

**Instituto de Biologia Molecular e Celular - IBMC**

DIRECT AWARD N.º 390/2023 - IBMC

**ACQUISITION OF HUMAN GENE MUTATION DATABASE (HGMD) CLINICAL LICENSES**

## **SPECIFICATIONS**

CPV: 72540000-2 (Licenses (User Service))

**Index**

1	Scope .....	3
2	Base Price .....	3
3	Contract .....	3
4	Integral Parts .....	3
5	Location of Service Provision .....	4
6	Entry into Force and Duration of the Contract.....	4
7	Main Obligations of the Successful Tenderer .....	4
8	Provision of Services .....	4
9	Contractual Price .....	5
10	Income and Gains of Collective Persons (IRC).....	5
11	Payment Conditions .....	5
12	Contract Termination .....	6
13	Force Majeure .....	6
14	Subcontracting and Assignment of the Contractual Position.....	7
15	Confidentiality.....	7
16	Strategic Policies .....	8
17	Governing Law .....	8
18	Settlement of Disputes .....	8
19	Notices and Conventional Domicile .....	8
20	Calculation of Deadlines .....	9
ANNEX I .....		10
21	Scope .....	10
22	Technical Specifications of the Service .....	10

## 1 Scope

The present specifications comprise the clauses to be included in the contract for the acquisition of services to be entered into by the "Instituto de Biologia Molecular e Celular - IBMC" ("IBMC") and which shall have as scope the *Acquisition of Human Gene Mutation Database (HGMD) Clinical Licenses* pursuant to the applicable legislation, with the characteristics, specificities and requirements set out in *Annex I* and terms and conditions defined in the contract.

## 2 Base Price

For preparing the proposal (s), the estimated contract value of **€ 49.219,10 (forty-nine thousand, two hundred and nineteen euros and ten cents)** is fixed as the base parameter of the contract price, for the maximum contractual term of 1 (one) year.

- ✓ HGMD "Download", "Clinical Use", Medium Ent: € 40.441,50 (forty thousand, four hundred and forty one euros and fifty cents)
- ✓ HGMD "Online", "Clinical Use" (2 users): € 8.777,60 (eight thousand, seven hundred and seventy-seven euros and sixty cents).

## 3 Contract

3.1 The contract shall be composed by the following documents:

- a) The supply of errors and omissions in the specifications, identified by the competitors and expressly accepted by the competent body for the decision to contract;
- b) Clarifications and rectifications related to the specifications;
- c) The present specifications;
- d) The awarded tender;
- e) Clarifications on the awarded proposal provided by the Successful Tenderer.

3.2 In case of divergence between the documents referred to in the previous paragraph, the respective prevalence is determined pursuant to the order by which they are indicated.

## 4 Integral Parts

4.1 The *Annex I* is an integral part of the present Specifications.

4.2 The Specifications and its *Annex I*, the Invitation, the awarded tender and the information exchanged between the parties shall always be an integral part of the Contract.

## 5 Location of Service Provision

The services covered by the contract will be provided in the form of remote assistance to the software best identified in Annex I, located at the IBMC facilities, located at Rua Alfredo Allen, 208, Porto, Portugal.

## 6 Entry into Force and Duration of the Contract

The contract enters into force 1 (one) day after the notification of the awarding decision, or the presentation of the qualification documents, whatever occurs last, and it will last for a period of 1 (one) year, without prejudice to the ancillary obligations that must last beyond its termination.

## 7 Main Obligations of the Successful Tenderer

7.1 The following main obligations from entering into the contract shall apply to the Successful Tenderer:

- a) Obligation to provide licenses within less than twenty (20) days;
- b) Execute all tasks deemed necessary to the full execution of the services to be provided under this contract, with regard to all applicable provisions and high quality, efficiency and safety standards;
- c) Obligation of warranty and conformity of the services provided with the contract;
- d) Ensure the continuous and updated operation of the software;
- e) Immediately inform the IBMC of any occurrence and/or impediment that might compromise the execution of the services to be provided under this contract or the confidentiality of the data provided by the IBMC;
- f) Report any event that occurs during the execution of the contract and that changes, in particular, its corporate name, its legal representatives with relevance to the supply, its legal situation and its commercial situation;
- g) Provide the necessary maintenance, updates and technical assistance services to the services object of contract, for the contractual period.

## 8 Provision of Services

8.1 For the purpose of requesting the services to be provided by the Successful Tenderer, the IBMC will send, through e-mail, from [compras@ibmc.up.pt](mailto:compras@ibmc.up.pt), the respective purchase order, which will include the following mandatory mentions:

- a) Identification of the services to be provided;
- b) Purchase Order number;
- c) Reference of this Public Procurement Procedure;

## 9 Contractual Price

9.1 For the rendering of all services to be provided under this contract, the IBMC shall pay to the Successful Tenderer the price indicated in the awarded offer.

9.2 The price referred to in the previous number includes all costs, charges and expenses regarding the purchase of the services to be provided under this contract, as well as any charges arising from the use of trademarks, patents or licenses concerning to those services.

