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REPUBLIC OF PERU



**PRIVATE INVESTMENT PROMOTION PROCESS  
COMPONENT N°1 - MAJES-SIGUAS PROJECT - STAGE II**

**TENDER DOCUMENTS**

**COMPREHENSIVE PROJECT TENDER**

**CONCESSION OF LARGER WATER CONSOLIDATION WORKS AND  
INFRASTRUCTURE FOR THE IRRIGATION OF PAMPAS DE SIGUAS**

**PRIVATE INVESTMENT PROMOTION AGENCY**

**PROINVERSION COMMITTEE FOR PROJECTS OF SANITATION AND  
IRRIGATION INFRASTRUCTURE - PRO AGUA**

**AMENDED TENDER DOCUMENTS**

**JUNE 2009**

*The present tender documents have been developed in coordination with the Regional Government of Arequipa according to the Agreement of Technical Assistance under the modality of contract, signed between the Regional Government and PROINVERSIÓN.*

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## OBJECTIVE AND CHARACTERISTICS

### Tender Call and Purpose

1.1.1. The State of the Republic of Peru, represented by the Regional Government of Arequipa and acting through the Private Investment Promotion Agency – PROINVERSION complying with the Technical Assistance Agreement under the modality of contract, has called for a Comprehensive Project Tender to grant in concession to the private sector the “Larger Water Consolidation Works and the Infrastructure for the irrigation of the Pampas de Siguas”, which constitute the main component of the private investment promotion process in the Majes - Siguas Project (Stage II).

1.1.2. The purpose of the Concession is the execution of works and exploitation of the Concession through the economic use of its assets, hence, the Concessionaire will be responsible for the implementation of New Works and for the operation and maintenance of these and the existing Works during the concession term, in accordance with the technical specifications set forth in Exhibit 9 - Terms of Reference, which is part of these Tender Documents. Consequently, the Concessionaire shall comply with the following:

- Construction, operation and maintenance of major hydraulic infrastructure (Angostura Dam and Angostura-Colca Derivation) as part of the New Works;
- Construction, operation and maintenance of Lluclla-Siguas derivation works; and piping works, regulating reservoirs and distribution works to Pampas de Siguas, as part of the New Works;
- Operation and maintenance of major hydraulic infrastructure works built as part of the stage I of the project, up to Pitaya intake, except the irrigation infrastructure currently under control of the Majes Irrigation Users Association;
- Water supply for irrigation purposes to users and land owners in Pampas de Siguas;

- Water supply for generation purposes (non-consumptive use). The payment for this service will not be considered as part of the Concessionaire's income, but of the Majes – Sigwas Special Project, in accordance with the provisions of the Concession Agreement and the current regulations, and
- Water supply in blocks to users and purchasers of new lands of Pampas de Majes and Santa Rita de Sigwas users, according to the annual volume, water sources and delivery scheme agreed.

The water delivery scheme to be set to comply with the referred irrigation agreements, has priority over any other use of water and should be followed, without modification, for the development of the electrical component of the Majes – Sigwas Project, Stage II. However, if it is proposed an optimized scheme for hydroelectric generation, based on a water dispatch other than the required for the irrigation system, the electricity investor must provide a compensatory reservoir for full supply of the water delivery scheme required by irrigation users.

- 1.1.3. For the purposes of the present Concession the term will be of up to 20 years, including a period of up to 4 years for the construction the New Works in accordance with the completion scheme proposed by the Concessionaire. Consequently, the Period of Operation shall be of sixteen (16) years and shall begin at the end of the period of completion of the New Works. Nevertheless, the Operation Period could be reasonable extended if the Concessionaire had higher costs due to contingencies associated with Geological Events.
- 1.1.4. According to the type of contract under the Concession Scheme, it is a BOT-type Concession where the revenues will be regulated by the Concession Agreement. These revenues will result from the provision of water supply for irrigation in Pampas de Sigwas.
- 1.1.5. During the Concession term, when the system operation is not directly executed by the Concessionaire, it may be carried out by an operator hired for the purpose by the Concessionaire or, when the Post-Construction Period is finished, it may be passed on to another investor who totally or partially acquires,

via stock transfer, the rights and obligations of the Concessionary Company.

- 1.1.6. The competition factor for the Concession Award will be the lowest amount proposed for the Basic Unit Remuneration for the guaranteed water supply to Pampas de Sigwas, along with the lowest Co-financing request for funding the New Works. The Economic Bid will be structured according to the formula of normalization and weighting of both factors as shown in Point 1.2.59.
- 1.1.7. During the Operation Period, the monthly revenues for the Concessionaire will never be less than the Guaranteed Minimum Income nor will exceed the result obtained when multiplying the Basic Unit Remuneration by the volume of water specified in the monthly delivery schedule for the corresponding month, plus the Value Added Tax.
- 1.1.8. The State will additionally allow the concessionaire to use free of charge, the existing infrastructure of the stage I up to the Pitaya intake, except the irrigation infrastructure currently operated by the Majes Irrigation Users Association. The Existing Works to be delivered along with the New Works of the present Concession constitute the complete hydraulic system of the Majes-Sigwas Project. The Concessionaire will commit to its operation and maintenance.
- 1.1.9. The Concessionaire guarantees the transfer and distribution of a minimum annual volume of five hundred and thirty (530) million m<sup>3</sup> of water to the lands to be auctioned in Pampas de Sigwas; as well as its distribution according to monthly delivery schedules and individual service contracts assumed with the end users or clients.
- 1.1.10. The Concessionaire also guarantees delivery of water in blocks to the current irrigation users in Pampas de Majes and Santa Rita de Sigwas, according to the volumes and water sources arising from the use of water regulations in force on the Closing Date of the Contract.
- 1.1.11. The water supply service for irrigation shall be regulated by the terms in Exhibit 15 of the Concession Agreement, which will specify the detailed conditions of delivery and the Concessionaire's income for providing this service in Pampas de

Siguas. For the purposes of providing the service to the end users or clients in the Pampas de Siguas, the Concessionaire will subscribe, with each one of them, Contracts for Water Supply which shall be regulated by the Concession Agreement, by the Civil Code and by other Applicable Laws. The model of the individual service contract will be part of the Concession Agreement.

In addition, the water supply for generation of hydroelectricity will be provided by the Concessionaire in accordance with the addendum to the Concession Agreement. The service will be provided as from the water intakes which will be indicated in cases of total or partial use of existing slopes. In those cases, all collection works, complementary regulation works (prior to the water passing through turbines), and compensation works needed to restore the required system for irrigation, are the sole liability and responsibility of the electricity investor.

When implementing the hydroelectric development, the independent operation of the conduction of irrigation water in case of postponement or delay in the construction or decommissioning of hydroelectric plants, will be considered as a possible event.

1.1.12. When the concession term expires, including contract extensions, the Project Works will be passed on to the Regional Government of Arequipa, which shall assign them, through a tender, to a new Concessionaire in order to guarantee the continuity of the system operation, including the water supply to the Pampas de Majes and Siguas, in accordance with their respective characteristics.

1.1.13. The New Works will be built on land registered in the name of the Regional Government and/or Majes-Siguas Special Project (AUTODEMA), which will be made available to the Concessionaire for the term of the Concession. The agricultural land in the Pampas de Siguas that will benefit from the water supply service for irrigation purposes is not part of this provision.

1.1.14. The basic references for the implementation of the New Works are the Final, Feasibility and the complementary studies which are available. The bidder is free to make his proposal with the technological adjustments and updates it deems appropriate,

as long as the modifications conform to the minimum specifications contained in the Terms of Reference (Exhibit 9) and do not undermine the potential development of the Majes-Siguas Project, as described in those studies.

1.1.15. The following economic and financial indicators have been considered in the structural scheme of the Concession:

**a) Referential Amount of Investment**

The Referential Amount of the Investment is established in Point 1.2.53.

**b) Co-financing and State Guarantees**

The financial structure of the Concession includes an amount of Co-financing by the State and a Guaranteed Minimum Income proportionate to the size of the investment and the Concession scheme characteristics. These amounts will be announced via Circular Letter.

**c) Contributions of the Concessionaire**

Through his contributions the Concessionaire will cover the difference between the total Amount of Investment and the State's Co-financing. To this end, the Concessionaire shareholders' contribution shall not be less than the percentage that will be announced in advance by Circular Letter in no less than sixty (60) calendar days before the date to submit the Envelopes No. 2 and No. 3. The difference will be covered with the necessary indebtedness provided by the Authorized Creditors. Contributions from the Concessionaire, including debt, will be recovered exclusively through the income from the provision of the Service.

In the event of early termination of the Concession Agreement, the investment recognized by the State shall be calculated based on the Referential Amount of Investment.

1.1.16. The Tender Process shall be conducted in accordance with the provisions of the present Tender Documents.

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## Definitions

Any reference made herein to "Point", "Form", and "Exhibit" should be understood as made to the points, forms, and exhibits in these Tender Documents, unless otherwise specified.

The expressions in the singular include where appropriate, the plural and vice versa. References to "Days" shall be understood as not made to a Saturday, Sunday or non-working holiday in the city of Lima. Holidays are also understood as the non-working days for the public sector. All time references are to be understood as referring to the local time in Peru.

The terms in capital letters in the present Tender Documents, and that are not specifically defined, relate to Applicable Laws or to terms defined in the Contract or to the meaning given to them in the use of the activities related to the development of the project or to terms that are currently used in the upper case.

In the present Tender Documents, the following terms shall have the meanings set out below:

- 1.2.1 Confidentiality Agreement:** This is the agreement that the Acquirers, through their Legal Representative or Authorized Agents, must sign before using the Data Room. The format of the Confidentiality Agreement text appears in Exhibit No. 1 hereto.
- 1.2.2 Concession Award:** This is the statement to be made by the Committee announcing the Economic Bid of the successful bidder of this Tender.
- 1.2.3 Successful Bidder:** This is the Bidder who is awarded with the Concession Award.
- 1.2.4 Acquirer:** This is the individual or legal entity that pays the Participation Fee for the tender. In the case of a Consortium, only one of the members should pay the Participation Fee.
- 1.2.5 Private Investment Promotion Agency - PROINVERSION:** The Decentralized Public Entity attached to the Economic and Financial Sector referred to in the Law No.28660 and in the Supreme Decree No. 027-2002- PCM, as amended by the



Supreme Decree No. 095-2003-EF, responsible, among other functions, for promoting private investment in infrastructure and public services that can be given in concession to the private sector according to Applicable Regulations.

- 1.2.6 Authorized Agents:** These are the individuals appointed as such by the Acquirer or the Listed Bidder for the purposes of this Tender.
- 1.2.7 Technical Advisor:** The consulting firm Lahmeyer-Agua y Energía S.A. was responsible, between March and July 2007 for updating the studies and complementing the technical solutions and referential designs for the New Works, the condition of the Existing Works, operation and maintenance activities in the Project Works and water balance of the project, as well as other issues.
- 1.2.8 Transaction Advisor:** The Latin Pacific Capital S.A. has consolidated the costs of the Project and the financial structuring of the Concession, and is currently advising PROINVERSIÓN in the management of the Tender Process.
- 1.2.9 Governmental Authority:** This is any governmental or national, regional, departmental, provincial or municipal authority, or any of its departments or agencies, regulatory or administrative, or any Peruvian entity which, under the law, exercises executive, legislative or judicial powers, or belongs to any of the governments, authorities or institutions listed above, with jurisdiction over persons or issues in question.
- 1.2.10 Tender Documents:** The document herein, including its Forms, Exhibits, Appendices and Circular Letters issued by the Committee, establishing the terms that shall govern the Tender and the Concession.
- 1.2.11 Work schedule:** Chronological sequence of the various stages, activities and aspects of the works which the bidder takes into account to when organizing and implementing the General Work Plan.
- 1.2.12 Circular Letters:** All the directives or dispositions issued in writing by the Committee, whether for specific or general purposes, aimed at completing, clarifying, interpreting or

modifying the contents of these Tender Documents, other Circular Letter, or answering inquiries made by parties authorized to do so pursuant to the Tender Documents. These Circular Letters shall be an integral part hereto.

- 1.2.13 Co-financing:** The non-refundable contribution of the State of the Republic of Peru to finance the implementation of the New Works.
- 1.2.14 Maximum Co-financing (COM):** This is the maximum amount according to which the Listed Bidders shall formulate their Co-financing proposals (Required Co-financing) as part of their Economic Bids.
- 1.2.15 Required Co-financing (COR):** The amount of Co-financing required by the Listed Bidder, as part of the Economic Bid.
- 1.2.16 Committee:** The Committee of PROINVERSIÓN for Sanitation and Irrigation Projects - PRO AGUA, constituted through Supreme Resolution No. 036-2009-EF, which is responsible for the management of the Tender Process.
- 1.2.17 Proof of payment of Participation Fee:** It is the document that PROINVERSIÓN will deliver to the Acquirer as a proof of having paid the Participation Fee for the Comprehensive Projects Tender Process.
- 1.2.18 Grantor:** This is the State of the Republic of Peru, represented by the Regional Government.
- 1.2.19 Concession:** This is the administrative act contained in the Contract, by which the Grantor grants the Concessionaire the right to build, exploit, re-design and maintain the Project Works, as established by the Concession Contract and subject to applicable laws.
- 1.2.20 Concessionaire:** It is the legal entity constituted by the Awardee who holds the Concession Agreement with the Grantor.
- 1.2.21 Comprehensive Projects Tender or Tender:** This is the selection process regulated by these Tender Documents for the granting of the Concession.

- 1.2.22 Consortium:** This is the group of two or more legal entities, or one or more individuals with one or more legal entities, whose legal status depends on its members, and which has been formed for the purpose of participating as a Bidder in this Tender.
- 1.2.23 Constructor:** This is the Bidder or a member thereof, or in due times the Concessionaire or specialized contractor firm that will be responsible for the implementation of the New Works, condition that the bidder must certify in accordance with the Point 5.2 of these Tender Documents in order to be qualified by the Committee. The Constructor, if so, must agree to a Construction Contract with the Concessionaire, assuming joint liability for the proper accomplishment of the New Works and for their effects on the Existing Works.
- 1.2.24 Concession Contract or Contract:** It is the contract that grants Concession of the construction, redesign, operation and maintenance of the Project Works and that regulates the provision of the Service and other requirements established for such purposes between the Concessionaire and the Grantor.
- 1.2.25 Effective Control:** It is understood that an individual or legal entity has or is under the Effective Control of a legal entity or under joint control with it if:
- There is direct or indirect control over more than fifty percent (50%) of its joint stock, with voting rights;
  - There is a direct or indirect representation on its board or its equivalent body, of more than fifty percent (50%) of its members;
  - By any other mechanism or condition (binding or not) effectively controls the decision-making in the other company.
- 1.2.26 Schedule:** The time sequence of activities taking place during the process of the present Tender Process and is set out in Point 1.6.

- 1.2.27 Sworn Statement:** Written statement submitted by the Bidder in which he declares or assumes a commitment, presumed true for the purposes of this Tender, without contravening what is mentioned in Point 5.1.
- 1.2.28 Participation Fee:** It is the amount equivalent to US\$ 1,000 (one thousand) dollars, to be paid to PROINVERSIÓN to participate in the Tender.
- 1.2.29 Dollar or U.S. Dollar or US\$:** It is the legal currency or monetary symbol of the United States of America.
- 1.2.30 Affiliated Company:** A company will be considered affiliated to another company when the Effective Control of said companies is in the hands of the same Holding Company.
- 1.2.31 Holding Company:** It is the company that has the Effective Control of one or several companies. This definition also considers the company that has Effective Control of a Parent Company and so on.
- 1.2.32 Subsidiary Company:** It is a company that is under the Effective Control of another company.
- 1.2.33 Related Company:** This is any affiliated, subsidiary or parent company.
- 1.2.34 Banking Companies:** These are those included in Appendix 2 of Exhibit No. 2.
- 1.2.35 International Financial Entity:** These are those included in Appendix 1 of Exhibit No. 2.
- 1.2.36 Handing over the Project Control:** It is the procedure of handing over to the Concessionaire the land where the New Works and auxiliary activities will be carried out, as well as the handing over of Existing Works, as specified in Exhibit 1 of the Concession Agreement. It includes the handing over of the technical and legal documentation to support the possession and actions of the Concessionaire in relation to the project. This definition will be added to in the Concession Contract.

- 1.2.37 Project Studies:** These are the final, feasibility and additional studies related to the development of the works of the first and second stages of the Majes-Siguas Project, which will constitute the basic reference for the formulation of the Bidders' Technical Proposals within the framework of this Tender.
- 1.2.38 Geological Event:** This is linked to the geological risk in the construction of the tunnels and the foundations and abutments of the Angostura Dam. It will have the definition and scope that are established in the Concession Agreement.
- 1.2.39 Closing Date:** This is the day set out in Point 1.6, in the place and time that will be announced by the Committee through Circular Letter, to perform the acts set out in Point 10.2 of these Tender Documents.
- 1.2.40 FONCEPRI:** This is the Fund for the Promotion of Private Investment in Public Infrastructure and Services - FONCEPRI, and is directed by PROINVERSION.
- 1.2.41 Polynomial Formula:** This is the formula to adjust certain components of prices for the construction of the New Works. It will be announced via Circular Letter within a period not less than sixty (60) calendar days preceding the date of submission of Envelopes N °2 and 3.
- 1.2.42 Guarantee of Validity, Effectiveness and Seriousness of the Economic Bid:** Guarantee bond issued by a bank for an amount of three million Dollars (U.S. \$ 3'000, 000.00) provided by the Bidder in favor of PROINVERSIÓN, to ensure the validity, effectiveness and seriousness of his Economic Proposal, pursuant to the model enclosed as Form No. 3 of Exhibit No. 5.

As an alternative, a stand-by letter of credit which meets the formalities used by the bank carrying out the transaction may be accepted, provided that it meets the requirements indicated in the Form 3 in Exhibit N°5, and is issued by an International Financial Entity and confirmed by Banking Company.

- 1.2.43 Guarantee of Performance of the Concession Agreement:**  
The guarantee will be obtained by the Concessionaire through

a bank guarantee bond pursuant to model in Exhibit No. 2 and in line with the conditions set forth in Point 10.2.1.4. This Guarantee must be issued by Banking Company or an International Financial Institution, referred to in Appendices 1 and 2 of Exhibit No. 2 to these Tender Documents.

As an alternative, a stand-by letter of credit which meets the formalities used by the bank carrying out the transaction may be accepted, provided that it meets the requirements indicated in the Exhibit N° 2, and is issued by an International Prime Bank and confirmed by a Local Banking Company.

- 1.2.44 National Government:** This is the government of the Republic of Peru exercised by the Executive in accordance with the Political Constitution of Peru, its Organic Law and the Law of the Bases for Decentralization.
- 1.2.45 Regional Government or Regional Government of Arequipa:** This is the Regional Government of the Department of Arequipa.
- 1.2.46 VAT:** This is the Value Added Tax.
- 1.2.47 Resident Engineer:** This is the Engineer appointed by the Concessionaire or Constructor, as appropriate, who is directly and permanently responsible for the management and execution of the New Works.
- 1.2.48 Members:** Each individual or legal entity that is part of a Consortium.
- 1.2.49 Strategic Investor:** This is the Bidder or one of his members in the case of a Consortium, who complies with the provisions of Point 5.3.8.2, and also contributes at least fifty percent (50%) of the amount of net equity, needed as a financial requirement in Point 5.4.1.
- 1.2.50 Applicable Laws:** This is the set of Peruvian laws governing the Contract and its effects. It includes the Political Constitution of Peru, the legal norms, supreme decrees, regulations, directives and resolutions that may be issued by any appropriate government authorities.

- 1.2.51 Lowest Economic Bid:** This is the Economic Bid, which represents the lowest value required from Listed Bidders to comply with the terms of the Contract.
- 1.2.52 Amount of Investment:** This is the amount proposed by the Successful Bidder for the execution of the New Works and the implementation of the Concession scheme in general, including VAT.
- 1.2.53 Referential Amount of Investment:** This is the basic amount calculated by the Grantor, required for the execution of the New Works. This amount will be announced in advance by Circular Letter no less than sixty (60) calendar days from the date to submit the Envelopes No. 2 and No. 3.

The Referential Amount of Investment, adjusted in the corresponding items by applying the Polynomial Formula, is applicable to the payment Clause for early termination of the Concession Agreement and will be the base for establishing the amount of the Guarantee of Performance and other Concessionaire monetary commitments.

