



Internal Instructions Governing Contracts

Contents

1. Contractual Framework Application	1
2. Contracts not subject to harmonized regulation	2
2.1 Rules of general application.....	3
Contracting authority	3
Requirements to be met by Contractors	3
Elements of the contract	3
Preparation of the contract	4
Entering into the contract	5
Execution of Contract	5
2.2 Bid/Tender Document	6
2.3 Adjudication Procedures.....	8
Works Contracts.....	8
Remaining contracts (supply, service and others)	11
2.4 Questions.....	15
3. CONTRACTS SUBJECT TO HARMONIZED REGULATION	16
3.1 Rules of general application.....	16
Specifications in relation to the requirements to be met by contractors.....	16
Preparation of the contract	16
Completion and formalization of the contract	17
3.2. Bid/Tender Document	17
3.3 Adjudication procedure	17
3.4 Questions.....	18
Preparation and award.....	18
Purpose and termination.....	19
2.5 Official Review.....	19
4. Contractor Profile	20
Annex I	21
Annex II	23
Annex III	24

1. CONTRACTUAL FRAMEWORK APPLICATION

Achucarro Basque Center for Neuroscience Fundazioa (hereinafter "Achucarro") it's a non for profit foundation, under the Spanish and Basque laws for this kind of legal entities.

Achucarro is governed by the provisions of Law 12/1994, of 17 June, on Foundations of the Basque Country, of the Decree 100/2007 approving the Regulations approved protectorate, and by other laws to which you application. It is also governed by the Statutes of the Foundation that were prepared in accordance with those rules.

The main strategic objective of **Achucarro** is to contribute to the development of a socially and economically sustainable Society. To do this we strive to perform world-class research in the study of **neuron-glia biology in the normal and pathological brain**. This research focus will allow us to contribute to the training of future generations of neuroscientists and be an active partner in the dissemination of the human knowledge about the brain.

Achucarro believes that due to its purposes, income sources, composition and management, meets the requirements to be regarded as a Contracting Authority, which is not considered a Public Administration, pursuant to article 3.3 of the revised Law on Public Sector Contracts (hereinafter "TRLCSP" or, interchangeably, the Law), approved by Royal Legislative Decree 3/2011 of 14 November.

This is because it is an entity:

- With its own legal personality,
- Created specifically, like all the other foundations regulated by the Law 12/1994 of 17 June, to meet needs of general interest,
- Its needs don't have an industrial or commercial character, and
- Another Contracting Authority (in this case, a Public Administration: the Basque Government), mainly finances its activity.

In its capacity of Contracting Authority, Achucarro must take into account certain rules of the TRLCSP on the preparation and adjudication of certain contracts. Specifically, we must directly apply the rules of TRLCSP for the preparation and adjudication of all those contracts subject to Harmonized Regulation. These contracts are defined in the TRLCSP and notwithstanding this, these internal instructions are defined to regulate the contracting.

The contracts entered into by Achucarro are classified into the following categories:

1. Contracts not subject to the Royal Legislative Decree 3/2011, 14th November, in which the text is approved revising the law on Public Sector Contracts (hereafter, the TRLCSP or interchangeably, the Law), therefore subject to private law or, as the case maybe, to the special regulations which are applicable to them. These are the contracts described in article 4 of the TRLCSP (attached to these instructions as Annex I).
 - These instructions do not apply.
2. Contracts subject to the Law, not characterized by harmonized regulation. These are all contracts, except for those in the following category.
 - Those which the provisions in **section 2** of these instructions apply to.
3. Contracts subject to the Law, characterized by harmonized regulation. Those which the provisions in section C of these instructions apply to. They are the following contracts:
 - Works contracts with an estimated value equal to or greater than 5,000,000 Euros*.
 - Supply contracts with an estimated value equal to or higher than 200,000 Euros*.
 - Service contracts in categories 1 to 16 of Annex II of the TRLCSP, with an estimated value equal to or greater than 200,000 Euros*.

() The above amounts are understood to exclude V.A.T.*

Regardless of the amount, under no circumstances are those contracts described in article 13.2 of the TRLCSP (which is attached to these instructions as Annex II) subject to harmonized regulation, neither are the service contracts included in the categories 17 to 27 of Annex II of the TRLCSP.

2. CONTRACTS NOT SUBJECT TO HARMONIZED REGULATION

These are the following contracts:

- Works contracts with an estimated value less than 5,000,000 Euros*.
- Supply contracts with an estimated value less than 200,000 Euros*.
- Service contracts in categories 1 to 16 of Annex II of the TRLCSP, with an estimated value less than 200,000 Euros*.
- Service contracts included in categories 17 to 27 of Annex II of the TRLCSP, and contracts included in article 13.2, whatever their amount.

()The above amounts are understood to exclude V.A.T. These limits are fixed by the Eleventh Additional Provision of TRLCSP, and could vary depending on what is set by the European Commission hereafter, according to the provisions in the eleventh Additional Provisions of the TRLCSP.*

2.1 Rules of general application

CONTRACTING AUTHORITY

The capacity to contract is governed by the provisions in the statutes of ACHUCARRO and by the rules of private law which are applicable.

The Contracting Authority of ACHUCARRO is the Governing Board in all cases and in addition those persons who under statutory provision or power of attorney hold the authority for this.

The Contracting Authority will be able to expressly empower the person or persons that it deems appropriate for the implementation of specific proceedings in relation to the contract in each case.

