

INTERNAL INSTRUCTIONS WITH REGARD TO PROCUREMENT



Fira Barcelona

February 2023

Index

I. NATURE OF FIRA DE BARCELONA AND ITS LOCATION WITHIN THE SUBJECTIVE FRAMEWORK OF THE APPLICATION OF LAW 9/2017 ON PUBLIC SECTOR CONTRACTS	3
II. PURPOSE OF THESE INSTRUCTIONS.....	5
III. SCOPE OF APPLICATION	5
IV. PRINCIPLES TO BE ABIDED BY IN FIRA'S PROCUREMENT.....	5
4.1. Principles of publicity and concurrence	5
4.2. Principle of transparency	6
4.3. Principles of equality and non-discrimination	7
4.4. Principle of confidentiality	7
4.5. Fight against corruption and prevention of conflicts of interest.....	8
V. PROCUREMENT SYSTEMS	8
5.1. Simplified system, made up of the following procedures	8
5.2. Tendering system, made up of the following procedures	9
5.3. Framework agreements	9
VI. AWARD PROCEDURES IN THE TENDERING SYSTEM	10
6.1. General provisions	10
6.2. Rules common to every procedure.....	12
6.3. Special rules	13
VII. NATURE OF THE CONTRACTS AND COMPETENT JURISDICTION.....	16
VIII. CONTRACTOR PROFILE.....	16

I. NATURE OF FIRA DE BARCELONA AND ITS LOCATION WITHIN THE SUBJECTIVE FRAMEWORK OF THE APPLICATION OF LAW 9/2017 ON PUBLIC SECTOR CONTRACTS

FIRA INTERNACIONAL DE BARCELONA (hereinafter, **FIRA**) is a membership-based public entity consisting of a consortium comprising, in equal parts, the Government of Catalonia, Barcelona City Council and the Official Chamber of Commerce, Industry and Shipping of Barcelona, with the same rights and obligations.

FIRA has its own legal personality, independent of its members, with independent assets and full capacity to operate in the fulfilment of its purposes.

As indicated in Article 2 of its Articles of Association: *“The objective and function of Fira de Barcelona is, in the broadest sense, to promote, foster and develop business and industry. (...) In the exercise of this purpose and function, Fira may manage all kinds of services which can be provided at its fairgrounds”,* indicating below, in Article 22: *“In the fulfilment of the purpose and function established in Article 2, it is essential for it to organize events, manage the spaces and provide services complementary and related to fairs, exhibitions, congresses and similar events.”* Similarly, pursuant to Article 3 of its Articles of Association, *“Fira Internacional de Barcelona may assign, under the agreed conditions, its premises as facilities and services for the holding of congresses, conventions, conferences, exhibitions and other events organized and conducted in accordance with the legal provisions valid in each case.”*

FIRA’s activity therefore focuses on the organization of fairs and/or congress-related activities, as well as the management of the venue for the attraction of events organized by third parties, in exchange for monetary compensation resulting from the commercial nature of its activity.

As a result of the above, although **FIRA** is an entity which forms part of the public sector, it has not had the status of an awarding authority, in accordance with the provisions of Article 3 of Royal Legislative Decree 3/2011 of 14 November, approving the consolidated text of the Law on Public Sector Contracts (hereinafter, LCSP, in its Spanish acronym), by virtue of not being included in the cases established therein.

Since the entry into force of Law 9/2017 of 8 November on Public Sector Contracts on 9 March 2018, transposing Directives 2014/23/EU and 2014/24/EU of 26 February 2014 (hereinafter, LCSP) of the European Parliament and the Council to the Spanish legal order,

the situation has not changed.

In fact, **FIRA** is not an awarding authority for the purposes of Article 3.3. d) of the LCSP, given that its activity is of a commercial nature, as it operates in a competitive market (organization of fairs) and assumes the real risk of its activity.

Nor is it a Public Administration for the purposes of Article 3.2. b) of the LCSP because, in addition to the above, it is not an entity of public law and must be regarded as a market production unit for the purposes of the European Accounts System.

