

CONTRACT FOR PROVISION OF TECHNICAL ASSISTANCE SERVICES No.337 - 2013 OF 24/9/2013 ENTERED INTO BY THE COLOMBIAN INSTITUTE FOR THE ASSESSMENT OF EDUCATION – ICFES AND THE AUSTRALIAN COUNCIL FOR EDUCATIONAL RESEARCH – ACER.

internationally recognized expert in studies for the area of civic and citizenship education, who participated in discussions carried out by the team of officials in charge of the development and consolidation of the Citizenship Competences test. Taking into account the discussions approached, he reviewed, oriented, and made observations to the documents produced by the areas of Instruments Design, Instruments Production, and Analysis and Dissemination. Within this context, and giving continuity to the revision, training, and advice process regarding the evaluations on civic and citizenship education that ICFES has conducted (International ICCS study 2009 and Saber 5 and 9, 2012), it is necessary to have the support and technical assistance of an expert on education and evaluation in order to strengthen topics regarding data processing, equalization and production of scales, and proposal of analysis and reports structure plans, among other activities. In this manner, ACER constitutes the best choice for ICFES concerning the development of the aforementioned activities, thanks to its wide experience in this sort of projects worldwide; besides valuing its history with the Institute in previous years, which provides it with a vision and knowledge of the project's scenario and challenges".

2. Following the justification set forth, the Institute deems feasible to invite **AUSTRALIAN COUNCIL FOR EDUCATIONAL RESEARCH** to submit a bid to provide technical assistance services in order to strengthen issues related to data processing, equalization and production of scales, and proposal of analysis and reports structure plans, regarding the evaluations of civic and citizenship education conducted by ICFES (International Study ICCS 2009 and Saber 5 and 9 tests, 2012), since the former relies on the experience conditions and qualifications. **3.** Based on the aforementioned, **AUSTRALIAN COUNCIL FOR EDUCATIONAL RESEARCH** was invited by means of communication dated September 23rd, 2013, signed by the official authorizing expenditures, to which the corresponding requisition was attached. **4.** That the **AUSTRALIAN COUNCIL FOR EDUCATIONAL RESEARCH** accepts the invitation extended by ICFES regarding the specifications, technical conditions, and terms described therein. **5.** That by means of certification issued by the General Secretary, and the approval of the deputy Human Resources Sub director, it is stated that there is neither the infrastructure nor the personnel required to carry out the purpose of this contracting process. **6.** That there are sufficient resources, and to this effect the Budget Availability certificate No. 1275 was issued. **7.** This contracting process is supported by article 12 Act 1324 of 2009 which sets forth "... Contracts that ICFES shall subscribe and grant as an entity of special nature, in the development of its corporate purpose, shall be subject to the provisions of the private law."; the Colombian Constitution, especially what is set forth in articles 209 and 267, and **by article 13, Act 1150 of 2007 in accordance to the provisions of article 18** of the contracting manual of ICFES (Agreement 014 of 2011) which establishes: "(...)" *"ICFES may exclude the aforementioned Public Tender Invitation and Direct Selection procedures and contract*

