

**STANDARD SPECIAL ADMINISTRATIVE CLAUSES SPECIFICATIONS
FOR SERVICE PROCUREMENT**

**SUPPLY, INSTALLATION AND COMMISSIONING OF “CRYOGENIC
NON-MAGNETIC UHV NANOPositionERS WITH CAPACITIVE
READOUT” FOR THE ICFO LABORATORY”, THROUGH A
NEGOTIATED PROCEDURE WITHOUT ADVERTISEMENT FOR
REASONS OF EXCLUSIVITY NOT SUBJECT TO HARMONIZED
REGULATION**

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I. TABLE OF CONTRACT SPECIFICATIONS

The Table of Contract Specifications for this tender is included in the contract file of this tender, and is considered the contractual documentation corresponding to the same.

II. GENERAL PROVISIONS

CLAUSE 1.- Object of the contract

1.1. The object of the Special Administrative Clauses Specifications is to establish the terms and conditions governing the awarding by the Institute of Photonic Sciences (hereinafter, "ICFO") of the service contract that is the subject of the Table of Contract Specifications, whose conditions are defined in this Specification and its annexes.

1.2. The contract corresponding to this tender may be divided into lots in accordance with its specifications. The division into contract lots is indicated in the Table of Contract Specifications. Furthermore, the description and content of each lot when applicable, is defined in the technical documentation attached to these Specifications.

1.3. These Special Administrative Clauses Specifications, its Annexes and the Special Technical Specifications shall be contractual. The contract will be in accordance with the contents of these Specifications, whose clauses shall be considered an integral part of the corresponding contract.

1.4. The submission of proposals involves the unconditional acceptance by the bidders of the content of these Specifications and of all the documentation belonging to this tender, without exception or reservation.

1.5. The interpretation of the contract and any disagreements regarding its application will be made taking into consideration first of all the Special Administrative Clauses Specifications and the Technical Specifications, which will prevail over any other rule.

Lack of awareness of any of the terms of the contract and of any other contract documents that may be applied in the execution of the agreed matter, shall not exempt the awardee from complying with such terms.

1.6. Should these Specifications be translated in other languages, in case of a disagreement the Catalan language will prevail.

CLAUSE 2.- Legal system governing the contract

2.1. The contracting body is subject to the provisions of Law 9/2017, of 8 November, regarding Public Sector Contracts, which translate to the Spanish legal system, the Directives of the European Parliament and the European Council 2014/23/EU and 2014/24/EU, of 26 February, 2014 (hereinafter, "LCSP") relating to contracts that are applicable to it as a contracting authority that is not a Public Administration in nature.

In relation to any contractual modifications that may arise, the regime provided in subsection 4 of Section 3 of Chapter I of Title I of the LCSP shall apply.

2.2. The contract is considered a private contract and its effects and expiration are subject to private law, governed by these Specifications, by the contract and the attached documentation, and for all matters not covered, by the civil and commercial law applicable.

In the preparation and award of this contract, the provisions of Title I of the Third Book of the LCSP shall apply.

2.3. For any disagreements arising from the preparation, award and amendment of contracts, if they are based on a breach of Articles 204 and 205 of the LCSP, when it is understood that such amendment should have been subject to a new award, the parties shall submit to the administrative courts.

For any disagreements that may arise in relation to the effects and expiration of this contract, the parties shall submit to the civil courts.

CLAUSE 3.- Financial data of the contract

3.1. The estimated value of the contract and the method used for calculating it are set out in the Table of Contract Specifications. For calculation purposes, the provisions in Article 101 of the LCSP have been taken into account.

3.2. The base bid budget of the contract is determined in the Table of Contract Specifications. This base budget includes all the valuation factors and expenditures that, according to the contract documents and the current legislation, shall be borne by the awardee, as well as any taxes, including the VAT.

Furthermore, this base bid budget is the maximum price that can be offered by the bidding companies participating in the tender of this contract. Therefore, any bid higher than the base bid budget or the unit prices in which it is broken down, shall be excluded.

3.3. The price of the contract will be the price to which the award amounts, plus the corresponding Value Added Tax, which will have to appear as a separate item.

Any other taxes, fees and royalties applicable, as well as any expenses that the awardee must bear in accordance with the provisions set out in the attached standard contract and in the tender documents and attached documentation, shall be considered included in the price of the contract.

Under no circumstances shall the award amount exceed the base bid budget. Any bidder who exceeds this figure, shall be excluded from the procedure.

3.4. It is stated that sufficient credit is available to meet the financial obligations that are incurred by the contracting body in meeting the contract terms referred to in these Specifications, until its conclusion.

3.5. If the contract is formalized in the budget year prior to the start of its execution, it will be necessary to specify that the award will be subject to the condition that adequate and sufficient credit is available to fund the obligations arising from the contract in the corresponding budget year, which will be stated in the table of specifications.

When the term of execution of the contract encompasses more than one budget year and the expenditure is approved to be spread over more than one year, this shall be noted in the table of specifications.

CLAUSE 4.- Duration of the contract

4.1. The duration of the contract is set out in the Table of Contract Specifications. This term shall start from the date set out in the contract.

4.2. The contract subject to this tender may be extended if this is foreseen in the Table of Contract Specifications. In the event that the extension of the contract is foreseen, it must be agreed by the Contracting Body and it will be mandatory for the contracting company, provided that said an extension is notified to the contractor at least TWO (2) months before the end of the contract. In no event shall the extension be made by tacit agreement between the parties.

4.3. Pursuant to article 29.4, section five of the LCSP, if the contract should expire and a new contract that guarantees the continuity of the service to be provided by the contractor would not have been formalized, as a result of incidents arising from unforeseeable events for the Contracting Body that occurred in the awarding procedure, and if there are reasons of public interest not to interrupt the provision, the original contract may be extended until the execution of the new contract begins and in any case for a maximum period of nine months, without modifying the remaining conditions of the contract, provided that the tender notice of the new contract has been published at least three months prior to the date of termination of the original contract.

CLAUSE 5.- Contract file, contract award procedure and documentation that will be provided to the bidders

5.1. The contract for the reference service will be awarded through the procedure indicated in the Table of Contract Specifications.

The contract will be awarded to the bidder that presents the best value as a whole, in accordance with the award criteria set out in Annex no. 4 of these Specifications.

5.2. NEED AND SUITABILITY OF THE CONTRACT: the needs that the contracting body intends to meet by means of this contract appear in the explanatory report.

5.3. DOCUMENTATION TO BE PROVIDED TO THE BIDDERS: from the date of publication of the tender notice, the interested companies may obtain, through the Contractor Profile, the necessary documentation to prepare their proposals, which includes the following documents:

- Application for submission to the tender
- These Specifications of Special Administrative Clauses.
- Technical Specifications.
- Table of Contract Specifications.
- Annexes.

All this documentation will be contractual.

Pursuant to article 138.3 of the LCSP, 5 days before the end of the bid submission deadline, the Contracting Body will provide all interested parties with the additional information regarding the contract specifications and any other documentation that they may request, as long as it has been requested at least 7 days before the deadline for the submission of bids.

5.4. CONTRACTING BODY: due to its amount, the contracting body for this contract is included in the Table Contract Specifications.

CLAUSE 6.- Call for tenders

This tender does not require the prior publication of a tender announcement, in accordance with articles 63, 166 and 168 of the LCSP.

CLAUSE 7.- Admission of variant bids

Variant bids will be admitted when this is stipulated in the Table of Contract Specifications, with the minimum requirements, in the modalities and specifications detailed.

The variant bids must be associated with the object of the contract, refer to elements previously set out in the table of specifications and presented in the form stipulated therein.

CLAUSE 8.- Use of electronic media

8.1. In accordance with the 15th additional provision of the LCSP, this tender process involves that all notifications and communications derived from it are to be channelled through electronic media only.

However, oral communication may be used for communications other than those relating to essential elements such as specifications or offers, although the content of these oral communications shall be duly documented, for example as text or sound files or summaries of the main elements of the communication.

8.2. Communications and notifications made during the contracting procedure and during the term of the contract will use the e-NOTUM electronic system, in compliance with the LCSP and Law 39/2015, of 1 October, on the common administrative procedure for public administrations. Therefore, notices regarding the availability of notifications and communications will be sent to the email addresses and a mobile phone numbers that the companies have provided for this purpose in the ESPD, pursuant to clause eleven of these Specifications. When the company receives the email(s) (and the text message if a mobile phone number has been supplied) to confirm that the corresponding notification is available in the e-NOTUM, the designated person(s) (who will previously have supplied their Corporate Tax ID/Tax identification number/Passport/Foreign identity document), must access it using the link that will be sent for this purpose. In the virtual space where the notification is deposited, access is possible using a digital certificate or password (if applicable).

The deadlines from the notification will be calculated from the date of sending the notice of notification, if the deed being notified has been published the same day in the contractor profile of the contracting body. Otherwise, the deadlines will be calculated from the receipt of the notification by the company to which it is addressed. However, the deadlines for notifications made on the basis of the special appeal procedure by the Catalan Court of Contracts, in any case, are counted from the date of sending the notification notice.

8.3. Furthermore, in order to receive any news regarding this tender, any companies interested and in particular the bidding companies, must subscribe to this news service, through the virtual space available for this purpose at the web address of the ICFO contractor profile, accessible on the Platform of Public Procurement Services of the Catalan Government (Generalitat):

https://contractaciopublica.gencat.cat/ecofin_pscp/AppJava/cap.pscp?reqCode=viewDetail&keyword=icfo&idCa p=1923812&ambit=&

This will allow subscribers to immediately receive any news, amendments, publications or alerts related to this tender at their email address.

Moreover, any communication concerning or as a result of this bidding procedure and contract award will be made using the notice board of the virtual bidding space for this tender on the Platform of Public Procurement Services. Information regarding both the tender and the contract posted on the electronic notice board is time-stamped and guaranteed to be authentic and complete. For this purpose, the following actions will be organized through the contracting platform:

- Inquiries from interested companies in relation to the tender, and their response.
- Communication of the announcement of the public opening of the envelope containing the evaluable elements automatically or using formulas, communication of the valuations made by the contracting body in relation to the contents of the envelopes assessed by value judgment.
- Communication of any incident in the tender process (modification of dates, additional information, etc.)

This information will not be published by any other media; therefore, the bidders are responsible for subscribing to the notice board of the file, which will immediately publish any new information available.

This subscription must be made in a precise and specific way for each bid in which a company is interested, and it can be accessed through the section currently called "Subscripcions: Voleu que us informem de les novetats?" ("Subscriptions: Would you like to know what's new?")

In addition, the bidding companies may also register on the Bidder's Profile with the required authentication. The Bidder's Profile is a set of services for bidding companies. Each company has its own space, with tools to help them access and manage the tenders they are interested in. To register, you need to have the required digital certificate, click on the "Bidder's Profile" section of the Platform of Public Procurement Services. This Platform offers companies a "bidder's guide".

8.4. Digital certificates:

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

With regard to EU foreign certificates, qualified certificates will be accepted in any European Union country pursuant to article 25.3 of the aforementioned Regulation (EU) 910/2014/EU on electronic identification and trusted services mentioned, which provides that "a qualified electronic signature based on a qualified certificate issued in a Member State will be recognized as a qualified electronic signature in the other Member States.

8.5. The formalization of the contract in an administrative document will be done preferably by electronic signature. For this purpose, the legal representatives of the awardee companies must have an electronic signature certificate from a legal person with a secure signature device issued by any certification body classified by the Consortium "Administració Oberta de Catalunya" ("Open Administration of Catalonia"), or an electronic ID.

