

**SPECIFIC ADMINISTRATIVE TERMS AND CONDITIONS AND
TECHNICAL SPECIFICATIONS GOVERNING THE INVITATION TO
TENDER CALLED BY BiMEP FOR AWARD BY NEGOTIATED
PROCEDURE WITH PUBLICATION OF THE CONTRACT TO
SUPPLY, INSTALL AND MAINTAIN A SCANNING LiDAR SYSTEM**

FILE NUMBER

BIM/23/003

NEGOTIATED PROCEDURE WITH PUBLICATION

I. SCHEDULE OF TERMS AND CONDITIONS

FILE NO. BIM/23/003

A. OBJECT OF THE CONTRACT

- Title: Supply, installation and maintenance of a data supply and measurement system for characterization of the BiMEP wind resource by means of scanning LiDAR technology. The object of the contract includes, in the terms indicated in the Technical Specifications (TESP), the following scope:
 - Manufacture, supply, legalization and installation of the system to measure and supply data for characterization of the BiMEP wind resource by means of scanning LiDAR technology;
 - Verification, testing and trials of the measurement system;
 - Preventive maintenance of the system after the start of the operational phase;
 - Technical support and response to incidents after the start of the operational phase;
 - Training course for BiMEP personnel.
- Type of supply: Acquisition.
- Placement or installation work or services included: Yes, as indicated in the Technical Specifications (TESP).
- Maintenance of the assets supplied during the period the contract is in force: Yes, as indicated in the Technical Specifications (TESP).
- Division by lots: no.
- CPV code: 38126400-8 (Surface wind observation devices)
51215000-2 (Meteorological equipment installation services)
50411000-9 (Services to repair and maintain measurement devices)
- NUTS code: ES21.

B. CONTRACTING AUTHORITY

BISCAY MARINE ENERGY PLATFORM, S.A. (BiMEP), with Tax ID no. A95671244 and business address for these purposes at Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao.

- Person responsible for contracting:
 - Name: Laura Zubiate Sologastoa
 - Telephone: 94.403.56.00
 - Email: lzubiate@bimep.com
- Contractor profile:
 - <http://www.contratacion.euskadi.eus/w32-1081/es/v79aWar/comunJSP/v79aCambioldioma.do?idioma=es>
 - OJEU: <https://ted.europa.eu/udl?uri=TED:NOTICE:438014-2023:TEXT:ES:HTML>
- Contracting Committee: <https://www.eve.eus/Corporativo/Perfil-del-contratante/Comite-de-Contratacion-Reglamento-y-composicion>
- Committee of Experts: Not applicable.

C. BASIC TENDER BUDGET AND ESTIMATED VALUE OF THE CONTRACT

- Basic tender budget: The basic tender budget of this contract is €750,000, plus VAT of 21%, making a total of €907,500.
- Estimated value of the contract: €750,000 (net of VAT):

Tender budget (net of VAT)	€750,000
Amount corresponding to anticipated amendments (net of VAT)	-
Amount corresponding to prizes or payments (net of VAT)	-
Amount corresponding to possible options (net of VAT)	-
Extensions (net of VAT)	-
Estimated residual value of the asset (net of VAT)	-
TOTAL ESTIMATED VALUE	€750,000

D. PRICE AND PAYMENT

- Pricing system: Lump sum.

All tenders in excess of the basic tender budget specified in **SECTION C** above shall be rejected. These values shall be considered as maximum prices and all tenders in excess of them shall therefore be rejected.

- Mode of payment: Instalments to be paid at the times specified below:
 - Payment of the price for the *manufacture, supply, legalization and installation of the measurement system, the verification testing and trials of the measurement equipment and the training course for BiMEP personnel*:
 - 15% of the total when the contract is signed;
 - 50% of the total at the end of Milestone 1 “Manufacture of the equipment and in-factory verification”;
 - The rest of the total, except expenses for technical support, response to incidents and preventive maintenance, shall be paid once the document confirming definitive reception of the system by BiMEP has been signed and the operational phase has begun.
 - Payment of the price for *technical support and response to incidents*: On a semi-annual basis, in arrears.
 - Payment of the price for *preventive maintenance*: On a semi-annual basis, in arrears.

Although for valuation purposes the total price offered will be considered, the tenderer should provide a breakdown of the items of each service in Appendix V so that the invoicing can be managed according to the payment mode set out in this section.

- Preparatory operations: No.
- Price review: No.

E. CONTRACT TERM. PERFORMANCE PERIOD. EXTENSIONS

- Total term or total performance period or time limit:
 - *Manufacture, supply, legalization and installation of the measurement system, the verification, testing and trials of the measurement equipment*: the deadline for definitive reception by BiMEP shall be 36 weeks after the contract is signed. Also, the deadlines for intermediary milestones 1, 2 and 3 indicated in the following table are indicative and may be subject to negotiation:

Description of milestone	Time limit
Milestone 1. Manufacture of the equipment and in-factory verification	16 weeks counting from the date contract signed
Milestone 2. Verification against reference mast in accredited installation and delivery at BiMEP	As offered by the tenderer

Milestone 3. Installation, checking of measurement system operation and start of respective operation Signing of the document confirming provisional reception by BiMEP	2 weeks counting from the completion of milestone 2
Milestone 4. Pre-operational phase Signing of the document confirming definitive reception by BiMEP	4 weeks counting from the completion of milestone 3

- *Preventive maintenance and technical support and response to incidents:* subject to negotiation; at least one (1) year and at most five (5) years should be offered, counting from the start of the operational phase. The maximum period shall therefore be the one finally negotiated, always within the range indicated above.

- Start date: When the contract is signed.

- Partial deliveries: No.

- Contract extension: No.

F. ADVERTISING COSTS

Non-existent.

G. GUARANTEES

- Provisional guarantee: No.

- Definitive guarantee: Yes, amounting to 5% of the contract value (net of VAT).

H. INSURANCE

- The contractor shall have mandatory insurance as well as the following, proof of which shall need to be provided prior to formalization of the contract:
 - a. Professional Liability Insurance: covering errors and omissions in which professionals (lawyers, engineers, experts...) providing services for the contracting authority may incur in the performance of their work or in the exercise of their functions. This insurance shall be taken out with an insurance company of recognized standing and include an indemnity limit of not less than 300,000 euros.
 - b. Liability Insurance, general, with a limit of €1,000,000 , with employer liability coverage with a sublimit of €450,000 per victim. This policy should include BiMEP as additionally insured, without losing the condition of third party.
- If the contractor does not obtain and/or maintain the insurance referred to in the contract, or does not provide the corresponding certificates of insurance with proof of payment, the contracting authority shall be entitled to procure similar insurance coverage, the costs of which shall be charged to the contractor and promptly deducted from any sums owed to the contractor by the contracting authority.
- The insurance requirements specified for the contractor shall be forwarded by the contractor, in an appropriate manner and in proportion to their risk, to all subcontractors hired for the performance of the contract. The contractor shall be liable to the contracting authority or to the corresponding party for any fault that may occur in this respect.
- The contractor shall notify the contracting authority of any modification, renewal or cancellation of the policies indicated above. Likewise, when required to do so, the contractor shall also submit a copy of the insurance contracts and the receipt as proof of payment of the premium.

Failure to submit the corresponding accreditation or required supporting documentation shall be considered a breach of contract.

- The risks, obligations and liabilities assumed by the contractor shall not be limited by taking out the insurance referred to in this section. Furthermore, and as a consequence of this, the amount of the obligations and liabilities arising from the acceptance of such risks shall not be reduced in line with said insurance, or through not taking out said insurance or insufficient coverage provided therein, without prejudice to the contracting authority or third parties.
- The cost of all insurance specified in this section shall be borne by the contractor.

I. INFORMATION ON SUBROGATION OF WORKERS

Not applicable.

J. SPECIAL CONDITIONS OF PERFORMANCE

- Of a social nature or labour-related: those laid out in Clause 28.2 of these Terms and Conditions, in accordance with the provisions set out in Article 7 of Act 3/2016, of 7 April, for the inclusion of particular social clauses in public procurement.
- Environmental:
 - The documents shall preferably be delivered electronically. If BiMEP requests the delivery in paper of certain documents, they shall be submitted on 100% recycled paper (minimum 65% post-consumption) or non-recycled paper with a minimum content of fibers from sustainable forestry management and/or 20% recycled, printed on both sides, with the minimum possible binding and without plastic covers (to facilitate their recycling);
 - The successful bidder shall commit to complying with environmental rules and requirements and to minimizing environmental impacts derived from the performance of its activity;
 - It is essential for all electric and electronic components to comply with the law on Waste from Electric and Electronic Devices (Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste from electric and electronic devices), which regulates the appropriate collection, processing and financing of products at the end of their useful life in the European Union countries and requires that manufacturers and importers of electric and electronic devices must comply with all national waste management rules;
 - All components will have to comply with the regulations associated to the environment in force in the European Union.
- Ethical: No.
- Language: Those specified in Clause 28.1 of these Terms and Conditions.
- Gender equality: Those specified in Clause 28.4 of these Terms and Conditions.
- Personal data protection:
The performance of this contract will require the processing and/or cession of personal data to the contractor: No.

In the event that the contracting authority provides to the contractor contact information needed to perform the work, the contractor shall treat the respective information of the contact personnel provided for the exclusive purpose of coordinating the work.

If there are any, all special conditions of performance shall be required of all subcontracting companies.

K. ESSENTIAL CONTRACTUAL OBLIGATIONS AND OTHER ENVIRONMENTAL, SOCIAL OR LABOR OBLIGATIONS

- Essential contractual obligations
 - The special conditions of performance laid out in **SECTION J** of the Schedule of these Terms and Conditions.
 - Assign to the performance of the contract the material and/or human resources indicated, as the case may be, in **APPENDIX III "Commitment to assign resources"**, as well as those human and/or material resources the possession and/or availability of which, as the case may be, has been accredited in the award procedure to meet the requirements of technical or professional ability.
 - The obligation of the contractor themselves to carry out certain parts of the service or specific works, in accordance with **SECTION P** of the Schedule of these Terms and Conditions.
 - The conditions for subcontracting referred to in Clause 34, the accreditation of the fitness of the subcontractor person pursuant to the content of Clause 34 and accreditation of the circumstances determining the emergency or urgent situation referred to in Article 215.2.c) of the PSPA.
 - Regarding personal data protection, if the performance of the contract requires the contractor to process personal data on behalf of the data controller, the contractor must:
 - Fulfil the purpose set out in these terms and conditions for which the data was ceded;
 - Not change the location of the servers and the place of provision of the services associated to them, indicated by the contractor by means of a statement submitted before formalization of the contract, without prior notification to the contracting authority;
 - Not change the subcontractor(s) indicated by the contractor in its tender with which the servers or the services associated to same have been subcontracted, without prior notification to the contracting authority;
 - All those which regarding this matter are envisaged in the regulations governing public procurement.
- Failure to comply with any of the essential contractual obligations constitutes a serious breach pursuant to the content of Article 71.2.c) of the PSPA.

L. PENALTIES

Besides those laid out in Clause 31 of this document, and without prejudice to the termination causes envisaged in Clause 38, the following penalties are established:

- *Noncompliance or defective compliance with the contract.* In those cases in which each of the services and/or supplies subject to this contract were not performed in accordance with the criteria set out in the contractual documents or turn out to be manifestly incomplete, erroneous or defective and were not resolved within a maximum period of ten (10) calendar days counting from the notification issued by the contracting authority, a penalty of up to 3% of the estimated value of the contract shall be applied for each of them, depending on the seriousness of the noncompliance;
- *Delay in the total or partial execution of the milestones described in SECTION E of the Schedule of these Terms and Conditions or of those offered by the contractor after negotiating with the contracting authority.* A penalization equivalent to 1% of the contract's price for each week of delay can be imposed for each week of delay with respect to the deadlines indicated for each milestone in SECTION E of the Schedule of these Terms and Conditions or those offered by the contractor after negotiating with the contracting authority.

A penalty of €2,000 can be applied to each week of delay in the confirmation of a date or in the conducting of the training course that the contractor is obliged to carry out for BiMEP personnel, starting one month after BiMEP sends notice to arrange the specific date.

- *Delay in performance of the agreed preventive maintenance work.* A penalty equivalent to 1% of the price of the maintenance for each month of delay with respect to the period set out in the terms and conditions or, where appropriate, in the definitive tender for the performance of that maintenance;
- *Delays in technical support and response to incidents.* A penalty of 5% of the price of this support can be imposed for each day of delay that passes without delivering to BiMEP the diagnosis report and action plan for the incident with the corresponding hardware or software or without satisfactory resolution of the incident, after the deadlines set out in the terms and conditions or, where appropriate, in the definitive tender.

In any case, the maximum cumulative penalty for all aspects envisaged in this section shall be 20% of the contract's price. If that limit is exceeded, BiMEP can opt to terminate the contract with the effects described in this SATAC.

M. SUBCONTRACTING

The following limitations are imposed on the possibility of subcontracting:

- If so provided for under **SECTION P** of the Schedule of these Terms and Conditions, the contractor itself shall carry out those parts of the service or specific works specified in that Section.
- Tenderers intending to subcontract shall provide the following information and/or documentation in Envelope A:
 - The part of the service they intend to subcontract. They should complete and submit **APPENDIX IV** of these Terms and Conditions.
 - If performance of the contract requires the contractor's processing of personal data on behalf of the data controller, indication in **APPENDIX IV** of whether the subcontracting of the servers or associated services is expected, as well as the name or business profile of the subcontractor(s) (defined by reference to the professional or technical solvency conditions of the subcontractor(s)).
 - An ESPD from each and every subcontractor intended to be subcontracted (with Sections A and B of Parts II and III duly completed).
 - Additionally, in the event that the economic operator seeks the solvency and resources of external personnel or operators, **APPENDIX XIV** should also be submitted.
 - Declaration about the commitments the subcontractor assumes regarding workers who carry out the activity under the contract, according to the form set out in **APPENDIX X**.

N. PARTIAL RECEPTION OF WORK. WARRANTY PERIOD.

- Partial reception of work: Yes, according to the milestones indicated in Section E of the Schedule of the terms and conditions.
- Warranty period: Yes, at least twenty-four (24) months counted from the signing of the document confirming definitive reception and the start of the operational phase.

O. AMENDMENTS TO THE CONTRACT

- Possible contract amendment: Not applicable.

P. ADDITIONAL CLAUSES RELATING TO PROVISION OF THE OBJECT OF THE CONTRACT.

- The expenses for delivery and transport of the assets to the place indicated in SECTION N of the Schedule of these Terms and Conditions will borne by the contractor: Yes
- Mode of monitoring and examination by the contracting authority regarding the phase of producing the asset or assets to supply: Besides the factory test conducted by the contractor at its facilities, which BiMEP may attend, the contracting company shall offer BiMEP the possibility that BiMEP and/or a third party designated by BiMEP can supervise the equipment's verification against reference mast, which will be done at the facilities of a

certification company. The contracting company will contract this verification and it shall be paid for by BiMEP.

- It is required that the services or installation be carried out by the contractor itself, in accordance with the provisions of Art. 75.4 PSPA: No.

In the case of joint ventures, the obligation is established that the services or works are carried out by a specific member: No.

- Others: yes, the following:
 - *It is a manufacturing contract that should be performed in the following conditions:*
 - The contracting authority must provide the materials needed: No.
 - General and special rules of the construction contract that are applicable: No.
 - The trials, tests and analyses referred to in Clause 25 are borne by the contractor: No.

Q. SUBMISSION OF REQUESTS TO PARTICIPATE AND TENDERS

- Register: Telematic Electronic Contracting Registry (see clause 12.2 of the section on "Electronic Resources" of the Terms and Conditions).
- Deadline for submitting requests to participate and tenders: Requests to participate, together with all other documents from Envelope A ("Supporting documentation on compliance with prerequisites") shall be accepted until 13:00 o'clock (CEST) on September 15, 2023.

*Note: no documentation relative to Envelope B ("Part of the tender for which value judgement is required") or Envelope C ("Part of the tender evaluable using mathematical formulas") shall be submitted together with Envelope A. The deadline for the receipt of tenders contained in Envelopes B and C shall be published in the Contractor's profile and the companies selected to participate shall be notified in accordance with clause 15 of this SATAC and the timeframe established in article 164.1 of the PSPA.

R. CONTRACT PROCESSING AND PROCEDURE

- Processing: Ordinary
- Procedure: Negotiated
 - ☒ With publication.
 - ☐ Without publication.

Financial and technical aspects that will be subject to negotiation:

- Solution for installation of the scanning LiDAR equipment in the proposed location
- Proposals for temporary and spatial resolution and configuration of the wind measurement system
- Proposals for improvement that at least include the auxiliary measurement instruments
- Execution deadlines for milestones 1, 2 and 3
- Price
- Duration and content of the preventive maintenance plan and for technical support and response to incidents
- Conditions, coverage and scope of the guarantee
- In-factory testing procedures and procedures for verification against reference mast
- Scope and mode of conducting the course

The negotiated procedure is arranged in two successive phases to gradually reduce the number of tenders to negotiate by applying the award criteria indicated in Clause 22 of the contract's specific clauses: No.

- Information on division into lots: Not applicable.
- Means of processing: Electronic.
- Notifications and communications: Electronic means.
- Electronic auction: No.
- Contract reserved for special employment centres and placement companies or included in the framework of sheltered employment programs: No.
- Contract reserved for certain organizations because it is a contract for social, cultural or health services, in accordance with the forty-eighth additional provision of the PSPA: No.

S. CRITERIA FOR ECONOMIC AND FINANCIAL STANDING AND TECHNICAL ABILITY USED TO CHOOSE THE CANDIDATES INVITED TO TENDER

- Obligation to meet minimum solvency requirements: Yes, in accordance with the provisions of this section.
- Time for accrediting solvency: All the tenderers, in Envelope A – Documentation accrediting compliance with prerequisites.
- Objective solvency objectives according to which the candidates that will be invited to tender shall be chosen:
 - Economic and financial standing:
 - Existence of liability insurance for professional risks or for liability of the work for an amount equal to or above 300,000 euros;
 - Declaration of annual turnover, or annual turnover in the scope of activities corresponding to the contract, which referring to the year of highest turnover in the last three (3) annual periods (2020-2021-2022) available should at least be equivalent to one and a half times the estimated value of the contract: 750,000 euros x 1.5 = 1,125,000 euros.
 - Technical and professional ability:
 - A list of the main services carried out, of a same or similar nature to those constituting the object of the contract (supply and installation of a scanning LiDAR system), indicating the respective amount, date and recipient, public or private;

The tendering companies should accredit the execution of at least one (1) contract of equal or similar nature carried out in the last three (3) years (2020-2021-2022).

The work shall be accredited by means of certificates issued or endorsed by the competent authority when the recipient is a public sector body or, when the recipient is a private subject, by means of a certificate issued by it, or when that certificate is lacking, by means of a declaration from the tenderer.

Newly created economic operators should have the above-mentioned technical or professional ability, which shall be accredited by means of the resources deemed appropriate and whose validity shall be analyzed and agreed upon by BiMEP.

- Business of professional qualification: No.
- Mandatory assignment of resources: No.

T. AWARD CRITERIA

- The general criteria to be used as a basis for the award process are:

Criterion	Description	Points
Envelope B. Criteria not quantifiable by formula		
1	Technical report: technical characteristics of the equipment, data quality, flexibility and configuration options, auxiliary instruments and software functions	15
2	Work plan: details of the supply phases	6
3	Content of the training course	7
4	Technical support and response to incidents	8
5	Preventive maintenance	8
6	Conditions, coverage and scope of the guarantee	8
7	In-factory testing procedures and verification against reference mast	6
8	Improvements	2
Envelope C. Criteria that can be evaluated by mathematical formula		
9	Financial bid: 1.-Manufacture, supply, legalization and installation of the measurement system 2.-Verification, testing and trials of the measurement system 3.-Training course for BiMEP personnel	35
10	Financial bid per year: 4.-Preventive maintenance 5.-Technical support and response to incidents	5
TOTAL		100

- Formula(s) to calculate points in the case of Envelope C.

Criterion 9 – Financial bid (manufacture, supply, legalization and installation of the measurement system; verification, testing and trials of the measurement system; and training course for BiMEP personnel):

First the existing spread between the different bids shall be calculated.

- If the spread is less than $\pm 25\%$ with respect to the average bid:

The average bid will be calculated as the arithmetical mean of all the bids. A bid equivalent to that mean shall be given 17.5 points.

For each percentage point in which that average bid is improved, 0.7 additional points will be received; and for each percentage point in which that average bid worsens 0.7 points will be deducted.

Percentage differences of fractions of a point shall be translated into increases or decreases (as appropriate) of fractions of points in the same proportionate measure (0.7 to 1) expressed in the previous paragraph.

To calculate the points decimals will be used and rounding will be by truncation.

In any case, the maximum score shall never be more than 35 points or less than zero points.

- Otherwise:

The maximum score for this criterion (35 points) shall be awarded to the best bid and zero to the worst bid and a linear distribution of points shall be made between the bids that are between those two. If there are only two bids to appraise, the previously described formula will be applied, adapted to a range of $\pm 40\%$.

Criterion 10 – Financial bid (preventive maintenance and technical support and response to incidents):

First the existing spread between the different bids will be calculated.

- If the spread is less than $\pm 25\%$ with respect to the average bid:

The average bid will be calculated as the arithmetical mean of all the bids. A bid equivalent to that mean will be given 2.5 points.

For each percentage point in which that average bid is improved, 0.1 additional points will be received; and for each percentage point in which that average bid worsens 0.1 points will be deducted.

Percentage differences of fractions of a point shall be translated into increases or decreases (as appropriate) of fractions of points in the same proportionate measure (0.1 to 1) expressed in the previous paragraph.

To calculate the points decimals will be used and rounding will be by truncation.

In any case, the maximum score shall never be more than 5 points or less than zero points.

- Otherwise:

The maximum score shall be awarded for this criterion (5 points) to the best bid and zero to the worst bid and a linear distribution of points will be made between the bids that are between those two. If there are only two bids to appraise, the previously described formula will be applied, adapted to a range of $\pm 40\%$.

- **Minimum points of Envelope B:** As set out in Article 146.3 of the PSPA, it shall be required that a minimum of 50% of the points assigned to the total criteria not quantifiable by formula (Envelope B) shall be required in order to access the opening of Envelope C, criteria which can be evaluated by means of mathematical formula.
- **Abnormally low tenders:** Tenders shall be considered as abnormally or disproportionately low when the price proposed is less than twenty-six percent (26%) of the arithmetic mean of the tenders submitted.

U. SPECIFIC TIE-BREAK CRITERIA

Not established.

V. DOCUMENTS TO BE SUBMITTED IN EACH ENVELOPE

The documents required to take part in the proceedings shall be submitted within the electronic files or envelopes indicated below:

- ENVELOPE A - Documentation accrediting compliance with prerequisites. The documents detailed in Clause 13 shall be submitted in this envelope.
- ENVELOPE B - Tender for which a value judgment is required for evaluation. The documents indicated below should be submitted in this envelope so that BiMEP can evaluate the technical part of the tenders:
 1. Criterion 1: Technical report describing the supply. Technical report detailing all technical characteristics of the scanning LiDAR system (hardware and software) and of the proposed auxiliary instruments, including lightning protection, as described in sections 3, 4 and 5 of APPENDIX I, TESP.
 2. Criterion 2: Work plan. Work plan that includes a detailed description of all the activities to develop, the timeline of the operations, teams involved, materials and requirements for the work to be carried out in each activity, as well as all limits for safety, inspection and approval points, and the points of no return. Should at least include the milestones from Table 5 of the TESP.
 3. Criterion 3: Description of the content of the training course for BiMEP personnel. Document detailing the content of the training course for BiMEP personnel.
 4. Criterion 4: Description of the technical support and response to incidents. Document detailing how the technical support and response to incidents will be provided to BiMEP y and the deadlines for resolving those incidents, as described in Sections 5 and 6 of the TESP. The number of years for which the service is offered should be specified.
 5. Criterion 5: Description of the preventive maintenance. Document detailing the plan for preventive maintenance during the operational phase, as described in Sections 5 and 6 of the TESP. The number of years in which preventive maintenance is provided should be specified.
 6. Criterion 6: Description of the conditions, coverage and scope of the guarantee. Document detailing the conditions, coverage and scope of the guarantee, as described in Sections 5.5 and 6 of the TESP. Their respective duration should be specified.
 7. Criterion 7: Description of the in-factory validation procedures and verification against reference mast. Document detailing the in-factory testing procedures and the procedures for verification against reference mast at accredited third-party facilities.
 8. Criterion 8: Proposed improvements. Description of improvements to the current supply which may include the following, among others:
 - Improvements in the scope of supply: auxiliary data transmission systems, etc.
 - Improvements leading to better capabilities of BiMEP and its personnel for future operation of the scanning LiDAR equipment and its maintenance.
 - Improvements in the conditions for preventive and corrective maintenance.
 - Improvements in the guarantee conditions with respect to coverage.
 - Supply of response elements along with the toolkit.

