

ESS BILBAO CONSORTIUM SCHEDULE OF SPECIAL ADMINISTRATIVE CLAUSES FOR THE PROCUREMENT OF SUPPLY THROUGH AN OPEN PROCESS

Dossier Number:	203/20
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Aim of the contract:	Design and manufacture of the Bunker Wall Insert (BWI)
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NOTE to record that the text of this schedule of special administrative clauses is a copy of the standard model, which was the subject of a report by the Attorney-General's Office dated 22 December, 2020, and approved by the Executive Management on 18 January 2021.

Non-legally binding

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Non-legally binding

I. PARTS OF THE CONTRACT

1. LEGAL FRAMEWORK GOVERNING THE CONTRACT.

The contract to which this schedule refers is of an administrative nature, and shall be governed (i) by Law 9/2017 of 8 November on Public Sector Procurement (hereinafter the Public Sector Procurement Law), which transposes European Parliament and Council Directives 2014/23/EU and 2014/24/EU of 26 February 2014 into Spanish law, (ii) by such provisions of the European Parliament and Council Directives as are applicable hereto, (iii) by Royal Decree 817/2009 of 8 May partially implementing Law 30/2007 on Public Sector Procurement, (iv) by the General Regulations of the Public Sector Procurement Law approved by Royal Decree 1098/2001 of 12 October (hereinafter RGLCAP) and, on a supplementary basis, by the remaining provisions of administrative law, or in default thereof, by the rules of private law.

Pursuant to the provisions of article 122.2 of the Public Sector Procurement Law, the legal framework governing the effects, performance, and termination of the contract shall be that of the hybrid supply and services contract.

The Schedule of Special Administrative Clauses, the Schedule of Special Technical Specifications, and any other attached documents shall all be contractually binding. Contracts shall be in compliance with the content of this schedule, the clauses of which are deemed to be an integral part of the respective contracts.

Negotiation of the terms of the contract with bidders is prohibited.

In the event of a discrepancy between this schedule and any other contractual document, the Schedule of Special Administrative Clauses shall prevail, except for the bid tendered by the successful bidder in those aspects that constitute an improvement over the Schedules, containing the rights and duties that the parties to the contract are to accept.

Ignorance of this schedule, of the contract, of its attached documents, or of the instructions or rules of any kind approved by the Authority applicable to the performance of what has been agreed, shall not release the contractor from the duty to comply with them and perform them.

The judicial-review jurisdiction shall be the competent jurisdiction to hear any litigation arising in relation to the contract, without prejudice to the provisions of Law 9/2017 on Public Sector Procurement with regard to matters of voidability and the special procurement appeals process.

Contracts financed with European funds will furthermore be subject to the provisions of the Treaty on European Union and the acts established in accordance therewith and shall be compatible with Community activities, policies, and priorities to encourage sustainable development and the improvement of the environment, with a requirement to encourage growth, competition, employment, and social inclusion, as well as equality between men and women, in accordance with the provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

2. AIM OF THE CONTRACT AND PLACE OF DELIVERY.

The aim of the contract to which this schedule refers is the performance of the supply described at **point 3** of **ANNEX 1** of this schedule, and its corresponding Common Procurement Vocabulary (CPV) code is that indicated in the said annex.

Where pertinent, the batches are described at **point 4** of **ANNEX 1** of this schedule.

The place of delivery of the supply shall be as indicated at **point 13** of **ANNEX 1** of this schedule.

The technical specifications of the goods are expressly described in the Schedule of Special Technical Specifications, drawn up in accordance with the requirements laid down at articles 124 to 129 of the Public Sector Procurement Law.

The supply includes the distribution, assembly, installation, and commissioning (where necessary) of the goods that are the subject of this procurement, in accordance with the specifications contained in the Schedule of Special Technical Specifications.

3. TENDER BUDGET, CONTRACT PRICE, AND ESTIMATED VALUE.

The budget for the award of the contract, and the method by which it is calculated, is as indicated at **point 6** of **ANNEX 1** of this schedule.

This figure represents the maximum expenditure in which the Authority will incur.

In the case of unit prices, the maximum expenditure to be incurred shall be that resulting from the unit prices offered by the successful bidder and the units effectively required by the Authority and effectively supplied by the former.

Any offer for a higher amount shall be disqualified. In the case of unit prices, any offer received for a sum in excess of any of the said unit prices shall be disqualified.

The figure given for the budget includes, as a separate item and without prejudice to the provisions of Resolution 6/1997 of 10 July of the Taxation Directorate-General, Value Added Tax at the general rate in force at the time of the tendering process.

References to Value Added Tax shall be understood to refer to the General Indirect Canary Islands Tax or the Tax on Production, Services, and Imports, in those territories where these taxes apply.

The contract price shall be that resulting from the award of the contract, and shall include Value Added Tax as a separate item.

The contract price shall also be deemed to include any other taxes, fees, or levies of any kind that may be applicable hereto, as well as all costs in which the successful bidder incurs in connection with the performance of the duties envisaged in this schedule.

In the event that the estimated value of the contract in accordance with the provisions of article 101 of the Public Sector Procurement Law does not coincide with the tender budget, this circumstance shall be recorded at **point 8** of **ANNEX 1** of this schedule. Likewise, **point 9** of **ANNEX 1** shall record whether or not the contract is subject to harmonized regulation, and **point 10** of **ANNEX 1** shall record whether or not it is open to the special procurement appeals process.

Where allowed by **point 7** of **ANNEX 1** of this schedule, the price of this contract may be revised, either upwards or downwards, for which purpose the applicable official formula or indices shall be established in the said annex.

In the lease agreement, the sums payable (where pertinent) by the Authority under the heading of maintenance charge shall be set separately from those constituting the rent as indicated in the corresponding section of **point 6** of **ANNEX 1** of this schedule.

Point 6 of **ANNEX 1** may likewise establish that payment of the total price of the goods to be supplied may be settled partly in cash and partly in the supply of other goods of the same kind, where duly-justified technical or economic reasons in the dossier make this advisable, although the value of the said goods of the same kind may not under any circumstances exceed 50% of the total price.

The Contracting Authority may freely pass on the discount offered by the successful bidder in relation to the maximum total sum across the annual payments envisaged for the performance of the contract, and the contract shall reflect the distribution of the award price across the annual payments. Where this circumstance is not mentioned in the contract, the percentage discount shall be deemed to be passed on equally across all annual payments.

4. EXISTENCE OF FUNDS.

The Authority is in possession of the funds necessary in order to honour the economic duties in which it will incur as a result of the contract to which this schedule refers. The budget heading under which this expenditure will be recorded is indicated at **point 11** of **ANNEX 1** of this schedule, while **point 6** of **ANNEX 1** states the date on which the expenditure was incurred and the financial year to which it will be charged.

5. PERFORMANCE TERM.

The overall performance term for the contract, as well as any intermediate deadlines for successive deliveries that may be established, shall be set at **point 12** of **ANNEX 1** of this schedule.

Where due to the processing of the dossier, and due to unforeseen circumstances, the start of the performance of the contract is delayed beyond the date initially envisaged, the contracting authority may, prior to the start of the contract, make adjustments to the price and to the performance term so that these are in accordance with the real term, executing the contract for the new amount.

The said annex shall likewise indicate whether or not it is possible to extend the contract.

6. CAPACITY AND SOLVENCY OF THE UNDERTAKING TO PERFORM THE CONTRACT.

6.1. SUITABILITY AND CAPACITY. GENERAL LEGAL REQUIREMENTS.

Natural or legal persons, whether Spanish or foreign, who have full legal capacity under articles 65 and 66 of the Public Sector Procurement Law, are entitled to contract, provided that they do not incur in any of the prohibitions on contracting laid down at article 71 of the Public Sector Procurement Law and that they can establish their economic, financial, and technical solvency, in those situations where this is required, in accordance with the provisions of articles 86, 87, and 89 of the Public Sector Procurement Law.

Likewise, they must be in possession of such business or professional qualifications as may be required for the performance of the activity or provision of the service constituting the object of the contract.

Legal persons may only be awarded the performance of contracts where the activity involved falls within their aims, objects, or scope of activity as defined in their by-laws or articles of association.

The provisions of articles 67, 68, and 69 of the Public Sector Procurement Law shall apply to non-Community undertakings, Community undertakings, and joint-venture companies respectively.

Undertakings that have been involved in drawing up the technical specifications or the preparatory documents for the contract, or that have advised the contracting authority during the preparation of the tendering process – whether individually or as part of a joint venture – and any undertakings linked thereto, may not participate in the tendering process where their participation could hamper free competition or entail preferential treatment compared to the other bidders.

6.2. ECONOMIC, FINANCIAL, AND TECHNICAL OR PROFESSIONAL SOLVENCY.

With the exception of contracts awarded in accordance with the provisions of article 159.6 of the Public Sector Procurement Law, undertakings must be able to establish that they meet the minimum economic, financial, and professional or technical solvency criteria defined by the contracting authority from among those established at articles 86, 87, and 89 of the Public Sector Procurement Law.

The specific means by which solvency can be established shall be indicated at **ANNEX 3** to this schedule.

7. PROFILE OF THE PROCURER.

All items expressly contained at article 63 of the Public Sector Procurement Law shall be published on the procurer profile of the contracting authority.

The procurer profile shall be accessed through the Public Sector Procurement Platform (<https://contrataciondeestado.es/wps/portal/plataforma>).

II. AWARD OF THE CONTRACT

8. AWARD PROCESS.

The manner in which the process is to be carried out and the award is to be made, along with the applicable article of the Public Sector Procurement Law, shall be indicated at **point 14** of **ANNEX 1** of this schedule.

9. TENDER NOTICE.

Notice of the tendering process shall be published on the ESS Bilbao Consortium Procurer Profile available on the Public Sector Procurement Platform. Furthermore (except for contracts awarded by way of the simplified open procedure), the tender notice shall be published in the 'Official State Gazette (BOE)' (the maximum cost of publishing the tender notice in the BOE and the way in which this is to be paid shall be described in detail at **point 8** of **ANNEX 1** of this schedule).

Where contracts are subject to harmonized regulation, the tender notice must also be published in the 'Official Journal of the European Union'.

Tender notices for contracts shall contain the information listed at annex III of the Public Sector Procurement Law.

10. SUBMISSION OF BIDS.

The bids submitted by interested parties must be in compliance with the schedules and tender documents governing the process, and by submitting their bid undertakings unconditionally accept the entire content of the clauses and conditions thereof, without any exception or reservation, and authorize the committee and the contracting authority to check the details recorded at the Official Register of Public Sector Tenderers and Qualified Undertakings or in the official lists of economic operators of a Member State of the European Union.

No bidder may submit more than one bid, or subscribe any joint-venture bid with other parties while also submitting a bid individually, or appear in more than one joint-venture bid. Breach of these rules shall result in all bids in which the bidder is involved being disqualified.

Bidders may, if they choose, include a statement in each envelope identifying which administrative or technical documents and which data submitted are, in their opinion, confidential, as indicated at article 133 of the Public Sector Procurement Law. Documents and data submitted may be classed as confidential where the disclosure thereof to third parties could compromise their legitimate commercial interests, or prejudice fair competition between businesses within the sector, or fall within the prohibitions envisaged under the Protection of Personal Data Law. A model for making such a statement is included at **ANNEX 6** of this schedule.

All documents required must be drafted in Spanish and be either originals or authenticated copies in accordance with the provisions of Law 39/2015 of 1 October on the Common Administrative Procedure of the Public Authorities, except for those where it is expressly indicated that they may be submitted in English (point 15 of **ANNEX 1**).

Where the assessment criteria include aspects that have to be evaluated subjectively (on the basis of value judgments), under no circumstances may any references or notes regarding aspects that are to be evaluated by the application of formulas be included in envelopes or files 1 or 2. Failure to comply with this requirement shall result in the bid being disqualified.