REQUIREMENTS TO BE MET BY CONTRACTORS

ACHUCARRO can employ contractors that meet and are accredited with the following requirements:

- Conditions of qualifications: These are the ones provided in article 54 of the Law. Article 55 shall be applied (for non-EU companies) and article 56 (relative to the special conditions of compatibility).
- Capacity: It will be that which is required under article 57 (capacity of legal persons), article 58 (capacity of EU companies) and article 59 (capacity of joint ventures). Capacity will be accredited under article 72.

Not subject to prohibitions on contracting

Articles 60.1 will be applied, with regards to prohibitions on contracting, and 73, on ways to prove the non-concurrence of said prohibitions on contracting.

Minimum conditions of solvency

The minimum conditions of economic, financial and technical or professional solvency will be those established, in each case, in the Tender Specifications and shall be accredited in the manner provided herein.

In these documents not only will the documents to be presented be identified in order to justify solvency, but also the minimum thresholds attesting to such solvency.

Articles 62 (solvency requirement) will be applied, 63 (integration of solvency with external means) and 64 (fulfilment of the conditions of solvency).

Classification

Administrative classification will be required only if so provided in the Tender Specifications.

ELEMENTS OF THE CONTRACT

Object of the contract

ACHUCARRO enters into contracts when it is necessary for the fulfilment and achievement of its objectives. The nature and extent of the needs which it attempts to cover by means of the proposed contract, as well as the suitability of its objective and contents in order to satisfy these, will be determined with accuracy, and will be recorded in the preparatory documentation.

The objective of the contract will be determined by applying the provisions contained in article 86.

Duration of contract

ACHUCARRO will determine the duration of contracts, taking into account the nature of the services, the characteristics of their financing and the need to regularly review these. For these purposes the provisions in article 23 will be applied.

Possible contract extensions will be expressly provided where appropriate in the Tender Specifications.

Works contracts to a value less than 50,000 Euros and any with a value of less than 18,000 Euros (excluding V.A.T) which are subject to direct adjudication will have a duration of no longer than one year, in any event, and will not be subject to extension.

Price

The norms of articles 87 and 88 are applied to the price of the contract calculating the estimated value and setting of the tender budget, with the corresponding adjustments arising from the fact that it is not a Public Administrative body.

The review of prices will take place if provision has been made for this in the Tender Specifications.

PREPARATION OF THE CONTRACT

Request

Except when direct adjudication is necessary, the contract of employment will begin by the completion of the form which accompanies these instructions as Annex III by internal staff at ACHUCARRO. This form will record, in all cases, the nature and extent of the needs to be met by the proposed contract, in addition to its suitability of purpose and contents in order to satisfy them.

Tender/Bid Documents

It will be obligatory to create a Tender document establishing specifications in all those contracts exceeding the amount of 50,000 Euros (excluding V.A.T.). At the discretion of the Contracting Authority for contracts other than works contracts, it will also be possible to create the Tender document when the amount exceeds 18,000 Euros (excluding V.A.T.).

In contracts exceeding the said amount, the Tender Specifications will be accompanied by technical specifications.

In the actual specifications or in the complementary documentation the subrogation conditions in employment contracts, in accordance with the provisions in article 120 of the TRLCSP will be explained.

In Works contracts the corresponding Works proposals which could substitute the technical specifications, if necessary, will be created.

Service contracts in categories 17 to 27 of Annex II of the TRLCSP, with a value equal to or greater than 200,000 Euros, will also remain subject to the provisions of article 137.1 of the TRLCSP.

ENTERING INTO THE CONTRACT

The contract will be completed with its formalization.

The contract will be formalized in writing.

If the contract goes to direct adjudication, being of the same origin, the aforementioned formalization could consist solely of the issuance of the corresponding budget and written communication of acceptance.

In the event that the Tender specifications are not created, the contract which is signed must necessarily include the information specified in article 26 of the TRLCSP.

Under no circumstances are stipulations establishing rights and obligations for the different parties other than those provided in the Tender documents included in the contract with the specifications derived from the present offer and from the details of the adjudication process.

EXECUTION OF CONTRACT

With regard to effects and termination of the contract, the terms stipulated in the Tender documents (which if agreed may refer to legislation governing Public Administration contracting) and additionally civil law except when modifications of the contract occur which in all events will be under the provisions of Title V of the Book I (articles 105,106,107 and 108) of the TRLCSP.

2.2 Bid/Tender Document

The Tender Specifications will determine the following aspects with the specific nature of the negotiated procedure:

- Contracting Authority.
- Advertising, way of accessing profile of contracting party and costs of advertising.
- Objective of the contract and where appropriate, existence of batches.
- Requirements to be met by the contract and factors to be taken into account.
- Budget tender base and, where appropriate, distribution of the same in annuities.
- Contractual Documentation.
- Duration of the contract, with details, if any, of extensions.
- Process of awarding the contract: Open process, restricted or negotiated.
- Submission of proposals:
 - Presentation mode.
 - Form and content (documents to be submitted).
 - Time and place of submission.
- The contracting party:
 - Capacity.
 - Terms of competency.
 - Prohibition on contracting.
 - Economic and financial solvency (documents and minimum thresholds).
 - Technical or professional solvency (documents and minimum thresholds).
- Evaluation and adjudication:
 - Adjudication criteria and their consideration.
 - When dealing with a negotiated procedure, issues subject to negotiation and, where appropriate, adjudication criteria and their consideration.
 - Presentation of the selected proposals
 - Evaluation of the proposals and selection of the most economically advantageous tender.
 - Documents to be submitted by the tenderer offering the most economically advantageous proposal.
 - Awarding of the contract and its notification.
- Remaining documentation to be submitted, where appropriate, by the adjudicator and deadline.
- Formalization of contract and deadline.
- Rights and obligations of the parties.
- Receiving the contract and warranty period of the contracted services.
- Scheme of payments of the price.
- Causes of termination of the contract.
- Legal framework and jurisdiction.

