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INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.	
Review: 01	Effective data: 29/05/2008

CONTENTS:

1. **Aim**
2. **Interpretation of the Instructions**
3. **Types of Contract**
 - 3.1 Building Work Contracts
 - 3.2 Supply Contracts
 - 3.3 Service Contracts
4. **General Principles for the Contracts Regulated by These Instructions**
5. **Nature of and Legal Scheme Applicable to Contracts Regulated by These Instructions**
6. **Contracting Bodies**
7. **Ability to Sign a Contract with LANTIK S.A.**
8. **Required Guarantees**
9. **Award Procedures**
 - 9.1 General Procedure. Level 2
 - 9.2 Simplified Procedures. Level 1
 - 9.3 Other Contracting Procedures
 - 9.4 Open Agreements with Suppliers
 - 9.5 Formalising Contracts
10. **Publicity**
11. **Competent Jurisdiction**

INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.

Review: 01

Effective date: 29/05/2008

INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.**1. Aim**

In order to comply with Article 191 b) of Legislative Royal Decree 3/2011, of 14 November, which approves the Consolidated Text of the Public Sector Procurement Act (*Texto Refundido de Ley de Contratos del Sector Público* (TRLCSP)), pursuant to which LANTIK, S.A. is part of the public sector in the terms of Article 3.3.b) of said Act and has the status of contracting authority despite not holding the status of Public Administration, these instructions seek to define the LANTIK, S.A. internal procedures for awarding contracts not subject to harmonized regulation. This means that the effectiveness of the principles of publicity, competition, transparency, confidentiality, equality and non-discrimination is guaranteed and that the contract is awarded to the bidder who submits the most economically advantageous bid.

These instructions were approved by agreement of the LANTIK, S.A. board of administration on 23 March 2012; they come into force on 24 March 2012; and will apply to all tenders for contracts that are initiated after that date.

Compliance with these instructions is obligatory within LANTIK, S.A. Therefore, they will be available to all parties interested in the procedures for awarding contracts regulated by them and will be published in the Contractor's Profile of LANTIK, S.A.

2. Interpretation of the Instructions

For the purposes of these Instructions, the terms that appear with a capital letter as the first letter will have the meaning defined in these instructions and those that are not defined in the Instructions will have the meaning given to them in the TRLCSP.

When, because of these Instructions, a precept from the TRLCSP must be applied in an adapted form or is not applicable either wholly or in part, the references to this precept in other applicable articles of the TRLCSP must be understood as having these adaptations or revocations, in accordance with these Instructions.

The estimated value of the contracts will be calculated under the rules given in article 88 of the TRLCSP and will not include Value Added Tax.

The amount given in section 8 of these Instructions for service contracts included in categories 17 to 27 of Appendix II of the TRLCSP and the amounts starting from which the contracts signed by LANTIK, S.A. are considered to be subject to standardised regulations will be updated, as appropriate, in accordance with the amount set by the European Commission under the terms of Additional Provision eleven of the TRLCSP.

3. Types of Contracts

These Instructions will be applied to all large contracts signed by LANTIK, S.A., whatever their legal nature, except for the following:

- a) The businesses and legal relationships listed in article 4 of the TRLCSP.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective date: 29/05/2008

- b) Contracts subject to standardised regulations in accordance with article 13 and similar articles in the TRLCSP, the awarding of which will be regulated by the terms of article 190 of the TRLCSP.
- c) Contracts and businesses regulated by or expressly exempted from the applicable regulations for that sector, which will be awarded in accordance with the terms of those regulations.

Apart from these exceptions, these Instructions will basically apply to the following contracts that are signed with LANTIK, S.A.:

3.1. Building Work Contracts

These are contracts that have as their object the carrying out of some work or some of the jobs listed in Appendix I of the TRLCSP or the carrying out, by any means, of some building work that responds to the specific needs of LANTIK, S.A. As well as performing this work, the contract can include, if appropriate, the drawing up of the corresponding project.

The term "building work" should be understood as being the result of construction or civil engineering work that is designed to fulfil by itself an economic or technical function and has some real property as its object.

3.2. Supply Contracts

Supply contracts are those that have as their object the acquisition, financial renting or renting with or without the option to buy of products or real estate.

