

**PARTICULAR ADMINISTRATIVE
SPECIFICATIONS TO AWARD THE PROMOTION
OF VITORIA AIRPORT AND VITORIA-GASTEIZ,
ÁLAVA AND THE BASQUE COUNTRY AS A
DESTINATION OF ECONOMIC AND TOURIST
INTEREST.**

(PAVIA01_2020)



Vitoria International Airport Promotion Agency

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1) Subject-matter of the contract:

The purpose of this procedure is to contract the promotion of Vitoria Airport and Vitoria-Gasteiz, Álava and the Basque Country as a destination of economic and tourist interest from 31 March 2021 to 31 March 2025.

The CPV classification of the contract is 79342200-5; and given its price, it is subject to harmonised regulation.

2) Needs to be met by this contract.

The performance of the contract as defined in the Particular Administrative Specifications meets the following needs:

- Promotion of the airport as an infrastructure at the service of passengers.
- Promotion of airport activities within the operating hours of Vitoria airport.
- Strengthening of scheduled flight operations as part of the Autonomous Community of the Basque Country's air transport complementarity strategy.
- Recognition of Vitoria Airport as an infrastructure, not only dedicated to air cargo, but also to passenger transport, as part of the air complementarity strategy of the Autonomous Community of the Basque Country.
- It gives continuity to the promotional activities of the Airport

3) Budget of the contract

I.- Budget

The overall budget of the contract amounts to FIVE MILLION, EIGHT HUNDRED THOUSAND EUROS (€5,800,000). Value Added Tax excluded.

This budget is broken down as follows:

The part of the budget to be implemented immediately totals FOUR MILLION, EIGHT HUNDRED THOUSAND EUROS (4,800,000 Euros), VAT excluded, to present the technical offer detailed in this tender. This part of the budget is broken down into two groups with maximum amounts.

GROUP 1: Promotional Action Plans for Markets to be consolidated with a maximum budget of FOUR MILLION EUROS (4,000,000 Euros), VAT excluded.

GROUP 2: Promotional Action Plans for New International Markets with a maximum budget of EIGHT HUNDRED THOUSAND EUROS (800,000 Euros), VAT excluded.

The part of the budget to be implemented in the future totals ONE MILLION EUROS (1,000,000 Euros), VAT excluded, for possible extensions to the promotion concerning this contract throughout its performance, in accordance with the terms set out in Point 28 of the Administrative Specifications of this tender.

II.- Contract price

The overall Price of the contract (on which the offer must be submitted) is FOUR MILLION, EIGHT HUNDRED THOUSAND EUROS, (€4,800,000); VAT excluded.

This overall price is broken down as follows:

Basic price, which must include the Promotional Action Plans for Markets to be consolidated with a maximum budget of FOUR MILLION EUROS (4,000,000 Euros), VAT excluded. The submission of the Group 1 bid is mandatory to participate in the tender. (Group 1).

Additional price, which shall include the Promotional Action Plans for New International Markets with a maximum budget of EIGHT HUNDRED THOUSAND EUROS (800,000 Euros), VAT excluded. The proposal for Group 2 is optional, (Group 2).

III.- The difference between the Budget and the Overall Price, ONE MILLION EUROS (€1,000,000), VAT excluded, has been earmarked for possible amendments to the contract, as regulated in Clause 28 of these specifications.

4) Budgetary allocation

This contract will be financed against the budgetary account of VIA Promoción del Aeropuerto de Vitoria, S.A. expressly created to cover the funding needs, among others, of this contract based on the following budgetary agreements of the partners:

Basque Government, Concession of a Direct Nominative Subsidy to VIA, Promoción del Aeropuerto de Vitoria S.A. corresponding to the Budget item "20.0.1.03.41.0300.1.451.00.51413.005/L" agreed in the Governing Council on 25 August 2020.

Provincial Council of Álava, Credit Commitment corresponding to the item "1.15101.0901.4790002 Convenio VIA Potenciación Foronda".

City Council of Vitoria-Gasteiz Credit Commitment corresponding to budgetary item 0821 4331 48175 "CONVENIO CON VIA PARA POTENCIAR ACTIV. DEL PASAJE".

5) Law of the contract

The contract and preliminary documentation and processes are governed by the following law:

Preliminary documentation and processes regarding the contracting parties, in particular the bidders and the contract award method, are governed by Law 9/2017, of 8 November, on Public Procurement, (hereafter LCSP), that transposes into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014.

And the contract performance shall be governed by the law specified by the contract. In view of its private legal nature, it will be, apart from the sectorial law, the private legal system.

6) Award proceedings

The contract will be awarded through the open proceedings procedure, (articles 156 to 158 of the LCSP).

The deadline to submit bids will be November 20st at 13:00.

