

**REPUBLIC OF PERU**



**AUTORIDAD PORTUARIA NACIONAL  
(APN)**



**TENDER DOCUMENT  
(Circular Letters 1 through 18)**

**COMPREHENSIVE PROJECTS TENDER FOR THE  
CONCESSION OF THE NEW CONTAINER TERMINAL AT  
THE CALLAO PORT TERMINAL - SOUTHERN ZONE**

**May, 2006**

Users of this translated document shall take into consideration that in case of discrepancies between versions, the Spanish version shall prevail.

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UNOFFICIAL TRANSLATION

## 1. TENDER OBJECTIVE AND CHARACTERISTICS

### Introduction

These Tender Documents aim at regulating the procedure for the Comprehensive Project Tender for granting in concession the New Container Terminal at the Callao Port Terminal – Southern Zone to the private sector. The objectives of these Tender Documents are the following:

- Conducting a transparent, simple, objective and equitable procedure.
- Involving the greatest number of experienced bidders to provide the required services.
- Involving the greatest number of investors capable of financing the required infrastructure and equipment to provide the required services.
- Defining the basic guidelines for bidders' proposals.

Basic considerations include Tender rules and terms, the concession area, the type of revenues expected by the **State of the Republic of Peru**<sup>1</sup>, the Competition Factor, the kind of services expected from the Concessionaire, bidder attributes, among others. As usual in this kind of Tender, the details will be addressed through Circular Letters and in the different Concession Contract versions.

### 1.1 Call for Bids and Tender Objective<sup>2</sup>

The State of the Republic of Peru, through the National Port Authority, with assistance from the Private Investment Promotion Agency – PROINVERSION, hereby issues a call for a Comprehensive Projects Tender for the award in concession to the private sector of the New Container Terminal at El Callao Port Terminal – Southern Zone, located in the Constitutional Province of El Callao.

The Concessionaire will be in charge of the design, Construction, financing, **conservation and exploitation** of the New Container Terminal at El Callao Port Terminal – Southern Zone. Since this is a new port infrastructure facility, Article 11 of the National Port System Law authorizes the award of a concession for the Exclusive Execution and/or Supply of port activities and services by the Concessionaire.<sup>3</sup>

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<sup>1</sup> Added by the Circular Letter N° 10.

<sup>2</sup> Modified by Circular Letter N° 010.

<sup>3</sup> By the Circular Letter N° 006 it was established that the activities and port services referred in Article 11 of the National Port System Law are those referred in Points 8.12 and 8.13 of the Contract.

The Port Terminal subject matter of this Tender shall have the following basic referential characteristics **according to** Tender Documents **and the** Concession Contract:

Concept	Minimum requirement
<b>Minimum Number of Berths (Docking Sites)</b>	2
<b>Minimum Dock Length</b>	600 m
<b>Minimum Gantry Cranes</b>	6
<b>Minimum Annual Capacity<sup>4</sup></b>	600,000 TEU
<b>Minimum Backup Maritime Area</b>	14.5 Ha.

As regards the kind of contract foreseen in the Concession scheme, this is a DBFOT (*Design, Build, Finance, Operate and Transfer*) Concession.

The design should allow for future expansion to meet growing demand, **according to the Technical File submitted by the Concessionaire and approved by APN.**

The Concession Term shall be thirty (30) years, including the Construction period, pursuant to the Concession Contract and Article 10, Paragraph 10.3 of the National Port System Law.

Part of the redundant work force of ENAPU S.A. **may** be hired by the Concessionaire, thereby ensuring their job continuity and training.

At the end of the Concession Term, the Port Infrastructure granted in concession, including the Works, the Equipment and other assets concerning this operation, shall be transferred to the State of the Republic of Peru under the conditions set forth in the Concession Contract, and the State of the Republic of Peru will be free to exploit them directly or to hand them over to be managed by the private sector through a new private investment promotion procedure, in accordance with the Applicable Laws, so that service continuity is guaranteed.

To carry out the Works and install the Equipment in this Concession, mandatory minimum parameters and yields will be defined and detailed in the Concession Contract. In their Technical Proposals, Bidders may submit **projects** with the technological changes and updating they may deem convenient, provided the proposed changes are an improvement over the basic referential characteristics and over **the service and productivity levels** set forth in these Tender Documents and the Concession Contract.

**The service and productivity levels** will comprise indicators about the future Terminal's basic characteristics, capacity for serving the ships, the time ships remain docked, the pace of activities at the pier, the speed of freight delivery or reception, and compliance with legal regulations applicable to port operations. **These indicators shall be specified in Appendix 1 to Annex 11 and in the Concession Contract.**

To prepare their Proposals, Bidders shall have access to the **Available Studies**, which are listed in Appendix 1 to Annex 8 to the Tender Documents herein.

The Bidder is free to use said information. However, the Proposal submitted by the Bidder is its exclusive responsibility and in the future, as Concessionaire or in any

<sup>4</sup> Modified by Circular Letter N° 004.

other case, they may not allege or claim damages, indemnification or compensations for eventual errors, omissions, inaccuracies or deficiencies of any kind that may exist in said technical background documentation and studies.

The services in charge of the Concessionaire will be supplied to any user requesting them under the principles of free competition, non-discrimination, equality in the eyes of the law, neutrality, price transfer prohibition, separate accounting and freedom of choice.

The Tender shall be carried out pursuant to the provisions established in the Tender Documents herein.

## 1.2 Definitions

All references in the document herein to "Paragraph", "Form" and "Annex" shall be understood as referred to the paragraphs, forms and annexes of the Tender Documents herein respectively, except if there is explicit indication otherwise.

Expression in singular comprises in their case for plural and vice versa. References to "Days" shall be understood as referred to working days that is not Saturday, Sunday or non-labor holiday in the city of Lima. Holidays include those days in which the banks in the city of Lima are not obliged to serve the public by Governmental Authority provision. All hour references shall be understood as referred to Peru's local hour.

The terms in capital letters in the Tender Documents herein and that are not explicitly defined herein correspond to Applicable Laws, or to the meaning given to them in the definition of the activities related to the project's development or, otherwise, to terms that are normally capitalized.

In these Tender Documents, the terms below shall have the following meanings:

- 1.2.1 **Non-Disclosure Agreement:** It is the agreement that the Authorized Agents shall sign before using the Data Room. The text of the Non-Disclosure Agreement is enclosed hereto as Annex N° 1.
- 1.2.2 **Contract Award:** It is the declaration the Committee shall produce determining which Bidder received the highest score under the terms and conditions established in the Tender Documents and that determined what Bidder won the Concession subject-matter of the Call for Tenders herein.
- 1.2.3 **Successful Bidder: The Short-Listed Bidder who was awarded the Contract.**<sup>5</sup>
- 1.2.4 **Port Manager:** In these Tender Documents, it is the public or private corporation in charge of exploiting the port facilities and providing the basic port services on an exclusive basis, and, if so, also the general services at the port terminal under its management.
- 1.2.5 **Private Investment Promotion Agency – PROINVERSION:** It is a **Peruvian**<sup>6</sup> State agency created by Supreme Decree N° 027-2002-PCM, as amended by Supreme

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<sup>5</sup> Modified by the Circular Letter N° 010.

<sup>6</sup> Specified by Circular Letter N° 010



Decree N° 095-2003-EF, charged by the Autoridad Portuaria Nacional to execute and develop the process herein.

- 1.2.6 Authorized Agents:** They are the individuals appointed as such by the Bidder for purposes of the Call for Tenders herein.
- 1.2.7 Concession Area:** Maritime and continental land area reserved for the New Container Terminal at the Callao Port Terminal – Southern Zone, pursuant to Annex N° 9 of the Tender Documents.
- 1.2.8 Governmental Authority:** Any national, regional, departmental, province or municipal government or authority or any of its branches or agencies, either regulatory or administrative, or any entity or organization from the State of the Republic of Peru which, according to law, exercises executive, legislative or judicial powers or which belongs to any of the aforementioned governments, authorities or institutions, with jurisdiction over the persons or matters in question.<sup>7</sup>
- 1.2.9 Autoridad Portuaria Nacional (APN):** It is an entity incepted by the National Port System Law – Law N° 27943. It is a Decentralized Public Organization in charge of the National Port System, ascribed to the Ministry of Transportation and Communications. It is an internal public independent corporation and administrative, functional, technical, economic and financial autonomy. It has regulatory powers by delegation of the Ministry of Transportation and Communications. It is in charge of leading the promotion of private investment in national port infrastructure and facilities owned by the State. Its Organization and Functions Regulations were approved through Supreme Decree N° 034-2004-MTC.
- 1.2.10 Tender Documents:** This document, containing the administrative and procedural aspects and conditions, including its Annexes, Forms, Appendixes and Circular Letters issued by the Committee and which establish the terms under which the Tendering and Concession Award shall take place.
- 1.2.11 DBFOT:** (*Design, Build, Finance, Operate and Transfer*). An arrangement whereby the Concessionaire is awarded the Concession Area, including the port infrastructure and equipment it may contain, so the Concessionaire can design, build, finance, control, operate and exploit the New Container Terminal at the Callao Port Terminal – Southern Zone and is obligated to transfer the infrastructure and equipment to the State of the Republic of Peru at the end of the Concession's term.
- 1.2.12 Subscribed and paid in capital:** Part of the subscribed capital effectively provided by the Concessionaire's shareholders.
- 1.2.13 Circular Letters:** They are all the guidelines issued in writing by the Committee, be they specific or general, aiming at completing, verifying, interpreting or modifying the content of the Tender Documents herein, of another Circular Letter or answer queries made by authorized parties pursuant to the Tender Documents herein. This Circular Letters shall be part of the Tender Documents herein.
- 1.2.14 Committee:** It is PROINVERSION's Committee for Infrastructure and Utility Project, constituted through Supreme Resolution N° 444-2001-EF and by Supreme Resolution

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<sup>7</sup> Modified by the Circular Letter N° 010

N° 228-2002-EF and by Supreme Resolution N° 009-2003-EF, in charge of executing and developing the Tender herein according to what is foreseen in the AGREEMENT.

