

SPECIFIC ADMINISTRATIVE CLAUSES, PURSUANT TO THE SIMPLIFIED OPEN TENDERING PROCEDURE, TO CARRY OUT THE CONSER02024036OP PORTABILITY SERVICE AND DEVELOPMENT OF AN EXISTING SOFTWARE COMPONENT, I.E. DYNINST, TO THE RISC-V ARCHITECTURE WITHIN THE FRAMEWORK OF THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN OF THE PROJECT FOR THE DEVELOPMENT OF TECHNOLOGIES FOR THE GENERATION OF PROTOTYPES BASED ON RISC-V TECHNOLOGY.

Dossier: **CONSER02024036OP**

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1. GENERAL PROVISIONS

1.1. OBJECT AND LOTS

The purpose of these Specifications is to establish the agreements and conditions defining the rights and obligations that must govern the legal, administrative and economic aspects of the contracting of the services referred to in section B.1) of the Table of Characteristics of the Contract - hereinafter, Table of Characteristics -.

The needs to be satisfied by means of this Contract are those set out in the Technical Specifications and in section B.2) of the Table of Characteristics.

With respect to the division into lots, the provisions of section B.4) of the Table of Characteristics will apply.

With respect to the variants, the provisions of section B.5) of the Table of Characteristics will apply.

1.2. CPV

The CPV code is the one indicated in section B.3) of the Table of Characteristics attached to these Specifications.

1.3. CONTRACT DURATION .

With regard to the duration of the contract and whether or not partial terms are foreseen, the provisions of section D) of the Table of Characteristics will apply.

However, the Contract Manager may indicate the exact date of commencement of the contract, and this circumstance must be recorded in the dossier.

1.4. PLACE OF EXECUTION OF THE CONTRACT.

The contract will be executed at the place described in section D.5) of the Table of Characteristics.

2. LEGAL NATURE AND LEGAL REGIME

Since the Barcelona Supercomputing Center Consortium (BSC-CNS) is a consortium set up as an entity of Integrated Public Law for the General Administration of the State to through the Ministry of Science, Innovation and Universities for the Administration of the Generalitat de Catalunya Government(hereinafter, GENCAT) through the Competent department in matters related to research and the Polytechnic University of Catalonia (hereinafter, UPC), and attached to the General Administration of the State, this Contract, is of an administrative nature, in view of its purpose .

This Contract will be governed by the present Specifications, which constitute the Contract Law, with binding force for both parties, along with the Technical Specifications, in addition to Act 9/2017 of 8 November on Public Procurement Contracts which transpose to the Spanish

Legal System the Directives of the European Parliament and of the Council and 2014/23/EU and 2014/24/EU of 26 February 2014 (hereinafter, LCSP) and other applicable regulations.

Likewise, since it is a contract within the framework of the "Next General EU Recovery, Transformation and Resilience Plan Financed by the European Union", it is also governed by the following regulations and documents:

European regulations:

- a) Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021, which establishes the Recovery and Resilience Facility and other implementing regulations.
- b) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018, on the financial rules applicable to the General Budget of the Union (Financial Regulations of the EU). OJEU of 30 July 2018, No. 193.
- c) Directive (EU) 2017/1371, of the European Parliament and of the Council of 5 July 2017, on the fight against fraud that affects the financial interests of the Union through Criminal law (PIF Directive). OJEU of 28 July 2017, No. 198.

National Regulations:

- Royal Decree-Law 36/2020, of 30 of December, which approves urgent measures for the modernisation of the Public Administration for the execution of the aforementioned Recovery, Transformation and Resilience Plan.
- Order HFP/1030/2021, of 29 of September which configures the Recovery, Transformation and Resilience Plan management system.
- Order HFP/1031/2021, of 29 of September which establishes the procedure and format of the information to be provided by State, Regional Public Sector and Local Entities for monitoring compliance with Milestones and Objectives and the budgetary execution and accounting of the measures of the components of the Recovery, Transformation and Resilience Plan.
- These Specific Administrative Clauses are adapted to Order HFP/55/2023, of 24 January, relating to the Systematic analysis of the risk of conflict of interest in the procedures executed by the PRTR.
- Instruction of 23 December 2021 of the Public Procurement Advisory Board on aspects to be incorporated into the dossiers and the specifications governing contracts that are to be financed with funds from the Recovery, Transformation and Resilience Plan.
- Act 38/2003, of 17 November, General Subsidies, and Royal Decree 887/2006, of 21 July, approving the Regulations of Act 38/2003, of 17 November, General Subsidies.
- Royal Decree 959/2022, of 15 of November which regulates the direct concession of a Subsidy to BSC-CNS for the execution of innovative projects in the cloud computing area of the UNICO R&D Cloud Program within the framework of the Next General EU Recovery, Transformation and Resilience Plan Financed by the European Union.

These Specifications, the Technical Specifications and the Table of Characteristics of the contract in question, as well as their Annexes and other annexed documents will be of a contractual nature.

In the event of a discrepancy between these Specifications and any of the other contractual documents, these Specifications will take precedence. Likewise, the successful technical economic bid and, as applicable, the Contract Formalisation document will also be considered contractual documents.

Ignorance of the Contract Clauses in any of their terms, or of any other contractual documents that form a part thereof and of the instructions or the regulations that are applicable to the execution of what has been agreed does not exonerate the Awardee from fulfilling its obligation of compliance.

In the event that, pursuant to the terms of section C.6) of the Table of Characteristics, European funding for this Contract exists, the contracting will be subject to the provisions of the Treaty and to the documents established by virtue of the same.

In addition to the general regulations on Public Procurement, these Specifications are subject to the Specific Principles of Management of the PRTR, which are as follows:

- Concept of milestone and objective, criteria for the monitoring thereof and accreditation of the result.
- Green labelling and digital labelling.
- Risk analysis in relation to potentially significant negative impacts on the environment (*Do no significant harm, DNSH*), follow-up and verification of the result of the Initial evaluation.
- Reinforcement of mechanisms for the prevention, detection and correction of fraud, corruption and conflicts of interest.
- Compatibility of the State aid regime and prevention of double financing.
- Identification of the final receiver of the funds, either as the beneficiary of the aid, or as the awardee of a subcontractor contract.
- Communication

The successful bidder, by submitting its proposal, unconditionally accepts the content of all its clauses and conditions, without any exception or reservation, and authorises the Contracting Board to consult the data collected in the Official Register of Bidders and Classified Companies in the Public Sector (hereinafter ROLECSP) or in the official lists of economic operators of a Member State of the European Union.

The contracting of the service will be awarded by the simplified open procedure (art.159 LCSP).

3. CONTRACTING AUTHORITY, CONTRACT MANAGER AND CONTRACTOR PROFILE

3.1. CONTRACTING AUTHORITY

The of Contracting Authority is the Director of the BSC-CNS, by delegation of the Executive Committee by virtue of the powers attributed to the Director in Article 15(i) of the Charter of this Consortium.

3.2. CONTRACT MANAGER

In accordance with the provisions of article 62 LCSP, the Contract Manager will be identified in section A.3) of the Table of Characteristics. It will be the responsibility of the latter to continuously and directly coordinate, supervise, control and monitor the contract and issue the necessary instructions in order to ensure the correct execution of the agreed service.

To this end, during the execution of the contract, the Contract Manager may supervise the services as often as they deem necessary and request the information they deem appropriate for the correct control of the work. To this end, the Contract Manager and their collaborators will have unrestricted access to the places where the contract is carried out. The Contractor, at no additional cost, will provide BSC-CNS with professional assistance in the explanatory or information meetings that they deem necessary to take advantage of the contracted service.

The Contractor will provide all documentation and clarifications required by the Contract Manager during the execution of the contract. When the Contractor, or their dependents, commit acts or omissions that compromise or interrupt the proper progress of the contract, the Contract Manager may request the adoption of specific measures to achieve or restore good order in the execution of the agreement.

The Contractor will be obliged to cooperate with the Contract Manager, to ensure the normal fulfilment of the obligations entrusted to them.

In order to be responsible for their mission of management, control, verification and supervision of the correct performance of the services, the Contract Manager will assume, in relation to the contractor, as many functions as necessary, and specifically the following:

- Request the Contractor, directly or through the personnel under their command, to comply with the contractual conditions.
- Ensure the execution of services in strict compliance with the offer, or duly approved modifications, and compliance with the work programme.
- Define those technical conditions that the Technical Specifications leave to their discretion.
- Resolve any technical issues that arise in terms of interpretation as long as the conditions of the contract are not modified.
- Study any incidents or problems raised that prevent the normal performance of the contract or give rise to its modification, processing, where appropriate, the corresponding proposals.
- Propose the appropriate actions to obtain from the bodies and individuals the necessary permits and authorisations for the execution of the services and resolve the problems raised related to them.
- Personally assume, under their responsibility, in cases of urgency or seriousness, the immediate management of certain operations or works in progress for which the Contractor must make available the necessary personnel and material.

3.3. CONTRACTOR PROFILE

Access to the Contracting Authority's Contractor profile will be gained through the BSC website:

<https://contrataciondelestado.es/wps/poc?uri=deeplink%3AperfilContratante&idBp=JPLO15U%2BByxkQK2TEfXGy%2BA%3D%3D>.

4. BUDGET, ESTIMATED VALUE, PRICE REVIEW, EXISTENCE OF CREDIT

4.1. TENDER BASE BUDGET

The maximum expenditure budget of this Contract foreseen for its initial period of validity (Value Added Tax included) is detailed in section C.1 of the Table of Characteristics and will serve as the basis for the tender.

For all purposes, it will be understood that the bids submitted include all the evaluation factors, expenses that the successful bidder must incur for the proper execution of the Contract, such as general expenses, consumables, tools and utensils, financial expenses, insurance, transport and travel, as well as all kinds of taxes that are applicable according to the provisions in force, in all cases, taking into account the specifications contemplated in the Technical Specifications. The amount corresponding to VAT will be detailed as a separate item.

Proposals that exceed this budget will be rejected.

4.2. ESTIMATED VALUE OF THE CONTRACT

The estimated value, for the purposes of article 101 LCSP, is that indicated in section C.2) of the Table of Characteristics.

4.3. PRICE REVIEW

The provisions of the Table of Characteristics will be followed.

4.4. EXISTENCE OF CREDIT

The budgetary application is as indicated in section C.4) of the Table of Characteristics.

There is sufficient credit up to the amount of the budget approved by the BSC-CNS contracting authority.

In the case of services that are performed over several years, the existence of credit and its future availability are considered in section C.4) of the Table of Characteristics of the Contract.

If there is external financing, this will be reflected in section C.6) of the Table of Characteristics

5. CAPACITY AND SOLVENCY OF OF THE BIDDERS AND PROPOSAL DOCUMENTATION

5.1. CAPACITY AND SOLVENCY OF THE BIDDERS

1) Proposals may be submitted by natural persons or legal entities, whether Spanish or foreign,

as individuals or grouped in temporary business associations (art. 69 LCSP) who have full capacity to act, and who are not affected by any of the prohibitions on contracting established in article 71 LCSP or any other applicable provisions.

When the bidders are legal persons, the services of the contract subject to these Specifications must be included within the purposes, object or scope of activity that, in accordance with their statutes or founding rules, belong to their field of specialisation and they must have the appropriate infrastructure for the proper execution of the Contract.

2) In addition, the interested parties must prove that they have sufficient economic and financial solvency, to ensure that the correct execution of this Contract is not in danger of being altered by economic or financial incidents. As regards the execution of the Contract, the appropriate technical or professional solvency must also be made available for the correct execution thereof.

All this will be accredited by the means specified in section F) of the Table of Characteristics.

When the Contractor is a newly-created company, understood as one that is less than five years old, its technical solvency will be accredited by the means indicated for this purpose in section F.2) specifically for newly created companies.

3) Accreditation of solvency by reference to other companies.

In order to prove the solvency necessary to conclude a given contract, the entrepreneur may rely on the solvency and resources of other entities, regardless of the legal nature of the links it has with them, provided that it demonstrates that during the entire duration of the performance of the contract it will effectively have that solvency and means and the entity to which it resorts is not subject to a prohibition on contracting.

Under the same conditions, entrepreneurs grouped together as temporary business associations as set out in article 69 LCSP, may use the capacities of entities outside the temporary association.

However, with respect to the criteria relating to educational and professional qualifications indicated in Article 90.1.e) LCSP, or to the relevant professional experience, companies may only use the skills of other entities if they are going to provide services for which such skills are necessary.

Where an undertaking wishes to draw on the capacities of other entities, it must demonstrate to the Contracting Authority that it will have the necessary resources by submitting the written undertaking of those entities to that effect.

The undertaking referred to in the preceding subparagraph will be submitted by the bidder who has submitted the best tender.

Where an undertaking makes use of the capacities of other entities with regard to the criteria relating to economic and financial solvency, both entities will assume, by virtue of the award and conclusion of the contract, joint responsibility for the performance of the contract.

5.2. PRESENTATION OF PROPOSALS

1) Each bidder may only submit one proposal, and may not subscribe to any proposal in temporary grouping with others if they have done so individually, or appear in more than one temporary business association. Contravention of this principle will automatically lead to the non-admission of all the proposals submitted by them.

2) The submission of proposals implies unconditional acceptance by the bidder of the content of all the clauses or conditions foreseen in the Specifications without any exception or reservation.

3) In accordance with the provisions of Article 133 LCSP, the tendering companies will have to indicate, if applicable, by means of a complementary reasoned statement, which administrative and technical documents and data submitted are, in their opinion, constitutive of being considered confidential. This circumstance must also be clearly reflected (superimposed, in the margin or in any other way) in the document itself indicated as such. The documents and data submitted by the tendering companies may be considered confidential in the case of technical or commercial secrets, confidential aspects of the tenders and any other information whose content may be used to distort competition, whether in that tender procedure or in subsequent ones. The duty of confidentiality of the Contracting Authority, as well as of its dependent services, may not be extended to the entire content of the bid of the successful tenderer or to the entire content of the reports and documentation that, where appropriate, are generated directly or indirectly by the Contracting Authority in the course of the tendering procedure. It may only be extended to documents that have a restricted dissemination, and in no case, to documents that are publicly accessible.

If this reasoned statement is not provided, no document or data will be considered to have such a character.

The Contracting Authority guarantees the confidentiality of the proposals submitted by the bidders, in accordance with art. 133 LCSP.

5.3. PROPOSAL SUBMISSION METHOD

The tendering companies will present the envelopes indicated in the Table of Characteristics, marked with the numbers 1, 2, 3, the content of which is established in section G of the Table of Characteristics. Each envelope will include an index with its contents.

In accordance with Article 23 of the RGLCAP, foreign companies must submit the documentation officially translated into Catalan and/or Spanish.

In the event that the object of the Contract is made up of different lots, the bidders, unless otherwise established in the Table of Characteristics, may submit a proposal for all the lots or lots they consider appropriate.

Persons interested in the tendering procedure may request additional information from the contracting authority on the Specifications and other complementary documentation, which will provide it at least six days before the end of the deadline for the submission of tenders, provided that they have requested it at least 12 calendar days before the deadline for submission of tenders.

Those interested in the tender procedure can also contact the Contracting Authority to request clarifications of the provisions of the specifications or the rest of the documentation, through the questions and answers section in the virtual space of the tender on the Public Sector Procurement Platform. These questions and answers will be public and accessible through the aforementioned panel.

Those proposals that contain omissions, errors or deletions that make it impossible to ascertain the fundamental elements of the offer will not be accepted, such as: lack of concordance with the documentation examined and admitted, exceeding the tender budget, substantially changing the proposal model established as Annex I to these Specifications, having comparative figures such as, for example, the expressions "so much less" or "a certain percentage less" than the most advantageous proposal or similar concepts, as well as those in which the bidder admits that it suffers from error or inconsistency that makes it unviable.

In the event of a discrepancy between the offer expressed in letters and the one expressed in numbers, the amount stated in letters will prevail.

Bidders must take into account that the evaluation of the bids, as well as their award, will be made in lots, if so established in the Table of Characteristics. Therefore, they must submit an economic and technical offer for the lots for which they are tendering. In the event that they submit an offer for more than one lot and the technical project and the rest of the documentation of the technical offer must be the same, they must indicate this in their bid, for the purposes of its evaluation.

The documentation required for the envelopes is detailed in section G) of the Table of Characteristics.

5.4. PLACE AND TERM OF DELIVERY

Proposals must be submitted electronically within the period indicated in section H) of the Table of Characteristics.

6. AWARD CRITERIA

The award criteria for the bids submitted by the bidders are detailed in section J) of the Table of Characteristics.

In the event of a tie in the total score between two or more bidders, this will be settled in the manner set out in section J.2) of the Table of Characteristics.