In all cases, the following will be considered to be supply contracts:

- Contracts in which the business person is obliged to hand over a number of goods sequentially and for a unit price without the total amount being defined exactly at the time the contract is signed because these goods are subject to delivery according to the needs of LANTIK, S.A..
- Contracts that have as their object the acquisition and renting of equipment and telecommunications systems or devices and programs for processing information and the granting of rights to use the latter.
- Contracts for manufacturing, in which the thing or things that must be delivered by the provider must be produced in accordance with some particular characteristics that have been set in advance by LANTIK, S.A., even when LANTIK, S.A. is obliged to supply, wholly or in part, the materials needed.

3.3. Service Contracts

Service contracts are those whose object is the performance of services consistent of carrying out an activity or directed to obtaining a result that is different from building work or supply, in accordance with the categories defined in Appendix II of the TRLCSP

Therefore, contracts for purchasing custom-developed computer programs are considered to be service contracts.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective date: 29/05/2008

4. General Principles for the Contracts Regulated by These Instructions

The contracts to which these Instructions apply will be governed by the principles contained in article 1 of the TRLCSP, and their awarding will be subject in all cases to the principles of publicity, competition, transparency, confidentiality, equality and non-discrimination, in accordance with article 191 of the TRLCSP.

With the aim of guaranteeing the observance of the principles stated in the previous paragraph, in the procedures for contracting that are carried out by LANTIK, S.A. in accordance with these Instructions, the actions of the contracting entities will, in all cases, be directed toward satisfying these principles.

These principles will be understood to have been complied with when the rules in the following sections of these Instructions are observed, and the following guidelines for action will be observed when applying and interpreting them:

- a) The principle of publicity will be understood to have been complied with when appropriate and sufficiently accessible methods of broadcasting or publicity are used to provide information on contracts from LANTIK, S.A. for the benefit of all potential tenderers, permitting the market to be opened up to competition.
- b) The principle of transparency will be understood to have been complied with when sufficient information that will permit all potential tenderers to be in a situation to show their interest by taking part in the tendering has been broadcast or publicised before the contract is awarded. Therefore, this principle implies that all the participants can know in advance the rules that apply to the contract that it is intended to award, as well as being certain that these rules will be applied equally to all entities.
- c) The necessary measures will be adopted, according to the terms of these Instructions, to improve the access and participation of potential tenderers, with the aim of awarding the contract to the most economically advantageous offer.
- d) The principle of confidentiality will be respected by LANTIK, S.A.'s assuming the obligation not to divulge information provided by business people that they have stated to be confidential, as long as there are justified reasons for this, especially technical or commercial secrets and the confidential aspects of the offers. Similarly, the application of this principle will require that contractors respect the confidential character of the information to which they have access when carrying out the contract, which they have been given in the specifications or in the contract itself, or information which by its very nature must be treated as being confidential.
- e) To guarantee the principle of equality and non-discrimination, the necessary measures will be adopted to guarantee the impartiality and equity of the procedures. These measures will include at least the following:
 - i) The object of the contracts will always be described in a non-discriminatory way, without referring to a particular manufacturing process or source, or particular products, or a particular trademark, patent, type, origin or production method, unless a reference of this kind is suitably justified and is accompanied by the phrase "or the equivalent".
 - ii) No condition will be imposed that implies direct or indirect discrimination against potential tenderers from other member States of the European Union.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective data: 29/05/2008

- iii) If the candidates are required to submit diplomas, certificates or other types of documentation as credentials, documents from other member States must be accepted in accordance with the principle of the mutual recognition of degrees, certificates and other diplomas
- iv) The time limits allowed for showing an interest or submitting an offer will be adequate so as to permit companies from other member States to carry out a suitable evaluation and submit a bid.
- v) For contracts where more than one provider or supplier is involved in the tendering process, LANTIK, S.A. guarantees that all of them will have the same information about the contract under identical conditions.

5. Nature of and Legal Scheme Applicable to Contracts Regulated by These Instructions

In all cases, the contracts celebrated with LANTIK, S.A. will be considered to be private contracts, in accordance with the terms of article 20.1 of the TRLCSP.

Contracts with LANTIK, S.A. that are regulated by these Instructions will in all cases be subject to the provisions that must, by obligation, be complied with by public bodies that are signing contracts that are not subject to the standardised regulations, in accordance with the terms of the TRLCSP. In particular, this implies that the rules contained in Volume I of the TRLCSP ("General configuration of public sector contracting and structural elements of the contracts") will be applied, which, because of their content, apply to LANTIK, S.A. as it is an adjudicating power that is part of the public sector but cannot be considered to be a Public Administration.

