the applicable regulations.

Responses to clarifications or amendments to the specifications shall be made public in the contractor's profile and shall be binding.

In the event that a tenderer incurs, after the submission of the proposal and prior to the formalisation of the appropriate contract, in any of the cases of inability or prohibitions to contract determined in current legislation, it must inform the Reference Laboratory of Catalonia of this circumstance immediately, so that the appropriate measures can be taken. In accordance with current legislation, and the contract cannot be formalised. In this case, the award will be proposed to the next company that has submitted the best quality/price offer in accordance with the order in which the bids have been classified.

15.1.- Submission of bids electronically through the application of the "Digital Envelope":

Bidding companies must submit bids electronically through the "Digital Envelope" application accessible to the virtual space of this tender, at the following web address:

<https://contractaciopublica.gencat.cat/perfil/> Laboratori de Referència de Catalunya

Once they access the Digital envelope web tool through this link, bidding companies must fill in a form to register in the tool and, then, they will receive a message, to the email(s) indicated in this registration form, activating the offer.

The email addresses that the bidding companies indicate in the registration form of the Digital Envelope tool, which will be used to send emails related to the use of the Digital Envelope tool, must be the same as those designated in their ESPD to receive notifications and communications through the e-NOTUM.

Once they access the Digital envelope web tool through this link, bidding companies must fill in a form to register in the tool and, then, they will receive a message, to the email(s) indicated in this registration form, activating the offer.



The email addresses that the bidding companies indicate in the registration form of the Digital Envelope tool, which will be used to send emails related to the use of the Digital Envelope tool, must be the same as those designated in their ESPD to receive notifications and communications through the e-NOTUM.

In order to start sending the documentation, the tool will require the bidding companies to enter a keyword for each envelope with encrypted documentation that is part of the tender (for envelope A no keyword is required, since the documentation is not encrypted). This keyword will be used to encrypt the documentation at the time of sending the bids. Therefore, this encryption process is carried out by the Digital Envelope tool, so bidding companies should NOT previously encrypt files using another tool. Likewise, the decryption of the bid documents is carried out using the same keyword, which must be kept by the bidding companies. It is important to take into account the importance of correctly safeguarding this or these keys (they can be the same for all the envelopes or different for each of them), since only the bidding companies have them/them (the Digital Envelope tool does not save or remember the passwords entered) and they are essential for the decryption of the bids and, therefore, by access to its content.

The bidding companies will be asked, through the email indicated in the registration form for the offer of the Digital Envelope tool, to access the Digital Envelope web tool to enter their keywords at the corresponding time.

When the bidding companies enter the keywords, the process of deciphering the documentation will begin, which will be stored in a secure virtual space⁴ that guarantees the inaccessibility of the documentation before, where appropriate, the constitution of the Committee and the act of opening the envelopes, on the established date and time.

In any case, tendering companies must enter the keyword before the end of the opening act of the first one on encryption.

In the event that a bidding company does not enter the keyword, the contents of the encrypted envelope will not be accessible. Thus, given that the submission of bids through the Digital Envelope tool is based on the encryption of the documentation and necessarily requires the entry by the bidding companies of the key word(s), which only they guard throughout the process, in order to access the encrypted content of the envelopes, It will not be possible to carry out the evaluation of the documentation of your offer that cannot be deciphered because the company has not entered the keyword.

Once all the tender documentation has been completed and the documents that make it up have been attached, the tender itself will be submitted, which is not considered submitted until it has been registered, with the corresponding entry note, through the tool. From the moment the offer has been submitted, the documentation sent can no longer be modified.

It should be noted that the Digital Envelope tool does not allow you to delete or modify bids once they have been submitted; Yes, it is possible at any time prior to the submission of the offer. In the event that a tendering company submits two or more bids to the same lot/contract within the deadline for submission of bids, intending that the latter replaces one or more previous bids, it must reliably inform

the contracting authority and the contracting authority or, where appropriate, the contracting committee, will assess what is appropriate with respect to these bids.

In the event of a technical bankruptcy that makes it impossible to use the Digital Envelope tool on the last day of submission of the proposals, the bidding company may complete the corresponding procedure for the submission of the bid at the time when this is possible, without requiring in any case that the contracting authority, where appropriate, adopt an express prior decision regarding a possible extension of the term for the time considered essential.

You can find support material on how to prepare a bid using the digital envelope tool in the "Electronic Tendering" section of the Public Procurement Services Platform, at the following web address: https://contractaciopublica.gencat.cat/ecofin_sobre/AppJava/views/ajuda/empreses/index.xhtml?set-locale=ca_ES

It is important that bidding companies verify sufficiently in advance that they have the required knowledge of the tool and that they know the necessary requirements to submit a bid.

15.2. In accordance with the provisions of section 1.h of the Sixteenth Additional Provision of the LCSP, the submission of bids using the Digital Envelope tool may be done in two phases, first transmitting the electronic fingerprint of the bid documentation, within the deadline for submission of bids, upon receipt of which their submission will be deemed to have been made for all purposes. and then sending the documentation of the offer itself, within a maximum period of 24 hours. If this second submission is not made within 24 hours, the tender will be considered to have been withdrawn.

If this possibility is used, it must be taken into account that the documentation sent in this second phase must fully coincide with that for which the fingerprint has been previously sent, so that no modification of the electronic files that make up the tender documentation can be made. In this regard, it is important not to manipulate these files (nor, for example, to make copies, even if they are identical in content) in order not to change the electronic fingerprint, which is the one that will be checked to ensure the coincidence of documents in the bids sent in two phases.

15.3. The bids submitted must be free of computer viruses and any type of harmful program or code, since under no circumstances may documents affected by a virus be opened with the corporate tools of the Generalitat de Catalunya. Thus, it is the obligation of the contractor companies to pass the documents through an antivirus and, in the event that documents of their bids arrive with viruses, it will be their responsibility that the contracting entity cannot access their content.

In the event that any document submitted by the tendering companies is damaged, blank or illegible or is affected by a computer virus, the Contracting Committee will assess, depending on the documentation affected, the legal consequences with respect to the participation of this company in the procedure, which must arise from the impossibility of accessing the content of any of the tender documents. In the case of essential documents to know or assess the offer, the committee may agree to the exclusion of the company.



The tendering companies may submit a backup copy of the electronic documents submitted in electronic physical format, which will be requested from the tendering companies if necessary, in order to be able to access the content of the documents in the event that they are damaged. In this sense, it is important to remember the importance of not manipulating these files in order not to change their electronic fingerprint, which is the one that will be checked to ensure the coincidence of the documents in the backup, sent in electronic physical support, and those sent in the offer, through the Digital Envelope tool. Likewise, it should be taken into account that this copy cannot be used in the case of having sent documents with viruses through the Digital Envelope tool, given the technical impossibility in these cases of being able to compare the electronic fingerprints and, therefore, to be able to guarantee the non-modification of the bids once the submission period has ended.

15.4. The Digital Envelope tool does not allow the submission of files larger than 25 Mb. For this reason, the files of offers of this size must be compressed or fragmented into several parts. The partition must be done manually (without using tools such as winzip or automatic partition winrar) and without entering any type of password. The files resulting from the partition are incorporated in the other documentation section numbered (part 1 of 2, part 2 of 2).

15.5. The technical specifications necessary for the electronic submission of bids are available in the "Electronic Tendering" section of the Public Procurement Services Platform, at the following web address:

https://contractaciopublica.gencat.cat/ecofin_sobre/AppJava/views/ajuda/empreses/index.xhtml?set_locale=ca_ES

SIXTEENTH.- CONTENT OF THE PROPOSALS: DOCUMENTATION

The proposals will consist of only three envelopes, provided that criteria that can be evaluated by means of value judgment have been provided. In the event that only objective criteria (economic or automatic) have been foreseen, only 2 envelopes will be required.

- **Envelope A: Administrative Documentation**

This envelope will contain the European Single Procurement Document (ESPD) and the declarations indicated in these specifications.

If the tender is divided into different lots with different solvency, a ESPD must be submitted for each of the lots in which it participates.

- **Envelope B: Technical Documentation and Criteria for Value Judgement**

This envelope will include the technical proposal that must contain the documentation and information established in these specifications.

- **Envelope C: Economic proposal and automatically assessable criteria**

This envelope will include the economic proposal and the information to assess the objective criteria.



16.1. Documentation to be submitted:

ENVELOPE A: ADMINISTRATIVE DOCUMENTATION.

The documentation of envelope number A must be presented in the manner indicated below.

1. **Index (Model 1)** of the documents included in the envelope, stated numerically
2. **Complementary data** signed by the bidder (**Form 2**).
In accordance with article 140.1 section A) of the LCSP, this document will state by the bidders, the email address that is designated for the purposes of all notifications by the contracting entity in the procedures governed by these specifications. The notifications made will be understood to be valid and comply with the provisions of the Law.
3. **Declaration of confidentiality** signed by the bidder (**Form 3**), stating whether or not the documents presented in the envelopes are confidential. In any case, the aforementioned declaration must comply with the conditions established in clause forty-four of this PCAP.
4. **Commitment**, where appropriate, to formally constitute a **temporary joint venture** if they are awarded the contract, indicating those circumstances required in clause twelve of these specifications, according to **Model 4**.
5. **Single European Procurement Document (ESPD)**, according to the **ESPD File**.

Laboratori de Referència de Catalunya will accept as preliminary proof of compliance with the legally established conditions for contracting with the public sector, as well as the capacity and solvency requirements established in these specifications, the Single European Procurement Document (hereinafter, ESPD), duly completed and updated.

Therefore, the tendering companies must submit the European Single Procurement Document (ESPD) by means of which they declare their capacity and economic, financial and technical solvency, in accordance with the minimum requirements demanded in these specifications; that they are not subject to any prohibition on contracting or, if they are, that they have adopted measures to demonstrate their reliability in the cases that are legally appropriate; and that they are up to date with compliance with tax and Social Security obligations, as well as that they comply with the rest of the requirements established in these specifications.

For the presentation of the ESPD, **bidders must use the online service of the Ministry of Finance (<https://visor.registrodelicitadores.gob.es/espd-web/filter?lang=es>) through which the file attached to these specifications of particular administrative clauses can be imported in xml format**, (ESP file) which must **be completed and downloaded** for presentation.

To complete the ESPD form, you must take into account:



In Part II: "Information on the economic operator", in addition to all the required information, it is necessary to report, if any, the lot(s) for which the economic operator wishes to submit a bid ("Lots").

If the tenderer satisfies Section A: "Global indication of all selection criteria" of Part IV A: "Selection criteria" of the form, the Contracting Committee will consider that it meets the economic, financial and technical solvency required in these specifications.

The ESPD must be signed by the tendering company or, where appropriate, by its legal representative.

In addition, the tendering companies shall indicate in the ESPD, where appropriate, the information relating to the person or persons authorised to represent them in this tender.

In the case of companies that participate in the tender jointly, each one must prove its personality, capacity and solvency, and submit a separate ESPD containing, where appropriate, the information required in parts II to V of the form. In addition to the ESPD, these companies must provide a document stating the commitment to formally constitute a temporary union in the event of being awarded.

In the event that the tendering company resorts to the capacities of other companies to prove economic and/or technical solvency, in accordance with the provisions of articles 75 of the LCSP, or intends to subcontract, it must indicate this circumstance in the ESPD and submit another separate ESPD for each of the companies whose capacity it uses or intends to subcontract. duly signed.

Tendering undertakings that are included in an official list of authorised economic operators need only provide in each part of the ESPD form the information not included in these lists. Thus, companies registered in the Electronic Register of Tendering Companies (RELI) of the Government of Catalonia, or in the Official Register of Bidders and Classified Companies of the State (ROLECE), will indicate in the corresponding section of the ESPD that the information is in the corresponding Register. They are only obliged to indicate information that is not registered in these registers, or that is not current or updated. In any case, these companies must indicate in the ESPD the necessary information that allows the contracting authority, where appropriate, to access the corresponding supporting documents or certificates.

