

***RESOLUTION OF JANUARY 26, 2016 BY ICEX SPAIN EXPORT AND INVESTMENT CALLING FOR THE AWARD OF AID THROUGH THE “INVESTMENT PROGRAM FOR FOREIGN COMPANIES IN R&D ACTIVITIES” FOR 2016***

Royal Decree 4/2011 of April 8 regarding urgent measures to boost internationalization through the creation of the public company "Spanish Institute for Foreign Trade" (ICEX) states in its article 13 that the aim of ICEX (whose name is now ICEX SPAIN EXPORT AND INVESTMENT in accordance with Royal Decree 20/2012 of July 13 regarding measures to guarantee budget stability and promote competitiveness) is to promote exports, support the internationalization of Spanish companies and improve their competitiveness, in addition to attracting and promoting foreign investment in Spain.

Article 2 of the aforementioned Royal Decree 4/2011 of April 8 states that the activity of ICEX, with certain exceptions, will be subject to private law. Elsewhere, Article 5.1 of Law 38/2003 of November 17, General Subsidies Act, approved by Royal Decree 87/2006 of July 21 states that entities linked with or dependent on the Central State Administration acting under private law in providing monetary sums to third parties without exchange shall be entirely subject to the principles of management and information contained in Articles 8.3 and 20 of Law 38/2003 of November 17.

The internal regulation approving the award of monetary aid without exchange by ICEX approved by the Board of Directors on December 12 2012 and developed on December 13 2013 regulates, among other aspects, the call for application for this aid. This call is the result of ICEX's decision to support the installation of companies with foreign capital with a high innovative component that may invest in plant, equipment, human resources or technology in order to contribute to improving the competitiveness and productivity of the Spanish economy.

Elsewhere, both article 5.1.c) of Law 38/2003 of November 17, General Subsidies Act, and ICEX's internal regulations on aid require that when the award of monetary sums without exchange made to third parties, in conjunction with the publicity measures normally used by the entity, exceeds €300,000, it must be published in the Official State Gazette, as occurs in this case.

As a result, according to the specifications of the aforementioned regulation and in virtue of the delegation of competences made effective in the Agreement of the Board of Directors of September 9 2013 published through the Resolution of its Chairman on September 20 2013,

**IT IS HEREBY RESOLVED**

Firstly.- To issue a call for aid applications through the “INVESTMENT PROGRAM IN FOREIGN COMPANIES INVOLVED IN R&D ACTIVITIES”, the Call for which is included in this resolution.

Secondly.- In compliance with Article 5.1.c) of Law 38/2003 of November 17, General Subsidies Act, approved by Royal Decree 887/2006 of June 21, this call will be published in the Official State Gazette and on the web pages [www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org).

Thirdly.- This call shall take effect starting on the day after its publication in the Official State Gazette.

Madrid, January 26, 2016

The Chairman of the Board of Directors of ICEX Spain Trade and Investment,  
P. D. (Resolution of September 20, 2013)  
The Managing Director of ICEX Spain Trade and Investment

Francisco Javier Garzón Morales

## 2016 CALL FOR THE AWARD OF AID IN THE “INVESTMENT PROGRAM FOR FOREIGN COMPANIES INVOLVED IN R&D ACTIVITIES”

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### First. Objective and purpose.

1. The objective of this call is the award of aid in 2016 for actions that promote investment by foreign companies with a high innovative component.
2. Support will be provided for investment in plant, equipment, human resources and technology, insofar as they are used in the project and with the aim of improving the competitiveness and productivity of the Spanish economy.

### Second. Characteristics and limitations of the aid.

1. The aid may be requested for projects and planned activities listed in Section 4 and provided by the requesting fund within the limits described in Section 6.
2. The system for granting the aid will be on a competitive basis through the selection procedures indicated in Section 12.
3. The aid included must have an incentivizing effect. That is, before starting the activity, the beneficiary must have presented the application to the appropriate call.
4. The aid is included in the system established in Regulation (EC) no. 1407/2013 of the Commission of December 18 2013 regarding the application of articles 87 and 88 of the EC Treaty on “*de minimis aid*”.

