

INTERNAL INSTRUCTIONS GOVERNING CONTRACTING  
NOT SUBJECT TO HARMONISED REGULATION OF THE  
FOUNDATION FOR THE BIOMEDICAL RESEARCH OF THE  
HOSPITAL UNIVERSITARIO 12 DE OCTUBRE

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## **1. Purpose.**

In order to comply with the provisions of Article 191.b) of the Consolidated Text of the Law on Public Sector Contracts, approved by Royal Legislative Decree 3/2011 of 14 November, hereinafter, "TRLCSP", pursuant to which the Foundation for Biomedical Research of the Hospital Universitario 12 de Octubre, (hereinafter THE FOUNDATION) forms part of the public sector under the terms of Article 3.1.f) of said Law, and is considered to be a contracting authority in spite of not holding the character of a Public Administration, the purpose of these Instructions is to define the internal procedures of the FOUNDATION for the awarding of contracts not subject to harmonised regulation, so as to ensure the effectiveness of the principles of publicity, concurrency, transparency, confidentiality, equality and non-discrimination, as well as the fact that the contract is awarded to the person who submits the economically most advantageous offer.

These Instructions were approved by agreement of the Board of the FOUNDATION on 19 June 2012, and came into force the day after their publication in the Portal of Public Procurement of the Community of Madrid. Said rules were modified, subsequently, by agreement of the Board of Trustees of the FOUNDATION on 20 June 2017, applying to all those contracting files that begin as of that date.

These Instructions are mandatory in the internal scope of THE FOUNDATION. Likewise, they will be made available to all those interested in participating in the procedures for the awarding of contracts regulated by them and will be published in the contractor profile of THE FOUNDATION, on the institutional website of the Community of Madrid.

## **2. Interpretation of the Instructions.**

For the purposes of these Instructions, those terms not expressly defined in them, shall have the meaning established for those same terms in the TRLCSP.

When by virtue of the Instructions a TRLCSP precept must be applied in an adapted form, or is not totally or partially applicable, the remissions to that same precept made by other articles of the TRLCSP that, according to these Instructions, if they are applicable, should be understood to have been effectuated with said adaptations or derogations.

The estimated value of the contracts will be calculated subject to the rules provided in article 88 of the TRLCSP and will not include Value Added Tax.

### 3. Types of Contracts

The Instructions will be applied to all the onerous contracts that THE FOUNDATION concludes whatever its legal nature, except for the following:

- a) The business and legal relationships listed in article 4 of the TRLCSP.
- b) Contracts subject to harmonised regulation in accordance with articles 13 and concordant of the TRLCSP, whose award will be governed by the provisions of article 190 of the TRLCSP.
- c) Those contracts and businesses regulated or expressly excepted by the applicable sectoral regulations, which will be awarded in accordance with the provisions of said regulations.

Once the above exceptions have been made, the Instructions will be applied fundamentally to the following contracts that are concluded by THE FOUNDATION

#### 3.1. Works contract

Works contracts are those whose purpose is the realisation of a piece of work or the performance of any of the works listed in Annex I of the TRLCSP or the performance by any means of work that meets the needs specified by THE FOUNDATION. In addition to these provisions, the contract may include, where appropriate, the drafting of the corresponding project. "Work" means the result of a set of construction or civil engineering works, designed to fulfil an economic or technical function, which has as its purpose a fixed asset object.

#### 3.2. Supplies contract

Supply contracts are those that have the purpose of acquiring, leasing, or leasing, with or without a purchase option, of products or movable assets.

In any case, supply contracts will be considered as:

- Those in which the employer is obliged to deliver a plurality of goods successively and by unit price without the total amount being defined exactly at the time of signing the contract, because deliveries are subordinated to the needs of THE FOUNDATION.
- Those whose purpose is the acquisition and lease of telecommunications equipment and systems or for the processing of information, its devices and programs and the assignment of the right to use the latter.

- That of manufacturing, so that the item or items that have to be delivered by the supplier must be prepared according to peculiar features, previously set by the FOUNDATION, even when it is obliged to provide, totally or partially, the precise materials.

### 3.3. Services contract.

Service contracts are those whose purpose is the development of an activity or service aimed at obtaining a result other than a piece of work or a supply, according to the categories defined in Annex II of the TRLCSP.

Contracts for the acquisition of customised computer programs are also considered as service contracts.

## **4. General principles of contracting regulated by these Instructions.**

The contracts to which these Instructions are applicable will be governed by the principles contained in Article 1 of the TRLCSP, and their award will be subject, in all cases, to the principles of advertising, concurrence, transparency, confidentiality, equality and non-discrimination, in accordance with article 191 of the TRLCSP.