At the request from Laboratori de Referència de Catalunya, which may occur at any time during the processing of the tender procedure, bidders must provide documentation accrediting their ability to contract (capacity and solvency) within a maximum period of five calendar days from the day following receipt of the request. Likewise, the bidder who submits the best value for money offer must provide this documentation in any case before the award of the contract when required for this purpose and within the period indicated. However, the tendering company that is registered in the RELI or in the ROLECE or in an official list of economic operators of a Member State of the European Union with free access, is not obliged to submit supporting documents or other documentary evidence of the data entered in these registers.



Failure to provide this documentation within the indicated period or when the documentation provided does not prove that the tenderer complies with all the capacity and solvency requirements will be grounds for exclusion from this procurement procedure, with seizure of the provisional guarantee provided, where appropriate.

In the case of companies that participate in the tender jointly through unions or groups of companies that are temporarily constituted for this purpose, each of its components will prove its capacity, personality, representation and solvency in accordance with the provisions of these specifications, and submit a separate ESPD.

In the event that a tenderer does not submit the ESPD, the contracting authority will require it to be provided within a maximum period of 3 working days. If the tenderer does not provide the ESPD/Declaration of Responsibility within the period granted for this purpose, its bid will be excluded from the tender.

6. **Responsible declaration by the bidder stating that the circumstances reflected in the RELI certificate have not changed** in the event that the bidder proves the capacity and solvency requirements through this means **(Form 5)**.
7. **Commitment** to subscribe, prior to signing the contract, the Civil Liability Policy indicated in these specifications, if applicable **(Form 6)**.
8. **Certificate**, if applicable, as you have visited the centre if this is indicated in the **table of specific characteristics (Form 7)**.
9. A statement indicating whether the tenderer intends to subcontract the servers or the services associated with them and, if so, to indicate the name or business profile of the subcontractor(s), which must be defined by reference to the conditions of professional or technical solvency; If the memorandum justifying the contract indicates that the contract requires the processing of personal data.
10. Responsible declaration by the bidder stating that it has implemented technical policies aimed at protecting the rights and freedoms of the interested parties and that it has security measures in place on all the company's equipment, servers and resources to avoid risks of personal information leakage **(Model 10)**, in the event that the contract requires the processing of personal data.

Foreign companies must also provide a declaration of submission to the jurisdiction of the Spanish Courts, expressly waiving any jurisdiction that may correspond to them, for any matter related to the contract for which they are tendered.

Other documents that the company deems appropriate to present for a greater knowledge of its activities.



These documents listed in envelope A shall be submitted as preliminary evidence of compliance with the conditions established by law for contracting with the public sector, as well as the capacity and solvency requirements established in these specifications and table of specific characteristics.

In this regard, at the request of Laboratori de Referència de Catalunya in the terms established in these specifications and, in any case, the bidder proposed as the successful bidder, must provide the following documentation:

A.- Documentation accrediting the personality and capacity of the bidder

I.- For individuals (individual entrepreneurs and professionals), it will be mandatory to present the national identity document (DNI), or document that replaces it, and the tax identification number (NIF), in case this does not appear in the aforementioned DNI.

II.- For legal persons, it will be mandatory to present the NIF and the deed of incorporation or modification, where appropriate, duly registered in the Mercantile Registry, when this is required in accordance with the commercial legislation that is applicable to them. When this registration is not required, accreditation will be carried out by providing the deed or document of incorporation, modification, statutes or founding act, which includes the rules governing the activity of the company, registered, where appropriate, in the corresponding Official Register.

III.- Documents that prove the power of attorney if the entrepreneur acts through representatives or is a legal person:

a.) Public document of power of attorney, duly registered in the corresponding Public Registry, with a declaration of its validity.

b.) DNI and NIF of the representative and the signatory of the economic proposal.

B.- Documentation accrediting economic, financial and technical solvency

Economic, financial, technical and professional solvency will be accredited by providing the documentation indicated in the summary table of characteristics.

C.- Other documentation relating to the justification of the responsible declarations indicated in the ESPD and, in particular, the following:

- In the case of companies with more than 50 workers, which comply with the obligation to have a number of workers with a disability of no less than 2%, in accordance with the provisions of Article 42 of Royal Legislative Decree 1/2013, of 29 November.

Failure to accredit these aspects will lead to the exclusion of the bidder.

ENVELOPE B: TECHNICAL DOCUMENTATION AND CRITERIA SUSCEPTIBLE TO VALUE JUDGMENT



This envelope must contain all the documentation accrediting the technical references for the weighting of the award criteria that can be evaluated on the basis of value judgments, indicated in the following section:

1. Declaration of the documentation provided in envelope B **(Form 8)**
2. Declaration of lots, if indicated in the **table of specific characteristics**, submitted by the tenderer
3. The technical documentation that, specifically for this procedure, is requested from the Technical Specifications.
4. The information that proves compliance with the minimum requirements required in the technical specifications.

Bidders may complete their proposal with other complementary elements that, due to their special characteristics, they consider useful for Laboratori de Referència de Catalunya, indicating the detailed characteristics.

Tenderers must provide in this envelope B only the documentation referred to in the previous sections, as well as the documentation that must be the subject of a value judgement and which are those that refer to the award criteria established in the **table of specific characteristics**.

ENVELOPE C: ECONOMIC PROPOSAL AND CRITERIA THAT CAN BE EVALUATED AUTOMATICALLY, MUST INCLUDE:

1. **The economic offer** submitted by the company, according to **Model 9 and the Annex on OE (if applicable), duly signed.**

The price offered will include all types of expenses, taxes or necessary fees that arise due to the contract and its execution, as well as all those elements identified in the contract, technical specifications and all the documentation attached to this document, as well as the rest of the costs and expenses listed in the contract.

In accordance with the fifth clause of these specifications, the amount offered may not exceed the tender budget.

When Annex OE **is annexed to the specifications**, it will be mandatory to complete and submit the economic offer by means of the Economic Annex.

2. Presentation of the objective criteria quantifiable through formulas, where appropriate.
3. Bidders must submit the proposal, as established in the **table of characteristics and in the technical specifications**.



Tenderers must provide documentation relating to the rest of the award criteria that are automatically quantifiable and which are those that appear in the **table of specific characteristics**.

16.2. Contents of the envelopes:

It should be borne in mind that the personal data of the tendering companies, obtained by the contracting entity in this procurement procedure, will be processed by the unit responsible for the processing activity for the purpose or purposes identified in **Annex 2** of these specifications, relating to the Basic Information on the Protection of Personal Data of the Bidders.

Likewise, it should be remembered that in the event that companies have to communicate personal data on the occasion of participation in this tender, both to incorporate them in their bids, and to prove compliance with the requirements prior to the award, they must comply with the obligation to have the prior informed consent of the affected persons, in accordance with the provisions of Articles 6 and 11 of Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights.

SEVENTEENTH.- PRESENTATION OF SAMPLES

The need to submit samples shall be indicated in the **table of specific characteristics and in the Technical Specifications**.

In the event that samples are to be presented, they must be presented at the place indicated in the **table of specific characteristics**.

The samples requested must be clearly identified with the offer proposed by the tenderer, indicating, in any case, the code of the article of the file and the name of the company providing the sample and the number. of file.

Samples will not be returned to bidders, unless the cost of the materials is believed to be high enough to be returned to the bidder.

Laboratori de Referència de Catalunya reserves the right to visit the bidders' industrial facilities before the award and, especially, during the period of validity of the contract in order to inspect compliance with the conditions of the bid.

EIGHTEENTH.- NON-ADMISSION OF THE PROPOSITIONS.

Bids will not be accepted:

- Those filed simultaneously by the same company or by an individual entrepreneur.
- Those submitted in a temporary union with other companies when one or more of the companies that make it up have also submitted a joint proposal that is part of another temporary union.
- Presentation of different proposals by related companies in which one exercises effective



control over the other, as it has a large majority in the participation of its capital. However, if the link occurs before the end of the deadline for submission of bids, the offer determined by mutual agreement of the aforementioned companies may be replaced. Related companies will be considered those that are in any of the cases of article 42 of the Commercial Code.

- Those that are not signed by the corresponding representative(s), and have not been amended within the corresponding period.

NINETEENTH.- COMPETENT BODIES FOR THE PROCESSING OF THE PROCEDURE

A) CONTRACTING TABLE

In accordance with the provisions of Article 326 of the LCSP, the contracting authority will be assisted by the Contracting Committee, which will be the competent body for the evaluation of bids.

The functions of the Contracting Committee will exercise the following functions:

- a) The qualification of the documentation accrediting compliance with the prerequisites referred to in Articles 140 and 141 LCSP, and, where appropriate, agreeing to the exclusion of candidates or tenderers who do not prove this compliance, following the amendment procedure.
- b) The evaluation of the bidders' proposals.
- c) Where appropriate, the proposal on the classification of a bid as abnormally low, after processing the procedure referred to in article 149 LCSP.
- d) The proposal to the contracting authority for the award of the contract in favour of the tenderer that has submitted the best offer, in accordance with the provisions of article 145 LCSP, as appropriate in accordance with the specifications of particular administrative clauses governing the tender.

The procedure will be processed by the Contracting Committee appointed by the contracting authority and will be made up of the members specified in the **table of specific characteristics**.

The Contracting Committee in charge of proposing the award of the contract to the contracting authority may be assisted by a technical team, which, as an auxiliary body of the committee, may carry out the tasks requested by the committee for the technical analysis of the proposals.

B) COMMITTEE OF EXPERTS

In the event that article 146.2 of the LCSP is applicable, in which the evaluation of bids depends mostly on value judgments over automatic evaluation criteria, the evaluation will correspond to a committee of experts that may be made up of at least 3 people, who may belong to the services dependent on the Contracting Authority, but in no case may they be attached to the body proposing the contract. All members of the committee must have the appropriate professional qualifications for the subject matter of the assessment.

In the case of local authorities, the Committee of Experts may be made up of any career or permanent civil servant with the appropriate qualifications and who have not participated in the drafting of the

technical documentation of the contract, and, in any case, this staff must include a legal technician specialising in public procurement.

The procedure for the assessment of those offered by a committee of experts will be that indicated in articles 25 to 30 of RD 817/2009, of 8 May, which partially implements Law 30/2007, of 30 October, on Public Sector Contracts.

TWENTIETH.- PROVISIONAL GUARANTEE

In general, the constitution of a provisional guarantee will NOT be a necessary requirement to participate in the tender. In the event that the contracting authority has not waived the provision of the provisional guarantee, it will be stated in the **table of specific characteristics** and, in this case, the tenderers must provide the provisional guarantee for an amount equivalent to 3% of the contract budget that appears in the **table of specific characteristics**. The provisional guarantee may be constituted in accordance with any of the means established in article 108 of the LCSP and articles 55 to 58 of RD 1098/2001, in favour of Laboratori de Referència de Catalunya.

In the case of division of the contract into lots, the provisional guarantee will be set exclusively on the basis of the amount of the lots in which the tenderer is presented.

The provisional guarantee is automatically extinguished and must be returned to the tenderers immediately after the conclusion of the contract. In any case, the provisional guarantee must be withheld from the successful bidder until the definitive guarantee is constituted, and confiscated from companies that unjustifiably withdraw their proposal before the award.

TWENTY-FIRST.- OPENING OF ADMINISTRATIVE DOCUMENTATION

Once the deadline for submission of proposals has expired, the Contracting Committee will proceed in a private session to qualify the documentation submitted by the bidders in envelope "A".

In the procurement procedure with electronic processing, as bids have been submitted through the Digital Envelope web tool, the documentation of envelope A can be accessed, 24 hours after the deadline for submission of bids has ended and once the people who allow the opening of the envelopes (called custodians) have applied, with the minimum quorum and in the interval of terms that have been previously defined, their credentials.