## 10 Income and Gains of Collective Persons (IRC)

10.1 The services, licenses, covered by the contract, are considered to have been obtained in Portugal for tax purposes, so it will be subject to withholding tax in our country (25% - article 87, 4, CIRC - Income Tax), but it can be avoided by applying the Convention to avoid double taxation between Portugal and Germany (article 7). For that, we will need:

- a) The original 21-RFI certificate completed and signed by the person in charge of the company;
- b) A certificate issued by the German authorities attesting that you are resident and subject to income tax. (Article 98, CIRC- Income Tax).

10.2 The RFI\_21 is valid for two years and it has to be renewed to avoid withholding tax.

## 11 Payment Conditions

11.1 The invoice(s) shall be paid within 30 (thirty) days as of the date of the invoice(s), by bank transfer to the account to be indicated by the Successful Tenderer in the invoice(s).

11.2 The invoice(s) should be sent, preferably, by electronic means complying with all requirements foreseen under Portuguese law to the e-mail address: [daf@ibmc.up.pt](mailto:daf@ibmc.up.pt), or any other address indicated by the IBMC to the Successful Tenderer.

11.3 The invoicing mechanisms applied during the term of the contract to be signed are especially and jointly applicable to article 299 of the CCP; in numbers 2, 3 and 4 of article 2 of Decree-Law 123/2018, of December 28, in its current wording, and Order 8/2022-XXIII, of 12/13/2022, of the Secretary of State for Fiscal Affairs.

11.4 In order to comply with what is established in the previous paragraph, the IBMC will notify the Successful Tenderer, throughout the contractual execution, about the applicable invoicing method.

11.5 In case the IBMC disagrees, on the amounts indicated in the invoice, he should inform the Successful Tenderer in writing, about the respective grounds, remaining the latter obliged to render all necessary clarifications, also in writing, and, if appropriate, issue a new corrected invoice. The payment deadline will be suspended until all necessary clarifications are provided or a new invoice has been received.

## 12 Contract Termination

12.1 Without prejudice to other grounds for terminating the contract provided for by law, the IBMC may terminate the contract in the following cases:

- a) Serious or repeated failure by the Successful Tenderer to comply with any obligations provided for in the contract or applicable law;
- b) Subcontracting or assignment of the contractual position carried out in breach of the terms provided for in the contract;
- c) Presentation by the Successful Tenderer or proposition against him, which is the subject of a decision to proceed, insolvency or recovery;
- d) In the event of force majeure preventing the execution of the contract in time deemed useful by the IBMC, provided that it exceeds 30 (thirty) days;

12.2 The right of withdrawal provided for in the preceding paragraphs is exercised by means of a written declaration, sent to the Successful Tenderer by registered letter, and takes effect on the third business day after the date of registration.

12.3 The termination of the contract by the IBMC constitutes the Successful Tenderer in the duty to indemnify the IBMC, in an amount that is already fixed as a penal clause at 10% (ten percent) of the contractual value.

12.4 The indemnity referred to in the previous number will be paid by the Successful Tenderer within 30 (thirty) days after notification of the termination of the contract.

12.5 The provisions of this clause are without prejudice to the claim for compensation for excess damage.

## 13 Force Majeure

13.1 For the purposes of the contract, only circumstances that make it impossible for one of the parties to comply with any obligations assumed in the contract, which, cumulatively, are beyond its control, which it could not be aware of or foresee at the date of the contract are considered to be force majeure and whose effects it would not reasonably be required to circumvent or avoid.

13.2 When verified the stated in the previous clause, earthquakes, floods, fires, sabotage, strikes, embargoes or international blockage, acts of war or terrorism, riots and governmental or administrative injunctive determinations may, namely, constitute force majeure.

13.3 The following circumstances do not constitute force majeure:

- a) Any circumstances that do not constitute force majeure for the subcontracted, auxiliary staff or suppliers of the Successful Tenderer, in the part in which they intervene;

- b) Strikes or labor conflicts limited to the Successful Tenderer or to groups of companies in which the latter is incorporated, as well as subcontracted associations or groups of companies;
- c) Governmental, administrative or judicial determinations of penalty nature or in any other way arising from the breach by the Successful Tenderer of his obligations or encumbrances;
- d) Popular demonstrations due to the non-compliance by the Successful Tenderer of legal provisions.
- e) Fires or floods with source in the Successful Tenderer's facilities, cause, spread and proportions of which are not determined or should be attributed to willful misconduct or negligence of the Successful Tenderer or to the non-compliance of safety regulations;
- f) Failure in the computer or mechanical systems of the Successful Tenderer;
- g) Events that are or should be covered by insurance.

13.4 The occurrence of circumstances that may substantiate situations of force majeure should be immediately communicated to the other party.

13.5 When a party does not accept, in writing, that a certain occurrence invoked by the other party constitutes a situation of force majeure, the party that invoked said situation has to prove the respective requirements.

