

## **ADMINISTRATIVE TERMS AND CONDITIONS**

### **GOVERNING THE CONTRACT FOR THE SUPPLY OF UHV VALVES FOR THE ALBA SYNCHROTRON LIGHT FACILITY**

Dossier: 54/07

Type of contract: Supply

Contractual procedure: Normal

Award procedure: Open

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## ADMINISTRATIVE TERMS AND CONDITIONS

### I – GENERAL PROVISIONS

#### 1. Subject-matter of the contract

1.1 The subject-matter of these terms and conditions is the contract for the supply of UHV valves for the Consortium for the Construction, Equipment and Exploitation of the Synchrotron Light Facility<sup>1</sup> (hereinafter CELLS).

1.2 The subject-matter of the contract is divided into four (4) lots pursuant to clause 2 of the Technical Specification:

- Lot number 1: Pneumatic all metal UHV RF gate valves and pneumatic all metal UHV gate valves
- Lot number 2: Pneumatic UHV gate valves with Viton gate seal and metal bonnet seal
- Lot number 3: Manual UHV all metal right angle valves
- Lot number 4: Fast closing shutters and their associated controllers, module sensors and cables and double gate valve

1.3 The tenderer may submit offers for one (1), two (2), three (3) or the four (4) lots mentioned in clause 1.2 of the Administrative Terms and Conditions.

1.4. Thus, the subject-matter of the contract includes both the supply of each of the lots mentioned in clause 1.2 of the Terms and Conditions and the subsequent ordering and successive supply of the said goods to the contractor of the corresponding lot, formalised in purchase orders throughout the period for performance of the contract.

1.5 The contract shall therefore be performed in two (2) contractual phases:

- Phase 1. First delivery of UHV valves and their components

The contractor shall supply to CELLS the number of units established in the Technical Specification of the awarded lot. The supply shall be performed within the delivery times specified in clause 4.5.4 of the said Specification.

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<sup>1</sup> “Consortio para la Construcción, Equipamiento y Explotación del Laboratorio de Luz de Sincrotrón”

- Phase 2. Successive deliveries of the UHV valves and their components

CELLS may order from the contractor of the awarded lot – by means of a purchase order issued in writing and processed by CELLS – any of the units of goods that CELLS may require for that purpose, as per price and delivery time offered, throughout the period for performance of this contract. Consequently, the contractor of the awarded lot shall supply them to CELLS in accordance with the price and delivery time offered.

1.6 When submitting its application, the tenderer may tender for both contractual phases under the financial and technical conditions established by the Administrative Terms and Conditions and the Technical Specification.

1.7 CELLS does not undertake any obligation to contract during phase 2 of the contract, and the contractor who has been awarded any of the lots may not claim any additional amount whatsoever for these items.

## **2. Legal provisions regulating the contract**

2.1 The contract is of an administrative nature and is governed by Royal Legislative Decree No. 2 of 16 June 2000 approving the Public Service Contracts Act as Amended (hereinafter *TRLCAP*<sup>2</sup>), Royal Decree 1098 of 12 October 2001 approving the General Regulations governing the Public Service Contracts Act (hereinafter *RGLCAP*<sup>3</sup>), and other legislation in force in the area of government procurement.

2.2 The contract shall also be governed by the conditions set out in these Administrative Terms and Conditions, and in the Technical Specification, which form an integral part thereof. These must therefore be signed by way of consent by the successful tenderer at the same time as the contract is formally executed.

## **3. Approval of dossier, expenditure and existence of credit**

3.1 On 26 June 2007, the Contracting Authority approved the contract dossier.

3.2 On 26 June 2007, the Contracting Authority approved the corresponding expenditure.

3.3 The financial obligations of the contract shall be chargeable to budgetary application 620.0001 of the CELLS expenditure budget for the years 2007, 2008 and 2009.

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<sup>2</sup> “Texto Refundido de la Ley de Contratos de las Administraciones Públicas”

<sup>3</sup> “Reglamento General de la Ley de Contratos de las Administraciones Públicas”

3.4 CELLS shall make the corresponding credit reservation when the subsequent purchases of goods are formalised.

#### **4. Tender budget**

4.1 The overall amount of the contract cannot be precisely defined at the time of its execution, as the deliveries of goods are dependent upon the needs of CELLS.

4.2 CELLS establishes the following tender budget for this first contractual phase of two million eight hundred and fifty-eight thousand and fifty-seven euro cents (€ 2,858,000.57) including VAT (16%).

4.3 The budgetary and credit provision for each lot (including VAT 16%) for this first contractual phase is as follows:

- Lot number 1: Two million ninety thousand and fifty-seven euro cents (€ 2,090,000.57)
- Lot number 2: One hundred and eighty-eight thousand euros (€ 188,000.00)
- Lot number 3: Two hundred and eighty thousand euros (€ 280,000.00)
- Lot number 4: Three hundred thousand euros (€ 300,000.00)

4.4 Offers in excess of the basic tender budget established for each of the lots shall be automatically rejected.

4.5 The offers include the costs of transporting and unloading the supply, in accordance with the conditions of the INCOTERMS 2000 International Trade clauses DDP (Delivery Duty Paid), at such place as CELLS may appoint for that purpose.

4.6 The offers also include VAT and other valuation factors that may be applicable; as well as the financial charges and any other costs provided for in these terms and conditions.

#### **5. Award procedure**

5.1 This contract shall be awarded under normal contractual procedure, by the system of public tender and by means of the open procedure, in accordance with sections 73.2, 74.3, 85 b) and 172.1 a) of TRLCAP.

5.2 Pursuant to section 172.1 a) of TRLCAP, the contractor undertakes to deliver a number of goods in succession and for a unit price. The total amount shall not be exactly defined at the time of signing the contract, as the deliveries are dependent on the needs of CELLS.

5.3 The award proposal of the Evaluation Committee, if any, does not create any rights in favour of the proposed tenderer, who shall not acquire any such rights in regard to CELLS, until the contract has been awarded to it by resolution of the Contracting Authority.

5.4 Submission of the offer implies that the tenderer unconditionally accepts the clauses of these terms and conditions.

## **6. Objective award criteria**

Pursuant to section 86 of TRLCAP, the Contracting Authority shall award the contract to the tenderer who, as a whole, submits the most advantageous offer, in accordance with the evaluation criteria set forth in clause 16, with the corresponding weighting, without taking into account solely the price and without prejudice to the right to declare any of the lots void.

## **7. Capacity to contract**

7.1 Those eligible to sign this contract with CELLS are natural or legal persons, whether Spanish or foreign, who have full capacity to act pursuant to section 15 of TRLCAP, whose purpose or activity is directly related to the subject-matter of the contract, are not included in any of the prohibitions on contracting listed in section 20 of the same TRLCAP, can provide proof of sufficient economic-financial and technical capacity and have an organisation at their disposal with sufficient personnel and material resources for the performance of the subject-matter of this contract.

7.2 In the case of contractors from European Union Member States, they must provide proof of their registration with a professional or commercial registry, provided that such registration is required by the legislation of the respective State, pursuant to section 15.2 of TRLCAP.

7.3 Foreign natural or legal persons from non-European Union Member States must also meet the requirements of section 23 of TRLCAP.

7.4 CELLS may enter into contracts with joint ventures which are temporarily established for that purpose, with no need for these to become formally incorporated by means of a public instrument until they have been awarded the contract. These contractors shall be jointly and severally liable to CELLS and must submit a declaration of undertaking to establish the joint venture, if applicable, signed by all the parties involved. They must also appoint a sole representative or attorney of the joint venture, with sufficient powers to exercise the rights and fulfil the obligations of the contract, without prejudice to the existence of joint powers which the firms may grant for collections and payments of

significant amounts. This sole representative or attorney must complete Annex 1 of these Terms and Conditions.

## **8. Proof of economic-financial and technical standing**

Tenderers must provide proof of both their economic-financial standing and their technical standing, as specified in clause 11 of these Administrative Terms and Conditions.

## **9. Provisional bond**

9.1 Tenderers shall initially make available to the Contracting Authority a provisional bond equivalent to 2% of the tender budget corresponding to each of the lots for which they wish to tender. The amounts of the provisional bonds are:

- Lot number 1: Forty-one thousand eight hundred euros (€ 41,80000 €)
- Lot number 2: Three thousand seven hundred and sixty euros (€ 3760.00)
- Lot number 3: Five thousand six hundred euros (€ 5,600.00)
- Lot number 4: Six thousand euros (€ 6,000.00)

9.2 This bond shall be provided by any of the following means, as specified in section 35 of TRLCAP:

- Cash, public or private securities subject in each case to the conditions established by the regulations. The cash, securities or corresponding certificates shall be deposited in the *Caja General de Depósitos* (General Public Depository), at its branches, in the depositories or equivalent establishments of the Autonomous Communities or Local Authorities in the form and with the conditions established by the regulations.
- By means of a guarantee provided in the form and conditions established by the regulations, by any of the banks, savings banks, credit cooperatives, financial credit institutions and mutual guarantee companies authorised to operate in Spain.
- By a fidelity guarantee insurance contract entered into in the form and conditions established by the regulations with an insurer authorised to operate in the fidelity branch. In this case the certificate of the contract must be produced to the corresponding Contracting Authority.