In the event that there are bidders whose documentation has been submitted with defects or omissions considered to be amendable, the interested parties will be notified, for the purposes of amendment, within a maximum period of 5 calendar days, if they do not do so, they will be definitively excluded from the procurement procedure.

Requests for clarifications or amendments will be carried out through the functionality of the Digital Envelope tool, through which an email will be sent to the address or addresses indicated by the bidding



companies in the registration form, with the link to access the space of the tool where they must provide the corresponding documentation. These requests for amendment or clarification will be communicated to the company by electronic communication through the e-NOTUM, integrated with the Public Procurement Services Platform, in accordance with clause nine of these specifications.

Defects consisting of the lack of the required requirements will be considered non-amendable, and those that refer to the mere lack of accreditation of the same will be considered amendable. Those bidders who have unamendable defects or have not corrected the defects within the period granted will be denied admission and excluded from the bidding procedure.

Once the period granted for the amendment has elapsed, and in any case before the opening session of the proposals, the Bureau will determine the companies admitted, excluded and the reason for their exclusion.

TWENTY-SECOND.- OPENING OF PROPOSALS FOR ECONOMIC AND TECHNICAL CONDITIONS

If a single award criterion or several award criteria have been established that all respond to the same type of valuation, i.e. all of them subject to value judgement or all of them automatically quantifiable, on the day, place and time indicated in the tender notice, the C envelopes submitted by the admitted companies will be opened.

If award criteria have been established that can be evaluated on the basis of a value judgement together with automatically quantifiable criteria, the day, place and time indicated in the tender notice will be opened on the day, place and time indicated in the tender notice.

In any case, the number of openings will be specified in the **table of specific characteristics**.

Within a period of no more than 7 calendar days from the opening of the administrative documentation of envelope A, the Contracting Committee will proceed to open the **proposals submitted by the bidders in envelope B (technical documentation and criteria susceptible to value judgment)**, at the address of the contracting entity. Unless otherwise indicated in the **table of specific characteristics**, the opening of envelope B will not be public, in accordance with article 157.4 of Law 9/2017, of 8 November, on Public Sector Contracts, which refers to the public act only for the economic offer, unless it is foreseen that electronic means may be used in the tender.

The opening of bids must be done within a maximum period of twenty days from the date of the end of the deadline for submitting bids. In the event that there is more than one envelope or electronic file, the 20-day period will be understood to have been fulfilled when the first of the envelopes or electronic files has been opened.

Before the opening of the first proposal, the attending bidders will be invited to express the doubts that are presented to them or ask for the explanations they deem necessary, and the Contracting Committee will proceed to the appropriate clarifications and responses, but at this time the Committee will not be able to

take charge of documents that have not been delivered during the period for the admission of bids, or the correction or amendment of defects or omissions.

Documentary evidence shall be recorded, in the minutes drawn up, of all the actions carried out.

Proposals corresponding to bidders excluded from the tender shall be excluded from the award procedure and the envelopes containing them shall not be opened.

Once the envelopes have been opened, the bidding companies may register with the Bureau all the observations they deem necessary, which must be reflected in the minutes.

Subsequently, **the proposals submitted by the bidders will be opened in envelope C** (criteria that can be evaluated automatically), at the address of the contracting entity, on the **date and time specified in the table of specific characteristics, disclosing the information regarding the result of the opening of envelope number B** and shall submit them to the Contracting Authority together with the minutes and the observations that have been made. Unless otherwise indicated in the **table of specific characteristics**, the opening of envelope C will not be public, in accordance with article 157.4 of Law 9/2017, of 8 November, on Public Sector Contracts, which refers to the public act only for the economic offer, unless it is provided that electronic means may be used in the tender.

The proposals contained in envelope C will be studied, evaluated and weighed, in accordance with the automatically assessable award criteria indicated in these Specifications.

The Contracting Committee may request and admit the clarification or correction of errors in the bids when they are of a material or formal nature, not substantial and do not prevent knowing the meaning of the bid. The clarification or amendment of errors in tenders will only be permitted provided that they do not entail a modification or specification of the tender, in order to guarantee the principle of equal treatment between tendering companies.

Companies whose proposals do not agree with the documentation examined and admitted, those that exceed the base tender budget or the unit prices offered (if any), substantially modify the proposal models established in these specifications, or those that have omissions, involve a manifest error in the amount of the proposal or that prevent a clear knowledge of the fundamental content for the purpose of the tender, will be excluded from the tender, by means of a reasoned resolution. the evaluation of the bid, and those in which the bidding company recognizes the existence of error or inconsistency that makes it unviable.

The existence of errors in the economic proposals of the tendering companies will imply the exclusion of them from the procurement procedure, when the principle of equality may be affected, in cases of errors that prevent the determination of the price actually offered by the companies and, therefore, prevent the evaluation of the bids from being carried out.

The Bureau may request the technical reports it deems necessary before formulating its award proposal. It may also request these reports when it deems it necessary to verify that the bids comply with the technical specifications of the specifications. Proposals that do not comply with these requirements will not be subject to evaluation.



It may also request reports from the social organisations of users who are the recipients of the service, from organisations representing the field of activity to which the subject matter of the contract corresponds, from trade union organisations, from organisations that defend gender equality and from other organisations in order to verify social and environmental considerations.

Taking into account the above, the Contracting Committee, with the evaluations made and the reports it deems appropriate to request, will classify the proposals submitted by the bidders, in descending order, according to the evaluation criteria established in these specifications, and will proceed to make the award proposal or, where appropriate, to propose to leave the tender void when there is no offer that is admissible in accordance with the criteria of adjudication determined therein. the present specifications.

TWENTY-THIRD.- AWARD AND TIE-BREAKING CRITERIA

A) AWARD CRITERIA

The criteria to be applied for the formulation of the proposal for the award of the contract will be those set out in the **table of specific characteristics**.

In compliance with the provisions of article 149 of the LCSP, and unless otherwise established in the **table of specific characteristics**, all those economic offers that are less than 80% with respect to the average of all the offers submitted will be considered to be offers with abnormal or disproportionate values. In the event that a single bidder competes, an offer with abnormal or disproportionate values will be considered to be an economic offer that is less than 80% of the base tender budget.

Likewise, when a proposal is identified that may be disproportionate or abnormal, the procedure provided for in article 149.4 of the LCSP will be followed.

For this reason, the Contracting Committee will initiate an adversarial procedure, provided for in article 149.4 of the LCSP in order to assess whether, indeed, the offer or proposal is viable and will allow a correct execution of the contract under the agreed terms and, consequently, admit and evaluate them, in accordance with the evaluation criteria established in the specifications of particular administrative clauses and/or in the **table of specific characteristics**.

In compliance with the above, it will be agreed to open the hearing procedure established in article 149.4, 5 and 6 of the LCSP and 84 RJPAC, for the justification of the offer and precision of the conditions thereof, in particular, with regard to the savings allowed by the procedure for the execution of the contract. the technical solutions adopted, the exceptionally favourable conditions available to them to perform the service, and, in general, the different options provided for in article 149.4 3rd paragraph of the LCSP.

The period that will be granted to the bidder to motivate the possibility of compliance will be 3 working days from the communication to the bidder. After this period, if the Contracting Committee does not receive the justifications, it will inform the contracting authority and it will be considered that the proposal cannot be fulfilled and, therefore, the tendering company will be excluded from the selection procedure.



In any case, the contracting authority will reject bids that it finds to be abnormally low because they violate subcontracting regulations or because they do not comply with applicable environmental, social or labour obligations, national or international, including non-compliance with the sectoral collective agreements in force.

If, on the other hand, the justifications are received within the aforementioned period, the Contracting Committee will submit the corresponding documentation to the contracting authority so that it can decide either to accept the tender, so that it can be taken into account for all purposes in order to resolve the award, or to reject the tender.

Once the justifications have been accepted, where appropriate, by the contracting authority, the bids of all the admitted bidding companies will be evaluated, in accordance with the initial criteria established to determine the best value for money offer.

B) TIEBREAKER CRITERIA

In accordance with article 147.2 of the LCSP, in the event of equality in the bids of the bidding companies, the additional award criteria will be as follows, following the order of priority provided below:

- 1) Companies that have a higher percentage of workers with disabilities or in a situation of social exclusion in their workforce, prioritizing, in the event of equality, the largest number of permanent workers with disabilities in the workforce, or the largest number of workers in inclusion in the workforce.
- 2) Companies that have the lowest percentage of temporary contracts in the workforce.
- 3) Companies that have the highest percentage of women employed in the workforce.
- 4) By lottery, in the event that the application of the above criteria has not led to the tie-breaker.

TWENTY-FOURTH.- DETERMINATION OF THE BEST OFFER FOR MONEY AND REQUIREMENT OF DOCUMENTATION.

The Contracting Committee will classify, in descending order, the proposals admitted and that have not been declared disproportionate or abnormal according to article 149 of the LCSP. To carry out this classification, the award criteria indicated in **the table of specific characteristics** or the announcement will be taken into account, and as many technical reports as may be appropriate may be requested. When the only criterion to be considered is price, it will be understood that the best value for money offer is the one that incorporates the lowest price.

In the event that the Contracting Committee or Contracting Authority has substantiated indications of collusive conduct in the procedure, in the sense defined in Article 1 of Law 15/2007, of 3 July. Prior to the award of the contract, the Ministry of Competition will transfer it to the National Commission on Markets and Competition or to the Catalan Competition Authority so that it can rule on it through a summary procedure. The submission of these indications will have suspensive effects on the procedure. The procedure referred to in this paragraph shall be regulated by regulation.



By virtue of article 150.2 of the LCSP, the contracting authority will require the company that has submitted the best offer for value for money to provide, within a period of **ten working days** from the day following the day in which it received the request, the certificates and documentation justifying the circumstances referred to in clause sixteen. corresponding to the documents indicated in article 140 of the LCSP, to effectively have the means to which it has undertaken to dedicate or to assign to the execution of the contract in accordance with article 76.2 of the LCSP as well as to have constituted the appropriate definitive guarantee.

Likewise, with respect to those contracts that require the contractor to process personal data on behalf of the data controller, the successful bidder, in application of Decree-Law 14/2019, of 31 October, adopting urgent measures for reasons of public security in the field of digital administration, public sector procurement and telecommunications, Before the formalisation of the contract – together with the documentation to be submitted as a future contractor – the successful bidder must submit a declaration showing where the servers will be located and from where the services associated with them will be provided (according to **Annex 1** of these specifications).

If the ten working days have elapsed without the bidder providing said documentation in the previous paragraphs, it will be understood that the bidder has withdrawn its bid, proceeding to demand the amount of 3% of the base tender budget, excluding VAT, as a penalty, which will be paid in the first place against the provisional guarantee, if it has been constituted.

In this case, the same documentation will be requested from the next tenderer, in the order in which the bids have been classified.

TWENTY-FIFTH.-AWARD

The Contracting Authority must award the contract within **five working days following** receipt of the documentation required based on Article 150.2 of the LCSP. In the event that it is a file with a diversity of successful bidders, this calculation will be made from the receipt, within the deadline, of the last documentation received.

The award must be reasoned and contain the points referred to in article 151.2 of the LCSP.

The award resolution or the declaration of the void procedure will be notified to each of the bidders and published in the contractor's profile, within 15 days.

The same procedure may be applied when the purpose of the award is to continue the execution of the contract that has been declared terminated, once it has begun.

TWENTY-SIXTH.- RESIGNATION OR WITHDRAWAL



The Contracting Authority may, for duly justified reasons of public interest and with the corresponding notification to the tendering companies, renounce to sign the contract before its formalisation. It may also withdraw, before formalisation, when an unremediable infringement of the rules for the preparation of the contract or those governing the award procedure is found, in accordance with the provisions of article 152 of the LCSP.