In order to guarantee the observance of the principles stated in the previous paragraph, in the contracting procedures processed by THE FOUNDATION in accordance with the Instructions, the performance of the contracting bodies will be oriented, in any case, towards meeting the designated principles.

These principles will be understood to have been complied with by observing the rules set forth in the following sections of these Instructions, for the application and interpretation of which the following action guidelines will be observed:

a) The principle of advertising shall be understood as being fulfilled through the application, for the benefit of any potential bidder, of adequate means of dissemination or disclosure and being sufficiently accessible, provides contractual information of THE FOUNDATION and allows opening the market to the competition.

b) The principle of transparency shall be understood as being fulfilled through the dissemination or disclosure, prior to the awarding of the corresponding contract, of adequate information that allows any potential bidder to be in a position to express interest in participating in the bidding process. Likewise, this principle will imply that all the participants can know beforehand the rules applicable to the contract that is intended to be awarded, as well as to have the certainty that said rules are applied equally to all entities.

c) The necessary measures will be adopted, as foreseen in these Instructions, to facilitate the access and participation of potential bidders, in order to award the contract to the economically most advantageous bid.

d) The principle of confidentiality will be respected through the assumption by the FOUNDATION of the obligation not to disclose the information provided by employers that they have designated as confidential, provided there are justified reasons for this, and, in particular, technical or commercial secrets and confidential aspects of the offers. Likewise, the application of this principle will require that contractors must respect the confidential nature of the information they have access to during the performance of the contract that was given that character in the specifications or in the contract, or that due to its own nature should be treated as such.

e) In order to guarantee the principle of equality and non-discrimination, the necessary measures will be taken to guarantee the impartiality and fairness of the procedures. These measures shall include, at least, the following:

I. The purpose of the contracts shall always be described in a non-discriminatory manner, without reference to a particular manufacture or provenance, or to particular products or refer to a particular brand, patent, type, origin or production, unless a reference of this type is adequately justified and is accompanied by the mention "or equivalent".

II. No condition that involves direct or indirect discrimination against potential bidders from other Member States of the European Union will be imposed.

III. If candidates are required to submit diplomas, certificates or other supporting documentation, documents from other Member States must be accepted in accordance with the principle of mutual recognition of degrees, certificates and other diplomas.

IV. The terms granted to show interest in or to submit an offer will be adequate to allow companies from other Member States to proceed with an appropriate evaluation and submit an offer.

V. In those contracts in whose adjudication procedure there is more than one supplier or supplier competing, THE FOUNDATION will guarantee that all of them have the same information about the contract under the same conditions.

## **5. Nature of the legal system applicable to contracts regulated in the Instructions.**

The contracts concluded by THE FOUNDATION have in any case the consideration of private contracts in accordance with the provisions of article 20.1 of the TRLCSP.

The contracting of THE FOUNDATION regulated in these Instructions shall in all cases be subject to those provisions of mandatory compliance for entities of the public sector that conclude contracts not subject to harmonised regulation, in accordance with the provisions of the TRLCSP. In particular, this implies the application of the rules contained in Book I of the TRLCSP "General configuration of public sector contracting and structural elements of contracts", which, due to their content, are applicable to THE FOUNDATION as a contracting authority that is a member of the public sector that cannot be classified as a Public Administration.

## **6. Contracting bodies**

The Contracting Body, without prejudice to the delegations, agreements or powers of attorney that may validly be granted by the FOUNDATION Board of Trustees, for the Contracting Levels specifically established in these Instructions, will be the following:

- Contracts of less than € 50,000: the Director of the Foundation or the Administrator of the Foundation in solidarity.
- Contracts of an amount equal to or greater than € 50,000: the Chairman of the Board. In the absence of the Chairman of the Board of Trustees, the Contracting Authority will be the Chairman of the Research Committee.

The contracting body for a higher level or sub-level will always have the capacity to contract at a lower level or sub-level.

## **7. Ability to contract with THE FOUNDATION.**

Only natural or legal persons, Spanish or foreign can contract with the FOUNDATION, who have full capacity to act, are not subject to a prohibition to contract and who can prove their economic, financial and technical or professional solvency.

The minimum requirements of capacity and solvency that are required in each case must be linked to the object of the contract and be proportional to it.

Without prejudice to the provisions of the TRLCSP that are applicable to all entities of the public sector, the accreditation of the economic and financial and technical or professional solvency to contract shall be made in accordance with what, in each case, is determined in the corresponding tender in light of the circumstances and features of the contract, the provisions of articles 75 to 79 of the TRLCSP may be applied if deemed appropriate by the contracting authority.

Likewise, in accordance with article 65.5 of the TRLCSP, in consideration of the circumstances and features of the contract, it may be required, where appropriate, that the solvency of the entrepreneur be accredited through the corresponding classification.