7. CONTRACTING BOARD

In the cases provided for in Article 326 of the LCSP, the Contracting Authority will be assisted by the Contracting Board, which will be the competent body for the evaluation of bids, without prejudice to the provisions of Article 146.2 a) of the LCSP.

The Contracting Board is composed of the members listed in section I) of the Table of Characteristics.

The resolutions of the Board will be valid provided that the majority of the voting members who are to make it up are present. In the event of a tie in votes, the Chairman will have the casting vote.

The Contracting Board may be advised by technical committees, in accordance with Article 146.2 b) of the LCSP.

The Contracting Board is composed of the members listed in section I) of the Table of Characteristics.

8. OPENING OF BIDS AND AWARD PROPOSAL

8.1. OPENING OF BIDS

In this Tender, electronic media will be used, i.e., the companies interested in submitting bids will use electronic media through the Contractor profile area of the BSC-CNS hosted on the Public Sector Procurement Platform .

Failure to submit any of the required envelopes is sufficient cause for exclusion.

Once the term for submitting the Bids has ended, the Contracting Board will meet to review the Documentation relating to Envelope No. 1.

Prior to the electronic opening of envelopes, the members of the Committee will complete the Declaration of Absence of Conflicts of Interest (DACI).

This obligation is imposed on all those involved in the Contract and, in particular, on the head or heads of the Contracting Authority, on all those who participate in the drafting of the Contract specifications (both that of the Specific Administrative Clauses and that of the Technical Specifications), on the members of the Contracting Boards, on the members of the Committees of Experts and on the technical staff who prepare the assessment reports within the Contract. In the case of collective bodies such as the Committee of Experts, the Contracting Board or the Contracting Authority, this declaration will be made only once for each tender, at the beginning of the first meeting, and will be recorded in the minutes.

The Contracting Board whose members are designated in section I of the Table of Characteristics of these Specifications, will proceed to verify that the bidders have submitted the documentation required in Envelope No. 1, relating to the general documentation and documentation to be assessed by means of criteria whose weighting depends on a value judgment. In particular, it will be observed whether the Declaration of Absence of Conflicts of Interest has been submitted by all the bidding entities, in accordance with the form provided in the Table of Characteristics of the Contract.

If the Board observes defects or material errors of a correctable nature in the Documentation submitted, it will notify the Interested parties via email through the Public Sector Procurement Platform and will grant a term of no longer than three calendar days for the bidder to correct the error.

Likewise, pursuant to Article 95 of the LCSP, the Contracting Authority may request the bidding companies to provide any clarifications it may need regarding the certificates and documents submitted or request them to submit complementary ones, and, in accordance with article 22 of the RGLCAP, they will have a term of five calendar days, and it will not be possible to submit such documents once the bids have been declared admitted.

Pursuant to the terms of Articles 4.2 and 7.3 of HFP Order 55/2023, prior to the **assessment of the Proposals**, the Contracting Authority will, through the Data Mining Tool of the State Tax Administration Agency (AEAT), MINERVA or any other tool that may replace it in the future, start the ex-ante Conflict of Interest analysis procedure, consisting of entering the data of bidders who are natural persons or companies and of the decision-making bodies of the operation (Contracting Authority and members of the Contracting Board). The aforementioned data will be: a) The tax IDs and names and surnames of the decision-making bodies and of the bidders who are natural persons and, b) The company name in the case of bidders who are companies.

In the event that AEAT has no information about the beneficial owner of the company for which the consultation is being made, and this has been notified to the Contracting Authority through the corresponding black flag, it will have to request the Bidding companies for information about their beneficial owners, which they must provide within a term of 5 business days from the request. In the event that none of the requested information is provided within this period, the tendering company will be excluded from the procedure.

Once the Contracting Board has rated the documentation in Envelope No. 1 and requested corrections, if necessary, provisionally admitting those companies, it will proceed to open and examine the assessable part of the bid through qualitative criteria (Envelope no. 2), if any .

After the assessment of the qualitative criteria, in the place, on the date and at the time specified in the tendering announcement, the contract announcement will be read out and a count will be made of the proposals submitted and the companies admitted will be notified as well as those that have been excluded. In the latter case the reasons for the exclusion will be specified.

Then the envelopes containing the quantifiable criteria by the application of formulas will be opened, Envelope No. 3 (or Envelope 2 if there are no qualitative criteria).

In cases in which some bids are presumably unfeasible due to having been formulated in terms that make them abnormally low, in accordance with the terms of section J.3) of the Table of Characteristics , the bidder/s committing this reckless act will be given a term that is sufficient to justify and provide a reasoned and detailed itemisation of the low price levels or costs, or any other parameter used as a basis for the irregularity of the bid, through the presentation of information and documents that are relevant for these purposes, all of which will be in accordance with the terms of Article 149 LCSP.

The notification will be made by electronic means pursuant to the 15th Additional provision LCSP.

The above deadlines will be extended by fifteen business days when one or several bids have been Identified that are presumably irregular, as indicated in section 4 of Article 158 LCSP.

If the award is not made within the indicated deadlines, the bidders will have right to withdraw their proposals.

8.2. AWARD PROPOSAL AND REQUEST TO THE BIDDER WHO HAS SUBMITTED THE BEST BID

After this public act, in the same session, the Board will proceed as follows:

1. After excluding, where appropriate, any bids that do not meet the requirements of the specifications, evaluate and classify the bids.
2. Make the award proposal in favour of the candidate with the best score.
3. In accordance with Article 159.4.f.3 LCSP, verify in the Official Register of Bidders and Classified Companies that the company is duly incorporated, that the signatory of the proposal has sufficient power to formulate the offer, that it has the required economic, financial and technical solvency or, where appropriate, corresponding classification and that it is not subject to any prohibition to contract. If the tenderer has made use of the right to prove the submission of the application for registration in the corresponding Register referred to in the final paragraph of letter a) of section 4 of this article, the Board will request the tenderer to justify all the points relating to its suitability to contract set out in this number.

In the event that the bidder whose award is proposed is not registered in the ROLECE, proof of this will be required at the time of requesting the constitution of the definitive guarantee under the terms provided for in the following section.

4. Request the company that has obtained the best score by electronic communication to constitute the definitive guarantee, as well as to provide the commitment referred to in Article 75. 2 LCSP and where appropriate, the supporting documentation justifying that it effectively has the means it has undertaken to dedicate or assign to the execution of the contract in accordance with Article 76. 2 LCSP; all this will be done within 7 working days of sending the communication.

In the event that the proposal of the bidder obtaining the best score is presumed to be abnormally low due to the assumptions provided for in article 149LCSP, the Board, having carried out the actions set out in points 1 and 2 above, will follow the procedure provided for in the aforementioned article, although the maximum period for the bidder to justify their offer may not exceed 5 working days after sending the corresponding communication.

After presentation of the definitive warranty and in cases where it is mandatory, after the Controller has audited the commitment of the expenditure under the terms provided for in Act 47/2003, of 26 November (RCL 2003, 2753), General Budget, within a period of no more than 5 days, the contract will be awarded in favour of the bidder proposed as the successful bidder, and once it has been awarded, it will be formalised.

In the event that the candidate proposed as the successful bidder does not submit the definitive warranty within the period granted for this purpose, an award proposal will be made in favour of the candidate obtaining the next best score, granting the corresponding period to constitute the aforementioned definitive warranty.

In the event that the entrepreneur has to submit any other documentation that is not registered in the Register of Bidders, it must be provided within the period of 7 working days established to present the definitive warranty.

In cases where foreign entrepreneurs from a Member State of the European Union or signatory to the European Economic Area apply for tenders, the accreditation of their capacity, solvency and absence of prohibitions may be carried out either by consulting the corresponding official list of authorised economic operators of a Member State, or by providing documentation accrediting the above, which, in the latter case, must be submitted within the period granted for the presentation of the Definitive Warranty.

In matters not provided for in this clause, the general provisions of the LCSP applicable to the open procedure will apply.

8.3. DEFINITIVE WARRANTY

The bidder submitting the best bid is obliged to accredit within a maximum of seven business days from the day after the one on which it received the request, a Definitive Warranty for 5% of the amount of the award, excluding VAT, in accordance with the provisions of Article 159.4.f.4. The submission method, responsibilities and return of the Warranty will be adapted to the provisions of Articles 107-114 LCSP.

Entities that have this exception recognised by state laws will be exempt from the constitution of the Definitive Warranty.

In accordance with the provisions of Article 109.3 of the LCSP, when, as a result of a modification of the Contract, there is a variation in the Contract price, the Warranty must be readjusted, so that it is in due proportion to the new modified price, within fifteen days from the date on which the entrepreneur is notified of the modification agreement. For these purposes, price variations that occur as a result of a review of the same in accordance with the provisions of Chapter II of Title III of this Book of the LCSP will not be considered.

With regard to the possibility of establishing a complementary and/or provisional warranty, the provisions of section E) of the Table of Characteristics will apply.

During the term of the Warranty the Contractor will be obliged to correct, at its own cost, all shortcomings that may be observed in the services provided, regardless of the consequences that could arise from the responsibilities that could have been incurred, in accordance with the terms of these Specifications and of Article 311 LCSP.

Once the Contract has been executed in full and the Warranty period has elapsed, the Definitive Warranty will be returned, provided the Contract has been satisfactorily fulfilled, and if no liabilities have arisen that need to be executed in relation to the Warranty, pursuant to Article 111 LCSP.

8.4. AWARD

The Contracting Authority will issue an Award Resolution within five working days following receipt of the documentation, in accordance with Article 150.3 LCSP.

The Award Resolution must be reasoned, the candidates or bidders will be notified and, simultaneously, the award will be published in the BSC-CNS Contractor Profile (<https://www.bsc.es/discover-bsc/public-tenders>) as well as on the State Procurement Platform (<https://contrataciondelestado.es/>).

8.5. NO AWARD, WAIVER OR WITHDRAWAL

The decision not to award or enter into the contract or the withdrawal from the procedure may be agreed by the contracting authority before formalisation, in accordance with the provisions of Article 152 of the LCSP.

In the event that the Contracting Authority withdraws from the award procedure or decides not to award or conclude the contract for which the relevant call for tenders has been made, it will notify the candidates or tenderers thereof, and also inform the European Commission of this decision when the Contract has been announced in the Official Journal of the European Union.

The decision not to award or conclude the Contract or the withdrawal from the procedure may be agreed by the Contracting Authority before formalisation.

A decision not to award or conclude the Contract may only be taken for reasons of public interest, duly justified in the dossier. In this case, a new tender for its purpose may not be promoted as long as the reasons alleged to justify the waiver persist.

Withdrawal from the procedure must be based on an irremediable infringement of the rules for the preparation of the Contract or those governing the award procedure, and the concurrence of the cause must be justified in the dossier. Withdrawal must not prevent the immediate initiation of a new tendering procedure.

9. FORMALISATION OF THE CONTRACT.

9.1. FORMALISATION OF THE CONTRACT

In accordance with the provisions of Article 29.3.b) of Law 38/2023, of 17 November, General Subsidies, the Contract must be authorised by the Secretary of State for Telecommunications and Digital Infrastructures.

Once awarded, the Contract will be formalised in an administrative document and will be exactly adjusted to the conditions of the tender, this document constituting sufficient title to access any public registry.

Along with the formalisation of the contract, the contractor must provide completed Annexes IV and V.

However, the Contractor may request that the Contract be made a public deed, at its own expense.

The execution of the contract may not begin without its prior formalisation.

When, for reasons attributable to the successful bidder, the Contract has not been formalised within the period indicated in the following section, the amount of 3 per cent of the base tender budget, excluding VAT, will be required as a penalty, payable first against the definitive guarantee, if it has been constituted, without prejudice to the provisions of article 71.2.b) LCSP.

In this case, the Contract will be awarded to the next bidder in the order in which the bids have been classified, upon presentation of the documentation established in Article 150.2 LCSP, with the deadlines established in the previous section being applicable.

If the causes of the non-formalisation are attributable to BSC-CNS, the Contractor will be compensated for the damages that the delay may cause.

The formalisation of the contract perfects it, and therefore enforcement cannot begin without it having taken place.

Once the Contract has been formalised, it will be published in the Contractor Profile with the same data as the award notice.

9.2. DEADLINE FOR THE FORMALISATION OF THE CONTRACT

The formalisation of the contract may not take place until ten calendar days have elapsed from the day following the notification of the decision to award the contract in accordance with the provisions of Article 58 of Royal Decree Law 36/2020, of 30 December:

1. In contracts to be financed with funds from the Recovery, Transformation and Resilience Plan that are subject to special appeal in procurement matters in accordance with the provisions of Article 44 of Law 9/2017, of 8 November, on Public Sector Contracts and provided that the contractor selection procedures have been effectively processed electronically:
 - a) The Contracting Authority may not proceed with the formalisation of the contract until ten calendar days have elapsed from the day following the notification, the decision to award the contract. In this same case, the period for filing the special appeal in procurement matters, where applicable, will be ten calendar days and will be calculated in the manner established in Article 50.1 of Law 9/2017, of 8 November.
 - b) The body competent to rule on the appeal must expressly rule, within five working days of the filing of the appeal, on the concurrence of any of the grounds for inadmissibility established in Law 9/2017, of 8 November, and on the maintenance of the precautionary measures adopted, including the cases of their automatic pension.
2. Special appeals in procurement matters that are filed against the acts and decisions issued in relation to the contracts referred to in this article are urgent and take absolute preference before the respective bodies that are competent to resolve.

10. EXECUTION OF THE CONTRACT AND MODIFICATION THEREOF

10.1. EXECUTION OF THE CONTRACT

- The execution of the Contract may not begin without its prior formalisation.
- The Contract will be executed in accordance with its provisions and the Specifications, and in accordance with the instructions given to the Contractor for its interpretation by BSC-CNS.

- The Contractor is obliged to fully execute the contract under the terms provided for in Articles 192 and 197 LCSP.
- If, during the execution of the work, the Contract is modified in accordance with the provisions of these Specifications, action will be taken in the manner provided for in Arts. 190, 191 and 203 LCSP. Each time the contractual conditions are modified, the Contractor is obliged to update the Work Schedule.
- In the event of a contract suspension, the provisions of Article 208 LCSP and its implementing regulations will apply. If BSC-CNS agrees to a suspension of the work, the corresponding Suspension Certificate will be drawn up.
- In accordance with art. 311 LCSP, the Contractor will be responsible for the services provided and for the consequences that may result for BSC-CNS or for third parties of omissions, infringements of precepts or regulations, errors, inadequate methods or incorrect outcomes in the execution of the Contract.
- The Contracting Authority will determine whether the service provided by the Contractor complies with the requirements established for its execution and compliance, as established in Article 311 LCSP.
- The successful bidder will guarantee the service under the agreed conditions, throughout the term of the Contract, without it being altered during vacation periods and in other similar circumstances.
- Acceptance will be carried out in accordance with the provisions of Arts. 210 LCSP.
- The Contractor will comply with the special conditions of execution indicated in section K) of the Table of Characteristics.
- The Contractor will comply with the essential contractual obligations indicated in the Table of Characteristics.

Failure to comply will lead to the initiation of proceedings for the imposition of penalties which, in accordance with their proportionality, will be between 3.01% and 5% of the Contract award price, excluding VAT.

10.2. WORK SCHEDULE

Once the service has been awarded, the Contractor will submit a schedule for the execution of the work in such a way that it adjusts to the start dates and initial or subsequent execution period indicated, and BSC-CNS, through the Contract Manager, may impose the introduction of modifications or compliance with certain requirements, provided that they do not contravene the clauses of the Contract.

The Schedule must include, where appropriate, the following information for the Contractor:

Determination of the necessary means, such as personnel, facilities, equipment and materials, with the expression of their average performance.

Estimate in days of the execution times of the various services, equipment and facilities.

Monthly and cumulative assessment of the scheduled service.

At the same time, and during the execution of the work, a restudy of the monthly plan will be required in which the adjustments made will be included.

10.3. MODIFICATION

- With regard to the modification of the Contract, once it has been concluded, it will be necessary to comply with the provisions of section N of the Table of Characteristics.
- In these cases, the modifications agreed by the Contracting Authority will be mandatory for contractors, provided that they do not involve a variation of more than 20% in the contract price.
- In the event that the modification involves the elimination or reduction of units, the Contractor will not be entitled to claim any compensation.
- Modifications to the Contract that are not duly approved by the Contracting Authority, in accordance with the provisions of these Specifications, will give rise to liability on the Contractor, who will forfeit all right to payment for such modifications executed without authorisation.

