

INTERNAL INSTRUCTIONS FOR ENTERING INTO CONTRACTS FOR THE COMPANY

“ENUSA INDUSTRIAS AVANZADAS, S. A., S.M.E.”

I. SUBJECT MATTER OF THE CONTRACTING INSTRUCTIONS

The subject matter of these instructions is to regulate the contractual procedures of the company ENUSA INDUSTRIAS AVANZADAS, S.A., S.M.E. (hereinafter, ENUSA) with no contracting authority under Law 9/2017 of November 8, on Public Sector Contracts (hereinafter, LCSP, for its acronym in Spanish). Therefore, contracts entered into by the company shall abide by these instructions, which guarantee the effectiveness of the advertising, competition, transparency, confidentiality, equality and non-discrimination principles, as stated in part 1 of Article 321 of the LCSP, and that contracts are awarded to the best offer submitted, in accordance with Article 145 of the LCSP.

These instructions shall be available to all the stakeholders willing to take part in the procedures for adjudicating the contracts governed by the above mentioned law, and shall be published in the contractor's profile of the webpage www.enusa.es.

II. OPTIONAL NATURE OF THESE INSTRUCTIONS

In accordance with the provisions set forth in Article 321.2 of the LCSP, the application of these instructions will be optional and shall entitle the competent bodies of ENUSA to award contracts without applying these instructions, although the principles and regulations set forth in the above mentioned Article 321.2 of the LCSP shall be complied with in any case.

III. SCOPE OF APPLICATION

These instructions shall apply to all contracts entered into by ENSUA and which are not awarded by virtue of Article 321.2 of the LCSP.

However, the following business and legal relationships shall be excluded from the scope of application hereof:

- a) Contracts subject to labour law.
- b) The agreements that may be entered by the Company with the Public Administrations and the public bodies under the authority thereof, as well as with natural or legal persons subject to private law, as long as the subject matter thereof is not governed by that of contracts regulated by the LCSP or in special administrative regulations.
- c) Excluded businesses and contracts in the area of Research, Development and Innovation, as set forth by the provisions specified in the LCSP.
- d) Loan contracts, contracts related to financial services and treasury operations, regardless of whether they are related to the issuance, purchase, sale and transfer of securities or financial vehicles, treasury operations and those aimed at raising funds or capital for the company, as well as any services provided by the Banco de España.
- e) purchase-sale contracts, donations, swaps, leases and other analogous legal transactions on real property, tradable securities and intangible assets, except for those related to software programmes and which should be classified as supply or service contracts
- f) contracts related to arbitration and conciliation services
- g) contracts in which the company undertakes to deliver goods or grant rights or to render a service, regardless of whether the purchaser of these assets or services, if it is a public-sector body subject to the LCSP, should adhere to the provisions thereof in order to enter into the relevant contract.

- h) Contracts the subject matter of which is to provide educational activities in public sector premises, in the form of training courses or further training for staff such as seminars, symposium, round tables, conferences, collaborations or any other similar type of activity, as long as these activities are carried out by natural persons.
- i) In-house management arrangements and assignments regulated by current legislation on public contracts within the public sector.
- j) Contracts entered into and signed abroad, which shall be governed in accordance with the content of the first additional provision of the LCSP.
- k) Any other contract or business activities excluded from the LCSP.

IV. PRINCIPLES GOVERNING CONTRACTS

The awarding of contracts referred to by these instructions shall be subject to the public announcement competition, transparency, confidentiality, equality and non-discrimination principles.

a) Principles of public announcement and competition

1) Public announcement

The company will ensure that the contracts aimed to be entered into shall be duly published to enable interested parties to apply, encouraging participation thereof. The tender notice shall be published, except in the circumstances described in section a) 2 hereof, in the ENUSA contractor profile, notwithstanding the use of additional advertising media, depending on the contract value, its subject matter, geographical scope, nature and the circumstances of the industry.

The tender notice that may be eventually published should contain at least the following information:

- 1) description of the essential contractual features and maximum bidding amount
- 2) deadline for submitting bids and the remaining phases of the procedure
- 3) award method and criteria
- 4) rules for sub-contracting, if appropriate
- 5) invitation to contact the contracting company.