9.3 The provisional bond shall guarantee that the tenders submitted by the tenderers shall remain in place until the award of contract, and the tender submitted by the successful tenderer shall remain in place until the formal execution of the contract.

9.4 The provisional bond shall be returned to the interested parties immediately after the award of the contract. Notwithstanding, the said bond may be withheld from the unsuccessful tenderers by the Contracting Authority for the purposes provided for in section 84 of TRLCAP. In any case, the bond provided by the unsuccessful tenderers shall be returned as soon as its return is requested by the unsuccessful tenderer.

9.5 The provisional bond shall be seized from companies which withdraw their tender without good reason before the contract award, in which case the provisions of section 62 of RGLCAP shall apply.

9.6 Should the successful tenderer choose, if applicable, to apply the amount of the provisional bond to the definitive bond, the provisional bond shall be cancelled simultaneously with the provision of the definitive bond.

## **10. Definitive bond**

10.1 The successful tenderer shall provide a definitive bond of 4% of the amount of the award, in accordance with section 36 of TRLCAP.

10.2 If the tenderer should be awarded one or more lots he shall provide a definitive bond corresponding to the awarded lot(s).

10.3 The successful tenderer shall provide proof of the provision of this bond within a time-limit of fifteen (15) calendar days from the notification of the award of contract. If this requirement is not met for reasons attributable to the successful tenderer, CELLS may terminate the contract.

10.4. The definitive bond shall guarantee the items detailed in section 43.2 of TRLCAP.

10.5 The definitive bond shall be returned upon expiry of the warranty period and once the contract has been satisfactorily performed, or upon termination of the contract with no blame on the part of the contractor.

## **II – SPECIAL TENDERING CLAUSES**

### **11. Form and contents of the applications to take part**

11.1 Tenders shall consist of **TWO (2)** sealed **ENVELOPES**, signed by the tenderer or the person representing him, and the following literal text shall appear in a clearly visible manner on the front of the envelopes:

#### **ENVELOPE A: “GENERAL DOCUMENTATION”**

**“APPLICATION TO TAKE PART IN THE CONTRACT FOR THE SUPPLY OF UHV VALVES FOR THE ALBA SYNCHROTRON LIGHT FACILITY”**

Company or Joint Venture represented:  
Business Address:  
Telephone:  
Fax:  
E-mail:  
Date and signature:

#### **ENVELOPE B: “FINANCIAL AND TECHNICAL DOCUMENTATION - LOT NUMBER...”**

Company or Joint Venture represented:  
Business Address:  
Telephone:  
Fax:  
E-mail:  
Date and signature:

**The tenderer shall submit a single “ENVELOPE A” and one “ENVELOPE B” for each lot for which he is tendering.** He shall also submit Annex 1 “application to take part” according to the number of lots for which he is tendering. The application form to take part must not be inserted into any of the envelopes, but must be submitted in duplicate, on a separate sheet and in a visible manner, so that CELLS can register the said application without the need to open the above-mentioned envelopes.

## **ENVELOPE A “GENERAL DOCUMENTATION”**

Envelope A shall contain the required documents – originals or authentic copies – according to the relevant section for each particular case, with a list of their contents in numerical order:

### **11.2.1 SPANISH LEGAL PERSONS**

#### **11.2.1.1 Capacity to act**

1. Authenticated copy of the deed of incorporation of the company entered in the Commercial Register and, if applicable, deed of amendment of the company duly entered in the Commercial Register.
2. If a joint tender is submitted in the name of a Professional Team or Joint Venture, each member shall provide proof of his capacity, legal standing and representative authority. The names and particulars of those signing the tender and the percentage of each of their participations shall be given in a separate document, and the person or entity who is to be the representative to CELLS throughout the term of the contract shall be designated therein.

#### **11.2.1.2 Proof of representative authority**

1. Authenticated copy of the power of attorney establishing representative authority, duly validated by *l'Advocacia de la Generalitat de Catalunya* (Law Office of the Autonomous Government of Catalonia) or by the *Abogacía del Estado* (Spanish Government Law Office) if the person signing the offer is doing so on behalf of the company.
2. Authenticated copy of the National Identity Document (DNI), valid passport or driving licence of the person in whose favour the power of attorney or representative authority was granted.

#### **11.2.1.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.
2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

#### **11.2.1.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.1.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that it is up to date with the payment of its tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3A).

#### **11.2.1.6 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.2.2 LEGAL PERSONS FROM EUROPEAN COUNTRIES OR SIGNATORIES TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA**

#### **11.2.2.1 Capacity to act**

1. Authenticated copy of the deed of incorporation or amendment of the company entered in the Commercial Register, if this requirement of entry in the Commercial Register is required by the legislation of the country of the company which is applicable to it.
2. If this requirement of entry in the Commercial Register is not required, proof of capacity to act shall be provided by means of an authenticated copy of the deed of incorporation, memorandum and articles of association or founding instrument, entered in one of the professional or commercial registers referred to in Annex I.2 of the RGLCAP.
3. If a joint tender is submitted in the name of a Professional Team or Joint Venture, each member shall provide proof of his capacity, legal standing and representative authority. The names and particulars of those signing the tender and the percentage of each of their participations shall be given in a separate document, and the person or

entity who is to be the representative to CELLS throughout the term of the contract shall be designated therein.

4. The documents of paragraphs 1 and 2 must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.2.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.

2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.

3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.2.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.

2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

#### **11.2.2.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.2.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that it is up to date with the payment of its tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3A).

#### **11.2.2.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

An undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

#### **11.2.2.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.2.3 LEGAL PERSONS FROM NON-EUROPEAN UNION COUNTRIES SIGNATORY TO THE WORLD TRADE ORGANIZATION AGREEMENT ON GOVERNMENT PROCUREMENT**

#### **11.2.3.1 Capacity to act**

1. Report of the Spanish Permanent Diplomatic Mission in the corresponding State or of the Spanish Consular Office in whose territorial area the company has its registered office.
2. Report of the Spanish Permanent Diplomatic Mission in the corresponding State on the status of the State as a signatory to the World Trade Organization Agreement on Government Procurement.
3. If a joint tender is submitted in the name of a Professional Team or Joint Venture, each member shall provide proof of his capacity, legal standing and representative authority. The names and particulars of those signing the tender and the percentage of each of their participations shall be given in a separate document, and the person or entity who is to be the representative to CELLS throughout the term of the contract shall be designated therein.

#### **11.2.3.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.
2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.

3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.3.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.

2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

#### **11.2.3.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.3.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that it is up to date with the payment of its tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3A).

#### **11.2.3.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

An undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

#### **11.2.3.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

## **11.2.4 LEGAL PERSONS FROM COUNTRIES NOT INCLUDED IN THE PREVIOUS PARAGRAPHS**

### **11.4.1 Capacity to act**

1. Report of the Spanish Permanent Diplomatic Mission in the corresponding State or of the Spanish Consular Office in whose territorial area the company has its registered office.
2. Report of the Spanish diplomatic and consular missions on reciprocity of treatment.
3. If a joint tender is submitted in the name of a Professional Team or Joint Venture, each member shall provide proof of his capacity, legal standing and representative authority. The names and particulars of those signing the tender and the percentage of each of their participations shall be given in a separate document, and the person or entity who is to be the representative to CELLS throughout the term of the contract shall be designated therein.

### **11.2.4.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.
2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.
3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

### **11.2.4.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.
2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

### **11.2.4.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.4.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that it is up to date with the payment of its tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3A).

#### **11.2.4.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

An undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

#### **11.2.4.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.2.5 SPANISH NATURAL PERSONS**

#### **11.2.5.1 Capacity to act**

Authenticated copy of the National Identity Document (DNI), valid passport or driving licence of the tenderer.

#### **11.2.5.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI), valid passport or driving licence of the person signing the offer.

2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender, validated by *l'Advocacia de la Generalitat de Catalunya* (Law Office of the Autonomous Government of Catalonia) or by the *Abogacía del Estado* (Spanish Government Law Office).

### **11.2.5.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.
2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

### **11.2.5.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

### **11.2.5.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that he is up to date with the payment of his tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3B).

### **11.2.5.6 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

## **11.2.6 NATURAL PERSONS FROM EUROPEAN UNION COUNTRIES OR SIGNATORIES TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA**

### **11.2.6.1 Capacity to act**

1. Authenticated copy of the National Identity Document (DNI) or passport of the tenderer.
2. Authenticated copy of the deed of incorporation or amendment of the company entered in the Commercial Register, if this requirement of registration is required by the commercial legislation of the country of the company which is applicable to it.
3. If this requirement of entry in the Commercial Register is not required, proof of capacity to act shall be provided by means of an authenticated copy of the deed of incorporation, memorandum and articles of association or founding instrument, entered in one of the professional or commercial registers referred to in Schedule I.2 to RGLCAP.
4. The documents of paragraphs 1, 2 and 3 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

### **11.2.6.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.
2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.
3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

### **11.2.6.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.
2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

#### **11.2.6.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.6.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that he is up to date with the payment of his tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3B).