11. OBLIGATIONS OF THE SUCCESSFUL BIDDER

11.1. OBLIGATIONS IN PROJECTS FINANCED WITH FUNDS FROM THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN

The Contractor and Subcontractors will comply with the following obligations:

- Comply with European and national obligations regarding the financing of the EU Recovery and Resilience Facility.
- They will observe the control and audit measures set out in Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.
- The successful bidder is obliged to comply with the milestones and objectives detailed in Annex IX of these specifications, within the time limits set, and must carry out the tests and submit to the established control mechanisms.
- In relation to green labelling and digital labelling, the Contractor will ensure compliance with the climate and digital labelling obligations, with a percentage of 0 per cent and 100 per cent respectively, in accordance with the provisions of the RTRP and the Recovery and Resilience Facility, established by Regulation (EU) 2021/241 of the European Parliament and of the Council. of 12 February 2021, as well as with the provisions of Order HFP/1030/2021, of 29 September.
- Mandatory compliance with the obligations assumed by the application of the principle of do no significant harm (DNSH): The Contractor, in compliance with the provisions of the Recovery Plan, in Regulation (EU) 2021/241 of 12 December 2021,

February 2021 establishing the Recovery and Resilience Facility, and its implementing regulations, in particular the Commission Communication (2021/C 58/01) Technical guidance on the application of the principle of not causing significant harm, as well as with the requirements of the Council Implementing Decision on the approval of the evaluation of the Recovery and Resilience Plan for Spain (CID), is obliged to ensure that all financed actions that will be carried out within the framework of this contract respect the principle of not causing significant harm to the environment (DNSH principle, "Do No Significant Harm"). This includes compliance with the specific conditions provided for in Component 15, Investment 5 in which it is framed and especially in the Annex to the CID and those set out in sections 3 and 8 of the Plan Component document.

In particular, in relation to the non-DNSH principle, the contractor undertakes that:

1. The activities to be carried out in execution of the contract do not cause significant harm to the following environmental objectives, according to Article 17 of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investments through the implementation of a classification system (or 'taxonomy') of environmentally sustainable economic activities:
 - a. Climate change mitigation – an activity is considered to cause significant harm to climate change mitigation if it results in significant greenhouse gas (GHG) emissions.
 - b. Climate change adaptation – an activity is considered to cause significant harm to climate change adaptation if it results in an increase in the adverse effects of current and expected future climatic conditions on itself or on people, nature or assets.
 - c. Sustainable use and protection of water and marine resources - an activity is considered to cause significant harm to the sustainable use and protection of water and marine resources if it is detrimental to the good status or good ecological potential of water bodies, including surface and groundwater, and to the good ecological status of marine waters.
 - d. Circular economy, including waste prevention and recycling – an activity is considered to cause significant harm to the circular economy, including waste prevention and recycling, if it generates significant inefficiencies in the use of materials or in the direct or indirect use of natural resources; if it results in a significant increase in waste generation, incineration or disposal; or whether long-term waste disposal can cause significant and long-term harm to the environment.
 - e. Prevention and control of pollution to air, water or soil - an activity is considered to cause significant harm to pollution prevention and control when it results in a significant increase in emissions of pollutants to air, water or soil.
 - f. Protection and restoration of biodiversity and ecosystems - an activity is considered to cause significant harm to the protection and restoration of biodiversity and ecosystems when it is largely detrimental to the good condition and resilience of ecosystems, or is detrimental to the conservation status of habitats and species, in particular those of interest to the Union.

2. The activities will be adapted, where appropriate, to the characteristics and conditions set for the measure and sub-measure of the Component and reflected in the Recovery, Transformation and Resilience Plan.

3. The activities carried out in execution of the contract will not be excluded for financing by the Plan when complying with the DNSH principle in accordance with the Technical Guide on the application of the principle of "*do no significant harm*" pursuant to the Regulation on the Recovery and Resilience Facility (2021/C 58/01), the Proposal for a Council Implementing Decision on the approval of the evaluation of the Recovery and Resilience Plan of Spain and its Annex.

Excluded activities are:

- The construction of crude oil refineries, coal-fired power plants and projects involving the extraction of oil or natural gas, due to the detriment to the climate change mitigation objective.
- Activities related to fossil fuels, including the subsequent use of fossil fuels, except for projects related to the generation of electricity and/or heat using natural gas, as well as related transmission and distribution infrastructure, which meet the conditions set out in Annex III of the European Commission's Technical Guide.
- Activities and assets under the EU Emissions Trading System (ETS) for which the greenhouse gas emissions they will cause are expected not to fall below the relevant benchmarks. Where it is expected that the greenhouse gas emissions caused by the subsidised activity will not be significantly lower than the benchmarks, a reasoned explanation must be provided.
- Compensation for indirect ETS costs.
- Activities related to waste landfills and incinerators; this exclusion does not apply to actions in plants dedicated exclusively to the treatment of non-recyclable hazardous waste, or in existing plants, where such actions are aimed at increasing energy efficiency, capturing exhaust gases for storage or use, or recovering materials from incineration ash, provided that such actions do not lead to an increase in the waste treatment capacity of the plants or to an extension of their useful life; these details must be documented for each plant.
- Activities related to mechanical-biological treatment plants; this exclusion does not apply to actions in existing mechanical-biological treatment plants, where such actions are aimed at increasing their energy efficiency or their refurbishment for separate waste recycling operations, such as composting and anaerobic digestion of bio-waste, provided that such actions do not lead to an increase in the waste treatment capacity of the plants or to an extension of its useful life; these details must be documented for each plant.
- Activities where long-term disposal of waste may cause damage to the environment.

4. The activities carried out in execution of the Contract will not cause direct effects on the environment, nor primary indirect effects throughout its life cycle, understood as such those that could materialise after their completion, once the activity has been carried out.

- For the purposes of audit and control and based on the provisions of Article 22 of Regulation (EU) 2021/241 on the Recovery and Resilience Facility, and Article 8.2 of Order HFP/1030/2021, of 29 September, it must provide the Contracting Authority with the data of the subcontractors and final recipients of the contract price. These data will be incorporated into a single database. Thus, the requirements in relation to the identification of contractors and subcontractors are:
 1. NIF of the contractor or subcontractor.
 2. Name or company name.
 3. Where applicable, the date of birth of the beneficial owner as defined in Article 3, point 6 of Directive (EU) 2015/849.
 4. Tax domicile of the contractor and, where applicable, of the subcontractor.
 5. Acceptance of the transfer of data between the Public Administrations involved in order to comply with the provisions of the applicable European regulations and in accordance with Organic Law 3/2018, of 5 December, on the Protection of Personal Data and guarantee of digital rights (Model annex IV.B of Order HFP 1030/2021).
 6. Responsible declaration regarding the commitment to comply with the cross-cutting principles established in the RTRP and that could affect the area under management (Model annex IV.C of Order HFP 1030/2021).
 7. Contractors will prove their registration in the Census of entrepreneurs, professionals and withholders of the State Tax Administration Agency or in the equivalent census of the Regional Tax Administration, which must reflect the economic activity effectively carried out on the date of application for the aid.
- This contract is fully subject to the provisions of the Anti-Fraud Measures Plan, including conflict of Interests. The BSC has approved an Anti-fraud plan. The Plan that is published in the BSC-CNS Transparency Portal will apply. All the above is in accordance with the terms of Article 6 of Order HFP/1030/2021. In the event of a variation in the same during the execution of the Contract, this will be communicated to the Contractor for information purposes.
- Bidding entities, contractors and subcontractors must complete a Declaration of Absence of Conflict of Interest (DACI) included as Annex III in these specifications.
- They will also be subject to the controls of the European Commission, the Anti-Fraud Office, the European Court of Auditors and the European Public Prosecutor's Office and the right of these bodies to access information on the contract. The Contractor is required to authorise and grant the rights and access necessary to ensure that the European Commission, the Anti-Fraud Office, the European Court of Auditors and the European Public Prosecutor's Office as well as the competent national auditors exercise the rights granted to them by Article 129(1) of the Financial Regulation.
- The Contractor will be responsible for the reliability and monitoring of the execution of the actions subject to the contract, so that the level of achievement of each action and the milestones and objectives that have been established in this regard can be known at all times.

- It must establish mechanisms to ensure that the actions to be carried out by third parties contribute to the achievement of the planned actions and that these third parties provide the information that, where appropriate, is necessary to determine the value of the monitoring indicators of the Recovery, Transformation and Resilience Plan.
- It assumes the maintenance of an adequate audit trail of the actions carried out within the framework of this contract, and the obligation to maintain the supporting documentation. The provision of the information will be carried out under the terms established by the Ministry of Finance in accordance with national and European Union regulations.
- Obligation to ensure the regularity of the underlying expenditure and the adoption of measures aimed at preventing, detecting, reporting and correcting fraud and corruption, preventing conflict of interest and double financing.
- Audit trail requirements: obligation to keep track of each of the investments and each of the final recipients of the funds, as well as to have a system in place to calculate and monitor compliance with objectives and measurement of indicators, in accordance with Article 22(d) of Regulation (EU) 2021/241.
- Information, communication and publicity obligations referred to in Article 34 of Regulation (EU) 2021/241 on the Recovery and Resilience Facility on European funding of the measures included in the Recovery, Transformation and Resilience Plan, as well as in Article 9 of Order HFP/1030/2021 of 29 September 2021 setting up the management system for the Recovery, Transformation and Resilience Plan.
- Obligation to comply with the rules on the retention of documentation, in accordance with the provisions of Article 132 of the Financial Regulations. Custody and conservation of documentation linked to the activity financed by the RRF.
- Obligation for the contractor and subcontractors to provide information relating to the "Beneficial Owner" of the final beneficiary of the funds in the manner provided for in Article 10 of Order HFP/1031/20321, of 29 September and in the terms established in point 6, of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council, in order to comply with the requirement of Article 22.d) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021:

'Beneficial owner' means the natural person or persons who ultimately own or control the customer or the natural person(s) on whose behalf a transaction or activity is carried out, including, at least:

a) In the case of legal persons:

- the natural person or persons who ultimately own or control a legal person through direct or indirect ownership of a sufficient percentage of shares or voting rights or ownership rights in that entity, including bearer share portfolios, or through control by other means; except for companies listed on a regulated market that are subject to reporting requirements in accordance with Union law or equivalent international standards that guarantee adequate transparency of information on the property.

- The fact that a natural person has a share capital of 25% plus a share or an ownership right of more than 25% in the customer will be an indication of direct ownership. The fact that a company, which is controlled by one or more natural persons, or that multiple companies, which are themselves controlled by the same person or natural persons, has a share capital interest of 25% plus a share or an ownership right of more than 25% in the customer will be an indication of indirect ownership. The foregoing will apply without prejudice to the right of Member States to decide that a lower percentage may be indicative of ownership or control. The existence of 'control by other means' may be determined, inter alia, in accordance with the criteria set out in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council;
- In the event that, after exhaustion of all possible means and provided that there is no cause for suspicion, no person is identified in accordance with subparagraph (i), or in the event of doubt about whether the identified person or persons are the beneficial owners, the natural person(s) holding a high-level managerial position, the obligated entities will keep records of the measures taken to identify the beneficial owner under subparagraph (i) and this subparagraph;

b) In the case of trusts:

- The settlor,
- The trustee or trustees,
- The protector, if there is one,
- The beneficiaries; or where the beneficiaries of the legal entity or structure are yet to be designated, the category of persons for whom the legal entity or structure has been created or principally acts;
- Any other natural person who ultimately exercises control of the trust through direct or indirect ownership or through other means;

In the case of legal entities such as foundations, and legal structures similar to trusts, this category includes the natural person or persons who hold an equivalent or similar position to those referred to in point (b).

11.2. LABOUR OBLIGATIONS, ENVIRONMENT, DATA PROTECTION AND INTELLECTUAL PROPERTY

The successful bidder is obliged to comply with the provisions in force on tax, labour, social security, prevention of occupational risks or social protection, safety and hygiene at work, protection of data intellectual property and in general, any other regulations that are applicable to their activity.

These provisions give rise to the following obligations for the successful bidder:

a) Labour obligations:

- The Contractor is obliged to comply with current regulations on labour, Social Security and Occupational Health and Safety. Failure by the Contractor to comply with these obligations will not imply any liability for BSC-CNS.
- In the event that this is indicated in Annex III and in section O) of the Table of Characteristics, the successful bidder must be subrogated as the employer in the employment contracts whose conditions are included in the complementary documentation to this dossier. In the event that the aforementioned Annex does not include such an obligation, subrogation will only be mandatory if the applicable legislation or the specific collective agreement so determines. This Annex will contain a list of personnel indicating age, seniority, professional category and other acquired rights, which the new company must respect. Such data are provided for information purposes only, having been provided by the company currently providing the service without the Contracting Authority being responsible for the accuracy, completeness or veracity of the same, all without prejudice to the legal effects originating in the company supplying them.
- All personnel working on behalf of the successful bidder must be covered by the corresponding employment contract. Said personnel will not acquire any employment relationship with BSC-CNS, as they are dependent solely and exclusively on the successful bidder, who will have all the rights and obligations inherent to their status as employer with respect to the aforementioned personnel, in accordance with the Labour Legislation, without BSC-CNS being responsible for the obligations arising between the successful bidder and its employees, even when the dismissals or other measures adopted are a direct or indirect consequence of the compliance, non-compliance, termination or interpretation of this contract. Likewise, the successful bidder must register with the Social Security all the personnel who provide their services in the activity and sign the Association document with the corresponding Mutual Benefit Society, which covers the risks of accidents at work, in exact compliance with what is established or established by the legislation on the matter, as well as the safety regulations, occupational health and occupational risk prevention.
- There will be no employment relationship between the personnel assigned by the successful bidder to the execution of the contract and BSC-CNS, since the aforementioned personnel are expressly subject to the managerial and organizational power of the successful bidder in any legally established area and order and therefore the latter is solely responsible and obliged to comply with any legal provisions applicable to the case, especially in matters of recruitment, Social Security and Safety and Health at work, since said personnel will in no case have a legal-labour relationship with BSC-CNS, and this regardless of the powers of control and inspection that legally or contractually correspond to it.
- The successful bidder assumes under its responsibility that it will comply with and ensure that all its workers comply with the work standards and operating procedures established by the Occupational Risk Prevention Service.
- BSC-CNS may request the successful bidder to provide a copy of the Social Security registration, deregistration or alteration reports of all the personnel assigned to the awarded works, as well as a copy of the settlements of contributions made to the Social Security, forms TC1 and TC2 or those that may replace the aforementioned in the future. Whenever requested by BSC-CNS, the Contractor must also make available to the former precise information on the contracts of the personnel of their company used for the execution of this Contract. Any change that occurs must be notified in advance and in a reliable manner to the managing unit, and

the reduction in the number of workers assigned to the fulfilment of the contract or their replacement by personnel who do not have the same work qualifications is not allowed. The notification made to that effect by the successful bidder must state the professional category, type of contract, seniority, number of weekly working hours and daily hours, both of the people it intends to replace and those it wishes to incorporate.

- The successful bidder will comply with the obligation to maintain, during the term of the contract, at least two percent (2%) of workers with disabilities, or with the execution of the alternative measures authorized and declared, in accordance with the documentation provided at the time of the tender, in the event that it is obliged to do so, in accordance with article 42.1 of Royal Legislative Decree 1/2013, of 29 November, which approves the Revised Text of the General Law on the Rights of Persons with Disabilities. BSC-CNS may request the necessary documents for the effective accreditation of its compliance at any time during the execution of the contract.
- It will also be obliged to comply exactly with the provisions of current social legislation and the prevention of occupational risks, at its own expense and risk all kinds of social insurance, subsidies, compensation, remuneration and, in general, any other obligation of a labour nature.
- It is the obligation of the Contractor to comply with the salary conditions of the workers in accordance with the applicable sectoral Collective Agreement.

b) Measures for the effective equality of women and men.

The characteristics of the conditions of contractual performance, taking into account the nature of this contract and the sector of activity where its services are generated, are that a minimum of 25% of women holding jobs, professions or positions in which they have been under-represented participate in the execution of the object of the contract. Hiring is not limited to the occupation of typically feminised positions.

c) Obligations in matters related to the environment.

The Contractor is obliged to comply with the provisions in force on environmental protection that are established both in the regulations in force and in the specifications that govern this contract.

The Contracting Authority may indicate in the Technical Specifications the body or bodies from which tenderers may obtain the relevant information relating to the aforementioned obligations.

d) Data protection

In accordance with the provisions of current regulations on data protection, the controller of the data is BSC-CNS (hereinafter, the Data Controller).

The Data Controller is entitled to process the data provided by the bidders on the occasion of participation in this tender for the following purposes:

- a) Manage the participation of bidders in the tender. This processing is legitimised by the consent validly given by them at the time of submitting their application.
- b) The data of the successful bidder will be used for the control and execution of the legal relationship that arises between the parties. The processing is legitimised by virtue of the execution of the contract that will govern the provision of the service covered by the contract.