6. Contracting Bodies

The contracting bodies will be determined in each case in accordance with the terms of the statutes and other provisions that are applicable to LANTIK, S.A., without prejudice to the delegation and empowerment that could validly be given to other bodies.

7. Ability to Sign a Contract with LANTIK S.A.

Only Spanish or foreign individuals or legal entities that have the full ability to operate a business, that are not forbidden to sign contracts and that can prove their economic, financial and technical or professional solvency can sign contracts with LANTIK, S.A.

The minimum requirements for ability and solvency that are required in each case must be linked to the object of the contract and be in proportion to it.

Without prejudice to the provisions of the TRLCSP that are applicable to all public sector bodies, proving economic, financial and technical or professional solvency in order to sign a contract will be carried out in accordance with what is specified in each case in the corresponding tender according to the circumstances and characteristics of the contract. Also, the terms of articles 75 to 79 of the TRLCSP can be applied if this is considered to be appropriate by the contracting body.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective date: 29/05/2008

In accordance with article 65.5 of the TRLCSP, depending on the circumstances and characteristics of the contract, it can also be required, if appropriate, that the solvency of the business person be proved through the corresponding classification.

The minimum requirements for solvency that the business person must meet and the documentation required to prove this will be indicated in the announcement of the tender and will be detailed in the contract specifications, if they can be required in accordance with these Instructions.

8. Required Guarantees

Depending on the circumstances and characteristics of the contract, the contracting body can require that a guarantee be given to the tenderers or candidates to ensure that their offers will be retained until the contract is awarded and that a guarantee be given to the awardee to ensure that the contract is performed correctly.

The amounts of these guarantees will be established for each case depending on the circumstances and characteristics of the contract.

The guarantees that are required can be presented in any of the ways listed in article 96 of the TRLCSP.

9. Award Procedures

Different levels (hereafter, one is the "Level" and several are the "Levels") have been differentiated for applying these Instructions and setting the procedures and requisites that are applicable to the awarding of each contract:

- a) Level 1. Contracts with an estimated value of less than 50,000 euros, no matter what type of contract, are included in this Level.
- b) Level 2. Contracts with an estimated value of between 50,000 euros and the following amounts:
 - 4,999,999 euros for building work contracts.
 - 199,999 euros for all other contracts.

First of all, the procedure called the General Procedure will be explained, which is applicable to Level 2 contracts. After this, the special features applicable to Level 1 contracts will be described.

9.1. General Process. Level 2

The General Process will apply to Level 2 contracts, that is:

- Supplies: between 50,000 € and 199,999 €
- Services: between 50,000 € and 199,999 €
- Building work: between 50,000 € and 4,999,999 €

However, this Process can be applied to contracts that are for an amount that is less than 50,000 €, if it is proposed by the department initiating the contract.

9.1.1 Contract Tender

INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.

Review: 01

Effective data: 29/05/2008

LANTIK, S.A. will draw up in advance the Specifications of the Basic Contract Conditions, which will be specifying at least the following aspects:

- Requirements for being able to tender (ability and economic and technical solvency).
- Procedures to be followed by LANTIK, S.A. for awarding the contract.
- Criteria for evaluating the tenders.

LANTIK, S.A. will also draw up the Technical Specifications Report document in which the object of the contract and the technical requirements will be defined.

The maximum limit for the tenders is the maximum amount that the contract may have. If all the tenders exceed this maximum tender limit, LANTIK, S.A. will declare the tendering process to be void.

9.1.2 Publicising the Tender.

LANTIK, S.A. will publish the information about the tender, including the specifications, in the Contractor's Profile (on the LANTIK, S.A. web site at www.lantik.bizkaia.net) so that all interested tenderers can present their tenders in accordance with section 10 of these Instructions.

9.1.3 Deadline for Submitting Proposals.

LANTIK, S.A. will indicate in the advertisement or, if appropriate, in the specifications, the deadlines that are applicable to each case before which the tenderers can present their proposals. In all cases, the time limit will be sufficient to allow all possible tenderers, including companies from other member States of the European Union, to make a suitable evaluation and submit a bid.

