

RULES

REGULATING THE DEVELOPMENT AND ACQUISITION BY NEIKER - INSTITUTO VASCO DE INVESTIGACIÓN Y DESARROLLO AGRARIO, S.A., OF INDUSTRIAL PROPERTY CONSISTING OF PRODUCING A NEW GRAPE/GRAPEVINE VARIETY

1. PURPOSE OF THE RULES AND LEGAL SYSTEM

The purpose of these Rules is to regulate the procedure and contractual conditions for the development and acquisition by NEIKER-Instituto Vasco de Investigación y Desarrollo Agrario, S.A. (hereinafter, “NEIKER”) of industrial property consisting of at least one and no more than five new grape/grapevine varieties to be used in the production of txakoli that are resistant to Downy Mildew (*Plasmopara viticola*) and Powdery Mildew (*Uncinula necator*), obtained from the Hondarrabi Zuri variety.

A description of the intended result and the processes (hybridisation and selection) to be carried out for said purposes and the deadlines are set out in **Appendix I**.

These Rules and the contract resulting from the procedure in question shall be governed in full by private law. Given that the contract is linked to industrial property, it is an asset management business that is excluded from the scope of Act 9/2017 of 8 November, on Public Sector Contracts, by virtue of Article 9 of said Act, due to the fact that it is related to immaterial property.

Notwithstanding the foregoing, pursuant to the terms of Article 4 of the above Act, the intention is to apply the principles of competition, transparency, publicity and equal treatment to all bidders taking part in the procedure.

To that end, the Rules shall be published in NEIKER’s contractor profile.

2. PRICE

The price of the contract to be paid to the successful bidder shall be as follows:

- **Monetary consideration:**

- ✓ For the first variety considered valid: up to a maximum amount of €220,500 (excluding VAT).
- ✓ In the event that new varieties are selected based on the crosses made within the scope of this contract, NEIKER shall declare whether or not it wishes to acquire ownership of the Rights over the same, in which case it shall pay: a maximum amount of €40,500 for each additional variety, with no more than five varieties.

The above monetary considerations may be subject to a reduction in the tendered price.

The monetary consideration set out in the successful tender shall be paid in the following manner:

- It shall be paid annually upon presentation of the respective invoice by the contractor. The invoice corresponding to the last yearly payment shall be issued together with the document certifying the physical delivery of the plant and the necessary documentation for the registration of the variety. The invoices shall be issued annually in arrears, during the course of the month following their maturity.
- The annual amount to be paid to the contractor shall be the result of dividing the total price tendered by the contractor by the number of years of the contract. In all cases, the last invoice shall correspond to the total price that remains to be paid.
- The price for new additional varieties selected from the crosses developed within the framework of this contract shall be paid upon presentation by the contractor of the invoice along with the document certifying the physical delivery of the plant and the necessary documentation for the registration thereof.
- **Non-monetary consideration:**
- ✓ A non-exclusive right to use the new varieties, consisting of multiplication and sale in the Basque Country for a term of 30 years starting one calendar year after the granting of the legal protection.

The terms and conditions for exercising said right shall be as follows: the maximum price for which the successful bidder can sell these new varieties in the Basque Country shall be double the average price of plants grafted with new non-resistant local varieties (average price means the arithmetic average of the price of the main suppliers of the plant during the year in question).

- ✓ NEIKER may grant non-exclusive rights of use for the purpose of multiplying the new varieties to the habitual supplier nurseries of the Txakoli Designations of Origin, which shall pay the contractor a royalty of 20% of the price per plant.

3. TERMS

The maximum term of the contract shall coincide with that of the protection of the variety produced, which, pursuant to current law, is the end of the thirtieth calendar year after the granting of the legal protection.

The maximum term for the delivery of the grapevine variety/varieties obtained shall be 10 years after the formalisation of the contract. Said term may be reduced in the tenders. In the event that the work covered by this contract is completed before the above-indicated term, NEIKER shall immediately take possession of said work and NEIKER shall pay the contract price pursuant to the terms of Clause Two.

