

## **ADMINISTRATIVE TERMS AND CONDITIONS**

**GOVERNING THE CONTRACT FOR THE SUPPLY OF THE OPTICAL COMPONENTS OF THE EXPERIMENTAL BEAMLINE NUMBER 09 OF THE ALBA SYNCHROTRON LIGHT LABORATORY**

Dossier 58/07

Type of contract: Supply

Contractual procedure: Normal

Award procedure: Negotiated without publicity

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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 the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory of the Consortium for the Construction, Equipment and Exploitation of the ALBA Synchrotron Light Laboratory (hereinafter, CELLS).

1.2 The subject-matter of the contract is divided into four (4) lots as specified below:

1.2.1 Lot number 1: Beamline backbone

1.2.2 Lot number 2: Monochromator chamber

1.2.3 Lot number 3: Gratings

1.2.4 Lot number 4: Mirrors

1.3 The tenderer may submit offers for one (1) lot, for two (2) lots, for three (3) lots or for the four (4) lots mentioned in clause 1.2 of these Terms and Conditions. If the tenderer should tender for more than one (1) lot, it must submit separate offers for each of the lots for which it is tendering.

1.4 Each lot shall be the subject of a separate award, although in the event of a tenderer being awarded more than one (1) lot; CELLS shall conclude a single contract with the said successful tenderer.

1.5 The technical characteristics of the supply to which the contract relates are defined in the Technical Specification.

#### **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), Royal Decree 1098 of 12 October 2001 approving the General Regulations governing the Public Service Contracts Act (hereinafter RGLCAP), and the remaining 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. The last tender submitted by the successful tenderer shall also form an integral part of the contract.

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

3.1 The contract dossier was approved by the Contracting Authority on 16 July 2007.

3.2 The expenditure shall be approved prior to the signature of the corresponding contract, given that the tender rate is not specified in clause 4 of these Terms and Conditions.

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 and 2008.

3.4 Pursuant to article 93.2 of the RGLCAP, in the negotiated procedure the contract may not under any circumstances be awarded for an amount in excess of the previously approved budget.

### **4. Non-specification of tender rate**

4.1 Given the technical characteristics of the subject-matter of the contract and in view of the high level of technical specialisation required for the design and manufacture thereof, CELLS does not establish a tender rate due to the large number of indeterminate factors involved in fixing this.

4.2 For all purposes, it is understood that the offers submitted are inclusive of VAT and any other taxes that may be applicable under the provisions of law in force.

4.3 The offers shall 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.

4.4 It is also understood that the offer includes all the expenses that the bidder undertakes for the effective accomplishment of the contracted obligations such as insurance, transport and financial expenses arising from the payments schedule established in clause 24.1.2 of Administrative Terms and Conditions.

## **5. Procedure**

5.1 Given the specific characteristics of the supply object-matter of the contract and the high level of technical specialisation required for its design and construction -subject to the prior specifications given by CELLS-, this contract shall be awarded under normal contractual procedure, by negotiated award procedure without publicity, all in accordance with articles 73.4 and 182 paragraph c) of the TRLCAP.

5.2 The supply must be delivered to CELLS in accordance with the specifications detailed in the Technical Specification. The subject-matter of the contract shall be individually designed for CELLS, therefore negotiation is essential in this tendering process so that the viability of the subject-matter can be evaluated.

5.3 Notwithstanding the provisions of the previous paragraphs and although there is no mandatory obligation on the part of CELLS to advertise, CELLS shall advertise this tender by means of an indicative announcement in the Official Journal of the European Union (OJEU), in order to ensure participation in the tender.

5.4 CELLS shall invite a minimum of three (3) qualified firms, provided this is possible, to participate in the negotiation process which shall take place in order to award the supply contract.

5.5 The letter of invitation to tender shall be sent by post with acknowledgement of receipt or by e-mail, stating the address from which the tenderer may request information concerning the Administrative Terms and Conditions and the Technical Specification, and any other additional documentation; and the offices where the terms and conditions and other documentation may be inspected.

5.6 The sending of the invitation by e-mail in the negotiated procedure shall only be valid if there is reliable proof of transmission and receipt, the dates thereof, the full contents of the communications and the identification of the sender and recipient. In this regard, a printed copy shall be obtained and recorded, and inserted into the dossier.

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

5.8 Submission of the offer implies that the tenderer unconditionally accepts the clauses of these Terms and Conditions.

## **6. Scope of negotiation**

6.1 By virtue of the provisions of article 92.3 of the TRLCAP, only the financial and technical aspects of the supply, and the delivery times, shall be subject to negotiation.

