



INTERNAL PROCUREMENT INSTRUCTIONS OF THE ZINEUSKADI ASSOCIATION

The ZINEUSKADI ASSOCIATION of Donostia-San Sebastian is a non-profit organisation which is subject to the provisions of Organic Law 1/2002, of 22 March, governing the Right of Association, and Basque Associations Act 7/2007, of 22 June, approved by the Basque Parliament, pursuant to the provisions of articles 9 and 10.3 of the Statute of Autonomy of the Basque Country.

Pursuant to Royal Legislative Decree 3/2011, of 14 November, approving the Consolidated Text of the Public Sector Contracts Act (TRLCSP), the ZINEUSKADI ASSOCIATION is part of the public sector, according to the provisions of article 3.1. i) and, although it is not a Public Authority, it has the characteristics set forth in that legislation to be considered a "contracting authority", according to article 3.3 of said Act, which determines the legal framework applicable to its procurement procedures and establishes the requirement to have internal procurement instructions for contracts that are not subject to harmonised regulations, pursuant to the provisions of article 191 of the foregoing TRLCSP.

In order to meet this requirement, the general meeting of the ZINEUSKADI ASSOCIATION approved these Internal Procurement Instructions at its meeting on 21 March 2014.

SECTION 1. GENERAL PROVISIONS

Art. 1. - Aim and purpose.

The aim of these Internal Procurement Instructions is to govern the procedures used by the ZINEUSKADI ASSOCIATION to procure works, services and supplies from third parties, with the exclusion of the following:

- 1) The transactions and legal relationships specified in art. 4 of Royal Legislative Decree 3/2011, of 14 November, approving the Consolidated Text of the Public Sector Contracts Act.
- 2) The contracts subject to harmonised regulations, i.e.:
 - Collaboration agreements between the public and private sectors, in every case.
 - Works contracts with an estimated value of €4,845,000 (VAT not included) or above.
 - Supply and service contracts that fall within categories 1 to 16 of Annex II of the TRLCSP, with an estimated value of €193,000 (VAT not included) or more.
- 3) The contracts and transactions that are governed or expressly excluded by the applicable industry regulations, which shall be awarded according to the provisions of said regulations.



- 4) The awarding of grants and subsidies by the association in the pursuit of its general aims.

Pursuant to the provisions of art. 191 of the TRLCSP, the purpose of these Instructions is to ensure the application of the principles of disclosure, competition, transparency, confidentiality, equality and non-discrimination.

Furthermore, these Instructions are considered an integral part of the contracts entered into by the ZINEUSKADI ASSOCIATION and their content shall be available in this entity's contracting authority profile.

Art. 2. - Nature of the contracts and competent jurisdiction.

The contracts entered into by the ZINEUSKADI ASSOCIATION shall be considered private contracts, pursuant to the provisions of article 20.1 of the TRLCSP. Consequently, their termination and legal effects shall be governed by private law and, in the absence of any specific provisions, the drafting and awarding of such contracts shall be governed by the TRLCSP and its implementing provisions, with private law also being applicable.

Furthermore, pursuant to article 21 of the TRLCSP, the civil courts shall have jurisdiction to rule on any legal disputes regarding the drafting, awarding, legal effects, performance and termination of its contracts. However, the administrative courts shall have jurisdiction over matters relating to the procurement of services from categories 17 to 27 in Annex II of the TRLCSP whose value is €193,000 or above, which are eligible for special appeal with regard to procurement, pursuant to art. 40 et seq. of the TRLCSP.

Art. 3. - Arbitration.

Any disagreements that may arise regarding the legal effects, performance and termination of the contracts entered into by the ZINEUSKADI ASSOCIATION may be submitted to arbitration.

SECTION 2. PURPOSE OF THE CONTRACT.

Art. 4. - Purpose of the contract.

1. - The purpose of the contract must be specifically established, whatever it may be.
2. - It shall not be possible to divide a contract in order to reduce the value thereof and thus circumvent the requirement of disclosure, or the applicable requirements regarding the contracting procedure.
3. - When the purpose of the contract permits the splitting of contracts and this is duly shown on the records, each part of the contract may be divided into lots, provided that they are able to be used or utilised separately and each constitute a functional unit, or when this is so required for the purpose of the contract [art. 86 of the TRLCSP).

Art. 5. - Freedom of contract.



The ZINEUSKADI ASSOCIATION may include any covenants, clauses and conditions, provided that they are not contrary to the public interest, the law or the principles of good administration (art. 25 TRLCSP).

Art. 6. - Price.

1. - The price must be firm, or the way in which it is determined must be established, and it must be expressed in euros.
2. - The price may be determined in unit prices or as a lump sum.
3. - It shall be possible to freely establish clauses for reviewing or updating the price in the bid specifications, without being subject to the provisions of articles 89 to 94 of the TRLCSP.
4. - Price variation clauses may be established based on time objectives or performance targets.
5. - Penalty clauses may be established for breaches of contract.
6. - The estimated value of contracts shall be determined in accordance with the provisions of art. 88 of the TRLCSP.
7. - The payment method shall be determined in the bid specifications or in the contract, within the limits established by the applicable regulations, with article 2016 of the TRLCSP not applicable.