- 1.2.15 Evaluation Committee:** It is appointed by the Committee to evaluate the documents contained in Envelopes 1 and 2, according to what is provided in the Tender Documents.
- 1.2.16 Certificate of participation in the Tender:** It is a document that PROINVERSION shall submit the Bidder as a certification of having paid for the right to participate in the Tender herein.
- 1.2.17 <sup>8</sup> Grantor:** The State of the Republic of Peru, represented by the Ministry of Transport and Communications (MTC). For all purposes of this Tender, the GRANTOR, represented by MTC, shall act by and through APN, which, as provided for in Article 24 of the LSPN, has the power, among others, to enter into with the private sector the contracts set forth in the LSPN<sup>9</sup>
- 1.2.18 Concession:** The legal relationship under public law established between the Grantor and the Concessionaire as from the execution of the Contract, whereby the Grantor grants the Concessionaire the right to economically benefit from the Concession assets during the term of the concession<sup>10</sup>
- 1.2.19 Concessionaire:** The corporation organized in Peru by the Awardee, that enters into the Concession Contract with the Grantor.
- 1.2.20 Tender:** It is the Comprehensive Project Tender regulated by the Tender Documents herein for granting in Concession the New Container Terminal at the Callao Port Terminal – Southern Zone.
- 1.2.21 Consortium:** The grouping of two or more corporations which lacks corporate status independently from its members, and that has been established with the aim of participating in this Tender as Bidder.
- 1.2.22 Construction:** The activities needed for implementing and commissioning the Concession of the New Container Terminal at the Callao Port Terminal – Southern Zone. Included among these activities are: (1) civil Works of various kinds, (2) electric, mechanical or electronic equipment or system installation, and (3) IT implementation.
- 1.2.23 Concession Contract or Agreement:** It is the Concession Contract and annexes that make it up which shall rule the relationship between the Grantee and the Grantor for the execution and exploitation of the New Container Terminal at the Callao Port Terminal – Southern Zone.
- 1.2.24 Effective Control:** It is understood that an individual or corporation is under the Effective Control of another corporation or subject to a common control with it, when:
- There is a direct or indirect control of more than fifty percent (50%) of the voting capital; or

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<sup>8</sup> The definition of “Investment Commitment” has been replaced by the definition “ Complementary Investment Amount”, according to the Circular Letter N° 001.

<sup>9</sup> Modified by the Circular Letter N° 010.

<sup>10</sup> Modified by the Circular Letter N° 010.

- There is a direct or indirect representation in its board or equivalent body, of more than fifty percent (50%) of its members; or
- If through any other mechanisms or circumstances (contractual or legal) it effectively controls decision making at the other company.

**1.2.25 Call:** It is the announcement by which those interested in participating in the Tender are invited to bid pursuant to the Tender Documents herein.

**1.2.26 Schedule:** It is the time frame for the activities being developed pursuant to the Tender herein as shown in Annex N° 12

**1.2.27 Days:** These refer to working days, that is to say, days that are not Saturday, Sunday or non-working holiday in the city of Lima. Also understood as holiday are those days on which the banks in the city of Lima are not required to open to the public by decision of the Government<sup>11</sup>

**1.2.28 Sworn Statement:** Written statement submitted by the Bidder in which it declares or makes a commitment pursuant to Paragraph 5.1.

**1.2.29 Dollar or American Dollar or US\$:** It is the legal currency of the United States of America.

**1.2.30 Exclusive Execution and/or Service Supply:** It is the right that will be granted to the Concessionaire to execute and/or supply, on an exclusive basis, the services established in the Port Infrastructure Contract making up the New Container Terminal – Southern Zone, in accordance with Article 11.3 of the LSPN.<sup>12</sup>

**1.2.31 Affiliated Companies:** This is the company which, although it has common shareholders, does not have an Effective Control over another company.

**1.2.32 Subsidiary Company:** It is a company that is under the Effective Control of another company.

**1.2.33 Related Company:** It is any Affiliate or Subsidiary Company.

**1.2.34 Banking Companies:** They are companies defined as such by Law N° 26702, General Law for the Financial System and Insurance System and Organic Law of the Banking and Insurance Superintendence and listed in Annex N° 2, Appendix 2.

**1.2.35 International Financial Entity:** It is a first class international financial entity, acknowledged in Peru and listed in Annex N° 2, Appendix 1.

**1.2.36 Port Equipment:** For purposes of the provisions set forth in the Tender Documents, they are the mechanical, electrical and electronic facilities which form an integral part of the Port Infrastructure of the New Container Terminal at El Callao Port Terminal – Southern Zone<sup>13</sup>

<sup>11</sup> Modified by Circular Letter N° 004

<sup>12</sup> Modified by Circular Letter N° 010.

<sup>13</sup> Modified by the Circular Letter N° 010.

**1.2.37 Existing Studies:** The technical studies and reports made by or for several entities of the State of the Republic of Peru. These studies shall be available to the bidders in the Data Room, and they can use them to prepare their Technical and Economic Proposals.

**1.2.38 Benchmark Study:**<sup>14</sup> Is the study referred to in the National Plan for Port Development, conducted as M1 phase 1 of the study called “Final Report-Feasibility Study for New Container Terminal at the Port of Callao-Peru” prepared by Moffatt & Nichol International.

**Without prejudice of the abovementioned, the comprehensive version of the study on the Callao Port Development conducted by Pacific Consultants International and CESEL S.A.<sup>15</sup> will be available at the Data room.**

**1.2.39 Competition Factor:** The variable determining the Successful bidder, pursuant to paragraph 7.2 of the Tender Documents.

**1.2.40 Closing Date:** It is the day, place and time to be communicated by the Committee through a Circular Letter for the acts foreseen in paragraph 10.2 of the Tender Documents.

**1.2.41 FONCEPRI:** It is the Private Investment Promotion Fund for Infrastructure and Utility Public Works – FONCEPRI – referred to in Article 11 of Supreme Decree N° 059-96-PCM, which resources shall be allocated pursuant to the Applicable Laws.

**1.2.42 Validity, Effectiveness and Seriousness Bond:** It is the stand-by Letter of credit or the banking bail that the Short-listed Bidder shall submit in favor of PROINVERSION for an amount equivalent to US\$ 5,000,000.00 (Five Million and 00/100 Dollars) to ensure the validity, effectiveness and seriousness of the Proposal according to the specimen enclosed as Form N° 3 to Annex N° 5.

A joint and several, unconditional, and irrevocable, guarantee, with no benefit of excussion or division, and of automatic performance that shall be issued by a Banking Company or by an International Financial Institution, pursuant to Annex N° 2 herein. This Guarantee shall be effective as from the Economic Proposal’s submission date and up to sixty (60) days after the Closing Date. The Committee shall set out the mandatory extension of this Guarantee, and the Bidder shall be obliged to renew it in the terms agreed for such purposes..

The Guarantee submitted by a Short-listed Bidder which is not a Successful Bidder, will be returned within fifteen (15) days after the Closing Date.

***In case that the guarantee is issued by an International Financial Institution, the guarantee is required to be endorsed and confirmed by any of the Banks listed in Appendix 2 of Annex 2.***<sup>16</sup>

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<sup>14</sup> The term “Benchmark Project” is replaced by “Benchmark Study”, according to the Circular Letter N° 010.

<sup>15</sup> Added by Circular Letter N° 001

<sup>16</sup> Added by Circular Letter N° 018.

#### 1.2.43 <sup>17</sup>Performance Bond for the Concession Contract<sup>18</sup>:

The amount of this Bond shall be a **percentage** of the Work Official Estimated Budget, **as detailed below**:

**From the Closing Date until the approval of the Works corresponding to a berth: 20%**

**From the approval of the Works corresponding to a berth until the approval of the initial minimum Works referred to in Appendix 1 to Annex 11: 15%**

**From the approval of the initial minimum Works referred to in Appendix 1 to Annex 11 until two (02) years following the expiry of the Contract term: 10%.**

The purpose of said bond is guarantee compliance with all contractual obligations, including the **Construction, exploitation and conservation** of the Works and Equipment, **as well as the penalties established in the Concession Contract.**

It shall consist of a bank letter of guarantee issued by a Banking Entity or an International Financial Entity, as detailed in Annex 2 to these Tender Documents. Said bank letter of guarantee shall be joint and several, unconditional, irrevocable, without benefit of discussion or division, and of automatic execution, as from the Closing Date, and shall be renewed on an annual basis to remain in full force and effect.