Therefore, as occurred with the previous legislation, **FIRA is regarded as a public sector entity in the typology of Article 3.1. d), as it is a consortium “governed by local legislation”.**

Therefore, the system for awarding contracts which may be entered into by **FIRA** is that contained in Section II of Book III of the LCSP (Articles 321 and 322), in express reference to Art. 26.4. of the LCSP. From the above precepts, it follows that:

- The rule contained in Section 1 of Article 321 of the LCSP, equivalent to the one already enshrined in Article 192 of the TRLCSP, is applied. This is imperative, as it entails the necessary approval by these entities of Internal Procurement Instructions to regulate procurement procedures in a way which guarantees the effectiveness of the principles of publicity, concurrence, transparency, confidentiality, equality, and non-discrimination, as well as ensuring that the contracts are awarded to whomever submits the best bid, in accordance with the provisions of Article 145.
- **FIRA's** current Internal Procurement Instructions, whose latest version was approved at the meeting of the Board of Directors held on 12 June 2018, comply with the general procurement principles set forth in Section 1 of Article 321 of the LCSP, as a result of which they need not undergo adaptation of any kind, without the standard contained in the 5th TP of the LCSP being applicable.
- The award rules in Section 2 of Article 321 of the LCSP are not applicable. In addition to being optional, they do not apply to public sector entities which have already approved their own Instructions, unless they have waived them.

II. PURPOSE OF THESE INSTRUCTIONS

The purpose of these Instructions is to regulate **FIRA**'s procurement procedures, in order to guarantee not only the effectiveness of the principles of publicity, concurrence, transparency, confidentiality, equality and non-discrimination set forth in Article 321.1 of the LCSP, but also compliance with the guideline consisting of the contracts being awarded to whoever submits the best bid, in accordance with the provisions of Article 145 of the LCSP.

III. SCOPE OF APPLICATION

These Instructions will apply to all the agreements entered into by **FIRA**, with the exception of private-property agreements (Article 9.2. LCSP) and partnership agreements (Article 6.2. LCSP), which are, among others, businesses and agreements excluded from the general system of the LCSP.

Any agreements entered into by **FIRA**, in its status as a public sector body and not an awarding authority, have the conceptual configuration of private contracts, in accordance with Article 26.1. c) of the LCSP.

IV. PRINCIPLES TO BE ABIDED BY IN FIRA'S PROCUREMENT

The awarding of the contracts referred to in these Instructions is subject to the principles of publicity, concurrence, transparency, confidentiality, equality, non-discrimination, the fight against corruption and the prevention of conflicts of interest.

4.1. Principles of publicity and concurrence

Generally speaking, **FIRA** will give sufficient publicity to the contracts it intends to enter into, so that any interested parties may compete, thereby favouring their participation. The means of publicity used will be **FIRA**'s Contractor's Profile, with the new content required by the current Article 63 of the LCSP. **FIRA**, depending on the amount of the contract, its purpose, its geographical scope and the characteristics and circumstances of the sector, may use other means of publicity, consisting of the publication of advertisements in local publications, in Official Gazettes, in the Official Journal of the European Union and other media.

However, work contracts whose estimated value is lower than five hundred thousand

(500,000) euros will not be subject to publicity, nor contracts for supplies and services for less than two hundred twenty-five thousand (225,000) euros.

In the procurement procedures which apply to any of the cases of publicity exclusion listed above, it will be necessary to request bids from at least three (3) companies qualified to fulfil the purpose of the contract, whenever possible.

4.2. Principle of transparency

The application of this principle entails the following consequences:

- Possibility of all the participants in the tender previously knowing the rules applicable to the contract to be awarded, as well as having the certainty that said rules will be applied equally to all the companies.
- Establishment of suitable and sufficient time periods to enable the companies to perform a proper assessment and duly formulate their bids. Any such timelines will be set, case by case, in the calls for tender, in accordance with the characteristics and circumstances of the contracts.
- Precise and prior setting of the objective award criteria, without taking into account the characteristics or experience of the bidders, nor the level or characteristics of the means to be used for the execution of the contracts. The assessment of the proposals and the determination of the best bid must take into account criteria directly related to the purpose of the contract, valued by means of the figures and percentages obtained from the application of formulas established in the specifications, such as quality, price, period for the execution or delivery of the service, cost of use, environmental characteristics and others related to meeting social demands, profitability, technical value, aesthetic and functional characteristics, availability and cost of replacements, maintenance, technical assistance, after-sale service and so on. When a single award criterion is used, it will necessarily be the lowest price.
- Clear and prior determination of the bodies responsible for making the award proposal and awarding the contracts.
- Necessary awarding of the contract to the best bid in accordance with the award criteria established in each case.