CLAUSE 9.- Conditions of bidder capacity and solvency

9.1. Spanish or foreign natural or legal persons having full capacity to act pursuant to article 65 of the LCSP, who do not incur any of the prohibitions from entering into contract set out in article 71 of the mentioned Law, who produce proof of the solvency required in these specifications and who have professional or technical competence that may eventually be required for engaging in the activity or service that is the object of the contract, will be able to enter into a contract with the contracting body.

The requirements of capacity, solvency and absence of prohibitions for contracting must be met at the time the offer is submitted and must be maintained until award and formalization of the contract.

9.2. Pursuant to article 75 of the LCSP, solvency may be accredited based on the solvency and means of other bodies, regardless of the legal nature of any existing associations, provided proof is produced showing that for the execution of the contract these means will effectively be in place. However, regarding academic and professional qualifications or experience, the capacities of other bodies may only be used if they fulfil the part of the object of the contract for which such capacities are required. These third parties must prove their capacity, aptitude and solvency required in these Specifications.

In the event that the bidding company uses the capacities of other companies to prove its financial and/or technical solvency, pursuant to article 75 of the LCSP, or intends to subcontract, it must indicate this circumstance in the statement of responsibility in accordance with the model set out in Annex no. 1 of these Specifications, referred to below, and submit a separate statement, duly signed, for each of the companies whose capacity it will use or it intends to subcontract.

In the event that the economic and financial solvency of other entities is used, the bidder and the entities it collaborates with for the procurement of this contract will be jointly and severally liable for its execution.

9.3. The bidding companies must meet the solvency criteria set out in the Table of Contract Specifications. However, only the company or companies proposed as awardee(s) will have to provide documentary proof of compliance with these requirements. Notwithstanding this, the contracting body may request that bidders prove that they have complied with these requirements any time prior to the award proposal.

9.4. Non-EU foreign companies must also comply with the requirements set out in Article 68 of the LCSP.

9.5. The contracting body may enter into contract using joint ventures that are established temporarily for this purpose. This participation will be carried out at the bidding stage, by providing a private document stating the desire for joint concurrence, indicating the names and circumstances of its members, the participation of each of

them, designating a sole representative or attorney with sufficient powers to exercise the rights and fulfil the obligations arising from the contract until the termination thereof, without prejudice to the existence of joint powers in other aspects, and assuming the commitment to constitute it formally in case of being awarded the contract. The formalization in public deed will not be necessary until the award in their favour has been made.

These entrepreneurs will be jointly and severally liable before the contracting body.

A Temporary Joint Venture will not be required to be formally constituted through a public deed until the contract has been awarded.

9.6. The contracting body will take the appropriate measures to guarantee that the participation in the bidding of the companies that have previously participated in the preparation of the technical specifications or the preparatory documents of the contract, or that have advised the contracting body during the preparation of the hiring procedure, do not misrepresent the competition. In either case, the rules set out in article 70 of the LCSP will be observed.

In the event that a bidding company, or a related company, has participated in the preparation of the technical specifications or preparatory documents for the contract, this must be explicitly stated, specifying the extent of its participation, by submitting the corresponding self-declaration in envelope no. 1.

9.7. Legal bodies can only be awarded contracts whose provisions are included within their own purposes, object or field of activity according to their by-laws or founding rules.

9.8. Bidders with more than fifty permanent employees must have at least 2% disabled employees of the total workforce, or comply with the alternative measures set out in the Royal Decree 364/2005, of 8 April, or rule replacing it.

III. PROVISIONS RELATING TO THE BIDDING PROCEDURE

CLAUSE 10.- Proposals of bidders: general rules

10.1. Proposals will refer to the whole of the service subject to this contract or where appropriate, to the totality of each of the lots in which the contract is divided, and partial offers will not be accepted.

Proposals will be submitted within the maximum period set out in the Table of Contract Specifications and in the tender announcement. Proposals submitted after the deadline will not be accepted under any circumstances.

When submitting their proposals, all bidders must indicate their address, telephone number, fax, email and person of contact, on the submission form provided by ICFO included in Envelope 1, for any communications and relationships that are generally derived from this procedure or that may in any way affect the bidder.

10.2. Bids must be valid for six (6) months, from the proposal opening date. After this period, bidders may choose to keep or withdraw their proposals, with full indemnity for the parties, without being able to request compensation or reparation. Bids that are not withdrawn will be considered valid and binding on the bidder for all purposes set out in these Specifications.

10.3. Bidders shall not submit more than one proposal in the same lot in this procurement procedure, either individually or jointly with other companies.

The submission of more than one bid per Lot by a bidder, individually or jointly with other companies, will imply non-admission and therefore the rejection of all proposals in which the infringing bidder is present, as well as exclusion from this tender procedure.

Nor will the bidder be able to sign any proposal of joint participation with other bidders if he has already done so individually, or appear in more than one of these associations. Infringement of this paragraph will lead to the inadmissibility of all proposals submitted.

10.4. Simultaneous submission by any associated companies will lead to the effects set out in the applicable regulations in relation to the application of the offer scheme with abnormal or disproportionate values.

10.5. In the event of a contract whose purpose is the surveillance, supervision, control and direction of any contract, as well as coordination in the field of health and safety, it shall not be awarded to the same company that has been awarded the corresponding contract, or to a company linked to it.

10.6. In the event that there is a division into lots, the Contracting Body may limit the participation in these in the Table of Contract Specifications, in accordance with the rules established.

CLAUSE 11.- Format for submission of bids and electronic media: general rules

11.1. Prior to the evaluation of the bids, the contracting authority must initiate, through the IT tool based at the State Tax Administration Agency (AEAT), the ex ante conflict of interest analysis procedure consisting of the introduction of the data of the natural or legal persons bidding and of the decision-making bodies of the operation.

In the event that the AEAT does not have the information on the real ownership of the company under consultation and has so indicated by means of the corresponding black flag to the contracting authority, the latter must request the bidding companies for the information on their real ownership, which they must provide within 5 working days of the request. In the event that the requested information is not provided within this period, the bidding company will be excluded from the procedure

11.2. The proposal will consist of ONE single envelope.

The envelope will contain its contents, listed numerically, on a separate sheet.

1.3. The single envelope must contain the documentation proving the prerequisites referred to in article 140 of the LCSP, as well as the financial offer or any evaluation based on automatic formulas, the latter conforming to the model included as an annex to these Terms of Reference.

11.4. The proposal will be submitted typewritten or using other types of mechanical or computer printing, and no handwritten document or one with omissions, errors or amendments that do not allow the conditions for evaluating the offer to be clearly known will be accepted.

11.5. The offer will not be accepted, in any case, if the invited party is in any of the circumstances provided for in article 71 of the LCSP on prohibitions on contracting.

11.6. The invited company must submit the documentation confirming its offer within the deadline indicated in the tender announcement, using the Digital Envelope tool accessible at the following web address: ICFO Contractor Profile.

Once they access the Digital Envelope web tool through this link, the bidding companies must fill out a form to register for the tool and, subsequently, they will receive a message, to the email indicated in this registration form, activating the offer.

Bidders must keep the bid activation email, as the link contained in the activation message is the exclusive access they will have to submit their bids through the Digital Envelope tool.

By accessing the bid submission website through this link sent, bidders must prepare all the required documentation and attach it in electronic format in the corresponding envelopes. Bidders may prepare and send this documentation in stages, before submitting the bid.

11.7. 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 (no keyword is required for envelope 1, since the documentation is not encrypted). With this keyword, the documentation will be encrypted at the time of sending the offers.

Likewise, the decryption of the offer documents is carried out using the same keyword, which the bidding companies must keep. It is important to take into account the importance of properly safeguarding this or these keys (they can be the same for all envelopes or different for each one), since only the bidding companies have them (the Digital Envelope tool does not save or remember the passwords entered) and **they are essential for decrypting the offers and, therefore, for accessing their content.**

11.8. The Contracting Board will ask the bidding companies, via the email indicated in the Digital Envelope tool offer registration form, to access the Digital Envelope web tool to enter their keywords at the appropriate time.

When the bidding companies enter the keywords, the process of decrypting the documentation will begin, which will be stored in a secure virtual space that guarantees the inaccessibility of the documentation before, where applicable, the constitution of the Board and the opening of the envelopes, on the established date and time.

The bidding companies may be asked to enter the keyword 24 hours after the end of the deadline for submitting offers and, in any case, they must enter it within the established period before the opening of the first encrypted envelope.

11.9. Once all the documentation of the offer has been completed and the documents that make it up have been attached, the actual presentation of the offer will be made. **From the moment the offer has been submitted, the documentation submitted may no longer be modified.**

In the event that any document submitted by the bidding companies is damaged, blank or illegible or is affected by a computer virus, the Procurement Committee will assess, depending on which documentation is affected, the legal consequences with respect to the participation of this company in the procedure, which may arise from the

impossibility of accessing the content of any of the documents of the offer. In the event that these are essential documents to know or assess the offer, the Committee may agree to exclude the company.

Bidding companies may submit a backup copy of the electronic documents submitted on electronic physical support, which will be requested from the bidding companies if necessary, in order to be able to access the content of the documents in the event that they are damaged. In this regard, it is important to remember the importance of not manipulating these files in order not to change their electronic fingerprint, which is what will be checked to ensure the coincidence of the documents in the backup copy, sent on electronic physical support, and those sent in the offer, through the Digital Envelope tool.

11.10. Under no circumstances will bids from those people who meet any of the circumstances provided for in article 71 of the LCSP on prohibitions on contracting be accepted. Offers that are incomplete, anomalous, contain omissions, errors or amendments that do not allow their terms to be clearly known and, consequently, do not allow the conditions for assessing the offer to be clearly known or are misleading will be excluded from the procurement procedure.

CLAUSE 12.- Bidders' Proposals: Documentation

SINGLE ENVELOPE

12.1. General administrative documentation supporting the prerequisites

12.1.1. Responsible declaration of suitability to contract in accordance with the European Single Procurement Document (ESPD) model.

The bidding companies can fill out the self-declaration that conforms to the ESPD form included in **Annex No. 1** to these Specifications, or they can directly fill in the ESPD using the online service of the European Commission, through which the ESPD model corresponding to this tender can be imported, completed, downloaded and printed to be submitted. The model for this document can be downloaded from the following URL: <https://ec.europa.eu/growth/tools-databases/ESPD/filter?lang=es>

Through the ESPD the companies declare the following:

- That the company is validly constituted and that in accordance with its corporate purpose it can participate in the tender, and that the person signing the ESPD has the appropriate representation to submit the proposal and the ESPD;
- That it meets the requirements of economic, financial and technical solvency, in accordance with the minimum requirements required in these Specifications;
- That it does not incur in prohibition to contract;
- That it complies with the other requirements set out in these Specifications and that can be verified through the ESPD.

Special conditions related to temporary business associations:

-
- a. Each businessman must submit the corresponding self-declaration or ESPD.
 - b. It will be necessary to submit the document proving the appointment of a sole representative or attorney with sufficient powers to exercise the rights and fulfil the obligations arising from the contract until its termination, as well as indicating the names and circumstances of the businessmen who subscribe to it, each of their participation, and the commitment to formally form a temporary association, in the case of being awardees.
 - c. The provisional tax ID number assigned by the relevant Administration may be included. Only in the event that the association should become an awardee will proof of its constitution in public deed have to be provided as well as the definitive tax ID number assigned.