#### **11.2.6.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

Undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

#### **11.2.6.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.2.7 NATURAL PERSONS FROM NON-EUROPEAN UNION COUNTRIES SIGNATORY TO THE WORLD TRADE ORGANIZATION AGREEMENT ON GOVERNMENT PROCUREMENT**

#### **12.2.7.1 Capacity to act**

1. Authenticated copy of the National Identity Document (DNI) or passport of the tenderer.
2. Report of the Spanish Permanent Diplomatic Mission in the corresponding State or of the Spanish Consular Office in whose territorial area the company has its registered office.

3. Report of the Spanish Permanent Diplomatic Mission in the corresponding State or Spanish Consular Office on the status of the State as a signatory to the World Trade Organization Agreement on Government Procurement.

4. The document of paragraph 1 must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.7.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.

2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.

3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.7.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.

2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

#### **11.2.7.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

#### **11.2.7.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that he is up to date with the payment of his tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3B).

#### **11.2.7.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

Undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

#### **11.2.7.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.2.8 NATURAL PERSONS FROM OTHER COUNTRIES NOT INCLUDED IN THE PREVIOUS PARAGRAPHS**

#### **11.2.8.1 Capacity to act**

1. Authenticated copy of the National Identity Document (DNI) or valid passport.
2. Report of the Spanish Permanent Diplomatic Mission in the corresponding State or of the Spanish Consular Office in whose territorial area the company has its registered office.
3. Report of the Spanish diplomatic and consular missions on reciprocity of treatment.
4. The document of paragraph 1 must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

#### **11.2.8.2 Proof of representative authority**

1. Authenticated copy of the National Identity Document (DNI) or valid passport of the person signing the tender.
2. Authenticated copy of the power of attorney establishing the representative authority of the person signing the tender.
3. The documents of paragraphs 1 and 2 above must be legalised in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated by a sworn-official translator.

### **11.2.8.3 Economic-financial and technical standing**

1. Proof of the economic-financial standing of the tenderer shall be established by means of a declaration concerning the total turnover of supplies provided by the company over the last three (3) years.
2. Technical standing shall be established by means of a list of the main supplies provided over the course of the last three (3) years in relation to the subject-matter of the contract, stating the amount, dates and public or private recipient of the supplies.

### **11.2.8.4 Provisional bond**

Proof of having deposited the provisional bond corresponding to the lot tendered for, in accordance with clause 9 of the Administrative Terms and Conditions.

### **11.2.8.5 Undertaking that the tenderer does not fall within any of the prohibitions on contracting pursuant to sections 15-20 of TRLCAP**

An express undertaking that the tenderer is not subject to any of the grounds of incompatibility for entering into contracts with the administration and that he is up to date with the payment of his tax obligations (to the national, regional and local Administrations) and Social Security obligations, imposed by the provisions of law in force, notwithstanding that the successful tenderer may be required to provide documentary evidence in support of this requirement prior to the award of contract (Annex 3-B).

### **11.2.8.6 Undertaking to submit to Spanish jurisdiction and waiver of own jurisdiction**

Undertaking by foreign companies to submit to the jurisdiction of the courts and tribunals of Spain, of whatever kind, for all matters arising directly or indirectly from the contract, waiving any right they may have to foreign jurisdiction pursuant to section 79.2 d) of TRLCAP.

### **11.2.8.7 Undertaking that the tenderer has not been subject to any claim for hidden defects or termination of an administrative contract**

An undertaking that the tenderer has not been subject to a claim of any kind in respect of hidden defects or to any termination of an administrative contract for culpable reasons by any public body or administration.

### **11.3 DECLARATION REPLACING THE SUBMISSION OF DOCUMENTATION SIGNED BY THE REPRESENTATIVE OF THE COMPANY**

11.3.1 Tenderers who have already previously participated in other tender procedures convened by CELLS may replace the submission of the documentation establishing the capacity to act and representative capacity by a declaration stating that such documents, which are already in the possession of CELLS, give sufficient proof of these points and that their contents have not been altered in any way. This declaration must be submitted in Envelope A.

11.3.2 In the cases referred to in the previous paragraph where there have been changes to any of the documents establishing the capacity to act and representative capacity which are in the possession of CELLS, the same declaration described in the previous paragraph may be submitted, accompanied by the document which is to be considered as modified, clearly designating which of the documents existing in the records of CELLS should be set aside. This declaration, together with the replacement document, must be submitted in Envelope A.

### **11.4 Envelope B: FINANCIAL AND TECHNICAL DOCUMENTATION**

The financial and technical documentation shall be submitted in the Envelope B relating to the lot for which a tender is submitted. A table of contents listing its contents in numerical order shall also be included.

#### **11.4.1 Financial offer**

11.4.1.1 The financial offer shall be submitted in accordance with the model format of Annex 2 which is applicable in each case – according to the lot tendered for. Tenderers may submit offers for one (1), two (2), three (3) or all four (4) lots. If tenders are submitted for more than one lot, the tenderer may specify in an additional document the percentage of discount which will apply for tendering for more than one lot. This additional document shall be included in the Envelope B of each of the corresponding lots.

11.4.1.2 Tenderers shall fix the unit price of each component which shall apply equally for the two phases of the contract. The provisions of clause 2 of the Technical Specification should also be taken into account when making the financial offer.

11.4.1.3 The price offered for each lot shall be clearly stated. Under no circumstances shall offers containing omissions, errors or deletions, which prevent the offer from being clearly understood, be accepted. In the event of any discrepancy between the amount expressed in words and in figures, the amount stated in words shall prevail, unless the documents making up the offer suggest otherwise.

11.4.1.4 The price offered for the corresponding lot(s) is inclusive of VAT and any other kinds of taxes which may be applicable.

11.4.1.5 The price also includes the INCOTERM 2000 costs, *Delivery Duty Paid* (DDP).

## **11.4.2 Technical documentation**

11.4.2.1 Technical proposal for the supply of each lot pursuant to clause 3 of the Technical Specification.

11.4.2.2 Delivery time proposal: CELLS shall give consideration to those tenders which reduce the delivery time of the supply to which the contract relates. Tenderers shall also indicate the delivery time they are offering for each of the phases mentioned in clause 1 of the Administrative Terms and Conditions.

11.4.2.3 Warranty period proposal: CELLS shall give consideration to those tenders which extend the warranty period established in clause 34 of the Administrative Terms and Conditions. The warranty period offered for each of the phases mentioned in clause 1 of the Administrative Terms and Conditions must also be specified.

## **12. Language in which documents are to be written**

12.1 The administrative documentation contained in Envelope A shall be submitted in one of the two official languages – Spanish or Catalan.

12.2 The documentation of a technical nature contained in Envelope B may be submitted in any of the following languages: Spanish, Catalan or English, apart from the financial offer (Annex 2), which must be submitted in Spanish or Catalan.

## **13. Period for submission**

13.1 Tenders may be submitted until 1.00 p.m. on 7 November 2007.

13.2 The place for submission of applications shall be the offices of CELLS at:

Divisió d'Administració de CELLS – Registre  
Edifici C (Facultat de Ciències),  
Mòdul C5 Bis Senars  
Campus Universitari de Bellaterra  
Universitat Autònoma de Barcelona  
08193 Bellaterra, Cerdanyola del Vallès (Barcelona), Spain

13.3 The CELLS registry shall be open from 9.00 a.m. to 1.00 p.m. from Monday to Friday.

13.4 Tenders may be sent by post as laid down in section 80.4 of RGLCAP, or by private courier if applicable. The tenderer must provide proof of the date of posting at the Post Office or of delivery of the package via private courier. In both cases, the tenderer must send the Contracting Authority proof of the date of dispatch, on the same day. This may be done by fax, to the number (+34) 93 592 43 01, telegram or by e-mail to the address [alba.concursos@cells.es](mailto:alba.concursos@cells.es)

13.5 Unless both requirements are met (proof of date of posting at the Post Office or of delivery at the private courier service, and notification of the Contracting Authority on the same day), the tender shall not be admitted, if it is received by the Contracting Authority after the end of the period stated in the notice.

13.6 If the tender has not been received upon expiry of ten (10) calendar days from the deadline for submission mentioned in clause 13.1, it shall not be admitted under any circumstances.

13.7 Tenders submitted outside the time-limit shall not be admitted under any circumstances.

13.8 Tenders which do not strictly comply with the above stipulations shall not be admitted.

#### **14. Alternative solutions or variants**

Only one tender may be submitted. Tenderers may offer alternative solutions or variants which represent improvements on the conditions set out in the Technical Specification. The improvements must be clearly identified on a separate sheet in Envelope B.

#### **15. Evaluation Committee**

In pursuance of section 88 of TRLCAP, an Evaluation Committee is established, which shall submit a proposal for the award to the Contracting Authority, in accordance with the provisions of clause 17.4 of the Administrative Terms and Conditions. The Evaluation Committee may also propose that the tender process be declared void.

## 16. Evaluation of offers

The Evaluation Committee shall evaluate each of the lots according to the following criteria:

### 16.1 Financial offer

16.1.1 The financial evaluation shall be weighted at 50% of the total score assigned to each offer.

| <b>Evaluation of the financial offer</b> | <b>POINTS</b> |
|--|---------------|
| Financial offer                          | 50            |

16.1.2 When evaluating disproportionate offers, the Evaluation Committee may consider the relation between the standing of the tendering company and the offer submitted.