Additionally, the Bid/Tender Specifications could give details of the following aspects:

- Financing.
- Variations or improvements: Indication of whether to authorize, expressing their requirements, limits, terms and aspects of the contract on those admitted.
- Review of prices (with the indication of the formula or official index applicable, according to that established in article 87, section 3, of the TRLCSP).
- Provisional and definitive guarantees.
- Classification.
- Date of review of documentation establishing capacity requirements.
- Possibility of amending contract, specifying clearly, precisely and unambiguously the conditions, scope and limits of the amendments that may be agreed, maximum percentage of the contract price and procedure to be followed for this.
All the time respecting and meeting the requirements provided in the TRLCSP (article 106).
- Objective and temporary extension of the duty of confidentiality imposed on the contractor.
- Assignment and subcontracting: Indication of the requirements for the assignment of the contract and identification of the services or the percentage of those likely to be employed by the contractor.
- Penalties for delay and defective workmanship.
- Any other agreements, terms and conditions not contrary to law.

2.3 Adjudication Procedures

In compliance with the provisions of Article 191 of the TRLCSP, the adjudication procedures are given below, according to the different types of contracts and their amounts.

Notwithstanding all that is given below, the Contracting Authority may use the competitive dialogue procedure in cases and in accordance to the provisions in Articles 179 to 183.

In addition, it may also use systems for the rationalization of contracting (framework agreements, dynamic and central contracting systems), in which case it must comply with the provisions in sections 196 to 205, for the adjudication of contracts subject to harmonized regulation.

WORKS CONTRACTS

Distinction by amounts

With regards to Works contracts, three procedures will be followed, according to the economic value of the work. As follows:

- a) Works contract amounting to a value of up to 49,999.99 Euros(*).
- b) Works contract amounting to a value of between 50,000 Euros and 999,999.99 Euros (*)
- c) Works contract amounting to a value of between 1,000,000 Euros and 4.999,999.99 Euros (*)

All the above amounts are understood to exclude V.A.T.

()Or the figure set by the European Commission hereafter, according to the provisions in the eleventh Additional Provisions of the TRLCSP.*

Works contracts amounting to a value of up to 49,999.99 Euros

This type of contract, will generally be directly awarded. The appropriate budget will be requested, to be approved by ACHUCARRO, proceeding to the signing of the relevant contract or exclusively on the express written acceptance of said budget, communicating the acceptance of the same.

Verifying the fulfillment of the contract, payment of the amount will follow, upon provision by the contractor of the corresponding invoice and its acceptance.

However, a negotiated open or restricted procedure can also be chosen, in which case the provisions in the following section will apply.

Works contracts with a value of between 50,000 and 999,999.99 Euros

In this type of contract the adjudication process will take place by means of a negotiated procedure, open or restricted, the choice of the specific procedure must be included the Tender Specifications.

1) Negotiated Procedure

If the negotiated method is chosen, the following procedures shall be observed:

- a) Request: Contract applications will be performed by completing the form attached as Annex III by the internal staff of ACHUCARRO.
- b) Application for offers: Offers will be applied for by at least three companies competent to carry out the purpose of the contract. However, offers will not be applied for when the tender is published in the profile of the contracting party.
- c) Tender Documents: A Tender Specification will be created (with the contents provided in section 2, section II of these instructions), as well as a document outlining the Technical Specifications, or the corresponding Project Work.
In this Tender document or in the supporting documentation information will be provided on the subrogation conditions in employment contracts according to the provisions in article 120 of the TRLCSP.
- d) Advertising: When the value of the contract exceeds 200,000 Euros its tender and adjudication will be published in the contractor profile.
The adjudication of the contract will be published in the contractor profile.
The latter notwithstanding the provisions in letter g) of this section.
- e) Evaluation: In the Tender Specification economic and technical aspects subject to negotiation with companies will be determined, also, where appropriate, the criteria for adjudication and its consideration.
Once negotiations have taken place and, in all cases, in view of the final tenders submitted by technical staff at ACHUCARRO these will then be presented to the Contracting Authority as a proposal containing the list of tenders submitted, which have not been declared disproportionate or abnormal, classified in descending order, as well as the identification of the most advantageous tender, with reasons.
The reasons for acceptance or rejection of the invitations issued and the tenders received and the negotiations which have taken place will be recorded.
- f) Adjudication and formalization of contract: The Contracting Authority will award the contract to the most economically advantageous tender in view of the proposal from the technical personnel.
The Contracting Authority will agree on the award of the contract justifying its decision, the tenderers will be notified and at the same time this will be published in the contractor's profile.
When the Contracting Authority does not award the contract in accordance with the proposal made by the technical personnel it must justify its decision.
The formalization of the contract will be carried out within a maximum period of fifteen days following the date of receipt of the notification of award by the tenderers.
- g) Other forms of application: a negotiated procedure can also be chosen, whatever the amount, in the contracts provided in Articles 170 and 171, paragraphs a), b) and c).
In these cases, notice of contract will only be published in the contracting profile in the cases of Article 170, paragraphs a) and b) and 171, paragraph a).
- h) In matters not expressly provided in the Tender Specifications or in these instructions the provisions in articles 151 (sections 1,2 and 3), 169, 176, 177, 178 will be applicable, and the remaining articles that can be applied by reference to them, with the corresponding amendments arising from the fact that it is not a Public Administrative body.

