



Parque Tecnológico de Álava Arabako Teknologi Elkartegia

IPI

Internal Procurement Instructions

of the Company

Parque Tecnológico de Álava – Arabako Teknologi Elkartegia, S.A.

for procurement not subject to harmonized control

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1. Purpose and approval

The internal procurement instructions (herein the IPI) are applicable to Parque Tecnológico de Álava – Arabako Teknologi Elkartegia, S.A., (herein, "the Company").

The Company belongs to the public sector under the terms of article 3.1.d) of Royal Legislative Decree 3/2011 of 14 November, approving the Redrafted Text of the Public Sector Contracts Law (RTPSCL). The Company is also a procurement authority according to article 3.3.b) of the RTPSCL.

The purpose of these IPI is to regulate the Company's internal procedures for awarding contracts that are not subject to harmonized control, ensuring the correct application of the principles of publicity, concurrence, transparency, confidentiality, equality and no discrimination, and that the contract is awarded to the bidder submitting the most advantageous bid in full compliance with the mandate of article 191.b) of the RTPSCL.

The IPI have been approved by the Company's Board of Directors, on the basis of a legal advisors' report. It shall take effect on 16th December 2010 and shall be applied to procurement procedures starting after said date.

When these IPI come into force, any previous contract procedures used before this time shall become null and void.

2. Interpretation of the IPI

For the purposes of these IPI, the terms set out in capital letters shall have the meanings established for said terms in the RTPSCL.

When, pursuant to the IPI, a rule in the RTPSCL must be adapted in order to be applied or is not fully or partly applicable, references to said rule in other articles of the RTPSCL shall be made which, in accordance with these IPI, if applicable, and shall be understood as having been made according to these adaptations or repeals.

The estimated value of contracts shall be calculated according to the rules foreseen in article 88 of the PSCA exclusive of Value Added Tax.

The amounts set out in sections 9 and 10 of these IPI and the amounts above which the contracts entered into by the Company are considered subject to harmonized control shall be understood to be updated, when appropriate, in accordance with the terms established by the European Commission and set out in the Eleventh Additional provision of the RTPSCL.

3. Contracts subject to the IPI

The IPI are applicable to all contracts for valuable consideration entered into by the company, whatever their legal nature, with the exception of the following:

- a) Legal business and relationships as set out in article 4 of the RTPSCL.
- b) Contracts subject to harmonized control pursuant to article 13 and concordant of the RTPSCL, which are awarded pursuant to the provisions of article 190 of the RTPSCL.
- c) Contracts and businesses that are regulated or which are expressly excluded from the applicable sector regulations, which shall be awarded pursuant to said law.

4. General procurement principles of the IPI

The contracts to which these IPI are applicable are governed by the principles set forth in article 1 of the RTPSCL, and they are awarded being subject, in any event, to the principles of publicity, concurrence, transparency, confidentiality, equality and no discrimination, pursuant to article 191 of the RTPSCL.

To ensure compliance with the principles set out in the paragraph above in procurement procedures carried out by the Company pursuant to the IPI, the activities of the procurement bodies shall satisfy the aforementioned principles.

These rules shall be deemed to have been complied with by observance with the rules foreseen in the following sections of this IPI, for whose application and interpretation the following action guidelines shall be observed:

- a) The principle of publicity shall be deemed to have been complied with by the application, in benefit of all potential bidders, of adequate and sufficiently accessible advertising and communication, which provides the Company's contractual information and allows the market to be opened up to competition.
- b) The principle of transparency shall be deemed to have been complied with by advertising and communication, before awarding the contract, of sufficient information for all potential bidders to be in a position to declare their interest in taking part in the bidding procedures. This principle also means that all participants shall be given access to all the rules applicable to the contract to be awarded in advance, in the certainty that these rules will be applied equally to all the companies.

- c) The necessary measures shall be adopted, as foreseen in these IPI, to facilitate access and participation to potential bidders, in order to award the contract to the one making the most advantageous offer.
- d) The principle of confidentiality shall be respected by the Company, which undertakes not to disclose the information provided by the bidders that they designate as confidential, provided there is just cause for this, and, specifically, technical or commercial secrecy and confidential aspects of the bids. Contractors are expected to apply this principle, and must respect the confidential nature of the information to which they have access through execution of the contract which has been deemed confidential in the procurement dossiers or contract, or which are confidential in nature.
- e) To guarantee the principle of equality and no discrimination, the necessary measures shall be taken to guarantee impartiality and fairness in the procedures. These measures shall comprise at least the following:
 - (i) The purpose of the contracts shall always be described in a non-discriminatory way, and shall not make reference to any specific manufacturer or procedure, to specific products, nor shall it refer to any specific brand, patent, type, origin or production, unless a reference of this type is adequately justified and is accompanied by a mention or "equivalent".
 - (ii) No conditions shall be imposed that comprise direct or indirect discrimination against potential bidders from other European Union member states.
 - (iii) If candidates are required to present qualifications, certificates or other types of justifying documentation, documents from other members states they shall be accepted according to the principle of mutual recognition of qualifications, certificates and other diplomas.
 - (iv) The deadlines granted for showing interest or presenting a bid shall be sufficient to allow companies from other Member States to make an appropriate evaluation and present an offer.
 - (v) For contracts in which more than one bidder takes part, the Company will guarantee that they all have the same information about the contract in identical conditions.

