

# **NAVANTIA INTERNAL CONTRACTING AND PROCUREMENT INSTRUCTIONS**

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## I. NATURE AND LEGAL SYSTEM

Navantia S.A., S.M.E. [hereinafter NAVANTIA] is a state-owned industrial commercial company belonging to the Sociedad Estatal de Participaciones Industriales (SEPI), which controls 100% of its capital.

Given its status as a state-owned public company, NAVANTIA is governed by the terms of:

- a) Law 40/2015, of 1 October, on The Legal Regime of the Public Sector, in accordance with which the company must strive for greater efficiency, transparency and good governance in its management, promoting good practices and codes of conduct appropriate to its nature;
- b) Law 33/2003 of 3 November on Public Administration Patrimony and;
- c) the private legal system, except in those matters in which the budgetary, accounting, personnel, economic and financial control and **procurement or contracting** regulations apply.

Likewise, and for the same reason, the inclusion of NAVANTIA within the subjective scope of application of Law 9/2017, of 8 November, on Public Sector Contracts (hereinafter, the 'PSCL') is unquestionable. Given the industrial nature of its activity, as defined in its corporate purpose, NAVANTIA's submission to the PSCL takes place in the form of an entity belonging to the public sector which does not have the status of Contracting Authority (Article 3 of the PSCL) and is therefore obliged in its procurement procedures to comply with the provisions of said PSCL, to the extent that they are applicable to those entities that **are not considered to be Contracting Authorities**.

The legal regime for the procurement of said entities is not the full application of the rules contained in the PSCL, but only part of these rules, in particular:

- those contained in Section II of the Third Book [Articles 321 and 322];
- Article 145 expressly referred to by article 321 on requirements and classes of award criteria for contracts; and
- certain rules laid down in Book I, insofar as they apply to contracts throughout the public sector.

In all other matters, their procurement activity must comply with the principles of the PSCL by means of Internal Procurement Instructions implementing them, and that may establish specific rules that do not have to coincide with those established by the PSCL for Contracting Authorities, but which must in all cases guarantee the effectiveness of the principles of publicity, competition, transparency, confidentiality, equality and non-discrimination.

This distinction that PSCL makes between matters subject to its rules and those subject to its principles is of great importance. While the rules are characterised by their closed conditions of application, the conditions of application of the principles are more open and flexible, allowing their application to be adjusted in order to optimise the value or purpose characterising each legal principle. Alongside this, while the rules, with some exceptions, are mutually exclusive and only applied in combination in the manner defined by another rule, the principles can be applied in combination, adjusting their respective optimisation mandates to achieve the greatest possible use of the different purposes or values involved.

This means that when defining the rules forming part of the Internal Procurement Instructions of a State commercial company not considered as a Contracting Authority, it is necessary to combine the principles of public procurement with the guiding principles of the management of State commercial companies, which are mandates of the legislator of the same nature and hierarchy of regulations. In terms of procurement activity, therefore, the guiding principles of efficiency management and the promotion of good practices appropriate to the nature of the company are particularly important. This combined effort cannot be arbitrary but must meet rational criteria in order to achieve the best possible combination of the different principles, making it easier for them to pursue their respective aims as intensely as possible, to the extent that they are not incompatible with one another.

In the case of NAVANTIA, the task of combining these principles is of great importance, essentially when it comes to regulating the part of its procurement activity that is intended to meet the needs of its Clients. This is due to two types of reasons directly linked to efficiency and the promotion of good practices. Therefore, firstly, there is a direct link between a part of the contracts which NAVANTIA must award to its contractors and the contracts that NAVANTIA must in turn honour with its Clients. And secondly, because certain segments of the industrial market to which NAVANTIA must refer to in order to select its contractors have distinct characteristics requiring similarly differentiated processing.

The problems involved for a part of Navantia's procurement activity can be characterised as follows:

- i. The Client is a third party other than the contracting state commercial company and its contractors.
- ii. The price paid by the Client is the source of resources to pay the contractors participating in the relevant industrial project.
- iii. The Client is the one who will receive the final result of the service provided by NAVANTIA. This final provision is defined by the Client in its contract with NAVANTIA and is intended to meet the Client's needs.

- iv. NAVANTIA's final provision includes the services of the contractors involved in the industrial project.
- v. The legislation applicable to the contract between NAVANTIA and the Client enables the latter, in order to achieve the fulfilment of its interests, when defining NAVANTIA's final provision, to limit the scope of action of NAVANTIA in defining the performance of its contractors or in selecting contractors. In this regard:
  - a. If NAVANTIA's Client is a State, its interests are public objectives and it may establish such limits in its public procurement rules or stipulate them in its public contracts. Such limitations are more frequent in the procurement within the defence sector, with specific public objectives surrounding national security and defence needs.
  - b. If NAVANTIA's Client is a company, said company may have legitimate commercial, technical or economic interests for the introduction of such limits to contracts with NAVANTIA, which would be covered by applicable law and are recognised through the contractual practice in the sectors in which NAVANTIA operates.
- vi. If it is not possible to fulfil its interests in a future contract with NAVANTIA in the manner permitted by the applicable legislation, the Client may decide or be legally obliged not to enter into a contract with NAVANTIA and entrust the final provision to a competitor of NAVANTIA that accepts the aforementioned limits to be included in the contract, a situation which may serve as a fundamental indicator of management efficiency.

Alongside the problems associated with the Client, there is also a certain problem related to contractors in very specific segments of the industrial market, in which there are established good practices regarding procurement which, if not followed, may either determine the refusal of fundamental contractors to enter into contracts with NAVANTIA, or may entail inefficient pricing, to the detriment of NAVANTIA.

These Internal Procurement Instructions have been drawn up with the aim of combining, as much as possible, compliance with the principles of public procurement with the introduction of the special rules required in order to allow NAVANTIA to operate effectively and within the best practices that are essential in order to compete in the various sectors of activity in which it carries out its corporate purpose.

In light of all the above and in accordance with the terms of Article 321 of the PSCL, the Board of Directors of NAVANTIA at its meeting of 20 June 2018 approved these Internal Procurement and Contracting Instructions (hereinafter, IPI) intended to guarantee that, in NAVANTIA's procurement procedures (preparation, tendering and awarding of contracts):

- a. The effectiveness of the principles of publicity, competition, transparency, confidentiality, equality and non-discrimination is guaranteed; and
- b. The contracts are awarded to those who submit the tender that represents the best value for money, in accordance with the terms of Article 145 of the PSCL establishing the requirements and classes of award criteria for the contract, and which by virtue of the aforementioned PSCL is directly applicable to NAVANTIA's procurement procedures.

Pursuant to the terms of Article 321.3 of the PSCL, and with the aim of guaranteeing the greatest efficiency in fulfilment of its contractual obligations with its Clients and within the framework of the operations inherent in its activity, NAVANTIA may establish contract rationalisation systems, such as framework agreements, dynamic supplier acquisition or approval systems, establishing in these IPIs the bases to be taken into consideration for the application of said rationalisation systems.

Contracts entered into by NAVANTIA with third-party contractors are private contracts and their effects, modification and termination will be governed by the applicable private law (Article 322 of the PSCL).

These IPIs will be at the disposal of all those interested in participating in the procedures for awarding the contracts regulated by them, and will be published in NAVANTIA's contracting profile, which is integrated in the Public Sector Procurement Platform.

The actions carried out in preparing and awarding the contracts by NAVANTIA are subject to administrative challenges in accordance with the terms of Law 39/2015, of 1 October, on Common Administrative Procedure before the SEPI (Sociedad Estatal de Participaciones Industriales) (Article 321.5 of the PSCL).

