

**IN-HOUSE INSTRUCTIONS OF THE PUBLIC FOUNDATION**  
**"VALL-HEBRON ONCOLOGY RESEARCH INSTITUTE" (VHIO)**  
**FOR CONTRACT AWARD NOT SUBJECT TO HARMONIZED**  
**REGULATION**

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## **1. OBJECT AND APPROVAL**

The Public Foundation "Vall d'Hebron Oncology Research Institute" ("VHIO") is part of the public sector according to Article 3.1.h) of Law 30/2007 of October 30<sup>th</sup>, Public Sector Contracts ("LCSP" in Spanish). VHIO has also contracting authority under Article 3.3.b) of the LCSP.

These in-house instructions regarding contract awarding (hereafter, the "IICs") are intended to regulate the internal procedures of VHIO for the award of contracts not subject to harmonized regulation, so as to ensure the effectiveness of advertising guidelines, competition, transparency, confidentiality, equality and non discrimination, as well as to ensure that the contract will be awarded to anyone who presents the most economically advantageous tender, thus giving full effect to the mandate of Article 175.b) of the LCSP.

The IICs had been approved by agreement of the board of VHIO, during the meeting held on the 16<sup>th</sup> of June, 2008, following a report of the VHIO Secretary and the Legal Advice Bureau of the Department of Health of the Generalitat of Catalonia. They will be implemented the day following their publication in the contracting party profile and will apply to those contracting proceedings which will start after that date.

The IICs are compulsory inside VHIO. Likewise, they will be made available to all people interested in participating in the award of contracts regulated by them and published in VHIO's contracting profile.

## **2. INTERPRETATION OF THE IICs**

For the purposes of these IICs, the terms set out with their initial capital letters shall have the meaning defined in them and those which are not defined in the IICs will have the meaning set for the same terms in the LCSP.

When by reason of the IICs a LCSP provision should be applied in an adapted way, or would not be applicable in whole or partially, referrals to the same provision made by

other articles of the LCSP which, according to these IIC, are applicable, shall be construed as done with such adaptations or exemptions.

The estimated value of the contracts will be calculated subject to the rules laid down in Article 76 of the LCSP and will not include the value added tax.

The amount referred to in paragraph 9 of these IIC in relation to services contracts in levels 17 to 27 of Annex II of the LCSP and amounts upon which the contracts signed by VHIO are considered subject to harmonized regulation, shall be construed updated where necessary, in line with those set by the European Commission in the terms described in the 14<sup>th</sup> Additional Provision of the LCSP.

### **3. CONTRACTS SUBJECT TO THE IICs**

The IICs will apply to all onerous contracts signed by VHIO, whatever their legal status, except the following:

- (a) Business and legal relations related to Article 4 of the LCSP.
- (b) Contracts subject to harmonized regulation under Articles 13 and concordant of the LCSP, whose award will be governed by the provisions of Article 174 of the LCSP.
- (c) Those contracts and businesses regulated or expressly excepted by the applicable sectorial regulation, which will be awarded according to that regulation.

### **4. GENERAL CONTRACT AWARD GUIDELINES REGULATED BY THE IICs**

The contracts resulting from the implementation of the present IICs will be governed by the guidelines contained in Article 1 of the LCSP, the award being subject, in any case, to the principles of publicity, competition, transparency, confidentiality, equality and non discrimination in accordance with Article 175 of the LCSP.

To ensure the observance of the principles set forth in the preceding paragraph, in the contracting procedures that VHIO undertakes in accordance with the IICs, the actions of the contracting authorities will be directed towards to the satisfaction of those identified principles in all cases.

Those principles will be met by complying with the rules anticipated in the following paragraphs of the IICs, for which implementation and interpretation the following proceedings must be observed:

(a) The principle of advertising will be satisfied through the use, for the benefit of any potential bidder, of adequate and sufficiently accessible media which will provide contractual information about VHIO and allow the opening of the market to competition.

(b) The principle of transparency is met advertising, before the award of the contract, adequate information to enable that every potential bidder is able to express their interest in participating in the tender. Moreover, this principle implies that all participants could know beforehand the rules applicable to the contract to be awarded, as well as to be sure that these rules apply equally to all companies.

(c) Necessary measures will be adopted, as provided in the present IICs, to facilitate access and participation of potential bidders, in order to award the contract to the most economically advantageous tender.

(d) The principle of confidentiality will be observed by VHIO assuming the obligation not to disclose the information provided by the companies and classified as confidential, provided that there are justifiable reasons for this, and, in particular, technical or commercial secrets and confidential aspects of the bids. Similarly, the application of this principle also requires that contractors must respect the confidentiality of the information classified as confidential to which they access while the contract is being carried out.