Alternatively, a stand-by letter of credit may be accepted, which may be subject to the formalities used by the bank carrying out the transaction, provided that the requirements set forth in Form 2-B of Annex 2 are met and provided that it is issued by a Prime Foreign Bank and confirmed by a Banking Entity of **the National Financial System.**

**In the case of a bank letter of guarantee issued by an International Financial Entity, it shall be certified and confirmed by any of the Banking Entities listed in Appendix 2 to Annex 2.**

#### 1.2.44 IGV: Value Added Tax.

**1.2.45 Standard Rate Index: It is the amount expressed in US Dollars per TEU *calculated based on the Standard Services Rate according to the vessel and the cargo, pursuant to Form 3 of Annex 6.* It is the Competition Factor.**<sup>19</sup>

**1.2.46 Port Infrastructure: The Civil work and mechanical, electrical and electronic facilities, both fixed and floating installations built or located at the ports to provide better modal transport and exchange.**<sup>20</sup>

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<sup>17</sup> The “Performance Bond for Work Execution and Equipment Installation” definition was first modified by Circular Letter N° 004 and later eliminated by Circular Letter N° 012.

<sup>18</sup> Modified by Circular Letter N° 012

<sup>19</sup> Modified by the Circular Letters N° 010 and N° 018

<sup>20</sup> Modified by Circular Letter N° 010.

**1.2.47 Common Port Infrastructure:** The port infrastructure indistinctly used by any user, operators and Port Managers of **El Callao Port Terminal** to carry out the port activities.<sup>21</sup>

**1.2.48 Monthly Gross Income**

Is the result obtained after deducting the Value Added Tax (VAT) from the total amount of incomes obtained by the CONCESSIONAIRE every month for the provision of the Services.<sup>22</sup>

**1.2.49 Complementary Investment**<sup>23</sup>

It is the obligation assumed by the CONCESSIONAIRE to execute the Minimum Complementary Investment and to transfer the Additional Complementary Investment as possession in trust, as set forth in the Contract. The amounts corresponding to the Complementary Investment does not include the design, Construction, financing, conservation and exploitation costs for the New Container Terminal – Southern Zone.

The Complementary Investment shall not exempt the CONCESSIONAIRE from complying with other payments, compensations or taxes at its expense, as established by the Applicable Laws and Provisions, the Tender Documents, the Concession Contract and, in general, the Peruvian legal provisions.

The Complementary Investment is divided into two parts:

- **Minimum Complementary Investment (ICM):** It is the commitment for executing the common works mentioned in *Appendix 2 of Annex 11*.
- **Additional Complementary Investment (ICA):** It is the amount that the Short-listed Bidder offered as a component of its Economic Proposal, pursuant to the terms and conditions indicated in Point 7.2 of the Tender Documents. *The ICA shall be contributed to a trust pursuant to the terms and conditions set forth herein.*

The calculation of the ICA is the exclusive responsibility of the Short-listed Bidder

**1.2.50 Investment in the National Component**<sup>24</sup>: It refers to the amount the Concessionaire shall invest in the purchase of properties and execution of the Works produced in the country during the Concession Term. The said amount may not be less than US\$ 31,250,000 (Thirty One Million Two Hundred and Fifty Thousand US Dollars). For the purpose of application of the formula set forth in Sub-point 9.1.6 of the Tender Documents, the said amount is established in up to US\$62,500,000 (Sixty Two Million Five Hundred Thousand US Dollars), without including administrative expenses and Valued Added Tax (IGV).

Investment in the National Component should be offered by the Short-listed Bidders in Form 1 of Annex 6.

<sup>21</sup> Modified by Circular Letter N° 010

<sup>22</sup> Added by Circular Letter N° 018

<sup>23</sup> Added by Circular Letter N° 018 which substitutes the “Complementary Investment Amount” definition.

<sup>24</sup> Added by Circular Letter N° 018

**1.2.51 Applicable Laws:** The regulations set forth in Point 1.3 of these Tender Documents and any other regulation that, in accordance with the body of laws **of the Republic of Peru**, may be applicable<sup>25</sup>

**1.2.52 LIBOR: The 180-day “London Interbank Offered Rate” established by the Cable Reuters daily received in Lima at 11 a.m<sup>26</sup>.**

**Complementary Investment Amount<sup>27</sup>**

**1.2.53 Notices:** The documents described in paragraph 2.1.5.

**1.2.54 Nuevo Sol:** Peru’s legal tender.

**1.2.55 <sup>28</sup>Works:** **The result of the Construction and equipping works to be executed during the term of the Concession. They involve the assets to be used, built, exploited and/or maintained by the Concessionaire for the operation, exclusive rendering of the services, and conservation of the Concession assets under the terms of the Contract.<sup>29</sup>**

**1.2.56 Minimum Shareholding:** Voting stock kept by the Strategic Partner in the Consortium, up to five years after beginning of **Exploitation, according to the terms and conditions of the Contract** and pursuant to paragraph 5.2.2.8.2 herein.<sup>30</sup>

**1.2.57 Person:** Any natural or legal person, Peruvian or foreign, that may carry out juridical acts and undertake obligations in Peru.

**1.2.58 Concession Term:** The term between the Closing Date and the termination of the Concession.

**1.2.59 Bidder:** A legal entity or Consortium participating in this Tender that is granted the right to participate and subjected to the provisions herein.

**1.2.60 Short-listed Bidder:** The Bidder which documentation, dully submitted in Envelope N° 1, fulfilled the requirements set forth herein, and is therefore expressly accepted by the Committee.

**1.2.61 Price:** It refers to **the fee charged by the Concessionaire for the rendering of Special Services.** The Price shall not be subject to regulation.<sup>31</sup>

**1.2.62 Work Official Estimated Budget:** It is equal to a referential cost of US\$ **213,500,000 (Two Hundred and Thirteen Millions Five Hundred Thousand US Dollars) which does not include the Value Added Tax (VAT), to implement and commence the Exploitation of the New Container Terminal and to implement the**

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<sup>25</sup> Modified by Circular Letter N° 010

<sup>26</sup> Added by Circular Letter N°010

<sup>27</sup> The “Complementary Investment Amount” definition that replaced the “Investment Commitment” definition by Circular Letter N° 001 was later replaced by “Complementary Investment” definition by Circular Letter N° 018.

<sup>28</sup> The “Alternative Work(s) and Equipment(s)” definition was eliminated by Circular Letter N° 010.

<sup>29</sup> Modified by Circular Letter N° 010.

<sup>30</sup> Specified by Circular Letter N° 010.

<sup>31</sup> Modified by Circular Letter N° 010.

**works corresponding to the Minimum Complementary Investment.** This budget only applies to the provisions expressly set forth in the Tender Documents.<sup>32</sup>

- 1.2.63 Proposal:** The documentation to be submitted by the Short-listed Bidders; the Economic or Technical Proposals.
- 1.2.64 Economic Proposal:** The Short-listed Bidder's Economic Proposal to be submitted pursuant to paragraph 7.2 and Annex N° 6.
- 1.2.65 Technical Proposal:** The set of documents submitted by the Short-listed Bidder in Envelope N° 2, pursuant to paragraph 7.1.
- 1.2.66 Contract Project:** The non-final Concession Contract model to be delivered to the Bidders for their suggestions. None of the terms and/or opinions therein shall bind APN, PROINVERSIÓN, the Committee and/or Grantor under no circumstance.
- 1.2.67 Port:** Geographic location and economic structure of a town where the land, sea, natural or artificial terminals, facilities, and installations fit for carrying out port activities are located.
- 1.2.68 Reference Project:** The Project described in the National Port Development Plan, identified as M1 Phase 1 of the "Final Report-Feasibility Study for the New Container Terminal at the Port of Callao-Perú", prepared by Moffatt & Nichol International.

Notwithstanding the aforementioned, the complete version of the Callao Port Development Project prepared by Pacific Consultants International will be available to the bidders in the Data Room.

- 1.2.69** <sup>33</sup>**Regulator:** The Supervising Agency on Investment in Transport for Public Use, OSITRAN, pursuant to Law N° 26917.
- 1.2.70 Legal Representative:** the individual person **with a domicile in Lima or El Callao (Peru) appointed** as such by the Bidder for the purposes of this Tender.<sup>34</sup>
- 1.2.71 Short-listing Requirements:** The requirements mentioned in paragraph 5 herein, which include, among others, those regarding the technical, economic, and legal solvency requisites that must be met by the Bidder to be declared as Short-listed Bidder and to continue to participate in the Tender.
- 1.2.72 Remuneration:** The economic consideration the Concessionaire is obliged to periodically pay to the Grantor, during the effective period of the Concession, in the terms set forth by the Concession Contract.

**The Remuneration amounts to three percent (3%) of the Monthly Gross Incomes obtained by the Concessionaire for the provision of services, from the commencement of the exploitation up to the termination of the Concession, pursuant to the terms set forth in the Concession Contract.**<sup>35</sup>

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<sup>32</sup> Modified by Circular Letters N° 006, N° 010 and N° 018

<sup>33</sup> The "Benchmark Project" definition was eliminated by Circular Letter N° 010 and replaced by "Benchmark Study".