- c) Publication of the data of the bidders and the successful bidders through the means that BSC-CNS deems appropriate, especially through the company's website, which collects information about, among other aspects, contracts and suppliers. This purpose is authorised by the LCSP.

Personal data will only be processed and kept for as long as the relationship persists and once it has ended, for as long as the Data Controller is entitled to process and/or store them in accordance with the deadlines established by current legislation.

With regard to the personal data collected for processing, bidders have the possibility of exercising their rights of access, rectification, deletion and portability. Likewise, in certain circumstances, bidders will have the right to request the limitation or opposition of the processing of their data, in which case the Data Controller will cease to process them and will only keep them for the exercise or defence of claims.

The exercise of the aforementioned rights may be made by means of a written request addressed to the Data Controller through the contact details indicated in the Table of Characteristics, under the terms subscribed to by current legislation. Likewise, at any time, complaints may be addressed indistinctly to the Data Controller or the Spanish Data Protection Agency through the forms that this entity has enabled for this purpose and that are accessible through its website, <https://sedeagpd.gob.es>.

If, in order to provide the service, it is necessary to access personal data for which BSC-CNS is responsible, the successful bidder would hold the status of Data Processor, for the purposes of data protection regulations. In this case, it will be necessary to formalise a contract regulating the conditions of such processing, which must contain at least the following aspects:

- a) Commitment to process the data solely and exclusively in accordance with the documented instructions provided by BSC-CNS, and to inform BSC-CNS of any indication that, in the opinion of the successful bidder, infringes data protection regulations. Compliance with BSC-CNS's instructions must also occur in the case of sub-processors and international data transfers that must be previously authorised by BSC-CNS.
- b) In the event that the successful bidder determines the purposes and means of the processing, it will be considered responsible, being subject to the legal responsibilities established in the data protection regulations.
- c) For the purposes of complying with the provisions of Article 32 of the GDPR, the commitment to implement and update the appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of the processing, as well as risks of varying probability and severity for the rights and freedoms of natural persons.
- d) Provision to BSC-CNS of all the information necessary to demonstrate compliance with the obligations established in the General Data Protection Regulation (hereinafter, GDPR), as well as in the corresponding Organic Law. In this sense, it undertakes and is obliged to allow and contribute to the performance of audits, including inspections, by BSC-CNS or another auditor authorized by it.
- e) In the event that in order to carry out the processing operations of the Specifications, it is necessary to carry out the impact assessment of article 35 of the GDPR, the

commitment of the awardee to assist BSC-CNS in the conduct and maintenance of impact assessments and prior consultation.

- f) Obligation to notify BSC-CNS, without undue delay, of any breaches of the security of the personal data in its charge of which it is aware, together with all the relevant information for the documentation and communication of the incident.
- g) Maintenance of the record of processing activities, unless the exception provided for in Article 30.5 GDPR applies.
- h) At the option of BSC-CNS, once the provision of the service has been completed, the obligation of the successful bidder to:
 - Delete all personal data and existing copies, unless a legal regulation stipulates the need to keep them. Storage, in which case the deletion of the personal data will not be admissible or
 - Return of all personal data once the provision of the processing service has ended, and deletion of any copies that may have been made.

e) Intellectual or industrial property

The name BSC-CNS and its logo constitute a distinctive sign registered with the Spanish Patent and Trademark Office, of which BSC-CNS is the owner. Participation in this tender or the eventual award of the same, does not grant any right of use over the aforementioned trademark.

BSC-CNS will be the exclusive owner of the results that form the subject matter of these Specifications, as well as of all the industrial and intellectual property rights that are generated as a result of the execution of the contract, including, where appropriate, possible updates, modifications, documentation, manuals, etc. that are created during the term of the Contract.

In relation to work protectable under intellectual property, the successful bidder must exclusively assign all rights over the works, including the rights of reproduction, distribution, public communication and transformation, without any limitation, for all modes of exploitation known at the time of signing the contract for the maximum legally possible time and with a scope of worldwide effectiveness, without any additional financial compensation. In the event that the work is computer programs, the successful bidder must deliver the source code of the software created once the service has been completed, or if applicable, at the time the contract is terminated by any of the parties.

In the case of industrial property rights, ownership is equally exclusive and will include the possibility of exploiting them in any field and of registering them or not with any industrial property offices, with a worldwide scope and for the maximum legally possible time.

The successful bidder must be the owner or have the authorisation of the holder of the exploitation rights, of the intellectual and industrial property rights necessary for the execution of the Contract, a circumstance that may be verified by BSC-CNS at any time during the term of the Contract. Thus, the successful bidder will exonerate BSC-CNS from any type of liability to third parties for claims of any kind arising from the supplies, materials, procedures and means used for the execution of the contract subject to these Specifications, from the holders of the intellectual and industrial property rights over them.

11.3. COMPLIANCE WITH DEADLINES

The successful bidder is obliged to comply with the total term of execution of the contract set by the BSC-CNS.

The successful bidder is obliged to comply with the milestones and objectives detailed in Annex IX of these specifications, as well as those defined in section D.2 of the Table of Characteristics, within the time limits set and must carry out the tests and submit to the established control mechanisms.

If, at the end of the total period mentioned, the Contractor has incurred a delay for reasons attributable to it, the BSC-CNS may opt for the termination of the contract or for the imposition of economic penalties. These will be daily, in the proportion of 0.60 euros for every 1,000 euros of the contract price. In any case, delay on the part of the Contractor will not require any prior interpellation or intimation by the BSC-CNS.

Whenever the penalties for delay reach a multiple of 5% of the contract price, the Contracting Authority will be empowered to proceed with the termination of the contract or agree to the continuation of its execution with the imposition of new penalties.

The application and payment of penalties do not exclude compensation for damages to which BSC-CNS may be entitled, due to the Contractor's delay.

11.4. PROFESSIONAL SECRECY

The successful bidder undertakes to maintain the strictest confidentiality and secrecy regarding confidential information, promising not to disclose it to third parties, except in the cases specifically provided for in these Specifications, and must implement the technical, legal, training and organisational measures that guarantee these confidentiality and secrecy obligations.

The successful bidder undertakes to limit access to confidential information to the persons in its organisation who strictly need access to the performance of the contract, and must on the other hand, prior to such access to confidential information, sign a confidentiality contract that guarantees compliance with the provisions of these specifications.

Confidential information may only be used by the successful bidder within the framework of this commitment and for the sole purpose of compliance and development thereof, and may not be used or applied for any other type of purpose or purpose other than that set out in the Contract.

At the time of termination of the contract, for whatever reason, the successful bidder, in general and unless specified otherwise in the Contract, must proceed to return the information and, where appropriate, to effectively and securely delete it from its computer systems in the event that it has been incorporated into them.

The duty of confidentiality will remain in force during the Contract term and for five (5) years after its termination, regardless of the cause that motivates the termination. For its part, the territorial scope of the confidentiality commitment will be global.

Confidential information will be understood as any data, procedures, techniques, know-how, information or explanations generated in relation to the above elements, regardless of their nature, whether technical, commercial or economic, that BSC-CNS discloses,

communicates or makes available to the successful tenderer, regardless of the means or procedure used to do so, including oral communication, during the term of the contract.

However, information that the successful bidder is in a position to prove that:

- Was known to the successful bidder by a legitimate means prior to having been received from BSC-CNS;
- Was known either at the time of receipt from BSC-CNS, or later becomes public or in the public domain;
- Was received through third parties who do not have any obligation of confidentiality to the successful bidder;
- Was developed by the successful bidder regardless of the confidential information they have received from BSC-CNS as long as it can be documented in evidence; or
- The successful bidder is obliged to inform a third party by legal requirement will not be considered Confidential Information and will therefore not be subject to the obligations set out in this Clause. However, in this case, the successful bidder will notify BSC-CNS as soon as possible of this circumstance so that it may take the measures it deems appropriate in order to preserve the confidentiality of said Information. In any case, the successful bidder undertakes to provide only the information that it is obliged to disclose, and to take any actions may be necessary to preserve the confidentiality of the information.
- BSC-CNS authorises it to disclose.

11.5. SPECIAL RULES REGARDING THE PERSONNEL OF THE CONTRACTOR COMPANY

1. It is the exclusive responsibility of the contractor company to select the personnel who, having the qualification and experience requirements set out in the specifications (in cases where specific qualification and experience requirements are established), will form part of the work team assigned to the execution of the contract, without prejudice to the verification by the BSC-CNS of compliance with those requirements.

The contractor company will ensure that there is stability in the work team, and that variations in its composition are occasional and based on justified reasons, to avoid altering the proper functioning of the service (when there are reasons that justify this requirement), informing the BSC-CNS at all times.

2. The contractor company assumes the obligation to exercise the power of management inherent to any employer over the personnel who are members of the work team in charge of the execution of the Contract, in a real, effective and continuous manner. In particular, it will assume the negotiation and payment of wages, the granting of leave, authorisations and holidays, the substitution of workers in cases of sick leave or absence, the legal obligations in the Social Security area, including payment of contributions and of benefits, where appropriate, the legal obligations related to occupational risk prevention, the exercise of disciplinary powers, as well as any rights and obligations arising from the contractual relationship between employee and employer.

3. The contractor company will take special care to ensure that the workers assigned to the execution of the Contract carry out their activity without exceeding the functions performed in relation to the activity delimited in the specifications as the object of the Contract.
4. The contractor company must designate at least one technical coordinator or manager integrated into its own staff, who will have the following obligations, among others:
 - a) Act as an interlocutor of the contractor company before the BSC-CNS, channelling communication between the contractor company and the staff members of the work team assigned to the contract, on the one hand, and the BSC-CNS, on the other hand, in all matters relating to the execution of the contract.
 - b) Distribute the work among the personnel in charge of the execution of the Contract, and give said workers the work orders and instructions that are necessary in relation to the provision of the contracted service.
 - c) Supervise the correct performance by the members of the work team of the functions entrusted to them, as well as control the attendance of said personnel at the workplace.
 - d) Organise the holiday regime for the personnel assigned to the execution of the Contract, and for this purpose, the contractor company must be adequately coordinated with BSC-CNS, in order to avoid altering the proper functioning of the service.
 - e) Inform the BSC-CNS about any occasional or permanent variations in the composition of the work team assigned to the execution of the Contract.
 - f) With regard to the relationship between the successful bidder and the BSC-CNS, all communications between both entities must be in writing, with the contact person at the BSC-CNS being the person designated by the management of the centre.

12. RIGHTS OF THE CONTRACTOR: PAYMENT OF THE WORK AND INVOICING

12.1. PAYMENT

Payment for the services will be made as indicated in section C.8) of the Table of Characteristics.

The Contractor is entitled to receive payment of the price agreed upon in the award, for the work actually carried out and formally received in accordance with the BSC-CNS, but it will not be entitled to compensation for breakdowns and damages caused in the execution of the Contract, unless the BSC-CNS is at fault.

For payment on account of preparatory actions, stockpiling of materials and equipment of machinery assigned to the services, the provisions of Articles 198 LCSP will apply. The Contractor will also be entitled to receive payments on account for the amount of the operations preparatory to the execution of the contract and which are included in the object of the Contract, under the conditions indicated in the respective specifications, and the aforementioned payments must be backed by the provision of a guarantee.

The Contractor may not claim any price or compensation for work performed outside the stipulations of the Contract, even if it alleges and proves that the services thus performed

were absolutely necessary to ensure the perfect performance of the service as a result of what is indicated in the previous paragraphs.

BSC-CNS will have the obligation to pay the price within thirty days of the approval of the invoice accompanied by the documents that prove the total or partial performance of the Contract, and the invoice must be provided for this purpose.

If BSC-CNS is behind schedule, on the expiry of said thirty-day period, it will pay the Contractor late payment interest and compensation for the costs of collection under the terms provided for in Law 3/2004, of 29 December, which establishes measures to combat late payment in commercial transactions.

The Contractor may assign the right of collection that it has against BSC-CNS pursuant to the Law.

12.2. INVOICING

The Contractor will deliver an invoice to the BSC-CNS incoming register for processing.

The invoices must be conformed by the Person Responsible for the Contract and must be issued in accordance with the provisions in force and, specifically, will include: serial numbering, date of issue, description of the work performed, NIF of the shipper and recipient and VAT charged.

If it is observed that the invoice submitted fails to comply with any enforceable requirement, a request will be made for it to be corrected, and the period for payment will not start to run until it has been corrected.

Depending on each case, the invoice may be electronic or on paper in accordance with the provisions of the regulations governing invoicing obligations detailed below.

– Electronic invoicing

In compliance with the provisions of Article 9 of Law 25/2013, of 27 December, on the promotion of electronic invoicing and creation of the accounting register of invoices in the Public Sector, and Article 14.2 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, contractors who are considered to be legal entities are obliged to submit electronic invoices through **FACe** (<https://face.gob.es/es/>), the general point of entry for electronic invoices of the General State Administration, used by BSC-CNS until it has established its own general point of entry for electronic invoices.

FACe will identify the processing units to which the invoices are addressed in accordance with the identification codes included in the following "Common Directory of Units and Offices DIR3":

- Accounting Office: EA0008330
- Managing body: EA0008330
- Processing unit: EA0008330

The obligation applies to all legal persons, without prejudice to their corporate form and the amount of the invoice.

– Paper invoice

Those issued by individuals or foreign suppliers are excluded from the obligation to submit electronic invoices.

However, natural persons, who are not obliged to invoice electronically, may, in any case, exercise their right to submit electronic invoices.

In cases where electronic invoicing is not used, invoices issued by contractors must be submitted to the General Register of BSC-CNS, without prejudice to the provisions of Article 16 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

The invoice must identify the administrative bodies to which it is addressed.

13. ASSIGNMENT

13.1. ASSIGNMENT

By virtue of Article 214 of the LCSP, it is not envisaged that the parties may assign the rights and obligations arising from the Contract to a third party, since in this tender, the technical qualities of the transferor constitute a decisive reason for the contract award.

13.2. SUCCESSION OF THE SUCCESSFUL BIDDER

In the event of a merger of companies in which the successful bidder participates, the contract in force with the absorbing entity or with the entity resulting from the merger will continue, with the subrogation of all the rights and obligations arising from it. Likewise, in the event of a spin-off, contribution or transfer of companies or branches of activity thereof, the contract will continue with the entity to which the contract is attributed, with the subrogation of the rights and obligations arising from it, provided that it meets the conditions of capacity, absence of prohibition on contracting, and the solvency required when the award is agreed or that the various beneficiary companies of the aforementioned operations and, if it subsists, the company from which the assets, companies or segregated branches come, will be jointly and severally liable with them for the execution of the Contract. If subrogation cannot take place because the entity to which the Contract is attributed does not meet the necessary solvency conditions, the Contract will be terminated, being considered for all purposes as a case of termination due to the fault of the successful bidder.

14. SUBCONTRACTING

By virtue of the speciality included in article 6.5 of Royal Decree 959/2022, of 15 November, which regulates the direct granting of subsidies to Spanish public research centres and foundations and universities for the implementation of innovative projects in the area of cloud computing of the UNICO I+D Cloud Programme, within the framework of the Next Generation EU Recovery, Transformation and Resilience Plan Financed by the European Union, the initial subcontractor or subcontractors may not subcontract any of the R+D work that corresponds to the initial subcontractor(s) to third parties.

15. PENALTIES

15.1. APPLICATION OF PENALTIES

If the Contractor fails to comply with any of the conditions and requirements indicated in these Specifications or in the LCSP, BSC-CNS, after giving reasons, documentation of the non-compliance and after a hearing of the interested party has been offered for a minimum period of 5 calendar days, it may impose the penalties indicated in the following sections, in accordance with the different causes that have motivated them.

Regardless of whether or not the conduct is classified as a contractual breach, BSC-CNS will deduct from the payment to the company the amount corresponding to the unfulfilled obligations, demanding the respective compensation in the event that damages or losses occur.

15.2. PUNISHABLE FAULTS

For contractual purposes, any action or omission by the Contractor that involves a breach of the requirements specified in the Specifications or in the LCSP will be considered a punishable fault.

In order to determine whether or not there is an infringement, the importance of the unfulfilled obligation, the concurrence or non-concurrence of negligence, the recidivism or repetition of the omission of services, the importance of the incidence in relation to the contract as a whole, etc., must be assessed. Therefore, when applying these penalties, the quality of the services provided will be taken into account, and they must be proportional to the type of breach causing the penalty in the Contract as a whole. The procedure for imposing penalties will only be initiated when such an assessment results in the existence of an infraction in a fair and proportional manner. The aforementioned assessment must be carried out in accordance with the above criteria of equity and proportionality.