The minimum scope of all these documents is detailed in these terms and conditions and in **APPENDIX I – TESP**.

- ENVELOPE C - tender automatically evaluable using formulas. The following documents shall be submitted in this envelope:
 1. Financial bid for criteria 9 and 10, per the model that appears in **APPENDIX V**.

W. VARIANTS

Not permitted

X. DOCUMENTATION TO BE SUBMITTED BY THE TENDERER WHO HAS SUBMITTED THE BEST TENDER

The documents specified in Clause 21.1.

Y. SUPPLEMENTARY CLAUSES RELATING TO THE PROCEDURE

- Supplementary information on the terms and conditions and any additional documentation:
 - Deadline for requesting it: 10 calendar days
 - Deadline for obtaining it: 5 calendar days
 - Binding nature of clarifications on terms and conditions and documentation: No.
 - An English version of the Terms and Conditions is published, although, in case of discrepancy with respect to the Spanish version, the Spanish version shall prevail.
- Compensation in the event of non-conclusion of the contract and withdrawal from the procedure: compensation of one hundred (100) euros shall be paid to each tenderer.
- Deadline for awarding the contract: The deadline for awarding the contract shall be two (2) months from the first act of opening the envelope containing a part of the tender. Should the award not be granted within the period indicated, tenderers shall have the right to withdraw their tender and, where appropriate, to a refund of the provisional guarantee.
- Other documents to be submitted prior to formalization: No.

Z. APPLICABLE PROVISIONS AND JURISDICTION

- The contract is considered to be a private contract (Article 26.b) of the PSPA).
- Contract subject to harmonized regulation (Article 317 and related provisions of the PSPA). With respect to personal data protection and in accordance with what is envisaged in Article 35 of the PSPA, the contractor submits to the national and European Union regulations on this respect.
- All and any issues of contention arising during the preparation and award of this contract shall be subject to contentious-administrative jurisdiction (Article 27.1.c) of the PSPA).

Those acts which, in accordance with what is set out in Article 44 of the PSPA and by virtue of the nature and amount of this contract, are provided for in the PSPA, shall be subject to special appeal in matters of contracting.

- All and any issues arising in relation to the effects and termination of the contract, with the exception of the contractual amendments referred to in Article 27.1.b) and c) of the PSPA (Article 27.2 of the PSPA), shall be subject to civil jurisdiction. The contracting authority and the awarded contractor voluntarily submit to the jurisdiction of the Courts and Tribunals of Bilbao, expressly waiving any other jurisdiction that may correspond to them.

AA. TABLE FOR MONITORING THE INCLUSION OF SOCIAL, ENVIRONMENTAL AND OTHER PUBLIC POLICY ASPECTS INCORPORATED IN THE PROCEDURE AND THE CONTRACT

ASPECTS:	SOCIAL OR WORK-RELATED				ENVIRONMENTAL	LANGUAGE
	IN PARTICULAR			OTHER		
	Integration in the job market	Gender equality	Occupational risk prevention			
Object of the contract						
Solvency requirements						
Technical specifications						
Award criteria						
Special contract performance conditions		X			X	X

II. GENERAL CONDITIONS

1. OBJECT OF THE CONTRACT

The object of the contract is that specified in **SECTION A** of the Schedule of these Specific Administrative Terms and Conditions (hereinafter "**SATAC**") and is defined in the Technical Specifications (hereinafter "**TESP**") attached in **APPENDIX I**.

When the object is split into lots, the object of each lot is specified in **SECTION A** of the Schedule of these Terms and Conditions and defined in the TESP.

The CPV and the category of service into which the service falls are specified in **SECTION A** of the Schedule of these Terms and Conditions.

In the case of an open-ended contract, and where the number of service units making up its object is not precisely defined, the service units to be performed by the contractor shall be those specified by the contracting authority.

2. CONTRACT DOCUMENTS

The following documents are of a contractual nature:

- a) The Specific Administrative Terms and Conditions (**SATAC**).
- b) The Technical Specifications (**TESP**).
- c) The document formalizing the contract.
- d) The work schedule, where so specified in **SECTION P** of the Schedule of these Terms and Conditions.

3. LEGAL STATUS

3.1. The contract is of a private nature and is governed by the Contract Documents and, in that which by nature of the contract and/or the contracting authority, may be applicable under the rules and documents specified below:

- a) The Public Procurement Act 9/2017, of 8 November, on Public Sector Procurement (hereinafter "**PSPA**").
- b) The General Regulations of the Public Administration Procurement Act (hereinafter "**GRPAPA**"), insofar as it is not incompatible with the provisions of the PSPA.
- c) Decree 116/2016, of 27 July, on the public sector procurement system in the Autonomous Community of the Basque Country, insofar as it is not incompatible with the provisions of the PSPA.
- d) Royal Decree 817/2009, of 8 May, partially implementing Law 30/2007, of 30 October, on Public Sector Procurement.
- e) Order of 16 August 2004 of the Councilor of Finance and Public Administration, on electronic processing of certain procedures and actions envisaged in the legislation on contracts of public administrations.
- f) Regulation (EU) 2016/679, of the European Parliament and of the Council, of 27 April 2016, on protection of natural persons with respect to personal data processing and free movement of that data, thereby repealing Directive 96/46/EC.
- g) Organic Law 3/2018, of 5 December, on personal data protection and guarantee of digital rights.
- h) Any other provisions that regulate contracting in the scope of the European Union, the state and the Autonomous Community of the Basque Country and which may be applicable.

3.2. The parties are expressly bound by the contract documents. Ignorance of the provisions of these documents shall not absolve the contractor from the obligation to comply with them,

and the submission of a tender implies the unconditional acceptance by the tenderer of all its clauses, with no reservations or qualifications whatsoever.

4. INFORMATION ON TAXATION, THE ENVIRONMENT, GENDER EQUALITY, EMPLOYMENT PROTECTION, WORKING CONDITIONS, OCCUPATIONAL RISK PREVENTION AND INTEGRATION OF THE DISABLED INTO SOCIETY AND THE JOB MARKET, OBLIGATION TO HIRE A SPECIFIC NUMBER OR PERCENTAGE OF PEOPLE WITH DISABILITIES, AND DATA PROTECTION

Information can be obtained in the following government agencies on the obligations and provisions in force in relation to:

- Gender Equality: EMAKUNDE - The Basque Institute for Women.
- Taxation: Provincial Tax Offices of Álava, Bizkaia, Gipuzkoa and of the Autonomous Community of Navarra, and the Spanish Central Tax Authorities.
- Environmental protection: IHOBE - The Basque Environmental Agency.
- Employment protection, working conditions, occupational risk prevention: Labor and Social Security Office of the Department of Employment and Justice, and OSALAN - The Basque Institute for Occupational Health and Safety.
- Integration of the disabled into society and the job market and the obligation to hire a specific number or percentage of people with disabilities: LANBIDE - The Basque Employment Service.
- Data protection: The Basque Country Data Protection Agency.

5. BASIC TENDER BUDGET AND ESTIMATED VALUE

The basic tender budget of the contract is that specified in **SECTION C** of the Schedule of these Terms and Conditions and is broken down into yearly payments and lots, where appropriate, as laid down in that Section.

The estimated value is that specified in **SECTION C** of the Schedule of these Terms and Conditions and has been calculated on the basis of the rules provided for under Article 101 of the PSPA.

6. CONTRACT PRICE AND BUDGET LIMIT

- 6.1 Lump sum tender. In a lump sum tender, the price of the tender shall be that offered by the successful tenderer, which in no case may exceed the basic tender budget (net of VAT) specified in **SECTION C** of the Schedule of these Terms and Conditions.
- 6.2 Unit price tender. In a unit price tender in which the units correspond to the different component parts of the service to be provided, service delivery units or units of time:
 - a) *when the number of units comprising the object has been clearly defined*: the price shall be the result of multiplying the unit price quoted by the successful tenderer by the number of units.
 - b) *when the number of units comprising the object has not been clearly defined*:
 - 1) The price of each unit shall be that quoted by the successful tenderer.
 - 2) A maximum budget limit shall be established. This budget may be the same as the basic tender budget or, in the event of the successful tenderer offering a reduction in the unit tender prices, may be reduced by a proportion to be determined by the contracting authority.

In this case, the actual expenditure of this budget shall be conditioned by the real needs of the contracting authority, which is not obliged to demand a certain number of units nor to spend it in its entirety.

- 6.3 If both systems (lump sum and unit prices) are used to determine the price for different parts of the service, the provisions of **SECTION C** of the Schedule of these Terms and Conditions and of Clauses 6.1 and 6.2 above shall apply.

- 6.4 The maximum contract price or budget limit shall be determined in the award resolution, specifying the VAT as an independent item and, where appropriate, with a multi-annual breakdown.
- 6.5 The tender price or prices shall include all applicable taxes, rates and fees and any other expenses derived from compliance with contractual conditions. All and any expenses necessarily incurred for the correct performance of the contract, as detailed in the TESP, shall be borne by the successful tenderer and therefore not chargeable to the contracting authorities.

7. PRICE REVIEW

Prices shall only be subject to review if so specified under **SECTION D** of the Schedule of these Terms and Conditions by applying the formula detailed in that Section.

8. CONTRACT PERFORMANCE PERIOD AND EXTENSION

- 8.1 Single performance contracts. The time limit for performance of the contract shall be:
 - a) *In the event that tenders are unable to propose a reduction in the total and/or partial time-limits: that indicated under **SECTION E** of the Schedule of these Terms and Conditions.*
 - b) *In the event that tenders are able to propose a reduction in the total and/or partial time-limits: those offered by the successful tenderer.* These timeframes shall only be extended in accordance with Article 195.2 of the PSPA.
- 8.2 Open-ended (continuing performance) contracts: both the contract term and, where appropriate, partial time limits are detailed respectively in **SECTION E** of the Schedule of these Terms and Conditions.
- 8.3 Extension of open-ended contracts: when so provided for under **SECTION E** of the Schedule of these Terms and Conditions, the contracting authority may agree to the extension of the contract, which shall be obligatory for the contractor, unless the cause for termination set out in Article 198.6 of the PSPA applies. For the extension of the contract to be obligatory for the contractor, the person responsible for the contract shall have given prior notice at least one (1) month before the end of the contract.

The extension shall be agreed to by reasoned decision of the contracting authority.

9. GUARANTEES

- 9.1 The provisional guarantee may be constituted in one of the formulas specified in Article 108.1.b) and c) of the PSPA and shall be deposited in the manner provided for in Article 106.3.b) of the PSPA. The provisional guarantee shall automatically expire and shall be returned to the tenderers immediately after the conclusion of the contract.
In the case of the successful tenderer, the provisional guarantee shall be returned when the definitive guarantee has been constituted, in accordance with the provisions of Article 106.4 of the PSPA.
- 9.2 The definitive guarantee and, where appropriate, the complementary guarantee shall be constituted before the contracting authority, in the form of a bank guarantee or surety bond, in accordance with the document models provided in **APPENDIX VI**.
- 9.3 In the case of a temporary association of companies (or joint venture, hereinafter "**JV**"), the provisional and definitive guarantees may be constituted by one or more participants in the JV, provided that the total amount required is reached, and that it jointly and severally guarantees all its members.

10. CONTRACTOR PROFILE AND ENQUIRIES

- 10.1 The following link provides access to the contractor profile:
<http://www.contratacion.euskadi.eus>

- 10.2 The details, information and documents required under the PSPA shall be published in the contractor's profile for awarding authorities that do not have the status of public administration.
- 10.3 Interested parties may make enquiries and/or requests for supplementary documentation and/or additional information through the email addresses listed in **SECTION B** of the Schedule of these Terms and Conditions. Any such enquiries and/or requests may be made in writing up to the deadline for requesting information specified in **SECTION Y** of the Schedule of these Terms and Conditions and shall be answered up to and including the deadline indicated in **SECTION Y** of the Schedule of these Terms and Conditions.

III. TENDERING

11. ELIGIBILITY AND CONDITIONS FOR PARTICIPATING

- 11.1 All and any private individuals or legal entities, Spanish or foreign, with full capacity to act, who are eligible to participate in public procurement contracts and who meet the solvency requirements or, as the case may be, have a solvency classification, and who are suitably qualified, where appropriate, as specified under **SECTION S** of the Schedule of these Terms and Conditions (if said Section specifies that the time at which the qualification(s) must be available is the "deadline for submission of requests to participate and tenders") are eligible to take part in the procurement procedure. Various other persons meeting the requirements specified in the previous paragraph may also participate, grouped in a joint venture in accordance with the conditions established by law.

Only legal entities complying with Article 66.1 of the PSPA, as well as economic operators of the Community or States signatories to the Agreement on the European Economic Area and non-Community economic operators complying with Articles 67 and 68.1 of the PSPA, respectively, are eligible to participate.

- 11.2 No individual person may submit more than one proposal, unless variants are allowed under **SECTION W** of the Schedule of these Terms and Conditions, or subscribe to any proposal in a joint venture with others if that person has submitted a proposal individually, or appear in more than one joint venture. Non-compliance with these rules shall result in the inadmissibility of all the proposals submitted by that person.
- 11.3 In the event that **SECTION R** of the Schedule of these Terms and Conditions reserves the contract, respectively, for special employment centers and/or companies supporting social integration, or the contract is included within the framework of sheltered employment programs, in compliance with the fourth additional provision of the PSPA, or for certain organizations in compliance with the forty eighth additional provision of the PSPA, only those who additionally meet the legally established requirements may participate (Revised text of the General Law on the Rights of Persons with Disabilities and their Integration in Society, approved by Royal Legislative Decree 1/2013, of 29 November; Law 44/2007, of 13 December, for the regulation of social and occupational integration companies; and the forty eighth additional provision of the PSPA).
- 11.4 The circumstances relating to the solvency, standing and/or business or professional qualification that, where appropriate, are required under **SECTION S** of the Schedule of these Terms and Conditions (unless this clause specifies that the time at which said solvency, standing and/or business or professional capacity must be available is "prior to the formalization of the contract"), together with evidence of not being prohibited from participating in public procurement contracts, shall concur by the deadline for submission of requests to participate and tenders and subsist at the time of the contract coming into force.

The Contracting Committee may request tenderers to submit all or part of the certificates and supporting documents at any time during the procedure, where this is necessary to ensure that the procedure runs smoothly, prior to the award of the contract. It may also ask them for clarification of the certificates and documents submitted or require them to submit additional documents.

- 11.5 Submission of a tender implies unconditional acceptance by the tenderer of the clauses of these Terms and Conditions and the rest of the contractual documents, without reservation or qualification, as well as the authorization for the Contracting Committee and the contracting authority to consult, at any time during the contract award procedure, the data collected in the Register of Tenderers and Classified Companies of the Basque Country, in

the Official Register of Contractors and Classified Companies in the Public Sector and/or in the official lists of economic operators or in the national database of a Member State of the European Union, provided that, in the latter case, it is accessible free of charge.

- 11.6 In the event that SECTION R of the Schedule of these Terms and Conditions establishes that the contract is awarded by negotiated procedure without publication, it shall be necessary to request tenders from at least three companies, whenever so possible, with which negotiation of the contract terms will be carried out.

12. SUBMISSION OF REQUESTS TO PARTICIPATE AND TENDERS

12.1 Language

All documents shall be submitted in their original form, or officially translated, in Basque or Spanish.

12.2 Means

Electronic means: Unless **SECTION R** of the Schedule of these Terms and Conditions specifies that the means for processing the contract award procedure are not electronic, tenders shall be submitted by electronic means through the application entitled SISTEMA DE LICITACIÓN ELECTRÓNICA (SYSTEM FOR ELECTRONIC TENDERING) found in KONTRATAZIO PUBLIKOA EUSKADIN PLATAFORMA CONTRATACIÓN PÚBLICA EN EUSKADI SISTEMA DE LICITACIÓN ELECTRÓNICA.

User requirements for this application are as follows:

1. *Administrative requirements*
 - a) To be in possession of a digital certification licensed by the Administration of the Autonomous Community of the Basque Country for the purposes of electronic processing. At the time of writing, digital certification is available through:
 - IZENPE (corporate, private individuals and representatives)
 - FNMT (corporate, private individuals and representatives)
 - DNI-E
 - CAMERFIRMA (corporate and private individuals)
 - b) To be in one or more of the following situations:
 - i. To be registered, and have a valid certification, in the Register of Tenderers and Classified Companies of the Basque Country.
 - ii. To be registered in the Temporary Licensing System.
 - iii. In the event of two or more economic operators deciding to officially form a joint venture if their tenders are successful, said joint venture undertaking shall be registered in the Temporary Licensing System.
2. *Technical requirements:* information on technical requirements is available at: <http://www.contratacion.euskadi.eus/informacion-general-licitacion-electronica/w32-kpelicel/es/>
3. *Helpline for enquiries and/or incidents in connection with e-tendering:* 945 016 298.

Submission

- a) The documents specified in **SECTION V** of the Schedule of these Terms and Conditions shall be enclosed in the respective envelopes which, in accordance with that Section, appear in the application.
- b) Only documents stored with the following extensions are guaranteed to be read and processed: .doc, .xls, .ppt, .docx, .xlsx, .pptx, .pdf, .rtf, .sxw, .sdw, .abw, .xml, .jpg, .bmp, .tiff, .zip, and .7z.
- c) To minimize the incidence that the presence of viruses may have on the operation of the system, it is recommended to submit documents in the formats .pdf, .rtf, .sxw, .jpg and .tiff.
- d) The tender shall be understood to have been received within the submission deadline if the

transmission starts within it and is successfully completed.

Non-electronic means or in hard copy

Submission:

- a) Documentation shall be submitted in sealed envelopes and signed by the economic operator or their legal representative. A numbered list of the documents enclosed shall be included inside the envelope, and the following information shall appear on the outside of each envelope:
 - 1) Clear identification (A, B, C or others) of the envelope in question, as specified in **SECTION V** of the Schedule of these Terms and Conditions.
 - 2) Contract identification details: file number and object.
 - 3) Identification details of the tenderer: business name and tax ID number in the case of a legal entity, and name, surname and ID number (or equivalent document) in the case of a private individual.
 - 4) Identification details of the private individual who has signed the tender: name, surname and ID number (or equivalent document).
- b) Envelopes shall be submitted within the time limit - date and time - specified in the call for tender, and to the address specified in **SECTION Q** of the Schedule of these Terms and Conditions or at a Post Office for subsequent forwarding to the specified address.

In the event that the documentation is submitted at a Post Office, the tenderer shall inform of the submission by email to the address specified in **SECTION B** of the Schedule of these Terms and Conditions within the same day. This e-notice of submission shall only be considered as valid if evidence of the transmission and receipt, the respective dates thereof and the full content of the communications is provided therein, together with reliable identification of the sender and the intended recipient. This being the case, a printed copy shall be made and registered, which shall then be incorporated into the file.

The notice of submission shall include identification details of the contract and of the tenderer and shall be accompanied by a receipt of payment issued by the Post Office. If the documentation has not been received within ten (10) calendar days following the date specified in the tender notice, the documentation shall not be accepted under any circumstances.

Return of documentation. Tenderers who have not been awarded the contract and who wish to retrieve their documents shall send a written request to the Contracting Committee - with details of the file number and the person assigned to retrieve the documents - and personally go to the administrative offices to retrieve the documents. Proof of identification of the person assigned to retrieve the documents shall be required prior to the documents being handed over. If an appeal has not been filed and no request has been received for the documentation to be returned within twelve (12) months from the date of formalization of the contract, the documents shall be destroyed.

The same actions shall be taken and the same time limits shall apply in the event of withdrawal from the procedure or waiver of the conclusion of the contract.

12.3 Confidentiality

Tenderers who consider any of the documents submitted to be confidential shall make this explicitly clear - and complete the standard form provided in **APPENDIX VII** - through the use of a confidential watermark, or on the page margin, on the document designated as confidential. Failure to do so in this manner shall mean the document will not be considered confidential.

In addition to tenderers indicating the information and the aspects of their tender considered to be of a confidential nature by reason of their link to technical or commercial secrets, the specific reasons that justify said link shall also be specified in **APPENDIX VII**.

In no case shall the economic tender be considered confidential. Designation by the tenderer of the economic tender as confidential shall be deemed as not conferred.

The confidentiality declaration shall not extend to all the documentation submitted by the tenderer or to all the supporting documentation of the technical tender. Where this is requested, or in the event that the scope of the confidentiality declaration is deemed inadequate for confidentiality purposes, the contracting authority shall determine in a reasoned manner which data and/or documents merit such consideration.

Similarly, the contracting authority shall take appropriate action in the event that the declaration does not contain reasons considered to be adequate and sufficiently substantiated for the tenderer's request to consider the information declared as confidential.

In the event that the tenderer has not expressly indicated any data and/or document as confidential, it shall be understood that none of the data and/or documents submitted are of a confidential nature, without prejudice to the fact that, exceptionally and in a reasoned manner, the contracting authority considers as confidential information not declared as such in order to preserve legitimate business interests.

Likewise, once tenders have been submitted, indication as confidential of information which has not been designated as such at the time of submission shall be prohibited.

In the event that documentation not forming part of the initial tender is submitted during the award procedure, the information or documents forming that new documentation may be designated as confidential under the conditions described in the preceding paragraphs of this clause.

12.4 Checking of documentation

The contracting authority reserves the right to check, both during the award procedure and once the contract has been awarded and formalized, the authenticity of the documents provided. False information may be considered as grounds for the nullity of the contract. A declaration of nullity for this reason shall be considered as non-compliance attributable to the economic operator, who shall compensate the contracting authority for any damages it may have suffered.

12.5 Notifications and communications

Actions considered to be the object of notification and communication are as follows:

- The resolutions of the contracting authority on candidate selection and awarding and the procedural acts defined in Article 44.2.b) of the PSPA shall be notified.
- Communication shall be understood as requests for clarifications, requirements to correct defects or omissions, requirements for the submission of documents provided for in these Terms and Conditions and other procedural acts not included in Article 44.2.b) of the PSPA.

Submission of requests to participate and tenders through electronic means. The electronic tendering system shall be used for notifications and communications.

Submission of requests to participate and tenders through non-electronic means or in hard copy. Notifications and communications shall be made through the Internet portal of the Basque Government at <https://euskadi.eus>. Alternatively, email may be used, as specified in **SECTION R** of the Schedule of these Terms and Conditions.

For the purposes of notifications and communications, **APPENDIX VIII** shall be duly completed, signed and forwarded.

13. ENVELOPE A «SUPPORTING DOCUMENTATION ON COMPLIANCE WITH

PREREQUISITES»

13.1 List of documents to be provided in this envelope

- Participation application per the form contained in APPENDIX XVIII.
- As required in SECTION S of the Schedule of these Terms and Conditions, documentation concerning the objective solvency criteria for choosing the candidates that will be invited to tender.
- European Single Procurement Document (ESPD) of the economic operator, duly completed. It shall be filled out via the address <https://visor.registrodelicitadores.gob.es/home> and the xml file published in the contractor profile.

Further ESPDs shall be submitted as required, pursuant to the provisions of Clause 13.3.

