

INTERNAL PROCUREMENT INSTRUCTIONS

“FUNDACIÓ BARCELONA MOBILE WORLD CAPITAL FOUNDATION”

(Approved by the Foundation’s Board of Trustess in session of December 12th 2016)

MODEL favorably reported by the Permanent Commission of the Contracting Advisory Board of the Government of Catalonia, through report 15/2015, of December 21st, and adjusted to the content of the Instruction 1/2016, of April 28th, of the General Directorate for Public Procurement, whose aim is to lay down the effects of the direct application of certain provisions of European Directives 2014/23/EU and 2014/24/EU, according to the report 1/2016 of the Contracting Advisory Board of the Government of Catalonia and the Decree 3/2016, of May 31st, on urgent measures within the public procurement.

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INTRODUCTION

In March 13th 2012, the representatives of the General Administration of the Kingdom of Spain, the Government of Catalonia, the Barcelona City Council, Fira Internacional de Barcelona and GSMA Ltd. incorporated the Fundació Barcelona Mobile World Capital Foundation, (hereinafter, the Foundation”).

Among the provisions which regulate the Foundation’s legal regime, are included the proceedings within public procurement, and, more specifically, the Royal Legislative Decree 3/2011, of November 14th, under which the Public Sector Contracts Act was approved (hereinafter, “TRLCSP”).

Article 3.1 TRLCSP determines the entities and organizations that, under this Act, are considered part of the public sector; most specifically, in paragraph f) are mentioned *“the foundations constituted with majority contribution, direct or indirect, from one or several entities integrated in the public sector, or whose capital, permanently, is made up in more than a 50% by assets or rights contributed or assigned by the referred entities”*. According to that, is evident that the Foundation is integrated in the public sector.

Moreover, article 3.3 TRLCSP relates the entities that, belonging to the public sector, are considered “awarding authorities”. Among them are included those *“entities, bodies and organisations with legal personality which are not public administrations, specifically created to satisfy general interests and with no industrial or commercial nature, as long as one or several entities which are considered awarding authorities, according with the criteria stated in paragraph 3, mostly finance their activity, supervise and control their management or appoint more than a half of the membres of the management board”*. The Foundation complies with these requirements, so it has to be considered an awarding authority that does not have the character of public administration.

In October 31st 2007, it was published in the Official State Gazette the Act 30/2007, of October 30th, of the Public Sector Contracts, which provides, in article 175.b), the obligation of the entities which are considered awarding authorities that do not have the consideration of public administrations, to approve a fully binding internal procurement instructions to regulate non harmonized contractings with the aim of guaranteeing the effectiveness of the principles of publicity, open competition, transparency, confidentiality and non discrimination (hereinafter, “the Instructions” or, alternatively, “IIC”).

Currently, such provision is included in article 191.b) TRLCSP.

TRLCSP has been subsequently modified by several legal texts: Act 17/2012, of December 27th; Royal Decree Act 4/2013, of february 22th; Act 8/2013, of June 26th; Royal Decree Act 8/2013, of June 28th; Act 11/2013, of July 26th; Act 14/2013, of September 27th; Act 20/2013, of December 9th; Act 25/2013, of December 27th; Royal Decree Act 1/2014, of January 24th; Act 2/2015, of March 30th and Royal Decree Act 10/2015, of September 11th.

On the other side, TRLCSP has been deployed and complemented by many diferent provisions and resolutions from the Contracting Advisory Board, which concrete the interpretation of several of its prescriptions.

It also should be taken into account the amendments of Royal Decree 1098/2001, on General Regulations on the Contracts Law and the Royal Decree 300/2011, of March 4th, under which the Contracts Law is partially amended, such as the Order ECO/294/2015, of September 18th, by which amends the Order ECO/47/2013, of March 15th, which regulates the operation and approves the application of the Public Registry of Contracts of the Government of Catalonia.

Lastly, and in addition to the TRLCSP, it must be taken into account, regarding procurement, the recent provisions regarding transparency: the State Act 19/2013, of December 9th, of transparency, access to public information and good governance y and the Parliament of Catalonia's Act 19/2014, of December 29th, of transparency, access to public information and good governance, which entered into force in July 1st 2015.

Likewise, in April 18th 2016 expired the term for the transposition of the European Directives 2014/23/UE, of February 26th 2014, related to the awarding of concession contracts, and 2014/24/UE, regarding public procurement, without them having been duly transposed by the State legislation.

The TRLCSP, the same as Act 30/2007, provides a different legal regime depending on the type of entities of the public sector and depending on if it's contracting is harmonized or non harmonized.

The purpose of these Instructions is to regulate the non harmonized contractings, with the aim of guaranteeing the effectiveness of the principles of publicity, open competition, transparency, confidentiality and non discrimination, and guaranteeing also that the contract is awarded to the candidate with the most advantageous offer, such as adequating the amounts of the contracts subject to the present Instructions.

According to article 20.1 TRLCSP, the contracts that the Foundation celebrates within these Instructions are to be considered private contracts. This means that the preparation and awarding shall be ruled by the TRLCSP with the particularities provided for in article 190, while the effects and extinction shall be regulated by private law. Besides, in accordance with article 20 TRLCSP, the provisions of Title V from Book I of TRLCSP, on amendment of the contracts, shall also be applicable.

In July 20th 2012, the Foundation's Board of Trustees approved the first Internal Procurement Instructions, which were revised afterwards to be adjusted to the amendments that, at that time, took place regarding public procurement law, and which crystallized in a new version already approved by the Foundation's Board of Trustees in July 9th 2015.

Now, this new revision of the Internal Procurement Instructions has the aim to adjust them to the European Directives 2014/23/UE and 2014/24/UE, according to the report 1/2016 of the Contracting Advisory Board of the Government of Catalonia, such as the content of the Law Decree 3/2016, of May 31st, on urgent measures within public procurement, which gives a three months period for its adaptation.

These Instructions avoided the determination of the most advantageous offer according exclusively to the price unless the purpose of the contract or duly justified circumstances, stated in the dossier of the contract, expressly recommend it.

With the aim of guaranteeing the fulfillment of these principles, and, in particular, the principle of publicity, the contracting profile is considered particularly relevant, as contains the information related to the tenders regulated in the current Instructions and fulfils the principle of publicity contained herein.

Likewise, these Instructions shall be published in the Foundation's contracting profile and shall be permanently available to all those who might be interested in participating in the contracts of the Foundation. Any amendment shall be also informed through such profile.

TITLE I. GENERAL PROVISIONS

Chapter I. Object and scope

Article 1. Object

- 1.1. According to article 191 of TRLCSP, these Instructions regulate the Foundation's non harmonized contractings with the aim of guaranteeing the effectiveness of the principles of publicity, open competence, transparency, confidentiality and non discrimination, and guaranteeing also that the contract is awarded to the candidate with the most advantageous offer.
- 1.2. Likewise, and additionally to the above mentioned regulation, these IIC include general provisions related to public procurement, as well as provisions related to the bidders, contracting preliminary proceedings, its execution and subsequent extinction.
- 1.3. In accordance to article 22.2 of TRLCSP, the Foundation shall ensure efficiency and maintenance of the terms agreed within the execution of the public procurement proceedings, favour the speeding-up of procedures, take into account the innovation and hi-tech implementation as positive aspects in the procurement processes, foster the participation of small and medium companies and the free access to the information, in the terms legally provided.

Article 2. Scope

- 2.1. These IIC shall apply to all the Foundation's non harmonized contracts.

The following are considered non harmonized contracts:

- Work contracts whose estimated value is less than 5.225.000 euros.
 - Supply contracts whose estimated value is less than 209.000 euros.
 - Service contracts whose estimated value is less than 209.000 euros and that are not excluded according to their scope, and the service contracts for social and others specifically included in Annex XIV of the Public Procurement Directive whose estimated value is less than 750.000 euros.
 - The public services management contracts under service concession and public works concession whose estimated value is less than 5.225.000 €.
- 2.2. The economical thresholds and the specific circumstances provided in the TRLCSP to determine if a contract is harmonized or non harmonized shall be considered automatically amended when legal or specific regulations specifically update them.

- 2.3. Contracts excluded from the scope of TRLCSP are also excluded from the present Instructions, according to article 4.1 of such Act, excepting contracts provided for in letter r) of article 4.1 TRLCSP.

Article 3. Definition of the contracts governed by these IIC

Contracts are classified into the following categories:

a) Works

Work contracts consist in the execution of some of the tasks indicated in the Annex II of the Directive 2014/24/UE or the execution, by any mean, of a work that satisfies the Foundation's needs. Apart from these works, the contract may include, where appropriate, the drafting of the corresponding project.

Works mean the result of a combination of construction works or civil engineering tasks, aimed to create an economical or technical function with respect to a real property.

b) Supply

Supply contracts are contracts having as their object the purchase, the leasing or the rental, with or without option to buy the products or movable property including, where appropriate, installation operations.

Supply contracts with respect to intangible properties or negotiable assets and values are not considered supply contracts.

In any circumstance, the following shall be considered supply contracts:

1. Those where the contractor comes obliged to deliver several and successive products under a unit price without the total amount of the contract is yet defined, conditioned to the needs of the contracting party.
2. Those that consist of the acquisition and rental of equipment and IT systems, its devices and programmes, and the corresponding license of use, excepting made to measure software acquisition contracts, which shall be considered service contracts.
3. Those manufactures to be delivered by the contractor according to peculiar features previously fixed by the contracting party, although the materials required for the execution of the contract are partially or totally contributed by the contractor.

c) Service

Service contracts are contracts having as their object the execution of an activity or the achievement of a result other than a work or a supply.

d) Mixed contracts

Mixed contracts are contracts containing provisions falling under two or more contracts of those governed by these IIC. For the purposes of applying the rules laid down in these IIC relating to the publication and awarding of these contracts, it shall be considered to be principal the provision of greatest economic value.

e) Contracts provided for in article 4.r) of TRLCSP

Research and development contracts remunerated entirely by the contracting authority, provided that it shares with the awarded companies the risks and benefits of the scientific and technical research necessary to develop innovative solutions that exceed those available in the market.

Article 4. Evaluation of the contracts estimated value

- 4.1. Unless otherwise indicated, whenever these IIC refer to the amount of the contracts, such amounts shall not include VAT.
- 4.2. The calculation of the estimated value of a contract, according to article 88 TRLCSP, shall be based on the total amount payable, net of VAT. In determining this calculation, it shall be considered the total estimated value, including any form of possible option, as well as any possible renewal of the contract and, where appropriate, the premiums or payments to candidates or tenderers.
- 4.3. Where a proposed work or a contract of services or supply may result in contracts being awarded at the same time in the form of separate lots, the total estimated value of all such lots shall be taken into account. If the global estimated value of the contract exceeds the economical thresholds that determine the application of harmonized contracting regulations, the provisions for such contractings shall apply to award every lot. In this regard, the contracting authority may take into account the exceptions that may apply, contained in article 14.2 (works), 15.2 (supplies) and 16.2 (services) of TRLCSP.