Art. 7. - Term and extension of the contract.

1. - The term of the contracts entered into by the ZINEUSKADI ASSOCIATION must be established according to the nature of the services/supplies, the characteristics of their funding and whether they need to be put out to tender on a regular basis.
2. - The contract may provide for one or more extensions, provided that its characteristics remain unchanged throughout the maximum term of the contract, including during extension periods. Furthermore, extensions may not exceed the originally set term, either individually or jointly.
3. - The extension shall be agreed by the contracting authority and shall be compulsory for the successful bidder, unless expressly stated otherwise in the contract. There may be no tacit consent by the parties (art. 23 of the TRLCSP).

SECTION 3. PARTIES TO THE CONTRACT.

Art. 8. - Contracting authorities.

1.- Depending on the estimated value of the contracts, on behalf of the association's Board of Directors, the contracting authorities of the ZINEUSKADI ASSOCIATION shall be:-

- Miren Gurutze Peñalva Anchustegui-Echarte, Technician from the association, for any type of contract with a value below €25,000.



- Clara Montero Tellechea, President of the Association, for any type of contract with a value above €25,000 and below €100,000.

For contracts of any kind whose estimated value is €100,000 or more, the Board of Directors of the ZINEUSKADI ASSOCIATION shall act as the contracting authority.

2. - Notwithstanding the foregoing, the ZINEUSKADI ASSOCIATION may decide to establish a Procurement Committee when deemed necessary due to the technical complexity or special characteristics of the contract. Said committee shall be responsible for assessing the documents submitted, evaluating the tenders and submitting an award proposal to the contracting authority.

3. - The contracting authority reserves the right to decide on the interpretation of the contract, resolve any doubts regarding its fulfilment, amend it, agree on its termination and legal effects and declare the award procedure void, and any other prerogatives that may be exercised under the current law, provided that they are not contrary to the public interest, the law or the principles of good administration, as set forth in art. 25 of the TRLCSP.

Art. 9. - Contract manager.

Pursuant to art. 52 of the TRLCSP, the contracting authority may appoint a contract manager, who shall be responsible for overseeing the execution thereof, making the necessary decisions and giving the necessary instructions to ensure the proper provision of the agreed service, within the scope of the powers granted to him/her.

Art. 10. - Capacity of the contractor.

1. - The bid specifications shall establish who is forbidden to enter into a contract with the ZINEUSKADI ASSOCIATION. In any event, any natural persons or legal entities to whom any of the circumstances set forth in art. 60.1 of the TRLCSP apply are not permitted to be contractors.

2. - The capacity and competence requirements and the way to show that they have been met are established in said bid specifications. When the value of the contract means that it is not necessary to draw up Bid Specifications, i.e. when the estimated value is €50,000 (VAT not included) or less, the requirements deemed necessary may be specified in the request for offers, according to the purpose of the contract.

3. - The legal capacity to act and the technical or professional competence and financial solvency shall be shown using the methods set forth by the association in the bid specifications.

SECTION 4. TENDERING AND AWARD OF THE CONTRACT.

Art. 11. - Tendering and award procedure.

1. - The ZINEUSKADI ASSOCIATION may use open, restricted or negotiated procedures, or award contracts directly.

2. - Competitive dialogue and the tendering of projects may be used in the manner set forth in the TRLCSP for administrative contracts, adapting them to the specific features of the legal nature of the ZINEUSKADI ASSOCIATION.



3. - It shall also be possible to use any procurement techniques established in the TRLCSP, such as a framework agreement, the dynamic purchasing system and electronic auctions.

4. - In the open procedure, any interested business owner may submit a proposal. In the restricted procedure, only business owners selected by the ZINEUSKADI ASSOCIATION through a request for offers may submit proposals, if suitably competent and solvent. In the negotiated procedure, the contract shall be awarded to the bidder that is duly chosen by the contracting authority, from the bids received or after a request for offers has been made to at least three qualified companies, insofar as is possible.

5. - VAT is not deemed to be included in the amounts established in these Instructions.

6. - The general procurement procedures shall be as follows, based on the band within which the value falls:

A) Level 1 contracts.

On the one hand, the following contracts may be awarded to any company with the legal capacity to act and with the necessary professional competence to provide the service:

- Works contracts with an estimated value below €50,000.
- All other contracts (services and supplies) with an estimated value below €18,000.

In such cases, it shall be sufficient for the approval of the expenditure and the respective invoice to appear on the records.

The term of such contracts may not exceed one year and they may not be extended.

On the other hand, contracts for services and supplies with an estimated value exceeding €18,000 and below €50,000 may be awarded directly to any business owner with the legal capacity to act and the necessary professional competence to provide the service; it shall be necessary to request the submission of a bid or quote from at least three qualified providers or suppliers, insofar as is possible.

B) Level 2 contracts.