- 1.2.54 Notices:** These are set out in Point 2.1.5.
- 1.2.55 Nuevo Sol:** This is the current legal currency in Peru.
- 1.2.56 Project Works or Works:** This is the whole property to be used, constructed, renovated, operated, exploited and/or maintained by the Concessionaire to ensure the provision of water supply for irrigation in the Pampas de Siguas and to meet other obligations arising under the terms of the Concession Agreement. They involve Existing Works and New Works in their entirety.
- 1.2.57 Existing Works:** This is the set of all works defined as such in the Concession Agreement.
- 1.2.58 New Works:** This is the set of all works defined as such in the Concession Agreement.
- 1.2.59 Economic Bid:** This is formed by the sum of two monomials representing in the first case, the relationship between the value of the Unit Remuneration proposed by the Listed Bidder and the value of the Maximum Unit Remuneration (RUM), and



in a second case, the relationship between the amount of Co-financing Required by the Listed Bidder and the maximum value of the Co-financing, to which apply the weighting indexes  $\alpha$  and  $\beta$ . These indexes, together with the RUM and the COM values will be announced in advance at least sixty (60) calendar days before the date to submit the Envelopes No. 2 and No. 3.

Based on these criteria, for the assessment of the Economic Bids of the Listed Bidders and for the selection of the Lowest Economic Bid, the Committee will apply the following formula:

$$OE = \alpha \frac{RUo}{RUM} + \beta \frac{COR}{COM}$$

Where:

OE	is the Economic Bid.
RUo	is the Unit Remuneration proposed by the Bidder
RUM	is the Maximum Unit Remuneration
COR	is the Co-financing Required by the Bidder
COM	is the Maximum Co-financing
$\alpha$ and $\beta$	are the Weighting Indexes

They are presented pursuant to the terms specified in Exhibit No. 6.

**1.2.60 Post-Construction Period:** This is the initial part of the Operation Period and will include five (5) years from the date of issue of the Certificate of Project Starting. During the Post-Construction Period, the Guarantee of Performance of the Concession Agreement will remain valid at the equivalent of seven and a half percent (7.5%) of the Referential Amount of Investment. This guarantee will cover the obligations, sanctions or penalties of the Concessionaire in the event of early termination of the Concession Agreement for reasons attributable to him.

**1.2.61 Person:** This is any individual or legal entity, national or foreign, that can perform legal acts and assume obligations in Peru.



- 1.2.62 Peru:** The Republic of Peru, including any political division or subdivision of it.
- 1.2.63 General Work Plan:** The scope and conceptualization of the Bidder which expresses his interpretation and execution of the Project that is the matter of this tender.
- 1.2.64 Bidder:** This is the legal entity or Consortium participating in this Tender that is subject to the tender documents herein, requesting to be a Listed Bidder.
- 1.2.65 Listed Bidder:** The Bidder whose documentation, duly submitted in Envelope No. 1, has fulfilled the requirements set forth in these Tender Documents and is therefore accepted and announced directly by the Committee. After the prequalification process, the Listed Bidder may be simply called Bidder.
- 1.2.66 Bid:** Indistinctly, the Economic Bid and/or Technical Bid or both of them submitted by the Bidder.
- 1.2.67 Economic Bid or Economic Proposal:** This is the Economic Bid that the Bidder will submit in Envelope No. 3, pursuant to Point 7.2.
- 1.2.68 Technical Bid:** The set of documents to be submitted by the Bidder in Envelope No. 2, as indicated in Point 7.1.4.
- 1.2.69 Project:** This is the conception and development of the studies, the execution of Works, installation and assembly of equipment, the definition of activities, procedures and techniques to ensure the efficient operation of the “Larger Water Consolidation Works and Infrastructure for Irrigation of Pampas de Siguas.”
- 1.2.70 Draft Contract:** This is a non-definitive contract model that will be given to Bidders in order to receive their suggestions. None of the terms and/or criteria contained in it will in any way bind PROINVERSIÓN, the Committee and/or the Grantor.
- 1.2.71 Siguas-Majes Project:** This is a multi-sectorial development project described in the respective final, feasibility, as well as

in the complementary existing studies, whose first stage is built and in operation, and whose second stage is the objective of Promotion of Private Investment in the Majes-Siguas Project, Stage II, as amended and approved by Agreement of the Board PROINVERSIÓN on June 10, 2009.

- 1.2.72 Unit Remuneration:** This is the unit remuneration offered by the Listed Bidder for the provision of the Service in Pampas de Siguas. Its amount per cubic meter of supplied water, expressed in US dollars, excluding VAT, will form part of the Listed Bidder's Economic Offer.
- 1.2.73 Basic Unit Remuneration (RUB):** This is the Unit Remuneration proposed by the Successful Bidder, excluding VAT. It's called Basic because it is the initial or starting remuneration that does not include the implementation of the adjustment mechanisms foreseen in the Concession Agreement. The RUB will be the basis for the structuring of contracts for the provision of water supply for irrigation. The RUB plus VAT will be established, together with its adjustment mechanisms, in the Concession Agreement. The Concessionaire's income through the RUB will be guaranteed by the Grantor by recognizing a guaranteed minimum income.
- 1.2.74 Maximum Unit Remuneration:** This is the remuneration expressed in dollars per m<sup>3</sup> for water to be delivered to the users of the Service in Pampas de Siguas, excluding VAT. This remuneration will be established by the Committee as the maximum amount, based on which the Listed Bidder will formulate the Unit Remuneration as part of his Economic Offer, for an amount equal to or below that amount. The amount of the Maximum Unit Remuneration shall be approved by the Committee on the basis of the proposal calculated and endorsed by the Transaction Advisor. The Committee will announce the amount of the Maximum Unit Remuneration by Circular Letter in advance, not less than sixty (60) calendar days before the date to submit the Envelopes No. 2 and No. 3.
- 1.2.75 Legal representative:** This is the individual resident in Peru designated as such by the Bidder.

- 1.2.76 Financial Qualification Requirements:** They are the financial requirements to be met by the Bidder to be considered as a Listed Bidder.
- 1.2.77 Qualification Requirements:** These are the requirements mentioned in Point 5 of the Tender Documents herein which include, among others, those regarding the minimum technical and economic solvency that must be met by each Bidder to be declared Listed Bidder and thus be able to continue to participate in the Tender.
- 1.2.78 Legal Qualification Requirements:** These are legal requirements to be met by the Bidder to be considered a Bidder to be qualified.
- 1.2.79 Data Room:** This is the area of the offices related to Majes-Siguas Special Project (AUTODEMA), located in Urbanización La Marina, Mz. B-9, Cayma - Arequipa – Peru. This area will contain information related to this project and may be visited by the Acquirers and Bidders, according to the terms outlined in these Tender Documents.
- 1.2.80 Service:** The service of water supply for irrigation that will be provided by the Concessionaire to end users or clients who have bought land in the Pampas de Siguas. The service will be offered complying with the respective Water Supply Contract.
- 1.2.81 Envelope No. 1:** This is the envelope containing the documents specified in Point 5 herein, to be submitted by the Bidder.
- 1.2.82 Envelope No 2:** This is the envelope containing the documents specified in Point 7.1 herein, to be submitted by the Listed Bidder.
- 1.2.83 Envelope No. 3:** This is the envelope containing the Economic Proposal to be submitted by the Listed Bidder, as set forth in Point 7.2.
- 1.2.84 Terms of Reference:** This is the description of the terms and scope to be considered by the Bidder for the development of his Technical Bid, including details of the level that must be

achieved for submitting the technical documentation, according to the minimum technical specifications herein identified, for implementation, development and supervision of Concession Works; its operation and maintenance, quality requirements and environmental protection measures as detailed in Exhibit No. 9.

### 1.3. Legal Framework and Background

1.3.1. The Legislative Decree No. 674 published on September 27, 1991 declared the Promotion of Private Investment in State-Owned Companies of national interest and created the Commission for the Promotion of Private Investment (COPRI), as the governing entity of the process.

1.3.2. The Legislative Decree No. 839, published on August 20, 1996, approved the Act for the Promotion of Private Investment in Public Works of Infrastructure and Public Services, creating the Private Concession Promotion Commission (PROMCEPRI) as the entity in charge of such.

1.3.3. The Supreme Decree No. 059-96-PCM, published on December 27, 1996, approved the Consolidated Text of the rules with the status of Law that regulate the awarding in concession to the private sector of public works of infrastructure and public services.

1.3.4. The Supreme Decree No. 060-96-PCM, published on December 28, 1996, promulgated the Regulations of the Consolidated Text of the rules with the status of Law that regulate the awarding in concession to the private sector of public works of infrastructure and public services..

1.3.5. The Law 27111, published May 16, 1999, transferred the functions, attributions and jurisdiction of the PROMCEPRI to the Private Investment Protection Commission (COPRI).

1.3.6. The Supreme Resolution No. 444-2001-EF published on September 15, 2001, established the Special Committee for the Promotion of Private Investment in Projects of Infrastructure and Public Services.

1.3.7. The Supreme Decree No. 027-2002-PCM, published April 25, 2002, ordered the merger of the COPRI, the National

Commission on Foreign Investments and Technologies and the Management of the Economic Promotion of the Peruvian Promotion Commission into the Executive Board of the Privatization Fund (FOPRI), which was later renamed the Investment Promotion Agency (PROINVERSIÓN)

- 1.3.8. The Supreme Resolution N° 228-2002-EF of September 26, 2002, changed the name of the Special Committee for the Promotion of Private Investment in Projects of Infrastructure and Public Services to PROINVERSIÓN, Committee for Infrastructure and Public Services Projects.
- 1.3.9. The Supreme Resolution N° 009-2003-EF published on January 18, 2003, amended the composition of the PROINVERSIÓN Committee on Infrastructure and Public Services, which is made up by three permanent members.
- 1.3.10. The Supreme Decree N° 036-2003-PCM, published on April 2, 2003, approved the Schedule of Transfers of funds, projects and social programs, including the Majes – Sigwas Project, to regional and local governments for the year 2003.
- 1.3.11. On July 18, 2003, the Law No. 28029 was published - Law regulating the use of water in the Special Projects granted in Concession; this rule is regulated by Supreme Decree No. 018-2005- AG published on April 15, 2005.
- 1.3.12. The Supreme Decree N° 020-2003-VIVIENDA published on August 16, 2003, transferred the Majes-Sigwas Special Project to the Regional Government of Arequipa.
- 1.3.13. The Regional Ordinance No. 026-2003-AREQUIPA published on January 30, 2004, declared the full implementation of the Stage II of Majes - Sigwas Project a necessity and public service of regional interest.
- 1.3.14. The Supreme Resolution No.044-2004-EF published on May 11, 2004, changed the composition of the Committee PROINVERSIÓN in Projects of Infrastructure and Public Services.
- 1.3.15. The Supreme Resolution No. 115-2005-EF published on September 10, 2005, constituted the Multisectoral

Commission to evaluate the conditions for promoting private investment in the Stage II of the Majes-Siguas Project.

- 1.3.16. The results of the Multisectoral Commission and its Technical Secretariat are to be found in its Final Technical Report and the Final Act of the Commission, which emphasizes the description of the promotion scheme which was taken as the basis for evaluation as well as the guidelines and financial-economic conditions for its implementation.
- 1.3.17. Document No. 012-2006-AG-DM dated January 6, 2006, addressed to the President of the Council of Ministers, the President of the Multisectoral Committee presented the findings and recommendations of the committee, thus complying with provisions of Supreme Resolution No. 115-2005-EF.
- 1.3.18. In accordance with the provisions of Article 34 of the Organic Law of Regional Governments - Law No. 27867, the Regional Governments can grant concessions within the limits of their jurisdiction and celebrate any other type of contract, provided that they contribute to local and regional sustainable development. Regional governments can celebrate agreements for consultancy and support for funding with the national institutions promoting investment.
- 1.3.19. In accordance with the provisions of Article 18 of the Framework Law for the Promotion of Decentralized Investments - Law No. 28059, it corresponds to PROINVERSIÓN to provide technical assistance to regional governments, upon request, for the design and management of the processes for the promotion of private investment under its jurisdiction.
- 1.3.20. The Article 38 of the Regulation of Law No. 28059, approved by Supreme Decree N ° 015-2004-PCM, establishes that the referred technical assistance may be provided through: a) consultancy in the development of the processes for the promotion of private investment and/or regarding the application of existing regulations on investment promotion, and b) assuming responsibility for the processes to promote private investment under the jurisdiction of regional and local

governments, when these entities request it. For the purposes of providing the required technical assistance, PROINVERSIÓN will countersign corresponding agreements with the regional or local governments after approval by its Board of Directors.

- 1.3.21. In accordance with the legal framework outlined above, by means of Document No. 009-2006-GRA/PR dated January 20, 2006, the Regional President of Arequipa Mr. Daniel Verá Ballón, requested technical assistance from PROINVERSIÓN in the form of commissioning with funding to carry out the process of promoting private investment for the Majes– Siguas Project.
- 1.3.22. In addition, through Document No. 123-2006-GRA/PR-GGR dated January 23, 2006, addressed to the Executive Director of PROINVERSION, the General Manager of the Regional Government of Arequipa released the Regional Agreement No. 002-2006-GRA/CR-AREQUIPA, adopted by the Regional Council in a Special Session dated January 23, 2006, due to which the following was approved:
- a) The incorporation of the Majes-Siguas Project to the process of promoting private investment within the limits of Law No. 28059, under the mechanisms and benefits set forth in the current laws and complementary norms.
  - b) To request technical assistance from PROINVERSION in the form of commission with funding to carry out the process for the promotion of private investment for the Majes - Siguas Project.
  - c) That the Technical Assistance Agreement was in the form of commission with funding to carry out the process for the promotion of private investment for the Majes - Siguas Project.
  - d) To authorize the Regional President of Arequipa to countersign said agreement.
- 1.3.23. The Law No. 28670 published on January 26, 2006, declared several investment projects, to be of public necessity and national interest, among which is the Angostura Dam, the main component of the Majes-Siguas Project, Stage II.



1.3.24. With the agreement of the PROINVERSIÓN Board of Directors dated February 2, 2006, the following was approved:

- a) To take over the process of promoting private investment in the Majes-Siguas Project, responsibility of the Regional Government of Arequipa, under the mechanisms, procedures and benefits set forth in the norms with the status of law, regulatory and complementary norms in force related to the promotion of private investment, referred to in subsection e) of Article 4 of Supreme Decree N° 015-2004-PCM, Regulation of Law No. 28059.
- b) Approve the terms and conditions under which the Technical Assistance Agreement with the Regional Government of Arequipa will be concluded, in the form of commission with funding, instructing the Executive Director of PROINVERSIÓN to countersign, after issuance of the respective ratifying Supreme Resolution.

1.3.25. The Supreme Resolution No. 006-2006-EF published on February 7, 2006, stipulated the following:

- a) To ratify the agreement adopted by the ProlInversión Board at its session on February 2, 2006, which approved taking over the process for promoting private investment of the Majes-Siguas project, under the authority of the Regional Government of Arequipa.
- b) To entrust ProlInversión with the Infrastructure and Public Services Projects, develop the aforementioned process, taking into account the conclusions and recommendations established by the Multisectoral Committee constituted by Supreme Resolution No. 115-2005-EF.
- c) The Majes Siguas Project must have the feasibility certification referred to by the National System of Public Investment and the public contribution will be co-financed by the National Government, together with the Regional Government of Arequipa.



- 1.3.26. On February 7, 2006, the Regional Government of Arequipa and ProlInversión signed the corresponding Agreement for Technical Assistance in the form of commission with funding.
- 1.3.27. In this regard, the Regional Government of Arequipa included the Majes-Siguas Project in the process of promoting private investment, under the procedures permitted in Article 6 of the Framework Law for the Promotion of Decentralized Investment - Law No. 28059. Also, in accordance with the Technical Assistance Agreement, the specific form to be applied to various components of the Majes-Siguas Project will be defined by ProlInversión, in coordination with the Regional Government of Arequipa, taking into account the Final Report of the Multisectorial Commission appointed by Supreme Resolution No. 115-2005-EF.
- 1.3.28. By Regional Agreement No. 022-2006-GRA/CR-AREQUIPA dated March 22, 2006, the Regional Government of Arequipa approved the Plan for Promotion of Private Investment of Majes-Siguas Project.
- 1.3.29. The ProlInversión Steering Council at its session on March 23, 2006, approved the Private Investment Promotion Plan of Majes-Siguas Project, Stage II.
- 1.3.30. By Supreme Resolution No. 012-2006-EF published on March 24, 2006, the agreement of the ProlInversión Steering Council, reported in the previous Point, was ratified.
- 1.3.31. The ProlInversión Steering Council at its session on April 27, 2006, approved the amendment to the Promotion Plan, which incorporates the schedule of activities for the Tender, stating that prior to the ratification of the agreement by the corresponding Supreme Resolution the consent of the Regional Council of Arequipa must be obtained.

By Regional Agreement No. 036-2006-GRA/CR-AREQUIPA dated May 16, 2006, the Regional Council of Arequipa gave its consent to the schedule approved by the ProlInversión Steering Council.

By Supreme Resolution No. 018-AG-2006, published on May 19, 2006, the agreement of the ProlInversión Board of Directors of April 27, 2006, mentioned above, was ratified.

- 1.3.32. By Regional Ordinance No. 007-2006-GRA/CR-AREQUIPA published on May 3, 2006, the Regional Council of Arequipa declared as a priority the construction of the Angostura Dam, component of the Majes-Siguas Project, Stage II.
- 1.3.33. The Tender Documents were approved by agreement of the ProlInversión Steering Council on May 16, 2006.
- 1.3.34. By Supreme Decree No. 065-2006-PCM, published on October 7, 2006, the commitment of the Regional Government to contribute to the Concession co-financing and guarantee, was ratified.
- 1.3.35. By Regional Agreement No. 031-2007-GRA/CR-AREQUIPA published on May 12, 2007, the completion of the Special Project Majes Siguas, Stage II, was declared a priority need and regional public service.
- 1.3.36. The Regional Ordinance No. 014-AREQUIPA published on June 10, 2007, authorized the President office of the Regional Government of Arequipa to use and invest the revenues from canons, royalties and shares of the Regional Government, to complete the amount of co-financing and guaranties of the Concession.
- 1.3.37. By Legislative Decree No. 1012 issued on May 13, 2008, the Framework Law on Public - Private Partnerships for the generation of productive employment was approved and norms for expediting the process of promoting private investment were declared; this norm is regulated by Supreme Decree No. 146-2008-EF published on December 9, 2008.
- 1.3.38. The Regional Ordinance No. 048-AREQUIPA published on May 29, 2008, suspends the proceedings of private investment initiatives, as well as mining exploration and exploitation in the area of Majes - Siguas II Special Project, and establishes the first requirement to participate in the tender of hectares assigned to modules of major agriculture directed at agro-exports.
- 1.3.39. The Supreme Decree No. 015-2008-AG published on June 25, 2008, renew for 2 additional years the water reservoir extended by Supreme Decree No. 028-2006-AG, in favor of the Majes-Siguas Special Project.

- 1.3.40. By Emergency Decree No. 047-2008 published on December 18, 2008, special provisions were issued to facilitate the Public-Private Partnerships promoted by the National Government in the context of the International Crisis, declaring of national necessity and priority implementation by ProlInversión, the processes for promoting private investment associated with the granting of various projects, among them, the Majes – Siguas Project.
- 1.3.41. The Supreme Resolution No. 2009-EF-036 issued on March 22, 2009, constituted the PROINVERSION Committee on Sanitation and Irrigation Projects- PRO AGUA, among other Special Committees.
- 1.3.42. The Supreme Resolution No. 2009-RU-047 published on April 30, 2009, appointed the permanent members of ProlInversión Special Committees.
- 1.3.43. By agreement of the ProlInversión Steering Council of June 10, 2009, published in the official gazette "El Peruano" on June 12, 2009, in accordance with the Emergency Ordinance No. 047-2008, the amendment to the Plan of Private Investment Promotion of the Majes - Siguas Project, Stage II, was approved, with the consent of the Regional Government, according to the Agreement with the Regional Council of Arequipa N °061 dated June 09, 2009.
- 1.3.44. By agreement of the ProlInversión Steering Council of June 17, 2009, the Amended Tender Documents herein were approved.
- 1.3.45. It is considered, without admissible evidence to the contrary, that any Acquirer, Bidder, Listed Bidder, Successful Bidder or individual, directly or indirectly participating in the Tender knows the content of these Tender Documents and the Applicable Laws.
- 1.3.46. The Process of the referred Tender in these Tender Documents shall be conducted in accordance with the provisions contained in the Tender Documents, and, in matters not covered therein, shall apply to this process, the norms of the Supreme Decree N° 059 -96-PCM, as well as its complementary, regulatory and modifying norms.