6.2 In no case shall the contents of the clauses of these Terms and Conditions be negotiated.

## **7. General award criteria**

The Contracting Authority shall award the subject-matter of this contract to the tenderer who, as a whole, submits the most advantageous tender in accordance with the evaluation criteria laid down in clause 12.4 of these Terms and Conditions, without having regard solely to the price and without prejudice to the right to declare any of the lots void.

## **8. Capacity to contract**

8.1 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 article 15 of the TRLCAP, whose purpose or activity is directly related to the subject-matter of the contract, are not included in any of the prohibitions against contracting listed in article 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.

8.2 In the case of tenderers 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 article 15.2 of the TRLCAP.

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

8.4 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 tenderers 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.

### **9. Proof of standing**

Tenderers must provide proof of both their economic and financial capacity and their technical capacity, in accordance with the stipulations of clause 12 of these Administrative Terms and Conditions.

### **10. Provisional bond**

Given the characteristics of this invitation to tender by means of negotiated procedure, tenderers shall not be required to provide a provisional bond, pursuant to article 35.5 of the TRLCAP.

### **11. Definitive bond**

11.1 The Contracting Authority shall require the successful tenderer to provide a definitive bond equivalent to 4% of the amount of the award, in accordance with article 36.1 of the TRLCAP.

11.2 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 for reasons attributable to the successful tenderer this requirement is not met, CELLS may terminate the contract.

11.3. The definitive bond shall guarantee the items detailed in article 43.2 of the TRLCAP.

11.4 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.

11.5 If the tenderer is awarded one or more lots, he shall deposit the definitive bond corresponding to the lot or the lots awarded.

## II – SPECIAL TENDERING CLAUSES

### 12. Form and content of the applications to take part

12.1 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”**

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

The following paragraph shall also appear on the front of each envelope:

**“APPLICATION TO TAKE PART IN THE TENDER FOR THE CONTRACT FOR THE SUPPLY OF THE OPTICAL COMPONENTS OF THE EXPERIMENTAL BEAMLINE NUMBER 09 OF THE ALBA SYNCHROTRON LIGHT LABORATORY. DOSSIER 58/07”**

Company or Joint Venture represented:

Company Name:

Telephone:

Fax:

E-mail:

Date and signature:

**The tenderer shall submit only one ENVELOPE A and one ENVELOPE B for each lot for which it is tendering. It shall also submit as many applications to take part (Annex 1) as lots for which it is tendering.** The application to take part must not be inserted into either of the envelopes, but must be submitted in Spanish or Catalan 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.

**THE ENVELOPES MUST INCLUDE THE FOLLOWING DOCUMENTATION:**

### 12.2 ENVELOPE A: GENERAL DOCUMENTATION

The documents **-originals or authentic copies-** (photocopies or scanned documents shall not be accepted under any circumstances) which are required in the section corresponding to each particular case shall be included in the envelope A with an index that relates them numerically:

## **12.2.1 SPANISH LEGAL PERSON**

### **12.2.1.1 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.

### **12.2.1.2 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.

### **12.2.1.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.
3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.1.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the representative of the company, to the effect 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 3-A).

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

A responsible declaration, signed in writing by the representative of the company, to the effect 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.

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

#### **12.2.2.1 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 above must be legalised with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.2.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.2.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.

3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.2.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the representative of the company, to the effect 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 3-A).

#### **12.2.2.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the representative of the company that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the representative of the company, to the effect 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.

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

#### **12.2.3.1 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.

#### **12.2.3.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.3.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.

3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.3.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the representative of the company, to the effect 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 3-A).

#### **12.2.3.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the representative of the company that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the representative of the company, to the effect 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.

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

#### **12.2.4.1 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 mission 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.

#### **12.2.4.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.4.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.

3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.4.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the representative of the company, to the effect 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 3-A).

#### **12.2.4.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the representative of the company that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the representative of the company, to the effect 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.

### **12.2.5 SPANISH NATURAL PERSONS**

#### **12.2.5.1 Capacity to act**

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

#### **12.2.5.2 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).

#### **12.2.5.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.
3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.5.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the tenderer, to the effect 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 3-B).

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

A responsible declaration, signed in writing by the tenderer, to the effect 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.

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

### **12.2.6.1 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 Annex I.2 of the RGLCAP.
4. The documents of paragraphs 1, 2 and 3 above must be legalised with the Apostille in accordance with the Hague Convention of 1961 October 3 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

### **12.2.6.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

### **12.2.6.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.

3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

**12.2.6.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the representative of the company, to the effect 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 3-B).

**12.2.6.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the tenderer, that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the tenderer, to the effect 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.