13.6 The occurrence of a force majeure situation determines the extension of the delays for compliance of the affected contractual obligations only for the period proven to correspond to the impediment arising from the force majeure, without prejudice to clause 12.1 al. e) of these specifications.

#### **14 Subcontracting and Assignment of the Contractual Position**

The Subcontracting and Assignment of the Contractual Position are hereby prohibited in this Public Procurement Procedure.

#### **15 Confidentiality**

15.1 The Successful Tenderer undertakes, for the duration of the contract, to keep the content of the contract private and confidential, as well as all information and documentation, technical and non-technical, commercial or other, related to the IBMC, of which he might have knowledge under or in relation with the execution of the contract, under penalty of being held accountable for the damages arising there from.

15.2 The information and documentation covered by the confidentiality obligation cannot be transferred to third parties nor be subject to any use or as a mean for advantage apart from those directly and exclusively intended for the execution of the contract.

15.3 The Successful Tenderer is forced to fulfil the obligations foreseen in the Law of Personal Data Protection and in the General Data Protection Regulation (GDPR), under penalty of its accountability for any and all losses suffered by the IBMC as a result of the violation of those obligations.

15.4 The Successful Tenderer's confidentiality obligation is extended to all his workers, employees, agents and to any other person who directly or indirectly intervenes in the execution of the contract.

15.5 The confidentiality obligation set out in the present clause shall be in force for all duration of the present contract and shall remain in force after its termination whatever the cause may be, up to ten (10) years.

15.6 Information and documentation that were proven to be in the public domain at the date of obtaining by the Successful Tenderer or that the latter is legally obliged to disclose, by virtue of the law, of a final judicial decision or to a request from regulatory authorities or other competent administrative entities.

## **16 Strategic Policies**

Pursuant to point 2 of the Article 1-A of the PCC, the Successful Tenderer shall ensure, at the formation and execution stage of this contract, full compliance with the applicable social, labor, environmental and gender equality standards, resulting from International, Community, National or Regional Law.

## **17 Governing Law**

The contract shall be governed by in accordance with Portuguese law, with the express exclusion of the rules contained in Part III of the Public Contracts Code.

## **18 Settlement of Disputes**

18.1 In case of dispute or disagreement arising in connection with the contract, namely regarding its interpretation, validity, applicability or integration, the parties shall seek, by all means of dialogue and ways of balancing interests, to achieve a joint solution for the matter under discussion.

18.2 In the lack of a joint settlement of the dispute pursuant to the terms set out in the previous paragraph, and maximum within 10 (ten) days after the first notification expressly referring the need to obtain a joint solution for the dispute, the latter shall be decided by the Courts of Oporto, expressly waiving any other.

## **19 Notices and Conventional Domicile**

19.1 Except if otherwise foreseen in this contract, all communications and notices to be carried out between the parties, under the terms and in respect to the agreement, shall be made in writing and sent by registered mail with acknowledgement of receipt or by e-mail with read receipt to the addresses and

e-mails indicated below, or to any other that the parties indicate by prior communication in writing to the counterpart, under penalty of being considered as not carried out.

*To the IBMC:*

**At the attention of:** Serviço de Logística - IBMC

**Address:** Rua Alfredo Allen, 208; 4200-135 Porto, Portugal

**E-mail:** [procedimentosccp@ibmc.up.pt](mailto:procedimentosccp@ibmc.up.pt)

*To the Successful Tenderer:*

**At the attention of:** [Complete]

**Address:** [Complete]

**E-mail:** [Complete]

19.2 The indicated addresses shall be valid for purposes of eventual summons or judicial notifications.

## 20 Calculation of Deadlines

20.1 For the calculation of deadlines referred in the Specifications and related to Public Procurement Procedures is applicable the provisions stated in the article 87 of the Code of Administrative Procedure (CPA), by legal reference to article 470 of the Public Procurement Code, and in no case the provisions of article 88 of the CPA shall apply.

20.2 The deadlines foreseen in the contract are continuous, running on Saturdays, Sundays and public holidays, by legal reference to article 471 of the Public Procurement Code,

**ANNEX I****21 Scope**

It is intended to acquire two types of licenses from the Human Gene Mutation Database (HGMD, Qiagen): "online" and "download. One of the strands of the CGPP consists of making genetic tests available to several national and international hospital centers. In this laboratory work, it is essential to integrate technical and scientific knowledge regarding the genetic variants identified in these genetic studies, applying an appropriate classification system and incorporating different levels of information. This type of work requires different tools for the interpretation of genetic variants, including the two types of licenses to be acquired.

**22 Technical Specifications of the Service**

These HGMD licenses provide access to structured information and publications that are constantly updated and can be accessed through an internet browser ("online" version). On the other hand, the information available at HGMD is an indispensable resource for the diagnostic routine at CGPP that has been used in the analysis of all genetic tests based on exome ("download" version).

Product Name	Product Code	Quantity	Term (months)	Unit Base Prices
HGMD Download, Clinical Use, Medium Ent	834083	1	12	40.441,50 €
HGMD Online, Clinical Use, 1 User	834056	2	12	8.777,60 €