- 1.3.47. Under the first complementary, transitional provision of the Legislative Decree No. 1017 - Law of State Contracts and COPRI Agreement No. 355-2001, the norms contained therein do not apply to this Contest, with the exception of the stated in clause 25 of the Concession Contract.

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#### 1.4. Powers of the Committee and PROINVERSIÓN

- 1.4.1. The purpose of the Committee is to lead the promotion process of private investment in the Majes-Siguas Project, Stage II, and particularly, the Comprehensive Projects Tender for Concession of larger water consolidation works and infrastructure for the irrigation of Pampas de Siguas that correspond to the Component N° 1 described in the Promotion Plan. As such, the Committee is authorized, among other faculties, to promote, program, regulate, modify, guide, supervise, monitor and announce all dispositions deemed necessary to execute said process, to solve any issue not foreseen in this Tender Document and Applicable Laws and, in general, to exercise all the faculties assigned by the Applicable Laws.
- 1.4.2. The Committee may extend the periods indicated in this Tender Document. The present Tender could be suspended or cancelled if it is considered convenient by the Committee, without explaining any cause and without incurring into any responsibility as a consequence of that. Any amendment of the Tender Document hereby shall be communicated to the Acquirers or Listed Bidders, accordingly, through Circular Letters.
- 1.4.3. Only by presenting the information indicated in these Tender Documents and/or requested by the Committee for the purposes of qualification, the Committee is not obliged to declare a Bidder as a Listed Bidder, neither the presentation of any Bid obliges the Committee to accept it. The sole submission of the necessary documents to qualify implies a full knowledge, acceptance and unconditional subjection from the Acquirer, Listed Bidder or Successful Bidder, as appropriate, to each and every proceedings, obligations, conditions and norms –without exception- established in the Tender Documents, which have judicially binding nature for them, as well as his irrevocable and unconditional waive to raise, before any jurisdiction or authority, any action, claim, demand or request of compensation against the State, Regional Government, PROINVERSIÓN, Committee, advisors, or any other entity, body or officer of the Peruvian Government to exercise the foreseen authority on these Terms.

- 1.4.4. Except as otherwise established in these Terms, the decisions relating to this Tender, taken by the Committee and PROINVERSIÓN, accordingly, are final. They do not allow any compensation and are not subject to any administrative or judicial contestation. Consequently, only by paying the participation fee or by participating in the Tender, the people under this Tender Document resign to present any contestation appeal against such decisions.

#### Concession Contract

- 1.5.1 The Draft Contracts and their final version shall be made available for the Acquirers according to the Schedule, Point 1.6 of these Tender Documents.
- 1.5.2 The Bidders shall be able to present inquiries to the Tender Documents and suggestions to Draft Contracts within the periods indicated in Point 1.6 of these Tender Documents according to the Points 3.1.1 and 3.1.2. The Committee shall not be obliged to consider or answer any suggestions from the Acquirers and Bidders to the Draft Contracts.

#### 1.6. Schedule of the Tender

The dates for the activities of the Schedule are as following:

<b>Activity</b>	<b>Date/Period</b>
<b>1.6.1</b> Call for Tender	05/01/2006 and 05/02/2006
<b>1.6.2.1</b> Payment of Participation Fee	From 05/08/2006
<b>1.6.2.2</b> Publication of Tender Document (Original version)	04/27/2006
<b>1.6.3</b> Delivery of First Draft Contract	10/22/2008
<b>1.6.4</b> Delivery of Amended Tender Document	06/18/2009
<b>1.6.5</b> Inquiries on Amended Tender Document	Until 07/09/2009

<b>1.6.6</b>	Clarifications to inquiries on Amended Tender Document	(**)
<b>1.6.7</b>	Reception of comments and suggestions to First Draft Contract	Cancelled Activity
<b>1.6.8</b>	Delivery of Second Draft Contract to Short-listed Bidders	07/02/2009
<b>1.6.9</b>	Reception of comments and suggestions to Second Draft Contract	Until 07/16/2009
<b>1.6.10</b>	Presentation of Envelope N°1	From February 12 <sup>th</sup> , 2009 to Thursday, August 06 <sup>th</sup> , 2009
<b>1.6.11</b>	Rectification of observations formulated to general documentation presented in Envelope N° 1	Until fifth working day after presentation of Envelope N° 1
<b>1.6.12</b>	Second Announcement of Listed Bidders and delivery of certificate of Listed Bidders	(**)
<b>1.6.13</b>	Delivery of Third Draft Contract to Short-listed Bidders	(**)
<b>1.6.14</b>	Reception of comments and suggestions to Third Draft Contract	(**)
<b>1.6.15</b>	Request of opinion of General Controllorship of the Republic	(**)
<b>1.6.16</b>	Delivery of Final Version of Contract (*)	(**)
<b>1.6.17</b>	Access to Data Room	(**)
<b>1.6.18</b>	Submission of Envelopes N°2 and N°3 and opening of Envelope N°2	08/14/2009
<b>1.6.19</b>	Amendment of observations formulated to documentation included on Envelope N° 2	(**)
<b>1.6.20</b>	Amendment of observations formulated to technical proposal included on Envelope N° 2	(**)
<b>1.6.21</b>	Announcement of the result of Assessment of Envelope N°2, Opening of Envelope N°3 and adjudication of Award	08/31/2009
<b>1.6.22</b>	Closing Date	To be defined

(\*) The General Controllorship of the Republic is assumed to issue its favorable opinion to the contract until 10 working days after the request is sent by PROINVERSIÓN (Point 1.6.15).

(\*\*) The dates shall be communicated through Circular Letter.

The Committee shall be able to modify at any time the dates of the Schedule, which shall be communicated to the interested parties through Circular Letter.

Except as otherwise expressly indicated, the maximum period shall expire at 17:30 hours in Lima, Peru.

## **AUTHORIZED AGENTS AND LEGAL REPRESENTATIVE**

### **2.1. Authorized Agents**

#### **2.1.1 Appointment of Authorized Agents**

Before using the Data Room, each Acquirer shall appoint up to two (2) people as Authorized Agents, for the purposes of the Tender hereby.

#### **2.1.2 Appointment Letter**

The appointment of Authorized Agents shall be made by a simple letter signed by the Acquirer or, in case of a legal entity, by the Legal Representative, specifically pointing out their powers and the corresponding information according to Points 2.1.3 and 2.1.4.

#### **2.1.3 Powers**

The Authorized Agents duly designated may act one or the other without distinction and not necessary jointly, and may be the only people authorized by the Acquirer or Bidder, accordingly, to:

- I. Represent the Acquirer before PROINVERSIÓN, the Regional Government, the Committee and advisers about all matters, which were not exclusive competence of the Legal Representative according to Point 2.2.1;
- II. Reply, on behalf of the Acquirer or Listed Bidder and with binding effect for his assignor, any question asked by the Committee;
- III. Receive Circular Letters, judicial or extrajudicial notices;



- IV. Subscribe, with binding effect for the Bidder, the Confidentiality Agreement according to Exhibit N° 1 ; and
- V. Request information to the Committee and use the Data Room.

#### **2.1.4 Information**

The information provided in relation to each Authorized Agent shall be: name, identity document, common address, telephone number, fax number and email.

The common address as well as telephone and fax number shall correspond to Lima City or Callao.

#### **2.1.5 Notices**

All extrajudicial notices addressed to the Acquirer or Bidder may be sent to any Authorized Agents through fax or email, with confirmation of complete transmission issued by the addressee; or through letter delivered by messaging service or by notarial via that the notice shall be understood as received the date of its delivery; it is also understood as executed and effective any notice made by fax, email or usual address according to Point 2.1.4.

#### **2.1.6 Substitution**

Prior written communication addressed to the Committee fulfilling the requirements set out in Point 2.1.2, the Acquirer or Bidder may substitute any Authorized Agent at any moment, or change the address, telephone or fax numbers or email used for the Authorized Agents, taking into account that the new common address and telephone and fax numbers have to correspond to Lima city or Callao. The appointment of Authorized Agents or change of the common address and telephone and fax numbers or email, accordingly, become effective from the date when the Committee receives the respective communication issued by the Acquirer or Bidder.

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## 2.2. Legal Representative

### 2.2.1 Appointment and Powers

Documents presented on Envelopes N° 1, N° 2 and N° 3 and, in general, any document presented by a Bidder relating to the Tender, shall be signed by the respective Legal Representative who should be duly authorized to do that, according to this Point.

The Bidder may only appoint up to two common Legal Representatives to be their representative, jointly or individually, according to this Point. The address, fax and telephone number and email address of the Legal Representatives as well as their delegates are subject to Points 2.1.4, 2.1.5 and 2.1.6 by extension.

The powers granted to each Legal Representative shall have to be wide enough to allow them to sign, on behalf of his grantor of power, any document requested by the Tender Document including, specifically, the authority to initiate the impugnation proceedings foreseen in the Tender Document, sign the Forms of presentations of bids and subscribe the Contract, as appropriate.

In case that the Bidder is a Consortium, said appointment shall have to be executed by the legal representatives of the Consortium Members who have the authorities to do so. These authorities shall be accredited by the presentation of a copy of the power or equivalent document legalized by a notary or consulate.

The powers of the legal representatives of the Consortium Members shall have the same powers of the Legal Representatives of the Bidder, indicated in Points 2.2.2 y 2.2.3.

### 2.2.2 Power Representation

The powers through which the Legal Representatives are appointed shall include the corresponding representation faculties and shall be presented on Envelope N° 1.

The appointment of a new Legal Representative only shall become effective from date when the Committee receives the documents which authorize said appointment.

### **2.2.3 Place of Granting of Power**

The power granted out of Peru pointing a Legal Representative should be:

- I. Duly drawn up or legalized before any competent Peruvian consulate, having to attach a simple translation to Spanish whether it was issued in a different language;
- II. Authenticated before the Ministry of Foreign Affairs of Peru;

The powers granted in Peru shall have to be composed, by public deed or notary certificate copy, of the minutes of the corresponding company body by which it is granted.

### **2.2.4 Registrations in Public Records Office**

Under no circumstances it shall be demanded that, at the moment of its presentation, the Legal Representative Power is registered in the Public Record. However, it must be registered in the corresponding Public Records Office before Closing Date in case of resulting Successful Bidder.

## **3. INQUIRIES AND INFORMATION**

3.1. Inquiries on the Tender Documents and suggestions to Draft Contract

### **3.1.1 Period for inquiries and suggestions**

Acquirers and/or Bidders may make inquiries about Tender Document and suggestions about Draft Contracts through Authorized Agents and/or Legal Representatives, from the dates indicated in Point 1.6 and to the dates set out in this Point.

### 3.1.2 Formalities of inquiries

The inquiries about Tender Document and suggestions about Draft Contracts shall be made by written and in Spanish, addressed to:

**Mario Hernández Rubiños**

Jefe de Proyectos Hidroenergéticos y de Irrigación -  
PROINVERSIÓN

Av. Paseo de la República N°3361, Piso 8, San Isidro  
- Lima, Perú

Telephone [511] 612-1200, extension 1327

Fax [511] 612-1210

Email: mhernandez@proinversion.gob.pe

### 3.1.3 Circular Letters

- 3.1.3.1. The replies to the inquiries by the Committee shall be communicated to all Acquirers and Bidders by Circular Letters, without any indication of the name of the person who made the inquiry.

Whether the Committee, at any moment, deems necessary to clarify, modify or amend the Tender Documents, it shall issue a Circular Letter for this effect. Said Circular Letters shall be addressed to Authorized Agents and sent to the common address according to Point 2.1.4 of the Tender Documents hereby.

All issued Circular Letters shall be announced on PROINVERSIÓN web page: [www.proinversion.gob.pe](http://www.proinversion.gob.pe).

After evaluating the Bidders, Circular Letters shall only be sent to Listed Bidders, and after presenting Envelopes N° 2 and 3, only to Bidders who submitted proposals.

- 3.1.3.2. Circular Letters issued by the Committee shall be part of these Tender Documents, consequently being judicially binding for Acquirers, Bidders and Listed Bidders.

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### 3.2. Access to Information – Data Room

#### 3.2.1 Access to Data Room

**3.2.1.1** The Acquirers and Bidders shall have access to information related to the Majes-Siguas Project, Stage II, which shall be available in the Data Room located in:

Urbanización La Marina Mz. B -9, Cayma – Arequipa -  
Peru  
Telephone (054) 257223

**3.2.1.2** The access to the Data Room shall be coordinated with the Committee according to norms established for its operation included in “Data Room User Guide”, Exhibit N°8 of the Tender Document hereby.

**3.2.1.3** The Acquirers and Bidders, through written communication sent to the Committee by any Authorized Agent or Legal Representative shall indicate the name of the people having access to the Data Room. The Committee shall coordinate opportunely the effective coordination of visits to the Data Room.

**3.2.1.4** The Acquirers and Bidders shall have access to the Data Room until date indicated in the Schedule.

#### 3.2.2 Confidentiality Agreement

The Acquirers and Bidders shall have to sign the Confidentiality Agreement according to the Exhibit N° 1, in order to have access to the Data Room; and also to deliver one copy to Committee and another one to the Majes – Siguas Special Project.

### 3.3. Interview Requests

Any Acquirer or Bidder, through Authorized Agents and/or Legal Representatives, accordingly, shall have the right to meet the Committee or PROINVERSIÓN officers until the Day before the delivery of Envelope N° 1. In case of Listed Bidders, they shall be able to meet it until the Day before of the

presentation of Envelopes N° 2 and N° 3, prior coordination with the Committee to organize these interviews.

#### 3.4. Limitation of Liability

##### **3.4.1 Independent decision of Bidders**

The decision of the Bidders to present or not a bid for technical and economic qualification should be based on their own investigations, tests, inspections, visits, interviews, analysis and conclusions about the available information and the information specifically obtained by the Bidder at his account and risk.

##### **3.4.2 Limitation of Liability**

The State of Republic of Peru or any bureau, body or officer of this, or PROINVERSIÓN, Committee, Regional Government, or advisers are not responsible; they do not guarantee, implicitly or explicitly, the totality, integrity, reliability or veracity of verbal or written information given for effects of or within the Tender. Consequently, nobody who participates in the Tender may attribute any responsibility to any party before mentioned or their representatives, agents or dependants for using said information, or for any inaccuracy, deficiency, defect, lack of update or any other cause not expressly contemplated in this Point.

##### **3.4.3 Scope of Liability**

The limitation mentioned in Point 3.4.2 reaches, in the widest sense, all the information related to the Tender that is effectively acknowledged and not acknowledged. Also the information that at a certain point should have been acknowledged as well, including the possible mistakes or omissions thereby mentioned by the State of the Republic of Peru or by any other office, agency or a government office or by its officials, by PROINVERSIÓN, the Committee, the Regional Government, or the advisers. Likewise, such limitation of liability reaches all the information, being or not supplied or prepared, direct or indirectly by any of the parties above mentioned.

The limitation of liability also reaches all the information available in the Data Room, as well as that supplied through Circular Letters or any other mean of communication, acquired during the

visits to the Tender related facilities and the information mentioned in these Terms, including all the Forms, Appendices and Exhibits.

#### **3.4.4 Acceptance of Point 3.4 by Listed Bidder**

The only presentation of Envelope N° 1 shall constitute, with no need of any further act, the acceptance of the provisions contained in Point 3.4 by the Bidder and, as appropriate, by the Constructor, as well as his irrevocable and unconditional waive, in the widest extension allowed by the Applicable Laws; to put in any action, counterclaim, exception, claim, lawsuit or compensation application against the State or any office, agency, government employee of the government or PROINVERSIÓN, or the Regional Government or the advisors.

### **4. PRESENTATION OF ENVELOPES N°1, N°2 AND N°3**

#### **4.1. Presentation**

##### **4.1.1. Presentation of Envelope N° 1**

The presentation of documents in Envelope N° 1 to be evaluated shall take place in the Committee offices located in Av. Paseo de la República N° 3361, Piso 8, San Isidro - Lima, Peru, within the period set out in Point 1.6 of the Tender Document herein.

##### **4.1.2. Presentation of Envelopes N° 2 and N° 3**

The presentation of the envelopes N° 2 and N° 3 shall take place before the Committee and in the presence of the Notary Public, the date set out in Point 1.6 and in the place and time appointed in the Circular Letter.

In the act indicated to present the Envelopes N° 2 and N° 3, Envelope N° 2 shall be opened and Envelope N° 3 shall remain in custody of the Notary Public. The opening of the Envelope N° 2 shall be carried out only for the Bidders who had rectified, to the satisfaction of the Committee, the observations made by the Committee regarding the information given in Envelope N° 1 and, therefore, the Bidder had been declared as a Listed Bidder by the Committee.

##### **4.1.3. Opening of Envelope N° 3**

The Notary Public will open the envelope N° 3 in the place and time indicated in the Circular Letter in the date set out in Point 1.6. The opening of Envelope N° 3 shall be carried out only for those Bidders who

had submitted the Envelope N°2 and, if this is the case, had rectified, to satisfaction of the Committee, the observations made by the Committee to the documentation contained in such Envelope, and whose technical proposals had been declared as technically valid according to Point 8.2.4 of the Tender Document.

#### **4.1.4. Presentation of Envelopes by Authorized Agents or Legal Representatives**

The Envelopes N° 1, N° 2 and N° 3 shall be submitted personally or by one of the Authorized Agents or Legal Representatives of the Bidder. No document sent by mail, fax or by any other mean of communication shall be accepted or received.

#### **4.2. Language**

Except as otherwise specifically established in these Tender Documents, all the documents shall be submitted in Spanish or with a simple translation into Spanish. If there is any difference between the texts written in different languages, the Spanish text shall prevail.

If there are attached any brochures or catalogs in foreign languages which are not required by the Tender Documents, in order to better understand the Credentials, the Committee shall be able to request its translation into Spanish.

#### **4.3. Original Documents and Copies**

The documents in Envelopes N° 1, N° 2 and N° 3 shall be submitted in original and two (2) photocopies, properly labeled as "Original", "Copy 1" and "Copy 2" in the first page. The photocopies shall not require any notary or consular legalization.

#### **4.4. Presentation formalities for Envelopes N° 1, N° 2 and N° 3**

4.4.1 The envelopes shall be submitted conveniently closed and clearly marked at its obverse with the indications "Envelope N°1" or "Envelope N°2" or "Envelope N°3", as appropriate, and indicating the Bidder name.

4.4.2. Each page of all the submitted documentation in the Envelopes shall be perfectly legible, clearly and correlatively numbered, and initialed. Also, a detailed index of all the documents contained in each envelope shall be included.



4.4.3. If there is any difference between the amount expressed in numbers and in letters, the amount expressed in letters shall prevail.

#### **4.5. Cost of Preparation and Presentation**

The Acquirer and the Bidder shall be responsible of all the incurred costs or expenses, directly or indirectly, related to the preparation and presentation of Envelopes N° 1, N° 2 and N° 3, at the case may be. The State of Republic of Peru or any bureau, body or officer of this, or PROINVERSIÓN, the Committee, the Regional Government, or advisors are not responsible under no circumstances for these costs, or way used to carry out the Tender or its result.

#### **4.6. Payment of Participation Fee**

In order to be able to participate in the Tender, before the presentation of the Envelope N° 1, the Bidder shall have paid the Participation Fee. The amount of the Participation Fee is established in one thousand dollars (US\$ 1,000). This amount is not reimbursable. Once the Participation Fee has been paid, PROINVERSIÓN will issue the Acquirer the Participation Fee receipt.

If an Acquirer pays the Participation Fee and decides not to participate in the Tender, he shall be able to transfer it to a member of his group or to a third party. Hereto, the Acquirer of such Participation Fee shall submit in the Envelope N° 1 a communication guarantying the transfer of this right to his behalf, with a legalized signature of the assignor.

### **5. QUALIFICATION REQUIREMENTS: CONTENT OF ENVELOPE N° 1**

Only legal entities or Consortia shall be able to participate in the Tender.

