MUBIL

| | | | | | |
|---|---|---|---|---|---|
| **TYPE OF CONTRACT:** | **SUPPLY** | | | | |
| **PROCEDURE:** | **OPEN** | | | | |
| **CONTRACT SUBJECT TO HARMONIZED** | | **YES** | [X] | **NO** | [ ] |
| **CONTRACT SUBJECT TO SPECIAL APPEAL** | | **YES** | [X] | **NO** | [ ] |
| **ELECTRONIC TENDER** | | | | | |

**Processing** [X] **Ordinary** [ ] **Urgent**

**File code:**
MUBIL2022/06

# SPECIFIC ADMINISTRATIVE CLAUSES
## FEATURES TABLE

| **1.- ADJUDICATING POWER** | |
|---|---|
| Contracting entity | MUBIL Fundazioa |
| Contracting authority | Presidency and General Directorate of MUBIL Fundazioa, in joint form |
| Mailing address | Poligono Usabal 127, Tolosa, 20400, Gipuzkoa |
| Email | mubil@mubil.eus |

| **2.- CONTRACTOR PROFILE** | Contractor profile (euskadi.eus) |
|---|---|

| **3.- PURPOSE OF THE CONTRACT** |
|---|
| Supply, installation and commissioning of two test areas for electric traction systems, one for the automotive sector (area A1) and other for heavy transport sector (buses and trucks, area A2) under international standards. |
| CPV code(s):<br><br>385400000-2 Measuring machines and devices.<br>38970000-5 Research, tests and scientific-technical simulators.<br>713000000-1 Engineering services.<br>51000000-9 Installation services. |
| Tender into lots YES [ ] NO [X]<br><br>In accordance with article 99.3.b) of Law 9/2017, on Public Sector Contracts, the division into lots is not contemplated, since the purpose of the contract is to supply, install and commission state-of-the-art and flexible test areas; the division into lots would increase complexity and difficulty in the operation of said test areas and would complicate the communication, synchronisation and compatibility between equipment as they would be manufactured using different criteria. |

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| 4.- BASE BUDGET OF THE TENDER (VAT INCLUDED) | |
|---|---|
| Price determination system | Unit price ☐<br>Lump-sum prices apart from the contract ☐<br>Lump-sum prices in the totality of the contract ☒ |
| Base budget of the tender (VAT included) | 7.865.000 € |
| breakdown of base budget of the tender | Direct costs: ……..…….5,462,185 €<br>Indirect costs:<br>• General expenses (13%): ……..….. 710,084 €<br>• Industrial profit (6%): ……..…….. 327,731 €<br>Total (excluding VAT): …… 6,500,000 €<br>**Total (21% VAT included): ……..…. 7,865,000 €** |

| 5.- ESTIMATED VALUE OF THE CONTRACT (VAT EXCLUDED) |
|---|
| Amount: 6,500,000 € |

| 6.- FINANCING | Percentage |
|---|---|
| MUBIL Fundazioa | 100% |

| 7.- ANNUITIES | |
|---|---|
| EXERCISE | AMOUNT |
| 2022 | 2,359,500 € |
| 2023 | 3,146,000 € |
| 2024 | 2,359,500 € |

| 8.- DELIVERY PERIOD |
|---|
| Total period: 15 months<br>Partial periods YES ☒ NO ☐<br>- Delivery of all equipment required within a maximum period of 1 year counting from the formalization of the contract<br>- Installation and commissioning within a maximum period of 15 months from the formalization of the contract<br><br>MUBIL Fundazioa reserves the right to request the successful bidder to keep the equipment for a maximum of 4 months after it has communicated that the equipment is ready to deliver, without this affecting in any way the financial and technical part. |

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**9.- EXTENSION**

YES ☐

NO ☒

**10.- PAYMENT TERMS**

Payments will be made for the supply, installation and commissioning of the aforementioned equipment according to article 198.2 of Law 9/2017 on Public Sector contracts.
The price will be paid in accordance with the following milestones:

- The successful bidder will issue the invoice corresponding to 30% of the price after awarding and formalising the contract for the collection of the material required for the manufacture of equipment.
- The successful bidder will issue the invoice corresponding to 40% of the price after successful delivery of all equipment required within a maximum period of 12 months.
- The successful bidder will issue the invoice corresponding to 30% of the price after successful installation, commissioning, calibration and accepting the factory acceptance tests (FAT) defined in the particular technical specifications clauses without exceeding the maximum contract execution period (15 months).

**11.- DELIVERY AND RECEPTION PLACE**

Facilities of MUBIL Fundazioa

**12.- ADMISSIBILITY OF VARIANTS**

YES ☐ Requirements, modalities, aspects:

NO ☒

**13.- PRICE REVISION**

YES ☐

NO ☒

**14.- BUSINESS OR PROFESSIONAL AUTHORIZATIONS/QUALIFICATIONS, ECONOMIC AND FINANCIAL SOLVENCY, AND TECHNICAL OR PROFESSIONAL SOLVENCY**

**1) BUSINESS OR PROFESSIONAL AUTHORIZATIONS/QUALIFICATIONS (art. 65 LCSP)**

Proceeds YES ☐ NO ☒

**2) ECONOMIC AND FINANCIAL SOLVENCY (art. 87 LCSP)**

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Annual volume of business, referring to the year with the highest volume of the last three years, must be equal to or greater than €5,500,000

The values that appear in the annual accounts approved and deposited in the Mercantile Registry will be consigned, if the entrepreneur was registered in said registry, and otherwise by those deposited in the official registry in which he must be registered. Individual entrepreneurs not registered in the Mercantile Registry will accredit their annual volume of business through their inventory books and annual accounts legalized by the Mercantile Registry.

**3) TECHNICAL OR PROFESSIONAL SOLVENCY (art. 89 LCSP)**

Art. 89-1a): Having executed, in the course of the last three years, contracts that have involved the supply, installation and commissioning of 10 test benches for automotive or heavy-duty electric traction systems (similar to those presented in this tender) for a total accumulated amount of 10,000,000 euros. To this end, a list of said supplies must be presented in the DEUC document indicating the object, amount, date and recipient, public or private, of the same.

In any case, it will correspond to the contracting authority to determine if the supply presented for the accreditation of technical and professional solvency can be classified as similar projects in accordance with what is stated in the specifications that govern the tender.

Art. 89-1b): Having a specialized technical service capable of providing maintenance and repair services and with a minimum of one qualified person with verifiable experience and knowledge of their own technology, with the capacity to respond within a maximum period of 24 hours from the communication of an incident or breakdown, regarding the award of these services by negotiated procedure without competition for technical reasons that will have to be formalized after the end of this contract. To this end, it must be declared in the corresponding section of the DEUC document to have that technical service.

**4) ACCREDITATION OF COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT AND QUALITY GUARANTEE STANDARDS**

YES ☐ NO ☒

**15.- COMMITMENT TO MANDATORY SUBSCRIPTION OF MEDIA**

YES ☒ NO ☐

**Assignment of human resources:**

The successful bidder must commit to ascribing to the execution of the contract a human team made up of personnel capable of covering the following functions and knowledge:

The minimum project team by the successful bidder will be the following:

- Project Manager.
  Person with university degree studies and a minimum experience of 3 years in similar projects.
- 1 Mechanical Engineer.
  Responsible for all mechanical aspects of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Electrical Engineer.
  Responsible for all electrical aspects of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Electronic, Control and Communications Engineer.
  Responsible for all electronic aspects, control and communications of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Engineer for Software Implementation.
  Responsible for the implementation of the software supplied by the successful bidder, as well as the agreed automatic test procedures.
  Person with a minimum experience of 2 years in similar position.
- 1 Engineer for Data Acquisition and Processing.
  Responsible for the electrical, mechanical, noise and vibration data acquisition and processing, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.

**Assignment of material resources:**

The bidding companies must undertake to provide the list of technical means indicated in the Technical Specifications.

The commitment to ascribe human and material resources will be completed by submitting in **electronic file number ONE** the declaration contained in **Annex IV** of the Specific Administrative Clauses.

For the purposes indicated in article 150.2 of the LCSP, the entity that is proposed as the awardee of the contract, must present, in the phase prior to the award, the supporting documentation of effectively having the means that it had promised to ascribe to the execution of the contract.

The experience of the proposed personnel will be accredited by the company proposed as the successful bidder through the curriculum vitae of the assigned personnel, work life and company certificates in the contract award phase.

| **16.- OUTSOURCING** | |
|---|---|
| Obligation to indicate in the DEUC the part of the contract planned to be subcontracted, indicating its amount and the name or business profile of the subcontractors | YES ☐ NO ☒ |

| | |
|---|---|
| Direct payments to subcontractors | YES ☐ NO ☒ |
| Critical tasks that cannot be outsourced | YES ☐ NO ☒ |
| Description of critical tasks that cannot be outsourced: | |

| **17.- WARRANTIES** | |
|---|---|
| PROVISIONAL | YES ☐ NO ☒ |
| FINAL | YES ☒ NO ☐ Amount: 5% of the award amount (VAT not included) |
| COMPLEMENTARY | YES ☐ NO ☒ |
| GUARANTEE PERIOD | 2 YEARS from the reception date at MUBIL facilities. On that date, a verification document will be written so that the exact date of warranty period start will be recorded |

**18.- AWARD CRITERIA**

**1) CRITERIA WHOSE QUANTIFICATION DEPENDS ON A VALUE JUDGMENT …… 50 points**

YES ☒ NO ☐

**File No. TWO will contain the necessary documentation for the assessment of the criteria submitted to value judgment.**

**Those bidders who do not meet the required technical conditions and those who include in electronic file No. TWO documentation that must be subject to evaluation by applying formulas (electronic file No. THREE) will be excluded from the bidding procedure:**

| **Criteria** | **Weighting** |
|---|---|
| **1.- Technical characteristics**<br>The information related to the criteria to be evaluated through value judgments will be collected in the document called technical proposal that will be included in electronic file number two.<br><br>A descriptive technical report of the **technical characteristics of the test areas** will be presented, which will be assessed according to the following parameters:<br><br>• Increase in the minimum capacities required in the technical requirements that expand the performance of the equipment and the range of devices to be tested…….. | **50 POINTS**<br><br>25 points |

| | |
|---|---|
| • Proposed overall technical solution to increase test flexibility and minimise setup times between tests/configurations …… | 10 points |
| • Proposed safety matrix that increases operational and operator safety……..…….. | 5 points |
| • Software packages that increase the capabilities and functionalities of the test benches……. | 5 points |
| • Level of detail of proposed layout and facility requirements..... | 5 points |
| To pass in this section, the technical offers must reach a minimum score of 35 points, being excluded from the tender those offers that do not reach said score. The bids to be valued using formulas submitted by the bidders excluded for this reason will not be opened.. | |

Indicate if the evaluation corresponds to:

☐ Committee of experts

☐ Specialized Technical Organization: (insert identification)

**2) CRITERIA TO BE ASSESSED THROUGH THE APPLICATION OF FORMULAS…… 50 points**

| | Criteria | Maximum score |
|---|---|---|
| **1.-** | Price | 30 points |
| 2.- | Technical criteria | 4 points |
| 3.- | Warranty Criteria | 2 points |
| 4.- | Delivery time criteria | 4 points |
| 5.- | Environmental criteria | 4 points |
| 6.- | Social criteria | 6 points |

| | Criteria | Weighting |
|---|---|---|
| **1.-** | **PRICE** | **30 POINTS** |
| | This section will be valued out of a total of 100 points, according to the following criteria.<br>This evaluation will be based on the amounts of the offers and the bidding budget without VAT.<br>Out of 100, 0 points will be awarded to the offer that matches the bidding budget and increasing 2 points for each 1% price drop, with the maximum score being 100 points, unless any price drop exceeds 50%, in which case 100 points will be awarded to the lowest offer and the rest will be interpolated.<br>$For\ Bmax\ \leq 50\% \rightarrow P = B \cdot 200$ | |

$$For\ Bmax\ > 50\% \rightarrow P = \frac{B}{B_{max}} \cdot 100$$

Where:

- P: Score of the offer being evaluated.
- B: Price drop of the offer being evaluated, B = 1 - (Amount offered) / (Bidding budget)
- Bmax: Maximum price drop, Bmax = 1 - (Minimum offer) / (Bidding budget)

In this way, a score of 100 points is obtained, which will be transferred to its corresponding score of 30 points, which is the score assigned to the economic proposal in the award criteria.