The award of contracts which have been publicly announced shall also be announced in the contractor profile available at the ENUSA website, and should include at least the following information:

- a) The contract explanatory report.
- b) Detailed subject matter of the contract, duration, the base budget and the award amount, if applicable, including the applicable VAT.
- c) All relevant notices related to the contract, such as those related to prior information, calls for tenders, awarding and entering into contracts, any modification notice and the reasons thereof.
- d) The means by which the contract has been published, if appropriate, and links to these publications.
- e) The number and identity of the bidders, the assessment report of the quantifiable award criteria using a value judgement for each bid, where relevant, reports on the bids considered abnormal and the contract award decision.

ENUSA's contractor profile is included in the State Contracting Platform and is managed and distributed thereby, with a link to the above mentioned profile on ENUSA website.

2) Exemption from public announcement

The contracts which meet the following criteria shall not be subject to public announcement, when duly justified by the contracting organization:

1.º When no bid has been presented or there is no acceptable bid; no application to participate or no acceptable application to participate, as long as the initial terms of the contract are not modified substantially, and in no case may the initial budget of the tender be increased nor the remunerations system modified.

2.º In case the works, supplies or services can only be provided by a specific provider, due to one of the following reasons: the subject matter of the contract is to create or acquire a work of art or art object that does not form part of Spanish Historical Heritage; that there is no competition for technical reasons: or that these exclusive rights should be protected, including intellectual or industrial property rights.

3.º When the contract has been declared secret or restricted, or when legislation requires its execution to be accompanied by special security measures, or when this is required to protect essential national interests of the security of the State, and has been so declared in accordance with part c) of Section 2 of Article 19 of the LCSP.

4.º When due to urgent unforeseen events which affect but are not attributable to the contracting party requires the prompt execution of the contract which cannot be achieved with the application of the emergency procedure regulated under Article 119 of the LCSP.

5.º When irregular or unacceptable bids are submitted, on condition that the negotiation includes all the bidders who had submitted bids in the previous procedure that meet the formal requirements of the tender procedure, and as long as the initial conditions of the contract are not substantially modified, although in no case may the bidding price be raised or the remuneration system altered.

6.º When the products to be supplied are manufactured exclusively for the purposes of research, experimentation, study or development; this condition does not apply to mass production that is intended to establish the commercial viability of the product or to recover the costs of research and development.

7.º In case of additional deliveries made by the initial supplier that are either a partial replenishment of supplies or commonly used facilities, or an expansion of existing supplies or facilities, if a change of supplier means that the contracting party has to acquire material with distinct technical qualities, generating incompatibility or disproportionate technical issues in its use or maintenance. As a general rule, the duration of such contracts should not, be longer than three years.

8.º In case of acquiring products in regulated markets or stock exchanges for raw material supplies listed thereon.

9.º In case of a supply agreed on particularly advantageous terms with a supplier who is ceasing its business activities, or with the receiver in case of bankruptcy, through a judicial agreement or similar procedure.

10.º When the service contracts are the result of a competition between projects and the applicable rules dictate that it must be awarded to the winner. If there are several winners, all of them should be invited to take part in the negotiations.

11°. In contracts for specific work and services, when the work and services that are the subject matter of the contract repeat other similar contracts awarded to the same contractor through a tender procedure that involved prior public notice of the tender, on condition that they correspond to a base project which was the subject matter of the initial contract awarded through said procedure, that the option to use this procedure is indicated in the initial tender notice, that the price of the new work and services has been taken into account when calculating the estimated value of the initial contract and that no more than three years have passed since the execution of the first contract.

In contractual procedures in which one of the preceding conditions for excluding public notice applies, bids should be requested from at least three companies with the capacity to carry out the subject matter of the contract, whenever possible.

In all cases, interested companies may request additional information at the address included in the last section of these instructions.

b) Principle of transparency

This principle involves:

1) The possibility that all participants in the tender can previously know the regulations that apply to the contract to be awarded, and the assurance that these regulations shall apply equally to all companies.

2) The setting of suitable deadlines for submitting bids, which shall be enough to allow companies to make an appropriate assessment, to rectify any documents presented, to assess the offer, make the proposal and draft the bid. Each deadline shall be set in the tender notice, on a case by case basis.

3) The objective criteria used to precisely and previously assess the bids and award the contract should be set out, in the tender notice, which in any case shall comply with criteria directly associated with the subject matter of the contract.

4) Clear and precise identification of the body that will carry out the award proposal and award the contract.