A legal entity or a natural person, direct or indirectly, individually or through a Consortium, cannot participate in more than one Bid. If its Consortium is not successful, it will not be able, at a later time, to be part of other Consortium, nor to a Company constituted by it regarding the Contract firm. This obligation is also applied to the Constructor.

In order to be declared Listed Bidder, a Bidder shall have paid the Participation Fee of the Tender or have acquired through a title concession, the right to participate in the Tender, and also to provide, through the

presentation of the Envelope N° 1, the information, detailed hereafter, which has a status of Sworn Statement.

### **5.1. Generalities**

The Bidder shall accredit its commitment of submitting truthful information, through the presentation of the Form 1 of Exhibit N°3, which shall have a status of Sworn Statement. This Sworn Statement shall be submitted to the Committee through a simple document duly signed by the Legal Representative, whose signature shall be legalized by a Notary Public or by the Consul of Peru in the country of domicile of the Bidder.

The Committee reserves the right of verifying the documentation submitted by the Bidder during the different stages of the Tender, which does not limit the liability of the Bidder due to any possible deficiency or lack or veracity of the data or the information submitted.

The lack of veracity or deficiency in the data or in the information submitted by the Bidder empowers the Committee to disqualify it, at any stage.

### **5.2. Technical Experience Requirements**

5.2.1 According to the Form 2 of Exhibit N° 3, the Bidder is obliged to accredit that himself, or one of its members; or a third party to be hired, is a Constructor who has performed during the last ten (10) years:

- I. At the least twenty thousand (20.000) meters of tunnels, regardless the section dimension, diameter or construction method.
- II. At the least ten thousand (10.000) meters of tunnels with a minimum section of fifteen (15) square meters in hard rock.
- III. A the least one RCC dam (Roller compact concrete dam) with no less than two hundred thousand (200.000) cubic meters, or a CFRD dam with no less than eight hundred thousand (800.000) cubic meters; or a mass concrete dam with no less than one hundred thousand (100,000) cubic meters.
- IV. Infrastructure for water conduction and distribution for irrigation, with at least five thousand (5,000) meters of

main ducts lined in concrete, a higher section of six (6) square meters and at least ten thousand (10,000) meters of smaller ducts.

In the case of Consortiums, the requirements could be accomplished gathering the experience of the members.

- 5.2.2 If the Bidder is not the Constructor, a Constructor should be presented (can be one of the members or a third party to be hired for this purpose) who accredits the technical experience indicated in Point 5.2.1. For this reason, through his Legal Representative, the Constructor shall subscribe the Form 2 of Exhibit N° 3, which will be also subscribed by the Bidder. Furthermore, the Constructor and the Bidder shall express their will to celebrate, before the Closing Date, a construction contract for the performance of the Project Works, in which the Constructor assumes the joint liability with the Bidder for the realization of the Work, by submitting a joint Sworn Statement, with legalized signature, according to the model included in Form 5 of Exhibit N°5, regarding the case.

According to the Point 5.2.1, the supporting documentation and information corresponding to the Constructor, could come from Related Companies.

- 5.2.3 Likewise, the Bidder shall have a Resident Engineer who accredits having similar experience to the Constructors referred in Point 5.2.1, in at least two (2) of the three (3) first requirements indicated in Point 5.2.1. The Resident Engineer shall speak Spanish. For this, a presentation letter of the Resident Engineer shall be submitted, crediting his experience and his commitment to participate in the works.

### 5.3. Legal Requirements

Furthermore, the Bidder shall accredit the fulfilling of the following legal requirements:

- 5.3.1 That the Bidder is a legal entity or a Consortium, consequently it should accredit the fulfillment of this requirement through the presentation of the following:
- A legalized copy of the incorporation papers of the Bidder. If it is a Consortium, the incorporation papers of all of its Members or a legalized Copy of them shall be required.

- An Sworn Statement signed by the Legal Representative of the Bidder, if it is a legal entity, confirming its existence, in accordance with the legal applicable principles according to its origin legislation, written pursuant to the model that appears in Form 1 of Exhibit N° 4.

If the Bidder is a Consortium, besides the presentation of Form 1 of Exhibit N° 4 of each Member (with the signatures of the corresponding legal representatives), the Bidder shall present an Sworn Statement signed by his Legal Representative and by the legal representative of each Member, confirming their existence and their jointly liability regarding the assumed obligations and the submitted Sworn Statements, in accordance with the model in Form 2 of Exhibit N° 4.

The signatures of the legal representatives in these Sworn Statements shall be legalized by a Notary in Peru but if the document is issued out of Peru, a proceeding established in Point 2.2.3 shall be followed.

- A Sworn Statement, in accordance with the model in Form 3 of Exhibit 4, signed by the Legal Representative of the Bidder, indicating the participation percentage of each shareholder or associate of the Bidder. In the case of a Consortium, such information shall also be required regarding each Member, excepting the Constructor, as appropriate, and
- If the Bidder is a Consortium integrated by one natural person or more, these people shall present a legalized copy of their identity card, their annual income Sworn Statement of the last three years (3) or tax periods presented before the correspondent administrative tax agency, as well as a declaratory note or certificate of their credit history issued by a banking risk office or by an equivalent entity.

In this case, the adequate exhibits and forms shall also be submitted, properly adapted to his natural person condition, in accordance with the models approved by the Committee.

- 5.3.2** That the Bidder or any of its Members has become the Acquirer by paying de Participation Fee or by acquiring this title through a surrender of rights. In order to accredit this fact, it is only necessary to present a copy of the Participation Fee receipt for

the Tender or a copy of the communication through which it is accredited the transfer on his behalf, as appropriate. Furthermore, a Sworn Statement explaining the binding relation between the Bidder and the Acquirer in accordance with the above mentioned.

**5.3.3** To count with a Legal Representative in pursuance of the established requirements in Point 2.2, accrediting through the presentation of a legalized copy of the respective power of attorney.

**5.3.4** The Bidder, its shareholders, associates or Members and, if the Bidder is a Consortium, its Members' shareholders and associates, i) are not administratively penalized with a temporal or permanent disablement in the exercise of their rights to participate in the selection procedures called by any Peruvian State entity, nor to be hired by the Peruvian State ii) are not grantees anymore due to non-compliance of a concession held with the Peruvian State, subscribed under the private investment promotion process frame referred in the concessions TUO approved by Supreme Decree N° 059-96-PCM or Law N° 28059 – The Decentralized Investment Promotion Legal Framework or the Law Decree N° 1012 – Framework Law of Public-Private Associations. Once the award is granted, such requirements shall be fulfilled by the Contract subscribing Company.

Likewise, those who are under the scope of Article 1366° of Civil Code shall not be able to be Bidders.

For this matter, it will be necessary that the Bidder subscribes, through its Legal Representative, a Sworn Statement in accordance with the model in Form 4 of Exhibit N° 4 .

**5.3.5** That the Bidder, its shareholders, associates and Members, and, if the Bidders is a Consortium, its Members shareholders or associates, have waived any privilege or diplomatic immunity or others, or any claim diplomatically and any possible claim, by or against the State of the Republic of Peru or its offices, the Regional Government, PROINVERSIÓN; the Committee, its members, or advisers under the Peruvian law or under any other legislation regarding its obligations to the Tender Documents, the Economic Offer, the Technical Proposal and the Contract. For these matters it shall be necessary that the Bidder subscribe, through the respective Legal Representative, a Sworn Statement as the Model in Form

5 of Exhibit N°4.

**5.3.6** That the Advisors of the Bidder have not directly rendered any sort of service, as a full time, partial time or temporary job, to PROINVERSIÓN and the Committee, linked to the referred process of private investment during this process. To accredit this fact, the presentation of a Sworn Statement written in accordance to Form 6 of Exhibit N° 4 and properly subscribed by the Legal Representative of the Bidder, shall suffice.

**5.3.7** That the Bidder, its shareholders, associates or Members, as well as the Members associates or shareholders, if it is a Consortium, do not have a direct or indirect participation in any other Bidder. To accredit this fact, the presentation of a Sworn Statement written in accordance to Form 7 of Exhibit N° 4 and properly subscribed by the Legal Representative, shall suffice. In case of partnerships with shares in the stock market, the abovementioned participation shall be restricted where it is applied the control of the management by any other Bidder, or by any of its members if it is a Consortium, according to the Indirect Property Rules, Liaison and Economic Groups approved by the CONASEV (Peruvian Securities and Exchange Commission) Resolution N° 090-2005-EF/94.10 or by a norm that replaces it. To accredit this fact, the presentation of a Sworn Statement written in accordance to Form 8 of Exhibit N° 4 and properly subscribed by the Legal Representative, shall suffice.

### **5.3.8 Incorporation Commitment**

**5.3.8.1** The Bidder and each of its Members, if it is a Consortium, shall present an Sworn Statement of its intention to incorporate a concessionary company in Peru with a five percent (5%) of equity capital of the Referential Amount of Investment, from which, the twenty five (25 %) percent shall been paid on the concessionary company constitution date and shall complete the total amount subscribed to the end of the fourth Concession Year, in accordance to the current legal regulations; if it is awarded, with the same associates, shareholders or Members and in the same proportions they had in the Bidder or Consortium in the Award Adjudication date.

Such Sworn Statement(s) shall be submitted with a legalized signature, according to the model in Form 1 Exhibit N°5.

**5.3.8.2** In the Concessionaire Shareholder Structure, the Strategic Investor shall own and maintain a participation of no less than thirty five per cent (35%) of the Concessionaire equity capital (Minimum participation), at least during the Construction and Post Construction Periods.

**5.3.8.3** The Strategic Investor shall own and maintain its Minimum Participation from the date of the Concessionaire constitution, during the indicated periods and shall not be able to transfer it in a way that it results having a lower participation than what is set in the previous point.

#### **5.4 Financial Requirements**

The Bidder shall accredit the fulfillment of the following financial requirements:

**5.4.1** The Bidder shall accredit a minimum net equity equivalent to thirty five million dollars (US\$ 35'000,000.00).

The financial information referred in this point shall be presented in Spanish or in English, the translation is not necessary if it is presented in English, and shall be submitted in accordance to Form 2 of Exhibit N° 5 and its sections, signed by the Legal Representative. The Bidder shall record its financial data or its Members', if it is a Consortium, the data of its shareholders or associates or the data of the Company related to them.

Furthermore, it shall be presented the audited financial statements or equivalent documents for the same years of the shareholders or associates of the Bidder, or the respective Company related to the Bidder or its Members, in which case, the Legal Representative of the Bidder shall present a Sworn Statement explaining the relation with the Bidder.

A letter of reference shall be included issued by Banking Company or an International Financial Entity referred in Appendices 1 and 2 of Exhibit N° 2 of the Tender Documents, indicating the credit value and the current financial situation of the Company; this letter shall be presented in original as part of the documents to be submitted.



#### Verification of the Information by the Committee

From the presentation of the documents, referred to in Point 5, to the Closing Date, the Bidder is engaged to make available to the Committee any document requested by it, in order to verify the veracity of the submitted documentation in accordance to Point 5.

## **6. PRESENTATION OF THE ENVELOPE N° 1 AND QUALIFICATIONS RESULTS**

### **6.1. Presentation of Envelope N° 1**

The Bidders shall present Envelope N° 1 , within the period established in Point 1.6, prior individual appointment, in the place and date indicated to each Bidder.

In each case, the Envelope N° 1 shall be received and opened in the presence of the Notary Public who will draw up the minutes on the presentation of the Bidder and the number of pages of the documentation included.

In the minutes referred in the above paragraph, it shall be recorded the acceptance or refusal of, as appropriate, the requirements indicated in Points 5.2, 5.3 y 5.4 of the Tender Documents, the observations made by the Bidder and the content of the Envelope N° 1 presented in such opportunity.

After opening the Envelope N° 1, the Bidder or any person who is not directly associated with the process, will receive no information concerning its qualification, until the report of the Committee is informed to the Bidder.

#### **6.1.1 Notices and Rectification of observations to Envelope N° 1**

If after opening the Envelope N° 1 it is found any mistake considered rectifiable by the Committee, it shall request the Bidder to correct them within five (5) days following the requirement, on pain of exclusion of the qualification process.

Additionally, in order to facilitate the evaluation, verification and comparison of the data and requirements, the Committee shall be able to request to any Bidder to explain the information in Envelope N° 1, not implying any modification in its content. The explanation request and the corresponding answer shall be done in writing, in pursuance of the above paragraph.



### **6.1.2 Announcement of Listed Bidders**

Within the period indicated in the Schedule, the Committee shall analyze the documentation in Envelope N° 1 and shall issue its decision, indicating the Listed Bidders that will participate in the following stages of the process.

The Committee, through a Circular Letter, shall inform the result of the Qualification process in the dates indicated in Point 1, 6.

The Committee decision regarding the qualification shall be final and not impugnable.

### **6.1.3 Incorporation of New Members in a Listed Bidder**

If a Listed Bidder decides to incorporate a new Member to widen the Consortium, such Bidder shall correct the documentation of Envelope N°1 modifying them with technical, legal and financial information related to the intervention of the New Member and to the Consortium setup; in such way that the prequalification process requirements are fulfilled according with the conditions established in the Tender Documents.

The deadline is thirty (30) calendar days following the date of the second notice of the Listed Bidders.

In order to present the corrected documentation and its corresponding verification, the Bidders shall present the Envelope N° 1, prior individual appointment, in the place, date and time indicated to each of them.

For each case, Envelope N° 1 shall be received and opened in the presence of the Notary Public who will draw up the minutes on the presentation of the Bidder and the number of pages of the documentation included in this Envelope.

In the minutes referred in the above paragraph, it shall be recorded the acceptance and refusal, as appropriate, the requirements indicated in Points 5.2, 5.3 y 5.4 of the Tender Documents, the observations made by the Bidder and the content of the Envelope N° 1 presented in such opportunity.

If any deficiency is found in any of the documents, the Committee shall request the Bidder to correct it within the five (5) following days.

Within the three (3) days following the expiration of period referred in the above paragraph, the Committee shall communicate a new qualification pronouncement, taking into consideration the modification of the Bidders structure.

## **7. CONTENT OF THE ENVELOPES N°2 AND N°3**

### **7.1. Content of Envelope N°2**

The content of the Envelope N°2 shall comply with the following:

#### **7.1.1. Sworn Statement**

The Bidder shall present a Sworn Statement, as the model in Form N° 4 of Exhibit N°5, about the following issues:

**7.1.1.1.1** That the information, statements, certification, and in general, all the information presented in Envelope N° 1 remains valid to the date and shall remain in the same way until the Closing Date.

**7.1.1.1.2** That the Listed Bidder or its Members do not own any direct or indirect participation in other Listed Bidder or its Members.

### **7.2. Contract**

**7.1.1.1.1** The Listed Bidders shall present two (2) copies of the final version of the Contract, properly initialed in each page and signed by its Legal Representative.

**7.1.1.1.2** The amounts required to be added in the Contract, shall not be included in the text of the Contract, because they will be included in the Closing Date according to the winning Economic Offer.

### **7.1.3 Guarantee of Validity, Effectiveness and Seriousness of the Economic Bid**

**7.1.3.1** The Bidder shall guarantee the validity, effectiveness and seriousness of the Economic Bid, by presenting a joint, irrevocable and unconditional guarantee, without the benefit of excussion or division and automatically payable, in favor of PROINVERSIÓN, and according to the following Point.

**7.1.3.2** The guarantee shall be provided as a Bank Guarantee and shall be submitted according to the model included in Form 3 of Exhibit N°5. As an alternative, a stand-by letter

of credit which meets the formalities used by the bank carrying out the transaction may be accepted, provided that it meets the requirements indicated in the Form 3 in Exhibit N° 5, and is issued by an International Financial Entity and confirmed by a Banking Company.

- 7.1.3.3** The guarantee shall be issued by a Banking Company or by an International Financial Entity, referred to in the Appendices 1 and 2 of Exhibit N° 2 of these Tender Documents. Such Guarantee shall be in force from the date of the presentation of the Economic Offer to ninety (90) calendar days after the Closing Date. The Committee shall be able to dispose the compulsory extension of the referred guarantee, which the Listed Bidder shall renew according to the instructions of the Committee.
- 7.1.3.4** The amount of the guarantee shall be of three million dollars (US\$ 3'000,000.00). With the purpose of accomplishing to the indicated herein, it is possible to submit two or more guarantees that add up the amount requested in this Point, provided that each and all of the individual guarantees fulfill with all the requirements mentioned in this Point and in Form N° 3 of Exhibit N° 5.
- 7.1.3.5** Once the Committee declares the Award, the Committee may dispose the execution of the guarantee presented by the Successful Bidder, if this Bidder, for reasons attributable to him, does not comply with his obligations mentioned in Point 1.6 of these Tender Documents until the Closing Date.
- 7.3.6** The guarantees submitted by the Listed Bidders who are not granted with the Award, shall be returned within fifteen (15) days following the Closing Date.

#### **7.1.4 Technical Bid**

- 7.1.4.1** The Technical Bid will be prepared considering the available technical information and will follow the criteria assumed by the Listed Bidder, according to the conditions established in the Terms of Reference included in Exhibit N° 9 and in the present Tender Documents.

7.1.4.2 The bids presented by the Listed Bidders shall not have mistakes or corrections, they shall contain the description of the proposed solutions and the critical activities properly scheduled.

7.1.4.3 When evaluating the Technical Proposals presented by the Listed Bidders, the Committee will determine if they meet the minimum content requirements indicated in this document, and they will be evaluated according to the quality of the following documents of the Technical Proposal:

- General Scope
- Detailed Analysis
- General Work Plan

The General Scope and the Detailed Analysis shall be developed according to the guidelines and level provided in the Terms of Reference indicated in Exhibit N° 9.

7.1.4.4 The Listed Bidder shall present, for the Concession period, a General Work Plan which will indicate the conceptual development and the scope of the Bid for the execution and exploitation of the Concession, for construction and operation, the main characteristics of the works and equipments, the constructive procedures and the technologies foreseen for the realization and subsequent operation of the Works.

7.1.4.5 The Listed Bidder will include a Work Schedule of the studies and works which will take into account all the fronts or stages of the execution of the works and activities for each stage until the beginning of the operation. In addition, the Listed Bidder shall include an Investment Schedule based on the investment percentage structure, consequent with the Work Schedule.

7.1.4.6 The General Work Plan shall be developed in detail so the Technical Proposal allows accomplishing with the requirements, investments, goals and periods established in the Contract.

The General Work Plan shall include the development of the organizational aspects of the construction of the

Works and the formulation of the Operation and Maintenance Program of the integrated hydraulic system.

## **7.2 Content of Envelope N°3: Economic Bid**

**7.2.1** The Listed Bidder shall present in the Envelope N° 3 the following documents:

**7.2.1.1** Economic Bid according to Exhibit N° 6. The Economic Bid shall be evaluated following the Point 1.2.59 for the definition of Economic Bid.

**7.2.2** The Economic Bid shall be in force at least ninety (90) calendar days after the Closing Date, even if said Economic Bid is not declared the winner of the Tender. Any Economic Bid with a shorter life shall be considered judicially null and void. The Committee may decide the obligatory extension of the Economic Bid.

**7.2.3** For the purposes of this Tender, the presentation of Envelope N° 3 by a Listed Bidder constitutes an irrevocable Economic Offer for matter of this Tender. An Economic Offer involves the acceptance of the Listed Bidder to all terms and conditions, without exceptions, of the Contract and the presentation letter of its Economic Offer.

## **8. ACTS OF RECEPTION OF ENVELOPES N° 2 AND N° 3, OPENING AND EVALUATION OF THE CONTENTS OF THE ENVELOPE N° 2**

**8.1.** Submission and Reception of Envelopes N° 2 and N° 3 and Opening of Envelope N° 2

**8.1.1** The Regional Government and PROINVERSION will create by common consent an Evaluation Committee of Technical and Economic Bids (hereinafter, the "Evaluation Committee"), prior to the date of submission of Envelopes N°2 and N° 3.

**8.1.2** The submission and reception of Envelopes N°2 and N°3 shall be carried out on the date established in Point 1.6, pursuant to the general rules provided for in Point 4 of these Tender Documents, before the Committee, the Evaluation Committee and a Notary Public. By means of Circular Letter the Committee shall establish the place and time to submit the Envelopes N° 2 and N° 3;

notwithstanding, the Committee shall grant thirty (30) minutes of grace for the start of the act of submission and reception of the envelopes containing the technical and economic bids.