4.3. Principles of equality and non-discrimination

The application of these principles entails the following requirements:

- Non-discriminatory description of the purpose of the contract. Descriptions must not refer to a particular manufacture or provenance, nor refer to a specific trademark, patent, type, origin, or production, unless a reference of this kind is justified by the purpose of the contract and is accompanied by the words “or equivalent”.
- Equal access for economic operators from all member states of the European Union. Conditions entailing direct or indirect discrimination between the bidders will not be imposed, such as the obligation for companies interested in the contract to be based in the territory of the same member state or in the same region as the awarding authority.
- Objective assessment of the submitted bids, the obtained conclusions being justified without recurring to criteria which may be deemed as discriminatory.
- Mutual acknowledgement of degrees, certificates, and other diplomas. If the bidders are required to submit certificates, diplomas or other kinds of supporting documentation, documents from other member states offering equivalent guarantees to those requested must be accepted.
- Prohibition to provide, in a discriminatory manner, information which may benefit certain bidders with respect to other.

4.4. Principle of confidentiality

FIRA may not disclose any information provided by the bidders which the latter have declared to be confidential or which, owing to its own nature, must be processed as confidential. Any such confidentiality affects, in particular, technical and commercial secrets and confidential aspects of the bids.

As for the contractor, it must respect the confidential nature of the information to which it has access in the event it executes the contract for which the aforementioned data has been given to it in the specifications or in the contract, or that which, owing to its own nature, must be treated as such.

4.5. Fight against corruption and prevention of conflicts of interest

FIRA will, in accordance with its internal regulations, adopt the appropriate measures to fight against fraud, favouritism and corruption and detect and resolve, in an effective manner, any potential conflicts of interest which may arise in the bidding procedures, in order to avoid the distortion of the competition and guarantee transparency and equal treatment for all bidders.

V. PROCUREMENT SYSTEMS

Two (2) procurement systems are established:

5.1. Simplified system, made up of the following procedures

- a. Awards of a reduced amount:** All contracts (either work contracts or supply/purchase contracts for goods or services) not exceeding the amount of fifty thousand (50,000) euros, not including VAT, will be processed as contracts of a reduced amount.

In these cases, the processing of the dossier will only require:

- i. Authorization for the acquisition of the goods or service.
- ii. Approval of the expenditure.
- iii. A request for three (3) bids for awards exceeding eighteen thousand (18,000) euros.
- iv. The selection of the winning bid.
- v. Receipt of the corresponding invoice by the Suppliers Department.

In cases where a contract is agreed upon with a natural person for an amount exceeding ten thousand (10,000) euros, the corresponding contract will be executed, and its term may not exceed ONE (1) YEAR or the period of execution of a specific project.

- b. Direct awards:** The following cases of procurement will be processed as direct awards:

- b1.** for construction work, for an amount greater than fifty thousand (50,000) euros and not exceeding three hundred fifty thousand (350,000) euros, not

including VAT.

- b2.** for supplies, for an amount greater than fifty thousand (50,000) euros and not exceeding one hundred thousand (100,000) euros, not including VAT.
- b3.** to natural persons, where the amount exceeds ten thousand (10,000) euros.

In any such cases the processing of the dossier will require:

- i. A request for three (3) bids (for the cases in sections b1 and b2).
- ii. Justified selection of the winning bid.
- iii. Authorization of the selected bid by the Executive Committee.
- iv. The formalization of the corresponding contract, the term of which may not exceed TWO (2) YEARS, without extensions (for the cases in sections b1 and b2).
- v. Receipt of the corresponding invoice by the Suppliers Department.

