

**INTERNAL GUIDELINES FOR CONTRACTING PROCEDURES OF THE
PRIVATE FOUNDATION OF THE BARCELONA INSTITUTE
FOR GLOBAL HEALTH**

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INTERNAL GUIDELINES FOR CONTRACTING PROCEDURES OF THE PRIVATE FOUNDATION OF THE BARCELONA INSTITUTE FOR GLOBAL HEALTH

The following internal guidelines for procurements (hereinafter called “**Contracting Guidelines**” or “CG”) were willingly adopted by the Private Foundation of the Barcelona Institute for Global Health (hereinafter called “**ISGlobal**”), in order to make sure that its contracting activity is subject to a reference procedure which encourages full advertising, competition, transparency, equality and confidentiality when selecting the companies or individuals which it contracts.

I. INTRODUCTORY PROVISION

ISGlobal is a non-profit private organization that is subject to the laws of the Generalitat de Catalunya (Catalan Government) and which has its own legal personality and full powers to act, contract and undertake.

In accordance with the provisions of article 6 of ISGlobal’s articles of association, the purpose of ISGlobal is to enhance global health by creating knowledge through scientific research, the transmission and transfer of knowledge and innovation, in both developed and developing countries.

Given the private nature of its legal status, ISGlobal does not fall into the scope of the contracting regime of Royal Legislative Decree 3/2011 of November 14th, approving the revised text of the Public Sector Contracts Act (TRLCSP). Notwithstanding the above, the organization has decided to willingly adopt the following CGs as a reference procedure to regulate its contracting activity.

II. PURPOSE OF THE CONTRACTING GUIDELINES

The purpose of the CGs is to establish a contracting procedure which abides by the principles of publicity, competition, transparency, equality and confidentiality, thus enabling ISGlobal to select the contractor who submits the most economically advantageous tender.

The CG will be available to all those who wish to take part in ISGlobal tenders by means of accessing the company’s Contractor’s profile page which is located at the URL www.isglobal.org.

III. SCOPE OF APPLICATION

The following CGs shall generally apply to all contracts entered into by ISGlobal. Notwithstanding the above, the following businesses and legal relationships are expressly excluded from its scope of application:

- a) Contracts that are subject to labor legislation.
- b) Agreements which are entered into by ISGlobal with any public administration and their dependent entities, as long as their purpose is not mentioned in those of the contracts governed by the TRLCSP act or, when applicable, in any special administrative regulations.
- c) Contracts relating to financial services involving the issuance, purchase, sale and transfer of securities or financial instruments, treasury operations and any operation intended to securing funds in favor of ISGlobal.
- d) Purchase-sale, donation, swap and lease contracts as well as any other similar legal transactions that apply to properties, marketable securities and intangible properties, except those that fall under computer programs and must be qualified as supply or service contracts.
- e) Contracts for arbitration and conciliation services.
- f) Contracts in which ISGlobal is bound to deliver goods, rights or services.
- g) Contracts which purpose is to offer teaching activities within centers of the public sector in the form of personnel training or improvement courses or seminars, colloquies, round-table discussions, conferences, collaborations or any other similar type of activity, provided that such activities be carried out by natural persons.
- h) Contracts which are subject to harmonized regulation in accordance with the TRLCSP act. In such cases, given the high sums of the contracts and the existing will to abide by the principles of publicity, competition and transparency, ISGlobal may voluntarily and on a general basis subject itself to the basic procedural rules contemplated in Chapter I of Part I of Book III of the TRLCSP act relating to the selection of contractors.
- i) Any remaining contracts and businesses that are expressly considered exempt from the TRLCSP act.

IV. PRINCIPLES THAT SHALL GOVERN CONTRACTING PROCEDURES

The award of contracts referred to by the present CGs shall be subject to the principles of publicity, competition, transparency, equality and confidentiality.

▪ Principle of publicity

Dissemination of contracts

Without prejudice to the provisions of section XI of the present CGs relating to minor contracts, ISGlobal shall disseminate any contract it intends to enter into by publishing its tender on its Contractor's Profile page located at www.isglobal.org.

The invitation to tender shall at least include the following information:

- Description of the main characteristics of the contract and the maximum bid amount.
- The deadline for the submission of the tenders as well as the remaining steps of the procedure.
- Awarding procedures and criteria.
- Subcontracting regulations, when applicable.