**Parameters to consider an offer with abnormal or disproportionate values:**

In principle, bids that are more than 20% lower than the arithmetic mean of all the prices of the accepted bids or, in the event of a single bidder, 25% of the maximum amount will be considered disproportionate or abnormal. established, and its declaration will require the prior request for information from all the bidding companies supposedly included in it, as well as the technical advice of the corresponding service.

| 2- | **TECHNICAL CRITERIA** | **4 POINTS** |
|---|---|---|
| | Improving the characteristics of universal inverters in both test areas (A1 and A2) by increasing the operating voltage range up to 1200Vdc of the universal inverter will be awarded.<br>The bidder who offers it will be awarded 4 points, the one who does not offer it will be awarded 0 points. | |

| 3- | **WARRANTY CRITERIA** | **2 POINTS** |
|---|---|---|
| | The bidder who offers an additional year to the 2-year warranty will be awarded 1 point (1 points per year extra or the proportional part), without exceeding the maximum score of **2 points**. | |

| 4- | **DELIVERY TIME CRITERIA** | **4 POINTS** |
|---|---|---|
| | The bidder who offers a reduction in the delivery period (expressed in months) will be awarded in inverse linear proportion, assigning **4 points** to the shortest period proposed.<br>For the rest of the offers, the score will be calculated using the following formula:<br>$$Delivery\ score = 4\ x\ \frac{(Administrative\ period - Offer\ period)}{Maximum\ reduction}$$<br>*Formula 1. Delivery improvement score.*<br>Where:<br>• Delivery score = delivery period related score obtained by the bidder that is being evaluated.<br>• Administrative period = execution period defined in particular administrative clauses (15 months). | |

| | | |
|---|---|---|
| | • Offer period = execution period offered by the bidder that is being evaluated.<br>• Maximum reduction = the maximum delivery period reduction that has been received among all offers.<br>The offers that present a reduction of more than 4 months will not be taken into account for the purposes of their evaluation. | |
| **5-** | **ENVIRONMENTAL CRITERIA** | **4 POINTS** |
| | 1) **1 point** will be awarded for the assignment of an electric or hybrid vehicle to the members of the team. The company awarded the contract will be required to provide the registration number, model and main characteristics of the vehicle assigned.<br>2) **3 points** will be awarded to the bidder that has an environmental certificate (ISO 14064, ISO 14001 or equivalent). | |
| **6-** | **SOCIAL CRITERIA** | **6 POINTS** |
| | 1) **3 points** will be awarded to the company that has a work-life balance plan, which is included in the company's collective agreement.<br>2) **3 points** will be awarded if at least one woman is included in the allocation of resources. | |

**Specific criteria for the tiebreaker:**
Those established in article 147.2 of the LCSP.

**MANDATORY CRITERIA FOR WRITTEN TEXTS (WITHOUT GRAPHICS, PHOTOGRAPHS, DIAGRAMS...) THAT ARE PRESENTED**

All written texts that are presented in relation to these criteria must be written with the following parameters:

- Documentation maximum extension (without considering covers or indexes): 35 pages
- Minimum margins:
  - Lower and upper: upper 2.5 cm.; bottom 2cm
  - Left and right: left 2.5 cm.; right 1.5cm
- Font type and size: Arial 10.
- Line spacing: simple.

| **19.- SPECIAL EXECUTION CONDITIONS** |
|---|
| Those established in clause 38.2 and in letters d) and e) of clause 38.3.2 of these specifications |

| **20.- ESSENTIAL OBLIGATIONS OF THE CONTRACT** |
|---|
| Those established in letters a), b) and c) of clause 38.3.2 of these specifications<br><br>The ascription of means indicated in clause 15 of this cover sheet is an essential obligation of the contract, the breach of which may be considered cause for termination of the contract for the purposes indicated in article 211.f) of the LCSP. |

| **21.- ANTICIPATED CONTRACTUAL MODIFICATIONS** |
|---|
| YES ☐ NO ☒ |

| **22.- PENALTIES** |
|---|
| See clause 39 of this document |

| **23.- AMOUNT OF THE COMPENSATION TO THE BIDDERS** |
|---|
| It does not proceed. |

| **24.- PAYMENTS ON ACCOUNT FOR PREPARATORY OPERATIONS** |
|---|
| YES ☐ NO ☒ |

| **25.- OTHER ADDITIONAL SPECIFICATIONS** |
|---|
| It does not proceed. |

| **26.- CONTRACTING DESK** | |
|---|---|
| CHAIRWOMAN | Ane Insausti Altuna, General Manager of MUBIL Fundazioa. |
| VICE PRESIDENT AND VOCAL 1st | Ainhoa Saizar Liceaga, Electromobility technician of MUBIL Fundazioa. |
| 2nd MEMBER | Ana Urkola Aranburu, Head of the Strategic Projects Service of the Department of Economic Promotion, Tourism and Rural Affairs of the Provincial Council of Gipuzkoa. |
| 3rd MEMBER | Iñaki Egizurain Nebreda, Head of the Legal Advice and Coordination Section of the Department of Economic Promotion, Tourism and Rural Affairs of the Provincial Council of Gipuzkoa, or a person delegated by him, with legal advisory functions. |
| MEMBER 4 | Xabier Lertxundi Agote, Head of the Intervention and Audit Service of the Treasury and Finance Department of the Provincial Council of Gipuzkoa, or a person delegated by him. |
| SECRETARY | Irati Malatsetxebarria Elizegi, General Administration Technician of the Strategic Projects Service of the Department of Economic Promotion, Tourism and Rural Environment of the Provincial Council of Gipuzkoa. |

| **27.- DEADLINE FOR SUBMISSION OF PROPOSALS** |
| --- |
| The deadline for submitting proposals will be 30 calendar days from the day after the tender notice is sent to the Publications Office of the European Union (art. 156.2 and 156.3c LCSP) |

San Sebastián, … of … 2022.

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## CHAPTER I - GENERAL PROVISIONS

### 1.- Purpose of the contract

1.- The purpose of the contract is the supply consignment described in **section 3** of the table of characteristics in this tender document, in due consideration, where applicable, of any amendments that may be arranged pursuant to the scenarios provided for in Law 9/2017 of 8 November on Public Procurement Contracts ("LCSP"), which transposes into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014.

When the aforementioned section stipulates thus, the bidding shall be carried out in lots, in accordance with the terms and limitations described therein, pursuant to Article 99 of the LCSP. All references made in this tender document to the contract or to the successful tenderer shall be understood as made to each lot into which the purpose of the contract may be divided, as applicable

2.- The coding is as per the nomenclature Common Contract Vocabulary ("CPV") set out in **section 3** of the table of characteristics.

### 2.- Needs to be satisfied by the contract

This contract shall satisfy the needs described in the technical specifications, through the supply consignments described therein.

### 3.- Basic bid estimate

The sum of the contract's basic bid estimate, calculated pursuant to Article 100.2 of the LCSP, is that stipulated as the maximum amount in **section 4** of the table of characteristics, including Value-Added Tax.

### 4.- Estimated value of the contract

1.- The estimated value of the contract, calculated pursuant to Article 101 of the LCSP and stipulated in **section 5** of the table of characteristics, has been taken into account to select both the award procedure applicable to this contract and the publicity to be applied to it, and to establish the conditions of aptitude of the natural persons and legal entities tendering (hereinafter the tenderers) and the system of appeals applicable. This estimated value shall include, in the event they are envisaged, any upward contractual amendments stipulated in **section 21** of the table of characteristics.

2.- Pursuant to the provisions of Article 101.5 of the LCSP, **section 5** of the table of characteristics indicates the method used to determine the estimated value of the contract.

### 5.- Price of the contract

1.- The price of the contract shall be that arising from award of the contract, and VAT shall be set out as an independent item. The price of the contract shall be considered to include all taxes, charges and levies of any kind that may be applicable, and all costs incurred by the successful tenderer as a result of compliance with the obligations contemplated in this tender document.

2.- Pursuant to the provisions of Article 102.4 of the LCSP, **section 4** of the table of characteristics indicates the system used to determine the price.

3.- In contracts in which the price is determined as a lump sum, the price of the contract shall be that offered by the successful tenderer, and may not under any circumstances exceed the basic bid estimate.

4.- In contracts in which the price is determined as unit prices for the various components or units supplied:

a) When the number of units making up the purpose is precisely defined: the price shall be the result of multiplication of the unit price offered by the successful tenderer by the number of units.

b) When the number of units making up the purpose is not precisely defined:

1) The price of each unit shall be that offered by the successful tenderer.

2) The maximum limitational prices of the contract shall be established, although the effective cost of this estimate is conditioned by the real needs of the contracting authority, which is not obliged to demand a certain number of units, or to disburse it in its entirety.

5.- If this is stipulated in **section 4** of the table of characteristics, economic offers containing partial unit prices with a percentage increase with respect to the prices stated in the basic bid estimate shall be permitted, although under no circumstances may the resultant maximum price exceed the amount of the basic bid estimate.

## 6.- Financing/annual payments on the contract

The contract shall be financed pursuant to the annual payment/s established in **section 7** of the table of characteristics.

## 7.- Delivery lead time and location for the supply consignment

1.- The lead time shall be as stated in **section 8** of the table of characteristics or, as the case may be, as stipulated by the successful tenderer, if offers may propose a reduction of the total lead time and/or of the partial lead times. All these lead times shall commence as of formalisation of the contract or as of the date stipulated in the contractual document.

2.- The contract may be extended if this is stipulated in **section 9** of the table of characteristics, and the extension shall be binding on the contractor in the terms stipulated in Article 29 of the LCSP.

3.- The partial and total delivery lead times for the supply consignment shall be as stipulated in **section 8** of the table of characteristics or, as the case may be, as stipulated by the successful tenderer, if offers may propose a reduction of the total lead time and/or of the partial lead times. All these lead times shall commence as of formalisation of the contract or as of the date stipulated in the contractual document.

4.- The consignment shall be delivered to the location stipulated in **section 11** of the table of characteristics.

5.- The supply maintenance lead time shall be, where applicable, that stipulated in **section 8** of the table of characteristics.

## 8.- Price review

1.- If a price review must be carried out, this shall be indicated in **section 13** of the table of characteristics, which shall contain the formula applicable.

2.- The price review shall take place in the terms established in the LCSP (Articles 103 and following).

## 9.- Publicity for the contract

1.- The call for tenders to award the contract shall be posted on the contracting party's profile.

2.- The contracting party's profile shall provide information on the call for tenders for the contract, including the specific administrative clauses and additional documentation, where applicable.

3.- Any information concerning this contract which, pursuant to the stipulations of Article 63 of the LCSP, is to be posted on the contracting party's profile, may be consulted at the electronic address stipulated in **section 2** of the table of characteristics.

4.- When the contracts are subject to harmonised regulation, the tender shall also be published in the Official Journal of the European Union, pursuant to Article 135 of the LCSP.

## 10.- Information on taxation, the environment, equality of women and men, linguistic equality, employment protection, working conditions and the prevention of occupational hazards and data protection

Information on the obligations and stipulations in force may be obtained from the bodies listed below in relation to the following:

- Taxation: Gipuzkoa Provincial Council Department of Taxation and Finance and other Tax Authorities.
- Employment protection, working conditions and the prevention of occupational hazards and social/job insertion of people with disabilities: Basque Government Department of Employment and Justice's Employment and Social Security Division.
- Equality of women and men: Autonomous Body EMAKUNDE- Basque Institute of Women.
- Linguistic equality: Basque Government Linguistic Policy Subdepartment.
- Protection of the environment: Gipuzkoa Provincial Council Department of the Environment and Waterworks' Environment Division. Sociedad Pública de Gestión Ambiental IHOBE, S.A.
- Protection of personal data: Basque Data Protection Agency.

## 11.- Legal system applicable to the contract

1.- This contract is a private-law contract in accordance with the provisions of Article 26 of the LCSP.

2.- The parties are expressly subject to the provisions of this tender document and in its specific technical clauses, in such a way that this tender document and other documents attached shall be contractual, and must therefore be signed by the successful tenderer to accredit its agreement when the contract is formalised.

3.- In the event of any discrepancies between this tender document and any of the other contractual documents, this tender document shall prevail.

4.- In relation to any issues not covered in the tender documents, the contract shall be governed:

a) In relation to its preparation and award: by the LCSP, by Royal Decree 817/2009 of 8 May partially implementing Law 30/2007 of 30 October on Public Procurement Contracts ("RD 817/2009") and by the General Regulations of the Law on Public Authority Contracts, approved by Royal Decree 1098/2001 of 12 October ("RGLCAP"). It shall also be governed by any other provisions that may be applicable to regulate procurement, pertaining to the Autonomous Community of the Basque Country (Law 3/2016 of 7 April, for the inclusion of certain social clauses in public contracts), and also to the Gipuzkoa Provincial Council.

   Additionally, the other regulations of administrative law shall be applicable and, failing this, by private law.

b) In relation to its effects and termination: by the rules stipulated in private law and the rules of paragraph one of Article 319 on environmental, social or employment-related issues, special conditions of execution, amendment of the contract, assignment and subcontracting, technical rationalisation of procurement; and the cause of termination of

the contract in reference to the impossibility of performing same in the terms initially agreed, when it is not possible to amend the contract pursuant to Articles 204 and 205 of the LCSP.

5.- Ignorance of the clauses of the contract in any of its terms, of the other contractual documents forming part of the contract and of any instructions or regulations that may be applicable for the performance of the issue agreed, does not release the successful tenderer from its obligation to comply with them.

## 12.- System of appeals

1.- Contentious-administrative criteria are applicable for the resolution of any issues that may arise in relation to preparation, award and contractual amendments, when these are challenged on the basis of non-compliance with Articles 204 and 205 of the LCSP, on the grounds that the amendment should have been covered in another award procedure.

2.- Civil jurisdiction shall be competent to rule on any disputes arising with respect to the effects and termination of the contract.

3.- This tender document and the technical specifications may be challenged optionally by means of the special appeal stipulated in Article 44 of the LCSP in the case of a contract the estimated value of which exceeds 100,000 euros.

Appeals may also be submitted against the following actions:

a) Calls for tender and any other contractual documents establishing the conditions to govern the procurement process.

b) Administrative action taken during the award procedure, provided this directly or indirectly makes decisions regarding the award, determines the impossibility of continuing the procedure or leads to defencelessness or irreparable damage to legitimate interests or rights. In any case it shall be considered that the foregoing circumstances correspond in any actions by the contracting committee or body which agree to admit or reject candidates or bidders, or admit or reject offers, including any offers that are excluded because they are abnormally low as a result of application of Article 149 of the LCSP.

c) The award agreements.

d) Amendments based on non-compliance with the provisions of Articles 204 and 205 of the LCSP, on the grounds that the amendment should have been covered in another award procedure.

Pursuant to the provisions of Article 51 of the LCSP, the appeal must be presented in the register of the contracting body, in the register of the Provincial Administrative Tribunal of Contractual Appeals or at the locations established in Article 16.4 of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Authorities, within fifteen business days, in the terms stipulated in Article 50 of the LCSP.

Notwithstanding the provisions of the preceding paragraph, when the appeal is based on one of the causes of nullity stipulated in section 2 c), d), e) or f) of Article 39 of the LCSP, the submission timelines stipulated in Article 50.2 of the LCSP shall be applicable.

Alternatively, a contentious-administrative appeal may be submitted in the terms stipulated in Law 29/1998 of 13 July regulating Contentious-Administrative Jurisdiction to the Basque Country's Higher Court of Justice within two months.

