

Instituto de Biologia Molecular e Celular - IBMC

DIRECT AWARD No. 414/2024 - IBMC

**INVITATION TO PROPOSAL
DIRECT AWARD PROCEDURE**

PURCHASE OF SOFTWARE CLINICAL LICENSES FOR VARIANT ANALYSIS AND COPY NUMBER VARIATIONS (CNVs)

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Article 1 - Identification of the Procedure

This procedure has the designation AD 414/2024.

Article 2 - Type and Object of the Procedure

1. This public procurement procedure takes the form of Direct Award, with a view to the *Acquisition of Software Clinical Licenses for Variant Analysis and Copy Number Variations (CNV's)*, the object of the contract to be signed and in accordance with the technical specifications and conditions contained in *Annex I* of the Specifications Document of this pre-contractual procedure.
2. The present acquisition has CPV classification: 72540000-2 (Licenses (utilization service)).

Article 3 – Public Contracting Authority

Instituto de Biologia Molecular e Celular – IBMC

VAT number 503 828 360 | Rua Alfredo Allen, 208 | 4200-135 Porto

E-mail address: procedimentosccp@ibmc.up.pt

Article 4 – Competent Authority for the contracting decision

The Public Contracting Authority's management, Competent Authority for the contracting decision, took the decision to contract, on October 8, 2024.

Article 5 - Reasons for Choosing the Type of Procedure

The procedure is by Direct Award under the provisions of the Public Procurement Code, hereinafter referred to as the "PPC", approved by Decree-Law 18/2008, of January 29, in its current wording, other applicable legislation and regulations, in particular, under the terms and effects of the provisions of Article 16(1)(a) and (2)(e); Article 24(1)(e)(ii) and (iii); Article 36(1); Article 38; and Articles 112 et seq.

Article 6 - Invitation and Invited Entity

Instituto de Biologia Molecular e Celular - IBMC hereby invites the company *Golden Helix, Inc*, to submit a proposal as part of a pre-contractual Direct Award procedure.

Article 7 - Procedure Management

The pre-contractual procedure is conducted by the competent department of the Public Contracting Authority, namely the Public Procurement Department, in the person of the Direct Award Manager for the acquisition of the services in question, appointed by the Public Contracting Authority's management on 08/10/2024, with the email address procedimentosccp@ibmc.up.pt and with office hours of 9:00-13:00 and 14:00-17:00.

Article 8 - Access to the Procedure Documents

1. The procedure dossier is, in accordance with articles 40, n.º 1, al. a), and 2; 42 and 115 of the PPC, made up by the invitation to proposal and by the Specifications Document, as well as by the other documentation that is an integral part of it.
2. The procedure documents can be downloaded through the free access in Public Contracting Authority's website: <http://www.ibmc.up.pt/public-procurement>.

Article 9 - Clarifications and Rectifications on the Procedure Documents

The Public Contracting Authority is responsible for providing the necessary clarifications for a good comprehension of the procedure documents, which requests shall be addressed to the following e-mail address: procedimentosccp@ibmc.up.pt. The Public Contracting Authority shall provide the requested clarifications by the same way.

Article 10 - Impediments and their Revelation

1. The Awardee must not be in any of the situations provided for in Article 55 of the PPC.
2. Without prejudice to the provisions of the previous paragraph, the provisions of Article 55(1)(d) and (e) shall apply to the regimes for settling tax debts and social security debts.
3. If the Awardee is in one of the situations referred to in points b), c), g), h) or l) of paragraph 1 of the aforementioned article, it may demonstrate its suitability to perform the contract, namely by:
 - a. Demonstrating that it has compensated or taken steps to compensate for any damage caused by the criminal offense or serious misconduct;
 - b. Full clarification of the facts and circumstances through active collaboration with the competent authorities;
 - c. Adoption of technical, organizational and personnel measures that are sufficiently concrete and adequate to prevent further criminal offences or serious misconduct.
4. Notwithstanding, if the Awardee complies with the provisions of the previous paragraphs, the Public Contracting Authority may decide that the impediment is not relevant.