Other special conditions:

When the employer resorts to the solvency and means of other bodies or intends to subcontract, this circumstance must be indicated in **Annex No. 1** or in the ESPD and another annex or separate ESPD must be submitted by each of the companies to which they resort or intend to subcontract, duly signed.

When the Specifications provide for the division into lots of the object of the contract, if the necessary economic, financial, technical or professional solvency requirements vary from one lot to another, a self-declaration will be provided for each lot or group of lots to which the same solvency requirements apply.

The Contracting Body will require that the company receiving the award proposal produce proof before the award of the contract, that it has fulfilled the personality and capacity requirements and solvency requirements by providing the documents indicated in clauses 6 and 11 of these Specifications.

In any case, the Contracting Body may request, at any time prior to the adoption of the award proposal, that the bidders provide the documentation proving that they have fulfilled the conditions established to be the awardee of the contract referred to in the aforementioned clauses 6 and 11 of these Specifications.

- A) Submission application.
- B) Declaration of confidentiality of data and documents. (Annex no. 4).
- C) Commitment of assignment of material and/or personnel resources.
- D) In the event that a company wishes to resort to the capabilities of other bodies, it will have to provide a written commitment from said bodies, in accordance with the provisions of article 75.2 of the LCSP.
- E) Provisional guarantee

A document offering proof that the provisional guarantee has been constituted, if required, in accordance with the provisions of the Table of Contract Specifications.

The guarantee will cover the maintenance of the offers until the completion of the contract and may be provided in one or some of the ways provided for in paragraph 1 of article 108.

In the event that the contract is divided into lots, the provisional guarantee will be paid according to the amount of the lots for which a bid has been submitted and not based on the amount of the total bid budget.

The provisional guarantee expires automatically and is returned to the bidders immediately after the contract is completed.

F) Commitment to constitute a temporary business association, if applicable.

In the event that several employers concur together in a temporary association, the commitment to constitute the temporary association shall be provided, in accordance with the provisions of article 69.3 of the LCSP.

G) Declaration of submission to the Spanish courts and tribunals.

In the event that the contract is executed in Spain, foreign companies must provide a declaration to submit to the jurisdiction of the Spanish courts and tribunals of any order, in any incidents that may arise directly or indirectly from the contract, with a waiver, where appropriate, of any foreign jurisdiction that could correspond to the bidder.

H) Other documents required

Additionally, any other documents required by the Table of Contract Specifications must be provided.

12.2. Economic offer

Economic offer and other automatically evaluable references, in accordance with Annex No. 2 of these Terms of Reference.

The economic offer and other automatically evaluable references must be formulated in accordance with the model that accompanies these terms of reference as Annex No. 3.

Regarding the economic offer, the price offered will be considered to include all types of expenses, fees or necessary taxes that arise due to the Contract and its correct execution.

In addition, the price offered must include a breakdown of the current Value Added Tax. Any variation in the VAT rate will be applicable from its effective date.

Failure to follow the offer model provided for in Annex No. 3 may lead to the exclusion of the bidding company.

The proposal must demonstrate compliance with the elements of the service subject to the contract that constitute the minimum requirements that the offer must meet, as set out in section I of the Characteristics Table.

CLAUSE 13.- Contract award criteria.

13.1. Proposals submitted and admitted will be studied, evaluated and weighted in accordance with the criteria set out in **Annex no. 2** of these Specifications.

The submission of the proposal/offer by the bidder implies that it complies with the legal system and can be executed in its terms, and in no case can this liability be affected or diminished due to the fact that the offer has been valued or accepted by the ICFO.

13.2. The award will be made to the proposal offering the **best value for money**, which will be the one that obtains the highest score among all the proposals admitted to the tender that match or exceed the minimum score established in these Specifications. If none of the bids reaches the minimum score required by the awardees based on the award criteria, all bids will be rejected and the bidding procedure declared void.

13.3. Any allegedly abnormal or disproportionate bids shall be assessed in accordance with the provisions of **Annex no. 2**.

From the applications of these criteria, if a proposal is identified as allegedly abnormal or disproportionate, the contracting body will contact the affected bidders in writing, requesting the information and justifications it deems appropriate in relation to the different items of their proposal, a procedure that must be completed within a maximum period of 3 working days.

Upon receipt of the information and justifications, the contracting body will request a technical report from the technical services of the entity assessing the justifications of bidders who have incurred in an allegedly abnormal or disproportionate offer.

The analysis of the justifications of the proposals that may be considered abnormal or disproportionate will take into account the relationship between the financial offer made by the bidder and the rest of elements offered.

Based on the bidder's justification and on the technical report, the contracting body will determine whether or not the bid can be fulfilled by the bidder as a result of the inclusion of abnormal or disproportionate values. If the offer is considered abnormal or disproportionate, the contracting body will exclude it from the bidding procedure.

If the abnormally low offer shows that the unit prices of the wages of employees considered in the offer are lower than those established in the wage agreement, a complementary technical report from the representative body of workers or a representative organization in the sector may be required in order to verify the compliance with salary costs.

Moreover, the offer will be excluded if in the hearing process of the bidder who has submitted an abnormally low qualified bid, it is evident that the unit prices of the salaries of the people who will execute the contract considered in the service are lower than those established in the wage agreement.

13.4. In the event of a tie in the scores obtained by the bids of the bidding companies, the contract will be preferably awarded to:

- When producing proof of their technical soundness, proposals submitted by companies that have over two percent of employees with a disability, provided that their proposals match the most advantageous proposal in accordance with the award criteria.
- Preference will be given to the bidding company with the highest number of disabled workers on a permanent contract.
- Preference will be given to the proposal submitted by an entity recognized as a Fair-Trade Organization for the award of contracts involving products for which there is a fair-trade alternative.

- Preference will be given to proposals submitted by companies that, by the bid deadline, include social and work measures that favour equal opportunities between women and men.

If the tie persists after applying the additional award criteria, the award will be settled by a draw carried out in a public event, after being called through the Contractor's Profile.

CLAUSE 14.- Procurement Board

The Contracting Board will be composed of the members stated in the Table of Contract Specifications (a minimum of four members, including a legal advisor and the budget manager, and a secretary without voting rights). Its members will be appointed by the contracting body and their profile publicized. Their agreements will be valid as long as the majority of voting members are present. In the event of a tie vote, the President will have the casting vote.

The Board will be assisted by the technical advisers appointed in each case, and by the administrative staff considered appropriate, all without the right to vote.

CLAUSE 15.- Expert Committee

In the event that the score attributed to the award criteria that depend on a value judgment is higher than that attributed to the automatically scored criteria, a committee of experts will be appointed to assess the award criteria that depend on a value judgment. The members of the expert committee will be designated in the Table of Contract Specifications and will be published in the contractor's profile, as well as the deadline for the assessment and the maximum and minimum quantification limits. In any case, the expert committee will be made up pursuant to article 146.2.a) of the LCSP and article 28 of RD 817/2009.

CLAUSE 16.- Opening and examination of tenders

16.1. Once the deadline for submitting the proposal has expired, the "Single Envelope" will be opened, in order to verify that it contains the documentation established in clause 12 of these Terms of Reference and to proceed to qualify its formal validity.

The Procurement Committee, or the services dependent on the Procurement Body, in the event that this is not established, may require the bidder to submit all or part of the documents supporting their suitability, capacity and solvency for the purposes of verifying any point of the declaration of compliance with the prerequisites, when it considers that there are reasonable doubts about the validity or reliability of the declaration or when it is necessary to guarantee the proper development of the procedure. The deadline for providing the required documentation will be five calendar days from receipt of the request.

16.2. Subsequently, and if applicable, the bidder will be notified of the existence of defects or omissions that can be corrected, setting a deadline for the bidder(s) to submit the appropriate correction. This deadline may not be longer than three days from the date of the aforementioned notification.

The decisive moment to assess the concurrence of the capacity requirements required to contract will be the end of the deadline for submitting the proposal.

The non-admission and exclusion from the tendering procedure of the bidder(s) whose documentation presents non-correctable defects or those who have not mentioned the defects within the deadline granted will proceed.

In addition, the Contracting Board or dependent services may request clarifications from the bidder on the certificates and documents submitted or require them to submit other complementary ones.

16.3. Failure to submit any of the documents that must be included in the Single Envelope will be grounds for exclusion from the bidding procedure, unless it is considered amendable by the Procurement Board or dependent services and has been amended within the given period.

16.4. Once the general documentation presented in the Envelope has been examined and qualified and, where appropriate, the defects or omissions in the documentation presented have been amended, the admission of the invited company to this contracting procedure will be determined.

16.5. The examination and assessment of the financial offer and other automatically assessable references will then proceed, in the same private act if the documentation has been presented correctly.

Once the economic proposal has been opened and the documentation included in it has been verified, the Contracting Committee will identify whether the offer meets the minimum requirements established in the PCAP to be admitted and, if not, it will be required to amend them.

At this point, and prior to the final evaluation of the offers, the negotiation round will be carried out, consisting of offering to improve the parameters susceptible to negotiation defined in the characteristics table.

CLAUSE 17.- Classification of bids and pre-award documentation required

17.1. Once the evaluation of the offers has been made, and after excluding those that do not meet the requirements of the Specifications, the Procurement Board will propose the ranking in descending order and formulate the award proposal in favour of the candidate who has obtained the best score, which will be raised to the contracting body.

Relevant technical reports may be requested to formulate the classification proposal.

17.2. Once the contracting body accepts the proposal from the Procurement Board, the corresponding services ask the bidder who has submitted the best offer, pursuant to article 145 of the LCSP, to submit the following documents within (10) working days that run from the day following receipt of the request:

- If the company is not recorded in the ROLECE (the Official Register of Bidders and Classified Companies in Spain) or RELI (Electronic Register of Tendering Companies in Spain):
 1. Supporting documentation accrediting capacity to operate and legal personality:
 - a. For natural persons (individual and professional entrepreneurs), it is obligatory to submit an identification number or document replacing it, and Tax Identification Number (NIF in Spain), if not included in the ID card.

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- b. For legal entities, the submission of the Tax ID number and the deeds of incorporation, with modification and adaptation of statutes, where applicable, duly registered in the Business Register, will be obligatory when this requirement is necessary in accordance with the commercial law applicable. When this registration is not required, it may be accredited through the deed or document of incorporation, modification, by-laws or articles of association, which include the regulations governing the activity of the company, recorded where appropriate, in the corresponding official Register.
 - c. If the business person is acting through a representative or is a legal personality, it is necessary to provide:
Public document designating the representative, duly recorded in the corresponding Public Registry.
ID card and tax identification number (NIF) of the representative and the signatory of the financial proposal.
 - d. Companies from European Union member states other than Spain, or signatories of the European Economic Area agreement, must accredit their capacity to operate through their inclusion in the relevant registers in accordance with the legislation of the state where they are established, or by filing an affidavit, or a certification under the terms set forth in the regulations, in accordance with applicable European Union provisions.
 - e. The ability to operate of foreign companies not included in the previous section must be accredited by observing the rules set out in article 68 of the LCSP.
 - f. As mentioned above, bids may be submitted by groups or associations of companies that are temporarily set up for this purpose, without the need to be formally constituted through a public deed until the contract has been awarded in their favour. These companies will be jointly and severally liable to the contracting body.

In such cases, both natural and legal persons must accredit its capacity, personality and representation, and must indicate in a separate document the names and circumstances of each of the members, the percentage of their participation, and they shall appoint a representative or attorney with sufficient powers to exercise the rights and fulfil the obligations arising from the Contract until its termination.