In the event that all Listed Bidders are present before the expiration of the grace period, the Committee may begin the act of submission and reception of Envelopes N°2 and N°3.

**8.1.3** The Notary Public shall receive Envelopes N° 2 and N° 3 of the Listed Bidders in the same order as they were short-listed.

**8.1.4** If during the act of submission and reception of Envelopes N°2 and N°3 there was only one Bidder present, the Committee shall suspend such act and proceed to return the sealed envelopes to the respective Bidder. The Committee shall, as an exception, announce a new date for the act of submission and reception of Envelopes N° 2 and N° 3 by means of Circular Letter. If on such new date it is verified the submission of less than two (2) Bids, the Committee shall proceed to cancel the Tender.

**8.1.5** If the submission of Envelopes N° 2 and N° 3 by at least two (2) Bidders is verified, the Notary Public will proceed to the opening of Envelopes N° 2 in the same order as they were short-listed.

**8.1.6** Once the Envelopes N° 2 are open, the Notary Public shall initial and seal all the pages of the documents included in each envelope and hand them over to the Committee and the Evaluation Committee for their evaluation. Such evaluation shall be conducted according to the provisions of Point 8.2.

Envelopes N° 3 shall remain sealed and under the custody by the Notary Public up to the date of the Act of Opening of Envelopes N° 3 and Award.

**8.1.7** Once the period for the evaluation of Envelopes N° 2 had expired and after the termination of the period to rectify the observations made by the Evaluation Committee, pursuant to the provisions of Point 8.2, the Chairman of the Committee shall call for a new public act for the date

established in Point 1.6 in order to inform the Listed Bidders of the results of the evaluation of Envelopes N°2, as well as of the list of Bidders eligible to carry on in the Tender, and proceed with the Act of Opening of Envelopes N° 3 and Award, in accordance with the provisions of Point 9 of these Tender Documents. The opening of these envelopes shall be carried out in the same order indicated in Point 8.1.3.

**8.1.8** During each act, the Notary Public will draw up the appropriate minutes, which shall be signed by the Chairman of the Committee or the person acting as such, the members of the Evaluation Committee and the Listed Bidders intending to do so.

## 8.2. Evaluation of the Contents of Envelope N°2

8.2.1. If the Evaluation Committee determines the existence of rectifiable defects with respect to any of the documents included in Envelope N° 2, except for the Technical Bid itself, it shall proceed to inform the Committee of such event so that the latter informs the Listed Bidder and grants it a period of three (3) Days to rectify the defects incurred. In no case whatsoever the failure to submit any document that should be included in Envelope N° 2 will be considered a rectifiable defect.

8.2.2. The Technical Bids shall be analyzed by the Evaluation Committee, which shall prepare a report with its recommendations to the Committee on the acceptance or not of the Technical Bids submitted by the Listed Bidders.

8.2.3. If the Committee, directly or advised by the Evaluation Committee, makes any observation to the Technical Bid included in Envelope N° 2, the Committee shall be empowered to request the Bidder, up to two (2) Days prior to the date provided for in Point 1.6 for the announcement of the results of the Evaluation of Envelope N°2, the Opening of Envelopes N° 3 and the Award, to submit clarifications with regard to the contents of the Technical Bid, without such clarifications representing any amendment to or variation of the Technical Bid submitted.

8.2.4. The Technical Bids of the Listed Bidders shall be declared technically valid if, at the Committee's discretion and based on the recommendations made by the Evaluation Committee, its technical conception is consistent and meets the minimum objectives provided for the development of the Majes-Siguas



Project - Stage II according to the Points 7.1.4 and 7.1.5 and of Exhibit N° 9 of these Tender Documents. The results of the qualification of the Technical Bids shall be noted in a record which shall be signed by the members of the Evaluation Committee and submitted to the Committee so that it issues its final pronouncement. Only the Bidders which have submitted technically valid bids and have complied with enclosing the documents indicated in Point 7 will move on to the next stage of the Tender, that is the opening of Envelope N°3 .

- 8.2.5. The Committee's decision on the results of the qualification of the Technical Bids shall be final and will not give rise to any claim or challenge whatsoever by the Listed Bidders.

## **9. OPENING OF ENVELOPE N°3 AND AWARD**

### **9.1. Opening and Evaluation of Envelope N° 3**

- 9.1.1** On the date set in Point 1.6 hereof, the Chairman of the Committee or the person acting as such shall announce the list of Listed Bidders that were declared eligible to carry on in the Tender.
- 9.1.2** For those Listed Bidders whose Technical Bids are not found technically valid, the Notary Public shall return the sealed Envelopes N°3, which contain their Economic Bids, pertaining to such Bidders, and shall place on record that these remained unopened.
- 9.1.3** Subsequently, the Notary Public shall proceed to open Envelopes N°3 of the Listed Bidders whose Technical Bids were declared technically valid, one by one, and shall read their contents identifying the holder of each Economic Bid. Such envelopes shall be opened in the same order in which the Bidders were short-listed.
- 9.1.4** Upon the opening of Envelopes N° 3, the Notary Public shall initial and seal all the pages of the documents included in each envelope and hand them over to the Evaluation Committee so that it verifies that these are in agreement with these Tender Documents.



- 9.1.5** If the Evaluation Committee decides that any of the Economic Bids contained in Envelope N° 3 of any of the Bidders which were declared eligible does not meet the requirements established herein, such Economic Bid shall not be deemed by the Committee as a valid Economic Bid.
- 9.1.6** Subsequently, the Chairman of the Committee or the person acting as such shall announce those valid Economic Bids that were submitted in accordance with the provisions of Exhibit N° 6, identifying the holder of each Economic Bid.
- 9.1.7** Upon the opening of Envelopes N° 3 of the Bidders, the Notary Public shall verify that the Unit Remunerations and Co-financing Required, which are part of the Economic Bids, are valid, that is, they correspond to amounts that are equal or lower than the Maximum Unit Remuneration and the Maximum Co-financing established in accordance with Points 1.2.74 and 1.2.14, respectively. Subsequently, with the intervention of the Evaluation Committee, the Notary Public shall proceed to determine which one is the Lowest Economic Bid. There must be at least two (2) valid Economic Bids to finalize the selection procedure of the Lowest Economic Bid.
- 9.1.8** For the case stipulated in Point 9.1.9, the Evaluation Committee will evaluate the valid Economic Bids by applying the formula established in Point 1.2.59.
- 9.1.9** Upon obtaining the value of each valid Economic Bid, pursuant to the provisions of Point 1.2.59, the Evaluation Committee shall inform the results to the Chairman of the Committee or the person acting as such, who will proceed to announce one by one the Economic Bids values determined by the Evaluation Committee.
- 9.1.10** The Listed Bidder with the Lowest Economic Bid, as defined herein, shall become the Successful Bidder.
- 9.1.11** In the event of a tie between Economic Bids, the following shall apply:
- 9.1.11.1** The Listed Bidders being tied shall have a period of up to two (2) hours to submit a new Economic Bid, which should be lower than the ones initially submitted. In the event of a

new tie, one (1) additional hour shall be granted to submit a new Economic Bid which should also be lower than the ones previously submitted. If, however, the tie persists, the decision shall be made by a drawing conducted by the Notary Public within the same act, according to the mechanism established by the Committee at such time, in coordination with the Evaluation Committee.

**9.1.11.2** Any new Economic Bid submitted as a result of a tie should be necessarily lower than the previous one. In the event that any Bidder fails to submit a new Economic Bid, the bidder which submits an Economic Bid which is lower than its previous bid shall be awarded the contract.

**9.1.12** The Bidder which submits a new Economic Bid should do so by submitting a new Envelope N° 3, which should contain only a new Economic Bid Submission Letter, in accordance with Exhibit N° 6, signed by the appropriate Legal Representative.

**9.1.13** The Act of Opening of Envelopes N° 3 and Award shall be carried out in the city of Arequipa.

## 9.2. Challenge

### 9.2.1 Procedure to Challenge the Award

Any Listed Bidder may file a remedy to challenge the Award before the Committee. Such challenge should be noted as an observation in the notarial record of the opening document of Envelope N° 3 and be duly supported, in written, within a maximum term of eight (8) Days calculated as from the Day following the date of the Award.

The Committee shall resolve such challenge within a maximum term of ten (10) Days calculated as from the day of the filing.

- 9.2.2** The challenging Bidder may file an appeal against the resolution of the Committee before the Steering Council of PROINVERSION within a term of three (3) Days subsequent to the date of its reception.

The appeal may also be filed against the implied resolution denying the challenge in the event that, upon the lapsing of the term of ten (10) Days for the Committee to resolve the challenge filed, this fails to issue the appropriate resolution. In such case, the term of three (3) Days to file the appeal will be calculated as from the Day subsequent to the expiration of the term of ten (10) Days indicated.

- 9.2.3** The appeal filed against the express or implied resolution of the Committee shall be resolved by the Steering Council of PROINVERSION within a term of thirty (30) Days as from its filing. The resolution in second and last instance shall be final and unappealable.

### 9.3. Challenge bond

- 9.3.1** No challenge shall be deemed as validly filed and shall lack full force and effect unless, within a term of three (3) Days following the date of the Award, the Bidder provides the Committee with a joint, irrevocable and unconditional bank bond, without the benefit of excussion or division, and automatically payable, in accordance with Exhibit N° 7, in favor of PROINVERSION. Such bank bond should be issued by a Banking Company or by an International Financial Entity, as referred to in Appendices 1 and 2 of Exhibit N° 2 of these Tender Documents, for an amount equal to one percent (1 %) of the Referential Amount of Investment.
- 9.3.2** Such challenge bond may be executed by PROINVERSION if the appeal filed by the Bidder is declared groundless or is dismissed or in case such appeal is not filed within the term established in Point 9.2.2.
- 9.3.3** The effective term of the challenge bond shall be no less than sixty (60) Days.

**9.3.4** In the event that the challenge or the appeal are declared admitted, the challenge bond shall be returned to the relevant Bidder and will not accrue any interest to its favor.

#### 9.4. Unsuccessful Tender Process

The Committee shall declare the Tender unsuccessful if not receiving at least two (2) valid Economic Bids meeting the indications provided for in these Tender Documents.

#### 9.5. Suspension

The Tender may be suspended or cancelled or declared null and void at any time and without the need to state any cause if deemed convenient by the Committee, without the latter incurring in any liability whatsoever. Such decision may not be challenged.

### **10. CLOSING PROCEDURE**

#### 10.1. Closing Date

The Closing Date shall be the one indicated in Point 1.6, at the place and time to be indicated by Circular Letter and shall be carried out before a Notary Public, who shall certify the acts referred to in Point 10.2. The notarial expenses shall be borne by the Successful Bidder.

#### 10.2. Closing Acts

The following acts shall take place on the Closing Date:

**10.2.1.** The Successful Bidder shall submit the following documents:

**10.2.1.1** In accordance with the provisions of Point 5.3.8, the Successful Bidder should submit the documents evidencing the filing with the Public Records Office of the Articles of Association of the legal entity which is to enter into the Contract. Such legal entity should have been incorporated in Peru, with the same partners, shareholders or Members, and in the same proportions these held on the date of the Award, with a fully subscribed share capital equal to five percent (5%) of the Referential Amount of Investment,

twenty-five percent (25 %) of which should be paid-in as of the date of incorporation of the concessionary company, and the full amount subscribed should be completed up to the end of the fourth year of the Concession, in accordance with the legal regulations in force.

**10.2.1.2** Certified Copy of the power-of-attorney of the person who shall sign the Contract on behalf of the Concessionaire, including the certificate of its filing in the appropriate Public Records Office;

**10.2.1.3** The Successful Bidder should submit, with respect to the company and the Consortium Members, as appropriate, and the Concessionary Company, evidence of not being restricted from participating in selection procedures or from entering into contracts with the State, issued by the Supervisory Body of State Procurement - OSCE.

In the event of determining the existence of falsehood in the information provided, the Award shall be revoked and the provisions established in Point 10.3 may be applied.

**10.2.1.4** Guarantee of Performance of the Concession Contract by means of a bank letter of guarantee according to the sample of Exhibit N° 2, issued by a Banking Company or by an International Financial Entity, as referred to in Appendices 1 and 2 of Exhibit N° 2. Such bond should be joint, irrevocable and unconditional, without the benefit of excussion or division, and automatically payable, with an effective term of one (1) year as from the Closing Date, and shall be renewed on an annual basis so that it remains in force, according to the following scheme:

- For an amount equivalent to five percent (5%) of the Referential Amount of Investment, as from the Closing Date up to the Date of Submission of Control of the Project.

- For an amount equivalent to ten percent (10%) of the Referential Amount of Investment, as from the Date of Submission of Control of the Project up to the end of the Initial Period.
- For an amount equivalent to seven and a half percent (7.5%) of the Referential Amount of Investment, during the subsequent five-year period after the completion of the Initial Period (Post-Construction Period).
- For an amount equivalent to one and a half percent (1.5%) of the Referential Amount of Investment, as from the completion of the Post-Construction Period and up to the expiration of the effective term of the Concession.

As an alternative, a stand-by letter of credit which meets the formalities used by the bank carrying out the transaction may be accepted; provided that it meets the requirements indicated in Exhibit N°2 and is issued by an International Prime Bank and confirmed by a Local Banking Company.

- 10.2.1.5** In the event that the Concessionaire and the Constructor are not the same legal entity, the Concessionary Company should submit the Construction Contract executed with the Constructor whereby the latter assumes the responsibility of the Works. In addition, such contract should contain terms and conditions internationally used in this type of transaction and should be duly converted into a Public Deed.

Such Construction Contract should include, but not be limited to, clauses regarding: (i) the ability of the Constructor to perform such Contract and assume the responsibility of the Works; (ii) the execution and performance of the Construction Contract having been duly authorized by any and all corporate actions necessary by the Constructor, as well as the sufficiency of the powers of its representative; (iii) the representations and guarantees and other matters

being carried out in agreement with Form 6 of Exhibit 5 of these Tender Documents; and (iv) the remaining customary terms and conditions for this type of contract.

- 10.2.2. The Contract entered into by and between the Grantor and the Concessionaire.
- 10.2.3. PROINVERSION will return the Guarantee of Validity, Effectiveness and Seriousness of the Economic Bid to the Successful Bidder.
- 10.2.4. The execution of the Legal Stability Agreements provided for in Legislative Decrees N° 662 and N° 757, as amended, insofar as the Successful Bidder or any of its Members complies with the provisions of the regulations in force.
- 10.2.5. The enactment of the Supreme Decree granting, by means of a contract, the guarantee from the State supporting the representations, securities and obligations assumed by the Grantor, established in the Concession Contract.
- 10.2.6. The Successful Bidder or the legal entity it incorporates shall pay the amounts referred to in Points 11.3 and 11.5 of these Tender Documents through cashier's checks which should be issued by any of the banking entities listed in Appendix 2 of Exhibit N° 2.

#### Execution of the Guarantee of Validity, Effectiveness and Seriousness of the Economic Bid

- 10.3.1** In the event of failure by the Successful Bidder which hinders the performance of the acts provided for the Closing Date, PROINVERSION may immediately execute the Guarantee of Validity, Effectiveness and Seriousness of the Economic Bid without the need of prior notice to the Successful Bidder. The execution of such guarantee does not limit or restricts any other right that PROINVERSION may be entitled to with regard to the Successful Bidder which failed to perform its obligations regarding the bid.

10.2.7. In the event of failure by the Successful Bidder, the Committee shall be empowered to, but not be obliged to, accept the proposal of the Bidder with the second best Economic Bid. In such case, the Committee shall inform such Bidder of its decision to declare it as the new Successful Bidder. Moreover, the latter shall be informed of the closing procedure and the date, time and place where such procedure will be carried out.

10.2.8. Notwithstanding the provisions in this Point 10.3, PROINVERSION and/or the Committee may initiate all legal actions they are allowed to by the Applicable Laws, as a direct or indirect consequence of the failure by the original Successful Bidder.

#### 10.4. Coming into Force of the Contract

The Contract shall come into full force and legal effect as from the Closing Date, upon being executed by the Concessionaire's Legal Representative and the representative duly accredited of the Grantor.

The Closing Date shall be identified for all purposes as the date on which the Contract is executed.

## **11. FINAL PROVISIONS**

### 11.1. Applicable Laws

These Tender Documents, the documents thereof and the Contract shall be governed and construed according to the Applicable Laws.

### 11.2. Jurisdiction and Competence

11.2.1. The Acquirers, the Listed Bidders and the persons who are members of Consortia, the Successful Bidder and the Concessionary Company irrevocably submit to and accept the jurisdiction and competence of the judges and tribunals of the city of Lima, Peru, to resolve any conflict arising between them with regard to these Tender Documents, and expressly and irrevocably waive their right to any diplomatic claim, as well as any right to initiate actions of any sort before any other court or jurisdiction.



11.2.2. No provision shall be applicable if said provision modifies and tampers or cuts down the right of the State of the Republic of Peru, PROINVERSION, the Committee or the Regional Government to initiate any legal action or enforce a judgment obtained in Peru before the judges and courts of other jurisdictions. Moreover, the Acquirers, the Listed Bidders, the persons who are members of Consortia, the Successful Bidder and the Concessionary Company waive their right to resort to or exercise any immunity or privilege they may be entitled to in such jurisdictions, without reserve or limitation whatsoever, and accept from now on and by the simple fact of participating in the Tender, the election of the alternative jurisdiction or jurisdictions made by the State, PROINVERSION, the Committee and the Regional Government, as appropriate.

#### 11.3. Contribution to FONCEPRI

Pursuant to the provisions of Supreme Decree N° 021-98-PCM, the Successful Bidder is bound to make a contribution to FONCEPRI, the amount of which shall be informed by the Committee in due time through a Circular Letter.

#### 11.4. Environmental Matters

The Project has environmental impact studies which are available in the Data Room. If necessary, their supplementing or updating shall be at the Concessionaire's account.

#### 11.5. Reimbursement of the Process Expenses

The Successful Bidder or the legal entity it incorporates should reimburse PROINVERSION, on the Closing Date, the preparatory expenses of the tender process, including the VAT, the exact amount shall be informed by the Committee in due time through a Circular Letter.

#### 11.6. Previous report of the General Controllershship of the Republic

These Tender Documents, as well as the Contract resulting from this process, shall include the relevant aspects of the report, if any, to be issued by the General Controllershship of the Republic, as appropriate,

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by applying the provisions of subsection I) of Article 22 of the Law N° 27785, which reads as follows:

“Article 22.- Powers

The powers of the Controllership are as follows:

- I) Issue a previous report on the transactions, bonds, sureties and other guarantees granted by the State, including draft contracts, which may compromise in any manner its credit or financial position, whether when dealing with negotiations domestically or abroad”.
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**EXHIBIT N° 1****CONFIDENTIALITY AGREEMENT**

Reference: Points 1.2.1 and 3.2.2 of the Tender Documents

Lima, ..... , 200....

**Comité de PROINVERSIÓN en Proyectos de  
Saneamiento e Irrigación – PRO AGUA**

Acquirer and/or Bidder: .....

.....(name of the Bidder) acting by and through its  
..... (position of the undersigned), Mr. .... (name of the  
undersigned), identified with ....., with principal place of business at  
....., hereby express our interest to have access to the Data Room made  
available by the Committee, as well as to visit the facilities of the Majes-Siguas  
Project, in accordance with the Tender Documents of the Comprehensive  
Projects for granting the Concession of the Larger Water Consolidation Works  
and Infrastructure for the Irrigation of Pampas de Sigwas, which are part of the  
Majes-Siguas Project - Stage II.

In such regard, we undertake to keep all the information obtained in the Data  
Room confidential, not to disclose any material or information to third parties  
without the previous authorization in writing by the PRO AGUA Committee, not  
to use the information for any other purpose not related to the Tender process,  
and not to use such information in any manner so as to create any conflict with  
the interests of the State, its officials or agencies, the Regional Government,  
PROINVERSION and the Committee.

The materials obtained from the Data Room shall be made available only to our  
staff, executives and consultants, for reasons related to the Tender process.  
Such staff shall be made aware of this agreement and shall be also obliged to  
keep the above-mentioned information confidential. Moreover, we shall  
endeavor to prevent the disclosure of any such information to any person  
without prior written consent by the Committee.