The envelopes will be opened within five days after the bid submission deadline.

The award proposal will be taken by the Contracting Authority approved by VIA, Promoción del Aeropuerto de Vitoria S.A. for this procedure, which is made up of five (5) members. The valid constitution of the contracting authority will require that one half plus one of its members must be present. For decision making, the Contracting Authority may seek the support of a Technical Committee made up of VIA experts, the VIA legal adviser on contracts, and experts in the matters covered by the contract.

The deadline for awarding the contract will be a maximum of twenty days from the date the envelopes are opened.

7) Issues subject to negotiation with the tenderers

As this is an open procedure, no negotiation is required.

8) Abandonment and fees to be paid

The contracting body may desist at any time prior to the awarding procedure of this contract under the terms and conditions set out in Article 152 of the LCSP; and this will entitle the bidders to compensation for the expenses incurred in submitting their bids.

9) Requirements to bid

9.1 Natural or corporate persons must meet the following requirements to be a party to the award proceedings:

Have the physical or legal personality, full capacity to act, not to face any circumstance preventing it from contracting under section 60 of the Consolidated Text of the Act on Public Procurement.

Have the technical competence in connection with materials, personnel and organization means sufficient to properly perform the contract and all provisions subject to the award.

Have the financial capacity to properly execute the provisions of the contract; being in bankruptcy proceedings, or in preliminary proceedings for bankruptcy, in a labour force adjustment plan or in any other circumstance affecting the economic situation of the company significantly affecting the corporate or financial situation will be an impediment for participating in these proceedings.

10) Bid bonds

No bid bond is required to submit the tenders.

11) Submission of tenders

Bid documents shall be submitted in closed envelopes externally marked as follows:
“LICITACIÓN PARA CONTRATACIÓN DE PROMOCIÓN AEROPUERTO DE VITORIA 2021 a 2025”

They should also be identified with the name and address of the bidder, its signature or the signature of the person duly representing it. A separate sheet shall be contained by each envelope as a table of the contents in each of them.

Envelopes will be submitted to VIA, Promoción del Aeropuerto de Vitoria, S.A. premises as stated in the invitation to bid; the person filing them will be given a receipt for the documents submitted including the bidder name, key to the bid, date and time of submission. Envelopes may also be sent by courier; in that case, the bidder is liable for the submission within the time limit and to the premises of VIA, Promoción del Aeropuerto de Vitoria, S.A.

If the documentation is not received within the indicated period, and with the established formalities, it will be rejected. The documentation accrediting the capacity and solvency shall be rectifiable, but not the defects that affect their existence; bids that do not conform to the documentation examined and accepted, exceed the base bidding budget, substantially vary the established model, or contain a manifest error in the amount of the proposal, or where the bidder acknowledges that it is flawed or inconsistent, shall also be rejected.

In the event of any discrepancy regarding amounts expressed in words and numbers, the figures shall be as indicated in words.

Prices shall be expressed in Euros.

12) Method of submission of tenders

12.1 Tenders will be submitted in three numbered envelopes with the following labelling on each one:

ENVELOPE A GENERAL DOCUMENTS

Documents included in this envelope may be original documents or certified copies thereof according to the applicable law.

a) Documents proving personality and capacity of the bidder

1. The capacity to act of the businesspeople will be accredited by means of the deed or document of incorporation, the articles of association, or the founding act, in which the rules by which their activity is regulated are stated, duly registered, if applicable, in the corresponding Public Registry, according to the type of legal entity in question.

2. If a business permit is required for performing the activity or provision being the subject-matter of the contract, a certified copy of the certificate attesting the professional ability.

3.- Documents proving the representation

Persons appearing or signing bids on behalf of another person shall file the relevant power of attorney granted before a notary public.

If the bidder is a corporate person, the general power of attorney should be registered, if appropriate, before the Companies House. If it is a particular empowerment, however, it does not need to be registered before the Companies House.

Likewise, a person with a sufficient power for the purposes of representation shall produce a copy certified by a Notary or administrative official, of the National Identity Document or, if appropriate, of another equivalent identity document.

4.- Document authorizing the treatment of your details by VIA, Promoción del Aeropuerto de Vitoria, S.A. with the formalities required by the state and community regulation on personal data protection. (Annex 9).

b) Documents to support economic and financial solvency

Economic and financial solvency will be supported through one of these means:

1.- Statement of annual turnover for the last three ended years showing that the addition of the three years exceeds twice the contract price as established in the invitation to bid.

The annual turnover will be proved by the approved annual accounts deposited with the Companies House if the bidder is registered with said registry. Otherwise, it will be proved by the approved annual accounts deposited with the official registry where it must be registered. Individual bidders not registered with the Companies House shall prove their annual turnover through their inventory and accounting books legalized by the Companies House.