Bidders who are part of a temporarily constituted business group or association may not participate individually in the same procedure or appear in more than one business group or association.

In the event that all or part of the related documents has already been delivered to the contracting body and has been neither modified or updated, therefore being in full force, the bidder will not need to provide them again, as long as a duly completed certification on the validity of said documents is included under his responsibility.

2. Documentation proving the financial, economic and professional or technical solvency, in accordance with the provisions of the Table of Contract Specifications
3. If required, document accrediting the constitution of the definitive guarantee. In the event that within the term granted, the candidate proposed as the awardee did not present the definitive guarantee, the award

proposal will be made in favour of the next ranking candidate, granting the corresponding term to constitute said guarantee.

4. Other documentation:

- a. Registration document for the Economic Activities Tax, in the heading corresponding to the object of the contract, and latest receipt, provided that it exercises activities subject to and not exempt from said Tax.

However, if the company proposed meets one of the conditions for exemption from this tax, pursuant to article 82 of Royal Legislative Decree 2/2004, of 5 March, of the Recast Text of the Law regulating Local Treasuries, it must provide a sworn statement specifying the legal basis for the exemption and a declaration that the company is included in the census of taxable persons.

- b. Certificate from the Spanish tax agency confirming that the company is up to date with its tax obligations, for the purposes of article 43 of the General Tax Law 58/2003, of 17 December.
 - c. Certificate issued by the local Government of Catalonia (Generalitat) confirming that the company has no debts payable to this Administration.
 - d. Certificate issued by the Spanish Social Security Treasury General stating that all social security obligations are up to date.
 - e. In the case of resorting to solvency integration through external means, commitment referred to in article 75.2 of the LCSP shall be provided.
 - f. Commitment to assign resources as indicated in Article 76.2 of the LCSP.
- If the company is not recorded in the ROLECE (the Official Register of Bidders and Classified Companies in Spain) or RELI (Electronic Register of Bidding Companies in Spain):
 - (i) Document confirming that the company is recorded in the ROLECE or RELI and certification regarding the validity of the data contained therein. If any of the information referred to in the previous section does not appear in the RELI, it must be provided separately.
 - (ii) In the case of resorting to the integration of solvency through external means, contribution of the commitment referred to in article 75.2 of the LCSP.
 - (iii) Commitment to assign means referred to in article 76.2 of the LCSP.
 - (iv) If required, a document accrediting the constitution of the definitive guarantee. In the event that within the term granted, the candidate proposed as the awardee did not submit the definitive guarantee, the award proposal will be made in favour of the next ranking candidate, granting the corresponding term to constitute said guarantee.

Unless all required documents are submitted appropriately within the set period, the bidder is understood to have withdrawn his bid, and will be required to pay a penalty of 3% of the base bid budget, excluding taxes, which will

be effective first of all against the provisional guarantee, if it has been constituted. In this case, the same documents will be requested from the next bidding company in accordance with the ranking in which the tenders have been classified.

IV. PROVISIONS RELATING TO THE AWARD AND FORMALIZATION OF THE CONTRACT

CLAUSE 18.- Definitive guarantee

18.1. The amount of the definitive guarantee, if applicable, is the one indicated in the Table of Characteristics of the Contract.

In the special cases referred to in section 2 of article 107 of the LCSP, the Specifications may establish that, in addition to the definitive guarantee, a complementary guarantee of up to 5% of the final price offered will be provided by the bidding company that presented the best offer, excluding tax, so that the total guarantee can be up to 10% of said price.

18.2. The guarantees can be provided in any of the following ways, as established in article 108 of the LCSP:

- By endorsement, provided in the form and conditions established by regulation, by one of the banks, savings banks, credit unions, credit finance companies or mutual guarantee companies authorized to operate in Spain, which will be deposited in the Caixa General de Deposits of the General Treasury of the Generalitat or in the safety deposit boxes of the territorial treasures.
- By means of a surety bond contract with an insurance company authorized to operate in the manner and under the conditions established by regulation. The insurance certificate must be delivered at the establishments indicated in section a).
- By withholding on the price. The form and conditions of the withholding will be stated in the notification of the bid ranking, where applicable.

18.3. In the case of a temporary business association, the definitive guarantee can be constituted by one or more of the participating companies, providing that together the required amount in the table of specifications box is reached and that it guarantees jointly all the companies involved in the temporary business association.

18.4. The definitive guarantee is based on the concepts defined in article 110 of the LCSP.

18.5. When the penalties or indemnities required of the awardee become effective on the guarantee, the bidder shall replace or extend the guarantee, in the amount corresponding, within a period of FIFTEEN (15) days from the execution.

18.6. Pursuant to article 107.2 of the LCSP, the Specifications may provide that, in special cases and in particular in the event that the bid of the awardee has been involved in a presumption of irregularity, a supplementary guarantee of up to 5% of the price be submitted.

CLAUSE 19.- Decision not to award the contract and withdrawal

The contracting body may DECIDE NOT TO AWARD OR ENTER INTO THE CONTRACT, for duly justified reasons of public interest, notifying the bidding companies before the formalization of the contract, pursuant to article 152 of the LCSP.

It may also WITHDRAW from the procedure, before the award is made, by notifying the bidding companies, when it notices a non-amendable violation of the rules of preparation of the contract or of the regulations of the awarding procedure.

In both cases, the bidding companies will be compensated for any expenses they have incurred (in the absence of an express provision as to how to determine the expenses eligible for compensation, this will be done according to the evaluation criteria applied to calculate the pecuniary liability of the Administration, through the regular administrative procedure).

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

CLAUSE 20.- Award of the contract

20.1. Once the documentation referred to in clause seventeen has been submitted, the contracting body will award the contract to the bid that is the most economically advantageous after a reasoned resolution, which will be notified to all the bidders and published in the Contractor Profile, within a maximum period of five (5) working days from the moment the definitive guarantee has been constituted, if required, and once the documentation referred to in the previous clause has been provided.

The decision to award the contract must be reasoned with reference to the award criteria of these Specifications and pursuant to article 151 of the LCSP, specifying the reasons for rejecting a bid or offer and the characteristics and advantages of the offer selected, while indicating the total and partial scores obtained by all the companies admitted in each award criteria. This motivation will be sufficient if, once the decision regarding the award is made, the contracting body accepts and assumes the award proposal made by the Procurement Board.

This decision will be notified to the bidding companies using the e-NOTUM electronic system, pursuant to clause 8 of these Specifications, and will be published in the contracting profile of the contracting body within FIFTEEN (15) days, indicating the period within which the contract must be formalized.

For this purpose, a notice stating that the notification is available will be sent to the email address (and to the mobile phone, when provided) that the bidding companies will have designated when submitting their proposals. The email will also contain the link to access it.

Exceptionally, any means may be used that allows to leave evidence that the recipient has received the notification. In particular, this may be done by email to the address that the bidders have given when submitting their proposals.

20.2. Moreover, the award decision will indicate the deadline for the formalization of the contract.

If no proposal is admissible in accordance with the award criteria of these Specifications, the procedure will be declared void.

20.3. If the contracting body departs from the contract proposal made by the Contracting Board, the reasons must be justified in the resolution.

20.4. If no award resolution has been issued after the deadlines indicated in article 158 of the LCSP for the award of the contract, the bidders will have the right to withdraw their proposal, without the right to any compensation. However, the contracting body may ask the bidders to maintain their bids for a longer period, following notification to the bidders and publication in the Contractor Profile, maintaining the tender with those bidders who accept the extension.

CLAUSE 21.- Formalization and completion of the contract

21.1. The Contract shall be formalized in writing at the headquarters of the contracting body, by means of a private document, in accordance with the form attached to these Specifications. The Contract will be completed with its formalization.

The awardee company or companies may request that the contract be attested by a Notary Public, assuming the costs at their own expense.

21.2. If a contract is subject to special appeals on matters of procurement pursuant to article 44 of the LCSP, its execution may not take place until FIFTEEN (15) working days have elapsed since the bidding companies were notified of the award referred to in the previous clause.

Once the above period has elapsed without any appeals being submitted that might lead to postponing the execution of the contract, the contracting body shall instruct the awardee to execute the contract within a period not exceeding FIVE (5) days from the day after the request has been received

21.3. If a contract is not subject to special appeal on matters of procurement, its formalization will take place within a maximum period of FIFTEEN (15) working days have elapsed since the bidding companies were notified of the award referred to in the previous clause.

21.4. When, due to causes attributable to the awardee, the contract has not been formalized within the stated period, he will be required to pay an amount equivalent to 3% of the base bid budget, excluding taxes, which will be effective first of all against the provisional guarantee, if it has been constituted.

In this case, the contract will be awarded to the next bidder in accordance with the ranking in which the tenders have been classified, after submitting the documents stated in the seventeenth clause of these Specifications.

21.5. The contract may not be executed prior to its formalization.

21.6. The formalization of this contract, together with the contract, will be published in the contractor profile within a period not exceeding fifteen (15) days after its completion. If the contract is subject to harmonized regulation, the formalization announcement will also be published in the Official Journal of the European Union.

21.7. Once the contract has been formalized, the basic details will be reported to be recorded in the Register of Public Contracts of the Generalitat de Catalunya, such as identity of the awarded company, the amount awarded, together with the corresponding tax breakdown; and then, where appropriate, any modifications, extensions, variations of terms or prices, the final amount and the termination of the contract.

The contractual data reported to the register of public contracts will be accessible publicly, according to any limitations imposed by the rules on data protection, provided that they are not confidential.

V. PROVISIONS RELATING TO THE EXECUTION OF THE CONTRACT

CLAUSE 22.- Management and inspection of the execution of the contract

The person responsible for the contract named by the contracting body will perform the following functions:

- Supervising the execution of the awarded contract.
- Ensuring compliance with the obligations assumed by the awardee, both those stipulated in the Specifications and the proposal or bid.
- Giving the awardee the orders and instructions required to ensure the proper execution of the contract.
- Contacting the technical coordinator or person responsible appointed by the awardee.
- Ensuring that the contracted company fulfils its obligations by affiliating and registering the workers assigned to perform the contract with the Social Security and, for this purpose, along with each invoice, the awardee may be requested to show copies of the salaries and documents TC1 and TC2, proving that the wages and Social Security of the people performing the contract have been paid and to attach these documents to each validated invoice.

The person responsible for the contract will be in contact with the technical coordinator or responsible person appointed by the awardee, who must belong to the workforce, in order to coordinate and control the correct execution of the contract, for which they should meet on a regular basis.

In no case shall the person responsible for the contract of the contracting body determine which employees of the awardee will execute the contract or participate in their selection or training, nor will he give specific orders and instructions to the workforce of the awardee or exercise any managerial power over them.

The contracting body will also be authorized to supervise, during the execution of the contract, that it is executed with the maximum respect for the environment, in accordance with the obligations and requirements contained in these Specifications.

CLAUSE 23.- Conditions of execution and essential obligations of the contract

Special conditions of contractual execution:

- In compliance with the non-use of sexist language or images in the execution of this contract, the bidder undertakes to deliver, before receipt of the service, an evaluation report of the measures implemented and incidents detected and corrected that have occurred during the execution of this contract.
- The commitments assumed by the successful tenderer in its offer in relation to sustainable public procurement.
- Maintenance of the working conditions of the people who execute the contract throughout the contractual period: The contracting company must maintain, throughout the execution of the work, the working and social conditions of the workers employed in the execution of the contract, established at the time of submitting the offer, according to the applicable agreement.
- Compliance with the non-existence of any illegal economic and/or financial relationship with a country considered a tax haven.
- The environmental obligations established in the Specifications and the Contract.