<sup>34</sup> Modified by Circular Letter N° 006

<sup>35</sup> Added by Circular Letter N° 018



**1.2.73 Data Room:** Is an area at PROINVERSIÓN's offices, located in the First Floor of the building domiciled at Av. Paseo de la Republica 3361, San Isidro, Lima 27, Peru, which will contain the studies performed by and for the Republic of Peru, in relation to the project, and which shall be available for the Bidders' preparation of their Proposal.

**1.2.74 Standard Services:**<sup>36</sup> These are the services that the CONCESSIONAIRE will supply to both the vessel and the cargo, for which it will charge the corresponding Rates. These services will be supplied on a mandatory basis to any User requesting them; necessarily complying with the Service and Productivity Levels indicated in Appendix 1 of Annex 11 and Annex 3 to the Contract.

*The Standard Services are itemized in the services specified below:*

- **Ship Services:** *These comprise the use of the Berth at the Terminal.*
- **Cargo Services:** *These include container loading and unloading services, by the use of the dock gantry crane; as well as the use of the Terminal infrastructure.*

**1.2.75 Special Services:** These are services **other than** the Standard Services that the CONCESSIONAIRE is authorized to provide, **the terms and conditions of which are freely agreed upon by the parties, and for which the Concessionaire will be entitled to charge a Price. Said services shall be rendered in keeping with the principles established in Article 14.3 of the LSPN, as the case may be.** This shall not affect the users' right to demand Standard Services supply as an alternative.<sup>37</sup>

**1.2.76 Envelope(s):** Individually or collectively, Envelopes N° 1, 2 and 3.

**1.2.77 Envelope N° 1:** The envelope containing the documents mentioned in paragraph 5 herein, to be presented by the Bidder.

**1.2.78 Envelope N° 2:** The envelope containing the documents mentioned in paragraph 7.1 herein, to be presented by the Short-listed Bidder.

**1.2.79 Envelope N° 3:** The envelope containing the Economic Proposal to be presented by the Short-listed Bidder, pursuant to the provisions of paragraph 7.2.

**1.2.80 Strategic Partner:** In the case of a Consortium, it is the Bidder or one of its members who independently have complied with the Operational Experience Short-listing Requirements, and who if awarded the Bid, shall demonstrate upon the incorporation of the Concessionaire, the ownership of the Minimum Participation. There must exist one Strategic Partner during the effective period of the Concession. The Strategic Partner, under all circumstances, must comply with any and all the requirements mentioned in Paragraph 5.2 of the Tender Documents herein.

**1.2.81 Terminal:** For the effects of the Tender Documents herein, it means the port infrastructure and equipment which make up business units devoted to supplying services to ships and freight.

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<sup>36</sup> Modified by Circular Letter N° 018

<sup>37</sup> Modified by Circular Letters N° 010 and N° 018.

### **1.3 Tender Legal Framework**

- 1.3.1** Law N° 27943 National Port System Law (LSPN) was published March 1, 2003 and regulated by Supreme Decree N° 003-2004-MTC, published February 4, 2004. These regulations govern the activities and services at the terminals, infrastructure and facilities comprising the National Port System (SPN).
- 1.3.2** LSPN established APN as a Decentralized Public Organism governing the SPN.
- 1.3.3** LSPN establishes that APN shall foster private sector participation, preferably through investment in developing port infrastructure and equipment with PROINVERSIÓN's support. In this regard, LSPN regulations give the APN responsibility for promoting private investment in national port infrastructure and equipment for which end it may enter into cooperation agreements with PROINVERSIÓN.
- 1.3.4** A Cooperation Framework Agreement (the AGREEMENT) was signed March 10, 2005 by virtue of which APN charges PROINVERSIÓN with promoting private investment promotion in port infrastructure and facilities belonging to the state, which will be carried out according to the Promotion Plan previously approved by APN at de PROINVERSIÓN's request, as per the National Port Development Plan (PNDP) guidelines prepared by APN.
- 1.3.5** Pursuant to Clause 3.1.2 of the AGREEMENT, through Official Letter 252-2005-APN/PD, APN requested PROINVERSIÓN to determine the financial and economic feasibility of, and to prepare the Promotion Plans for, the following Projects, among others:
- New Container Terminal at the Callao Port Terminal - Southern Zone
  - Conditioning of Pier N° 5 of the Callao Port Terminal for containers, and the gantry crane equipment
  - New minerals pier for the Callao Port Terminal
- 1.3.6** Pursuant to the LSPN, Supreme Decree N° 006-2005-MTC, published on March 10, 2005, approved the PNDP.
- 1.3.7** Legislative Decree N° 674 of September 25, 1991, created the Private Investment Promotion Commission (COPRI).
- 1.3.8** Legislative Decree N° 839 of August 20, 1996, approved the Law for Private Investment Promotion in Public Infrastructure and Utility Works, and the Private Concession Promotion Commission (PROMCEPRI) was created as the body in charge of specific concession awards.
- 1.3.9** Supreme Decree N° 059-96-PCM of December 26, 1996, approved the Conformed Single Text of the regulations with rank of Law governing the concession of public infrastructure and utility works (concessions TUO is the Spanish acronym) to the private sector.
- 1.3.10** The regulations for the Conformed Single Text of regulations with rank of Law which govern the award of public infrastructure and utility work concessions to the private

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<sup>38</sup> The "Terms of Reference" definition was eliminated by Circular Letter N° 010.

sector were enacted through Supreme Decree N° 060-96-PCM of December 27, 1996.

- 1.3.11 Law 27111, of May 11, 1999, transferred PROMCEPRI's functions, attributions and competencies to COPRI.
- 1.3.12 Supreme Resolution N° 444-2001-EF published on September 15, 2001, created the Special Committee for the Promotion of Private Investment in Infrastructure and Utility Projects, and its current members were appointed through Supreme Resolution N° 145-2002-EF, dated May 23, 2002.
- 1.3.13 Supreme Decree N° 027-2002-PCM of April 24, 2002, provided for the merger between COPRI, the National Commission for Foreign Investments and Technology (CONITE) and the Economic Promotion Management of Peru's Promotion Commission, as FOPRI executive directorate, named from then on Investment Promotion Agency (PROINVERSIÓN).
- 1.3.14 Supreme Decree N° 028-2002-PCM of April 24, 2002, approved PROINVERSIÓN's Organization and Function Regulations.
- 1.3.15 Supreme Resolution N° 228-2002-EF of September 24, 2002, has changed the name of the Special Committee for Public Investment Promotion on Infrastructure and Utility Projects to PROINVERSIÓN Committee for Infrastructure and Utility Projects.
- 1.3.16 Supreme Resolution N° 009-2003-EF of January 17, 2003, has amended the participation scheme of the PROINVERSIÓN Committee on Infrastructure and Utility Project, same which is made up by three permanent members.
- 1.3.17 Supreme Decree N° 095-2003-EF of July 03, 2003, changed the name of the Investment Promotion Agency – PROINVERSIÓN, to Private Investment Promotion Agency – PROINVERSIÓN, and changed its Organization and Function Regulations.
- 1.3.18 Urgency Decree N° 054-2001 gave PROINVERSIÓN authority over the private investment promotion and infrastructure and utility public work concession processes under the jurisdiction of Municipalities, Charities and other **Peruvian**<sup>39</sup> government bodies pursuant to the mechanisms, procedures and benefit set forth in Legislative Decree N° 674 and the TUO approved by Supreme Decree N° 059-96-PCM.
- 1.3.19 PROINVERSIÓN's Steering Council, in its June 30, 2005 meeting accepted the responsibility for promoting private investments on port infrastructure and facilities owned by the State within the scope of Law N° 27943, National Port System Law and of Urgency Decree N° 054-2001 and, under the mechanisms and procedures of the Single Text approved by Supreme Decree N° 059-96-PCM and Legislative Decree N° 674, its regulatory and complementary norms.
- 1.3.20 In said meeting, the Steering Council charged PROINVERSIÓN's Committee on Infrastructure and Utility Projects to prepare and carry out this process.
- 1.3.21 Supreme Resolution N° 098-2005-EF of August 10, 2005, modified the abovementioned Agreement adopted by PROINVERSIÓN's Steering Council.

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<sup>39</sup> Specified by Circular Letter N° 010.