4. PARTICIPATION REQUIREMENTS

To participate in the procedure regulation by these Rules, interested parties must comply in full with the following requirements on the deadline for the presentation of proposals:

- a) They shall have full capacity to act and to fulfil their corporate purpose, and their activity must be related to the production of plant varieties.
- b) They shall have a bank of grapevine varieties resistant or with a high tolerance to Downy and Powdery Mildew (with at least 6 resistant genes).
- c) They shall have experience during the past 3 years in producing at least five varieties of grapevine resistant to Downy Mildew (*Plasmopara viticola*) and Powdery Mildew (*Uncinula necator*)
- d) As a nursery, they must have sold at least 1,000,000 plants a year over the past three years.
- e) They shall have experimental facilities used for clonal selection located in agro-climatic zones prone to severe infection by Downy and Powdery Mildew.

5. PARTICIPATION AND COMMUNICATIONS

5.1. METHOD, PLACE AND TERM FOR DELIVERING THE PROPOSALS

Proposals shall be delivered **by hand or by post** (in the latter case, certifying the date on which it was sent from the post office and confirming to the contracting entity that the proposal was sent by email to: admin@neiker.eus; the content of the email will only be valid if there is a record of the transmission and receipt, the dates and the entire content of the communications and if the identity of the sender and the recipient has been duly certified. In this case, a printed copy will be obtained and the registration thereof, which must be attached to the file. In the event that these requirements are not met, no documents received after the last date of the term set out in the confirmation shall be admitted. Nonetheless, if, 10 calendar days after the indicated date, no proposal has been received, it shall not be admitted under any circumstances), inside **a single sealed envelope**, to the following address and during the following hours:

- Address: Berreaga Kalea nº 1 48150 Derio (Bizkaia) For the attention of Sonia Masip.
- Hours: Monday to Friday, from 8 a.m. to 2 p.m.

The proposals shall be submitted no later than 15 calendar days after the publication of the Rules on the NEIKER website, i.e., 27 January 2023.

The submission of the proposal entails full and unconditional acceptance of all the Clauses set out in these Rules.

5.2. DOCUMENTATION TO BE SUBMITTED

The participants shall submit a single envelope containing the following documents:

- i. List of all the documents inside the envelope.
- ii. Application to take part in the procedure regulated by these Rules, using the form attached as **Appendix II**.
- iii. Foundational deed or document, Articles or any other equivalent document stating the purpose and activity that NEIKER considers appropriate.
The capacity to act in the case of non-Spanish entrepreneurs who are nationals of EU Member States shall be accredited by means of their inclusion in the opportune Register pursuant to the laws of the State in which their headquarters are located, or by submitting a sworn statement or a certificate containing the applicable community provisions.

The capacity to act of other foreign entrepreneurs shall be accredited by means of a report issued by the Permanent Diplomatic Mission of Spain or Consulate in the respective State where the company headquarters are located. Said report shall justify that the State where the foreign entity is located also admits the participation of Spanish entities in Public Sector Contracts and with similar or like public institutions, organisations or entities.

- iv. Copy of the Identity Card or any equivalent document and a power of attorney that is sufficient, duly filed with the Companies Registry, of the person appearing or signing the documentation on behalf of the entrepreneur. Those persons who appear or sign proposals on behalf of another party shall submit a copy of their Identity Card and a power of attorney that is sufficient for the purpose. If the participant is a company, the power of attorney shall be duly filed with the Companies Registry when this is required, pursuant to the terms of Article 94 of the Companies Registry Regulations, or, as the case may be, with the respective Public Registry, depending on the type of company in question.
- v. Documentation that adequately accredits fulfilment of the solvency requirements set out in Sections b) and c) of Rule 4.
- vi. Technical proposal, with the following sections correctly identified:
 - a) A descriptive report of the development plan and methodology used to execute the contract, excluding the pollination phase. The proposal shall include a description of the parent strains available which shall, in all cases, comply with the requirements set out in Appendix I as well as documentation accrediting that the proposed parent strains fulfil the requirements. In addition, a detailed schedule of the different milestones shall be attached. The bidders may reduce the maximum term of 10 years for the execution of the contract.
 - b) The human resources to be assigned to the execution, with their CVs, qualification and experience, as well as a description of their organisation, for the purposes of fulfilling the purpose of the contract.
 - c) The material resources to be assigned to the execution, with a special mention of the grape variety banks available and assigned to executing the contract.