4.- Any actions which do not meet the requirements for submission of the special appeal shall be challenged in administrative proceedings, pursuant to the provisions of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Authorities, to the department, body, unit or division to which the contracting body is attached, or to the body charged with administration.

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## CHAPTER II - PROCUREMENT PROCEDURE

### 13.- Class of dossier and tendering procedure

1.- The procurement dossier is drawn up in accordance with the procedure and arrangements stipulated at the beginning of the table of characteristics.

If variants are permitted, tenderers may offer alternative bids after the fashion established in **section 12** of the table of characteristics, with the requisites, modalities and technical characteristics stipulated in the specific technical specifications and summarised in said section.

2.- If the table of characteristics specifies urgent proceedings for the dossier, the timelines established for tendering, award and formalisation shall be shortened, pursuant to the rules established in Article 119 of the LCSP and other articles applicable.

### 14.- Natural person and legal entity bidders

1.- Spanish or foreign natural persons or legal entities may enter into contract with the contracting authority, provided they have full capacity to take action, are not affected by any contracting restrictions, and can accredit their economic, financial and technical or professional solvency.

When, if such circumstance is determined by the regulations applicable, the tenderer is subject to certain requisites in relation to its organisation, the destination of its profits, financing system or other criteria in order to take part in the award procedure, it must accredit same when it undertakes the procedure.

2.- The circumstances in relation to capacity, solvency and the absence of any contracting restrictions referred to in the preceding paragraph must be in place at the final date of submission of bids, and must remain in place when the contract is performed.

3.- Tenderers must also hold any corporate or professional qualifications that may be required to provide the services constituting the purpose of the contract.

4.- Legal entities may only be awarded contracts in relation to which the services relate to the objectives, purpose or scope of activity forming part of their business pursuant to their by-laws or foundational rules.

5.- The contracting entity may also draw up contracts with companies forming a temporary joint venture to this end, with no need to draw up any public deed formalising them, until the contract has been awarded to them.

In the event of any changes to their composition, and in any scenarios of amendments arising before and after formalisation of the contract, the provisions of Article 69 section 8 and following of the LCSP shall apply. In this regard, any circumstance that may have arisen must be notified to the contracting body.

6.- In relation to EU companies or companies from States that are signatories to the European Economic Area Agreement and non-EU companies, the provisions of Articles 67 and 68 of the LCSP shall apply.

### 15.- Provisional guarantee

1.- Pursuant to the provisions of Article 106 of the LCSP, if in exceptional circumstances, for reasons in the public interest justified in the dossier, this contract requires a provisional guarantee to be furnished, the amount shall be that stipulated in **section 17** of the table of characteristics.

2.- In relation to the format and requisites of guarantees, the provisions of Articles 106.3 and 108.1 of the LCSP and the provisions of Articles 55, 56, 57 and 58 of the RGLCAP shall apply.

3.- The provisional guarantee shall be automatically cancelled and returned to tenderers immediately after execution of the contract.

## 16.- Submission of bids

1.- Bids shall be submitted via the electronic tendering platform www.contratacion.euskadi.eus to the deadline stipulated in **section 27** of the table of characteristics, running from the day after the call for tenders is posted on the contracting party's profile, or in the Official Journal of the European Union (OJEU) for contracts subject to harmonised regulation.

2.- Dispatch of documentation, notifications and communications shall be pursuant to the provisions of **Annex I** to this tender document.

3.- The documents shall be named in accordance with the various sections stipulated in **clauses 19**, **20** and **21** of this tender document as documentation content to be included in electronic files ONE, TWO and THREE.

4.- The offers shall be secret, and to this end measures shall be taken to guarantee their secrecy until the time of the public tender.

## 17.- Information for tenderers

1.- When it is necessary to provide the additional or complementary information referred to in Article 138.3 of the LCSP, the contracting body must furnish this, at the latest six calendar days before the deadline set for submission of offers, provided the request is submitted at least twelve calendar days before this date. This request shall be made to the e-mail address stated in the call for tenders and in **section 1** of the table of characteristics.

2.- In the case of dossiers graded as urgent, the deadline shall be four six calendar days at the latest before the deadline set for submission of offers for contracts subject to harmonised regulation expires.

3.- In cases in which clarifications are posted publicly on the contracting body's profile, replies shall be binding.

## 18.- Contents of offers

1.- Offers shall be presented in the electronic files indicated in the clauses below, by the tenderer or the person representing same.

2.- The contents shall be stated in a separate file inside each electronic file, in numbered format (Article 80.1 of the RGLCAP).

## 19.- Electronic file nº ONE: "DOCUMENTATION ACCREDITING COMPLIANCE WITH THE PRIOR REQUISITES"

1.- This electronic file, with the title "DOCUMENTATION ACCREDITING COMPLIANCE WITH THE PRIOR REQUISITES", must contain the documents listed below, and an index referring to all of them.

a) **Data for the purposes of receiving notifications and communications**, pursuant to the specimen in the **Addendum** to **Annex I**.

b) **Single European Contract Document (SECD)**. Pursuant to the provisions of Articles 140 and 141 of the LCSP, a responsible statement shall be presented, to be completed in accordance with the instructions set out in **Annex II**, signed by the tenderer or its representative, in pursuant to the specimen form therein.

   When the tenderer avails itself of the solvency and means of other organisations, an SECD must be submitted for each of them.

   When the table of characteristics stipulates the division of the purpose of the contract into lots, if the economic, financial and technical or professional solvency requisites vary between one lot and another, an SECD shall be submitted for each lot or group of lots to which the same solvency requisites are applicable.

c) **Undertaking to create a Joint Business Venture, where applicable**. When two or more companies apply for a tender by creating a joint venture, they must submit a private document stating the names and circumstances of the companies signing it and the participation of each of them, and also stating that they accept the undertaking to act as a joint venture if their bid is successful (Articles 69 of the LCSP and 24 of the RGLCAP). This document must be signed by those representing each of the companies making up the Joint Venture. In these cases, each of the companies must submit its SECD. **Annex III** to this tender document contains the specimen undertaking to create a Joint Business Venture.

d) **Responsible statement of provision of human and material means for performance of the contract** with the profiles and specifications stipulated in **section 15** of the table of characteristics. A specimen is set out in **Annex IV** to this tender document.

e) **Explicit responsible statement by the tenderer concerning the business group** to which it belongs, including all the companies forming part of the same group, in the terms established in Article 42 of the Commercial Code. If it does not form part of any business group, the statement shall make this circumstance clear. A specimen is set out in **Annex V** to this tender document.

f) **Declaration of the tenderer's confidential documents and data.** Tenderers must state, if the case arises, which administrative and technical documents and data submitted are, in their opinion, considered confidential. This circumstance must be reflected (superimposed, in the margin, or in any other way) on the actual document and stipulated as such. Documents and data submitted by tenderers may be considered confidential when their disclosure to third parties or organisations may be contrary to their legitimate commercial interests, or may adversely affect fair competition among companies. If this statement is not completed, it shall be assumed that no documents or data are confidential. A specimen is set out in **Annex VI** to this tender document.

g) **Document attesting to the provisional guarantee**, where applicable (see specimen guarantee in **Annex VII**). In the case of joint business ventures, provisional guarantees may be furnished by one or more of the companies involved, provided the joint contribution attains the amount required in **section 17** of the table of characteristics, and furnishes a joint and several guarantee for all companies in the temporary joint venture.

h) **Special features of the documentation to be submitted by foreign tenderers**. All foreign tenderers must submit, in addition to the responsible statement referred to in b) above, a **declaration of submission to the jurisdiction of Spanish Courts and Tribunals of any kind** for any incidents which directly or indirectly may arise from the contract, with a waiver of any foreign jurisdictional rights to which the tenderer may be entitled (Article 140.1 f) of the LCSP).

   Companies from States that are not member states of the European Union or signatories to the Single European Area Agreement must also furnish the following:

   - **Report** issued by Spain's Permanent Diplomatic Mission or Consular Post in the location in which the company is registered, stating, with accreditation by the company, that it is entered in the local professional, commercial or similar register or, failing this, that it habitually acts in local traffic in the area of the activities concerning the purpose of the contract.
   - **Reciprocity report,** referred to in Article 68 of the LCSP, except in the case of contracts subject to harmonised regulation, in which case this shall be substituted by a report by the Permanent Diplomatic Mission or the Foreign Trade General Secretariat of the Ministry of Finance on the status of the State that is a signatory to the World Trade Organization's Public Procurement Agreement.

2.- The contracting body or the contracting committee may, at any time, request documented accreditation of compliance with the conditions in relation to which tenderers have responsibly stated their compliance.

The tenderer must submit the documentation required within a period that may not exceed five business days, considered from the day following that on which the request is received. If the request is not properly met within the deadline stipulated, it shall be understood that the tenderer has withdrawn its offer, and it shall be excluded from the procedure.

## 20.- Electronic file nº TWO: "DOCUMENTATION TO BE ASSESSED PURSUANT TO A VALUE JUDGMENT"

1.- If **section 18** of the table of characteristics includes award criteria on a value judgment that must be subjected to a prior assessment, the tenderer must furnish an electronic file nº TWO entitled "DOCUMENTATION TO BE ASSESSED PURSUANT TO A VALUE JUDGMENT", with the documentation demanded therein.

2.- Under no circumstances may this electronic file contain any information pertaining to electronic file nº THREE.

3.- The tenderer must also furnish any other documents which, as applicable, are expressly stipulated in the technical specifications and verify that the offer meets the technical specifications required, but which shall not be assessed. They shall be included in electronic file nº TWO, if presentation of this file is mandatory, or, if this is not the case, in electronic file nº THREE.

## 21.- Electronic file nº THREE: "ECONOMIC OFFER AND DOCUMENTATION TO BE ASSESSED THROUGH THE APPLICATION OF FORMULAS"

1.- This electronic file entitled "ECONOMIC OFFER AND DOCUMENTATION TO BE ASSESSED THROUGH THE APPLICATION OF FORMULAS" must include the economic offer and the other documents to be assessed through the application of formulas.

2.- Offers must be in accordance with the specimen format set out in **Annex VIII**, and any offers containing omissions, errors or items crossed out that prevent any clear knowledge of what the contracting body deems essential for consideration of the offer shall not be accepted. Economic offers by tenderers must state, as a separate item, the amount of Value-Added Tax, if this must be charged.

The economic offer and the rest of the documentation in this file shall be assessed in accordance with the criteria set out in **section 18** of the table of characteristics.

3.- If a bid exceeds the basic bid estimate, substantially changes the model established, or contains a manifest error in the amount of the bid, or the tenderer admits there is an error or inconsistency that makes it non-viable, it shall be rejected by the contracting committee in a reasoned resolution. On the other hand, changes to or omissions of some words in the model, provided neither circumstance alters its meaning, shall not constitute sufficient grounds for rejection of the bid.

4.- Each tenderer may submit no more than one offer, without prejudice to the provisions of Article 142 of the LCSP on the admissibility of variants. Nor may it sign any offer as a temporary joint venture with other companies if it has done so individually, or forms part of more than one temporary joint venture. Infringement of this principle shall lead to the rejection of all the offers submitted simultaneously.

5.- When the offer is drawn up by a temporary joint venture, all the companies of which it is composed shall sign the offer directly or by means of a representative.

6.- When **section 12** of the table of characteristics authorises the presentation of variants, in addition to the economic offer in reference to the basis, this file may include an economic offer for each variant. The economic offer for each variant shall be drawn up in accordance with the

specimen set out in **Annex VIII** to this tender document, and shall include the concepts and conditions stipulated in said section.

## 22.- Admissibility of variants

1.- If variants are admitted, the only offer submitted by each tenderer may contain as many different solutions it deems advisable to offer in relation to the purpose of the contract, with the requisites, modalities and technical characteristics set out in the specific technical specifications, summarised in **section 12** of the table of characteristics**.** Variants shall be submitted in the format established in the aforementioned section of the table of characteristics, and they may not exceed the basic bid estimate.

2.- It shall in any case be compulsory for all tenderers to draw up an offer referring exclusively and literally to the basic consignment required, with a deadline for the service and price, the same or lower in both cases in comparison to those set out in the table of characteristics, which must exactly match those set out in the work schedule submitted.

## 23.- Effects of the submission of bids

1.- Submission of bids by the tenderer entails unconditional acceptance of the clauses in this tender document and the technical specifications with no exceptions or reservations, and authorisation for the committee and the contracting body to consult the data entered in the Official Register of Tenderers and Classified Companies in the Public Sector or in the official lists of economic operators of a European Union Member State.

Non-submission to tender documents necessarily entails rejection of the offer.

2.- Tenderers may not withdraw their bid over a period of fifteen calendar days from the opening of offers, when the only criterion to select the successful tenderer is price, or over a period of two months when other criteria have been taken into account to award the contract, pursuant to the provisions of Article 158.4 of the LCSP. This period shall be extended by fifteen business days when it is necessary to adhere to the arrangements referred to in Article 149 of the LSCP concerning abnormally low offers.

3.- Unwarranted withdrawal of a bid shall constitute a reason to prevent the tenderer from entering into public sector contracts pursuant to the provisions of Article 71.2 of the LCSP, and shall also entail seizure of the provisional guarantee pursuant to Article 106.1 of the LCSP, if same has been required.

## 24.- Contracting committee

1.- The contracting committee shall be the technical body that is competent to assess the offers, and it shall act in accordance with the provisions of Article 326 of the LCSP, and in accordance with Articles 21 and 22 of Royal Decree 817/2009 of 8 May implementing its composition and functions.

2.- Its composition is set out in **section 26** of the table of characteristics and shall be posted via the contracting body's profile, along with the call for tenders or, conversely, always before it has been created, by means of a specific announcement on said profile.