Any litigation matters affecting the preparation and awarding of the contracts referred to in these IPIs shall be tackled by the jurisdiction of the administrative courts (Article 27. 1 sections d) and e) of the PSCL).

Any litigation matters affecting the effects and termination of such contracts shall be the responsibility of the civil jurisdiction (Article 27.2 b) of the PSCL).

## II. DEFINITIONS

**'Public client'.** - This refers to any third party of a public nature that contracts Navantia to execute one or more services included within Navantia's corporate purpose.

This may be i) a State, ii) a territorial entity within a State, iii) any public entity linked to or dependent on a State or any of its territorial entities, iv) a capital company effectively controlled, or majority owned, directly or indirectly, by any of the above; indirect participation and control may be developed through companies or groups of companies; v) a consortium or group without legal personality of public entities provided for in the applicable legislation.

***'Private client'.*** - This refers to entities of a private nature with legal personality and groups without legal personality of such entities contracting Navantia with the execution of one or more services included within the corporate purpose of Navantia.

***'Client'.*** - This indistinctly refers to Public Clients or Private Clients.

***'Works Contract'.*** - This refers to those contracts intended to carry out work, understood as the result of a series of construction or civil engineering works, as established for this purpose in Article 13 of the PSCL.

For the avoidance of doubt, for the purposes of these IPIs, the concept of the works contract shall be deemed to include any of the activities identified as works in Annex 1 of the PSCL, where such activities are liable to be carried out in the construction or repair of a ship, floating structure or similar.

***'Service Contract'.*** - This refers to contracts where the object is to be carried out consistently with the development of an activity or intended to obtain a result other than work or supply, as established in Article 17 of the PSCL.

For the avoidance of doubt, for the purposes of this instruction, the concept of the service contract shall not be deemed to include all activities included in Annex 1 of the PSCL, where such activities are to be carried out in the construction or repair of a ship, floating structure or similar.

***'Supply Contract'.*** - This refers to contracts intended for the acquisition, leasing or lease, with or without a purchase option, of goods or movable assets and, in general, those defined as such in Article 16 of the PSCL.



***'Mixed contracts'***. - This refers to contracts which, in accordance with Articles 18 and 34.2 of the PSCL, include services corresponding to another or others of a different type, and may only be concluded where the services corresponding to the different types of contract are directly linked to each other, and maintain complementary relationships requiring their consideration and treatment as a functional unit intended to meet a need for NAVANTIA.

The rules for the awarding of such contracts shall be those which correspond to the nature of the principal benefit.

***'Minor Contract(s)'***. - This refers to works, service or supply contracts where the amount of which is: (i) equal to or less than 40,000 euros for works contracts; (ii) equal to or less than 15,000 euros for service or supply contracts.

***'Non-minor contract(s)'***. - This refers to all contracts not considered to be minor contracts, as previously defined in this Instruction II.

### III. APPLICATION

As a general rule, these IPIs will apply to all contracts concluded by NAVANTIA.

Notwithstanding the above, and in accordance with the terms of Article 4 and following of the PSCL, to the extent applicable to NAVANTIA, the following business and contracts fall outside the scope of application of these IPIs:

- a) Collective agreements lying within the scope of Article 346 of the Treaty on the Functioning of the European Union if signed within the defence and security sector.
- b) Any agreements that Navantia may sign with Public Authorities and public bodies dependent on these, unless their object is included within the contracts governed by the PSCL or specific public authority regulations.
- c) Any agreements that Navantia may sign with individuals or legal entities subject to private law, unless their object is included within the contracts governed by the PSCL or specific public authority regulations.
- d) The management tasks (in-house assignments) that NAVANTIA may carry out in accordance with the terms of Article 33 of the PSCL, in addition to any management tasks that may be entrusted to NAVANTIA.

- e) Research, Development and Innovation contracts excluded by virtue of the terms of Article 8 of the PSCL.
- f) Contracts involving the sale or purchase, donation, exchange, leasing and other analogous legal transactions involving real estate property, tradable securities and intangible property, except where involving computer programs and requiring classification as supply or service contracts.
- g) Contracts relating to financial services excluded under the terms of Article 10 of the PSCL.
- h) Contracts subject to employment legislation.
- i) Contracts involving arbitration and reconciliation services.
- j) Contracts where NAVANTIA gives an undertaking to deliver goods or rights or provide a service.

#### **IV. GENERAL CONFIGURATION OF THE PROCUREMENT OF NAVANTIA AND STRUCTURAL CONTRACT ELEMENTS**

##### **1. Rationality and consistency of NAVANTIA's procurement. General considerations**

Navantia may enter into all contracts required in order to fulfil its organisational purposes, including all those required for the proper fulfilment of the obligations assumed by NAVANTIA, as an industrial company, in execution of programmes and/or contracts with its Clients.

In general, and without prejudice to the characteristics that in the case of the provision of repair services by NAVANTIA to Clients may be derived from the provisions set out in Annex 1, the nature and extent of the needs that are to be covered by each contract, as well as the suitability of its object and content to fulfil them, shall be precisely determined and recorded in the documentation comprising each procurement procedure.

NAVANTIA shall ensure in its procurement procedures the most appropriate compliance with the legal principles referred to in the previous Instruction I, promote the streamlining of procedures, assess the incorporation of social, environmental and innovation conditions and promote the participation of small and medium-sized companies (Article 28.2 of the PSCL). All the above, likewise complying with any possible contractual obligations of NAVANTIA that could arise from commitments acquired/express requirements of each Client for the execution of a specific programme or project and/or, where applicable, the legal regulations applicable to the

main contract with the Client.

In order to establish the duration of NAVANTIA's contracts, consideration will be given to the nature of the provision, the financing conditions and the need to periodically subject the contract to competition. The above, notwithstanding the fact that given the industrial nature of NAVANTIA and the purpose of the object of the contracts subject to these IPIs, this duration must at times, with its justification stated in the file, be established in accordance with the optimum compliance of the contractual and legal obligations applicable to the programmes/contracts with NAVANTIA's Clients, and always taking into consideration the best value for money for their execution.

**1. Freedom of agreements and minimum content of the contract**

NAVANTIA's contracts may include any terms, clauses and conditions, provided that they are not contrary to public interest, the legal system and principles of good administration.

Documents formalising the contracts signed by NAVANTIA must necessarily include the references referred to in Article 35 of the PSCL.

The contractual document must not include provisions establishing rights and obligations other than those set out in the specifications in the case of open (including simplified open) and restricted procedures and those which, where applicable, may have been specified in the contract award document in the negotiated procedures, as acted upon in the procurement procedure.

**2. Form of the contracts**

Pursuant to the terms of Article 37.1, NAVANTIA's contracts must be formalised in writing.

**V. CONTRACTING PROFILE**

NAVANTIA shall publish in its contracting profile integrated in the Public Sector Procurement Platform (PLACSP) the information required for this purpose by Article 63 of the PSCL, to the extent applicable.