No license or right has been or shall be granted to our advisors with regard to  
the availability of any information contained in this Agreement

We accept that neither the State, its officials or agencies, nor the Regional  
Government, PROINVERSION, the Committee, its advisors or members  
declare or guarantee, either expressly or implicitly, the accuracy, reliability or  
integrity of the information made available to us. Moreover, none of these

Tender Documents of the Comprehensive Projects Tender for the Awarding in Concession of the Larger  
Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Sigwas

parties or their relevant directors, officials, employees or representatives shall be liable to us or to any other person as a consequence of the use of such information and/or materials. We agree to make our own decisions with regard to the information made available to us and acknowledge that we shall not depend upon or be influenced by such information at the time of deciding on our intention with regard to the Tender process.

We agree that none of the information provided, nor any material, discussion, negotiation or other related issues represent an offer by the Committee or on its behalf, and that they shall not serve as grounds or be taken into account in connection with any agreement, except when expressly agreed in writing with the Committee.

At the request of the Committee, we accept to immediately return all copies of all the documents made available to us, or to our representatives or advisors.

Likewise, we agree that the Committee does not undertake nor it is obliged to provide access to additional information or to update the information and materials made available or to correct any inaccuracy that may arise.

This agreement shall not apply to the information that: (i) as of the date it was disclosed to us or to our advisors it was publicly known, or at any time as from such opportunity becomes of public knowledge (except for that information subject-matter of failure by us or our advisors with regard to this agreement); or (ii) as of this date, is already in our legal possession, thus not being subject to the confidentiality commitment.

The rights and obligations established herein shall be governed and construed according to the provisions of Peruvian laws and the parties agree to irrevocably submit to the jurisdiction and competence of the judges and courts of Lima, Peru.

In witness whereof, this confidentiality agreement is signed and a counterpart is submitted to the Committee this ..... day of ..... 200....

Legalized signature.....

Name..... (Legal Representative of the Bidder and/or Acquirer or Authorized Agent)

Entity..... (Bidder)

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**EXHIBIT N° 2****MODEL FORM OF PERFORMANCE BOND**

Lima, ..... , 200....

**REGIONAL GOVERNMENT OF AREQUIPA**

Ref.: Concession Contract for the Construction, Operation and Maintenance of the Larger Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Siguas

Bond N° .....

Expiration: .....

Dear Sirs,

We hereby, and upon request of our clients, Messrs..... (name of the legal entity) (hereinafter, "the Concessionaire"), create this joint, irrevocable and unconditional bond, without the benefit of excussion or division, and automatically payable, up to for the amount of \_\_\_\_\_ UNITED STATES DOLLARS (US\$ \_\_\_\_\_) in favor of the Regional Government of Arequipa, in order to guarantee the proper and timely performance of each and every obligation assumed by the Concessionaire resulting from the execution of the Concession Contract for the Construction, Operation and Maintenance of the Larger Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Siguas, which is part of the Majes-Siguas Project - Stage II (hereinafter, "the Contract").

This Bond shall also guarantee the proper and timely performance of the obligations assumed by the Concessionaire established under the provisions contained in the Single Uniform Text of the regulations with the status of law governing the granting of concessions to the private sector regarding public works of infrastructure and public utilities approved by Supreme Decree N°059-96-PCM, and its regulations approved by Supreme Decree N°060-96-PCM.

In order to honor this Bond, a written requirement by the Regional Government of Arequipa by notarial letter will suffice. The payment shall be made within 24 hours following its requisition to our offices located at .....

Any delay from our part to honor such Bond shall accrue an interest equivalent to the highest LIBOR rate plus a 3% spread. The LIBOR rate shall be the one established by the daily Reuter Cable received in Lima at 11:00 a.m. on the

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date of reception of the payment request by notarial letter and should accrue interests as from the date when its execution was demanded and up to the effective date of payment.

Our obligations under this Bond shall not be affected by any dispute arising between you and our clients.

This Bond shall be effective as from..... .., 200..., up to..... .., 200....., inclusive.

Sincerely yours,

Signature .....  
Name .....  
Banking Company .....

**Note: This model form may be replaced by the model of the issuing bank, provided that it includes all the conditions indicated in this form.**

**EXHIBIT N°2****APPENDIX 1****LIST OF INTERNATIONAL FINANCIAL ENTITIES AUTHORIZED TO ISSUE  
THE BONDS PROVIDED FOR IN THE TENDER DOCUMENTS****Foreign Banks:**

The international prime banks, as well as multilateral banks, included in the list approved by the Central Reserve Bank of Peru by means of Circular Letter N° 039-2008-BCRP, published in “*El Peruano*” official gazette on September 28, 2008, will be taken into consideration.

**EXHIBIT N° 2****APPENDIX 2****LIST OF LOCAL BANKS AUTHORIZED TO ISSUE THE BONDS  
ESTABLISHED IN THE TENDER DOCUMENTS**

The list below includes the local Banks authorized to issue letters of guarantee:

- Banco Interamericano de Finanzas – BIF
- Citibank, N.A., Lima Branch Office
- Banco Continental
- Banco de Credito del Peru
- Banco Financiero del Peru
- Banco Internacional del Peru S.A.A. – INTERBANK
- Scotiabank
- HSBC Bank
- Deutsche Bank
- Banco Santander
- MIBANCO



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**EXHIBIT N° 3****Form 1****SWORN STATEMENT****(Commitment to reliability of information)**

Reference: Point 5.1 of the Tender Documents

We hereby declare under oath that:

All the information provided for the accreditation of our experience in the management and operation indicated in the documents submitted is authentic.

Place and date: ....., ....., 200.....

Entity .....  
Legal entityName .....  
Name of the Legal Representative of the BidderSignature .....  
Signature of the Legal Representative of the Bidder**(The signature of the Legal Representative should be legalized)**

**EXHIBIT N°3**
**Form 2**
**TECHNICAL REQUIREMENTS FOR SHORT-LISTING**

Reference: Point 5.2.1 of the Tender Documents

**A. CONSTRUCTOR:**

.....

CHARACTERISTICS OF THE TUNNEL(S)						CONSTRUCTION PERIOD
N°	Name and Location	Main characteristics and type	Accumulated length (20,000m)	Hard rock tunnel(s) section > 15m <sup>2</sup> 10,000m	From (month/year)	To (month/year)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
<b>TOTAL</b>						

CHARACTERISTICS OF THE DAM(S)					CONSTRUCTION PERIOD	
N°	Name and Location	Type and volume of Dam (any of the indicated, without distinction)			From (month/year)	To (month/year)
		200,000m <sup>3</sup> RCC	- (800,000) m <sup>3</sup> Earth CFRD	100,000 m <sup>3</sup> Mass Concrete Dam		
1						
2						
<b>TOTAL</b>						

In the event that the information provided pertains to a Related Company, fill in the additional information of section B.

CHARACTERISTICS OF IRRIGATION PROJECTS				CONSTRUCTION PERIOD	
N°	Name and Location	Project characteristics		From (month/ year)	To (month/year)
		5,000 m of concrete-lined channels, section > 6 m <sup>2</sup>	10,000m of lower- section channels		
1					
2					
<b>TOTAL</b>					

B. Explanation of the relationship between the Constructor and its respective Related Company.

In the even that the information of the shareholder or Member pertains to a different legal entity, the existing relationship with the Bidder which provides the status of Related Company thereof should be explained.

.....  
 .....  
 .....

Sincerely yours,

Signature .....

Name: .....  
 Legal Representative of the Bidder

Entity: .....  
 Bidder

Signature: .....

Name .....  
 Name of the Legal Representative of the Related Company

Place and date: ....., ....., 200.....

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**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 1****SWORN STATEMENT**

We hereby declare under oath that (name of the Bidder) is a legal entity duly incorporated under the laws of ..... and is currently in good standing in accordance with the applicable legal principles of its country of origin.

Place and date: ....., ....., 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the Bidder**(The signature of the Legal Representative should be legalized)****(In the event that the Bidder is a Consortium, this form should be submitted per Member, including the legalized signature of the appropriate legal representatives thereof).**

**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 2****SWORN STATEMENT**

We hereby declare under oath that:

..... (name of each Member of the Consortium) have entered into a partnership through a consortium in order to participate in the Tender.

..... (name of each Member of the Consortium) are companies duly incorporated in accordance with the legislation and are currently in good standing.

..... (name of each Member of the Consortium) are jointly and severally liable before the Republic of Peru, the Regional Government, PROINVERSION and the Committee with respect to each and every obligation assumed and sworn statements submitted by the Bidder in connection with this Tender.

Place and date: ....., ....., 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the BidderEntity .....  
Legal Representative of (Member 1)Name .....  
Legal Representative of (Member 1)Signature .....  
Legal Representative of (Member 1)

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Entity .....  
Legal Representative of (Member 2)

Name .....  
Legal Representative of (Member 2)

Signature .....  
Legal Representative of (Member 2)

Entity .....  
Legal Representative of (Member 3)

Name .....  
Legal Representative of (Member 3)

Signature .....  
Legal Representative of (Member 3)

**(The signature of the Legal Representatives should be legalized)**

**EXHIBIT N° 4**

**CREDENTIALS FOR SHORT-LISTING**  
**(Legal entity incorporated or Consortium)**  
 Reference: Point 5.3 of the Tender Documents

**Form 3**
**SWORN STATEMENT**

We hereby declare under oath that the share percentage of each of our shareholders or partners or Members, except for the Constructor, as appropriate, is as follows:

Shareholder or partner	Share percentage in the Bidder (only those over 5%)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
<b>TOTAL</b>	

In the case of Bidders participating as a Consortium:

Members	Share percentage in the Bidder
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
<b>TOTAL</b>	

Place and date: ....., 200...

Entity .....  
                     Bidder  
 Name .....  
                     Legal Representative of the Bidder  
 Signature .....  
                     Legal Representative of the Bidder

**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 4****SWORN STATEMENT**

We hereby declare under oath that..... (name of the Bidder), as well as its shareholders, partners or Members, and the shareholders and partners thereof, if appropriate:

- a. Have not been imposed any administrative sanction with temporary or permanent disqualification of the exercise of their rights to participate in processes called for by the Peruvian State or to enter into contracts therewith.
- b. Have not lost their status as concessionaires as a result of any breach of a concession contract executed with the Peruvian State under the framework of the private investment promotion process referred to in the Single Uniform Text (TUO) on concessions approved by Supreme Decree N° 059-96-PCM or Law N° 28059 - Framework Law on De centralized Investment Promotion or Legislative Decree N° 1012 - Framework Law on Public-Private Partnerships.

Place and date: ....., ..... , 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the Bidder



**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 5****SWORN STATEMENT**

We hereby declare under oath that (name of the Bidder), as well as its shareholders, partners or Members, and the shareholders and partners thereof, if appropriate, waive the following rights:

1. To resort to or exercise any diplomatic or any other type of privilege or immunity.
2. To file any claim through diplomatic means, as well as any right of compensation or other right in connection with any claim which may be initiated by or against the Peruvian State, the Regional Government, PROINVERSION, the Committee, its members and advisors, under Peruvian law or any other legislation, regarding our obligations with respect to the Tender Documents, the Economic Bid and the Concession Contract.

Place and date: ....., ..... .., 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the Bidder

---

**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 6****SWORN STATEMENT**

We hereby declare under oath that our legal and technical advisors have not rendered any type of direct services related to this process in favor of PROINVERSION and the Committee during the development of this private investment promotion process, either on a full- or part-time basis or under a temporary contract.

Place and date: ....., ..... , 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the Bidder

---

**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Legal entity incorporated)**

Reference: Point 5.3 of the Tender Documents

**Form 7****SWORN STATEMENT**

We hereby declare under oath that neither (name of Bidder), its shareholders, partners or Members, nor the partners or shareholders thereof, if appropriate, hold direct or indirect share in any other Bidder.

Place and date: ....., ..... ....., 200...

Entity .....  
BidderName .....  
Legal Representative of the BidderSignature .....  
Legal Representative of the Bidder

---

**EXHIBIT N° 4****CREDENTIALS FOR SHORT-LISTING  
(Applicable only for corporations listed at the stock market)  
Reference: Point 5.3 of the Tender Documents****Form 8****SWORN STATEMENT**

We hereby declare under oath that neither ..... (name of Bidder), its shareholders, partners or Members, nor the partners or shareholders thereof, if appropriate, hold any direct or indirect share in any other Bidder where they have control of management or, in the case of a Consortium, of any of its members, pursuant to the provisions of the Regulations on Indirect Ownership, Relationship and Economic Groups approved by CONASEV Resolution N° 090-2005-EF/94.10.

Place and date: ....., ..... ....., 200...

Entity .....  
Bidder

Name .....  
Legal Representative of the Bidder

Signature .....  
Legal Representative of the Bidder

**EXHIBIT N°5****Form 1  
CONSTITUTION AGREEMENT****SWORN DECLARATION**

Reference: Points 5.3.8.1 and 10.2.1.1 of the Terms Document

Hereby, we declare under oath the following:

(In the case of the Bidder being a Consortium)

- That, ..... (name of each of the Consortium Members) have associated themselves by means of a Consortium for the effects of participating in the present Tender.
- That, ..... (those mentioned in the previous point) have signed a commitment of intention of forming a legal entity located in the Republic of Peru and a capital stock in compliance with that established in Points 5.3.8.1 and 10.2.1.1 of the Tender Document.

(In the case of the Bidder being a company)

- That, ..... (name of the company) commits itself to constitute a legal entity situated in the Republic of Peru and a capital stock in compliance with that established in Points 5.3.8.1 and 10.2.1.1 of the Tender Document.

(Following paragraphs for both cases)

- That, the legal entity to be constituted will sign the Concession Contract.
- That, the social objective of the legal entity to be constituted, shall be within the framework of the present Tender.
- If we are the Successful Bidders, we commit ourselves to deliver the respective Certified Copy of the Deed of the constitution of the concessionary society with the respective record of its inscription in the corresponding Registry Office in the Closing Date indicated in Point 1.6 of the Tender Document.
- In that sense, we point out that we acknowledge and accept that the noncompliance of the present commitment could be considered in order to leave without effect the awarding granted in our favor.

Place and date: ....., ..... of ..... 200...

Entity .....

Bidder

Name .....

Legal Representative of Bidder

Signature .....

Legal Representative of Bidder

Entity .....

Legal Representative of (Member 1)

Name .....

Legal Representative of (Member 1)

Signature .....

Legal Representative of (Member 1)

Entity .....

Legal Representative of (Member 2)

Name .....

Legal Representative of (Member 2)

Signature .....

Legal Representative of (Member 2)

Entity .....

Legal Representative of (Member 3)

Name .....

Legal Representative of (Member 3)

Signature .....

Legal Representative of (Member 3)

**(The signature of the Legal Representatives should be legalized)**

**EXHIBIT N° 5****Form 2****FINANCIAL REQUIREMENTS - ENVELOPE N° 1**

Reference: Point 5.4 of the Tender Document

**MODEL FORM OF THE LETTER OF PRESENTATION OF FINANCIAL  
INFORMATION FOR QUALIFICATION**

Lima, ..... of .....200...

**Comité de PROINVERSIÓN en Proyectos  
de Saneamiento e Irrigación – PRO AGUA**

Bidder: .....

According to that stipulated in Point 5.4 of the Tender Document, we hereby fulfill with submitting our Letter of Presentation of Financial and Technical Information.

**I. FINANCIAL REQUIREMENTS****A. Net Assets of the Bidder**

NET ASSETS      US\$ [    ]*
------------------------------

\* The total amount shown in this Table should be the same indicated in Table B.

**B. Net Assets, share percentage in the Bidder and prorated net assets of the shareholders or members of the Bidder.**

Shareholder, Related Company or Member	Note 1	US\$ Net Assets (Note 2)	Share %	US\$ Prorated Net Assets
		(I)	(II)	(III = I x II)
TOTAL (Copy this total in Section A)				US\$

Note 1: Mark with an “X” if the figure of Net Assets belongs to a Related Company and in addition complete Section D.

Note 2: In case of assets corresponding to Shareholders, Related Companies or Members in currency other than US\$, Table C will be used.

**C. Net assets in the case of conversion of amounts expressed in currency other than the US\$.**

Shareholder, Member or Related Company	Amount (Original Currency)	Exchange Rate	Amount (US\$)



---

**Note:** The Exchange rate published by the Superintendent of Banking and Insurance on the closing date of the Financial Statements will be used.

**D. Explanation of the relationship between the Bidder, shareholder or Member of the Bidder and its respective Related Company.**

If the figure of a shareholder or Member belongs to someone else, in the following lines it must be detailed the relationship that originates that the company is a Related Company of the Bidder, shareholder or Member of the Bidder.

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**E. Include Letter of Reference from the International Financial Entity**

Sincerely,

Signature .....

Name .....  
Legal Representative of Bidder

Entity .....  
Bidder

Signature .....

Name .....  
Legal Representative of Bidder

**EXHIBIT N°5****Form 3****MODEL FORM OF GUARANTEE OF VALIDITY, EFFECTIVENESS AND  
SERIOUSNESS OF ECONOMIC OFFER**

Reference: Point 7.1.3 of the Terms Document

Lima, ..... of ..... , 200..

**Agencia de Promoción de la Inversión Privada- PROINVERSIÓN**

Ref. : Tender of Comprehensive Projects for the awarding in Concession of the Larger Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Siguan

Bond N° .....

Expiry: .....

Dear Sirs:

Hereby and on behalf of our clients, ..... we constitute this joint, irrevocable and unconditional bond, without the benefit of excussion or division, and automatically payable, up to the amount of three million and 00/100 American Dollars (US\$3'000,000.00) in favor of PROINVERSIÓN, to guarantee the Validity, Effectiveness and Seriousness of the Economic Offer presented by our client in accordance with the terms and conditions established in the Tender Document of the Tender of Comprehensive Projects for the awarding in Concession of the Larger Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Siguan.

Likewise, we certify that the present guarantee will become effective if our client is declared Successful Bidder by the PRO AGUA committee and does not fulfill with the obligations of his position foreseen in the Closing Date of the above-mentioned Tender.

Payment will become effective by simple request of the Executive Director of PROINVERSIÓN, or the person acting as such, by notarial letter, in our offices situated in .....

---

Any delay from our part to honor such Bond shall accrue an interest equivalent to the highest LIBOR rate plus a 3% spread as from the date when its execution was demanded and up to the effective date of payment.

The LIBOR rate shall be the one established by the daily Reuter Cable received in Lima at 11:00 a.m. on the date of reception of the payment request by notarial letter.

Our obligations under this Bond shall not be affected by any dispute arising between you and our clients.

This Bond shall be effective as from the date of the presentation of the Economic Offer until the..... .., 200....., inclusive

The terms employed in this Bond shall have the same significance as those defined in the Tender Document.

Sincerely,

Signature .....

Name .....

Banking Company .....

**Note: This model form may be replaced by the model of the issuing bank, provided that it includes all the conditions indicated in this form.**

**EXHIBIT N°5****Form 4****VALIDITY OF THE INFORMATION**

Reference: Point 7.1.1 of the Tender Document

**SWORN STATEMENT**

Hereby we declare under oath as follows:

1. That the information, statements, certification and all the documents presented in Envelope N°1 in general remain valid to date and will remain as such until the Closing Date.

2. That we have no direct or indirect participation in any other Short-listed Bidder or its Member.

Place and date: ....., ..... of..... , 200...

Entity .....

Bidder

Name .....

Legal Representative of Bidder

Signature .....

Legal Representative of Bidder

**EXHIBIT N°5****Form 5****COMMITMENT OF CONSTRUCTION CONTRACT****SWORN STATEMENT**

Reference: Point 5.2.2 of Tender Document

Hereby, we declare under oath as follows:

That, we have signed a contract commitment, by which if the Bidder is declared the Successful Bidder in compliance with the Tender Document, we commit ourselves to sign, before the Closing Date, a Construction Contract by which the Constructor jointly commits with the Successful Bidder to execute the Construction Works in the terms foreseen in Point 10.2.1.5 of the Tender Document.

Place and Date: ....., .... of ....., 200...