Article 5. Contract's minimum content

- 5.1. Contracts subject to these IIC shall be, necessarily, formalized in writing, except for those contracts which are awarded by direct procurement by reason of their amount.

Contracts subject to these IIC shall include, at least, the following aspects:

- a) The identification of the parties and the evidence of the signatories' capacity for the purposes of subscribing the contract.
- b) The definition of the subject-matter of the contract.
- c) The numbering of each of the documents forming part of the contract, amongst which, there shall necessarily be included the Special and Technical Bid Specifications, where appropriate. In the case of works contracts, the project shall be numbered.

- d) The price of the contract or the manner to determine it, and the conditions of payment.
- e) The term of the contract or the estimated dates of commencement and completion, as well as the term of any renewals, should these be envisaged.
- f) The conditions for the receipt, delivery or admission of the works carried out or the services provided.
- g) The imposing of penalties, where appropriate.
- h) The causes for termination and their consequences.
- i) The submission to jurisdiction or arbitration.
- j) The contractor's duty of confidentiality.

5.2. Subscription to magazines and other publications, whatever their support may be, as well as the contracting of the access to information contained in specialized databases, may be subject to the general conditions that the providers may apply, including those referred to the payment terms. These contracts may be concluded by electronic, computer or telematic means.

Article 6. Calculation of terms and deadlines

Terms and deadlines stated in these IIC shall be considered natural days, unless the contracting authority expressly indicates that are working days. In this particular case, administrative procedural Law shall apply.

Article 7. Conclusion and place of execution of the contract

- 7.1. Contracts with an amount less or equal to 50.000 euros, VAT excluded, shall be concluded with the acceptance of the contractor's offer or budget. The rest of the contracts shall be concluded with the formalization.
- 7.2. The contracts shall be considered celebrated in the place where the Foundation has its offices.

Article 8. Language in the execution of the contracts

The contractors and, where appropriate, the subcontractors, are subject in the execution of the contract to the obligations set forth in the Act 1/1998, of January 7th, on language policy and its complementary regulations.

Article 9. Data Protection

- 9.1. According to Organic Act 15/1999, of December 13th, on Personal Data Protection, the bidders and contractors data communicated to the Foundation during the preliminary proceedings of the contract, the contract itself or after its formalization, shall be incorporated to a Foundation's file called "*clients and providers*" with the purpose to manage the communications that may be addressed within the contractual relationship. The Foundation commits to the fulfillment of the obligation of secrecy of such data, its custody and shall adopt the necessary measures to avoid its alteration, loss, manipulation or unauthorized access, respecting in all case the technology state-of-art. The holders of rights on such data may exercise their access, rectification,

cancelation and opposition rights by means of written document addressed to the Foundation.

- 9.2. In case the bidder or contractor provides information of third parties, it shall have informed them and obtained their express consent.
- 9.3. If, as a consequence of the execution of the contract, the parties mutually assign personal data, the transmitter shall have the consideration of data controller and the receiver shall have the consideration of data processor.
- 9.4. Within the Act 15/1999 of December 13th, on Personal Data Protection, the receiver shall process the data following the instructions of the transmitter.
- 9.5. With the sole purpose of providing the services of the contract, security measures shall be applied according to Royal Decree 1720/2007, of December 21st, under which is approved the Regulations on the Organic Act 15/1999, of December 13rd, on Personal Data Protection. In this regard, data shall not be communicated to third parties, not even for its preservation, and, once expired the contractual relationship, the data receiver commits to destroy or return to the transmitter any personal data provided, unless those data that should be kept in order to accomplish legal requirements.

Article 10. Legal regime of the contracts and competent jurisdiction

- 10.1. Contracts subscribed by the Foundation which are subject to the present IIC shall be deemed private contracts, so the civil jurisdiction shall be competent to decide over the discrepancies and/or claims arising out of or in connection with the preparation, award, effects, fulfilment and extinction.
- 10.2. In any case, amendments of the contracts shall be regulated by provisions contained in Title V of the Book I of TRLCSP, as long as the global nature of the contract remains with no alteration.

Chapter II. Contracting profile and governing principles

Article 11. Contracting profile

- 11.1. With the aim of ensuring transparency and public access to the information related to the Foundation's contractual activity, the contracting authority shall diffuse its contracting profile through its website <http://mobileworldcapital.com>, and/or with a direct link to the Public Procurement Electronic Platform of the Government of Catalonia.
- 11.2. At the Contracting profile, that may be linked to the Public Procurement Electronic Platform of the Government of Catalonia, shall appear the following information:
 - a) The content of the present IIC.
 - b) The following information, separately addressing supply, services and works contracts:

- Tender announcements.
- Special and Technical Bid Specifications.
- Awards of the contracts.
- Amendments of the contracts
- Extension of contracts
- Any other mandatory information or to be included in the future.

Article 12. Principle of publicity

12.1. The principle of publicity shall include all those measures carried out by the entity to enable bidders to know about the entity's contracting procedures and the contracts concluded by the entity. For these purposes, are actions to that end:

- Prior information notice: notice by means of which the entity publishes the possible contracts that it intends to award over the following 12 months. The said notice shall be optional for the entity and shall not bind it. It shall further allow the shortening of time limits for the submission of bids.
- Contract notice: notice by means of which the entity publishes the start of a contracting procedure for the award of a contract regulated by these IIC. This contract notice shall be mandatory for the Foundation in those procedures regulated in these IIC, which thus provide for it. The notice shall contain the following minimum information:
 - a) The name of the contracting authority.
 - b) The type of contract and the award procedure
 - c) The description of the object and the estimated value of the contract
 - d) The minimum solvency requirements and the documentation required to its proof.
 - e) The instructions to obtain the tender documents.
 - f) The address to ask questions by the bidders.
 - g) The deadline for the presentation of documents by the bidders.
- Award notice: notice by means of which the Foundation publishes the contracts which have been awarded in the cases indicated in these IIC.
- Formalisation notice: notice by means of which the Foundation informs of the subscription of the contracts awarded within these IIC.
- Amendment notice: notice by means of which the Foundation informs of the amendments of the contracts awarded within these IIC.

12.2. The tender and formalization of the contracts whose estimated value is equal to or higher than 50.000 €, VAT excluded, shall be published in the contracting profile, indicating at least the same data of the awarding notice.

12.3. The Foundation's contracting authority shall communicate to the Public Register of Contracts of the Government of Catalonia, with the maximum celerity and accuracy, the information provided by the current legislation related to the awarded contracts.

Article 13. Principle of competition

- 13.1. For the purposes of these IIC, the principle of competition shall include all those measures carried out by the entity to guarantee free access, in those procedures which thus provide for it, from all those bidders capable of properly performing the object of the contract. The specific features of the contracting shall be drafted in a manner that do not constitute an obstacle for the open competition, avoiding the statement of clauses that may favour or harm certain bidders.
- 13.2. The Foundation's contracting authority shall divide into lots all those contractings in which this is possible and reasonable, with the purpose of allowing open competition between the bidders. By foreseeing that in the tender documents and the tender notice or the invitation, the Foundation's contracting authority may limit the number of lots that may be awarded to a specific bidder with the purpose of avoiding situations that may affect to the effective competition and always justifying this circumstance in the needs report. In the contracts where there is no division into lots, it shall be included in the file a report justifying such reasons and provide it in the tender documents.
- 13.3. In the negotiated procedures celebrated within these IIC, the principle of competition shall be considered fulfilled with the request of offers, as long as that is possible, to a minimum of three candidates. The terms of the negotiation process between the Foundation's contracting authority and the bidders shall be left proof in the file.
- 13.4. However, the capacity to act and the solvency of the bidders must be verified, including in the file all the proposals and the evaluation.
- 13.5. Excepcionalmente, by reason of their amount, the Foundation may award directly certain contracts. However, in the services and supplies contracts whose estimated value exceeds 18.000 €, VAT excluded, as long as it is possible and with the purpose of fostering the competition and the reception of the most advantageous offer, the contracting authority shall ask for offers to a minimum of three candidates.

Article 14. Principle of transparency

- 14.1. For the purposes of these IIC, the principle of transparency shall refer to all those measures carried out by the entity with the aim to make known its contracting processes and enable third parties to know about the different requirements of the contracting procedures subject to these IIC; it shall further include those measures that enable tenderers who have been rejected to know about the reasons justifying their rejection or failure to be awarded through the procedure laid down in these IIC.
- 14.2. Likewise, and with the purpose of ensuring the obligations of the awardees, the contracting authority may provide information in accordance to Act 19/2014, of December 29th, of transparency, access to public information and good governance, notwithstanding the obligations regarding transparency.

- 14.3. The information regarding public procurement must be exposed in a section different from the Transparency Portal, considered as an specific publicity electronic platform, and coordinated with the contracting profile and the Public Register of Contracts.
- 14.4. Likewise, the principle of transparency requires that the contracts to be subscribed include the obligations of the awardees to provide the following information, stated in Act 19/2014, of December 29th:
- a) The relation of the positions occupied by the personnel assigned to the execution of the contract that, by virtue of such contract, execute an activity, a service or a work, permanently, in a unit or public office, as well as the dedication, retribution and the tasks to be executed, without including personal references or personal data.
 - b) The retributions perceived by the management staff if the turnover of the company, linked to the activities executed on behalf of the public administrations exceeds twenty five per cent of the company's turnover.
 - c) This information shall be provided to the contracting authority once requested to do so by the contracting authority. The complete information shall be provided within a month since the request from the contracting authority, unless the contractor proves the material impossibility of providing this information. Non fulfillment of such obligation, the contracting authority may extinguish the contract without the contractor has any right to claim any compensation. In this regard, the contractor shall be liable for those damages derived to the Foundation as a consequence of the non fulfillment of such obligation, having to respond for this concept with the definitive guarantee put in place by the contractor.

Article 15. Principle of confidentiality

- 15.1. For the purposes of these IIC, the principle of confidentiality shall be defined as the obligation of the entity, its contracting bodies and different persons involved in the contracting processes, not to release the information submitted by the candidates which has been designated as confidential by them. Particularly, this confidentiality nature shall be assigned to the technical or commercial secrets and the confidential aspects of the bids that are expressly indicated by the tenderer.
- 15.2. It shall not be considered confidential that documentation or information that the entity needs to make public in order to guarantee compliance with the principles regulated in the present IIC.
- 15.3. Contractors will have to observe the confidential nature of all that information they may have access to during the performance of the contract if it is thus required in the Special and Technical Bid Specifications or when it is thus indicated by the entity, or when due to its own nature it has to be treated as such.