**12.2.7 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 with the Apostille in accordance with the Hague Convention of 5 October 5 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.7.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.7.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.

3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.7.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the tenderer, to the effect 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 3-B).

#### **12.2.7.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the tenderer, that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the tenderer, to the effect 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.

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

#### **12.2.8.1 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 with the Apostille in accordance with the Hague Convention of 5 October 5 Abolishing the Requirement of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.8.2 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 with the Apostille in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement

of Legalisation for Foreign Public Documents and duly translated into Spanish or Catalan by a sworn translator.

#### **12.2.8.3 Economic-financial and technical capacity**

1. Proof of the economic-financial capacity 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 capacity 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.
3. Documents mentioned in paragraphs 1 and 2 above must be signed on each sheet and in writing by the representative of the company.

#### **12.2.8.4 Responsible declaration to the effect that the tenderer does not fall within any of the prohibitions for contracting pursuant to articles 15-20 of the TRLCAP**

An express declaration, signed in writing by the tenderer, to the effect 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 3-B).

#### **12.2.8.5 Declaration of submission to Spanish jurisdiction and waiver of own jurisdiction**

Declaration by foreign companies, signed in writing by the tenderer, that they 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 article 79.2 d) of the TRLCAP.

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

A responsible declaration, signed in writing by the tenderer, to the effect 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.

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

12.3.1 Tenderers who have already previously participated in other tender procedures convened by CELLS may replace the submission of the documentation of Envelope A relating to 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, signed in writing by the representative of the company, must be submitted in "ENVELOPE A" (Annex 4-A).

12.3.2 In the cases referred to in the previous paragraph where there have been changes to any of the documents relating to 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 (Annex 4-B).

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

The following documentation shall be submitted in “Envelope B” duly sealed. The tenderer shall submit one “Envelope B” for each lot for which a tender is submitted.

In accordance with article 92.3 of the TRLCAP, **this documentation included in Envelope B shall be the only documentation which shall be subject to and the subject of negotiation, as specified in these Terms and Conditions:**

### **12.4.1 Financial offer**

12.4.1.1 The financial offer shall be submitted in accordance with the model format of Annex 2 of these Terms and Conditions which is applicable in each case. Tenderers shall submit as many financial offers as lots for which they are tendering and, when making the financial offer, they shall take into account the time-limits and payment percentages set forth in clause 24.1.2 of these Terms and Conditions.

12.4.1.2 If tenders are submitted for more than one lot, the tenderer may specify in an additional document the percentage of discount which would apply if the tenderer were to be awarded more than one lot – indicating the corresponding lots – and including this additional document in each of the envelopes of the corresponding lots.

12.4.1.3 The price offered shall be inclusive of VAT and any other kinds of taxes which may be applicable.

12.4.1.4 The price includes the costs of the supply in accordance with the conditions of the INCOTERMS 2000 International Trade clauses DDP, *Delivery Duty Paid*.

12.4.1.5 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 tender suggest otherwise.

#### **12.4.2 Technical documentation**

Technical proposal specifying the information requested in clause 4.3 of Technical Specification.

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

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

13.2 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.

### **14. Time-limit for submission**

14.1 Tenders may be submitted until 13:00 hrs. on 7 November 2007.

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

Edifici C. Mòdul C5 bis senar  
Campus Universitari de Bellaterra  
Universitat Autònoma de Barcelona  
08193 Bellaterra (Cerdanyola del Vallès)  
Barcelona. Spain

14.3 The CELLS registry shall remain open from 9.00 a.m. to 1.00 p.m. from Monday to Friday.

14.4 Tenders may be sent by post as laid down in article 80.4 of the 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)

14.5 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 announcement.

14.6 If the tender has not been received upon expiration of ten (10) calendar days from the deadline for submission referred to in clause 14.1, the tender shall not be admitted under any circumstances.

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

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

## **15. Alternative solutions or variants**

Tenderers may offer alternative solutions or variants which represent improvements on the conditions set out in the Technical Specification. They may not under any circumstances submit alternatives or variants which do not comply at least with the requirements laid down in the said Specification. The improvements must be clearly identified on a separate sheet in Envelope B.

## **16. Evaluation of applications**

The negotiation shall be carried out on the basis of the following evaluation criteria for each lot:

### **16.1 Financial offer**

CELLS may reject those offers which, in its view, due to their amount, do not conform to the available budget, or those offers which cannot be accepted by CELLS in view of the total cost of the project.

### **16.2 Technical documentation**

The technical documentation and delivery time-limits shall be subject to negotiation with the tendering companies.