Article 11 - Proposal Documents

1. The proposal to be presented shall include the following documents:
 - a. Declaration by the invitee of acceptance of the content in the Specifications Document, made in accordance with the *Annex I* template of this procedure (Declaration template referred to by Art. 57, no. 1, paragraph a) of the PCC);

- b. Price offer made in accordance to the *Annex II (Proposal Template)* of the present Invitation, of which it is an integral part;
 - c. Model declaration of commitment of subcontractor, where applicable (*Annex IV* of this Invitation);
 - d. Other documents presented by the invitee, considered to be indispensable, by containing **attributes of the proposal**, according to which he is willing to contract.
2. The information contained in the documents referred to in **paragraph d)** above must be limited to what is strictly necessary and must comply with the following parameters:
- a. Under no circumstances should it exceed the limit of **6 (six) pages**, failing which the excess pages will not be taken into account for the purposes of evaluating the proposal;
 - b. The font size must not be less than 10pt;
 - c. If there is a need to submit more than one document, the invitee must order them, for the purposes of counting the limit of sheets/pages referred to in point a) above (e.g. 1. commercial proposal; 2. catalog).
3. All documents that constitute the proposal may be presented in Portuguese or English languages, except the one mentioned in no. 1, paragraph a), which must be written in Portuguese.

Article 12 - Base Price and Indication of Price

1. The base price set forth in Clause 4 of the Specifications Document is **USD 58 608.00 (fifty-eight thousand, six hundred and eight USD dollars)** corresponding to the current exchange rate of **€ 53 394,82 (fifty-three thousand, six hundred and eight euros and eighty-two cents)**;
2. Under the terms of Article 47(1) of the PPC, the base price is the maximum price that the Public Contracting Authority is willing to pay for the performance of all the services that make up the subject of the contract.
3. The prices of the proposal, which shall include all charges inherent to the object of the contract to be signed, shall be indicated in figures and without value added tax (VAT).
4. Whenever several prices are indicated in the proposal, in case of divergence between them, the most decomposed partial prices shall always prevail, for all purposes.

Article 13 - Proposal Submission

1. The proposal concerning this procedure shall be submitted through Public Contracting Authority's website, which is free of charge: www.ibmc.up.pt/public-procurement.

2. Up to 10 files may be submitted, with the maximum size of 26MB and in the following formats: pdf; zip, rar, xls, docx, doc and odt. After submission, the invitee will receive a confirmation via email, of the act.
3. We warn you that only the email addresses authenticated by us will be allowed to access our portal, for the purposes of proposal submission, together with a key, of the type "c5651f87c86dfdb3473e027ec8a28abb8958db", provided with invitation of this procedure.
4. The invitee be responsible for any problem occurring during sending or receipt of oversized email messages.

Article 14 - Deadline for Proposal Submission

The proposal may be submitted **until 12pm (local time) on October 14, 2024.**

Article 15 - Proposal Maintenance Period

The proposal must be valid for a minimum period of **66 (sixty-six) days**, counted from the expiration of the proposal's submission deadline.

Article 16 - Variant Proposals

The submission of variant proposals is not authorized.

Article 17 - Negotiation

Under no circumstances will the proposal submitted be subject to negotiation.

Article 18 - Electronic Auction

There will be no electronic auction.

Article 19 - Proposal Analysis and Award

1. The competent department appointed to carry out the procedure will analyze the proposal submitted in all its attributes, terms and conditions, drawing up a draft award decision which it will forward to the Competent Authority for the contracting decision, which is responsible for deciding on its content, namely for the purposes of awarding the contract.
2. The award of the contract is the act by which the Competent Authority for the contracting decision accepts the proposal submitted and notifies the award of the contract, until the deadline for the obligation to maintain proposal has expired.

Article 20 – Notification of Award

1. In accordance with article 77 of the PPC, the award decision is notified to the Awardee.
2. Along with the award notification, the Awardee will also be notified:
 - a. To present the qualification documents required in accordance with the provisions of the following Article and in accordance with Article 81 of the PPC;
 - b. Confirm within **3 (three) working days**, if applicable, the commitments made by third parties relating to attributes or terms or conditions of the awarded proposal.
3. No award shall be made when any of the situations set out in paragraph 1 of article 79 of the PPC occurs.