2) Open or restricted procedure

In works contracts amounting to a value of between 50,000 and 999,999.99 Euros if open or restricted procedure is chosen the provisions in the following section will be applicable except for those given in paragraph c), in relation to advertising. In the latter case the requirement is defined as being derived from the principle of publicity with the publication of the tender and the awarding of the contract in the contractor profile.

Works contracts amounting to a value of between 1,000,000 Euros and 4,999,999.99 Euros

In this type of contract the awarding process is processed by means of an open or restricted procedure, the choice of the specific procedure must be stated in the Tender Specifications.

The following rules apply regardless of whether the open or restricted procedure is chosen:

- a) Request: The request shall be made by the internal staff at ACHUCARRO by completing the form attached as Annex III.
- b) Documents: A Tender Specification will be created using the contents provided in section 2, section II of these instructions as well as a Technical Specification, or the corresponding Project Work.
In the Tender document itself or in the supporting documents the conditions of subrogation in employment contracts, as provided in Article 120 of the TRLCSP will be reported, as appropriate.
- c) Advertising: The tender shall be published, as a minimum requirement, in the contractor profile, in the contractor profile and in the Official Journal of Bizkaia, or in the contractor profile and in a provincial newspaper, the specific option to be indicated in the Tender Specifications. The adjudication of the contract will be published in the contractor profile.
- d) Deadline for submission of the proposals: The deadline for submission of the proposals will be given in the Tender Specifications, but under no circumstances will this be less than twenty-six (26) days, unless, in the opinion of the Contracting Authority, there are exceptional circumstances justifying its reduction.
- e) Method for submitting proposals: The proposals will be confidential and will be submitted in sealed envelopes as determined in the Tender Specifications.
- f) Evaluation: The criteria that form the basis for awarding contracts, as well as their consideration, will be determined by the Contracting Authority and will be indicated in the advertisement and in the Tender Specifications.

The criteria directly linked to the subject of the contract, such as quality, price, the formula used for reviewing remuneration linked to the use of the work, the time of execution for the providing of services or delivery, the running costs, the environmental characteristics, links with the satisfaction of social needs, profitability, technical merit, aesthetic and functional characteristics, the availability and cost of spare parts, maintenance, technical support, after sales service or the like will be addressed.

The Tender Specifications may consider the composition and powers of a committee with the responsibility for issuing an objective report evaluating the proposals submitted, also responsible for submitting to the Contracting Authority a proposal containing the tenders, that have not been declared disproportionate or abnormal according to the criteria for evaluating proposals envisaged in the Tender Specifications, classified in descending order as well as identifying the most economically advantageous tender. In the absence of express provision related to the Evaluation Committee, technical personnel will submit to the Contracting Authority that proposal.

- g) Awarding and formalization of the contract: The Contracting Authority will award the contract to the economically most advantageous proposal according to the objective criteria for the evaluation of proposals under the Tender Specifications and in view of the proposal by the Evaluation Committee or, as the case maybe, by technical personnel.

The contracting authority will award the contract by reasoned decision notification of which will be given to the tenderers and simultaneously published in the contractor profile.

When the Contracting Authority does not award the contract according to the formula proposed by the Evaluation Committee or, as the case maybe, by technical personnel it must justify its decision.

Formalization of the contract will be carried out within a maximum period of fifteen days following which the tenderers will receive notification of the award.

In the absence of express provision in the Tender Specifications or in these instructions, the following provisions shall apply:

- for the open procedure and the restricted procedure, Article 151 (sections 1, 2 and 3).
- For the open procedure, in Articles 157, 158, 160 (but under no circumstances provisions with regards to the intervention of the committee of experts or specialized body of technicians are applicable) and 161: for the restricted procedure, in Articles 162, 163, 165, 166, 167, 168, and remaining provisions that could be applicable by referring to all of them. In both cases with the corresponding amendments derived from the fact it is not a Public Administrative body.

REMAINING CONTRACTS (SUPPLY, SERVICE AND OTHERS)

Distinction by amounts

In relation to these contracts (supply, service and others), three different procedures will be observed, depending on their financial cost. As follows:

- a) Contract amounting to a value of up to 17,999.99 Euros (*).
- b) Contract amounting to a value of between 18,000 Euros and 99,999.99 Euros (*).
- c) Supply and service contracts amounting to between 100,000 Euros and 199,999.99 Euros and remaining contracts, without limit (*).

All the amounts referred to are understood to exclude V.A.T.

(*). Or the figure set by the European Commission hereafter, according to the provisions in the eleventh Additional Provisions of the TRLCSP.

Contracts up to a value of 17,999.99 Euros

This type of contract is generally awarded directly. The appropriate budget, to be approved by ACHUCARRO, will be requested, proceeding to the signing of the corresponding contract or exclusively to the express written acceptance of this budget, communicating acceptance of this.

Once fulfillment of the contract has been verified payment will proceed, after provision by the contractor of the corresponding invoice and its acceptance.