Essential obligations of the contract:

- The special conditions of execution.
- The assignment of the minimum mandatory personnel set out in the table of characteristics.
- The contractor will be bound by the offer that has been submitted, the fulfillment of which, in all its terms, will have the character of an essential obligation of the contract.
- The effective dedication or assignment to the execution of the contract of the personal and/or material resources indicated and committed in the offer.
- Those obligations of these Terms and Conditions and of the Standard Contract to which the character of an essential contractual obligation is specifically attributed.
- The effective dedication or assignment to the execution of the contract of the personal and/or material resources indicated and committed in the offer.
- The adaptation of the supplies to the requirements set out in the Technical Specifications and to the offer presented by the successful tenderer.
- The delivery of the work resulting from the supply within the time and place established in the contract.

CLAUSE 24.- Person responsible for the contract

Regardless of the unit in charge of monitoring and of the ordinary performance of the contract, a person responsible for the contract will be appointed to perform the following functions:

- Supervising the execution of the contract, making decisions and issuing the necessary instructions in order to ensure the proper execution of the object of the contract, always within the scope of the powers granted by the contracting body.
- Adopting the proposal regarding the enforcement of penalties.
- Submitting a report determining if a delay in execution is due to reasons attributable to the contractor.

CLAUSE 25.- Delay in performance

The awardee is obliged to fulfil the contract within the deadline set for this purpose, as well as to meet any partial deadlines indicated for the subsequent execution, where applicable. For the awardee to be declared in default, the contracting body shall not be required to give prior notice of non-payment.

If the awardee fails to meet any partial or overall terms for reasons attributable to it, the contracting body may choose either to terminate the contract with loss of the guarantee or to apply the penalties set out in the formal conditions pursuant to articles 193 and 194 of the LCSP after considering the circumstances.

In the processing of the case file, the awardee will be heard and can make allegations within five working days and the contracting body will decide, after issuing the relevant reports.

The awardee can suspend the fulfilment of the contract due to non-payment, provided that the delay exceeds four months.

CLAUSE 26.- Responsibility for execution and penalties

26.1. The awardee shall compensate the contracting body or its staff for any damages caused by deliberate and gross negligence in fulfilling the obligations resulting from the award. The awardee will also be responsible for any damages caused to third parties during the execution of the contract.

26.2. In the event of a breach or defective fulfilment of the obligations assumed by the awardee, the contracting body may terminate the contract or oblige the awardee to comply with it.

26.3. Noncompliance or defective compliance of contractual obligations will lead to the enforcement of penalties. The types of misconducts for the purposes of this contract are described below:

Minor:

- Lack of collaboration with the staff of the contracting body.
- Failure to fulfil the partial execution of the provisions defined in the contract, which does not constitute a serious misconduct.
- Not informing the contracting body of the incorporation of new staff or if there are any changes.
- Failure to comply with the regulations on Occupational Risk Prevention, classified as minor by the relevant regulations.
- A delay exceeding 2 weeks in the delivery of the goods being supplied.
- In the case of successive supplies, failure to deliver the goods that are the object of the contract for a period exceeding 7 days.

Serious:

- Resistance to the requirements made by the contracting body, or non-compliance.

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- Failure to fulfil the partial execution of the procurement defined in the contract, which is not considered a severe misconduct.
 - Not having any substitute staff available to perform tasks of installation, commissioning or maintenance of the goods.
 - Carry out a work day that is longer than that allowed by labour laws and not informing the contracting body when this occurs by accident.
 - Allowing the access by action or omission, of people unrelated with the execution of the contract, to departments of the contracting body.
 - Lack of delivery by the deadline, of all the information regarding the execution of the contract that has been requested by the contracting body.
 - Recurrence of minor misconducts.

Severe:

- Delivery by the awardee of items other than those described in the bid made or that do not meet the requirements set out in the Technical Specifications, until the defects detected have been completely eliminated.
- Failure to provide the procurement, whether due to abandonment or other reasons.
- Passivity, neglect and negligence in the performance of the contract.
- Resistance to or non-observance of the requirements made by the contracting body, when it causes a very serious prejudice to the execution of the contract.
- The use of work systems, elements, materials, machinery or personnel other than those provided for in the Specifications and in the awardee's bids, where applicable, when it causes a very serious damage.
- Not making staff available for the execution of the minimum services established.
- Very serious infringement of subcontracting terms, where applicable.
- Distortion by the awardee of the supplies described on the invoice.
- Recurrence of serious misconduct.
- Incorporating staff that has no knowledge of their obligations or prior training.
- Failure to comply with the regulations on Occupational Risk Prevention, classified as severe in the specific regulations, and especially in the Health and Safety Plan for procurement.
- Failure to comply with third-party safety provisions in the procurement.
- In the event of successive supplies, failure to deliver the goods that are the object of the contract for a period exceeding 3 weeks.
- A delay of more than 8 weeks in the delivery of the goods being supplied.
- In the processing of the file, the awardee shall be heard so that he can make the allegations he deems appropriate, and the contracting body of ICFO will resolve the matter.

26.4. Regardless of any compensation for damages, in the event of a breach that does not result in termination of the contract, the contracting body may apply the following sanctions, graduated according to the damage, danger and/or recurrence:

- SEVERE misconduct: 15% of the contract amount

- SERIOUS misconduct: 10% of the contract amount
- MINOR misconduct: 5% of the contract amount

The amount of the penalties may be paid through deduction from any invoices to be paid to the awardee.

The contracting body reserves the right to terminate the contract in case of recurring deficiencies in the execution of the contract, if more than 3 of the above penalties indicated apply.

Without prejudice to the above, the following penalties may be imposed:

- 3.5 percent (3.5%) of the total contract amount for each day of delay in the delivery of the equipment, when it is demonstrated that the delay is attributable to the contractor.
- In the event of non-compliance with the special execution conditions defined in the specifications, a penalty corresponding to 5% of the contract price, excluding VAT, may be imposed.
- In the event of non-compliance with the environmental, social or labor obligations referred to in clause thirty of these specifications, a penalty corresponding to 10% of the contract price, excluding VAT, may be imposed, and the total of these may not exceed 50% of the contract price, depending on its seriousness, which will be assessed by the contracting authority in each case.
- In the event of non-compliance by the contractor with the obligation to present the detailed list of subcontractors or suppliers and proof of payment compliance, as provided for in clause thirty-six of these specifications, a penalty corresponding to 5% of the contract price, excluding VAT, may be imposed.

CLAUSE 27.- Execution of the contract

The execution of the contract will be supervised and managed solely by the awardee. The awardee will appoint at any time, the workers who will execute the performance, determine the tasks to be performed in accordance with the general instructions of the contracting body and issue the appropriate guidelines to ensure that the contract is properly executed. The awardee shall provide its own technical, material, organizational and human resources to ensure the proper execution of the contract, appoint qualified and specialized staff to carry out the tasks under the contract, on its behalf, and to ensure that the staff appointed has the necessary qualifications, training and professional level for the services to be performed. The awardee shall not dissociate itself from the execution in any event.

CLAUSE 28.- Data protection

In compliance with the provisions of Organic Law 3/2018, of 5 December, on the protection of personal data and the guarantee of digital rights, in the development regulations and the provisions of Regulation (EU) 2016/679, of the European Parliament and the European Council, of 27 April 2016, on protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC, it is hereby stated that:

- a. Participation in this bidding procedure requires submitting documents which contain personal data.
- b. In relation to the documents submitted by the bidders containing the personal data of natural persons (workers, technical staff, collaborators, etc.), the bidder guarantees that consent has been previously

obtained from the concerned/affected persons to provide the aforementioned information to the contracting body for the purpose of bidding in this procedure.

- c. The documents submitted by the bidders containing personal data will be deposited at the offices of the contracting body, and duly processed by the contracting body for the qualification, assessment and comparison of the bidders' proposals and to fulfil the purposes stated in the public procurement regulations that apply to the contracting body. The recipients of this information will be the contracting body, as well as any third parties who carry out control tasks or third parties who need to access it, in the execution of the contract.
- d. Submission of the tender and the requested documents implies that the bidder authorizes the contracting body to process the abovementioned information in the terms mentioned and, in the event of being awarded, within the framework of the execution of the contract.
- e. The concerned/affected persons may exercise their rights to access, rectify, cancel or oppose their personal data, by contacting the contracting body, as the body responsible for data processing, at the address indicated in paragraph c) above, attaching a copy of an ID card or other Official Document in proof of the identity of the person exercising the right.

The awardee undertakes to comply with all the provisions of Organic Law 3/2018, of 5 December, on the protection of personal data and the guarantee of digital rights, the development regulations and the provisions of the Regulations (EU) 2016/679, of the European Parliament and the European Council, of 27 April 2016, concerning the protection of natural persons with regard to the processing of personal data and free movement of such data, which repealed Directive 95/46/EC, in relation to the personal data it may have access to during the term of this contract.

Any documents or information provided or to which the awardee has access as a result of the obligations arising from the contract and that belongs to the contracting body as responsible for the personal data file, are confidential and shall not be fully or partially reproduced by any means or medium, nor computer processed or edited, or transmitted to third parties outside the strict scope of the direct execution of the contract, not even to the rest of the staff that the awardee may have.

The awardee of the contract, responsible for processing the personal data that are the responsibility of the contracting body as the responsible for the file and data processing, undertakes to use them for the sole purpose of providing the services or commissioned work.

The awardee of the contract undertakes to process the data only in compliance with instructions of the contracting body, for the strict execution of the contract; not to apply or use the personal data that come from the files owned by the contracting body for a purpose other than that established in the contract nor to communicate or transfer them to other people, even for their preservation.

The awardee of the contract undertakes to delete or return the personal data and any media or documents containing such personal data obtained as a result of the execution of the contract, not keep any copies and not let any external person access such data, without express authorization from the contracting body.

The awardee of the contract undertakes to adopt the measures established in the Spanish and the European regulations, in accordance with the data processed of a technical and organizational nature, to ensure the security of any personal data coming from the files of the contracting body and to prevent its alteration, loss, processing or unauthorized access, given the state of the technology, the nature of the stored data and the risks to which they are exposed, whether due to human action or physical or natural environment.

The awardee of the contract and its employees undertake to strictly keep secret the information they have access to and to comply with any technical and organizational measures that are established to guarantee the confidentiality and integrity of the information. Such obligations will remain even after the termination and expiration of this contract.

CLAUSE 29.- Confidentiality

The awardee and its collaborators will be obliged to respect the confidentiality of all the information that they have access to for the execution of the contract as indicated in the same or as indicated by the contracting body, or that by its very nature must be treated as such. This duty of confidentiality will be maintained for a minimum period of 5 years, except that the contract establishes a longer term.

Likewise, the awardee must explicitly indicate any documentation and/or information that it considers confidential in his offer by submitting **Annex no. 4**.

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

CLAUSE 30.- Obligations of the awardee

In addition to the obligations established in the applicable regulations, the awardee will be required to:

- a. Detail the employees who will be performing the contract, at the request of the contracting body, notify any replacement or changes in the workforce and show proof that their employment status is in accordance with the law.
- b. Appoint a coordinator for the smooth running of the work and the behaviour of the staff, and also liaise with the contracting body and the person responsible of the contract.
- c. Assume any advertising expenses for the tender that are set out in these specifications. For this purpose, the contracting body will deduct the amount of such expenses from the first invoice issued or from any following invoices, if necessary.
- d. Carry out proper environmental management of the execution of the contract, taking the necessary measures to minimize any impact caused such as minimizing acoustic impact on the environment, applying proper management of waste and packaging, etc., in accordance with the current legislation.
- e. Keep secure any data or details that are not of public knowledge and that are related to the object of the contract, of which it is aware as a result of same.
- f. Respect, in any case, the requirements of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, the implementing regulations and the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 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, in relation to personal data.