5.2. Tendering system, made up of the following procedures

Consisting of the following procedures:

- **Negotiated procedure**
- **Restricted procedure**
- **Open procedure**

5.3. Framework agreements

FIRA may enter into Framework Agreements with several contractors, numbering no fewer than three (3), whenever this is possible and for a maximum period of four (4) years. The signing of Framework Agreements and the awarding of specific contracts covered therein will be performed in accordance with the provisions of the corresponding Specifications.

The signing of said Framework Agreements will be published in **FIRA's** Contractor Profile.

In addition to the Framework Agreements, **FIRA** may use other systems for the rationalization of the procurement.

VI. AWARD PROCEDURES IN THE TENDERING SYSTEM

6.1. General provisions

- **Necessity and suitability of the contract (Article 28 LCSP)**

The procurement file must expressly state the nature and extent of the needs intended to be covered by the planned contract, as well as the suitability of its purpose and content for meeting them.

- **Term of the contracts (Article 29 LCSP)**

The term of the contract will be established by taking into account the nature of the provisions and its financing. One or more extensions may be envisaged, provided that the characteristics of the contract remain unchanged during the extension period. Successive supply and service provision contracts will last a maximum of five (5) years, including any extensions thereto.

Any such extension shall be expressly approved by **FIRA** and will be mandatory for the contractor, provided that prior notice is given at least two (2) months before the termination of the contract, unless the Specifications establish a longer notice.

- **Purpose and price of the contract**

The rules on the purpose, initial bidding budget, estimated value, price and review of the contracts respectively contained in Articles 99 to 105 of the LCSP are applicable to **FIRA's** procurement.

- **Procurement bodies and contract manager**

FIRA's procurement body will be the Executive Committee or any approved, as appropriate, by the Board of Directors of **FIRA**. Said procurement body will be assisted in the opening and assessment of the bids by a Procurement Committee, whose members are established below. Each contract will be assigned a manager, in the terms indicated in Article 62 of the LCSP.

- **Procurement Committee**

It is the body which assists the procurement body in the tendering system, and it will be constituted at the beginning of the procurement dossier.

The Procurement Committee will be made up of the tender Manager, who will act

as Chairperson, and members numbering no fewer than three (3), comprising of one (1) member for legal matters (acting as Secretary) and one (1) member in charge of economic control, as well as the technicians required in each case from a legal, technical and/or economic point of view.

- **Contractor eligibility conditions**

- i. Capacity to operate:** The articles of the LCSP relating to the conditions of eligibility (Article 65), non-EC companies (Article 68), special compatibility conditions (Article 70), the capacity of legal persons (Article 66), the capacity of EC companies (Article 67), employers' unions (Article 69) and Article 84 on the certification of the capacity to operate will be applicable.
- ii. Procurement prohibitions:** The prohibitions related to procurement established in Article 71 of the LCSP will be applicable.
- iii. Conditions of solvency and classification:** The minimum solvency requirements to be met by the employer and the documentation required to prove the above will be indicated in the Tender's Administrative Specifications and must be linked to the purpose of the contract and be proportional to it.

The solvency of the companies may be regarded by **FIRA** as certified where a certain classification is provided in accordance with the provisions of Article 74 of the LCSP.

The registration of an employer in the Official Register of Bidders and Classified Companies of the Public Sector will prove to **FIRA**, unless evidence appears otherwise, its conditions of eligibility with regard to its legal personality, ability to operate, representation, professional or business authorization and economic and financial solvency, as well as the concurrence or non-concurrence of the procurement prohibitions which must appear in said Registry.

- iv. Guarantees:** The procurement body may require provisional and/or final guarantees from the bidders and/or winners of the contracts, in order to ensure, respectively, the maintenance of their bids until the formalization or award of the contract and to ensure the proper execution of the service. The amount of the guarantees and the system for their refund or

cancellation will be established by the procurement body in accordance with the characteristics of each contract, with the limits stipulated in Articles 106.2. and 107.2. of the LCSP.