(e) To ensure the principle of equality and non discrimination, necessary measures will be adopted to guarantee impartiality and fairness of the proceedings. These measures include at least the following:

(i) The aim of the contracts will always be described in a non-discriminatory manner, without reference to a specific make or source, or to particular products or refer to a trademark, patent, type, origin or production, unless a reference of this type is adequately justified and is accompanied by the words "or equivalent."

(ii) No condition shall be imposed which involves a direct or indirect discrimination against potential bidders from other member States of the European Union.

(iii) If the candidates are required to submit diplomas, certificates or other documentation, those documents from other member States will be accepted in accordance with the principle of mutual recognition of diplomas, certificates and diplomas.

(iv) The time allowed to show interest or make a bid will be adequate to enable companies from other member States to make a proper assessment and make a bid.

(v) If more than one provider or supplier participate in the awarding, VHIO will ensure that they all have the same information on the contract under identical conditions.

## **5. NATURE AND LEGAL SYSTEM FOR CONTRACTS REGULATED BY THE IICs**

Contracts signed by VHIO are considered, in all cases, private contracts in accordance with the provisions of Article 20.1 of the LCSP.

The contracting VHIO carries out and regulated by the IICs will be submitted to those provisions mandatory for the local public sector who sign contracts not subjected to harmonized regulation, in accordance with the provisions of the LCSP. This involves applying the rules contained in Book I of the LCSP (“*General settings of contract awarding in the public sector and structural elements of the contracts*”), which, in terms of content, are applicable to VHIO that the contracting authority of the public sector does not qualify as Public Administration.

## **6. CONTRACTING AUTHORITIES**

Contracting authorities are determined in each case in accordance with the provisions of the statutes and other provisions applicable to VHIO, without prejudice to the delegates or representatives who can validly be given to other bodies.

## **7. SOLVENCY AND ABILITY OF THE EMPLOYER**

### **7.1. Ability to award contracts**

The contracts covered in these IICs can only be signed by people who comply with the conditions laid down in Article 43 of the LCSP and concordant precepts that apply to all public sector entities. Specifically, contracts cannot be signed with individuals in which any of the prohibitions for contracting defined in Article 49.1 of the LCSP is present, as well as those companies which, because of the people who manage them or other circumstances, it may be assumed that are a continuation or derive, by means of transformation, merger or succession of other companies in which those had a presence. The minimum ability and reliability requirements demanded in each case should be linked to the object of the contract and be proportional to it.

### **7.2. Proof of ability to award contracts**

Articles 61 and 62 of the LCSP will be applied for the purpose of proving the ability to act and the fact that there is no prohibition of contracting, respectively.

Without detriment to the provisions of the LCSP which apply to all public sector entities, the accreditation of the financial and technical or professional ability to contract is made according to what, in each case, is determined on the corresponding tender under the circumstances and characteristics of the contract and the provisions of Articles 64 to 68 of the LCSP may apply if considered appropriate by the authority.

Also, in accordance with Article 54.5 of the LCSP, given the circumstances and characteristics of the contract, the employer's solvency accreditation may be required by means of appropriate classification.

The minimum solvency requirements to be met by the employer and the documentation required for accreditation will be indicated in the invitation to bid and will be specified in the special conditions of the contract, if required by the IICs.

## **8. GUARANTEES REQUIRED**

According to the circumstances and characteristics of the contract, a guarantee from the bidders or candidates may be required by the contracting authority in order to be able to maintain their bids until the finalization and formalization of the contract, as well as a guarantee of the successful tenderer to ensure the smooth implementation of the provision.

The quantity of that guarantee will be established in each case under the circumstances and characteristics of the contract. The guarantees required can be presented following the specifications detailed in Article 84 of the LCSP.

## **9. PREPARATION OF CONTRACTS**

In accordance with the provisions of Article 22 of the LCSP, in the preparatory documentation for the award regulated by the IICs, the suitability of the object and the content of the contract must be stated in order to satisfy the needs covered in it.



The preparation of service contracts fall into the categories 17 to 27 of Annex II of the LCSP with a value equal to or greater than 206,000 euros will be adjusted as provided in Article 121.1 of the LCSP and concordant provisions.

For the rest of the contracts referred to in the IICs, when the amount exceeds 50,000 euros a document should be drawn up with the contents specified in Article 121.2 of the LCSP and concordant provisions, the Article 104 being also applicable.

Additionally, this document will contain relevant information according to the concordant paragraphs of the IIC.