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- g. Comply with current provisions concerning tax, labour, social and general regulations regarding the prevention of occupational risks. For such purposes, it must have and provide, at the request of the contracting body, the Certificate from the Tax Authorities for contractors and subcontractors covering the entire contract period.
- h. Have an adequate technical, economic and personnel organization to carry out, with due efficiency, the object of the contract.
- i. Submit all the necessary documents in Catalan for performance of the contract and use the Catalan language to perform the supplies that are the object of the contract.
- j. Have a civil liability insurance policy for an adequate amount to cover any kind of liability that may arise from the execution of the contract.
- k. Ensure that all the actions in this contract comply with the principles of non-discrimination and equal treatment regarding sex, sexual orientation, gender identity, ideology, nationality, racial or ethnic origin, religion, age, functional or other disability or any kind, as well as the dignity and freedom of people.
- l. Provide and submit the information indicated in Law 19/2014, of 29 December, on transparency, access to public information and good governance.
- m. Fulfil the following obligations regarding the ethical principles and rules of conduct to which bidders and contractors must adapt their activity, pursuant to article 55.2 of Law 19/2014, of 29 December, on transparency, access to public information and good governance:
- Adopt ethically exemplary behaviour, refraining from encouraging, proposing, promoting or conducting any kind of corrupt practice, both in relation to the terms set out in the Criminal Code as corruption and in relation to ethically reprehensible actions, informing the competent bodies of any manifestation of such practices that, in its opinion, is present or may affect the procedure or the contractual relationship, and refraining from taking any other action that may violate the principles of equal opportunity and free competition.
 - Observe the principles, rules and ethical standards of the activities, trades and/or professions under the contract.
 - Refrain from taking actions that jeopardize the public interest in relation to the scope of the contract or the supplies contracted.
 - Report any irregular situations that may arise during the contracting process, during the execution of the contract.
 - Immediately inform the contracting body of any situations of conflict of interest, understood as any situation in which the members of the contracting body staff or a contracting service provider acting on behalf of the contracting authority participating in the development of the contracting procedure or that could affect its result, have a direct or indirect financial, economic or personal interest that may appear to jeopardize their impartiality and independence within the contracting procedure. And take into account the provisions regarding conflicts of interest contained in Directive 2014/24/EU.
 - Refrain from requesting, directly or indirectly, that a public position or employee influence the award, continuation or maintenance of the contract in its own interest or that of a third party.

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- Refrain from offering or providing personal or material advantages to public positions or employees, whether for their own benefit or for third parties, irrespective of the personal or professional bond they may or may not have, and for the persons who participate or may influence the contracting procedure.
 - Respect the principles of free market and competition and refrain from conducts that are intended to or can prevent, restrict or distort competition, such as fraudulent behaviour or fraudulent competition (safeguard offers, elimination of offers, market allocation, rotation of offers, etc.). And report any act or conduct of which it is aware, aimed at such purposes and related to the tender or the contract.
 - Refrain from using confidential information, of which it is aware through the tender or the execution of the contract, for obtaining a direct or indirect advantage or benefit of any kind in its own interest.
 - Not attempt to unduly affect the decision-making process of the contracting authority, obtain confidential information which could give it undue advantage in the procurement process, or negligently provide misleading information which may have a significant influence on decisions regarding exclusion, selection or award of the contract.
 - Collaborate with the contracting body in the actions it carries out to monitor and/or evaluate the fulfilment of the contract, particularly providing the information requested for such purposes.
 - Fulfil the obligations of providing information that transparency legislation and public sector contracts impose on the awardees in relation to the Administration or administrations of reference, without prejudice to the fulfilment of the transparency obligations that may be directly attributed to them by legal provision.
 - Report any acts brought to its attention that may lead to a breach of the above obligations.
- n. Provide, where appropriate, information regarding the conditions of the contracts of workers affected by the subrogation.
- o. Submit technical documentation related to the goods being supplied such as user's manuals, plans, instructions, etc.

CLAUSE 31.- Payments to the awardee

The awardee will be entitled to receive payment of the price of the supplies actually delivered and formally received by ICFO, in accordance with the provisions established in the contract.

The effective payment of the performed services will be made within a maximum period of 30 calendar days from the date of approval of the invoice by the contracting body.

The invoices will include the Unit Code and the contract reference that will be provided by the contracting body.

The contracting body will pay for the procurement once it has been partially or completely provided and once the invoice has been entered in its registry. On this basis, payment in advance of either part or all of the contract price is not considered.

CLAUSE 32.- Risk and responsibility

The execution of the contract will be at the risk and peril of the awardee.

CLAUSE 33.- Modification of the contract

33.1. In relation to any contract modifications that may arise, the system foreseen in subsection 4 of Section 3 of Chapter I of Title I of the LCSP shall apply, depending on whether or not specific causes of modification have been foreseen.

The maximum increase for contract price changes due to reasons set out in these Specifications, is fixed in the percentage given in the Table of Contract Specifications. In any case, any successive modifications that may be agreed during the execution of the contract for the reasons set out in these Specifications will not exceed the percentage indicated above. This percentage will not be affected by the modifications that may eventually be necessary, due to circumstances not set out in these Specifications and made in accordance with the applicable law.

33.2. The following causes can generate the conditions necessary for a modification of the contract:

Subjective causes:

- Total or partial succession of the initial contractor due to a restructuration of the company, complying with the requirements and conditions established in article 98 of the LCSP and provided that this does not imply other substantial modifications of the contract, nor is it intended to circumvent the application of the Directive.
- Substituting the initial contractor as a result of a transfer of the contract to a third party, in the terms set forth in article 214 of the LCSP. In this event, prior and express authorization from the Contracting Body will be required to transfer the Contract and the assignee must have full capacity to contract with the public sector, have the solvency required in these Specifications and not be included in cases of inability or prohibition to contract with the public sector determined by the current legislation. The assignee of the contract shall be subrogated to all the assignor's rights and obligations.

Objective causes:

Foreseen modifications:

- The modification of the contract will be carried out in the event(s), with the conditions, scope and limits set forth in this clause and in the table of contract specifications.
- These modifications are mandatory for the contracting company.
- In no case may the modification of the contract involve the establishment of new unit prices not provided for in the contract.
- The foreseen modifications shall not exceed 20% of the initial price of the contract, and shall not alter the overall nature of the contract.
- In the case of service contracts with a limited budget, in which the employer is obliged to deliver a succession of supplies for a unit price, without exactly determining the total number of supplies included in the object of the contract at the time of its formalization, the reason for modifying the contract may be due to the fact that during its validity the actual needs were greater than those initially estimated, pursuant to article 204 of the LCSP.

- The modification of the contract in cases of budget cuts, containment or modification of expenditure arising from the application of budget stability measures, in accordance with the First Additional Provision of Law 5/2017, of 28 March, on fiscal, financial and administrative measures, will be made for reasons of public interest pursuant to art. 206 of the LCSP.

Unforeseen modifications:

- A modification of the contract not set out in this clause may only be made when the requirements are met and the assumptions set out in article 205 of the LCSP are fulfilled, in accordance with the procedure regulated in article 191 of the LCSP and with the specificities set out in article 207 of the LCSP.
- These modifications are mandatory for the contracting company, unless they involve an individual or joint alteration of the initial contract price by more than 20%, excluding tax. In this case, the modification will be agreed by the contracting body with the prior written consent from the contracting company; otherwise, the contract will be terminated in accordance with the cause set out in Article 211.1.g) of the LCSP.

33.3. To modify the contract, the procedure requires:

- A signed report from the contract manager stating the need to proceed to the contract modification.
- A Legal Report from the Contracting Department recommending its suitability, given the case.
- Contractor hearing for a period of ten working days and his appearance in which he claims to have been informed of the scope of these new works.
- Approval of the modification and award by the Contracting Body at the proposal of the contract manager with budget validation.
- Readjustment of the definitive guarantee.

33.4. Any modifications that are approved will be mandatory for the contractor. Therefore, the awardee accepts any modification of the contract proposed by the contracting body pursuant to these Specifications or to the Contract and agrees to execute it once the corresponding agreement is adopted.

In such cases, the contractor shall be obliged to continue the work with strict adherence to the rules that are set accordingly, and will not have any claim to compensation or be allowed to slow or interrupt the work pace for any reason.

There will be no limitation of modification to decrease the contract. In the event that the downward modifications exceed 20% of the award amount, the awardee may request the termination of the contract and payment of the work performed, without having the right to any other compensation or payment due to forgone profit.

CLAUSE 34.- Suspension of the contract

The contract may be suspended by the ICFO or if the contractor chooses to suspend it in the event of a delay in the payment of the price exceeding SIX (6) months, by notifying the ICFO ONE (1) month in advance.

In either case, the ICFO shall draw up the corresponding suspension certificate, ex officio or at the request of the contracting company, pursuant to article 208.1 of the LCSP.

The act of suspension, in accordance with article 103 of the RGLCAP, must be signed by a person on behalf of the contracting body and the contracting company and must be issued within a maximum period of TWO (2) working days running from the day after the suspension is agreed.

The ICFO shall pay the contracting company for any damages actually caused pursuant to article 208.2 of the LCSP.

Payment of damages to the contracting company will only comprise the concepts indicated in this provision.

CLAUSE 35.- Ethical clause

35.1. Senior executives, executives, leadership positions, administrative positions and personnel at the service of the Public Administration and its public sector, who are directly or indirectly involved in the public procurement procedure, are subject to the Code of Conduct and Principles Recommended for Public Procurement, and their provisions shall be applied transversally to actions that are part of any phase of the procurement procedure in accordance with the degree of intervention and responsibility in the contract procedures.

Submission of the bid by the bidders will entail their adherence to the Code of Conduct and Principles Recommended for Public Procurement in accordance with the ethical and integrity commitments that are part of the contract relationship.

35.2.1. Bidders, contractors and subcontractors have the following obligations:

- a) Observing the principles, rules and ethical standards specific to the activities, trades and/or professions under the provisions covered by the contracts.
- b) Not undertaking actions that jeopardize the public interest in the scope of the contract or the provisions to tender.
- c) Reporting irregular situations that may arise during public procurement processes or during the execution of the contracts.
- d) Refraining from behaviours whose purpose is or that may lead to preventing, restricting or rigging the competition, such as collusion or fraudulent competition behaviour (complementary bidding, suppression of bids, market allocation, bid rotation, etc.).
- e) Upon submitting the bid, the bidder must declare if there are any conflicts of interest, pursuant to article 64 of the LCSP, or relationships with parties interested in the project. If such a situation occurs during the execution of the contract, the contractor or subcontractor must inform the contracting body.
- f) Respecting confidentiality agreements and regulations.
- g) Moreover, the contractor shall collaborate with the contracting body in actions the latter carries out to monitor and/or evaluate the fulfilment of the contract, providing in particular any information requested for such purposes and that the laws on transparency and regulation of contracts in the public sector apply to contractors in relation to the Administration or administrations of reference, without prejudice to the fulfilment of the transparency obligations applicable under legal provision.