### 16.2 Technical documentation

The technical evaluation shall be weighted at 50% of the total score assigned to each offer. This shall be evaluated within the range of 0 up to the maximum score assigned for each criterion. The weighting of the evaluation criteria is established in Annex 4.

| <b>Valuation of the technical documentation</b> | <b>POINTS</b> |
|---|---------------|
| Technical proposal                              | 40            |
| Delivery time proposal                          | 05            |
| Warranty period proposal                        | 05            |

## 17. Opening of tenders

17.1 At the end of the period for the submission of offers, the Evaluation Committee shall proceed to the opening of envelopes A, "General Documentation", for the purpose of classifying the documentation submitted by the tenderers. Then, at the place and time stated in the invitation to tender, Envelope B - "Financial and technical documentation" - shall be opened in a public act.

17.2 Prior to the opening of Envelope B, the Evaluation Committee shall list the offers submitted, those which have been admitted and those which have some rectifiable defect, granting the tenderers concerned a period of no more than three (3) working days in which to amend them. Finally, it shall list the offers which have been excluded, stating the reason which has given rise to their exclusion. It may also request clarifications concerning the certificates and other documentation submitted or request the submission of other additional documents. In this case it shall specify the maximum time-limit within which such documentation is to be provided.

17.3 At the place and time stated on the notice of the invitation to tender, the Evaluation Committee shall proceed to the opening of Envelope B, in a public act. The announcement of the contract shall be read out and there shall then be a count of the tenders submitted, which shall be checked against the details appearing on the Certificates issued by the General Registrar. The Chairman shall declare the result of the checking of the documents submitted in Envelope A and shall state which tenders have been admitted and which have been rejected, as well as the reasons for their non-admittance. After Envelope B has been read, the public meeting shall be adjourned.

17.4 The Evaluation Committee, pursuant to the objective award criteria referred to in clause 16, shall issue a resolution proposing the award of the contract to the Contracting Authority and shall submit the following documentation to the said authority:

- The tenders submitted and additional documentation of both the admitted and excluded tenderers;
- The minutes of the meetings held by the Evaluation Committee of this public tender;
- Any legal, technical and financial reports that may have been produced.

17.5 After considering the documentation referred to in the previous paragraph, the Contracting Authority may pass one of the following resolutions:

- To make the definitive award of the contract to the tenderer who offers the most favourable tender, without having regard solely to the financial value of the tender. For these purposes, the evaluation criteria listed in clause 16 of the Terms and Conditions shall be applied;
- To declare the tender process void;
- To set aside the proceedings of the Evaluation Committee, taking them back to the moment when a defect of form rendering the proceedings invalid was committed.

## **18. Resolution awarding the contract**

18.1 The resolution awarding the contract shall be issued by the Contracting Authority within a maximum time-limit of three (3) months from the opening of the offers, pursuant to section 89 of TRLCAP.

18.2 The Contracting Authority shall give a reasoned explanation of its resolution, taking into account the award proposal of the Evaluation Committee.

18.3 The said resolution shall be notified directly to the successful tenderer and to all the participants in the tender, and shall be published in accordance with the provisions of section 93.2 of TRLCAP and sections 76 and 77 of RGLCAP.

## **19. Return of documentation**

19.1 The documentation submitted by the unsuccessful tenderers - with the exception of the documentation proving capacity to act and representative capacity and the financial offer - may be removed upon expiry of three (3) months from the day following notification of the award to the tenderers, and shall be returned within a period of thirty (30) calendar days, unless CELLS should see fit to withhold it due to any complaints or appeals, or if any administrative issues have arisen.

19.2 Upon expiry of the time-limit for removal of the documentation, CELLS shall be free to use it as it sees fit, and shall be exempt from all liability in respect thereof.

### III – EXECUTION OF THE CONTRACT

#### 20. Documentation to be submitted by the successful tenderer

20.1 The successful tenderer shall submit the following documentation in the form of originals or authentic copies within a maximum time-limit of fifteen (15) calendar days following notification of the award:

20.1.1 Certificates from the competent bodies establishing that the company is up to date with its tax obligations to the State and to the *Generalitat de Catalunya* (Autonomous Government of Catalonia) and with its Social Security contributions.

20.1.2 The latest receipt of the *Impuesto de Actividades Económicas (IAE)* (Tax on Commercial and Professional Activities), showing the heading corresponding to the activity to which the contract relates, and accompanied by a declaration to the effect that the company has not been removed from the register for this tax.

If the successful tenderer has IAE legal exemption status, it must provide proof of such exemption by any of the means established in section 82 of Royal Legislative Decree 2/2004 of 5 March 2004 approving the Consolidated Act Regulating Local Tax Authorities<sup>4</sup>.

Clauses 20.1.1 and 20.1.2 are only applicable to companies having their registered office in Spain.

20.1.3 For companies who have tendered a joint offer, a public deed of incorporation of the joint venture, duly validated, in which reference is made to the appointment of the sole representative or attorney of the joint venture with sufficient powers to exercise the rights and meet the obligations arising from the contract until its extinguishment.

20.1.4 A document proving deposit of the definitive bond equivalent to 4% of the amount of the award of the corresponding lot(s). This bond shall be provided by any of the following means:

- Cash, public or private securities subject in each case to the conditions established by the regulations. The cash, securities or corresponding certificates shall be deposited in the *Caja General de Depósitos* (General Public Depository), at its branches, in the depositories or equivalent establishments of the Autonomous Communities or Local Agencies in the form and with the conditions established by the regulations.

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<sup>4</sup> Texto Refundido de la Ley Reguladora de las Haciendas Locales

- By means of a guarantee provided in the form and conditions established by the regulations, by any of the banks, savings banks, credit cooperatives, financial credit institutions and mutual guarantee companies authorised to operate in Spain.
- By a fidelity guarantee insurance contract entered into in the form and conditions established by the regulations with an insurer authorised to operate in the fidelity branch. In this case the certificate of the contract must be produced to the corresponding contracting authority.

20.1.5 Public liability insurance policy, together with the latest receipt proving payment of the premium, and declaration of undertaking to renew the public liability policy annually, in accordance with clause 23.8 of the Terms and Conditions. Foreign companies must provide the relevant sworn translation of these documents into Spanish or Catalan.

20.1.6 Document proving payment to CELLS for the notices of the invitation to tender. CELLS shall inform the successful tenderer of each lot in advance of the amount it is required to pay for this.

20.1.7 CELLS may request from the successful tenderer before signature of the contract and throughout the term thereof a sworn-official translation of the non-scientific technical documentation into Spanish or Catalan referred to in clause 11.4.2 of the Terms and Conditions.

## **21. Costs payable by the successful tenderer**

21.1 The following costs shall be payable by the successful tenderer: costs deriving from the execution of the contract; costs relating to personnel, material, vehicles, amortizations, transport, installations, national insurance payable by it, payments required to obtain authorisations, documents or any information from public or private bodies; taxes, duties, compensations and other charges or costs that may be applicable in accordance with the provisions of law in force, in the form and amount specified by such provisions, and any other necessary costs for the performance of the contract.

21.2 The successful tenderer shall also be liable for the costs arising from the notices of the invitation to tender, for which the maximum amount payable is fixed at three thousand euros (€ 3,000.00).

## **22. Perfecting of the contract**

22.1 The contract is perfected by means of the award by the Contracting Authority and shall be performed subject to the clauses of these Terms and Conditions and those of the

Technical Specification and in accordance with the instructions that CELLS may issue to the contractor for their interpretation.

22.2 The performance of the contract may not commence until it has been formally executed.

22.3 The successful tenderer shall sign the contract within a maximum time-limit of thirty (30) calendar days from the day after the notice of the award. The successful tenderer must previously have submitted the documentation required in clause 20 of these Terms and Conditions.

22.4 The contract shall conform to the contents of these Terms and Conditions and shall be executed in the form of the administrative document provided for in section 54 of TRLCAP. If the successful tenderer should require the contract to be executed as a public deed, any costs deriving therefrom shall be payable by it.

22.5 These Administrative Terms and Conditions and the Technical Specification shall form an integral part of the contract.

22.6 If the contract cannot be executed for reasons attributable to the successful tenderer, CELLS may resolve to terminate the contract after granting a prior hearing to the interested party, and if that party opposes such termination it shall be a necessary procedure for a report to be issued by the *Comissió Jurídica Assessora de la Generalitat de Catalunya* (Legal Advisory Board of the Autonomous Government of Catalonia).

## **IV – RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **23. Obligations and rights**

#### **23.1 Employment obligations**

The contractor is obliged to comply, under its responsibility, with the provisions of law in force concerning employment, social security and any other applicable matters, in particular those deriving from the legislation on risks in the workplace.

#### **23.2 Duty of confidentiality**

23.2.1 The contractor shall keep confidential any data or background information relating to the subject-matter of the contract of which it may become aware in the course of performance of the contract.

23.2.2 The contractor may not either use itself or supply to third parties any data relating to the work contracted for, nor publish in full or in part the contents of that work without express authorisation from CELLS. Likewise, the contractor also acquires the undertaking of faithful safekeeping of the documents delivered for the performance of the work and the obligation that under no circumstances are these to be disclosed to third parties.

23.2.3 Any breach of these duties by the successful tenderer shall give rise to the applicable civil, criminal or administrative liability pursuant to current legislation, in addition to contractual liability.