Article 16. Principles of equal treatment and non-discrimination

- 16.1. The contracting procedures regulated in these IIC shall guarantee equal treatment and non-discrimination of all tenderers, and they shall not permit to carry out any actions that aim at favoring one of the tenderers or prejudicing others.
- 16.2. The Special Bid Specifications and the Technical Bid Specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the free competition between enterprises.
- 16.3. Under no circumstances shall the technical specifications refer to a specific make or source, or a particular process, with the effect of favoring or eliminating certain undertakings or certain products, unless such technical specifications are essential for the definition of the subject-matter of the contract. In particular, technical specifications shall not refer to trade marks, patents, types or a specific make or source, with the exceptions laid down in these IIC for technical or artistic reasons, or for reasons connected with the protection of exclusive rights. Notwithstanding the above, the said references shall be permitted if accompanied by the word “or equivalent” in cases where it is not possible to define the subject-matter of the contract by means of sufficiently precise or intelligible technical specifications.
- 16.4. Any clarification on the contract documents, terms and conditions, etc. shall be made known to the tenderers through the Contracting Profile.

Article 17. Determination of the most advantageous offer

- 17.1. The most advantageous offer shall be determined over the basis of the price or cost, taking into account the relation cost-efficacy of the proposition, through, where appropriate, the calculation of the cycle of life's cost. The evaluation may take into account the relation quality-price.
- 17.2. For the valuation of the cycle of life it has to be assessed all the necessary stages for the execution of thye contract, such as:
 - a) The works or studies of research and deployment.
 - b) The production of the good or service.
 - c) The sales and transport.
 - d) The usage of the good or service, including the energy consumption and the maintenance requirements during the whole useful life, from the purchase of raw materials until the dismantling costs.
 - e) Acquisition costs
 - f) Environmental and energetic costs
- 17.3. Likewise, in those exceptional cases where appropriate, it may be provided as an awarding criteria the closeness of the bidder's delegations or management structures as long as this has a direct impact in the execution of the contract and may have an effect on its efficiency. Such closeness shall be referred to the accessibility and celerity of the bidders with respect to the execution of the contracts, no matter what is the residence or establishment.

- 17.4. These criteria, subcriteria, where appropriate, and its deliberation, shall be duly determined in the tender documents. The contracting authority shall not apply ponderation rules or subcriteria that are not included in the tender and so, reported to the bidders.

Chapter III. Contracting boards and assistance

Article 18. Contracting boards

The contracting board of the Foundation is the Board of Trustees. However, by virtue of the approval of the present IIC, it expressly delegates its condition in the following boards of the Fundation according to the following thresholds:

Amount of the contract	Contracting authority
Contracts of works, services and supplies with estimated value less than 50.000 euros	General Manager
Contracts of services and supplies with estimated value equal or more than 50.000 euros and less than 400.000 euros Contracts of workd with estimated value equal or more than 50.000 euros and less than 1.000.000 euros	Executive Committe
Contracts of services and supplies with estimated value equal or more than 400.000 euros Contracts of works with estimated value equal or more than 1.000.000 euros	Board of Trustees

** Amounts are VAT excluded.*

Article 19. Functions of the Contracting authority

- 19.1. The functions of the Contracting authority shall include, without limitation, the following:
- a. Approval of the tender documents
 - b. Appointment of the members of the Contracting Committee, Technical Committee and other advisory bodies.
 - c. Exclusion of disproportionate or abnormal bids.
 - d. Contract awarding.
 - e. Contract award resolution.
 - f. Interpretation of the contract.

Article 20. Contracting Committee or Technical Committee

- 20.1. The contracting authority shall be assisted by a Contracting Committee or Technical Committee of the contract, in accordance with the terms of the Specific Administrative Terms and Conditions, except for those contracts awarded by means of a negotiated procedure with publication of a contract notice on the web, those awarded by direct procurement and those awarded under a framework agreement. The Contracting authority shall designate the members of the Contracting Committee and the members or member of the Technical Committee of the contract, who may be assisted by a Commission of experts
- 20.2. The Contracting Committee shall be integrated by a President, a Secretary and a minimum of two (2) members appointed by the contracting authority, and one (1) of them necessarily shall be a technician expert do within the purpose of the contract. The members of the Contracting Committee may be assisted by an Experts Commission if the contracting authority expressly states it.
- 20.3. The contracting authority shall appoint the members of the Contracting Committee, who may be permanent or specifically for the award of one or more contracts. If the appointment is permanent or provides specific functions for several contracts, the composition may be published at the contracting profile.
- 20.4. In the negotiated procedure, direct procurement and derived from a framework agreement, the contracting authority may constitute a Contracting Committee or Technical Committee of the contract.
- 20.5. In any case, contracts awarded through open procedure with an estimated value equal to or more than 100.000 euros, shall be assisted by a Contracting Committee.
- 20.6. Within the competitive dialogues, a special Committee shall be constituted with qualified experts over the matter purpose of the dialogue, appointed by the contracting authority.

Article 21. Functions of the Contracting Committee or the Technical Committee

- 21.1. The following are functions of the Contracting Committee or the Technical Committee:
 - a) The assessment of the documentation proving the personality and, if appropriate, the representation and capacity of the tenderers to enter into contracts, as well as the assessment of the documentation relating to the reasons for their rejection.
 - b) The checking of the economic and financial standing, technical or professional capabilities of the tenderer.
 - c) Notification of correctable errors and adoption of decision regarding economic operators accepted to the contract procedure.

- d) The assessment of the technical proposal. The Contracting /Technical Committees may request, before formulating the awarding proposal, those technical reports they may consider necessary, in cases in which, they need to take into consideration criteria different from the price for the purposes of assessing the proposals. Those reports may also be requested whenever it is necessary to check whether the proposals comply with the Technical Specifications.
 - e) The public opening of economic proposals and the settlement of any incidents therein.
 - f) The assessment of abnormal or disproportionate proposals, following the procedure laid down in the present IIC.
 - g) The submission of the contract award proposal to the contracting authority.
 - h) Any other functions which are necessary for the assessment of the proposals, as well as for the drawing up of a contract award proposal and those which are conferred to it by the present IIC or the contracting authority of the entity.
- 21.2. The contract award proposals drawn up under the present IIC, shall mention the order of precedence of the tenderers who have been considered, with the weighting for each of them. No rights shall arise out of the contract award proposals, until the contract award resolution has been passed.
- 21.3. Members of the Contracting Committee are guaranteed their right to express their opinion when it opposes the majority's and that their reasoned opinion appears in the minutes.

Article 22. Assessment of proposals and contract award proposal when a Contracting Committee or Technical has not been set up

In contract award procedures where a Contracting Committee or Technical Committee has not been set up, the suitability of submitted bids shall be checked by the technical services, designated by the contracting authority, in accordance with the criteria of economic and financial standing, and of professional and technical capabilities. In cases where there is a shortage of technical personnel, the said reports shall be issued by at least two members of the staff who is in charge of activities related to the subject-matter of the contract or who have been directly involved in the contracting procedure. They shall also formulate the contract award proposal, following the issue of technical reports assessing the bid, should they deem it necessary.

TITLE II. ON THE CONTRACTS

Chapter I. Contractor's capacity

Article 23. Aptitude of the bidders

- 23.1. Contracts regulated under these IIC may be entered into by natural persons or legal entities, of public or private nature, with Spanish or foreign nationality, with full capacity to act, providing evidence of their economic and financial standing and their technical or professional capabilities, and not being included in any of the events of prohibition to contract in accordance with the present IIC. All the said requirements shall be met at the expiry of the period for submission of bids.

The inscription in the Electronic Registry of Corporations of the Government of Catalonia or in the Official Registry of Bidders and Classified Corporations of the State shall credit before the contracting authority full capacity to act, economic and financial standing, technical or professional capabilities and qualification, as well as the non prohibition events.

- 23.2. The documents proving the fulfillment of preliminary requirements by the bidders, such as capacity to act, economic and financial standing, technical or professional capabilities and qualification shall be substituted by a responsible statement by the bidder indicating the fulfillment to contract with the Foundation, or the presentation of the normalized DEUC form (European Unique Document of Contract). The awarded bidder shall proof before the contracting authority acredited, prior to the award, the possession and validity of such documents.
- 23.3. The Foundation may contract with tenderers or candidates that participate in a group. In this groups, each of the members shall proof its own capacity.
- 23.4. The groups shall not be formalized under public deed until the award resolution has taken place. Contractors participating jointly in a contract shall be jointly and severally liable in respect of the obligations undertaken and shall appoint a representative or power of attorney with powers to exercise the rights and fulfill the obligations arising out of the contract until its expiry, notwithstanding the existence of joint and several powers that may be constituted for significant payments and collections.

Within the tender, this participation shall be implemented by means of a private document in which it is mentioned the intent of the tenderers to submit a joint tender, the interest percentage of each of them.

The term of the groups shall coincide with the contract's expiry.

Article 24. Contractor's capacity to act

- 24.1. Bidders shall provide evidence of their capacity to act and their representation in all the contract award procedures regulated under these IIC, as well as that do not incur in any prohibition of contracting. The way to provide such evidence shall be the one laid down in the TRLCSP
- 24.2. The submission of the relevant invoice shall be deemed as evidence of the entrepreneur's or professional's capacity to act within the direct procurement provided such invoice contains the data and meets the requirements laid down in the rules governing the issuance and delivery of invoices. In any event, the entity may at any time require the contractor to furnish evidence of his capacity.
- 24.3. Contractors wishing to take part in a contract procedure may be requested, to prove their enrolment on one of the professional or trade registers that enables them to carry out the activity, which is the subject matter of the contract.
- 24.4. In the event of non-Spanish companies incorporated in a Member State of the EU or of the European Economic Area, where the specific legislation prescribes the enrolment on one of the professional or trade registers, it will be sufficient proof of enrolment, the provision of a declaration on oath or a certificate.

- 24.5. Legal entities may only be awarded contracts regulated under these IIC when the works carried out or the services provided therein are included within the aims, object or activity of such entities, according to their Articles of Incorporation or incorporation rules.
- 24.6. Contractors who have assisted the entity in the drawing up of the technical specifications or contracts' preparatory documents shall not take part in a contract procedure, whenever such assistance may cause restrictions to free competition or may imply a privileged treatment with respect to the remaining tenderers.