### Third. Geographical and financial scope.

1. The subsidized activities must be performed in one or a number of the Autonomous Communities, as established in the categories in the Community regulations, as indicated below:
  - In the category of “less-developed” regions: Extremadura.
  - In the category of regions “in transition”: Andalusia; Murcia; Castile-la Mancha; and the Canary Islands.
  - In the category of “more developed” regions: Galicia and Region of Valencia.
2. The maximum amount of aid awarded in the present call will be two million euros (2,000,000 euros) in total for the autonomous regions listed in the previous paragraph as a whole.
3. As this call is framed within the Agreement signed with the Department of Innovation and Competitiveness in the State Secretariat for Research, Development and Innovation of February 26 2015, which allocates 2,000,000 euros throughout the whole of the period 2014-2020 for each of the seven Autonomous Regions mentioned in the previous paragraph, in the case that the aid requested in this call, accumulated to the amounts granted in previous calls exceeds –in the case it is granted– the 2,000,000 euros allocated to the same Autonomous Region, this aid may not be awarded in an amount that exceeds that limit.
4. Depending on the budgetary provision, this amount may be increased by an additional amount under Article 58.2 of Law 38/2003 of November 17, General Subsidies Act, approved by Royal Decree 87/2006 of July 21.

#### Four. Projects and activities eligible for aid.

1. This call includes a set of diverse measures with the common aim of promoting research and development in foreign companies seeking to establish themselves in Spain, or those that are already established here and wish to commence and develop their R&D activities.
2. Specifically, the following categories are envisaged:
  - a) On the one hand R&D projects aimed at foreign companies not yet installed and that wish to establish an R&D center in our country. That is, what are known as “greenfield” projects.
  - b) On the other hand, R&D projects aimed at foreign companies that are already installed, provided that they will attract new R&D projects to the Spanish subsidiary.

#### Fifth. Beneficiaries. Participation categories.

1. Beneficiaries: Notwithstanding the exceptions established in Article 1 of EC Regulation 1407/2013 , the beneficiaries of the aid may include the following entities:

- a) Any foreign-owned company, whatever their legal form, engaged in economic activity and that is validly constituted at the time of the award. For the purposes of this call, the concept of company will include public or private corporations, public business entities and individual entrepreneurs.
- b) Groups of companies with the participation of at least one foreign-owned company, which will be entitled to receive aid in proportion to the percentage share of the foreign equity.

The entities can form unions or groups without a legal status, that are governed by the contractual documents that regulate them, and have a representative body acting as interlocutor for the purposes of the application. This interlocutor or representative entity will receive, distribute, represent and undertake the obligations with which the group must comply under this call, as well as those that apply to all the group's members.

2. For the purpose of each call, a foreign-owned company will be understood to be a company with a 10% or greater share of direct foreign investment its capital.

3. Categories. All the projects and activities defined may be conducted according to one of the following categories:

- a) Individual project or activity: performed by a single entity, whose type may be any of those cited as beneficiaries. The projects can, in all cases, involve subcontracts, under the terms provided in Section 9.
- b) Project or activity in cooperation: those in which more than one foreign-owned company participates and whose relations are formalized in a contract, covenant or agreement establishing the rights and obligations of the different participating subjects. The projects can involve subcontracts, under the terms provided in Section 9.

4. Legal representation will be necessary in both the individual and cooperative projects or activities. In the case of cooperative projects, one of the members will act as representative. The representative will be the applicant for the aid and responsible for carrying out the project or activity before ICEX. To this end, the representative will coordinate the relationship with the participants and the provision of supporting

documentation for the project or activity. The payment of the aid will be made to the legal representative, who will be responsible for transferring the corresponding funds to each participant. All the above, without prejudice to the rights and obligations that, arising from the condition of beneficiaries, the representative and participants have, in particular, to be apprised of their tax and social security obligations.