Given their critical nature, the hybridisation services shall not be outsourced.

The technical proposal shall be submitted in Basque, Spanish and/or English.

- vii. Economic proposal: the entrepreneurs participating in the process shall specify the amount of the monetary consideration to be received, up to the maximum limit set out in Rule 2, using the form attached as **Appendix III**.

NEIKER reserves the right to make all the checks it considers necessary or to request any additional documentation it deems appropriate in order to check the truthfulness of the documentation and information provided by the participants.

5.3. COMMUNICATIONS

All communications sent on occasion of the procedure regulated pursuant to these Rules shall be sent by email using the addresses designated by the participants in the application form which is attached as **Appendix II**, with the email address of NEIKER being: admin@neiker.eus.

6. DEVELOPMENT OF THE PROCEDURE FOR SELECTING THE BEST PROPOSAL

6.1. ADMISSION OF PROPOSALS

At the end of the term for submitting the proposals, they shall be studied to check that the participating entities fulfil the participation requirements set out in Clause 4 of the Rules.

In the event of observing any defects that can be corrected in the documentation submitted, NEIKER shall give the participant a term of ten (10) working days to correct them.

6.2. NEGOTIATION PHASE

A negotiation phase shall be opened with the entities admitted, pursuant to the terms of Clause 6.1 above, which may be related to any of the aspects included in the technical proposal to which reference is made in Section vi. of Clause 5.2 of these Rules, and the economic proposal of Section vii. of the same Clause.

Once the negotiation has ended, if the participants have changed their position as a result of said negotiation, they shall submit their final proposals no later than ten (10) working days after the end of the negotiation.

6.3. ASSESSMENT AND IDENTIFICATION OF THE BEST PROPOSAL

Once the negotiation phase has ended, the final proposals shall be assessed by a committee appointed by NEIKER, pursuant to the following criteria:

- Descriptive report of the development plan and methodology used to execute the contract, with a detailed schedule of the different milestones: **a maximum of 30 points.**

The level of detail, adequacy and rigour of the proposed plan shall be taken into account, and in particular, the methodology and deadlines for achieving the final objective.

- The human resources to be assigned to the execution of the contract, with their CVs, qualifications and experience. In addition, a description of their organisation, for the purposes of fulfilling the purpose of the contract: **a maximum of 30 points.**

An assessment shall be made of the number and adequacy of the qualifications and certificates, experience and organisation of the staff assigned to the activities to be carried out.

Prior to formalising the contract, the effective availability of the staff shall be evaluated, as well as their qualifications and experience.

- The material resources to be assigned to the execution of the contract: **a maximum of 30 points.**

An assessment shall be made of the number and resources tendered, and in particular, the features and surface area of the grape variety banks available and assigned to the execution of the contract

- Economic proposal: **a maximum of 10 points.** This shall be evaluated pursuant to the following formula:

- ✓ Evaluation of the tendered price for the first variety considered valid for local distribution (a maximum of **8 points**). The highest score shall be awarded to the most economical proposal, and the rest shall be evaluated in accordance with the following formula: Points for proposal A= (Most economical proposal/Proposal of entity A)* points awarded.
- ✓ Evaluation of the tendered price for each new variety developed (a maximum of **2 points**). The highest score shall be awarded to the most economical proposal and the rest shall be evaluated in accordance with the

following formula: Points for proposal A= (Most economic proposal/Proposal of entity A)* points awarded.

7. FORMALISATION OF THE CONTRACT

The contract resulting from all that is established in these Rules shall be concluded through its formalisation.

Said contract shall be formalised in a private document which shall accurately reflect the terms and conditions established in these Rules and in the proposal submitted by the bidder.

8. PENALTIES AND CONTRACT TERMINATION

In the event that the successful bidder fails to honour any of the obligations established in these Rules or in its proposal for reasons attributable to it, NEIKER may either terminate the contract, or continue with its execution, applying with the applicable penalties for damages in either case.