- Provisional guarantee, if required under the provisions of **SECTION G** of the Schedule of these Terms and Conditions. In the event that SECTION R of the Schedule of these Terms and Conditions establishes that the means of processing are “electronic”, besides providing a copy of the provisional guarantee electronically, the original should be delivered to the following address: Att. Servicios Jurídicos. Ente Vasco de la Energía. Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao.
- Declaration of commitment to assign material and/or human resources, as per the schedule in **APPENDIX III**, where appropriate.
- Designation as confidential of information provided by the economic operator, as per the document model provided in **APPENDIX VII**.
- Undertaking to formally constitute a JV, as per the document model provided in **APPENDIX IX**.
- In the event that the economic operator foresees subcontracting part of the service in accordance with **SECTION M** of the Schedule of these Terms and Conditions, **APPENDIX IV** should be filled out.

Also, if the economic operator relies on the solvency of outside operators or persons, **APPENDIX XIV** should also be submitted.

- Statement on the economic operator’s commitments in relation to the workers conducting the activity defined as the object of this contract, as per the document model provided in **APPENDIX X**.

In the event that the contractor engages third parties to partially fulfil the contract, it should in turn submit the statement on the commitments assumed by the subcontractor regarding workers who carry out the activity that is the object of the contract, using the form supplied in **APPENDIX X**.

- In the event of several economic operators belonging to the same business group, in accordance with Article 42.1 of the Commercial Code, submitting a tender, **APPENDIX XI** shall be completed.
- In the event of the existence of lots, in accordance with **SECTION A** of the Schedule of these Terms and Conditions, **APPENDIX XII** shall be completed to indicate the lot or lots for which the tender has been submitted and, in the event that **SECTION R** of the Schedule of these

Terms and Conditions provides for the submission of requests to participate and tenders with multiple lots, the combination of lots for which the tender with multiple lots has been submitted.

- In the event that **SECTION R** of the Schedule of these Terms and Conditions stipulates that the means of processing are “non-electronic”, **APPENDIX VIII** shall be completed. On an exceptional basis, tenderers with corporate or personal tax ID numbers not of Spanish nationality must fill out and submit **APPENDIX VIII**.
- If it has been indicated in **SECTION J** of the Schedule of these Terms and Conditions that performance of the contract will require the processing and/or cession of personal data to the contractor, then **APPENDIX XV** should be completed.
- In the case of economic operators of the Community or States signatories to the Agreement on the European Economic Area, and if the contract is to be performed in Spain, said operators shall attach a declaration of submission to the jurisdiction of the courts and tribunals of Spain of any kind, for all incidents that may arise directly or indirectly from the contract, expressly waiving, where appropriate, any other foreign jurisdiction that may correspond to them.
- If several non-EU economic operators are involved, said operators shall submit the report regulated under Article 68.1 of the PSPA. Furthermore, if the contract is to be performed in Spain, said operators shall attach a declaration of submission to the jurisdiction of the courts and tribunals of Spain of any kind, for all incidents that may arise directly or indirectly from the contract, expressly waiving, where appropriate, any other foreign jurisdiction that may correspond to them.

13.2 Accumulation of solvency in the case of JVs. To determine the economic and financial standing and the technical or professional ability of the JV, the characteristics of each of the economic operators shall be aggregated. If, in accordance with **SECTION S** of the Schedule of these Terms and Conditions, it is possible to replace the solvency specified in said Section with the contractor classification indicated in **SECTION S**, and all the economic operators participating in the JV have a classification, the individual contractor classifications shall be aggregated to determine an overall classification, as specified in **SECTION S** of the Schedule of these Terms and Conditions.

However, if not all the economic operators have a classification, the JV shall be understood to comply with the required solvency requirements if and when, having aggregated the characteristics of each and every member of the JV, the JV is seen to comply with one or both of the following requirements:

- The solvency requirements specified in **SECTION S** of the Schedule of these Terms and Conditions.
- Group, sub-group and category specified in **SECTION S** of the Schedule of these Terms and Conditions.

13.3 Specific rules with regard to the European Single Procurement Document (ESPD)

- When the contract is divided into lots and the selection criteria, i.e. the means of proving standing and ability, vary from lot to lot, an ESPD shall be submitted for each of the lots. However, if the means of proving standing and ability are the same for all the lots and what varies are the requirements depending on the number of lots for which the economic operator submits a tender, one single ESPD shall be completed for all of them.
- Subcontractors. If so indicated in **SECTION M** of the Schedule of these Terms and Conditions, the economic operators shall complete Section D of Part II of the ESPD, providing the

following information:

- The part(s) of the contract they intend to subcontract
- The percentage of that part, and of each and every part, they intend to subcontract
- The name of the subcontractor(s) and their business profile, with reference to their conditions of professional and technical ability.

If so indicated in **SECTION M** of the Schedule of these Terms and Conditions, the economic operators shall, in addition to the information specified in the previous clause, attach the ESPD (with sections A and B of Parts II and III duly completed) of the person to be subcontracted or, if several persons are to be subcontracted, the ESPD of each and every person to be subcontracted, duly signed.

- Integration of solvency with external resources. When the economic operator uses the solvency and resources of another/other person(s) or operator(s), they shall, together with their own ESPD, duly complete and submit **APPENDIX XIV** together with the ESPD of each of the persons or operators whose solvency and/or resources they are using (an ESPD for each and every person or operator), duly signed, and with Sections A and B of Parts II and III (and, where appropriate, Part IV) duly completed.
- JV. Where several economic operators wish to participate in a joint venture, a separate ESPD, containing the information required in Parts II to IV, shall be submitted for each participating economic operator.
- Classification. If solvency is to be superseded by classification, as specified in **SECTION S** of the Schedule of these Terms and Conditions, the corresponding group(s), sub-group(s) and category(ies) shall be specified in Section A of Part II of the ESPD, so that the members of the Contracting Committee may have ex officio access to the certificate containing that classification.

IV. OPENING AND EVALUATION OF TENDERS

14. REASONS FOR REJECTION OF TENDERS AND REQUEST FOR CLARIFICATIONS

- The Contracting Committee shall agree to reject those tenders which:
 - a) are submitted with one or more documents in the wrong envelope, thereby compromising the secrecy of the tender;
 - b) are submitted with contradictions, omissions, mistakes or deletions which hinder full and assured understanding of its content;
 - c) do not correspond to the documents examined and accepted;
 - d) exceed the basic tender budget or maximum unit prices;
 - e) are substantially different from the model of economic tender included in these Terms and Conditions;
 - f) contain a manifest error in the amount of the tender;
 - g) suffer from an error or inconsistency that makes them unfeasible to be recognized by the tenderer;
 - h) do not comply with the conditions and requirements set out in the SATAC and/or the TESP;
 - i) are virus-infected and therefore cannot be read or seen;
 - j) are submitted after the deadline specified in the call for tender and/or after the deadline specified in these Terms and Conditions; and
 - l) are submitted without the required external markings on the envelopes (A, B, C), or, in the case of envelopes B and C, submitted without being sealed.
- The Contracting Committee shall have the right, at any time prior to the formulation of the award proposal, to seek any clarification required to understand the tenders. Under no circumstances shall it be permitted for tenderers to change the terms of their tender in the course of a request for clarification.
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15. ENVELOPE A - OPENING AND EVALUATION OF SUPPORTING DOCUMENTATION OF COMPLIANCE WITH PREREQUISITES

- Once the deadline for submission of requests to participate and tenders has expired, the Contracting Committee shall meet to examine the documents submitted in Envelope A in due time and form.

If the Contracting Committee concludes that the documentation examined is correct and sufficient to prove compliance with the requirements, it shall agree to admit all tenderers to the procedure.

If the Contracting Committee observes correctable defects or omissions in the documentation examined, it shall agree to grant the tenderers that have submitted or omitted that documentation a period of three (3) working days to provide corrected documentation.

Once that period has elapsed, the Contracting Committee shall proceed to examine the documentation provided in that rectification phase and shall agree on the admission or exclusion of the tenderers. If it agrees to exclude a tenderer, the agreement shall include the reasons for the exclusion.

- The list of admitted and excluded tenderers shall be published in the contractor's profile, indicating, in the case of excluded tenderers, the reasons for the exclusion.
- Once the personality and solvency of the applicants has been proven by the contracting authority, it shall select those that will pass on to the next phase, inviting them simultaneously via the corresponding channel, as established in the clause on "Means of Processing" of SECTION R of the Schedule of these Terms and Conditions, to present bids in the appropriate timeframe, as indicated in Article 164 PSPA.

16. ENVELOPE B - OPENING AND EVALUATION OF THE PART OF THE TENDER USING CRITERIA WEIGHTED BY A VALUE JUDGMENT

16.1 Public opening. The Contracting Committee, in a public session, shall give notice of the admission or exclusion of tenderers and shall then proceed to open the B envelopes submitted by the admitted tenderers.

16.2 General course of action: evaluation by the Contracting Committee

The Contracting Committee may decide to send the documentation to the service promoting the contract to verify that there is nothing in the tenders which contravenes the specifications set out in the TESP, to evaluate them and to draw up the resulting report.

If, in the course of conducting the evaluation, the service promoting the contract verifies that a tender contravenes the specifications or includes documents or data to be provided in another envelope, it shall state this circumstance in the report. Once the report has been drawn up, it shall be sent to the Contracting Committee together with the documents making up the tenders.

17. ENVELOPE C - OPENING AND EVALUATION OF THE PART OF THE TENDER EVALUABLE USING MATHEMATICAL FORMULAS

17.1 Actions to be taken prior to opening the envelopes

Criteria requiring a value judgement are used. Before opening the C envelopes, the Contracting Committee shall:

Prior to the start of the public session:

- examine the evaluation report issued by the service promoting the contract and evaluate and assign scores to the tenders; and
- as provided for under the provisions of Clause 14 above, take the decision to reject certain tenders.

In the public session itself:

- inform those attending of the scores given to each tender and, where appropriate, of the tenders rejected and the reasons behind their exclusion.

Criteria requiring a value judgments shall not be used. Prior to the opening of the envelopes, the Contracting Committee shall give notice of the admission or exclusion of tenderers.

17.2 Opening of envelopes and reading of tenders

The Contracting Committee, having completed the actions detailed above, shall open in public session the C envelopes submitted by the tenderers whose tenders have not been rejected, and shall proceed to read the tenders.

18. EVALUATION OF TENDERS AND TIE-BREAK CRITERIA

18.1 Evaluation of tenders

Subsequently, and in as many sessions as may be required, the Contracting Committee shall:

- Check if the tenders incur in any of the grounds for rejection specified in the SATAC and take, if appropriate, the subsequent decision to reject them; and

- Check whether the tenders admitted exceed the limits established, if any, in **SECTION C** of the Schedule of these Terms and Conditions and, if so, take the actions provided for in Article 149.4 of the PSPA. The Contracting Committee shall determine the period for the hearing taking into account the characteristics of the tenders, which may not be less than three (3) or more than ten (10) working days.

At the end of this procedure, the Contracting Committee shall propose to the contracting authority the admission or rejection of the tender(s) it considers cannot be complied with.

- Calculate the scores of the different tenders and determine which is the best by adding up the points obtained by each one in each of the award criteria. In making this calculation, it shall not take into consideration the tender(s) it has proposed for exclusion.

In the event that two or more tenders obtain the same score, the Contracting Committee shall require the tenderers that have submitted such tenders to provide, within a maximum period of ten (10) working days, the documents accrediting compliance with the specific tie-break criteria, if any, specified under **SECTION U** of the Schedule of these Terms and Conditions. In the event that no specific criteria have been specified under **SECTION U** of the Schedule of these Terms and Conditions, the tie-break criteria detailed in Clause 18.2 below shall apply.

18.2 Tie-break criteria

In the absence of provisions in **SECTION U** of the Schedule of these Terms and Conditions, a tie between several tenders after application of the award criteria of the contract shall be resolved by the application, in order, of the following social criteria, on expiry of the tender submission deadline:

- a) A higher percentage of workers with a disability, or in a situation of social exclusion, in the workforce of each of the tenderers, giving priority, in the case of a tie, to the number of permanent workers with a disability in the workforce or the highest number of employees working in social integration in the workforce.
- b) A lower percentage of temporary contracts in the workforce of each of the tenderers.
- c) A higher percentage of women employed in the workforce of each of the tenderers.
- d) A draw, in the event that the application of the above criteria does not succeed in breaking the tie.

To apply these criteria, tenderers shall provide evidence of them, where appropriate, by means of the corresponding employment contracts and Social Security contribution documents and any other document admitted by law that accredits the aforementioned social criteria.

19. NEGOTIATION OF THE CONTRACT TERMS

The contracting authority, through its technical services, shall negotiate with the tenderers the initial bids and all ulterior bids they have submitted to improve their content and adjust them to the requirements indicated in these terms and conditions, in the tender announcement, where appropriate, and in the eventual supplementary documents, with a view to identifying the best tender by applying the award criteria established in **SECTION T** of the Schedule of these Terms and Conditions.

The minimum requirements of the service that is the object of the contract, and the established award criteria, are non-negotiable.

SECTION R of the Schedule of these Terms and Conditions establishes the technical and financial aspects that will be the object of negotiation with the tenderers. **APPENDIX XVII** details how the negotiation of the contract terms will be conducted.

When so specified in SECTION R of the Schedule of these Terms and Conditions, the contracting authority can arrange the negotiated procedure in successive phases, to thereby gradually reduce the number of tenders to negotiate by applying the award criteria indicated in the terms and conditions. The phases in which the criteria will be applied and the minimum point thresholds that the tenderers must obtain to continue in the procedure are indicated in SECTION S of the Schedule of these Terms and Conditions. The number of solutions that reach the final phase should be sufficiently broad to ensure effective competition, as long as a sufficient number of adequate solutions have been presented.

This negotiation phase shall especially ensure that all tenderers are treated equally and safeguard the principle of confidentiality. To that end, information that might give certain tenderers advantages over others cannot be provided in a discriminatory manner.

During the course of the procedure the technical services of the contracting authority shall comply with their confidentiality obligation per the terms established in the PSPA, whereby they shall not reveal to the other participants the information designated as confidential communicated to them by a candidate or tenderer without the prior consent of same. That consent cannot be of general nature but must rather specify what information is referred to.

Also, if as a consequence of the negotiation the technical specifications or other contractual documentation (other than those establishing minimum requirements) are modified, it will be necessary to inform through the corresponding channel all the tenderers whose tenders were not excluded and they will be given sufficient time to submit a new revised tender.

The file must contain a record of the invitations sent out, the tenders received, the reasons for their acceptance or rejection and the advantages obtained in the negotiation.

When the contracting authority decides to conclude the negotiations, it shall inform all the tenderers and shall ask them to submit, through the corresponding channel, their definitive tender, which should correspond to the result of the negotiation undertaken, by the common deadline set out in the communication.

In the case of a negotiated procedure with publication, the Contracting Committee shall next verify that the definitive tenders meet the minimum requirements and that they comply with all the requirements established in the terms and conditions. It shall also appraise and classify them per the award criteria indicated in these terms and conditions, for which purpose it may gather the technical reports it deems necessary. Finally, it shall, when appropriate, forward the corresponding best tender proposal to the contracting authority, which does not create rights in favor of the proposed tenderer.

In the case of a negotiated procedure without publication, the negotiating technical service shall appraise and classify the definitive tenders per the award criteria indicated in these terms and conditions and shall finally, when appropriate, forward the corresponding best tender proposal to the contracting authority, which does not create rights in favor of the proposed tenderer.

V. AWARD AND FORMALIZATION OF CONTRACT

20. AWARD PROPOSAL

The Contracting Committee shall rank the tenders in descending order of score and, on the basis of that ranking, shall submit the corresponding award proposal to the contracting authority.

The contracting authority may:

- (i) accept the proposal of the Contracting Committee;
- (ii) take the decision not to award the contract for reasons duly justified in the file; or
- (iii) discontinue the award proceedings in the event of an irremediable breach of the rules governing the preparation of the contract or the rules governing the award procedure.

21. SUBMISSION OF DOCUMENTATION PRIOR TO THE AWARD

21.1 Once the award proposal has been accepted by the contracting authority, the tenderer who has submitted the best offer shall be required to submit the following documents within ten (10) working days from the day following that on which the corresponding request is received:

- (i) If the tenderer is registered in the Register of Tenderers and Classified Companies of the Autonomous Community of the Basque Country, or in the Official Register of Contractors and Classified Companies of the Public Sector, they shall submit:
 - a copy of the corresponding accreditation certificate, accompanied by a statement of responsibility verifying the validity and effect of the data provided to the Register; and
 - documents c), d), e), f), g), j), k), l), m), n), o) y p) listed in sub-section (ii) immediately below, together and in line with the conditions specified in that sub-section.
- (ii) If the tenderer is not registered in the above-mentioned Registers, they shall submit the following documents:
 - a) To demonstrate their capacity to act:
 1. Spanish tenderers that are legal persons shall demonstrate their capacity to act by means of a deed or document of incorporation, articles of association or founding act, which shall contain the rules regulating their activity, duly registered, where appropriate, in the corresponding public Register, depending on the type of legal person in question.
 2. Non-Spanish tenderers who are nationals of Member States of the European Union or States signatories to the Agreement on the European Economic Area shall demonstrate their capacity to act in accordance with the provisions of Article 84.2 of the PSPA.
 3. All other foreign tenderers shall demonstrate their capacity to act in accordance with the provisions of article 84.3 of the PSPA.
 - b) Power of attorney. When the person signing the tender is not acting in his or her own name, or when the tenderer is a company or legal person or entity, the person signing the tender shall submit sufficient power of attorney to that effect. If the tenderer is a legal person or entity, this power of attorney shall be duly registered in the relevant public register if, in accordance with the applicable regulations for the type of legal person in question, its registration is compulsory.
 - c) Public deed of constitution of the joint venture when the companies awarded the contract have been grouped together in a joint venture.

- d) Solvency: where, in accordance with **SECTION S** of the Schedule of these Terms and Conditions, minimum solvency requirements are mandatory, the tenderer shall submit the documentation specified in **SECTION S** of the Schedule of these Terms and Conditions for accreditation, unless such requirements have been superseded by classification.
- e) Business and/or professional qualification: when **SECTION S** of the Schedule of these Terms and Conditions specifies that qualification shall have been obtained by the tender submission deadline.
- f) Availability of material and/or human resources which, where appropriate, the tenderer has committed itself to assigning to the performance of the contract: documentation specified in **SECTION K** of the Schedule of these Terms and Conditions (**APPENDIX III**).
- g) Availability of the solvency and resources of other persons or entities throughout the term of the contract. If the tenderer has had recourse to the solvency and resources of other persons or entities, it shall complete and submit the schedule "Commitment to the availability of solvency and resources of other persons or entities" provided in **APPENDIX XIV**.
- h) Eligibility for participating in public procurement contracts. Documentation providing evidence of no prohibition from participating in public procurement contracts, in accordance with the provisions of Article 85 of the PSPA (**APPENDIX XIII**).

In the event that the contractor engages partial performance of the contract with third parties, it must in turn submit documentation accrediting that the subcontractor is not prohibited from participating in public procurement procedures, in accordance with the provisions of Article 85 of the PSPA (**APPENDIX XIII**).

- i) Be up to date with tax and Social Security obligations. Certified evidence of being up to date with tax obligations to contract with the public sector and of being up to date with Social Security obligations to contract with the public sector. In the event that the tenderer is required to pay tax in several territories, it shall provide certificates issued by each and every one of the competent authorities.

In the event that the contractor engages partial performance of the contract with third parties, it must in turn submit, regarding the subcontractors and in the same terms, certificates of being up to date with their tax obligations to contract with the public sector and a certificate of being up to date with their Social Security obligations to contract with the public sector.

- j) Guarantee. Proof of having constituted the definitive guarantee (unless not required under **SECTION G** of the Schedule of these Terms and Conditions) and, where applicable, the complementary guarantee. In the case that **SECTION R** of the Schedule of these Terms and Conditions establishes that the means of processing are "electronic", besides providing a copy of the definitive guarantee by electronic means, the original must be delivered to the following address: Att. Servicios Jurídicos. Ente Vasco de la Energía. Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao.
- k) In the case that **SECTION R** of the Schedule of these Terms and Conditions establishes that the means of processing are "electronic", besides providing a copy of the definitive guarantee by electronic means, the original must be delivered to the following address: Att. Servicios Jurídicos. Ente Vasco de la Energía. Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao.

- l) The policies of the insurance contracts specifically required, where applicable, under **SECTION H** of the Schedule of these Terms and Conditions, which shall include as insured persons the contractor, subcontractors and the awarding authority indicated in **SECTION B** of the Schedule of these Terms and Conditions. The corresponding proof/s of payment of premium shall also be provided.
- m) Subcontracting. **APPENDIX IV**, if so required under the provisions of Clause 34.
- n) Any additional documentation required, where appropriate, under **SECTION Y** of the Schedule of these Terms and Conditions.
- o) Advertising costs. If specified under **SECTION F** of the Schedule of these Terms and Conditions, proof of payment of corresponding advertising costs.
- p) Reserved contracts. If, in line with the provisions of **SECTION R** in the Schedule of these Terms and Conditions, the contract is reserved, the tenderer shall provide documentary proof of compliance with the conditions required for the contract to be reserved.
- q) The originals that, if applicable, may be required from among those previously submitted through simple copy. The corresponding certificates may be issued by electronic, computer or telematic means.

21.2 If remediable omissions or defects are observed in the documentation provided, the granting of a period of three (3) days shall be agreed in order to provide the documentation needed to rectify the detected omission or defect. In the event that the tenderer fails to comply adequately with the requirement within the period specified, it shall be understood that the tenderer has withdrawn their tender. In this case, the following actions shall be taken:

- the tenderer shall be required as a penalty to pay 3% of the basic tender budget (net of VAT), first against the provisional guarantee, if it has been constituted, without prejudice to the provisions of letter a) of Article 71.2 of the PSPA.
- the same documentation shall be obtained from the next tenderer, in the order in which their tenders have been ranked.

22. AWARD OF THE CONTRACT AND NOTIFICATION OF AWARD

22.1 The contracting authority shall award the contract within five (5) working days of receipt of the documentation submitted by the successful tenderer.

22.2 The decision of the award shall be notified to the tenderers together with, where appropriate, the evaluation report of the parts of the tender for the evaluation of which criteria have been used that require a value judgment, and the analysis report of the justification of those tenders considered abnormally low, which shall be published in the contractor's profile within fifteen (15) days.

22.3 If, as a consequence of the content of the resolution of a special appeal under Article 44 of the PSPA, it should be necessary for the contracting authority to agree to award the contract to another tenderer, the latter shall be granted a period of ten (10) working days to provide the documentation specified in the previous clause.

23. FORMALIZATION OF CONTRACT

- The contract shall be formalized in the terms and conditions established under Article 153 of the PSPA:

- If the contract is subject to special appeal on contracting, in accordance with that specified in **SECTION Z** of the Schedule of these Terms and Conditions, the contract may not be formalized before fifteen (15) working days have elapsed following notification of the award to the tenderers and candidates.
- In all other cases, the contract shall be formalized no later than fifteen (15) working days following notification of the award to the tenderers and candidates.
- The formalization shall be published in the contracting party's profile together with the corresponding contract within a period of no more than fifteen (15) days after the contract comes into force. Likewise, when the contract is subject to harmonized regulation, the notice of formalization shall be sent for publication in the Official Journal of the European Union no later than ten (10) days following formalization.
- In the event that it is not possible to formalize the contract within the time limits established by law for reasons attributable to the successful tenderer, the following actions shall be taken:
 - the tenderer shall be required as a penalty to pay 3% of the basic tender budget (net of VAT), first against the provisional guarantee, if it has been constituted, without prejudice to the provisions of letter a) of Article 71.2 of the PSPA.
 - The contract shall be awarded to the next tenderer in the order in which the tenders have been ranked, upon request and submission of the documentation referred to in Clause 21.1.
- In the event that the provisions of **SECTION G** of the Schedule of these Terms and Conditions require a provisional guarantee, after the formalization of the contract, said guarantee shall automatically become void and be immediately returned to all tenderers who have not become contractors. The same procedure used for the submission of the guarantee shall be used to return it.

VI. PERFORMANCE OF THE CONTRACT

24. SETTING OUT. SAFETY AND HEALTH. PERSON RESPONSIBLE FOR THE CONTRACT. SITE MANAGEMENT. PROJECT SUPERVISOR.

24.1. Checking the setting out of the site: if in the framework of this contract it is necessary to execute works, the verification of the setting out shall be done in accordance with the provisions of Article 237 of the PSPA and 139 of the GRPAPA.