**VI. CONTRACTUAL PARTIES**

In accordance with the terms of NAVANTIA's Articles of Association, for the Board of Directors and for the other bodies referred to in this Instruction VI, section 1, NAVANTIA's Contracting Authorities are established taking into account the amount and type of contracts and the business or activity to which they are assigned, notwithstanding any delegation or deconcentration of powers which may be agreed, and will in each case be specified in accordance with the current organisation, in order to comply with the following criteria:

### **1.1 Bodies responsible for initiating and conducting the procedure**

The competent bodies for initiating the procurement procedure and for conducting the procedure, evaluating the tenders and submitting the award proposal shall be:

- 1) Where the contract is intended to satisfy the purposes of a business, programme or activity whose management corresponds to one of the different business units in which NAVANTIA is organised, the power to initiate the procedure shall lie with the manager of that business unit. The power to conduct the procedure, evaluating the tenders and submitting the award proposal, shall be vested in the management bodies responsible for the management of Purchases.
- 2) Irrespective of the amount of the contracts, the Corporate Departments of Navantia's central offices will be responsible for initiating procurement procedures that correspond to their functions and activities. The power to conduct the procedure, evaluating the tenders and submitting the award proposal, shall be vested in the competent body for the management of Purchases.
- 3) Notwithstanding the above and exclusively in those procurement procedures in which the technical specification of the object of the contract requires/advises its management by expert personnel of the proposing Corporate Management, said Corporate Management, in addition to requesting for the initiation of the procedure, shall have the competence to instigate the procedure. It will also be able to assess the offers and to submit the award proposal to the competent Contracting Authority and with regard to the remaining contracts, the power to initiate the procedure shall lie with the management in charge of the activity the purposes of which the contract awarded is intended to fulfil. The power to conduct the procedure, evaluating the tenders and submitting the award proposal, shall be vested in the management bodies responsible for the management of Purchases.

## **1.2 Competent bodies for the awarding of contracts**

The competent bodies for the awarding of contracts shall be the following:

- 1) In works, supply and service contracts of an amount equal to or greater than 3,000,000 Euros, NAVANTIA's Management Committee, which will report its awards to the Board of Directors.
- 2) In contracts the sum of which is less than 3,000,000 and equal to or greater than 600,000 euros for works or supply contracts and service provision contracts of a sum equal to or greater than 300,000 euros, Navantia's Central Purchasing Committee, which will report its awards to NAVANTIA's Management Committee.
- 3) In the case of contracts with a value of no less than 600,000 euros for the execution of work or supply and in the case of contracts with a value of no less than 300,000 euros for the provision of services:
  - The Purchasing Committee of the different business units in which NAVANTIA is organised to which the business, programme or activity management corresponds, the purpose of which the contract awarded is intended to fulfil.  
The Purchasing Committees of the different business units in which NAVANTIA is organised will report its awards to NAVANTIA's Central Purchasing Committee, in the first meeting held after the award.
  - In all other cases, the power to award the aforementioned contracts lies with NAVANTIA's Central Purchasing Committee.

In any case, the minimum number of members of each Committee shall be five (5) persons. At least two of its members shall be joint representatives authorised to enter into contracts and with sufficient powers in relation with the amount of the contract; another member of the body responsible for administration and finance; and another member must come from the body to which the legal advice applies.

The chairperson of each Committee shall always be the responsibility of one of the authorised proxies to enter into contracts and with sufficient powers related to the amount involved.

## **1.3 Competent bodies for the awarding of minor contracts**

In the case of minor contracts, the directors responsible for the different business units of NAVANTIA and the heads of the Directorates responsible for the management of Purchases will be responsible for their awarding. The above notwithstanding the joint exercise of the procurement powers by these same legal representatives.

#### **1.4 Competent bodies for the authorisation of changes in contract prices.**

The competent bodies for the authorisation of price changes shall be as follows:

- 1) For works, supply and services contracts of an amount equal to or greater than 3,000,000 Euros:
  - Where the amount of the modification or the total number of cumulative modifications already approved is greater than 10 % of the original price of the contract, NAVANTIA's Management Committee shall report to the Board of Directors.
  - Where the amount of the modification or the total number of cumulative modifications already approved is equal to or less than 10 % of the original price of the contract, NAVANTIA's Central Procurement Committee will report its awards to NAVANTIA's Management Committee.

In contracts the sum of which is less than 3,000,000 and equal to or greater than 600,000 euros for works or supply contracts and service provision contracts of a sum equal to or greater than 300,000 euros, NAVANTIA's Central Purchasing Committee, which will report its awards to NAVANTIA's Management Committee.

- 2) In the case of contracts with a value of less than 600,000 euros for the execution of work or supply and in the case of contracts with a value of less than 300,000 euros for the provision of services, the same Contracting Authority that awarded them.

The Purchasing Committees of the different business units in which NAVANTIA is organised shall report to NAVANTIA's Central Purchasing Committee on the modifications they agree to in the first session held following the modification agreement.

When the amount of the original price plus that of the modification or, where applicable, cumulative modifications exceeds the amount of €600,000 for works or supply execution contracts or €300,000 for service provision contracts, the competent authority for approving new modifications will be NAVANTIA's Central Purchasing Committee.

- 3) In minor contracts, the same single Contracting Authority that awarded them, reporting to the Purchasing Committee of the business unit to which they belong and, if they do not belong to any, to NAVANTIA's Central Purchasing Committee.

NAVANTIA's representatives authorised to sign the contracts, and any amendments to them, shall be the proxies of NAVANTIA, by virtue of the matter and the amount so recorded in the Companies Register of Madrid.

## **2. Conditions regarding Contractor aptitude**

NAVANTIA's contractors will be subject to the capacity requirements, prohibitions on contracting and solvency regulated in articles 65 to 69 and 71 to 92 of the PSCL.

The requirement for the registration of the contractor business in the Official Registers of Bidders and Classified Companies in the manner governed by the PSCL and accrediting the corresponding aptitude conditions shall be optional for NAVANTIA, which may alternatively establish an equivalent supplier classification procedure which may operate as a procurement rationalisation system with regard to the inherent operations of its traffic, as established in paragraph 3 of Article 321 of the PSCL. This notwithstanding, classification certificates providing accreditation of registration with official lists of businesses authorised for contracts as established by the Member States of the European Union establish a presumption of aptitude on the part of those businesses listed therein, in the cases referred to in Article 97 of the PSCL.

Notwithstanding the right of bidders to demonstrate their technical capacity by any means, and in order to facilitate the procurement process, the corresponding Contracting Authority may waive accreditation of this technical capacity on the part of companies with which it has signed contracts in the past and which have demonstrated their technical ability.

## **VII. OBJECT AND PRICE OF THE CONTRACT**

The principles of Articles 99 and 102 of the PSCL regarding object and price, respectively, shall apply.

## **VIII. ACTIONS RELATING TO PROCUREMENT. PRINCIPLES TO WHICH IT IS SUBJECT.**

### **1 Preliminary market enquiries**

NAVANTIA may use, in the preparation of its contracts, preliminary market enquiries in accordance with the terms of Article 115 of the PSCL.

## 2 **Procurement file. Preparation of the file and approval of its inception.**

The conclusion of contracts by NAVANTIA shall require the prior processing of a file to be initiated by the corresponding Contracting Authority, where applicable, in accordance with the terms of Instruction VI, paragraph 1.1.

For this purpose, an Initial Report - mandatory in all procurement procedures, except in the case of minor contracts - will be drawn up, which must determine:

- (i) the nature and extent of the needs that are intended to be covered by the proposed contract/procurement system.
  - (ii) the suitability of its purpose and content to meet those needs.
  - (iii) the approximate cost of the contract (always including labour costs, if any).
  - (iv) the presence of a sufficient budget.
  - (v) the type of procurement procedure proposed.
  - (vi) the justification, where appropriate, of the exception to the principle of publicity.
  - (vii) the decision not to divide the subject matter of the contract into parts, if applicable;
- and
- (viii) the solvency criteria, as well as the award criteria (economic and qualitative) that will be considered for the selection of the best value for money offer.
  - (ix) the report prepared by the Contracting Authority in the event of preliminary market enquiries.

The Technical Specifications or Documentation (description of the technical, quality, environmental characteristics, etc.) and the Specific Clause Specifications must form part of said initial documentation in addition to the aforementioned report.