35.2.2. Bidders, contractors and subcontractors, or their subsidiaries or affiliated companies, undertake to strictly adhere to tax, labour and social security laws, and specifically, not to carry out financial operations in breach of tax regulations in countries that do not have regulations on capital control and are considered tax havens by the European Union.

35.3. All these obligations and commitments are considered as special conditions for the execution of the contract.

35.4. The consequences or penalties for breaching this clause are as follows:

- In case of non-compliance with sections a), b), c), f) and g) of section 33.2.A, a minimum penalty of 0.60 euros is set for every 1000 euros of the contract price, excluding tax, which may be increased in a justified and proportional manner depending on the severity of the events. The severity of the events will be determined by the damage caused to the public interest, a recurrence of the facts or a profit obtained as a result of the breach. In any case, the amount of each of the penalties may not exceed 10% of the price of the contract, excluding tax, nor can the total amount exceed in any case 50% of the price of the contract.
- In the event of non-compliance with the provisions set forth in letter d) of section 33.2, the contracting body will inform the competent authorities in matters of competition.
- In case of non-compliance with the provisions of letter e) of section 33.2, the contracting body will inform the Ethics Committee on Public Procurement of the Generalitat de Catalunya to issue the relevant report, without prejudice to other penalties that may be established.
- If the seriousness of the events requires it, the contracting body will notify the Anti-Fraud Office of Catalonia or the relevant control and taxation bodies.

VII. PROVISIONS RELATING TO SUCCESSION, ASSIGNMENT, SUBCONTRACTING AND PRICING REVIEW OF THE CONTRACT

CLAUSE 36.- Subcontracting, succession and assignment

36.1. The contracting company may arrange to subcontract other companies to partially perform the procurement under this contract, in accordance with the provisions in the Table of Contract Specifications, unless the procurement or part of it must be directly executed by the contracting company, due to its secret or restricted nature or because its execution must be accompanied by special security measures in accordance with legal or regulatory provisions; or when the protection of the essential interests of State security requires it; in which case subcontracting must always require the express authorization of the contracting body; or in the case of critical tasks which the contract file shall specify as having to be performed directly by the contracting company.

36.2. The bidding 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, defined in accordance to the conditions of professional or technical solvency of the subcontractors to whom they intend to entrust its realization. In this case, the intention to subcontract must be stated in the ESPD and a separate ESPD must be submitted for each company to which it intends to subcontract part of the contract.

36.3. The contracting company shall notify the contracting body in writing of its intention to subcontract other companies after the award of the contract, indicating which part of the procurement it intends to subcontract before the beginning of its execution; it shall also provide the identity, contact details and legal representative of the subcontracted company, providing sufficient proof of the subcontractor's ability to execute the task due to the technical and human resources it has and its experience, and proving that it is not affected by a ban from official contracts.

If the subcontracted company has a suitable classification to perform the part of the contract being subcontracted, it will be sufficient to inform of this circumstance to provide proof of its ability.

36.4. The contracting company shall notify the contracting body in writing of any changes that may occur during the execution of the contract, and provide all the necessary information about the new subcontractors.

36.5. The letting of subcontracts is subject to compliance with the requirements and other circumstances regulated in Article 215 of the LCSP.

36.6. Infringement of the terms established in this clause and in article 215 of the LCSP for proceeding to subcontracting, and failure to provide proof of the ability of the subcontracted company or of any circumstances determining a situation of emergency or any that require urgent subcontracting, will have the following consequences, depending on their impact on the performance of the contract:

- A penalty of up to 50% of the amount of the sub-contract shall be applied to the contracting company.
- Termination of the contract shall be pursuant to the provisions set out in the second paragraph of letter f) of section 211 of LCSP.

36.7. Subcontracted companies are only answerable to the principal contracting company, which takes full responsibility before the ICFO for performing the contract, in accordance with these Specifications and the terms of the contract, including compliance with the obligations regarding environmental, social or labour matters referred to in clause twenty-nine of these specifications. The ICFO's knowledge of the contracts executed or any authorization it grants do not alter the exclusive responsibility of the principal contractor.

Subcontracted companies shall not have any recourse against the ICFO for obligations that the contracting company has towards them as a result of the performance of the main contract or the sub-contracts.

36.8. Under no circumstances may the contracting company or companies agree to the partial execution of the contract with persons declared unfit to contract in accordance with the legal system or persons who have incurred in one of the causes of the prohibition to contract provided for in article 71 of the LCSP.

36.9. The contracting company shall inform the person representing the subcontractor's workers, in accordance with the labour legislation.

36.10. Sub-contracts are for all purposes private.

36.11. Payment to sub-contractors and suppliers is governed by Articles 216 and 217 of the LCSP.

CLAUSE 37.- Price review

The price review applicable to this contract will be detailed, where applicable, in the Table of Contract Specifications.

The price review will only be applied when the contract has been executed for at least 20% of its amount and TWO (2) years have elapsed since its formalization.

The amount of any appropriate revisions will be settled, ex officio, by means of a payment or corresponding discount in the certifications or partial payments.

VIII. PROVISIONS RELATING TO THE TERMINATION OF THE CONTRACT**CLAUSE 38.- Reception, settlement and term of the guarantee**

The reception and settlement of the supplies that are the object of the contract will be carried pursuant to articles 210 and 300 of the LCSP and article 204 of the RGLCAP.

The awardee will be responsible for the surveillance and storage of the goods that it has to service until they are received by the contracting body.

Once the goods that are the object of the contract have been delivered and, where appropriate, installed, set up and commissioned, and their compliance with the provisions of these Specifications and the Technical Specifications has been checked, a takeover record will be issued, except in the event that any incidents have been detected. In this case, the bidder will be given a maximum of 15 calendar days to correct the observed defects or, where appropriate, replace the material.

In the event that the defects detected are not corrected within the 15-day period, the contracting body will be entitled to terminate the contract or, where appropriate, impose the penalties established in these Specifications until defects are completely amended.

CLAUSE 39.- Termination

39.1. This contract may be terminated due to any of the causes set out in article 211 and 306 of the LCSP.

39.2. Apart from the causes set out in the aforementioned article and those already set out in these Specifications, the following are specific causes for termination:

- Delay in initiating the procurement.
- Failure to comply or defective compliance with the conditions of execution of the contract established in these Specifications and in the Technical Specifications.
- Failure to comply with essential contractual obligations.
- Failure to comply with other obligations legally established by this type of contract.
- Manifest technical incapacity or negligence, evidenced in relation to the performance of the tasks covered by this contract, refusal or manifest resistance of the awardee to comply with the indications made by the contracting body in order to adjust the contract to its needs, a repeated no show at work meetings, failure

to comply with the partial deadlines that may be established, omission of information and any attitude or negligence that could negatively affect the development of the contract.

- A situation foreseen as a prohibition to contract that occurs once the contract has been formalized.
- Being in a situation of control or association with regard to other candidates or bidders, having agreed with other participants in the bidding process and having subcontracted any task to other companies participating in this tender without the authorization of the contracting body.
- Not maintaining due confidentiality with respect to data or records that are not public or notorious and that are related to the object of the contract, coming to the awardee's knowledge in connection with the contract.
- Failure to fulfil the partial execution of the provisions set out in the contract when it causes very serious detriment.
- Repeated breach of any of the special conditions of execution established in these Specifications that are not essential contract obligations.

The application and effects of these causes of resolution are established in articles 212, 213 and 306 of the LCSP.

In all cases, the termination of the contract will be carried out in accordance with the procedure established in article 191 of the LCSP and article 109 of the RGLCAP.

IX. APPEALS SYSTEM AND OTHER ASSUMPTIONS

CLAUSE 40.- Appeals system

In the case of supply contracts with an estimated value exceeding 100,000.00 euros:

40.1. The following are susceptible to special appeal in matters of procurement, in accordance with article 44 of the LCSP: tender notices, specifications and contractual documents that establish the conditions that must govern the procurement; procedural acts that directly or indirectly decide on the award, determine the impossibility of continuing the procedure or produce defenselessness or irreparable damage to legitimate rights or interests; contract award agreements; and contract modifications based on the breach of the provisions of articles 204 and 205 of the LCSP, on the understanding that the modification should have been the subject of a new award.

This appeal is optional, free for the appellants, may be filed before the Catalan Court of Public Sector Contracts, prior to or alternatively to the filing of the contentious administrative appeal, in accordance with Law 29/1998, of 13 June, regulating the contentious administrative jurisdiction, and will be governed by the provisions of articles 44 and following of the LCSP and Royal Decree 814/2015, of 11 September, which approves the Regulations of the special procedures for reviewing decisions in contractual matters and the organization of the Central Administrative Court of Contractual Appeals.

Ordinary administrative appeals may not be filed against acts susceptible to special appeal.

The deadline for filing a special appeal in matters of procurement is ten calendar days and is calculated in the manner established in article 50.1 of the LCSP, in accordance with article 58 of Royal Decree-Law 36/2020, of December 30, which approves urgent measures for the modernization of the Public Administration and for the execution of the Recovery, Transformation and Resilience Plan.

Against the resolution of the special appeal, where applicable, interested parties may file a contentious-administrative appeal within a period of TWO (2) months, in accordance with the provisions of Law 29/1998, of July 13, regulating contentious-administrative jurisdiction.

40.2. Against the acts adopted by the contracting authority in relation to the effects, modification and termination of this contract that are not susceptible to special appeal in matters of contracting, the corresponding ordinary administrative appeal (appeal of appeal) shall be filed in accordance with the provisions of Law 26/2010, of August 3, on the legal and procedural regime of the public administrations of Catalonia, and Law 39/2015, of October 1, on the common administrative procedure of the public administrations; or the contentious administrative appeal, in accordance with the provisions of Law 29/1998, of July 13, regulating contentious administrative jurisdiction.

40.3. The agreements adopted by the contracting body in exercise of its prerogatives are subject to optional appeal for review, in accordance with the provisions of Law 26/2010, of August 3, on the legal and procedural regime of the public administrations of Catalonia, and the basic legislation of common administrative procedure, or to contentious administrative appeal, in accordance with the provisions of Law 29/1998, of July 13, regulating contentious administrative jurisdiction.

In the case of supply contracts with an estimated value of less than 100,000.00 euros:

40.4. The acts of preparation and award, and those adopted in relation to the effects, modification and termination of this contract, are subject to the corresponding ordinary administrative appeal (appeal to the higher court), in accordance with the provisions of Law 26/2010, of 3 August, on the legal and procedural regime of the public administrations of Catalonia, and Law 39/2015, of 1 October, on the common administrative procedure of the public administrations, or to the contentious administrative appeal, in accordance with the provisions of Law 29/1998, of 13 July, regulating the contentious administrative jurisdiction.

40.5. The agreements adopted by the contracting body in exercise of its prerogatives are subject to optional appeal for review, in accordance with the provisions of Law 26/2010, of August 3, on the legal and procedural regime of the public administrations of Catalonia, and the basic legislation of common administrative procedure, or to contentious administrative appeal, in accordance with the provisions of Law 29/1998, of July 13, regulating contentious administrative jurisdiction.

CLAUSE 41.- Cautionary measures

Before filing the special appeal for contracting, the persons entitled to file it may request before the competent body that cautionary measures be adopted for its resolution, pursuant to article 49 of the LCSP and Royal Decree 814/2015, of 11 September, abovementioned.

CLAUSE 42.- Invalidation system

This contract is subject to the invalidity system pursuant to articles 38 to 43 of the LCSP.