Any faults committed by the Contractor will be classified according to their relevance, proportionality and intentionality as: minor, serious or very serious, according to the following criteria:

Minor fault: Minor faults will be considered those that, adversely affecting the operation and efficiency of the contract, are not due to actions carried out maliciously, do not entail danger to people, animals or objects, and do not reduce the economic life of the work carried out, or cause inconvenience to users of roads, parks, etc. They include the following, among others:

- Non-observance of the initial and normal operating mechanics in the work.
- Delay or suspension in the provision of the contract of less than three days, and negligence or lack of diligence in the fulfilment of obligations.
- In general, lack of punctuality or failure to comply with their duties due to negligence or excusable neglect.
- Failure to comply with any obligation established in these specifications or in their corresponding Technical Specifications that is not rated with greater severity in these specifications.
- Causing unnecessary disturbance to neighbours.
- Failure to immediately remove surplus materials once the work has been completed.

Serious fault: Serious faults are classified as those which, as a result of the deficient performing of inspections or the different work required, or the contractual deliverables and

requirements, may have a negative effect on the economic life of the work carried out, or cause inconvenience and danger to users or serious damage to the municipal control or inspection of the contracted work. They include the following, among others:

- A delay or suspension in the Contract deliverables of between three and fifteen days, a repeated lack of punctuality, and negligence or continuous carelessness.
- In general, a serious breach of duties and obligations and the commission of three minor offences in the course of one year.
- Not maintaining due discretion about matters known by reason of the Contract that is being executed.
- Failure to repair damage caused to the centre's property or to users as a result of the use of inappropriate products.
- Committing three minor faults in the same year.
- Failure to observe health and safety measures at work.
- Failure to provide any of the agreed operations,
- Lack or absence of staff or material resources.
- The placement of advertising not authorised or allowed under the Technical Specifications.

Very serious fault: Very serious faults are classified as those actions that involve an infringement of conditions of particular importance or that are the result of malicious behaviour by the contractor.

Among others, these include:

- Penalties will be imposed on the contractor for failing to comply with the award criteria or when one or more of the commitments agreed in its bid are breached.
- Financial fraud against BSC-CNS, using invoices that do not reflect the real situation or through any other means, without the existence of intent being necessary.
- Delay or suspension in the provision of the contract equal to or greater than fifteen days or abandonment of the contract.
- Accumulation or repetition of three serious faults committed over the course of a year.
- Clear performance failure, the incorrect or defective provision of the contract, both in its quality and quantity.
- Unjustified refusal to perform the services under the contract or the tasks ordered in writing by the contract manager, provided that this attitude is directly attributable to the successful bidder or its executives, managers or employees.
- Any conduct constituting a crime, especially coercion and theft on the premises.
- Assigning the rights and obligations arising from the contract without the authorisation of BSC-CNS.
- Failure to comply with the obligation of professional secrecy.
- The deliberate allowance of the deterioration of an element or installation.
- Misreporting.
- Not having sufficient staff or material resources to meet the execution period offered or specified under the contract, as well as those requested by the Contract manager.
- Abandonment of the contract.
- Repetition of any serious fault.
- Failure to respect the “do not cause significant damage” to the environment principle, failing to comply with the specific conditions set out in component 15, within the framework and especially in the Annex to the CID and those set out in sections 3 and 8 of the Plan’s Component document.

- Not providing the Absence of Conflict of Interest Declarations for the contractor or not renewing them in the event of a change in circumstances.
- Failure to comply with the special execution conditions.
- Failure to comply with the milestones and targets established in these specifications.
- Failure to comply with the information and publicity obligations set out in section 11.1 of these specifications.
- Failure to comply with the obligations regarding digital and green labelling enshrined in these specifications.
- Failure to comply with the obligations arising from financing with the RRF.

To these penalties, we can add those included in section L) of the Table of Characteristics.

Failure to comply with the special execution conditions will be considered a very serious fault and may give rise to the imposition of penalties for the purposes established in subsection c) of section 2 of article 71 of the Spanish Public Sector Contracts Law (LCSP).

15.3. SIZE OF THE PENALTIES.

For each day of delay in starting the execution of the contract or of the suspension of the execution of the contract, the penalty provided for in article 12.2 of these specifications will be imposed, unless a different one is established in section L of the Table of Characteristics.

In addition, the following penalties will be imposed:

- Minor faults: Each minor fault may be penalised with an amount of between 1% and 3% of the contract award price, excluding VAT.
- Serious faults: For each serious fault committed, the contractor may be penalised with an amount of between 3.01% and 5% of the contract award price, excluding VAT.
- Very serious faults: Very serious faults will be penalised with an amount of between 5.01% and 10% of the contract award price, excluding VAT.

The following may not be invoked as causes of force majeure or just cause for non-compliance with their obligations:

- a) Non-exceptional adverse weather conditions and those that do not have catastrophic effects.
- b) Internal work stoppages at the successful bidder.
- c) Vacations or sick leave of their staff or the staff of third parties.

In the event of non-compliance, the successful bidder must repair the damage caused, all without prejudice to any demand for liability to which the event may give rise.

The amounts of the penalties will be paid by deducting them from payments or, where appropriate, from the deposit.

The imposition of penalties does not prevent compensation being payable to BSC-CNS as a result of the fault.

16. ENDING OF THE CONTRACT

In general, and in accordance with article 209 LCSP, this contract will come to an end due to it being fulfilled or terminated.

16.1. FULFILMENT OF THE CONTRACT

The contract will be understood to have been fulfilled by the contractor when it has completed all of the services in accordance with that established in these specifications and the Technical Specifications, and these services have been received and deemed acceptable by the BSC-CNS, without the latter having made any complaints.

In the event that the services are not in conditions that allow them to be received or the BSC-CNS has made any complaints in due to non-compliance by the contractor, this must be properly documented and the BSC-CNS will give instructions to the contractor so that it may remedy such non-compliance or defects observed. If even after this the Services do not reflect that set out in the contract for reasons attributable to the contractor, the BSC-CNS will be able to reject those services and be released from the obligation to make any payment for them, it being understood that this starts from the date of non-compliance of provision of the service or deficient provision.

16.2. GUARANTEE PERIOD

The guarantee period will be, where appropriate, that established in section D.4) of the Table of Characteristics, or, where appropriate, the period offered by the successful bidder.

If during this period the existence of defects in the work performed is proven, the contracting body will have the right to demand their correction.

After the expiry of the guarantee period indicated, assuming that BSC-CNS has not made any objections, the Contractor will be released from all liability in relation to the service provided.

16.3. TERMINATION OF THE CONTRACT

The grounds for termination of the contract will be those established in these Specifications and arts. 211 and 313 of the LCSP, with the effects provided for in art. 313 LCSP.

Likewise, in relation to article 215.3.b) of the LCSP and article 67.2.p) of Spanish Royal Decree 1098/2001, the infringement of the conditions provided for in article 215.2 of the LCSP for subcontracting will be considered grounds for termination of the contract.

When the contract is terminated due to the fault of the successful bidder, the definitive guarantee will be seized, without prejudice to claims for any compensation, where appropriate, for damages caused to the BSC-CNS, to the extent that these exceed the amount of the guarantee seized.

17. POWERS AND JURISDICTION

17.1. POWERS OF THE CONTRACTING AUTHORITY

The contracting authority has the power to interpret this contract and resolve any doubts arising from its fulfilment. Likewise, it may modify it, in accordance with the provisions of article 203 and following of the LCSP, agree to its termination and determine the effects thereof, within the limits and subject to the requirements and effects indicated in the LCSP and declare the liability attributable to the contractor as a result of the execution of the contract.

The agreements issued by the contracting authority, following a report from the Legal Department, in the exercise of its powers of interpretation, modification and termination, will represent the end of the administrative procedure and will be immediately enforceable.

17.2. JURISDICTION

The following may optionally be filed against these specifications and the decisions issued in its performance:

- Special appeal, where appropriate (in accordance with the provisions of section P) of the Table of Characteristics) in matters of public procurement before the Central Administrative Court of Contractual Appeals within the period of ten calendar days, according to article 50 LCSP and article 58 of Spanish Real Decree Law 36/2020. If the award is appealed, this agreement will be automatically suspended. If the award is appealed, this agreement will be automatically suspended.
- Contentious Administrative Appeal once the administrative remedies have been exhausted; within two months. This period will be calculated from the day following the notification or publication of the agreement being appealed in accordance with the provisions of Spanish Law 29/98, of 13 July, regulating that jurisdiction.

ANNEX I. FORM FOR PROPOSING CRITERIA QUANTIFIABLE THROUGH USE OF A FORMULA

(Include in envelope 3)

Mr/Ms....., resident of, with address in....., on their own behalf or in representation of, aware of the Specifications of the Specific Administrative Clauses and Technical Specifications approved by the BSC-CNS that must govern the procedure for "CONSER02024036OP Service for the porting and development of an existing software component, i.e. Dyninst, to the RISC-V architecture within the framework of the Recovery, Transformation and Resilience Plan of the project for the development of technologies for the generation of prototypes based on RISC-V technology" and accepting the contents of these in full, on behalf of..... (themselves or the person or entity they represent, in the latter case specifying their role), undertakes to provide the service described for the amount stated in this financial proposal:

1. Financial offer

| Maximum tender Price (excluding VAT) | Price offered by the bidder, in figures (excluding VAT) | Price offered by the bidder, in words (excluding VAT) | VAT amount in figures |
|---|--|--|-----------------------|
| € 120,000.00 | | | |

2. Promoting gender equality

| | |
|--|---|
| <p>The company will approve and circulate a specific protocol for the use of gender language in the company, so that all documentation, advertising, image or material generated as a result of the execution of the contract uses non-sexist language, avoids any discriminatory image of women or sexist stereotypes and promotes an image of the values of equality, equal presence, diversity, shared responsibility and a range of gender roles and identities.</p> | <input type="checkbox"/> Si <input type="checkbox"/> No |
|--|---|

Place, date and signature of the bidder.

DATA PROTECTION - In accordance with the provisions of the current regulations on data protection, we inform the bidders that the **data controller** for your data is the BSC-CNC (hereinafter, the Data Controller), located at C/ Jordi Girona, no. 29, with telephone number 93 413 77 16 and email address tenders@bsc.es. The Data Controller is entitled to process the data provided by the bidders for participation in the tender for the following **purposes**: a) Managing their participation in the tender. This processing is legitimised by the consent validly given by the bidders at the time of their participation. b) Publication of the data of unsuccessful and successful bidders through the means that the Data Controller deems appropriate, in particular through the company's website (www.bsc.es), which collects information about, among other aspects, the company's contracts and suppliers. This purpose is authorised by Spanish Law 9/2017, of 8 November, on Public Sector Contracts. Personal data will **only be retained and processed** as long as the relationship continues and once it has ended, as long as the Data Controller is entitled to retain and/or process them, in accordance with the deadlines established under current legislation. With regard to the personal data collected for processing, bidders have the option to exercise the **rights** of access, rectification, erasure and portability. Likewise, in certain circumstances, bidders will have the right to request the restriction of or object to the processing of their data, in which case the Data Controller will cease to process them and will only retain them for the exercise or defence of claims. The exercise of the aforementioned rights may be made by means of a written request addressed to the Data Controller through the contact details indicated above, under the terms specified in the current legislation. Likewise, at any time, complaints may be addressed to either the Data Controller or the Spanish Data Protection Agency through the forms that this entity has provided for this purpose and that are accessible through its website, <https://sedeagpd.gob.es>.

ANNEX II: FORM FOR THE DECLARATION OF RELATED COMPANIES.

(Include in envelope 1)

Mr/Ms, of legal age, with address at..... and National Identity Document (DNI) number....., acting in their own name and right or on behalf of, in their role as; in relation to the proposal submitted for the reference contract, declares at their own responsibility:

(Indicate, as appropriate):

- That the companies included in the attached list are companies related to the bidding company, there being no other company for which the requirements indicated in the aforementioned provision are met.

Name or company name..... Tax ID number (NIF/CIF).....

1.

2.

3.

- That the bidding company does not have related companies.

Place, date and signature of the bidding company.

DATA PROTECTION - In accordance with the provisions of the current regulations on data protection, we inform the bidders that the **data controller** for their data is BSC-CNC (hereinafter, the Data Controller), located at c/ Jordi Girona, 29, with telephone number 93 413 77 16 and email address tenders@bsc.es. The Data Controller is entitled to process the data provided by the bidders for participation in the tender for the following **purposes**: a) **Managing your participation in the tender**. This processing is legitimised by the consent validly given by the bidders at the time of their participation. b) **Publication of the data of unsuccessful** and successful bidders through the means that the Data Controller deems appropriate, in particular through the company's website (www.bsc.es), which collects information about, among other aspects, the company's contracts and suppliers. This purpose is authorised by Spanish Law 9/2017, of 8 November, on Public Sector Contracts.

Personal data will **only be retained and processed** as long as the relationship continues and once it has ended, as long as the Data Controller is entitled to retain and/or process them, in accordance with the deadlines established under current legislation.

With regard to the personal data collected for processing, bidders have the option to exercise the **rights** of access, rectification, erasure and portability. Likewise, in certain circumstances, the bidders will have the right to request the restriction of or object to the processing of their data, in which case the Data Controller will cease to process them and will only retain them for the exercise or defence of claims. The exercise of the aforementioned rights may be made by means of a written request addressed to the Data Controller through the contact details indicated above, under the terms specified in the current legislation. Likewise, at any time, complaints may be addressed to either the Data Controller or the Spanish Data Protection Agency through the forms that this entity has provided for this purpose and that are accessible through its website, <https://sedeagpd.gob.es>.

ANNEX III. DECLARATION OF ABSENCE OF CONFLICT OF INTEREST (DACI)

(Include in envelope 1)

Dossier: CONSER02024036OP Procurement/subsidy.

In order to guarantee the principles of objectivity, impartiality, transparency and integrity in the procurement/subsidy procedure referred to above, the undersigned, as participant(s) in the process of preparing and processing the file, declares:

That they have been informed of the following:

One.

1. That Article 61.3 "Conflict of interest" of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 (EU Financial Regulation) establishes that "a conflict of interests exists where the impartial and objective exercise of the functions is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest".
2. That Article 64 "Fight against corruption and prevention of conflicts of interest" of Spanish Law 9/2017, of 8 November, on Public Sector Contracts, aims to avoid any distortion of competition, guarantee transparency in the procedure and ensure equal treatment for all candidates and bidders.
3. That section 3 additional provision 112 of Spanish Law 31/2022, of 23 December, on the General State Budget for 2023, establishes that "The systematic and automated analysis of the risk of conflict of interest is applicable to public employees and other personnel working for decision-making, executing or instrumental entities that participate, individually or through their membership of collegiate bodies, in the described procedures for awarding contracts or granting subsidies".
4. That, in accordance with paragraph 4 of the aforementioned additional provision 112:
 - The data mining computer tool MINERVA, based at the Spanish State Tax Administration Agency, or any other that replaces it in the future, will be used to analyse possible family relationships or corporate ties, direct or indirect, in which there may be a personal or financial interest likely to cause a conflict of interest, between public employees and other personnel working for decision-making, executing and instrumental entities that participate, individually or through their membership of collegiate bodies, and the bidders participating in each procedure. In particular, this analysis will be carried out for those people who are considered to be decision-makers for the operation, in accordance with article 3.1 of Order HFP/55/2023, of 24 January, on the systematic analysis of the risk of conflict of interest in procedures to implement the Recovery, Transformation and Resilience Plan.
 - "For the identification of relationships or links, the tool will contain, inter alia, the beneficial ownership data of the legal persons referred to in Article 22.2.d)(iii)

of Regulation (EU) 241/2021, of 12 February, those in the databases of the State Tax Administration Agency and those obtained through the agreements signed with the Associations of Notaries and Registrars”.

5. That Article 23 "Abstention" of Spanish Law 40/2015 of 1 October 2015 on the Legal Regime for the Public Sector, establishes that "the authorities and personnel working for the Administrations subject to any of the circumstances indicated in the following section" must refrain from participating in the procedure, these being:
- a. Having a personal interest in the matter in question or in another whose resolution could be influenced by that of the former; being a director of an interested company or entity, or having pending litigation with an interested party.
 - b. Having a marriage bond or similar de facto situation or a relationship of consanguinity up to the fourth degree or of affinity up to the second, with any of the interested parties, with the directors of interested entities or companies and also with the advisors, legal representatives or agents involved in the procedure, as well as sharing a professional office or being associated with them for advice, representation or power of attorney.
 - c. Having a close friendship or clear enmity with any of the people mentioned in the previous section.
 - d. Having been involved as an expert or as a witness in the proceedings in question.
 - e. Having a service relationship with a natural or legal person directly interested in the matter, or having provided professional services of any kind and in any circumstance or place over the last two years".