Where the award criteria only include aspects that are to be evaluated by the application of formulas, and **ANNEX 7 (Technical documentation to be evaluated subjectively (value judgment))** of this schedule indicates that the said annex does not apply, only envelopes or files 1 and 3 shall be submitted (**point 15 of ANNEX 1** of this schedule)

Undertakings submitting documents in another language must attach the corresponding official translation into Spanish, certified by a sworn translator.

The goods that make up this procurement may be offered as a whole, or – where this is allowed by the schedule – in batches, and in this case bidders must clearly specify, on the outside of each envelope or file, the batch or batches for which they are bidding, and the award shall be made in accordance with the batches offered. Where the tender process is done in batches, bids must under all circumstances contain the price offered per batch.

10.1 PLACE, MANNER, AND TIME LIMIT FOR SUBMISSION.

Bids, together with all necessary documentation, shall be submitted in the manner, at the place, and within the time limit indicated in the tender notice.

The tendering process shall, in general terms, be conducted electronically, although the option of submission by hand may be allowed in the situations envisaged in the ‘Fifteenth Additional Provision’ of the Public Sector Procurement Law.

The manner in which bids are to be submitted in this tendering process is defined at **point 15 of ANNEX 1 of this schedule.**

Bids must be submitted within the time limit indicated in the tender notice. Bids not submitted within the time limit will not be considered.

10.1.1 PROCEDURE FOR SUBMITTING BIDS ELECTRONICALLY:

Bidders are required to draw up and submit their bids electronically using the **Public Sector Procurement Platform** (<https://contrataciondelestado.es>), in accordance with the provisions of the Guide to Electronic Tendering Services for Businesses which may be found here: <https://contrataciondelestado.es/wps/portal/guiasAyuda>.

The said guide explains how bidders should draw up and submit the documentation and the electronic envelopes or files that make up their bid using the **‘Preparation and Submission of Bids Tool’** that is made available to them and that will automatically launch on their local machine following the instructions contained in the reference guide.

For these purposes, being a registered user of the Public Sector Procurement Platform and filling out both the basic details and the additional details is an essential requirement (see the Guide for Using the Public Sector Procurement Platform for Businesses – ‘Economic Operator Guide’ – available via the above link).

Electronic fingerprint – Submission of bids via the Public Sector Procurement Platform (PLACSP).

The tool made available by the Public Sector Procurement Platform to undertakings or bidders allows them to submit their bids even where the upload speed or bandwidth of the communications channel they are using is inadequate for the size of their bid, provided that the bid has been submitted within the established deadline.

When undertakings or bidders click on 'Send', the Tool will always send the electronic fingerprint or summary of the bid.

Once the electronic fingerprint has been registered, the process continues with the submission of the complete bid:

- If the bandwidth available is adequate or there is no breakdown in the communications service, it will be registered with the PLACSP servers almost simultaneously.

- Otherwise, the Tool will inform the undertaking or bidder that it has 24 hours within which to complete the bid, which it can do by way of another attempt at electronic submission. Where for various reasons it is not possible to complete the bid electronically, the bidder must use the PLACSP Tool to download it in an electronic file (DVD, USB) and submit it in person or by way of express courier service at the following address: ESS BILBAO CONSORTIUM (Att: Contratación), Parque Tecnológico de Bizkaia, Laida Bidea 207B SS2, 48160 Derio, Bizkaia.

The time and date the bid is submitted will always be that of the electronic fingerprint, even where up to 24 hours have elapsed between them.

Undertakings or bidders must establish that they have presented an electronic fingerprint by supplying the proof of presentation generated by the PLACSP, including the reference HUELLA ELECTRÓNICA.

Where the complete bid is not submitted within 24 hours of presenting the electronic fingerprint, or in the event a new bid is made (where this is possible), it shall be deemed that the bid corresponding to the previous electronic fingerprint has been withdrawn.

Recommendations for persons or businesses who are bidding.

You are advised to read the Electronic Tendering Services Guide: Preparation and Submission of Bids, section 4.7.1 Electronic Fingerprint for Businesses, which is available on the Public Sector Procurement Platform, as an 'economic operator' user.

In this tendering process, bids not submitted in the manner established at **point 15 of Annex 1** of this schedule will not be considered.

IMPORTANT: If the dossier is being processed in batches, then bidders must submit as many sets of files as batches they are bidding for (1, 2, and 3, or 1 and 3 where it has been established that only criteria that are to be evaluated by the application of formulas are being submitted), identifying the batch number being bid for in each and every one of them, in a way that is clearly visible and that does not require them to be opened in order to be read.

10.1.2 PROCEDURE FOR SUBMITTING BIDS BY HAND:

The envelopes to be submitted must be sealed, identified on the outside stating the tendering process being bid for, signed by the bidder or the person representing the bidder stating his/her Tax ID number, and the forenames and surnames or corporate name of the undertaking and the corresponding Tax ID number. In addition, the following shall be stated: address, telephone number, and **e-mail address** for any possible communications. The contents of the envelope shall be listed numerically on a separate sheet contained within the envelope.

Bidders shall send the envelopes to the address indicated in the tender notice, by post or by any other means envisaged at art. 16 of Law 39/2015 on the Common Administrative Procedure of the Public Authorities within the submission deadline stated in the notice. In these cases, the Contracting Authority shall be informed of the submission of the bid, and documentary proof shall be provided of the official time/date stamp as follows: attaching in all circumstances a copy of the proof of dispatch referred to above. Unless both requirements are met (submission of the documentation and communication of the dispatch thereof within the tendering deadline), the bid shall be disqualified, if it is received by the Contracting Authority after the date on which the deadline expires as stated in the tender notice.

However, if the bid is not received within ten calendar days of the deadline for the submission of bids, it shall not be considered under any circumstances.

Bids submitted elsewhere or sent to other addresses shall not be considered.

Each envelope to be submitted shall display, in a way that is clearly visible and that does not require them to be opened in order to be read, the following table (one per envelope):

ENVELOPE No. 1: DOCUMENTS IN PROOF OF MEETING THE PRELIMINARY REQUIREMENTS
ENVELOPE No. 2: DOCUMENTATION TO BE EVALUATED IN ACCORDANCE WITH SUBJECTIVE ASSESSMENT CRITERIA (VALUE JUDGMENT)
ENVELOPE No. 3: CRITERIA TO BE EVALUATED IN ACCORDANCE WITH THE APPLICATION OF FORMULAS
AIM OF THE CONTRACT AND DOSSIER NUMBER (the title and the dossier number stated in the tender notice shall be quoted)
BATCH: the batch number shall be stated where pertinent
BIDDER: Forenames and surnames or corporate name of the company and Tax ID number
Registered office:
Telephone number:
E-mail address (essential):
Date signed:

IMPORTANT: If the dossier is being processed in batches, then bidders must submit as many sets of files as batches they are bidding for (1, 2, and 3, or 1 and 3 where it has been established that only criteria that are to be evaluated by the application of formulas are being submitted), identifying the batch number being bid for in each and every one of them, in a way that is clearly visible and that does not require them to be opened in order to be read.

11. CONTENT OF THE ENVELOPES.

Each envelope or file shall included inside it, on a sperate sheet, a numbered list of its contents.

The electronic files or envelopes to be submitted, which shall be described in detail at **point 15 of ANNEX 1 of this schedule**, must contain the following:

11.1 ENVELOPE OR FILE 1 (DOCUMENTS IN PROOF OF MEETING THE PRELIMINARY REQUIREMENTS).

- **Self-declaration in proof of meeting the preliminary requirements** pursuant to articles 140 and 141 of the Public Sector Procurement Law, in accordance with the ESPD for tendering processes with an estimated value in excess of 100,000.00 euros, as per the model contained at **ANNEX 2** of this schedule.

Important: An e-mail address must be provided for the service of notices, which must be 'approved' pursuant to the Fifteenth Additional Provision of the Public Sector Procurement Law, to which all notices in relation to this procedure will be sent. By designating this e-mail address, there is an implied acknowledgement that the said electronic address is under the control of the interested party, which agrees to having communications sent to the designated electronic address.

- **Technical and economic solvency:** Companies must supply the necessary documents in order to establish their technical and economic solvency in accordance with the criteria laid down at Annex 3. In those cases where a Statement of the main deliveries performed is required, Annex 10 must be filled out together with the documents in proof of and supporting the said deliveries.

- **SME Declaration and/or Declaration of belonging to a business group:** companies must supply the document duly filled out in accordance with the model contained at **ANNEX 4** of this schedule.

- **Inclusion of external resources in the solvency:** In the event the undertaking is relying on the solvency and resources of other undertakings pursuant to article 75 of the Public Sector Procurement Law, each and every one of the said other undertakings must also submit a self-declaration containing the relevant information for these cases in accordance with the standard form under the European Single Procurement Document or self-declaration of meeting the preliminary requirements indicated at **ANNEX 2** of this schedule.

- **Joint ventures:** In all situations where various undertakings bid as part of a joint venture, a self-declaration in accordance with the model contained at **ANNEX 5** of this schedule shall be filed.

- In the event the contract is to be performed in Spain, **foreign companies** shall supply a Statement of being bound by the jurisdiction of the Spanish Courts and Appeal Courts of any division in respect of any incidents that may arise, whether directly or indirectly, from the contract, in waiver (where pertinent) of the protection of any foreign jurisdiction that may correspond to the bidder, in accordance with the model contained at **ANNEX 11** of this schedule.

- Documents in proof of having established the provisional bond where so required by **point 17** of **ANNEX 1** of this schedule.

NOTE: Point 17 of **ANNEX 1** of this schedule envisages the possibility of establishing a provisional bond.

- Where the bidder has previously participated in the drafting of the technical specifications or the preparatory documents for the contract, or has advised the contracting authority during the preparation of the tendering process, it shall supply a Statement to the effect that the said participation does not infringe the principle of equal treatment with other bidders or distort competition with them.

NOTE: We consider it appropriate to maintain this paragraph given that where a company has previously participated in drawing up the technical specifications or the preparatory documents for the contract and the contracting authority sought to exclude it, it would be under a duty to allow the company the opportunity to be heard so that the company could argue that the said participation does not infringe the principle of equal treatment with other bidders or distort competition with them (as is required at paragraph two of article 70.1 of the Public Sector Procurement Law).

- Where required, the Statement indicated at **ANNEX 3** of this schedule regarding 'other documentation' essential for the proper performance of the contract shall be supplied.

The circumstances regarding capacity, solvency, and lack of disqualification from contracting must be extant on the last day for the submission of bids and remain extant at the time the contract is finalized.

The Contracting Authority may in all circumstances and for the purpose of ensuring the successful completion of the procedure require bidders, at any time prior to the approval of the award proposal, to supply documents to prove that they meet the eligibility conditions laid down for the award of the contract.

11.2 ENVELOPE OR FILE 2 (DOCUMENTATION TO BE EVALUATED IN ACCORDANCE WITH SUBJECTIVE AWARD CRITERIA (VALUE JUDGMENT)).

The documents listed at ANNEX 7 of this schedule shall be included, duly organized, grouped, and classified according to the various sections as required, in accordance with the nature of the supply that is the subject of the procurement and the documents requested in the Schedule of Technical Specifications, including, where pertinent, any variations, improvements, and/or alternatives and any other documents, catalogues, etc.. The said documentation shall be signed by the bidder.

This file shall only contain the offer referring to criteria that have to be evaluated by way of a value judgment. The inclusion in this file of any aspect of the technical or economic offer that is to be evaluated by way of the application of formulas shall result in the offer being disqualified.

The supplies that are the subject of this contract must be offered by the bidders duly legalized in respect of intellectual, industrial, or commercial property, patents, trade marks, and any other similar rights, and any costs or indemnities that this entails shall be borne by the bidders. The successful bidder shall be liable for any and all claims in connection with industrial, commercial, or intellectual property, and shall be required to pay damages to the Authority for any losses or harm incurred by the Authority in respect of claims relating to these matters.

All items specified in the Schedule of Technical Specifications are mandatory, and any bidder that breaches or fails to comply with any of the specifications may be disqualified.