## **17. Opening of tenders**

17.1 At the end of the period for the submission of offers, the envelopes A - “General Documentation” - shall be opened, for the purpose of checking the documentation submitted by the tenderers.

17.2 In the first place, it shall be checked that the tenders registered within the established time-limit match the existing envelopes. Then the documentation provided in Envelope A shall be checked and those tenderers who have not provided all the documentation required shall be automatically excluded. However, if any rectifiable defects or omissions are found, the tenderers concerned shall be granted a period of no more than three working days in which to amend them. Clarifications may also be requested concerning the certificates and other documentation submitted, or the submission of other additional documents may be requested. In this case the maximum time-limit within which such documentation is to be provided shall be specified.

17.3 Negotiations with the admitted companies shall then commence on the financial and technical aspects referred to in clause 12.4 of these Terms and Conditions.

17.4 Minutes of each of the negotiation sessions held between CELLS and each of the companies invited to the negotiation shall be drawn up; These Minutes shall record the content of the discussions and the conclusions reached in the said session.

17.5. The Minutes shall be kept in chronological order and, once the negotiation has been concluded, they shall be filed in the contract dossier.

17.6 Pursuant to article 92.2 of the TRLCAP, the Head of the CELLS Experiments Division, on the basis of the financial and technical negotiation carried out, shall submit the contract award proposal to the Contracting Authority together with the following documentation:

- The tenders submitted and additional documentation of both the admitted and excluded tenderers.
- The full set of Minutes of the negotiations with each of the companies.
- Any legal, technical and financial reports that may have been produced.

17.7 After considering the documentation referred to in the previous paragraph, the Contracting Authority may adopt 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 12.4 of these Terms and Conditions shall be applied;
- To declare the tender process void;

- To set aside the proceedings, taking them back to the moment when a defect of form rendering the proceedings invalid was committed.

## **18. Resolution of award**

18.1 The resolution awarding the contract shall be issued by the Contracting Authority within a maximum time-limit of six (6) months from the deadline for the receipt of the offers, pursuant to article 89 of the TRLCAP.

18.2 The Contracting Authority shall give a reasoned explanation of its resolution, taking into account the award proposal of the Head of the CELLS Experiments Division.

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

## **19. Return of documentation**

19.1 The documentation submitted by tenderers - with the exception of the documentation of Envelope A relating to the capacity to act and representative capacity and the financial offer - may be removed upon expiry of six (6) 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 After the time-limit for removal of the documentation has expired, CELLS shall be free to use it as it sees fit, and shall be exempt from all liability in respect thereof.

## **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. They must also submit a copy of 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 legal exemption status from IAE (Tax on Commercial and Professional Activities), it must provide proof of such exemption by any of the means established in article 82 of Royal Legislative Decree 2/2004 of 5 March 2004 approving the Consolidated Act Regulating Local Tax Authorities.

Clause 20.1.1 is only applicable to companies having their registered office in Spain.

20.1.2 For those 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.

20.1.3 Deposit slip for the definitive bond equivalent to 4% of the amount of the award, which shall be provided by any of the following specified 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.
- 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.

See model formats for bonds set out in Annex numbers 5 - 8.

20.1.4 Public liability insurance policy, as well as submission of the latest receipt proving payment of the premium, and a declaration of undertaking to renew the policy annually in accordance with clause 23.9 of the Terms and Conditions. Foreign companies must provide the relevant sworn translation of these documents into Spanish or Catalan.

20.1.5 CELLS may request from the successful tenderer before signature of the contract and throughout the term thereof a sworn translation of the non-scientific technical documentation referred to in clause 12.4.2 of the Terms and Conditions.

### **III - EXECUTION OF THE CONTRACT**

#### **21. Perfecting of the contract**

21.1 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.

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

21.3 The successful tenderer must 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.

21.4 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 article 54 of the 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.

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

21.6 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).

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

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.

## **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, health and safety at work and any other which may be applicable in the said matters.

#### 23.2 Duty of confidentiality

23.2.1 The contractor is expressly obliged to keep absolutely confidential any data or background information relating to the subject-matter of the contract of which it may become aware in the course of the 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 Protection of personal data

23.3.1 The contractor undertakes to observe all the obligations which may arise from its responsibility on processing the data, in accordance with the provisions of article 12 of the Personal Data Protection Act (Ley Orgánica 15/1999) of 13 December, and by any other additional provision or regulation which may be applicable.

23.3.2 The contractor undertakes not to allocate, apply or use the data to which he may have access within the framework of the performance of this contract for purposes other than those specifically needed for the provision of the contracted services.