However, a negotiated procedure can be chosen, open or restricted, in which case the provisions in the following section will apply.

Contracts amounting to a value of between 18,000 Euros and 99,999.99 Euros

This type of contract shall be awarded by means of a negotiated process, open or restricted, the choice of the procedure must be included in the Tender Specifications. In the event that this is not included the choice will be made by express decision by the Contracting Authority.

1) Negotiated process

If a negotiated procedure is chosen, the following procedures shall be observed:

- a) Request: The request for a contract is carried out by completing the form attached to Annex III by the internal personnel at ACHUCARRO.
- b) Application for tenders: Tenders from at least three companies competent to achieve the purpose of the contract will be requested. However, tenders will not be requested when the tender is published in the profile of the contractor.
- c) Bid/Tender Documents: When the amount of the contract exceeds 50,000 Euros a Tender Specification will be created (with the contents provided in section 2, section II of these instructions) in addition to Technical Specifications.

In the document itself or in supporting documents the conditions of subrogation in employment contracts will be reported where appropriate, in accordance with the provisions in article 120 of the TRLCSP when the amount of the contract exceeds 50,000 Euros.

When the amount of the contract is equal to or less than 50,000 Euros, the preparation of the Tender documents is optional.

- d) Advertising: When the amount of the contract exceeds 60,000 Euros its tender will be published in the profile of the contractor.
The award of the contract will be published in the profile of the contractor.
This is not to the detriment of the provisions in letter g) of this section.
- e) Evaluation: In the Tender Specifications the economic and technical aspects that have to be negotiated with companies shall be determined, in addition, where appropriate, the criteria for awarding the contract and its consideration.
Following the negotiations conducted and in view of the final proposals submitted, the technical personnel at ACHUCARRO will submit this proposal containing the list of tenders submitted, classified in descending order and which have not been declared disproportionate or abnormal as well the identification of the most economically advantageous tender with reasons to the Contracting Authority.
A record will be made of the invitations sent, the offers received, reasons for acceptance or rejection, and the negotiations conducted.
- f) Awarding and formalization of the contract: The Contracting Authority will award the contract to the most economically advantageous tender in view of the proposal submitted by technical personnel.
The Contracting Authority will agree on the award of the contract by reasoned decision, notification of which will be given to the tenderers and, at the same time, will be published on the contractor profile.
When the Contracting Authority does not award the contract in accordance with the proposals made by the technical staff it must justify its decision.
The formalization of the contract will be carried out within a maximum period of fifteen days following which notification of the award will be received by the tenderers.
Other Forms of application: The negotiated process can also be chosen, regardless of the amount, in those contracts provided in articles 170, 173, sections a), b) and c), d) and e), article 174, sections a), b), c) and d) and article 175.

In these instances the tender notice will only be published in the contractor profile in the cases of article 170 sections a) and b), 174, section a) and 175 (when the negotiated process is chosen on the basis of the amount and this exceeds 60,000 Euros).

In matters not expressly provided in the Tender Specifications or in these instructions, the provisions in articles 151 (sections, 1, 2 and 3), 169, 176, 177, 178 are applicable and the remaining articles which could be applicable by reference to all of them, with the appropriate amendments resulting from the fact that it is not dealing with a Public Administrative body.

2) Open or restricted procedure

In this type of contract (supply, service or other) amounting to a value of between 18,000 and 99,999.99 Euros, if open or restricted procedure is chosen the provisions in the following section will be applicable, except for the provisions in paragraph c) relating to advertising. In the latter case the requirement is defined as being derived from the principle of publicity with the publication of the tender and the awarding of the contract in the contractor profile.

Contracts amounting to a value of between 100,000 euros and 199,999.99 euros.

In this type of contract the awarding process will take place by means of an open or restricted procedure, the choice of the specific process must be included in the Tender Specifications.

The following rules apply regardless of whether an open or restricted process is chosen:

- a) Request: The request is made by the internal staff of ACHUCARRO with the completion of the form attached to these instructions as Annex III.
- b) Tender document: A Tender Specification will be created using the contents provided in section 2, section II of these instructions in addition to a Technical Specification.
In the document itself or in the supporting documents the conditions of subrogation in employment contracts will be reported where appropriate according to the provisions in article 120 of the TRLCSP.
- c) Advertising: The tender shall be published as a minimum requirement in the contractor profile, in the contractor profile and in the Official Journal of Bizkaia, or in the contractor profile and in a provincial newspaper, the specific option to be indicated in the Tender Specifications.
The awarding of the contract will be published in the contractor profile.
- d) Deadline for submission of proposals: The deadline for submission of proposals will be specified in the Tender Specifications, but under no circumstances will this be less than fifteen (15) days, unless the Contracting Authority decides there are exceptional circumstances justifying its reduction.
- e) Method for submitting proposals: The proposals will be confidential and will be submitted in sealed envelopes as determined in the Tender Specifications.
- f) Evaluation: The criteria that form the basis for awarding contracts, as well as its consideration, will be determined by the Contracting Authority and will be indicated in the advertisement and in the Tender Specifications.

The criteria directly linked to the subject of the contract, such as quality, price, the formula used for reviewing remuneration linked to the use of the work, the time of execution for the provision of services or delivery, the running costs, the environmental characteristics or links to the satisfaction of social needs, profitability, technical merit, aesthetic and functional characteristics, the availability and cost of spare parts, maintenance, technical support, after sales service or the like will be addressed.