Exemption of publicity and requests for tenders

The following contracts (hereinafter called “**Cases of Exemption from Publicity**”) shall not be subject to publicity:

- a) Those for which no bid or tender was submitted or for which the tenders were considered inappropriate after having gone through an open or restricted procedure, provided that the preliminary conditions of the contract were not substantially modified.
- b) Those which, for technical or artistic reasons or for reasons relating to the protection of exclusivity rights, can only be awarded to a specific contractor.
- c) Those which, on grounds of urgency arising from unforeseeable events for which the contracting authority cannot be held accountable, require a prompt execution of the contract that cannot be achieved by means of applying the urgency procedure regulated in article 112 of the TRLCSP act.
- d) Those which have been declared secret or confidential, whether they must be performed under specific security measures in accordance with the current laws, or when this is required to protect the primary interests of National Security and is declared so in accordance with the provision of article 13.2.d) of the TRLCSP act.
- e) For works contracts, when these refer to complementary works that are not included in the project nor in the contract, nor in the awarded project and its initial contract, but which, due to unforeseen circumstances, become mandatory to carry out the work as it was described in the project or in the contract without altering it, and which performance is awarded to the main contractor or public works operator in accordance with the rates applicable under the primary contract or which, when appropriate, are set contradictorily, provided that the works cannot be technically or financially separated from the primary contract without causing major drawbacks to the Administration or which, even though they may be separated, are strictly necessary for its improvement, and that the cumulative amount of the complementary works do not exceed 50 % of the primary contract's total value. Other complementary works that do not qualify under these requirements shall be subject to a separate contract.
- f) For works contracts in which the works are repetitions of other similar ones that were awarded under an open or restricted procedure to the same

contractor by the awarding body, provided that they conform to a base project that had been the purpose of the initial contract awarded following these procedures, and that the possibility to use this procedure be mentioned in the invitation to tender of the initial contract and that the sum of the new works were taken into account during the calculation of the total value of the contract. The exemption from publicity will only be allowed within the three years following the conclusion of the initial contract.

- g) For supply contracts relating to the purchase of movable properties that are part of Spain's National Heritage (Patrimonio Histórico Español), prior to their estimation on behalf of the Qualification, Assessment and Export Board of Properties belonging to Spain's National Heritage or a competent body of the various Regional Governments, which are used as museums, archives or libraries.
- h) For supply contracts in which the products are exclusively manufactured for research, testing, study or development purposes. This requirement does not apply to mass production intended to guarantee the commercial viability of the product or to recover research and development costs.
- i) For supply contracts relating to complementary deliveries made by the primary supplier that are either normal partial replacements of supplies or installations, or an extension of the existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire goods that have different technical characteristics, which in turn would result in either incompatibility or disproportionate technical difficulties in operation and maintenance. The exemption from publicity will only be allowed within the three years following the conclusion of the initial contract.
- j) For supply contracts involving the purchase of supplies in organized markets or commodity exchanges in which they trade.
- k) For supply contracts involving a provision concluded under particularly advantageous terms with a supplier who has permanently ceased his business operations, or with tender administrators, or by means of a legal agreement or any procedure of the same nature.
- l) For service contracts referring to complementary services that are not included in the project nor in the contract, but which, due to unforeseen circumstances, become mandatory to carry out the service as it was described in the project or in the contract without altering it, and which performance is awarded to the holder of the main contract in accordance with the rates applicable under the main contract or which, when applicable, are set contradictorily, provided that such services cannot be technically or financially separated from the primary contract without causing major drawbacks to the Administration or which, even though they may be separated, are strictly necessary for its improvement, and that the cumulative amount of the complementary services do not exceed 50 % of the primary contract's total value. Other complementary services that do not qualify under these requirements shall be subject to a separate contract.

- m) For service contracts in which the services are repetitions of other similar ones that were awarded to the same contractor by the awarding body under an open or restricted procedure, provided that they conform to a base project that had been the purpose of the initial contract awarded following these procedures, and that the possibility to use this procedure be mentioned in the invitation to tender of the initial contract and that the sums of the new services were taken into account during the calculation of the total value of the contract. The exemption from publicity will only be allowed within the three years following the conclusion of the initial contract.
- n) In any case, when the total estimated value of the works, supply and service contracts is lower than fifty thousand Euros (50,000 €).
- o) When, due to the nature of the service, especially for those contracts which purpose is to provide intellectual services and whichever service mentioned in category 6 of Addendum II of the TRLCSP act, it is impossible to establish the awarding criteria with the precision required under the regulated procedure of the present Guidelines.