The verification of the setting out shall be conducted by the person responsible for the contract, the site management and the contractor, whose presence may be substituted by its project supervisor. The person responsible for the contract shall notify the contractor to attend the act of verifying the setting out on the date indicated in the notice.

As indicated in Article 237 of the PSPA, after verifying the setting out a record shall be drawn up with the content and effects set out in article 140 of the GRPAPA.

24.2 Occupational safety and health plan: if in the framework of this contract it is necessary to execute works, the respective work cannot begin without prior approval of the occupational safety and health plan (hereinafter “the Plan”) referred to in Art. 7 of RD 1627/1997.

By the deadline indicated in **SECTION E** of the Schedule of these Terms and Conditions, counting from the formalization of the contract or, where appropriate, from reception of the resolution authorizing the work to begin, the contractor shall present the Plan to the contracting authority for its approval along with the report from the coordinator of occupational health and safety or, if the latter is not necessary, from the site management.

Non-compliance with the deadline for submitting the Plan that is the fault of the contractor and consequently the impossibility of its approval shall not prevent the verification of the setting out or, where appropriate, the authorization to begin work, although they cannot effectively begin without approval of the Plan. In such case, the contract period shall begin when the record of verification of the setting out or the authorization to begin work, in which the aforementioned points are recorded, have been signed.

In this case, the contractor will not be able to request extension of the execution deadline.

The contractor should gather in the Plan all the measures and elements needed to fulfil what is stipulated by currently applicable legislation, good construction standards and the specifications and requirements set out in the terms and conditions and in the health and safety study.

24.3 Person responsible for the contract

Without prejudice to the functions of monitoring and ordinary performance of the contract by the contracting authority, supervision and inspection of the works correspond to the person responsible for the contract, who shall perform the following functions:

- a) Propose to the contracting authority the approval of the works schedule which, if at all, is set out in **SECTION P** of the Schedule of these Terms and Conditions.
- b) Issue, in writing, the necessary instructions to ensure the correct delivery of the service.
- c) Approve, where appropriate, the certification/s of services.
- d) Those indicated in Clause 36.1 in relation to the verification of the correct provision of the service and its reception.
- e) Supervise and verify the contractor's compliance with the obligations assumed under the contract, inform the contracting authority of any breaches and, where appropriate, propose the termination of the contract or the imposition of penalties.
- f) Authorize changes in the human and material resources required to be assigned to the performance of the contract, in accordance with **SECTION K** of the Schedule of these Terms and Conditions.

- g) Propose the necessary amendments.
- h) Request from the contractor data relative to the working conditions of the workers assigned to the performance of the contract.
- i) Request additional documentation from the contractor to prove that, during the entire term of the contract, it has the solvency and/or resources of third parties, the solvency and/or resources which it stated it had and/or could call on in order to participate in the contract award procedure.
- j) Verify that the contractor complies with its obligation to pay subcontractors and/or suppliers in accordance with the provisions of Clause 34.2.
- k) Issue a report determining, in the event of a delay in performance, whether the delay is attributable to the contractor.
- l) Issue the reports specified in Clause 35.1 regarding contract assignment and change in the composition of the JV.
- m) Require the contractor to provide certified documentary proof that it has returned all the supports or destroyed or erased all the files containing personal data once the performance of the contract has been completed.

In the event of a change in the selection of the person assigned as responsible for the contract, as specified in **SECTION B** of the Schedule of these Terms and Conditions, the contractor shall immediately be notified in writing.

24.4 Site management: if the execution of works is necessary under this contract, besides the functions assumed by the person in charge of the contract, the contracting authority shall direct, inspect, verify and ensure correct performance of the work through the site management designated for that purpose, which shall act as its representative in the work and provide assistance to the person in charge of the contract.

In the event of a change in the designation of the site management indicated in **SECTION B** of the Schedule of these Terms and Conditions, the contractor shall immediately be informed of this in writing.

24.5 Site supervisor: if the execution of works is necessary under this contract, the contractor may or, if it is a legal person, should designate a site supervisor with sufficient powers of representation to act on its behalf before the contracting authority to ensure smooth and proper progress of the work.

The supervisor should organize the work so that it is correctly developed and completed, should propose and collaborate on resolving problems that arise during its implementation and should interpret and put into practice the orders received by the site management and/or the person responsible for the contract.

The contractor shall designate the supervisor and inform the contracting authority of that appointment for its approval. Along with the name of the person designated as supervisor it shall provide the document accrediting the respective experience in projects of equal or similar nature to those that are the object of the contract, as well as the respective address for notification purposes.

The contracting authority shall inform the contractor in writing within a maximum of three (3) working days of the acceptance or rejection of the person proposed as supervisor, as well as, where appropriate, of the management team personnel. Regarding the latter, the contractor should designate another person as delegate or management personnel within the period granted for respective acceptance by the contracting authority.

During the execution of the work the contracting authority may at any time demand that the supervisor and, when appropriate, any of the dependent management personnel, be replaced, or authorize such replacement upon request from the contractor, when so justified during the course of the work.

Ignorance of any of the terms of the agreement, of the attached documents forming a part thereof or of the instructions, terms and conditions or rules of any kind approved by the contracting authority shall not release the contractor from its obligation to comply with them.

25. SERVICE DELIVERY

25.1 Subject to contractual documents and instructions. The services shall be delivered strictly subject to the provisions of the contract documents, the contractor's tender and any instructions issued in writing by the person responsible for the contract and/or the site management (in the latter case if the execution of works is necessary under this contract) for its performance or interpretation.

25.2 Risk. The performance of the contract shall be at the risk of the contractor. The contractor shall be responsible for the correct application of the contract and the risks of loss, both material and involving personnel and third parties, during the performance of the work. The performance by the contractor of any work which is not defined in the contract, or which has not been previously authorized by the contracting authority or the person responsible for the contract, shall not be remunerated.

25.3 Works schedule. If required under the provisions of **SECTION K** of the Schedule of these Terms and Conditions, the contractor shall deliver to the person responsible for the contract, within seven (7) working days from the day following the formalization of the contract, a works schedule that includes the data and information specified in the corresponding clause of the TESP. The works schedule, which shall conform to the terms established in the SATAC and, if applicable, in the tender, shall be approved by the contracting manager within fifteen (15) working days.

25.4 Authorizations. The contractor shall be responsible for obtaining all the authorizations and licenses, both public and private, required for the performance of the service and the payment of the expenses generated.

25.5 Insurance. The contractor is responsible for taking out compulsory insurance and for maintaining those insurance policies specified in **SECTION H** of the Schedule of these Terms and Conditions.

25.6 Collaboration. The contractor shall provide the contracting authority, at no additional cost, with all professional services required for the proper performance and fulfilment of the object of the contract, such as attendance at explanatory and public information meetings, as well as free access for the person responsible for the contract to the places where the service is provided.

25.7 Contractor's liability. The contractor is responsible for the technical quality of the work it performs and the services it provides, as well as for the consequences, for the contracting authority or third parties, of omissions, errors, inadequate methods or incorrect conclusions in the performance of the contract.

In the event that it is necessary to execute works under this contract:

- The fact that the contracting authority's representatives have examined or recognized during the respective construction the parts and units of the work or the materials used shall not exempt it or give it any rights, even if they have been included in the partial certifications and measurements, except in the cases provided for in Article 196.2 of the PSPA.
- When the guarantee period has ended, within fifteen (15) days after the reception the contractor shall be liable for any damage derived from hidden construction defects that could not be detected during the performance and guarantee periods and which result from the contractor's noncompliance with the contract, in accordance with Article 244 PSPA.

- The demolition and reconstruction of defective or badly executed work and respective expenses shall be as established in current legislation.
- The contractor must indemnify all damages caused to third parties as a result of operations required for performance of the contract, except in the cases provided for in Article 196.2 of the PSPA.
- **Construction office:** Before beginning the work, and with prior agreement of the person responsible for the contract and the site management, the contractor must install (and maintain during performance of the contract) a construction office at the place it deems most appropriate near the site where the work will be performed. Its size should be adequate for the volume of work and the respective deadline and it should have appropriate conditions. The contractor must preserve therein a copy of all documents concerning the work which are of contractual nature, as well as the original officially authenticated books required by current regulations. The contractor cannot transfer or change the location of the office without prior written authorization.
- **Books: Orders and Attendance Book:** the contractor must preserve this book which at all times should be kept at the site and at the disposal of the person responsible for the contract and the site management. It shall record of the visits, orders, instructions and communications occurring during the work. The contractor shall be obligated to sign by itself or through its supervisor the timely notification of receipt of such instructions, and to transcribe any orders or instructions received in writing from the person responsible for the contract and the site management, without prejudicing the need for conformity of those transcriptions by the person responsible for the contract and the site management by means of their signature.

In the document confirming reception the contractor must submit the Orders and Attendance Book duly filled out, which will be delivered to the contracting authority when the reception is completed.

Book of Health and Safety Incidents: if the work is included in the applicable scope of Royal Decree 1627/1997 of 24 October, establishing minimum health and safety provisions in construction projects (hereinafter “RD 1627/1997”), the contractor should keep this book at the worksite, note any irregularities associated to control and monitoring of the health and safety plan and comply with all other obligations set out in Articles 13 and 14 of that Royal Decree.

Subcontracting book: if the work is included in the applicable scope of Law 32/2006 of 18 October, regulating subcontracting in the construction sector, the contractor must maintain this book, which should at all times be kept at the worksite until the work is fully completed.

It should indicate in chronological order since the work began and prior to its commencement, each and every one of the subcontracts engaged with subcontracted companies and self-employed workers.

- **Signage and project sign:** the contractor must install at its expense the signage needed to indicate the access to the site, circulation in the area where work is performed and possible danger points due to the ongoing work, both in that area and respective boundaries and nearby. It must also comply with orders regarding the installation of additional signs or the modification of signs already installed. Likewise, from the beginning of the work the contractor shall include among the respective signage signs identifying the project with the characteristics set, when appropriate, by the contracting authority and which meet the requirements indicated for that purpose in the clause corresponding to special performance conditions regarding language.

- **Testing and analysis:** without prejudicing the tests and analyses envisaged in the TESP, the person responsible for the contract and the site management can order that tests and analyses of materials and units of work be conducted and that the specific reports deemed pertinent in each case are produced. The respective costs shall be borne by the contractor if so indicated in the Schedule of these Terms and Conditions. However, if Decree 209/2014 of 28 October, regulating construction quality control, is applicable to the project, then the contracting of a laboratory or laboratories to carry out the tests and analyses set out in the quality control program and, where appropriate, the modifications introduced in that program during performance of the work, shall be the responsibility of the contracting authority.

In this case the contractor must provide for the means for control and make provision for the system to collect and deliver control documentation. It shall designate the person in charge of providing in a coordinated manner the samplings to other agents, in accordance with the quality control plan and pertinent current regulations. The person responsible for the contract and the site management shall be informed of all of this. The costs derived from the personal and material resources indicated in this paragraph shall be borne by the contractor.

In any case, the costs derived from controls that must be carried out due to defects in work quality and/or performance shall be borne entirely by the contractor, with no limitation whatsoever.

- **Preservation and vigilance:** Besides performing the construction work, the contractor is also obliged to maintain it. Until the respective reception, the contractor is responsible for securing the site and the assets located therein.

25.8 Indemnification in contracts for the preparation of works projects. In those cases where the budget for the performance of the work foreseen in the project deviates by more than 20%, either in terms of shortfall or excess, from its real cost as a result of errors or omissions attributable to the consulting contractor, the latter shall indemnify the awarding authority in accordance with the scale provided for in Article 315 of the PSPA.

25.9 Environmental responsibilities

The contractor shall ensure that their operations, and/or those of their subcontractors, have no negative impact on the natural environment or on any animal or plant life, and shall take all necessary steps to nullify or minimize any incidents which may arise in the course of such operations.

The contractor shall perform the work in compliance with all laws, regulations and recommendations issued by the competent environmental authorities, and shall strictly observe any additional rules that the contracting party may establish, being solely responsible for non-compliance.

26. RESOURCES USED TO PERFORM THE CONTRACT

26.1 Commitment to assign material and/or human resources. The contractor is obliged to assign to the performance of the contract the resources indicated, where applicable, in the schedule of commitment to assign resources (**APPENDIX III**), as well as those required to perform the contract, in accordance with the conditions and deadlines stipulated in the contractual documents.

The material resources indicated may only be replaced after notifying the person in charge of the contract, so that that person can verify, through the documents provided that accredit it, that the proposed resource meets the requirements and issue the respective authorization within seven (7) working days.

If the person responsible for the contract concludes that the resources do not meet the requirements, that person shall inform the contractor in writing, indicating the reasons for their decision. The contractor may then propose other resources.

The human resources specified may only be replaced in accordance with the provisions of this clause. In any event, any subsequent inconvenience in adapting to the working environment as a consequence of the replacement shall be offset by periods of overlap between the person(s) being replaced and the person(s) being recruited, at no additional cost, for the time required.

Replacement shall be done according to the following procedure and conditions:

- a) Change requested by the contractor. If, due to justified causes, the contractor needs to replace certain resources, they shall inform the person responsible for the contract in writing fifteen (15) working days in advance - except in the event of temporary incapacity for work or death - and provide the following information:
 - details of the person to be replaced and the reason why they need to be replaced; and
 - a proposal for an eligible candidate to take his/her place, together with supporting documents.

The person responsible for the contract shall authorize the replacement within seven (7) working days. Alternatively, in the event that the candidate is considered not to meet the requirements, the person responsible for the contract shall inform the contractor in writing, stating the reasons for their decision. The contractor may then propose another candidate.

- b) Change requested by the contracting authority. If the contracting authority considers it necessary for the correct performance of the contract to effect a replacement, it shall notify the contractor in writing, indicating the reasons. The contractor shall, within fifteen (15) working days, then propose at least one qualified candidate, and provide the supporting documentation. The person responsible for the contract shall authorize the replacement within seven (7) working days. Alternatively, in the event that the candidate is considered not to meet the requirements, the person responsible for the contract shall inform the contractor in writing, stating the reasons for their decision. The contractor shall then propose a new candidate in accordance with the terms of the previous paragraph.

The same rules shall apply in relation to the resources provided to prove solvency in the event that the contractor has had recourse to the solvency and/or resources of other persons or entities in the tendering phase.

26.2 Specific rules regarding human resources. The human resources assigned to the provision of the service shall depend exclusively on the contractor, who shall retain the rights and obligations inherent to its status as an employer. To that end, the contractor assumes the following obligations:

- a) To select the personnel to be assigned for performance of the contract, without prejudice to the power of the awarding authority to verify compliance with the professional qualification requirements, if any, specified in the terms and conditions.
- b) To ensure personnel stability, and that any changes can be put down to specific circumstances and justified, so as not to alter the proper functioning of the service (when there are reasons justifying this requirement), informing the contracting authority at all times.
- c) To exercise, in a real, effective and continuous manner the power of management inherent to any employer over the employees assigned for performance of the contract. In particular, the contractor assumes the negotiation and payment of salaries, the granting of leave and holidays, substitutions in cases of absence, obligations in matters of Social Security, including, when appropriate, the payment of contributions and of benefits, obligations in matters of occupational risk prevention, the exercise of disciplinary authority, and any rights and obligations deriving from the contractual relationship between the employee and the employer.

d) To guarantee that the assigned personnel perform their activity without exceeding their functions in relation to the activity defined in these terms and conditions as the object of the contract.

e) To appoint at least one coordinator, belonging to its staff, to carry out the following tasks:

- To act as the contractor's interlocutor with the contracting authority, channeling communication between the contractor and the personnel assigned to the contract, on the one hand, and the contracting authority, on the other, in all matters relating to the performance of the contract.
- To distribute the work among the personnel and give them the necessary work orders and instructions for adequate provision of the service.
- To ensure personnel do their job correctly and to monitor attendance at work.
- To organize the system for holidays.

f) To inform the contracting authority of any variations, occasional or permanent, in the composition of the work team assigned for performance of the contract.

26.3 Information on working conditions. The contractor is obliged to provide the person responsible for the contract with the data and documents indicated in the paragraphs below, in accordance with the terms and conditions specified in each case:

a) The data relating to the working conditions of each of the workers assigned to the performance of the contract. This shall be submitted by e-mail, duly completing the statement of responsibility in **APPENDIX X** within seven (7) working days from the date of receipt of the corresponding request.

b) The documents requested by the person in charge of the contract to verify the data provided and compliance with the labor obligations taken on by the contractor in its capacity as employer. This shall be submitted by e-mail as a scanned copy within ten (10) working days from the date of receipt of the corresponding request.

The person responsible for the contract may request this information at any time during the period the contract is in force and especially for the purpose of the provisions of Article 130 of the PSPA.

26.4 Place of performance of the contract. The service shall be provided in premises or facilities other than those of the contracting authority itself. If this is not possible, in order to avoid personnel confusion, the contractor's workers, unless the specific circumstances do not allow it, shall not share spaces and workplaces with personnel working for the contracting authority. Furthermore, the workers and the contractor's resources shall be identified by corresponding distinctive signs such as uniforms or labelling.

26.5 Indemnity rule. If, as a result of the contractor's failure to comply with the obligations set out in this clause, the contracting authority is ordered to pay sums jointly and severally with the contractor, the amount paid shall be passed on to the contractor through the relevant legal actions.

26.6 Subrogation of personnel. If, in accordance with labor legislation, personnel are subrogated, when the contract is awarded to an economic operator other than the contractor that had been providing the service, the latter shall be responsible for the unpaid wages of the subrogated personnel, as well as for the social security contributions accrued, even if the contract is terminated. In no case shall this obligation be incumbent on the new contractor.

In this case, the awarding authority, once the non-payment of the aforementioned salaries has been accredited, shall proceed to withhold the amounts owed to the contractor to guarantee the payment of the aforementioned salaries, and not to return the definitive guarantee until evidence of payment of these salaries has been provided.

27. OBLIGATIONS RELATING TO EMPLOYMENT, SOCIAL SECURITY AND OCCUPATIONAL HEALTH AND SAFETY

- The contractor is obliged to comply with the provisions in force on labor law, Social Security and occupational health and safety, and in particular:
 - (i) When the services to be provided are subject to a workers' ordinance or collective agreement, the contractor is obliged to comply with the provisions of the corresponding workers ordinance or collective agreement.
 - (ii) The contractor shall take all necessary steps to ensure safety and hygiene at work to maximize the prevention of risks potentially affecting the life, integrity and health of workers.
 - (iii) The contractor shall also comply with the obligations relating to occupational risk prevention established by the regulations in force and, before commencing the contracted activity, shall provide proof of compliance with the following obligations:
 - a) to have adopted a form of preventive organization in accordance with the legislation in force;
 - b) to have integrated occupational risk prevention into the company's general management system through the implementation and application of an occupational risk prevention plan, in accordance with Article 2 of the Prevention Services Regulations, approved by RD 39/1997 of 17 January. This requirement shall be considered as proven through the existence of an occupational risk prevention management system based on the OHSAS 18001 Standard, the guidelines on Health and Safety systems of the ILO or another equivalent standard, provided that said system evaluates and accredits compliance with the required measures. Compliance with this obligation may also be attested by any other appropriate means of proof;
 - c) risk assessment and planning of the preventive activity corresponding to the contracted activity;
 - d) to have a written procedure regulating the method of consultation and participation provided for in Chapter V of Law 31/1995 on Occupational Risk Prevention or, as the case may be, the minutes of the meetings of the Health and Safety Committee;
 - e) to have a procedure regulating the control of compliance with the established safety measures, proceeding where appropriate to the adoption of disciplinary measures provided for in the Workers' Statute, collective agreement, etc., to guarantee the safety of all workers;
 - f) to have a list of jobs and/or activities that require the presence of preventive resources linked to risk assessment;
 - g) that all personnel involved in the performance of the contract, both those of the contractor and those of others, have received at the time of incorporation information on specific risks, protection measures and emergency measures, as well as the necessary training regarding the risks affecting their activity (Articles 18 and 19 of Law 31/1995), in accordance with the procedure of the occupational risk prevention plan. In particular, that relevant training has been given on the use of personal protective equipment;
 - h) to have proof of the provision of personal protective equipment, if necessary;
 - i) to have provided adequate canteen and rest facilities, hygienic facilities and changing rooms, taking into account the number of workers and the location of work areas; and

- j) to plan the development of work and personnel recruitment in such a way as to ensure that the rest days of the workers are respected and that the performance of overtime is exceptional.
- If the contractor subcontracts part of the performance of the contract, the contractor shall require the subcontractors to provide supporting documentation for the aforementioned obligations and to submit it to the contracting authority.
- In the event of an accident or injury of any kind occurring to workers during the performance of their work, the contractor shall comply with the provisions of the regulations in force under its responsibility, which shall in no way extend to the contracting authority.

28. SPECIAL CONDITIONS OF PERFORMANCE

Both the contractor and the subcontractors shall comply with these special conditions of performance, as well as those specified in **SECTION J** of the Schedule of these Terms and Conditions.

28.1 Language conditions

- In all relations between the contracting authority and the contractor, the Basque language shall normally be used. For the purposes of performance of the contract “Basque language normally” used is understood as:
 - a) In verbal communications, personnel with knowledge of Basque who are addressing the contracting authority in the functions of performance of the contract shall initially express themselves in this language. Should the contracting authority address in Basque personnel assigned to the performance of the contract who do not have sufficient knowledge of this language, the company in charge of performance shall immediately provide the resources or personnel with linguistic training in Basque necessary so that the relationship with the contracting authority arising from performance of the contract may be carried out in Basque.
 - b) Written communications shall be made in Basque and Spanish unless the issuer and receiver thereof chose to use Basque.
- When performance of the purpose of the contract includes the provision of services to the public or involves relations with third parties and the general public, the language used in all verbal and written notification between the contractor and users or people with whom it has to deal in the performance of the contract shall be that chosen in each case by the user or third party. When no option is expressly stated, notifications and communications of all types that the company in charge of performing the contract addresses to natural and legal persons shall be in the two official languages, including invoices and other traffic documents, without prejudice to the fact that at any time a member of the public may exercise their right to a choice of language and may request the use of a single one of the official languages. In any event, the contractor shall assign the material and human resources required to ensure that the recipients of the service can, at all times, be addressed and informed in Basque. If by application of the law or of the corresponding clauses of the applicable collective labor agreement, a newly successful tenderer should have to subrogate in labor relations with the group of workers assigned to the terminated contract, and said group does not have the linguistic capacity to fulfil the requirements established in this regard in the contract clauses, the new contractor shall be obliged to cover any replacement of subrogated personnel that may have to be made with personnel who meet the conditions regarding knowledge and use of the Basque language required under the contract in question.

- In contracts whose purpose is the performance of studies, reports, projects or other works of a similar nature, said documents shall be submitted in both official languages, including the text and audio interfaces of the different software packages.

28.2 Social and employment related conditions

- Meet current provisions of law, regulations and conventions on matters related to labor, social security and occupational health and safety;
- Comply with the provisions of Clause 26.3;
- Throughout the entire performance of the contract, pay the salary established in the applicable collective labor agreement, in accordance with the professional category of the employee. In no case may the salary paid be lower than said amount; and
- Offer institutional transparency with regard to all data arising from performance of the contract.

28.3 Verification of payments to subcontractors and suppliers

- The contractor shall submit to the person responsible for the contract, upon request, a detailed list of subcontractors and suppliers participating in the contract when their participation is agreed, together with the subcontracting or supply conditions of any that are directly related to the period of the payment.
- The contractor shall submit to the person responsible for the contract, upon request, evidence of compliance with payments to subcontractors and suppliers described in the paragraph above, once the service has been delivered, within the payment periods legally established in Article 216 of the PSPA and Act 3/2004 of 29 December, establishing measures for combating late payment in commercial transactions.