#### **23.3 Compliance with time-limits and penalties for delay**

23.3.1 The contractor shall perform the supply within the time and at the place established in clause 32 of the Administrative Terms and Conditions and in accordance with the Technical Specification.

23.3.2 If, upon expiry of the time-limit, the contractor has incurred any delay for reasons attributable to it, CELLS may choose either to terminate the contract or to impose the penalties established in section 95 of TRLCAP, without any need to give prior notice of the delay.

23.3.3 CELLS shall have the same privileges if it should have reason to presume that, as a result of the delay, the contractor may be unable to complete the delivery of one phase or the total delivery within the specified time-limits.

23.3.4 The amount of the penalties does not exclude any damages to which CELLS may be entitled as a result of the contractor's delay. CELLS may withhold the definitive bond in order to ensure payment of the penalties imposed on the contractor when these cannot be deducted from the payment.

#### 23.4 Liability

23.4.1 Liability in respect of delivery and receipt of the supply shall be as provided for in section 185 of TRLCAP.

23.4.2 The contractor shall be liable for the quality of the goods it delivers and for the consequences deriving for CELLS or for third parties from omissions, errors, inappropriate methods or incorrect conclusions in the performance of the contract.

23.4.3 The contractor shall be liable for the final design, production methods and the correct supply, regardless of whether these have been chosen by the contractor or suggested by CELLS, as the case may be.

#### 23.5 Damages

23.5.1 The contractor may be held liable for damages in accordance with section 97 of the TRLCAP.

23.5.2 The contractor shall be obliged to compensate CELLS for any loss or damage which CELLS may suffer as a result of a breach of contract attributable to the contractor, provided that there is a causal link between its action or omission or the event attributable to it, and the loss or damage caused.

23.5.3 The contractor shall not be liable in the event of force majeure or any other unforeseeable or inevitable impediment.

23.5.4 The contractor shall be directly and indirectly liable for work carried out by its associates and subcontractors, shall perform the contract at its own risk and responsibility and shall be obliged to compensate for all loss and damage caused to third parties as a consequence of the operations required by the performance of the contract, except where such damage is caused as an immediate and direct consequence of an order issued by CELLS, pursuant to section 115 of TRLCAP.

#### 23.6 Intellectual and Industrial Property

23.6.1 The contractor assigns free of charge and exclusively to CELLS all exploitation rights in the works performed under the subject-matter of this contract, without limitation in terms of time or territorial scope. The signature of the contract shall imply, *inter alia*, the execution of the said assignment.

23.6.2 The documentation generated during the performance of this contract is the exclusive property of CELLS and the contractor may not supply it to third parties without prior consent in writing from CELLS.

23.6.3 The contractor must obtain the necessary assignments, permits and authorisations from their respective holders in order to make use of the technology, procedures, materials and equipment used in the performance of the work contracted for, as well as any intellectual and industrial property rights. It shall also be liable for any claims and shall hold CELLS harmless from any loss or damage arising for it from any claim filed.

### 23.7 Personnel and organisation

23.7.1 The contractor shall supply the necessary personnel and ancillary resources for the proper performance of the supply within the total and partial time-limits agreed.

23.7.2 CELLS may demand the replacement of any technician or person who does not carry out the work correctly. However, the exercise or non-exercise of this right does not exempt the contractor from performing the subject-matter of the contract.

23.7.3 The contractor may not replace the personnel proposed in its offer without express prior approval from CELLS. In the event that the contractor should decide to replace any of the technical or other personnel detailed in the offer, it must notify CELLS of this in writing so that CELLS can proceed to approve it.

### 23.8 Insurance

23.8.1 Prior to signature of this contract, the contractor must prove that it has taken out the compulsory insurance policies and third party public liability insurance – covering damage, loss and injury to both persons and property. The said insurance policies must provide cover throughout the period of performance of the contract. This obligation shall be considered to have been fulfilled when the successful tenderer has provided proof that it has taken out the public liability insurance before signing this contract. The policy premiums shall be payable by the contractor.

23.8.2 The contractor must submit the following documents to CELLS before signing the contract:

- Proof that it has taken out the insurance and paid the premium, by submitting the latest receipt. Breach of this obligation shall be a ground for termination of the contract.
- A declaration of undertaking to renew the public liability policy annually.

23.8.3 The contractor must submit to CELLS, at the time of receipt of the supply, proof that the policy is valid up to the end of the warranty period of the supply and proof of payment of the premium.

## **24. CELLS' obligations**

### **24.1 Payment of the price**

#### **24.1.1 Phase one: First delivery of the UHV valves and their components**

24.1.1.1 The Head of the CELLS Accelerators Division must certify in writing and in advance acceptance of the goods actually delivered for each of the lots, in order that CELLS may proceed to payment thereof.

24.1.1.2 Payment of the contract price of the corresponding lot shall be made in several partial payments in accordance with the schedule of deliveries of the supply established in clause 4.5.4 of the Technical Specification. The partial payment percentages shall be proportional to the deliveries of goods according to the unit price offered.

24.1.1.3 Upon acceptance of each of the deliveries of components of the corresponding lot(s) by the Head of the CELLS Accelerators Division, and approval of the invoice by him, CELLS shall pay to the contractor the partial payments agreed.

24.1.1.4 Payment of the partial payments shall be made on the tenth (10<sup>th</sup>) day of the following month, upon expiration of thirty (30) days from the date of approval of the invoice.

#### **24.1.2 Phase two: Successive delivery of the UHV valves and their components**

24.1.2.1 CELLS may order from the contractor of the awarded lot, by means of a purchase order, the units of goods which CELLS may require for that purpose, according to the price and delivery time offered, and throughout the period for performance of this contract.

24.1.2.2 CELLS shall pay the price specified in the purchase order, following acceptance of the supply by the Head of the CELLS Accelerators Division, and upon submission of the corresponding invoice.

24.1.2.3 Payment of the contract price shall be made on the tenth (10<sup>th</sup>) day of the following month, upon expiration of thirty (30) days from the date of approval of the invoice.

### **24.2 Price review**

No price review is established in this contract for the first three (3) years of contract, since all possible price increments and/or variations during these three (3) years have been provided for. The price includes all the costs inherent in this supply and, consequently, no additional amount whatsoever may be charged up to the end of this contract. In the event of an extension of the contract, the price shall be reviewed at the

beginning of the calendar year and the maximum increase that may be applied shall be the increase provided for in the Consumer Price Index (IPC) – national index – published by the Spanish National Institute of Statistics.

## **V – PERFORMANCE OF THE CONTRACT**

### **25. Management and supervision**

25.1 The Head of the CELLS Accelerators Division, or delegated personnel, shall be responsible for supervising the supply and shall discharge the duties of control, coordination and inspection of the supply.

25.2 The Head of the CELLS Accelerators Division, or delegated personnel, shall have the right to inspect and be informed of the development of the work at each of its phases, and may order tests and trials or carry them out themselves, as appropriate, establish quality control systems, propose appropriate modifications to be introduced for the satisfactory progress of the work and issue such instructions or orders as he may see fit for the strict fulfilment of the contract.

25.3 The Head of the CELLS Accelerators Division, or delegated personnel, shall have the right to visit the contractor during normal working hours without any need for prior notice.

### **26. Contractor's own risk and responsibility**

The contract shall be performed at the contractor's own risk and responsibility pursuant to section 98 of TRLCAP.

### **27. Time-limit for performance of the contract**

27.1 The contract shall be performed in two (2) distinct time phases:

27.1.1 Phase 1: The contractor shall deliver to CELLS the goods corresponding to the lot awarded, in accordance with the delivery times established in clause 4.5.4 of the Technical Specification. The computation of the time-limit shall commence from the date of signature of the contract.

27.1.2 Phase 2: The contractor of the awarded lot shall deliver to CELLS the goods which CELLS has previously ordered from the contractor by means of a purchase order, and shall also comply with the delivery times specified in its offer. The computation of the delivery time shall commence from the date of signature of the corresponding purchase order.

27.2 The term of the contract shall be three (3) years from the date of signature of this contract. Notwithstanding, an extension may be agreed by mutual consent between the parties, who shall state in writing their wish to extend it before the end of the contract. In this case, the total duration of the contract – including the extensions – may not exceed four (4) years.

## **28. Conditions for performance of the contract**

28.1 The work to which the contract relates shall be carried out strictly subject to the stipulations of these Terms and Conditions, the Technical Specification and the instructions of the Contracting Authority. The contractor is obliged to perform the contract within the time-limit established for its performance.

28.2 The contractor shall provide CELLS, at no additional cost, with such professional services as may be considered necessary and are inherent in the performance of the contract.

28.3 CELLS may inspect and monitor the performance of the contract directly and continuously. The contractor shall facilitate visits to its offices, examinations and other inspection checks which CELLS may carry out.

28.4 The contractor shall appoint a person responsible for the performance of the contract and for any communications and procedures to be carried out and received from CELLS.

## **29. Assignment and subcontracting**

29.1 The contractor may not assign the rights and obligations deriving from this contract to a third party.

29.2 The contractor may not subcontract the contract without prior authorisation in writing from CELLS. If CELLS should authorise the partial subcontracting of the contract, this shall be processed in accordance with section 115 of TRLCAP.