The Tender Specifications may consider the composition and powers of a committee with the responsibility for issuing an objective report evaluating the proposals submitted and responsible for submitting a proposal to the Contracting Authority containing a list of the tenders submitted, that have not been declared

disproportionate or abnormal according to the criteria for evaluating proposals envisaged in the Tender Specifications, classified in descending order, as well as identifying the most economically advantageous tender. In the absence of express provision related to the Evaluation Committee, technical personnel will submit to the Contracting Authority that proposal.

- g) Awarding and formalization of the contract: The Contracting Authority will award the contract to the economically most advantageous proposal according to the objective criteria for the evaluation of proposals provided in the Economic and Administrative tender document and in the view of the Evaluation Committee or, as the case maybe, technical personnel.

The contracting authority will award the contract by reasoned decision which will be notified to the tenderers and at the same time published in the contractor profile.

When the Contracting Authority does not award the contract in accordance with the proposals made by the Evaluation Committee or, as the case maybe, by technical personnel it must justify its decision.

The formalization of the contract will be carried out within a maximum period of fifteen days following which notification of the award by the tenderers will be received.

In the absence of express provision in the specifications or in these instructions, the following provisions will apply:

- for open procedure and restricted procedure, in article 151 (sections 1,2, and 3).
- for the open procedure in articles 157, 158, 160 (when under no circumstances the provisions regarding the committee of experts or the specialized technical body is applicable) and 161; for the restricted procedure, in articles 162, 163, 165, 166, 167, 168, and those remaining which could be applicable by reference to all of them. In both cases resulting from the fact that it is not a Public Administrative body.

2.4 Questions

Any questions relating to the preparation, adjudication, effects, performance or termination of these contracts can only be addressed through the civil courts.

In the case of questions relating to the preparation and adjudication of service contracts included in categories 17 to 27 of Annex II of the TRLCSP whose amount is equal to or above 200,000 Euros these will be subject to the provisions for contracts subject to harmonized regulation in paragraph C, section I of these instructions.

In addition, the resolution of disputes that could arise with regards to the effects, performance and termination of contracts entered into could be taken to arbitration, according to the provisions in Law 60/2003 of December 23, which includes that reference in the corresponding Economic-Administrative tender document.

3. CONTRACTS SUBJECT TO HARMONIZED REGULATION

These are the following contracts:

- Works contracts whose value is estimated to be equal to or greater than 5,000,000 Euros(*).
- Supply contracts whose value is estimated to be equal to or greater than 200,000 Euros (*)
- Service contracts included in categories 1 to 16 of Annex II of the TRLCSP whose value is estimated to be equal to or greater than 200,000 Euros (*).

The above amounts are understood to exclude V.A.T.

(*) Or the figure set by the European Commission hereafter, according to the provisions in the eleventh Additional Provisions of the TRLCSP.

This is with the exception of contracts in article 13.2 which whatever their value, are not considered to be subject to harmonized regulation.

3.1 Rules of general application

In contracts subject to harmonized regulation the provisions of section 2, section I of these instructions for contracts not subject to harmonized regulation will not apply with the following specifications:

SPECIFICATIONS IN RELATION TO THE REQUIREMENTS TO BE MET BY CONTRACTORS

Specifications in relation to the conditions of aptitude

In addition to the provisions of article 54, article 55 will be applicable (dispensing with the World Trade Organization reciprocity report in relation to companies signatory to the Agreement on Public Contracting).

Specifications in relation to the minimum conditions of solvency

In addition to the provisions in section 2.1., section 2.4 of these instructions, Articles 74 to 79 will apply in all cases relating to the means of proving solvency.

Compliance with quality assurance standards and environmental management standards

Articles 80 and 81 will be applied in relation to the accreditation of compliance with quality assurance standards and environmental management standards.
The provisions for this purpose will be established in the Tender Specifications.

PREPARATION OF THE CONTRACT

The rules established in article 117 for the definition and establishment of technical specifications will apply.

The provisions of articles 118 (special conditions for the execution of the contract), 119 (information on the obligations relative to taxes, environmental protection, employment and working conditions) and 120 (information on the conditions of subrogation in employment contracts) will also apply.

If the contract is required to meet a pressing need or if it is necessary to accelerate the award on grounds of public interest, the Contracting Authority could declare its processing to be urgent, stating its reasons in the preparatory documentation. In this case the provisions of Article 112.2.b) on reduced deadlines will apply.

COMPLETION AND FORMALIZATION OF THE CONTRACT

The contract will be completed with its formalization and will be formalized in writing.

3.2. Bid/Tender Document

The Tender Specifications, could include the following aspects in addition to the objectives indicated in section 2, section II of these instructions, for contracts not subject to regularized harmonization:

- Accreditation of compliance with quality assurance standards and environmental management (in the terms provided in articles 80 and 81 of the TRLSCP).
- Special conditions for the execution of the contract and consequences noncompliance (in the terms provided in Article 118 of the TRLSCP).
- Information on the obligations relative to taxes, environmental protection, employment and working conditions (in the terms provided in article 119 of the TRLSCP).

