

CONTRACTING FILES

MedCities is an association of cities and local governments from all shores of the Mediterranean. It was created in Barcelona in November 1991, as a vehicle to reinforce municipalities regarding urban development. MedCities promotes the preparation of development strategies of cities and the implementation of urban projects. It advocates for support to local authorities in the Mediterranean region.

Over the past 25 years, MedCities has promoted sustainable urban development, as a way to improve living standards in the Mediterranean region.

The goals of MedCities are based on:

- Strengthening the role, competences and resources (institutional, financial and technical) of local authorities in adopting and implementing sustainable development policies.
- Developing and managing cooperation and direct collaboration projects between its members with other cities and organizations.
- The awareness and participation of citizens in sustainable development of towns and cities.

WHAT WE DO

- Promotion in the preparation and implementation of sustainable urban development strategies.
- Technical assistance to implement urban projects in fields such as waste management, local economic development, tourism, management of public areas, local cohesion, etc.
- Prepare and provide skills to elected representative and municipal employees.
- Explore funding opportunities for MedCities members.
- Promotion of bilateral or multilateral decentralized cooperation projects.
- Promotion and transfer of know-how between cities.
- Support to local governments of the Mediterranean region.
- Representation of interests of local authorities of the Mediterranean in international debates.
- Participation in defining programmes and policies of the European Union that affect Mediterranean cities.

APPROACH

Pursuant to the mandate of recent general assemblies, **MedCities** intends to make an in-depth examination, with all members of the Association, to prepare projects for member cities. Therefore, **MedCities** wants to strengthen its presence throughout the Mediterranean, to promote cooperation possibilities.

In line with this, **MedCities** is publishing:

General Secretariat

CONTRACTING INSTRUCTIONS IN CONTRACTS NOT SUBJECT TO HARMONIZED REGULATION

Owing to the legal nature of **MedCities**, it should be governed by private law in contracting as an association.

Article 3.1 i) of the Consolidated Text of the Public Sector Contract Law (hereinafter “TRLCSPP”) approved by Royal Legislative Law 3/2011, of 14 November, establishes that, for the purposes of application of this law, associations constituted by Public Administrations, such as **MedCities**, form part of the Public Sector. These associations are also considered as contracting authorities in accordance with article 3.3. c) of the TRLCSPP.

MedCities does not constitute a Public Administration, and contracts signed with third parties are of a private-legal nature. However, for the preparation and later awarding, some regulations established in the TRLCSPP should be followed, applied to a greater or lesser extent, depending on whether contracts are subject to harmonized regulation or not. As regards **MedCities**, the contracts involved in these contracting instructions, are not subject to harmonized regulation.

In order to meet the regulations established in the TRLCSPP, **MedCities** is **obliged** to approve **contracting instructions**, which regulate the contracting procedure of contracts not subject to harmonized regulation. This is done so that the effectiveness of advertising, concurrence, transparency, confidentiality, equality and non-discrimination principles are guaranteed, and that the contract is not awarded to anybody presenting a more advantageous financial offer, as established in article 191 a) of the TRLCSPP.

These instructions are available to any party interested in participating in the contracting procedure for the awarding of contracts regulated by them, and which have been published in these instructions in the contractor profile of **MedCities** of our website, with free access to them for anyone interested.

The purpose of these **instructions** is to set the procedure to select contractors and the awarding of contracts not subject to harmonized regulation. Referral to the TRLCSPP regulations or to amounts included in them, will be understood to be automatically modified, in the event that said regulations or amounts of the substituted TRLCSPP are modified, in accordance with term of the regulations, or with the term of the substituted regulations.

1. Contracting procedure

The purpose of these **instructions** is to regulate the contracting procedure of **MedCities** as a contracting authority, in accordance with the TRLCSPP. When contracts are not considered harmonized regulation, contracting of **MedCities** will adapt to these instructions, in accordance with the aforementioned article 191 a) of the TRLCSPP.

2. Scope of application

These instructions will be applied to the preparation and awarding of contracts entered into by MedCities, according to the TRLCSPP. They should not be subject to harmonized regulation and to

the clauses that regulate the tender procedure.

These contracting instructions will be applicable to all those contracts that **MedCités** enters into both in national territory and abroad, regardless of the amount. In the preparation and awarding process of contracts, the specific rules given in point 9 of these instructions will be applicable, with the exceptions indicated therein.

3. Principles to which contracting is submitted.

The awarding of contracts will be subject to the principles established in article 191 a) of the TRLCSP on advertising, concurrence, transparency, confidentiality, equality and non-discrimination.

4. Contracting authority

The Contracting Authority will be the General Secretary of **MedCités**.