Article 25. Companies not belonging to the European Union and principle of reciprocity

- 25.1. Companies established in countries not belonging to the European Union or to the European Economic Area, in addition to giving proof of their capacity to act, as prescribed in their State of establishment, and their economic and financial standing and technical or professional capabilities, they must justify, by means of a report issued by the relevant Spanish representative office, that the foreign company's State of establishment accepts, on its turn, the participation of Spanish companies in public procurement, in substantially analogous conditions. Such certificate must be enclosed with the documentation submitted.
- 25.2. For works contracts, it shall be further necessary that such companies have a branch in Spain, with designation of representatives or proxies for their operations and that such branch is registered on the Register of Commerce.

Article 26. Prohibitions to contract

The persons who fall under any of the prohibitions to contract laid down in the TRLCSP shall under no circumstances contract with the entity, being excluded from taking part in the contract procedure.

Chapter II. Economical or financial and technical or professional solvency

Article 27. Economical or financial solvency

- 27.1. Tenderers must prove their economic and financial standing for the execution of the contract, meaning the adequate economic and financial situation of the company with the aim to guarantee the correct execution of the contract.

The inscription in the Electronic Registry of Corporations of the Government of Catalonia or in the Official Registry of Bidders and Classified Companies of the State shall proof, before the contracting authority, economical and financial standing.

- 27.2. The level of economic and financial standing shall be specific for each contract and its demand shall be adequate and proportionate to the characteristics of the works contracted. The contracting authority shall be entitled to choose the references that tenderers must furnish to prove their economic and financial standing from those laid down in the TRLCSP or those that it considers appropriate and proportional to the purpose of the contract.

In this regard, as a reference, it may be considered proportional the average turnover of the company with respect to a specific number of years (five years within works and three years within the rest of contracts) not exceeding the double of the estimated value of the contract, except for duly justified cases.

- 27.3. The contracting authority, respecting the principles of freedom of access to tenders, publicity, transparency, non discrimination and equality of treatment, shall take into account the access from PYME by fixing specific solvency criteria.
- 27.4. If, for any valid reason, the tenderer is unable to provide the references requested by the entity, he may prove his economic and financial standing by any other document which the entity considers appropriate.

Article 28. Technical or professional solvency

Tenderers must prove their technical or professional capabilities for the execution of the contract, meaning the technical or professional ability to perform the contract, thank to either having previous experience in similar contracts or sufficient technical resources and personnel available to them.

Article 29. Means to proof the economical or financial and technical or professional solvency

- 29.1. The contracting authority may choose the means to proof economical and financial solvency according to TRLCSP or those that considers appropriate. In any event, the references to be furnished to prove the economic and financial standing must be set out in the tender documents.
- 29.2. The contracting authority may choose the means to proof economical and financial solvency according to TRLCSP or those that considers appropriate.
- 29.3. As long as the purpose of the contract provides it, specific technical solvency criteria may be included with respect to the employment of long time unemployed or handicapped people and its proof throught the inscription in the Registry of Employment Companies of the Government of Catalonia, regulated by Law 20/2002 of December 20th.

Article 30. Evaluation of the economical or financial and technical or professional solvency

Tenderers shall be entitled to furnish proof of their economic or technical capabilities, claiming those capabilities of other companies, regardless of the legal nature of the relationship between them. In the case of undertakings controlling a group of companies, they may claim the capabilities of the companies belonging to the group, provided the said undertakings prove that they have at their disposal the resources, belonging to such companies, necessary to execute the contracts

Article 31. Definition of related undertaking

For the purposes of these IIC, related undertaking shall mean any undertaking over which the contractor exerts, whether directly or indirectly, a dominant influence as a result of ownership, financial participation or the rules which govern it, or, as a result of the undertaking which exerts a dominant influence on the contractor. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking, it: a) holds a majority of the undertaking's subscribed capital; b) controls a majority of the votes attached to the shares issued by the undertaking; or c) can appoint more than half of the undertaking's administrative, management or supervisory body.

Article 32. Solvency of the temporary unions of companies

In the temporary unions of companies, each of the members shall proof its respective capacity to act and solvency, and the determination of of the solvency of the union shall be done by accumulating the elements already proven by each of the membres.

Article 33. Company's classification

- 33.1. The bidder shall be entitled to require the classification of the contractors in accordance with the provisions of public procurement regulations; such requirement must be laid down in the Special Bid Specifications and in the contract notice, where appropriate.
- 33.2. In order to assess the classification with respect to the unions of companies, the accumulated features of each of the members, expressed in their respective classifications, shall be taken into account.

Article 34. Quality assurance certificate

- 34.1. Should the contracting authority of the entity require the production of certificates drawn up by independent bodies attesting the compliance of the tenderer with certain quality assurance standards, it shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.

- 34.2. The contracting authority shall also accept certificates from recognised bodies established in other Member States of the European Union. It shall further accept other evidence of equivalent quality assurance measures from tenderers who do not have access to the certified ones or have no possibility to produce them within the time limit fixed.

Article 35. Special rules with respect to the contractor's employees

- 35.1. The Contractor is exclusively responsible of the selection of its staff according to the training and expertise required in the tender documents, which is necessary to execute properly the contract.
- 35.2. The Contractor shall ensure adequate performance of the team, and shall attempt that the eventual variations in its composition are punctual and obey to duly justified reasons, to not alter the good performance of the service.
- 35.3. The contractor assumes the obligation of exercising, in a real, effective and continuous manner, management of the work team responsible for executing the contract. In particular, it will assume the negotiation and payment of wages, the granting of permits, licenses and holidays, substitutions of workers in case of absences, legal obligations in matters of Social Security, including the payment of contributions and payment, where appropriate, legal obligations regarding the prevention of occupational risks, the exercise of disciplinary power, as well as all rights and obligations arising from the contractual relationship between employee and employer.
- 35.4. The contractor shall take particular care to ensure that the employees assigned to the performance of the contract carry on their activities without exceeding the functions exercised in respect of the activity stated in the specifications of the contract.
- 35.5. The contractor shall appoint at least one coordinator, integrated in its own staff, who will have among its obligations the following:
- a) to act as interlocutor of the company, channeling the communication between the contracting authority and the personnel belonging to the work team assigned to the contract, on the one hand, and the contracting authority, on the other hand, in all matters related to the derived issues of the performance of the contract.
 - b) to distribute the work among the personnel responsible for the execution of the contract, and to give the workers the orders and instructions that are necessary within the execution of the contract.
 - c) to supervise the correct deployment by the contract's working staff roles and duties, as well as to control the attendance of such staff at the workplace.
 - d) Organize the vacation regime of the personnel assigned to the performance of the contract and, for this purpose, properly coordinate the contracting company with the Foundation.

TITLE III. CONTRACT'S PRELIMINARY PROCEEDINGS

Chapter I. Common provisions to contracts regulated in the IIC

Article 36. Commencement and content of the dossier

- 36.1. All contracts governed by these IIC shall be preceded by the processing of a contract dossier, which shall be composed of the documents mentioned in the provisions regulating each of the procedures and in which it shall be justified the need and advisability of the works to be carried out or the services to be provided by virtue of the contract.
- 36.2. With the exception of contracts awarded by direct procurement by reason of the amount, in which it shall not be necessary the processing of a contract dossier, for the rest of the contracts awarded following these IIC, the contract dossier shall commence with the following information:
- a) A reasoned request, stating the need, characteristics and estimated value of the works or services that are the object of the contract.
 - b) The Special Bid Specifications.
 - c) The Technical Bid Specifications
 - d) Where appropriate, the appointment of the bodies which assist the contracting authority.

In the restricted procedure, a reasoned request shall be also included indicating the chosen project and the criteria for the selection of candidates, which shall be stated in the special bid specifications, notwithstanding the rest of procedures which may also be applicable

Article 37. Special Bid Specifications

- 37.1. With the exception of contracts awarded by direct procurement by reason of the amount, each contract procedure shall commence with a document laying down the terms and conditions defining the legal and economic aspects of the rights and obligations of the parties, which shall be referred to as Special Bid Specifications.
- 37.2. The Special Bid Specifications shall set out the contract award criteria and may specify whether one of the said criteria is essential or whether it requires a minimum weighting, under which the bid shall be excluded.
- 37.3. The Special Bid Specifications shall provide the scoring attributed to each of the awarding criteria.
- 37.4. The Special Bid Specifications shall be available to the interested parties and shall be published at the Foundation's contracting profile.
- 37.5. The Special Bid Specifications shall always be considered as part of the contract, which shall comply with their content.

Article 38. Special Bid Specifications minimum content

The Special Bid Specifications must include, at least, the following content:

1. Definition of the subject-matter of the contract.
2. Contract's basic characteristics.
3. Specific rights and obligations of the parties in the contract.
4. Economic, legal and technical essential conditions which shall govern the contract procedure and the contract.
5. Contract award form and procedure.
6. Documents to be submitted by bidders, as well as form and content of the proposals.
7. Manners of receipt of bids.
8. Contract award criteria and their weighting.
9. Technical and economic aspects object of negotiation in the negotiated procedures.
10. Authorization regime regarding variants or alternatives.
11. Provision of guarantees, where appropriate.
12. Information on the conditions of subrogation in the employment contracts, where appropriate.
13. System of revision of prices, where appropriate.
14. Identity of the contracting authority and the receiver of the invoices derived from the contract.
15. Contracting Committee or Technical Committee that will assist the Contracting Authority.
16. The Contractor's obligation to provide in the invoices of the contract the information contained in previous bullet.

Article 39. Technical Bid Specifications

- 39.1. The Technical Bid Specifications shall be drafted up by the entity's technical staff responsible for the control of the contract execution, and they shall include the technical specifications required for the execution of the contract.
- 39.2. Technical Bid Specifications shall mean the technical demands that define the required characteristics of a work, material, product, supply or service, and that allow defining them objectively in a manner that is adequate to the specific use by the entity. These technical requirements may include the quality, the performance, the safety or the dimensions, as well as the requirements applicable to the material, product, supply or service as refers to quality assurance, terminology, symbols, tests and testing methods, packing, branding and labeling.
- 39.3. With respect to works contracts, technical bid specifications may also include the criteria on definition and calculation costs, tests, control and reception of works and techniques or methods of construction, as well as all the remaining conditions of technical nature that the contracting entity may prescribe, according to general or specific rules, in relation to completed works and the material or elements composing them.

- 39.4. Technical bid specifications may include environmental requirements. Where the entity lays down environmental requirements, it may use detailed specifications, or, if necessary, parts thereof, as defined by European or multinational or national eco-labels, or by any other eco-label, provided that: those specifications are appropriate to define the characteristics of the services that are the object of the contract, and the requirements for the label are drawn up on the basis of scientific information and are available to all interested parties.