#### Sixth. Items eligible for aid and its intensity.

1. The aid anticipated in this call will be used to cover the expenses directly related with the development of the project or activity for which it was granted under the terms of Article 31 of Law 38/2003 of November 17.
2. In compliance with the Commission's Communication on the Community Framework on State Aid for Research, Development and Innovation (2014/C 198/01) and criteria established by ICEX, the aid shall be applied to the following items:
  - a) Staff costs: researchers, technicians and other auxiliary staff, insofar as that they are dedicated to the project.
  - b) Instrument and equipment costs insofar as and for the period they are used for the project. Should the instruments and equipment not be used for the project for their entire useful life, the depreciation costs corresponding to the project duration shall be eligible calculated according to sound accounting practises.
  - c) Costs for buildings and land, insofar as they are used for the project and for its duration. For buildings, only the depreciation costs corresponding to the duration of the project will be considered eligible, calculated according to sound accounting practices. For the land, the costs of commercial transfer or capital costs actually incurred will be eligible.
  - d) Costs relating to contractual research and acquisition of intellectual property or patents, or for obtaining licenses from external sources in fully competitive conditions, and equivalent services used exclusively for the project.
  - e) Additional overheads incurred directly as a result of the project.
  - f) Other operating costs, including the costs of materials, supplies and similar products, incurred directly for the project.
  - g) Costs of constituting and/or setting up the company that will implement the co-financed R+D project
3. The maximum intensity of support may be a maximum of 80% of the amount considered eligible for industrial research projects, and 60% for experimental development projects, in accordance with the percentages applicable to maximum aid intensity established in the EC Communication in the Community Framework regarding State Aid for Research and Investigation and Innovation (2014/C 198/01) for the different company profiles and project types:

	Small companies	Medium companies	Large companies
Industrial research	70%	60%	50%

a) subject to effective collaboration between companies (in the case of large international companies or with at least one SME) or between a company and a research body, or	80%	75%	65%
b) subject to the widespread dissemination of the results			
Experimental development	45%	35%	25%
a) subject to effective collaboration between companies (in the case of large international companies or with at least one SME) or between a company and a research body, or	60%	50%	40%
b) subject to the widespread dissemination of the results			

4. The size of the company will be determined following Annex I of Commission Regulation 651/2014 of June 17 2014, and specific categories of aid will be established compatible with the common market in application of Articles 107 and 108 of the Treaty; and the project type will be determined following the Community Framework on State Aid for Research, Development and Innovation (2014/C 198/01)
5. When the amount of an eligible expenditure exceeds 12,000 euros, the beneficiary must acquire a minimum of three quotations from different providers, prior to contracting the commitment to the service or the delivery of the goods, except where the special characteristics of the eligible expenditure mean there is not a sufficient number of market entities that provide or supply the item, or where the expenditure has occurred before the application for aid.

When the selection does not go to the most advantageous economic proposal, the choice between the quotations offered must be supported in the justification, or, where appropriate, in the application for aid, and must be based on criteria of efficiency and economy, expressly justified in a selection report.

6. Under no circumstances will indirect taxes be considered eligible expenses when susceptible to recovery or compensation; nor will personal income taxes.
7. The maximum level of aid per beneficiary for this call is 200,000 euros.

#### **Seventh. Deadline for submission of applications and eligibility period.**

1. The submission period for applications will begin the day after the publication of this call in the Official State Gazette and will end two calendar months from the publication date (at 23:59 local time on the date of finalization).
2. The eligibility period will run from the day after the submission deadline and finish on December 31 2016 (at 23.59 local time on that day).