Where the nature and extent of the requirements and the suitability of the subject matter and content of the contract to meet them are sufficiently detailed in the nature and wording of the documentation or any other technical, accounting or other documentation directly related to the contract, the initial report may be in abbreviated form, by reference to that documentation.

The Contracting Authority responsible for authorising the commencement of the procurement procedure may order the urgent processing of the case in those contracts the conclusion of which corresponds to an urgent need. In such cases, a duly substantiated declaration of urgency must be included in the file.



### **3 Rules for the awarding of contracts. Applicable principles**

The contracts concluded by NAVANTIA shall be awarded in such a way that, in the relevant procurement procedures referred to in Instruction IX below, the principles of publicity, competition, transparency, confidentiality and non-discrimination are fulfilled, and the criteria established for the award in 145 of the PSCL are applied.

Therefore, and with regard to the principles applicable to NAVANTIA's procurement, the following premises will be taken into consideration:

#### **3.1 Principles of Publicity and Competition**

NAVANTIA shall properly publicise any contract it intends to award in order to allow any interested party to compete, facilitating their participation.

Calls for tenders for the awarding of contracts by NAVANTIA shall in all cases be published in NAVANTIA's Contracting Profile integrated in the Public Sector Procurement Platform. The above notwithstanding the possibility of direct access via the link provided on NAVANTIA's website and the optional insertion and additional announcements in official bulletins, local publications or the Official Journal of the European Union.

##### **3.1.1. Calls for tenders. Minimum content**

The calls for tenders shall contain at least the following information:

- 1) Description of the essential details of the contract and maximum amount of the tender, when this can be determined or the estimated value of the contract in the case of a Framework Agreement award procedure. If the contract is divided into parts, the aforementioned description and maximum amount will be made for each part.
- 2) Clear and precise reference of the maximum deadline for submitting tenders, as well as the intermediate deadlines, if any, and the remaining deadlines which, depending on the type of contract and the applicable procedure, are required.
- 3) Type of procurement procedure and criteria to be used to award the contract(s) concerned. Except where the best offer is determined on the basis of the price only, the criteria determined by the price shall be indicated in accordance with Article 145 of the PSCL of award.
- 4) Requirements/conditions applicable to subcontracting, where applicable.
- 5) Invitation to contact NAVANTIA.

### 3.1.2. Prior Information Notice

NAVANTIA may publish a prior information notice to present advance information on the works, supply and service contracts which it plans to award over the following twelve months, including the following details:

- a) In the case of works contracts, the essential characteristics thereof.
- b) In the case of supply contracts, the estimated total value, broken down by product groups corresponding to the concepts of the CPV (Common Procurement Vocabulary).
- c) For service contracts, the estimated total value for each type/category of service to be contracted.

### 3.1.3 Exceptions to the principle of publicity

NAVANTIA's Contracting Authorities may be subject to the mandatory justification in the procedure initiation file referred to in this Instruction VIII, paragraph 2, to award contracts using the procurement procedure. **without publicity**, only in the following cases:

- a) If the principles of publicity and competition are objectively incompatible. Such objective incompatibility shall in particular be deemed to exist in the case of contracts intended to fulfil the military or National Defence needs of a State, if the specific classification of the subject of the contract or the specific characteristics of the object are decisive in fulfilling the aforementioned military or National Defence needs.
- b) When the contracts that NAVANTIA intends to conclude meet the following requirements:
  - i. Be intended to comply with a contract signed between NAVANTIA and the General State Administration to attend to National Security and Defence needs; and
  - ii. That, in accordance with the regulations applicable in this regard, the Ministry of Defence is responsible for the decision to select two or more potential contractors or a permanent contractor for NAVANTIA.
- c) When the contracts that NAVANTIA intends to conclude meet the following requirements:
  - i. Be intended to comply with a contract entered into between Navantia and a Public Client from a foreign State;

- ii. That the Law applicable to the contract entered into between Navantia and the Public Client of a Foreign State:
    - 1) establishes rules applicable to the contract to be signed by Navantia in order to comply with said contract;
    - 2) enables the Contracting Public Client to introduce into the contract rules that must be applied to the procurement that NAVANTIA must conclude in order to comply with said contract;
  - iii. That such legal or contractual rules restrict or limit the application of the principle of publicity.
- d) When the contracts that NAVANTIA intends to conclude meet the following requirements:
  - i. Be intended to fulfil a sub-contract entered into between Navantia and a Private Client who has entered into a contract with a Public Client from a foreign State:
  - ii. That the law applicable to the contract concluded between the Private Client and their Public Client from a foreign State:
    - i. establishes rules applicable to the procurement to be undertaken by Navantia in order to comply with the subcontract entered into with the private Client;
    - ii. enables the Contracting Public Body to introduce into the Client rules applicable to the procurement that NAVANTIA must conclude in order to comply with the subcontract concluded with the Private Client.
  - iii. That such legal or contractual rules restrict or limit the application of the principle of publicity.
- e) Where, following the relevant procurement procedure, no offer or application has been submitted, or where the tenders submitted are not suitable or are excluded from those set out in the applicable specifications.
- f) If for technical or artistic reasons or for reasons connected with the protection of exclusive rights the contract can only be entrusted to one specific operator.
- g) Where the contract has been declared secret or reserved, or where its execution must be accompanied by special security measures in accordance with the legislation in force, or where this is required in order to protect the essential security interests of NAVANTIA, and an express, reasoned declaration in this regard has been issued by the Contracting Authority.
- h) Where the overriding urgency resulting from circumstances which could not be foreseen by the Contracting Authority and which are not attributable to it demand the swift execution of the contract. Among others, it will be deemed urgent for the purposes of

this section i) if this is determined by unforeseen changes occurring in the planning of the execution of contracts for Clients, not attributable to the Contracting Authority, and which would make optimum compliance with the delivery obligations assumed by NAVANTIA with regard to said Clients, and which, if not applicable, could give rise to losses regarding assets for NAVANTIA.

- i) Where, in supply contracts, the products are manufactured exclusively for the purposes of research, experiment, study or development; this condition does not apply to series production intended to establish the commercial viability of the product or to recover research and development costs.
- j) Where supply contracts involve supplementary deliveries made by the initial supplier representing either a partial replacement of supplies or facilities in normal usage, or otherwise an extension to the existing supplies or facilities, if a change of supplier would force the Contracting Authority to acquire materials with different technical characteristics, giving rise to incompatibilities or disproportionate technical difficulties in usage and maintenance. The duration of such contracts, and also that of renewable contracts, may not in general be any greater than three years.
- k) When, in the case of supply contracts, it concerns the acquisition of raw materials on organised markets or stock exchanges for supplies traded on them.
- l) Where, in the case of supply contracts they involve a supply arranged under particularly advantageous terms with a supplier which definitively ceases its commercial activities, either with administrators in place in a tender, or by means of a court order or equivalent procedure.
- m) Where the works or services constituting its object comprise the repeat of similar works awarded under the procedure established in this Instruction to the same contractor by the Contracting Authority, provided that they correspond to basic plans covered by the initial contract awarded under the said procedure, and that the possibility of making use of this procedure was indicated in the initial call for tenders and that the sum of the new works was calculated when establishing the overall sum of the contract. This procedure may only be applied over a period of three years from the date of formal signature of the initial contract.
- n) Where the service contract in question is the result of a competitive process and, in accordance with the applicable regulations, must be awarded to the winner. In the event of several winners, they must all be invited to participate.

In procurement procedures in which one of the cases of exclusion of publicity listed above applies, tenders must be requested, unless this is not possible, from at least three companies qualified to carry out the object of the contract.