Two. That they are in the following situation:

At the time of signing this declaration and in the light of the information in its possession, it has no circumstances which could be classified as a conflict of interest, under the terms provided for in section four of additional provision 112, which may affect the tender procedure, **the systematic analysis of the risk of conflict of interest as provided for in Order HFP/55/2023, of 24 January, being applicable.**

Three. That they undertake to inform the contracting authority/evaluation committee, without delay, of any conflict of interest or grounds for abstention that gives rise or could give rise to such a scenario.

Four. That the undersigned is fully aware that a declaration of conflict of interest that is proven to be false will entail the disciplinary/administrative/legal consequences established under the applicable regulations.

(Date and signature, full name and ID no.)

ANNEX IV. FORM FOR THE DECLARATION OF COMMITMENT TO THE EXECUTION OF ACTIONS UNDER THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN (RTRP)

(This annex will be included with the formalisation of the contract)

Mr/Ms....., with National Identification Number (DNI).....
as head of the board/CEO/Manager/ of the entity....., with Tax
Identification Number (NIF)....., and tax domicile
in..... in its role as a responsible body/managing
body/beneficiary of grants financed with resources from the RTRP/ that participates as a
contractor/entity receiving the assignment/subcontractor, in the performance of actions
necessary to achieve the objectives defined in Component 15, declares the commitment of the
person/entity they represent to adhere to the strictest standards in relation to compliance with
legal, ethical and moral rules, adopting the necessary measures to prevent and detect fraud,
corruption and conflicts of interest, notifying the appropriate authorities of any breaches
observed.

In addition, in accordance with the content of the RTRP, they undertake to respect the principles
of the circular economy and avoid significant negative impacts on the environment (*DNSH, “do
no significant harm”*) in the execution of the actions carried out within the framework of that
Plan, and declare that they are not subject to double financing and that, where appropriate, they
are not aware of a risk of any conflict with the State aid scheme.

....., XX of 2024
Signed.....
Position:

ANNEX V: DECLARATION OF RESPONSIBILITY

(Include in envelope 1)

I, Mr/Ms (*full name of the person signing the declaration*), with National ID/ Passport (*ID or Passport number*), acting as (*legal representative*) of the company (*Company Name*) with NIF (*Company Tax ID number*), declare under my responsibility:

- a) That the signatory is the representative of the company submitting the bid.
- b) That the company has suitable economic, financial and technical solvency, or, where appropriate, the corresponding classification, as required in the Specifications.
- c) That the company has the necessary authorisations to carry out its activity.
- d) That the company is not banned from contracting in any way.
- e) That the company is going to use the capabilities of other entities,

Yes No

In this case, it declares that if it is the company that submits the best offer, it will have the necessary resources, where appropriate, doing so by submitting the written commitment of those entities to this effect.

- f) In the event that the bid is submitted by a joint venture, it must be accompanied by a commitment to form that joint venture.
- g) In the event that the company is foreign, it declares that it is subject to the jurisdiction of the Spanish courts and tribunals of any order, for all incidents that may arise directly or indirectly from the contract, waiving any foreign authority or jurisdiction that may correspond to the bidder.
- h) That the company is going to use subcontracting:

Yes No

If yes, please indicate the percentage to be subcontracted, the items being subcontracted and the company.

| Item to be subcontracted | % subcontracted | Company |
|--------------------------|-----------------|---------|
| | | |
| | | |
| | | |

- i) Is the economic operator a micro, small or medium-sized enterprise?

Yes No

Place, date, signature and name of the declarant/applicant

Bidder's Seal

ANNEX VI. DECLARATIONS UNDER ANNEX IV OF THE ORDER HFP/1030/2021, OF 29 SEPTEMBER

(This annex will be included with the formalisation of the contract)

a) Declaration of transfer and processing of data for the execution of actions under the recovery, transformation and resilience plan (RTRP) (Form Annex IV.B of Order HFP/1030/2021, of 29 September)

Mr/Ms, National Identification Number (DNI), as Director Delegate/Manager/ of the company, with Tax Identification Number (NIF), and tax domicile in

..... acting as a contractor/subcontractor in the performance of the actions necessary to achieve the objectives defined in component XX ".....", declares that they are aware of the applicable regulations, in particular the following paragraphs of Article 22, of Regulation (EU) 2021/241 of the European Parliament and of the Council, of 12 February 2021, establishing the Recovery and Resilience Facility:

1. Paragraph 2(d): “for the purpose of audit and control and to provide for comparable information on the use of funds in relation to measures for the implementation of reforms and investment projects under the recovery and resilience plan, to collect and ensure access to the following standardised categories of data:

- i. name of the final recipient of funds;
- ii. name of the contractor and sub-contractor, where the final recipient of funds is a contracting authority in accordance with Union or national law on public procurement;
- iii. first name(s), last name(s) and date of birth of beneficial owner(s) of the recipient of funds or contractor, as defined in point 6 of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council (26);
- iv. a list of any measures for the implementation of reforms and investment projects under the recovery and resilience plan with the total amount of public funding of those measures and indicating the amount of funds paid under the Facility and under other Union funds”.

2. Section 3: “Personal data as referred to in point (d) of paragraph 2 of this Article will only be processed by Member States and by the Commission for the purpose, and corresponding duration, of discharge, audit and control proceedings related to the use of funds related to the implementation of the agreements referred to in Articles 15(2) and 23(1). Within the framework of the discharge procedure to the Commission, in accordance with Article 319 TFEU, the Facility will be subject to reporting under the integrated financial and accountability reporting referred to in Article 247 of the Financial Regulation, and, in particular, separately in the Annual Management and Performance Report”.

In accordance with the legal framework set out above, they agree to the transfer and processing of the data for the purposes expressly listed in the aforementioned articles.

b) Declaration of commitment in relation to the implementation of actions under the recovery, transformation and resilience plan (RTRP) (Form Annex IV.C of Order HFP/1030/2021, of 29 September)

The undersigned declares the commitment of the person/entity they represent to the highest standards in relation to compliance with legal, ethical and moral standards, adopting the necessary measures to prevent and detect fraud, corruption and conflicts of interest, notifying the appropriate authorities of any breaches observed.

In addition, in accordance with the content of the RTRP, they undertake to respect the principles of the circular economy and avoid significant negative impacts on the environment (*DNSH, do no significant harm*) in the execution of the actions carried out within the framework of that Plan, and declare that they are not subject to double financing and that, where appropriate, they are not aware of a risk of any conflict with the State aid scheme.

c) I certify registration in the Census of entrepreneurs, professionals and withholding agents of the Spanish Tax Agency (census declaration 036 or 037 ¹or equivalent document from the Regional Administrations) which includes the activity related to the contract in accordance with the provisions of Article 8, section 2 of Order HFP/1030/2021, of 29 September).

....., XX 202X

Signed.....

Position:

¹ These declarations can be obtained by companies from the AEAT website at the following link <https://sede.agenciatributaria.gob.es/Sede/tramitacion/G322.shtml>. If you have any questions, please call the Tax Agency's general consultation telephone number or 060.

ANNEX VII. DECLARATION OF RESPONSIBILITY FOR COMPLIANCE WITH ARTICLE 29 OF SPANISH LAW 38/2003, OF 17 NOVEMBER, ON SUBSIDIES

(This annex will be included with the formalisation of the contract)

Project: Project for the development of technologies for the generation of prototypes based on RISC-V technology within the framework of the Recovery, Transformation and Resilience Plan.

Subsidy: Resolution of the Secretary of State for Telecommunications and Digital Infrastructures governing the contribution of the Secretary of State for Telecommunications and Digital Infrastructures (SETELECO), to the Barcelona Supercomputing Center – Centro Nacional de Supercomputación (BSC-CNS), for the implementation of the project for the development of technologies for the generation of prototypes based on RISC-V technology within the framework of the Recovery, Transformation and Resilience Plan- funded by the European Union – NEXT GENERATION EU.

The undersigned, Mr/Ms, with National ID Number (DNI)....., in their own name and in their role as..... and with sufficient power, of the entity....., with Tax ID Number (NIF)..... and with tax domicile in....., with a proposal for the subcontracting of "CONSER02024036OP service for the porting and development of an existing software component, i.e. Dyninst, to the RISC-V architecture within the framework of the Recovery, Transformation and Resilience Plan of the project for the development of technologies for the generation of prototypes based on RISC-V technology", through this document and in accordance with the legal framework, declares that the entity..... does not fall under the grounds established in article 29.7 of Spanish Law 38/2003, of 17 November, on Subsidies.

..... of....., 2024.

Signed.....

Position:

ANNEX VIII.- FORM FOR THE DECLARATION OF TRANSFER AND PROCESSING OF DATA IN RELATION TO THE PERFORMANCE OF THE ACTIONS UNDER THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN (RTRP)

(This annex will be included with the formalisation of the contract)

Mr/Ms....., DNI.....as CEO/Manager/ of the entity....., with NIF, and tax domicile in.....beneficiary of grants financed with resources from the RTRP/ who participates as a contractor/subcontractor in the development of actions necessary to achieve the objectives defined in Component 15, declares that they are aware of the applicable regulations, in particular the following paragraphs of Article 22, of Regulation (EU) 2021/241 of the European Parliament and of the Council, of 12 February 2021, establishing the Recovery and Resilience Facility:

1. Paragraph 2(d): “for the purpose of audit and control and to provide for comparable information on the use of funds in relation to measures for the implementation of reforms and investment projects under the recovery and resilience plan, to collect and ensure access to the following standardised categories of data:
 - i. Name of the final recipient of funds;
 - ii. Name of the contractor and sub-contractor, where the final recipient of funds is a contracting authority in accordance with Union or national law on public procurement;
 - iii. First name(s), last name(s) and date of birth of beneficial owner(s) of the recipient of funds or contractor, as defined in point 6 of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council (26);
 - iv. A list of any measures for the implementation of reforms and investment projects under the recovery and resilience plan with the total amount of public funding of those measures and indicating the amount of funds paid under the Facility and under other Union funds”.

2. Section 3: “Personal data as referred to in point (d) of paragraph 2 of this Article will only be processed by Member States and by the Commission for the purpose, and corresponding duration, of discharge, audit and control proceedings related to the use of funds related to the implementation of the agreements referred to in Articles 15(2) and 23(1). Within the framework of the discharge procedure to the Commission, in accordance with Article 319 TFEU, the Facility will be subject to reporting under the integrated financial and accountability reporting referred to in Article 247 of the Financial Regulation, and, in particular, separately in the Annual Management and Performance Report”.

In accordance with the legal framework set out above, they agree to the transfer and processing of the data for the purposes expressly listed in the aforementioned articles.

..... of..... 2024

Signed.....

Position:

ANNEX IX.- MILESTONES AND OBJECTIVES IN THE TENDER

The duration of these activities will be 12 months starting from December 2024 and with a deadline until the end of November 2025.

Milestones and Objectives

Single objective: Porting of the DynInst library to the RISC-V architecture and development of reference use cases.

- **Milestone 1:** Presentation of the development plan for the porting of the library and description of the use cases (adapted to the project milestones). It includes analysis of requirements and workflow with the rest of the activities of the software package.
 - **Execution period:** second month (M02) from the date of formalisation.
 - **Verification Method:** Its verification will be carried out through the delivery, by the bidding company, of the aforementioned document.
- **Milestone 2:** Partial version of the porting of the library and set of use cases available to the rest of the software working groups.
 - **Execution period:** sixth month (M06) from the date of formalisation.
 - **Verification Method:** Its verification will be carried out through the delivery, by the bidding company, of the code repository; together with the delivery, by the BSC, of a conformity report that refers to the stage of development of the library and whether it meets the required expectations.
- **Milestone 3:** Final porting candidate version. Final set of use cases. Distribution packages available to all other software workgroups.
 - **Execution period:** tenth month (M10) from the date of formalisation.
 - **Verification Method:** Its verification will be carried out through the delivery, by the bidding company, of the code repository; together with the delivery, by the BSC, of a conformity report that refers to the stage of development of the library and whether it meets the required expectations.
- **Milestone 4:** Validation of the final version of the porting of the library.
 - **Execution period:** last month (M12) from the date of formalisation.
 - **Verification Method:** Its verification will be carried out through the code repository provided by the bidding company and its installation on the platform resulting from the BZL project in order to check the different use cases implemented in BSC-CNS described in the technical specifications.

ANNEX X: REGULATORY AGREEMENT FOR THE DATA PROCESSOR

REGULATORY AGREEMENT FOR THE DATA PROCESSOR

In _____, on _____ of _____ 2023

ACTING

Mr/Ms _____, with
National ID Number _____, in the name
and on behalf of BARCELONA SUPERCOMPUTING CENTER - CENTRO NACIONAL DE
SUPERCOMPUTACION, with registered office at Calle Jordi Girona 31 - 08034 Barcelona
(Barcelona) and with Tax Identification Number (NIF) S0800099D, who declares that they have
sufficient powers for the execution of this contract and to bind the party they represent.

Hereinafter, THE DATA CONTROLLER

And

Mr/Ms _____, with
National ID Number _____, in the name
and on behalf of _____, with
registered office in _____ - _____ (Barcelona) and with Tax
Identification Number (NIF)....., declares that they have sufficient powers for the
execution of this contract and to bind the party they represent.

Hereinafter, THE DATA PROCESSOR

Both parties mutually and reciprocally acknowledge their necessary legal capacity required by
law to enter into this contract and, by virtue of this, freely and voluntarily,

DECLARE

1. Purpose of the processing order

By means of these clauses, the successful bidder, in charge of the processing, is authorised to
process, on behalf of BARCELONA SUPERCOMPUTING CENTER - CENTRO NACIONAL DE
SUPERCOMPUTACION, the data controller, the personal data necessary to provide the service
detailed in the specifications xxx.

The processing will consist of the service provision _____

Details of the processing to be carried out:

| | |
|-------------|--------------|
| Collection | Registration |
| Structuring | Amendment |
| Retention | Extraction |

| | |
|--------------|-------------------------------|
| Consultation | Communication by transmission |
| Diffusion | Interconnection |
| Collation | Restriction |
| Deletion | Destruction |
| Other: _____ | Communication |

2. Identification of the affected information

For the execution of the actions derived from the fulfilment of the subject matter of this order, the entity BARCELONA SUPERCOMPUTING CENTER - CENTRO NACIONAL DE SUPERCOMPUTACION, the data controller, makes available to the entity____, data processor, the information described below:

•.....

3. Duration

This agreement has a duration linked to the provision of services.

Upon termination of this contract, the processor must erase the personal data and eliminate any copies in its possession.

4. Obligations of the data processor

The data processor and all its staff undertake to:

4.1. Use the personal data being processed, or those collected for their inclusion, only for the purpose that is the subject of this assignment. Under no circumstances may they use the data for their own purposes.

4.2. Process the data in accordance with the instructions of the data controller. If the data processor considers that any of the instructions could infringe the GDPR or any other data protection regulations from the European Union or its Member States, the data processor will immediately inform the controller.

4.3. Keep, in writing, a record of all categories of processing activities carried out on behalf of the data controller, including:

a) The name and contact details of the processor(s) and of each controller on behalf of whom the processor is acting and, where applicable, of the representative of the controller or processor and of the data protection officer

b) The categories of processing carried out on behalf of each controller.

c) Where applicable, transfers of personal data to a third country or international organisation, including the identification of that third country or international organisation and, in the case of the transfers referred to in the second paragraph of Article 49(1) of the GDPR, the documentation of appropriate safeguards.

d) A general description of the technical and organisational security measures relating to:

d.1) Pseudonymisation and encryption of personal data.

d.2) The ability to ensure the ongoing confidentiality, integrity, availability and resilience of the processing systems and services.

d.3) The ability to restore availability and access to personal data quickly, in the event of a physical or technical incident.

d.4) The process of regular verification, evaluation and assessment of the effectiveness of technical and organisational measures to ensure the security of the processing.

4.4. Not to communicate the data to third parties, unless they have the express authorisation of the data controller, in the legally admissible cases.

The processor may transfer the data to other processors working for the same controller, in accordance with the instructions from the controller. In this case, the controller will identify, in advance and in writing, the entity to which the data must be communicated, the data to be communicated and the security measures to be applied to proceed with the communication.

If the processor is required to transfer personal data to a third country or to an international organisation, under the law of the European Union or of the Member States applicable to it, it shall inform the controller of this legal requirement in advance, unless such law prohibits this for important reasons of public interest.

4.5. Subcontracting. Not to subcontract any of the actions that are part of the subject matter of this contract that involve the processing of personal data, except for the auxiliary services necessary for the normal functioning of the services of the processor. If it is necessary to subcontract any processing, this fact must be communicated in advance and in writing to the controller, providing one month's notice, indicating the processing that is intended to be subcontracted and clearly and unequivocally identifying the subcontractor company and its contact details. Subcontracting may go ahead if the controller does not express any objection to this within the established period.