9.1.4 Study and Evaluation of the Proposals.

When the deadline for submitting proposals has passed, the department initiating the tender will analyse the offers and their structure and evaluate them according to all criteria other than price.

9.1.5 Award Proposal.

The General Technical Section, the HR Department, and the Contract Secretary or Board, as appropriate, will formulate a proposal for awarding the tender to the bid that is considered to be the most economically advantageous, or they can request clarifications or supplementary information.

The Contracting Body can award the contract to the company that is proposed or it can award to any other of the tenderers, if it considers that their offer is the most economically advantageous, in which case, it must justify the reason for this decision.

9.1.6 Notification of the Awarding of the Contract.

INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.

Review: 01

Effective date: 29/05/2008

Once the tendering process has been concluded, LANTIK, S.A. will inform the winning tenderer and the other participants in the process about the awarding of the contract. Also, it will ask the winning tenderer for the documentation needed in order to formalise the contract. It will also publish the result of the awarding of the contract on the Contractor's Profile (on the LANTIK, S.A. web site at www.lantik.bizkaia.net) giving the name of the winner and the amount of the award.

9.2. Simplified Procedures. Level 1

The Simplified Procedures will apply to the contracts included in Level 1.

In order to determine which of the Simplified Procedures listed below will be applicable, Level 1 contracts will be divided into:

- i. Contracts with an estimated value of less than 50,000 euros but equal to or more than 18,000 euros (“**Level 1A Contracts**”).
- ii. Contracts with an estimated value of less than 18,000 euros (“**Level 1B Contracts**”).

However, the process described below for Level 1A Contracts can be applied to Level 1B Contracts, if it is proposed by the department initiating the contract.

9.2.1 Simplified Procedure for Level 1A Contracts

In this process, it is not obligatory to publicise the announcement of the tender.

Specifications of the Basic Contract Conditions and a Technical Specifications Report must be drawn up, as for the General Procedure, and a minimum of three bids must also be requested. If it is not possible to ask for this minimum number of bids, this will be justified in the specifications.

In spite of the above, the telephone number and address of LANTIK, S.A. will be posted on the Contractor's Profile so that any tenderers who might possibly be interested can request information on the simplified procedures for the current Level 1A contract tenders.

After the contract has been awarded, the Contract will be drawn up and the tenderers whose bids were not accepted will be informed.

9.2.2 Simplified Procedure for Level 1B Contracts

Level 1B Contracts can be awarded to any business person who has the ability to work and the professional skills needed to perform the work or service by directly requesting a bid from one single person in a letter containing an order.

There is no requirement to draw up any Specifications of the Basic Contract Conditions or Technical Specifications Report like those for the General Procedure.

The processing of the tender only requires that the expenditure, budget, the order mentioned above and the corresponding invoice be approved.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective data: 29/05/2008

9.3. Other Contracting Procedures.Negotiated Procedure.

This procedure can be used when contracting building work, supplies and services as defined in art. 170, 171, 173 and 174 of the TRLCSP, and the procedure is governed by the terms of article 169 and similar articles in the TRLCSP.

In these cases, if it is appropriate, bids can be requested of three companies. Otherwise, this circumstance will be justified in the contract specifications.

Specifically, in cases where the contract can only be given to one supplier for technical or artistic reasons, or for reasons related to the protection of exclusive rights, the department initiating the contract must draw up a justificatory report to which will be attached documentation certifying the existence of this situation (a letter of exclusivity or certificates proving the ownership of the intellectual or industrial property rights).

Competitive Dialogue.

When the terms of article 180 of the TRLCSP apply, it can be decided to apply the competitive dialogue procedure, which will be governed by the terms of the articles 179 to 183 of the TRLCSP.

9.4. Open Agreements with Providers.

In order to rationalise contracting, LANTIK, S.A. can initiate an Open Agreement with Providers process in accordance with the terms of article 199 to 201 of the TRLCSP, with the aim of setting the conditions for contracts that it is intended to award for a set time limit, which may never be more than 4 years. The awarding of each specific contract under this system will be in accordance with these Internal Contracting Instructions.

Although LANTIK, S.A. will adhere to the above precepts, the company can use means other than those included in article 198.4 of the TRLCSP to develop the system described in this section and to award contracts under this system.