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without having requested previously several bids in the following cases: (...) f. In the case of contracting professional services for which the quality and conditions of the natural or legal person turn out to be particularly relevant, in which case the criteria and conditions to be taken into consideration for the selection of contractor shall be stipulated in the requisition". **FIRST CLAUSE – PURPOSE:** To provide technical assistance services in order to strengthen topics regarding data processing, equalization and production of scales, and proposal of analysis and reports structure plans, regarding the evaluations on civic and citizenship education that ICFES has conducted (International ICCS study 2009 and Saber 5 and 9, 2012). **SECOND CLAUSE – SCOPE OF THE CONTRACT:** The academic products produced under the obligations of this contract correspond to a work on commission, mandated by ICFES to the contractor under the plan and instructions of ICFES at its own expense. Therefore, all property rights of the works, the results, contents, and in general the purpose of the contract, shall be vested exclusively on ICFES. **THIRD CLAUSE – OBLIGATIONS OF THE CONTRACTOR:** During the performance of the contract, the CONTRACTOR undertakes to: **1.** Prepare and submit the work schedule, establishing the activities to be carried out which will be subject to revision by ICFES, who may recommend adjustments thereof. **2.** Provide technical assistance regarding the procedures for production of scales and equalization of the scales (items) of the international study ICCS 2009 used in the Citizenship Competences of the SABER 5 and 9 tests 2012. **3.** Prepare a proposal for the analysis and structure of the results report for the scales (items) of the international study ICCS 2009 and related variables, included in the SABER 5 and 9 test 2012. **4.** Advise the Institute regarding the analysis of data and production of the report of results for the study of Citizenship Competences of the SABER 5 and 9 test 2012 taking into account the scales (items) of the international study ICCS 2009. **5.** Produce and deliver to ICFES the sections that contain the global comparison analysis with the ICCS international study, in the report of results for the Citizenship Competences study of the SABER 5 and 9 tests 2012. **6.** Attend and participate in virtual meetings and a face-to-face meeting in Bogota, which will be scheduled with ICFES team for the development of the contractual purpose following the established schedule of work. **7. Comply** with the purpose of the contract in its entirety, on a timely manner, within the established term and in accordance with the quality agreed upon. **8.** Maintain on behalf of ICFES secrecy and reserve of information that is given, obtained, and handled pursuant to the contract. **9.** Submit the invoicing bill or equivalent document. **10.** All other obligations that may be required in order to achieve full compliance with the purpose of the contract. **FOURTH CLAUSE – OBLIGATIONS OF ICFES:** During the performance of the contract, ICFES undertakes to: **1.** Prepare jointly with the CONTRACTOR a schedule of activities, which details the activities execution times, personnel to be required, and dates scheduled for the application and for products delivery. **2.** Provide


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the contractor with all information and documentation required regarding the purpose and obligations of the contract. **3.** Schedule the meetings (both face-to-face and virtual) necessary to comply with the contractual purpose. **4.** In case of requiring that personnel from ACER attends personally meetings scheduled in Colombia pursuant to the contract, ICFES shall bear the costs associated with the stay in Bogota D.C. such as local transportation, food, lodging, etc. **5.** Ensure compliance with the contractual purpose by exercising supervision of the contract. **6.** Receive and approve to entire satisfaction the reports and documents subject of the contract. **7.** Pay in a timely manner the values agreed upon as payment for the services contracted, prior satisfactory acceptance by the supervisor. **8.** **Other** obligations that may arise from the execution of the contract. **FIFTH CLAUSE – VALUE OF THE CONTRACT:** for all legal and tax purposes, the total value of the contract is the amount of **THIRTY FIVE THOUSAND FIVE HUNDRED NINETY EIGHT DOLLARS AND EIGHTY NINE CENTS (US\$ 35,598.89)** amount that includes the direct and indirect costs generated pursuant to the execution. **PARAGRAPH ONE.** The total value of the technical assistance contract generates a VAT for sixteen per cent (16%) corresponding to **FIVE THOUSAND SIX HUNDRED NINETY FIVE DOLLARS AND EIGHTY TWO CENTS (US\$ 5,695.82)** which will be paid entirely by ICFES, in compliance with the obligations set forth in the National Tax Statute. **PARAGRAPH TWO:** Banking commissions caused by bank drafts from Colombia to the CONTRACTOR's account shall be paid entirely by ICFES; these amounts are estimated in **THIRTY DOLLARS and TEN CENTS (US\$ 30.10).** **PARAGRAPH THREE:** Withholding tax shall be applied on ten percent (10%) of the technical assistance service billed by the foreign entity, as income tax and related taxes. **PARAGRAPH FOUR:** According to the aforementioned, ICFES shall make the budget commitment for a total amount of **EIGHTY TWO MILLION FOUR HUNDRED FORTY THREE THOUSAND FIVE COLOMBIAN PESOS (COP 82.443.005)** equivalent to **FORTY ONE THOUSAND THREE HUNDRED TWENTY FOUR DOLLARS AND EIGHTY ONE CENTS (US\$41,324.81).** **SIXTH CLAUSE – MANNER OF PAYMENT:** ICFES shall pay the value of the contract in a single payment for the value of the service provided, which is equal to **THIRTY FIVE THOUSAND FIVE HUNDRED NINETY EIGHT DOLLARS AND EIGHTY NINE CENTS (US\$35,598.89)**, upon delivery of report containing the results of the performance of obligations 2, 3, 4, and 5 listed under the contractor's obligations clause. **PARAGRAPH ONE:** for payment purposes, the CONTRACTOR shall submit besides the invoice or similar document, the certification of satisfactory acceptance signed by the supervisor of the contract and the document that accredits payment of contributions to the Comprehensive Social Security System. Payment shall be made provided that all of the required documents had been submitted; delays occurring for such concepts shall be the sole responsibility of the CONTRACTOR, therefore not entitling it to