The minimum solvency requirements that the employer must meet and the documentation required for accreditation shall be indicated in the contract notice and shall be specified in the contract document, in case they are required in accordance with these Instructions.

## **8. Guarantees required.**

Depending on the circumstances and features of the contract, it may be required by the contracting authority, the provision of a guarantee to bidders or candidates to respond to the maintenance of their bids until the award, as well as a guarantee to the successful bidder to ensure proper execution of the provision.

The amount of the guarantees will be established in each case according to the circumstances and features of the contract.

The guarantees that are required may be presented in any of the ways provided in article 96 of the TRLCSP.

## **9. Advertising.**

Regardless of the Level of the contract in question, when its estimated value exceeds 50,000 euros, the information regarding the tender must be inserted in the contractor profile of THE FOUNDATION. However, additional means of dissemination may be used if deemed necessary in light of the circumstances and features of the contract, including without limitation the possibility of resorting to official bulletins, local publications or the Official Journal of the European Union.

Likewise, if it is deemed necessary, prior announcements regarding the contracts that are projected to be awarded in each year or in a multi-year period may be disseminated. The announcement of the tender will contain the following information:

- a) A brief description of the essential details of the contract.
- b) The procedure for awarding the contract, indicating the deadline for the submission of bids.
- c) Contact information of the Foundation.

In any case, if the circumstances and features of the contract so advise, the content of the advertisement may be extended or additional information may be added to the contractor profile.

Without prejudice to what has been established in previous paragraphs, advertising may be dispensed with in those cases of application of the negotiated procedure contained in articles 170 to 175 of the TRLCSP, which, in accordance with the provisions of article 177 of said legal text, should not be subject to advertising.



## 10. Award procedures

For the application of these Instructions and in order to establish the procedures and requirements applicable to the award of each contract, the following levels are distinguished (hereinafter, only one "Level", and together the "Levels"):

- a) Level 1. The contracts whose estimated value is less than 50,000 euros, whatever the type of contract in question, are subject to this level.
- b) Level 2. Contracts whose estimated value is between 50,000 euros and the following amounts are in this level:

5,225,000 euros in the case of works contracts.  
209,000 euros in other contracts.

Contracts whose estimated value is above the amounts cited in Level 2, except those specifically excluded by the TRLCSP and those indicated in point 2 of article 13, will necessarily have to be subject to harmonised regulation procedures, regardless of the type of contract or the features of the contracting parties.

In the first place, the singularities applicable to the contracts of the so-called Level 1 Procedure are listed, and the Procedure that will be applicable to Level 2 contracts is described below.

### 10.1 Level 1 procedure

This Procedure will be applied for the contracting included in Level 1, whose estimated value is less than 50,000 euros.

Level 1 contracts may be awarded directly to any employer with the capacity to act and who has the necessary professional qualifications to perform the service.

Notwithstanding the foregoing and in accordance with the provisions of article 31.3 of Law 38/2003 of 17 November on Subsidies, as amended by the fifth final provision of Law 14/2011 of 1 June on Science, Technology and Innovation, in the contracts with credit from public subsidies of more than 18,000 euros, (supplies and services) and 50,000 euros (works) will be required to have at least three budgets in the file, awarding the contract to the offer that is economically more favourable. In the event that the request for such a minimum number of offers is not possible, it will be justified in the file.

The Contracting Body for contracts of this Level will be the Director of the Foundation or the Administrator of the Foundation in solidarity.

In this Procedure, the advertisement of the call is not obligatory.

In consideration of the features and circumstances of the contract, the award rules provided for the higher level may be applied to Level 1 contracts.

The processing of the file will only require the approval of the expense, one or three budgets, depending on the amount of the contract, the referred order and the corresponding invoice.

## 10.2 Level 2 procedure

This Procedure will apply to Level 2 contracts, that is:

- Supply Contracts: between € 50,000 and € 209,000
- Services Contracts: between € 50,000 and € 209,000
- Works Contracts: between € 50,000 and €5,225,000

However, this Procedure may be applied, at the proposal of the sponsor area of the contract, to contracts whose amount is less than € 50,000.

The procedure will start with a justifying report that motivates the necessity and suitability of the contract as well as the procedure, preparing a contract file, with a list of basic conditions for the contracting and a maximum bidding budget, an advertisement before, during and after of the tender, an express award procedure and a formalisation of the contract.

The contracting body for contracts of this level will be the Chairman of the Board.

In the absence of the Chairman of the Board of Trustees, the Contracting Authority will be the Chairman of the Research Committee.