In relation to the documentation supplied by the bidder, any documents concerning matters protected by commercial or industrial secrets, or that are considered confidential, must be expressly identified by the bidder as being for the exclusive use of ESS Bilbao Consortium, in accordance with the model confidentiality statement contained at ANNEX 6 of this schedule, pursuant to the terms set forth at article 133 of the Public Sector Procurement Law.

Failure to include this statement shall result in the presumption that no document or information supplied is of a confidential nature.

11.3 ENVELOPE OR FILE 3 (DOCUMENTATION TO BE EVALUATED BY THE MERE APPLICATION OF FORMULAS).

This file shall include the documentation indicated at ANNEX 8 of this schedule.

The economic bid, duly signed and dated, must comply with the model attached at ANNEX 9 of this schedule, and must indicate, as a separate item, the amount of Value Added Tax to be passed on, stating the percentage rate applicable in each case.

Each bidder may only submit one single economic bid, which shall contain one single offer. Likewise, bidders may not subscribe a joint-venture with others if they have submitted a bid individually or participate in another joint-venture. Breach of this restriction shall result in the disqualification of all offers where duplication is detected.

Where, apart from price, there are other criteria to be evaluated by way of the application of formulas, the model in accordance with ANNEX 9 Bis of this schedule should be filled out.

Where the procedure contains criteria that have to be evaluated by way of value judgments which need to be assessed in advance of the opening of that envelope, any bidders that submit their economic offer, or that refer to any aspect of the offer to be evaluated by way of formulas or objectively, in an envelope other than the envelope reserved for this purpose (envelope no. 3), shall be disqualified.

Where an offer does not coincide with the documentation examined and admitted, or exceeds the tender budget, or substantially diverges from the established model, or contains a manifest error in the value of the bid, or the bidder acknowledges that it contains an error or inconsistency that makes it unviable, it shall be rejected by the award committee by way of a reasoned resolution. However, the alteration or omission of some of the words of the model shall not be sufficient grounds for the bid to be rejected, provided that this does not change its meaning.

The economic offers drawn up shall be deemed to include the costs in which the successful bidder will necessarily incur in the normal performance of the contracted services, including administrative costs (insurance, transport and delivery costs, postal charges, documentation, etc.) and all applicable taxes and levies.

Where payment of the total price of the goods to be supplied is to be made partly in cash and partly in the supply of other goods of the same kind, the valuation of the latter shall be expressly explained by the bidders in their offers.

In the event of a discrepancy between a sum stated in figures and a sum stated in words, the sum stated in words shall prevail.

Bids containing omissions, errors, or crossings-out that prevent a clear understanding by the Authority of any aspect considered essential to the offer shall be disqualified.

12. ASSESSMENT OF THE DOCUMENTATION AND OPENING OF THE TECHNICAL AND ECONOMIC OFFERS.

12.1. AWARD COMMITTEE.

The award committee shall be formed and shall operate in accordance with article 326 of the Public Sector Procurement Law, and its members are defined at **point 19** of **ANNEX 1** of this schedule.

Where a member of the award committee other than the representative of the General Comptroller is absent, he/she may be substituted by a civil servant of similar rank, designated by the contracting authority. If the representative of the General Comptroller is absent, only the General Comptroller him/herself is authorized to designate who is to substitute his/her representative.

The award committee intervening in the simplified open procedure governed by article 159 of the Public Sector Procurement Law shall be deemed to be quorate and validly in session where the Chairman, the Secretary, a civil servant from among those appointed (whether by statute or by the regulations) to provide legal advice to the contracting authority, and a civil servant holding powers regarding economic and budgetary control, are all in attendance.

No award committee shall be established in the simplified open procedures governed by article 159.6 of the Public Sector Procurement Law.

12.2. RECEIPT OF DOCUMENTATION.

Once the deadline for the receipt of bids has expired, a certificate shall be issued listing the bids received.

12.3. COMMITTEE OF INDEPENDENT EXPERTS.

The award committee has requested, and the contracting authority has authorized, technical advice from independent experts, where this is indicated at **point 20** of **ANNEX 1** of this schedule.

In those cases where this is appropriate, i.e. in cases where criteria that have to be evaluated by way of value judgments are given more weight than criteria to be evaluated by way of the application of formulas, the assessment of the said criteria dependent on value judgments shall be performed by a committee of experts with the relevant qualifications, composed of at least three members who may also belong to the dependent services of the contracting authority, but under no circumstances may they be attached to the body offering the contract, i.e. the same body that will have to judge the offers. In the alternative, the said evaluation may be delegated to a specialist technical body, duly identified in the schedules.

In all other cases, the assessment of criteria that have to be evaluated by way of value judgments, as well as (in all cases) the assessment of criteria to be evaluated by way of the application of formulas, shall be carried out by the award committee (where there is one) or by the dependent services of the contracting authority (where there is no award committee), for which purpose such technical reports as may be considered necessary may be requested in accordance with the provisions of article 150.1 and 157.5 of the Public Sector Procurement Law.

12.4. CERTIFICATION AND ASSESSMENT OF DOCUMENTS.

Upon the expiry of the deadline for the submission of bids and prior to the date set for the public session for the opening of the technical offers to be evaluated by way of the application of formulas (where pertinent) and the economic bid, the award committee, governed by article 326 of the Public Sector Procurement Law, shall hold a meeting to assess those documents that have been submitted in due time and manner pursuant to article 163 of the Public Sector Procurement Law.

For this purpose, it shall proceed to open and examine file or envelope no. 1 of the offers submitted in good time.

Where the documentation submitted by the bidders is found to contain defects that can be rectified, a time limit shall be allowed for this, which shall not exceed three calendar days. Any agreements reached in respect of the documentation examined shall be published in the Public Sector Procurement Platform and shall be notified to the bidders affected. The request for the rectification of defects, which shall give details of the defects or omissions detected, shall be made by e-mail to the address indicated by the bidders.

12.5. OPENING OF THE TECHNICAL OFFERS TO BE EVALUATED BY WAY OF A VALUE JUDGMENT. TECHNICAL REPORT ASSESSING THE AWARD CRITERIA TO BE EVALUATED BY WAY OF A VALUE JUDGMENT.

Prior to the opening of the bids contained in envelope or file no. 3, and where pertinent, the award committee shall, at a public act, open the technical offers to be evaluated by way of a value judgment contained in file no. 2.

The technical documentation contained in envelope or file no. 2 shall be handed over to the technicians in charge of verifying compliance by the offers with the technical specifications and of assessing them. Once the various offers have been examined in accordance with the said criteria, the technicians shall draw up a report stating the score earned by the bidders for each one of the criteria that have to be evaluated by way of value judgments contained at ANNEX 7 of this schedule, and proposing the exclusion of those offers that do not meet the technical specifications of the aims of the contract.

The order of priority of the award criteria and the weight they are given shall be established in decreasing order in ANNEX 7 of this schedule. This annex shall also state, where pertinent, the minimum score bidders must attain to avoid being knocked out of the selection process.

12.6. OPENING OF ECONOMIC AND TECHNICAL OFFERS TO BE EVALUATED BY WAY OF THE APPLICATION OF FORMULAS.

The award criteria to be evaluated by way of the application of formulas and the weight given to them shall be established in decreasing order in ANNEX 8 of this schedule.

The opening of the economic offer shall be carried out at a public act, unless the tender notice states that electronic means may be used.

With regard to the opening of bids submitted by hand, the opening of the economic and technical offers to be evaluated by way of the application of formulas corresponding to offers admitted in the preliminary assessment at a public session shall be carried out at the place, on the date, and at the time indicated in the tender notice, and the result of the assessments carried out by the award committee or committee of experts referred to in the previous point shall be announced at this act.

12.7. RANKING OF THE BIDS.

The contracting authority shall rank in descending order those bids that have qualified for the next stage and that have not been found to be disproportionate or abnormal in accordance with the provisions of article 149 of the Public Sector Procurement Law. The said ranking shall take into account the award criteria referred to in the schedule or in the tender notice, and for this purpose it may request such technical reports as it considers appropriate. Where the only criterion to be taken into account is price, it shall be deemed that the offer that is the most economically advantageous is that offering the lowest price.

Where two or more bids are tied, this shall be resolved by way of applying the provisions of article 147.2 of the Public Sector Procurement Law.

In accordance with the outcome of this procedure, the award committee shall draw up the corresponding award proposal for submission to the contracting authority, once all criteria that must be applied in order to select the successful bidder have been duly considered, in accordance with the provisions of article 157 of the Public Sector Procurement Law.

12.8. DISPROPORTIONATE OR ABNORMAL OFFERS.

The only criterion to be taken into account in order to determine the existence of a disproportionate or abnormally low offer is the price in accordance with the following objective parameters:

1. Where there is only one bidder and the offer is below the tender budget by more than 25 percentage points.
2. The lower offer where there are two bidders and the said lower offer is more than 20 percentage points below the other offer.
3. Where there are three bidders, any offer that is more than 10 percentage points below the arithmetic mean of all three offers. However, the offer with the highest price shall be excluded from the calculation of the said arithmetic mean where it is over 10 percentage points higher than the said mean. Any offer that is more than 25 percentage points lower shall be deemed disproportionate in all circumstances.
4. Where there are four or more bidders, any offer(s) that is/are more than 10 percentage points lower than the arithmetic mean of all the offers submitted. However, where there are offers that exceed the said arithmetic mean by more than 10 percentage points, a new mean shall be calculated using only those offers that do not incur in this excess. In all circumstances where the number of offers remaining is less than three, the new mean shall be calculated on the basis of the three offers with the lowest price.

Where an offer is found to be disproportionately or abnormally low, the bidder shall be required to justify the offer in accordance with the provisions of article 149 of the Public Sector Procurement Law.

13. REQUEST SERVED ON THE BIDDER SUBMITTING THE OFFER THAT IS THE MOST ECONOMICALLY ADVANTAGEOUS AND PROOF OF DOCUMENTATION PRIOR TO THE AWARD.

The contracting authority shall require the bidder submitting the most economically-advantageous offer to file the documentation set forth below within ten business days counted as from the day following the day on which the request is received.

The corresponding certificates may be issued by electronic, computerized, or telematic means.

Should this request not be satisfactorily complied with within the said time limit, the bidder shall be deemed to have withdrawn the offer, and shall be required to pay a penalty equivalent to 3 per cent of the tender budget, excluding VAT, which shall in the first instance be deducted from the provisional bond. Subsequently, the next bidder in the order in which the offers have been ranked shall be requested to supply the same documentation.

13.1. ADMINISTRATIVE DOCUMENTATION.

Except in simplified open proceedings, where the provisions of article 159 of the Public Sector Procurement Law shall apply, the highest-ranked bidder shall, following a request by the contracting authority and prior to the award of the contract, provide proof that it possesses the documents indicated below and that they are valid:

13.1.1. DOCUMENTS IN PROOF OF PERSONALITY AND POWER TO CONTRACT.

1. Spanish natural persons shall supply an uncertified copy of their national ID card or equivalent document.
2. The power to contract of undertakings which are legal persons shall be established by way of the deed of incorporation or other founding document, the by-laws or articles of association setting out the rules governing the performance of the activity, duly recorded at the corresponding Public Registry, according to the type of legal person in question.
3. With regard to non-Spanish undertakings from Member States of the European Union, their power to contract must be established by way of their recordation at the appropriate Registry in accordance with the legislation of the State where they are established, or by filing a sworn affidavit or certificate in the terms laid down in the regulations, in accordance with the applicable European provisions.

NOTE: The wording contained in the schedule corresponds to the provisions of point 2 of article 84 (Proof of capacity to contract) of the Public Sector Procurement Law.

4. Other foreign undertakings must establish their power to contract by way of a report from the Spanish Permanent Diplomatic Mission in the corresponding State or from the Consular Office corresponding to the territory in which the undertaking is based.