- 1.3.22** On September 29, 2005, APN approved the Promotion Plan for the New Container Terminal at the Callao Port Terminal – Southern Zone.
- 1.3.23** Supreme Resolution N° 136-2005-EF ratified PROINVERSIÓN Steering Council's Agreement approving the Promotion Plan for the New Container Terminal at the Callao Port Terminal - Southern Zone.
- 1.3.24** By Resolution dated **October 28, 2005**<sup>40</sup>, APN Board of Directors issued a favorable opinion on these Tender Documents.
- 1.3.25** By Resolution of PROINVERSION Steering Council dated **November 3, 2005**<sup>41</sup>, these Tender Documents were approved.
- 1.3.26** All Bidders, Short-listed Bidders or Persons who directly or indirectly participate in the Tender are assumed to know the contents of the Tender Documents herein and the Applicable Law. No proof to the contrary will be acceptable.
- 1.3.27** The Tender process embraced by these Tender Documents shall be carried out pursuant to the provisions of the Tender Documents. The National Port System Law and its Regulations, the provisions of Supreme Decree N° 059-96-PCM and their complementary and regulatory norms, and amendments, shall apply to this process in what is not foreseen by the Tender Documents.
- 1.3.28** By virtue of COPRI Agreement N° 355-4-2001, the regulations comprised in the Conformed Single Text (TUO) of the Contracting and Procurement Law approved by Supreme Decree N° 012-2001-PCM do not apply to this Tender.
- 1.3.29** Paragraph L, Article 22 of Law N° 27785, Law of the National Control System and the Republic's General Comptroller establish the Republic General Comptroller's authority to report on operations, guarantees, bails, and other securities granted by the State of **the Republic of Peru**<sup>42</sup>, including agreement projects which may in any way compromise the State's credit or financial capacity, whether in Peru or abroad.
- 1.4 Execution of the Commission given to PROINVERSION by APN and Power granted to the Committee and PROINVERSIÓN**

Pursuant to the AGREEMENT, APN shall, among other initiatives, promote private investment by approving the respective Promotion Plans, requesting PROINVERSION to determine the economic and financial viability of such processes, make suggestions about the contents of the Tenders and/or the documents, and for the agreement to be entered into with the private sector, and signing contracts with the private sector resulting from the Project.

The referred AGREEMENT establishes that PROINVERSION shall, among other responsibilities, execute and develop projects which promotion plans have been approved by APN and shall undertake the necessary actions to carry out the projects until they are delivered to the private sector, under any private participation modality in port infrastructure and facilities owned by the State, pursuant to the conditions established in the promotion plans approved by APN and based on the competencies granted to it by the Applicable Laws

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<sup>40</sup> Added by Circular Letter N° 010.

<sup>41</sup> Added by Circular Letter N° 010.

<sup>42</sup> Specified by Circular Letter N° 010.

- 1.4.1** In this regard, within the framework of the AGREEMENT and, according to the competencies granted by the concessions TUO, its regulations and other applicable laws, the Committee is authorized, among other aspects, to promote, program, regulate, modify, conduct, supervise, control, extend the terms set in the Tender Documents, suspend or cancel the Tender, as mentioned in paragraph 9.4 and issue all the dispositions deemed pertinent or necessary for the execution of the Comprehensive Project Tender to award the concession of the New Container Terminal at the Callao Port Terminal - Southern Zone to the private sector. It may resolve unforeseen events in the Tender Documents or the applicable law and, generally, execute all the other powers the abovementioned legal framework grants it.
- 1.4.1** Any amendment to the Tender Documents will be communicated through Circulars Letters to the Bidders and Short-listed Bidders. The changes implying substantial amendment to the Tender Documents shall include APN's favorable opinion.
- 1.4.2** The sole presentation of the information foreseen by the Tender Documents and/or requested by the Committee to Short-list the Bidders does not oblige the Committee to declare it as Short-listed Bidder, and submission of a proposal does not oblige the Committee to accept it. The sole submission by the Bidder of the necessary documents to become Short-listed, implies full knowledge, acceptance and unconditional submission by the Bidder, the Short-listed Bidder or the Successful Bidder, as applicable, of all and each one of the procedures, obligations, conditions and rules —without exception— set forth in the Tender Documents, same which are legally binding to them, as well as their irrevocable and unconditional waiver to file, before any court or authority, any action, indemnification request, demand or to press charges against the State **of the Republic of Peru**<sup>43</sup>, APN, PROINVERSION, the advisors, the Committee, or any other entity, organism, or official of the State or Government of the Republic of Peru stemming from the exercise of the powers granted by the Tender Documents.
- 1.4.3** Unless otherwise expressly established by the Tender Documents, the Committee's or PROINVERSION's decisions, according to each case, related to this Tender, are final and shall not result in any kind of indemnity, claim or request of challenge in the administrative or judicial field. Consequently, the persons comprised by the scope of the Tender Documents, for their sole participation in this Tender waive their right to file any challenge recourse against said decisions.

## **1.5 Concession Contract**

- 1.5.1** The Project's Agreement shall be made available to the Bidders pursuant to the schedule of Annex N° 12 of the Tender documents.
- 1.5.2** The Bidders may submit suggestions about the Draft Agreement pursuant to Annex N° 12 of the Tender document under the formalities foreseen in paragraphs N° 3.1.1 and 3.1.2. The Committee will not be obliged to include the Bidders or Short-listed Bidders' suggestions in the Draft Agreement.

## **1.6 Tender Schedules**

The dates for the Scheduled activities are shown in Annex N° 12.

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<sup>43</sup> Specified by Circular Letter N° 010  
Concession of the New Container Terminal - Callao Port Terminal – Southern Zone

The Committee may modify the Scheduled dates at any time; which decision will be communicated to the interested parties through Circular Letters

Unless expressly indicated otherwise, days will end at 17.30 hours, Lima – Peru time.

## **1.7 Interpretations and references**

**1.7.1** The terms and expressions used in the Tender Documents shall be interpreted in their natural and obvious sense, unless a different meaning has been specifically given to them in the Tender Documents or its Annexes or if the meaning is inferred from its context; and, in any case, in accordance with the regulations currently in force of the Republic of Peru. Every participant in this process shall be assumed to know the laws and regulations currently in force in the Republic of Peru that are applicable to this case. No proof to the contrary will be acceptable.

**1.7.2** The titles of chapters, paragraphs, forms and annexes of the Tender Documents are exclusively used as indications and shall not affect the content's interpretation.

**1.7.3** In case of contradiction between provisions in the Tender Documents and provisions in any of its Annexes, the Tender Documents shall prevail, unless expressly, clearly and unequivocally the Annexes amend the Tender Documents. In all cases the amendment and Circular Letters referred to in the Tender Documents shall prevail over the Tender Documents' provisions, even when not expressly stated.

## **1.8 Technical background provided to the Bidders**

Different technical background documents and studies performed by the State of the Republic of Peru will be made available to the Bidders in the Data Room mentioned in paragraph 3.2 of the Tender Documents.

The studies making up the technical background documentation that will be available to the Bidders are shown as Appendix N° 1 of Annex N° 8 to the Tender Documents.

## **2. AUTHORIZED AGENTS AND LEGAL REPRESENTATIVE**

### **2.1 Authorized Agents**

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

Each Bidder must appoint up to two individuals domiciled in the city of Lima or Callao as their Authorized Agents for this Tender.

#### **2.1.2 Appointment Letter**

The appointment of Authorized Agents shall be made through a simple letter signed by the Bidder, expressly pointing out their powers and including the appropriate information pursuant to paragraphs 2.1.3 and 2.1.4.

#### **2.1.3 Powers**

Duly appointed Authorized Agents may act separately one from the other and not necessarily jointly, and they shall be the sole persons authorized by the Bidder to:

- I. Represent the Bidder before PROINVERSIÓN, the Committee and the advisors on any issues which are not the exclusive competence of the Legal Representative as in paragraph 2.2.1;
- II. Respond, on behalf of the Bidder and with binding effect for their power-giver (mandatory), all the questions asked by the Committee;
- III. Accept judicial or extrajudicial notifications; and
- IV. Sign, with binding effect for the Bidders, the Non-Disclosure Agreement as per paragraph 2.2.2.

#### **2.1.4 Information**

The information the Bidder must provide concerning each one of the Authorized Agents shall be the following:

Name, identity document, address in the city of Lima or Callao, telephone and fax numbers, and email address.

#### **2.1.5 Notifications**

All the extrajudicial notifications addressed to the Bidder may be made to any Authorized Agent by fax and/or email with complete transmission confirmation issued by the respective communication receiver through another fax and/or email, in which case it will be understood as received on the day in which the receiver's transmission is completed or by courier or notary, in which case the notification will be understood as received on the date of its delivery. Any notification shall be understood as effected and effective if sent from the address designated by the Authorized Agent pursuant to paragraph 2.1.4.

#### **2.1.6 Substitutions**

The Bidder, after written communication to the Committee complying with the same requirement described in paragraph 2.1.2, may substitute any of the authorizations at any time, or vary the address, phone or fax number designated for the Authorized Agents, taking into account that the new address and phone or fax numbers and email address shall be fixed within the city of Lima or Callao. Appointment of the Authorized Agents or change of address, phone or fax numbers, as appropriate, is effective as from the day in which the respective communication issued by the Bidder is received by the Committee.

### **2.2 Legal Representative**

#### **2.2.1 Appointment and Powers**

The document submitted in Envelope N° 1, 2 and 3 and, generally, all the documents that the Bidder submits in connection with the Tender, shall be signed by the Legal Representative of the parties submitting said documents, who shall be duly authorized to that effect pursuant to provisions in this section.

The Bidder may only appoint up to two common Legal Representatives to represent him, jointly or individually, pursuant to this paragraph. The address, phone number, fax number and email address of the Legal Representative, as well as his replacement, are submitted pursuant to paragraphs 2.1.4, 2.1.5 and 2.1.6.

The powers granted to each one of the Legal Representatives must be sufficiently broad so that any of them can sign on behalf and representation of their power-giver (mandatory) any documents the Tender Documents so require, specifically including the power to initiate challenge procedures foreseen in the Tender Documents, signing the Submissions Letters for the Proposal and signing the Agreement.