That is, taking into account the content of Article 121.2 of the LCSP and the concordant paragraphs of the IICs, the following terms will be necessarily included in the specifications, without being detrimental to the additional issues that are deemed appropriate by the contracting authority:

- (a) Basic characteristics of the contract.
- (b) Conditions for admission of variants.
- (c) Methods for the receipt of tenders.
- (d) The minimum ability and solvency requirements demanded to companies interested in participating in the tender.
- (e) If deemed appropriate by the contracting authority, the objective criteria of solvency under which the elected candidates are invited to submit proposals, as well as the maximum number of candidates invited to submit a tender, which may not be less than three.
- (f) The technical and economic criteria to evaluate and determine the most economically advantageous tender to whom award the contract.

(g) Setting up a board which evaluates the documentation submitted, assesses the bids and raises a proposal for the award, when the contracting authority deems it necessary.

(h) Guarantees to be provided by the successful bidder(s).

(i) Relevant information in accordance with Article 104 of the LCSP about the conditions of subrogation in employment contracts.

(j) The objective and temporary extension of the confidentiality obligation which is imposed on the employer.

(k) The deadlines applicable to obtain further information from bidders and deadlines for submission of tenders or, if appropriate, requests for participation and for the correction of the documentation submitted if deemed appropriate by the authority.

(l) The deadline for the formalization of the contract, when establishing a period different to the regular ten calendar days.

(m) In Level 3 contracts defined in paragraph 10.3 of the IICs, the proof of the award procedure selected by the contracting authority under the terms of these IICs.

## **10. SELECTION OF CONTRACTOR AND AWARD OF CONTRACTS**

### **10.1. Levels of contracts**

To implement the present IICs and establish the procedures and requirements for the award of each contract, the following levels are distinguished (hereinafter only one "**Level**", and together "**Levels**"):

(a) Level 1. Contracts with an estimated value of less than 50,000 euros are subject to this level, regardless of the type of contract.

(b) Level 2. Contracts with a value estimated between 50,000 euro and the following amounts:

- Less than 1, 000,000 euros in the case of contracts for works.
- Less than 100,000 euros for other contracts.

(c) Level 3. Contracts with a value greater than that of Level 2 and which are not subject to harmonized regulation.

## **10.2. Advertising**

Regardless of the level of contract in question, when its estimated value exceeds 50,000 euros, the information related to the bidding should be inserted in VHIO's contracting profile. However, other advertising resources may be used to spread the news if it is deemed necessary under the circumstances and characteristics of the contract, including without limitation the possibility of resorting to official bulletins, local publications or the Official Journal of the European Union. Also, if necessary, prior announcements relating to contracts designed to be awarded each year or in a multi-year period may be broadcasted.

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 submission of bids (in the open procedure) or requests to participate (in the restricted and negotiated procedures), as well as economic and technical aspects to be negotiated with the companies (the negotiated procedure).

(c) Where deemed appropriate by the contracting authority, the solvency objective criteria under which the candidates will be elected and invited to

submit proposals, indicating the deadline for submitting applications for participation.

(d) An invitation to contact VHIO in order to obtain additional information.

In any case, if the circumstances and characteristics of the contract so advise, the content of the announcement may be extended or the information incorporated into the contracting profile.

### **10.3. Awarding procedures**

VHIO will award contracts observing, at least, the following guarantees for every level.

#### **(a) Level 1 Contracts: Direct award**

Level 1 contracts may be awarded directly to any employer with the capacity to act and that has the professional qualifications required to perform the service, with a request letter/order to a single supplier.

According to the circumstances and characteristics of the contract, Level 1 bidding rules provided for one of the highest levels could be applied for this award and should be necessarily applied when the duration of the contract exceeds one year.

#### **(b) Level 2 Contracts: Negotiated procedure**

Level 2 contracts will be awarded in a negotiated way, subject to the following rules:

(i) Whenever possible, VHIO will ask at least three qualified companies to make an offer to carry out the contract. Among the companies invited to submit the tender will include those who have expressed their interest in participating within the period provided. However, if appropriate, the contracting authority may establish solvency objective criteria for the election of candidates invited to tender from among those who have

expressed an interest, and set a maximum number of candidates who will be invited, which cannot be less than three. These objective criteria, which may appear in the contract announcement, must be at least included in the relevant specifications.

(ii) The contracting authority may opt for the creation of an evaluation body when it deems necessary as a result of the technical complexity or the special circumstances or characteristics of the contract, indicating it in the specifications. This body is responsible for assessing the evidence, evaluate the bids and raise an award proposal to the contracting authority.