## **30. Amendment of the contract**

30.1 CELLS may only introduce modifications for reasons of public interest, pursuant to section 101 of TRLCAP, provided that these are due to new requirements or unforeseen causes, and it shall provide adequate justification for any such modifications in the dossier.

30.2 Any modifications introduced shall be executed in an administrative document pursuant to section 54 of TRLCAP.

30.3 The contractor is obliged to implement any modifications that do not imply an overall upward or downward alteration of the price equal to or in excess of 20 %.

### **31. Suspension of the contract**

If, in accordance with section 102 of TRLCAP, it is resolved to suspend the contract, a record of this shall be issued stating the circumstances giving rise to the suspension and the actual status of the performance.

## **VI – CONCLUSION OF THE CONTRACT**

### **32. Delivery of the supply**

32.1 The contractor shall deliver the supply within the stipulated time-limits in accordance with INCOTERM 2000 *Delivery Duty Paid* (DDP) and at the site designated by CELLS. In this respect, the Head of the CELLS Accelerators Division shall examine the documentation submitted and if he considers that the technical specifications have been met, he shall propose that the delivery should be accepted.

32.2 If CELLS should consider that the technical specifications of the contract have not been met, it shall give the contractor precise, detailed instructions in writing so that it may remedy the faults or defects observed, stating in this document the time-limit allowed for achieving this and any observations that it may see fit to include.

32.3 If the contractor should raise any objections to the observations made by the Head of the CELLS Accelerators Division, the latter shall refer such objections, with his report, to the Contracting Authority, which shall issue a decision on the matter.

### **33. Acceptance of the supply**

33.1 The Head of the CELLS Accelerators Division must expressly approve acceptance of the supply of each lot.

33.2 The contract shall be considered to have been performed by the contractor when the contractor has performed and delivered the complete supply of each lot, in accordance with the conditions established by CELLS.

33.3 Acceptance of the supply shall be effected by the Head of the CELLS Accelerators Division, who shall issue a Certificate acknowledging its acceptance, considering the contract as duly completed.

33.4 The Certificate shall be signed both by the CELLS representative and by the representative duly assigned by the contractor, and the warranty period shall commence at that moment.

33.5 If the supply should be found not to conform to the agreed technical specifications, the Head of the Accelerators Division shall state this in writing and give the contractor precise instructions in order that it may remedy the defects observed or, if appropriate, proceed to a new supply in accordance with what has been agreed.

### **34. Warranty period**

34.1 The warranty period of the contract shall be at least twenty-four (24) months after the Certificate of Acceptance of the complete supply of each lot.

34.2 If during the warranty period evidence should be found of faults or defects in the goods supplied, CELLS shall be entitled to require the contractor to replace the appropriate goods or to demand that they be repaired, if this should be sufficient. Any such instructions issued by CELLS shall be binding on the contractor. In any case, throughout the warranty period the contractor shall be entitled to be aware of and express its views on the application given to the goods supplied. All costs arising from the removal, repair or replacement of the supply shall be payable by the contractor.

34.3 If the Contracting Authority should consider that, during the warranty period, the goods delivered are not fit for their intended purpose as a consequence of faults or defects attributable to the contractor, and if there is a presumption that repair or replacement of the goods is not sufficient to achieve that purpose, CELLS may reject the supply before the end of the warranty period, leaving it for the contractor's account. CELLS shall be discharged from the obligation to pay and, if payment has been made, CELLS shall be entitled to recover the price actually paid.

34.4 Once the warranty period has expired without any objections on the part of CELLS, the contractor's liability shall be extinguished by reason of the goods supplied.

### **35. Termination of the contract**

35.1 The causes and effects of termination of the contract are as established in sections 111 and 192 of TRLCAP, as well as the following:

- 35.1.1 Supervening loss of the requirements for entering into contracts with CELLS.
- 35.1.2 Breach of the restrictions laid down in regard to subcontracting.
- 35.1.3 Obstructing the powers of supervision and inspection of the Head of the CELLS Accelerators Division.
- 35.1.4 Breach of the contractor's obligation to maintain confidentiality.
- 35.1.5 Failure to provide the human resources and materials offered.
- 35.1.6 Repeated failure to meet the technical specifications of the supply.

35.2 Termination of the contract shall be resolved by the Contracting Authority on its own initiative or at the contractor's request, by means of the procedure followed according to the rules laid down in section 109 of RGLCAP.

35.3 Where the contract is terminated due to culpable breach by the contractor, the contractor's bond shall be seized and the contractor shall also compensate CELLS for any loss or damage caused in excess of the amount of the seized bond.

35.4 The damages payable by the contractor shall be determined by the Contracting Authority, which shall give its reasons for the amount decided, having regard, amongst other factors, to any delay which this may involve to the project and any costs which it may cause for CELLS.

35.5 In the event of rescission of the contract by either party, the contractor shall hand over to CELLS all the material acquired up to that date and provide it with all the documentation prepared up to the date of termination of the contract.

## **VII – FINAL PROVISIONS**

### **36. CELLS' prerogatives**

In accordance with section 59 of TRLCAP, CELLS has the right to construe the contract to which these Terms and Conditions relate and resolve any doubts that may arise in its performance. It may also amend it, for reasons of public interest, suspend its performance and resolve to terminate it in the terms provided for in current legislation on administrative contracts.

### **37. Competent jurisdiction**

37.1 The contract to which these Terms and Conditions relate is of an administrative nature and any litigious issues that may arise in its interpretation, amendment, termination and effects shall be resolved by the Contracting Authority, whose resolutions bring the administrative procedure to a close. A contentious-administrative appeal may be filed against the said resolutions before the Courts and Tribunals of Spain of a contentious-administrative nature, pursuant to section 60 of TRLCAP.

37.2 Optionally, within a maximum time-limit of one month from the day after notification of the said resolutions, the interested parties may file an administrative appeal before the Contracting Authority against the resolutions issued by the Contracting Authority, pursuant to sections 116 and 117 of Law 30 of 26 November 1992 on the legal system regulating public administrations and the common administrative procedure.

**VIII – TABLE OF CHARACTERISTICS OF THE CONTRACT**

### 38. Table of characteristics of the contract

|   |
|---|
| 1) Subject-matter of the contract   |
| Contract for the supply of UHV valves for the ALBA Synchrotron Light Facility   |
| 2) Tender rate  |
| € 2,858,000.57 (including VAT 16%)  |
| 3) Budgetary application  |
| 620.0001 of the CELLS expenditure budget for the years 2007, 2008 and 2009  |
| 4) Price review   |
| Not established   |
| 5) Multi-annual expenditure   |
| There is multi-annual expenditure   |
| 6) Admittance of variants   |
| Admitted  |
| 7) Corporate classification   |
| Not necessary   |
| 8) Assignment   |
| Not applicable  |
| 9) Subcontracting   |
| Pursuant to clause 29.2 of these terms and conditions   |
| 10) Place for delivery of tenders   |
| CELLS   |
| División de Administración -Registro  |
| Edifici C (Facultat de Ciències)  |
| Mòdul C5 bis senars   |
| Campus Universitari de Bellaterra   |
| Universitat Autònoma de Barcelona   |
| 08193 Bellaterra (Barcelona). Spain   |
| 11) Time-limits   |
| The delivery time in accordance with clause 4.5.4 of the Technical Specification  |
| 12) Bond  |
| Provisional: 2% of the tender price of each lot:  |
| <ul style="list-style-type: none"> <li>• <u>Lot number 1</u>: € 41,800.00</li> <li>• <u>Lot number 2</u>: € 3,760.00</li> <li>• <u>Lot number 3</u>: € 5,600.00</li> <li>• <u>Lot number 4</u>: € 6,000.00</li> </ul> |
| Definitive: 4% of the amount of the award   |
| 13) Warranty period   |
| Minimum two (2) years   |

## **IX – ANNEXES**

**ANNEX 1A**

**MODEL APPLICATION TO TAKE PART - LOT 1**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
For the purposes of this invitation to tender:  
With address at.....  
Number ..... Postcode..... Town/ City.....  
Telephone Nos.: Landline..... Mobile..... Fax .....  
E-mail: ..... acting (in his own name or on behalf of the  
company or joint venture).....  
with Tax Identification number (NIF): .....

Having been informed of the conditions and requirements for taking part in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility.

I declare that I am familiar with and accept the Administrative Terms and Conditions and the Technical Specification. Finally, I also declare that I fulfil each and all of the conditions required to enter into contracts with CELLS and that I undertake (in my own name and behalf or on behalf of the company or joint venture which I represent) to carry out the corresponding work strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the above-mentioned tender.  
(Place, date and applicant's signature)

Documentation attached:

- Envelope A. General documentation.
- Envelope B. Financial and technical documentation.

**ANNEX 1B**

**MODEL APPLICATION TO TAKE PART - LOT 2**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
For the purposes of this invitation to tender:  
With address at.....  
Number ..... Postcode..... Town/ City.....  
Telephone Nos.: Landline..... Mobile..... Fax .....  
E-mail: ..... acting (in his own name or on behalf of the  
company or joint venture).....  
with Tax Identification number (NIF): .....

Having been informed of the conditions and requirements for taking part in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility.