**If the Bidder is a Consortium, such appointment shall be made through the legal representatives of the Consortium members duly empowered to that effect. Said powers must be certified by submitting a copy of the power of attorney or similar document authenticated by a notary or a consul.<sup>44</sup>**

### **2.2.2 Power-of-Attorney submission**

The power of attorney by which the Legal Representatives are appointed shall contain the corresponding powers of representation **and the information referred to in Sub-point 2.1.4 of the Tender Documents.**<sup>45</sup> It shall be submitted together with the Credentials in Envelope 1.

**Alternatively, the information mentioned in Sub-point 2.1.4 may be provided through a simple letter, with the authenticated signature of the Bidder's Legal Representative.**<sup>46</sup>

The appointment of a new Legal Representative will become effective only as from the day in which the Committee receives the documents duly certifying said appointment.

### **2.2.3 Power of attorney granting place<sup>47</sup>**

**A power of attorney granted in Peru must be expressed in a notarially recorded instrument or a notarially authenticated copy of the minutes of the corporate body granting it.**

A power of attorney granted outside Peru appointing a legal representative shall be:

- I. Duly executed or legalized before the consulate of Peru. A simple translation into Spanish must be attached if issued in a different language;
- II. Confirmed before the Ministry of Foreign Affairs of Peru;

### **2.2.4 Registrations in the Registration Office**

In no case shall it be required to have registered the legal representative's power-of-attorney in the Public Registry when it is submitted. However, they shall be registered in the corresponding registration office before the Closing Date in case the Bidder becomes an Awardee.

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<sup>44</sup> Added by Circular Letter N° 010

<sup>45</sup> Modified by Circular Letter N° 006.

<sup>46</sup> Added by Circular Letter N° 010.

<sup>47</sup> Modified by Circular Letter N° 010.



### **3. INQUIRIES AND INFORMATION**

#### **3.1 Inquiries on the Tender Documents and Suggestions for the Draft Agreement**

##### **3.1.1 Term to make inquiries and suggestions**

From the dates mentioned in Annex N° 12 and until the dates mentioned in that same Annex, the Bidder and Short-listed Bidders may make inquiries on the Tender Documents and suggestions to the Draft Agreements through their Authorized Agents and / or Legal Representatives, as may correspond.

##### **3.1.2 Formality of the inquiry and suggestions**

The inquiries and suggestions shall be formulated in writing in Spanish and be addressed to:

**Mr. Juan Suito Larrea**

Sector Technical Coordinator for Port Affairs

PROINVERSIÓN

Av. Paseo de la República 3361, Piso 1, San Isidro - Lima, Perú

Phone number: 612-1200 Extension: 1205-1349

Fax [511] 421-2616

Email address: [jsuito@proinversion.gob.pe](mailto:jsuito@proinversion.gob.pe)

##### **3.1.3 Circular Letters**

###### **3.1.3.1** The Committee's responses to inquiries shall be communicated anonymously through Circular Letters to all the Bidders or the Short-listed Bidders, as the case may be.

The Committee is not obliged to answer inquiries on the Tender Documents that bear no relationship with the Tender herein.

If the Committee, at any time, considers it necessary to clarify, amend or complement the Tender Documents, it shall issue a Circular Letter to that effect. Such Circular Letter shall be addressed to the Authorized Agents and sent to their addresses pursuant to paragraph 2.1.4 of the Tender Documents herein. Every issued Circular Letter shall be available for review in the Data Room.

After the Bidders' Short-listing, the Circular Letters shall be sent only to Short-listed Bidders and, after the submission of Envelopes N° 2 and 3, only to those Bidders who submitted proposals.

###### **3.1.3.2** The Circular Letters issued by the Committee shall make integral part of the Tender Documents.

#### **3.2 Access to Information - Data Room**

##### **3.2.1 Access to the Data Room**

###### **3.2.1.1** The Bidders who have paid the right to participate in the Short-listing Stage will have access to the information regarding the Callao Port Terminal, which shall be available as reference in the Data Room. Such Room is located in the First Floor of the building domiciled at Av. Paseo de la Republica 3361, San Isidro, Lima 27, Peru.

**3.2.1.2** The use of the Data Room shall be coordinated with the Data Room administration pursuant to the regulations set forth for its operation, contained in the “Data Room User Guide”, Annex N° 8 of the Tender Documents hereto.

**3.2.1.3** The Bidders, through written notice delivered to the Committee by any of its Authorized Agents or the Legal Representative, will indicate the name of the persons who shall have access to the Data Room. The Committee shall appropriately coordinate the effective organization of the visits to the Data Room.

**3.2.1.4** The Bidders who have paid the right to participate in the Short-listing Stage will have access to the Data Room on the day indicated in the Schedule.

### **3.2.2 Non-Disclosure Agreement**

The Authorized Agents shall sign the Non-Disclosure Agreement included in Annex N°1 in order to have access to the Data Room.

### **3.2.3 Information in the Data Room**

The list of documents is attached as Appendix N° 1 to Annex N° 8 of the Tender Documents.

Any Document incorporated to the Data Room shall be notified by Circular Letter.

### **3.3 Meeting Request**

Any Purchaser or Bidder, through their Authorized Agents and/or Legal Representatives, as the case may be, will have the right to meet the Committee's officials, up to the day prior to the last day set to deliver Envelope N° 1 and, in the case of the Short-listed Bidders, they may meet such officials until the presentation of Envelope N° 3, after coordinating the meetings with the Committee.

### **3.4 Limitation of Responsibility**

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

All the Bidders shall base their decision of presenting or not their Technical and Economic Proposal on their own research, examinations, inspections, visits, interviews, analysis, and conclusions obtained by the available information and the information that the Bidder has obtained by his own means, at his own risk and expense.

#### **3.4.2 Limitation of Responsibility**

The State of the Republic of Peru or any institution, APN, PROINVERSIÓN, the Committee, or the advisors do not undertake, guarantee, neither expressly nor implicitly, the totality, integrity, reliability or truthfulness of the information, whether verbal or in writing, provided by them for the purposes of or within the Tender. Consequently, no person participating in the Tender may hold responsible any of the abovementioned parties or their representatives, agents or sub-offices, for the uses given to that information, or for any inaccuracy, insufficiency, flaw, lack of update or any other cause not contemplated expressly under this Section.

### **3.4.3 Scope of the Limitation of Responsibility**

The limitation mentioned in Section 3.4.2 covers, as broader as possible, all the information related to the Tender which is effectively known, the unknown information and the information that was known in a determined period of time, including possible mistakes or omissions contained therein, by the State **of the Republic of Peru**<sup>48</sup> or any institution, body or officer thereof, by APN, PROINVERSIÓN, the Committee, or their advisors. Likewise, such limitation of responsibility applies for all the information, whether supplied or prepared, directly or indirectly, by any of the abovementioned parties.

The limitation of responsibilities applies also to all the information available in the Data Room, and the information provided through Circular Letters or any other communication media, which is acquired during the visits to the facilities related to the Tender and those mentioned in the Tender Documents herein, including all its Forms and Annexes.

### **3.4.4 Acceptance by the Short-listed Bidder of what is provided in Paragraph 3.4**

The sole presentation of **prequalification documents** shall<sup>49</sup> constitute, with no need of any previous act, acceptance with everything provided in Paragraph 3.4 by the Bidder and in its case, by the Concessionaire, as well as their irrevocable and conditional waiver in the broadest way permitted by the applicable laws to file any action, reconvention, exception, claim, demand or compensation, request by the State **of the Republic of Peru**<sup>50</sup> or any state, agency, entity, official or by PROINVERSIÓN, APN, the Committee or their advisors.

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

### **4.1 Submissions**

#### **4.1.1 Submission of General Documentation for Short-listing (Envelope N° 1)**

The submission of documentation for short-listing contained in Envelope N° 1 shall take place at the Committee's offices located at the building on Av. Paseo de la República 3361, Piso 11, San Isidro - Lima, Peru, within the term mentioned in Annex N° 12.

#### **4.1.2 Submission of Envelopes N° 2 and N° 3**

The Bidder must submit one Envelope N° 2 and one Envelope N° 3 at the Committee's offices located at the building on Av. Paseo de la República 3361, Piso 11, San Isidro - Lima, Perú, on the date mentioned in Annex N° 12.

Submission of Envelopes N° 2 and N° 3 will take place before the Committee and Notary Public at the time and place pointed out through Circular Letter.

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<sup>48</sup> Specified by Circular Letter N° 010.

<sup>49</sup> Modified by Circular Letter N° 004

<sup>50</sup> Specified by Circular Letter N° 010.

#### 4.1.3 Submission of Envelopes by Authorized Agent or Legal Representative.

Envelopes N° 1, N° 2 and N° 3 can only be submitted personally by one of the Bidder's Authorized Agents or Legal Representative. Documents sent by mail, fax or any other kind of communication shall not be accepted or received.

#### 4.2 Language

Unless expressly set forth otherwise in the Tender Documents herein, all the documents shall be submitted in Spanish or enclose a simple translation into Spanish. In case any brochures or catalogs not required in the Tender Documents are enclosed in a foreign language, for a better understanding of the Credentials, the Committee may request their translation into Spanish.