3.3 Adjudication procedure

Contracts subject to regularized harmonization will be awarded in accordance with the provisions established in article 190 of the TRLSCP, that is, in the manner provided for in Public Administration contracts with the following amendments:

- a) The provisions of the second subparagraph of section 2 of Article 150 on the intervention of the expert committee for the assessment of subjective criteria will not apply.
- b) The provisions of paragraphs 1 and 2 of Article 152 on the criteria for determining abnormal or disproportionate tenders will not apply.
- c) The provisions of Article 156 on the formalization of contracts to be subject to the deadline established in section 3 and the provisions in section 5 will not apply.
- d) The provisions of Article 160 on the review of proposals and award proposal will not apply.
- e) The provisions of Article 172 on cases in which it is possible to opt for a negotiated procedure for awarding public service management contracts.

When compliance with the deadlines established by law is impracticable, for reasons of urgency, the provisions of Article 112.2.b) on shorter deadlines will apply.

The Tender Specifications will consider the composition and powers of a committee responsible for issuing an objective report on the evaluation of the proposals and responsible for submitting a proposal to the Contracting Authority containing the list of tenders received, classified in descending order, which have not been declared disproportionate or abnormal, based on the criteria for evaluating proposals envisaged in the tender specifications in addition to identifying the most economically advantageous tender.

The notification of award to tenderers must include, in all cases, the information necessary to enable the excluded tenderer or unsuccessful candidate, to appeal against the awarding decision under Article 40 of the TRLSCP. The notice shall state the following:

- a) In relation to the unsuccessful candidates a summary of the reasons for the rejection of their candidacy.
- b) With regards to tenderers excluded from the procedure, also a summary of the reasons why their tender was not admitted.
- c) In all cases, the name of the successful tenderer, the features and advantages of their proposal determining their selection in preference to the other tenderers whose proposals were not admitted.

The confidentiality exception contained in article 153 will be applied to the reasons for the award of contract.

In all cases, in the notification and the contractor profile the date by which the formalization of the contract must proceed under Article 156.3. will be indicated.

The tender and the formalization shall be published at least:

- a) In the Official Journal of the European Union and in the trading platform referred to in Article 334 or in the equivalent system managed by the Public Administrative body on which ACHUCARRO is dependent.
- b) In the Official Journal of the European Union and in the Official State Bulletin.

Asimismo, los anuncios de licitación, adjudicación y formalización serán objeto de publicidad en el perfil de contratante.

3.4 Questions

PREPARATION AND AWARD

Optionally, prior to the filing of an administrative appeal they will be subject to special appeal with regards to procurement.

- a) the invitations to tender, the tender documents and the contractual documents setting out the conditions that must govern the contract.
- b) the procedural measures adopted in the awarding process, provided that they directly or indirectly relate to the award decision determining the impossibility of continuing the procedure or produce powerlessness or irreparable damage to legitimate rights or interests.
- c) the award agreements.

The power to resolve an appeal corresponds to the competent body that the appellant chooses from those which have jurisdiction under the provisions of section 5 of article 41 of the TRLCSP.

The submission of the written appeal must be made in the register of the Contracting Authority of ACHUCARRO or in the competent body chosen for the resolution of the appeal.

The special appeal with regards to contracting will be processed in accordance with the provisions of Articles 40 and following in the TRLCSP.

Regarding the request for provisional measures these will subject to the provisions in Article 43 of the TRLCSP.

Filing an administrative appeal is the only action that can be taken against the resolution of the appeal according to the provisions in the Law 29/1998 of July 13, governing jurisdiction over administrative disputes.

With regards to the question of filing for invalidity this will be as provided in Article 39 of the TRLCSP.

Although service contracts included in categories 17 to 27 of Annex II of the TRLCSP, regardless of their amount, are not subject to harmonized regulation, when their value is equal to or greater than 200,000 Euros, they will also be subject to special resource procurement, interim measures and administrative appeal, as well as issue of nullity, in the terms provided in this section.

PURPOSE AND TERMINATION

Faced with any questions relating to the effects, compliance and termination of these contracts appeals may only be brought before the civil courts.

2.5 Official Review

The official review of preparatory acts and of the awarding process for contracts subject to harmonized regulation will take place according to the provisions of Chapter I of Title VII of the Law 30/1992 of November 26.

The department head, body, agency or entity attached to ACHUCARRO or its corresponding trusteeship selected by the review applicant from the administrative bodies attached to ACHUCARRO have jurisdiction to declare the invalidity of such acts or to declare their damage.

This is in accordance with the provisions of Article 34 of the TRLCSP.

4. CONTRACTOR PROFILE

ACHUCARRO will disseminate, via the Internet, its contractor profile, in order to ensure transparency and public access to information on its contracting activity.

The form of access to contractor profile will be specified, among others, in the Tender documents and invitations to tender.

The computing system that supports the contractor profile must have a device to demonstrate conclusively the starting time of public dissemination of the information to be included in it.

The following data and information will be published in the contractor profile of ACHUCARRO:

- a) These instructions governing contracts
- b) Invitations to tender for contracts, excluding smaller contracts and those negotiated without advertising.
- c) The award procedure except for smaller contracts.
- d) The formalization of contracts subject to harmonized regulation.

In addition, the contractor profile can include any data or information relative to the contractual activities of ACHUCARRO, including, the information announcements provided in Article 141 open or ongoing tenders and documentation relating to this, scheduled contracts, contracts awarded, cancelled procedures, points of contact and means of communication that could be used to contact the Contracting Authority, etc.