Article 21 - Qualification Documents

1. In the event of an award, the Awardee must submit, in accordance with Article 81 of the PPC and Ordinance 372/2017 of December 14, in its current wording, the following *Qualification Documents* within **3 (three) working days** of notification of the award decision:
 - a. A declaration, sworn on honor, drawn up in accordance with the model in *Annex III* to this invitation, of which it forms an integral part;
 - b. Qualification documents referred to in Article 81(1)(b) of the PPC, namely:
 - ✓ The criminal record from the Board of Administration, Company Management or Direction, or an equivalent document issued by the competent judicial or administrative authority, that proves that those requirements are satisfied;
 - ✓ Company Register, or an equivalent document;
 - ✓ Proof of regularized status regarding social security contributions and taxes due in the country of the Awardee or equivalent certificate issued by the competent authority.
2. Pursuant to Article 4 of Ordinance 372/2017 of December 14, in its current wording, when, by their very nature or origin, the qualification documents mentioned in paragraph b) above are written in a foreign language, the Awardee must accompany them with a duly legalized translation.
3. Under paragraph b), no. 2, Article 3 of the Decree-Law 60/2018 of August 3, the declaration provided for in paragraph a) above, provided that it is presented in the languages admitted for the presentation of the proposal, does not require a duly legalized translation.
4. Within the scope of paragraph c), no. 2, Article 3 of the aforementioned Decree-Law, when, in the country of origin of the Awardee, the required document(s) or certificate(s) in paragraph b) above are not issued, they may be replaced by declaration of honor. It may be drawn up in the languages provided for

the submission of the proposal, not requiring a duly legalized translation or being presented before a notary, judicial or administrative authority or any other competent authority.

5. In accordance with Article 3, no. 7, of Ordinance 372/2017 of December 14, in its current wording, the Competent Authority for the contracting decision may request the Awardee, even if they do not appear in this Invitation, the presentation of any documents proving the ownership of the qualifications legally required for the provision of the services covered by the contract to be concluded, setting a deadline for that purpose.

6. Whenever there is a fact that determines the expiration of the award, in accordance with Article 86. No.1 of the PPC, the Public Contracting Authority will notify the Awardee for which the event occurred, setting the deadline of **2 (two) days** for comment, in writing, under the right of prior hearing.

7. When, for the reasons brought forward, the situations referred to in Article 86, no.1 of the PPC are derived from a fact not attributable to the Awardee, the Public Contracting Authority shall fix an additional period of **3 (three) working days** for the purpose of presentation of the missing Qualification Documents.

8. The Awardee must submit a reproduction of the qualification documents referred to in this article by e-mail: procedimentosccp@ibmc.up.pt

9. Non-presentation of the qualification documents in accordance with the terms of this article implies the expiration of the award (Article 86(4) of the PPC).

Article 22 - Causes of Non-Award and Revocation of the Decision to Contract

1. There will be no place for award when one of the causes set out in Article 79 of the PPC occurs.
2. The non-award decision, as well as the respective reasons, in accordance with the provisions of paragraph 2 of Article 79 of the PPC.
3. The expiration of the award also determines the subsequent occurrence of circumstances that make the celebration of the contract unfeasible, namely due to natural or legal impossibility, extinction of the Public Contracting Authority or the Awardee or due to the latter's insolvency, in light of article 87-A of the PPC.
4. The non-award decision referred to in the previous numbers determines the revocation of the decision to contract, under the terms established in Article 80 of the PPC.

Article 23 - Confirmation of Commitments

1. The Awardee must, within **3 (three) working days** from notification of the award decision, confirm, if applicable, the commitments made by third parties relating to attributes or terms or conditions of the awarded proposal.

2. Within the scope of Article 92 of the PPC, at the reasoned request by the Awardee, the Competent Authority for the contracting decision may extend the deadline set may extend the period fixed for the confirmation of commitments assumed by third parties relative to attributes or terms or conditions of its proposal.
3. The non-confirmation of commitments is regulated under the terms of the provisions of Article 93 of the PPC.

Article 24 - False Documents and Statements

Without prejudice to reporting to the competent authority for criminal prosecution, the falsification of any qualification document or the wrongful delivery of false declarations entails the forfeiture of the award.