For those contracting procedures in which one of the Cases of Exemption from Publicity applies, tenders must be requested from at least three companies that are capable of performing the contract, whenever possible.

▪ **Principle of competition**

For the purposes of the present CGs, the principle of competition shall refer to any action performed by ISGlobal in order to advertise its tender and make sure that any third party is aware of the various formalities which form the contracting procedures that are subject to these CGs, and that unsuccessful tenderers be made aware of the reasons that justify their disqualification or non-award using the procedure laid down in the present CGs.

▪ **Principle of transparency**

For the purposes of the present CGs, the principle of transparency includes the following:

- a) The possibility for all tenderers to receive a forecast of the regulations that will apply to the contract that is to be awarded, and that such regulations shall, without a doubt, apply equally to all of the pretending companies.
- b) The setting of appropriate deadlines for the submission of tenders, which shall give companies enough time to make a proper evaluation, to verify the submitted documentation, to evaluate the submitted bids and to publish the award proposal and its formulation. Deadlines shall be set on a case-by-case basis in the invitation to tender.
- c) The prior and precise establishment of the objective criteria that shall apply to the evaluation of tenders and the contract award, notwithstanding the characteristics or experience of the tenderers, nor the level or characteristics of the means that

shall be used to perform the contract.

- d) The clear and precise determination of the body that is to issue the award proposal as well as the award of the contract.

- **Principle of equality and non-discrimination**

For the purposes of the present CGs, the principle of equality and non-discrimination includes the following:

- a) The non-discriminatory description of the purpose of the contract, which shall not refer to a specific manufacture or origin nor to any specific brand, patent, type, origin or production, unless such a reference can be justified by the purpose of the contract and includes the complementary mention “or its equivalent”.
- b) Equal access for all economic agents based in Member States of the European Union. ISGlobal is not obliged to impose any condition that would constitute a direct or indirect discrimination among tenderers, like for example, the obligation for interested companies to be based in the territory of the same Member State or the same region as the awarding authority.
- c) The mutual recognition of qualifications, certificates and other diplomas. If tenderers are required to provide certificates, qualifications or any other type of supporting documentation, documents from other Member States which offer equivalent guarantees must be accepted.
- d) The prescription to provide information which may favor certain tenderers over the rest of tenderers in a discriminatory manner.

- **Principle of confidentiality**

ISGlobal shall not disseminate any information provided by tenderers that is explicitly defined as confidential.

For his part, the contractor shall respect the confidential nature of any information which he has been given access in order to properly perform the contract, and which has been defined as such or, by its very nature, must be treated as such.

V. CONTRACTING AUTHORITY

The following are defined as contracting authority of ISGlobal:

- a) **Manager:**
For the procurement of goods, services and supplies that do not exceed a total of 209,000 €.
- b) **Manager and Managing Director:**
For the procurement of goods, services and supplies which total is between 209,000 € and 1,000,000 €.

- c) Manager or Managing Director and Secretary of ISGlobal's Board of Trustees:
For the procurement of goods, services and supplies which total is between 1,000,001 € and 5,000,000 €.

These bodies shall be considered as contracting authorities and their responsibilities, among others, are to authorize the initiation of the dossier, the approval of expenditure and of the tender documents as well as the awarding of orders of contract and the signing of the such contracts, including their extension if it were foreseen, their amendment, their interpretation, their cancellation and their termination.

For contracts that are not subject to a harmonized regulation, the Awarding Authority may choose to form a Contracting Board that will assess the documentation submitted by the tenderers and help the Awarding Authority in the contract award. The Board shall be formed by a President, at least 2 chairpersons and a maximum of 5, and a secretary. As the case may be, its composition shall be confirmed by the Awarding Authority.

VI. CAPACITY CRITERIA OF THE CONTRACTOR

The requirements for capacity, prohibitions on contracting and solvency laid down in articles 54 to 79 of the TRLCSP act shall apply to all contractors.

The requirement for the contractor to be registered in the Official Registry of Tenderers and Classified Companies, which recognizes the contractor's capacity to contract, shall be regarded as optional by ISGlobal.

Notwithstanding the above, any classification certificate which confirms a registration in official lists of contractors authorized to contract that were established by Member States of the European Union, determine a presumed capacity to contract of the listed contractors in all cases laid down in article 84 of the TRLCSP act.