## 25.- Opening and examination of the offers

### 25.1.- Opening of electronic files nº ONE and assessment of the administrative documentation

1.- When the deadline for submission of offers has expired, the contracting committee shall open and grade the administrative documentation submitted by the tenderers, in due time and format, in electronic file nº ONE. If the committee observes any rectifiable omissions or flaws in the documentation submitted, it shall notify this circumstance to the parties concerned, and shall grant

them a period of no more than three calendar days for correction or rectification. The committee may also request the submission of complementary or clarificatory documentation from tenderers in addition to that already submitted, and shall grant them a period of five calendar days for submission.

2.- The parties concerned shall be notified by electronic means.

3.- Finally, the contracting committee shall determine which tenderers have been accepted for the tender and which have been rejected, with the reasons for their rejection.

### 25.2.- Opening of electronic files nº TWO (only when an electronic file nº TWO exists)

1.- If its submission is compulsory, electronic files nº TWO shall be opened, identified as "DOCUMENTATION TO BE ASSESSED PURSUANT TO A VALUE JUDGMENT", for the purposes of assessing the contents pursuant to the criteria expressed in **section 18** of the table of characteristics.

2.- This shall commence with an explicit pronouncement on the grading of the offers by the committee, specifying which tenderers have been accepted for the tender and which have been rejected, with the reasons for their rejection.

3.- Tenderers that do not meet the technical conditions required shall be excluded from the procedure, and also tenderers that include documentation in the electronic files nº TWO which must be assessed through the application of formulas (electronic file nº THREE).

### 25.3.- Opening and examination of electronic files nº THREE

1.- Electronic files nº THREE shall be opened at a public event and, if this is stated on the call for tenders in the contracting body's profile, it may be viewed live via the link provided in the call for tenders.

2.- When there are no electronic files nº TWO, the public opening of electronic files nº THREE shall commence with an explicit pronouncement on the grading of the offers by the committee, specifying which tenderers have been accepted for the tender and which have been rejected, with the reasons for their rejection.

3.- If there are criteria for assessment pursuant to value judgments, the result of this assessment shall be announced during the event.

4.- The contracting committee shall then open the electronic files nº THREE of the tenderers accepted, denominated "ECONOMIC OFFER AND DOCUMENTATION TO BE ASSESSED THROUGH THE APPLICATION OF FORMULAS", and the economic offers shall be read.

5.- The documentation in these electronic files shall be assessed pursuant to the criteria expressed in **section 18** of the table of characteristics.

6.- In any case, the assessment of these criteria shall always be subsequent to the assessment of the documentation in electronic files nº TWO.

### 25.4.- Minutes of the contracting committee

All action taken pursuant to the preceding sections shall be recorded in the minutes, which shall reflect the outcome of the procedure and any incidences.

## 26.- Publication of the outcome of action taken by the contracting committee and notification to the tenderers concerned

Information concerning the contracts shall be posted on the contracting body's profile pursuant to any provisions of the LCSP applicable to them.

## 27.- Award criteria

1.- The criteria to be considered and their weightings for award of the contract, applicable to the basic offer and any variants, shall be those established in the call for tenders and in **section 18** of the table of characteristics.

2.- Companies submitting offers that do not meet the formal characteristics stipulated in **section 18** of the table of characteristics concerning the size of paper, margins, font and line spacing of written texts (irrespective of graphics, photographs, diagrams etc.) shall be required to formally correct their offer, with no alterations to its material contents. Alteration of these contents shall entail immediate exclusion from the procedure.

When the requirement has been issued, if the informality persists, the offers shall not be assessed with respect to the award criterion concerned, although this non-compliance shall not under any circumstances entail exclusion from the award procedure.

3.- Any offers which comply with these formal characteristics and exceed the maximum length (disregarding title pages and indexes) established in the aforesaid **section 18** for each section in relation to the award criteria shall not under any circumstances be excluded from the procedure. If the aforesaid maximum length is exceeded, the contents shall be assessed up to the maximum number of pages permitted.

4.- If a tenderer does not furnish the documentation in relation to the award criteria, the offer by this company shall not be assessed with respect to the criterion concerned. Offers shall not be excluded from the procedure for this reason under any circumstances.

## 28.- Assessment of offers

1.- For the exercise of its functions, the contracting committee may request any technical reports it may deem necessary, pursuant to the provisions of Article 146.2.b) of the LCSP.

2.- Any offers that do not meet the technical specifications required shall be excluded by the contracting committee.

3.- When criteria the assessment of which depends on a value judgment exceed 50% of the total weighting, the prior assessment of electronic file nº TWO shall be conducted by a committee composed of experts with proper qualifications or by a specialist technical body, expressly stipulated in **section 18** of the table of characteristics and posted on the contracting body's profile. This section shall stipulate the specific criteria that must be assessed by the committee experts or by the specialist technical body, the deadline for them to conduct their assessment, and the maximum and minimum thresholds in which this is to be quantified.

## 29.- Clarification of offers

The contracting body or the contracting committee may ask the tenderers for clarifications concerning the offers submitted or if they must correct manifest material errors in their texts, provided the principle of equality is observed, and under no circumstances may the terms of the offers be amended. All action taken must be recorded in document format in the dossier.

## 30.- Offers with abnormally low values

1.- In **section 18** of the table of characteristics, the contracting body shall establish the objective parameters by virtue of which it shall be understood that the offer cannot be carried through because it is considered abnormally low.

2.- When one or more offers are identified that may be affected by alleged abnormality, the contracting committee or, failing this, the contracting body, must require the tenderer or tenderers provide a reasoned and detailed justification and breakdown of the parameters of their offer that have defined the abnormality of the offer, enacting the procedure stipulated in sections 4 to 6 of

Article 149 of the LCSP and, considering the outcome, tabling a proposal to the contracting body for acceptance or rejection.

### 31.- Succession in the procedure

1.- If, during the procedure and prior to formalisation of the contract, a merger, spin-off or a transfer of business assets or of a branch of activity arises, the tenderer or candidate shall be succeeded in its position in the procedure by the company absorbing, the company arising from the merger, the beneficiary of the spin-off or the party acquiring the business assets or the branch of activity, provided it meets the conditions of capacity and the absence of any ban on contracting, and can accredit its solvency and classification in the conditions demanded by the specific administrative clauses to take part in the award procedure.

2.- When the operations referred to in the preceding paragraph are ascertained in joint ventures, the provisions of Article 69 of the LCSP shall apply.

### 32.- Decision not to award or draw up the contract and abandonment of the award procedure by the contracting body

1.- The decision not to award or draw up the contract and abandonment of the award procedure in the terms of Article 152 of the LCSP may be agreed by the contracting body prior to formalisation, notifying the tenderers and also informing the European Commission when the contract has been announced in the Official Journal of the European Union.

2.- In both cases, suitable candidates or tenderers shall be compensated in the amount, if any, indicated in **section 23** of the table of characteristics in this tender document.

### 33.- Award

### 33.1.- Classification of offers and award proposal

When the offers have been assessed, the contracting committee shall send the contracting body the minutes, its assessment and the award proposal, which shall set out the offers in descending order, including the score allocated to each of them through the application of the criteria indicated in **section 18** of the table of characteristics, and identifying the offer with the best quality-price ratio.

The proposal for awarding the contract does not create any rights in favour of the tenderer proposed, which shall not acquire these vis-à-vis the contracting authority until the contract has been formalised.

When the only criterion to be considered is the price, it shall be understood that the best offer is the offer with the lowest price.

### 33.2.- Presentation of documentation attesting to compliance with the prior requisites by the tenderer that has submitted the offer with the best quality-price ratio

1.- When the committee's proposal has been accepted by the contracting body, the corresponding services shall require the tenderer that has submitted the best offer to, within ten business days of the day following that on which it receives the request, present the documentation stipulated as necessary for the contract to be awarded.

This documentation shall be as follows:

a) **Documents attesting to the power to act and its area of activity** If the company is a legal entity, the power to act shall be accredited by the presentation of a deed of incorporation or modification, as the case may be, properly entered in the Business Register when this requisite is obligatory, pursuant to the business legislation applicable. If

this requisite is not obligatory, the power to act shall be accredited by the deed or document of incorporation, by-laws or foundational statement, setting out the rules governing its activity, entered, as applicable, in the official Register concerned.

Legal entities may only be awarded contracts in relation to which the services relate to the objectives, purpose or scope of activity which, pursuant to their by-laws or foundational rules, form part of their business, an issue which must be accredited in the documentation furnished.

If the company is an individual, through presentation of the national identity document or document in substitution of same.

b) **Documents attesting to representation, where applicable.** Any persons acting or signing offers on behalf of another person shall present a copy of their national identity document, along with a proper power of attorney for such purpose.

   If the person representing does not have a national identity card, they must present a photocopy, lawfully notarised or stamped by the competent administrative body, of the document lawfully substituting same.

   If the company is a legal entity, the power of attorney must be entered in the Business Register. However, in the case of power of attorney for a specific action, entry in the Business Register shall not be necessary, pursuant to the provisions of Article 94.1.5 of Business Register Regulations.

c) **Economic-financial and technical or professional solvency.** Accreditation of economic, financial and technical or professional solvency by one of the means stipulated in Articles 87 and 89 of the LCSP and specified in the call for tenders and in **section 14** of the table of characteristics.

   In the case of Temporary Joint Ventures, for the purposes of determining their solvency, the characteristics of each member of the entity shall be accumulated (Article 24.1 of the RGLCAP).

d) **Accreditation of business or professional qualifications to provide the service under the contract.** If it is legally required as a condition of aptitude to enter into a contract, documentation must be submitted to accredit business or professional qualifications to provide the service which constitutes the purpose of this contract.

e) The provision of **documentation accrediting actual availability of human and material means** with the profiles and specifications stipulated in **section 15** of the table of characteristics.

f) **The accreditation of solvency by external means** (Article 75 of the LCSP) shall require a demonstration that these human and material means are available to perform the contract, through the presentation of a written undertaking by the external organisations.

   The tenderer shall perform the contract with the same means it furnished to attest to its solvency. These may only be replaced, for unforeseeable reasons, by other means attesting to equivalent solvency, with the corresponding authorisation of the contracting authority.

g) **Certificates of compliance with regulations concerning environmental management and quality guarantee.** If this is stipulated in **section 14** of the table of characteristics, and as per the stipulations laid down therein.

h) **Certificates attesting that the party is up to date with its tax obligations and Social Security obligations.** If the tenderer is liable for tax in several territories, it must furnish the certificates issues by each and every one of the competent Authorities. It may authorise the body managing the contract to obtain the certificates concerned from the Gipuzkoa Provincial Council and from the General Social Security Treasury.

i) Companies with more than 250 employees must present **documentation to accredit that they have an equality plan in place** pursuant to the provisions of Article 45 of Organic Law 3/2007 of 22 March on the equality of women and men.

j) **Documentation accrediting the number of employees with disabilities** Companies with 50 or more employees must furnish documentation accrediting compliance with a percentage allocation of jobs for people with disabilities equal to or higher than 33% or, additionally or in subsidiary fashion, compliance with any alternative measures that may be adopted, in accordance with the provisions of Royal Legislative Decree 1/2013 of 29 November approving the recast General Law on the Rights of people with disabilities and their social inclusion, and in its implementing regulations.

k) **When activities are carried out that are liable for the Tax on Economic Activities**: registration for the current year, or the last payment slip, along with a responsible statement that the entity has not been deregistered for this Tax and, as the case may be, a responsible statement of its exemption.

l) Provision of any **definitive guarantee** that may be applicable (see specimen guarantee in **Annex VII**).

2.- Notwithstanding the foregoing, presentation of the certificate of entry in the Register of Tenderers and Classified Companies in the Autonomous Community of the Basque Country shall release the tenderer, in accordance with the contents of same and unless any evidence is forthcoming to the contrary, from the obligation to present the documents accrediting the circumstances recorded in the register.

Presentation of the certificate of entry in the Official Register of Tenderers and Classified Companies in the Public Sector shall have the effects stipulated in Articles 87.2 and 96 of the LCSP and in Article 19 of Royal Decree 817/2009 of 8 May partially implementing the LCSP.

The certificates must be accompanied by a responsible statement declaring that the circumstances stated in the certificate have not undergone any changes.

When the entry in the Official Register of Tenderers and Classified Companies does not contain one of the requisites it is obliged to accredit, the company must justify these by one of the procedures stipulated in the LCSP.

When the company is listed in the Official Register of Tenderers and Classified Companies in the Public Sector or is listed in a national database of a European Union Member State, by way of a virtual dossier of the company, an electronic document storage system, or a pre-grading system, and these are accessible free of charge for these bodies, it shall not be obliged to present the justificatory documents or other documentary evidence of the data listed at these locations, and the tenderer is merely obliged to expressly state its listing in the Register or database concerned.

3.- If presentation of the documentation referred to in the two preceding paragraphs has not been properly completed within the deadline established, it shall be understood that the tenderer has withdrawn its offer, and it shall be liable for 3% of the basic bid estimate, excluding VAT, by way of a penalty, and this shall be taken up in the first instance against the provisional guarantee, if this has been furnished.

In the scenario described in the preceding paragraph, the same documentation shall be collected from the following tenderer, in the order in which offers have been classified (Article 150.2 of the LCSP).

4.- Any tenderer that fails to comply with the provisions of this clause within the deadline established through misconduct, blamefulness or negligence may be banned from contracting in accordance with the provisions of Article 71.2 a) of the LCSP.

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### 33.3.- Definitive guarantee

1.- The tenderer submitting the best offer, pursuant to the provisions of Article 145 of the LCSP, must provide a definitive guarantee for the contracting body. The amount shall be equal to 5% of the sum of the final price offered by the tenderer, excluding Value-Added Tax. Provision of this guarantee must be accredited within ten business days of the day following that on which it receives the request stipulated in Article 150.2 of the LCSP.

2.- The definitive guarantee stipulated in **section 17** of the table of characteristics may be furnished in any of the formats described in Article 108 of the LCSP and Articles 55 and following of the RGLCAP. If this requisite is not met for reasons attributable to the successful tenderer, the contracting authority shall not award it the contract.