2.- Document supporting the existence and validity of an insurance policy covering professional risks for an amount equivalent or exceeding the amount required by the invitation to bid. Supporting document should be original (or a copy certified by the insurer) attesting the existence of such an insurance, its validity and that the bidder is up to date with the payments; and an affidavit confirming that the insurance will be maintained under the same terms and conditions during the term of the contract.

3.- Equity, or liabilities to assets ratio, at the end of the last financial year for which the approval of annual accounts is due. It shall be twice the contract price as established in the invitation to bid.

It will be attested by the approved annual accounts of the last ended year deposited with the Companies House or the relevant official Registry if the time limit for depositing them has expired and they were actually deposited. Otherwise they shall be deposited with the approval certificate issued by the relevant company's management authority. Individual bidders not registered with the Companies House shall submit their inventory and accounting books legalized by the Companies House.

4.- In any case, registration in the Official Registry of Bidders and Classified Companies of the Public Administrations will be evidence for all public contracting authorities of the economic and financial solvency of the bidder provided that the registration includes provisions in this regard and unless there is evidence to the contrary. Therefore, submission of the original or certified copy of a document attesting the registration and dated after the date of the invitation to bid will be sufficient evidence of the fulfilment of this requirement.

5.- The classification of a bidder in a group or sub-group that corresponds to the promotion activities.

To facilitate the submission of the documentation, economic and financial solvency may be accredited by means of a statement of compliance. If this method is chosen, once the contract has been awarded, the successful bidder must justify his economic and financial solvency by one of the means indicated in this article before the deadline set out in Article 19 of this specifications document and, in any case, before the formalisation of the contract. (Annex 3).

c) Documents to support technical or professional competence

The bidder may base on the competence and resources of other entities regardless of their legal nature of the links between them, provided that the bidder shows that during the performance of the contract those resources will be indeed available. Evidence of competence

through external resources as required by section 63 of the Consolidated Text of the Act on Public Procurement shall include evidence that the bidder will indeed have these means available upon production of the relevant availability undertaking.

In case of being the successful bidder, it will perform the contract with the same means used to support its competence. They may only be replaced due to unforeseeable reasons for other means supporting equivalent competence and with the prior consent of the Administration.

Evidence of technical or professional competence will be supported through one of these means:

1.- A list of the main services or works carried out during the last five years including amount, dates and public or private contracting party in connection with the subject-matter of the contract. Services provided or works carried out will be proved through certificates issued or approved by the relevant authority if the contracting party is a public entity; if the contracting party is a private entity, a certificate issued by said party or, by default, an affidavit by the bidder; if appropriate, said certificates will be sent directly to the contracting authority by the relevant authority.

2.- Statement about the technical personnel or internal and external technical units that will be involved in the performance of the contract.

3.- Statement on the annual average company's staff and significance of managerial personnel during the last three years with relevant supporting documents.

4.- Affidavit attesting machinery, technical equipment available for performing the works or rendering the services with the supporting relevant attachments.

5.- Statement of compliance with the mandatory requirements as set out in section V of the Technical Specifications of this procedure.

6.- The classification of a bidder in a group or sub-group that corresponds to the promotion activities.

To facilitate the submission of the documentation, technical solvency may be accredited by mean of a statement of compliance. If this method is chosen, once the contract has been awarded, the successful bidder must justify his technical solvency by one of the means indicated in this article before the deadline set out in Article 19 of this specifications document and, in any case, before the formalisation of the contract. (Annex 3).

d) Foreign companies.

1.- To justify the necessary skills as well as technical and financial solvency, foreign companies may also do so by means of official documents from their respective states. In the

case of EU member states, said documents need not be validated in accordance with Spanish regulations as long as they comply with the relevant requirements established in applicable rules in accordance with community or state regulations. If the company is from a country that is not an EU member state, the documentation must be validated for it to be accepted within the European Union.

2.-Foreign businesspersons shall provide a statement by which they submit to the jurisdiction of the Spanish Courts and Tribunals, of any type, that correspond to the city of Vitoria (according to their relevant territorial and functional competence) regarding all incidents that may arise directly or indirectly from the contract; waiving, if appropriate, any foreign jurisdiction to which the bidder may be entitled. (Annex 8)

e) Affidavits.

Bidders shall also submit the following documents:

1.- Affidavit of full capacity to act and affidavit attesting that they are not involved in practices or activities that would prevent them to enter into the contract pursuant to the provisions of section 71 de la LCSP. (Annex 2)

2.- Declaration of being up to date in the fulfilment of tax and social security obligations under the provisions in force.

These affidavits should be dated after the date of the invitation to bid. (Annex 4).