Entity .....  
BidderName .....  
Legal Representative of BidderSignature .....  
Legal Representative of BidderEntity .....  
Legal Representative of (Member 1)Name .....  
Legal Representative of (Member 1)Signature .....  
Legal Representative of (Member 1)Entity .....  
Legal Representative of (Member 2)Name .....  
Legal Representative of (Member 2)

---

Signature .....  
Legal Representative of (Member 2)

Entity .....  
Legal Representative of (Member 3)

Name .....  
Legal Representative of (Member 3)

Signature .....  
Legal Representative of (Member 3)

Entity .....  
Constructor

Name .....  
Legal Representative of Constructor

Signature .....  
Legal Representative of Constructor

**(The signature of the Legal Representatives should be legalized)**

---

**EXHIBIT N°5****Form 6****SWORN STATEMENT OF THE CONSTRUCTOR**

Reference: Point 10.2.1.5 of Tender Document

Hereby, the Constructor declares under oath the following:

1. Organization and Powers

The Constructor is a commercial society or entity duly constituted, legally existent, duly registered in the respective registry, according to the laws of the jurisdiction of its constitution or organization and has all the necessary social powers or other applicable powers, and the necessary authority to own and to manage its properties, to conduct its businesses, to sign the present Construction Contract and fulfill all the obligations established herein.

2. Capacity

The Constructor has the necessary abilities and competences to conduct its business, daily operations, and other operations considered in the present Construction Contract.

3. Authorization

The Constructor has the sufficient capacity and representation to sign and fulfill the present Construction Contract. The signing and fulfillment of the present Construction Contract have been duly authorized by means of all necessary social actions. None of the necessary acts for this purpose has been modified or cancelled, and such acts have full validity.

---

4. Absence of Conflicts

The signing, delivery and fulfillment of the present Construction Contract by the Constructor and the fulfillment of the acts considered in it (1) do not fail to comply with any disposition of the Applicable Laws to the Constructor or any Strategic Investor, social agreement, fiduciary agreements or Construction Statute, as applicable, or any order, resolution or decree by any Governmental Authority which obliges the Constructor, (2) is not in conflict with, nor is in noncompliance with, or constitutes (with the due notice or the lapse of time or both) a noncompliance of any contractual obligation of the Constructor; (3) do not result in, or require of the creation or imposition of, any substantial charge on any of the properties or assets of the Constructor; and (4) does not require any approval or consent from any person or entity according to any contractual obligation of the Constructor.

5. Governmental Consents

The signing and fulfillment of the present Construction Contract by the Constructor does not require any inscription, consent or approval of, or notice to any Governmental Authority in addition to those already obtained, copies of which have been attached to the Construction Contract.

6. Binding Obligation

The present Construction Contract is legally valid and liable for the Constructor, according to its terms, except that said liability could be limited by the Applicable Laws on insolvency or bankruptcy.

7. Adverse Contract.

The Constructor does not form part of purchase contracts, future contracts, noncompetition agreements, or any other contract which limits its capacity to conduct business, or which could reasonably result substantially adverse for the Constructor's capacity to fulfill with the present Construction Contract.



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8. Contract Fulfillments.

The Constructor has not incurred in the noncompliance of any obligation, agreement or condition included in any contractual obligation, except when said noncompliance cannot be reasonably adverse for the Constructor's capacity to fulfill the present Construction Contract.

9. Intellectual Property.

The Constructor has the property license of use, or otherwise it has the right to use all patents, brand names, commercial names, copyrights, technology, know-how and necessary processes for the fulfillment of the present Construction Contract.

10. Disclosure.

No Constructor's statement contained in the present Construction Contract or which forms part of itself, be it by certificate or written declaration, constitutes a false declaration of a fact or omits to reveal a fact whose disclosure is necessary to emit false declarations, taking into consideration the circumstances under which these were made. There is no substantial fact known by the Constructor which had had, has or could have a substantially adverse effect on the Constructor's capacity to fulfill with the present Construction Contract that has not been disclosed by means of the present Construction Contract, to be used in relation with the operations and transactions considered in the present Construction Contract.

11. Law Observance.

The Constructor has not breached any law, ordinance, rule, order, policy, guideline or other requirement from any local or foreign government or any of its organisms, departments or agency with jurisdiction on the management of its respective business or the property of its respective properties, including, but without limiting itself to, any violation related to the use, remittance, stocking, transport or disposal of any dangerous material whose noncompliance can or could subject the Constructor, or any of its respective employees, to penal liability, or that can or could have a substantially adverse effect on the Constructor's capacity to fulfill the present Construction Contract. The Constructor has duly registered, or presented all relevant reports, documents and other materials, which need to be registered or presented in compliance with any law, ordinance, rule, order, policy, guideline or any requirement from any Governmental Authority except when the noncompliance of keeping such register, or presentation does not bind the Constructor or any of its employees to penal liability, nor have a substantially adverse effect for the Constructor's capacity to fulfill the present Construction Contract.

---

In that sense, we acknowledge understand and accept the consequences of the noncompliance of the present commitment and/or of the lack of veracity of the above-mentioned statements.

Place and Date: ....., ..... of ....., 200...

Entity .....  
Constructor

Name .....  
Legal Representative of Constructor

Signature .....  
Legal Representative of Constructor

## EXHIBIT N°6

**ENVELOPE 3: MODEL FORM OF LETTER OF PRESENTATION OF  
ECONOMIC BID**

Reference Point 7.2.1 of Tender Document

Lima, ..... of ....., 200...

**Comité de PROINVERSIÓN en Proyectos  
de Saneamiento e Irrigación – PRO AGUA**

Bidder: .....

According to the Point 7.2 of the Tender Documents, we are pleased to send our Economic Bid according to the conditions established for the present Tender, on the following terms:

**1. Amount of Unit Remuneration:**

**Unit Remuneration:** in US\$/m<sup>3</sup> of water, US\$ \_\_\_\_\_  
(.....and..... American dollars) excluding VAT.

**2. Amount of Co-financing Required:**

**Co-financing Required:** US\$ \_\_\_\_\_ (..... and ...../100 American dollars).

We state that our Economic Bid is irrevocable and will remain valid up to ninety (90) calendar days after the Closing Date, committing ourselves to imperatively extend it if the Committee so decides.

We accept that this offer be readjusted according to the terms and conditions indicated in the Concession Contract and which will remain effective during the period of its validity.

Bidder .....  
Name

Name .....  
Legal Representative of the Bidder

Signature .....  
Legal Representative of the Bidder

**EXHIBIT N° 7****MODEL FORM OF CHALLENGE BOND OF OBJECTION OF AWARD**

Reference: Point 9.3 of Tender Document

Lima, .....

**Agencia de Promoción de la Inversión Privada- PROINVERSIÓN**

Ref.: Tender of Comprehensive Projects for the Awarding in Concession of the Larger Water Consolidation Works and Infrastructure for the Irrigation of Pampas de Sigwas

Bond N° .....

Expiry: .....

Dear Sirs:

Hereby and behalf of our clients, ....., we constitute this joint, irrevocable and unconditional bond, without the benefit of excussion or division and automatically payable, up to the amount of \_\_\_\_\_ and 00/100 American Dollars (US\$ \_\_\_\_\_) in favor of PROINVERSIÓN to guarantee our client in the payment of this amount in any of the supposed cases indicated in the fourth paragraph of this bond letter.

This bond will be valid as from the ..... of ..... , 200... until the ..... of ....., 200....; and will be executed in case the appeal motion presented is declared inadmissible or unfounded or in case said appeal motion was not presented within the period established in Point 9.2.2 of the Tender Document of the mentioned Tender.

It is clearly understood by us that this bond may be executed by PROINVERSIÓN in compliance with the Article 1898 of the Peruvian Civil Code.

It is expressly agreed that in order to honor this bond, a simple petition by notarial letter in our offices situated at the following address, will suffice.

We engage ourselves to pay the total amount of the bond within a maximum delay of 24 hours, as from the reception date of the respective notary letter.

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Any delay from our part in honoring it will incur in the payment of compensatory interest in your favor that will be calculated on the maximum annual LIBOR rate plus a 3% spread.

The LIBOR rate shall be the one established by the daily Reuter Cable received in Lima at 11:00 a.m. on the date of reception of the payment request by notarial letter and should accrue interests as from the date when its execution was demanded and up to the effective date of payment.

Sincerely,

---

SIGNATURE AND SEAL

Name of bank issuing the bond:  
Bank's address

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**EXHIBIT N° 8****DATA ROOM USER GUIDE****I. AVAILABILITY****1. Authorized users**

The authorized Access to the Data Room is granted to the representatives of the companies that have paid their Participation Fee in the Tender and have been adequately presented and identified before the Data Room administration by the forms duly completed.

**2. Capacity and services**

The Data Room has a conference room with a maximum capacity of 5 people to be served. The users, apart from all the available documentation concerning the Majes-Siguas Stage II Project, will be allowed to use printers, photocopy machines, telephone, fax and other services that facilitate their work.

**3. Opening hours**

The opening hours of the Data Room will be from 8:00 a.m. to 12:30 m and from 14:00 to 18:00 p.m., Monday to Friday. By express request on behalf of the person interested, these horary could be extended for certain cases.

**4. Attention procedure**

The Acquirer or Bidder who wishes to use the Data Room must sign the Confidentiality Agreement and submit his request using the respective form, indicating his time preferences, duration of time to be employed and the people included. The Data Room Coordination will reply to the request according to the availability and to the criteria of equity and fairness. Ideally, the Data Room should be used for consultations and works on investigation documents. Under no circumstances will it become an operation base for the Bidders.

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## **II. SERVICES OFFERED**

The use of the Data Room is cost-free but services of photocopying, printing, binding, diskette copying, telephone, fax, refreshments, etc, will be charged. Additional services such as draft copies, image scanning, internet and other could possibly be provided that they were requested in advance and will be also be charged according to cost, which will be previously informed of by the Data Room Coordination.

In addition, a CD Rom will be available containing the main part of the digitalized studies and drafts of the Project, including all of the final studies.

For visits to the dam site, entry and exit of the tunnel, land and other places of interest, the users should inform with anticipation of the number of participants in order to organize the visit and necessary backups. Transport will be charged to those interested.

## **III. FORMS FOR THE USE OF THE DATA ROOM**

In this Exhibit, Form 1 (IDENTIFICATION OF THE PEOPLE AUTHORIZED TO MAKE USE OF THE DATA ROOM) and its Appendix 1 (TABLE OF DATA AND PERMANENCE) have been included. These formats should be filled and delivered before the first day of use of the Data Room, by fax or electronic mail, by the representatives of the Bidder's group; this is an indispensable requirement for them to have access to the information available in the Data Room. Based on the information provided in this form the timetables and reservations for use of the Data Room will be drawn up.





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**EXHIBIT N° 8****Form 1****IDENTIFICATION OF THE PEOPLE AUTHORIZED TO MAKE USE OF THE  
DATA ROOM**

Lima, .....

**Comité de PROINVERSIÓN en Proyectos  
de Saneamiento e Irrigación – PRO AGUA**

Hereby I, ..... (Name of Representative), in representation of..... (company's name) request the use of the Data Room, during the period of visits which is proposed and by the people listed in the table of Appendix 1.

Regarding the procedures for the use of the Data Room, we declare to have acknowledged the procedures which figure in the Data Room User Guide – Exhibit N°8 of the Tender Document.

Additionally, we acknowledge that the information of the Data Room is strictly confidential.

Sincerely,

---

Name of Representative

---

Identity Document

**EXHIBIT N°8****Form 1 - Appendix 1****TABLE OF DATA AND PERMANENCE**

N°	Names and Surnames	Identity Document	Nationality	Permanence Period (date)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

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**EXHIBIT N°9****TERMS OF REFERENCE****1.0 GENERALITIES**

The development of the component of water consolidation works and irrigation of Pampas de Sigwas, Stage II, of the Majes-Sigwas comprehensive project, also known as the Angostura-Sigwas Project, has as its main objective the irrigation and agricultural development of 38,500 ha in the Pampas de Sigwas, while guaranteeing the supply which presently correspond to the Pampas de Majes and to the irrigation of Santa Rita de Sigwas. Additionally, the water consolidation of the Majes –Sigwas system will make possible the full development of the hydroelectric generation component which forms part of the comprehensive Project.

The present Terms of Reference establish the general reference specifications and the specifications of obligatory fulfillment which will serve as a guideline for the development of the Technical and economic Proposals of the Bidders. Said specifications have been made taking into consideration the existent studies which have been made available to the Bidders in the Data Room of the project. These include the supplementary and updated studies undertaken by the Lahmeyer – Agua y Energía in June, 2007, as the Technical Advisor of the process.

Each Bidder will prepare its own project, according to their own assessment and experience, provided that the specifications of obligatory fulfillment established in the present Terms of Reference are complied.

**2.0 PURPOSE**

The purpose of the Concession will be the execution of the Works and the exploitation of the Concession by means of the economic utilization of the facilities, in virtue of which, the Concessionaire will be under the obligation of executing the new construction Works (Angostura dam, Angostura-Colca derivation, LLuclla-Sigwas derivation, and works to drive and distribute water for irrigation in the Pampas de Sigwas) and, will also execute the operative and maintenance activities of the new and the existing works during the validity of the Concession period. These technical and economic obligations will be executed according to the guidelines contained in the present Terms of Reference, taking into account the following main aspects:

- Construction, operation and maintenance of the new major hydraulic infrastructure ( Angostura Dam and Angostura-Colca Derivation);
- Construction, operation and maintenance of the Lluclla-Head Water derivation works of the irrigation area in the Pampas de Sigwas; and conveyance, control and distribution at regulating reservoir level and irrigation sectors in the Pampas de Sigwas;
- Operation and maintenance of the major hydraulic infrastructure works constructed as part of the first stage of the Project up to the Pitay intake, except the irrigation infrastructure which is presently under control of the Majes Irrigation Users Association;
- Provision of irrigation water supply to the buyers of land in the Pampas de Sigwas;
- If the case may be, provision of irrigation water supply for hydroelectric generation, considering that this service will depend on the scheme for the dispatch of water for irrigation; and
- Batch delivery of water to the users and buyers of new lands of the Pampas de Majes and of Santa Rita de Sigwas, according to the supply sources, annual volume, already committed delivery scheme.

### 3.0 LOCATION OF THE PROJECT

The Comprehensive Majes-Sigwas Project, including civil works and irrigation areas, covers about 200 km<sup>2</sup> between 15° and 17° South Latitude and 72°30' West Longitude. It extends from the lower parts of the Western Andes to the lower part of the Pampas de Majes and Sigwas at 1200 masl.

The existing reservoirs and major hydraulic infrastructure works (Condorama Dam, Tuti Intake and Colca – Sigwas Derivation), are located in the basins of the Colca and Sigwas rivers in Caylloma Province.

The Concession Works include the Angostura Dam and Angostura – Colca Derivation which are located approximately at the 4250 masl in the upper part of Caylloma province – Arequipa – Peru and about 230 km. far from the city of Arequipa, capital of the Region. Lluclla Sigwas Derivation and Pampas de Sigwas Irrigation Distribution System are located from the 1800 masl to 1200 masl in Arequipa Province.

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#### **4.0 CLIMATOLOGY AND HYDROLOGY**

The weather is the corresponding to the western side of the Andes in the south of the country. The Angostura and Caylloma weather stations provide the following information: Temperatures between  $-7^{\circ}\text{C}$  and  $+20^{\circ}\text{C}$  in summer and  $-15^{\circ}\text{C}$  and  $+12^{\circ}\text{C}$  in winter.

The temperature variation during the day may be higher than  $20^{\circ}\text{C}$ . The annual average rainfall is 650 mm, ranging from 50 to 900mm. The rainy season elapses between December and April.

For the new works, the hydrological parameters have been checked and updated with the purpose of estimating the size of the Apurimac river floods for return periods of 2, 5, 10, 100, 500, and 1000 years. These floods have been used to design the hydraulic works. The performed Hydrological Research has also insisted in the features of the sediment accumulation process in the reservoirs and the length of rainy and dry periods of the Apurimac river basin, thus these data is useful both for estimating the useful life and the construction period of the Works. A part of the research developed by the Technical Advisor corresponds to a new evaluation of the hydric balance of the project and the referential schema of dispatch and delivery of water from the integrated regulation system to the water delivery sites in block to the current users and regulated water for the provision of irrigation water for the new users in Pampas de Siguas. The results of such evaluation have been used as reference for the accuracy of the concession plan and are at disposal of the Bidders at the Data Room. Each bidder must verify by his own the available information for preparing the respective Technical Proposal.

#### **5.0 GEOLOGY**

The location area of Angostura Dam presents a geological background where prevailing volcanic events affected the region from late cretaceous until recent times. The relief presents a morphology caused by intense erosion and the glaciation process, presenting pampas, smooth hills and mountains showing an advanced erosion surface.

The rocks observed along the axis of the dam and the Angostura-Colca derivation are volcanic rocks: volcanic agglomeration, andesitic rocks, and lithified sands. The found volcanic formations consist of extensive mudslides of Andesites and volcanic agglomerations, in regular and repetitive alternation, with variable thickness and low dip slope ( $12^{\circ}$ -  $20^{\circ}$ ) without tectonic, magmatic and lithostratigraphic manifestations which could suggest the existence of a cauldron.

There is no evidence of large structures that could compromise the tunnel layout or the dam's axis; these are usually distant or perhaps hidden by deposit accumulations increasingly newer. The prevailing structures are related to wide range folds as result of compression efforts of the Andean fold. An analysis of the rift background allows identifying preferential efforts NE- SW and NW – SE.

In the area of Lluclla-Siguas derivation there is less detailed information. However, the area is located in the Coast Plain of the southern region of the country. The derivation is located in the formation Late Moquegua and Recent Quaternary which are made up by gravel and irregular size sand which are ordinarily consolidated.

## **6.0 EXECUTION OF THE CONCESSIONAIRE'S OBLIGATIONS**

During the Concession period the concessionaire has the obligation to comply with the following technical and economic commitments:

### **6.1 Construction, operation and maintenance of the new major hydraulic infrastructure works (Angostura Dam and Angostura – Colca Derivation)**

The purpose of this part is to provide basic and descriptive information of the major works considered in the concession plan and the present Terms of Reference. This information is referential and has been chosen from existing and available studies in the Data Room of Majes-Siguas Project, Stage II.

The description of the main parameters of the works is shown below:

#### **6.1.1 Angostura Dam**

The Bidder will develop the project according to his own evaluation and expertise and under the specifications set in the present Terms of Reference. Any adjustment, change, or any other modification to the parameters and characteristics of mandatory compliance of the works performed by the Bidder in the Technical Proposal, will be considered as a cause of disapproval for such Proposal.

In the existing Final Study, the dam is gravity type in rolled compact concrete. Nevertheless, the technical advisor has evaluated the feasibility of other construction technologies for the dam; therefore the bidder has alternative references to prepare his Technical Proposal.

Generally, the Bidder may choose the type of structure which he considers to be more suitable for the dam's construction, provided that the solutions adopted assure the hydraulic performance, operability conditions, safety conditions and useful life as foreseen in the original designs of the dam. In such context, the following parameters will be considered as mandatory compliance:

**Dam:**

Maximum height from foundation	:	105 m
Crest elevation	:	4 217 masl
Crest length	:	330 m

**Spillway**

Maximum discharge	:	509,1 m <sup>3</sup> /sec
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**Reservoir**

Live Storage	:	1140 Hm <sup>3</sup>
Minimum Water Level Elevation	:	4 174
Maximum Water Level Elevation	:	4 214
Free Water Surface	:	43.3 km <sup>2</sup>

The dam will be located in the site described in the Final Study at 550m downstream from the confluence of Hornillos and Apurimac rivers.

The composition and the building process of the Angostura hydraulic facility also includes diversion system, cofferdams and access roadways as well as waterproofing solutions of the dam, drainage galleries, intake structure, sluiceway, minimum environmental discharge, control well, control house in diversion tunnel, implementation, operation electric system and its digitized central control, among others components described in the Final Study and Technical Advisor's studies.

The Successful Bidder will consider the development of the respective operation and maintenance manuals which will contain information about the new works of major hydraulic infrastructure, besides the existing works, except for Pitay Intake and the existing infrastructure in Pampas de Majes.

### 6.1.2 Angostura-Colca Derivation

In the case of the Angostura-Colca Derivation, the Bidder will be able to make his own project according to his own evaluation and expertise, being allowed to submit optimization initiatives regarding the scheme of works described in the existing and available research in the Data Room of the project. These initiatives will not be a cause for invalidation of the Bidder's Technical Proposal as long as the established minimum specifications are imperatively respected in the present Terms of Reference and provided that these do not affect the safety, useful life, hydraulic performance and the operability conditions foreseen in the original designs.