The subcontractor, who will also have the status of data processor, is also obliged to comply with the obligations established in this document for the data processor and the instructions issued by the controller. It is the responsibility of the initial processor to control the new relationship so that the new processor is subject to the same conditions (instructions, obligations, security measures, etc.) and has the same formal requirements as the initial processor, with regard to the proper processing of personal data and the guarantee of the rights of the data subjects. In the event of non-compliance by the sub-processor, the initial processor shall remain fully liable to the controller for the fulfilment of the obligations.

4.6. Treat as confidential the personal data to which it has had access by virtue of this order, even after its purpose has ended

4.7. Ensure that the persons authorised to process personal data undertake, expressly and in writing, to respect confidentiality and comply with the corresponding security measures, of which they must be duly informed.

4.8. Keep at the disposal of the data controller the documentation demonstrating compliance with the obligation established in the previous section.

4.9. Guarantee the necessary personal data protection training of the persons authorised to process personal data.

4.10. Assist the data controller in responding to the exercise of the rights to:

- a) Access, rectification, erasure and objection
- b) Restriction of processing
- c) Data portability
- d) Not to be subject to automated individualised decisions (including profiling)

4.11. Right to information. The data processor, at the time of data collection, must provide information regarding the data processing that is going to be carried out. The wording and format in which the information shall be provided must be agreed with the data controller before the start of data collection.

4.12. Notification of data breaches. The data processor must notify the data controller by email, without undue delay, and in any case within a maximum period of 24 hours, of any security breaches involving the personal data held by it of which it is aware, together with all the relevant information for the documentation and communication of the incident.

Notification will not be necessary where such a breach of security is unlikely to constitute a risk to the rights and freedoms of individuals.

If available, at least the following information shall be provided:

1. Description of the nature of the personal data breach, including, where possible, the categories and approximate number of data subjects affected, and the categories and approximate number of personal data records affected.
2. The name and contact details of the data protection officer or other contact point where further information can be obtained.
3. Description of the possible consequences of the personal data breach.
4. Description of the measures taken or proposed to be taken to remedy the personal data security breach, including, if applicable, the measures taken to mitigate any possible negative effects.

If it is not possible to provide all the information immediately, and to the extent that this is not possible, the information must be provided gradually without undue delay.

4.13. Support the data controller in carrying out data protection impact assessments, where appropriate.

4.14. Support the data controller in carrying out prior consultations with the supervisory authority, where appropriate.

4.15. Make available to the controller all the information necessary to demonstrate compliance with its obligations, as well as for the performance of audits or inspections carried out by the controller or another auditor authorised by them.

4.1.6. Implement security measures that allow for:

- a) Guaranteed ongoing confidentiality, integrity, availability and resilience of processing systems and services.
- b) Recovery of availability and access to the personal data quickly, in the event of a physical or technical incident.
- c) Verification, evaluation and assessment, on a regular basis, of the effectiveness of the technical and organisational measures implemented to guarantee the security of the processing.
- d) Pseudonymising and encryption of personal data, where applicable

4.17. Appointment of a data protection officer and communication of their identity and contact details to the controller.

4.18. Data destination. Return the personal data and, if applicable, the media containing them, to the data controller once the service has been completed. The return must entail the total deletion of the data existing on the computer equipment used by the processor. However, the processor may keep a copy, with the data duly blocked, for as long as liabilities may arise from the execution of the service.

5. Obligations of the data controller

It is the responsibility of the data controller to:

- a) Deliver to the processor the data referred to in clause 2 of this document.
- b) Carry out a personal data protection impact assessment for the processing operations to be carried out by the processor.
- c) Carry out the corresponding prior consultations.
- d) Ensure, prior to and throughout the processing, compliance with the GDPR by the processor.
- e) Oversee the processing, including conducting inspections and audits.

BARCELONA SUPERCOMPUTING CENTER - CENTRO NACIONAL DE SUPERCOMPUTACION

Data controller

Successful bidder

Data processor

Bidder's Seal

TABLE OF CHARACTERISTICS OF THE CONTRACT "CONSER0202 4036OP" WITHIN THE FRAMEWORK OF THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN – FINANCED BY THE EUROPEAN UNION – NEXTGENERATION EU

| | |
|--|-------------------|
| Contract subject to harmonised regulation | x No |
| Processing of the dossier | x Ordinary |
| Type | x Simplified Open |

A. AWARDING AUTHORITY

- Awarding authority:** Barcelona Supercomputing Center - Centro Nacional de Supercomputación.
- Contracting authority:** Director of the BSC-CNS.
- Contract manager:** Jesús Labarta Distinguished Senior Research Fellow in the Department of Computer Sciences.
- Address of the contracting authority/telephone/fax/email:** Plaça Eusebi Güell, núm. 1-3, 08034 Barcelona, 934137716, tenders@bsc.es.
- Contractor profile:** [Contracting Platform](#).

B. SUBJECT OF THE CONTRACT

1. Description of the subject matter of the contract

We need to procure the service for porting and development of an existing software component, i.e. Dyninst, to the RISC-V architecture within the framework of the Recovery, Transformation and Resilience Plan. The component allows the modification of the binary code of a computer application, both while running and on the disk. The changes made can be used for different purposes, from mere instrumentation through other tools already included in the software stack (e.g., Extrae), to changes in the planning of instructions or run parameters.

Spanish Royal Decree 959/2022, of 15 November, regulates the direct granting of a subsidy to Spanish public research centres and foundations and public universities for the completion of innovative projects in the area of cloud computing under the UNICO R&D Cloud programme.

In accordance with the provisions of that Royal Decree 959/2022, the Secretary of State for Telecommunications and Digital Infrastructures has authorised, through the resolution dated 29 December 2022, a direct subsidy to the Barcelona Supercomputing Center to finance the execution, within the framework of the Recovery, Transformation and Resilience Plan, of next-generation infrastructure projects and services in the cloud and at the edge; UNICO R&D Cloud subproject, described in the royal decree regulating this subsidy and contributing to the achievement of milestones CID# 241 and milestone 242, of component 15, investment 5, of the Recovery, Transformation and Resilience Plan in accordance with the characteristics contained in the technical specifications.

2. Needs to be met

In accordance with the provisions of paragraphs 1, 2 and 3 of Article 6 of Spanish Royal Decree 959/2022 and in accordance with the provisions of Article 5 of Order 1030/2021, there has been an assessment to identify that the subject matter of the contract does no significant harm (DNSH) to the six environmental objectives defined in Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

The BSC-CNS needs to procure the requirements for the services resulting from the obtaining of the BSC-CNS Zettaescala Laboratory project within the framework of the RECOVERY, TRANSFORMATION AND RESILIENCE PLAN of the project for the development of technologies for the generation of prototypes based on RISC-V technology. It is in this project where the possible subcontracting of certain activities to be provided by external developers has been considered.

In particular, within the set of compilation and runtime tools (Task 2.3), different activities are established aimed at improving the performance of the applications run on RISC-V-based architectures (specifically, those processors developed in the context of the project). The use of the subject matter of the procurement in this application would allow the implementation of new performance improvements on the executed applications.

In this sense, it is necessary to outsource this service to the extent that this Consortium does not have either the technical means or the appropriate personnel for it.

3. Coding

- CPV description: Experimental research and development services.
- CPV No.: 73100000-3
- Contract category: Service Contract.

4. Lots

- Divided into lots: NO

Given the nature and purpose of this tender, as well as the specification of the needs that lead to this service being required, it is not appropriate or advantageous to carry out a division into lots, since it is a specific service that needs to be centralised in a single contractor.

That is, it does not make sense to divide it into lots insofar as it is a cloud computing service that can only be carried out by one company at any time. It would not make sense to divide the subject matter of this contract into lots since the service, in itself, is indivisible, if it is to achieve the purpose of guaranteeing sufficient computational resources to process large volumes of data.

The division into lots of such a specific service would therefore jeopardise the proper execution of the contract by making it impossible to coordinate the execution, since the service cannot be divided up.

5. Acceptability of variants

Variables are not allowed.

C. CONTRACT PRICE

1. Base Tender Budget

The maximum base tender budget is €145,200.00 (ONE HUNDRED AND FORTY-FIVE THOUSAND TWO HUNDRED EUROS), including VAT, for a period of 12 months. The VAT corresponding to this amount is €25,200.00 (TWENTY-FIVE THOUSAND TWO HUNDRED EUROS).

In accordance with the provisions of Article 131 of Spanish Royal Decree 1098/2001, of 12 October, which approves the General Regulations of the Public Administration Contracts Law, the estimated breakdown that has been made in relation to direct and indirect costs is as follows (*taking into account the price of the service through a comparison with tenders of similar characteristics*):

Service market price: €120,000.00, excluding VAT, for a period of 12 months.

| Cost Type | Estimated percentage | Amount |
|--|----------------------|---------------------|
| Direct costs <i>(personnel costs, tools, expenses related to the provision of the service, etc.)</i> | 82% | € 98,400.00 |
| Indirect costs <i>(infrastructure costs of the successful bidder, overheads, etc.)</i> | 12% | € 14,400.00 |
| COSTS SUBTOTAL | | € 112,800.00 |
| Industrial Profit | 6% | € 7,200.00 |
| TOTAL COSTS | | € 120,000.00 |
| VAT | 21% | € 25,200.00 |
| TOTAL | | € 145,200.00 |

It is a service contract in which, although there are financial costs due to the salaries of the workers employed in the execution, there is no direct provision for the contracting entity and only for it, that is, they are not employed only on the execution of the contract with the Administration, but on work for all users or consumers. As a result, the salary costs do not form part of the total price of the contract as a price.

Both the base tender budget indicated and the bids submitted by bidders must be understood to include all scored factors, expenses that the successful bidder must incur in the normal provision of the contracted service, as well as taxes of any kind that may be applicable according to the provisions in force, including value added tax, which must be itemised.

2. Estimated contract value

The estimated contract value is €120,000.00 (ONE HUNDRED AND TWENTY THOUSAND EUROS), excluding VAT, as no modifications or extensions are foreseen.

The calculation method applied by the contracting authority to calculate the estimated value is as follows:

| | |
|---|---------------------|
| Base tender budget (including VAT) | € 145,200.00 |
| VAT Rate | 21% |
| Amount excluding VAT | € 120,000.00 |
| Duration in months of the tender amount | 12 |
| Modification percentage | 0% |
| Modification Amount | € 0.00 |
| Duration of extensions in months | 0 |
| Amount of extensions excluding VAT | € 0.00 |
| ESTIMATED CONTRACT VALUE | € 120,000.00 |

The breakdown of the estimated contract value has been performed in relation to the direct and indirect costs and industrial profit (taking into account the price of the service verified through comparison with tenders of similar characteristics), specified and broken down in section C1 of the table of characteristics.

3. Pricing system.

Flat-rate.

The evaluation of the contract price should not be broken down into units, due to the very nature of the service, and it is therefore considered that the price must be determined as a flat rate, in accordance with the options established in articles 102.4 and 309 of the LCSP.

4. Annual amounts (including VAT, unless VAT exempt) and application to the budget item.

The budgetary annual amounts of the contract and the budgetary application of the contract expenses are:

| YEAR | BUDGET APPLICATION | Amount (excluding VAT) | VAT | Amount (including VAT) |
|------|--------------------|---------------------------|-----|---------------------------|
| 2024 | PN038700/2024 | € 10,000.00 | 21% | € 12,100.00 |
| 2025 | PN038700/2025 | € 110,000.00 | 21% | € 112,100.00 |

The budget items will be derived from the internal coordinated BSC-CNS project “Zettaescala Laboratory” which is part of the UNICO project defined within the framework of the RECOVERY, TRANSFORMATION AND RESILIENCE PLAN and in accordance with the concession resolution dated 12 December 2022 issued by the Secretary of State for Telecommunications and Digital Infrastructures governing the direct awarding of a subsidy from the Secretary of State for Telecommunications and Digital Infrastructures (SETELECO) to Spanish public research centres and foundations and public universities for the completion of innovative projects in the area of cloud computing, within the framework of the recovery, transformation and resilience plan (financed by the European Union – Next Generation EU), to achieve and contribute to the achievement of milestones CID# 241 and 242, component 15, investment 5, of the Recovery, Transformation and Resilience Plan.

5. Price Review

- Not contemplated.

6. Financing with external funds

YES

Type of fund: European Union Next Generation Funds. 100%
co-financing:

This contract is carried out within the framework of the Coordinated “BSC-CNS Zettaescala Laboratory” plan being run by the Barcelona Supercomputing Center – Centro Nacional de Supercomputación (BSC-CNS), in accordance with the need to contribute to the fulfilment of the objectives and milestones described in the resolution dated 12 December 2022 issued by the Secretary of State for Telecommunications and Digital Infrastructures, which governs the direct granting of a subsidy from the Secretary of State for Telecommunications and Digital Infrastructures (SETELECO) to the Barcelona Supercomputing Center to carry out innovative projects in the area of cloud computing, within the framework of the Recovery, Transformation and Resilience Plan (financed by the European Union-Next Generation EU), specifically for the achievement of milestones CID #241 and #242, of component 15, investment 5, of the Recovery, Transformation and Resilience Plan, in accordance with the characteristics set out in the technical specifications.

COOPERATIVE INNOVATION PROJECT (COMPONENT 15) related to "Digital connectivity, promotion of cybersecurity and deployment of 5G" which responds to the flagship initiative "Connection" described in the "Annual Sustainable Growth Strategy 2022".

MEASURE. Measures to support business R&D that are focused on the phases of application of new knowledge for the development and improvement of technologies that increase the medium and long term resilience and competitive capacity of Spanish companies, accelerating the development of innovation ecosystems in cloud infrastructures.

JUSTIFICATION OF COOPERATIVE INNOVATION PROJECT/FINANCING FROM THE FUNDS

Spanish Royal Decree 959/2022, of 15 November, regulates the direct granting of a subsidy to Spanish public research centres and foundations and public universities for the completion of innovative projects in the area of cloud computing under the UNICO R&D Cloud programme.

In accordance with the provisions of that Royal Decree 959/2022, the Secretary of State for Telecommunications and Digital Infrastructures has authorised, through the resolution dated 29 December 2022, a direct subsidy to the BARCELONA SUPERCOMPUTING CENTER to finance the execution, within the framework of the Recovery, Transformation and Resilience Plan, of projects for next-generation infrastructure and services in the cloud and at the edge; UNICO R&D Cloud subproject, described in the royal decree regulating this subsidy and contributing to the achievement of milestones CID# 241 and milestone 242, of component 15, investment 5, of the Recovery, Transformation and Resilience Plan in accordance with the characteristics contained in the technical specifications.

In accordance with the provisions of article 5 of Order 1030/2021, there has been an assessment to identify that the subject matter of the contract does no significant harm (DNSH) to the six environmental objectives defined in Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

The BSC-CNS needs to procure the requirements for the services resulting from obtaining the BSC-CNS Zettaescale Laboratory project within the framework of the RECOVERY, TRANSFORMATION AND RESILIENCE PLAN of the project for the development of technologies for the generation of prototypes based on RISC-V technology. It is in this project where the possible subcontracting of certain activities to be provided by external developers has been considered.

In particular, within the set of compilation and runtime tools (Task 2.3), different activities are established aimed at improving the performance of the applications run on RISC-V-based architectures (specifically, those processors developed in the context of the project). The use of the subject matter of the procurement in this application would allow the implementation of new performance improvements on the executed applications.

This contract will be financed with funds from the Recovery, Transformation and Resilience Plan through European Union Next Generation Funds. The VAT will be paid from BSC's own funds. The absence of double financing of the contract will be guaranteed and verified.

Co-financing:

- BSC: 0 %
- Recovery, transformation and resilience plan. Funded by the European Union - NEXTGENERATION EU. 100 %

7. Payment method

Payment will be made by bank transfer 30 days from the date of the invoice,

taking into account that the payment day at BSC-CNS is the 20th of each month. Notwithstanding the foregoing, a single final reception will take place at the end of the contract, in accordance with the provisions of Article 311 of the LCSP and Articles 203 and 204 of the Spanish General Regulations of the Public Contracts Law (RGLCAP).

Invoicing will be linked to the achievement of the milestones and objectives described in Annex IX.

In the first invoice, the successful bidder will submit a declaration of responsibility for compliance with environmental, social and labour obligations.

Billing will be carried out on a monthly pay-as-you-go basis in arrears.

8. Payments

The contractor will be entitled to payment of the contract price agreed upon in the award and for the work and service actually performed in accordance with the BSC-CNS.

D. DURATION AND EXECUTION PERIOD

1. Total duration

The duration of the contract is 12 months from the date of its formalisation.

The estimated start date of the contract is December 2024.