3.- Affidavit under the terms set out in paragraph 1 of Article 70 of the LCSP that they have not participated in the preparation of the technical specifications or preparatory documents for the contract referred to in this tender. (Annex 5).

4.- Natural persons (by an affidavit) or directors of corporate persons (by a certificate issued by the management authority) shall specify in said affidavit or certificate that they are not engaged in any of the incompatible practices or activities pursuant to the provisions of the Basque Parliament Act 1/2014 on Codes of Conduct and Conflicts of Interests of Public Officials. (Annex 6).

5.- Sufficient authorization so that the Contracting Authority can verify the fulfilment of the tax and social security requirements in favour of VIA, Promoción del Aeropuerto de Vitoria, S.A. (Annex 10).

6.- Evidence of compliance with the legislation on recruitment of disabled people or Royal Decree 364/2005 of 8 April governing the alternative compliance, with an exceptional nature, of the positions reserved for disabled workers.

7.- Evidence of compliance of the Parliament Act 3/2007 of 22 March for the effective equality of men and women, in particular, the employers bound by said Act shall submit the

equality plan governed by section 45 of the aforementioned Act and its appropriate implementation.

8.- List of group companies: for the purposes of applying the rule established by section 86(1) of the General Regulation of the Act of Contracts with Public Administrations in connection with second paragraph of section 145(4) of the Consolidated Text of the Act on Public Procurement, bidders shall submit an affidavit attesting that they do not belong to a group of companies or that they meet the requirements established by section 42 of the Commerce Code and belong to a group of companies. In this case the bidder shall list the companies of such a group and those submitting the tenders.

9.- Confidentiality statement: bidders may submit a statement indicating which administrative and technical documents and submitted data are, in their opinion, confidential. (Annex 11).

10.- Subcontracting: in case of potential subcontracting, bidders shall state in their tenders the part of the contract that they may entrust to a subcontractor and provide its name or business profile defined with reference to the technical or professional competence features of said subcontractor; and the maintenance of such external means during the entire term of the contract.

11.- E-mail address: bidders shall provide an e-mail address so that the VIA may send electronic communications. Said email address will be used to communicate the progress of these contracting proceedings.

ENVELOPE B TECHNICAL BID DOCUMENTS FOR ASSESSMENT BASED ON VALUE CRITERIA

This envelope shall contain the documents proving the measures referred to in section 5.1. and 5.2.1. of the Technical Specifications.

The technical bid shall also include any additional information that may assist the contracting authority to assess the suitability of the bid submitted and the eligibility of each bidder to be awarded the Contract, where appropriate.

The bidder may submit, for clarification purposes, the documents deemed convenient and may mark those being confidential.

VIA, Promoción del Aeropuerto de Vitoria S.A. reserves the right to conduct any verification work it considers appropriate or to request any additional documentation it considers necessary to confirm the veracity of the information provided by the bidders in the previous sections.

Annexes 12a-f to these specifications is provided as a model for the submission of these documents.

ENVELOPE C ECONOMIC BID AND TECHNICAL BID SUBJECT TO ASSESSMENT BY MATHEMATICAL FORMULAS

Economic offer will be included in Envelope B as shown in the form provided as Annex 1.

Bids may not be submitted in writing and must be submitted without amendments, deletions and with the date and signature of the bidding entrepreneur.

The price offered shall be for the complete service, i.e. the full price. Section 4.1 of the Technical Specifications must be followed, i.e. the maximum price required to provide the service must be offered. Bear in mind that there are two groups. It must, therefore, necessarily include the basic Price and, separately, the additional price (the latter is not necessary to submit a bid). All this with a breakdown of the applicable VAT and with the total amount (VAT included).

This envelope shall also include the documents that prove the measures referred to in sections 5.2.2. and 4.1. of the Technical Specifications. (Annexes 13 and 14)

13) Time limit for receipt of tenders

The documentation, duly added to the relevant envelopes, must be submitted before the deadline indicated in the announcement published in the OJEU. As for the formalities governing the submission of documentation, the provisions of clause 11 of this document shall apply.

After the deadline, no further bids will be accepted.

Submission of a tender implies the unconditional acceptance by the bidder of the technical specifications and particular administrative requirements and of the rest of documents incorporated to this request for bids.

Once a tender is submitted, it cannot be withdrawn. However, once the award proceedings are closed, documents from non-successful bidders will be returned.

14) Variants

Apart from the tenders to be assessed according to a value criterion, no other variants are accepted.

15) Opening of tenders and Awarding

Once the envelopes have been submitted, before the deadline to open the envelopes, to the headquarters of the contracting body, the documentation in Envelope A will be

examined to check that it meets all the requirements for the person who submitted it to be considered a bidder.