If at any time during the contract term, it becomes evident that the contract is not feasible for reasons not attributable to the successful bidder, the contract shall be terminated and all amounts handed over up to that time shall be deemed paid, and the contract shall be settled with the delivery of a final report in sufficient detail in the opinion of NEIKER, without handing over any additional amounts or paying any compensation whatsoever.

9. COMPETENT JURISDICTION AND TAX SYSTEM

In the event of any dispute related to the content of these Rules or the contract resulting from the procedure established therein, the parties agree to submit to the civil jurisdiction of the Courts of the City of Bilbao.

APPENDIX I

Description of the intended result and the processes (hybridisation and selection) to be developed for that purpose and deadlines.

The objective is to produce between 1 and 5 varieties of grapevine which, due to their quality and enological features, are as similar as possible to the Hondarrabi Zuri variety and incorporate genes that are resistant to Downy and Powdery Mildew.

The parental strains used to hybridise Hondarrabi Zuri must have at least the following technical features:

- Presence of at least 3 genes resistant to Downy Mildew and 3 genes resistant to Powdery Mildew, preferably with some that are homozygous.
- Good level of tolerance to secondary diseases (black rot, phomopsis fruit rot, botrytis bunch rot, etc.).
- Produce good quality wine, confirmed by a chemical analysis of the wine and by its organoleptic properties.

Every year, the successful bidder shall send NEIKER a report of all the work carried out, in sufficient detail in the opinion of NEIKER, which may likewise request additional information.

The representatives and/or technical staff of NEIKER shall have access to the genotypes selected in the field and in the successful bidder's wine research centre.

No vine cuttings/plants shall be sold outside the Basque Country without the express authorization of NEIKER. If NEIKER is interested in selling them outside the Basque Country, the contractor shall have the exclusive right of multiplication, marketing and sale.

NEIKER shall be responsible for processing the registration of the new variety in the Commercial and Protected Plant Variety Registers it deems appropriate, and shall pay all costs related to processing in those registers. The contractor shall deliver to NEIKER the necessary technical documentation for NEIKER to carry out the registration process.

APPENDIX II

**APPLICATION TO TAKE PART IN THE PROCEDURE FOR THE
DEVELOPMENT AND ACQUISITION BY NEIKER -INSTITUTO VASCO DE
INVESTIGACIÓN Y DESARROLLO AGRARIO, S.A. OF INDUSTRIAL
PROPERTY CONSISTING OF PRODUCING A NEW GRAPE VARIETY**

The entity _____ with Tax ID: _____,
and with address for notices and summonses at _____, street
_____ number _____ and with contact
email address _____ and telephone number for notices
_____ represented by Mr./Mrs. _____ with
sufficient powers to bind them in this act.

Requests the contracting authority of NEIKER, S.A. to allow it to participate in the
procedure for the development and acquisition by NEIKER, S.A. of industrial property
consisting of producing a new variety of grape, for which purpose, it attaches all the
documentation set out in these Rules.

In, _____ on _____

Signed

APPENDIX III

Economic proposal

Mr./Mrs. [...], with address at [...] and ID number [...], appearing in their own right or on behalf of [...], with address at [...] and ID or Tax ID number [...], with full legal capacity and capacity to act, and duly informed of the tender through procedure [...], for the contracting of [...], hereby

DECLARES

1. That they undertake to execute the contract for the DEVELOPMENT AND ACQUISITION BY NEIKER -INSTITUTO VASCO DE INVESTIGACIÓN Y DESARROLLO AGRARIO, S.A., OF INDUSTRIAL PROPERTY CONSISTING OF THE PRODUCTION OF A NEW VARIETY OF GRAPE, subject to the following conditions:
 - ✓ For the first variety considered valid for local distribution: € _____ (excluding VAT).
 - ✓ In the case that various new varieties are selected from the crosses made within the framework of this contract and NEIKER wishes to acquire their ownership: € _____ for each variety (excluding VAT).

2. That they are familiar with the contractual documentation regulating the contract, which they expressly assume and abide by in full.

In [...], on [...] [...] [...].

[Signature]