2. Partial deadlines

There are partial deadlines, in accordance with the provisions of the Milestones and Objectives set out in Annex IX of these specifications.

3. Extension

Not contemplated.

4. Warranty period

The warranty period will be for the entire period of the contract and for two months after it has ended. During this period, the contractor will be liable for any damage caused as a result of the execution of the service. The last invoice will be taken as a reference for this warranty period.

5. Place of execution of the service

Place of service provision: The services will be carried out in the city of Barcelona.

E. WARRANTIES

1. Definitive warranty

It will be mandatory for the contractor to provide a definitive warranty of 5% of the final price offered by the successful bidder, excluding Value Added Tax.

2. Complementary warranty

Not contemplated.

F. ECONOMIC OR FINANCIAL AND TECHNICAL OR PROFESSIONAL SOLVENCY

The solvency requested, both financial and technical, relates to the subject matter of the contract and is intended to ensure that the successful bidder has the capacity to execute the contract with sufficient means. The criteria, therefore, are proportional and do not imply any discrimination against the different suppliers making bids, at all times establishing conditions to allow effective competition, and trying at all times to ensure compliance with the regulations applicable to the products to be supplied.

The solvency required relates to the contract and is proportional to it to guarantee that the bids may be evaluated under conditions of effective competition.

1. Economic and financial solvency

The solvency required in the contract is as follows:

- Annual turnover in the area to which the contract refers, referring to the best financial year over the last three available depending on dates of incorporation or commencement of activities of the business and the submission of bids for an amount equal to or greater than €120,000.00.
- The annual turnover of the bidder or candidate will be accredited by means of its annual accounts approved and deposited in the Commercial Register, if the entrepreneur is registered in that register, and otherwise by those deposited in the official register in which it must be registered. Individual freelancers not registered in the Commercial Registry will prove their annual turnover through their inventory books and annual accounts legalised by the Commercial Registry.

2. Technical or professional solvency

The required technical solvency will be accredited by the following information:

- a) List of the main services, similar to the subject matter of this contract, provided over the last three years, indicating their amount (the annual amount over the full year with the most business must be equal to or greater than 70 percent of the average annual contract amount), their dates and their public or private recipient. In accordance with Article 90.1.a) of the LCSP, the services or work carried out will be demonstrated by means of certificates issued or endorsed by the

competent authority, where the recipient is a public sector entity; where the recipient is a private person, by means of a certificate issued by the latter or, in the absence of such a certificate, by means of a declaration from the entrepreneur accompanied by the documents in the entrepreneur's possession attesting to the provision of the service; where appropriate, these certificates will be communicated directly to the contracting authority by the competent authority.

For these purposes, in order to determine services or works of a same or similar nature to those that constitute the subject matter of the contract, the first 3 digits of the respective CPV codes will be taken into account.

In accordance with article 90 LCSP, it has been decided to require the list of the services performed to ensure that the potential successful bidder has sufficient experience and capacity in services similar to those that are the subject of the contract. The idea behind the annual amount over the full year with most business having to be at least 70% of the estimated value of the contract is to allow non-restrictive access to the tender, as this is an acceptable amount and at the same time demonstrates real experience in the activity that is the subject matter of the contract.

3. Registration in the Public Sector Official Register of Bidders and Classified Companies

According to Article 96 of the LCSP:

1. Registration in the Public Sector Official Register of Bidders and Classified Companies will demonstrate to all public sector contracting authorities, in accordance with that reflected therein and unless proven otherwise, the conditions of suitability of the entrepreneur in terms of their legal status and capacity to act, representation, professional or business qualification, economic or financial and technical or professional solvency, classification and other circumstances recorded, as well as the presence or absence of any prohibitions on contracting that must be included therein.
2. Registration in the Register of Bidders held by an Autonomous Community will demonstrate identical circumstances for the purposes of contracting with that Autonomous Community, with the local entities included in its territorial scope, and with the other public sector agencies, bodies or entities reporting to these.
3. Proof of the content of the Register of Bidders will be by means of a certificate issued by the body responsible for it, which may be issued by electronic, computer or telematic means. The certificates must indicate the references that have enabled the entrepreneur to be included in the list or the certificate to be issued, as well as, where appropriate, the classification obtained.

By virtue of Article 159.4.a) of the LCSP, bidders must be registered in the Public Sector Official Register of Bidders and Classified Companies, and such registration accredits, among other things, economic or financial and technical or professional solvency, according to Article 87.2 of the LCSP. All bidders who present bids through this simplified procedure must be registered in the Public Sector Official Register of Bidders and Classified Companies, or, where appropriate, in accordance with the provisions of section 2 of Article 96, in the Official Register of the corresponding Autonomous Community, on the final date for the submission of bids, provided that there is no restriction on competition. For these purposes, also

accepted are offers from bidders who can demonstrate that they have submitted the application for registration in the corresponding Register, together with the mandatory documentation for this purpose, provided that such application is dated prior to the final date of submission of the bids. This circumstance will be demonstrated by providing the acknowledgement of receipt of the application issued by the corresponding Register and a declaration of responsibility of having provided the mandatory documentation and not having received a request for correction.

Exceptionally, there is the option of accrediting solvency through means of any of the subsidiary methods set out in the following sections (F1 and F2) for those bidders who have made use of the power to prove the submission of the application for registration in the corresponding Register referred to in the final paragraph of letter a) of section 4 of article 159 LCSP.

G. DOCUMENTATION TO BE SUBMITTED BY BIDDERS

1. Envelope no. 1:

- The presentation of the offer will require the declaration of responsibility of the signatory with respect to holding the representation of the company presenting the offer; having adequate economic, financial and technical solvency or, where appropriate, the corresponding classification; having the necessary authorisations to carry out the activity; not being subject to any bans on contracting; and will make a declaration about the existence of the commitment referred to in Article 75.2. For these purposes, the form appears as Annex V of this Specification.

In the event that the company is registered in the Official Public Sector Official Register of Bidders and Classified Companies, the bidding company must consider which data are filed and updated in these Registers and which are not filed or updated.

- When forming a joint venture, it must be accompanied by the commitment to form that joint venture and in the case of accrediting solvency with external means, it will declare that it will have the necessary resources, where appropriate, by presenting the written commitment of such entities to this effect and completed by all the members of the joint venture. The commitment will indicate the name and situation of all of those who form it and the participation of each, as well as declaring that they accept the commitment to formally create a joint venture in the event of being awarded the contract.

In addition to the declaration, the commitment to form the joint venture will be provided by the entrepreneurs in accordance with art. 69.3 LCSP, which will indicate the name and situation of all those who form it and the participation of each one, as well as declaring that they accept the commitment to formally create a joint venture in the event of being awarded the contract. Each company must submit its Responsible Declaration. This declaration must also be submitted by the companies whose solvency is included.

- Responsible declarations in accordance with the forms in Annex III (DACI). Companies must submit signed copies of the forms in Annex III of this document relating to the absence of any conflict of interest, transfer and processing of data and commitment to comply with cross-cutting principles.

- Responsible declaration on the relationship of companies related to the bidding companies, in accordance with Annex II.
- Where applicable, a declaration of confidentiality under the terms indicated in clause 5.2.3 of these specifications.
- Foreign companies must provide a declaration that they will submit to the jurisdiction of the Spanish courts and tribunals of any order, for all incidents that may directly or indirectly arise from the contract, waiving any foreign jurisdictional authority that may correspond to the bidder.
- Bidders must submit the necessary documents to corroborate that the minimum requirements established in the Technical Specifications are met.

2. Envelope No. 2:

Bidders must submit the documents necessary for the scoring and weighting of their offers in relation to the assessment criteria for offers that cannot be quantified through formulas established in section J) of the Table of Characteristics. Specifically, the following:

a. Technical report

All the contents of envelope 2 must be submitted in digital format through the platform, not including documentation from other envelopes in that link.

Under no circumstances must the envelope contain the financial offer, nor documents relating to its financial offer, nor documents relating to criteria quantifiable by formula.

3. Envelope No. 3:

- This will contain a single proposal signed by the bidder or person representing it, drawn up in accordance with the form that appears as Annex I to these Specifications.
- Envelope 3 will include all the documentation related to the award criteria that can be scored automatically.
- Proposals submitted by a joint venture must be signed by the representatives of all the companies in that JV.
- Offers submitted by the bidders include the contract price and other expenses incurred until the completion of the works, at the place designated by the BSC-CNS. Under no circumstances may they exceed the amount of the tender. The amount corresponding to VAT will appear as a separate item.

Proposals will not be accepted if they contain omissions, errors or deletions that prevent the clear understanding of the key elements when considering the offer, such as those that are not consistent with the documentation examined and admitted, exceed the tender budget, vary substantially from the established

proposal form that appears as Annex I to this Specification, have comparative figures such as, for example, the expression “an amount lower” or “a percentage lower” than the best proposal or similar concepts, as well as those in which there is recognition by the bidder that it includes an error or inconsistency that makes it unfeasible.

In the event of any discrepancy between the offer stated in words and the one expressed in numbers, the amount stated in words will prevail. It is hereby stated that calculation errors in the financial offer will lead to its correction.

H. PLACE AND DEADLINE FOR SUBMISSION OF PROPOSALS

1. Deadline for submission of offers

The deadline for submission of offers will be specified in the tender notice.

2. Place:

All bids must be submitted electronically through the Public Sector Procurement Platform, at the following [link](#).

I. CONTRACTING BOARD

- **President (incumbent/alternate):** Manager or appointment of an alternate for them.
- **Members (incumbents/alternates):** Distinguished Senior Research Fellow from the Computer Sciences Department, Head of Administration and Finance.
- **Lawyer:** State’s Attorney.
- **Secretary (incumbent/alternate):** 2 Public Procurement technicians.

J. AWARD CRITERIA

1. Award criteria:

The overall score obtained by offers will be the result of the scoring criteria set out above, with a maximum score of 100 points.

In accordance with article 145 and following of the LCSP, the assessment criteria are as follows:

Offers will be scored on a scale with a maximum of 100 points, of which 75 points correspond to criteria that can be assessed automatically, and 25 points to criteria whose quantification depends on a value judgment.

Offers which, as a whole, do not achieve a score equal to or higher than **20 points** in the assessment of qualitative and technical characteristics will not be considered technically acceptable and as a result will be excluded from the tender procedure.

a) Criteria that can be evaluated automatically: Max. 75 points

1. Financial offer (max. 50 points)

The financial offer will be scored up to a maximum of **50 points**, according to the following formula:

$$\frac{LOS \times 50}{OSB} = FSO$$

Where:

- **OBP**: lowest offer submitted
- **OSB**: offer submitted by the bidder
- **FSO**: financial score obtained by the bidder

2. Promotion of effective equality between women and men (max. 25 points)

There will be a maximum of **25 points** for the approval and circulation of a specific protocol for the use of gender language in the company, so that all documentation, advertising, image or material generated as a result of the execution of the contract uses non-sexist language, avoids any discriminatory image of women or sexist stereotypes and promotes an image of the values of equality, equal presence, diversity, shared responsibility and a range of gender roles and identities.

b) Criteria whose quantification depends on a value judgment: Max. 25 points

1. Technical report (max. 25 points)

There will be a score of up to **25 points** for bidding companies that have the following proposals, in relation to the minimum requirements established in the technical specifications (cumulative score):

- There will be **0 to 18 points** awarded to bidding companies that include the three use cases described in the technical specifications (from 0 to 6 for each use case).
- There will be **0 to 7 points** awarded to bidding companies that include a status report with a frequency higher than that established by the milestones (7 points if it is carried out weekly, 5 points if it is carried out every two weeks, 2 points if it is carried out monthly, and 0 points if it is carried out exclusively at the official milestones).

Demonstration of studying the deadlines provided in the technical offer, based on the order and organisation of the information, technical suitability/specificity, level of detail, concreteness and consistency of the documentation submitted

2. Tie-breaking criteria

In the event that two or more offers obtain the same number of points, the proposal presented by the company that has a number of disabled workers in its workforce greater than 2% will be preferred; and in the case of equality, preference will be given to those that comply with the measures aimed at promoting equal opportunities between women and men in the labour market, as established in Article 33 of Spanish Organic Law

3/2007, of 22 March, for the effective equality of women and men and, therefore, those with a certification as a "Collaborating entity in equal opportunities between women and men", issued by a public body.

3. Criteria for the consideration of abnormally low offers.

Proposals with abnormally low values will be considered those in the following cases:

- Various bidders: Financially abnormal or disproportionate bids will be considered to be those that are more than 20% lower than the arithmetic mean of the offers submitted, on the basis of the view that the offer cannot be fulfilled.
- Sole bidder: Financially abnormal or disproportionate offers will include those where the offer (including VAT) subject to objective assessment is more than 20 percentage points lower than the tender's base budget.

In the event that offers of this type are submitted, the contracting authority will follow the procedure established in article 149 of the LCSP.

When companies belonging to the same group, within the meaning of Article 42.1 of the Commercial Code, have submitted offers, only the lowest offer will be taken into account for the purposes of applying the system for identifying offers that are presumed to be abnormal, regardless of whether they submit their offer alone or jointly with another company or companies outside the group and with which they establish a joint venture.

The exclusion of abnormally low offers will in no case have an effect on the calculations already made.

K. SPECIAL CONDITIONS FOR THE EXECUTION OF THE CONTRACT

The successful bidder undertakes to draw up and implement a Gender Equality Plan and a Protocol for Prevention and Action against Sexual Harassment and Harassment on Grounds of Sex, in accordance with the provisions of Spanish Organic Law 3/2007, of 22 March and Spanish Law 31/1995, of 8 November, on the Prevention of Occupational Risks. The plan must include specific measures to guarantee equal treatment and opportunities between women and men in the company, as well as to prevent any type of discrimination. The protocol should be properly implemented and communicated to all staff, and should include clear procedures for reporting, investigating and resolving cases of harassment.

Failure to comply with these special conditions of execution will constitute a very serious fault and may give rise to the imposition of penalties for the purposes established in subsection c) c) of section 2 of article 71 of the LCSP.

L. SPECIFIC PENALTIES

No penalties are contemplated other than those established in the Specifications of Specific Administrative Clauses.

M. CIVIL LIABILITY INSURANCE TO BE PRESENTED BY THE SUCCESSFUL BIDDER

Not applicable.

N. MODIFICATION OF THE CONTRACT

The provisions of article 203.2.b) and 205 to 207 of the LCSP will apply.

There are no grounds for modification in these Specific Administrative Clauses and it may only be modified in the cases contemplated in article 205 by reference to article 203.2b) LCSP

Ñ. OPTION TO SUBCONTRACT

The services may be subcontracted.

Bidders must indicate in the offer the part of the contract they intend to subcontract, indicating its amount, and the business name or profile, defined by reference to the conditions of professional or technical solvency, of the subcontractors to whom it is to be entrusted.

By virtue of the special characteristics included in article 6.5 of Spanish Royal Decree 959/2022, of 15 November, which regulates the direct granting of a subsidy to Spanish public research centres and foundations and public universities for the completion of innovative projects in the area of cloud computing under the UNICO R&D Cloud Programme, within the framework of the Recovery, Transformation and Resilience Plan -Financed by the European Union- Next Generation EU, the initial subcontractor or subcontractors may not subcontract any of the R&D work that corresponds to the initial subcontractor(s) to third parties.

O. SUBROGATION

The provisions of article 130 of the LCSP will apply.

P. SPECIAL APPEAL

The interested parties may choose to file the following appeals against these specifications of specific administrative clauses:

- The special appeal in matters of procurement:

By virtue of article 44 of the LCSP, given that this tender is a service tender whose estimated value is greater than €100,000, a special appeal could potentially be filed.

It must be filed with the Central Administrative Court of Contractual Appeals within ten calendar days in accordance with article 50 LCSP and article 58 of Spanish Royal Decree Law 36/2020, starting from the day after the one on which the tender notice is published in the contractor profile, provided that the way in which the interested parties can access them is indicated therein. When no such indication is made, the period will begin to run from the day following that on which they have been delivered to the interested party or it has been able to access their content through the contractor profile. If the award is appealed, this proceeding will be automatically suspended.

With regard to the place or body with which it has to be filed, the presentation will be made in the places established in article 16.4 of the LPAC, in the BSC register or in the Central Administrative Court of Contractual Appeals.

- Or directly through a contentious-administrative appeal, in accordance with art. 46.1 of Spanish Law 29/1998, of 13 July, Regulating the Contentious-Administrative Jurisdiction (hereinafter, LJCA), within 2 months, starting from the day following the notification or publication of the specifications.

The body with which the contentious-administrative appeal must be filed is the Contentious-Administrative Chamber of the High Court of Justice of Catalonia, in accordance with arts. 8.3, paragraph two, and 14.1, one, of the LJCA.