#### **Eighth. Beneficiary's requirements and obligations.**

##### **A) Requirements:**

1. 1) The beneficiaries must fulfill the obligations under Article 14 of Law 38/2003 of November 17, and those included in the developing regulations, as approved by Royal Decree 887/2006 of July 21.
2. In any case, they must not be subject to any of the following circumstances, except where the nature of the aid exempts them from the regulatory rules:
  - a) Having been convicted by final judgment to the penalty of the loss of eligibility for public subsidies or aid.
  - b) Having filed for bankruptcy, been declared insolvent in any procedure, be declared bankrupt, be subject to judicial intervention or have been disqualified pursuant to the Bankruptcy Act, and be within the disqualification period established by the insolvency sentence.
  - c) Having given rise, by being declared culpable, to the definitive termination of any contract entered into with a government body.
  - d) The natural person, the company administrators or those that legally represent other legal individuals must not be involved in any of the circumstances specified in Law 5/2006 of April 10 regarding conflicts of interest of government members or senior officials in the administration, or in Law 53/1984 of December 26 regarding incompatibilities of personnel employed by government bodies, or be involved in any of the elected positions regulated by Constitutional Law 5/1985 of June 19 in the General Electoral System under the terms set out therein or in the regional regulations governing these matters.
  - e) Currently failing to fulfill the tax or social security obligations imposed by the existing provisions, in a manner determined by regulation.
  - f) Having tax residence in a country or territory legally classified as a tax haven.
  - g) Failing to fulfill payment obligations for reimbursement of subsidies under the terms established by regulation.
  - h) Have been sanctioned by a final decision with the loss of the eligibility for subsidies under the current legislation.

## B) Obligations:

1. The beneficiaries must notify ICEX, if the case occurs, should other aid, subsidies, income or resources be obtained for the implementation of the funded activities, as soon as they become aware of this, and, in any event, prior to the justification of the application for the funds.

Furthermore, recipients must report any other aid granted under the EU de minimis rule, in the current financial year and the previous two, whatever its purpose, according to the specifications of EC Regulation 1407/2013 of the Commission of December 18, 2013 regarding de minimis aid, to guarantee that a group of associated companies is considered as a single company to the effects of the application of the de minimis rule.

2. The beneficiaries must expressly accept the aid given. Acceptance by the beneficiaries will imply authorization for the publication on the INVEST IN SPAIN/ICEX web page of the aid provided, the project or activity title, a brief description of its content, the project's implementation period and the amount of the aid.

3. Similarly, the beneficiaries must publicize the aid received in service and labor contracts, in grants, publications, papers, equipment, inventoriable material and in activities for the dissemination of the results financed by the aid, expressly mentioning their source and, where appropriate, co-financing with European Union Structural Funds. They must also publish the award of the aid on their website.

## Ninth. Subcontracting.

1. A beneficiary shall be understood to have subcontracted when it concludes with third parties the partial execution of the activity that is the subject of the aid. This item does not include the contracting of any expenses that must be incurred by the beneficiary for its own performance of the financed activity.
2. When part of the implementation of a project or activity is subcontracted, the subcontract cost must not exceed 50% of the total cost of the project or activity. In any case, the total expenditure on subcontracting, correctly justified by the approved invoices, may not exceed 50% of the total expenditure, duly justified, for all items. Any invoices deemed appropriate relating to the different items of expenditure approved in this subsidized project may be submitted for this calculation.  
Exceptionally, in activities qualified as of general interest, the Evaluation Committee may approve a higher percentage of subcontracting. Under no circumstance can activities be subcontracted that increase the cost of the subsidized activity without adding value to the content thereof.
3. A contract may not be split with the objective of decreasing the amount therein to avoid compliance with the above requirements.
4. The contractors are solely bound to the beneficiary, who assumes total responsibility for implementation of the subsidized activity before the Administration.
5. For the purposes of the previous section, the beneficiaries will be responsible for ensuring that the implementation of the subsidized activity contracted with third parties respects the limits established in the subsidy's regulations in terms of the nature and amount of the subsidized costs, and the contractors will have a duty to collaborate in order to permit the proper verification of compliance with these limits.
6. When the subcontract exceeds 20% of the total aid awarded and is above 60,000 euros, a written contract between the parties will be required, to be presented to the instructor prior to the decision on the aid. The aid will be understood to have been granted and the contract authorized by the body awarding the aid when the beneficiary receives the decision to grant the aid.
7. Subcontracting may not take place with individuals or entities affected by any of the following circumstances:
  - a) Individuals or companies involved in any of the prohibitions described in clause eight, Section 2).
  - b) Individuals or entities that have received other subsidies or aid for the implementation of the contracted activity.
  - c) Intermediaries or consultants where payment is defined as a percentage of the operation's total cost, unless said payment is justified with reference to the market value of the work performed or services rendered.
  - d) Individuals or entities linked with the beneficiary, except under the following circumstances:
    - When the contract was conducted in accordance with normal market conditions.
    - When prior authorization was obtained from the body granting the aid.
  - e) Individuals or entities applying for aid in the same call and program that have not obtained aid due to failure to comply with the requirements or failure to achieve the necessary score.