#### 4.3 Original Documents and Copies

The Credentials that make part of Envelopes N° 1 and the documents in Envelope N° 2, shall be submitted in original or notarized or consularly authenticated copy plus two copies duly marked as "original", "Copy 1" and "Copy 2" on the third page. Copies shall not require notary or consular authentication.

#### 4.4 Way to Submit Envelopes N° 1, N° 2 and N° 3

4.4.1 The Envelopes must be submitted conveniently closed and clearly marked on their back with the indications "Envelope N° 1" or "Envelope N° 2" or "Envelope N° 3", respectively; and the Bidder's name.

4.4.2 Every document submitted in the Envelopes must be perfectly legible and must be numbered clearly, in a sequential order and initialized on each page **by the Legal Representative**<sup>51</sup>. Likewise, a detailed list of all the documents included in each Envelope must be provided..

4.4.3 In case of discrepancy between a figure expressed in numbers and letters, the amount expressed in letters shall prevail.

#### 4.5 Preparation and Submission Cost

The Bidder shall pay for any direct or indirect costs or expenses which it incurs in connection with the preparation and presentation of Envelopes N° 1, N° 2 and N° 3, as the case may be. The State of the Republic of Peru<sup>52</sup> or any of its agencies, entities or officials, or PROINVERSIÓN, APN, the Committee or their advisors shall not be responsible in any case for said cost, whichever the form of the Tender or its results.

### 5 PREQUALIFICATION REQUIREMENTS: CONTENTS OF ENVELOPE N° 1 (CREDENTIALS)

Only Corporations or Consortia may participate in the Tender herein.

The cost of the right to participate at the Short-listing Stage is Ten Thousand and 00/100 United States Dollars (US\$ 10,000.00) and it gives its holders the right to

<sup>51</sup> Modified by Circular Letter N° 006

<sup>52</sup> Specified by Circular Letter N° 010.

participate in the Integral Project Tender for the Concession of the New Container Terminal at the Callao Port Terminal – Southern Zone.

To be able to submit Envelope N° 1, a Bidder must have paid the right to participate in the Tender herein and provide, through the presentation of Envelope N° 1, the information detailed below, which will have a Sworn Statement character.

**The purchaser of the right to participate in the Prequalification Stage that decides not to participate in the Contest may transfer the same to a person in its group or to a third person. To this end, the purchaser of such right must present a communication in Envelope N° 1 by means of which the transfer in its favor is accredited, with the assignor's legalized signature.<sup>53</sup>**

## 5.1 General Information

***The Bidder must certify its commitment to submit truthful information through the presentation of Form 1 of Annex 3, which will be a Sworn Statement. The Sworn Statement shall be submitted to the Committee through an unofficial document signed by the Bidder's Legal Representative, whose signature must be authenticated by Notary Public or by the Consul of Peru in the country where it is located.<sup>54</sup>***

The Committee reserves the right to certify the truthfulness of any documents submitted by the Bidder during the different tender stages, and does not imply in any way a limitation of the Bidder's liability for possible insufficiency or lack of truthfulness of the submitted data or information.

Lack of truthfulness or insufficiency of the data or information submitted by the Bidder in this Tender, which is detected by the Committee may cause the Bidder's exclusion from the Tender at any of its stages.

Consortia will submit as many Annexes 3 – Forms 1, as companies make up the Consortium.

## 5.2 Bidder Short-listing Requirements:

For Short-listing, the Bidder shall comply with the following minimum requirements concerning technical-operational, legal and economic-financial matters:

### 5.2.1 Technical–operational capacity

To certify the technical-operational Short-listing of the Strategic Partner, according to the requirements listed below, Form 2 of Annex N° 3 of the Tender documents herein shall be completed, in addition to the respective documents to support the submitted information. This documentation may include third party reports used as certification, accreditation, supervision or control.

So as to certify the technical-operational capacity of the Bidder's Business Partner set forth in the Tender documents, the following provisions must be observed:

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<sup>53</sup> Added by Circular Letter N° 004.

<sup>54</sup> Modified by Circular Letter N° 006

#### Operational Experience (Port Management):

- a) Annual handling of 2,500,000 TEU or more. Handling by transshipment is also considered. Handling must refer to exclusive use terminals where the operator has effective control over the port manager.
- b) Effective control of the Port Manager in at least one terminal of exclusive use handling 500,000 TEU annually or more.
- c) Effective control of the Port Manager in at least one exclusive use terminal where the main weight is made up by containers and where total added docking-length is 600 or more meters.

**To certify that the main cargo is made up of containers, the Bidder may elect any of the following alternatives:**

- **That the cargo percentage destined to containers, measured in Metric Tons (MT), during a year as from 2002 is greater than 50%.**
- **That the occupancy of the docking sides used per containerized cargo is greater than 50% during a year as from 2002.**
- **That the percentage of income derived from the traffic and storage of containers is higher than 50% of the total income earned by the Terminal in any annual period counted as from 2002.**
- **That the traffic of containers exceeds 500,000 TEUs in any annual period counted as from 2002.<sup>55</sup>**

The Strategic Partner must concurrently comply with the requirements described in Items a), b) and c) above. To this effect, it may refer to one or more terminals, **so that different terminals may certify the experience stated in each item. Only in the case of the requirement outlined in Item a) may the Strategic Partner add the experience of its Related Companies and of companies of which the Strategic Partner is a Subsidiary. In the case of the requirements in Items b) and c), the Strategic Partner may satisfy them either directly or through one or more Subsidiaries. In no case may the experience of other Consortium members be included.**

**Similarly, the Strategic Partner must demonstrate that the activities mentioned as Operational Experience were carried out after January 1, 2002. Consequently, it shall suffice that the Operational Experience has been attained in any annual period subsequent to such date.<sup>56</sup>**

#### **5.2.2 Legal requirements:**

In addition the Bidder will certify strict compliance with the following legal requirements.

##### **5.2.2.1 That the Bidder shall be a corporation or a Consortium and must certify being so by submitting the following:**

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<sup>55</sup> Added by Circular Letter N° 006.

<sup>56</sup> Modified by Circular Letters N° 004 and N° 006.

- Authenticated copy of the Bidder's articles of incorporation. In case it is a Consortium, of the authenticated copies of the articles of incorporation of each one of the participants shall be submitted; **As an alternative to the articles of incorporation of the Bidder or the members of the Partnership, the by-laws currently in force or equivalent instrument issued by a competent authority in their country of origin will be accepted, whether for the Bidder or members of the Partnership.**<sup>57</sup>
- A Sworn Statement signed by the Bidder's Legal Representative, in case it is a corporation, confirming its existence, as per the applicable legal regulations according to its legislation of origin, drafted following the specimen shown as Form N° 1 of Annex N° 4. In the case the Bidder is a Consortium, besides complying with this requirement concerning each one of its members, **the Bidder must submit a Sworn Statement signed by its Legal Representatives and by the legal representative(s) of each one of its members**, confirming its existence and the joint and several liability<sup>58</sup> assumed by the participants. The Sworn Statement will be drafted following the model that appears as Form N° 2 in Annex N° 4. The Legal Representative's signature on this Sworn Statement shall be authenticated by a Notary Public in Peru or if the document is formalized out of Peru, the Bidder must proceed as set forth in 2.2.3; and,
- A Sworn Statement following the model that appears as Form N° 3 to Annex N° 4, signed by the Bidder's Legal Representative, explaining each shareholder or partner's interest in the Bidder. In the case of Consortia, said information will be required also concerning each one of the Consortium's participants, as applicable.

**5.2.2.2 That the Bidder, or one or of its shareholders or partners, or a company related to the Bidder or one of its shareholders or partners, has been the person that paid or acquired through an assignment of rights, the right to participate in the Prequalification Stage. In order to accredit this fact, it is sufficient to present a copy of the proof of payment of such Right or the communication by means of which the transfer in its favor is accredited, as corresponds. In addition, a Sworn declaration that explains the relation of entailment between the Bidder and said person, as indicated above**<sup>59</sup>

**5.2.2.3** Having a Legal Representative pursuant to paragraph 2.2, certifying him through the presentation of the authenticated copy of the respective power of attorney.

**5.2.2.4** A Sworn Statement, following the model in Form N° 4 of Annex N° 4, signed by the Bidder's Legal Representative declaring that the Bidder, its shareholders or partners and the members or shareholders or partners of said participants in case the Bidder is a Consortium, do not fall under any of the assumptions concerning ineligibility to comply with the contractual obligations as detailed in the referred model.

**Once the contract has been awarded, such requirements shall be in turn satisfied by the company that signs the contract.**

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<sup>57</sup> Modified by Circular Letter N° 004.

<sup>58</sup> Modified by Circular Letter N° 010.

<sup>59</sup> Modified by Circular Letter N° 004.