VII. PURPOSE OF THE CONTRACT

The regulations laid down in articles 86 and 87 of the TRLCSP act relating respectively to the purpose and the rates for contracts shall apply.

The total estimated value of the contracts, which depends on the trigger points of contracts subject to harmonized regulation or not, the publicity rules and the requirement or not of specifications, shall correspond to the total amount of the contract, free of the Valued Added Tax, and taking into account any type of potential clauses or extensions, as laid down in article 88 of the TRLCSP act.

VIII. NATURE OF THE CONTRACTS AND COMPETENT JURISDICTION

The contracts that ISGlobal enters into shall always be considered as private contracts.

The awareness of all litigious matters that affect the preparation, awarding, effects, performance and termination of such contracts shall be the responsibility by the civil judicial court.

IX. CONTRACTING PROCEDURE

The award of contracts subject to these Contracting Guidelines and that are not susceptible to a direct award shall be made using the following procedure:

a) Preparation of the contract

All of the procedures shall commence with a report which will have to be submitted to the contracting authority who will then determine the nature and the scope of the needs that are to be addressed by the foreseen tender, as well the estimated cost of the contract, the availability of sufficient funds and the adjustment to the principle of publicity in each case.

b) The drafting of tender documents

Tender documents are to be drafted and they must contain the agreements and specifications that define the rights and obligations of the contractual parties.

c) Contracting decision

ISGlobal's manager shall take all of the decisions relating to the initiation of the procedure in a delegated manner when such decisions do not fall under the responsibility of the contracting authority.

d) Publication

The invitation to tender shall be published within fifteen (15) days, unless the urgency of the need to contract requires a shorter deadline. The invitation shall be available in ISGlobal's Contractor's Profile page at www.isglobal.org, while the publication of additional advertisements in local newspapers or in the Bulletin of the Government of Catalonia (DOGC), the Bulletin of the Spanish State (BOE) or the bulletin of the European Union (DOUE) is optional.

e) Opening and evaluation of tenders

Bids and requests for tender shall be maintained confidential and all means necessary shall be made available to maintain such secrecy until the publication of the public tender.

The opening and evaluation of bids shall be carried out by the contracting authority. Any technical report deemed necessary for the submitted bids may be requested and, if applicable, candidates may be required to resolve any defaults related to the submitted documentation.

f) Contract award

The contract award shall be determined by the contracting authority in favor of the most economically advantageous bid, by means of a reasoned resolution which shall be sent to the candidates or tenderers and published, when applicable, on the Contractor's Profile page. In case no bid was submitted or if the submitted bids are inappropriate, inconsistent or unacceptable, the tender procedure will be declared inconclusive.

g) Signing of the contract

Unless they are already laid down in the tender documents, any contract ISGlobal enters into must mention the following:

- The names of each party.
- Proof of the signer's capacity to enter into the contract.
- The description of the purpose of the contract.

- Reference to contract's applicable laws.
- A list of all the documents which form the contract.
- The exact price, or its calculation method.
- The duration of the contract or the estimated commencement and termination dates as well as those of the extension or extensions, if any are foreseen.
- The reception, delivery or acceptance conditions of the services.
- The method of payment.
- The cases in which the resolution is applicable.
- The accounting program or rubric to which the rates will be charged, as the case may be.
- The objective and temporary extension of the confidentiality obligation which, as the case may be, is imposed on the contractor.

X. CONTRACTS SIGNED ABROAD

The contracts that ISGlobal signs abroad and which involve the performance of cooperation or research programs or projects that are financed by third parties may be awarded using a negotiated procedure, without the need of publicity and under conditions freely agreed upon with the foreign contractor in case the participation of the latter is deemed indispensable to carry out the project or program, or when such a decision has been duly taken by the funding body in the document or memorandum by virtue of which financing is granted.

XI. MINOR CONTRACTS

For the purposes of the present CGs, contracts which value is less than 50,000 € are considered minor contracts.

Such contracts may be awarded directly to any contractor with sufficient capacity to contract and who is in possession of the required professional qualification to carry out the service, with the sole need to approve the expenditure and to include the corresponding invoice as well as the work project in such type of contracts.

For this type of contracts, there is no need to require the three bids referred to in the last paragraph of section IV.

In Barcelona, on April 4th, 2017

TRANSLATION