Article 25 - Celebration of the Contract

1. Pursuant to Article 95(1)(c)(i) of the PPC, the contract shall not be required to be in writing if the services are provided in full within a maximum period of 20 (twenty) days from the date on which the Awardee provides proof that the security deposit has been lodged or, if this is not required, from the date of notification of the award.
2. When the reduction of the contract to writing is not required, it shall be understood that the contract results from the combination of the Specifications Document with the content of the awarded proposal, but it may not begin until all the required qualification documents have been submitted and the commitments referred to in Article 77(2)(c) of the PPC have been confirmed.

Article 26 – Other Provisions

1. The Public Contracting Authority may, at any time, demand the presentation of supporting documents for the declarations made by the Awardee.
2. Without prejudice to the provisions of the previous paragraph, the Awardee undertakes to provide all clarifications deemed necessary by the Public Contracting Authority in relation to the proposal submitted.
3. The prices included in the proposal must always include all the expenses and charges inherent to the object of the contract to be signed, namely they must reflect all the costs, charges and expenses inherent to the acquisition in question, whose responsibility is not expressly attributed to the Public Contracting Authority, namely those related to the supply of the object of the contract, as well as any costs arising from the use of trademarks, patents or licenses, as well as any other costs inherent in nature and in compliance with legal, regulatory and tendering provisions relating to the supply in question, under the terms of the specifications and with the characteristics and conditions contained in the Specifications Document of this procedure.

4. With regard to the falsity of documents and declarations, without prejudice to reporting this to the competent authority for the purposes of criminal prosecution, the falsification of any qualification document or the culpable making of false declarations shall result in the expiry of award of contract, in accordance with Article 87 of the PPC.

Article 27 - Counting of deadlines

The counting of the deadlines relating to the formation of the contract is governed by the provisions of Article 470 of the PPC.

Article 28 - Expenses and Charges

All expenses related to the participation in the present procedure, including those related to the preparation and submission of the proposal and qualification documents and to the execution of the contract, when applicable, shall be the Awardee 's costs.

Article 29 - Prevalence

1. In case of divergence between the clarifications and rectifications and the parts of the procedure to which they refer, of which they form an integral part, the former shall prevail.
2. In case of divergence between the documents referred to in number 2 of Article 96 of the PPC, the prevalence is determined by the order in which they are indicated in that number.
3. In case of divergence between the documents referred to in paragraph 2 of Article 96 of the PPC and the clauses of the contract, the former shall prevail, except for the adjustments proposed in accordance with the provisions of Article 99 of the same law and accepted by the Awardee under the terms of the provisions of Article 101 of the same law.

Article 30 - Communications and Notices

Notifications and communications relating to this contract formation procedure are governed by the provisions of Articles 467 to 469 of the PPC.

Article 31 - Confidentiality

1. Under the terms of the law, the Awardee must maintain the necessary confidentiality with regard to all information and documentation, technical and non-technical, commercial or otherwise, relating to the Public Contracting Authority, of which it may become aware under or in connection with this procedure, and this obligation must be maintained even after the procedure has ended.
2. The information and documentation covered by the duty of secrecy may not be transmitted to third parties or used in any way other than directly and exclusively for this procedure.

3. The obligation referred to in the preceding paragraphs extends to the Awardee's agents, officials, employees and collaborators, including contractors, as well as to any third parties they may involve.

4. The duty of secrecy does not apply to information and documentation that was demonstrably in the public domain at the time it was obtained by the Awardee or that the Awardee is legally obliged to disclose, by virtue of the law, legal proceedings or at the request of regulatory authorities or other competent administrative bodies.

5. The duty of secrecy shall remain in force until the expiry of a period of 5 (five) years from the termination, for whatever reason, of this procedure, without prejudice to any subsequent legal duties relating, in particular, to the protection of business secrets or the credibility, prestige or trust due to legal persons.

Article 32 - Governing Law

Portuguese law shall apply to this contract formation procedure, namely the provisions of the Public Procurement Code and, where applicable, the provisions of the Invitation and the Specifications Document for this procedure.

Article 33 - Integral Parts

All the annexes referred to in the preceding articles form an integral part of this Invitation.

Annexed: 4 annexes to Invitation,
Specifications and annex therein.