#### **3.1.4 Principle of competition**

NAVANTIA's Contracting Authorities may, subject to the required justification in the file for the initiation of the procedure referred to in Section VIII, paragraph 2, limit the number of tenders to a specific group of bidders or select a contractor directly, only in the following cases:

- a) If for technical or artistic reasons or for reasons connected with the protection of exclusive rights the contract can only be entrusted to one specific operator.
- b) When the contracts that NAVANTIA intends to conclude meet the following requirements:
  - i. Be intended to comply with a contract signed between NAVANTIA and the General State Administration to attend to National Security and Defence needs; and
  - ii. That, in accordance with the regulations applicable in this regard, the Ministry of Defence is responsible for the decision to select two or more potential contractors or a permanent contractor for NAVANTIA.
- c) When the contracts that NAVANTIA intends to conclude meet the following requirements:
  - i. Be intended to comply with a contract entered into between Navantia and a Public Client from a foreign State;
  - ii. That the Law applicable to the contract entered into between Navantia and the Public Client of a Foreign State:
    - 1) establishes rules applicable to the contract to be signed by Navantia in order to comply with said contract;
    - 2) enables the Contracting Public Client to introduce into the contract rules that must be applied to the procurement that NAVANTIA must conclude in order to comply with the said contract;
  - iii. That such legal or contractual rules restrict or limit the application of the principle of competition.

d) When the contracts that NAVANTIA intends to conclude meet the following requirements:

- i. Be intended to fulfil a sub-contract entered into between Navantia and a Private Client who has entered into a contract with a Public Client from a foreign State;
- ii. That the Law applicable to the contract concluded between the Private Client and their Public Client from a foreign State:
  - a) establishes rules applicable to the contract to be signed by Navantia in order to comply with the subcontract entered into with the private Client;
  - b) enables the Contracting Public Body to introduce into the Contract with the Client rules that must be applied to the procurement that NAVANTIA must conclude in order to comply with the subcontract concluded with the Private Client.
- iii. That such legal or contractual rules restrict or limit the application of the principle of competition.

e) When the contracts that NAVANTIA intends to conclude meet the following requirements:

- i. Be intended to fulfil a contract entered into between NAVANTIA and a third company (the Client) in a market environment open to competition;
- ii. That the contract between Navantia and the Client contains contractual rules restricting or limiting competition, introduced at the request of NAVANTIA's Client company;
- iii. That the aforementioned contractual rules are appropriate to the usual contractual, technical or economic practices of the sector of business activity in question.

### 3.2 Principle of transparency

This principle involves:

- 1) The possibility enjoyed by all those participating in the procurement process to know in advance the regulations applicable to the contract which is to be awarded, based on a certainty that these regulations are applied equally to all companies.
- 2) Definition of appropriate deadlines for the submission of tenders, which must be sufficient in order to allow companies to perform an appropriate evaluation, to rectify the documentation submitted, to place a value on their offers and draw up and present their procurement proposal. Deadlines shall be established on a case-by-case basis in the call for tenders.

- 3) The precise and prior fixing, in the call for tenders, of the criteria for awarding the contract, which must comply with the provisions of Article 145 of the PSCL. In this way, contracts will be awarded using a variety of award criteria on the basis of the best value for money assessed on the basis of economic and qualitative criteria, which must:
- i. be linked to the object of the contract;
  - ii. be objectively formulated with respect for the principles of equality, non-discrimination, transparency and proportionality;
  - iii. not grant the Contracting Authority unlimited freedom of decision; and
  - iv. ensure that tenders are evaluated under conditions of effective competition, these criteria should be accompanied by specifications allowing for effective verification of the information provided by bidders in order to assess the extent to which the tenders meet the award criteria.

As a general rule, the qualitative criteria linked to the object of the contract must be subject to assessment by means of figures or percentages obtained by application of formulas inserted in the specifications and may refer to:

- a) Quality, understood as the technical value, environmental characteristics or linked to the satisfaction of social demands, innovation, aesthetic or functional characteristics, etc.
- b) The organisation, qualification and experience of the personnel assigned to the contract to be executed, provided that the quality of said personnel can significantly affect its optimum execution.
- c) After-sales service and technical support and delivery conditions, availability and cost of spare parts, maintenance, after-sales service or other such services.

These qualitative criteria should be accompanied by a cost-related criterion, either price or a cost-based approach.

Where one sole award criterion is employed, this must at all times be that of the lowest price.

- 4) Clear and precise definition of the body responsible for making the award proposal and for awarding the contract.

### 3.3 Principles of equality and non-discrimination

These principles involve the following requirements:

- 1) Non-discriminatory description of the object of the contract. The description may not make any reference to a specific manufacturer or source, nor refer to a trademark, a patent, a type, specific production or origin, unless a reference of this type is justified by the object of the contract and is accompanied by the designation 'or equivalent'.
- 2) Equal access on the part of economic operators from all Member States of the European Union. This equality of access shall be subject to the limitations on the principle of equality set out in sections b), c), d) and e) of point 3.1.3 and to the principle of competition governed by paragraph 3.1.4 of this Instruction VII.
- 3) Mutual recognition of titles, certificates and other diplomas. If bidders are required to present certificates, titles or other forms of documentary credentials, documents from other Member States offering equivalent guarantees must be accepted.
- 4) Debarment from the provision of any information which could offer certain bidders an advantage regarding the rest.
- 5) Contractors shall be obliged to inform NAVANTIA, as soon as they become aware of it, of any situation of conflict of interest between the managers or workers of the contractor and NAVANTIA's workers or managers involved in the award or management of the contract.

#### **3.4 Principle of confidentiality**

NAVANTIA may not disclose information provided by the bidders which they have declared to be confidential. Confidentiality applies in particular to technical or commercial secrets and confidential aspects of tenders.

For its part the contractor must respect the confidential nature of all information to which it may have access as a result of execution of the contract and which has been defined as such in the contract or, given its inherent nature, must be handled as such.

NAVANTIA may require and the contractor may request the signing of a non-disclosure agreement as a requirement to facilitate access to confidential information both before and after the award of the contract.



## **IX. PROCUREMENT PROCEDURES**

The awarding of all non-minor contracts for works, services and supplies will be carried out in accordance with the procedures set out below, with the characteristics identified for the contract rationalisation systems in Instruction XI below.

### **1. Negotiated procedure**

#### **1.1 Assumptions to which it applies**

NAVANTIA shall award through the negotiated procedure all works, service or supply contracts and procurement rationalisation procedures, under which any of the following circumstances arise:

- a) When in order to meet NAVANTIA's needs, it is essential that the provision, as available on the market, be subject to prior design or adaptation work by the bidders;
- b) Where the procurement involves a project or innovative solutions;
- c) Where the contract cannot be awarded without prior negotiations due to specific circumstances linked to the nature, complexity or legal or financial configuration of the service to be provided or because of the risks inherent in it;
- d) Where the Contracting Authority is unable to establish with sufficient accuracy the technical specifications by reference to a standard, European technical evaluation, common technical specification or specific technical reference.
- e) Where in open or restricted procedures, if any, previously followed, only irregular or unacceptable offers would have been submitted.

#### **1.2 Types of negotiated procedure. Processing**

The negotiated procedure may correspond to one of the following types, as indicated below:

##### **1.2.1 Procedure negotiated with publicity**

Once the Contracting Authority has approved the commencement of a negotiated procedure in each case, as established in Instruction VIII, paragraph 2, the call for tenders will be published for a minimum period of ten days, unless the urgency of the procurement requires a shorter period of time. In the event that NAVANTIA has included the object of the contract in a prior information notice as set out in the aforementioned Instruction VIII section 3.1.2, the

period may be reduced to five days.