I declare that I am familiar with and accept the Administrative Terms and Conditions and the Technical Specification. Finally, I also declare that I fulfil each and all of the conditions required to enter into contracts with CELLS and that I undertake (in my own name and behalf or on behalf of the company or joint venture which I represent) to carry out the corresponding work strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the above-mentioned tender.  
(Place, date and applicant's signature)

Documentation attached:

- Envelope A. General documentation.
- Envelope B. Financial and technical documentation.

**ANNEX 1C**

**MODEL APPLICATION TO TAKE PART - LOT 3**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
For the purposes of this invitation to tender:  
With address at.....  
Number ..... Postcode..... Town/ City.....  
Telephone Nos.: Landline..... Mobile..... Fax .....  
E-mail: ..... acting (in his own name or on behalf of the  
company or joint venture).....  
with Tax Identification number (NIF): .....

Having been informed of the conditions and requirements for taking part in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility.

I declare that I am familiar with and accept the Administrative Terms and Conditions and the Technical Specification. Finally, I also declare that I fulfil each and all of the conditions required to enter into contracts with CELLS and that I undertake (in my own name and behalf or on behalf of the company or joint venture which I represent) to carry out the corresponding work strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the above-mentioned tender.  
(Place, date and applicant's signature)

Documentation attached:

- Envelope A. General documentation.
- Envelope B. Financial and technical documentation.

**ANNEX 1D**

**MODEL APPLICATION TO TAKE PART - LOT 4**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
For the purposes of this invitation to tender:  
With address at.....  
Number ..... Postcode..... Town/ City.....  
Telephone Nos.: Landline..... Mobile..... Fax .....  
E-mail: ..... acting (in his own name or on behalf of the  
company or joint venture).....  
with Tax Identification number (NIF): .....

Having been informed of the conditions and requirements for taking part in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility.

I declare that I am familiar with and accept the Administrative Terms and Conditions and the Technical Specification. Finally, I also declare that I fulfil each and all of the conditions required to enter into contracts with CELLS and that I undertake (in my own name and behalf or on behalf of the company or joint venture which I represent) to carry out the corresponding work strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the above-mentioned tender.  
(Place, date and applicant's signature)

Documentation attached:

- Envelope A. General documentation.
- Envelope B. Financial and technical documentation.

**ANNEX 2A**

**MODEL FINANCIAL OFFER - LOT 1**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
with address at.....  
number ..... postcode..... town/ city.....  
(in his own name or on behalf of the company or joint venture).....  
with Tax Identification number (NIF).....

Having been informed of the conditions and requirements established in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility, and strictly subject to each and all of the stipulated requirements and conditions, I accordingly make the following financial offer:

Tenderers must state the unit price of each component.

**TOTAL PRICE .....€**

(Please state clearly in numbers and words the amount in euros to which the tenderer is committed).

The price is inclusive of VAT and any other types of taxes that may be applicable, as well as all the costs provided for in these Terms and Conditions.

I also undertake, if awarded the contract, to assume full responsibility for the performance of the contract; I am solely liable for this performance to CELLS and to third parties for any loss, injury or damage that may arise during the term of the contract.

(Place, date and applicant's signature)

**ANNEX 2B**

**MODEL FINANCIAL OFFER - LOT 2**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
with address at.....  
number ..... postcode..... town/ city.....  
(in his own name or on behalf of the company or joint venture).....  
with Tax Identification number (NIF).....

Having been informed of the conditions and requirements established in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility, and strictly subject to each and all of the stipulated requirements and conditions, I accordingly make the following financial offer:

Tenderers must state the unit price of each component.

**TOTAL PRICE** .....€

(Please state clearly in numbers and words the amount in euros to which the tenderer is committed).

The price is inclusive of VAT and any other types of taxes that may be applicable, as well as all the costs provided for in these Terms and Conditions.

I also undertake, if awarded the contract, to assume full responsibility for the performance of the contract; I am solely liable for this performance to CELLS and to third parties for any loss, injury or damage that may arise during the term of the contract.

(Place, date and applicant's signature)

**ANNEX 2C**

**MODEL FINANCIAL OFFER - LOT 3**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
with address at.....  
number ..... postcode..... town/ city.....  
(in his own name or on behalf of the company or joint venture).....  
with Tax Identification number (NIF).....

Having been informed of the conditions and requirements established in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility, and strictly subject to each and all of the stipulated requirements and conditions, I accordingly make the following financial offer:

Tenderers must state the unit price of each component.

**TOTAL PRICE .....€**

(Please state clearly in numbers and words the amount in euros to which the tenderer is committed).

The price is inclusive of VAT and any other types of taxes that may be applicable, as well as all the costs provided for in these Terms and Conditions.

I also undertake, if awarded the contract, to assume full responsibility for the performance of the contract; I am solely liable for this performance to CELLS and to third parties for any loss, injury or damage that may arise during the term of the contract.

(Place, date and applicant's signature)

**ANNEX 2D**

**MODEL FINANCIAL OFFER - LOT 4**

**DOSSIER 54/07**

Mr/Ms.....  
of full age, holder of National Identity Document (DNI) number .....  
with address at.....  
number ..... postcode..... town/ city.....  
(in his own name or on behalf of the company or joint venture).....  
with Tax Identification number (NIF).....

Having been informed of the conditions and requirements established in the tender for the contract for the supply of UHV valves for the ALBA Synchrotron Light Facility, and strictly subject to each and all of the stipulated requirements and conditions, I accordingly make the following financial offer:

Tenderers must state the unit price of each component.

**TOTAL PRICE .....€**

(Please state clearly in numbers and words the amount in euros to which the tenderer is committed).

The price is inclusive of VAT and any other types of taxes that may be applicable, as well as all the costs provided for in these Terms and Conditions.

I also undertake, if awarded the contract, to assume full responsibility for the performance of the contract; I am solely liable for this performance to CELLS and to third parties for any loss, injury or damage that may arise during the term of the contract.

(Place, date and applicant's signature)

**ANNEX 3A**

**MODEL UNDERTAKING – LEGAL PERSONS**

**DOSSIER 54/07**

I, (Full name) .....  
as a representative of the company .....,  
a tenderer in the public tender for the contract for the supply of UHV valves for the  
ALBA Synchrotron Light Facility, undertake that:

- Neither the undersigned, nor the directors or representatives of the company are subject to any of the prohibitions or incompatibilities provided for in section 20 of TRLCAP for entering into contracts with CELLS.
- The company which I represent complies with its tax and Social Security obligations pursuant to sections 13 and 14 of RGLCAP, in Spain or, if applicable, in the country where its registered office is located.
- The company has not been removed from the register for IAE [*Impuesto de Actividades Económicas* – Tax on Commercial and Professional Activities].

In witness whereof, I sign this undertaking.

(Place, date and declarant's signature)

**ANNEX 3B**

**MODEL UNDERTAKING – NATURAL PERSONS**

**DOSSIER 54/07**

I, Mr./Ms. ....  
on my own behalf, and representing my company .....,  
a tenderer in the public tender for the contract for the supply of UHV valves for the  
ALBA Synchrotron Light Facility, undertake that:

- Neither the undersigned, nor the company which I represent, are subject to any of the prohibitions or incompatibilities provided for in section 20 of TRLCAP for entering into contracts with CELLS.
- My company is up to date with payment of its tax and Social Security obligations pursuant to sections 13 and 14 of RGLCAP, in Spain or, if applicable, in the country where the company's registered office is located.
- My company has not been removed from the register for IAE [*Impuesto de Actividades Económicas* – Tax on Commercial and Professional Activities].

In witness whereof, I sign this undertaking.

(Place, date and declarant's signature)

## **ANNEX 4**

### **VALUATION CRITERIA**

#### **DOSSIER 54/07**

When awarding the contract, the evaluation of the following criteria shall be taken into account for each lot, according to the weighting shown below:

1.- Price offered. From 0 to a maximum of 50 points: Consideration shall be given to the total price offered for this first contractual phase, the unit price of the component for phase 1 and 2 of the contract, as well as the discounts and price reductions for volume of purchases.

2.- Technical documentation: From 0 to a maximum of 50 points.

2.1 Technical proposal. From 0 to a maximum of 40 points: Consideration shall be given to the degree to which the technical proposal conforms to the Technical Specification.

2.2 Delivery time proposal. From 0 to a maximum of 05 points: Consideration shall be given to proposals which reduce the delivery time of the supply both for phase 1 and 2 of the contract.

2.3 Warranty period proposal. From 0 to a maximum of 05 points: Consideration shall be given to proposals which extend the warranty period of the supply both for phase 1 and 2 of the contract.

**ANNEX 5A**

**MODEL DECLARATION REPLACING THE SUBMISSION OF THE  
ADMINISTRATIVE DOCUMENTATION OF ENVELOPE A**

**DOSSIER 54/07**

I, Mr./Ms. ....  
as a representative of the company .....,  
a tenderer in the public tender for the contract for the supply of UHV valves for the  
ALBA Synchrotron Light Facility, undertake that:

- The company .....  
has taken part in the tender procedure for the contract for the supply  
of..... with dossier number .....
- The administrative documentation of envelope A relating to the capacity to act  
and representative capacity submitted in the said tender procedure by the above-  
mentioned company is in the possession of CELLS, as a result of having taken  
part in the said public tender. The information contained therein is valid and up-  
to-date on the date of signature by the declarant.
- The administrative documentation of envelope A relating to the capacity to act  
and representative capacity of the said tender procedure has not been altered  
and/or amended in any way.