In both cases, the tendering companies will be compensated for the expenses they have incurred. This compensation will be made according to the actual expenses incurred by the companies, after accreditation of the same and with the analysis of the contracting entity.

The decision not to award or sign the contract and the withdrawal from the award procedure will be published in the contractor's profile.

TWENTY-SEVENTH.-DECLARATION OF THE PROCEEDING VOID

The contracting authority may declare the procedure void, with reasons, when the contract is not awarded due to a lack of bidders or because those submitted have not been admitted to tender or the bids are not adequate. In this case, and in accordance with the provisions of article 167 e) of the LCSP, the contracting authority may award the contract by means of a negotiated procedure without publicity, provided that the original conditions of the contract are not substantially modified.

TWENTY-EIGHTH.- DEFINITIVE GUARANTEE.

The successful bidder will be obliged to provide a definitive guarantee in the amount of 5% of the contract price, excluding VAT.

However, in the special cases defined in article 107.2, second paragraph of the LCSP of the public sector, a complementary guarantee of an additional 5% may be presented, thus reaching 10% of the contract price, excluding VAT.

In this sense, the **table of specific characteristics** will indicate the % of the definitive guarantee.

The definitive guarantee may be constituted by means of a guarantee or surety insurance contract, or by means of a retention in the price or cash, at the request of the successful bidder.

In cases where the provision of a provisional guarantee has been required, the best-ranked company may apply the amount of the provisional guarantee to the definitive guarantee or proceed to a new constitution of the latter.

The successful bidder will have a period of 10 working days from the day following the day on which it received the request for the constitution of the definitive guarantee. Failure to comply with this deadline will result in the award in its favour.



The definitive guarantee will be responsible for the exact compliance by the successful bidder with the obligations assumed when contracting. The definitive guarantee responds to the concepts defined in article 110 of the LCSP.

In the event that, as a result of the modification of the contract, for any reason, the price of the contract experiences an upward or downward variation, the guarantee constituted will be readjusted by the amount necessary to maintain the due proportionality between the guarantee and the price of the contract in force at any given time.

The guarantee shall be liable for the imposition of penalties; for all debts arising from the established service; for the correct execution of the contract and/or its eventual termination; for the reimbursement of the amounts that, if any, have been paid in excess to the contractor; for compensation for damages arising from the breach of its obligations, including those that may be claimed by third parties, and particularly, by the contracting entity in accordance with the terms that regulate the contract; and in general, the fulfillment of all the obligations of the contractor.

In any of the cases provided, Laboratori de Referència de Catalunya may execute the deposit constituted by its exclusive determination, and dispose of the amount corresponding to these breaches. All this without prejudice to the actions, claims or resources that it deems appropriate, which will not suspend in any case the free availability of the deposit. The only obligation of Laboratori de Referència de Catalunya will be to reimburse the contractor in due course the amounts drawn, if applicable, plus the legal interest counted from the date of disposal.

TWENTY-NINE.- FORMALIZATION OF THE CONTRACT

Contracts arising from the procurement procedures governed by these Specifications, if they are contracts subject to special appeal in procurement matters in accordance with article 44 of the LCSP, may not be formalised before 15 working days have elapsed since the bidders and candidates are notified of the award, through the means established in clause nine of the PCAP. Once this period has elapsed, provided that no appeal has been filed that entails the suspension of the formalisation of the contract, or in any case, once the lifting of the suspension has been agreed, the contracting authority will require the successful bidder to formalise the contract within a period of no more than 5 days.

If the contract is not formalised within the period indicated in the previous section for reasons attributable to the successful tenderer, the amount of 3 per cent of the base tender budget, excluding VAT, will be required as a penalty, which will be paid first against the definitive guarantee, if it has been constituted. In addition, this fact may lead to declaring the company prohibited from contracting, in accordance with article 71.2 b of the LCSP.

If the contract is not formalised within the indicated period for reasons attributable to the contracting entity, the successful tenderer must be compensated for the damages that the delay may cause.



In all other cases, when no special appeal can be lodged in procurement matters, the formalisation must be carried out within a maximum period of fifteen working days from the receipt of the notification of the award.

The content of the contract will be in accordance with the content provided for in article 35 of the LCSP and 71 of the RGLCAP.

The formalisation of the contract may be carried out in a public deed when requested by the successful bidder, with the costs incurred being borne by the successful bidder.

The companies that have competed with a joint tender offer must submit the public deed of incorporation of the temporary union stating the appointment of a representative or sole representative of the union with sufficient powers to exercise the rights and comply with the obligations arising from the contract until its termination.

The contract will be perfected with its formalisation, being essential to be able to start its execution.

THIRTIETH.- PUBLICITY OF THE FORMALIZATION OF THE CONTRACT

The formalisation of the contract will be announced in accordance with the provisions of Article 135 of the LCSP, in the contractor's profile and, if it is a harmonised procedure, in the Official Journal of the European Union (D.O.U.E.)

The amount of the announcements resulting from this tender will be borne by the successful bidder, up to the amount established **in the table of specific characteristics**. In the event that there are several successful bidders, the amount to be paid for each of them will be calculated according to the amount that has been awarded to them.

Once the contract has been formalised, the data relating to the basic characteristics of the awarded contract must be communicated to the Register of Contracts, in accordance with Article 346 of the LCSP, without prejudice to the obligation to subsequently communicate the data relating to modifications, extensions, variations in terms or prices, the final amount and the termination of the contract.

III.- PROVISIONS RELATING TO THE EXECUTION OF THE CONTRACT

THIRTY-FIRST.- SPECIAL CONDITIONS OF EXECUTION

The special conditions in relation to the execution, which must be complied with by the contractor company or companies, are those established in the **table of specific characteristics**.

The contractor's obligation to comply with national and European Union regulations on data protection is a special condition for execution, in accordance with the provisions of Royal Decree-Law 14/2019, of 31 October, adopting urgent measures for reasons of public security in the field of digital administration.



public sector contracting and telecommunications and will respect it in each and every one of its terms.

Finally, in the **table of specific characteristics**, it will be identified which of the special conditions of execution have the character of essential contractual obligations. Thus, the breach of an essential contractual obligation will lead to the termination of the contract.

In addition, in the case of contracts involving supplies for electronic goods in the field of information and communication technology (ICT), the following special conditions for the performance of the contract related to socially responsible procurement of electronic products apply:

The contractor company, whether it is a manufacturer or distributor of electronic products, will ensure compliance with labour rights and safety standards in the supply chains and in the factories where the goods subject to this contract are produced.

To this end, the contractor companies, manufacturers or distributors of electronic products, undertake to act with due diligence and accredit, where appropriate, reasonable and proportionate efforts, so that the factories producing the electronic goods subject to this contract comply with the provisions of the Basic Code of Labour Standards in the Production of Electronic Goods that appears as Annex No. 2 to Instruction 5/2020, so that the supply of the aforementioned goods is carried out through fair marketing conditions.

Likewise, the contracting companies of a contract for the supply of electronic products, whether manufacturers or distributors, are obliged to:

- Deliver to the person responsible for the contract designated by the contracting entity, within a maximum period of 25 working days from the formalisation of the contract, the Disclosure Form, duly completed, which is attached as Annex 3 to Instruction 5/2020, in which it will provide information on the factories responsible for the production of the goods (name and registered office) and on the products and components subject to the contract produced in each factory. The contractor must notify the contracting authority of any changes to the information included in the Disclosure Form.
- Communicate, where appropriate, in writing to the person responsible for the contract designated by the contracting entity those practices of the factories in charge of the production of the electronic goods subject to the contract that it considers may contribute to or cause non-compliance with the Basic Code of Labour Standards in the Production of Electronic Goods attached as Annex 2 to Instruction 5/2020, and to inform how the contractor (if it is a mere distributor) can exert its influence to manage these possible practices.

This clause applies to the following electronic products: desktop computers, laptops, workstations, tablets, and thin clients; screens and monitors; peripherals (mice, keyboards, control sticks, cables and headphones); scanners, printers, faxes, photocopiers and multifunction equipment; ICT products for companies (switches, routers, supercomputers, servers and storage systems); and smartphones and IP phones.

The monitoring and material control of the activities that must assess the degree of compliance with labour rights and safety standards in the production chains of the electronic goods subject to the contract will be carried out by the Directorate-General for Public Procurement of the Department of the Vice-Presidency and of the Economy and Finance of the Generalitat of Catalonia. This Directorate-General will have the external collaboration of an accredited entity, with qualified personnel with recognised experience in the inspection and evaluation of compliance with labour regulations in the production factories and assembly workshops of the electronic equipment subject to the contract, both nationally and internationally, whether or not they are from the countries of the European Union.

Electronic product contractor companies, whether distributors or manufacturers, will facilitate the identification of the original origin and the traceability of the production process and assembly of the components of the equipment as much as possible in order to make the survey work and random visits by said accredited external entity in the production centres viable. so that it can determine the greater or lesser degree of compliance with basic labor rights within the framework of the fundamental Conventions of the International Labor Organization.

THIRTY-SECOND. CONTRACT EXECUTION AND SUPERVISION

The contract shall be executed subject to the provisions of its clauses and specifications and in accordance with the instructions given to the contractor company or companies by the contracting authority.

THIRTY-THIRD.- WORK PROGRAM

The contractor or companies will be obliged to submit a work program for the delivery of the goods to be supplied when this is determined in the **table of specific characteristics**.

THIRTY-FOUR.- COMPLIANCE WITH DEADLINES AND CORRECT EXECUTION OF THE CONTRACT

The contractor company is obliged to comply with the partial or total execution period of the contract and to start the service as indicated in the **table of specific characteristics**.

In the event that the service includes supply services, the contractor company is not entitled to compensation caused by losses, breakdowns or damages caused to the goods before they are delivered, unless Laboratori de Referència de Catalunya has incurred in arrears when receiving them.

Laboratori de Referència de Catalunya will have the same power with respect to non-compliance, for reasons attributable to the contractor company, of the partial execution of the services defined in the contract.

If, on the arrival of the deadline, the contractor is in arrears in complying with the total term or partial deadlines for provision due to causes attributable to the contractor, Laboratori de Referència de Catalunya may opt indistinctly for the termination of the contract with the seizure of the definitive guarantee provided or for the imposition of a daily penalty. The penalty fees for delay with respect to the execution

deadlines established in these specifications or in the proposal of conditions of the successful bidder, will be, with regard to their amount, those provided for in articles 193 of the LCSP.

If the Laboratori de Referència de Catalunya opts for the imposition of penalties, the amounts of the same will be paid by deducting the amounts that, by way of total or partial payment, must be paid to the contractor company or on the guarantee that, where appropriate, it has been constituted, when they cannot be deducted from the aforementioned invoices. When they become effective on the guarantee, the contractor will be obliged to complete it within fifteen calendar days following the notification of the penalty.

The amount of the penalty does not exclude compensation for damages to which Laboratori de Referència de Catalunya may be entitled as a result of the delay of the contractor company.

If the delay is caused by reasons not attributable to the contractor company, the provisions of article 195.2 of the LCSP will apply.

In any case, the late constitution of the contractor company will not require prior interpellation or notice by Laboratori de Referència de Catalunya.

In the event of defective performance of the service that is the subject of the contract or of non-compliance with the commitments and the special conditions of performance, the imposition of the corresponding penalties may be agreed upon under the terms and conditions established in the **table of specific characteristics**.

THIRTY-FIFTH.- SANCTIONS AND PENALTIES FOR NON-COMPLIANCE

The contractor will be responsible for ensuring that the supply subject to the contract is provided at the time and place provided for in the technical specifications or in the orders received, being without fault in those cases in which the provision would not have been possible due to duly justified force majeure.

The successful bidder will be liable for all damages caused to Laboratori de Referència de Catalunya within the contractual process.