Article 40. Prohibitions of obstacles to the free competition

- 40.1. The contracts' technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the free competition between enterprises.
- 40.2. Under no circumstances shall the technical specifications refer to a specific make or source, or a particular process, with the effect of favoring or eliminating certain undertakings or certain products, unless such technical specifications are essential for the definition of the subject-matter of the contract. In particular, the technical specifications shall not refer to makes, patents, types or a specific origin or source. Notwithstanding the above, the said references shall be permitted if accompanied by the word "or equivalent" in cases where it is not possible to define the subject-matter of the contract by means of sufficiently precise or intelligible technical specifications.

Article 41. Social and environmental requirements

- 41.1. The Special Bid Specifications may include detailed social or environmental requirements on the way to perform the contract, such as: the return or reuse of bottles, packaging or used products; the energetic efficiency of the products or services; the supply of products in recycled containers; the collection and recycling of waste materials or products used on the account of the contractor; the obligation to employ long time unemployed people; the organization by the contractor of training activities for young and unemployed people; the implementation of measures to promote equal treatment or measures to integrate immigrants and the obligation to employ a specific number of handicapped people and other similar requirements.
- 41.2. In case of non-compliance with these requirements, the entity may either terminate the contract due to breach of the same by the contractor or resume its execution with the imposing of penalties laid down in the specifications or in the contract.

Chapter II. Rules on publishing and competition periods

Article 42. Rules on publishing

- 42.1. The tender procedures, with the exceptions described below, shall be publishing on the entity's Contractor Profile, maintaining the contract notice up to the contract award, thus guaranteeing the principle of advertising. The

contract information shall remain public for at least 1 month after the date of the contract award.

- 42.2. Likewise, the entity may publish on the Contracting Profile the prior information notice which shall remain public for the following 12 months. For the purposes of shortening the periods of competition laid down in these IIC, the prior information notice must be published with a minimum of 45 days prior to the relevant contract notice
- 42.3. The contract notices may also be published at the daily press. Likewise, the Contracting authority may decide to publish the contract notice in the Official Journal of the European Union or other official Journals.
- 42.4. Contract notices described in this section shall be made only for information purposes, without having any legal effects with regard to establishment of time limits or submission of bids or applications.
- 42.5. The awards of contracts regulated in these IIC, with the exception of contracts awarded by direct procurement by reason of the amount, shall be published at the entity's Contracting Profile of the Government of Catalonia. Among the information, the special and technical bid specifications shall always be published.

Article 43. Periods of competition

- 43.1. In open procedures, the minimum period for submitting bids shall be 15 days for supply and service contracts and 26 days for works contracts, from the date of publication of the contract notice on the Contractor Profile.
- 43.2. In the event the entity publishes a prior information notice, the time limits may be reduced to 5 days.
- 43.3. In the negotiated procedures, the time limit for consultation and submission shall be specified, on a case by case basis, at the Special Bid Specifications and at the invitation to tender to the selected candidates. In any event, it shall be necessary to establish a time limit which is sufficient to guarantee competition, equal treatment and non-discrimination of the tenderers.

TITLE IV. CONTRACT AWARD PROCEDURES

Chapter I. Contract award procedures

Article 44. Contract award procedures

- 44.1. Los contratos regulados en estas IIC se adjudican de acuerdo con alguno de los procedimientos que se detallan a continuación:
 - a) Open procedure.
 - b) Restricted procedure.
 - c) Negotiated procedure
 - d) Direct award.
 - e) Competitive dialogue.

- f) Association for the innovation
- g) Project tender procedure

44.2. In general terms and, provided it is not required to award the contract by means of another procedure regulated in these IIC, it will be mandatory to award the contracts by applying the open or restricted procedure when the contract estimated value is greater than 50.000 euros, VAT excluded.

Article 45. Open procedure

Open procedure means those procedures whereby any interested tenderer, meeting the requirements of capacity and the economic and technical capabilities laid down in the Special Bid Specifications may submit a bid. Negotiation of the terms, conditions and requirements of the contract with the tenderers shall not be possible.

Article 46. Conduct of the open procedure

Once the preparation of the contract has been completed in accordance with the provisions of Title III of these IICs, the open procedure will follow the following procedures:

- a) Contract notice in the terms laid down in these IIC, where it will be indicated that the Special Bid Specifications and the Technical Bid Specifications, where appropriate, and other documentation necessary for the execution of the contract are available to interested tenderers.
- b) Opening of administrative documentation or, in its case, the responsibility declaration of the tenderer in which manifests that it complies with the conditions established by law to contract with the Administration.
- c) Public opening of bids.
- d) Assessment of bids.
- e) Contract award proposal by the Contracting Committee or the Technical Committee.
- f) Contract award resolution by the Contracting authority.
- g) Publication of the contract award on the Contractor Profile and notification of the contract award resolution to the companies that submitted a bid.
- h) Formalization of the contract.

Article 47. Measures of efficient management in the processing of the open procedure

Except for contracts directly awarded according to these IIC, the contracting authority may decide to apply measures of efficient management in the processin of the open procedure, with estimated value less than 100.000 euros, in services and suplies, and with estimated value less than 1.000.000 euros, in works.

These efficient measures are the following:

- a) Publication of the contract notice only in the contracting profile in contracts with an estimated value higher than 50,000 euros but less than 100,000 euros in service and supply contracts and 200,000 euros or less in works contracts. The amounts are VAT excluded.

- b) Not to demand a provisional or performance guarantee or establish the option of retention of the price, as permitted by the legislation of public sector contracts.
- c) Provide the obligation to submit technical and economic proposals in accordance with a model that must be available to bidding companies, as an annex to the special and technical bid specifications, preferably in a format that can be completed electronically.

Whenever the tender documents or documents governing the contract expressly admit it, these models may allow bidders to submit or attach other documents which they deem appropriate.

- d) The contracting authority may, in a motivated manner and whenever it does not limit the concurrence, establish as a requirement of bidding the registration in the Electronic Register of Companies of the Generalitat or in the Official Registry of Classified Bidders and Companies of the State.
- e) Unify the meetings of the Contracting Committee in a single act, with a preliminary internal phase and a later public stage.

In the internal stage, the members of the Contracting Committee shall analyze the capacity and solvency of the bidding companies and the technical report related to the proposals that can be valued by means of a value judgment, if any; and must propose the admission or inadmissibility of bidding companies, and the punctuation of propositions valued by a value judgment.

In the public phase, a valuation proposition through a value judgment and the technical report will be given to the bidders. In addition, the agreements adopted by the Contracting Committee at the internal phase on admission or inadmissibility and the punctuation of value propositions by means of a value judgment shall be read. Finally, proposals automatically assessed have to be opened and read and, whenever possible, the awarded company will be proposed according to the final scoring.

In any case, the members of the Contracting Committee shall have received the technical report of the valuation propositions with value judgments, if any, at least one working day before the meeting.

- f) The contracting authority may authorize that the public opening act of automatically assessed proposals is done on a non-face-to-face basis, using audiovisual or electronic means. The realization of a non-face-to-face public act may not prevent the fulfilment of the principles of equality, non-discrimination, publicity and transparency. The minutes shall state that the meeting has been non-face-to-face and the audiovisual or technological document that reproduces the act will form part of t.

This public act of non-presence opening will be governed by what is established in Law 26/2010, of August 3rd, on the legal and procedural regime of the public administrations of Catalonia.

- g) The contract will be awarded within a maximum of one month from the day after the deadline for submitting bids, after which the bidding companies are not obliged to keep their bids.
- h) The contract shall be formalized within a maximum of 5 days, since the day after the notice of the award.

For justified reasons which must be included in the dossier of the contract, the contracting authority may extend these latter two periods.

Article 48. Restricted procedure

- 48.1. Restricted procedure means those procedures in which any entrepreneur or professional may request to participate and whereby only those entrepreneurs or professionals selected by the entity and complying with the selection criteria laid down in the Special Bid Specifications are invited to submit a bid, in the terms and conditions set out in the invitation.
- 48.2. In any case, the number of companies selected by the Contracting authority shall be less than three.
- 48.3. El The restricted procedure shall have two different stages: The stage of selection of candidates and the stage of selection of the successful bidder.
 - a) The stage of selection, or first stage, shall consist in the selection of entrepreneurs which will be invited to submit a bid. This selection shall be carried out in accordance with the criteria for the “selection of candidates” laid down in the Special Bid Specifications. The minimum period for the receipt of requests to participate shall be 10 days from the publication of the contract notice on the Contractor Profile.
 - b) The second stage will consist in the dispatch simultaneously and in writing of the invitations to the selected candidates to submit their bids. Such dispatch may be done by fax, letter or electronic means. Simultaneously, the invitation shall also be published on the Contractor profile, indicating the companies which have been selected. The minimum time limit for the receipt of bids from the selected companies shall be 15 days from the date on which the invitation is sent. This stage shall be conducted in accordance with the rules of the open procedure laid down in the previous article.

Article 49. Conduct of the restricted procedure

Once the preparation of the contract has been completed in accordance with the provisions of Title III of these IICs, the restricted procedure will follow the following procedures:

- a) Selection and contract notice in the terms laid down in these IIC.
- b) Special Bid Specifications and Technical Bid Specifications, where appropriate, and other documentation necessary for the performance of the contract are available to interested bidders.
- c) Receipt of the requests to participate.

- d) Opening of administrative documents, correction of defects within 3 days and admission of bidders who meet the requirements set out in the Special Bid Specifications.
- e) Determination by the contracting authority of the selected entrepreneurs.
- f) Dispatch of the invitations to the selected candidates and publication on the Contractor Profile.
- g) Receipt of the bids from the candidates.
- h) Public opening of bids.
- i) Assessment of bids.
- j) Contract award proposal by the Contracting Committee or the Technical Committee.
- k) Contract award resolution by the contracting authority and notification of the contract award resolution to the companies that submitted a bid.
- l) Publication of the contract award on the Contractor Profile and notification of the contract award resolution to the companies that submitted a bid.
- m) Formalization of the contract.

Article 50. Negotiated procedure

- 50.1. Public sector contracts may be awarded under negotiated procedure, no matter the amount, only when one of the following circumstances are met according to the TRLCSP:

Article 170.); article 170.c); article 170.d); article 170.e); article 171.c); article 172.a); article 172.c); article 173.b); article 173.c); article 173.d); article 173.e); article 174.); article 174.c); y article 174.d).

- 50.2. The negotiated procedure is a contract award procedure where the entity may consult and negotiate the conditions of the contracts with some entrepreneurs of his choice, and selects the tender justifying it and in accordance with the criteria laid down in the Special Bid Specifications.
- 50.3. In this procedure, whenever possible, the entity must invite to negotiate at least three candidates suitable to perform the contract. In this procedure, the entity shall award the contract to the company submitting the most advantageous bid, amongst all the bids received, taking into consideration the award criteria laid down in the Special Bid Specifications.
- 50.4. The negotiated procedure under the event provided for in article 170.d) TRLCSP, shall only take place when it is impossible to promote competition as objectively there is only one company to execute the contract. This circumstance shall be duly justified in the dossier of the contract.