If the contracting authority finds any defects or omissions that can be remedied, it shall note them in the minutes and the successful bidder (where appropriate) shall remedy them before the contract is signed, at the risk of losing the provisional bond and the contract not being awarded.

Once the capability requirements have been examined, the technical bid envelope will be opened and assessed based on value criteria (Envelope B). After it has been assessed, the envelope containing the economic bid and the documents that justify the technical bid will be opened; these will be assessed subject to a mathematical formula (Envelope C).

The Contracting Authority shall draw up an award report based on the report prepared by the Technical Committee. This report shall be available in the VIA contracting profile. It will include a list of the bidders (that have not been excluded) from the highest to the lowest total score, with their partial scores for the financial bid and technical bid, and a justification of the scores given.

If the bidder with the highest score should have made a mistake that can be remedied, the bidder must remedy the defect before the Contracting Authority awards the contract, with a warning that the bidder will lose the tender if the defect is not remedied before the deadline given.

16) Criteria to take into consideration tenders with unusual or disproportionate values.

Since the price is not the only parameter for determining the most advantageous offer, a minimum threshold is established above which a bid is considered abnormal or disproportionate; this corresponds to 35 per cent of the average price of the bids submitted excluding yours and the one with the highest price. If two bids are submitted, the average price for considering a bid as having abnormal or disproportionate values will be that of the bid with the highest price.

In case the tender is considered to include unusual values or is disproportionate, the bidder will be required to account for its tender. If the contracting authority finds that the explanation is insufficient, the tender may be excluded from the awarding proceedings.

17) Award criteria:

In total, points amount to 100.

Of which, the economic bid will account for a maximum of 25 points, while the remaining 75 points will correspond to the technical bid.

This distribution takes into account the value that the company VIA places on achieving its corporate purpose, the promotion of Vitoria Airport, and on the confirmation, based on the experience of recent years of increasing passenger numbers at the airport, of the

importance, for said promotion, of the successful bidder’s capability to achieve market traction and penetrate the target markets. Consequently, the Technical Bid must necessarily have such a significant weight when establishing the score to award the contract.

This breakdown is detailed below:

ASSESSMENT OF THE BID				
ECONOMIC BID	25	Application of the Formula	20	Basic Price-Group 1
			5	Additional Price-Group 2
TECHNICAL BID	75	Value Judgement	15	Activity Report-Portfolio
			20	Mix of Promotional Actions
		Application of the Formula	20	Group 2 Promotional Action Plan
			20	Reach

The economic bid will provide a maximum of 20 points for the basic price offered and a maximum of 5 points for the additional price, based on the application of the formulas detailed below:

Assessment of the Basic Price offered:

The bid with the lowest basic price among those submitted will be given 20 points. The value of the rest of the bids will be determined in an inversely proportional manner based on the following formula:

$$P = 20 * (O_e / O_f)$$

P: The score that corresponds to the bid

O_e: The most economical bid

O_f: The bid submitted

Assessment of the Additional Price (if offered)

To assess the Additional Price, a **one-year period will be considered** and, therefore, the additional price offered will be divided by the years indicated in the Annex during which the service will be provided. Once this has been done, the bid with the lowest annual additional price will be awarded 5 points. The value of the rest of the bids will be determined in an inversely proportional manner based on the following formula:

$P = 20 * (O_e / O_f)$

P: The score that corresponds to the bid

O_e: The most economical bid

O_f: The bid submitted-

Bids that exceed the maximum overall Price established Will be excluded. Bids that exceed the maximum basic Price or the maximum additional price established will also be excluded.

18) Resolution of a tie in the total score of two or more bids:

Any tie in the total score between two or more bids shall be resolved in favour of the one with best technical offer subject to the Mathematical Formula.

If the tie persists, it will be resolved in favour of the bid with the highest score for the Technical Offer subject to the Value Criteria.

19) Award

The contracting authority, taking into account the criteria set out in clauses 17 and 18, may award the contract to the most advantageous tender; and to this end, it must make public the specific evaluation of each proposal based on the different evaluation criteria; and it shall award the contract under the terms set out in clause 15 of these specifications. To award the tender, the awarding report prepared by the Technical Committee will be taken into account.

The award must be made public within the deadline in VIA's contractor profile section.

The award will be notified to the successful bidder and to the rest of bidders.

The successful bidder must meet the following requirements before entering into the contract:

a) Tax requirements:

- Certificate issued by the State Tax Agency [*Agencia Estatal de Administración Tributaria*] attesting that the bidder has met all its tax obligations or an affidavit stating that the bidder has no tax obligations. This certificate may be obtained as provided by Royal Decree 1671/2009 of 6 November partially implementing Act 11/2007 of 22 June on the Electronic Access to Public Service by Citizens.