3.- If this is stipulated in the aforesaid section of the table of characteristics, it may be furnished by means of a withholding on the price.

If it is furnished by means of a withholding on the price, the definitive guarantee shall be applied to the contractor, when express authorisation has been obtained, with a deduction of the amount from the first invoice and successive invoices until the full amount has been covered.

4.- If any penalties or indemnifications for which the contractor is liable are executed on this guarantee, it must replenish or add to the guarantee in the amount necessary within fifteen calendar days of execution, and failure to do so shall constitute a cause of termination.

5.- When as a result of an amendment to the contract, its price changes, the guarantee must be readjusted within fifteen calendar days of the date on which the successful tenderer is notified of the amendment agreement, in such a way as to preserve the proper proportion with the new price as amended.

6.- In any case, the definitive guarantee shall apply to the concepts referred to in Article 110 of the LCSP. These concepts include failure by the contractor to meet its obligation to compensate damages and losses occasioned to third parties as a result of incorrect provision of the services under the contract, as stipulated in Article 196 of the LCSP.

7.- In scenarios in which a provisional guarantee is furnished, the successful tenderer may optionally apply the amount of the provisional guarantee to the definitive guarantee, or may furnish the latter once more.

8.- The additional guarantee shall be established pursuant to the provisions of Article 107.2 of the LCSP, and the provisions of **section 17** of the table of characteristics.

### 33.4.- Award

1.- The contracting body must award the contract within five business days of reception of the documentation referred to in **clause 33.2**.

However, when the only criterion for selection of the successful tenderer on the contract is price, the award must be made within a maximum timeline of fifteen days from the day following that on which the offers are opened.

A tender cannot be declared null and void when an offer or a bid is admissible in accordance with the criteria set out in the tender document.

2.- The award ruling must state its grounds and these must be notified to the tenderers, and the ruling must be posted on the contracting authority's profile within fifteen days.

3.- Information on any collective bargaining agreement which the successful tenderer declares as applicable to the employees carrying out activities under the contract shall be included in the award ruling, and shall be posted on the contracting authority's profile.

4.- The notification and publication referred to in section 2 above shall contain the information necessary to enable the parties concerned by the award procedure to file an appeal with sufficient grounds against the award, and in particular the information required by Article 151.2 of the LCSP.

5.- The confidentiality exception cited in Article 155.3 of the LCSP shall apply to the motivation for the award.

6.- In any case, the notification and the contracting authority's profile shall state the timeline for formalisation pursuant to the provisions of Article 153 of the LCSP.

### 34.- Formalisation of the contract

1.- The contract must be formalised in a contractual document which exactly matches the conditions of tender, and this document shall constitute sufficient authority to gain access to any public register. However, the contractor may request that the contract be placed on public record, and it shall meet the costs of this. Under no circumstances may the document in which the contract is formalised contain clauses which entail any alteration of the terms of the award.

2.- The contract is finalised with formalisation, and under no circumstances may the contract be performed without prior formalisation.

3.- Prior to signature of the contract, the person representing the successful tenderer must submit the following to the contracting body:

a) Documents accrediting their representation.

b) If the successful tenderer is a Joint Business Venture, public deed of incorporation, the tax identification number allocated, and designation of the representative with proper power of attorney.

c) If a certificate has been submitted, issued by the Register of Tenderers and Classified Companies in the Autonomous Community of the Basque Country or the Official State Register of Tenderers and Classified Companies, the successful tenderer must reiterate that the circumstances that led to its issuance are still in place.

4.- If the contract is eligible for a special contracting appeal, the formalisation process cannot be carried out until fifteen business days have elapsed following dispatch of notification of the award to the tenderers.

The contracting body shall require the successful tenderer to formalise the contract within a period of no more than five calendar days after the day following that on which it received the requirement, following expiry of the deadline stipulated in the preceding paragraph, with no appeal filed which entails suspension of formalisation of the contract. The same procedure shall apply when the body with competence to resolve the appear has lifted the suspension.

5.- In other cases, the contract formalisation process must be carried out within the maximum timeline of fifteen business days after the day following that on which the successful tenderer received notification of the award.

6.- Any obligations undertaken by the successful tenderer in relation to aspects appraised as award criteria in relation to social and environmental aspects must be expressly added to the contents of the contract, pursuant to the provisions of Article 11.3 of Provincial Regulation 11/2014 of 29 October on the addition of contractual clauses concerning socially responsible public procurement in public sector contracts in the province.

7.- When, for reasons attributable to the successful tenderer, the contract has not been formalised with the timeline stipulated, the successful tenderer shall be liable for 3% of the basic bid estimate, excluding VAT, by way of a penalty, and this shall be taken up in the first instance against the definitive guarantee, if this has been furnished, without prejudice to the possibility that it may be banned from contracting in accordance with the provisions of Article 71.2 b) of the LCSP.

8.- If the causes of non-formalisation of the contract are attributable to the contracting authority, the contractor shall be compensated for any damages and losses the delay may occasion it.

9.- Formalisation of the contract shall be publicised in accordance with the provisions of Article 154 of the LCSP.

## CHAPTER III - EXECUTION OF THE CONTRACT

### 35.- Manager of the contract

1.- The contracting body will appoint in the resolution of the contract award a person as the contract manager, who must supervise its execution, adopt decisions and provide the necessary instructions in order to ensure the correct fulfilment of the service agreed upon.

Likewise, the contract manager may rely on collaborators, depending on their professional qualifications of specific knowledge, who will be identified in the same resolution of the contract award or, if not possible at that moment, at a subsequent moment.

The contract manager is the person who is the liaison between the company awarded the contract and the contracting body.

2.- In order to fulfil their functions, the manager and those who collaborate with them shall have free access to the locations where the contract is executed and may carry out the inspections they deem appropriate, accompanied by the person appointed as the health and safety coordinator, provided said location and their technical conditions are a deciding factor for the fulfilment of the services that are the purpose of the contract. Outside of these cases, the contract manager must justify the need for access, expressly and in detail in the dossier, which must be ratified, beforehand, by the contracting body.

Likewise, they may request information and documentation they deem appropriate and promote and call the meetings that are necessary for the adequate fulfilment of the purpose of the contract and to solve any incident in its fulfilment.

3.- The contract manager shall establish the appropriate guidelines.

In particular, the following functions correspond to them:

a) Checking that the fulfilment is carried out under the terms of the contract, and within the planned duration. Said function shall make it possible to carry out their actions necessary to verify whether the quality requirements and the social, environmental and innovation clauses are met.

b) Informing the contracting body of any kind of non-fulfilment, and when appropriate, to propose the initiation of the procedure to impose penalties, the suspension of the contract, the termination of the contract and the adoption of other measures to guarantee the correct fulfilment of the contract or to compensate the contracting entity for the damages caused by the non-fulfilment by the contracting company.

c) Recommending any change necessary in the contract, such as specifications, instructions or other requirements that lead to more effective operations.

d) Authorising, following the instructions of the contracting body, the alteration of human or material resources assigned to the contract in situations where they do not mean a modification of the same.

e) Informing and motivating the need and applicability of extensions.

f) Checking, if applicable, that the contracting company fulfils its obligation to pay subcontractors.

4.- If during the execution of the contract the appointment of the contract manager of the collaborators is changed, it shall be made known to the contracting company in writing and will be published on the contracting party's profile.

### 36.- Succession in the person of the contractor

1.- In cases of merger, demerger, contribution or transfer of companies or branches of activity of the same, the contract shall continue with the entity to which the contract is attributed, which will be subrogated in the rights and obligations arising from the same, if the conditions required in

article 98 of the Spanish law on public procurement (LCSP) are met. When the contractor is a temporary association of companies, article 69.9 of the LCSP shall be complied with.

2.- The contractor must reliably communicate to the contracting entity any change that affects its legal status, suspending the tally of the legally planned periods for payment of corresponding invoices until the same has been verified.

3.- If the subrogation cannot take place because the entity to which the contract is awarded cannot meet the necessary solvency conditions, the contract shall be terminated and be considered for all purposes to be a termination caused due to fault of the awarded bidder.

## 37 Transfer of the contract

1.- The rights and obligations arising from the contract may be transferred by the awarded person or company to a third person, provided that technical or personal qualities have not been a decisive reason to award the contract and the transfer does not result in an effective restriction of competition in the market.

2.- In order for the contractor to transfer their rights and obligations to third persons, the following requirements must be met:

a) The contracting body expressly authorises, beforehand, the transfer.

b) The transferor has executed at least 20% of the contract amount.

c) The transferee has capacity to enter into the contract and the solvency required depending on the execution phase of the contract, and is not subject to a prohibition to enter into contracts.

d) The transfer is formalised between the awarded company and the transferee in a public deed.

3.- The transferee shall be subrogated in all the rights and obligations that would correspond to the transferor.

## 38.- Conditions and obligations of the contractor

### 38.1.- General conditions

1.- The contract shall be executed with strict adhesion to the clauses stipulated in these terms and conditions, the technical specifications and according to the instructions that the contractor provides to the contract manager for its interpretation.

2.- The awarded bidder shall be responsible for the quality of the goods supplied, as well as for any consequences arising for the contracting entity or for third persons as a result of omissions, mistakes, or inadequate methods or conclusions during execution of the contract.

3.- The contractor person or company must carry out the supply with adequate equipment and personnel resources, responding at all times to the needs derived from the progress of the works. They will also provide the technical resources included in their proposal and, in general, any that are required for the proper execution of the works.

4.- The companies applying for the tender voluntarily accept granting institutional transparency to all the information derived from the tender, award and execution processes until they are completed.

### 38.2.- Special conditions for execution of the contract

1.- All of the special conditions of execution that are part of the contract shall be equally required from all the subcontractors participating in the execution of the same.

2.- In addition to those contained in **section19** of the contract prospectus, special obligations of execution are those listed below:

**38.2.1.- Labour, social and environmental protection obligations**

1.- The contractor is obliged to comply with the legal, regulatory and conventional legal provisions in force that are applicable to employment, social security, occupational health and safety and environmental protection matters, as well as those that are established in these terms and conditions.

2.- The contractor shall apply to the workforce that will execute the contract the working conditions established by the latest sectoral collective bargaining agreement of the smallest existing scope in this sector in which the activity of the contractor is carried out, without prejudice to other agreements or company arrangements that are in force and improve upon the above.

3.- Throughout the execution period of the contract, the contractor is obliged to maintain the working conditions of the personnel assigned to the contract depending on the collective bargaining agreement applicable, without worsening the same; and this regardless of the fact that such an agreement may subsequently cease to be applicable, in application of the legal or conventional provisions on the end of the validity of collective bargaining agreements. The obligation shall be understood to be met if the working conditions in force at the moment immediately prior to that in which, if applicable, the loss of validity takes place, is maintained. In any event, the obligation of maintaining the working conditions shall equally be understood to be met if they vary due to an agreement reached between the contractor and the representation of the workers, although in no event shall the salary conditions be lower than those established in the applicable sectoral collective bargaining agreement. The contractor shall be obliged to provide to the contracting body any information and documentation that is requested to certify this situation.

4.- The contractor must indicate the collective bargaining agreement that shall be applicable to the personnel carrying out the activity that is the purpose of the contract. For such purposes, they will be obliged to provide any information requested on the working conditions which, once awarded, are effectively applied to the personnel assigned to said contract.

5.- Any modification in the working conditions of the personnel assigned that affects those established by the collective bargaining agreement applicable at the moment the contract is awarded shall be communicated in advance to the contracting body. The communication must contain the documentation justifying the negotiation and the content of the new working conditions and their immediate and future economic impact on the cost structure of the contract.

6.- In the event of outsourcing, the subcontractor must likewise comply with this clause. The contractor shall check, prior to the start of the subcontracted activity, the membership and registration with social security of the workers at the companies with which it enters into a subcontract, and shall communicate it to the contracting body.

7.- If as a result of non-fulfilment by the contractor of the obligations set forth in this clause, the contracting entity is sentenced to bear the economic consequences derived therefrom, these shall be passed on to the contractor, for the purposes of which the contracting entity reserves itself the right to launch any administrative or legal actions that are appropriate and pertinent until the full recovery of the amounts paid.

**38.2.2.- Linguistic obligations**

1.- This contract is subject to the double official language status established by the Statute of Autonomy of the Basque Country in its article 6 and regulated by basic Law 10/1982, of 24 November, on the normalisation of the use of the Basque language.

2.- Unless indicated otherwise in the contract prospectus, the awarded company shall provide in both languages the studies, reports, projects or other documents that are part of the purpose of the contract, including the text and audio interfaces of the different softwares.

3.- All the designs and activities must be carried out with a bilingual approach, in Basque and in Spanish, except in specific cases where it is considered convenient to give priority to the use of

Basque according to the characteristics of the action proposed and the segment of citizens it is aimed at, always safeguarding the right of citizens to choose the language.

4.- In contracts whose execution involves interacting with third parties or with citizens in general, the language used in communication, both oral and written, between the company in charge of execution and the people with whom it must interact during execution of the contract, will be that chosen by the user or third party in each case. When no option has expressly been chosen, notifications and communications of all types addressed from the company in charge of selection to physical and legal persons will be made in the two official languages, without prejudice to the right of the citizens to choose a language at any time, and demand the use of only one of the official languages.

**38.2.3.- Obligations regarding the equality of women and men**

1.-The awarded company, in the execution of the contract, must establish measures that guarantee the equality of women and men in employment access, personnel classification, promotion, permanence, training, compensation, quality and work stability, duration and scheduling of the working day, as well as those that favour the personal, family and work balance of the personnel assigned to the execution of the contract, as established by Organic Law 3/2007, of 22 March, for the effective equality of women and men.

2.- The awarded company must use non-sexist language in all its documentation, publicity, image or material generated on occasion of the execution of the contract, and must avoid any discriminatory image of women or sexist stereotypes and foster an image with the values of equality, balanced presence, diversity, co-responsibility and plurality of roles and gender identities.