Failure to comply or defective compliance with the obligations arising from the contract will give rise to the imposition of the following sanctions:

The following are minor offences:

- Failure to partially perform the services defined in the contract that does not constitute serious misconduct.
- Failure to comply with formal requirements established in these specifications and in the applicable provisions for the execution of the contract, which does not constitute serious misconduct.

The following are serious offenses:



- Failure to comply with the deadline for the start of the execution of the services.
- Failure to partially perform the services defined in the contract that causes very serious damage.
- The total and absolute cessation of the execution of the services subject to this contract attributable to the contractor.
- Resistance to the requirements made by Laboratori de Referència de Catalunya, or their non-compliance, when it causes very serious damage to the execution of the contract.
- The falsification of the services recorded in the subcontracting of services and contractual assignments.
- Repeated commission of serious offences.
- The application in offers or invoices of unit prices higher than the maximum applicable prices of this contract.
- The refusal to supply the orders received by the logistics department of Laboratori de Referència de Catalunya under the applicable price conditions, during the term of the contract.

Sanctions:

Regardless of the compensation for damages, in the event of non-compliance that does not result in termination of the contract, Laboratori de Referència de Catalunya may apply the following sanctions, graduated according to the degree of damage, danger and/or repetition;

- Serious misconduct: discounts on the contract price of up to 10 per cent of the award amount.
- Minor offences: discounts on the contract price of up to 5 per cent of the award amount.

In the event that the total of the penalties exceeds 50% of the contract price, excluding VAT, the contracting entity may choose to terminate the contract for reasons attributable to the contractor, i.e. with seizure of the guarantee.

Offences related to Subcontracting:

- Infringement of the conditions established in Article 215, to proceed with subcontracting.
- The lack of accreditation of the subcontractor's aptitude or of the specific circumstances of the emergency situation or those that make subcontracting urgent.

For the commission of any of the offences related to subcontracting, the contracting authority may impose a penalty of 30% of the amount of the subcontract. However, in the event of 3 repeated faults in any of the aspects described in Article 215, the Contracting Authority will impose a penalty of 40% of the amount of the subcontract,

Prior to the imposition of penalties, the contractor will be heard so that he can make allegations, and the contracting authority will make a decision.

The amount of the penalties for delay and penalties may be made effective by deducting them from the invoices to be paid to the contractor or from the definitive guarantee provided by the contractor. When

they become effective on the guarantee, the contractor will be obliged to complete it within fifteen calendar days following the notification of the penalty.

In the event that the **table of specific characteristics** contemplates a different or complementary sanctioning regime or penalty, that will be the regime applicable in everything that does not contradict the content of this clause.

THIRTY-SIXTH.- QUALITY ANALYSIS

Laboratori de Referència de Catalunya may order the performance of quality control tests and analyses of the supply materials at the expense of the successful bidder up to 1% of the tender budget. The companies or laboratories to carry out this control will be designated by Laboratori de Referència de Catalunya, and the latter will deduct the amount of their fees up to the aforementioned percentage of the payments to be made to the supplier.

THIRTY-SEVENTH.- PERSON RESPONSIBLE FOR THE CONTRACT

A person responsible for the contract will be appointed, identified in the **table of specific characteristics**, who will exercise, in addition to the general functions of supervision of the execution of the contract, the specific functions that, according to the characteristics of each contractual object, are attributed to him in order to minimize the administrative and technical impact of incidents in the execution of the contract and in order to guarantee coordination between the different people. implied in the contract. Specifically, it will have the following functions:

- a) To supervise the contractor's compliance with all contractual obligations and conditions;
- b) To coordinate the different agents involved in the contract in the event that this specific function does not correspond to other people;
- c) To adopt the decisions and issue the necessary instructions for the correct performance of the agreed service;
- d) Report on the level of satisfaction with the execution of the contract.

Apart from all other information and reports that the person responsible for the contract considers appropriate, the latter will issue a final evaluation report of the procurement that will refer to different aspects of the execution of the contract, the adequacy of the design, the objectives envisaged with the procurement and the final results obtained, as well as the economic, budgetary and technical aspects.

THIRTY-EIGHTH.- RESOLUTION OF INCIDENTS

Any incidents that may arise between Laboratori de Referència de Catalunya and the contractor in the execution of the contract, due to differences in interpretation of what has been agreed or due to the need to modify the contractual conditions, will be processed by means of an adversarial file.

Unless reasons of public interest justify it or the nature of the incidents so requires, their processing will not result in the paralysis of the contract.

THIRTY-NINETH.- SUBSIDIARY ENFORCEMENT

Subsidiary execution will be carried out by the contracting authority when the contractor fails to comply with obligations that, because they are not of a very personal nature, can be carried out by a different subject.

In this case, Laboratori de Referència de Catalunya may carry out the unfulfilled obligations by itself, or through persons it determines, and at the expense of the contractor.

IV. PROVISIONS RELATING TO THE RIGHTS AND OBLIGATIONS OF THE PARTIES

FORTY.- LIABILITY OF THE CONTRACTOR COMPANY

The contractor company is responsible for the technical quality of the services and supplies provided, as well as for the consequences that may be deduced for the contracting entity or for third parties from omissions, errors, inadequate methods or incorrect conclusions in the execution of the contract. The contractor company executes the contract at its own risk and is obliged to compensate for damages caused to third parties as a result of the operations required for the execution of the contract, except in the event that the damages are caused as an immediate and direct consequence of an order from the contracting entity.

The contractor company shall also be obligated:

a) The contractor company is obliged to comply with the provisions in force on labour, social security and occupational health and safety. It is also obliged to comply with the provisions in force on the social integration of people with disabilities, fiscal and environmental.

b) The contractor company is obliged to apply the measures aimed at promoting equality between men and women when executing the services of the supply.

c) The contractor company must use Catalan in its relations with the contracting entity of the Generalitat arising from the execution of the object of this contract.

Likewise, the contractor company and, where appropriate, the subcontractor companies must use, at least, Catalan in the signs, publications, notices and other communications of a general nature that derive from the execution of the services subject to the contract.

In particular, the contractor company must use, at least, the Catalan language in the labelling, packaging, technical documentation, instruction manuals and in the description of other unique characteristics of



the goods and products, in accordance with what is determined in the technical specifications. Therefore, together with the delivery of the goods subject to this contract, the contractor company must deliver the corresponding manuals, as well as all the technical documentation necessary for it to work, at least in Catalan.

In any case, the contractor company and, where appropriate, the subcontractor companies, are subject to the obligations arising from Law 1/1998, of 7 January, on language policy and the provisions that develop it, in the execution of the contract. In the territorial area of the Vall d'Aran, contractor companies and, where appropriate, subcontractor companies must use blueberries in accordance with Law 35/2010, of 1 October, on Occitan, Aranese in Aran, and with the regulations of the General Council of Aran that develops it.

d) The contractor company is obliged in the execution of the contract to comply with the applicable obligations in environmental, social or labour matters established by European Union law, national law, collective agreements or the provisions of international environmental, social and labour law that bind the State, and in particular those established in Annex V of the LCSP.

e) The contractor company undertakes to comply with the obligations regarding the protection of personal data established in clause forty-five of this PCAP

f) The contractor company, unless otherwise agreed, is obliged to bear the costs of delivery and transport of the goods subject to the supply to the agreed place.

g) In the case of lease contracts, the contractor company has the obligation to assume the maintenance of the object of the contract during its term of validity.

FORTY-FIRST.- ETHICS CLAUSE

1. Senior officials, management staff, command positions, administrative positions and staff at the service of Laboratori de Referència de Catalunya, who intervene, directly or indirectly, in the public procurement procedure are subject to the Code of Principles and Recommended Conduct in Public Procurement and its provisions shall be applied transversally to any action that is part of any phase of the agreement procurement procedure with the degree of intervention and responsibility in contractual procedures.

The submission of the tender by the tenderers shall imply their adherence to the Code of Principles and Recommended Conduct in Public Procurement in accordance with the ethical and integrity commitments that are part of the contractual relationship.

2.1 Bidders, contractors and subcontractors assume the following obligations:

a) To observe the principles, rules and ethical canons of the activities, trades and/or professions corresponding to the services that are the subject of the contracts.

b) Not to carry out actions that put the public interest at risk in the scope of the contract or the services to be tendered.



c) To report irregular situations that may arise in public procurement processes or during the execution of contracts.

d) Refrain from conduct that has the purpose or may have the effect of preventing, restricting or distorting competition, such as collusive behaviour or fraudulent competition (receipt offers, elimination of offers, allocation of markets, rotation of offers, etc.).

e) At the time of submitting the bid, the bidder must declare whether it has any situation of possible conflict of interest, for the purposes of the provisions of article 64 of the LCSP, or a relationship equivalent to respect with parties interested in the project. If such a situation arises during the execution of the contract, the contractor or subcontractor is obliged to inform the contracting authority.

f) Respect confidentiality agreements and rules.

g) In addition, the contractor must collaborate with the contracting authority in the actions that it carries out for the monitoring and/or evaluation of compliance with the contract, particularly by providing the information that is requested for these purposes and that the transparency legislation and the regulations on public sector contracts impose on contractors in relation to the contracting entity or administrations of reference, without prejudice to compliance with the transparency obligations that correspond directly to them by legal provision.

2.2 Bidders, contractors and subcontractors, or their subsidiaries or related companies, undertake to strictly comply with tax, labour and social security legislation and, specifically, not to carry out financial transactions contrary to tax regulations in countries that do not have rules on capital controls and are considered tax havens by the European Union.

2.3 All these obligations and commitments are considered to be special conditions for the performance of the contract.

2.4. The consequences or penalties for non-compliance with this clause will be as follows:

- In the event of non-compliance with sections a), b), c), f) and g) of section 2.1, a minimum penalty of 0.60 euros per 1000 euros of the contract price is established, excluding VAT, which may be increased justifiably and proportionally depending on the seriousness of the facts. The seriousness of the facts will be determined by the damage caused to the public interest, the repetition of the facts or the obtaining of a benefit derived from the non-compliance. In any case, the amount of each of the penalties may not exceed 10% of the contract price, excluding VAT, nor may its total exceed 50% of the contract price in any case.

- In the event of non-compliance with the provisions of paragraph 2.1(d), the contracting authority shall inform the competent competition authorities of the facts.

- In the event of non-compliance with the provisions of letter e) of section 2.1, the contracting authority shall inform the Public Procurement Ethics Committee of the Generalitat of Catalonia so that it may issue the relevant report, without prejudice to other penalties that may be established.

- In the event that the seriousness of the facts so requires, the contracting authority will inform the Anti-Fraud Office of Catalonia or the control and inspection bodies that are competent for the matter.



FORTY-SECOND.- CLAUSES OF A SOCIAL NATURE

The successful bidder will be obliged to apply, when providing the service, measures aimed at promoting equal opportunities between women and men in the labour market, in accordance with the provisions of Organic Law 3/2007, of 22 March, for the effective equality of women and men.

The contractor company is obliged to comply with the provisions in force on labour, social security, occupational health and safety and integration into the labour market, in particular:

A) When the benefits to be provided are subject to a labour ordinance or collective agreement, it is obliged to comply with the provisions of the corresponding labour ordinance and labour agreement.

B) The company will adopt the safety and hygiene measures at work that are of pertinent obligation or necessary in order to the most perfect prevention of risks that may affect the life, integrity and health of workers. They must also comply with the obligations in terms of occupational risk prevention established by current regulations and must also prove compliance with the following obligations:

- a) Risk assessment and planning of the preventive activity corresponding to the contracted activity.
- b) Training and information on preventive matters for the workers to be employed in the execution of the contract.
- c) Proof of the delivery of personal protective equipment that, where appropriate, is necessary.

C) The company must comply with the obligation to hire, where appropriate, 2 per cent of workers with disabilities or adopt the alternative measures provided for by law.