- Certificate issued by the Basque Country Tax Agency [*Administración Tributaria del País Vasco y Foral*] attesting that there are no debts with the Autonomous Region of the Basque Country or the Regional Council of Álava. This certificate may be obtained as provided by Decree 21/2012 on Electronic Administration.

b) Social Security obligations:

- Certificate issued by the Territorial Administration of the Social Security [*Tesorería Territorial de la Seguridad Social*] attesting that the bidder has met all its obligations with the Social Security or an affidavit stating that the bidder has no obligations with the Social Security.

c) Business tax

- Proof of being registered in the relevant schedule for the subject-matter of the contract of the Business Tax and that the bidder is up to date with the payment of said tax. A copy of the payment receipt of last year shall also be filed together with an affidavit stating that the bidder is still registered in the Registry of said tax.

If the bidder is not subject to this tax, an affidavit should be submitted as a proof thereof.

d) Further documents

- In the event that employees or materials external to the bidder's company were assigned to the performance of the contract: a list of those resources and affidavit about their availability during the term of the contract.

- Any other document proving the bidder's ability to be awarded the contract or the availability of the resources the bidder undertook to engage or assign to the performance of the contract pursuant to its tender.

- Proof of technical and economic solvency, if indicated in your offer by means of affidavits.

To comply with these requirements, the body will require the successful bidder to submit them within 10 working days of the notification, as a prerequisite for signing the contract.

In case these documents are not filed within the indicated time limit, except in the event of force majeure duly proved, the successful bidder will be excluded from the award. Then the contract may be awarded to the bidder with the second best assessment, who shall also meet the aforementioned requirements subject to the possibility of declaring the request for bids null and void, and with the loss of the final bond.

20) Conclusion of the contract

Once the documents are filed and accepted, the successful bidder will be invited to conclude the contract at the headquarters of VIA, Promoción del Aeropuerto de Vitoria, S.A. within at least five business days from the notice.

The contract shall include at least those aspects contained in section 35 of the LCSP.

If the contractor wishes to convert it into a public instrument, it will pay the notarial and other expenses arising from the conversion.

If it is not concluded for a reason attributable to the contractor, the contracting authority may set a new time limit; or award the tender to the offer that came in second place.

21) Constitution of the final bond

A final bond will be required in the amount of five percent of the price offered excluding VAT.

The bond will be constituted by withholding the first monthly invoices up to 5 per cent of the price.

22) Confidentiality

Once the contract is concluded, the contractor undertakes to keep the contractual terms and conditions confidential. The contractor undertakes to keep the contractual terms and conditions confidential and to avoid providing information on its contents and terms to third parties unless it has the written consent of VIA, Promoción del Aeropuerto de Vitoria, S.A.; or pursuant to the state and community legislation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Furthermore, in accordance with the provisions of Clause 12 of these specifications, bidders may submit a confidentiality statement, indicating which administrative and technical documents and which of the data submitted are, in their opinion, to be considered confidential.

23) Price change

No change of prices is foreseen.

24) Performance of the contract

Performance of the contract will be at the contractor's risk.

The contract will be performed subject to the provisions of its terms and conditions and subject to the specifications and according to the interpretation guidelines the contracting authority may provide the contractor with.

The contractor will be liable for the technical quality of the works carried out and the services rendered as well as the consequences for VIA, Promoción del Aeropuerto de Vitoria,

S.A. or third parties arising out of omissions, mistakes, inappropriate methods or incorrect conclusions in the performance of the contract.

The contractor must keep secrecy about data and background related to the subject-matter of the contract that it gets to know due to the performance of the contract subject to the provisions of section 20 herein.

The contractor shall send to the contracting authority, upon its request, a detailed list of the subcontractors and suppliers taking part in the contract when their participation is formalized together with the subcontracting or supplying conditions of each of them if they have a direct relationship with the terms of payment.

The execution of the contract shall be carried out following the best environmental practices; in particular with a view to maintaining or improving the environmental values that may be affected by the contract.

In addition, it will promote the employment of people with disabilities and the elimination of inequalities between men and women.

25) Contractor's obligations

In addition to the aforementioned obligations, the contractor shall:

a) Labour, social and economic obligations.

The assigned personnel will exclusively depend on the contractor who will have all the rights and obligations inherent in an employer with respect thereto.

In general, the contractor will be liable for all the obligations arising out of its status of employer as well as for the fulfilment of all the rules governing and implementing the labour relationship or other kinds of relationships between the contractor and subcontractors and the employees of contractor and subcontractors. No penalty, fine or other liability can be passed on VIA, Promoción del Aeropuerto de Vitoria, S.A.

The contractor shall be obliged to comply with all applicable industry regulations.