23.3.3 The contractor declares its knowledge of the obligations arising from the data protection regulations and specifically from the security measures established in Royal Decree 994/1999 of 11 June. The contractor also guarantees the implementation and upholding of these security measures, as well as any other

which may be needed to guarantee the security of personal data contained in any medium.

23.3.4 Once the contractual relation which justified the access of the contractor to personal data has been ended or terminated, these data shall be returned to CELLS, as well as any other medium or document which may contain personal data.

23.3.5 The contractor exonerates CELLS from any claim which may be derived from the processing of personal data within the provision of the contracted services if the regulations applicable to the protection of these data are not observed. For this purpose, the contractor would be considered responsible for the processing of the data, personally answering for any infringements it might have committed, as well as for any other contractual or administrative and/or criminal responsibility under the law in force, and for any claim that anyone interested may lodge before the Data Protection Agency and the compensation, if any, that may be due to the person affected.

#### 23.4 Compliance with time-limits and penalties for delay

23.4.1 The contractor shall perform the supply at the time and place established in clause 33 of the Administrative Terms and Conditions and in accordance with the Technical Specification.

23.4.2 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 article 95 of the TRLCAP, without any need to give prior notice of the delay.

23.4.3 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.

23.4.4 The amount of the penalties does not exclude any compensation for loss or damage 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.

#### 23.5 Liability

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

23.5.2 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.

23.5.3 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.

### 23.6 Damages

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

23.6.2 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.

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

23.6.4 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 article 115 of the TRLCAP.

### 23.7 Intellectual and Industrial Property

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

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

23.7.3 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.

### 23.8 Equipment and organisation

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

23.8.2 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.

23.8.3 In the event that the contractor should replace any technical personnel proposed in the offer, it must inform CELLS of this. CELLS shall automatically have the option to approve the personnel chosen by the contractor for the performance of the commissioned works.

## 23.9 Insurance

23.9.1 Prior to signature of this contract, the contractor must prove that it has taken out the mandatory insurance policies and third party public liability insurance – covering 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.

23.9.2 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.

23.9.3 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. Obligations of CELLS**

### 24.1 Payment of the price

24.1.1 The contractor shall be entitled to receive payment of the price of the contract for the goods actually delivered and formally accepted by CELLS pursuant to the conditions established in the contract. The Head of the CELLS Experiments Division must certify acceptance of the goods received in writing.

24.1.2 The price of the contract shall be paid in several partial payments, upon verification of the deliveries of the components agreed in each case and certification of completion of the work by the Head of the CELLS Experiments Division. The partial payments shall be made in accordance with the following percentages which shall be applicable equally to each lot:

- 15% of the contract price, following approved acceptance of the design by the Head of the CELLS Experiments Division.
- 85% of the contract price, following acceptance of the front-ends and their components by the Head of the CELLS Experiments Division. This percentage shall be proportionally applied to each of the acceptances as they occur.

24.1.3 Upon acceptance of the deliveries referred to in the previous paragraph by the Head of the CELLS Experiments Division, payment shall be made on the tenth (10th) day of the following month, upon expiration of thirty (30) days from the date of approval of the invoice.

#### 24.24 Price review

The price established for this contract shall not be subject to review, since all possible price increments and/or variations throughout the period of performance of this contract have already been calculated. The price includes all items inherent in this supply and costs deriving from its performance. Consequently, no additional amount whatsoever may be charged up to the end of this contract.

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

### **25. Work Schedule**

25.1 Within a maximum period of two (2) weeks from the execution of the contract, the contractor shall submit the work schedule which must be approved by the Head of the CELLS Experiments Division, or personnel delegated for that purpose. This schedule shall contain the complete programme for performance of the work and shall specify the precise phases and the partial delivery times for each phase, subject to approval by the Head of the Experiments Division.

25.2 The Head of the CELLS Experiments Division, or the personnel delegated by him, shall adopt a decision on the work schedule submitted by the contractor and may require the introduction of amendments, extensions and the degree of definition he may consider necessary for its performance.

### **26. Management and supervision**

26.1 The Head of the CELLS Experiments Division, or personnel delegated by him for that purpose, shall be responsible for supervising the supply and shall discharge the duties of control, coordination and inspection of the supply.

26.2 The Head of the CELLS Experiments 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.

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

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

The contract shall be performed at the contractor's own risk and responsibility in accordance with the provisions contained in article 98 of the TRLCAP.

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

28.1 The supply shall be delivered in accordance with the time schedule established in clause 3.2 of the Technical Specification.

28.2 The computation of the time-limit for the performance of the contract shall commence from the day following the date of signature of the contract.

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

29.1 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 and the partial time-limits indicated for its successive performance.

29.2 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.

29.3 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.

29.4 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.