CLAUSE 43.- Competent jurisdiction

43.1. The administrative law courts are competent for resolving any disputes arising from the preparation, awarding, effects, modification and termination of this contract. The parties hereby submit to the jurisdiction of the Courts of Barcelona, expressly waiving any other jurisdiction that may correspond to them.

X. ANNEXES

Castelldefels, a data de la seva signatura

Mercè Carrasco Rodríguez
CFO de l'ICFO

Annex núm. 1

DOCUMENT EUROPEU ÚNIC DE CONTRACTACIÓ (DEUC)

A INCLOURE AL SOBRE NÚM. 1

Exempció de presentació de la documentació del sobre núm. 1 (DEUC):

En virtut del previst als articles 140 i 141 de la LCSP els licitadors en el moment de presentar les proposicions, hauran de presentar el Document europeu únic de contractació (DEUC) emplenat d'acord amb la Recomanació de la Junta consultiva de Contractació Administrativa de l'Estat de data 6 d'abril de 2016.

El DEUC es pot descarregar a través de l'enllaç següent:

<https://visor.registrodelicitadores.gob.es/espd-web/filter?lang=es>

En el cas que els licitadors recorrin a capacitats d'altres entitats, caldrà aportar el document europeu únic de contractació (DEUC) corresponent a les esmentades entitats.

S'estableix l'obligatorietat per aquelles empreses en qui recaigui la proposta d'adjudicació per haver presentat la millor oferta d'haver de presentar la documentació justificativa del compliment dels requisits de capacitat i solvència exigits en aquest plec (el compliment dels quals s'ha indicat en el DEUC), un cop siguin requerides a tal efecte amb caràcter previ a l'adjudicació.

De tota manera, l'òrgan de contractació, en qualsevol moment del procediment, podrà demanar als candidats i licitadors que presentin la totalitat o una part dels documents justificatius quan resulti necessari per a garantir el bon fi del procediment.

Annex núm. 2

CRITERIS D'ADJUDICACIÓ

In accordance with article 145.1 LCSP and considering the object of the reference contract, the following award criteria are proposed which will be related below.

Likewise, and in accordance with article 145 of the LCSP, it establishes "the award of contracts will be carried out using a plurality of award criteria in accordance with the best value for money", and furthermore "the best value for money will be assessed according to economic and quantitative criteria".

Article 146 of the LCSP, which establishes that when a plurality of award criteria are used, to determine them, whenever possible, preference will be given to those criteria that refer to characteristics of the object of the contract that can be valued through figures or percentages that are obtained by applying the mathematical formulas established in the specifications.

Therefore, taking into account this reflection and with the aim of guaranteeing an objective comparison of the relative value of the bidders that allows to determine, under conditions of effective competition, which offer is the most economically advantageous offer, the evaluation criteria have been focused only in objective and mathematically assessable elements.

We consider that the award criterion - the price - is a key component in the correct management and efficiency of public funds, it very significantly reduces the margin of appreciation that the contracting body has to evaluate the offers that it system carries; therefore, more legal certainty, as well as less risk of arbitrariness and mistakes being made.

In accordance with article 146.2 of the LCSP, for the evaluation of offers according to quantifiable criteria through the mere application of formulas, the procedure will be as indicated below:

SOBRE ÚNIC – CRITERIS D'ADJUDICACIÓ AVALUABLES MITJANÇANT FÓRMULES AUTOMÀTIQUES

Màxim 100 punts, desglossats de la següent manera:

OFERTA ECONÒMICA (màxim 100 punts)

La puntuació es calcularà amb la següent fórmula, de conformitat amb la Directriu 1/2020, d'aplicació de fórmules de valoració i puntuació de les proposicions econòmica i tècnica de la Direcció General de Contractació Pública de la Generalitat de Catalunya:

$$P_v = \left[1 - \left(\frac{O_v - O_m}{IL} \right) \times \left(\frac{1}{VP} \right) \right] \times P$$

P_v	= Puntuació de l'oferta a Valorar
P	= Punts criteri econòmic
O_m	= Oferta Millor
O_v	= Oferta a Valorar
IL	= Import de Licitació
VP	= Valor de ponderació

S'exclouran les ofertes que superin el pressupost base de licitació.

Justificació de la fórmula i del criteri:

Es considera que l'oferta econòmica més baixa respon a la gestió eficient dels recursos públics com a principi essencial de l'actuació de l'administració pública. S'aplica un valor de ponderació vinculat al pes del criteri preu en relació a la valoració total, seguint les recomanacions de la Directriu 1/2020 d'aplicació de fórmules de valoració i puntuació de les proposicions econòmica i tècnica, emesa per la Direcció General de Contractació Pública de la Generalitat de Catalunya.

Aquest valor de ponderació s'obté agregant al valor de ponderació ordinari 1, el pes específic del criteri preu. En aquest cas, atès que el pes específic del criteri preu és d'un 100% de la puntuació total, **el valor de ponderació associat al pes específic del criteri preu és 1.**

En el cas que de l'aplicació de la fórmula anterior s'obtinguin puntuacions negatives, es considerarà que la puntuació obtinguda és igual a zero.

Ofertes amb valors anormals o desproporcionats

Per detectar ofertes amb valors anormals o desproporcionats s'aplicarà allò previst a l'article 149 de la LCSP. Essent el preu ofert un dels criteris objectius que serveixen de base per a l'adjudicació del contracte, es considerarà, en principi, que una oferta presenta valors anormals o desproporcionats si excedeix en un 15% o més a la mitja aritmètica dels percentatges de baixa de totes les ofertes presentades. En cas que únicament concorrin dos licitadors, es considerarà que l'oferta presenta valors anormals o desproporcionats aquella oferta que sigui inferior en més d'un 20% a l'altra. En cas que únicament concorri un licitador, es considerarà que l'oferta presenta valors anormals o desproporcionats aquella oferta que sigui inferior en més d'un 30% al pressupost base de licitació.

Quan es detecti que una oferta presenta valors anormals o desproporcionats, la Mesa de Contractació requerirà a les empreses que han presentat les ofertes per tal que, en un termini de deu dies hàbils a comptar des del dia següent al de la recepció del requeriment, justifiquin i desglossin de manera raonada i detallada el baix nivell del

preu ofert o de costos, o qualsevol altre paràmetre en base al qual s'hagi definit el valor anormal o desproporcionat de l'oferta, mitjançant la presentació de tota la informació i documents que resultin pertinents a aquests efectes.

Finalment, la Mesa de Contractació avaluarà tota la informació i documents proporcionada pel licitador en el termini atorgat a l'efecte, amb l'assessorament tècnic del servei corresponent i, elevarà a l'Òrgan de Contractació de forma motivada la corresponent proposta d'acceptació o rebuig de l'oferta presentada.

PUNTUACIÓ TOTAL: De 0 a 100 punts.

Annex núm. 3

MODEL D'OFERTA AVALUABLE MITJANÇANT L'APLICACIÓ DE FÓRMULES AUTOMÀTIQUES

A INCLOURE AL SOBRE ÚNIC

El Sr. amb residència a carrer núm. essent coneixedor de l'anunci publicat al i de les condicions i requisits que s'exigeixen per a l'adjudicació del contracte de ".....", es compromet en nom(propri o de l'empresa que representa) a realitzar-les amb estricta subjecció a les condicions següents:

Criteris avaluables automàticament:

- OFERTA ECONÒMICA (màx. 100 punts):

<u>CONCEPTE</u>	<u>PRESSUPOST MÀXIM (IVA exclòs)</u>	<u>PREU OFERT</u>	<u>Import de l'IVA (21%)</u>	<u>PREU TOTAL OFERT (IVA inclòs)</u>
Subministrament, instal·lació i posada en servei de "CRYOGENIC NON-MAGNETIC UHV NANOPositionERS WITH CAPACITIVE READOUT" pel laboratori de l'ICFO.	95.000,00 €			

L'empresa que presenti una oferta amb un preu superior al preu de sortida de la licitació, quedarà automàticament exclosa del procediment.

Ofertes amb valors anormals o desproporcionats

Per detectar ofertes amb valors anormals o desproporcionats s'aplicarà allò previst a l'article 149 de la LCSP. Essent el preu ofert un dels criteris objectius que serveixen de base per a l'adjudicació del contracte, es considerarà, en principi, que una oferta presenta valors anormals o desproporcionats si excedeix en un 15% o més a la mitja aritmètica dels percentatges de baixa de totes les ofertes presentades. En cas que únicament concorrin dos licitadors, es considerarà que l'oferta presenta valors anormals o desproporcionats aquella oferta que sigui inferior en més d'un 20% a l'altra. En cas que únicament concorri un licitador, es considerarà que l'oferta presenta valors anormals o desproporcionats aquella oferta que sigui inferior en més d'un 25% al pressupost de licitació.

Quan es detecti que una oferta presenta valors anormals o desproporcionats, la Mesa de Contractació requerirà a les empreses que han presentat les ofertes per tal que, en un termini de deu dies hàbils a comptar des del dia següent al de la recepció del requeriment, justifiquin i desglossin de manera raonada i detallada el baix nivell del preu ofert o de costos, o qualsevol altre paràmetre en base al qual s'hagi definit el valor anormal o desproporcionat de l'oferta, mitjançant la presentació de tota la informació i documents que resultin pertinents a aquests efectes.

Finalment, la Mesa de Contractació avaluarà tota la informació i documents proporcionada pel licitador en el termini atorgat a l'efecte, amb l'assessorament tècnic del servei corresponent i, elevarà a l'Òrgan de Contractació de forma motivada la corresponent proposta d'acceptació o rebuig de l'oferta presentada.

Annex núm. 4**DECLARACIÓ DE CONFIDENCIALITAT DE DADES I DOCUMENTS**

Aquest document s'haurà d'aportar **OBLIGATÒRIAMENT** als sobres corresponents, tot indicant la documentació que es considera que té caràcter **CONFIDENCIAL**

En/na _____, amb NIF núm. _____ i domicili a aquests efectes a _____, C/ _____, actuant en nom i representació de l'empresa _____ amb NIF _____.

DECLARA que de la documentació presentada per l'entitat a la que represento a l'expedient de referència amb número _____ i que té per objecte la contractació de _____,

Té el caràcter de confidencial¹ la següent documentació que es presenta als sobres següents *(Cal determinar de forma expressa i justificada els documents i/o les dades facilitades que es considerin confidencials. No s'admeten declaracions genèriques² o no justificades del caràcter confidencial):*

DOCUMENTACIÓ ADMINISTRATIVA (sobre únic)

-

DOCUMENTACIÓ TÈCNICA (sobre únic)

-

Cap dels documents que consten en la meva oferta tenen caràcter confidencial.

En el supòsit de que no es compleixi aquest document, s'entendrà que cap informació aportada pel licitador té caràcter confidencial.

I per a que consti signo aquesta declaració responsable.

Data:

Signatura:

¹ Els documents i les dades presentats pels licitadors es poden considerar de caràcter confidencial si inclouen secrets industrials, tècnics o comercials i/o drets de propietat intel·lectual. Així mateix, també es consideraran confidencials quan la seva difusió a terceres persones pugui ser contrària als seus interessos comercials legítims i/o perjudicar la competència lleial entre les empreses del sector; o bé quan el seu tractament pugui ser contrari a les previsions de la normativa en matèria de protecció de dades de caràcter personal.

² En cas que es realitzin declaracions genèriques de la confidencialitat dels documents, serà potestat de l'òrgan de contractació decidir quina documentació es considera confidencial i quina no, d'acord amb l'establert al plec de clàusules administratives que regeixen la contractació.