6.2. Rules common to every procedure

- **Preparatory acts:** Every procedure will begin with a request to be submitted to the Executive Committee, which will include:
 - i. The general characteristics of the procedure (purpose, type of procedure, length, budget and guarantees required).
 - ii. The procedure calendar.
 - iii. The composition of the Procurement Committee.
 - iv. The award criteria.
- **Validation of the start of the tender:** The Executive Committee or, as appropriate, the procurement body or unit which has been assigned, will adopt the decision on the initiation of the procedure.
- **The Specifications and their contents:** The Procurement Committee, or the body which has been assigned, will prepare the Specifications that will govern the contract in question.

The Administrative Specifications, Technical Specifications and Economic Specifications will be drawn up. The Administrative Specifications will include the necessary rules relating to the award phase and the phases of the contract's compliance, effects, and termination. In this regard, the award criteria will be included, indicating the quantitative weighting granted to each of said criteria. When a single award criterion is used, this will be governed by the quality-price or cost-effectiveness parameters included in Article 145 of the LCSP.

Similarly, the Administrative Specifications will include the form of the bidders' accreditation of their ability to operate, their representation and the powers held by natural persons acting on behalf of others, proving that they are not involved in any of the causes of prohibition of procurement stipulated in Article 71 of the LCSP on economic, financial and technical and professional solvency, as well as any provisional and definitive guarantee which, as appropriate, may be determined.

The Technical Specifications will include all the technical characteristics of the contract and the conditions for the provision of the service or supply.

The Economic Specifications will contain the bidding budget whenever possible and, in any case, the form in which the economic bid must be submitted, as well as the payment and invoicing conditions.

- **Awarding of the contract:** The Procurement Committee will assess the proposals included in the tender, in accordance with the award criteria indicated in each case, by formulating the corresponding award proposal which will fall on the best bid in accordance with the provisions of Article 145 of the LCSP. The award proposal will be submitted to the Executive Committee, or as appropriate, to the procurement body or unit which has been assigned, which will decide upon it.

In the event that no bids are submitted or those submitted are unsuitable, irregular or unacceptable, the procedure will be declared unawarded.

- **Notification of the award:** The decision on the award will be posted in **FIRA's** Contractor Profile. Nevertheless, both the provisional award and its approval as final, or otherwise, must also be expressly notified to the interested parties.
- **Formalization of the contract:** After fulfilling the obligations prior to the formalization of the contract, indicated in each case in the Administrative Specifications, the corresponding contract will be formalized. All the Specifications comprising the tender will be regarded as rendered in the contract, forming an integral part thereof.

6.3. Special rules

- **Negotiated procedure:** This procedure may be used for contracts:
 - i. For construction work exceeding three hundred fifty thousand (350,000) euros and up to one million (1,000,000) euros.
 - ii. For the supply/purchase of goods or services for amounts exceeding one hundred thousand (100,000) euros and up to five hundred thousand (500,000) euros.

Prior to the start of the bidding phase, the competent body will draw up the Administrative Specifications, Technical Specifications and Economic Specifications which will govern the procurement in question.

In this procedure, for work contracts for amounts exceeding five hundred thousand (500,000) euros and up to one million (1,000,000) euros and contracts for the supply/purchase of goods or services for amounts exceeding two hundred

twenty-five thousand (225,000) euros and up to five hundred thousand (500,000) euros, the following acts will be announced via the Contractor Profile:

- a) Announcement of the tender, which will include the solvency criteria (economic, financial, technical, and professional), as well as the minimum number (no fewer than three (3)) and, as appropriate, the maximum number of contractors to be invited.
- b) Provisional Award Announcement or, as appropriate, the declaration of the procedure as void.
- c) Final Award Announcement.

It will be optional for **FIRA** to insert additional announcements in local publications, in Official Bulletins, in the Official Journal of the European Union and in other media.

- **Restricted procedure:** This procedure will be applicable to contracts:
 - i. For construction work exceeding one million (1,000,000) euros.
 - ii. For the supply/purchase of goods or services exceeding five hundred thousand (500,000) euros.

FIRA may also use the above procedure for contracts of amounts lower than those mentioned, provided that any such amounts are greater than three hundred fifty thousand (350,000) euros for construction work contracts and one hundred thousand (100,000) euros for supply contracts.