## **30. Assignment and subcontracting**

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

30.2 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 article 115 of the TRLCAP.

## **31. Amendment of the contract**

31.1 CELLS may only introduce modifications for reasons of public interest, pursuant to article 101 of the 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.

31.2 Any modifications introduced shall be executed in an administrative document pursuant to article 54 of the TRLCAP.

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

### **32. Suspension of the contract**

If, in accordance with article 102 of the 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**

### **33. Delivery of the supply**

33.1. The contractor shall deliver the supply in accordance with the INCOTERMS International Trade clauses DDP (Delivery Duty Paid), at the site designated by CELLS for that purpose. In this respect, the Head of the CELLS Experiments 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.

33.2 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.

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

### **34. Acceptance of the supply**

34.1 The Head of the CELLS Experiments Division must expressly approve acceptance of the supply of each lot.

34.2 The contract shall be considered to have been performed by the contractor when the contractor has performed and delivered the complete supply specified in each lot, in accordance with the conditions established by CELLS. Within a maximum period of one (1) month from the end of the contract, the Head of the CELLS Experiments Division shall execute the formal act of approval or acceptance, and the warranty period shall commence from that moment.

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

34.4 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.

34.5 If the supply does not conform to the agreed technical specifications, the Head of the CELLS Experiments 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.

### **35. Warranty period**

35.1 The warranty period of the contract shall be at least two (2) years from the Certificate of Acceptance.

35.2 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.

35.3 If CELLS 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.

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

### **36. Termination of the contract**

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

36.1.1 Loss of the requirements for entering into contracts with CELLS.

36.1.2 Breach of the restrictions laid down in regard to subcontracting.

36.1.3 Obstructing the powers of supervision and inspection of the Head of the CELLS Experiments Division or personnel delegated by him for that purpose.

36.1.4 Failure to provide the offered human resources or materials.

36.1.5 Repeated failure to meet the technical specifications of the supply.

36.2 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 article 109 of the RGLCAP.

36.3 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.

36.4 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 to the planned investment which this may involve and any higher costs which this may cause for CELLS.

36.5 In the event of rescission of the contract by either party, the successful tenderer 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**

### **37. Prerogatives of CELLS**

In accordance with article 59 of the TRLCAP, CELLS has the right to interpret 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.

### **38. Competent jurisdiction**

38.1 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 article 60 of the TRLCAP.

38.2 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 articles 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

### 39. Table of characteristics of the contract

1) Subject-matter of the contract
Contract for the supply of the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory.
2) Tender rate
Not determined by CELLS
3) Budgetary application
620.0001 of the CELLS expenditure budget for the years 2007 and 2008
4) Price review
None established
5) Multi-annual cost
There is multi-annual cost
6) Admittance of variants
They are admitted
7) Corporate classification
Not necessary
8) Assignment
Not applicable
9) Subcontracting
In accordance with clause 30.2 of the Terms and Conditions
10) Place for delivery of tenders
CELLS offices at:
Divisió d'Administració –Registre
Edifici C. Mòdul C5 bis senar
Campus Universitari de Bellaterra
Universitat Autònoma de Barcelona
08193 Bellaterra (Cerdanyola del Vallès)
Barcelona. Spain
11) Time-limits
The delivery time is specified in clause 3.2 of the Technical Specification
12) Bond
Provisional: Not applicable
Definitive: 4% of the amount of the award
13) Warranty period
Minimum two (2) years

## **IX – ANNEXES**

**ANNEX 1-A**

**MODEL FORMAT FOR APPLICATION TO TAKE PART - LOT NUMBER 1**

**DOSSIER 58/07**

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: .....  
Telephones: Landline..... Mobile..... Fax.....  
E-mail:..... acting (in his own name and behalf 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 the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory.

I declare that I know and accept the Administrative Terms and Conditions and the Technical Specification as part of the future contract, that I know and accept them as the basis for the negotiation which will take place solely in the financial and technical fields. 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 perform the said supply strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the negotiation of the above-mentioned contract.  
(Place, date and the signature of the applicant in writing)

Documentation attached:

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

**ANNEX 1-B**

**MODEL FORMAT FOR APPLICATION TO TAKE PART - LOT NUMBER 2**

**DOSSIER 58/07**

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: .....  
Telephones: Landline..... Mobile..... Fax.....  
E-mail:..... acting (in his own name and behalf 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 the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory.