**38.2.4.- Obligations in the event of outsourcing**

1.- Entering into sub-contracts will be subject to compliance with the following requirements:

a) Following the awarding of the contract and, at the latest, when implementation of the contract begins, the awarded bidder must send a written communication to the contracting body regarding their intention to enter into subcontracts, indicating the part of the contracted services which will be subcontracted and the identity, contact details, and legal representative(s) of the subcontractors, along with the documentation that justifies the suitability of the subcontractors to execute the parts of the service which will be subcontracted, and certifying that they are not prohibited from entering into contracts with the public sector.

   For the purpose of certifying that the proposed subcontractor is not prohibited from entering into contracts according to article 71 of the Spanish Law on Public Sector Procurement (LSCP), the contractor is obliged to provide along with the documentation indicated in the above section a statement of compliance signed by the subcontractor in this respect.

   The subcontracts that do not adapt to what is indicated in the offer, due to being entered into with companies other than those indicated nominally in the same or because they refer to parts of the service different to those indicated in it, may not be entered into before twenty calendar days have elapsed from when the notification has been submitted and the justifications of suitability of the subcontractor to execute it have been provided, with reference to the technical and human elements at their disposal and their experience, unless they have been expressly authorised beforehand, provided that the contracting entity has not notified within that period their opposition to the same. This regime shall be equally applicable if the subcontractors have been identified in the offer via the description of their professional profile.

b) Under the responsibility of the contractor, the subcontracts may be entered into without for the twenty calendar days to elapse if its execution is required to address an emergency

situation or one that requires the adoption of urgent measures, which is sufficiently justified and communicated.

c) In contracts that are secret or reserved in nature, or those whose execution must be accompanied by special security measures, according to the legal or regulatory provisions or when required for the protection of the essential safety interests of the contracting entity, the subcontracting will always require the express authorisation of the contracting body.

2.- The critical tasks indicated in **section 16** of the contract prospectus cannot be subcontracted and must be directly executed by the main contractor.

3.- Subcontractors will report solely to the main contractor, where the latter assumes all responsibility before the contracting entity for executing the contract, in strict accordance with the specifications and terms of the contract, including compliance with the environmental, social, or occupational obligations and with the obligation that refers to the submission to Spanish and EU regulations regarding data protection.

The knowledge that the contracting entity has of the sub contracts entered into by virtue of the communications referred to in letters a) and b) od section 1 above, or the authorisation it grants in the scenario set forth in letter c) of said section, shall not alter the exclusive liability of the main contractor.

4.- In no event may the contractor agree the partial execution of the contract with people disqualified from entering into contracts according to the legal system, or covered by any of the circumstances set forth in article 71 of the LCSP.

5.- The contractor must inform the representation of the personnel assigned to the subcontract according to labour legislation.

6.- The awarded company or entity must submit before the contracting body the document of the subcontract, which must establish the obligations of the subcontracted company or entity in relation to the clauses set forth in this contract and the consequences of their non-fulfilment.

7.- Payment to subcontractors must conform to article 216 of the LCSP and Temporary Provision three of Law 15/2010, of 5 July, on the modification of Law 3/2004, of 29 December, which establishes measures to fight against delinquency in commercial operations.

8.- The contracting entity may monitor the strict fulfilment of the payments that the contractor must make to the subcontractors or suppliers who participate in the contract.

In order to do this, the contractor shall submit to the contracting entity, when the latter requests it, a detailed list of the subcontractors or suppliers who participate in the contract when their participation is concluded, along with the subcontract or supply conditions of each one of them that has a direct relationship with the payment period.

Likewise, they will provide to the contracting entity, when the latter requests it, proof of compliance with the payment period established in article 216 of the LCSP and in Law 3/2004, of 29 December.

**38.2.5.- Obligations regarding workplace health and safety**

1.- The contractor must comply with the applicable provisions regarding occupational safety and risk prevention, as well as those derived from the applicable collective bargaining agreement.

2.- The contractor must adopt the workplace safety and hygiene measures that are obligatory or necessary to rigorously prevent the risks that may affect the integrity and health of personnel affected for the purposes of the contract.

3.- When the nature of the contract purpose requires the intervention of the contractor's personnel (or if applicable, the subcontractor’s personnel) to perform services in centres of the contracting entity where personnel from the contracting entity itself also provides services, before the start of the activity, all of the concurring companies and self-employed personnel must cooperate among each other and exchange information on the specific risks of the activities they will carry out and

which may affect the personnel. The companies shall inform their respective personnel of the risks derived from the concurrence of activities, and shall establish the necessary and appropriate means of coordination. For such purposes, the information received shall be taken into account in the assessment of occupational risks and in the planning of the corresponding preventive activities.

In these cases, before the start of the activity, in compliance with RD 171/2004, of 30 January, on the coordination of business activities, the following documentation must be provided:

a) The preventive management document, as well as the preventive measures to be adopted.
b) The planning of the preventive activity of the tasks to be performed.
c) Acknowledgement of receipt signed by the contractor and, if applicable, the subcontractor, accrediting that they have received from the contracting entity the documentation on the risks related to the workplace and its installations, on the preventive measures and instructions for the prevention of said risks, and those that must be applied in the event of emergency situations.
d) The modality of preventive organisation adopted. In the case of third party prevention service, a copy of the contract with the prevention service must be attached with the three specialities of Safety, Hygiene, Ergonomics and Psychosociology applied, in addition to the Health Supervision; and receipt of payment or certificate which states that it is currently in force.
e) List of the personnel who will execute the contract and machinery destined for the purpose of the contract.
f) Proof of medical aptitude for the performance of the tasks contracted of the personnel assigned to the execution of the contract.
g) Proof of the training and information given on prevention to the workers who will execute the contract; including information received on the risks of the workplace and its installations, on the preventive measures and instructions for the prevention of said risks, and those that must be applied in the event of an emergency.
h) Proof of the delivery of the necessary personal protective equipment (PPE).
i) If the company provides its own machinery and work equipment, declaration of conformity, CE marking or document proving compliance with Royal Decree 1215/1997, of 18 July, which establishes the minimum health and safety requirements for the use of work equipment by workers and instruction manual for their use. Likewise, certificate accrediting the personnel who must use them have received specific training and are authorised to use them.
j) The safety data sheets of chemical products when the contractor or subcontractor must provide chemical products.
k) Provide the identity of the person who must guarantee compliance with the health and safety regulations and establish the coordination resources with the personnel of the contracting entity. In addition to making available the appropriate preventive resources when they are necessary.

When the contractor subcontracts another company to perform part of the contract, the accreditations set forth in this clause must be required from the subcontractor (self-employed workers) by the contractor for their delivery to the contracting entity.

In particular come they must ensure that the subcontractor complies with all the obligations in terms of occupational health and safety and, specifically, that they comply with the regulations in terms of the coordination of preventive activities and the availability of preventive resources when they are necessary.

The contractor must guarantee that the subcontractor has the infrastructure and adequate resources to perform the activity and directly carry out the management of the tasks.

The contracting entity shall monitor compliance by the contractors and subcontractors with occupational risk prevention regulations, for which it may adapt any measure in line with this purpose.

4.- When the nature of the contract's purpose requires the intervention of the contractor's personnel (or if applicable, of the subcontractor) who must perform a service in workplaces of the contracting entity where its own personnel does not provide services, the activity that is the purpose of the contract may not be started if the contracting entity has not carried out the following actions beforehand:

- Informed the concurring companies of the risks in the workplace that may affect the activities performed, as well as the preventive measures for such risks.
- Inform the contractor of the emergency measures.

When the personnel of more than one company will concur at said workplace, before the start of the activity, in compliance with RD 171/2004, of 30 January, on the coordination of business activities, all the concurring companies and self-employed personnel must cooperate among each other and exchange information on the specific risks of the activities they will perform and which may affect the personnel of the other concurring companies. The companies shall inform their respective personnel of the risks derived from the concurrence of activities, and shall establish the necessary and appropriate means of coordination. For such purposes, the information received shall be taken into account in the assessment of occupational risks and in the planning of the corresponding preventive activities.

Before the start of the activity, the contractor and, if applicable, the subcontractor, must provide signed proof of having received from the contracting entity the documentation on the risks of the workplace and its installations, on the risks of the workplace that may affect the activities carried out, the preventive measures against such risks, and the emergency measures.

5. If as a result of non-fulfilment by the contractor or subcontractor of the obligations set forth in this clause, the contracting entity is sentenced to bear the economic consequences derived therefrom, these shall be passed on to the contractor, for the purposes of which the contracting entity reserves itself the right to launch any administrative or legal actions that are appropriate and pertinent until the full recovery of the amounts paid.

### 38.3.- Obligations regarding information security

1.- The information, data or specifications provided by the contracting entity or those to which it has had access to in the execution of the contract, must be considered by the contractor and the personnel at its service as confidential, and may not published, copied, used, transferred or loaned to third persons, totally or partially, under the terms of article 133.2 of the LCSP. These obligations shall survive even after ending its relationship with the contracting entity.

2.- In the event that the execution of the contract requires the contractor to process personal data on behalf of the person who is the data controller:

a) The purpose of this processing will be indicated in the contract prospectus. The contractor may not use these data for purposes other than those set forth. If the contractor uses the data processed for any other purpose, communicates them or uses them in breach of the provisions of the regulations in force, it will also be regarded as the data controller, and will be liable for any infringements that it may personally incur.

b) The contractor is obliged to respect Spanish and EU regulations in relation to data protection, as well as the instructions indicated by the contracting entity.

c) Before formalising the contract, the contractor must declare where the servers are located and where the services associated with the same will be provided from. Any change in this respect throughout the effective period of the contract must be appropriately communicated.

d) The contractor is obliged, as the data controller, to adopt the necessary technical and organisational measures that guarantee the safety of personal data and avoid its destruction, loss or alteration, or the unauthorised communication or access to said data.

e) Upon completing the contractual service provision, the contractor must destroy the personal data or return them to the contracting entity or to another data processor it appoints.

What is indicated in letters a, b) and c) of this section, in addition to the obligation of the bidders to indicate in their offer whether they intend to subcontract the servers or services associated with the same, the name or business profile, defined through reference to the professional or technical solvency conditions, of the subcontractors to whom its fulfilment will be commissioned, is an essential obligation for the purposes of that set forth in letter f) of section 1 of article 211 of the LCSP. The obligations referred to in letters d) and e) shall be considered special conditions of execution.

3.- The awarded bidder will allow the contracting entity to perform the checks is considers appropriate during the effective period of the contract to verify compliance with the safety measures and to adopt the pertinent corrective measures.

4.- If as a result of non-fulfilment by the contractor or subcontractor of the obligations set forth in this clause, the contracting entity is sentenced to pay a financial settlement, the amount paid shall be passed on to the contractor, for the purposes of which the contracting entity reserves itself the right to launch any administrative or legal actions that are appropriate and pertinent until the full recovery of the amounts paid.

### 38.4.- Obligations related to the management of permits, licences and authorisations

1.- Unless the contracting body decides to manage it itself, the contractor shall be responsible for obtaining any permits, licences and authorisations necessary for the correct execution of the tasks, and must take responsibility for compliance with the corresponding terms and provisions of the competent bodies.

2.- When fees, guarantees or other expenses are demanded for said permits, licences or authorisations, their payment will also be covered by the contractor.

### 38.5.- Expenses payable by the contractor

The contract formalisation expenses in the event of recording the contract as a public deed and any licences, authorisations and permits necessary in order to execute the contract and correctly deliver the goods that are the purpose of the contract shall be covered by the contractor. The awarded bidder will also cover the delivery and transport costs of the supply to the location specified in the terms and consitions or in the contractual document.

### 38.6.- Installation conditions and provisions complementary to the supply

1.- The awarded bidder shall be obliged to carry out at their own cost all operations inherent to the installations required by the supply, including the necessary ancillary elements which, due to their minor nature and the difficulty of their prior definition, do not expressly appear in the composition of the above, unless the technical specifications establish otherwise.

2.- If it is established in the technical specifications, the awarded bidder shall provide the training courses or other complementary services necessary for the adequate use of the goods supplied. All this at no cost to the contracting body.

### 38.7. Work programme

1.- If the contracting entity deems it appropriate to require a work programme according to the technical specifications, it shall be submitted by the awarded party for its approval by the

contracting entity at the same time that the documents of the chosen solution are approved, establishing the corresponding partial periods, if applicable.

2.- Each time the contractual conditions are modified, the awarded party is obliged to amend and bring up to date this programme, following the instructions that it receives for this purpose.

### 39.- Penalties for delays and other penalties

1.- The contracting body, subject to articles 192 and 193 of the LCSP, may impose penalties on the contractor due to the compliance failures indicated below:

a) Delay in complying with the total time period or the partial time periods.

b) Defective fulfilment of the service provision, for failing to comply, or defectively complying with any other special execution conditions contained in these terms and conditions that are different to those listed in the following sections.

c) Non-compliance or defective compliance that affects the aspects taken into account as offer assessment criteria.

d) Repeated non-fulfilments or delays in the payment of salaries or the application of salary conditions inferior to those derived from the collective bargaining agreements that is serious and wilful.

e) Breach of the obligations, conditions and other requirements for subcontracting.

f) Non-fulfilment of the time period to submit the occupational Health and Safety Plan, when it is required.

g) Non-fulfilment of the obligations set forth in article 30.2 of Provincial Regulation 11/2014, of 29 October, on the incorporation of contractual clauses related to socially responsible public procurement in provincial public sector contracts.