**Tenth. Competent bodies for the managing, evaluating and deciding on the aid.**



1. The Instructing Body, responsible for the instruction and organization of the aid awards procedure, is the department responsible for the program within Invest in Spain's Executive Management.

The Instructing Body will perform, *sua sponte*, whatever actions may be deemed necessary for the determination, understanding and verification of the data appearing in the applications received, and from which the documents submitted to the Evaluation Committee must be produced.

2. The Evaluation Committee is the body responsible for ensuring compliance with EU and national rules for the evaluation of the transactions.

The Evaluation Committee is responsible for:

- a) The technical analysis and the analysis of economic viability of the aid applications received.
- b) Monitoring the implementation of the projects receiving the aid.

The committee is made up of:

- i. The Director of Invest in Spain's Executive Management, who will act as President, and may delegate the post to the director of the department responsible for the program.
- ii. The director of the department responsible for the program.
- iii. The director of the Economic-Financial Department.
- iv. Up to a maximum of four public sector experts in the field of foreign investments and community programs.
- v. A member of the Legal Department, acting as Secretary.
- vi. As many advisers as are deemed necessary.

Decisions will be adopted by a simple majority of the voting members. The Secretary and advisers will have a voice but not a vote.

3. The decision on the procedure will correspond to the Managing Director of ICEX or the person delegated this competence.

#### **Eleventh. Formalizing and presenting applications.**

Applications for aid will be formalized through ICEX's virtual office which can be accessed through the websites of ICEX and INVEST IN SPAIN ([www.icex.es](http://www.icex.es) / [www.investinspain.org](http://www.investinspain.org)).

#### **Twelfth. Process of the evaluation phase.**

1. Once the application deadline has passed, the Instructing Body will publish a list of accepted and excluded applications on the websites of ICEX and INVEST IN SPAIN, specifying the reasons for exclusion so that those interested can present the documentation for the corresponding amendments within ten working days from the day after the publication of the list.

2. Once the deadline for the correction phase has passed, the Instructing Body will publish a definitive list of accepted and excluded applications on the same channels.

3. The admitted applications will undergo an evaluation process, which the Instructing Body will convey to the Evaluation Committee.

4. The evaluation will be conducted in accordance with the selection criteria listed below. The applications that do not score a minimum of 40 points, according to the table, will be directly excluded:

CRITERION	WEIGHTING
a) Increase in human and technological resources dedicated to R&D	25
b) Increase in the level of technology contributed in the form of patents, licenses, etc.	10
c) The evaluation of direct, indirect and induced effects.	25
d) The project's knock-on effect on the regional economy.	10
e) The strategic interest of the technologies to be developed in Spain.	10
f) Promotion of partnerships between private agents.	7.5
g) Promotion of public-private-partnerships (PPP)	7.5
h) Publicity and marketing as instruments for supporting R&D.	5
<b>Total</b>	<b>100</b>

5. In the case the scores are tied after the evaluation, priority will be given to projects that have obtained the highest score in section a).

6. After the process of evaluation the applications, the Evaluation Committee will publish on the websites of ICEX and INVEST IN SPAIN, ordered based on their score according to the valuation criteria established in this call:

- a) The provisional decision on the applications to be awarded aid of up to the maximum aid amount that can be distributed.
- b) The provisional decision on all the applications which, in compliance with the administrative and technical conditions established in the present call to comply the condition of beneficiary, cannot be considered as beneficiaries as they have reached the maximum authorized amount of credit fixed in this call.
- c) The provisional decision on the applications in the evaluations that have failed to achieve a minimum score of 40 points.