In any case, this will be subject to two accumulative requirements: on one side, under technical reasons and exclusivity rights and, on the other side, that these reasons make absolutely necessary the award of the contract to a specific company.

The dossier of the contract shall include a responsible statement or certificate of exclusivity issued by the company certifying that is the only one that can execute the contract, as well as a justifying report issued by the contracting authority through which the exclusivity is justified.

Article 51. Conduct of the negotiated procedure

Once the preparation of the contract has been completed in accordance with the provisions of Title III of these IICs, the negotiated procedure will follow the following procedures:

- a) **Publicity:** Information at the Contracting profile when the estimated value of the contract exceeds 50.000 euros, VAT excluded.
- b) **Selection of companies to be invited:** The bidders to be invited shall comply with the capacity to act and solvency requirements stated in the Special Bid Specifications.
- c) **Invitations:** Invitations must be sent simultaneously, by electronic mail or by other means on writing, to all selected companies, stating the deadline and place for the submission of bids, attaching the Special and Technical Bid Specifications or stating the place where such documents can be obtained. The invitation could be also published on the Contractor Profile, showing the selected companies.
- d) **Submission of bids:** The selected companies shall submit their bids in the conditions and time limit indicated in the invitation, which ordinarily shall be 10 days.
- e) **Receipt of bids:** The negotiated procedure shall start once the proposals or bids have been received, ensuring the fair treatment for all tenderers. In particular, the entity shall not provide information in a discriminatory manner which may give advantage to some tenderers from the rest. Notwithstanding the foregoing, if the contract notice indicates it, the essential conditions may be amended assuming the solutions or proposals submitted by the tenderers and proceeding to a new request of consultations with them.

In the event that the contract can only be awarded to a specific company, the terms of the negotiation shall be included in the dossier of the contract.

- f) **Award proposal:** Once the negotiation has finished, the corresponding department or, where appropriate, the Contracting Committee or Technical Committee, shall formulate the contract award proposal. Later the Contracting authority shall issue the contract award resolution.
- g) **Publication:** Publication of the contract award on the Contractor Profile.
- h) **Contract:** Formalization of the contract

Article 52. Direct awarding proceeding by reason of the amount

A contract may be awarded directly when the estimated value is less than or equal to 50.000 euros, VAT excluded, and the term is not exceeding one year..

Article 53. Conduct of the direct awarding proceeding

Once the preparation of the contract has been completed in accordance with the provisions of Title III of these IICs, the direct awarding proceeding will follow the following procedures:

- a) Capacity to act: The capacity to act shall be understood fulfilled with the presentation of the corresponding invoice, as long as it complies with the requirements on invoice issuance. In any case, the entity may request, at any time, the contractor to proof its capacity.
- b) Award and finalization: In the contracts of services and supplies with an amount less than 18.000 € and less or equal to 50.000 € for works, or when specifically is provided by the legislation, the contracting authority shall ask for at least three offers from three different providers, prior the award of the contract.
- c) In the submission of offers, the features of the contract and the award criteria shall be taken into account.
- d) The contract ends with the approval of the invoice by the competent authority of the entity, and so is approved the cost.
- e) Publicity: These contracts must be published according to the regulations on transparency and contracts registration.

Article 54. Competitive dialogue

- 54.1. Competitive dialogue may be used for particularly complex contracts, when the contracting authority considers that the use of the open or restricted procedure do not permits an adequate award of the contract.
- 54.2. In the competitive dialogue, the contracting authority leads a dialogue with the selected candidates with the aim to deploy one or more solutions in order to satisfy its needs and that will serve as for the candidates to send their final offer.

Article 55. Conduct of the competitive dialogue

- 55.1. In the competitive dialogue, the contracting authority shall publish a contract notice according to these IIC.
- 55.2. In case the number of companies to be invited to the dialogue is limited, this number will not be less than five, as long as this is possible. A lesser number of companies may be invited, at least three, when the matter purpose of the contract justifies this circumstance or due to market restrictions. With the aim to favour the participation of PYME in the dialogue competitive proceedings, these companies shall be invited as long as this is possible.
- 55.3. The invitations to participate in the competitive dialogue shall contain a reference to the contract notice and shall indicate the date and time of the consulting stage, the documents related to the capacity to act that, where appropriate, should be attached, as well as the ponderation of the awarding criteria.

- 55.4. The contracting authority shall deploy, with the selected candidates, a dialogue whose aim is to determine and define the adequate means to satisfy its needs. During this dialogue, all aspects of the contract may be discussed.
- 55.5. During the dialogue, the contracting authority shall treat all bidders in the same way and, in particular, shall not provide, on a discriminatory basis, information which may give advantage to certain bidders in relation to the rest. The contracting authority may not disclose to the other participants the solutions proposed by a participant or confidential data.
- 55.6. The contracting authority shall continue the dialogue until it is in a position to determine, after comparing them, if necessary, the solutions which may satisfy its needs. Once the dialogue has been declared and the participants informed of this, the contracting authority will invite them to present their final offer, based on the solution or solutions presented and specified during the dialogue phase, indicating the deadline and the address.
- 55.7. Bids must include all the elements required and necessary for the execution of the contract. The contracting authority may request clarifications or adjustments to the offers submitted, adjustments to them or additional information relating to them, provided that this does not entail a modification of their essential elements which leads to a variation that may distort competition or have a discriminatory effect.

The contracting authority shall evaluate the offers submitted by the bidders according to the award criteria set out in the contract notice or in the descriptive document and shall select the most economically advantageous offer. For this assessment, several criteria must necessarily be taken into consideration, without it being possible to award the contract solely on the basis of the offered price.

The contracting authority may require the bidder whose tender is considered most economically advantageous to clarify certain aspects of the offer or to ratify the commitments contained therein, provided that no substantial elements of the offer or the invitation to tender are modified or generate distorted competition, or a discriminatory effect.

Article 56. Association for the innovation

- 56.1. The Foundation will be able to create innovation partnerships to be tendered and published in the contracting profile in order to create a structured partnership for the development of innovative products and services and the subsequent purchase, where appropriate, of these supplies and services.
- 56.2. In the tender documents, the Foundation shall determine what is the need for a innovative product, service or work that it can not satisfy by acquiring them ordinarily in the market.
- 56.3. In this procedure, the contracting authority shall publish a contract notice in accordance with the provisions of these IICs

- 56.4. In case the number of companies to be invited to the dialogue is limited, this number will not be less than five, as long as this is possible. A lesser number of companies may be invited, at least three, when the matter purpose of the contract justifies this circumstance or due to market restrictions. With the aim to favour the participation of PYME in the dialogue competitive proceedings, these companies shall be invited as long as this is possible.
- 56.5. The Association for the Innovation Procedure shall be awarded through the negotiated procedure and candidates shall be selected on the basis of experience and ability in the field of research and development of innovative solutions.
- 56.6. The Foundation may decide to set up the Association for the Innovative Procedure with one or more partners carrying out separate research and development activities

Chapter II. On the submission of proposals

Article 57. Urgent procedure

- 57.1. Those contracts whose celebration is imperative and non extendable or whose award responds to a public interest need may be tendered under an urgent procedure. In this regard, the dossier of the contract shall contain the urgency statement by the contracting authority, duly motivated.
- 57.2. Urgent contracts shall be treated under the same proceeding than the ordinary ones, with the following exceptions:
- a) The dossiers will have preference for its dispatching by the different boards that participate in the administrative process, having to issue the corresponding reports within five days or meet the corresponding deadlines. That term may be extendable until ten days.
 - b) Once the awarding procedure is open, the deadlines stated in these IIC for bidding, awarding and formalizing the contract may be reduced at the half.
 - c) The term for the initiation of the execution of contract shall not exceed fifteen working days since its formalization.

Article 58. Proposals submitted by the bidders

- 58.1. Proposals submitted by the bidders are deemed to be secret and the special bid specifications shall provide the means that guarantee such character until the bid.
- 58.2. The presentation of the proposals by the bidders implies fully and unconditioned acceptance of all the clauses and conditions contained in the special bid specifications, and, where appropriate, in the technical bid specifications.

- 58.3. The contracting authority shall provide the terms and deadlines for the submission of proposals according to these IIC taking into account the reasonable time that may be deemed to be necessary to prepare them.
- 58.4. It is expressly prohibited the presentation of more than one proposal by the same bidder, no matter if it's individually submitted or jointly with other companies. Likewise, it is expressly prohibited to the bidders to attend to a tender forming part in more than a union of companies.

The non fulfillment of these prohibitions shall mean the non admission of all the proposals of the bidder.

Article 59. Form of submitting the documentation

- 59.1. In the open and restricted procedures regulated in these IIC, bidders shall submit their documentation and bids in three envelopes in accordance with the requirements and instructions set out in the Special Bid Specifications.
- 59.2. The period of validity of the bids shall be determined in the Special Bid Specifications.
- 59.3. Bids may be submitted to the entity's offices or may be dispatched by post within the stipulated time limit. Under no circumstances shall be considered bids submitted out of the deadline (day and hour) stipulated in the contract notice or in the invitation to tender.
- 59.4. In the event the tenders are sent by post within the time limit fixed, tenderers shall justify that the date and hour of the delivery to the Post Office are, as maximum, those indicated in the contract notice and they shall announce them to the entity by means of telegram, telefax or electronic mail, which must be received by the entity within the same time limit. The announcement to the entity by electronic mail shall only be valid if there is evidence of the dispatch and receipt, of their data and of the full content of the communications and if the announcement clearly identifies the sender and the receiver. If the abovedescribed requirements are not met, the bid shall not be considered if it is received by the entity after the deadline stipulated in the notice. A bid dispatched by post shall under no circumstances be considered, if it has not been received by the entity after 10 calendar days from the expiry of the time limit for submission of bids.
- 59.5. All tenderers need to provide at the time of submission of their bids, in addition to their postal address, an electronic mail address, for the purposes of communications and relations in general produced in the tender procedure..

Article 60. Documentation proving the capacity and solvency

- 60.1. In envelope 1 (or envelope A), bidders shall not become obliged to submit documents proving their capacity to act and solvency, as a responsible statement shall be deemed enough, or the presentation of the normalized DEUC form (European Unique Document of Contract).

- 60.2. The awarded bidder shall submit the required documentation in the term provided for in the special bid specifications.
- 60.3. In the event that the required documentation is not submitted within the specified deadline due to circumstances attributable to the contractor, the entity may annul the award, with seizure of the guarantees provided for the tender and with an additional compensation for damages exceeding the guaranteed percentage and the entity may award the contract to the next most economically advantageous bid.
- 60.4. Likewise, the entity shall be entitled to seize the relevant guarantee and claim responsibilities and compensation for damages should the contractor or any other tenderer submit uncertain or false data. In the case of the contractor, it shall further cause the annulment of the award.