Among the modifications the Bidder may do, excepting the aforementioned design aspects, the following are considered: selection of dam type and its building technology; layout optimization, slope, section and building technology of the tunnel, and with this purpose a pressure flow could be adopted. Also, it is considered as optimization factors the technology and the building process at minimum cost that the Bidder could adopt, as well as other measures of cost reduction such as the electric energy used in the works, from Callalli substation.

In this context, the specifications of imperative compliance related to Angostura-Colca Derivation are the following:

- a) The design of the Intake or Water Intake must have maximum and design capacity according to the floods established in the Final Study, taking into account the accuracy determined by the Technical Advisor.
- b) In the Angostura-Colca Derivation, measures of suitable foundation and coating will be assured according to the geotechnical conditions foreseen in the Final Study and update studies, considering the guarantee of a 50-year useful life for the structure without modifications.
- c) The capacity of minimum driving of the derivation will be 30 m<sup>3</sup>/sec as long as the Angostura dam is in its NAMI level at elevation of 4174 m.



- d) Firstly, the installations and hydromechanical equipments will be those considered in the Final Study, except for improvements and design updates that do not diminish the operability to the system.

The main design aspects of Angostura-Colca Derivation, described in the Final Study, considering the precisions made by the Technical Advisor, will be presented next:

The total length of the derivation is 18 285 m. with a 4.5 m. final diameter and a 30 m<sup>3</sup>/sec nominal capacity, considering the operation of the Angostura reservoir in its NAMI level at 4174 m. height. The function of the derivation will be to transfer water from the Angostura reservoir to Chalhuanca river, tributary of Colca river, upstream from Tuti Intake. For this purpose, the derivation includes the Pucará Diversion Tunnel, Andamayo window, Trans-Andean Diversion Tunnel, Chalhuanca Discharge Structure, Huaruma window and all the works considered for this objective.

The main design aspects which are mentioned in the update research carried out by the Technical Advisor, being referential for the effects of Terms of Reference, are the following:

Intake elevation	:	4,163 masl
Referential discharge elevation	:	4,150 masl
Andamayo window elevation	:	4,160 masl
Total Length	:	18,345 m

The tunnel has a relatively easy access for construction and can be dug in both ends and from a window in Andamayo, between Pucará section and the Trans-Andean Tunnel. Accesses for all work fronts of Angostura-Colca Derivation have been foreseen, from the dam to Trans-Andean Tunnel exit.

From a hydraulic viewpoint, the diameter of the tunnel will depend on the excavation method and the discharge elevation, but it must allow transfer at least 30 m<sup>3</sup>/sec related to reservoir NAMI at 4174 masl.

In addition, the design of the section of the tunnel and its coating depends on the rock quality, water and rock pressure. The rocky coating (overburden) varies between 50 m. and 260 m, thus significant

external pressures are not expected. Also, the drilling indicates that scarce subterranean water affluence could be expected.

Moreover, the existing reference studies describe the particular aspects of the intake, the tunnel layout, and the drainage and inspection system. The evaluations performed by the Technical Advisor have led to recommend a variation of the tunnel layout, as well as that of the exit port and discharge structures to Chalhuanca stream. Thus, these precisions must be taken into account in the elaboration of the Bidders' Technical Proposals. In the same way, references about provisional roads and access roadways are described.

## **6.2 Building, operation and maintenance of the works of Lluclla-Siguas diversion and the piping, regulation and distribution works at the regulating reservoir level and irrigation sectors of Pampas de Siguas.**

This part has the purpose of providing information about the New Works from Lluclla Intake to the water intakes in the irrigation sectors of Pampas de Siguas, as it is considered in the concession plan and the present Terms of Reference. Parameters and specifications of mandatory compliance corresponding to this part of the works have been included from the studies performed by the Technical Advisor.

### **6.2.1 Lluclla-Siguas Diversion**

The objective is to collect water from the discharge of the Lluclla Hydroelectric Plant, and then to divert it towards the left bank of Siguas river and from there to the elevation of 1750 masl of Pampas de Siguas. The minimum structures and the specifications of mandatory compliance are the following:

- a) Intake with desander in the bed of Siguas river after the discharge of the compensator of Lluclla H.P. for a 23 m<sup>3</sup>/sec design flood. The intake and desander design adopted by the Bidder must assure the availability of water free of sediment particles greater than 0.5 mm. at the entrance of Lluclla-Siguas Diversion. References about location and design conditions of the Intake are found in the studies of the Technical Advisor.
- b) The Lluclla – Siguas Diversion is about 16 km. long among tunnels and channels. It must have a 23 m<sup>3</sup>/sec design capacity and its

terminal place will be located in the headwater of Pampas de Sigwas in the joint with the start of the Mother Channel, approximately at elevation 1751 masl. References about general parameters of hydraulic and structural design correspond to the ones described in the available studies. The design proposal must exclude load or leak losses which may affect the inflow design.

It will be taken into consideration the contingency of no existence or the decommissioning of the Lluta y Lluclla H.P., in such case it is imperatively mandatory that the intake and desanding works assure the availability of water without particles greater than 0,5 mm. at the entrance of Lluclla-Sigwas Diversion.

### **6.2.2 Piping and Distribution of Irrigation Water in Pampas de Sigwas**

This consists of a piping and distribution system covering the following specifications of mandatory compliance:

- a) The Main Channel will have a 23 m<sup>3</sup>/sec piping capacity with an intake above the elevation 1750 masl, located in the highest end of Pampas de Sigwas. It's around 14.5 km. long besides a 3.0 km. wasteway. The Bidder will choose structural design aspects according to the geotechnical and seismic conditions of the area, and under the required performance. For such effect, it is imperative to evaluate the adoption of the hydraulic and geometric aspects estimated by the Technical Advisor which correspond to the entire length of the Channel divided in seven (7) stretches.
- b) The intakes, Regulating Reservoirs, Side Channels (7) and Sub-side Intakes making up the distribution system in Pampas de Sigwas will be designed taking as reference the structural and hydraulic parameters proposed by the Technical Advisor; which like all the other cases, must be confirmed or specified by the Bidder before assuming them in his Technical Proposal

The distribution system will be adequate for supplying water to the regulating reservoirs in which the purchasers of land will build in the exit of each sub-lateral intake, as the beginning of pressurized system for purposes of technical irrigation. The investments made after the exit of such sub-side intakes will not be in charge of the Concessionaire.

### **6.3 Operation and maintenance of the works and main hydraulic infrastructure built as part of the phase I of the project until Pitay intake, excepted the irrigation infrastructure that is currently under the control of the Majes Irrigation Users Association.**

#### **6.3.1 Operation and maintenance of the works of the Phase I**

In the works of Phase I, it will be imperative for the Concessionaire to operate and maintain the main hydraulic infrastructure which is made up by the Condoroma Reservoir and Dam, Tuti Intake and the Colca-Siguas Piping works until the terminal tunnel. At the same time, operation and maintenance of the irrigation works in the Pampas de Majes, including the Pitay Intake and its desander, as well as the lesser irrigation infrastructure of Santa Rita de Siguas and Colca valley will be under responsibility of their respective user and AUTODEMA boards, according to what corresponds to them.

Under his responsibility, the Concessionaire will assure the operability of the infrastructure during the whole period of the concession and when this expires, he will give the works in good operability condition.

The infrastructure works that will be an operation and maintenance objective on behalf of the Concessionaire are, among others, the following:

#### **Condoroma Dam**

It enables to have a useful 265 MMC. It is an earth dam with the following aspects:

- Crest length: 514.10 m
- Length width: 10.00 m
- Base width: 420.00 m
- Maximum elevation: 100.13 m
- Crest elevation: 4,158 masl

- Lowest elevation of foundation: 4,057 masl
- Freeboard: 7.00 m
- NAME: 4,155 masl
- NAMN: 4,151 masl
- NAMI: 4,107 masl
- NA exceptional minimum: 4,103.56 masl

### **Tuti Intake**

It has a 34 m<sup>3</sup>/sec diversion capacity towards Colca-Siguas Piping, included the waters regulated in the Condorama Reservoir and Angostura Reservoir. It is built on the left bank of Colca River at 3730 masl. It has a diversion dam with a Creager type spillway and is made of concrete and collection inlets equipped with 2 wagon gates of 1.70 x 3.7 m. respectively.

### **Diversion Tuti- Terminal Tunnel (Colca-Siguas Piping)**

It is mainly made up of tunnels (88.00 km.) having a 34 m<sup>3</sup>/sec capacity which are connected through short open channels (13.00 km.) and have concrete coating. Currently the regulated waters in Condorama are discharged to the bed of Siguas River from the exit gate of the Terminal Tunnel. In the most favorable scenario of the Majes-Siguas project, Stage II, the flow coming from the Siguas-Colca Piping do not discharge in the Siguas River at the termination of the hydric consolidation works; instead they must flow throughout the pipes of the hydroelectric plants before getting collected for the respective diversion towards the irrigation systems of Pampas de Majes and Pampas de Siguas.

## **6.4 Supply of water for irrigation for land purchasers within Pampas de Siguas.**

The hydrometric records corresponding to the historic series 1964-1998 of the stations of Angostura, Puente Colca, Sibayo, etc, located in the site of the projected works, are deemed to support the availability of water resources in Apurimac River. It has been established that from The Technical Advisor made another evaluation of the information, whose results have confirmed that the operation of the regulation system Angostura – Condorama will provide an

incremental hydric volume of 530 Hm<sup>3</sup>, guaranteed at 87.5%, in Pampas de Sigwas.

The supply of water for irrigation for the purchasers of the 38.500 ha of Pampas de Sigwas will be regulated by the Concession Contract and the Civil Code. The availability of a guaranteed volume of 530 Hm<sup>3</sup> will serve as a basis to calculate the payment for the service by applying the Basic Unit Remuneration per cubic meter delivered in Pampas de Sigwas. The income of the concessionaire for the provision of this service will permit to recover the investment, to cover the operation and maintenance costs, and to earn a reasonable profitability for the Concession period.

#### **6.4.1 Annual Volume and Transferring Scheme**

In the technical proposals, the Bidders will have to sustain the creation of the regulation and transferring system which allows them to assure the diversion of an annual volume 530 Hm<sup>3</sup> to Pampas de Sigwas, and the batch delivery of water to fulfill the requirements of the current users of the Majes Irrigation. For such effect, a monthly calendar of water delivery will be established. The studies of the Technical Advisor have referential information related to the hydric dispatch.

The monthly program to deliver transferred water which is proposed by the Successful Bidder and approved by the Supervision will be adopted as a Concessionaire commitment within the Concession Contract. However, this calendar could be adjusted at petition of the Grantor, during the operation period. The adjustments will be agreed with the Concessionaire within the permissible limits, according to the actual demands of the involved irrigation systems.

It will be definitely accepted that the dispatch water scheme from the Condorama-Angostura System and from the Tuti collection will be defined by the delivery requirements for irrigation purposes. Therefore the electric generation plans for the future hydroelectric plants will be definitely conditioned to such scheme, except when compensation reservoirs enable restitution.

The Concessionaire failure to the obligation to Transfer the monthly volume agreed for the delivery water program up to the 530 Hm<sup>3</sup> per year or the batch delivery of water for the current users, will be cause of penalty as described in the Concession Contract. Nevertheless, if a

demonstrable hydrological restriction caused the failure, the penalty will not be applied.

For control purposes of the hydrological regime linked to the system operation, the provider must foresee the installation of the following main hydrometric stations: Upstream of the Angostura reservoir; Upstream of the Condorama reservoir; Upstream of the Tuti Intake; Upstream of the Lluclla Intake. The location of the secondary measure sites will be indicated before the date to present the Envelopes N° 2 and N° 3.

#### **6.5 The batch delivery of water for the users and land purchasers of Pampas de Majes and Santa Rita de Sigwas, according to the annual volume and the delivery scheme currently compromised.**

At the same time to the compliance of the delivery scheme of the water volume assured to Pampas de Sigwas, the Concessionaire must assure the water delivery for the current users of Pampas de Majes and Santa Rita de Sigwas, according to the assignments and water sources recognized by the water authority.

##### **6.5.1 Allocation for Pampas de Majes and Santa Rita de Sigwas**

In the “Formalization Program of Water Use Rights” (PROFODUA in Spanish) of INRENA, the research of allocation of water rights of the sectors: Pampas de Majes and Santa Rita de Sigwas in the Majes-Sigwas Project has been conducted. Besides, the corresponding allocation process has been performed and the Administrative Resolution of ATDR of Irrigation District Colca-Sigwas-Chivay has been issued. The approval of the allocation for the users association of the Colca basin is being processed.

The proposal of allocation of water use rights is based on the studies performed by INRENA in December 2004 called “Proposal of Water Allocation in Block – annual and monthly volumes – for the Formalization of the Water Use Rights in Pampas de Majes Irrigation”, and “Proposal for Water Allocation in block – annual and monthly Volumes – for the Formalization of Water Use in Santa Rita de Sigwas Irrigation”. In both documents it is proposed to assign the water use in block in each sector.

The allocation of water use rights considers the 14.054.60 ha Irrigation infrastructure of Pampas de Majes and Pampa Baja, which has a main



channel, and pressure piping networks and pressure irrigation system (sprinkling). The management of the resource in each land is the responsibility of each user and at the level of systems or blocks is the responsibility of CR'S and users association. The losses committed by the user will not generate any compensatory right and the increase of availability for improvements in his irrigation system is for the benefit of the users themselves.

### **6.5.2 Water Allocation in Pampas de Majes**

The assigned water volumes are 21.965 m<sup>3</sup>/ha x year in A, B, C, D and E sectors of Pampas de Majes and 14.446 m<sup>3</sup>/ha in Pampa Baja which means allocation or irrigation modules of 0.70 l/sec x ha and 0.46 l/sec x ha. Having these unit demands, the water demands assigned in Pampas de Majes are 332.64 MMC. Finally, the allocation considers the available offer in the Pitay intake and the block delivery is obtained by affecting origin volumes due to the piping efficiency.

### **6.5.3 Water allocation in Santa Rita de Siguas**

In Santa Rita de Siguas, the water rights allocation has been performed on a 1.952.60 ha extension with an annual demand of 62.20 MMC considering water resources in headwater of block of 28.049.70 m<sup>3</sup>/ha x year and 29.840.10 m<sup>3</sup>/ha x years in the Pitay intake that is equivalent to 0.90 l/sec x ha in block and 0.95 l/sec in Pitay, respectively.

## **7.0 CONSTRUCTION MATERIALS**

The existing studies include the evaluation of materials for the concrete preparation within the RCC dam project. The evaluated material can be found in large volumes in the bed of Hornillos, Pusa-Pusa and Apurimac, and have a varied granulometry with plentiful fine soils showing to be excellent for being used in the concrete manufacture.

Petrographic analyses were done with the purpose of establishing the mineralogical components and watching the neo-formations of mineral covering the fragments (quartz, carbonates, clays, etc.). These materials were sent to the Soils and Concrete Laboratory of Universidad de San Agustín for evaluating their properties. The results showed that the obtained granulometric curves are within the optimal recommended values.



There are quarries along the area of the Sigwas-Lluclla Diversion which are currently used for the development of the Municipal infrastructure and/or services, having concordant qualities and volumes to be used for concrete.

In addition to these materials, the required materials are available in the working area for a CFRD dam type, if this building technology is selected.

## **8.0 TIME OF COMPLETION**

The development of the building process will strictly follow the Schedule of Activities and Investment proposed by the Successful Bidder. However, the total time for the entry into operation of the works must not exceed 48 months.

The period of operation of the system is estimated in 16 years from the signing of the minutes of the Starting of the works.

## **9.0 PROPOSAL LEVEL AND QUALITY REQUIREMENTS**

The technical proposals will be formulated according to the internationally accepted practices, standards and techniques and include drafts and descriptive memories at pre-execution level, besides these will include the main technical specifications of the offered building technology.

The technical documentation will be developed with the sufficient level to allow an objective evaluation of the following aspects:

- Final technical solution
- Design conditions
- Building process
- Materials, hydro-mechanical equipments and instrumentation to use
- Schedule of Quantities for the Works
- Budget of the Works
- Preparatory activities programs, building and equipment
- Technological tests
- Preliminary version of the Manuals of Operation and Maintenance (MOM)

The studies and projects to be developed will include the memories and calculation proceedings, the applied regulations and recommendations. Also, the preliminary version of the Manual Operation and Maintenance will have the approach and program of the Concessionaire for the future exploitation of the Integrated Hydraulic System (works of the Phases I and II of the Majes-Siguas Project).

The technical bids will be qualified if they comply with the minimum required specifications and if their design and quality conditions assure a 50-year useful life without refurbishments for infrastructure works and 25-year period for hydro-mechanical equipments.

The Successful Bidder will be the only required preparing the Technical Dossier, including the Final Project and the elaboration of detailed engineering planes and descriptive memories at the execution level. Jointly, this Bidder will be required to produce a detailed building program and the final working budget with the description of items, schedule of quantities and unit prices including the analysis developed. Also, the general and particular specifications of the building procedure and the supplying and equipments and instrumentation installation will be required to this Bidder.

In the technical dossier at execution level, no change that could distort the original Technical Proposal will be admitted, and the following indicators of the bidder's Technical Proposal will be assumed as final: Technical solution; main technical Specifications; working Budgets and Preparatory activities periods; construction and equipment.

Both the Technical Dossier and the final version of the Manual of Operation and Maintenance will require the approval of the Specialized Supervisor and the official technical body designated by the Grantor.

During the working execution process, the concessionaire will submit to the Grantor and the Specialized Supervision, monthly progress reports with the proper estimates, as established in the Concession Contract.

## **10.0 SUPERVISION OF THE TECHNICAL AND ECONOMIC OBLIGATIONS OF THE CONCESSIONAIRE**

The Grantor will control and supervise the compliance of the technical and economic obligations of the concessionaire both during the building period of the works and during their operation and maintenance period. Thus, PROINVERSIÓN will select specialized consulting companies according to

the area and the period, and these companies will perform the Supervision officially supported by entities accredited by the Grantor throughout the Regional Government of Arequipa.

In order to perform the Specialized Supervision during the construction period, as well as the rules established in the Concession Contract, the following will be also taken into consideration the dispositions corresponding to the Legislative Decree N° 1017 – Contract Law of the State and its regulations passed by Supreme Decree N° 184-2008-EF (or the regulations that could replace them), as it is among others, the obligation of having the respective logbooks.

## **11.0 ENVIRONMENTAL PROTECTION MEASURES**

The project has an update of Environmental Impact Research of the Angostura Dam and the Environment Management, approved at feasibility level by the corresponding environmental authority. This document is available for consulting in the Data Room.

Before starting the activities, the Concessionaire must develop the final and complementary environmental impact studies of the Angostura Dam and the Environment Management indicated in the Management Resolution N° 021 -06 –INRENA – OGATEIRN, and of the diversion, piping and distribution Infrastructure in Pampas de Siguas, and submit them for approval of the corresponding bodies through the Grantor.

Moreover, the Concessionaire must use the Environment Management Scheme in the planning, building, operation and maintenance which he will submit together with the Manual of Operation and Maintenance of the System. These must comply with the regulations of national environmental protection and also the regulations of financing international organizations when applicable.

## **12.0 REFERENCES OF THE EXISTING STUDIES**

This part has the objective of providing basic and descriptive information about the transferring works that are considered in the concession plan and in these Terms of Reference. This information has been selected based on the existing studies which are available in the Data Room of the project and listed in the Exhibit N° 10 of the present Tender Documents.

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Each Bidder will develop his own Project, according to his own evaluation and experience as long as they comply with the minimum specifications which have mandatory compliance established in the Terms of Reference. Any adjustment, change and any other modification of these Works, made by the Bidder in his Technical Bid, will not be considered as a cause of disapproval of such Bid, as long as these comply with the aforementioned minimum specifications which have mandatory compliance.

The information of this section shall not be considered as a recommendation, promise or declaration regarding the future, from the Regional Government of Arequipa, PROINVERSÓN, the Committee, transaction advisors or any person related to any of them. The Regional Government of Arequipa, PROINVERSIÓN, the Committee, transaction advisors or any person related to any of them, neither accept any obligation or responsibility for suitability, safety, accuracy or information integrity, nor make any statement or contract stipulation both expressly or implicitly, regarding the information established in this section.

**EXHIBIT N° 10****List of Documents in the Data Room****(It will be informed by a Circular Letter)**