Natural or legal persons from non-European Union States or States signatories of the European Economic Area Agreement must establish, by way of a report from the Spanish Overseas Economic and Trade Office, that the State of origin of the foreign undertaking allows in turn the participation of Spanish undertakings in procurement by public-sector bodies assimilable to those listed at article 3 of the Public Sector Procurement Law, in a manner that is substantially analogous. In contracts subject to harmonized regulation, the reciprocity report shall not be required in respect of undertakings from States signatories of the Agreement on Government Procurement of the World Trade Organization.

5. Where a particular business qualification is required for the performance of the activity or provision of the service that is the subject of the contract, a copy of the certificate in proof that the conditions governing professional qualification are met shall be attached.

13.1.2. DOCUMENTS IN PROOF OF REPRESENTATION.

Persons appearing or who sign offers on behalf of someone else must present the deed of power of attorney in proof that the person signing the offer holds an office at the company that, pursuant to the company by-laws, confers on him/her the representation of the company for these purposes. The said deed or other such document in place of a deed must refer, with sufficient clarity, to the power to participate in tendering processes called by the Authority and to formalize the contract.

Where the bidder is a legal person, the general power of attorney must be recorded, where pertinent, at the Commercial Registry. In the case of a special power of attorney for a specific act, the requirement for it to be recorded in advance at the Commercial Registry shall not apply.

Likewise, the person holding sufficient powers of representation must attach a copy of his/her ID Card (DNI) or other equivalent document.

13.1.3. DOCUMENTATION IN PROOF OF A JOINT VENTURE.

Undertakings participating as part of a joint venture must supply a self-declaration in accordance with the model contained at ANNEX 5 of this schedule.

13.1.4. DOCUMENTS IN PROOF OF ECONOMIC, FINANCIAL, AND TECHNICAL SOLVENCY.

In order to establish that they have the necessary solvency, undertakings must supply the documents indicated at ANNEX 3 of this schedule, which shall also apply to the simplified open procedure up until the entry into force of the provisions of article 159.4.a) of the Public Sector Procurement Law.

Undertakings may rely on the solvency and resources of other entities, irrespective of the legal nature of their links to the said other entities, pursuant to art. 75 of the Public Sector Procurement Law, provided that they can show that, for the performance of the contract, they effectively have access to those resources, and for this purpose they shall supply a certificate issued by the governing board of the company providing the said solvency in proof of this circumstance, and also containing the express acceptance by the company providing the solvency of the provisions of article 1257 of Civil Code.

In the event that the said certificate is accepted by the contracting authority, it may pursue administrative remedies to require the company providing the solvency to honour the commitments it made to the contractor.

In contracts subject to harmonized regulation, the contracting authority may, where ANNEX 3 of this schedule so provides, impose complementary technical solvency requirements in the form of the provision of certificates issued by independent bodies in proof of the undertaking being in compliance with certain quality-control regulations, or environmental regulations, in accordance with the provisions of articles 93 and 94 of the Public Sector Procurement Law. The award committee or the contracting authority may seek clarifications from the undertaking regarding the said certificates and documents submitted, or request it to supply further complementary documents.

13.2. TAX OBLIGATIONS.

Positive certificate, issued by the pertinent Revenue Authority, to the effect that the bidder is up-to-date in compliance with its tax obligations, or self-declaration to the effect that it is not required to file tax returns. This certificate may be obtained in the manner laid down at Law 39/15 of 1 October on the Common Administrative Procedure of the Public Authorities.

13.3. SOCIAL SECURITY OBLIGATIONS.

Positive certificate, issued by the Territorial Social Security Authority, to the effect that the bidder is up-to-date in compliance with its Social Security obligations, or self-declaration to the effect that it is not required to file Social Security returns.

13.4. ECONOMIC ACTIVITIES TAX.

Certificate of being registered for Economic Activities Tax (IAE), issued by the pertinent Revenue Authority, under the corresponding heading or headings, with reference to the current year, except for foreign companies for which this requirement does not apply. In the event the bidder is exempt from this tax, a Statement to this effect shall be supplied.

13.5. PERFORMANCE BOND.

Receipt in proof of having established, at the Spanish General Depository dependent on the Ministry of the Economy, Industry, and Competitiveness, the Performance Bond corresponding to 5% of the final price offered, excluding VAT. This bond shall be established in favour of the ESS Bilbao Consortium, Tax ID G95455473, and may be established in any of the ways laid down at article 108 of the Public Sector Procurement Law.

Where the contract price is presented in the form of unit prices, the value of this bond shall be determined in accordance with the tender budget, excluding VAT.

In the case of contracts with provisional prices as envisaged at article 102, the percentage shall be calculated with reference to the maximum or set price (article 107 of the Public Sector Procurement Law).

The successful bidder may transfer the value of the provisional bond, where it has been required to establish one, to the definitive bond, or it may establish the definitive bond separately, in which case the provisional bond shall be cancelled upon the establishment of the definitive bond (article 106.4 of the Public Sector Procurement Law).

The provisions of articles 107 to 111 of the Public Sector Procurement Law shall govern the way in which this bond is to be established, the situations it covers, how it may be invoked, its topping-up, and refund.

In the event that the bond is invoked in order to settle any penalties or indemnities imposed against the successful bidder, the said bidder shall be required to top it up or increase it, in the corresponding amount, within fifteen days of when the bond was invoked. Failure to do so shall constitute grounds for termination.

Where, as a result of the amendment of the contract, the contract price changes, the bond shall be adjusted within fifteen days counted as from the date on which the undertaking is notified of the amendment resolution, so that it maintains the correct proportion with the new amended price. For these purposes, price variations arising in connection with a price revision in accordance with the provisions of Chapter II of Title III of Book I of the Public Sector Procurement Law shall be ignored.

The Performance Bond shall be refunded or cancelled once the term of the bond has expired, as established at **point 25 of ANNEX 1 of this schedule** and the contract has been satisfactorily fulfilled, or upon the termination of the contract for reasons not attributable to the contractor.

The Performance Bond shall guarantee the absence of any defects in the goods supplied during the warranty period envisaged in the contract.

13.6. COMPLEMENTARY BOND.

Where the award is made in favour of an offer that has incurred in a presumption of being disproportionate or abnormal, and where following completion of all of the procedures envisaged at art. 149 of

the Public Sector Procurement Law it is considered that the contract may be performed, the value of the bond shall be increased by 5% of the final price offered, excluding VAT, or 5% of the tender budget (excluding VAT) where the price is determined on the basis of unit prices.

It shall be established in the same manner as described in the previous point, and shall be cancelled upon positive delivery of the supply.

13.7. OTHER DOCUMENTATION.

Any other documents in proof of the bidder's capacity to contract or of its effective access to the resources that it has undertaken to dedicate or allocate to the performance of the contract, pursuant to article 76.2 of the Public Sector Procurement Law, that may be requested by the contracting authority and so indicated at ANNEX 3 of this schedule.

Likewise, the bidder shall present a certificate to the effect that it is the account holder of the current account into which payment of the contract price is to be made, signed electronically by the legal representative.

14. AWARD OF THE CONTRACT.

The contracting authority shall award the contract within five business days of receipt of the documentation requested from the bidder that submitted the most economically-advantageous offer.

The award decision shall state its reasons and shall be notified to the candidates and bidders, and shall be published on the procurer profile within 15 days.

The notice shall indicate the time period within which the contract ought to be executed.

Where the sole criterion to be taken into account in selecting the successful bidder for the contract is price, the award shall be made within no more than 15 days counted as from the opening of the bids.

Where a range of criteria need to be taken into account for the award of the contract, the maximum time allowed for making the award shall be two months counted as from the first opening of the bids (article 158.2 of the Public Sector Procurement Law).

The time periods indicated in the above sections shall be increased to fifteen business days where it is necessary to follow the procedures referred to at article 149 of the Public Sector Procurement Law.

In the event no award is made within the time periods described, bidders shall be entitled to withdraw their bid.

The contracting authority may (provided that it does so prior to making the award) decide not to make any award or not to execute the contract for reasons of public interest, duly justified in the dossier, or to abandon the tendering process where there has been a breach that cannot be put right of the rules governing the preparation of the contract or governing the tendering process. In both cases, the candidates or bidders shall be compensated with the maximum sum established at **point 26** of ANNEX 1 of this schedule, provided that this is duly justified.

Where the contracting authority does not award the contract in accordance with the proposal drawn up by the award committee, the reasons for this decision must be given.

The tendering process may not be declared void for lack of any suitable bids where there is an admissible offer or bid in accordance with the criteria contained in the schedule.

14.1. NOTIFICATION OF THE AWARD AND PUBLICATION IN THE PROCURER PROFILE.

The award shall be notified to candidates or bidders, and should be published within 15 days on the ESS Bilbao Consortium procurer profile available on the State Procurement Platform, accessible from the State Procurement Platform.

The notification shall under all circumstances contain the information necessary so that bidders that have been excluded or candidates that have been rejected can file an appeal with sufficient grounds against the award decision.

In all circumstances, both the notification and the procurer profile shall state the time limit for the formalization thereof pursuant to article 153 of the Public Sector Procurement Law.

Notification shall be served by electronic means in accordance with the provisions of the Fifteenth Additional Provision of the Public Sector Procurement Law.

14.2. COSTS OF THE TENDER NOTICE.

The costs incurred in connection with the publication of the notices associated with this procedure shall be borne by the successful bidder, which shall settle the said costs in the manner laid down in the Resolution of 27 February 1998 of the General Comptroller of the National Government (Official State Gazette (BOE) no. 60 of 11 March 1998). The sum corresponding to these costs and the method of payment are indicated at **point 18** of **ANNEX 1** of this schedule.

The value of the publication costs shall be shared proportionately across the various successful bidders for each one of the batches that make up the dossier, and for this purpose the tender value of each one of the batches shall be taken into account.

The successful bidder may request proof of the advance disbursement made by the Authority, which shall under all circumstances consist of a copy of the receipt for the publication fee charged by the BOE. Under no circumstances shall an invoice be issued in proof of the reimbursement of the value of the publication costs by the undertaking.

15. EXECUTION OF THE CONTRACT.

Prior to execution of the contract, the successful bidder must provide proof that it has paid the full value of the tender notices, and where pertinent, that of publication in other communications channels, within the time limit allowed for reimbursement laid down at **point 18** of **ANNEX** of this schedule.

In the event that the successful bidder is a joint venture, it must supply the public deed in which it was established, the duration of which must coincide with that of the contract up until its expiry.

The successful bidder shall be under a duty to attend the execution of the contract within the time limit established by the contracting authority. Where the representative attending this act is someone other than the person who signed the economic bid, said representative must supply at this act a power of attorney sufficient for this purpose executed by the successful bidder.

Pursuant to the provisions of article 153.3 of the Public Sector Procurement Law, if the contract is open to the special procurement appeals process pursuant to article 44 of the Public Sector Procurement Law, it may not be executed before fifteen business days have elapsed following the service of notification of the award to all bidders and candidates.

The contracting authority shall request the successful bidder to execute the contract within no more than five calendar days counted as from the day after the day on which the request was served, once the time period envisaged in the foregoing paragraph has elapsed without any appeal being filed entailing the suspension of the

execution of the contract, or once the body responsible for hearing and deciding on the appeal has lifted the suspension.

In all other cases, the execution of the contract shall be carried out no later than within fifteen business days following the day on which notification of the award is received by the bidders and candidates in the manner envisaged at article 151 of the Public Sector Procurement Law.

The offer, and a copy of the Schedule of Administrative and Technical Clauses, which shall be signed by the successful bidder, shall be attached to the contract as an annex.

Where for reasons attributable to the successful bidder the contract has not been executed within the time period indicated, it shall be fined a sum equivalent to 3 per cent of the tender budget, excluding VAT, which shall be charged in the first instance to the Performance Bond, where one exists. In this case, the contract shall be awarded to the next bidder in the order in which the offers have been ranked, following the submission of the documentation established at section 2 of article 150 of the Public Sector Procurement Law.