I declare that I know and accept the Administrative Terms and Conditions and the Technical Specification as part of the future contract, that I know and accept them as the basis for the negotiation which will take place solely in the financial and technical fields. 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 perform the said supply strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the negotiation of the above-mentioned contract.  
(Place, date and the signature of the applicant in writing)

Documentation attached:

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

**ANNEX 1-C**

**MODEL FORMAT FOR APPLICATION TO TAKE PART - LOT NUMBER 3**

**DOSSIER 58/07**

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: .....  
Telephones: Landline..... Mobile..... Fax.....  
E-mail:..... acting (in his own name and behalf 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 the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory.

I declare that I know and accept the Administrative Terms and Conditions and the Technical Specification as part of the future contract, that I know and accept them as the basis for the negotiation which will take place solely in the financial and technical fields. 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 perform the said supply strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the negotiation of the above-mentioned contract.  
(Place, date and the signature of the applicant in writing)

Documentation attached:

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

**ANNEX 1-D**

**MODEL FORMAT FOR APPLICATION TO TAKE PART - LOT NUMBER 4**

**DOSSIER 58/07**

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: .....  
Telephones: Landline..... Mobile.....  
Fax.....  
E-mail:..... acting (in his own name and behalf 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 the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory.

I declare that I know and accept the Administrative Terms and Conditions and the Technical Specification as part of the future contract, that I know and accept them as the basis for the negotiation which will take place solely in the financial and technical fields. 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 perform the said supply strictly subject to the said conditions and requirements and,

Accordingly,

I apply:

To take part in the negotiation of the above-mentioned contract.  
(Place, date and the signature of the applicant in writing)

Documentation attached:

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

**ANNEX 2-A**

**MODEL FORMAT FOR FINANCIAL OFFER - LOT 1**

**DOSSIER 58/07**

Mr./Ms.....  
of full age, holder of National Identity Document (DNI) number: .....  
with address at: .....  
number.....Postcode..... Town/City..... (in his own  
name and behalf 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 public tender for the contract for the supply of the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory, strictly subject to each and all of the stipulated requirements and conditions, and accordingly I make the following offer:

**TOTAL PRICE** ..... €  
(VAT INCLUDED)

(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 the signature of the applicant in writing)

**ANNEX 2-B**

**MODEL FORMAT FOR FINANCIAL OFFER - LOT 2**

**DOSSIER 58/07**

Mr./Ms.....  
of full age, holder of National Identity Document (DNI) number: .....  
with address at: .....  
number.....Postcode..... Town/City..... (in his own  
name and behalf 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 public tender for the contract for the supply of the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory, strictly subject to each and all of the stipulated requirements and conditions, and accordingly I make the following offer:

**TOTAL PRICE** ..... €  
(VAT INCLUDED)

(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 the signature of the applicant in writing)

**ANNEX 2-C**

**MODEL FORMAT FOR FINANCIAL OFFER - LOT 3**

**DOSSIER 58/07**

Mr./Ms.....  
of full age, holder of National Identity Document (DNI) number: .....  
with address at: .....  
number.....Postcode..... Town/City..... (in his own  
name and behalf 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 public tender for the contract for the supply of the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory, strictly subject to each and all of the stipulated requirements and conditions, and accordingly I make the following offer:

**TOTAL PRICE** ..... €  
(VAT INCLUDED)

(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 the signature of the applicant in writing)

**ANNEX 2-D**

**MODEL FORMAT FOR FINANCIAL OFFER - LOT 4**

**DOSSIER 58/07**

Mr./Ms.....  
of full age, holder of National Identity Document (DNI) number: .....  
with address at: .....  
number.....Postcode..... Town/City..... (in his own  
name and behalf 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 public tender for the contract for the supply of the optical components of the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory, strictly subject to each and all of the stipulated requirements and conditions, and accordingly I make the following offer:

**TOTAL PRICE** ..... €  
(VAT INCLUDED)

(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 the signature of the applicant in writing)

**ANNEX 3-A**

**MODEL FORMAT FOR UNDERTAKING – LEGAL PERSONS**

**DOSSIER 58/07**

Mr./Ms. ....  
undertake that the company..... which I represent,  
as a tenderer in the public tender for the contract for the supply of the optical components  
of the Experimental Beamline number 09 of the CELLS ALBA Synchrotron Light  
Laboratory, as follows:

- Neither the undersigned, nor the directors or representatives of the legal person are subject to any of the prohibitions or incompatibilities provided for in article 20 of the TRLCAP for entering into contracts with CELLS.
- The company which I represent complies with its tax and Social Security obligations pursuant to articles 13 and 14 of the 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 responsible declaration.