7. At the same time, the Instructing Body will send by email an individual provisional communication to the companies that are beneficiaries of an award of aid to request them to submit the following documentation:

- a) Form for stating acceptance of the proposed aid.
- b) In the case of aid with projects and/or activities to be undertaken in cooperation, the contract, covenant or agreement establishing the rights and obligations of all participants.
- c) Contract between the parties in the case of subcontracts exceeding 20% of the total aid awarded and which are up to 60,000 euros.
- d) Valid accreditation of the authority of the person signing the application.
- e) The documentation required in the provisional decision proposal.

8. Within the period of 10 calendar days from the day after the communication of the provisional decision, all the companies (beneficiaries and those not considered) can present as many appeals as they deem necessary for their assessment.

9. Once the deadline for the appeals has passed, the Instructing Body, after a favorable report from the Commission on Aid, Contracts and Authorizations, will send a proposal for the final decision to the Managing Director of ICEX.

If the decision does not comply with the criteria adopted by the Evaluation Committee the reasons will be justified.

10. In the case funds are released due to the renunciation of aid by any of the beneficiary companies or because they failed correctly to accredit their condition of beneficiary, the released funds will be assigned by the Evaluation Committee, without the need to conduct a new call, to the following applicant/s, in the order of their score with regard to the last beneficiary awarded the aid.

#### **Thirteenth. Decision.**

1. Once the final decision has been signed by the Managing Director of ICEX, it will be published on the websites of ICEX and INVEST IN SPAIN:

- a) The final decision of the applications awarded aid up to the maximum amount that can be distributed.
- b) The final decision of the rest of the applications not considered as beneficiaries, indicating the reason for their non-consideration.

2. In addition, a communication with the final decision will be sent to all the companies.

3. The interested parties can refer the final decision to the competent bodies with civil jurisdiction.

#### **Fourteenth. Compatibility with other aid**

1. When referring to actions co-financed by EU Structural Funds, the aid provided under this call will not be compatible with the receipt of aid for the same actions financed by other EC instruments.

2. The beneficiaries must notify ICEX, if the case occurs, should other aid, subsidies, income or resources be obtained for the implementation of the funded activities, as soon as they become aware of this, and, in any event, prior to the justification of the application for the funds.

Furthermore, recipients must report other aid granted under the EU de minimis rule, in the current financial year and the previous two, whatever their purpose, according to the content of Regulation (EC) no. 1407/2013 of the Commission of December 18, 2013, regarding the application of de minimis aid, in order to guarantee that a group of associated companies is considered as a single company to the effects of the application of the de minimis rule.

#### **Fifteenth. Modification of the conditions of implementation of the activity.**

1. The subsidized activities must be implemented in the time and manner approved in the award decisions.

2. Any change proposed to the project will imply:
  - a) That the change must not affect the objectives pursued by the aid, in their fundamental aspects, nor the determination of the beneficiary.
  - b) That the change must be expressly accepted by ICEX-Invest in Spain.

#### **Sixteenth. Justification of the project or activity and payment of the aid:**

1. The aid will be justified in accordance with the provisions of the applicable regulations of the European Union Structural Funds.
2. The applicant must have separate accounts or accounting coding system for the management of the aid.
3. The planned expenditure on the project or activity eligible for aid must be made in the years for which the aid was granted. Proof of these costs can, however, be issued up to the deadline for submission or documentation, provided that these proofs reflect the date of the expenditure, within the stipulated period. The issuance of the proofs of payment will also be subject to this time restriction.
4. The beneficiary must present the documentation and technical and economic monitoring reports that justify the implementation of the project or activity that is the subject of the aid. The documentation must be submitted for the monitoring milestones approved by the aid decision and, in any case, upon completion of the project or activity.