Performance of the contract may not commence before it has been executed.

The execution of the contract shall be published in accordance with the provisions of article 154 of the Public Sector Procurement Law.

III. PERFORMANCE OF THE CONTRACT

16. PERSON RESPONSIBLE FOR THE CONTRACT ON BEHALF OF ESS BILBAO CONSORTIUM.

Point 22 of ANNEX establishes the unit that is in charge of the day-to-day monitoring and performance of the contract and the person responsible for the contract, who shall be responsible for supervising its performance and taking decisions and issuing instructions as necessary in order to ensure the proper performance of the agreed service, pursuant to article 62.1 of the Public Sector Procurement Law.

17. PERFORMANCE OF THE CONTRACT.

17.1. PERFORMANCE CONDITIONS.

Performance of the contract shall be at the risk of the contractor.

The Authority shall have the power to inspect and to be informed of the process for the manufacture or preparation of the product that is to be delivered in accordance with the contract, and it may order the performance of, or perform its own, analyses, tests, and trials of the materials to be used, establishing quality-control systems and issuing such provisions as it may consider appropriate for the strict compliance of what has been agreed.

Irrespective of the kind of supply, the successful bidder shall not be entitled to any compensation for losses, breakdowns, or harm caused to the goods prior to their delivery to the Authority, unless the Authority has incurred in a delay in receiving them.

The contractor shall respect the confidential nature of all information to which it has access in connection with the performance of the contract. This duty shall continue for a term of five years following becoming aware of the said information.

17.2. ESSENTIAL AND SPECIAL PERFORMANCE CONDITIONS.

The following are established as essential performance conditions:

- 1) The duty on the part of the contractor to strictly honour the payments it is required to make to all sub-contractors or suppliers participating in the contract.

- 2) To maintain the requirements for contracting with the Authority.
- 3) That the goods supplied should be in compliance with the samples, technical documentation, or references provided in the offer, unless it has the prior written agreement of the contracting authority.
- 4) Co-operation in order to ensure the effectiveness of the management and inspection powers acknowledged in favour of the Authority in this schedule, notified in advance in writing.
- 5) The correct invoicing of the articles effectively delivered by the contractor.

From the conditions contained at article 202 of the Public Sector Procurement Law, the following are deemed to be special performance conditions: ensuring health & safety in the workplace, and compliance with the applicable sectoral and territorial collective bargaining agreements. In the event the said special performance condition is breached, a penalty is hereby established of the forfeit of 500 euros from the total award price.

18. DELIVERY AND RECEIPT OF THE SUPPLY.

The contractor shall be under a duty to deliver the goods to be supplied at the place and time established in the contract, in accordance with the technical specifications and administrative clauses and the provisions of articles 192, 197, and 300 of the Public Sector Procurement Law.

The cost of transporting and delivering the goods to be supplied to the agreed location, as well as any taxes or levies that may be payable on the transaction, shall be payable by the successful bidder.

The liabilities in respect of the delivery and receipt of the supply shall be as defined for each party at articles 210 and 300 of the Public Sector Procurement Law.

The contract shall be deemed to have been fulfilled by the contractor upon the performance by the said contractor of the entire service, in accordance with the agreed terms and to the satisfaction of the Authority. Under all circumstances, fulfilment shall require a formal and positive act of receipt or conformity by the Authority within one month of the delivery or performance of the contract.

In the event a special deadline is established for receipt of the contractual supplies, or a special form of receipt is required given their characteristics, this is indicated at **point 13 of ANNEX 1**.

If the goods are not in a condition to be received this shall be recorded in the corresponding instrument and the contractor shall be given precise instructions in order to put right the defects that have been detected. In the event that the defects detected are not put right within the time limit allowed for this purpose, the contractor shall make a new supply with the same characteristics as required in the schedules and in the contract.

Where the technical specifications of this schedule allow for verification by taking samples from the deliveries, in the event the percentage of defective articles established in the Schedule of technical specifications is exceeded, the Authority shall be entitled to reject the whole delivery.

Irrespective of the kind of supply, the successful bidder shall not be entitled to any compensation for losses, breakdowns, or harm caused to the goods prior to their delivery to the Authority, unless the Authority has incurred in a delay in receiving them.

Where the schedule conditions establish that the formal act of receipt of the goods is to take place some time after delivery, the Authority shall be responsible for the safekeeping of the said goods during the time between delivery and receipt.

Once perishable goods or products have been received in conformity by the Authority, the said Authority shall be responsible for their management, use, or expiry, without prejudice to the supplier's liability for any defects or latent defects they may have.

In contracts for the manufacture and supply of products protected by intellectual or industrial property, the assignment of the said property to ESS Bilbao Consortium shall be included.

The goods shall remain at the destination point ready for use in accordance with the provisions of this schedule and the schedule of technical specifications for supply, and where pertinent, the contractor shall likewise take away any goods supplied to it as part payment of the price.

The cost of transporting and delivering the goods to be supplied to the agreed location shall be payable by the contractor, unless otherwise agreed.

19. EMPLOYMENT, SOCIAL, AND ECONOMIC DUTIES OF THE CONTRACTOR.

The personnel attached to the supply shall be exclusively dependent on the contractor, which shall hold all rights and duties inherent to its capacity as the employer of the said personnel.

The successful bidder must comply with the conditions governing the pay of its employees in accordance with the applicable sectoral Collective Bargaining Agreement.

The contractor shall be liable in respect of any and all duties inherent to its capacity as the employer, as well as for compliance with all rules governing and applying to the employment relationship or of any other kind, existing between itself – or its sub-contractors – and the employees of the former and the latter, and it may not pass on to the Authority any fine, penalty, or any other liability that may be imposed against it by the competent Bodies for any breach of the said rules. In any event, the contractor shall compensate ESS Bilbao Consortium for any sum the latter may be required to pay for any breach of the duties laid down in this schedule, even where this is imposed by a judicial or administrative ruling.

The following shall be the responsibility of, and payable by, the contractor:

- a) Obtaining any authorizations or licences, documents, or any information, whether official or private, needed in order to perform the supply.
- b) The cost of verifying materials, overseeing the manufacturing process, where pertinent, and the cost of materials, staff, transport, delivery of the goods at the agreed location and destination or removal of any goods therefrom, assembly, start-up or commissioning, and subsequent technical assistance for the goods eventually supplied during their respective warranty period, as well as any other costs that may arise for the performance of the contract, including tax duties.
- c) Tests, trials, or any reports necessary in order to verify the proper performance of the agreed supply, up to the limit of 1% of the total price of the contract.
- d) The compensation of any losses that may be caused to either the Authority or third parties as a result of the operations necessary for the performance of the supply, except where these losses have been caused by an immediate and direct instruction by the Authority.
- e) Any claims regarding the industrial, intellectual, or commercial property of the materials, procedures, or equipment used in the manufacture of the supply, and it shall compensate the Authority for any and all losses and harm that may be incurred by the Authority as a result of the filing of claims, including the costs deriving from any claims that may eventually be filed against the Authority.
- f) Abiding by the regulations in force governing data protection.

19.1 INFORMATION AND PUBLICITY DUTIES.

The successful bidder shall be under a duty to comply with the information and publicity duties laid down at Annex XII, section 2.2 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

20. INSURANCE.

The contractor must have all mandatory insurance policies, as well as insurance covering the liabilities deriving from the performance of the contract, in the terms indicated (where pertinent) in the Schedule of Special Technical Specifications governing the contract.

21. LIABILITY AND PENALTIES FOR DELAYS OR DEFECTIVE PERFORMANCE.

The contractor shall be under a duty to perform the contract within the total time period established for its performance, as well as within the intermediate deadlines established at **point 12** of **ANNEX 1** of this schedule.

Where there is any failure to perform this contract as a result of delays or defective performance, penalties shall be imposed following a decision by the contracting authority, approved at the proposal of the person responsible for the contract, which shall be immediately enforceable, and these penalties shall be settled by way of a deduction from the sum payable to the contractor as part or full payment for the contract, or from the performance bond, where one has been established and it is not possible to deduct them from the said payments.

In the event of defective performance of the service that is the subject of the contract (article 192.1 of the Public Sector Procurement Law), or breach of the commitments to allocate resources (articles 76.2 and 192.1 of the Public Sector Procurement Law), or breach of the special performance conditions of the contract (articles 192.1 and 202 of the Public Sector Procurement Law), or breach of characteristics of the offer linked to the assessment criteria, or breach of the technical specifications or of the clauses of this schedule, penalties shall be imposed.

These penalties shall be in proportion to the severity of the breach, and the value of any particular penalty may not exceed 10 per cent of the contract price, excluding VAT, nor may the total value of the penalties exceed 50 per cent of the contract price.

The contractor shall be under a duty to perform the contract within the total time period established for its performance, as well as within the intermediate deadlines established for its successive performance.

Where the contractor, for reasons attributable to itself, has incurred in a delay in respect of the overall time period allowed for performance, or any intermediate deadline, ESS Bilbao Consortium may, in accordance with the circumstances of the case, choose between termination of the contract or imposing daily penalties in a proportion of 0.60 euros for every 1,000 euros of the contract price, excluding VAT.

Where the penalties for delays reach a value of 5% of the contract price, excluding VAT, the contracting authority shall be entitled to terminate the contract or approve the continued performance of the contract with the imposition of new penalties.

The Authority shall not be under any duty to notify the contractor in advance before deeming that it has incurred in a situation of late performance.

Where the delay arises for reasons not attributable to the contractor and the contractor offers to perform its duties if it is given an extension on the initial deadline, the contracting authority shall grant this extension and set a new deadline that is at least as long as the time that has been lost, unless the contractor requests a shorter extension. The person responsible for the contract shall issue a report determining whether or not the delay was for reasons attributable to the contractor, pursuant to article 195.2 of the Public Sector Procurement Law.

Penalties for delays or for defective performance shall be imposed following a decision by the contracting authority, approved at the proposal of the person responsible for the contract, which shall be immediately enforceable, and these penalties shall be settled by way of a deduction from the sum payable to the contractor as part or full payment for the contract, or from the performance bond, where one has been established and it is not possible to deduct them from the said payments.

22. DUTIES OF THE AUTHORITY.

22.1. RECEIPT OF DELIVERY.

Deliveries shall be received in accordance with the provisions and formalities laid down at articles 210 and 300 of the Public Sector Procurement Law.

The Authority shall be under a duty to take delivery of supplies or of partial fulfilments of the supply, carried out in accordance with the provisions of this schedule, but under no circumstances shall any duties arise for the Authority involving any advance payment of the annual payments envisaged for the contract.

The warranty period under this contract is as established at **point 25** of **ANNEX 1** of this schedule, and shall start to run as from the date of receipt or conformity. Where any defects are detected in the goods supplied during the warranty period, the Authority shall be entitled to request the contractor to replace those items that are unsuitable, or to repair them where this is acceptable.

Should the contracting authority consider, during the warranty period, that the goods supplied are not fit for their intended purpose as a result of the defects detected in them attributable to the contractor, the provisions of articles 110.d and 305 of the Public Sector Procurement Law shall apply.

Once the warranty period has expired, and if no liabilities arise, the performance bond established in accordance with the provisions of article 111 of the Public Sector Procurement Law shall be refunded or cancelled.

22.2. PAYMENT OF THE PRICE AND PAYMENTS ON ACCOUNT.

The Authority shall be under a duty to pay for the goods effectively supplied and received, in accordance with the price offered and the provisions of article 301 of the Public Sector Procurement Law.

Where as a result of the processing of the dossier, and for unforeseen reasons, there is a delay in the commencement of performance of the contract beyond the date initially envisaged, the contracting authority may make adjustments to the price and the term, prior to the start of the contract, so as to adapt it to the actual performance term, formalizing the contract for the new price.

In the event that any of the items referred to at section 3 of the Schedule of Technical Specifications cannot be manufactured in accordance with the formats described in the table, and thus in accordance with the provisions of the said clause, the said items shall be acquired and supplied by ESS Bilbao, the cost of the said acquisition shall be deducted from the price, and the amount payable in the next instalment to be made according to the payment calendar indicated at section 23 of Annex I of this schedule shall be reduced.