Porto, October 8, 2024

ANEXO I - Modelo de Declaração

la que se refere a alínea a) do n.º 1 do artigo 57.º ou a subalínea i) da alínea b) e alínea c) do n.º 3 do artigo 256.º-A do CCP, conforme aplicável

1- _____ [nome, número de documento de identificação e morada], na qualidade de representante legal de ¹ _____ [firma, número de identificação fiscal e sede ou, no caso de agrupamento concorrente, firmas, números de identificação fiscal e sedes], tendo tomado inteiro e perfeito conhecimento do Caderno de Encargos relativo à execução do contrato a celebrar na sequência do procedimento de Ajuste Direto com a referência AD 414/2024, para a *Aquisição de Licenças Clínicas de Utilização de Software para Análise de Variantes e Alteração do Número de Cópias (CNV's)*, declara, sob compromisso de honra, que a sua representada² se obriga a executar o referido contrato em conformidade com o conteúdo do mencionado Caderno de Encargos, relativamente ao qual declara aceitar, sem reservas, todas as suas cláusulas.

2- Declara também que executará o referido contrato nos termos previstos nos seguintes documentos, que junta em anexo³:

- a) Anexo I - Declaração;
- b) Anexo II - Modelo de proposta;
- c) ...;

3- Declara ainda que renuncia a foro especial e se submete, em tudo o que respeitar à execução do referido contrato, ao disposto na legislação portuguesa aplicável.

4- Mais declara, sob compromisso de honra, que não se encontra em nenhuma das situações previstas no n.º 1 do artigo 55.º do Código dos Contratos Públicos.

5- O declarante tem pleno conhecimento de que a prestação de falsas declarações implica, consoante o caso, a exclusão da proposta apresentada ou a caducidade da adjudicação que eventualmente sobre ela recaia e constitui contraordenação muito grave, nos termos do Artigo 456.º do Código dos Contratos Públicos, a qual pode determinar a aplicação das sanção acessória de privação do direito de participar, como candidato, como concorrente ou como membro de agrupamento candidato ou concorrente, em qualquer procedimento adotado para a formação de contratos públicos, sem prejuízo da participação à entidade competente para efeitos de procedimento criminal.

¹ Aplicável apenas a concorrentes que sejam pessoas coletivas.

² No caso de o concorrente ser uma pessoa singular, suprimir a expressão "a sua representada".

³ Enumerar todos os documentos que constituem a proposta, para além desta declaração, nos termos do disposto nas alíneas b), c) e d) do n.º 1 e nos n.ºs 2 e 3 do artigo 57.º do CCP.

6- Quando a entidade adjudicante o solicitar, o concorrente obriga-se, nos termos do disposto no Artigo 81.º do Código dos Contratos Públicos, a apresentar a declaração que constitui o anexo II do referido Código, bem como os documentos comprovativos de que se encontra nas situações previstas nas alíneas b), d), e) e h) do n.º 1 do artigo 55.º do referido Código.

7- O declarante tem ainda pleno conhecimento de que a não apresentação dos documentos solicitados nos termos do número anterior, por motivo que lhe seja imputável, determina a caducidade da adjudicação que eventualmente recaia sobre a proposta apresentada e constitui contraordenação muito grave, nos termos do Artigo 456.º do Código dos Contratos Públicos, a qual pode determinar a aplicação da sanção acessória de privação do direito de participar, como candidato, como concorrente ou como membro de agrupamento candidato ou concorrente, em qualquer procedimento adotado para a formação de contratos públicos, sem prejuízo da participação à entidade competente para efeitos de procedimento criminal.

[Local], [Data], [Assinatura⁴]

[As notas constantes do presente modelo, ou equivalente, não devem ser reproduzidas no documento, constituindo um mero elemento definidor do modo como o documento deve ser elaborado]

⁴ Nos termos do disposto nos n.ºs 4 e 5 do artigo 57º do Código dos Contratos Públicos