(iii) VHIO may negotiate any aspect of the contract with the bidders in the relevant specifications, and during the negotiation will ensure that all bidders receive equal treatment and will not provide information in a discriminatory manner.

(iv) The contract will be awarded to the most economically advantageous tender, according to economic or technical criteria that have been established in the contract conditions.

(v) VHIO will record the invitations received and the reasons for acceptance or rejection.

**(c) Level 3 Contracts: Open, restricted, negotiated procedures or competitive dialogue**

The contracting authority, in accordance with paragraph 9 (m) of the IICs, will explain the chosen awarding procedure according to the characteristics of the contract and the rules laid down in the following paragraphs.

The normal procedure for the award of this type of contracts will be the negotiated one, where the rules laid down for Level 2 contracts will be applied.

Having in mind the foregoing, and always complying with the chosen procedure justification burden previously mentioned, the implementation of the open or restricted procedures should be considered under the following circumstances:

**(a)** Where the provisions to be contracted are defined precisely so as to render unnecessary the negotiation of technical and economic aspects related to them.

**(b)** In those contracts which, because of their particular economic importance and closeness to the amounts of contracts subject to harmonized regulation, the contracting authority considers that the open or restricted procedures comply more adequately with the guidelines defined in Paragraph 3 of the IICs.

In those cases where the open or restricted procedure is applied, the provisions of Articles 141 to 152 of the LCSP will be put into practice with the following adjustments:

**(a)** Neither the deadlines related to the information which should be provided to the bidders nor the ones for the submission of tenders or participation requests, which will be replaced by the deadlines determined in the notice or in the specifications, will apply. The deadlines determined will enable any potential bidder, including companies from other member states of the European Union, to make a proper assessment and make a bid.

**(b)** The contracting authority may opt for the creation of an evaluation body when it deems necessary as a result of the technical complexity or the special circumstances or characteristics of the contract, indicating it in the specifications. This body is responsible for qualifying the evidence, evaluate the bids and raise an award proposal to the contracting authority, without the provisions of Article 134.2 of the LCSP with regard to the intervention of the expert committee being applied.

When the assumptions of Article 164 of the LCSP are met, the application of competitive dialogue procedure may be decided, which will be governed by the

provisions of Articles 163 to 167 of the LCSP, with the same adjustments as provided in the preceding paragraphs regarding open or restricted procedures.

#### **10.4. Selection of the contractor**

In any of the previous cases, the selection of the contractor will be notified to the participants in the proceedings and will appear in VHIO's contracting profile.

#### **10.5. Formalization of contracts**

Unless already registered in the relevant specifications, contracts signed by VHIO and subject to the IICs must necessarily include the following information in accordance with Article 26 of the LCSP:

- (a) Identification of the parties.
- (b) Accreditation of the capacity of the signatories to sign the contract.
- (c) Definition of the object of the contract.
- (d) A reference to the law applicable to the contract.
- (e) The list of documents that make up the contract. If this is expressed in the contract, this list may be hierarchical, organized in order of priority as agreed by the parties, in which case, and except in cases of a glaring error, the order agreed will be used to determine the respective prevalence, in the event of contradictions between various 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 implementation and for its completion, as well as the extension or renewal, if expected.
- (h) Conditions for the receipt, delivery or acceptance of benefits.
- (i) Terms of payment.
- (j) Assumptions on which the resolution is appropriate.
- (k) The budgetary provision or program or accounting heading to which will be charged, if any.
- (l) The objective and temporary extension of the duty of confidentiality imposed on the contractor, if any.

In general, the contract will be carried out within a maximum of ten calendar days from the day following the notification of the selection of the contractor, provided they have not been given a different date in the specifications or corresponding offers. VHIO's contractual consent will be expressed by the formalization of the contract, in writing, meaning thereby that the contract has been concluded.

## **11. TECHNICAL RATIONALIZATION STANDARDS**

To streamline and manage the award of contracts, VHIO may hold electronic auctions, sign framework agreements, coordinate dynamic systems or centralize the procurement of works, services and supplies in services or other corporations or entities subject to Articles 132 and 178 to 191 of the LCSP, the adjustments resulting from the present IICs being applied in each case.

## **12. COMPETENT JURISDICTION**

The judicial order to resolve contentious issues relating to the preparation, procurement, impact, implementation and termination of contracts to which the present IICs refer to will be the civil judicial order.

However, in the procedures for awarding services contracts which range from 17 to 27 of Annex II of the LCSP, the relevant provisions contained in Articles 37 and 38 of the LCSP will be applied, concerning the special appeal with regard to contracting and the possibility of requesting temporary measures respectively.

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