D) In the event that the successful bidder has more workers than those indicated in Articles 45 and 46 of Organic Law 3/2007 in relation to the transitional provision according to Royal Decree-Law 6/2019, of 1 March, it must have established the plan for equal opportunities between women and men.

In the event that it is a company with a number lower than that indicated in Articles 45 and 46 of Organic Law 3/2007 in relation to the transitional provision according to Royal Decree-Law 6/2019, of 1 March and, during the execution of the contract, the workforce is increased – exceeding this number of workers, in accordance with Organic Law 3/2007, which promotes equality between men and women, must implement the aforementioned equality plan.

E) If the company subcontracts part of the service, it must demand from the subcontracting companies the proof of the above obligations and deliver them to the Administration of the Generalitat de Catalunya.

The contractor company must adopt measures to prevent, control and eradicate sexual harassment, as well as harassment based on sex.

Work carried out during the execution of the contract shall be subject to the obligations in terms of taxation/environmental protection obligations/the provisions in force on employment protection, working conditions and prevention of occupational risks.



The successful bidder must act in accordance with the regulations on the prevention of occupational risks and, to this end, will have established the necessary means of coordination for the protection and prevention of occupational risks and the information about them to their respective workers, in accordance with art. 24 of Law 31/1995, of 8 November, of Occupational Risk Prevention and its implementing regulations.

The new hiring of personnel that the company or companies awarded this contract must carry out in order to execute it must preferably be carried out among people who are legally unemployed in accordance with the provisions of Article 208 of Royal Legislative Decree 1/1994, of 20 June, which approves the Revised Text of the General Law on Social Security and, where possible, between groups with particular difficulties in insertion into the labour market as defined in Law 27/2002, of 20 December, on legislative measures to regulate social and labour insertion companies, or people who have a disability certificate.

The contractor company and, where appropriate, the subcontractor, must establish measures that favour the reconciliation of personal and/or family life of the workers assigned to the execution of this contract.

The successful bidder must guarantee the workers assigned to the execution of this contract the strict application of the working conditions established in the applicable labour agreement.

The company or companies awarded this contract must organise on-the-job vocational training actions that improve employment and the adaptability of people, as well as their skills and qualifications.

The company or companies awarded the contract are obliged, in their activities and in subsequent transactions, to comply with the principle of equal opportunity for people with disabilities, avoiding discrimination, direct or indirect, on the basis of disability.

Likewise, the **table of specific characteristics** will indicate the specific aspects in terms of social and environmental clauses.

FORTY-THIRD.- SPECIAL RULES REGARDING THE LABOR PERSONNEL OF THE CONTRACTOR COMPANY

1. In relation to the workers assigned to the execution of this contract, the contractor company assumes the obligation to exercise in a real, effective and continuous manner the power of management inherent to any employer. In particular, it will assume the negotiation and payment of salaries, the granting of leave, leave and holidays, substitutions, legal obligations in terms of occupational risk prevention, the imposition – where appropriate – of disciplinary sanctions, Social Security obligations, including the payment of contributions and the payment of benefits, as well as any rights and obligations arising from the contractual relationship between employee and employer.

2. The contractor company shall be obliged to execute the contract in its own premises or facilities unless, exceptionally, it is authorised to provide its services in the administrative premises. It is also the



responsibility of the contractor company to ensure compliance with this obligation. The **table of specific characteristics** of the specifications must state the need for the services to be provided in the administrative offices for the execution of the contract.

3. The contractor company must appoint at least one coordinator or manager, integrated into its own staff, who will have among its obligations the following:

a.) To receive and transmit any communication that the staff of the contractor company must make to Laboratori de Referència de Catalunya in relation to the execution of the contract will be carried out through the coordinator, technician or interlocutor designated for this purpose.

b.) To monitor compliance with the company's labour regulations, in particular with regard to staff attendance at the workplace and the enjoyment of holidays, so that the provision of the contracted service is not disturbed.

c.) Inform Laboratori de Referència de Catalunya of the contractor's employees who are no longer assigned to the execution of the contract, especially in order to be able to properly manage the means of work of those that have been available.

In this sense, the contract staff of the contractor company will not be part of the staff of the contracting entity.

FORTY-FOUR.- CONFIDENTIALITY OF INFORMATION

In accordance with article 133.2 of the LCSP, the successful bidder must respect the confidential nature of the information to which it has access due to the execution of the contract.

The duty of confidentiality will be valid for five years from the date of knowledge of the reference information.

In accordance with article 133.1 of the LCSP, the contracting authority, the candidates and bidders may not disclose the information provided by the bidders and designated by them as confidential.

Tenderers must submit a confidentiality declaration, in accordance with the provisions of clause sixteen, which must be necessary and proportionate to the purpose or interest to be protected and must expressly and justifiably determine the documents and/or data provided that they consider confidential. Generic or unjustified declarations of confidentiality are not allowed.

In the event of lack of indication, it will be understood that the documentation provided is not confidential.

Documents and data submitted by tenderers may be considered confidential if they include industrial, technical or commercial secrets and/or intellectual property rights, and where their dissemination to third parties would be contrary to their legitimate commercial interests and/or harm fair competition

between undertakings in the sector; or when their processing may be contrary to the provisions of the regulations on the protection of personal data.

Without prejudice to the declaration of confidentiality of the tenderers, in the event of a request for information, it is the responsibility of the contracting authority to assess whether this classification is correct, in accordance with the principles of publicity and transparency that govern administrative action, and to correct it, where appropriate, after hearing the tenderers. In no case are the economic proposal, the data of the European Single Procurement Document (ESPD) that appear in registers confidential.

FORTY-FIFTH.- PROTECTION OF PERSONAL DATA

Laboratori de Referència de Catalunya, as data controller and in application of REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 27 April 2016, on the protection of natural persons, hereinafter GDPR, and Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights, with regard to the processing of personal data and the free movement of these data, it informs that the data submitted by the bidding companies will be processed for the purpose of managing the open procedure for the contracting of services, the legal basis for this processing being article 6.1.c) of the GDPR that is necessary for compliance with a legal obligation. Likewise, the data will be processed by the entity's own areas or departments, within their competences and functions, and will not be transferred to other entities, unless there is a legal obligation.

The data will be kept for the period of time necessary to comply with the purpose, as well as the period established by the applicable regulations on the conservation of documentation. They can access their data, request rectification or deletion, oppose the processing and request limitation or portability, by sending their request in writing to the address of the data controller, attaching a photocopy of their ID card or document proving identity. In the event that, at any time, it is considered that rights have been violated, a complaint can be filed with the supervisory authority. However, if you wish, you can contact your data protection officer at the following address protecciodades@lrc.cat.

The contractor company, if in order to provide the agreed service it must access personal data for which Laboratori de Referència de Catalunya is responsible for the processing, will be responsible for the processing of the personal data that are owned by the contracting party responsible for the processing and undertakes to use them for the sole and exclusive purpose of providing the services ordered.

The contractor company undertakes, in accordance with the provisions of art. Art. 33 of Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights, to process the data in accordance with the instructions of the contracting party responsible for the file processing, for the strict provision of the contracted services; not to apply or use the personal data that come from the files owned by the contracting party responsible for the processing of the file for a purpose other than that of this contract and not to communicate or transfer them, not even for their conservation, to third parties. In this regard, the corresponding data processor contract must be signed (which will be in accordance with the model that appears in **Annex 3** of these specifications), which establishes the object, duration, nature and purpose of the processing, as well as the type of personal data and

categories of data subjects and the obligations and rights of the controller. Likewise, this contract determines that the data processor:

- Process personal data only on the documented instructions of the controller, including in relation to transfers of personal data to a third country or an international organisation, unless required to do so under Union or Member State law to which the processor is subject. In this case, the processor will inform the controller of this legal requirement prior to processing, unless this right prohibits it for important reasons of public interest.

- Ensure that the persons authorised to process personal data have undertaken to respect their confidentiality or are subject to a confidentiality obligation of a statutory nature.

- Take all necessary measures, in accordance with Article 32. GDPR.

- It will respect the conditions established in sections 2 and 4, to use another data processor.

- The controller will assist whenever possible, in accordance with the nature of the processing and through the appropriate technical and organisational measures, whenever possible, so that it can comply with the obligation to respond to requests that have as their object the exercise of the rights of the data subjects established in Chapter III. GDPR.

- It will help the controller to ensure compliance with the obligations established in articles 32 to 36 of the GDPR, taking into account the nature of the processing and the information available to the processor.

- At the option of the controller, it will delete or return all personal data, once the provision of the processing services has ended, and will delete existing copies, unless it is necessary to retain the personal data under Union or Member State law.

- It will make available to the controller all the information necessary to demonstrate that it complies with the obligations established in this article. It shall also enable and contribute to the performance of audits, including inspections, by the controller or another auditor authorised by the controller. In addition, if the processor considers that an instruction violates this Regulation or other data protection provisions of the Union or the member states, it must immediately inform the controller.

In the event that the contractor company does not need to access personal data to provide the agreed service, but it is possible for it to access it, it will sign the corresponding commitment and duty of confidentiality (which will be in accordance with the model that appears in **Annex 4** of these specifications). The aforementioned obligation will be complementary to the duties of professional secrecy in accordance with the applicable regulations, and the obligations will be established even if the relationship between the contractor company and the data controller has ended.

With regard to those contracts that require the processing of personal data on behalf of the data controller, the bidder or bidders who are awarded this contract, in application of Royal Decree-Law 14/2019, of 31 October, adopting urgent measures for reasons of public security in the field of digital administration, public sector procurement and telecommunications, commit to the following:



- To communicate any change that occurs, during the duration of the execution of the contract, from the information provided to the declaration referred to in the point prior to clause twenty-four.

This obligation is considered a special condition of performance, and therefore has the character of an essential contractual obligation for the purposes of contractual termination.

FORTY-SIXTH.- INTELLECTUAL PROPERTY

The successful bidder must obtain, on its own behalf and at its own expense, by paying the holders of patents, models and manufacturing marks, the rights of assignment, permits and authorizations for the use, either as materials, supplies, procedures and equipment necessary for the execution of the object of the contract.

It will also be responsible for all kinds of claims relating to the industrial and commercial property of the supplies it makes, and must indemnify the contracting entity for all contractual damages that may arise from the filing of claims. It must also bear the expenses arising from any claims that may be directed against Laboratori de Referència de Catalunya.

Inventions that are made by the contractor during the execution of the service or that are the result of a research activity explicitly or implicitly constituting the object of the contract will be the property of Laboratori de Referència de Catalunya.

The contractor assigns on an exclusive basis all the rights of exploitation of the works subject to these specifications, including the rights of public communication, reproduction, transformation or modification or any other right that may be transferred exclusively, in accordance with the provisions of current legislation on intellectual property.

FORTY-SEVENTH.- GUARANTEE PERIOD

The warranty period for all the material will be that set out in the Technical Specifications and in the **table of specific characteristics** of the contract, counted, where appropriate, from the date of receipt, which will be formalised by means of a document signed by the successful bidder and representatives of Laboratori de Referència de Catalunya. During this period, the successful bidder will have the obligation to replace and correct all parts or elements that present manufacturing and installation defects, as well as the appropriate repairs, revisions and replacements.

If during the warranty period the existence of defects or defects in the goods supplied is proven, the contracting authority has the right to demand from the contractor the replacement of those that are inadequate or their repair if sufficient.



If the goods are not fit for purpose, as a result of the defects or defects observed and attributable to the contractor, and there is a presumption that the repair or replacement is not sufficient, the contracting authority may reject the goods and leave them at the expense of the contractor, without the contractor being entitled to payment for the goods, or, where appropriate, to be claimed for the price paid by the contracting entity .

FORTY-EIGHTH - TRANSPARENCY

The successful bidder is obliged to provide the contracting entity with all the information necessary to comply with Law 19/2013, of 9 December, on transparency, access to public information and good governance and Law 19/2014, of 29 December, on transparency, access to public information and good governance. Likewise, the company is obliged to comply with the obligations set out in articles 9 and 10 of Decree 8/2021 on transparency and the right of access to public information.