Requests to participate, if any, and tenders shall be secret, and the means shall be provided to ensure that they are secret.

The tenders will be opened and evaluated by the competent Contracting Authority or by the other personnel delegated by the body and said delegation must be recorded in the file.

After the opening of tenders, technical reports on them considered appropriate may be requested, and companies may as applicable be called on to correct any defects in the documentation submitted.

NAVANTIA's Contracting Authorities may structure the negotiated procedure by means of successive phases, in order progressively to reduce the number of tenders to be negotiated.

During negotiations, Contracting Authority shall ensure that all bidders receive equal treatment and shall negotiate with the bidders the tenders submitted by them in order to adapt these to the requirements of the contract.

The awarding of the contract shall be agreed by the competent Contracting Authority, in accordance with Instruction VI, by means of a justified report in favour of the tender that presents the best value for money in accordance with the provisions of article 145 of the PSCL.

The selection of the contractor shall be communicated to all candidates or bidders and published on NAVANTIA's contracting profile of the Public Sector Procurement Platform, which may also be accessed through the link provided on the company's website.

Once the award has been notified, the Parties shall proceed to formalise the contract, which may not contain terms and conditions other than those required and/or agreed in the procedure prior to the award and shall include at least the information referred to in Instruction IV, paragraph 2.

### **1.2.2 Procedure negotiated without publicity**

The same procedure as in the negotiations with publicity shall be followed, except for the procedure for the publication of the notice of tender in all cases in which any of the circumstances set out in section 1.1 of this Instruction IX apply, and in addition any of the advertising exceptions listed in section 3.1.3 of the previous Instruction VIII apply.

In this case, it will be necessary to request bids, unless this is not possible, from at least three companies capable of fulfilling the purpose of the contract.

## **2. Open procedure**

### **2.1 Assumptions to which it applies**

NAVANTIA shall award by the open procedure all works, service or supply contracts and procurement rationalisation systems in which none of the circumstances determining the application of the negotiated procedure are present, and in those cases in which, notwithstanding the occurrence of any such circumstance, the competent Contracting Authority agrees to process the contract by the open procedure.

### **2.2 Open procedure. Processing**

The open procedure will comply with the terms established for the procedure negotiated with publicity, except for the negotiation procedure that is forbidden in the open procedure, with the terms and conditions established by NAVANTIA being applicable when requesting its bid.

## **3. Restricted procedure**

Where the characteristics and circumstances of the object (work, service or supply) to be contracted make this advisable for the most efficient management of NAVANTIA's programmes, NAVANTIA's Contracting Authorities may agree to use a restricted procedure that shall be arbitrated in two phases:

### **a) Initial candidate selection phase**

The call for tenders shall establish objective and non-discriminatory criteria or standards on which candidates will be selected. Likewise,

an indication of the minimum number of business to be invited to tender at the second stage and a maximum number may also be established.

Once the personality and solvency of the applicants have been checked, the Contracting Authority will select the applicants to move to the next stage.

b) Invitation to tender to the selected candidates, evaluation and award.

The invitation to tender will be made simultaneously, in writing and with the same content, to the selected candidates.

In this respect, the provisions contained in articles 160 to 165 of the PSCL shall apply accordingly.

#### 4. **Simplified procedures**

NAVANTIA's Contracting Authorities may agree to simplify the procedures described above, provided that:

- a) The estimated value of the contract is: (i) equal to or less than two million euros in the case of works contracts; (ii) equal to or less than one hundred thousand euros in supply or service contracts  
**and-**
- b) among the award criteria set out in the tender document, there is no criterion that can be assessed by value judgement or, if any, its weighting does not exceed 25 % of the total, except in the case of contracts relating to intellectual property services, where its weighting may not exceed 45 % of the total.

Simplification of proceedings on the basis of value will essentially concern the following aspects:

- (i) Only bidders previously duly registered and evaluated by NAVANTIA for the category/type of object (work, service or supply) in question will be accepted, on the final date of submission of tenders.
- (ii) The tender will contain a responsible declaration from the signatory that it holds the representation of the company; that it has the appropriate economic, financial and technical solvency, that it has the authorisations required to perform the activity, that it is not subject to a prohibition on entering into contracts, and that, if it intends to make use of third-party resources, it will present the undertaking for this purpose to third parties if it is awarded the contract.

- (iii) The tender shall be submitted in the register/location indicated in the call for tenders in a single envelope where none of the award criteria requires a value judgement. If this is the case, two envelopes will be submitted, one of them presenting the elements of the tender subject to a value judgement, which will be opened and assessed by the technical services of the Contracting Authority before the opening of the second envelope (that will contain the elements subject to quantitatively assessable criteria).

With regard to simplified procedures, in the case of works contracts for an amount equal to or less than 80,000 euros or supply or service contracts for a sum equal to or less than 35,000 euros (except service contracts for the purpose of intellectual property), the procedure may be subject to greater simplification in accordance with the terms of Article 159 point 6 of the PSCL, which shall apply accordingly. In this case, it will be referred to as an abbreviated simplified procedure.

#### **X MINOR CONTRACTS**

Minor contracts may be awarded directly to any business with the capacity to operate and with the professional skills required in order to carry out the service, the only requirement being approval of the expense and inclusion of the invoice, along with the budget for the works in contracts of this type.

In the case of minor contracts above €600, tenders shall also be requested from at least three companies with the capacity to perform the object of the contract, wherever possible.

#### **XI PROCUREMENT RATIONALISATION SYSTEMS**

Pursuant to the terms of Article 321, paragraph 3 of the PSCL, NAVANTIA may, for its own sector operations, establish procurement rationalisation systems. NAVANTIA may thus make use of framework agreements, dynamic acquisition systems, supplier approval or, where applicable, equivalent rationalisation systems, provided that the principles are respected, and the award guaranteed in accordance with the criteria of Article 145 of the PSCL.

Taking into consideration the need to provide NAVANTIA with the greatest efficiency in the execution of contracts with its Clients, and hence the better management of the company's commercial activity and its results, the systems for rationalising procurement become an essential element of its procurement activity.

For this reason, and in order to prevent any use thereof from being in any way considered abusive, or competition from being hampered, restricted or misrepresented, NAVANTIA shall procure that the use of such rationalisation systems will, where circumstances permit, enable the companies concerned to comply with the selection criteria required in the procurement file, to be included in the system in question at any time throughout its period of validity.

## **1 Framework Agreements/Dynamic Framework Agreements**

The Framework Agreements may be concluded with one or more companies and, in the latter case, may be concluded with a pre-established number of companies or a dynamic system that allows new companies to be incorporated during their period of validity.

The purpose of the Framework Agreements is to regulate the conditions governing the contracts to be awarded for a given period. Contracting Authorities shall not use Framework Agreements with a single company in an abusive manner or in such a way as to prevent, restrict or misrepresent competition.

The procedures for the awarding of Framework Agreements shall be those applicable in accordance with the terms of Instruction IX. The terms of the Framework Agreement will be binding, and in the awarding of contracts based thereon, the parties may not make any substantial modifications to said terms. In general, the Framework Agreements shall have a fixed period of duration not exceeding four years. However, in the event of the occurrence of exceptional circumstances (such as those which could arise from the terms of any of the sections of point 3.1.4 of Instruction VI), the duration may be extended to comply with the particular requirements of the specific case. The extension of the duration must be duly justified in the file.

Where a Framework Agreement is concluded with several companies, the procedure may include the possibility for interested companies meeting the selection and award criteria laid down in the procedure to join during the duration to be established for the Framework Agreement. In such a case, the Framework Agreement shall be referred to as the Dynamic Framework Agreement.