28.4 In matters of gender equality

The successful tenderer shall comply, inter alia, with the obligations listed below which are binding under the Gender Equality Act (Act 4/2005, of 18 February 2005, published in the Official Gazette of the Basque Country, 2 March 2005) on private organizations that hire, agree to or are beneficiaries of aid or grants from government authorities:

- to be governed by the principles of equal treatment, equal opportunities and respect for diversity and difference with regard to its employees (Article 3);
- to integrate the gender perspective, positive action and elimination of sex-based roles and stereotypes in its actions (Article 3);
- to seek balanced representation of women and men with suitable skills, competence and training in its executive and collegiate bodies (Article 23);
- to prepare its statistics and studies with a gender perspective, gathering and submitting data with a breakdown by sex (Article 16); and
- to make non-sexist use of language and images in any type of support (Article 18.4).

28.5 Personal data processing.

In contracts whose performance implies the cession of data to the contractor, the latter is subject to the regulations on data protection of the European Union and the Spanish state.

If it was indicated in **SECTION J** of the Schedule of these Terms and Conditions that the contract's performance will require the processing and/or cession of personal data to the contractor, the special performance conditions set out in Clauses 29.2 to 29.4 will be considered.

29. CONFIDENTIALITY AND PROCESSING OF PERSONAL DATA

29.1 Confidentiality

All the information that the contractor and the personnel assigned by it for the respective performance and, where appropriate, the subcontracting companies, have access to in order to fulfil the contract is of confidential nature and subject to the duty of professional secrecy, in accordance with applicable regulations, whereby it should be kept in reserve and secret and not be revealed in any way, totally or partially, to any legal or natural person who is not a party of the contract, unless by express prior authorization of the contracting authority.

Infringement by any of the aforementioned legal or natural persons of the duty of confidentiality and, where appropriate, the duty of professional secrecy, in accordance with the respective applicable regulations, will give rise to the corresponding liabilities and damages. Those duties must be complied with even after the contractual relationship has ended.

In any case, when performing work that does not involve personal data processing it is forbidden to access same; it is also mandatory to maintain secrecy regarding such data that may become known.

29.2 Processing of personal data

Personal data processing is considered to be any operation or set of operations carried out on personal data or sets of personal data, whether or not by automatic procedures, such as collection, recording, organization, structuring, retention, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction.

If so established in SECTION J, to fulfil this contract, the contractor should process the personal data that appear in the processing called **ECONOMIC-FINANCIAL MANAGEMENT**, whose data controlling body is the corresponding contracting authority (hereinafter the “body responsible for the processing”).

This entails that the contractor acts with the status of being in charge of the processing and should comply with current regulations at all times, duly processing and protecting the personal data according to additional provision twenty-five of Law 9/2017 of 8 November on public sector procurement.

If the contractor uses the data for another purpose or communicates or uses it in a manner that does not comply with the contract stipulations or current regulations, it will also be considered as the body responsible for the processing and have to answer for any infringements it may have personally incurred.

APPENDIX XV (task of personal data processing) describes in detail the personal data to protect as well as the processing to be carried out and the measures to be implemented by the contractor.

If as a consequence of the contract's performance it becomes necessary at any time to modify what is stipulated in **APPENDIX XV**, the contractor shall request this on a grounded basis and indicate the intended changes. If the processing body agrees with what is requested it will issue an updated **APPENDIX XV** so that same can always faithfully reflect the details of the processing.

29.3. Stipulations as data processor.

The obligations of this clause, along with the content of the corresponding **APPENDIX XV** of these terms and conditions constitute what Article 28.3 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data protection and free movement of that data, thereby repealing Directive 95/46/EC (hereinafter, GDPR), calls data processor contract between the body responsible for the processing and the contractor when it acts with the status of data processor.

The services to render to fulfil such obligations shall not be paid other than as provided in these terms and conditions and other contractual documents, and shall have the same duration as this services contract and be extended, when appropriate, for periods equal to the latter. However,

when the contract ends, the duty of secrecy shall remain in force with no time limit for all people involved in its performance.

To fulfil the object of this contract the contractor is not required to access any other personal information that is the responsibility of the body responsible for the processing and is therefore not authorized in any case to access or process personal data other than what is specified in **APPENDIX XV**.

If an incident occurs during performance of the contract entailing accidental or incidental access to personal data that are the responsibility of the body responsible for the processing not considered in **APPENDIX XV**, the contractor should inform the body responsible for the processing, specifically its data protection officer, with utmost diligence and within no more than 72 hours.

The contractor is obliged to ensure and guarantees fulfilment of the following obligations, complemented by what is detailed in **APPENDIX XV**, in accordance with what is envisaged in Article 28 of the GDPR:

a) To process personal data in accordance with the instructions documented in these terms and conditions and other contractual documents applicable to performance of the contract, and those, where appropriate, it receives from the body responsible for the processing at any time.

The contractor shall immediately inform the person responsible for processing when, in its opinion, an instruction is contrary to the personal data protection regulations applicable at any given moment.

b) To not use or apply the personal data for a purpose other than performance of the object of the contract.

c) To process personal data in accordance with the criteria for security and content envisaged in Article 32 of the GDPR, and to observe and adopt the technical and organizational security measures needed or appropriate for ensuring confidentiality, secrecy and integrity of the personal data it has access to.

In particular, and without limitation, it is compulsory to apply the protection levels regarding level of risk and security detailed in **APPENDIX XV**.

d) To uphold absolute confidentiality regarding the personal data it has access to for performance of the contract, and that resulting from the respective processing, no matter what support it was obtained in. This obligation extends to everyone who may intervene in any phase of the contractor's processing of personal data; it is the contractor's duty to instruct the people who depend on it about this duty of secrecy and about maintenance of that duty even after the rendering of the service ends or their separation therefrom.

e) To have a list of people authorized to process the personal data subject to these terms and conditions and to guarantee that those people expressly commit in writing to respect the confidentiality and comply with the corresponding security measures, about which they should be appropriately informed. It shall also maintain that accrediting information at the disposal of the body responsible for the processing.

f) To guarantee the necessary training in personal data protection matters for the people authorized to process such data.

g) To not communicate (cede) or disseminate the personal data to third parties, not even for its preservation, unless in each case it has express prior authorization from the body responsible for the processing.

h) To appoint a data protection officer, if such is necessary according to the GDPR and when proceeding voluntarily, and to inform the body responsible for the processing of that appointment

and of the identity and contact information of the natural person(s) designated by the contractor as its representative(s) for matters involving personal data protection (representatives of the data processor), those responsible for complying with the regulation on personal data processing, in the legal and formal aspects and regarding security.

i) To return or destroy, as decided by the body responsible for the processing reflected in **APPENDIX XV**, the personal data it has had access to, any other data generated by the contractor due to the processing, and the supports and documents containing any of that data, once the contractual service that is the object of these terms and conditions has ended. It shall not be destroyed when its preservation is permitted or required by law or by a rule of community law.

The data processor may nevertheless preserve personal data for as long as any liability may arise due to the respective relationship with the body responsible for the processing, in which case that data will be kept blocked and for a minimum period of time and be destroyed in a secure and definitive manner at the end of that period.

j) To carry out the personal data processing in the manual and automatic processing systems and devices and at the locations specified in **APPENDIX XV**. That equipment can be under the control of the body responsible for the processing or under the direct or indirect control of the contractor or others who have previously been expressly authorized in writing by the body responsible for the processing, as established in that appendix, and solely by users or profiles of users assigned to perform the object of the contract.

k) To process the personal data within the European Economic Area or another area considered by applicable regulations to have equivalent security and not to process it outside that area neither directly nor through any authorized subcontractors, in accordance with what is established in these terms and conditions or other contractual documents, unless obliged to do so by virtue of applicable law of the European Union or a member state or otherwise indicated in **APPENDIX XV** or expressly instructed to do so by the body responsible for the processing.

If because of national or European law the contractor is obliged to carry out any international transfer of personal data, it shall inform the body responsible for the processing in writing of that legal requirement sufficiently in advance to carry out the processing and shall guarantee compliance with any legal requisites applicable to the body responsible for the processing, unless the applicable law forbids it from doing so for important reasons of public interest.

l) To immediately and diligently inform the body responsible for the processing of any violation of the security of the personal data in its charge that it becomes aware of within 72 hours at most, supplying all relevant information to document and communicate the incident, or of any failure in its system for processing and managing information that it has had or may have which endangers the security of personal data, its integrity or availability, as well as any possible breach of confidentiality as a result of third parties gaining knowledge of the data and information obtained during performance of the contract, and even specifying when interested parties have suffered a loss of confidentiality. This is all in accordance with Article 33 of GDPR.

m) To communicate to the body responsible for the processing as soon as possible that an interested party has exercised before it any of the respective rights, such as access, rectification, deletion, opposition, limitation of processing and portability of the respective personal data, or others recognized by applicable legislation, and to not be subject to automated individual decisions.

The communication should be done immediately, in no case beyond the next working day after receiving the request to exercise the right; it shall include the credible identification of the person exercising the right and shall be accompanied, when appropriate, by documentation and other information in its possession that may be relevant for resolving the request.

Whenever possible, it shall assist the body responsible for the processing so that it can comply with and respond to the interested party exercising the respective right.

n) To work with the body responsible for the processing to ensure compliance with its obligations in matters of security measures, communication and/or notification of breaches (attempted and achieved) of security measures to the competent authorities or to the interested parties and when making assessments of impact associated to personal data protection as well as respective prior consultations with competent authorities, taking into account the nature of the processing and the information available to it.

It shall also place at the disposal of the body responsible for the processing, upon request of the latter, all the information needed to demonstrate fulfilment of the obligations envisaged in these Terms and Conditions and other contractual documents, and will collaborate on the holding of audits and inspections carried out, when appropriate, by the body responsible for the processing.

ñ) To keep in writing, including in electronic format and in the cases envisaged in Article 30.5 of the GDPR, a record of all the categories of processing activities carried out on behalf of the body responsible for the processing that contains at least the circumstances referred to in Article 30.2 of the GDPR.

o) To maintain evidence showing that it complies with personal data protection regulations and with the duty of active responsibility, such as previous certificates about the extent of compliance or results from audits, which it will have to place at the disposal of the body responsible for the processing upon the latter's request. Also, during the contract term it shall place at the disposal of the body responsible for the processing all the information, certification and audits carried out at any time.

p) Forward to the body responsible for the processing the information on the data processing they will carry out at the time it is collected. The wording and format in which the information is provided should be agreed with the body responsible for the processing before the data collection begins.

29.4.- Processing sub-commissions associated to subcontracting.

When the contract allows subcontracting, the contractor who intends to subcontract performance of the contract in which personal data must be accessed should inform the body responsible for the processing of its intention, identifying the personal data processing this entails, so that the body responsible for the processing can decide whether or not to grant the respective authorization.

The following two conditions should in any case occur for the body responsible for the processing to grant its authorization, if it so decides:

1. That the personal data processing by the subcontractor is in accordance with current legislation, what is set out in these terms and conditions and the instructions from the body responsible for the processing.
2. That the contractor and the subcontracting company formalize a contract for personal data processing in terms no less restrictive than those envisaged in these terms and conditions, which will be placed at the disposal of the body responsible for the processing upon its mere request to verify the respective existence and content.

If the contractor intends to make any change in the incorporation or replacement of other subcontractors, it should proceed as above. For its part, the body responsible for the processing should take into account that the two related conditions must be met for it to authorize those changes, if appropriate. It shall be understood that that authorization is not given if the contractor has not received it within 5 days after the body responsible for the processing would have received the information supplied by the contractor.

30. OWNERSHIP OF THE WORK PERFORMED AND INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

30.1 Ownership of the work performed

Ownership of the works performed at all and any stages corresponds to the contracting authority who may consequently, at any time, request the delivery of part of the services, provided that this

is compatible with the final production schedule and does not affect the correct progress of the works.

Likewise, the contractor may also request early delivery of the service, with the contracting authority being empowered to accept such delivery.

30.2 Industrial and intellectual property

Service contracts whose purpose is the development and final delivery of products protected by an intellectual or industrial property right shall entail the assignment thereof to the contracting authority.

Consequently, the contracting authority, in addition to the original production format, acquires the intellectual property rights and, in particular, the rights of reproduction, distribution, public communication, transformation of the work or product obtained, and others that may be susceptible to economic exploitation. These intellectual property rights are acquired on an exclusive basis, on any form of exploitation and/or support existing at the date of signing, for the maximum duration provided in the Revised Text of the Law on Intellectual Property, and with a geographical scope covering all countries in the world without exception.

Ownership of this right includes not only the work or final product, but also the set of works, sketches, diagrams, previous documents, flow charts and, as a whole, each and every one of the works susceptible of being the object of intellectual and industrial property carried out in the course of the works.

The contractor shall inform the contracting authority in detail of any reservations and legal rights third parties may have over pre-existing contributions to be included in the final result of the contracted work. It is the contractor's obligation to guarantee the total availability of all the elements subject to the aforementioned rights and reserves, assuming the costs that this may imply.

The contractor shall be wholly liable for all claims relating to these rights, and shall indemnify the contracting authority for all damages that may arise from any claims or complaints that may be filed, including representation and defense expenses that may arise.

When the object of the contract is the development of computer applications, the information on reserves and legal rights of third parties mentioned in the paragraph above shall necessarily include a reference to all the sources used, their versioning and origin, the licenses applied to each of their components and whether their use is in compilation or execution.

The contractor or any of the persons involved in the production may not use the work for themselves, or provide third parties with fragments of the work or film, texts, drawings, photographs or the like of the contracted work, or publish all or part of its contents, without the express written consent of the contracting authority. Likewise, the contractor or any of the persons involved in the production shall refrain from attempting to register any industrial and intellectual property rights that are identical or similar to those that may derive from the contract, and this obligation shall continue even upon termination of the contract. In any case, the contractor shall be liable for damages arising from non-compliance with these obligations.

The contractor undertakes to collaborate with the contracting authority and to subscribe to as much documentation as may be required for the contracting authority to effectively acquire all the rights mentioned in this clause, and/or for those rights to be protected in his favor.

31. PENALTIES

Without prejudice to the obligation legally incumbent on the contractor to repair defects and provide compensation for damages, and to the possibility of terminating the contract provided for in the PSPA and in Clause 38, the contracting authority may impose penalties on the contractor on the following grounds:

31.1 Grounds and amounts

- a) Non-compliance as specified, where appropriate, under **SECTION L** of the Schedule of these Terms and Conditions: the amounts as specified in said Section.

- b) Delay in meeting the deadline or partial deadlines: amounts stated in Articles 193.3 and 193.4 of the PSPA, unless otherwise specified in **SECTION L** of the Schedule of these Terms and Conditions.
- c) Breach of essential contractual obligations: between 1% and 10% of the maximum contract price or budget limit, depending on the seriousness of the breach and, where appropriate, its repetition.
- d) Non-compliance with the provisions of **SECTION K** of the Schedule of these Terms and Conditions regarding subcontracting: up to 50% of the amount of the subcontract.
- e) Failure to comply with the provisions of Clause 28.3: the amount for each day of delay shall be 0.01% of the contract price.
- f) Non-compliance with commitments undertaken through the tender which were taken into consideration as a valuation criterion: between 1% and 10% of the maximum contract price or budget limit, depending on the seriousness of the non-compliance and, where applicable, its repetition.
- g) Non-compliance with environmental, social or labor obligations specified in **SECTION J** of the Schedule of these Terms and Conditions (for these purposes, non-compliance is considered to be non-payment or repeated delays in the payment of salaries, or the serious and fraudulent application of salary conditions lower than those deriving from collective bargaining agreements): between 0.5% and 10% of the maximum contract price or budget limit, depending on the seriousness of the non-compliance and, where applicable, its repetition.
- h) Non-compliance with the deadline for presenting the Occupational Health and Safety Plan, when required: the amount for each day of delay shall be at the rate of one euro for every 5,000.00 euros of the maximum contract price or budget limit.

31.2 Procedure

The imposition of penalties shall be decided by resolution of the contracting authority. The ruling procedure shall include the following actions:

- a) Report from the person responsible for the contract, identifying the breaches detected and proposing the amount of the penalty.
- b) A five (5) working day hearing with the contractor to formulate the allegations it may consider appropriate.
- c) Resolution of the contracting authority.
- d) Collection of the amounts by deducting them from the amounts that, by way of total or partial payment, shall be paid to the contractor, or against the guarantee that, where applicable, has been constituted, when they cannot be deducted from the aforementioned payments.

32. PAYMENT OF THE PRICE

Payment shall be made in accordance with the following conditions:

- Time period and conditions:
 - a) If **SECTION D** of the Schedule of these Terms and Conditions specifies a lump sum payment of the price, a full invoice shall be submitted within thirty (30) days after the date of completion of the performance of the contract.
 - b) If **SECTION D** of the Schedule of these Terms and Conditions specifies partial payments of the price, partial invoices shall be submitted within thirty (30) days following each of the established periodic due dates.
- The contracting authority shall pay the price within thirty (30) days following the date of approval of service certification. If there is a delay in payment, the contracting authority shall

pay the contractor, starting from the completion of the period specified in the previous paragraph, interest on arrears and compensation for recovery costs in line with the terms set out in Law 3/2004, of 29 December, which establishes measures to combat late payment in commercial operations.

In any case, the beginning of the calculation of the term for the accrual of interest is subject to the contractor having submitted the invoice(s) in the register of the contracting authority.

The accrual of interest shall not commence until thirty (30) days after the date of submission of the invoice in the corresponding register, without the contracting authority having approved the conformity, if applicable, and made the corresponding payment.

33. AMENDMENTS TO THE CONTRACT

33.1 Conditions

Once the contract has been finalized, the contracting authority may only amend it by reason of public interest, in the circumstances specified in **SECTION C** of the Schedule of these Terms and Conditions and in Article 205 of the PSPA.

Reasons of public interest shall be deemed to be those whose purpose is to achieve the objective of budgetary stability and which are carried out during the corresponding budgetary year.

33.2 Procedure

The procedure for agreeing on the amendment includes, in any case, the following actions:

a) Single performance contracts and open-ended contracts in which the number of units comprising the object of the contract has been clearly defined:

- 1) A report from the person responsible for the contract specifying the reasons of public interest which justify the amendment, its qualitative and quantitative scope, the prevailing circumstances and the objective verification of those circumstances.
- 2) Resolution of the contracting authority agreed on initiation of the procedure.
- 3) A five (5) working day hearing with the contractor.
- 4) A three (3) working day hearing with the drafter of the project or of the technical specifications, if such specifications had been prepared by a third party unconnected to the contracting authority.
- 5) A legal report.
- 6) Resolution of the contracting authority and notification to the contractor.
- 7) Publication of the notice of amendment in the contractor profile, together with the contractor's allegations and all reports, if any, obtained prior to approval.
- 8) Publication of the notice of amendment in the OJEU if the contract is subject to harmonized regulation (unless the service is one of those included in Appendix IV of the PSPA) and the amendment responds to one of the cases covered under points a) and b) of Article 205.2 of the PSPA.

25. Open-ended unit price contracts in which the total number of service units has not been precisely defined when entering into the contract:

- 1) A report from the person responsible for the contract justifying the existence of real needs greater than those initially estimated and determining their economic scope.
- 2) Resolution of the contracting authority agreed on initiation of the procedure.
- 3) A five (5) working day hearing with the contractor.
- 4) A legal report.
- 5) Resolution of the contracting authority and notification to the contractor.
- 6) Publication of the notice of amendment in the contractor profile, together with the contractor's allegations and all reports, if any, obtained prior to approval.

In the cases detailed below, the following actions shall also be taken:

- 1) If the maximum contract price or budget limit is altered, the contractor shall readjust the guarantee within fifteen (15) calendar days from the notification of the decision.
- 2) Authorization of the amendment by the Basque Government Council when the following two circumstances apply:
 - a. The duration of the contract exceeds that stipulated in the regulations on public sector procurement, individually for specific contracts or generically for certain categories.
 - b. The amendment is cause for contract termination.
- 3) In the event that the amendment is not provided for in the SATAC, a report issued by the Legal Advisory Committee if the maximum contract price or budget limit is equal to or greater than 6,000,000 euros and the amendment implies an alteration of more than 20%. In the event that successive amendments are agreed, the calculation of the percentage variation shall be made considering all of them.

In any case, the amendment shall be formalized in accordance with the provisions of Article 153 of the PSPA and shall be published in accordance with Articles 63 and 207 of the PSPA.

33.3 Effects

Amendments agreed pursuant to this clause shall be binding on the contractor.

34. SUBCONTRACTING

In the event that **SECTION M** of the Schedule of these Terms and Conditions admits subcontracting, the contractor may subcontract the partial performance of the service within the limits specified in said Section and in accordance with the provisions of this clause.

In the event that the contractor contracts with third parties for the partial performance of the contract, the contractor shall assume full responsibility for the performance of the contract in strict accordance with these Terms and Conditions and the terms of the contract, including compliance with social and/or labor obligations.

34.1 Communication to the person responsible for the contract

- a) If, during the tendering phase, the contractor has completed Section D of Part II of the ESPD and intends to subcontract under the exact conditions indicated therein; the contractor shall send to the person responsible for the contract the declaration contained in **APPENDIX IV**, duly completed and signed, within the time limit indicated in Clause 21.1.
- b) If, during the tendering phase, the contractor has completed Section D of Part II of the ESPD but intends to subcontract under conditions different from those indicated therein, or has not completed the said Section; the contractor shall send to the person responsible for the contract the declaration contained in **APPENDIX IV**, duly completed and signed, at least fifteen (15) working days before the subcontractor begins to perform the work.

34.2 Verification of compliance with payment terms to subcontractors or suppliers

The contractor shall provide evidence of compliance with the payment terms agreed with the subcontractor or supplier. Those terms shall respect the limits specified in Article 216 of the PSPA, in accordance with the provisions of Clause 28.3 and, in the case of subcontractors, in accordance with the provisions of Clause 32.

35. CONTRACT ASSIGNMENT AND CHANGE IN THE COMPOSITION OF THE JV

35.1 Contract assignment

Cases

Without prejudice to cases of succession of the contractor under Article 98 of the PSPA and cases of changes in the composition of the JV under Article 69.9 of the PSPA, the contract may be assigned in the following cases:

1. When the contractor is in a state of insolvency, in accordance with Article 2.2 of Law 22/2003, of 9 July, and has not yet requested the declaration of bankruptcy, provided the contractor has not been declared insolvent in any other proceedings.
2. When the contractor has been declared bankrupt, including when winding-up proceedings have begun, or when the contractor has informed the competent court of the declaration of bankruptcy and that negotiations have begun to reach a refinancing agreement, or to obtain acceptance of an early agreement proposal, under the terms provided for in bankruptcy legislation.
3. Where the contractor is a natural person and has expressed the wish to retire prior to the end of the contract.

Procedure

1. The contractor shall submit to the person responsible for the contract a written request for authorization of the assignment. The request shall be accompanied by the following documentation:
 - i. evidence of the circumstances triggering the request for assignment of the contract to be submitted, and;
 - ii. evidence that the assignee complies with the requirements specified in Article 214.2.c) of the PSPA.
2. The resolution of the contracting authority agreeing to initiate the procedure.
3. A report issued by the person responsible for the contract indicating whether or not the requirement of having performed at least 20% of the contract amount must be met and, if so, whether this requirement is met. Furthermore, it shall be stated that the limits specified in the second paragraph of Section 1 of Article 214 of the PSPA are respected.
4. A legal report.
5. Provision by the contractor of the draft public deed in which the assignment is to be formalized.
6. Resolution of the contracting authority authorizing the assignment and notification to the contractor.
7. Publication of the contracting authority's resolution authorizing the assignment in the contractor's profile.
8. Formalization of the assignment in public deed.
9. Deposit of the guarantee. The guarantee provided by the assignor shall not be returned or cancelled until the guarantee of the assignee has been formally constituted.

Conditions

- In any case, the following conditions must be met for the contracting authority to authorize the assignment:
 1. compliance with the requirements specified in Section 2 of Article 214 of the PSPA;
 2. that the technical and/or personal qualities of the assignor (the contractor) were not the decisive grounds for awarding the contract; and
 3. that the assignment does not produce an effective restriction of competition in the market.
- The assignment of the contract shall not be authorized where it entails a substantial change in the characteristics of the contractor if these characteristics constitute an essential element of the contract.
- The assignment between the contractor (assignor) and the assignee shall be formalized in a public deed.
- The guarantee provided by the assignor shall not be returned or cancelled until the guarantee of the assignee has been formally constituted.