### 10.2.1. Contracting File.

THE FOUNDATION will prepare Preliminary Basic Terms and Conditions for Contracting in which the following aspects will be specified:

- A brief description of the essential details of the contract and the technical requirements required, as well as the economic aspects thereof.
- Requirements to be able to tender (capacity and economic, technical or professional solvency).
- Procedures to be followed and procedure for awarding the contract by THE FOUNDATION, including bid evaluation criteria.

The maximum budget of the tender is the maximum amount to which the contracting must total. If all the bids exceed said maximum bidding budget, THE FOUNDATION will declare the aforementioned bidding procedure void.

#### 10.2.2. Advertising of the tender.

THE FOUNDATION will publish the information related to the tender, including the bidding documents, in the Contracting Profile of the Public Procurement Portal of the Community of Madrid, so that any interested bidder may submit the bid, in accordance with the provisions of paragraph 9 of these Instructions.

In the case of works contracts of less than 200,000 euros and in the remaining contracts of less than 60,000 euros, it will not be necessary to publish the tender notice and the corresponding Bidding Document in the Contractor's Profile, it is enough that it generically indicates the contracts that are intended to be concluded and the foreseeable dates for it.

#### 10.2.3. Award procedure.

The ordinary procedure for awarding Level 2 contracts will be the one negotiated, although the application of the open or restricted procedure may be decided in those contracts in which, due to their particular economic relevance and proximity to the amounts of the contracts subject to harmonised regulation, the Contracting Body considers that the open or restricted procedure best satisfies compliance with the principles defined in section 4 of these Instructions.

The negotiated procedure will be applied subject to the following rules:

I. Whenever possible, THE FOUNDATION will request an economic offer, at least, from three companies able to carry out the contract. The companies invited to submit bids will include those that have expressed their interest in participating in the bid within the period established for that purpose. However, if the contracting body deems it appropriate, it may establish objective solvency criteria for the election of the candidates invited to submit proposals from those who have expressed their interest, and a maximum number of candidates may also be established for invitation, which may not be less than three. These objective criteria, which may appear in the contract announcement, must be included at least in the corresponding document.

II. THE FOUNDATION will record the invitations received, the offers received and the reasons for accepting or rejecting them.

III. THE FOUNDATION may negotiate any aspect of the contract with the bidders, in accordance with the provisions of the corresponding bidding rules, ensuring that during the course of the negotiation all bidders receive equal treatment, and shall not provide information in a discriminatory manner.

IV. The contract will be awarded in all cases to the most economically advantageous tender, in accordance with the technical criteria that have been established in the Bidding Documents and the economic ones on the maximum bid amount.

### 10.3 Formalisation of contracts.

Unless they are already included in the corresponding document, the contracts subject to these Instructions that the FOUNDATION holds must necessarily include the following mentions:

- a) The identification of the parties.
- b) The accreditation of the capacity of the signatories to sign the contract.
- c) Definition of the purpose of the contract.
- d) Reference to the legislation applicable to the contract.
- e) The enumeration of the documents that make up the contract. If this is expressed in the contract, this enumeration may be ranked, ordered according to the order of priority agreed by the parties, in which case, and unless there is a manifest error, the agreed order will be used to determine the respective prevalence, in case of contradictions between different documents.
- f) The true price or the way to determine it.
- g) The duration of the contract or the estimated dates for the beginning of its performance and for its completion, as well as the extension or extensions, if they were foreseen.
- h) The conditions of reception, delivery or admission of provisions.
- i) Payment terms.
- j) The assumptions in which the resolution proceeds.
- k) The objective and temporary extension of the duty of confidentiality that, in its case, is imposed on the contractor.

In general, the formalisation of the contract will be carried out within a maximum period of ten calendar days from the selection of the contractor, provided that a different term has not been established in the corresponding bidding documents or offers.

The contractual consent of THE FOUNDATION will be manifested through the formalisation of the contract, meaning that it will be perfected.

### **11. Competent jurisdiction.**

The jurisdictional order that is competent for solving litigious questions related to the preparation, award, effects, compliance and termination of the contracts referred to in these Instructions will be the civil jurisdictional order.

### **12. Modifications in estimated values of the contracts by legal imperative.**

If, by legal imperative, the amounts corresponding to the thresholds for contracts subject to harmonised regulation are modified, they will be understood to be automatically rectified in these Instructions.

**Application standards:**

- Royal Legislative Decree 3/2011, of 14 November approving the revised text of the Law on Public Sector Contracts.
- Law 38/2003, of 17 November General Law on Subsidies.
- Royal Decree 887/2006, of 21 July which approves the Regulation of Law 38/2003, of 17 November General Law on Grants.
- Law 14/2011, of 1 June on Science, Technology and Innovation.
- Order EHA / 3479/2011, of 19 December, publishing the limits of the different types of contracts for the purpose of contracting in the public sector as of 1 January 2012.