ANNEX II – Proposal template

----- [name], acting in the quality of legal representative of⁵ ----- [company name, tax identification number and registered office or, in the case of a competing grouping, company names, tax identification numbers and registered offices and share capital], having taken full and complete knowledge of the invitation and specifications of the procedure, concerning the execution of the contract to be entered into following the procedure of Direct Award with reference *DA 414/2024*, towards the *Acquisition of Software Clinical Licenses for Variant Analysis and Copy Number Variations (CNV's)*, hereby declares on his honor that its represented company proposes to execute, in accordance with the specifications, in relation to which it declares to accept without reservation all the clauses and applicable legislation, the object of the contract to be concluded, in terms of the specifications and with the characteristics and under the conditions contained in the specifications of the present procedure and for the following attribute(s):

The proposal's global price is € (in figures and words) [vide Clause 4 and 11 of the Specifications Document]
[Complete]

Communications and notifications:

For the Awardee:

At the attention of: ... [Complete]

Address: ... [Complete]

E-mail: ... [Complete]

The value added tax at the legal rate in force will be settled by the contracting authority in accordance with the standards in force.

Additionally, in which relates with the subject of the procedure and the execution of the contract we declare to be submitted to the Portuguese legislation in force and to the jurisdiction of the District Court of Porto, with express waiver to any other jurisdiction.

[Place], [Date], [Signature⁶]

[The notes set out in this draft should not be reproduced in the document but are merely indicative of how the document should be drafted].

⁵ Applicable when awardee is a legal person.

⁶ In accordance with the terms set forth in Article 57°, nrs. 4 and 5 of the Public Procurement Code.

ANNEX III – Statement template

[Referred to in no. 1 a) of the Article 81 of the Public Procurement Code]

1- _____ [name, number of identification document and address], acting in the quality of legal representative of _____ [company's name, taxpayer number and head office or, in case of group of proposers, companies' names, taxpayer numbers and head offices], awardee in the direct award procedure with reference *DA 414/2024*, towards the *Acquisition of Software Clinical Licenses for Variant Analysis and Copy Number Variations (CNV's)*, hereby declares on his honor that the company he represents⁷ is not in any of the situations provided for in no. 1 of Art. 55 of the Public Procurement Code.

2- The declarant annexes [or indicates... website where it can be consulted⁸] the supporting documents that the company he represents⁹ is not under the circumstances referred in *b), d), e)* and *h)* of no.1 of Article 55 of the Public Procurement Code.

3- The declarant is fully aware that the provision of false statements implies the forfeiture of the award and constitutes a very serious misdemeanor, under the terms of Art. 456 of the Public Procurement Code, which may determine the application of the accessory sanction of deprivation of the right to participate, as a candidate, as a competitor or as a member of a candidate group or competitor, in any procedure adopted for the formation of public contracts, without prejudice to participation to the competent authority for the purpose of criminal prosecution.

[Place], [Date], [Signature¹⁰]

[The notes set out in this draft should not be reproduced in the document but are merely indicative of how the document should be drafted].

⁷ In case the awardee is a natural/individual person, delete the words "the company he represents".

⁸ Add the necessary information to the consultation, if applicable.

⁹ In case the awardee is a natural/individual person, delete the words "the company he represents".

¹⁰ In accordance with the terms set forth in Article 57^o, nrs. 4 and 5 of the Public Procurement Code.

ANNEX IV - Model Declaration

[referred to in Article 11(1)(c) of the Invitation, if applicable]

Subcontractor's Declaration of Commitment

..... [name, identification document number and address], as the legal representative of
..... [company name, tax identification number and registered office of the subcontractor],
having fully and completely agreed to the parts of the Direct Award procedure with reference *DA 414/2024*,
for the *Acquisition of Software Clinical Licenses for Variant Analysis and Copy Number Variations (CNV's)*,
declares, on oath and as a subcontractor, that, in the event of the proposal submitted by ... being awarded,
the represented entity undertakes to carry out the contract. [the invitee's name or, in the case
of a competing group, the names of its component entities], the entity represented by it undertakes to carry
out, on a subcontracting basis, the activity or activities of [identify all the activities for which
the subcontracted entity will be responsible] included in the subject matter of the contract to be signed, in
accordance with the Specifications Documents, in respect of which it declares that it accepts, without
reservation, all of its clauses.

[Place], [Date], [Signature¹¹]

[The notes set out in this draft should not be reproduced in the document but are merely indicative of how the document should be
drafted].

¹¹ Signature of the subcontractor's legal representative(s)