35.2 Change in the composition of the JV

- In those cases where a change or changes in the composition of the JV means an increase or reduction in the number of its members, or that one or more of its members is/are replaced by another or others, the following action shall be taken:

1. The JV contractor shall contact the person responsible for the written contract requesting authorization for the change(s). This request shall be accompanied by the following documentation:
 - i. an explanation of the circumstances underlying the change(s) in the composition of the JV; and
 - ii. documentation proving that the newly composed JV complies with solvency and classification requirements, and that all members of the JV have full capacity to act and are not prohibited from contracting with the public sector.
 2. Resolution of the contracting authority agreeing to initiate the procedure.
 3. A report issued by the person responsible for the contract indicating that at least 20% of the contract amount has been performed.
 4. A legal report.
 5. Provision by the contractor of the draft public deed in which the new composition of the joint venture is to be formalized.
 6. Resolution of the contracting authority authorizing the change in the composition of the JV, and notification to the contractor JV.
 7. Publication of the contracting authority's resolution authorizing the change in the composition of the JV in the contractor's profile.
 8. Formalization of the JV in public deed.
 9. Deposit of new guarantee by the JV. The guarantee previously provided by the JV shall not be returned or cancelled until the new one has been formally constituted.
- In the event that, as a result of mergers, divisions or transfers of a branch of activity with respect to any member(s) of the JV, the acquiring company or the company resulting from the merger or the beneficiary of the division or the acquirer of the branch of activity is not a member of the JV, the same formalities as those specified in this clause shall be completed, except for the one concerning the performance of the contract for at least 20% of its amount.
- In the event that one or more components of the JV are declared bankrupt, even if the liquidation phase has been opened, the provisions of Article 69.9.c) of the PSPA shall apply, in accordance with Article 212.5 of the PSPA on the provision of sufficient additional guarantees for the performance of the contract. In this case, the following actions shall be taken:
1. The JV contractor shall send the person responsible for the contract a written statement, together with the documentation accrediting the tendering status of one or more of the members of the JV, whereby it may request one of the following:
 - i. a continuation of the performance of the contract with the remaining member(s). In this case, the applicant must attach documentation proving that the newly-composed JV meets the required solvency and/or classification requirements; or
 - ii. a continuation of the performance of the contract with the initial members of the JV, including the one(s) declared bankrupt.
 2. Completion of the formalities described in points 2 to 9 (except number 3) of the first Section of this clause 35. And, in the event that the contracting authority resolves that the JV shall continue to perform the contract with all its members, including the one(s) declared to be bankrupt, the JV contractor shall provide sufficient additional guarantees for the proper performance of the contract, as indicated by the contracting authority in its resolution.

VII. TERMINATION OF CONTRACT

36. COMPLIANCE: DELIVERY, RECEPTION AND SETTLEMENT

36.1 Delivery and verification of correct compliance.

Delivery of the services forming the object of the contract shall be in accordance with the specifications set out in the TESP and the deadlines specified in Clause 8. Unless otherwise provided for in the TESP, the delivery date shall be as follows:

- Single performance contracts: the date on which all services due are delivered by the contractor to the person responsible for the contract in the form and format specified in the TESP.
- Open-ended contracts: the deadline day of the total contract performance period.

Within a maximum of fifteen (15) working days from the delivery date, the person responsible for the contract shall carry out all and any appropriate checks to verify that the agreed conditions have been properly complied with.

- a) If it is concluded that the conditions have been properly complied with: the person responsible for the contract shall propose the service provision contracted to have been completed.
- b) If it is concluded that the conditions have not been properly complied with: the person responsible for the contract shall identify the breaches and/or defects observed and detail the instructions for rectifying them. They shall also send those instructions to the contractor, specifying the period within which the rectifications are to be made and informing the contractor of the possibility of submitting a claim in writing within five (5) working days.

If the contractor fails to submit a claim within the specified period, the contractor shall be understood to be in accordance with the instructions and obliged to rectify the defects observed. If the contractor submits a claim within the period specified, the verification and the claim shall be forwarded to the contracting authority, which shall resolve the matter within a maximum period of fifteen (15) working days.

36.2 Correction of defects

- Once the correction period has passed, the person responsible for the contract shall carry out all and any appropriate checks to verify that the instructions detailed have been properly complied with. Additionally, and within a maximum of ten (10) working days:
 - a) If it is concluded that the instructions have been properly complied with: the person responsible for the contract shall take the actions specified in Clause 36.1.a).
 - b) If it is concluded that the instructions have not been properly complied with: the person responsible for the contract shall identify the breaches and or defects observed and send the verification report to the contractor and to the contracting authority, together with a proposal for the imposition of penalties and, if appropriate, taking into account the concurrent circumstances, for any of the following actions to be taken:
 - 1) Initiation of contract termination procedure, with seizure of the guarantee and the obligation of the contractor to reimburse the contracting authority for any damages caused in excess of the amount of the guarantee seized.
 - 2) Granting of a new deadline for correction, with the imposition of a penalty of up to 25% of the maximum contract price or budget limit.

If the subcontractor does not correct the breaches and/or defects within the second period granted for this purpose, the contract shall be cancelled with seizure of the guarantee, and the contractor shall be obliged to reimburse the contracting authority for any damages caused in excess of the amount of the guarantee seized.

- The rectification of errors and correction of deficiencies in contracts for the preparation of work projects are governed by Article 315 of the PSPA.

36.3 Reception

In any case, prior to the reception, the contractor shall be responsible for proper compliance with the agreed conditions. The fact that the person responsible for the contract may have verified in a favorable manner, or may have certified delivery of partial services, does not exempt the contractor from its responsibilities or confer upon it any rights.

In the event that the person responsible for the contract has concluded that all agreed conditions have been properly complied with, the contract shall be accepted.

37. WARRANTY PERIOD AND RETURN OF DEFINITIVE GUARANTEE

37.1 Rights and obligations of the contractor

During the warranty period established, where applicable, in **SECTION N** of the Schedule of these Terms and Conditions, the contractor shall correct, at own expense, any faults or defects in the work performed, proof of which shall be provided and communicated in writing within said period.

The warranty period shall remain suspended during replacement, repair or rectification of faults or defects, which in turn shall be guaranteed, as from their completion, for the same period as that established in the original guarantee.

Failure by the contractor to correct any faults and/or defects reported in due time and form shall grant the contracting authority the right to withhold outstanding payments, enforce the guarantees and, where applicable, terminate the contract, with the contractor being liable for payment of all corresponding compensation for damages and prejudicial consequences incurred.

Once the guarantee period has elapsed, if the contracting authority has not made known to the contractor in due time and form the need to correct any faults or defects, the contractor shall be exempt from liability for the services rendered, without prejudice to the provisions of Articles 314 and 315 of the PSPA on contracts for the preparation of works projects or in the case of hidden faults or defects.

37.2 Return of guarantee

- If no warranty period has been specified in **SECTION N** of the Schedule of these Terms and Conditions, and on the request of the contractor and after due consultation with the person responsible for the contract, the definitive guarantee shall be returned by the contracting authority.
- If a warranty period has been specified in **SECTION N** of the Schedule of these Terms and Conditions, the following actions shall be taken once this period has elapsed:
 - a) If, in the course of the warranty period, no claims for correction of faults or defects have been submitted in due time and form or, if they have been submitted, said faults or defects have been successfully corrected, the contracting authority shall, on request of the contractor, agree to return the guarantee to the contractor or cancel it.
 - b) If, in the course of the warranty period, claims for correction of faults or defects have been submitted in due time and form and the contractor has not corrected them, the person responsible for the contract shall issue the appropriate instructions to the contractor for

the proper correction of the faults and defects. To this end, the contractor shall be granted a period during which they shall continue to be responsible for the technical quality of the works and services provided under the terms specified in Section 2 of Article 311 of the PSPA, without the right to receive any amount for extension of the warranty period.

Failure by the contractor to comply with the instructions issued by the person responsible for the contract shall be grounds for warrant seizure.

- If **SECTION N** of the Schedule of these Terms and Conditions provides for the return or cancellation of a proportional part of the definitive guarantee, action shall be taken in accordance with the provisions of Clauses 37.1 and 37.2.

38. TERMINATION

In addition to those stipulated in Articles 211 and 313 of the PSPA and those included, where applicable, in the Schedule of these Terms and Conditions, the following shall be considered as grounds for contract termination:

- a) Obstruction of the powers of management and inspection of the contracting authority, in accordance with the provisions of the second paragraph of Article 190 of the PSPA.
- b) Failure to comply with the obligation of the contractor to respect confidentiality.
- c) Failure to comply with the remaining contractual obligations specified in the SATAC and the TESP.

The occurrence of any of these causes, in the established terms, shall entitle the contracting authority to terminate the contract, with due compensation for damages and other effects that proceed in its favor in accordance with these Terms and Conditions and applicable regulations. Furthermore, the contracting authority may opt for subsidiary performance, undertaking any obligations that have not been met or continuing to perform the work itself or through the persons or companies it may determine, at the contractor's expense.

LIST OF APPENDICES		
Number	Description	Applicable
APPENDIX I	Technical Specifications (TESP)	YES
APPENDIX II	Details of the working conditions of personnel to be subrogated	NO
APPENDIX III	Commitment to assign material and/or human resources	NO
APPENDIX IV	Notification of subcontracting	Optional
APPENDIX V	Economic tender	YES
APPENDIX VI	Models of bank guarantee and surety bond	YES
APPENDIX VII	Designation of certain information in the tender as confidential	Optional
APPENDIX VIII	Details for the purpose of communications and notifications	NO (tenderers with non Spanish personal or tax ID number must submit it)
APPENDIX IX	Undertaking to formally constitute a joint venture	Optional
APPENDIX X	Statement of commitments regarding equality and with respect to persons carrying out the activity of the object of the contract	YES
APPENDIX XI	Companies belonging to the same business group	Optional
APPENDIX XII	Lot or lots for which a tender is being submitted	NO
APPENDIX XIII	Eligibility for participating in public procurement contracts	YES
APPENDIX XIV	Availability of the solvency and resources of other persons or entities throughout the term of the contract	Optional
APPENDIX XV	Declaration on commitments assumed in matters of personal data protection	NO
APPENDIX XVI	Additional information about personal data protection (information to provide to the tenderer.	YES
APPENDIX XVII	How the negotiation of the contract terms will be conducted	YES
APPENDIX XVIII	Participation application	YES

APPENDIX I TECHNICAL SPECIFICATIONS (TESP)

1. BACKGROUND

Biscay Marine Energy Platform, S.A., or BiMEP, is a real sea conditions testing area for research, demonstration and operation of marine energy converters, including wave energy and floating wind energy, as well as auxiliary equipment. The test site for the wave and wind energy conversion devices is situated offshore, near the locality of Armintza in the province of Bizkaia, comprising a total area of 5.2 km². Figure 1 shows a diagram of the test area. The closest port to the site is in Armintza, while the closest commercial ports are Bilbao and Pasajes.

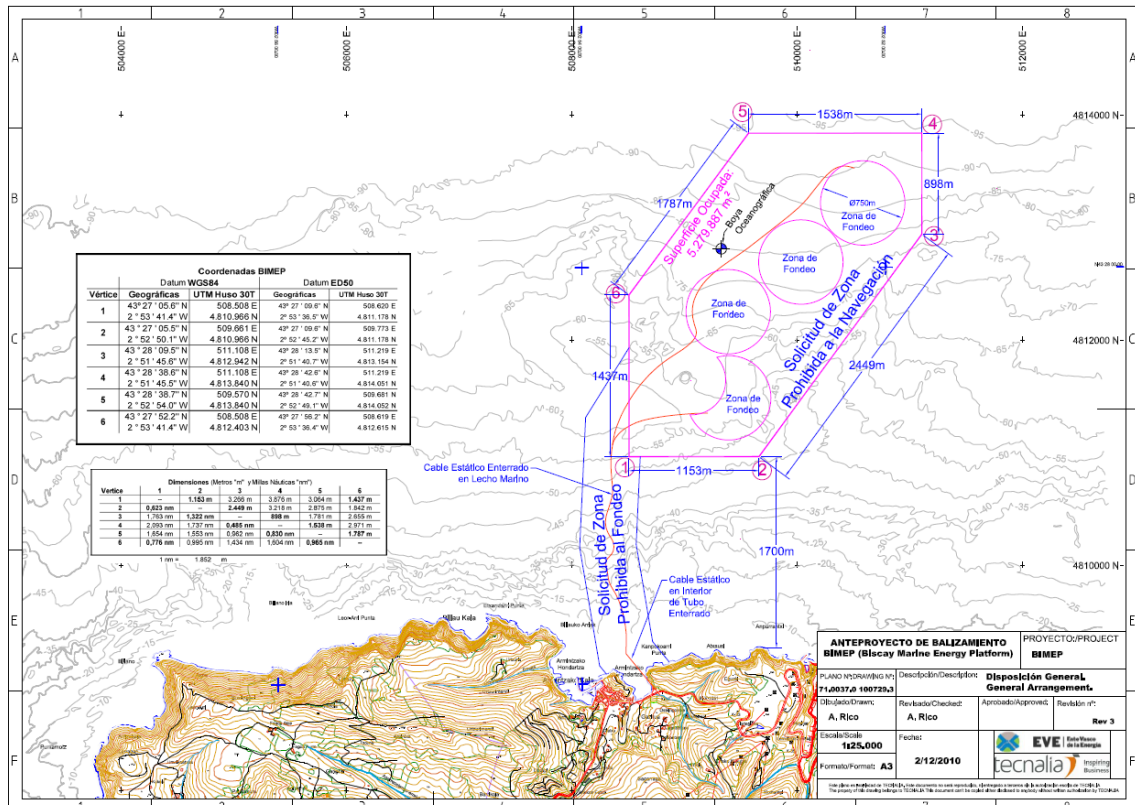


Figure 1. Location of the BiMEP testing area and perimeter in which the system should be situated.

1.1. Need for a wind measurement system

Besides the space at sea and the infrastructure, BiMEP offers services and support for different testing tasks. In relation to these services, information on ocean and weather conditions in the area is included. BiMEP began as an infrastructure for testing wave energy collectors and since 2009 has had an oceanographic buoy that provides oceanographic and weather data, including wind speed, direction and maximum gust at 3 meters above the sea surface, among others.

In 2019 BiMEP obtained administrative authorization to carry out floating wind tests (Resolution EOla-005-EoM-II_20190327), as long as there were no more than 2 floating wind turbines installed at the same time or 10 MW of power. However, it does not have the equipment needed to accurately ascertain wind characteristics at the height of a floating wind turbine's rotor.

The weather conditions in the BiMEP area, transitioning from land to open sea, are unlike those along the coast. This difference is accentuated by the complexity of the topography and vegetation on land. This circumstance means that wind has to be measured over the testing points, directly or indirectly. The information supplied by scanning LiDAR equipment must provide measurements

with sufficient quality to be representative of the zone. A horizontal scan of the testing area will be obtained as a result, or a vertical profile measurement at a specific point according to the requirements of BiMEP or of the tests carried out in the area.

1.2. Location of the scanning LiDAR system

The top of La Atalaya in Armintza has been deemed appropriate for the installation of the scanning LiDAR equipment, as it has good access, an electric power line, fiber optics and a surveillance camera, besides offering a full view of the testing area, as shown in Figure 2. This point is close to BiMEP's offices in the locality of Armintza.

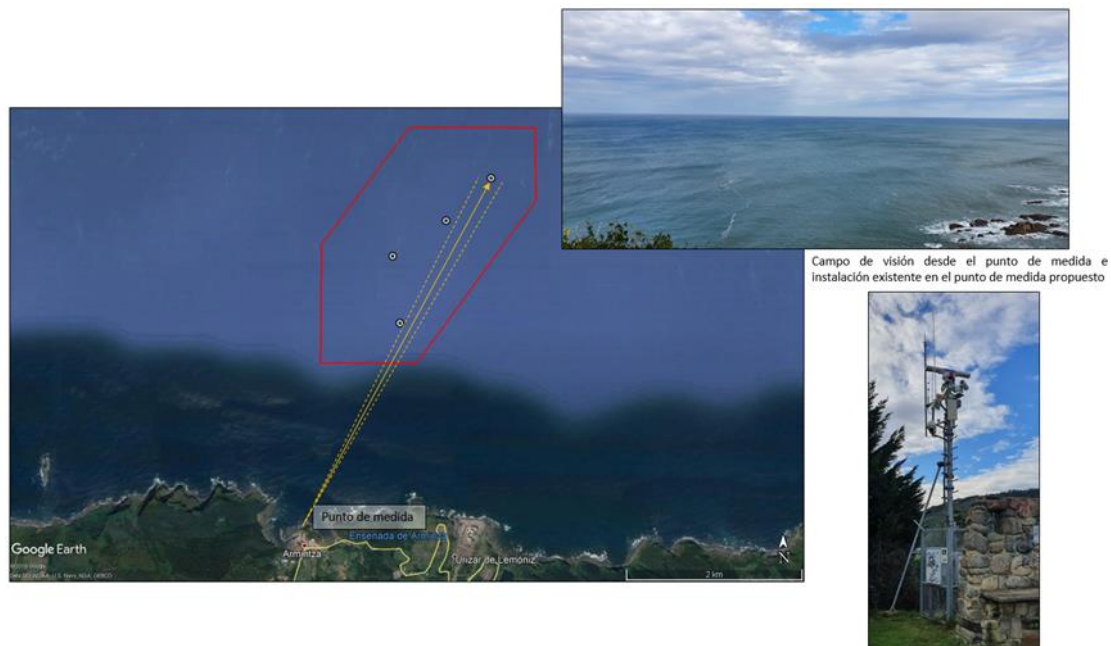


Figure 2. Proposed measurement point, field of view from same and existing infrastructure

The approximate coordinates of the proposed measurement point are:

	X (m)	Y (m)	Altitude (m)
Installation point	508382	4809005	58

Table 1. Coordinates of the installation point of the scanning LiDAR equipment.
UTM coordinate system ETRS89 30T.

The scanning LiDAR equipment should be installed at a sufficient height above ground level to allow a full view of the BiMEP testing area, taking into account that the clearing at La Atalaya is surrounded by shrubs.

Included as Appendix I of the TESP are detailed topographies of La Atalaya in .xyz and .shp formats. Also included, as Appendix II of this TESP are plans of the tower, instruments and communications cabinet of the sensors owned by BiMEP and situated at La Atalaya.

1.3. Climate conditions at BiMEP: wind

As an approximation to the site's wind conditions, the main wind characteristics are presented; they were obtained with a mesoscale meteorological model. Table 2 contains frequencies of wind occurrence by ranges of speed and direction; Figure 3 shows the mean scalar wind regime.

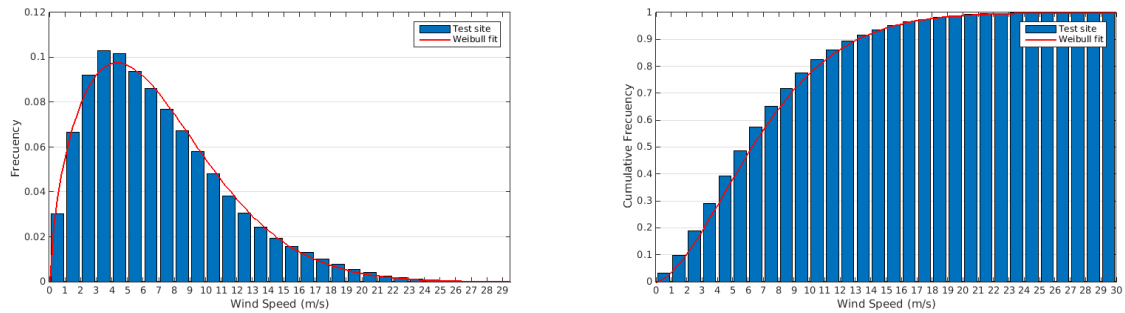


Figure 3. Probability function and scalar distribution function of wind speed

Location: BiMEP- Centre site at 90 m MSL													Period: Annual (Jan 1985- Dec 2015)	
Wind speed (m/s)	Wind Direction (degrees)												Total (%)	
	0	30	60	90	120	150	180	210	240	270	300	330		
0	0,21	0,23	0,26	0,30	0,35	0,27	0,27	0,26	0,25	0,22	0,21	0,20	3,03	
1	0,45	0,49	0,53	0,73	0,69	0,53	0,50	0,55	0,61	0,57	0,54	0,50	6,67	
2	0,67	0,70	0,75	0,95	0,89	0,46	0,52	0,70	1,02	0,94	0,85	0,75	9,20	
3	0,68	0,72	0,97	1,04	0,76	0,30	0,49	0,82	1,43	1,22	1,06	0,80	10,29	
4	0,57	0,62	1,12	1,24	0,49	0,18	0,46	0,83	1,46	1,34	1,12	0,73	10,16	
5	0,47	0,44	1,12	1,39	0,33	0,13	0,50	0,69	1,03	1,40	1,22	0,67	9,39	
6	0,40	0,36	0,85	1,56	0,23	0,08	0,54	0,61	0,74	1,50	1,15	0,57	8,59	
7	0,30	0,28	0,57	1,57	0,15	0,07	0,54	0,60	0,61	1,48	1,01	0,52	7,70	
8	0,28	0,22	0,35	1,41	0,10	0,06	0,53	0,57	0,50	1,43	0,86	0,45	6,74	
9	0,22	0,18	0,17	1,18	0,06	0,05	0,51	0,54	0,40	1,38	0,74	0,37	5,80	
10	0,20	0,13	0,10	0,84	0,04	0,05	0,54	0,54	0,30	1,16	0,63	0,27	4,81	
11	0,14	0,10	0,05	0,49	0,02	0,04	0,52	0,50	0,23	0,95	0,53	0,22	3,81	
12	0,11	0,07	0,04	0,26	0,01	0,04	0,52	0,46	0,15	0,78	0,43	0,18	3,06	
13	0,09	0,04	0,02	0,09	0,01	0,05	0,50	0,43	0,10	0,64	0,32	0,13	2,43	
14	0,05	0,02	0,01	0,03	0,00	0,04	0,48	0,35	0,07	0,52	0,26	0,09	1,95	
15	0,03	0,02	0,01	0,02	0,00	0,04	0,44	0,28	0,05	0,40	0,19	0,09	1,58	
16	0,02	0,01	0,00	0,01	0,00	0,05	0,40	0,22	0,03	0,33	0,15	0,06	1,29	
17	0,01	0,01	0,00	0,00	0,00	0,05	0,31	0,18	0,02	0,24	0,13	0,05	1,01	
18	0,01	0,00	0,00	0,00	0,00	0,05	0,27	0,13	0,01	0,17	0,10	0,03	0,77	
19	0,00	0,00	0,00	0,00	0,00	0,04	0,19	0,08	0,01	0,13	0,06	0,03	0,54	
20	0,00	0,00	0,00	0,00	0,00	0,03	0,15	0,06	0,00	0,09	0,05	0,02	0,40	
21	0,00	0,00	0,00	0,00	0,00	0,03	0,09	0,03	0,01	0,06	0,03	0,01	0,26	
22	0,00	0,00	0,00	0,00	0,00	0,02	0,06	0,02	0,00	0,05	0,02	0,00	0,18	
23	0,00	0,00	0,00	0,00	0,00	0,02	0,04	0,01	0,00	0,03	0,01	0,01	0,12	
24	0,00	0,00	0,00	0,00	0,00	0,01	0,03	0,01	0,00	0,02	0,01	0,00	0,08	
25	0,00	0,00	0,00	0,00	0,00	0,01	0,02	0,00	0,00	0,02	0,01	0,00	0,05	
26	0,00	0,00	0,00	0,00	0,00	0,01	0,01	0,00	0,00	0,01	0,00	0,00	0,03	
27	0,00	0,00	0,00	0,00	0,00	0,00	0,01	0,00	0,00	0,00	0,00	0,00	0,02	
28	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,01	0,00	0,00	0,01	
29 and over	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,01	
Total (%)	4,92	4,65	6,92	13,12	4,15	2,71	9,45	9,50	9,05	17,09	11,70	6,76	100,00	
Mean Speed (m/s)	5,65	5,02	5,00	6,52	3,67	6,00	9,96	8,22	5,63	8,46	7,52	6,42	7,02	

Table 2 Frequency of occurrence of wind states by range of speed and mean direction

Figure 4 below shows the wind roses at ten meters height. It can be seen that the prevailing winds are from the west and east, with a third significant origin, winds from the south.