In any case the contractor shall hold VIA, Promoción del Aeropuerto de Vitoria, S.A. harmless against any amount to be paid for the fulfilment of the obligations established by these specifications even though it is ordered by a court or by an administrative authority.

The contractor shall on its account:

i) Obtain official or particular authorizations, licences, documents or other information required to provide the contracted services.

ii) Pay the expenses arising out of the verification of materials, monitoring or performance process and subsequent assistance during the guarantee period.

iii) Compensate the damages caused to VIA, Promoción del Aeropuerto de Vitoria, S.A and third parties as a result of operations required by the provision of the services except in case those damages are due to a direct order by VIA, Promoción del Aeropuerto de Vitoria, S.A.

b) Insurances

The contractor shall have signed the mandatory insurance policies as well as an insurance covering the liabilities arising out of the performance of the contract pursuant to the terms established, if appropriate, by the Particular Technical Specifications.

c) Communications

The contractor shall appoint a person to act as responsible and spokesperson to liaise with VIA, Promoción del Aeropuerto de Vitoria, S.A. in connection with the performance of the contract. His/her telephone, fax number and e-mail address should be available for permanent communications. Communications by e-mail will be considered correct in connection with the transmission date and time and contents thereof.

The contractor will also provide, if necessary, the names and surnames, professional telephone and fax numbers of other persons responsible for the performance of the contract. It will also specify their positions and the liability they assume in this contract.

d) Banks

The contractor shall inform VIA, Promoción del Aeropuerto de Vitoria, S.A. of a current bank account (including the relevant IBAN and SWIFT codes) in a bank operating in Spain so that payments can be arranged through bank transfer to that account.

e) Prohibition of subcontracting

The contractor undertakes to avoid subcontracting for the performance of the contract except for those specifications in this regard in its tender.

26) Time limits and penalties

The contract shall start on 31 March 2021 and end on 31 March 2025.

The contractor shall therefore perform the contract within the indicated time limit subject to the terms of the contract and the particular administrative and technical specifications.

If the performance of the contract is delayed or is not correct, VIA, Promoción del Aeropuerto de Vitoria, S.A. is entitled to opt for, at its discretion and pursuant to the

provisions of section 192 of the Act on Public Procurement, the termination of the contract and withholding of the final bond or the penalties provided by said section.

The total amount of the penalties does not exclude the compensation to which the Administration may be entitled for damages arising from any delay of the contractor.

If delay is due to reasons beyond the contractor's control, section 195 of the Act on Public Procurement shall apply.

27) Terms of payments

Terms of payments will be specified in the contract to be entered into by the bidder and VIA, Promoción del Aeropuerto de Vitoria, S.A. and, in any case, they will include a refund of the cost of tickets sold during this period, at the stipulated price.

28) Extension, amendment and termination of contract

I.- EXTENSION: The contract may be extended within the economic margins set out in Article 3 of these specifications, which provide for an extension of up to ONE MILLION (1,000,000) euros for the scenario set out in Article 4.2 of the Technical Specifications. This extension is regulated as follows;

1) It must be done on the initiative of VIA, Promoción del Aeropuerto de Vitoria S.A., which, based on the performance reports submitted by the successful bidder and other progress made, agrees to extend the promotion of Vitoria Airport to new markets and intensify actions in existing markets due to enhanced connectivity and, through the contracting authority, requests the successful bidder to submit a proposal for the extension.

2) The successful bidder must submit a written proposal that contains the overall Price of the extension and details of the promotional measures proposed for the market or markets concerned on the basis of the extension application form annexed to these specifications. The proposal for an extension must include, at least, the same actions as those considered obligatory in point 5.2. of the technical specifications; furthermore,

3) VIA will decide whether the proposal is suitable based on the parameters set out in its request to the successful bidder, which will generally be those set out in this tender.

4) The successful bidder will be obliged to submit and implement the extension if VIA's Contracting Authority requests and approves such an action.

5) The amendment will require the signing of an annex to the contract, which will amend the contract by adding the obligations of both parties inherent to the extension.

II.- AMENDMENT: The Contract may be amended in the following (duly justified) cases up to a maximum of 20 per cent of the initial price in accordance with the provisions set out in Article 204.1 of the LCSP (Public Sector Procurement Act).

1a) Amendment of the promotional actions indicated in the bid up to a maximum of 50 per cent, for ensuing and justified reasons. These amendments may be based on the recommendations included in the annual promotion reports that the successful bidder must submit in accordance with Clause 5.2. of the Technical Specifications.

It must be authorised by VIA. Regarding this calculation, the contracting authority will determine the proportional amount based on the data submitted by the contractor.