(Place, date and the signature of the applicant in writing)

**ANNEX 3-B**

**MODEL FORMAT FOR UNDERTAKING – NATURAL PERSONS**

**DOSSIER 58/07**

Mr./Ms. ....  
on my own behalf, undertake that my company..... which I represent, as  
a tenderer in the public tender for the contract for the supply of the optical components of  
the Experimental Beamline number 09 of the CELLS ALBA Synchrotron Light  
Laboratory, as follows:

- Neither the undersigned, nor the company which I represent, are subject to any of the prohibitions or incompatibilities provided for in article 20 of the TRLCAP for entering into contracts with CELLS.
- The company complies with its tax and Social Security obligations pursuant to articles 13 and 14 of the 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 responsible declaration.

(Place, date and the signature of the applicant in writing)

**ANNEX 4-A**

**MODEL FORMAT FOR DECLARATION REPLACING SUBMISSION OF THE  
DOCUMENTATION OF ENVELOPE A**

**DOSSIER 58/07**

Mr./Ms .....  
declare under my responsibility that the company .....  
which I represent, as a tenderer in the public tender for the contract for the supply of the  
optical components of the Experimental Beamline number 09 of the CELLS ALBA  
Synchrotron Light Laboratory, as follows:

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

In witness whereof, I sign this responsible declaration.

(Place, date and the signature of the applicant in writing)

**ANNEX 4-B**

**MODEL FORMAT FOR DECLARATION AMENDING OR UPDATING THE  
DOCUMENTATION OF ENVELOPE A**

**DOSSIER 58/07**

Mr./Ms. ....  
undertake that the company ..... which I represent, as  
a tenderer in the public tender for the contract for the supply of the optical components of  
the Experimental Beamline number 09 of the ALBA Synchrotron Light Laboratory, as  
follows:

- 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 purpose of the relevant amendment and/or updating of the information contained in the administrative documentation of envelope A, I sign this undertaking.

(Place, date and the signature of the applicant in writing)

## ANNEX 5

### MODEL FORMAT OF GUARANTEE BY MEANS OF BOOK-ENTRY SECURITIES

#### (WITH REGISTRATION)

Mr/Ms (forename and surnames), 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 the Consortium for the Construction, Equipment and Exploitation of the Synchrotron Light Laboratory the following securities represented by means of book-entries, of which the pledger is the holder and which are identified as follows:

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 article(s) requiring the provision of this guarantee), in order to guarantee the following obligations: (detail the subject-matter of the contract or obligation assumed 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 6

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

Mr/Ms (forename and surnames), 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 the Consortium for the Construction, Equipment and Exploitation of the Synchrotron Light Laboratory the following participations, of which the pledger is the holder and which are identified as follows:

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 article(s) requiring the provision of this guarantee), in order to guarantee the following obligations: (detail the subject-matter of the contract or obligation assumed 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 7

### MODEL FORMAT OF BILL GUARANTEE

The entity (company 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 (forename and surname of the attorneys), with sufficient powers to bind it herein, as appears from the acknowledgement of powers appearing at the foot of this document, endorses (forename and surname or company name of the guaranteed person), Tax Identification Number (NIF), pursuant to (legal rule(s) and article(s) requiring the provision of this guarantee) in order to guarantee the following obligations (detail the subject-matter of the contract or obligation assumed by the guaranteed person or entity, indicating any possible extensions provided for in the contract), before the Consortium for the Construction, Equipment and Exploitation of the Synchrotron Light Laboratory for the amount of (in letters and figures).

The guarantor declares under its responsibility that it is in compliance with the requirements provided for in article 56.2 of the General Regulation for 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 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 OR THE SPANISH  
GOVERNMENT LAW OFFICE

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Province	Date	Number or code
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## ANNEX 8

### MODEL FORMAT OF CERTIFICATE OF FIDELITY GUARANTEE INSURANCE

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 it herein, as appears from the acknowledgement of powers appearing at the foot of this document,

Insures (3), Tax Identification Number (NIF), as policyholder, before the Contracting Authority, hereinafter insured, up to the amount of (in letters and figures) (4), in the terms and conditions established in the Public Service Contracts Act, its implementing rules and the administrative terms and conditions governing the contract (5), by way of cover for the insured (6), 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 declares, under its responsibility, that it is in compliance with the requirements stipulated in article 57.1 of the General Regulation for the Public Service Contracts Act (RGLCAP).

Non-payment of the premium, whether of the sole, first or following 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 any defence against the insured 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 the 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.

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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Instructions for filling out the form:

- (1) Give the full corporate name of the insurance company.
- (2) Forename and surnames of the attorney or attorneys.
- (3) Name of policyholder.
- (4) Amount, in letters and figures, for which insurance is provided.
- (5) 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.
- (6) State the type of insurance concerned, provisional, definitive, etcetera.