5. Nature and legal regime applicable to contracts regulated by the IPI

The contracts entered into by the Company shall be considered private contracts pursuant to article 20.1 of the RTPSCL.

The engagement of the Company regulated in the IPI shall be subject, in any event, to the mandatory provisions for public sector agents entering into contracts that are not subject

to harmonised regulation, pursuant to the RTPSCL. Specifically, this implies the application of the rules contained in Book 1 of the RTPSCL ("General configuration of public sector procurement and structural elements of contracts") which, due to its content, are applicable to the Company so long as the procuring authority belonging to the Public Sector is not classed as a Government Body.

6. Procurement entities

The procurement entities shall be determined in each case according to the company by-laws and other provisions applicable to the Company, notwithstanding any delegations or powers that may be validly granted to other organs.

7. Company capacity and solvency

7.1. Suitability to enter into contracts

Contracts regulated by these IPI may only be entered into by parties meeting the conditions set out in article 54 of the RTPSCL and concordant precepts which are applicable to all public sector entities. Specifically, contracts shall not be entered into with people who are prohibited from entering into contracts on the grounds set out in article 60.1 of the RTPSCL, or with companies which, because of the persons that govern them or because of other circumstances, may be presumed to be a continuation or to derive from such parties due to transformation, merger or succession of other companies in which they have concurred.

The minimum capacity and solvency requirements required in each case should be linked to the contractual purpose and be proportional to the same.

7.2. Certification of aptitude to enter into the contract

Notwithstanding the provisions of the RTPSCL, which is applicable to all public sector entities, certification of economic and financial and technical or professional solvency to enter into contracts shall be provided as required in each case according to the corresponding tender project and the contract circumstances and characteristics, applying articles 75 to 79 of the RTPSCL if seen fit by the procurement body.

Likewise, and pursuant to article 65.5 of the RTPSCL, according to the circumstances and characteristics of the contract, it may demand, in the event, that the solvency of the company be certified by the corresponding classification.

The minimum solvency requirements that must be met by the company and the documentation required to certify this shall be set out in the tender advertisement and specified in the contractual documents, if it is required according to the IPI.

7.3. List of Approved Suppliers

The Company shall have a list of suppliers approved to provide services that are not subject to harmonized regulation as defined in Levels 1 and 2 of article 10.1 of these IPI.

This list shall be created using transparent, open procedures, in which all companies and professionals meeting the capacity and solvency requirements established for this purpose may be registered.

The list of approved suppliers shall be published in the Company's procurement profile and it shall operate in accordance with the following principles:

- a) All entrepreneurs and professionals that guarantee that they comply with the requirements established are equally entitled to be registered on the list.
- b) The Company's suppliers must remain registered on the list of approved suppliers while their contracts are valid.
- c) The existence of a list of approved suppliers encourages transparent relationships with the companies and professionals that take part in Company's procurement procedures, facilitating their participation in tenders and keeping them up-to-date with the status of their bids.
- d) The company's list of approved suppliers shall operate without prejudice to other electronic registries of bidder and supplier companies held by Government Agencies or other public sector entities.
- e) There shall be a single list, centralised in SPRI, S.A. for all the Company's attached to the Sub-management of the SPRI Infrastructures Group.

8. Guarantees

According to the contractual circumstances and characteristics, the procurement entity may demand a guarantee be provided by the bidder to guarantee correct performance of the contract.

The amount of this guarantee shall be established in each case according to the circumstances and characteristics of the contract.

The guarantees required may be furnished in any of the manners foreseen in article 84 of the PSCA.

9. Preparation of the contracts

The service contracts included in categories 17 to 27 of Annex II of the RTPSCL for amounts equal to or above 200,000 euros shall comply with the provisions of 137.1 of the RTPSCL and concordant provisions.

For other contracts, with regard to the IPI, technical bid specifications shall be prepared when these are for sums in excess of €50,000, with the content set out in article 121.2 of

the PSCA and concordant provisions, and they are also subject to article 120 of the RTPSCL.

Additionally, the technical bid specifications shall contain such information as may be appropriate with the concordant sections of the IPI.

In other words, taking into account the content of article 137.2 of the RTPSCL and the concordant sections of the IPI, the following items shall be included in the Technical Bid Specifications, notwithstanding additional aspects that may be considered appropriate by the procurement body.