Payment of the price shall be made as indicated at **point 23** of **ANNEX 1** of this schedule.

The Authority shall be under a duty to pay the price within thirty days following the date of the receipt or conformity instrument, without prejudice to the provisions of article 210.4 of the Public Sector Procurement Law, and if there is a delay, it shall pay the contractor – as from when the said thirty-day period elapses – default interest and compensation for the collection costs in accordance with the provisions of Law 3/2004 of 29 December establishing measures to combat late payment in commercial transactions. In order for the term during which default interest accrues to start running, the contractor must have complied with the duty to present its invoice at the corresponding administrative registry, in due time and manner, within thirty days of the day on which the goods were effectively delivered or the service was effectively provided.

Without prejudice to the provisions of article 210.4 of the Public Sector Procurement Law, the Authority must approve the documents establishing that the goods supplied are in conformity with the provisions of the contract within thirty days of the effective delivery of the goods, unless expressly agreed otherwise in the contract and in the documents governing the tendering process.

The invoice must contain the details of the person in whose name it is issued (the management body), those of the processing unit, and those of the accounts office, with their respective codes as contained in the Directory of Administrative Units in force at any given time, as indicated at **point 24** of **ANNEX 1** of this schedule.

The contractor, according as indicated at **point 24** of **ANNEX 1** of this schedule, shall or shall not be entitled to receive payments on account for preparatory operations for the contract, in the event that these arise, and should secure these payments by way of establishing a guarantee in the sum of the payments in favour of the procurer, and which shall be refunded once the supply has been delivered and received in conformity.

22.3. PAYMENT OF DEFAULT INTEREST AND COST OF COLLECTION.

If the Authority fails to pay the price within thirty days of the date of the documents establishing its conformity with the goods delivered, it shall pay the contractor default interest and compensation for the cost of collection, in accordance with the provisions of Law 3/2004 of 29 December establishing measures to combat late payment in commercial transactions.

In order for the term during which default interest accrues to start running, the contractor must have complied with the duty to present its invoice at the corresponding administrative registry, in accordance with the provisions laid down in the regulations in force governing electronic invoicing, in due time and manner, within thirty days of the day on which the goods were effectively delivered.

Under all circumstances, where the contractor does not comply with the duty to file its invoice before the corresponding administrative registry in the manner laid down in the regulations in force governing electronic invoicing within thirty days, interest shall not accrue until thirty days have elapsed following the correct submission of the invoice, without the Authority having approved its conformity, where pertinent, and made the corresponding payment.

Likewise, in the event of a delay in payment of the settlement amount, the contractor shall be entitled to receive default interest and compensation for collection costs in accordance with the provisions of the said Law 3/2004.

22.4. PRICE REVISIONS.

The provisions of **point 7** of **ANNEX 1** of this schedule shall apply in accordance with Decision of the Contracting Authority in this regard.

23. WARRANTY OVER THE GOODS SUPPLIED.

A warranty period as indicated at **point 25** of **ANNEX 1** of this schedule is established, or the longer warranty period that the successful bidder has offered, counted as from the delivery and receipt of the various goods, subject to the scope and conditions laid down at articles 210.3 and 305 of the Public Sector Procurement Law.

Without prejudice to any special provisions contained in the schedule of technical specifications in this regard, the warranty shall cover the repair or replacement of those items found to be defective in a situation of normal use, which the Authority has reported to the contractor prior to the expiry of the warranty period.

The contractor shall bear any and all costs generated, under any heading, by the removal, repair, or replacement of the defective items, and any provisions in this regard contained in the successful bidder's offer shall not prevail for these purposes.

24. AMENDMENT OF THE CONTRACT.

The contract may only be amended for reasons of public interest in those cases and in the manner envisaged at articles 203, 204, 205, 206 and 207 of the Public Sector Procurement Law.

Without prejudice to the reasons set forth at article 205 of the Public Sector Procurement Law, this contract may be amended in non-substantial manner in the event of amendment for reasons duly-justified at **point 8** of **ANNEX 1** of this schedule, which sets out the situations, value, and maximum percentage envisaged.

In the event a reason for amending the contract arises, this shall be notified to the successful bidder, or where pertinent, the successful bidder shall notify this to ESS Bilbao Consortium. The Consortium shall issue the corresponding report which shall be made available to the successful bidder so that it may file allegations in this regard within five days. In view of the allegations and the report, the contracting authority shall approve the corresponding Decision regarding whether it approves or rejects the amendment of the contract following a report by the Attorney-General's Office. In the event the amendment is approved, said amendment shall be formalized pursuant to article 153 of the Public Sector Procurement Law, and the Performance Bond for the contract shall be adjusted in the event this affects the award price.

Any amendments not envisaged at **point 8** of **ANNEX 1** of this schedule may only be implemented where the existence of the circumstances envisaged at article 205 of the Public Sector Procurement Law can be adequately established.

In the situations allowing for the amendment of the contract envisaged at article 205, any amendments approved by the contracting authority that, whether individually or as a whole, result in an alteration to the initial price of the contract not in excess of **20 per cent** (excluding VAT) shall be mandatory for contractors.

In supply contracts where price is determined in accordance with unit prices, the number of units to be supplied may be increased up to a value of **10 per cent** of the contract price, as established at article 205.2.c).3°, without any need to go through the corresponding amendment procedure, provided that the corresponding financing has been established in the original dossier for the contract.

25. EXTENSION OF THE CONTRACT.

The total term of the contract, including any extensions, may not exceed 5 years pursuant to art. 29 of the Public Sector Procurement Law.

The contract may allow for one or more extensions provided that its characteristics remain unaltered throughout the entire term of the extensions and this is established at **point 8** of **ANNEX 1** of this schedule, without prejudice to any amendments that may be introduced in accordance with the provisions of articles 203 to 207 of the Public Sector Procurement Law.

The extension shall be subject to the initial contractual conditions and price.

Any extension shall be approved by the contracting authority and shall be mandatory for the undertaking, provided that it is given notice at least two months in advance of the expiry of the contractual term. Any contracts that have a term of less than two months are exempted from the duty to give advance notice.

Where upon the expiry of a contract the new contract that is to replace it has not been executed because of incidents occurring caused by events that were unforeseeable for the contracting body arising during the procedure for the award of the new contract, and as such the continuity of the services to be provided by the contractor cannot be assured and there are public-interest reasons for the service not being interrupted, the previous contract may be extended through to when performance of the new contract can begin, although this arrangement shall be limited to a maximum of nine months, without the remaining conditions of the contract being altered, provided that the tender notice for the new contract has been published at least three months in advance of the date of expiry of the previous contract.

26. ASSIGNMENT OF THE CONTRACT AND SUB-CONTRACTING.

The rights and duties deriving from the contract may be assigned by the successful bidder to a third party provided that the requirements and procedures laid down at article 214 of the Public Sector Procurement Law are followed.

The contractor may sub-contract partial performance of the service to a third party, subject to the provisions of **point 5** of **ANNEX 1** of this schedule.

Sub-contracting shall be subject to compliance with the requirements laid down at section 2 of article 215 of the Public Sector Procurement Law.

27. DISCHARGE OF THE CONTRACT.

The contract is discharged upon completion or termination.

27.1. DISCHARGE UPON COMPLETION OF THE CONTRACT.

The contract is terminated when the contractor has completed performance of the service in full, in accordance with the terms of the contract.

27.2. DISCHARGE UPON TERMINATION OF THE CONTRACT.

The contract shall be terminated for any of the reasons envisaged for administrative contracts at article 211 of the Public Sector Procurement Law.

The causes specifically envisaged for supply contracts at article 306 of the Public Sector Procurement Law shall also result in the termination of the contract, with the effects laid down at article 307 of the Public Sector Procurement Law.

With regard to the provisions of section f) of article 211 of the Public Sector Procurement Law, the following are deemed to be cause for termination on the grounds of breach of essential contractual duties:

In addition, the causes listed at point **17.2** of this schedule (**Essential and special performance conditions**) shall be deemed to be grounds for the termination of the contract.

Pursuant to article 213 of the Public Sector Procurement Law, where the contract is discharged on the grounds of culpable breach of contract by the contractor, the performance bond shall be forfeited, and it shall also be under a duty to pay damages to the Authority for any losses incurred where these exceed the value of the forfeited performance bond.

Where it is necessary to provide the services in a way that is different from that initially agreed, the contract should be terminated and a new one executed.

The procedure for the award of a new contract may be commenced simultaneously to the opening of the administrative casefile for the termination of the contract for any of the reasons laid down at sub-sections b), d), f), and g) of section 1 of article 211 of the Public Sector Procurement Law, although the award of the new contract shall be conditional on the conclusion of the termination procedure. Both procedures shall be processed in expedited manner.

Until such time as the new contract is executed, the contractor shall be under a duty, in the manner and to the extent to be decided by the contracting authority, to implement such measures as may be necessary for security reasons, or that may be essential to avoid serious disruption to the public service or the loss of what has already been built or manufactured. Where there is no agreement, the contractor's remuneration shall be set at the request of the contractor by the contracting authority, once the works have been completed, and taking as a

reference the prices that were used as the basis for the execution of the contract. The contractor may challenge this decision before the contracting authority, which shall reach a decision within fifteen business days.

Where the contractor is unable to guarantee the essential measures established in the foregoing paragraph, the Authority may intervene to ensure that the said measures are implemented, either with its own resources or by executing a contract with a third party.

IV. PREROGATIVE POWERS OF THE AUTHORITY, JURISDICTION, AND APPEALS.

28. PREROGATIVE POWERS OF THE AUTHORITY.

During the lifetime of the contract, the Authority shall hold, in respect of the said contract, prerogative powers of interpretation, management, amendment, and termination, as laid down at articles 190, 203, 204, 205, 206, 207, 211, 212, and 213 of the Public Sector Procurement Law.

Within the limits and subject to the requirements and purposes laid down in the Public Sector Procurement Law, the contracting authority holds prerogative power to interpret administrative contracts, to resolve any doubts regarding their performance, to amend them for public-interest reasons, to establish liability attributable to the contractor in connection with the performance of the contract, to suspend performance of the contract, to terminate the contract, and to define the effects of the said termination.

Likewise, the contracting authority holds powers to inspect the activities carried out by the contractors during the performance of the contract, within the terms and subject to the limits laid down in the Public Sector Procurement Law. Under no circumstances may the said powers of inspection constitute a general right in favour of the contracting authority to inspect the premises, offices, or other locations from where the contractor carries out its activities, unless the said locations and their technical conditions are fundamental to the performance of the services that are the subject of the contract. In this case, the contracting authority must provide express and detailed justification in the administrative dossier.

The right to manage and inspect shall be exercised by the in-house technical services of the Authority or those expressly procured for this purpose, following communication and identification thereof to the contractor.

The Inspection may have as its purpose the technical conditions of the performance of the supply, the requirements for bidding for the contract, the duties undertaken by the contractor in respect of its performance, or justification of the payments on account received or proposed by the contractor.

The contractor may request documentary identification for those persons who are to exercise this power of inspection and the supply of the written instructions from the contracting authority.

The decisions reached by the contracting authority in the exercise of its prerogative powers of interpretation, amendment, and termination shall be immediately enforceable, following a legal report by the competent bodies.

29. JURISDICTION AND APPEALS.

Any litigation arising in respect of the interpretation, amendment, termination, or effects of administrative contracts not subject to a special appeals process shall be resolved by the competent contracting authority, the decisions of which shall put an end to the administrative channel, which decisions may be appealed by way of a discretionary motion to set aside within one month before the same body, or a judicial-review appeal within two months, counted as from the day after the day it was notified or published.