2.- The amount of the penalties shall be as follows:

a) Due to the cause contemplated in letter a), the amount set forth in section 3 of article 193 of the LCSP, unless **section 22** of the contract prospectus establishes others that are different.

b) Due to the causes contemplated in letters b), c) and d), 4% of the contract amount unless, on justified grounds, the contracting body deems that the non-fulfilment is serious or very serious, in which case it may rise up to 7% in the first case, and up to 10% in the second. Repeated non-fulfilment will be taken into account to assess the seriousness.

c) Due to the cause contemplated in letter e), up to 50% of the contract amount.

d) Due to the cause contemplated in letter f), a daily penalty of one euro for each 5000 euros of the contract price.

e) The cause contemplated in letter g) will be considered a very serious non-fulfilment.

These penalties, with the exception indicated for a breach of the obligations referred to by letter a) of section 1 of this same clause, must be proportional to the seriousness of the non-fulfilment, and the amounts of each one of them may not be higher than 10% of the contract price, excluding VAT, nor may the total of the same exceed 50% of the contract price.

3.- If, according to the special characteristics of the contract, for its correct execution it is considered necessary to establish penalties different to those indicated in the section above, these will be specified in **section 22** of the contract prospectus.

4.- The situation of arrears of the contractor does not require prior notification by the contracting entity.

5.- The penalties for not fulfilling, or defectively fulfilling, the commitment to assign resources, the linguistic conditions or any other special conditions of execution shall be applied at the moment when the contracting body verifies the non-fulfilment.

6.- The penalties for non-fulfilment, or defective fulfilment, that affect the aspects taken into account as assessment criteria for the offers shall be applied when, at the time of receipt, the contracting body confirms that, due to causes attributable to the contractor, the latter has not executed the contract or any of the commitments assumed in their offer, provided they had been relevant for the award of the tender.

It will be considered that the non-fulfilled commitments are relevant if, after discounting 50% of the points received by the contractor in the non-fulfilled criterion, the result is that their offer would not have received the highest score.

7.- The penalties for defective fulfilment shall be applied regardless of the obligation that legally binds the contractor regarding compensation for such defects.

8.- In the event of easily deteriorated goods or others whose receipt does not have value beyond the date stipulated for the delivery (irrecoverable provisions), when the contractor does not supply them within the deadline and at the location agreed upon and their non-fulfilment obliges the contracting body to acquire those same goods via a different procedure, in order to maintain the public services for the satisfaction of which this contract is tendered, in addition, a penalty will be imposed on the awarded bidder equivalent to the highest cost that the arrears has caused.

9.- The imposition of a penalty does not exclude compensation for damages.

10.- The amount of the penalties due to delays shall be deducted from the invoices or certifications and, if applicable, from the guarantee when it cannot be deducted from the aforementioned documents. When they are made effective from the guarantee, the contractor must replace or increase said guarantee within fifteen calendar days following the event. Failure to do so will be considered grounds for contract termination.

## 40.- Contract modifications

1.- Once the contract has been finalised, the contracting body may only introduce modifications in the same due to reasons of public interest, when such a circumstance is contemplated in **section 21** of the contract prospectus come or in the scenarios and with the limits established in article 205 of the LCSP.

2.- When it is necessary to make modifications to the contract, the contract manager shall draft the appropriate proposal, formed by the documents that justify, describe and assess them. In the proceedings launched to adopt agreements related to the prerogative established in the previous section, an audience must be granted to the contractor.

3.- The modifications set forth in **section 21** of the contract prospectus and those others that adhere to the contract modification scenarios set forth in article 205 of the LCSP when they involve, in isolation or jointly, an alteration of its amount that does not exceed 20% of the initial price of the contract, excluding VAT, shall in all cases be obligatory for the contractor and must be agreed upon by the contracting body, after carrying out the procedure set forth in articles 191 and 207 of the LCSP and 102 of the RGLCAP, and formalising it in an administrative document according to article 153 of the LCSP, after readjusting the definitive guarantee if applicable.

4.- Neither the contractor nor the contract manager may introduce or carry out modifications that are not appropriately approved. The contract modifications that are not duly authorised by the contracting entity shall lead to liability of the contractor, which will be obliged, if applicable, to redo the part affected by them without the right to any payment.

5.- Each time that the contractual conditions are modified, the contractor is obliged to update the work programme.

### 40.1.- Planned modifications

1.- This contract may be modified, if this has been planned, as set forth in **section 21** of the contract prospectus of these terms and conditions, under the circumstances, conditions, scope and limits established therein, which may not exceed 20% of the initial price.

2.- In the event there are several causes for the modification, the circumstances, conditions, scope and limits must refer to each one of them.

3.- In no event may the planned modifications mean the establishment of new unit prices not set forth in the contract.

4.- The number of units to be supplied may be increased up to 10% of the contract price, referred to by article 301.2 of the LCSP, without it being necessary to process the corresponding modification dossier, when established in **section 21** of the contract prospectus.

### 40.2.- Unplanned modifications

1.- Modifications other than those set forth in **section 21** of the contract prospectus may only be introduced when the concurrence of one or several of the scenarios evaluated in article 205.2 of the LCSP have been sufficiently justified, and are limited to introducing the variations strictly essential to respond to the objective cause that makes them necessary.

2.- Without prejudice to that set forth in article 205 of the LCSP, before proceeding to the modification of the contract, in this scenario audience must be granted to the person who drafts the technical specifications, if these have been prepared by a third person external to the contracting body by virtue of a service provision contract, so that, within a period not inferior to three calendar days, they can formulate the considerations they deem appropriate.

### 40.3.- Modification regime

In terms of the regime, articles 203 to 207, article 191 of the LCSP and the regulatory provisions shall be complied with.

## 41.- Payments to the contractor

1.- Payment for the supply shall be made once it has been delivered and receipt has been confirmed, after the submittal of invoices or an equivalent document, certifications if they are partial deliveries and acceptance document if applicable. For this purpose, the contractor must submit the invoice within a period of thirty calendar days from the delivery date.

2.- Establishment of the payment deadline shall be carried out according to Law 15/2010 modifying Law 3/2004, of 29 December on the fight against delinquency in commercial operations.

3.- In any event, if the contractor does not comply with the period of thirty calendar days to submit the invoice, the accrual of interest shall not begin until thirty calendar days have elapsed from the date the invoice was submitted to the corresponding registry, without the contracting entity having issued its conformity, if applicable, and made the corresponding payment.

4.- On the other hand, the contracting entity must approve the documents that accredit the conformity of the supplies delivered with that set forth in the contract, within the thirty calendar days following the effective delivery of the goods.

## 42.- Maintenance

The awarded bidder shall carry out the maintenance of the goods that are to be supplied in the conditions set forth in the technical specifications.

## 43.- Contract cancellation

In the event of a cancellation of the contract, that which is set forth in articles 208 and 306 of the LCSP and article 103 of the RGLCAP shall be applied. In the event of a temporary, partial, total or definitive cancellation, a record will be issued of said cancellation.

## 44.- Receipt and guarantee period

### 44.1.- Receipt and settlement

1.- The contractor will be obliged to deliver the goods to be supplied within the time and at the location set forth in the contract and in accordance with the technical specifications and administrative clauses, and must deliver, prior to the start of the supply, the technical documentation referred to in the technical specifications.

2.- The delivery and transport expenses of the goods to be supplied to the agreed location shall be covered by the contractor.

3.- The awarded party shall not be entitled to compensation due to losses, faults or damages caused to the goods before their delivery to the contracting entity, unless the latter falls into arrears upon receiving them.

4.-When the formal act of receiving the goods, according to the terms and conditions, is later than their delivery, the contracting entity shall be responsible for the custody of the same during the time between one event and the other.

5.- Once perishable goods or products have been received and conformity has been issued by the contracting entity, the latter shall be responsible for their management, use or expiry, without prejudice to the responsibility of the supplier for the hidden vices or defects of the same.

6.- The contract shall be considered as fulfilled by the contractor when the whole purpose of the agreement is carried out in accordance with the established terms and when the contracting entity is satisfied.

7.- Within the month following the completion of the purpose of the contract, receipt of the goods supplied shall be formally confirmed.

8.- If the goods are in good condition and adhere to the technical specifications, the person appointed by the contracting entity shall confirm their receipt, issuing the corresponding record, which must be signed by the persons concurring at the receipt, delivering a copy to the contract manager or person representing the contracting entity, and another to the contractor. The warranty period begins at this moment.

9.- If the goods are not fit to be received, this will be recorded in the acceptance certificate and the relevant instructions will be given to the contractor to rectify the defects observed therein or carry out a new supply which complies with the provisions of the agreement.

### 44.2.- Warranty period

1.- The warranty period shall be that established in **section 17** of the contract prospectus or, if applicable, that offered by the awarded bidder.

2.- If during this period the existence of hidden vices or defects is accredited in the goods delivered or made available to the contracting body, the latter shall be entitled to demand their rectification in compliance with article 305 of the LCSP.

3.- If the contracting authority deems, during the guarantee period, that the goods supplied are not fit for their intended purpose as a result of faults or defects observed and which are attributable to the contractor, and where there is a presumption that the replacement or repair of these will not be sufficient, it may, before the expiry of the aforementioned period, reject the goods, leaving them to the contractor and being exempt from the obligation to pay or having the right, if applicable, to recover the amount paid.

### 44.3.- Return of the guarantee

After the warranty period indicated in **section 17** of the contract prospectus, and if the contracting entity has not formalised any complaint, the contractor shall be relieved of all responsibility in relation to the supply carried out, proceeding to the return or cancellation of the definitive guarantee.

## 45.- Termination of the contract

1.- In addition to those established in articles 211 and 306 of the LCSP, causes for the termination of the contract shall be non-fulfilment of the essential obligations indicated in the LCSP, those indicated in **clause 38.3** and those set forth in **section 20** of the contract prospectus as essential obligations of the contract.

2.- According to article 211.2 of the LCSP, in cases where several causes for the termination of the contract concur with different effects regarding the economic consequences of the termination, that which has appeared with priority in terms of time must be adhered to.

3.- The termination of the contract shall be agreed upon by the contracting body in conformity with article 212.1 of the LCSP via a procedure carried out as established by regulations.

4.- When the contract is terminated due to culpable breach by the contractor, the guarantee shall be seized and they must, in addition, compensate the contracting entity for the damages caused to the amount in which they exceed the guarantee seized. The determination of the damages to be paid shall be performed by the contracting body via a reasoned decision, after an audience with the same, paying attention, among other factors, to the delay that it involves and to the higher expenses caused to the contracting entity.

5.- For the application of the causes for termination article 212 of the LCSP shall be applied and regarding its effects, articles 213 and 307 of the LCSP, in addition to, if applicable, that set forth by the regulations in force.

6.- The contract may also be terminated due to the following causes:

a) Non-payment by the contractor, during execution of the contract, of the salaries to the personnel assigned to the contract, or non-fulfilment of the conditions established in the collective bargaining agreements in force for this personnel.

   Termination due to this cause shall be agreed upon, in general, at the request of the representation of the contractor's personnel; except when the personal affected by the non-payment of salaries are personnel subrogated according to article 130 of the LCSP, and the amount of the salaries owed by the contractor exceeds 5% of the contract award price, in which case the termination may be agreed unilaterally, directly by the contracting body.

b) Due to very serious non-fulfilment, according to these terms and conditions, of the obligations in terms of occupational health and safety.

7.- In the case of temporary joint ventures, when any of the members is in the situation set forth in article 211.1 a) and b) of the LCSP, the contracting entity shall be authorised to demand the fulfilment of the contractual obligations by the rest of the companies that make up the temporary joint venture or decide on the termination of the contract.

8.- However, when the penalties due to non-fulfilments reach a multiple of 5% of the contract price, the contracting body shall be authorised to proceed to its termination or to agree the continuity of its execution imposing new penalties.

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## ANNEX I.- INSTRUCTIONS FOR THE ELECTRONIC BIDDING

**ELECTRONIC BIDDING SYSTEM**

1. **Requirements to use the electronic bidding system for the procedures of the contracting proceedings**

### 1.1. Administrative requirements:

a) Have a digital certificate whose use is admitted as a means of identification and signature in the electronic bidding system. Currently these electronic certificates are the following:
   - Izenpe (Entity, Citizen, Entity Representative)
   - FNMT (Entity, Citizen, Entity Representative)
   - Dni-e
   - Camerfirma (Entity, Citizen)

   The list of permitted certificates may be modified. The access portal to the electronic bidding system will show at all times an updated list of the electronic certificates allowed.
   Entity certificates, although their renewal is not possible, may continue to be used until they expire or are revoked.

b) Being in any of these situations:
   a) Being registered and having a current certification in the Register of Bidders and Classified Companies of Euskadi
   b) Being registered in the temporary authorization system for electronic bidding
   c) In the event that two or more economic operators attend together with the commitment to formally constitute a temporary union of companies, the commitment of the temporary union of companies must be registered in the temporary authorization system.

### 1.2. Technical requirements:

Information on the technical requirements to bid electronically is available at the following link:
https://www.contratacion.euskadi.eus/informacion-general-licitacion-electronica/w32-kpelicel/es/

2. **Access to the electronic bidding system**

To use the system you must access the portal:
https://www.contratacion.euskadi.eus/kpecpe-licitacion_electronica-kontratazioa_es/w32-kpelicel/es/

**Support service to resolve doubts or incidents about electronic bidding:**
**945 016 298**

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## ADDENDUM TO ANNEX I.- DATA FOR THE PURPOSE OF RECEIVING NOTIFICATIONS AND COMMUNICATIONS

**IDENTIFICATION DATA**

| **1st surname, 2 nd surname, name** | **Identity document** |
|---|---|
| | |

☐ In own name

☐ On behalf of the company I represent

Company name of the represented:

Tax Identification Card of the represented:

* In the case of Temporary Union of Companies, adapt the model to add the data related to all the people who represent each of the companies that will form the Temporary Union of Companies.