This information will be provided to the contracting entity upon request. The complete information will be provided within a period of one month from the request made by the contracting entity, unless the contractor can prove that it is physically impossible to provide the information within this period. In the event of non-compliance with this obligation to provide information, the contracting authority is entitled to terminate the contract without the contractor having the right to claim any compensation in its favour. Likewise, the successful bidder must be liable for the damages that arise for the contracting entity from the breach of this obligation, and the definitive guarantee constituted by the successful bidder must respond for this concept.

FORTY-NINTH.- MODIFICATION OF THE CONTRACT

Public contracts may only be modified for reasons of interest public and distinguishes two cases:

- 1) When it is expressly provided for in the list of administrative clauses of the established in Article 204 of the LCSP.
- 2) Exceptionally, when it is necessary to modify the contract and it is not provided for in the specifications, provided that the conditions of article 205 of the LCSP are met.

I. Modifications provided for in the specifications of administrative clauses (article 204 LCSP)

Once the contract has been concluded and in compliance with article 203 et seq. of the LCSP, the contracting authority may only introduce modifications for reasons of public interest and to address unforeseen causes, which must be duly justified, as provided for in **the table of specific** characteristics and with a limit of 20%, in order to delimit clearly, precisely and unequivocally the conditions under which the



modification of the contract may be made, as well as the definition of the cases and the economic scope of the same.

However, the contract may not be modified when its purpose is:

- Add complementary benefits to those initially contracted.
- To expand the object of the contract so that it can fulfill new purposes not contracted in the preparatory documentation of the same.
- Incorporate a service that can be used or exploited independently.
- Alter the overall nature of the contract.

These modifications are mandatory for the contractor company.

In no case may the modification of the contract entail the establishment of new unit prices not provided for in the contract

II. Modifications not provided for in the Specifications of particular administrative clauses: additional benefits, unforeseeable circumstances and non-substantial modifications (article 205 LCSP)

Whether the modifications are planned or not, but do not comply with the provisions of article 204 of the LCSP, the contract may only be modified if the following requirements are met:

a) That the modification is limited to introducing **variations that are strictly essential** to respond to the **objective cause** that makes it necessary.

b) That it is justified by any of the assumptions established in article 205.2 of the LCSP and which are the following:

1. Need for additional supplies to those initially contracted and the following two circumstances apply:

to. The change of contractor is not possible for technical or economic reasons and

b. The modification of the contract implies an alteration in its amount that does not exceed, alone or jointly with other modifications agreed in accordance with this article, 50% of the initial price, excluding VAT.

2. **Supervening and unforeseeable circumstances** at the time the contract is tendered and the following three conditions are met:

a. circumstances that a diligent administration could not have foreseen.

b. It does not alter the overall nature of the contract.

c. Alteration in its amount that does not exceed, alone or jointly with other modifications agreed in accordance with this article, 50% of the initial price, excluding VAT.



3. **That the modification is not substantial.** In this case, both the need for the modification and why these new benefits were not included in the initial contract must be justified. It is understood that it is a substantial modification when it results in a contract of a materially different nature from the one entered into at the beginning; A modification will be considered substantial when it meets one or more of the following conditions:

- The amendment introduces conditions which, if they had existed in the initial tender, would have made it possible to select different candidates or accept a different offer or to attract more participants to the tender. This case will always be considered to occur when the work or service resulting from the original project or the specifications, respectively, plus the intended modification, requires a different classification of the contractor than that required in the original bidding procedure.

- The modification alters the economic balance of the contract to the benefit of the contractor in a way that was not foreseen in the initial contract. This will always be considered to be the case when, as a result of the modification to be made, new units of work are introduced whose amount would represent more than 50% of the initial budget of the contract.

- The modification significantly expands the scope of the contract. In any case, this case will be considered to occur when:

- The value of the modification entails an alteration in the amount of the contract that exceeds, individually or jointly, 15% of the initial price of the contract, excluding VAT, in works contracts, or 10% in the case of other contracts, or that in the case of non-harmonised contracts has the consequence of exceeding the Community thresholds.
- The supply subject to modification is within the scope of another contract, in force or in process.

III. **Mandatory nature of contract modifications**

Modifications not provided for in the specifications governing the tender are mandatory for the contractor when they imply, individually or jointly, an alteration in their amount that does not exceed 20% of the initial price of the contract, excluding VAT.

If the modification, in accordance with the provisions of the previous section, is not mandatory, the contractor must give its consent in writing; if it does not give it, the contract must be terminated in accordance with article 211.1g of the LCSP.

IV. **Procedure**

The procedure to be followed in the event of any modification will be as follows:

- The procedure will be initiated at the request of the service promoting the contract, requesting the modification of the contract.
- Verification by the contracting authority of compliance with the conditions of modification of the contract and will issue a modification resolution, which will be communicated to the contractor.



- The successful bidder will be given a minimum period of 5 calendar days to express the allegations he or she deems appropriate. In the event that the successful bidder does not express allegations of opposition within the aforementioned period, the modification resolution will be made final.
- Once the period granted to the contractor has expired, the contracting authority will issue a resolution agreeing, where appropriate, to modify the contract and consequently the definitive guarantee must be adjusted, where appropriate, or a complementary guarantee will be constituted.
- The provisions of the previous points are without prejudice to the provisions of article 207 of the LCSP.

In either case, the modifications will be formalized in accordance with article 153 of the LCSP and the notice of modification to the Contractor's Profile must be published, which must be accompanied by the contractor's allegations and all the reports prior to the approval of the modification, both those provided by the successful bidder and those issued by the contracting authority.

In any case, modifications to the Contractor Profile and the OJEU will be publicised in the case of contracts subject to harmonised regulation.

The authorisation of the entity to which it is attached or which supervises the contracting entity is required in cases of modification of the contract that are not provided for in the specifications of particular administrative clauses and their amount, individually or jointly, is greater than 20% of the initial price of the contract, excluding VAT, and their price is equal to or greater than 6,000,000 euros.

Other Specific Modifications

Also causes for contractual modification are succession in the person of the contractor, assignment of the contract, revision of prices and extension of the execution period.

The modification of the contractor by succession of the contractor may not imply in any case other substantial modifications to the contract or circumvent the application of contract law. It is also necessary that in these cases the contracting authority agrees to the continuity of the term of the contract.

FIFTIETH.- PAYMENT AND INVOICING SYSTEM

(a) Payment scheme

The contractor company will be entitled to payment of the price of the supplies effectively delivered and formally received by Laboratori de Referència de Catalunya.



The amount of the contract will be paid by Laboratori de Referència de Catalunya once the supply has been delivered, upon presentation of the corresponding invoice and delivery albarons, in triplicate. Delivery will not be understood to have been made until the goods are fully installed and fit for operation, so packaging, transport and assembly will be considered an integral part of the delivery operation, and in any case included in the price. Payment to the contractor will be made upon presentation of an invoice, issued in accordance with current regulations, within the terms and conditions established in article 198 of the LCSP.

The contractor may transfer the collection rights under the terms and conditions of article 200 of the LCSP.

In the event that the supply involves successive deliveries, the invoice and the appropriate delivery notes will be presented, for payment, once each partial instalment has ended.

In the documents that are presented for collection, VAT must be recorded as a separate item

b) Invoicing

The amount to be paid in consideration for the execution of the services that comprise the object of this contract will be that established in the award resolution and in the contract, and will be paid, upon presentation of the corresponding invoice by the contractor.

The invoice must comply with the requirements of Royal Decree 1619/2012, of 30 November.

V.- PROVISIONS RELATING TO THE ASSIGNMENT, SUBCONTRACTING and PRICE REVIEW

FIFTY-FIRST.- SUBCONTRACTING

The contractor company may agree with other companies to partially perform the service that is the subject of this contract. However, the parts of the contract identified in the **table of specific characteristics may not be subcontracted**.

The tendering companies must indicate in their bids the part of the contract that they intend to subcontract, indicating its amount and the name or professional profile of the subcontractors to whom they are going to entrust its execution.

In the event that tendering undertakings intend to enter into subcontracts, they shall submit an ESPD for each of the undertakings they intend to subcontract, containing information on the economic operator (Sections A and B of Part II) and the section on exclusion criteria —(Part III).

The contractor must notify the contracting authority in advance and in writing of the intention to enter into subcontracts, indicating the part of the service that it intends to subcontract and the identity of the subcontracting company or companies, and sufficiently justifying its ability to perform it, by reference to the technical and human resources available to it and its experience.



The contractor must notify the contracting authority in writing of any changes to this information during the performance of the contract and all necessary information on new subcontractors.

With regard to those contracts that require the processing of personal data for the contractor on behalf of the data controller, the bidder or bidders who are awarded this contract, in application of Decree-Law 14/2019, of 31 October, adopting urgent measures for reasons of public security in the field of digital administration, public sector procurement and telecommunications, undertake to indicate in their bid whether they intend to subcontract the servers or the services associated with them and, if so, to indicate the name or business profile of the subcontractors, which must be defined by reference to the conditions of professional or technical solvency.

The conclusion of subcontractors is subject to compliance with the requirements and the rest of the circumstances regulated in article 215 of the LCSP.

Infringement of the conditions established in article 215 of the LCSP to proceed with subcontracting, as well as the lack of accreditation of the subcontractor company's suitability or the determining circumstances of the emergency situation or those that make subcontracting urgent, may lead to the imposition on the contractor of a penalty of up to 50% of the amount of the subcontract.

The subcontractor companies will be obliged only to the main contractor company, which will therefore assume full responsibility for the execution of the contract before the contracting entity. The contracting entity's knowledge of the contracts entered into or the authorization it grants does not alter the exclusive responsibility of the main contractor company.

Subcontractor companies do not have in any case direct action against the contracting entity for the obligations contracted with them by the contractor company, as a result of the execution of the main contract or the subcontractors.

In no case may the contractor company or companies arrange the partial performance of the contract with persons disqualified from contracting in accordance with the legal system or incurring in any reason for exclusion in accordance with the regulations on public procurement or in any of the causes of prohibition of contracting provided for in the LCSP. If the contracting authority finds that the subcontracting companies are subject to any of the aforementioned grounds for disqualification, exclusion or prohibition of contracting, the contractor must replace them.

The contractor company must inform the person who represents the workers of the subcontracting, in accordance with labour legislation.

The payment to subcontractor companies and supply companies is governed by the provisions of articles 216 and 217 of the LCSP.

In accordance with the provisions of article 217 of the LCSP, Laboratori de Referència de Catalunya may verify compliance with payment to subcontractors and suppliers by the main contractor.



In this regard, it is mandatory for the successful bidder to provide a detailed list of subcontractors and suppliers specifying the conditions related to the payment term and the presentation of proof of compliance with the payment on time. These obligations are considered to be an essential condition for performance.

When this is determined in **the table of specific characteristics**, it is mandatory to subcontract with other unrelated companies of certain parts of the contract that, within the limits indicated in the **table of specific characteristics**. This obligation is considered an essential condition of execution.

FIFTY-SECOND.- SUCCESSION AND ASSIGNMENT OF THE CONTRACT

Succession in the person of the contractor:

In the event of a merger of companies in which the contractor company participates, the contract will continue to be in force with the absorbing entity or with the entity resulting from the merger, which will be subrogated to all the rights and obligations arising therefrom.

In the event of a spin-off, contribution or transfer of companies or branches of activity, the contract will continue with the entity to which the contract is attributed, which will be subrogated to the rights and obligations that arise, provided that it meets the conditions of capacity, absence of prohibition of contracting and the solvency required when the award of the contract is agreed or that the beneficiary companies of these operations and, in the event of subsistence, whose company comes from the assets, companies or segregated branches, they are jointly and severally liable for the execution of the contract.

The contractor must notify the contracting authority of the circumstance that has occurred.

