

NOTE ABOUT THE PUBLIC NATURE OF THE COMPANY "ENSA"

EQUIPOS NUCLEARES, S.A., S.M.E. (ENSA) is a Commercial Company 100% owned by the Spanish State, which is why it is classified as a **public sector commercial entity**, as established in art. 3.2.b) of Law 47/2003, of November 26, General Budget (*Ley 47/2003, de 26 de noviembre, General Presupuestaria*).

ENSA, as a public buyer/client, is subject to the rules of public procurement, within the category contemplated in art. 3 of Law 9/2017, of November 8, on Public Sector Contracts (*Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público*). Therefore, it can generally purchase goods or services to third parties if the purchase complies with these rules.

Reversely, these provisions do not limit ENSA's contracts as a supplier or service provider, situations where private law is applicable.

Law 9/2017, of November 8, on Public Sector Contracts (LCSP)

LCSP states that the awarding of contracts by these entities will comply with the following rules:

- 1) To approve Contracting Instructions accordingly with the principles of LCSP: publicity, competition, transparency, confidentiality, equality and non-discrimination. These Instructions will be made available to all those interested in participating, by publishing them on the Public Contracting Platform or on their corporate website.
- 2) To publish the request for tenders, in the same way as the Instructions, the first containing at least the Particular Administrative Conditions sheet and the Technical Prescriptions sheet as a content of the future contract.
- 3) To set a minimum tender submission deadline of 10 days counting from the publication of the tender notice.
- 4) The award of the contract must go to the best offer, in accordance with the provisions of articles 145 and 146 of the LCSP, that is, following objective evaluation criteria applied through formulation.

ENSA's Contracting Instructions (original June 14, 2018, modified November 25, 2021)

The current ENSA Contracting Instructions (IIC), which were approved on November 25, 2021 by the governing bodies of the Company and with a favorable report from the State

Attorney's Office on November 26 of the same year, develop certain points of the LCSP, especially in relation to the contract award procedure.

The procedures, in summary, are:

- **Open Bid** (arts. 8 and following): the request for offer is made public. In this form, there are:

- Bids *stricto sensu*, which consist of the publication of the request and conditions, presentation of offers by an unlimited number of tenderers, evaluation of the offers in accordance with the published conditions and awarding of the contract.

- Dynamic procurement systems: the bidding process with fix conditions (approved suppliers panel) is kept open to anyone for a maximum of four years, and based contracts are awarded to any of those operators approved.

- **Negotiated without publicity** (art. 3.a IIC): Publicity is excluded and replaced by an invitation to a specific operator or operators, with a minimum period of 10 days to respond; after submitting offers, the contract price is negotiated.

However, this form of award can only be used: a) the contract has the aim of creation or acquisition of a work of art that is not part of the Spanish Historical Heritage, **b) there is no competition for technical reasons**; or **c) that operator has exclusive rights**, including intellectual and industrial property rights.

In any case, it is necessary to reliably prove, before the Court of Auditors and other regulatory bodies, the compliance of one of these requirements.

Regarding exclusivity or lack of competitors in market, Spanish courts have stated that it is not sufficient for the contracting party to issue a responsible declaration, but that it is also necessary to justify and prove the exclusivity for technical reasons. Such accreditation can be made in a technical report where sufficient arguments are offered to consider the participation of a unique operator, and this report excludes the commercial opportunity, the deliberate inclusion of technical restrictions, the urgency in supplying and other non-technical factors.

The IICs will, in any case, be mandatory for ENSA and for its governing bodies, as well as for the company's personnel. They will not replace or displace the legal regime provided for in public procurement regulations.

Legislation (Spanish):

[Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público](#)
[Instrucciones Internas de Contratación de Ensa \(publicadas en web\)](#)