**IT/THEY DECLARE**

That for the purposes of notifications and communications in relation to the procedure for awarding the contract (name and file code):

**CONTRACT FILE DATA**

| **Name of the contract** | **Reference code** |
|---|---|
| | |

The data for the purposes of electronic notifications and communications are[1]:

**DATA FOR NOTIFICATIONS AND COMMUNICATIONS**

| | | | |
|---|---|---|---|
| **Street/Square/Avenue/...** | **Nu.** | **Floot** | **Door** |
| **Municipality** | **Postal code** | **Province** | |
| **Telephone** | **Mobile phone** | | |

**Notice email address:**

**Person who will be the recipient:**

**Language chosen to receive notification / communication:** Basque ☐ Spanish ☐

[1] In case of presenting an offer or request for participation by several companies with the commitment to formally constitute a Temporary Union of Companies in the event of being awarded, they must present a single address for the purposes of notifications and communications.

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## ANNEX II.- INSTRUCTIONS FOR COMPLETING THE EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD)

1. **The presentation of the ESPD by the bidder serves as preliminary proof of COMPLIANCE with the PREREQUISITES specified in the present tender to participate in this bidding procedure.**

The bidders must submit the ESPD, which consists of a responsible declaration of the financial situation, capacities and suitability of the companies to participate in a public contracting procedure, in accordance with article 140 of the LCSP and the Execution Regulation of Commission (EU) 2016/7 of January 5, 2016, which establishes its standardized form and the instructions for its completion.
The contracting authority may make use of its powers to verify the statements of responsibility previously submitted in Electronic File No. ONE, requiring the submission of the corresponding supporting documents, under the terms of article 69 of Law 39/2015.
In any case, the presentation of the ESPD by the bidder entails the commitment that, in the event that the contract award proposal falls in its favour, the supporting documents will be provided, which it replaces in accordance with the provisions of clause 33.2.

2. **ESPD standard form.**

The ESPD standard form is available to bidders at the following electronic address:
https://visor.registrodelicitadores.gob.es/espd-web/filter?lang=en

3. **Instructions.**

The requirements that are declared in the document must be met, in all cases, on the last day of the bidding period, except for the prohibitions on contracting, which must continue at least until the formalization of the contract, and the contracting entity may carry out verifications at any time of the procedure.
The declaration must be signed by someone who has sufficient power to do so.
When the division by lots of the object of the contract is foreseen, if the economic and financial or technical and professional solvency requirements demanded vary from one lot to another, an ESPD will be provided for each lot or group of lots to which the same requirements of solvency apply.
In the event that the required assigment of means is fulfilled with means external to the bidder, a ESPD must be presented by the bidder and by for each of the means assigned to the execution of the contract.
If several companies concur constituting a temporary union of companies, each one of those that compose it must prove their personality, capacity and solvency, presenting each and every one of them a standardized form of the ESPD. In addition to the standard form or forms of the ESPD and the commitment to set up the temporary union of companies, or the document accrediting the provisional guarantee, as the case may be, the electronic file No. ONE must include the declaration of the bidders as to whether or not they belong to a business group, according to the model in Annex V of these specifications.
The companies that are registered in the Register of Bidders of the Basque Country or in the Register of Bidders and Classified Companies of the State will not be obliged to provide those data that are already registered in an updated manner, as long as said circumstance is indicated in the standard form of the ESPD. In any case, it is the bidder who must ensure which data is actually registered and updated and which is not. When any of the data or information required does not appear in the aforementioned Bidders' Registers or is not updated in them, it must be provided by completing the form.
Regarding the use of the standard ESPD form, the bidders may consult the following documents:

- Regulation (EU) No. 2016/7 available on the website:
  https://www.boe.es/doue/2016/003/L00016-00034.pdf

- Recommendation of the State Administrative Contracting Advisory Board of April 6, 2016, available at:

https://www.boe.es/buscar/doc.php?lang=en&id=BOE-A-2016-3392

**4. The XML file with the form for this procedure is in the contracting party profile.**

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## ANNEX III.- MODEL OF COMMITMENT OF CONSTITUTION OF A TEMPORARY UNION OF COMPANIES

**IDENTIFICATION DATA**

**1st surname, 2 nd surname, name** **Identity document**

☐ **In own name**
☐ **On behalf of the company I represent**
**Company name of the represented:**
**Tax Identification Card of the represented:**

**IDENTIFICATION DATA**

**1st surname, 2 nd surname, name** **Identity document**

☐ **In own name**
☐ **On behalf of the company I represent**
**Company name of the represented:**
**Tax Identification Card of the represented:**

**IDENTIFICATION DATA**

**1st surname, 2 nd surname, name** **Identity document**

☐ **In own name**
☐ **On behalf of the company I represent**
**Company name of the represented:**
**Tax Identification Card of the represented:**

** Adapt the model to add the data related to all the people who represent each of the companies that will form the Temporary Union of Companies in the event of being awarded.*

**CONTRACT FILE DATA**

**Name of the contract** **Reference code**

**THEY DECLARE**

1. That they assume the commitment to formally constitute a Temporary Union of Companies, in the case of being awarded the reference contract with the following percentage of participation:

| Company name | % |
|---|---|
| | |

| | |
|---|---|
| | |
| | |

2. That they appoint a sole representative of the union, with sufficient powers to exercise the rights and fulfill the obligations arising from the contract until its termination, Mr./Mrs.:

| | |
|---|---|
| **Name and surnames** | |

**Place and date:**

| | |
|---|---|
| *Company name* | *Signature* |
| *Company name* | *Signature* |
| *Company name* | *Signature* |

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## ANNEX IV.- MODEL DECLARATION OF COMMITMENT TO ASSIGNMENT OF MEDIA

**IDENTIFICATION DATA**

| **1st surname, 2 nd surname, name** | **Identity document** |
|---|---|

☐ **In own name**

☐ **On behalf of the company I represent**

**Company name of the represented:**

**Tax Identification Card of the represented:**

**CONTRACT FILE DATA**

| **Name of the contract** | **Reference code** |
|---|---|

**IT/THEY DECLARE**

That it/they undertake(s) to ascribe the following means for the execution of the referenced contract:

☒ **Commitment of ascription of personal means:**

- Project Manager.
  Person with university degree studies and a minimum experience of 3 years in similar projects.
- 1 Mechanical Engineer.
  Responsible for all mechanical aspects of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Electrical Engineer.
  Responsible for all electrical aspects of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Electronic, Control and Communications Engineer.
  Responsible for all electronic aspects, control and communications of the facilities supplied, taking into account the products and conditions to be tested.
  Person with a minimum experience of 2 years in similar position.
- 1 Engineer for Software Implementation.
  Responsible for the implementation of the software supplied by the successful bidder, as well as the agreed automatic test procedures.
  Person with a minimum experience of 2 years in similar position.
- 1 Engineer for Data Acquisition and Processing.
  Responsible for the electrical, mechanical, noise and vibration data acquisition and processing, taking into account the products and conditions to be tested.

Person with a minimum experience of 2 years in similar position.

**[X] Commitment of ascription of material means:**

The company undertakes to provide the technical means indicated in the particular technical specifications clauses

**Place and date:**

| *Company name* | *Signature* |
| --- | --- |
| | |

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## ANNEX V.- MODEL STATEMENT RELATING TO THE BUSINESS GROUP

**IDENTIFICATION DATA**

| **1st surname, 2 nd surname, name** | **Identity document** |
|---|---|
| | |

☐ **In own name**

☐ **On behalf of the company I represent**

**Company name of the represented:**

**Tax Identification Card of the represented:**

**CONTRACT FILE DATA**

| **Name of the contract** | **Reference code** |
|---|---|
| | |

**IT/THEY DECLARE**

That the company you represent:

☐ YES, it is in any of the assumptions of article 42.1 of the Code of Commerce.

☐ NO, it is in none of the cases of article 42.1 of the Commercial Code.

If the answer is in the affirmative:

☐ DOES NOT concur in the award of the contract with companies that, belonging to the same group or in which any of the alternative assumptions established in article 42.1 of the Commercial Code concur, present individual proposals.

☐ YES attends the award of the contract with companies that, belonging to the same group or in which any of the alternative assumptions established in article 42.1 of the Code of Commerce concur, present individual proposals, which are listed below:

| Identity Document / Tax Identification Card | Social denomination |
|---|---|
| | |
| | |
| | |
| | |

* Article 42.1 of the Commercial Code: "Every parent company of a group of companies will be required to prepare the consolidated annual accounts and management report in the manner provided in this section.

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## ANNEX VI.- MODEL OF THE SUPPLEMENTARY DECLARATION OF THE DOCUMENTS AND DATA PRESENTED CONSIDERED CONFIDENTIAL

**IDENTIFICATION DATA**

| **1st surname, 2 nd surname, name** | **Identity document** |
|---|---|

☐ **In own name**

☐ **On behalf of the company I represent**

**Company name of the represented:**

**Tax Identification Card of the represented:**

**CONTRACT FILE DATA**

| **Name of the contract** | **Reference code** |
|---|---|

**IT/THEY DECLARE**

That it/they consider(s) the following **documents, information and aspects** of the offer to be confidential due to their connection to technical or commercial secrets: [2]

1.
2.
3.

……..…

That such confidentiality is justified for the following reasons:

1.
2.
3.

……..…

[2] The declaration of confidentiality may not be extended to all the documentation submitted by the company or to all the supporting documentation of the technical offer. In this case, or in the event that said statement is inadequately dimensioned, it will be the contracting authority that determines which data and/or documents deserve such consideration. In the event that the company has not expressly indicated any data and/or document as confidential, it will be understood that none of the data and/or documents provided is confidential. Likewise, once the bids have been presented, it will not be allowed to indicate as confidential data that has not been designated as such at the time of its presentation.

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## ANNEX VII.- GUARANTEE MODEL

**DATA FOR NOTIFICATIONS AND COMMUNICATIONS**

| | | | |
|---|---|---|---|
| **Street/Square/Avenue/...** | **Nu.** | **Floot** | **Door** |
| **Municipality** | **Postal code** | **Province** | |
| **Telephone** | **Mobile phone** | | |

**PROXY(S)**

| | |
|---|---|
| **Name and surname** | **Tax Identification Card** |

The entity mentioned above, and on its behalf and on behalf of the person(s) mentioned with sufficient powers to bind it in this act, as results from the sufficient powers outlined at the bottom of this document, constitutes before the contracting entity in solidarity guarantor of:

**DATA OF THE GUARANTEED PERSON OR ENTITY**

| | |
|---|---|
| **Name and surnames / Company name** | **Tax identification number** |

**Type of guarantee** ☐ Provisional (Art. 106 of the LCSP)
☐ Definitive (Art. 107 of the LCSP)

**Object of the contract or obligation assumed by the guaranteed**

**Contracting authority**

**Amount of the guarantee (in words and figures)**

The guarantor declares under its responsibility that it meets the requirements set forth in article 56.2 of the General Regulations of the Law on Public Administration Contracts. This guarantee is granted jointly and severally with respect to the principal, expressly waiving the benefit of exclusion and with a commitment to pay at the first request of the contracting authority, subject to the terms provided in the legislation of public sector contracts, in its implementing regulations and in Foral Regulation 4/2007 of March 27, on the Financial and Budget Regime of the Historical Territory of Gipuzkoa. This guarantee will be in force until the contracting authority or whoever is legally authorized to do so on its behalf authorizes its cancellation or return, in accordance with the provisions of the Public Sector Contracts Law and complementary legislation.

**Place and date:**
**Company name of the entity:**
**Signature of the attorneys:**

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## ANNEX VIII.- MODEL OF THE ECONOMIC OFFER AND OF THE OTHER ELEMENTS OF THE OFFER EVALUABLE BY MEANS OF FORMULAS

**IDENTIFICATION DATA**

**1st surname, 2 nd surname, name** **Identity document**

☐ **In own name**

☐ **On behalf of the company I represent**

**Company name of the represented:**

**Tax Identification Card of the represented:**

**CONTRACT FILE DATA**

**Name of the contract** **Reference code**

Aware of the conditions and requirements that are required in relation to the indicated contracting file, proposes the following price(s) and, where appropriate, the offers of the rest of the elements that can be evaluated by means of formulas.

### 1.- ECONOMIC CRITERIA (30 POINTS)

| | **Price offered** |
|---|---|
| Price without VAT | |
| Price with VAT 21 % | |
| **TOTAL** | |

**Maximum price:** Bidding base budget (section 4 of the title page) plus VAT.

### 2.- TECHNICAL CRITERIA (4 POINTS)

Improving the characteristics of universal inverters in both test areas (A1 and A2) by increasing the operating voltage range up to 1200Vdc of the universal inverter will be awarded.

YES ☐ NO ☐

### 3.- WARRANTY CRITERIA (2 POINTS)

Fill in if the company offers an additional warranty period to the mandatory two years:

1 year ☐ 2 years ☐

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## 4.- DELIVERY TIME CRITERIA (4 POINTS)

The company offers a reduction in the delivery period over the maximum of 15 months established:

Number of months that is reduced ☐ Definitive delivery term ☐

## 5.- ENVIRONMENTAL CRITERIA (4 POINTS)

The company will give an electric or hybrid vehicle to the team members (1 punto).

YES ☐ NO ☐

The company has an environmental certificate (ISO 14064, ISO 14001 or equivalent) (3 points).

YES ☐ NO ☐

## 6.- SOCIAL CRITERIA (6 POINTS)

The company has a Conciliation Plan included in the regulations (Company Agreement or Pact) regulating labor relations between the company and its workers (3 points):

YES ☐ NO ☐

At least one woman is included in the allocation of resources (3 points):

YES ☐ NO ☐

**Collective agreement** that will apply to workers who carry out the activity object of the contract: (*Indicate Collective Agreement*)

In the event of being awarded, it is obliged to provide as much information as is required on the working conditions that, once the contract has been awarded, are effectively applied to the workers who carry out the activity covered by the contract.
It states that in preparing its offer it has taken into account the obligations derived from current provisions on taxation, environmental protection, employment protection, gender equality, working conditions, occupational risk prevention and the obligation, in its case, to hire a specific number or percentage of people with disabilities.

**Place and date:**

| |
|---|
| *Company name* <br> *Signature* |