- a) Basic contract characteristics.
- b) Rules governing the acceptability of variations.
- c) Modalities for acceptance of bids.
- d) Minimum capacity and solvency requirements demanded of companies interested in presenting bids in the invitation to tender.
- e) When considered appropriate by the procurement body, the objective solvency criteria according to which the candidates will be selected to present bids, and the maximum number of candidates to be invited to submit offers, which must be at least three.
- f) The technical and economic criteria that shall be evaluated to determine which bid is the most economically advantageous to which the contract shall be awarded.
- g) The formation of an evaluation committee that shall score the documentation presented, evaluate the offers and issue a proposal for awarding the contract, when the procurement body sees fit.
- h) Any guarantees that must be provided by the bidder or bidders selected.
- i) Any other appropriate information pursuant to article 120 of the RTPSCL on the subrogation conditions in the work contracts.
- j) The objective term and duration of the duty to confidentiality this, if any, is required of the entrepreneur.
- k) Any deadlines applicable for obtaining additional information by bidders and deadlines for submitting bids or, in the event, applications to take part, and to correct the document submitted should this be deemed appropriate by the procurement body.
- l) The deadline for formalising the contract, when this is other than ten (10) calendar days.

10. Selecting the contractor and awarding the contracts:

10.1. Contract levels

For the application of these IPI and to establish the procedures and requirements applicable to the award of each contract, the following levels are set (herein, one the "**Level**" and jointly the "**Levels**").

a) Level 1

Contracts whose estimated value is below:

- €50,000 in the case of works contracts.
- €18,000 for other types of contracts.

b) Level 2

Contracts whose estimated value is between:

- €50,000 and €200,000 in the case of works contracts.
- €18,000 and €50,000 for other types of contracts.

c) Level 3

Contracts whose estimated value is between:

- €200,000 and €2,000,000 in the case of works contracts.
- €50,000 and €100,000 in the case of service contracts.

d) Level 4

Contracts whose estimated value is higher than Level 3 and which are not subject to harmonized regulation, in other words contracts whose estimated value is between:

- €2,000,000 and €5,000,000 in the case of works contracts.
- €50,000 and €200,000 in the case of supply contracts.
- €100,000 and €200,000 in the case of service contracts.
- Service contracts included in categories 17 to 27 of Annex II of the RTPSCL for amounts equal to or above 200,000 euros.

10.2. Advertising

For Level 3 and Level 4 contracts, information relating to the bid should be included in the Company's contracting profile, and in two of the Basque Country's most widely distributed daily newspapers. However, additional methods of advertising may be used when considered necessary according to the circumstances and characteristics of the contract, including the possibility of advertising in Official Gazettes or others.

In the Company's contracting profile advertisements shall also be published about contracts that are expected to be awarded every year or for several years.

The advertisement for the invitation to tender shall contain the following information:

- a)** A brief description of the basic details of the contract.
- b)** The procedure by which the contract will be awarded, stating the deadline for submitting bids (in the open procedure) or applications to take part (in the case of the restricted procedure), together with the economic and technical aspects that will be the subject of negotiation with the businesses (in the negotiated procedure).
- c)** When considered appropriate by the procurement body, the objective solvency criteria according to which the candidates will be selected to submit bids, indicating the deadline by which bids applications must be submitted.
- d)** An invitation to contact the company for the purpose of obtaining additional information.

In any case, if the contract circumstances and characteristics make it advisable to include additional content or information in the contractor profile.

10.3. Award procedures

In the event that the open or restricted procedure is applied, the provisions of articles 157 to 168 of the RTPSCL shall be applied with the following adaptations:

- a)** The deadlines for information that must be supplied to bidders, and the deadlines for submitting bids or applications to participate and, in general, any other deadlines, shall not be applied, and shall be replaced by the time periods stated in the advertisement or, in the event, in the technical bid specifications. The deadlines stated shall be, in any case, suitable to allow all possible bidders, including companies in other European Union member states, to make an adequate evaluation and present an offer.
- b)** The procurement body shall designate an evaluation committee when it deems this necessary, stating this in the technical bid specifications. Said committee shall be responsible for scoring the documentation presented, evaluating the bids and issuing a proposal for awarding the contract to the procurement body. The content of article 150.2 of the RTPSCL on the intervention of a committee of experts shall not be applicable.

The Company shall award the contracts respecting, at least, the guarantees set out below for each Level.

a) Level 1 Contracts: Direct award

Level 1 contracts worth less than €6,000 are awarded directly, and are not subject to the instructions set out below.

Level 1 contracts worth €6,000 euros or more are awarded to the most favourable of the three bids that are requested from businesses or professionals capable of acting.