For contracts with an estimated value of €50,000 or more and below the following amounts:

- €1,000,000 in the case of works contracts
- €100,000 for all other contracts

These shall be awarded through a negotiated procedure, following an explicit request for offers from at least three qualified companies from the sector associated with the subject of the contract, insofar as is possible.



It shall first be required to prepare bid specifications, at least containing the basic characteristics of the contract, the conditions for variant bids, the methods for receiving tenders, the award criteria and guarantees. The ZINEUSKADI ASSOCIATION may negotiate any aspect of the contract with the bidders, in accordance with any applicable provisions in the respective bid specifications. Furthermore, the information about these contracts shall be published in the ASSOCIATION'S contracting authority profile prior to their execution, with a brief description and details of the award method.

C) Level 3 contracts.

For contracts with an estimated value that exceeds those of level 2 above, and which are not subject to harmonised regulations, i.e.:

- Works contracts with an estimated value of €1,000,000 or more and below €4,845,000.
- Supply or service contracts from categories 1 to 16 of Annex II of the TRLCSP with an estimated value of €100,000 or more and below €193,000, and service contracts from categories 17 to 27 of Annex II of the TRLCSP for a value of €100,000 or more, with the provisions of article 137 of the TRLCSP applicable to the latter when their estimated value is €193,000 or more.

They shall be awarded through an open, restricted or negotiated procedure, the latter in those cases permitted by law, in accordance with the administrative and technical specifications that have previously been approved. The information about these contracts shall be published in the ASSOCIATION'S contracting authority profile, with a brief description and details of the award method.

Art. 12. - Disclosure.

The requirements of the principle of disclosure shall be deemed to have been met with the inclusion of the information regarding contracts with a value exceeding €50,000 in the ASSOCIATION'S contracting authority profile, in accordance with these instructions, notwithstanding the use of other means deemed appropriate and excluding those cases exempt from disclosure set forth in articles 169 to 175 of the TRLCSP.

Art. 13. - Documents that must be submitted by the bidders.

The documents that each bidder must provide shall be established in the bid specifications.

Art. 14. - Submission of proposals.

1. - The proposals by the relevant parties must meet the requirements of the bid specifications and their submission implies the business owner's unconditional acceptance of all clauses or conditions, without exception or reservation. Each bidder may present no more than one proposal.
2. - In the tender announcement and bid specifications, the contracting authority shall set the deadlines for receiving offers and requests to participate.
3. - The tender announcement and bid specifications shall indicate whether it is possible for bidders to offer variant bids or improvements, specifying the points and conditions for which their submission is authorised.



Art. 15. - Provisional and definitive guarantees

The ZINEUSKADI ASSOCIATION may demand the provisional or definitive guarantees set forth in the bid specifications.

Art. 16. - Tender evaluation criteria.

1. - The criteria that are to serve as the basis for awarding the contract shall be established by the contracting authority and shall be detailed in the bid specifications; relative weighting must be given to each of them.

2. - Contracts shall be awarded to the party that submits the bid that is most financially beneficial for the ZINEUSKADI ASSOCIATION, in accordance with the criteria established in the bid specifications.

Art. 17. - Announcement of the award.

1. - Notification of the contract awards shall be given to the tenderers and successful bidders, if any, by the means established in the bid specifications.

2. - Information regarding awarded contracts with a value exceeding €50,000 shall be included in the contracting authority profile.

Art. 18. - Execution of the contract.

1. - Generally, it shall be mandatory to execute works contracts with an estimated value of €50,000 or more.

2. - The execution of the contract, which must not be verbal unless in the event of an emergency (art. 28 of the TRLCSP), shall be executed through a written document within 15 business days of the date of notification of the award, pursuant to the provisions of art. 156.3 of the TRLCSP.

3. - Details of the execution of contracts with a value exceeding €50,000 shall be published in the contracting authority profile.

Art. 19. - Transparency.

The tender announcement shall contain a brief description of the essential details of the contract that is to be awarded and of the award method, in addition to an invitation to contact the contracting authority. If necessary, this shall be supplemented with additional information available in the contracting authority profile, or upon request to the contracting authority.

Art. 20. - Confidentiality.

1. - The ZINEUSKADI ASSOCIATION may not disclose any information provided by business owners which has been classified as confidential; this especially applies to technical or trade secrets and the confidential aspects of tenders.



2. - During the execution of the contract, the contractor must respect the confidential nature of any information made available to it in the bid specifications or contract that is classified as such, or which by its very nature must be treated as such. This obligation shall remain in force for a period of five years following receipt of said information, unless a longer period is established in the bid specifications or contract (art. 140 of the TRLCSP).

Art. 21. - Equality and non-discrimination.

All ZINEUSKADI ASSOCIATION calls for bids, requests for offers and contracts shall be accessible to all interested parties under the same conditions (art.139 of the TRLCSP)

Art. 22. - Entry into force.

These Instructions shall come into force after they are approved by the ZINEUSKADI ASSOCIATION, for all procurement procedures that commence after their approval.

[Signature here]

**Jose Carlos Juarez Castejon
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