Article 61. Form of submitting the technical and economic proposals

- 61.1. The proposals submitted by the bidders will be secret in relation to the other tenderers until their opening, and they must be submitted in writing, and in compliance with the requirements and conditions laid down in the Special and Technical Bid Specifications. Where appropriate, proposals shall be submitted via electronic means.
- 61.2. Proposals shall be submitted in closed envelopes, duly identified and signed by the representative of the tendering company, providing name and surname or social address, respectively, and with the reference of the corresponding tender.
- 61.3. The bidder shall include a statement specifying which documents and/or technical are deemed to be confidential. Under no circumstance shall be confidential public access documents, nor the economical offer, which shall be read in public act.
- 61.4. Subjective criteria:
- In envelope 2 (or envelope B), the bidders shall submit all the documents regarding subjective awarding criteria.
- The opening of these envelopes in open and restricted procedures that do not include measures of efficient management will take place in a public act. If the entity considers that the tender presented may be considered obscure or inconcrete, it may request clarification in all cases respecting the principle of equal treatment and non-discrimination of tenderers, which in no case may modify the offer. The answer period shall not exceed 10 days.
- 61.5. Objective criteria:
- In envelope 3 (or envelope C), the bidders shall submit all the documents regarding objective awarding criteria.

The economic proposal included in this envelope will be made according to the model established by the special bid specifications for open and restricted procedures, and in a single envelope for the remaining procedures. In open and restricted procedures which do not include measures of efficient management, the economic proposal will be opened and read in a public act.

If in the economic offer there is a discrepancy between the amount indicated with numbers and the amount indicated in letters, the amount indicated in letters will prevail. Likewise, in the event that the economic offer does not specify anything in relation to the value added tax, it will be understood that the economic offer does not include VAT.

Article 62. Provisional guarantees

- 62.1. The Foundation shall not require provisional guarantee in any of its procurements, unless a risk of retiring proposals with negative consequences may be foreseen.
- 62.2. In any case, the amount of the provisional guarantee shall not exceed 3% of the tender amount. These guarantees shall be at the disposal of the interested parties for their withdrawal in the period of 30 days from the date of publication of the award on the Contracting Profile; the guarantees pertaining to the successful tenderer shall be retained up to the delivery of the performance guarantee, if appropriate.
- 62.3. Las garantías se pueden constituir en cualquiera de las formas previstas en el pliego de cláusulas particulares.

Article 63. Evaluation of documentation, correctable errors and omissions

- 63.1. The following procedure shall be followed for the evaluation of documentation submitted by the tenderers:
 - a) The administrative documentation or in its case responsibility declaration, submitted by tenderers shall be evaluated by the Contracting Committee or Technical Committee, or by the person or committee designated by the entity's Contracting authority, whether in public or not, through the opening up of the relevant envelope. The contract dossier must include evidence of the documents' list submitted by each tenderer.
 - b) If correctable errors or omissions were detected in the documentation submitted, it will be notified in writing to the relevant tenderers, giving them a period not exceeding 3 days for their amendment.
 - c) Likewise and for the purposes of verifying the possible application of a prohibition to contract, the entity may demand the tenderer to submit additional certificates and documents or clarifications of the same. This demand shall be fulfilled within a maximum of 3 days.

- d) The bidders with non-correctable errors or who have not amended them within the stipulated time limit shall be rejected from the tender procedure.
 - e) Once the documentation has been evaluated and the errors or omissions, where appropriate, have been amended, the entity will proceed to determine the companies meeting the selection criteria laid down in the Specific Administrative Terms and Conditions, issuing an express decision on the tenderers who have been admitted or rejected, and the causes for their rejection.
 - f) The contract dossier must include evidence of the proceedings conducted.
- 63.2. Errors consisting of failure to comply with the prescribed requirements shall be considered non-correctable, whereas errors consisting of failure to give proof of the said requirements shall be considered correctable.
- 63.3. This article shall apply to both the cases where it is required the submission of the envelope number 1 with the relevant documentation, as well as to those cases where the Special Bid Specifications set out the possibility to replace such documentation with a solemn declaration by the tenderer.

Article 64. Evaluation of the proposals and public opening of the economic proposal

- 64.1. In the open and restricted procedure regulated in these IIC, the Contracting Committee or Technical Committee shall proceed to the public opening of the economic proposals, ensuring compliance with the principle of transparency.
- 64.2. The entity's Contracting Committee or Technical Committee shall proceed to the assessment of the technical and economic proposal submitted by the tenderers, in accordance with the award criteria laid down in the Specific Administrative Terms and Conditions. In the rest of the procedures, the said assessment shall be carried out by the person or committee designated by the entity's Contracting authority.
- 64.3. For the assessment of the proposals and the determination of the most advantageous offer, criteria directly linked to the purpose of the contract shall be taken into account.
- 64.4. The Contracting Committee shall reject a proposal, by means of a reasoned resolution, if it does not show concordance with the documentation examined and admitted, it exceeds the tender base budget, it varies substantially from the model set out, it implies obvious error in the amount of the proposal, and it contains an error or inconsistency that makes it non-viable, as acknowledged by the tenderer. On the contrary, the change or omission of some of the words of the model, provided neither one alter their meaning, shall not constitute sufficient reason for rejecting the proposal.

- 64.5. In the award proposals, the order of priority of the tenderers who have submitted an admissible proposal, with the respective scores obtained, shall be duly motivated by the award criteria. The award proposals will not generate any rights until the award decision is issued.

Article 65. Admissibility of variants and improvements

- 65.1. Where criteria other than price are to be taken into account in awarding contracts, the contracting authority may take account of any variants or improvements offered by bidders, provided that the special bid specifications expressly provide for this possibility.
- 65.2. The possibility for bidders to offer variants or improvements shall be indicated in the procurement notice of the contract, specifying which elements and under what conditions such improvements may be submitted, as well as the criteria for their valuation.

Article 66. Electronic auction

- 66.1. For the purpose of awarding contracts, an electronic auction may be organized as an iterative process, which takes place after a first full evaluation of the offers, for the presentation of price improvements or for new values relating to certain elements of the offers that improve them as a whole, based on an electronic device that allows their classification through evaluation methods.
- 66.2. The electronic auction may be used in open, restricted and negotiated procedures, provided that the specifications of the contract to be awarded can be accurately established and that the services which constitute its object are not of an intellectual nature. Electronic auctions may not be used abusively or in a way that hinders, restricts or distorts competition or that the object of the contract is modified.
- 66.3. The use of the electronic auction shall be made with the limitations legally established and under the following conditions:
- a) Shall be referred only to recurring supplies, the award of which must be made on the basis of the price offered by tenderers (such as gas, electricity, fuel or office paper).
 - b) They must relate to quantifiable contractual elements which can be evaluated automatically by electronic means.
 - c) It must be ensured that the use of the auction does not entail an additional economic cost to the bidders.
- 66.4. The electronic auction will be based on variations related to the price or values of the elements of the offer that can be quantified and can be expressed in figures and percentages.

- 66.5. When the contracting authority decides to use an electronic auction, it must indicate this in the contract notice and must include the following information in the special bid specifications:
- a) The elements to whose values the electronic auction refers to.
 - b) Where applicable, the limits of the values that may be presented, as they result from the specifications of the object of the contract.
 - c) The information that will be made available to bidders during the electronic auction and when it will be made available.
 - d) The manner in which the auction will take place.
 - e) The conditions under which tenderers may bid, and in particular the minimum improvements which will be required, where appropriate, for each tendering procedure.
 - f) The electronic device used and the modalities and technical specifications of connection.
- 66.6. For the correct development of the electronic auction, the contracting authority shall:
- a) Fix accurately all the technical specifications of the supply to be contracted.
 - b) Incorporate objective elements in the contracting regulatory documents to determine bids with abnormal or disproportionate values.
 - c) Include in detail in the regulatory documents of the hiring a protocol of resolution of possible technical incidents in the development of the auction.
 - d) Provide and offer to the bidders a schedule of tests prior to the completion of the electronic auction.

Article 67. Disproportionate or abnormal proposals

- 67.1. If the existence of disproportionate or abnormal offers is considered, prior to its declaration, the affected bidder shall be granted a maximum period of 10 days to justify the valuation of the offer and to specify the conditions of the offer. The bidder shall take into account the savings made possible by the performance of the contract, the proposed technical solutions and the exceptionally favorable conditions available to carry out the service, the originality of the proposed services, compliance with the provisions relating to the protection of workers and the conditions (In particular the observance of the minimum wage costs by professional category, according to the applicable labor agreement), or the possible public aid or subsidies that may be obtained by the bidder. Once the bidder's explanation has been received, by means of a report to be included in the dossier, the contracting authority, with the technical advice of the corresponding service, will decide whether to admit or reject it.
- 67.2. The criteria for the consideration of abnormally low proposals shall be laid down in the Special Bid Specifications.

- 67.3. The Contracting authority shall be the one accepting or rejecting the disproportionate or abnormal proposals, after the relevant technical report. It shall be indispensable, for the purposes of admitting to the tender a proposal initially evaluated as abnormal or disproportionate, that the tenderer formulating it, submits a report proving that the economic proposal does not prejudice the strict compliance of the project's technical and security requirements. This report must be expressly accepted by the entity's technical service.

Article 68. Application of the award criteria

- 68.1. The contracting authority of the Foundation shall avoid determining the most economically advantageous offer in accordance exclusively with the price offered, unless the subject of the contract or specific relevant cases recommend it, cases in which it must be stated in the dossier of the contract.
- 68.2. Under no circumstance the award criteria shall be related to the economic, financial, technical or professional capacity of the bidder, and in particular, the experience, the availability of means for the development of the work and the quality systems used by the bidder to ensure the quality of the service (ISO type, UNE).
- 68.3. The award criteria and their ponderation, if any, shall be determined by the contracting authority and will be specified, necessarily, in the special bid specifications. They can also be published in the contract notice and in the contracting profile.
- 68.4. When more than one award criteria is taken into account, the special bid specifications shall establish the relative ponderation attributed to each criteria, which may be expressed by fixing a range of values with adequate amplitude. If, for justified reasons, the ponderation of the chosen criteria is not possible, they will be quoted in order of decreasing importance.
- 68.5. The contracting authority may establish a system for the evaluation of proposals under a fixed price, in respect of which the tendering companies can not submit an economic offer, and compete only in terms of quality. When assessing these quality criteria, it is necessary to give preponderance to those that are valued by means of formulas, in the terms established in the regulations applicable to Public Sector Contracts.
- 68.6. Those special bid specifications which contain social provisions, may provide that, in the event that two or more proposals equate as more advantageous, will have preference in the award those where non-profit entities participate the most, provided that their purpose or activity is directly related to the purpose of the contract.