The call for tenders for a Dynamic Framework Agreement shall clearly indicate that it is a Dynamic Framework Agreement and its validity, and shall provide free, direct and full access to the contract documents throughout the period of its validity.

During the term of a Dynamic Framework Agreement, any company may request to participate in the Framework Agreement in accordance with the selection and award criteria set out in the procurement procedure for the Dynamic Framework Agreement. NAVANTIA must inform the company as soon as possible requesting to join the Dynamic Framework Agreement, whether or not it has been admitted.

Without prejudice to contracting by means of Framework Agreements for the execution of works, services or supplies, wherever the available time circumstances permit this and the amount of the object to be contracted so advises, a contract may be awarded independently, by means of the procurement procedures provided for in the aforementioned Instruction IX.

The awarding of contracts under the Framework Agreements in force shall be made in accordance with the following provisions:

- a) Where a Framework Agreement has been concluded with a sole business, contracts based on this Framework Agreement shall be awarded within the limits of the terms set out therein. In the awarding of these contracts, the contracting authorities with competence to initiate and instruct the procedure in accordance with Instruction VI may consult the company in writing, requesting, if necessary, confirmation or modification of its tender, where applicable.
- b) If the Framework Agreement has been concluded with several companies and all the essential terms of the contract are set out in the aforementioned Framework Agreement:
  - a. In the event of the need to contract urgent works or services, which must be duly justified in writing in the case file, Navantia may award the contract to any of the companies signing the Framework Agreement at the prices established therein.
  - b. In any other case, a tender will be requested for the works to be carried out by the companies awarded a Framework Agreement or the companies admitted in a Dynamic Framework Agreement on the date of the request for tender, in accordance with the procedure established in section c) below and awarding the contract to the best offer in accordance with Article 145 of the PSCL, based on the award criteria detailed in the specifications of the Agreement.
- c) In the event that the Framework Agreement has been concluded with several companies, but not all the essential terms of the contract are provided for in the

Framework Agreement, a new tender must necessarily be convened, which will take into account the same terms, making them more precise, if necessary or incorporating others, to which the specifications of the Framework Agreement refer, in accordance with the following procedure provided for in the call for tenders, which must in all cases:

- For each contract to be awarded, all companies capable of fulfilling the object of the contract shall be consulted in writing. However, where the amount is less than the amounts foreseen for simplified procedures, the Contracting Authority may decide not to extend this consultation to all business which are part of the Framework Agreement, provided that, as a minimum, it requests tenders from three of them selected on the basis of objective criteria to be justified in the file. Contracting Authorities with powers for this purpose in accordance with the terms of Instruction VI may not make use of this power in an abusive manner, nor in a way such that competition between businesses forming part of the Framework Agreement is hampered, restricted or misrepresented.
- The competent Contracting Authority for this purpose in accordance with the provisions of Instruction VI shall allow sufficient time to submit tenders for each specific contract, taking into account factors such as the complexity of the subject matter of the contract and the time required to process the tender.
- Bids will be presented in writing, and their contents must remain confidential up until expiry of the deadline established for a response to the tender announcement.
- The Contracting Authority competent for this purpose, in accordance with the provisions of Instruction VI, shall award each contract to the bidder who has submitted the best bid in accordance with article 145 of the PSCL, based on the award criteria detailed in the specifications of the Framework Agreement.

Notification to unsuccessful bidder companies of a contract based on a Framework Agreement may be replaced by a publication in the medium determined in the regulatory specifications of the Framework Agreement.

Contracting Authorities with powers of attorney in accordance with Instruction VI may use electronic auctions as a means of awarding contracts. Procedures will establish in the



regulatory specifications of the Framework Agreement the possibility of holding the electronic auction prior to the awarding of the contract, provided that the specifications of the contract to be awarded can be precisely established and that the services constituting the object are not intellectual in nature. The electronic auction may have as its object price or, where the contract is awarded on the basis of more than one criterion, other elements of the tenders indicated in the specifications of the Framework Agreement.

The provisions of Articles 219 to 222 of the PSCL shall apply accordingly for the extent not provided for in the Framework Agreements in this paragraph, insofar as they are applicable.

## **2 Dynamic Acquisition Systems**

NAVANTIA's Contracting Authorities, with powers for this purpose in accordance with the terms of Instruction VI, may structure dynamic systems for the acquisition of works, services and supplies of regular use, the characteristics of which are generally available on the market satisfy their needs, provided that the use of this rationalisation system does not hinder, restrict or misrepresent the competition.

The dynamic acquisition system will have a limited period of time, which must be clearly defined in the specifications and guarantee that, during its period of validity, all interested companies that request it and meet the selection criteria can join it.

Contracting Authorities, with powers for this purpose in accordance with the terms of Instruction VI, may structure the dynamic acquisition system into objectively defined categories of works or services products.

In order to be able to contract under a dynamic acquisition system, Contracting Authorities should follow the rules of the restricted procedure, but they will not be able to establish a maximum number of candidates, but must include in the system all companies meeting the duly published selection criteria.

For this purpose and prior to the awarding of contracts in the framework of a dynamic acquisition system, the Contracting Authority must:

- a) Publish the call for tenders expressly indicating that it involves a dynamic acquisition system and its period of validity;
- b) Clearly identify the time frames for submitting the initial application;

- c) Identify in the specifications the nature and estimated quantity of purchases planned, as well as describe how the dynamic system works;
- d) Identify by category, if any, of products, works and services and their characteristics;
- e) Offer free, direct and complete access to the contracting documents throughout the period of validity of the system.

During its period of validity, any company may request to participate in the dynamic system in the terms indicated above. NAVANTIA must inform the company as soon as possible that it requests to adhere to the dynamic system, whether or not it has been admitted.

Each contract to be awarded under a dynamic acquisition system must be the subject of a tender invitation.

Contracting Authorities, with powers for this purpose in accordance with the terms of Instruction VI, shall invite all companies previously accepted in the category that, in each case, apply.

The minimum period for submitting tenders shall be ten days from the date of the written invitation.

The Contracting Authority shall award the specific contract to the bidder who has submitted the best tender, in accordance with the award criteria detailed in the call for tenders for the dynamic acquisition system. If necessary, the criteria may be formulated more precisely in the call for tenders.

### **3 Other rationalisation systems**

During the period of validity of these IPIs, NAVANTIA may develop other procurement rationalisation systems, equivalent or similar, which will be, where appropriate, developed using NAVANTIA's internal regulations. These systems shall be based on strict compliance with the principles of the procurement to which NAVANTIA is obliged and the award is carried out in accordance with the terms of Article 145 of the PSCL.

The procedure for inclusion in such systems shall be transparent and non-discriminatory and shall be published on NAVANTIA's contracting profile.

These systems may include a system for the registration and approval/assessment of suppliers which, in an equivalent manner to that required in the PSCL for cases of simplified open procedure, allows NAVANTIA to simplify its contracting processes.

## **XII PROCUREMENT ABROAD**

Those contracts formalised and executed abroad may be awarded by a negotiated procedure without publicity, with the requirement that wherever possible at least three offers from companies capable of fulfilling the contracts in question be requested. In case a single tender is requested, the file must include a report justifying the ground preventing compliance with the principle of competition. Formalisation will be performed by the legal representatives of Navantia.