5) The contracts shall be awarded to the best bid based on the criteria of best value for money, which shall be assessed under financial and qualitative criteria in accordance with Article 145 of the LCSP. The qualitative criteria established by the contracting body may include environmental or social aspects, as long as they are relevant to the subject matter of the contract. Likewise, said qualitative criteria should also be accompanied by criteria linked to the costs, for which the contracting organization may choose either the price or an approach based on profitability, such as life-cycle costs. The application of more than one adjudication criteria shall apply, in all cases, to award the contracts listed in Article 145.3 of the LCSP.

c) Principles of equality and non-discrimination

These principles entail the following requirements:

1) A non-discriminatory description of the subject matter of the contract. The description shall not mention a specific manufacturer or source nor refer to a specific brand, patent, type, origin or determined production, except where a reference of this nature is justified by the subject matter of the contract and is accompanied by the term "or equivalent".

2) Equal access for all businesses from all member states of the European Union. The contracting company shall not impose any condition which would directly or indirectly imply discrimination against the bidders, such as the obligation of potential bidders to be established in the territory of the same country or same region as the awarding entity.

3) Mutual recognition of qualifications, certificates and other diplomas. In case bidders are requested to submit certificates, diplomas or other types of supporting documents, and documents from other member states that offer equivalent guarantees shall be accepted.

4) The discriminatory prohibition to disclose information that may offer advantages to certain bidders over the others.

d) Principle of confidentiality

The company may not disclose the information provided by the bidders which they have declared to be confidential. Confidentiality shall specifically apply to technical or trade secrets and the confidential aspects of the bids.

The duty of confidentiality of the contracting body, along with any dependent services, may not be extended to all of the content of the winning bid nor the content of the reports and documents, where relevant, created directly or indirectly by the contracting body in the course of the tender procedure. It may only be extended to documents with restricted access, and under no circumstances to documents that may be publicly available.

The duty of confidentiality will not prevent the public disclosure of non-confidential parts of the contracts, such as, where appropriate, settlement, deadlines for completing the work, contracted and sub-contracted companies and, in all cases, the essential parts of the tender and any subsequent modifications of the contract, adhering at all times to the provisions set forth in the law on the Protection of Personal Data.

In turn, the contractor shall respect the confidential nature of any information available thereto during the execution of the contract, indicating that the above mentioned information was of a confidential nature or which due to the nature thereof should be treated confidential. This duty shall be upheld for a term of five years from the date in which this information is disclosed, unless the terms or the contract establish a longer term that, in any case, shall be defined and restricted in terms of time.

V. SYSTEMS FOR SIMPLIFYING CONTRACTS

For its own business operations, ENUSA can set up systems to simplifying the contract process, such as framework agreements, dynamic purchasing systems or the standardisation of suppliers. Any procedure to which these systems apply shall be transparent and non-discriminatory, and shall be published in the corporate contractor profile.

VI. CONTRACTING BODY

The Contracting Committee shall be the contracting body included in the ENUSA Board of Directors, in the absence of a specific provision regarding that matter in the corresponding corporate internal by-laws or regulations, and notwithstanding any delegation or distribution of competences that may be agreed upon.

VII. CAPACITY OF THE CONTRACTOR

The capacity requirements, contracting prohibitions and solvency regulated in Articles 65 to 92 of the LCSP shall apply to contractors. The requirement for the entrepreneur to be included in the Official Registry of Tenderers and Classified Companies, which certifies their business capacity, shall be optional for ENUSA. However, the classification certificates that prove their registration in the official lists of entrepreneurs authorized to enter into contracts, established by the Member States of the European Union, represent an alleged capacity for those entrepreneurs included therein, in the cases referred to in article 97 of the LCSP.

VIII. SUBJECT MATTER, PRICE AND DURATION OF THE CONTRACT

The regulations set forth in Articles 99 and 102 of the LCSP, regarding the subject matter and the price, respectively, shall apply.

For the purposes set forth in the LCSP that apply to ENUSA, the estimated value of the contracts shall be calculated without including the Value Added Tax and in accordance with the other rules set forth in Article 101 of the LCSP.

Any revision of prices may be made according to the terms set forth in articles 103 et seq of the LCSP.

As regards the duration of the contract, the stipulations of article 29 LCSP shall apply.

IX. NATURE OF THE CONTRACTS AND APPLICABLE JURISDICTION

The contracts entered into by ENUSA will always be deemed private contracts in accordance with Article 26.1 c) of the LCSP.