Article 69. Projects contests

- 69.1. Project contests may be carried out for the obtention of particular projects within architecture, town planning, engineering or data processing, among others.

- 69.2. If the number of participantes is limited, this will not be less than five, as long as this is possible, and the selection shall be made under objective, clear and non distorting criteria. A lesser number of participants may be invited, minimum three, when is duly justified in the dossier of the contract according to restrictions of the market or the matter purpose of the contract specifically recommends it. With the aim to favour participation of PYME, at least 30% of the candidates shall have to be PYME.
- 69.3. The decision of the contest shall be made by a jury that will be formed by individuals independent from the participants in the project contest. When a specific professional qualification is required to participate in a project, at least one third of the members of the jury must have that qualification or another equivalent. The jury will take its decisions or opinions with total independence, based on projects that will be presented to him anonymously, and only following the criteria indicated in the announcement of the contest.
- 69.4. The jury will record in a report, signed by its members, the classification of the contests, taking into account the merits of each project, along with their observations and any other aspect that requires clarification. Anonymity shall be respected until the jury issues its opinion or decision.
- 69.5. Once the opinion of the jury has been known, and taking into account the content of the classification and the act referred to in the previous article, the contracting authority will proceed with the award, which shall be motivated if it does not conform to the proposal or proposals of the jury.

Chapter III. On the award of contracts

Article 70. Award

- 70.1. In the contract award procedures where the criteria used is only the offered price, the contract shall be awarded within a maximum period of 15 days, except when the Special Bid Specifications provide for a greater period, which must be justified, starting from the day following the public opening of bids, where appropriate, or from the deadline date for the receipt of bids in the rest of the procedures.
- 70.2. In the procedures where the tender is valued with more than one criteria, the Contracting authority shall award the contract within the maximum period of two months, except when the Special Bid Specifications provide for a greater period, which must be justified, starting from the day following the public opening of bids, where appropriate, or from the deadline date for the receipt of bids in the rest of the procedures.
- 70.3. Bidders shall be entitled to withdraw their proposal and request the return or cancellation of the guarantee, without any compensation whatsoever, should the above-mentioned award periods have elapsed and no award resolution has been passed. Nevertheless, the Contracting authority may request the tenderers to maintain their bid for a greater period, after communication to the

tenderers and publication on the Contractor Profile, and the tender shall resume with those tenderers who accept the extension.

- 70.4. The entity's Contracting authority shall decide on the award, and shall be entitled to either award the contract to the most economically advantageous bid or declare the tender void, as long as there is no admissible offer or proposal according to the criteria stated in the tender documents.
- 70.5. The contract award resolution must be justified by reference to the award criteria laid down in the Special Bid Specifications and must specify the reasons for the rejection of an application or a bid and the characteristics and advantages of the selected bid, indicating the total and partial weightings, obtained by all the companies admitted to the procedure, with regards to each of the award criteria, and shall be notified to all the tenderers. The award resolution shall be deemed sufficiently justified if the Contracting authority accepts and assumes the content of the assessment technical report.
- 70.6. If the Contracting authority does not follow the contract award proposal, it must justify the reasons of the resolution.
- 70.7. The Contracting authority may declare the contract procedure to be void, when factual or legal circumstances occur which, in a logical and reasonable manner, prescribe the prevalence of public interest in the light of the needs the contract intends to fulfill; the Contracting authority may also waive or discontinue the tender by reasons of public interest, duly justified at the dossier. If a revision of the tender documents under legal or opportunity reasons takes place, the contracting authority may stop the procedure, as long as this is agreed before the award.

Article 71. Award notice

- 71.1. The award of the contract shall be notified to the candidates or bidders and shall be published in the contracting profile. For purely informational purposes, without any legal significance, awards may also be published in the daily written press and in the Official Journal of the European Union or other official Journals according to the contracting authority's decision.
- 71.2. The notification must contain the information necessary to know by the excluded bidder or candidate discarded the reasons for his exclusion or rejection.
- 71.3. The notification can be made by any means that allows the receipt of the receipt by the recipient. In particular, it may be made by e-mail to the address that the bidders or candidates have designated at the time of submitting their proposals.

Article 72. Contract formalization

- 72.1. Contracts not directly awarded shall be formalized in writing, by means of a private document, signed by the parties prior to the submission of the documentation required by the contracting authority within a maximum period of 15 working days from the date of the award.

- 72.2. In the event that the successful bidder does not comply with the requirements of the entity, does not fulfill the requirements for the conclusion of the contract or prevents it from being formalized within the period indicated, the entity may proceed to resolve the award, giving a hearing process to the interested party of 10 days. In this case, and if applicable, the guarantee will be seized and the entity may demand compensation for the damages caused. In these cases, the entity may award the contract to the next most economically advantageous offer.
- 72.3. The formalization of contracts, if not directly awarded, will be published in the profile of the contractor of the contracting authority indicating at least the same data mentioned in the notice of award.
- 72.4. Notwithstanding the foregoing, the formalization of the contract shall be done when the content of the purpose of the contract generates:
- a) Rights and obligations within intellectual property and, in particular, the use of the trademark "Mobile World Capital".
 - b) Rights and obligations within data protection when the contractor is the data processor of those data whose property belongs to the Foundation.
 - c) Rights and obligations within a commercial contract formalized with professionals or autonomous.

Article 73. Provision of performance guarantees

- 73.1. The Special Bid Specifications may require the provision of performance guarantees prior to the contract formalization. The amount and form of such guarantees shall be laid down in the Terms and Conditions, and they shall under no circumstances exceed 5% of the award amount and, in the case of unit prices, 5% of the tender amount.
- 73.2. Guarantees shall secure the performance of the contract by the contractor until the expiry of the guarantee period which is regulated in the contract and, in particular, they shall secure the payment of the penalties, as well as the repair of possible damages caused by the contractor during the performance of the contract.
- 73.3. Guarantees may be provided in any of the forms laid down in the Special Bid Specifications, including in cash or by retention of the prices, unless a more solid guarantee shall be deemed necessary, circumstance that shall be indicated in the dossier of the contract.

Article 74. Transfer to bodies or Public Registers

In any event, the entity shall communicate the contracts formalized to the relevant Public Registers and to the corresponding monitoring organizations, particularly the Contracts Registry of the Government of Catalonia.

Chapter IV. Execution and extinction

Article 75. Responsible for the contract

75.1. The tender documents may appoint a person responsible for the contract, except in contracts with an estimated value of less than € 50,000, excluding VAT, which must supervise its execution and adopt the necessary instructions to ensure the correct performance of the purpose of the contract. The following functions will be assigned:

- a) Supervise the performance by the contractor of all contractual obligations and conditions.
- b) Coordinate the different agents involved in the contract in case this specific function does not correspond to other people.
- c) Adopt the decisions and dictate the instructions necessary for the correct performance of the contract.
- d) Inform of the level of satisfaction of the contract's execution. Apart from all other information and reports that the responsible for the contract considers appropriate, a final evaluation report on the contract will be issued, which will refer to the different aspects of the performance of the contract.

75.2. The Contracting authority shall preferably appoint as a responsible for the contract a physical persona of the Foundation that may have a direct knowledge in the contract's execution.

Article 76. Subcontracting

76.1. The contractor, prior authorization of the Foundation, and in accordance to the terms provided for in the tender documents, may partially subcontract the execution of the contract to third parties until the maximum percentage provided for in the tender. Subcontracting in chain is expressly prohibited.

76.2. In any case, the contractor and, where appropriate, the bidder, shall communicate in advance, in writing, the part of the service to be subcontracted (percentage), the identity of the subcontractor and justify the ability to perform such contract.

Failure to comply with these obligations may lead to the imposition of penalties or to the termination of the contract, in accordance with current legislation and the provisions contained in the specifications or in the regulatory documents of the contract.

76.3. Subcontractors shall be liable only to the main contractor who will therefore assume full responsibility for the performance of the contract against the Foundation. The knowledge that the Foundation has over the contracts entered into or the authorization granted does not alter the exclusive responsibility of the main contractor.

Article 77. Amendment of the contract

- 77.1. The contracting authority, once the contract has been concluded, may only agree changes to the contract when so provided in the tender documents, in the notice or in the cases established by the current legislation and in accordance with the procedure regulated therein, actually contained in Title V of Book I of TRLCSP. Contracts may be amended when additional services are required, which can only be carried out by the contractor for economic or technical reasons, or because a new award may lead to significant inconvenience or a substantial costs increase for the Administration. In any case, the overall limit of an amendment for this reason will be 50% of the contract price.
- 77.2. Shall be grounds for amendment of the contract, which shall be provided in the tender documents, the assignment of the contract, as well as the succession in the person of the contractor by merger, absorption, contribution, or transfer of the company or its branches of activity.
- 77.3. The revision of prices, if foreseen in the tender documents, shall be approved as the amendments of the contracts.

Article 78. Penalties for breach

The contracting authority may provide in the tender documents or even the contract penalties in case of defective performance of the contract or in case of non-compliance with the commitments or the special conditions of performance of the contract.

Article 79. Extinction of the contract

- 79.1. The contracts will be extinguished by their compliance. The contract shall be deemed completed by the contractor when the contractor has adequately performed the contract, in accordance with its terms of and to the satisfaction of the Foundation.
- 79.2. Contracts are also terminated by resolution. The following are causes for resolution:
- a) The death or incompetence of the individual contractor or the extinction of the legal personality of the contracting company.
 - b) The declaration of competition or the declaration of insolvency in any other proceeding.
 - c) Mutual agreement between the entity and the contractor.
 - d) The delay in the fulfillment of the deadlines by the contractor.
 - e) Those expressly established in the specifications or in the contract.
 - f) Any of those provided for in the Civil Code

COMPLEMENTARY DISPOSITIONS

First complementary disposition

The approval and the content of these IIC does not prevent the competent boards of the Foundation to agree to apply legal provisions referred to the harmonized contracting .

Second complementary disposition

The amendments of the TRLCSP under a legal state or comunitary provision that may affect these IIC shall become binding prior approval by the governing body of the entity.

Third complementary disposition

In order to rationalize and award of its contracts, the Foundation may conclude framework agreements and articulate dynamic systems, in accordance with what is established in the current legislation.

Framework agreements shall be generally established for a total duration (including possible extensions) of four years, although they may provide for a higher duration if the contractual purpose is thereby better achieved, a circumstance that must be stated in the document supporting the contracting.

SINGLE FINAL DISPOSITION

These IIC shall enter into force the day after its approval by the Board of Trustees of the Foundation, in December 12th 2016.