## **TRANSITORY PROVISION**

Without prejudice to the fifth transitional provision of Law 9/2017, of 8 November, on Public Sector Contracts, transposing Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 into Spanish law:

- a) Procurement procedures initiated prior to the entry into force of these Internal Procurement Instructions shall be governed by the previous Internal Procurement Instructions. For these purposes, procurement procedures with publicity will be understood to have been initiated if the corresponding call for tenders for the contract award procedure has been published. In the case of procedures without publicity, the date of approval of the agreement to initiate the procedure shall be taken into account in determining the time of initiation.
- b) Contracts awarded prior to the entry into force of these Internal Procurement Instructions will be governed, with regard to their effects, compliance and termination, including modification, duration and system of extensions, by the previous regulations.
- c) Contracts based on framework agreements or dynamic acquisition systems shall be governed by the regulations applicable to them.

## ANNEX 1

### **PROCUREMENT AND CONTRACTING IN THE FIELD OF SHIP REPAIR AND OTHER REPAIR AND MAINTENANCE SERVICES THAT ARE PART OF NAVANTIA'S CORPORATE PURPOSE. CHARACTERISTICS APPLICABLE IN THE PROCEDURES.**

#### **I INTRODUCTION**

NAVANTIA's corporate purpose includes a number of service provision activities for Clients, such as the **REPAIR** of military and merchant and commercial ships; repair of floating structures and platforms, of engines, of turbines; sale of spare parts and technical assistance for wind turbines and industrial components, etc., which due to their characteristics will require minimal specificities in the contracting processes in order to allow proper execution of the provision of services to the Client.

With regard to the repair of merchant and commercial ships, an activity of particular relevance at NAVANTIA, the market characteristics and circumstances in which this business is carried out are summarised below, justifying the characteristics established in this annex. In this regard:

- a) NAVANTIA's Repairs department provides ship repair and maintenance services.
- b) These are in all cases ships designed by third parties and generally different in each case with regard to their architecture, configuration, classification, equipment and materials used, etc.
- c) The purpose of the services is defined by each Client and is very dynamic and may vary during repair, so that it usually requires resources available on demand, adaptability to the changes requested and the speed of the response.
- d) The execution times are very short and require, among other things, the simultaneous execution of tasks in several disciplines in different areas of the ship and in the workshops with their own, subcontracted and the client's personnel; agility for the collection of materials in time and form; capacity to manage the continuous rescheduling of incidents that occur, coordination of activities and usage of a very active risk prevention system, etc. All of this also taking into account that these are ships in service, with machinery in operation, operated by the crew that resides on the ship, among other characteristics, of this activity.
- e) It is common for the Client to provide specific technical information, tools, spare parts, technical services and sometimes equipment and materials.

Likewise, and from a statistical analysis for the period 2016-2017 performed in this regard, it has been confirmed that the civil repair market at NAVANTIA is also affected by the following circumstances:

- the time limits between when NAVANTIA formalises the contract with the Client and the arrival of the ship in 85 % of the cases it does not exceed four weeks and it is estimated that in 75 % of the cases it does not exceed seven weeks, i.e. a period of time in which, in accordance with the requirements of the IPIs adapted to the new LCSP, it would not be possible to close the subcontracting procedures before the ship's arrival.
- once the contract has been formalised with the Client, and provided that a specification of the works to be carried out is available sufficiently defined in order to be able to plan and organise the execution of said works, a Kick-off Meeting is staged, involving Production and Procurement supervisors, estimating the works, services or supplies to be subcontracted prior to the arrival of the ship at NAVANTIA's facilities. The conclusions are reflected in the so-called Kick-off Meeting's Minutes.
- During the repair period (which, on average, can be estimated to be between 12 and 30 days in duration) it is a common circumstance in which modifications to the object of the contract occur (that is impossible to predict from the outset) which, on average, lead to a 30 % increase in the volume of jobs to be executed with regard to those initially contracted. The causes of these modifications are multiple, as a result of inspections carried out when the ship is already at the shipyard, equipment dismantled and must be repaired or refurbished, etc. It is the Owner who, on the fly, makes decisions extending or reducing the initial planned work, service or supply.
- In addition, the express wish of the Client is sometimes expressed in the designation of companies to be subcontracted or supplies to be contracted.

Likewise, in the case of repairs or maintenance regarded as **UNSCHEDULED** of military ships, engines, turbines, floating structures, etc., the problems in terms of deadlines are equivalent to that for the repair of merchant and commercial ships.

From all of the foregoing and in order not to jeopardise the essential objective of complying with NAVANTIA's contractual obligations to the Client within the agreed deadlines, and therefore preventing the consequent loss of business and assets, derives the need to establish in NAVANTIA's procurement procedures corresponding to the repair and maintenance department. In relation to the aforementioned subcontracting the minimum characteristics allow, in compliance with the applicable principles, the procurement procedures to be sped up, therefore enabling the most appropriate development of NAVANTIA's corporate purpose and the best efficiency in its management as established by Law 40/2015. All this in relation to the areas of repair and maintenance.

## **II GENERAL CRITERION IN RELATION TO PROCUREMENT PROCEDURES IN THE FIELD OF THE PROVISION BY NAVANTIA OF REPAIR/MAINTENANCE SERVICES TO CLIENTS**

NAVANTIA's procurement and contracting procedures in the aforementioned areas of repair and maintenance will be governed as a general rule by the terms of the IPIs of which this Annex forms an integral part.

Given the characteristics of the provision of repair or maintenance services described above, and with regard to subcontracting for the purpose of repairing merchant and commercial ships, unscheduled repairs of military ships, engines or turbines or any other unscheduled repair of products forming part of NAVANTIA's corporate purpose, it will be necessary, wherever possible, to make use of procurement rationalisation systems such as Framework Agreements in the way deemed most appropriate for each work, service or supply and its circumstances and subject to the provisions established for this purpose in the body of the IPIs.

Notwithstanding the above, and in the event that each and every one of the following circumstances is fulfilled, the specific features established in section III below may be applied. These circumstances are:

- The purpose of subcontracting the carrying out of works, services or supplies intended for the repair of merchant and commercial ships or unscheduled repairs as described above; and
- There is no Framework Agreement in force for the work, services or supplies in question; and
- The available deadlines taking into account the circumstances and requirements of NAVANTIA's contract with the Client are insufficient to manage the procurement procedure in accordance with that established in the body of the IPIs.

## **III APPLICABLE CHARACTERISTICS TO PROCUREMENT PROCEDURES IN THE FIELD OF THE PROVISION BY NAVANTIA OF REPAIR/MAINTENANCE SERVICES TO CLIENTS**

### **1. Regarding the principles of publicity and competition**

For those cases in which the circumstances described in section II above apply cumulatively, the corresponding Contracting Authority may apply, subject to the required justification in the file, the following characteristics in relation to the principles of publicity and competition:

- In the event of repair of merchant and commercial ships, where the time available between the date of the Kick-off Meeting Minutes and the expected date of arrival of a ship at NAVANTIA's premises is less than eight weeks and more than four weeks, the deadlines for publication of the call of tenders shall be reduced by half.
- In the event of repair of merchant and commercial ships, where the time available between the date of the Kick-off Meeting Minutes and the expected date of arrival of a ship at NAVANTIA's premises is less than four weeks, the obligation of publicity may be waived. However, competition will be sought by requesting tenders from at least three companies whenever possible.
- For all other unscheduled repairs or maintenance, the provisions of the two paragraphs above shall be applied accordingly, with sufficient justification in the file regarding the available deadlines.

Likewise, and with regard to the requirements for additional works, services or supplies that: (i) may arise during an ongoing repair; (ii) that require subcontracting by NAVANTIA; and (iii) that cannot be contracted under a current Framework Agreement, the publicity obligation may be waived if the available deadlines do not permit it. However, competition will be sought by requesting tenders from at least three companies, whenever possible