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payment of interests or compensation whatsoever. **PARAGRAPH TWO:** Payments due by ICFES in virtue of this contract are subject to the Annual Cash Program (PAC, Spanish acronym). **PARAGRAPH THREE:** ICFES shall apply withholding for income and related taxes, and VAT at the time of making the payments, in accordance with the provisions in the contract value clause. **PARAGRAPH FOUR:** The value of banking commissions caused in the country by bank drafts sent overseas shall be charged when the corresponding disbursement is made and the corresponding debit note is issued by *Banco Popular*. Banking commissions caused overseas shall be borne by the contractor. **PARAGRAPH FIVE:** Payments shall be made in US Dollars. **SEVENTH CLAUSE – DURATION AND EXECUTION TERM:** For all legal effects and purposes this contract shall have a term for completion until December 15th, 2013. **EIGHTH CLAUSE – SUPERVISION:** Supervision for the proper execution of the contract shall be in charge of JULIAN PATRICIO MARINO VON HILDEBRAND, identified with citizenship card No. 17.347.349, or by the person appointed by ICFES expenditure authority. **NINTH CLAUSE – BUDGET ALLOCATION:** The resources necessary to meet this commitment are available for the year 2013 in accordance with the Budget Availability Certificate number 1275 for an amount of **EIGHTY TWO MILLION FOUR HUNDRED FORTY THREE THOUSAND FIVE COLOMBIAN PESOS (COP 82.443.005)** corresponding to the value of this contract estimated at a market representative rate of **ONE THOUSAND NINE HUNDRED NINETY FIVE PESOS (COP 1,995)**. In case of requiring an adjustment due to increase in the market representative exchange rate, ICFES shall authorize it by means of justified resolution. **TENTH CLAUSE – INDEMNITY:** The CONTRACTOR shall indemnify ICFES against all claims, demands, actions and costs which might occur or arise for damages or injury to person or property, caused by the CONTRACTOR or its personnel or subcontractors during the execution of the object and obligations set forth herein. In case that any claims, suits, or legal actions are brought against ICFES by issues that are responsibility of the CONTRACTOR under the terms of this contract, they shall be communicated as soon as possible so that the CONTRACTOR adopts in a timely manner the measures set forth in the law in order to hold the Institute harmless, and to conduct the proceedings in order to reach a settlement for the conflict. ICFES, by request of the CONTRACTOR, may provide collaboration in order to respond to legal claims, and at its turn the CONTRACTOR shall recognize the costs they may cause to ICFES, without attenuation of the CONTRACTOR's responsibility caused by this acknowledgement nor by the fact that ICFES in a given moment had provided its collaboration for the defense of its interests against such claims, suits, or legal actions. If in any of the events specified in this item the CONTRACTOR does not assume duly and timely the defense of ICFES, the latter may do it directly, with prior written communication to the CONTRACTOR who shall pay for all of the expenses in which the