1b) Amendment of the destination markets where the promotional actions will be conducted and that are considered mandatory in the specifications document if the markets to be consolidated do not provide the necessary conditions for the promotional actions to take place due to circumstances beyond the control of the successful bidder and VIA. On a temporary basis, VIA may change the destination markets to the target markets listed in Clause 4 of the Technical Specifications. Said markets must meet the accessibility conditions set out in Point 1 of the Technical Specifications.

2) The contract may be amended if any of the circumstances foreseen in Article 205 of the LCSP (Public Sector Contract Law) concurs (not foreseen in the specifications, and duly justified): additional services, ensuing circumstances, or non-substantial amendments.

3) Delays or non-compliance not attributable to the contractor.

Non-compliance is not attributable to the contractor when the promotional service is reduced below the 50 per cent threshold due to ensuing and unforeseeable circumstances and, therefore, cannot be attributed to the contractor.

This will be considered, for all purposes, as a delay in performance if the following conditions concur, in addition to the threshold mentioned above:

- The service is still possible and satisfactory for VIA even after the end of the maximum contract deadline.
- The total contract price remains unchanged.
- This is agreed by VIA, based on a prior legal and technical report.
- The amendment will consist in extending the time limit by a period at most equal to that for which the service has remained below of the 50 per cent threshold.

4) The amendment will require the signing of a new contract; however, the contractual amendment must be implemented, for all purposes, while maintaining continuity of service, even if the contract remains to be signed. In addition, publication in the Official Journal of the European Union and in the contractor's profile.

If the successful bidder should refuse to accept these potential amendments to the contract, the contract will be terminated, and any damages incurred must be compensated.

III.- TERMINATION: The contract shall be terminated for any of the following reasons:

a) Death or disability of the individual contractor or annulment of legal personality of the contractor subject to the provisions of section 85.

b) Declaration of bankruptcy or decree of insolvency in any other procedure.

c) Agreement between the Administrator and the contractor.

d) Delay in meeting the deadline by the contractor.

e) Delay in payments by the Administration for a period exceeding the one established by paragraph 6 of section 198.6 of the LCSP or the shorter deadline established pursuant to paragraph 8 of said section.

f) Default in the remaining material contractual obligations qualified as such in the contract.

g) Impossibility of performing the provision of services pursuant to the initially agreed terms or the possibility of seriously damaging the interests of VIA, Promoción del Aeropuerto de Vitoria, S.A. if the services keep being rendered under those terms provided that the contract cannot be amended as described in previous section.

h) Failure to accept amendments to the contract as indicated in Clause 28.I.

The contract shall detail the termination reasons and the legal consequences in particular those arising from the performance by the contractor or VIA, Promoción del Aeropuerto de Vitoria, S.A.

29) Performance and termination

Once the contract is performed it will expire for all purposes subject to the necessary guarantee period.

The contracting authority shall agree on the performance of the contract and notify the contractor in this regard.

The guarantee period shall begin from the receipt of said notification.

30) Settlement

If there is, at the end of the contract, an outstanding amount or a claim against VIA, Promoción del Aeropuerto de Vitoria, S.A., it will be settled directly with the contractor.

31) Prerogatives vested in the contracting authority

The contracting authority enjoys certain prerogatives provided by section 190 of the LCSP.

32) Competent jurisdiction

Competent jurisdiction to settle all litigations arising out of the interpretation or performance of this contract will be vested in the courts of Vitoria or the relevant ones as if the parties had their headquarters in Vitoria and the performance took place Vitoria. The contractor waives any other jurisdiction it may be entitled to.

33) Method of submission of documents

Each bidder is liable for the submission of its documents which shall be adapted to the relevant application. Various forms are attached for several documents as specified; these forms are not mandatory. In case those forms are not used, the bidder will be liable for the lack of probative value of its documents. In case the relevant form is used, the submitted documents, if properly filled in, will be deemed valid.

34) Language used in the procedure and translation to other languages

The language used during the procedure will be Spanish; the version in this language will be the official one.

The contracting authority shall provide the documentation translated into English to facilitate the procedure for foreign companies bidding for the contract.

Bids should preferably be submitted in Spanish. English is the only alternative language accepted by the contracting authority.

35) Special appeal

In accordance with Article 44 and subsequent of the LCSP (Public Procurement Act), the following actions may be challenged before the Administrative Body for Contractual Resources of the Autonomous Community of the Basque Country:

- Tender notices, specifications, the contract and other documents governing the contract.
- Procedural actions that prevent the continuation of the process, that lead to a situation of defencelessness, or that directly or indirectly affect the awarding process.
- Agreements on the rejection of tenders or bidders.
- Changes to the specifications.
- Changes to the contracts.

The legal justification stems from the provisions of Article 48 of the LCSP; and the processing, particularly the time limit for filing claims, from the provisions of Article 50 and subsequent of the LCSP.