The justification should contain the following:

- a) A technical report accrediting compliance with the conditions imposed in the granting of the aid, indicating the activities undertaken and the results obtained. The report will contain:
  - I. The identification of the beneficiary and documentary proof that the beneficiary is a foreign-owned company.
  - II. An introduction to the activity's content.
  - III. The territorial location of the activity.
  - IV. The methodology or instrumentation used.
  - V. The justification of its incentivizing effect
  - VI. The activities undertaken.
  - VII. The results obtained, quantified and evaluated.
  - VIII. Any modifications undertaken, where necessary, and the justification for them.
  - IX. Conclusions.
- b) A financial report justifying the costs of the activities undertaken, which will contain:
  - I. A summary sheet with the budget approved for the activity and a comparison with the activity carried out, specifying the costs by year and for the items contained in the award decision.
  - II. A numbered list of the activity's expenses and investments with all supporting documentation and amounts paid with the total amount, including identification of the creditor and the document, its total amount and the part applicable to the project or activity, date of issue and payment, making reference to possible deviations in relation to the approved quotation and their causes.
  - III. Report on the implementation of the contracts, covenants, agreements and others signed with subcontractors and, in particular, with public research centers.
  - IV. Details of other income or aid that may have funded the activity, indicating the amount and origin.

- V. If not already submitted, the three quotations that should have been requested by the beneficiary in accordance with Article 31.3 of the General Subsidies Act.
- VI. Certificates verifying compliance with tax and social security obligations in accordance with the provisions of Article 14.1 e) of Law 38/2003 of November 17, General Subsidies Act.
- VII. Company certification, signed by a person with sufficient authority, showing the cost of internal staff dedicated to the project (with a list of staff, professional category, time devoted and cost/hour), attaching a copy of payrolls and documents TC1 and TC2 (only the sheet relating to the staff dedicated to the project).
- VIII. Where highly-qualified staff are recruited, a certificate of employment history issued by the Social Security for the person hired along with the documentation described in the previous section.
- IX. A copy of the self-assessment of asset transfer tax and certified legal documents must be supplied for the acquisition of land and buildings, or in their absence, a certification from the Settlements Office.
- X. Any other documentation that the procedure's instructor deems necessary for the correct justification of the cost of activities.

5. As a general rule, unless the decisions for granting the aid do not specify any other dates, the documentation previously described should be presented between January 1 and March 31 of the year immediately subsequent to the completion of the activity.

6. The corresponding technical-financial and physical checks will be made following the submission of the aforementioned documentation. These checks will be made in compliance with Public Sector Auditing Standards approved by the State Administration's Comptroller General; therefore any supporting documents deemed necessary will be requested in order to provide reasonable assurance regarding the proper application of the aid.

7. If, as a result of the checking, is it found that the funded investment has been less than that approved or that the objectives for which the aid was granted have not been wholly met, these circumstances will be communicated to the interested party along with the results of the investigation carried out, and the aid provided will either be reduced by adjusting its amount to the investments that have been effectively justified, or the aid will be withdrawn in its entirety, if it is understood that the reduction in investment would have resulted in the failure to complete the purposes for which the aid was granted.

The criteria for pro-rating potential cases of non-compliance are outlined in section nineteen.

8. The Instructing Body, after appropriate technical-financial checking, will issue a certificate of compliance with the objectives for which the aid was granted. This certification will be required for the initiation of the aid payment procedure.

9. The payment of the aid will always be effected after the completion of the project's or activity's corresponding activities, following delivery of the certificate demonstrating compliance with the purposes for which the aid was granted. The payment cannot be made if the beneficiary has failed to prove compliance with its tax and social security obligations and that it is not in default due to a ruling on proper reimbursement.

#### **Seventeenth. Verification and monitoring actions.**

1. The recipient of the aid is obliged to provide the checks aimed at ensuring the correct implementation of the project or activity for which it was granted. Moreover, the beneficiary will

be subject to audit by ICEX-Invest in Spain, as well as to financial control by the State Administration's Comptroller General and the fiscal oversight of the Court of Auditors and to the checks established in the regulations applicable to the management of aid co-financed by the ERDF under Article 108.1 of the Treaty on the Function of the European Union.

2. For the purposes of monitoring and controlling the funded activities, the beneficiaries must have accounting books, duly completed registers and other documents completed in the terms required by the laws applicable to the beneficiary, as well as invoices or documents of equivalent probative value and the corresponding proof of payment. This set of documents constitutes the supporting evidence for the aid granted and guarantees its proper reflection in the beneficiary's accounts.