The invitation to present the three bids shall be made, if possible, from the list of preferred suppliers. All companies and professionals may apply to be added to the list at any time by certifying that they comply with the conditions required in the call. The list of approved suppliers shall be continuously updated with tender invitations, so that they have a rotating preference. Therefore, when three companies or professionals have been invited to bid, they will not be invited to bid again until their turn comes again.

When these three bids have been received, the contract will be awarded to the most favourable one.

Any contractors failing to do the work satisfactorily may be deleted from the list of approved contractors.

b) Level 2 Contracts: Negotiated procedure

Level 2 contracts shall be awarded to the most advantageous bid from an economic and technical point of view.

If possible, all the companies and professionals registered in the list of approved contractors will be invited to take part.

Once the bids have been received, if necessary, negotiations will take place with those submitting the three most advantageous bids, after which time the contract will be awarded.

Any contractors failing to do the work satisfactorily, on the grounds of quality, price or deadline may be deleted from the list of approved contractors.

The Evaluation Committee may negotiate aspects of the contract with the bidders invited and during the course of the negotiation it shall ensure that all bidders receive equal treatment and that information is not provided in a discriminatory manner.

c) Level 3 Contracts: Restricted procedure

This is a two-phase award process:

1st Phase:

A competition is held based on a set of technical specifications in which the technical and economic requirements shall be established, as well as the award criteria.

When the bidders have presented the documentation, their solvency shall be examined and all those not complying with the minimum requirements set out in the technical specifications shall be eliminated, provided these defects cannot be corrected or have not been corrected before the deadline established to do so.

All bidders shall be notified of the results of the above.

2nd Phase:

Bidders that were successful in the previous phase are invited to take part.

The evaluation committee then examines the rest of the documentation and evaluates the offers based on the criteria established in the technical bid specifications.

The evaluation committees makes a proposal for awarding the contract giving reasons based on the criteria in the technical bid specifications and shall report this to the procurement body.

All bidders are notified individually of the results of the above.

d) Level 4 Contracts: Open procedure.

This is a single-phase award process.

A competition takes place based on a set of technical specifications in which the technical and economic required are established, as well as the adjudication criteria.

When the documentation has been received from the bidders, their solvency shall be examined and all those not complying with the minimum requirements set out in the technical specifications shall be eliminated, provided these defects cannot be corrected or have not been corrected before the deadline established to do so.

All bidders shall be notified of the results of the above.

The evaluation committee then examines the rest of the documentation and evaluates the offers based on the criteria established in the technical bid specifications.

The evaluation committees makes a proposal for awarding the contract giving reasons based on the criteria in the technical bid specifications and reports this to the procurement body.

All bidders are notified individually of the results of the above.

10.4. Contractor selection

For Level 3 and 4 contracts, the selection of the contractor is notified to the participants in the procedure and published in the Company's contractor profile and in two of the most widely distributed newspapers in the Basque Region, unless decided otherwise based on the circumstances and characteristics of the contract, and provided that this is justified on the grounds of confidentiality.

The cost of the press advertisements will be payable by the successful bidder.

10.5. Formalisation of the contracts

Unless they are already set out, in the event, in the corresponding set of technical bid specifications, contracts subject to the IPI entered into by the Company are required to include the following information in compliance with article 26 of the RTPSCL.

- (a)** The parties' identifying information.
- (b)** Certification of the signatories' capacity to sign the contract.
- (c)** Definition of the contract purpose.
- (d)** Reference to the law applicable to the contract.
- (e)** A list of the documents of which the contract comprises. If stated in the contract, this list can be hierarchised, set out in order of priority agreed with the parties, in which case, in the absence of manifest error, the order agreed shall be used to determine the respective prevalence, in the event, of contradictions among the different documents.
- (f)** The price or the way it is determined.
- (g)** The duration of the contract or the estimated dates for commencing performance and any extensions foreseen.
- (h)** The conditions for acceptance, delivery or admission of the facilities.
- (i)** Payment conditions.
- (j)** Circumstances that will give rise to resolution.

- (k) The objective term and duration of the duty to confidentiality which, if any, is required of the entrepreneur.

Generally, the contract shall be formalised within ten calendar days from the selection of the contractor, provided another deadline is not set out in the technical bid specifications or corresponding bids.

The Company's consent to the contract shall be shown by formalising the contract, which shall be then be deemed valid and binding.

11. Technical rationalisation regulations

To rationalise and order the award of the contracts, the Company may hold electronic auctions, conclude framework agreements, organise dynamic systems or centralise its contracts for works, services or other companies or other entities subject to articles 148 and 194 to 207 of the RTPSCL. The applications in the IPI are applicable to these.

12. Jurisdiction

Any disputes arising regarding the preparation, awarding, purposes, compliance or termination of the contracts referred to in this IPI shall be subject to civil jurisdictional order.