Any action taken when preparing or awarding the contracts may be appealed in an administrative court, in accordance with Law 39/2015 of October 1, on the Common Administrative Procedure for Public Bodies, before the person in charge of the department, organization, entity or body in which ENUSA is registered or governed by and which has ownership or controlling interest (Article. 321.5 LCSP), at present the above mentioned controlling interest being held by SEPI (*Sociedad Estatal de Participaciones Industriales*). The decision taken may be appealed before any administrative court (art. 27.1 d) LCSP).

Issues related to the effects, modification and termination of contracts shall be settled under civil jurisdiction courts (Arts. 27.2 b) and 322 LCSP).

X. AWARD PROCEDURE

Contracts are awarded through one of the procedures listed below:

1. Procedure involving Public Notice

a) Preparation of the contract.

All procedures shall begin with a report, which will be submitted to the contracting body to determine the nature and scale of the needs to be covered with the proposed contract, and the suitability of the subject matter and content thereof to meet the above mentioned, the approximate cost of the contract, the existence of an appropriate budget, the type of procedure proposed and the conformity of each case with each case of the principle of public notice.

b) Decision to contract

The contracting body shall make the decision to start the procedure.

c) Publication

The contract notice shall be published for a minimum term of ten days, unless the urgency of the contract requires a shorter period. The announcement will be included in the Contractor profile, accessible through the company website.

d) Opening of the Bids

The bids and applications shall be confidential and the relevant measures shall be implemented to guarantee this status.

The contracting body shall open and evaluate the bids. Any technical reports on the bids presented that are considered necessary can be requested, and if applicable, request the companies to remedy any defects detected in the documents submitted.

e) Award of the Contract

The award of the contract shall be agreed by the contracting body to the best offer, in accordance with the provisions set forth in Article 145 of the LCSP, with a reasoned decision that shall be notified to the candidates or bidders and published in the ENUSA contractor profile. If no bids have been submitted or those presented are inappropriate, irregular or unacceptable, the procedure shall be declared void.

f) Preparation of the contract

The contract prepared by the company ENUSA INDUSTRIAS AVANZADAS, S.A. shall necessarily include the following (Article 35 of the LCSP):

- 1) The identification of the parties.
- 2) The accreditation of the legal standing of the signatories to enter into the contract.
- 3) The definition of the subject matter and type of contract, including social, environmental considerations and innovation in the definition of the subject matter.
- 4) A reference to the legislation that applies to the contract.
- 5) A list of the documents that form part of the contract.
- 6) The fair price or how this is determined.
- 7) The duration of the contract, or its estimated start and end dates, along with any extension or extensions, if expected.
- 8) The conditions of reception, delivery or acceptance of the services.
- 9) The payment terms.
- 10) The applicable conditions for modification or, where appropriate, termination thereof.
- 11) The accounting entry or heading to which the price is assigned, where applicable.
- 12) The objective and temporary extension of the duty of confidentiality that is imposed on the contractor, where applicable.
- 13) The obligation of the contractor to comply with the rules and conditions set forth in the applicable collective agreement throughout the term of the contract.

2. Negotiation Procedure without Public Notice

ENUSA's contracting body may award contracts using the negotiated procedure without public notice only when one of the situations provided for in Article 168 of the LCSP applies.

The procedure shall be carried out in accordance with the special conditions set forth in Article 170 of the LCSP.

3. Minor Contracts

Contracts for a sum of less than 400,000 euros, in the case of construction contracts, or 15,000 euros in the case of services or supplies contracts, may be awarded directly to any competent company with the professional capacity required to fulfil the subject matter of the contract, subject only to approval of the cost and the addition of the invoice, and the construction budget, in this type of contract.

XI. ADDRESS TO REQUEST INFORMATION AND NOTIFICATIONS

Any additional information that is required in relation to these instructions may be requested in writing to the following address:

Enusa Industrias Avanzadas, S.A., S.M.E. Calle Santiago Rusiñol, 12. 28040 - Madrid".

XII. EFFECTIVE DATE

These Contracting Instructions shall be effective on the day following the approval thereof by ENUSA Board of Directors and shall apply to all contracting procedures which start thereafter.

ENUSA INDUSTRIAS AVANZADAS, S.A., S.M.E.
Board of Directors