Prior to the start of the bidding phase, the competent body will draw up the Administrative Specifications, Technical Specifications and Economic Specifications which will govern the procurement in question. In this procedure, the following acts will be given publicity via the Contractor Profile:

- a) Announcement of the tender, which will include the solvency criteria (economic, financial, technical, and professional), as well as the minimum number (no fewer than five (5)) and, as appropriate, the maximum number of contractors to be invited.
- b) Provisional Award Announcement or, as appropriate, the declaration of

the procedure as void.

c) Final Award Announcement.

It will be optional for **FIRA** to insert additional announcements in local publications, in Official Bulletins, in the Official Journal of the European Union and in other media.

- **Open procedure:** This procedure will be applicable to contracts:
 - i. For construction work exceeding two million (2,000,000) euros.
 - ii. For the supply/purchase of goods or services exceeding five hundred thousand (500,000) euros.

FIRA may also use the above procedure for contracts of amounts lower than those mentioned, provided that these amounts are greater than three hundred fifty thousand (350,000) euros for construction work contracts and one hundred thousand (100,000) euros for supply contracts.

Prior to the start of the bidding phase, the competent body will draw up the Administrative Specifications, Technical Specifications and Economic Specifications which will govern the procurement in question.

In this procedure, the following acts will be given publicity via the Contractor Profile:

- a) Announcement of the tender.**
- b) Administrative Specifications, Technical Specifications and Economic Specifications.**
- c) List of bidding companies.**
- d) Provisional Award Announcement.**
- e) Final Award Announcement or, as appropriate, the declaration of the procedure as void.**

It will be optional for **FIRA** to insert additional announcements in local publications, in Official Bulletins, in the Official Journal of the European Union and in other media.

The Procurement Committee shall, at its discretion, decide upon the type of restricted or open procedure to be used in each case.

VII. NATURE OF THE CONTRACTS AND COMPETENT JURISDICTION

The contracts **FIRA** enters into will always be regarded as private contracts, in accordance with the provisions of Article 26.4. of the LCSP.

Knowledge of the dispute matters affecting the preparation and award will fall under the contentious-administrative jurisdiction (Article 27.1. d) of the LCSP), while that of the matters concerning the purposes, compliance, and termination of any such private contracts will fall under the civil jurisdiction, in accordance with the provisions of Article 27.2. b) of the LCSP.

VIII. CONTRACTOR PROFILE

On the **FIRA** website www.firabarcelona.com there will be a section on tenders publicizing **FIRA** contractor's profile, with the content applicable by virtue of Article 63 of the LCSP. This profile will publish these instructions or any which, as appropriate, replace it.

In addition to the acts which, in accordance with these Instructions, are to be published, any agreement or decision, currently being processed or otherwise, adapted to the tender procedures whose announcement may have previously been made may be published in the Contractor's Profile, with said Profile serving as a notice board.

The computer system which supports the Contractor's Profile has a mechanism which reliably certifies the time of the beginning of the public announcement of the information included therein.

FOLLOW-UP INFORMATION OF THE DOCUMENT COMPLIANCE

Document ID	Internal Instructions with regard to Procurement
Document category	High-level regulation
Bodies to be applied to	FIRA INTERNACIONAL BARCELONA
Criminal risks covered	Corruption offences: public and private sector (arts. 286 <i>bis</i> and <i>ter</i> and 419 to 430 Spanish Criminal Code), criminal deception and other acts of fraud (arts. 248 to 251 <i>bis</i> Spanish Criminal Code), Prevention of execution and criminal acts of bankruptcy (arts. 257 to 261 <i>bis</i> Spanish Criminal Code), Money laundering (arts. 301 and 302 Spanish Criminal Code), Illegal financing of political parties (art. 304 <i>bis</i> Spanish Criminal Code) and Embezzlement offences (art. 435 Spanish Criminal Code).
Approvals by the Executive Committee	22.03.2023
Approvals by the Board of Directors or recording*	09.12.2015; 11.07.2017; 12.06.2018; 14.03.2023*
Last update	28.02.2023 (formal)