3. The beneficiary must keep the supporting documentation regarding the project's or activity's costs for the period established in the EC legislation for the Structural Funds.

#### **Eighteenth. Defaults, refunds and penalties.**

Failure to comply with the requirements established for each call and other applicable rules, or with the conditions that may have been established in the corresponding award decision, if any, will result, through a timely repayment procedure, in the obligation to return the corresponding aid received, in accordance with applicable regulations.

#### **Nineteenth. Criteria for pro-rating non-compliance.**

1. In cases of non-compliance with the conditions imposed for the award of the aid, the amount by which the aid awarded is reduced will be determined by applying the following criteria:
  - a) Failure to comply with the objectives for which the aid was provided or to implement the investment eligible for subsidy or to meet accountability obligations, will require the reimbursement of the totality of the aid awarded.
  - b) Where the beneficiary is almost completely compliant and its actions have an unambiguous tendency toward meeting the commitments and conditions for the award of the aid, the size of the reduction in the aid will solely correspond to the amount not accounted for.
2. Late submission of the documents supporting the implementation of the subsidized investment will result in the withdrawal of the aid awarded.
3. Unauthorized modifications made to the subsidized budget will reduce the quantities provided.

#### **Twentieth. Applicable regulations and complaints regime.**

1. The aid regulated in this call will be governed by the provisions of the call, the award decision and by ICEX's internal aid rules, and by all current applicable rules.
2. Specifically, by the provisions of EC legislation:
  - European Parliament and Council Regulation 1303/2013 of December 17, which establishes common provisions in relation to the European Regional Development Fund, the European Social Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, and establishes general provisions in relation to the European Regional Development Fund, the European

Social Fund, the Cohesion Fund, the European Maritime and Fisheries Fund, and repealing Council Regulation 1083/2006.

- European Parliament and Council Regulation 1301/2013 of December 17 regarding the European Regional Development Fund and specific provisions relating to investment objectives for growth and employment and repealing Council Regulation 1080/2006.

3. Similarly, the aid must comply with the specifications established in EC Regulation no. 1407/2013 of the Commission of December 18 2013 regarding the application of articles 87 and 88 of the EC Treaty on "*de minimis aid*".

4. In matters not covered in this call or in applicable EC Regulations, the provisions of Law 38/2003 of November 17, General Subsidies Act, will apply in a supplementary manner, and with the necessary adaptations derived from the legal nature of ICEX-Invest in Spain.

5. The interested parties may appeal directly to the competent judicial bodies with civil jurisdiction against the decisions taken by ICEX-Invest in Spain within the procedure for granting aid, which is the subject of this present call.

#### **Twenty-first. Information relating to the European Regional Development Fund.**

The aid may be co-financed by the European Union through the European Regional Development Fund (ERDF) for the aforementioned programming period 2014-2020.

The acceptance of aid from ICEX by the participating companies represents their agreement to be included in the list of public transactions according to article 115 section 2) of EU Regulation 1303/2013.

Similarly, this acceptance also implies its permission for ICEX to publish on its website the company's compliance with the following text:

"I am aware that this action is co-financed with European funds and I undertake to indicate this fact whenever I am required to mention this in response to third parties or to the public. Due to the importance this type of aid has for our company, I rate very positively the contribution of ERDF, the main fund for the policy of European cohesion, for its role in supporting our work and thus the economic growth and creation of employment in the region where I am located, and in Spain as a whole".

Furthermore, if this company is the beneficiary of aid co-financed by ERDF funds, and regarding the availability and conservation of the justifying documents, they must comply with the specifications of article 140 of EU Regulation 1303/2013, and article 125.4.b) of the aforementioned Regulation regarding the accounting of transactions.

All information relating to the responsibilities and obligations of the beneficiary companies in regard to information and communication is available on the ICEX website [www.icex.es/fondosfeder](http://www.icex.es/fondosfeder)

In no case will financing by ERDF funds imply additional support for the beneficiary companies.

#### **Twenty-second. Effectiveness.**

The present call will take effect from the day following its publication in the Official State Gazette.