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entity incurs for such reason. In case that the CONTRACTOR failed to do so, ICFES shall be entitled to discount the value of such expenses from any amount due to the CONTRACTOR, caused by the services subject to this contract, or to use any other legal means. **ELEVENTH CLAUSE – ASSIGNMENT:** The CONTRACTOR may not assign this contract without the prior written consent from ICFES. The Institute may refuse the assignment authorization. **TWELFTH CLAUSE – TAXES AND WITHHOLDINGS:** Payment of taxes and withholdings that arise because of this contract are in charge of the CONTRACTOR and ICFES, in accordance with the regulations of the National Tax Statute. **THIRTEENTH CLAUSE – INABILITIES, INCOMPATIBILITIES AND CONFLICT OF INTERESTS:** The parts state under oath that they are not involved in any of the causes set forth in the Constitution or the law which hinders them to subscribe this contract, and that in case that any of said causes shall arise during its process, they will proceed in accordance with the provisions of articles 8 and 9 from Act 80 of 1993. **FOURTEENTH CLAUSE – DISPUTES RESOLUTION:** Every difference or controversy arising from, in the development or, or as a consequence of the contract, its formalization or its settlement, shall be solved in direct manner among the parties. In case that it is not possible, the matters shall be subject to the conciliation procedure through an internationally recognized arbitration center chosen for that purpose, in the location designated by the parties. In case that the conflict persists, it shall be settled by the International Court of Arbitration seated in the International Chamber of Commerce appointed in mutual agreement by the parties, based on the Rules of Arbitration of the International Chamber of Commerce for 2012, in accordance with the following guidelines: The Court shall be made up by one arbitrator, appointed in mutual agreement by the parties, chosen from the lists in the International Court of Arbitration. In the event that such agreement is not possible among the parties, the arbitrator shall be appointed by the court, by means of a draw within its lists. Likewise, the fact that any of the parties does not attend the meeting for the appointment of an arbitrator, shall be understood as a negative of such party to reach an agreement in the appointment, and the Court shall make that appointment by means of draw within its lists. b) The internal organization of the Tribunal shall be subject to the rules set forth for institutional arbitration. c) The Tribunal shall rule under the law. d) The Tribunal shall be held in the siege of the International Court of Arbitration, International Chamber of Commerce. Expenses derived from the formation of the arbitration tribunal shall be paid by the CONTRACTOR. **FIFTEENTH CLAUSE – PENALTY CLAUSE:** The parties agree that in the event of partial or final breach of obligations by the Contractor, ICFES may enforce the penalty clause in an amount equal to ten percent (10%) of the contract value, as estimated and partial liquidated damages that may be caused to it, without prejudice to the right of obtaining from the Contractor and/or its guarantor the payment of compensation for the other damages suffered. For