Pursuant to the provisions of articles 44 to 59 of the Public Sector Procurement Law, tender notices, schedules, and the contractual documents laying down the conditions governing the tendering process, as well as any procedural steps taken during the tendering process that directly or indirectly decide on the award, or result in the impossibility of the procedure continuing, or give rise to defencelessness or irreparable prejudice to legitimate rights or interests, as well as the award decisions reached by the contracting authority, shall be open to the special

procurement appeals process, prior to the filing of a judicial-review appeal, provided that the supply contract in question has an estimated value in excess of one hundred thousand euros.

Steps taken by the contracting bodies in relation to contractual amendments not envisaged in the schedule and which, pursuant to the provisions of articles 205 of the Public Sector Procurement Law, it is necessary to take following the award of the contracts, both where they do and do not result in the termination of the contract and the holding of a new tendering process, shall be open to the special procurement appeals process.

The appeal decision may only be appealed by way of a judicial-review appeal in accordance with the provisions of Law 29/1998 of 13 July on the Judicial Review Jurisdiction.

Non-legally binding

ANNEX 1
CHARACTERISTICS OF THE CONTRACT

1.	Dossier Number:	203/20
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2.	Interested party:	ESS Bilbao Consortium
	Contracting Authority:	Executive Management

3.	Aim:	Design and manufacture of the Bunker Wall Insert (BWI)	
	CPV Code:	31643000-5 Particle accelerators 14622000-7 Steel	
	Admissibility of variations and improvements	No	
	Legal Framework	Pursuant to the provisions of article 122.2 of the Public Sector Procurement Law, the applicable legal framework for the performance and discharge of the contract shall be that for supply contracts.	

4.	Batches:	As is explained in the report attached to this Schedule, there are no batches in this tendering process.	
	Batch 1:	n/a	
	Batch 2:	n/a	
	Batch 3:	n/a	

5.	Sub-contracting	Allowed	Under no circumstances may a percentage in excess of the following percentage of the award value be sub-contracted	n/a
	Conditions (if yes)		<i>The contractor shall notify the contracting authority in writing, following the award of the contract and no later than the commencement of the performance of the contract, of its intention to sub-contract, stating the proportion of the contract that it intends to sub-contract as well as the identity, contact details, and legal representative(s) of the sub-contractor, and also providing adequate evidence of the suitability of the sub-contractor to perform the contract with reference to the technical and human resources it has available and its experience, and providing proof that it is not disqualified from contracting pursuant to article 71 of the Public Sector Procurement Law.</i>	
	Compulsory sub-contracting of part of the service	There is no compulsory sub-contracting	n/a	

6.	Tender budget, financial year, and date expenditure incurred:			
	Tender budget (state whether by unit prices, batches, or lease with delivery of goods).	Amount excl. VAT	VAT	Total
		€275.000	€57.750	€332.750
	Batches (where appropriate):	Amount excl. VAT	VAT	Total
	Batch 1	n/a	n/a	n/a
	Batch 2	n/a	n/a	n/a
	Unit prices (where appropriate):	Amount excl. VAT	Estimated no. of units	Total
		n/a	n/a	n/a
		n/a	n/a	n/a
	Lease (where appropriate):	Amount excl. VAT	VAT	Total
	Rent	n/a	n/a	n/a
	Maintenance charge	n/a	n/a	n/a
	With delivery of goods (where appropriate):	Amount excl. VAT	VAT	Total
	Payment in cash	n/a	n/a	n/a
	Other assets:	n/a	n/a	n/a
	Establishment of the contract price:	Fixed sum		
	Financial year to which it will be charged:	Current		
	Date expenditure incurred:	25 November, 2020		

7.	Price revision	No price revision.
	Decision of the contracting authority dated:	n/a
	Formula:	n/a

8.	Estimated value of the contract:	€275.000 excluding VAT	
	Establishment of the estimated value of the contract:		
	- Total value (excluding VAT)	€275.000	
	- Possible extension	Time	Value

	No extension is envisaged.	€0
- Possible amendment of the contract (including extensions)	Percentage (maximum or 20%)	Value
	0%	€0
Reasons for amendment of the contract:	- It cannot be amended.	

9.	Subject to harmonized regulation:	YES
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10.	Open to the special procurement appeals process:	YES
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11.	Budget account, indicating the pertinent annual payments, financing, and joint financing:		
	Budget account	Financial Year	Amount excl. VAT
	233	2021	€82.500
	233	2022	€192.500
	Financing (where pertinent): YES		
	Project reference:	This tendering process is eligible for joint financing through FEDER funding under the 2014-2020 Multi-regional Operative Programme (POPE)	
	Distribution by bodies:		
		Body	Amount excl. VAT
		n/a	n/a
		n/a	n/a

12.	Performance term:		
	Extendable	NO	Term: 84 weeks counted as from the date of execution of the contract.

13.	Place of delivery:	At the ESS Eric installations in Lund.
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	Special quality checks:	n/a
	Special deadline for receipt of delivery:	2 months, as from installation completed at the ESS ERIC installations in Lund

14.	Type of tendering process and award process	
	Award process:	Ordinary
	Tendering process:	Open
	Article:	Article 156 of the Public Sector Procurement Law

15.	Way in which bids are to be submitted and envelopes:	Electronic by way of the PLACSP Tool for the Preparation and Submission of Bids.
	Electronic file 1 (documentation in proof of meeting the preliminary requirements)	For these purposes, the European Single Procurement Document must be presented, duly signed (Annex 2), proof of technical and economic solvency according to annex 3, and where pertinent, Annexes 4, 5, 6, 10 and 11.
	Electronic file 2 (Documentation to be assessed in accordance with criteria that have to be evaluated on the basis of a value judgment)	For these purposes, the documentation necessary in order to allow these criteria to be assessed must be submitted (technical report) in accordance with annex 7, and where pertinent, annex 6. Note. The technical report may be submitted in Spanish or English.
	Electronic file 3 (Documentation to be assessed in accordance with criteria that are to be evaluated on the basis of the application of formulas)	For these purposes, Annexes 8, 9, and 9 bis shall be submitted, duly filled out. Offers with a performance term and/or price in excess of that indicated in the tender budget, i.e. those offering a price in excess of two hundred and seventy-five thousand euros (€275.000) EXCLUDING VAT will not be considered.

16.	Samples	NO
	Bidders shall not be required to provide samples in advance.	

17.	Provisional bond	The establishment of a provisional bond is not envisaged
	Reasons why this requirement is considered necessary:	n/a
	Value in figures	€
	Proof of establishment by electronic, computerized, or telematic means:	NO

18.	Maximum value of the publication costs of the tender:	€2,000
	Method of payment	The costs incurred in publishing the notices for this tendering process shall be borne by the successful bidder, which shall pay the said costs by way of a transfer into the ESS Bilbao Consortium bank account to be indicated in the request prior to the execution of the contract, stating the procurement dossier number.

19.	Award committee	
	Office	Role
	Chair	Ms. Fiamma García-Toriello. Head of Management Office. (Deputy: Ms. Iratxe Torreira)
	Member from the Attorney-General's Office	Mr. Roberto Hernández. (Deputy: Mr. Javier Asúa)
	Economic and Budgetary Supervision Member	Mr. Javier Losada. Financial Director. (Deputy: Mr. Roberto Paniagua)
	Member no. 1	Mr. Alexander Conde. Engineer. (Deputy: Mr. Fernando Sordo)
	Member no. 2	Mr. Igor Rueda. Head of Manufacturing. (Deputy: Mr. Javier Martinez)
	Secretary	Ms. Iratxe Torreira, Legal Services. (Deputy: Ms. Carmen Abaitua)

20.	Technical advisers or independent experts	NO
	Identity	Training
	n/a	n/a
	n/a	n/a
		Professional experience
		n/a
		n/a

21.	Performance Bond and complementary guarantee	
	Performance Bond:	5% of the final price offered, excluding VAT
	Proof by electronic, computerized, or telematic means:	NO
	Performance Bond by way of withholding part of the price:	It is permissible for the Performance Bond to take the form of withholding part of the price.
	Form (in the event part of the contract price is withheld)	By way of a withholding in the accounting documents for the payment of the sole or various invoices presented, up until the value of the Performance Bond is reached.
	Conditions (in the event part of the contract price is withheld)	The bidder with the highest score shall supply a request for the said Performance Bond to be withheld from the payment.
	Forfeit of the Performance Bond in the event the contract is not executed for reasons attributable to the successful bidder:	YES
	Value	5% of the contract budget
	Complementary guarantee:	As it is established in Clause 13.6

22.	Person responsible for the contract	Mr. Felix Jimenz Villacorta
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Unit in charge of the day-to-day monitoring and performance of the contract	Head of Instruments Division of ESS Bilbao
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23.	Provisions governing payment of the price	
	<p>Payment shall be made in accordance with the following milestones:</p> <ul style="list-style-type: none"> - Thirty per cent (30%) of the award price upon the approval of the Critical Design Review. AC + 4 weeks. Estimated 2021. - Forty per cent (40%) following approval of the Installation Readiness Review. AC + 17 weeks. Estimated 2022. - Twenty per cent (20%) of the award price following completion of the installation. AC + 19 weeks. Estimated 2022. - Remaining ten per cent (10%) of the award price following receipt/acceptance of the component in proof of the conformity of the supply (SAT). AC + 21 weeks. Estimated 2022. <p>Payment of the price to be effective within 30 days of the date of signature of the acceptance document recording fulfilment of each milestone as it is established in clause 210.4 the Public Sector Procurement Law</p>	
	Payments on account	n/a
	Situations and percentage	n/a

24.	Details to be included in the electronic invoice
	<p>ESS Bilbao Consortium is currently in the process of introducing electronic invoicing, and as such invoicing shall NOT be electronic, at least in this tendering process.,</p> <p>If electronic invoicing is introduced before the contractor is due to issue any invoice, it shall be furnished with the necessary details so that it can meet the requirements in order to be able to invoice electronically.</p>

25.	Warranty term	YES
	<p>A warranty term of 2 years is established, counted as from the delivery and receipt of the various goods, subject to the scope and conditions governed by articles 210 and 305 of the Public Sector Procurement Law.</p>	

26.	Compensation for bidders in the event it is decided not to award or execute the contract, and cancellation by the Authority of the tendering process.	
	<p>The maximum compensation payable in the event it is decided not to award or execute the contract or to cancel the tendering process, under the heading of compensation for each suitable candidate/bidder in the tendering process for the expenses in which they have incurred, provided that these are properly justified, shall be the maximum sum per bidder of:</p>	€400

27.	Special rules regarding contractor personnel:
	<ol style="list-style-type: none"> 1. The selection of the personnel who are to form part of the team attached to the performance of the contract (which personnel must meet the qualification and experience requirements laid down in the schedules) shall be the exclusive responsibility of the contractor, without prejudice to verification by ESS Bilbao Consortium that these requirements are met. The contractor shall ensure that the team remains stable, and that any personnel changes are isolated and only occur for justified reasons, so as not to disrupt the proper performance of the service, and it shall keep ESS Bilbao Consortium informed at all times. 2. The contractor undertakes, in respect of the personnel forming part of the team attached to the

<p>performance of the contract, to exercise the management powers inherent to any employer in real, effective, and continuous manner. Specifically, it shall be responsible for negotiating and paying their salaries, granting them leave, licence, or vacation, replacing them in the event they are on leave or absent, and meeting their statutory duties with regard to Social Security, including paying contributions and (where pertinent) benefits, as well as statutory duties regarding health & safety in the workplace, the exercise of disciplinary powers, and such rights and duties as may derive from the contractual relationship between employee and employer.</p> <p>3. The contractor shall in particular ensure that the personnel attached to the performance of the contract carry out their duties in a manner that does not exceed the limits of the activity defined in the schedule as being the aim of the contract.</p> <p>4. The contractor shall be under a duty to perform the contract at its own premises or installations, unless, by way of an exception, it is authorized to provide its services at the premises of ESS Bilbao Consortium. In this case, the contractor's personnel shall occupy workspaces that are differentiated from the workspaces occupied by public employees. The contractor shall also be responsible for ensuring that this duty is complied with.</p> <p>5. The contractor shall designate at least one technical co-ordinator or person responsible, who shall be one of its own employees, who shall have the following duties, inter alia:</p> <ul style="list-style-type: none">a) To liaise with ESS Bilbao Consortium on behalf of the contractor, channelling all communications between – on the one side – the contractor and the personnel forming part of the team attached to the contract, and – on the other side – ESS Bilbao Consortium, in all matters relating to the performance of the contract.b) To allocate work among the personnel responsible for the performance of the contract, and to give such work-related orders and instructions to the said personnel as may be necessary regarding the provision of the agreed service.c) To supervise the proper performance by the personnel forming part of the team of the duties allocated to them, as well as to monitor attendance by the said personnel at their place of work.d) To oversee the arrangements governing annual leave for the personnel attached to the performance of the contract, and for this purpose the contractor shall co-ordinate properly with ESS Bilbao Consortium so as not to affect the proper performance of the service.e) To inform ESS Bilbao Consortium of any changes, whether temporary or permanent, to the members of the team attached to the performance of the contract.
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Non-legal

ANNEX 2: INSTRUCTIONS TO FILL OUT THE ANNEX REGARDING EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD) BY THE TENDERERS

This Annex contains instructions to complete the ESPD-Form. ESPD xml-code file is attached as Annex 2 together with the rest of the Tender documentation. ESPD form must be completed and returned into envelope 1 (the Spanish version is mandatory).