Notwithstanding the powers corresponding to civil jurisdiction, the Contracting Authority will be able to solve any doubts or questions regarding the contents of these instructions, or within the contracting procedures governed by them.

5. Eligibility conditions required by the contractor.

Only Spanish or foreign individuals or legal entities may contract with **Medcities**, which have full capacity to act, are not subject to any prohibition for contracting with the Public Sector of those cases included in article 60 of the TRLCSP, and which have the entrepreneurial or professional abilities, which, where appropriate, are required to carry out the activity or provision, which forms the subject of the contract.

6. Purpose of the Contract

The purpose of the contract will be established. When the subject of the contract can be split and is duly justified, the separate implementation can be planned of each part, through dividing into batches, as long as they are eligible for use or can be used separately, and form a functional unit, as required by the nature of the subject.

Different provisions can be contracted separately, directed at forming part of a project, when said provisions have their own substantive autonomy, enabling separate implementations, as they should be undertaken by companies with a certain qualification.

Procedural and advertising rules may be applicable, that should be implemented in differentiated provision awarded and will be determined depending on the accumulated value as a whole.

7. Contract price

The remuneration of the contractor will consist of a certain price that should be given in euros.

The price will be appropriate to the compliance of the contract. It should be based on the general market price when the tender budget is set. Rules will be applied on offers with disproportionate values, to avoid alterations that may result from price inconsistency with the provision contracted.

The contract price can be made both in terms of unit prices, referring to different components of the provision, or units that are delivered or provided, applicable prices in lump sums or as part of the contract provisions. In any event, the amount of Value Added Tax (VAT) to be paid by **Medcities** will be indicated as a separate item. Current tax legislation regarding personal income tax will be applied at the time of the contract.

8. Nature of contracts and competent jurisdiction.

The contracts entered into by **MedCités** under these instructions, will always be considered private contracts.

The knowledge of litigious matters concerning the preparation, awarding, effects, compliance and expiration of contracts, governed by these Instructions, will correspond to the civil judicial order.

9. Awarding procedure

Any contract to be entered into will be governed by this clause:

a. Preparation and awarding of the contract

The awarding of contracts subject to these Instructions will be done through the procedure that regulates the following. The Contractor profile should at all times include updated information on projects and chief activities of MedCités that are indicated in its annual work plan.

The contracting procedure will start with the decision by the Contracting Authority, briefly indicating the contract to be entered into, its nature and extension, the subject, the approximate cost of the contract and the existence of sufficient budget, It will approve the conditions through which the selection procedure of the contractor will be governed.

Once the deadline has elapsed to submit participation applications, the Contracting Authority will negotiate the terms of contract with potential contractors, which have shown their interest in participating in the project, and fulfil the minimum requisites, the selection to award the contract will be made, as applicable.

b. Formalization of the contract

It is compulsory for the contract to include:

- a) Identity of the parties
- b) Accreditation of the capacity of the signatories to cover the contract.

- c) Definition of the subject of the contract.
- d) Reference to applicable legislation.
- e) The list of documents that form the contract.
- f) The specific amount or how it will be determined.
- g) The duration of the contract or the estimated dates to start and complete its implementation, along with the extension or extensions, if planned.
- h) The reception, delivery or admission terms of provisions.
- i) Payment terms.
- j) The circumstances to introduce modifications to the contract, always within the limits set by the TRLCSP.
- k) The circumstances leading to termination and its consequences in all circumstances.
- l) The objective and temporary extension of the duty of confidentiality, imposed on the contractor, as applicable.

In those circumstances in which the potential service or acquisition of goods requires the participation in any type of tender procedure or prior selection, through the Contracting Authority, **MedCities** will sign the contract with the selected contractor, with the minimum contents indicated in these Instructions.

Contractual documents and all documentation required for the preparation, awarding and general implementation of contracts, should be drawn-up in Spanish and/or Catalan. Contracts signed with foreign companies or professionals will be translated from Catalan and/or Spanish to English or French depending on the country. The acceptance of documents drawn-up in other languages may be agreed exceptionally for each contract, by the Contracting Authority through a substantiated decision and under its responsibility.

c. Excluded contracts

The rules contained in these instructions will not be applicable to those contracts entered into by **MedCities**, which, owing to their amount, should be classified as contracts subject to harmonized regulation. They should be implemented in a member country of the European Union, in which case the regulations of the TRLCSP are applicable, referring to community advertising and contract awarding procedures.

10. Entry into force

These Contracting Instructions will enter into force on their publication in the Contractor Profile, in accordance with the delegated power to contract in the broadest sense, held by the MedCitiesGeneral Secretary.