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that purpose, the CONTRACTOR hereby authorizes ICFES to deduct the value corresponding to the stipulated penalty clause from the amounts due in its favor. If such debts did not exist, or were they not sufficient to cover the amount, ICFES shall initiate the legal actions that may proceed. **FIRST PARAGRAPH:** The parties agree that the penalty may be accumulated with any other form of compensation, under the terms of article 1600 of the Colombian Civil Code. **SECOND PARAGRAPH:** To this purpose, ICFES shall make the corresponding formal requirement to the CONTRACTOR so that it submits to ICFES the evidences it considers pertinent within five (5) business days following receipt of the communication. Such evidences shall be discussed by the parties in order to document the decision to be taken with regards to the demand of this clause. **SIXTEENTH CLAUSE – PENALTY CLAUSE FOR ENFORCEMENT:** In case of delay in the compliance with the contract or the obligations regarding to its execution by the CONTRACTOR, it shall cause the payment of daily successive amounts equal to one percent (1%) of the total value of the contract for each day of delay, without exceeding ten percent (10%) of the total value of the contract, having prior application of due process as defined in the second paragraph herein and in accordance with the contractual provisions. To this effect, the CONTRACTOR authorizes ICFES to deduct and compensate from amounts in its favor the values corresponding to the penalty clause for enforcement. If such balances in favor of the CONTRACTOR shall not exist, or if they were insufficient to cover the total value of the penalty clause for enforcement, ICFES may obtain payment through the legal means that may proceed. Payment or deduction of eventual penalties does not release the CONTRACTOR from complying with its obligations and commitments, nor to conclude the activities undertaken in the conditions agreed upon for time and quality. **FIRST PARAGRAPH:** For the purposes of application of the penalty clause for enforcement, ICFES and/or the person in charge of the contract supervision shall verify the compliance with the obligations undertaken by the CONTRACTOR, in accordance to the provisions in the requisition, the proposal submitted by the CONTRACTOR, and other clauses of the contract. **SECOND PARAGRAPH:** The following procedure must be taken into account to demand payment of the penalty clause for enforcement: ICFES shall notify the evidenced delay to the Contractor in written form within the following three (3) business days. The CONTRACTOR shall have up to three (3) business days after receiving the notification to present to ICFES the arguments for the delay and the pertinent documental supports that justify it. Subsequently, ICFES shall analyze the presented arguments and documents provided by the Contractor in order to apply the stipulated penalty. **SEVENTEENTH CLAUSE – CONFIDENTIALITY:** All data and information to which the Contractor may have had access pursuant to this contract shall be maintained in confidential manner; this confidentiality is continuous and shall not expire neither by termination nor by declaring caducity of the Contract. The Contractor



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agrees not to disclose any information that is not in the public domain and that it would have obtained during the execution of the contract, either directly or indirectly, to any person neither during the term of the contract, nor after its termination, except with the express written consent of the contracting party. The Contractor undertakes to develop the contracted products with the highest confidentiality standards. **EIGHTEENTH CLAUSE - CAUSES FOR TERMINATION OF THE CONTRACT:** The parties agree that the contract shall be terminated in the following cases: Mutual agreement among the parties; b) repeated breach of any of the obligations by the CONTRACTOR; c) expiration of the term; d) completion of the contracted purpose; e) resolution condition in accordance with article 1546 of the Colombian Civil Code, purpose for which the fulfilled party may request before the competent authority that the contract is deemed expired. **NINETEENTH CLAUSE – EXCLUSION OF EMPLOYMENT RELATIONSHIP:** This contract shall not be construed as a way of labor relationship of the CONTRACTOR personnel with ICFES; therefore, neither the CONTRACTOR nor the personnel it employs for the execution shall be entitled to the recognition or payment of fringe benefits. **TWENTIETH CLAUSE – DOCUMENTS OF THE CONTRACT:** The following documents are integral part of this Contract: 1) Requisition. 2) BAC 1275 of September 19th, 2013. 3) The proposal submitted by the contractor. . 4) All of the documents that the parties issue during the execution of the contract, which are related to the nature of its purpose. **TWENTY FIRST CLAUSE – FORMALIZATION AND EXECUTION:** This contract is formalized with the signature of the parties. It requires the issue of the budget record for its execution. **TWENTY SECOND CLAUSE – DOMICILE:** For all legal and tax purposes derived from this Contract, the city of Bogota is set as domicile. Once the contract was read and approved by the parties, it is signed on September 24th, 2013.


ADRIANA JULET GIL GONZALEZ

ICFES EXPENDITURE
AUTHORITY


GEOFFEREY NORMAN MASTERS
AUSTRALIAN COUNCIL FOR EDUCATIONAL
RESEARCH-ACER
REPRESENTATIVE - CONTRACTOR

Prepared by: YENSSY MARLEY ORTIZ MALDONADO