ANNEX I

Article 4. Negotiations and excluded contracts

1. The following businesses and legal relations are excluded from the scope of this Act:

- a) The service relationship between civil servants and the contracts governed by employment legislation.
- b) The legal relationship involving the provision of a public service whose use requires the payment of a fee, charge or public price of general application by its users.
- c) The collaboration agreements entered into by Central Government with management entities and the common services of Social Security, Public Universities, Autonomous Regions, local bodies, autonomous bodies and other public entities or those that are made up these bodies and entities together, except those that, due to their nature, are considered to be contracts subject to this Act.
- d) The agreements in accordance with the specific rules governing them, that are held between Central Government and individuals or legal entities under private law, provided that their objective is not covered by contracts regulated by this Act or special administrative rules
- e) Agreements within the scope of Article 346 of the Treaty on the Functioning of the European Union concluded in the defense sector.
- f) The agreements entered into by the State with other States or international public law entities.
- g) Supply contracts relating to the direct activities of public bodies dependent on Public Administration whose activities are of a commercial, industrial, financial or similar nature, if the goods they are dealing with have been acquired for the purpose of return with or without transformation, to the legal transaction of assets, according to their individual purposes, provided that such bodies act within their specific competencies assigned to them by law.
- h) Contracts and agreements resulting from international treaties concluded in accordance with the Treaty on the Functioning of the European Union with one or more non EU member countries, with regards to works or supplies intended for the joint implementation or use of work or contracts relating to services for the common implementation or exploitation of a project.
- i) Contracts and agreements made under an international agreement relating to the stationing of troops.
- j) Contracts and agreements awarded by virtue of a specific procedure of an international organization.
- k) Contracts relating to arbitration and conciliation services.
- l) Contracts for financial services in connection with the issue, purchase, sale and transfer of securities or other financial instruments, in particular transactions relating to the financial management of the State, as well as operations aimed at obtaining money or capital by the authorities, bodies and public sector entities, as well as the services provided by the Bank of Spain and transaction by the treasury.
- m) Contracts by which an entity, organization or public sector entity is obliged to deliver goods or rights or provide a service, notwithstanding that the purchaser of the goods or the recipient of services, if it is a public sector entity subject to this Act, must conform to its requirements for the conclusion of the corresponding contract.
- n) Legal transactions whereby an entity is responsible, as stated in Article 24.6, for their own means and technical service and for carrying out a specific provision. However, contracts entered into by the entities that take into consideration their own means and technical service for carrying out services under commission shall be subject to this Act, in terms that are appropriate according to the nature of the entity its involves and the type and amount thereof and the case of contracts for works, services or supplies whose amounts exceed the thresholds established in Section 2

of Chapter II of this Preliminary Title, private law entities must observe the rules set out in Articles 137.1 and 190 for their preparation and allocation.

- o) Authorization and concessions on public property and contracts for the use of capital assets other than those defined in Article 7, to be governed by its specific laws except in cases where the provisions of this Act are expressly declared.
- p) Contracts for the purchase, donation, exchange, lease and other similar business relating to real estate, securities and intangible property, are always characterized as private contracts and governed by equity law unless they depend on computer programs and should therefore be classified as supplies or service contracts. In these contracts services that are specific to contracts regulated in Section 1 of Chapter II of the Preliminary Title cannot be included if the estimated value of these exceeds 50% of total business or they do not maintain the characteristic performance of the contract linking equity and complementary relationships in the terms stipulated in Article 25; In these two cases, such benefits must be subject to independent contracting under the provisions of this Act.
- q) Supply and service contracts awarded by State Public Research bodies and similar bodies of the Autonomous Regions whose purpose is providing services or products necessary for the implementation of research projects, development and technological innovation or technical services, when the presentation and outcome derived from these is linked to scientific, technological or industrial returns likely to be incorporated into legal transactions and their execution has been assigned to research teams belonging to the Agency through a competitive process.
- r) Research and development contracts paid in full by the contracting authority provided it shares share the risks and benefits of scientific and technical research with the winning companies necessary to develop innovative solutions that exceed those available in the market. In the awarding process for these contracts respect for the principles of openness, competition, transparency, confidentiality, equality and non-discrimination and choice of the most economically advantageous must be ensured.

2. The contracts, businesses and legal relationships listed in the previous section will be governed by special rules, applying the principles of this Act for the resolution of doubts and gaps that may arise.

ANNEX II

Article 13.

2. Notwithstanding the provisions of the preceding paragraph, the following contracts are not considered subject to harmonized regulation, whatever their estimated value:

- a) Those aimed at the acquisition, development, production or co-production of programs intended for broadcasting by broadcasters, as well as those relating to broadcasting time.
- b) Those research and development contracts paid in full by the Contracting Authority, provided that their results are not reserved for its exclusive use in the course of its own business.
- c) Those included within the scope defined by Article 346 of the Treaty on the Functioning of the European Union to be concluded in the defense sector.
- d) Those declared secret or confidential, or those whose performance must be accompanied by special security measures in accordance with current legislation, or those requiring the protection of vital interests for State security.
- e) Those whose principal purpose is to permit the Contracting Authorities the provision or operation of public telecommunications networks or delivery to the public of one or more telecommunications services.

ANNEX III

PURCHASE/PROCUREMENT REQUEST	
Applicant:	
Group:	
Project:	
Date:	
Product/service:	
Rationale:	
Specifications / Features:	
Estimated cost:	
Providers, tenders:	
Comments:	
Approval of Group Leader (Signature/Date):	
Approval of Scientific Director (Signature/Date):	