In witness whereof, I sign this undertaking.

(Place, date and declarant's signature)

**ANNEX 5B**

**MODEL DECLARATION AMENDING OR UPDATING THE  
ADMINISTRATIVE DOCUMENTATION OF ENVELOPE A**

**DOSSIER 54/07**

I, Mr./Ms. ....  
as a representative of the company .....,  
a tenderer in the public tender for the contract for the supply of UHV valves for the  
ALBA Synchrotron Light Facility, undertake that:

- The administrative documentation of envelope A relating to the capacity to act and representative capacity submitted in the tender procedure ..... with dossier number ..... which is in the possession of CELLS, has been amended in the following particulars as indicated below: (Tick the box corresponding to the relevant amendment and/or update)
  - Deed, document of incorporation or amendment, memorandum and articles of association or founding instrument.
  - Appointment of new representatives with powers to tender and/or sign contracts.
  - Revocation of powers of the persons authorised to tender and/or sign contracts.
  - Legal form, company name, objects or registered office.
- The amendment and updating of the relevant section must be supported by the documentation which the tenderer attaches to this declaration.

In witness whereof and for the relevant purposes, I sign this undertaking.

(Place, date and declarant's signature)

**ANNEX 6**

**MODEL GUARANTEE BY MEANS OF BOOK-ENTRY SECURITIES  
(WITH REGISTRATION)**

Mr/Ms (full name), on behalf of, Tax Identification Number (NIF), with address for the purpose of notices and demands at street/square/avenue, postcode, town/city

PLEDGES in favour of: (administrative body, autonomous entity or public law entity) the following securities represented by means of book-entries, of which the pledger is the holder and which are identified below:

| Number of securities | Issue (issuing entity), class of security and date of issue | Code of security | Registration Reference | Unit nominal value | Realisation value of the securities on the date of registration |
|----------------------|---|------------------|------------------------|--------------------|---|
|                      |   |                  |                        |                    |   |

Pursuant to: (legal rule(s) and section(s) requiring the provision of this guarantee), in order to guarantee the following obligations: (detail the subject-matter of the contract or obligation undertaken by the guaranteed person or entity, indicating any possible extensions provided for in the contract), entered into by (contractor or natural or legal person guaranteed) Tax Identification Number (NIF), with address for the purpose of notices and demands at street/square/avenue, postcode, town/city, for the amount of: (in letters and figures).

This contract is awarded in accordance with and fully subject to the provisions of the legislation governing Public Service contracts, their implementing rules and the rules regulating the *Caja General de Depósitos* (General Public Depository).

(Name or company name of the pledger) (signature/s).  
Certified by me, the Notary (signature).

Mr/Ms ..., with National Identity Document (DNI) ..., on behalf of (Member entity in charge of the accounting records), certifies the registration of the pledge,

(date)

(signature)

## ANNEX 7

### MODEL GUARANTEE BY MEANS OF PLEDGE OF PARTICIPATIONS IN INVESTMENT FUNDS

Mr/Ms (full name), on behalf of, Tax Identification Number (NIF), with address for the purpose of notices and demands at street/square/avenue, postcode, town/city.

PLEDGES in favour of: (administrative body, autonomous entity or public law entity) the following participations, of which the pledger is the holder and which are identified below:

| Number of participation | Identification of the investment fund, name and number of administrative register of the CNMV | Fund manager | Depository entity | Liquidation value on date of registration | Total value |
|-------------------------|---|--------------|-------------------|---|-------------|
|                         |   |              |                   |   |             |

Pursuant to: (legal rule(s) and section(s) requiring the provision of this guarantee), in order to guarantee the following obligations: (detail the subject-matter of the contract or obligation undertaken by the guaranteed person or entity, indicating any possible extensions provided for in the contract), entered into by (contractor or natural or legal person guaranteed) Tax Identification Number (NIF), with address for the purpose of notices and demands at street/square/avenue, postcode, town/city, for the amount of: (in letters and figures).

This contract is awarded in accordance with and fully subject to the provisions of the legislation governing Public Service contracts, their implementing rules and the rules regulating the *Caja General de Depósitos* (General Public Depository). The fund manager undertakes to maintain the pledge on the above-mentioned participations, and not to reimburse the holder, under any circumstances, for the value of the participations while the pledge subsists, and to proceed with the reimbursement of the participations in favour of the *Caja General de Depósitos* (General Public Depository) or equivalent body of the remaining Public Administrations at first request by the same.

(Name or company name of the pledger) (signature/s).  
Certified by me, the Notary (signature).

Mr/Ms ..., with National Identity Document (DNI) ..., on behalf of (Fund Manager), certifies the provision of the pledge on the above-mentioned participations.

(date)

(signature)

## ANNEX 8

### MODEL BILL GUARANTEE

The entity (corporate name of the credit institution or mutual guarantee company), Tax Identification Number (NIF), with address (for the purpose of notices and demands) at street/square/avenue, postcode, town/city and on its behalf (full names of the attorneys), with sufficient powers to bind the entity herein, as appears from the acknowledgement of powers appearing at the foot of this document, endorses (full name or company name of the guaranteed person), Tax Identification Number (NIF), pursuant to (legal rule(s) and section(s) requiring the provision of this guarantee) in order to act as guarantor for the following obligations (detail the subject-matter of the contract or obligation undertaken by the guaranteed person or entity, indicating any possible extensions provided for in the contract), before (administrative body, autonomous entity or public law entity) for the amount of (in letters and figures).

The guarantor undertakes that it is in compliance with the requirements provided for in section 56.2 of the General Regulations governing the Public Service Contracts Act (RGLCAP). This guarantee is granted jointly and severally in respect of the principal obligor, with express waiver of the benefit of discussion and with an undertaking to pay the guarantee at first request by the *Caja General de Depósitos* (General Public Depository) or equivalent organ of the remaining Public Administrations, subject to the terms provided for in the legislation concerning Public Service contracts, their implementing rules and the rules regulating the *Caja General de Depósitos* (General Public Depository).

This bill guarantee shall remain in force until (name of contracting authority), or whoever is legally authorised to do so on its behalf, authorises its cancellation or return pursuant to the Public Service Contracts Act and complementary legislation.

This guarantee has been entered as of today in the Special Register of Bill Guarantees of the Bank of Spain under number

(Place and date)

(Company name)

(Signature of attorneys)

VERIFICATION OF REPRESENTATION BY THE LEGAL DEPARTMENT OF THE CGD<sup>5</sup> OR  
THE SPANISH GOVERNMENT LAW OFFICE

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| Province | Date | Number or code |
|----------|------|----------------|
|----------|------|----------------|

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<sup>5</sup> Caja General de Depósitos (General Public Depository)

## ANNEX 9

### MODEL FIDELITY GUARANTEE INSURANCE CERTIFICATE

#### Certificate number

The insurance company (1) (hereinafter insurer), with address at, street, and Tax Identification Number (NIF), duly represented by Mr/Ms (2), with sufficient powers to bind the insurer herein, as appears from the acknowledgement of powers appearing at the foot of this document,

Insures (3), Tax Identification Number (NIF), as policyholder, before (4), hereinafter insured, up to the amount of (in letters and figures) (5), in the terms and conditions established in the Public Service Contracts Act, its implementing rules and the administrative terms and conditions governing the contract (6), by way of cover for the insured (7), in order to guarantee the obligations, penalties and other costs that may arise pursuant to the legal rules and other administrative conditions mentioned above.

The insurer undertakes that it is in compliance with the requirements stipulated in section 57.1 of the General Regulations governing the Public Service Contracts Act (RGLCAP).

Non-payment of the premium, whether of the sole, first or subsequent premiums, shall not entitle the insurer to terminate the contract, nor shall the contract be extinguished, nor the insurer's cover suspended nor the insurer released from its obligation in the event of the insurer having to encash the guarantee.

The insurer may not use against the insured any defence which it may be entitled to use against the policyholder.

The insurer undertakes to indemnify the insured at first request by the *Caja General de Depósitos* (General Public Depository) or equivalent organ of the remaining Public Administrations, in the terms laid down by the Public Service Contracts Act and its implementing rules.

This fidelity guarantee insurance shall remain in force until (4), or whoever is legally authorised to do so on its behalf, authorises its cancellation or return pursuant to the Public Service Contracts Act and complementary legislation.

Place and date

Signature

Insurer

#### VERIFICATION OF REPRESENTATION BY THE LEGAL DEPARTMENT OF THE CGD OR THE SPANISH GOVERNMENT LAW OFFICE

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| Province | Date | Number or code |
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|----------|------|----------------|

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#### Instructions for filling out the form

- (1) Give the full corporate name of the insurance company.
- (2) Full name(s) of the attorney or attorneys.
- (3) Name of policyholder.
- (4) Contracting authority.

- (5) Amount, in letters and figures, for which insurance is provided.
- (6) Identify individually and sufficiently (nature, class, etc.) the contract pursuant to which the fidelity guarantee is provided, indicating any possible extensions provided for in the contract.
- (7) State the type of insurance concerned, provisional, definitive, etcetera