It can use the Open Agreement with Suppliers system for all contracts that involve the acquisition of a number of goods or the performance of a specific type of services in which there is a large number of providers and the price fluctuates for various reasons, such as, for example, when purchasing computer equipment and supplies, etc.

Under no circumstances can Open Agreements with Providers be made in an abusive manner or in a way that obstructs, restricts or falsifies competition.

The announcement of an Open Agreement with Suppliers must be published in the Contractor's Profile and also through alternative publicity media.

The initial phase of the process will be as described in the General Procedure. In the Specifications of the Basic Contract Conditions, the operating rules will be established for awarding contracts under the Open Agreement with Providers system.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective data: 29/05/2008

LANTIK, S.A. can initiate various Open Agreements with Providers depending on their nature.

9.5. Formalising Contracts

Unless they are included, if appropriate, in the specifications, contracts subject to these Instructions that are signed with LANTIK, S.A. must necessarily include the following items:

- a) Identification of the parties.
- b) Proof of the ability of the signatories to sign the contract.
- c) Definition of the object of the contract.
- d) Reference to the legislation applicable to the contract.
- e) Enumeration of the documents making up the contract. If this is included in the contract, this enumeration can be hierarchical and organised according to the order of priority agreed to by the parties. In this case, unless there is an obvious mistake, the order agreed to will be used to determine the respective importance of different documents, if there are contradictions between them.
- f) The set price or the method of determining the price.
- g) The length of the contract or the estimated dates for the beginning and end of its implementation, as well as any extension or extensions, if these are included.
- h) The conditions for receiving, delivery or acceptance of what is provided.
- i) The payment conditions.
- j) The circumstances leading to cancellation.
- k) The extension, both of the object and in time, of the obligation of confidentiality imposed on the contractor, if appropriate.

Generally, the contract will be formalised within a maximum time limit of ten calendar days after the contractor has been selected, unless a different time limit was set in the corresponding specifications or bids.

The contractual consent of LANTIK, S.A. will be shown by the formalising of the contract, and this will be understood to mean that the contract is fully binding.

10. Publicity

No matter what the Level of the contract, when the estimated value is over 50,000 euros, the information about the tender must be posted to the LANTIK, S.A. Contractor's Profile. However, other media can be used to publicise it if this is considered to be necessary because of the circumstances and characteristics of the contract. These include, but are not limited to, official gazettes, local publications or the Official Journal of the European Union. Also, if it is considered to be appropriate, prior announcements can be made of the contracts that it is intended to award in each financial year or over several years.

**INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO
STANDARDIZED REGULATIONS FOR LANTIK S.A.**

Review: 01

Effective data: 29/05/2008

The announcement of the tender will contain the following information:

- a) A brief description of the essential details of the contract.
- b) The procedure for awarding the contract, including the deadline for submitting bids.
- c) LANTIK, S.A.'s contact information.

In all cases, if the circumstances and characteristics of the contract make it advisable, the contents of the announcement can be extended or additional information can be included in the Contractor's Profile.

Despite what has been said in the preceding paragraphs, publicity can be dispensed with for cases to which the negotiated procedure contained in articles 170 to 175 of the TRLCSP apply, which, according to the text of article 177 of the Law, do not have to be publicised.

11. Competent Jurisdiction

The competent legal jurisdiction for resolving any legal questions concerning the preparation, awarding, effects, compliance and cancellation of the contracts referred to in these Instructions will be the civil jurisdiction.

INTERNAL INSTRUCTIONS GOVERNING CONTRACTS THAT ARE NOT SUBJECT TO STANDARDIZED REGULATIONS FOR LANTIK S.A.

Review: 01

Effective data: 29/05/2008

REVIEW LOG

Review	Board approval date	Effective date	Amendments
00	28/05/2008	29/05/2008	Approval of the internal instructions governing procurement not subject to harmonized regulation in Lantik S.A.
01	23/03/2012	24/03/2012	<ul style="list-style-type: none"> The reference to the Public Sector Procurement Act (LCSP) 30/2007 of 30 October replaced by Legislative Royal Decree 3/2011 of 14 November approving the consolidated text of the Public Sector Procurement Act (TRLCSPP). The limit of the community threshold updated from €206,000 to €200,000 for supplies or services and from €5,150,000 to €5,000,000 for works. The approval date of the new version by the Lantik S.A. Board of Directors included.