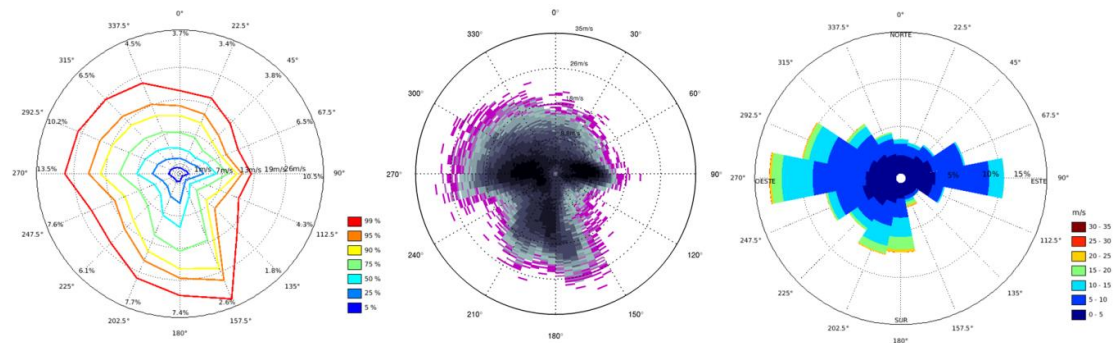


Figure 4. Roses of quantiles (left), probability (center) and intensity (right) of wind

Table 3 shows the frequency of occurrence of wind speed by month of the year:

Location: BiMEP- Center site at 90 m MSL													Period: Annual (Jan 1985- Dec 2015)	
Wind speed (m/s)	Month													Total (%)
	January	February	March	April	May	June	July	August	September	October	November	December		
0	0.15	0.17	0.26	0.24	0.29	0.33	0.37	0.35	0.35	0.25	0.15	0.11	3.03	
1	0.36	0.38	0.53	0.53	0.68	0.71	0.77	0.74	0.74	0.58	0.38	0.30	6.67	
2	0.52	0.51	0.68	0.71	0.93	0.97	1.14	1.06	0.94	0.78	0.52	0.43	9.20	
3	0.62	0.62	0.73	0.76	1.00	1.15	1.22	1.24	1.01	0.82	0.58	0.53	10.29	
4	0.65	0.64	0.82	0.76	0.95	1.06	1.13	1.18	0.99	0.80	0.58	0.60	10.16	
5	0.64	0.66	0.76	0.70	0.93	0.94	0.95	0.97	0.86	0.72	0.62	0.63	9.39	
6	0.65	0.63	0.72	0.71	0.81	0.79	0.77	0.81	0.72	0.68	0.62	0.68	8.59	
7	0.66	0.60	0.67	0.70	0.63	0.64	0.62	0.62	0.62	0.63	0.63	0.68	7.70	
8	0.61	0.54	0.60	0.61	0.55	0.49	0.48	0.52	0.51	0.58	0.62	0.64	6.74	
9	0.56	0.50	0.52	0.54	0.48	0.36	0.36	0.36	0.44	0.51	0.59	0.58	5.80	
10	0.48	0.43	0.44	0.49	0.36	0.29	0.26	0.25	0.28	0.45	0.54	0.53	4.81	
11	0.44	0.38	0.36	0.36	0.27	0.19	0.17	0.15	0.20	0.36	0.45	0.49	3.81	
12	0.40	0.33	0.30	0.26	0.17	0.11	0.11	0.11	0.15	0.31	0.36	0.44	3.06	
13	0.35	0.29	0.22	0.21	0.12	0.07	0.06	0.05	0.11	0.24	0.33	0.37	2.43	
14	0.31	0.23	0.18	0.15	0.09	0.04	0.04	0.03	0.08	0.20	0.29	0.31	1.95	
15	0.25	0.20	0.15	0.11	0.06	0.02	0.02	0.02	0.06	0.15	0.25	0.27	1.58	
16	0.21	0.16	0.14	0.09	0.04	0.02	0.01	0.02	0.05	0.13	0.20	0.24	1.29	
17	0.18	0.12	0.11	0.07	0.04	0.01	0.00	0.01	0.03	0.09	0.17	0.18	1.01	
18	0.14	0.09	0.08	0.05	0.03	0.01	0.00	0.01	0.02	0.08	0.13	0.14	0.77	
19	0.09	0.07	0.06	0.05	0.02	0.00	0.00	0.00	0.02	0.05	0.07	0.11	0.54	
20	0.09	0.06	0.05	0.03	0.01	0.00	0.00	0.00	0.01	0.03	0.06	0.07	0.40	
21	0.05	0.04	0.03	0.03	0.01	0.00	0.00	0.00	0.01	0.02	0.03	0.05	0.26	
22	0.03	0.03	0.02	0.01	0.00	0.00	0.00	0.00	0.01	0.01	0.03	0.04	0.18	
23	0.03	0.02	0.02	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.02	0.12	
24	0.01	0.02	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.08	
25	0.01	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.05	
26	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.03	
27	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	
28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	
29 and over	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	
Mean speed (m/s)	8.77	8.28	7.47	7.17	6.06	5.43	5.20	5.21	5.79	7.23	8.63	9.07	7.02	

Table 3 Frequency of appearance as a function of the months of the year

Table 4. 4 shows the extreme estimates with return periods of 1, 10, 50, 100 and 200 years.

Return Period (yrs)	1	10	50	100	200
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Return Value (m/s)	28.94	33.25	36.59	38.11	39.69
95% confidence interval	[28.35-29.52]	[31.46-35.05]	[32.01-41.17]	[31.64-44.6]	[30.87-48.51]

Table 4. Extreme wind regime

2. OBJECT AND SCOPE OF THE CONTRACT

Supply, installation and preventive and corrective maintenance of a system to measure and supply data for characterization of the wind resource at BiMEP by means of scanning LiDAR technology. The object of the contract includes the following scope:

- Manufacture, supply, legalization and installation of the system to measure and supply data for characterization of the wind resource at BiMEP by means of scanning LiDAR technology, in accordance with characteristics described in sections 3 and 4 of this APPENDIX I;
- Verification, tests and trials of the measurement system, as described in section 5 of this APPENDIX I;
- Training course for BiMEP personnel, per the terms described in section 5 of this APPENDIX I;
- Preventive maintenance of the measurement system after the start of the operational phase, with the conditions indicated in section 6 of this APPENDIX I;
- Technical support and incident response after the start of the operational phase, with the conditions indicated in section 6 of this APPENDIX I.

The contract is structured in the phases or milestones, as established in **SECTION E** of the Schedule of these Terms and Conditions.

3. TECHNICAL REQUIREMENTS OF THE SYSTEM

The scanning LiDAR equipment must be able to adapt to the site's conditions and should be designed to withstand both normal operating conditions and survival conditions without compromising its integrity. This means that the equipment must be able to withstand the loads expected in a minimum return period of fifty (50) years.

The contracting company must take into account all the environmental conditions it deems relevant for the design of the scanning LiDAR system and subsystems, including at least the wind conditions and their extreme values.

The useful life of the whole system, the equipment and all the software elements included therein should be proposed by the contracting company, always with a minimum of ten (10) years.

3.1. Description of the system

The scanning LiDAR unit used should comply with current industry standards for fixed terrestrial configurations.

A detailed technical description should be supplied, referring to the scanning LiDAR system used and the wind measurement technique.

The contracting company should at least supply the technical information on the scanning LiDAR system that is indicated below:

- Manufacturer and model of the scanning LiDAR device;
- Dimensions and total weight of the whole scanning LiDAR system, including description of the support structures;
- Data recording and communication channels;

- Schematic diagram of the scanning LiDAR system that includes the hardware components, electric power and supply systems and software;
- Characteristics of the measurement system for wind data:
 - Range – the maximum operational range should be specified according to standard ISO 28902-2. The minimum operational range has to be 6 km;
 - Configuration options – all the configuration options shall be described. The system must at least have the options of horizontal scanning, vertical and horizontal spot measurement;
 - Spatial resolution – the spatial resolution for each configuration shall be detailed. The minimum resolution in horizontal scan mode shall be 100 m;
 - The minimum time resolution in horizontal scan mode shall be 1 second;
 - Wind parameters recorded – the equipment shall at least measure the parameters of speed, direction and maximum gust. The method used for the scanning LiDAR system to determine these variables shall be described, as well as any other wind parameter or other variables that the system is able to record (e.g. turbulence), describing the calculation and post-process methods;
 - The availability, resolution and accuracy of the wind data shall be defined according to the measurement distance and the configuration option used;
 - Quality of the measurements (ten-minute means) expressed as standard error and indicators of the quality of the wind measurements. The filters applied shall be described, such as carrier-to-noise ratio (CNR), availability thresholds within those 10 minutes and rain detection, etc.;
 - Operational temperature and wind-speed ranges. Besides indicating the operational ranges, the sensitivity to these or other environmental factors and their effect on the availability and accuracy of the data, including potential consequences with respect to loss of information, data quality and system integrity if those limits or ranges are exceeded;
 - Description of the scanning LiDAR output data files;
- Laser eye safety class.

The tendering companies should provide technical documentation concerning measurement campaigns with the proposed scanning LiDAR equipment and especially in coastal environments similar to the BiMEP testing area.

A toolkit shall be included with everything necessary for installation of the equipment and respective maintenance tasks.

3.2. Secondary sensors for measuring wind speed and direction

The information from a secondary measurement system close to the scanning LiDAR unit should be supplied by means of an anemometer near the equipment's installation point. That sensor's measurements must be integrated in the system. If the equipment does not include sensors for temperature and humidity and a precipitation sensor, the contractor should also supply those sensors and integrate them in the system.

The data obtained by those instruments should be submitted at the same time and integrated with the scanning LiDAR measurements. The secondary measurement system shall be described, as well as its integration system. Documents should be supplied about the certification of that secondary system.

3.3. Energy supply system

The scanning LiDAR equipment shall include the elements needed for it to be correctly connected to the electric network (220Vac/50Hz). The equipment must have a system that enables it to function without interruption in the event of short power grid outages.

3.4. Data recording, storage and communication

The scanning LiDAR equipment shall include the elements needed to transmit the data obtained via cable to the data reception, management and control team. The scanning LiDAR shall include all necessary hardware and software elements so that the data can be transmitted through a cabled channel. The installation at La Atalaya has single-mode fiber. The connection with the BiMEP servicer should be by Ethernet/RJ45 cable.

The communication system has to be secure and should enable remote configuration and communication as well as remote operation of the unit.

The contracting company must include a description of the software to use and respective instructions and mode of usage. It shall also describe the hardware needs to house the software, enabling the data received to be stored on land. The software shall be supplied, including the licenses needed for BiMEP to use it for 1 year,

The set of information supplied by the awarded company must include:

- List of the recorded variables;
- Frequency of sampling, recording of data and quantity;
- Capacity for on-board data recording;
- Communication systems, protocols, frequency that data can be sent to land, including the daily rate;
- All aspects of the scanning LiDAR system that can be remotely controlled.

It must be possible for the set of information generated and supplied by the scanning LiDAR system to be received in real time. It should also be possible to integrate it in the SCADA system that BiMEP has installed for information management. Optionally, the OPC UA protocol will be followed or, failing that, MODBUS TCP.

3.5. Lightning and corrosion protection

Because the site is located in a coastal environment, the type of protection against corrosion of the system's components should be specified. The contractor should install a lightning protection system (near mast) that safeguards the security of the scanning LiDAR.

4. DATA SAMPLING AND MONITORING

4.1. Data recording

Wind speed and direction, CNR, signal quality and any other variable that the scanning LiDAR equipment provides are to be recorded as a ten-minute average, along with the maximum value, minimum value and standard deviation in the same time period. This data must be sent every ten minutes to the data collection center agreed with BiMEP. Real-time monitoring of the equipment's operating and configuration parameters shall also be permitted.

The atmospheric variables measured by the auxiliary sensors must also be saved at least as ten-minute data.

The system must be able to store data and also to transmit it in real time; that data must also be easy to download to a computer at the BiMEP headquarters when necessary. The minimum storage capacity shall be 6 months of data, depending on the spatial and temporal resolution the measurements are configured for.

4.2. Format and units of the data

The data shall be collected by the data recording system for subsequent data loading in real time by the designated communication channel.

The data transmission is to be done in ASCII CSV format or any other format suitable for the measurements (e.g. netcdf), as long as agreed previously with BiMEP. All the measurements and formats shall use international system (SI) units.

5. OPERATIONS

5.1. Testing and validation

Before installing the scanning LiDAR, the contractor shall guarantee that all components of the scanning LiDAR equipment comply with standards. For that purpose, the contractor shall undertake to validate the equipment by means of an in-factory acceptance test and verification against a reference mast.

- The in-factory acceptance test shall review the characteristics, functions and performance of the scanning LiDAR system. The acceptance test template shall be agreed by both parties, the contractor and BiMEP. A signed document with the test's result shall be delivered.
- The in-factory acceptance test shall require supervision by BiMEP or a third party designated by BiMEP. BiMEP reserves the right to also supervise the verification against a reference mast.

The contracting company should document and inform BiMEP of the procedures used to validate the wind measurement system to ensure that it can operate with the highest levels of reliability and quality.

When the verification has been completed, the contracting company shall deliver to BiMEP a calibration certificate issued by a classification and certification company or similar entity.

5.2. Transport, installation and delivery

The contractor shall be responsible for transporting, installing and delivering the system.

The supply shall consist of the transport by the contractor of the scanning LiDAR device and accessory equipment and the structure required to install the equipment at La Atalaya and the software in a computer at the BiMEP headquarters, located at the address indicated in Section 2 of this document.

The installation phase shall consist of the contractor's installation of the scanning LiDAR equipment as well as the accessory equipment required for it to function. The installation point is that indicated in Section 2. The installation shall be done according to the time schedule indicated in SECTION E of the Schedule of these Terms and Conditions or, when appropriate, as established in the tender after negotiation.

When the installation is done, the contractor shall send a report on the installation of the scanning LiDAR system, including: coordinates, site description, technical characteristics of the scanning LiDAR equipment and accessory equipment, photo report and any other relevant information.

During these operations, the contractor must comply with the applicable environmental and health and safety regulations.

5.3. Pre-operational phase

The parties shall sign the document confirming provisional reception once the equipment is installed and has begun operating to BiMEP's satisfaction and the installation report has been accepted. The pre-operational phase shall begin when the document confirming the equipment's provisional reception has been signed and end after four (4) weeks of operation with a correct configuration have passed without any incidents or irregularities.

In this phase the contractor shall monitor how the equipment is functioning and the data acquisition system and check to be sure they are working correctly. In the event of a system malfunction, the necessary adjustments will be made to resolve it. The expenses derived from this activity will be borne by the contractor.

In the event of failure during the operational tests, BiMEP may decide not to accept the system, providing due justification to the contractor. The contracting company will then have the opportunity to replace those elements that caused the failure and will have a deadline of (10) business days to replace them and repeat the tests. Once finished, the contractor is to produce a report with a summary of the measurements, data quality, incidents or observations and actions taken.

(i) If the result of the tests is satisfactory, BiMEP shall proceed to definitively accept the equipment (by signing the corresponding document), thereby beginning the operational phase and the guarantee period foreseen in **SECTION N** of the Schedule of the SATAC.

(ii) If the result of the tests is not satisfactory, BiMEP may opt to terminate the contract under the conditions indicated in Clause 35.2 of the SATAC.

5.4. Operational phase

Once the document confirming the definitive reception has been signed, the measurement campaign or operational phase shall begin, during which the contractor (i) shall provide a service of technical support and incident response and (ii) carry out maintenance of the equipment, as described in Section 6 of this APPENDIX I for both services and subject to the supply guarantee conditions indicated in the aforementioned section as well as in the contracting company's tender. The services of maintenance and technical support and incident response shall be in effect for at least one (1) year and at most five (5) years, as indicated in SECTION E of the Schedule of these Terms and Conditions, and are to be determined in the contractor's final tender after the negotiation phase.

5.5. Training course

The contractor shall conduct a training course whose content is to include equipment installation, downloading and processing of data and interpretation of results, and description of the most common problems. The course will preferably be given at the offices of BiMEP, although both the scope and the mode of teaching will be subject to negotiation. The syllabus will be delivered sufficiently in advance of the course. The necessary documentation to take the course and for the subsequent review will also be provided. The dates of this course can coincide with the time the equipment is being installed.

BiMEP will propose to the contractor the dates for conducting the course 1 month beforehand.

6. TECHNICAL SUPPORT/INCIDENT RESPONSE, PREVENTIVE MAINTENANCE AND SUPPLY GUARANTEE

Technical support and incident response:

During the operational phase the contractor must provide BiMEP with technical support to resolve questions and incidents. This technical support and respective coverage should be described in the submitted tender. The contractor must at least provide BiMEP with a telephone number and an email address that is available at least during business hours in the central European time zone.

It must be possible to access this technical assistance via email or telephone; it will be staffed by qualified personnel. In the event of serious incidents that require repair or replacement of parts, etc., the work will be considered to be covered by the guarantee.

The maximum response time for technical support shall be 72 hours after receiving notice from BiMEP. Within that 72-hour period the contractor must send BiMEP a diagnosis report and action plan to repair the problem, which among other information should at least indicate the time it will take to resolve the incident.

Preventive maintenance:

During the operational phase the contractor will provide a preventive maintenance service, carrying out remote supervision of the equipment and communicating relevant incidents that might affect proper functioning of the equipment. The system itself will send alerts if any problem is detected.

In addition to the preventive maintenance plan that the contracting companies must submit, which will be subject to evaluation for the sole purpose of ascertaining the future maintenance needs of the equipment provided. That description should indicate the minimum and maximum response times the contracting company usually commits to, depending on the type of problem, as well as the spare parts stocked and a spare parts recommendation based on the most frequent problems (including the prices of the indicated spare parts).

Supply guarantee:

The guarantee of the scanning LiDAR equipment (hardware and software) shall be for at least twenty-four (24) months counting from the signing of the document confirming definitive reception (or start of the operational phase) and shall include replacement parts as well as travel and labor. Only those problems caused by improper use of the equipment or its components by BiMEP personnel or a third party contracted by BiMEP shall not be considered covered by the guarantee.

7. LICENSES AND PERMITS

The contractor shall supply all the technical documentation needed so that BiMEP can proceed with arrangements for the competent authority to authorize the scanning LiDAR installation at BiMEP, if necessary, as well as any additional information required during the permits and consent process. The contractor must abide by the consent documents supplied by BiMEP.

8. APPENDIXES

The following are included as appendixes to the specifications:

- Appendix I: Detailed topography of Armintza and photographs of the access to La Atalaya
- Appendix II: elevation plans of the tower, communications cabinet and orientation of the tower

APPENDIX II

DETAILS OF THE WORKING CONDITIONS OF PERSONNEL TO BE SUBROGATED

The successful tenderer shall be obliged to subrogate the staff currently providing the service in order to contribute to and guarantee the principle of job stability. The conditions of the personnel currently assigned to the performance of the contract are shown below:

ID number	Collective bargaining agreement	Professional category	Type of contract	Working hours	Length of service / seniority date	Expiry date of contract	Gross annual salary	Agreements in force

APPENDIX III COMMITMENT TO ASSIGN MATERIAL AND/OR HUMAN RESOURCES

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number

HEREBY DECLARES

That with regard to the resources to be assigned to the performance of the contract:

- I. He/She undertakes to assign to the performance of the contract the material and/or human resources specified in the schedule "Commitment to assign material and/or human resources".
- II. He/She undertakes to provide any documentation that may be required by the contracting authority, to demonstrate that it has the means indicated in **SECTION S** of the Schedule of these Terms and Conditions and identified in the schedule "Commitment to assign material and/or human resources", within the period specified in Article 150.2 of the PSPA.

HUMAN RESOURCES		
MINIMUM REQUIREMENTS (see SECTION S)		
Professional profile		
Qualification(s)	Experience	Full-time / Part-time / Other
PROPOSED HUMAN RESOURCES ¹		
Name and surname(s)	Qualification(s)	Experience
MATERIAL RESOURCES		
MINIMUM REQUIREMENTS (see SECTION S)		
PROPOSED MATERIAL RESOURCES ²		

In [...], [day] [month] 20[..]

[Name of company/tenderer].

p.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the

¹ To be completed by the tenderer

² To be completed by the tenderer

award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.

3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX IV NOTIFICATION OF SUBCONTRACTING

Mr./Ms., ID document number, in his/her own name or on behalf of (name of contractor), with tax ID number....., as the contractor,

HEREBY DECLARES

That, in relation to the procedure for performance of the contract with file number

I. He/She has reached agreement with (name of subcontractor), tax ID number and registered address at, telephone number and whose legal representative is Mr./Ms....., for the performance of the work specified below and in the following conditions:

- Work: [...]
- Price of work: [...]
- % of work subcontracted in relation to the economic tender: [...]
- Price payment terms: [...]
- Start date of work: [...]

II. He/She has verified that the subcontractor meets the requirements on fitness stipulated in Article 215 of the PSPA and is not disqualified from contracting, and that he/she undertakes to provide the required supporting documentation within a maximum period of five (5) working days from the date of receipt of this notification.

III. He/She has informed the workers' representatives of this subcontract.

In [...], [day] [month] 20[..]

[Name of company/tenderer].
p.p.

Mr./Ms. [...]

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3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
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APPENDIX V ECONOMIC TENDER

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number

HEREBY DECLARES

- I. That he/she has taken into account in the preparation of their tender the obligations arising from the provisions in force in the areas of taxation, environmental protection, employment protection, gender equality, working conditions, occupational risk prevention and integration of the disabled into society and the job market, and the obligation to hire a specific number or percentage of people with disabilities, and environmental protection.
- II. That he/she undertakes to perform the services which constitute the object of the contract, in accordance with the conditions laid down in the Specific Administrative Terms and Conditions (SATAC) and in the Technical Specifications (TESP) and, where appropriate, provide supporting documents governing the contract for the following price(s):

Criterion 9 – Financial bid (manufacture, supply, legalization and installation of the measurement system; verification, testing and trials of the measurement system; and training course for BiMEP personnel):

	Item	Price net of VAT	VAT (.....%)	Price including VAT
1	Manufacture, supply, legalization and installation of the measurement system	€[...]	€[...]	€[...]
2	Verification, tests and trials of the measurement system	€[...]	€[...]	€[...]
3	Training course for BiMEP personnel	€[...]	€[...]	€[...]
=	TOTAL criterion 9 for valuation purposes (Items 1+2+3)	€[...]	€[...]	€[...]

Criterion 10 – Financial bid per year (preventive maintenance and technical support and response to incidents):

The valuation of this criterion shall consider the price per year, whereby the following table shall indicate the price per year of each item.

	Item	Price net of VAT including total of years tendered	VAT (.....%)	Price including VAT including total of years tendered
4	Preventive maintenance (price for each year)	€[...]	€[...]	€[...]
5	Technical support and response to incidents (price for each year)	€[...]	€[...]	€[...]
=	TOTAL criterion 10 for valuation purposes (Items 4+5)	€[...]	€[...]	€[...]

* **NOTE 1:** Along with **APPENDIX V** a detailed and broken-down proposal should be provide with all the items that comprise the object of this contract, with components to supply and services to render (containing at least the main items indicated in the table of APPENDIX V), so that the invoicing can be managed according to the payment mode set out in Section D of the Schedule of these Terms and Conditions. If the different maintenance years have different prices, the tenderers should provide a budget breakdown, although for valuation effects an average annual price should be offered in "Item 4" of Appendix V regarding maintenance.

* **NOTE 2:** The maximum tender price, encompassing all the service provisions included in this contract, cannot exceed the maximum of €750,000 (net of VAT) established in Section C of the Schedule of these Terms and Conditions. Regardless of the years tendered for "preventive maintenance" and "technical support and response to incidents", the contract's total price cannot under any circumstance exceed that maximum budget of €750,000 (net of VAT). **To verify that the budget ceiling is not exceeded**, the calculation resulting from application of the following table shall be complied with and considered; its amounts shall be equivalent with respect to those indicated for valuation purposes in the previous tables of APPENDIX V.