Please follow the following steps:

1. Save on your computer the ESPD code file
2. Go to the website <https://visor.registrodelicitadores.gob.es/esp-d-web/filter?lang=es>
3. Choose the language "español".
4. Select "*I am economic operator*"
5. Select "*Import ESPD*"
6. Download the file into system. Note: This is a code file in question.
7. Select your home country and click next
8. Start completing the form beginning with part II, III, IV, V and VI
9. Sign the document
10. This document duly signed and completed must be submitted together with the rest of the Tender documentation into envelope 1.

**ANNEX 3
SELECTION CRITERIA AND OTHER DOCUMENTATION**

ECONOMICAL AND FINANCIAL CRITERIA

The annual turnover for the best of the last three financial years for which accounts have been closed shall be equal to or larger than **EUR 275.000**

As supporting documentation it is required to send us a copy of the Annual Accounts which were approved and filed at the corresponding Register.

TECHNICAL CRITERIA

One (1) Engineer holding an appropriate degree with at least 3 years of full time work experience in the field of guides manufacturing

As supporting documentation it is required a copy of the Curriculum Vitae.

OTHER DOCUMENTATION

- It is not required

ANNEX 4
DECLARATION OF SMEs AND COMPANIES BELONGING TO THE SAME GROUP

File Number:

Object of the contract:

Mr./ Mrs. _____ with registered office in _____ with Identity Card number _____ in his own name or the company he represents _____

DECLARES

- 1) **That the company you represent is an SME** (please complete YES or NOT)
- 2) **That the company you represent** (please complete a or b)
 - a) does not belong to any group of companies
 - b) belongs to the group of companies called _____ composed of the following companies (please indicate all group companies)

In case b) you must indicate:

- b.1. Other companies of the Group (article 42.1 Commercial Code) do not participate in the tender.
- b.2. Other companies of the Group (article 42.1 Commercial Code) participate in the tender (please indicate the name of the other companies)

place, date and signature

ANEXO 5
DECLARACIÓN DE COMPROMISO DE CONSTITUCIÓN EN UNIÓN TEMPORAL

Nº de Expediente:

Objeto del contrato:

D^a./D. _____, mayor de edad y con NIF núm. _____, en nombre propio o en representación de la empresa....., con domicilio social en..... y NIF nº....., en calidad de (1), bajo su personal responsabilidad.

D^a./D. _____, mayor de edad y con NIF núm. _____, en nombre propio o en representación de la empresa....., con domicilio social en....., y NIF nº..... en calidad de (1), bajo su personal responsabilidad.

Se comprometen a constituir una unión temporal, de conformidad con lo establecido en la Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014.

En el caso de resultar adjudicatarias se comprometen a formalizar en escritura pública la citada unión. La participación en la unión temporal de cada miembro es la que sigue:

_____ XX%.
_____ XX%.

Como persona representante de la citada unión se nombra a _____ (2)

Que consiente que la Administración le envíe comunicaciones, en los términos establecidos en este pliego, derivadas del presente procedimiento de contratación a través de la dirección de correo electrónico indicada a continuación:

Correo electrónico:

(Lugar, fecha, firma)
(FIRMA DE CADA MIEMBRO DE LA UTE).

- (1) Apoderado/a, administrador/a único/a, administrador/a solidario/a, administradores/as mancomunados/as, etc.
- (2) Indicar cargo y empresa.

ANEXO 6
DECLARACIÓN DE CONFIDENCIALIDAD

Nº de Expediente:

Objeto del contrato:

D^a./D. ..., con D.N.I. núm. ..., en nombre y representación de ... con NIF...

DECLARA

Que los documentos y datos presentados en el siguiente sobre (1) se consideran de carácter confidencial y son los que a continuación se relacionan:

(Lugar, fecha y firma)

(1) (Indicar número de sobre, teniendo en cuenta que deberá presentarse, en su caso, una declaración por cada sobre)

Nota: De acuerdo con el artículo 133 de la LCSP, el deber de confidencialidad del órgano de contratación no podrá extenderse a todo el contenido de la oferta del adjudicatario ni a todo el contenido de los informes y documentación que, en su caso, genere directa o indirectamente el órgano de contratación en el curso del procedimiento de licitación. Únicamente podrá extenderse a documentos que tengan una difusión restringida, y en ningún caso a documentos que sean públicamente accesibles.

ANNEX 7: TECHNICAL DOCUMENTATION TO BE EVALUATED

There are two kinds of evaluation criteria:

- 1) Scoring of criteria that are subject to interpretation and evaluation by the reviewers panel. This documentation should be present in the ENVELOPE #2.
- 2) Scoring of criteria that are quantified and scored automatically (price and term). The documentation should be present in the ENVELOPE #3

1) SCORING OF CRITERIA THAT DEPEND ON THE REVIEWERS EVALUATION (TOTAL GRADE: 40 POINTS (OUT OF 100)):

Technical offer (from 0 to 40 points)

In the technical offer the feasibility and quality of the methodology proposed to fulfill the contract objectives is evaluated. The proposed fabrication procedure and the coherence of the whole proposal will be evaluated. The evaluation report will follow a "technical questionnaire" following the questions listed below.

The proposals from all the bidders will be compared among themselves with a **score ranging from 0 to 5**. For each question, the best answer will be given an score of 5 (best answer), and the rest scaled accordingly up to 1 (worst evaluated answer), according to the next table:

Best answer for each question (and all answers with the same evaluation)	5
Answer slightly worse	4
Answer worse than the best	3
Answer very clearly worse than best	2
Answer particularly worse than best	1
No answer	0

If the best answer is not, as evaluated by the reviewers, good enough, it could be scored with a score less than the maximum. The rest of answers will be scaled accordingly.

The total score for this section will be 45 points. The score given to questions B1, B2, B3 are weighted according to:

$$\text{Total section score} = (B1 \cdot 10/10) + (B2 \cdot 30/10) + (B3 \cdot 5/10)$$

TECHNICAL QUESTIONNAIRE:

Question B1: Project plan (score from 0 to 10, scaled to 10 points)

B1.1 Description of the project plan, Gantt diagram showing intermediate milestones and all the project tasks (0 to 5)

B1.2 Description of the quality plan for the contract, description of the document managing procedure and the tracking of customer requirements; non-compliance managing, especially in nuclear and / or vacuum environments (0 to 5).

Question B2: Fabrication plan (score from 0 to 10, scaled up to 30 points)

B2.1 Detailed description of the manufacturing and assembly procedures (0 to 5)

B2.2 Detailed description of the alignment procedures, production time reduction and risk reduction (0 to 5)

Question B3 Tests and verification plan (from 0 to 10, scaled to 5 points)

B3.1 Test and verification plan, as described in the Technical Specifications document (0 to 5)

B3.2 Description of the tolerance and alignment tests, emphasizing the alignment plans and interface control with the ESS (0 to 5)

Non-legally binding

ANNEX 8: TECHNICAL DOCUMENTATION TO BE EVALUATED BY AUTOMATIC SCORING

The documentation corresponding to this set of criteria should be included in the "ENVELOPE 3".

2.1 ECONOMIC QUOTATION (55 points) (according to Annex 9 template).

This will be fulfilled following the template that appears as Annex 9 of these documentation.

SCORING: Up to 55 points, according to the formula:

- Proposal with the lowest price → score = 55 points
- Rest of proposals → score = (lowest price / proposal price) x 55

(If a proposal is very over priced or under priced than the rest, it could be automatically excluded, as described in Annex 9).

Non-legally binding

**ANNEX 9
ECONOMIC PROPOSAL TEMPLATE**

THIS DOCUMENTATION MUST BE INCORPORATED TO ENVELOPE 3

FILE IDENTIFICATION

File nº: 141/20

Contract:

Budget for tendering without VAT: 500.000 €

Contracting authority: Consorcio ESS Bilbao

IDENTIFICATION OF OFFER SUPPLIED

Name of component	Quantity	Manufacturer/Company	Model/Version

IDENTIFICATION OF TENDERER

Surname and first name of the undersigned:

ID number or equivalent of the undersigned:

Relationship with the tenderer:

Social address of the tenderer:

NIF/CIF of the tenderer:

Address of the tenderer:

Phone:

e-mail:

ECONOMIC PROPOSAL

The undersigned, by virtue of their representation, commits, on behalf their represented, to the execution of the contract with the value of:

Budget without VAT:	€	(number in letters)	euro
VAT:	€	(number in letters)	euro
Total :	€	(number in letters)	euro

The offer will include other tax or expense derived from the execution of the contract and that is not excluded explicitly in the Administrative Document of the Tender, accepted by the mere presentation of this offer.

Date

Signature

ANNEX 9. Bis

Template for eligible criteria that can be evaluated through formula, to be presented by the tenderers.

THIS DOCUMENTATION MUST BE INCORPORATED TO ENVELOPE 3

FILE IDENTIFICATION

File n°:

Contract:

Budget for tendering without VAT:

Contracting authority:

IDENTIFICATION OF TENDERER

Surname and first name of the undersigned:

ID number or equivalent of the undersigned:

Relationship with the tenderer:

Social address of the tenderer:

NIF/CIF of the tenderer:

Address of the tenderer:

Phone:

e-mail:

PROPOSAL OF DELIVERY TIME

The undersigned, by virtue of their representation, offers, on behalf their represented, and execution period of weeks.

Non-legally binding

ANNEX 10
STATEMENT OF THE MAIN SUPPLIES CARRIED OUT IN THE LAST 3 YEARS

Mr./ Mrs. _____ with Identity Card number _____ in his own name or the company he represents _____ with registered VAT number _____ and with registered office in _____

DECLARES THAT THE MAIN SUPPLIES CARRIED OUT IN THE LAST 3 YEARS ARE THE FOLLOWING:

Scope of the contract	Delivery Date	Customer (public/private)	Total Amount
Total Year 20...: €			
Total Year 20...: €			
Total Year 20...: €			

And as evidence thereof, I hereby sign in _____, on _____, 2020

Signature:

(Signature and Stamp of the company)

ANNEX 11
DECLARATION OF SUBMISSION TO SPANISH COURTS
FOR FOREIGN COMPANIES

File Number:

Object of the contract:

Mr./ Mrs. _____ with Identity Card number _____ in his own name or the company he represents _____ with registered VAT number _____ and with registered office in _____

DECLARES

I hereby undertake on behalf of the company who represent, in the event of being contract awarded, to submit to the jurisdiction of Spanish courts of all incidents that directly or indirectly could be derived from the contract, expressly waiving to the other foreign jurisdiction which may correspond.

Place, date and signature