In the event that the contractor company is a joint venture, when mergers, spin-offs or transfer of a branch of activity take place with respect to one or more companies that are members of the temporary union, the execution of the contract with the successful bidder will continue. In the event that the absorbing company, the company resulting from the merger, the beneficiary of the spin-off or the acquirer of the branch of activity, are not companies that are part of the temporary union, it will be necessary that they have full capacity to act, are not prohibited from contracting and that the required solvency, capacity or classification is maintained.

If the contract is awarded to a different entity, the definitive guarantee may be renewed or replaced, at the discretion of the granting entity, by a new guarantee subscribed by the new entity, taking into account the risk posed by the latter entity. In any case, the old definitive guarantee remains in force until the new guarantee is created.

If the subrogation cannot take place because the entity to which the contract should be attributed does not meet the necessary solvency conditions, the contract will be terminated, being considered for all purposes as a case of termination due to the fault of the contractor company.



Assignment of the contract:

The rights and obligations arising from this contract may be assigned by the contractor to a third party, provided that the technical or personal qualities of the transferor have not been a determining reason for the award of the contract or that the assignment does not result in an effective restriction of competition in the market, when the following requirements are met:

a) The contracting authority authorises, in advance and expressly, the transfer. If the two-month period elapses without notification of the decision on the request for authorisation of the transfer, it will be understood to have been granted by administrative silence.

b) The transferring company has executed at least 20 per cent of the contract amount. This requirement is not required if the assignment takes place while the contractor company is in bankruptcy even though the liquidation phase has been opened, or it has informed the competent court for the declaration of bankruptcy that it has begun negotiations to reach a refinancing agreement, or to obtain adhesions to an early proposal for an agreement, in the terms provided for in the bankruptcy legislation.

c) The transferee company has the capacity to contract with the contracting entity, the solvency required according to the phase of execution of the contract, and is not incurred in a cause for prohibition of contracting.

d) The assignment is formalised, between the successful bidder and the transferor company, in a public deed.

The assignment to a third person may not be authorized when the assignment involves a substantial alteration of the characteristics of the contractor company if these constitute an essential element of the contract.

The transferee company will be subrogated in all the rights and obligations that would correspond to the company that assigns the contract.

FIFTY-THIRD.- PRICE REVIEW

The price revision applicable to this contract is detailed in the **specific characteristics table**. The price review will only be appropriate when the contract has been executed at least 20% of its amount and two years have elapsed since its formalisation.

The amount of the appropriate revisions will be paid, ex officio, by means of the corresponding credit or discount on the certifications or partial payments.



VI.- PROVISIONS RELATING TO THE TERMINATION OF THE CONTRACT

FIFTY-FOURTH.-RECEPTION AND SETTLEMENT

It will be carried out in reception and settlement of the supplies subject to the contract. If, due to their condition, the goods cannot be received, this must be recorded in the certificate of receipt and the contracting authority must instruct the contractor to remedy the condition of the defective goods or to deliver new goods in accordance with the contract.

In addition, the reception units of the contract will verify the effective compliance with the contractual clauses that establish obligations for the use of Catalan, making express reference to them in the certificates of reception and correct execution.

In the event that a contractual guarantee period has been provided, it shall commence from the unreserved receipt of the contract.

FIFTY-FIFTH.-RETURN OF THE GUARANTEE

Once the object of the contract has been satisfactorily carried out, its completion has been reached, its settlement has been carried out and the guarantee period has expired to the satisfaction of the contracting entity, the definitive guarantee provided may be returned to the contractor, upon request by the contractor.

FIFTY-SIXTH.- TERMINATION OF THE CONTRACT: CAUSES AND EFFECTS

The causes for termination of the contract are the following:

- The death or supervening incapacity of the individual contractor or the extinction of the legal personality of the contractor company, without prejudice to the legal provisions for the succession of the contractor.
- The mutual agreement of the parties.
- The non-delivery of the good or all the goods, or the delivery of the goods or goods with defects or with non-compliance with the requirements set out in the specifications.
- Delay in meeting deadlines by the contractor or failure to comply with the main obligation by the contractor. Failure to comply with the deadline shall be understood as the unjustified delay over the required period in one third of it.
- Unjustified delay in the start of the benefit for a period of more than 1 month compared to the scheduled period.
- Non-payment of workers' wages for a period equal to or greater than 2 months – not necessarily consecutive.



- No payment to Social Security for a period equal to or greater than 2 months -not necessarily consecutive-.
- Non-subrogation of the corresponding personnel in application of the collective agreement.
- The imposition on the contractor of penalties for an accumulated amount greater than 50% of the contract price, excluding VAT.
- Non-payment by the contracting entity. It will be understood that there is no payment when no invoice has been paid within 6 months.
- The impossibility of performing the service under the terms initially agreed, when it is not possible to modify the contract in accordance with articles 204 and 205 of the LCSP; or when, given the circumstances established in Article 205, the modifications imply, individually or jointly, alterations in the price of the same, in an amount greater or less, than 20% of the initial price of the contract, excluding VAT.

Those indicated in the table of specific characteristics **will also be cause for termination of the contract**. In particular, those established throughout these specifications and, specifically, those provided for in the table of specific characteristics are considered essential contractual obligations and, therefore, their non-compliance is cause for termination of the contract.

Likewise, the breach of the contractor's obligation to maintain secrecy with respect to data or background information that is not public and notorious is related to the object of the contract is cause for termination of the contract.

Likewise, the specific cause for termination of the contract is the failure to comply with the obligations provided for in relation to the use of Catalan and, in general, the failure to comply with any of the obligations relating to the use of Catalan that derive from the provisions of Law 1/1998, of 7 January, on language policy and the provisions that develop it. To this end, the certification issued by the person designated by the contracting entity to carry out its monitoring during the execution of the contract will be taken into account.

If the contracting entity terminates the contract on the basis of one of the causes mentioned in this clause or the table of specific characteristics, the contractor shall not be entitled to compensation of any kind.

When the termination of the contract occurs by mutual agreement between the parties, the validly stipulated between them will be followed.

When the resolution is attributable to the contractor, it may entail the seizure of the definitive guarantee constituted, without prejudice to the compensation that, where appropriate, the contractor is obliged to pay to the contracting entity as a result of the damage caused.

In all cases, the termination of the contract will be carried out by previously granting a hearing to the contractor for a period of at least 5 working days.

VII.- PROVISIONAL MEASURES AND SPECIAL CASES OF NULLITY LITAT



FIFTY-SEVENTH.- SYSTEM OF APPEALS

In accordance with the provisions of the LCSP, two regimes are established for challenging the proceedings:

a) Special appeal in procurement matters: For contracts with an estimated value equal to or greater than 100,000 euros:

Special appeal shall be open to tender notices, specifications and contractual documents establishing the conditions that must govern the procurement, the procedural acts adopted in the award procedure, provided that the latter directly or indirectly decide on the award, determine the impossibility of continuing the procedure or cause a lack of defence or irreparable damage to legitimate rights or interests and the award agreements adopted by the powers. adjudicators. The acts of the Contracting Committee by which the exclusion of bidders is agreed will be considered procedural acts that determine the impossibility of continuing the procedure. Award agreements, as well as contractual modifications, will also be subject to special appeal in procurement matters.

Procedural defects affecting acts other than those referred to in the previous paragraph may be brought to the attention of the interested parties in the body responsible for the investigation of the file or the contracting authority, for the purposes of their correction, and without prejudice to the fact that the irregularities affecting them may be alleged by the interested parties when appealing the award certificate.

This appeal will not be admissible in relation to the award procedures that are followed by the emergency procedure regulated in article 120 of the LCSP.

Acts issued in procedures for the award of administrative contracts that do not meet the requirements of the first paragraph may be the subject of an appeal in accordance with the provisions of Article 121 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations and with Law 29/1998 of 13 July regulating the Contentious-Administrative Jurisdiction, in the terms provided for in letter b) of this clause.

The special appeal in procurement matters will be optional.

The competent body for the resolution of the special appeal in procurement matters will be the Catalan Court of Public Sector Contracts, by virtue of the provisions of the fourth additional provision of Law 7/2011, of 27 July, on fiscal and financial measures and in Decree 221/2013, of 3 September, which regulates the Catalan Court of Public Sector Contracts and approves its organisation and operation.

The appeal may be filed by natural and legal persons whose rights or legitimate interests have been harmed or may be affected by the decisions that are the subject of the appeal.

Prior to the filing of the special appeal in matters of procurement, the persons entitled to it may request before the competent body the adoption of provisional measures, which are regulated in article 49 of the LCSP.



The time limit for filing the special appeal in procurement matters shall be fifteen working days from the day following the day on which the contested act is notified or published.

Nevertheless:

- When the appeal is filed against the content of the specifications and other contractual documents, the calculation will begin from the day following the day on which the tender notice has been published in the contractor's profile.
- When it is filed against procedural acts adopted in the award procedure or against an act resulting from the application of the negotiated procedure without publicity, the calculation will begin from the day following the day on which the possible infringement has become known.
- When it is filed against the contract notice, the period will begin to run from the day following the day of publication.
- When a modification is filed based on non-compliance with the provisions of articles 204 and 205 of the LCSP, on the understanding that the modification should be the subject of a new tender, from the day following the day published in the contractor's profile.

Notwithstanding the foregoing, when the appeal is based on any of the grounds for nullity provided for in section 2, letters c), d), e) or f) of article 39 of the LCSP, the time limit for filing will be:

- 30 days from the publication of the formalisation of the contract in the manner provided for in the LCSP, including the justifying reasons why the call for tenders has not been legally published or from the notification to the affected candidates and tenderers, of the reasons for the rejection of their candidacy or proposal and of the characteristics of the successful bidder's proposal that were determined from the award to its charge. favor.

-In all other cases, within six months of the formalisation of the contract.

If the contested act is that of award, the processing of the procurement file will be suspended until the appeal is expressly resolved, without being able, therefore, to proceed with the formalization of the contract.

Once the special appeal has been filed in matters of contracting, it will be processed and resolved in accordance with the provisions of articles 56 of the LCSP.

A contentious-administrative appeal may be lodged against the resolution of the appeal by the Catalan Court of Public Sector Contracts before the High Court of Justice of Catalonia within two months, as provided for in Article 10.1.k) of Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction.

b) Appeal: For contracts with an estimated contract value of less than 100,000 euros:

In these procedures, the award will be appealable by filing an appeal before the hierarchical superior of the corresponding contracting authority, in accordance with the provisions of Article 59.6 of the Law on Health Planning of Catalonia and Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (arts.121 and 122). as well as in Law 26/2010, of 3 August, on the legal and



procedural regime of the public administrations of Catalonia, the resolution of which will put an end to the administrative procedure. In this case, the competent body to resolve the appeal is the Board of Directors of Laboratori de Referència de Catalunya.

Against it, an extraordinary appeal for review may be filed, where appropriate (art. 125) or, directly, a contentious-administrative appeal, in accordance with the provisions of the aforementioned Law regulating the jurisdiction and Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (art. 122.3).

FIFTY-EIGHTH.- PROVISIONAL MEASURES

Before filing the special appeal in procurement matters, the persons entitled to file it may request the Catalan Public Sector Contracts Tribunal to adopt provisional measures, in accordance with the provisions of Article 49 of the LCSP and Royal Decree 814/2015, of 11 September.

FIFTY-NINETH.-JURISDICTION

The contentious-administrative jurisdiction is competent to resolve in relation to the preparation, awarding and contractual modifications, when the challenge of the latter is based on non-compliance with articles 204 and 205 of the LCSP, on the understanding that such modification would have had to be the subject of a new award, in accordance with article 27.1.c) of the LCSP.

On the other hand, it is competent to resolve the civil jurisdiction with respect to disputes related to effects and termination, except for the aforementioned modifications, in accordance with section 2 of article 27 of the LCSP.