				Price net of VAT
1 + 2 + 3	TOTAL criterion 9 for valuation purposes (1+2+3) - Manufacture, supply, legalization and installation of the measurement system - Verification, test and trials of the measurement system - Training course for BiMEP personnel			€[...]
	Price per year (net of VAT)	no. of years tendered	Price VAT not including total of years tendered	
4	<i>Preventive maintenance</i>	€[...]/year	x [...] years	
5	<i>Technical support and response to incidents</i>	€[...]/year	x [...] years	€[...]
=	TOTAL (1+2+3+4+5) maximum limit of €750,000			€[...]

In [...], [...] 20[...]

[Name of company/tenderer].
p.p.

Mr./Ms. [...]

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3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX VI MODELS OF BANK GUARANTEE AND SURETY BOND

Bank Guarantee

The Bank, (hereinafter, the “Bank”) and for and on its behalf Mr./Ms. *, duly authorized to execute this act through the powers granted to him/her on ** before the Notary Public of Mr./Ms. *, under the number of his/her official records and assuring that those powers have been neither revoked nor varied,

HEREBY STAND GUARANTEE on first demand and severally for the company (hereinafter, the “Company”) with tax identification number and registered at before Biscay Marine Energy Platform, S.A. (hereinafter, the “Beneficiary”) with tax identification number and registered at, amounting to a maximum of [...] ([...]) euros (hereinafter, the “Guaranteed Amount”) in the performance of any obligations arising from the proper performance and execution of the contract for the purpose of [indicate name of contract], to be signed between the Company and the Beneficiary, which the Bank declares to be aware of.

The following conditions apply:

- (i) The Bank expressly waives the rights and benefits of order, excussio and division and any type of defense.
- (ii) This guarantee is of an abstract nature, thereby making it unnecessary for the Beneficiary to indicate or justify the reasons for calling the guarantee, and the Bank will have no right to raise objections to any requirement for payment against the guarantee, despite any objections that may be put forward by the Company.
- (iii) The Bank will pay the amount upon request by the Beneficiary within a maximum of five (5) working days from the date of notification given to it in writing and to the following address: [...].
- (iv) The Bank will effect all payments required of it by the Beneficiary, once or in multiple instalments, as informed by the Beneficiary, provided the total amount does not exceed the Guaranteed Amount.
- (v) Payments shall be made to the bank account as shown in the notification of the Beneficiary, free from and with no deductions for or on account of any tax, duties, charges, compensation, counterclaims, deductions or retentions, present or future, of any nature.
- (vi) This guarantee will be valid indefinitely until such time as the Beneficiary authorizes its cancellation in writing.
- (vii) This Guarantee shall be governed by Spanish Law. Any disputes arising under this guarantee shall be subject to the exclusive jurisdiction of the Courts of Bilbao, to the jurisdiction of which the parties submit, expressly relinquishing any other jurisdiction that may be applicable.

This Guarantee has been registered in the Special Register of Guarantees on [...] 20[.] under number [...].

(Place and date)

(Registered address of entity)

(Signature of representative(s))

Province / Date / Number or code

Surety Bond

Certificate number (with registered name of insurer), hereinafter the “insurer” or “surety”, with registered address (for notices and demands) at, and tax ID number....., duly represented by Mr./Ms. (name and surname(s) of representative(s)), with powers sufficient to execute this act resulting from verification of the representation in the lower part of this document

INSURES

[name and surname(s) or registered name of the insured], with tax ID number [...], as the policyholder, before BiMEP, with tax ID number A95671244, hereinafter the insured, up to the amount of (in words and figures) euros, under the terms and conditions established in the Public Sector Procurement Act, implementing regulations and in the Specific Administrative Terms and Conditions governing the contract (indicate the object of the contract), as a definitive guarantee, to meet the obligations, penalties and other expenses that may be derived in accordance with the rules and other administrative conditions set forth above with respect to the insured.

The insurer declares, under its responsibility, that it complies with the requirements of Article 57.1 of the General Regulations of Public Administration Contract Law.

Failure to pay the premium, whether single, first or subsequent, shall not entitle the insurer to terminate the contract, nor shall the contract be extinguished, nor shall the coverage of the insurer be suspended or the insurer be released from its obligation, should the insurer have to make the guarantee effective.

The insurer may not raise exceptions against the insured which may apply to the policyholder.

The insurer undertakes to indemnify the insured at the first request of the General Treasury of the Basque Country, under the terms established in the Public Sector Procurement Act.

This surety bond shall remain in force until BiMEP, 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 Procurement Act.

In [...], [day] [month] 20[..]

Signed: Insurer

(Place and date)

(signature of representatives)

(Insurer)

Province / Date / Number or code

APPENDIX VII DESIGNATION OF CERTAIN INFORMATION IN THE TENDER AS CONFIDENTIAL

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number

HEREBY DECLARES

That, in relation to the documentation submitted in envelope(s) [...] (indicate the relevant envelope(s)) of tender file number (*) [...], the following information and aspects of the tender are considered confidential by virtue of their connection to technical or business secrets:

[...]

Such confidentiality is justified on the following grounds [...]

In [...], [day] [month] 20[..]

[Name of company/ tenderer].
p.p.

Mr./Ms. [...]

() Indicate the file number in the Schedule*

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX VIII DETAILS FOR THE PURPOSE OF COMMUNICATIONS AND NOTIFICATIONS

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number

HEREBY DECLARES

That the relevant details for the purpose of communications and notifications are as follows:

General details	
Name of tenderer	
Tax ID number	
Main activity	
Registered address	Head Office: Offices in the Autonomous Community of the Basque Country:
No. of employees	Total: In the Autonomous Community of the Basque Country:
Business turnover	Total: In the Autonomous Community of the Basque Country:
Certificate of Official Register of Contractors (yes/no)	
Certification of management systems (ISO, UNE or similar)	
Details for notification purposes	
Person to whom notifications should be sent:	
Email address:	
Language of notification:	Basque = [...] Spanish = [...]

Basic information about personal data protection

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1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX IX UNDERTAKING TO FORMALLY CONSTITUTE A JOINT VENTURE

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number, and

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number, and

[...]

HEREBY DECLARE

- I. That the companies represented undertake to take part jointly and severally in the call for tenders [...], undertaking to form a joint venture under the name [...] if they are awarded the contract.
- II. That the participation of each of the companies that would form the joint venture would be as shown below:
 - [...]
 - [...]
- III. That, for the purposes of representation before the contracting authority, the undersigned appoint Mr./Ms. [...], with ID document number [...], of legal age, whose address is [...], telephone [...] and fax [...], to be the representative of the Joint Venture.

In [...], [day] [month] 20[...]

[...]

[...]

p.p.

p.p.

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX X

STATEMENT OF COMMITMENTS REGARDING EQUALITY AND WITH RESPECT TO PERSONS CARRYING OUT THE ACTIVITY OF THE OBJECT OF THE CONTRACT

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), of tax ID number; in relation to file number

HEREBY DECLARES

- I. That the entity he/she represents has not been sanctioned for a very serious infringement or convicted by administrative decision or final court ruling for non-compliance with the equality obligations under the Workers' Statute or the applicable agreement.
- II. That the entity he/she represents complies with the provisions set out under Organic Law 3/2007, of 22 March, for effective equality of women and men.
- III. That, in the event of being awarded the contract, **the collective bargaining agreement applicable to the workers carrying out the activity of the object of the contract is *: [...]**
- IV. That, in the event of being awarded the contract, during the performance of the contract he/she will provide all the information required by the person responsible for the contract or the contracting authority on the working conditions that are effectively applied to these workers.
- V. That, in the event of being awarded the contract, he/she will pay, throughout the performance of the contract, the salary included in the applicable collective agreement, in accordance with the corresponding professional category of the worker, and that said salary shall under no circumstances be lower than that specified in that agreement.
- VI. That he/she voluntarily accepts to give institutional transparency to all data derived from the award procedure and from the performance of the contract until its completion.
- VII. That he/she undertakes to carry out the contract in strict compliance with the obligations regarding the personnel assigned to its performance that are incumbent on the contractor, and which are established in the Terms and Conditions.

In [...], [day] [month] 20[..]

[Name of company/ tenderer]
p.p.

Mr/Ms [...]

**Without prejudice to the provisions of labor legislation applicable in cases in which there is an obligation to subrogate.*

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.

4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XI COMPANIES BELONGING TO THE SAME BUSINESS GROUP

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number

HEREBY DECLARES

That, in accordance with Article 42.1 of the Commercial Code, the company I represent is part of a business group (yes/no): [...]. And that the company(ies) bidding for this tender is/are the following:

<i>Company name</i>	<i>Tax ID number</i>

In [...], [day] [month] 20[..]

[Name of company/ tenderer].
p.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XII LOT OR LOTS FOR WHICH A TENDER IS BEING SUBMITTED

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number,

HEREBY DECLARES

- I. That a tender is being submitted for the following lots: [...]
- II. That, if provided for under **SECTION R** of the Schedule of these Terms and Conditions, to be submitting a tender for the following multiple lots: [...]

In [...], [day] [month] 20[..]

[Name of company/ tenderer]
p.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XIII ELIGIBILITY FOR PARTICIPATING IN PUBLIC PROCUREMENT CONTRACTS

Mr./Ms....., ID document number in his/her own name or on behalf of (name of tenderer), with tax ID number; in relation to file number,

HEREBY DECLARES

That the company they represent, its administrators and representatives, the signatory and, where applicable, the companies that, by reason of the persons that govern them or other circumstances, can be presumed to be a continuation of, or that derive by transformation, merger or succession from other companies in which they have tendered, are not subject to any of the prohibitions and incompatibilities for contracting indicated in Article 71 of Act 9/2017, of 8 November, on Public Sector Procurement of 2017, under the terms and conditions foreseen therein.

In [...], [day] [month] 20[..]

[Name of company/ tenderer]
p.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XIV AVAILABILITY OF THE SOLVENCY AND RESOURCES OF OTHER PERSONS OR ENTITIES THROUGHOUT THE TERM OF THE CONTRACT

Mr./Ms....., ID document number, in his/her own name or on behalf of (name of contractor), with tax ID number, and registered address at, of the one part; and

Mr./Ms....., ID document number, in his/her own name or on behalf of (name of contractor), with tax ID number....., and registered address at of the other part,

HEREBY DECLARE

- I.- That, in accordance with the provisions of Article 75 of the PSPA, (name of tenderer) has used the solvency and/or resources of (third entity)..... to participate in the procedure for the award of the contract for (specify the object of the contract) under file number..... .
- II.- That (third entity) is not prohibited from contracting with the public sector.
- III.- That the solvency and/or resources belonging to (third entity) and made available to (name of tenderer) is/are as follows:
 - ...
 - ...
- IV.- That said solvency and/or resources shall be made available to the (name of tenderer) throughout the term of the contract.
- V.- That (third entity) shall provide services for which the academic and/or professional qualifications and/or professional experience specified in **SECTION S** of the Schedule of these Terms and Conditions are required.
- VI.- That (name of tenderer) shall provide all supporting documentation required by the person responsible for the contract when the latter so requests, as evidence of the authenticity of the claims made in this statement, within the period of time given to the tenderer to comply with this requirement.

In [...], [day] [month] 20[..]

[...]

[...]

p.p.

p.p.

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.

4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XV DECLARATION ON COMMITMENTS ASSUMED IN MATTERS OF PERSONAL DATA PROTECTION

Mr./Ms....., with ID in his/her own name or on behalf of (tenderer), with tax ID number; in relation to file no., and

DECLARES

- a) That he/she knows and accepts that the processing and/or cession of personal data that may entail the performance of this contract should only and exclusively be done for the purpose described in SECTION J of the Schedule of these Terms and Conditions.
- b) That if it awarded this contract, it shall unreservedly submit to national and European Union regulations in matters of data protection, without prejudice to what is set out in the last paragraph of Section 1 of Article 2020 of the PSPA.
- c) That if awarded this contract, the provision of the services associated to the contract will be carried out via **servers located in [...]**.
- d) That if awarded this contract, it is obliged to inform the contracting authority of any change that occurs throughout the life of the contract regarding the information provided in the declaration referred to in paragraph c) above.
- e) That if there is any intention to subcontract the servers or the services associated to same for performance of the contract, those subcontractors must be identified in accordance with the form indicated in **APPENDIX IV** of these Terms and Conditions.

1.- General description of the personal data processing to be done

Description:

The processing of personal data shall consist of: **NOT APPLICABLE**:

The personnel assigned by the contractor to provide the services established in the terms and conditions can process personal data. Personal data will only be processed by the assigned personnel and for the sole purpose of carrying out the contracted scope.

If as a consequence of performance of the contract it becomes necessary at any time to amend what is stipulated in this Appendix, the contractor will request this on a grounded basis and indicate the changes it requests. If the contracting award authority agrees with the requested change or changes, it will issue an updated Appendix so that the latter can always faithfully reflect the details of the personal data processing to be carried out.

2.- Groups and personal data processed

The groups of interested parties and personal data processed which the contractor can have access to are the following:

<i>Processing and main groups of interested persons</i>	<i>Personal data from the processing that can be accessed</i>
Processing 1: <i>Not applicable</i>	<i>Not applicable</i>

3.- Elements of personal data processing

The processing of personal data shall comprise:

- ☐ Collection / Recording
- ☐ Classification / Structuring
- ☐ Retention / Security copy
- ☐ Modification
- ☐ Extraction
- ☐ Consultation
- ☐ Communication / Transmission
- ☐ Limitation
- ☐ Elimination / Cancellation / Right to be forgotten
- ☐ Destruction of copies
- ☐ Recovery of security copies

4.- Disposal of personal data when the contract term ends

When the contract term ends, the contractor must:

a) Return the personal data to the body responsible for the processing and, if applicable, the supports on which it are stored, when the service has been provided. The return should entail total erasure of the personal data in the computer equipment used by the contractor. The contractor may nevertheless preserve a copy, with the personal data duly blocked, for as long as liability may derive from performance of the contract.

Notwithstanding the above, the body responsible for the processing may require that the contractor, instead of option a), comply with b) or c) below:

b) Return the personal data to the data processor designated in writing by the body responsible for the processing and, if applicable, the supports on which it is stored, when the service has been provided. The return should entail total erasure of all the personal data in the computer equipment used by the contractor.

However, the contractor may preserve a copy, with the personal data duly blocked, for as long as liability may derive from performance of the contract.

c) Destroy the personal data once the service has been provided. When they are destroyed, the contractor must certify their destruction in writing and deliver the certificate the body responsible for the processing. The contractor may nevertheless preserve a copy, with the personal data duly blocked, for as long as liability may derive from performance of the contract.

5.- Security measures

The personal data should be protected using the measures that an orderly company should take to prevent such data from losing their reasonable confidentiality, integrity and availability.

The contractor cannot fail to implement or remove such measures by using a risk analysis or impact assessment, unless express authorization to do so is obtained from the contracting authority.

The contractor's personnel must accordingly follow the security measures established by the contracting authority and may not process personal data other than that determined by the contractor.

In [...], [...] 20[...]

[Name of company/tenderer].
P.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"

APPENDIX XVI ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION

(to deliver to the tenderer for data protection information purposes)

1. **Body responsible for the processing and contact information:** Corresponding contracting authority, which can be contacted at the postal address Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao and by the telephone 944 03 56 00.
2. **Data protection officer and contact information:** the data protection officer of BiMEP can be contacted at the postal address Edificio Plaza Bizkaia, C/Alameda de Urquijo 36 – 1ª Planta, 48011, Bilbao, by the telephone 944 03 56 00, and via the email dpd@eve.eus
3. **Purpose of the processing:** management of all phases of the public procurement procedure, including execution, modifications, extensions, variations of deadlines or price, final amount and termination, as well as decisions to withdraw from the award procedure, to not award or enter into the contract and incidents imputable to the contractor which give rise to its termination.
4. **Preservation period:** the time needed to fulfil the purpose for which it was collected.
5. **Legitimation:** the processing is needed for performance of a contract in which the interested person is party to, and is also carried out in compliance with the provisions of Law 9/2017 of 8 November on public sector contracts (sections b) and c), respectively, of Article 6.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data, thereby repealing Directive 95/46/EC).
6. **Addressees:** The personal data can be communicated to people who have a legitimate interest and to the General Treasury of the Basque Country.
7. **Exercise of rights:** People whose personal data has been gathered can exercise the following rights:
 - a) **Access:** right to obtain from the body responsible for the processing confirmation of whether the personal data concerning him or her is being processed and, if so, the right to access that data.
 - b) **Rectification:** right to obtain rectification of inaccurate personal data concerning him or her and which complete any personal data that is incomplete, including by means of an additional declaration.
 - c) **Deletion (right to be forgotten):** right to obtain the deletion of the personal data concerning him or her when any of the following circumstances occur:
 - 1) the personal data is no longer necessary with respect to the purposes for which it was collected or otherwise processed;
 - 2) the interested person withdraws the consent on which the processing is based, and the latter is not based on another legal ground;
 - 3) the interested person opposes the processing and no other legitimate legal reasons for the processing prevail;
 - 4) the personal data has been processed illegally;
 - 5) the personal data should be deleted to comply with a legal obligation;
 - 6) the personal data was obtained in relation to the offer of information society services mentioned in Article 8, paragraph 1 of Regulation (EU) 2016/679;
 - 7) right to have any link to the respective personal data eliminated when there is an obligation to delete it.
 - d) **Limitation:** right to have processing of the respective personal data limited in the following cases:

- 1) when the accuracy of the personal data is disputed, during a period which allows the responsible body to verify its accuracy;
 - 2) the processing is illegal and the interested person is opposed to deletion of the personal data and instead requests that its use be limited;
 - 3) the responsible body no longer needs the personal data for the processing purposes, but the interested person needs it to make, exercise or defend against claims;
 - 4) the interested person has opposed the processing, while it is being verified whether the legitimate reasons of the responsible body prevail over those of the interested person.
- e) **Opposition:** right to object at any time, for reasons associated to his or her particular situation, processing of personal data concerning him or her by the controller, based on the performance of a task of public interest or in the exercise of public authority or in the legitimate interest of third parties, including profiling:
- 1) the data controller will stop processing the data unless it accredits imperative reasons that prevail over the interests, rights and freedoms of the interested person or are needed to make, exercise or defend against claims;
 - 2) if the data is for the purposes of scientific or historical research or statistical purposes of the interested person, he or she shall have the right, for reasons associated to his or her particular situation, to object to the processing of the respective personal data, unless it is needed to fulfil a task done for reasons of public interest.
- f) **Automated processing:** right to also not be the object of a decision based solely on automated processing, including profiling, that produces legal effects on the person whose personal data is gathered or significantly affects him or her in a similar manner.

8. Detailed information about personal data protection at the following places:

- a) General Data Protection Regulation (EU) 2016/679 (<https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:32016R0679&from=ES>).
- b) Organic Law 3/2018 of 5 December on Personal Data Protection and guarantee of digital rights
<https://www.boe.es/eli/es/lo/2018/12/05/3/con>

The persons or persons whose data is collected have the possibility of exercising these rights before the body responsible for the processing.

The person or persons whose personal data is collected can also contact the data protection officer before lodging a claim, against the responsible body or the person in charge of the processing, with the Basque Data Protection Agency, according to the provisions of Article 37.1 of Organic Law 3/2018 of 5 December on Personal Data Protection and guarantee of digital rights.

APPENDIX XVII

HOW THE NEGOTIATION OF THE CONTRACT TERMS WILL BE CONDUCTED

The aim of the negotiation phase will be to try to achieve improvement of the proposals in accordance with the financial and technical aspects that will be subject to negotiation, as indicated in SECTION R of the Schedule of these Terms and Conditions.

This appendix indicates how the negotiation of the contract terms will be conducted.

The negotiating technical service designated for that purpose shall proceed as follows:

1. The economic and technical proposals submitted with respect to the award criteria will be analyzed and an initial valuation report produced that indicates the main characteristics and advantages of each of them.

The report shall comply with the confidentiality obligation in the terms established in the PSPA, whereby it will not reveal information designated as confidential by tenderers and particularly technical or business secrets.

2. The negotiating technical service will invite the tenderers to negotiate, indicating the aspects subject to negotiation set out in SECTION R of the Schedule of these Terms and Conditions, informing them of the characteristics and advantages of the respective proposal and of the rest of the proposals submitted according to the aforementioned initial report.

The invitations will be sent in the form envisaged in SECTION R of the Schedule of these Terms and Conditions.

The tenderers may then submit within three to five working days, as indicated by BiMEP in each negotiating round, their response addressed to the negotiating technical service, in the indicated register. Documentation will not be accepted if it is received in another register or after the date and hour of the deadline indicated in the invitation.

The proposals from the tenderers can improve the terms of their initial tender or otherwise indicate that the original terms are maintained.

Neither the minimum requirements of the service that is the object of the contract nor the established award criteria are negotiable.

The new tenders should always specify the improvement offered, whereby a general offer to equal the most advantageous offering of another tenderer in the criterion or criteria considered shall not be accepted.

If as a consequence of the negotiation the technical specifications or other contracting documentation is modified (though not that establishing the minimum requirements), it will be necessary to inform via the corresponding channel all the tenderers whose tenders were not excluded and to give them sufficient time to submit a new revised tender.

The number of negotiation rounds shall be determined by BiMEP, although it should be between 1 and 3 rounds, approximately. The means through which the negotiation will be conducted will also be determined by BiMEP.

3. The procedure indicated above will be carried out as many times as so established.

This negotiation phase shall especially ensure that all tenderers receive equal treatment and that the confidentiality principle is strictly complied with. Accordingly, no information that can give advantages to certain tenderers over others can be provided in a discriminatory manner.

4. Once the previous actions have been carried out, the negotiating technical service will forward the results of the negotiation to the contracting committee, where appropriate, or if it has not been formed, to the contracting authority, accompanied by the documentation accrediting the negotiation and a technical report with the valuation of the tenders submitted, in accordance with the award criteria established in the terms and conditions. In particular, the submitted proposals that did not comply with the specifications of the terms and conditions not subject to negotiation shall be forwarded, so that their exclusion from the proceeding can be agreed, as appropriate.

The contracting authority shall declare the negotiating phase concluded and inform all the tenderers of this, while asking them to submit, through the corresponding channel, their definitive tender in accordance with the result of the conducted negotiation by the common deadline set in the communication, which will be notified in the form indicated in SECTION R of the Schedule of these Terms and Conditions.

The Contracting Committee will next proceed in the terms foreseen in Clause 20 of the SATAC.

The file should record the invitations sent out, the tenders received, the reasons for their acceptance or rejection and the advantages obtained in the negotiation.

APPENDIX XVIII PARTICIPATION REQUEST

Mr./Ms....., with ID in his/her own name or on behalf of
(economic operator), with tax ID number; in relation to file
no.

DECLARES:

I.- That having learned of the tender announcement published in ...

II.- It requests admittance to the bidding process and to be invited to submit a tender.

In [...], [...] 20[..]

[Name of company/tenderer].
p.p.

Mr./Ms. [...]

Basic information about personal data protection

In compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with respect to personal data processing and free movement of that data (General Data Protection Regulation) and other regulations in force on data protection, it is hereby informed that personal data will be included in the processing activity called "ECONOMIC-FINANCIAL MANAGEMENT".

1. **Responsible entity:** corresponding contracting authority.
2. **Purpose:** management of the public procurement procedure in all its phases, including execution, modifications, extensions, variations of deadlines or price, respective final amount and termination, as well as the decisions to withdraw from the award process, to not award or enter into the contract and the incidents that can be imputed to the contractor and which gave rise to its termination.
3. **Legitimation:** processing needed to perform a contract in which the person interested is a party and to fulfil a legal obligation applicable to the body responsible for the processing.
4. **Addressees:** the personal data can be provided to those who have a legitimate interest and to the General Treasury of the Basque Country.
5. **Rights:** You have the right to access, rectify or delete your data, and to limit or oppose its processing.

COMPLETE INFORMATION IN APPENDIX XVI "ADDITIONAL INFORMATION ON PERSONAL DATA PROTECTION"