**Those who are included within the scope of Article 1366 of the Civil Code cannot be Bidders<sup>60</sup>.**

**5.2.2.5** A Sworn Statement according to Form 5 of Annex 4, signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders or partners and members, and the shareholders or partners of the latter in case the Bidder is a Consortium, have waived the right to invoke or exercise any diplomatic or other privileges or immunity or claim through the diplomatic channel and any **compensation or other in connection with said claim**, which may be **filed** by or against the **Peruvian State**, APN, PROINVERSIÓN, the Committee, their members and advisors, under the Peruvian Law or any other legislation concerning their obligations as related to these Tender Documents, the Economic **Proposal**, the Technical Proposal and the Contract.<sup>61</sup>

**5.2.2.6** A Sworn Statement, according to Form 6 of Annex 4, signed by the Bidder's Legal Representative, declaring that the Bidder's Advisors have not directly provided any services to APN, PROINVERSIÓN or the Committee during the development of this **Tender**, whether on a full time, part time or occasional basis in relation to **this private investment promotion process**.<sup>62</sup>

**5.2.2.7** A Sworn Statement as per the specimen shown as Form No. 7 to Annex 4, signed by the Bidder's Legal Representative confirming the Bidder, its shareholders or members, in case of Consortia, as well as the latter's shareholders or partners, in case of Consortia, do not own a direct or indirect interest in any of the other Bidders.

**For the case of corporations that have their shares listed on stock exchanges, the participation mentioned in the preceding paragraph will be limited where control is exerted over the administration of another Bidder, or any of its members in cases of partnership, in agreement with the provisions in the Regulations on Indirect Ownership, Entailment and Economic Groups approved by means of CONASEV RESOLUTION N° 722-97-EF-94.10 or such norm as replaces it. In order to accredit this fact, it will be sufficient to present a sworn declaration in such sense, written according to Form N° 7.1 of Appendix N° 4 and duly subscribed by the Legal Representative.**<sup>63</sup>

#### **5.2.2.8 Incorporation Commitment**

**5.2.2.8.1** The **Bidder** and each one of its members, if it is a Consortium, must submit a Sworn Statement expressing their intention to incorporate a Concessionaire in Peru, which may adopt any of the corporate structures regulated by the Business Corporations' Law<sup>64</sup>.

The minimum required capital of the Concessionaire firm is 20% of the Works and Equipment Official Estimated Budget, which must be subscribed and paid in pursuant to the Concession Contract.

The Sworn Statement format that shall be used appears as Annex N° 5, Form N° 1, of the Tender documents.

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<sup>60</sup> Added by Circular Letter N° 006.

<sup>61</sup> Modified by Circular Letter N° 010.

<sup>62</sup> Modified by Circular Letter N° 010

<sup>63</sup> Added by Circular Letter N° 004

<sup>64</sup> Modified by Circular Letter N° 006



**5.2.2.8.2** In the Concessionaire's shareholding structure, there shall always be a Strategic Partner, same which must have a Minimum Share that can never fall below 51%.

**5.2.2.8.3** The initial Strategic Partner must have and maintain a Minimum Share up to five years after the beginning of **Exploitation, according to the terms and conditions of the Contract**<sup>65</sup> and may not transfer or assign it so it ends up with a lower share than that established in the preceding paragraph. Once the aforementioned term has elapsed a new Strategic Partner can participate only if previously accepted by the Peruvian State through its competent organism. This new Strategic Partner shall comply with the same requirements and conditions set forth for the initial strategic partner. The experience acquired in this concession process may not include to the new Strategic Partner's credit.

**5.2.2.8.4** Within the term of 5 years following the beginning of **Exploitation**<sup>66</sup> referred to in the preceding section, the Strategic Partner may transfer the Minimum Participation in the Concessionaire to a company of the same economic group, to the extent that that both are 100% controlled by the same parent company, having prior authorization from the Peruvian<sup>67</sup> State through the competent bodies and that the new Strategic Partner always fulfills such requirements and conditions established for the Initial Strategic Partner, not being creditable the experience acquired by virtue of the present Concession process.<sup>68</sup>

### **5.2.3 Financial Requirements**

The Bidder must certify its compliance with the following financial requirements:

**5.2.3.1** The Bidder must certify it has a minimum Net Worth of US\$ 200 MM (Two Hundred Million US dollars)

In order to certify the minimum Net Worth, the Bidder's Net Worth or the aggregate Net Worth of the members of the Consortium will be taken into account.

**Only in the case of the Strategic Partner, it may alternatively present the Net Worth of the Companies Affiliated thereto for holding a majority share in the capital stock of the Net Worth of the company, or in the company of which it is a Subsidiary for holding a majority share in the capital stock thereof. In the event that the Strategic Partner presents the Net Worth of the company of which it is a Subsidiary for holding a majority share in the capital stock, it may not present its own Net Worth or that of the other Subsidiaries. In no case may the same net worth be presented more than once.**<sup>69</sup>

The financial information referred to in this paragraph can be submitted in Spanish or English and no translation is required in this case. It shall be submitted pursuant to Form N° 2 of Annex N° 5 and its sections, and signed on the original by the Legal Representative.

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<sup>65</sup> Specified by Circular Letter N° 006

<sup>66</sup> Specified by Circular Letter N° 006

<sup>67</sup> Specified by Circular Letter N° 010.

<sup>68</sup> Added by Circular Letter N° 004.

<sup>69</sup> Modified by Circular Letter N° 006.

A letter of reference issued by a Banking Entity or an International Financial Entity shall be included as detailed in Annex 2 to the Tender Documents. It shall contain at least the following information: (i) the commercial standing of the Strategic Partner or of the company of which it is a Subsidiary and (ii) the credit quality (general information on the credit history) The original copy of said letter must be included as part of the documents to be submitted. It is pointed-out that the information refers to the Strategic Partner or the company of which it is a Subsidiary.<sup>70</sup>

### **5.3 Verification of the Information Submitted Before the Committee**

By submitting the documentation referred to in Paragraph 5 until the Closing Date the Bidder commits to make available for the Committee any documents requested by it so as to prove the truthfulness of the submitted documentation according to said paragraph.

### **5.4. Verification of legal requirements.**

Before the closing of the operation, the company that signs the Contract shall present to the Committee, with respect to the company and the members of the Consortia, as the case may be, the certificate issued by CONSUCODE that it is not disqualified from participating in selection processes or for contracting with the State of the Republic of Peru<sup>71</sup>. In case any falsehood is detected in the information submitted, the granting of the award will be revoked, and the provisions of Sub-point 10.3.2. may be applied.<sup>72</sup>

## **6 SUBMISSION OF CONTENTS OF ENVELOPE N° 1 AND RESULTS OF SHORT-LISTING**

### **6.1 Submission of contents of Envelope N° 1**

The Bidder will submit its Envelope N° 1 at a place and time designated for each Bidder.

Envelope N° 1 will be received by the Committee or an Evaluation Committee for Envelopes N° 1, as appointed by the Committee and will be opened before a Notary Public. A document will be prepared stating that the corresponding Bidder has submitted his envelope and the number of pages included in the document.

The document described in the preceding paragraph will also mention whether the short-listing requirements have been met or not, the observations made by the Bidder and the contents of Envelope N° 1 submitted at this time.

If errors that can be corrected are found in Envelope N° 1, at the sole judgment of the Evaluation Committee, the latter will instruct the Bidder to correct the mistakes or comply with the conditions set within the time set forth in Annex N° 12, or otherwise be excluded from the qualification.

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<sup>70</sup> Modified by Circular Letter N° 006 and specified by Circular Letter N° 010.

<sup>71</sup> Specified by Circular Letter N° 010

<sup>72</sup> Added by Circular Letter N° 006.

In addition, to provide for easier review, verification and comparison of information and requirements, the Evaluation Committee for Envelope N° 1 may request any Bidder to clarify the information included in Envelope N° 1, in writing, without thereby introducing any changes to the contents. The request for the clarification and ensuing answer will be provided in writing, in conformance with provisions set forth in the preceding paragraph.

Within the deadline provided in the timetable, the Committee will issue its decision and identify the Short-listed Bidders who may proceed to the subsequent stages of the Evaluation process, after the proposal made by the Evaluation Committee for Envelope N° 1.

## **6.2 Announcement of Short-listed Bidders**

The Committee will announce Short-listed Bidders at the date mentioned in Annex N° 12. Each of the individual Bidders will be sent a special notice.

Any Short-Listed Bidder may organize a Consortium up to fifteen (15) calendar days before the submission of Envelopes 2 and 3. Likewise, within that term, Short-Listed Bidders, if associated in Consortia, may change their configuration, and may enter into partnerships with other Short-Listed Bidders. The new members must meet all the short-listing requirements, including the Bidders' having the technical and operational expertise **and the financial requirements**<sup>73</sup> described in the Tender Documents.

These changes must be reported to the Committee within the deadline mentioned above. The Committee reserves the right to accept or reject such changes.

The Committee's decision concerning the Short-listing will be final and may not be challenged.

## **7 CONTENTS OF ENVELOPES N° 2 AND N° 3**

### **7.1 Contents of Envelope N° 2**

The contents of Envelope N° 2 will be divided into six (6) documents, as described below:

#### Document N° 1: Sworn Statement<sup>74</sup>

The Bidder will submit a Sworn Statement following the specimen shown in Form N° 4 in Annex N° 5, stating the following:

- That data, representations, certifications and, generally, all the information included in envelope N° 1 are current and shall remain so until the Closing Date.

#### Document N° 2: Acceptance of Tender Documents and Contract

The Bidder shall submit a Sworn Statement stating his knowledge of the Tender Documents and acceptance of the Contract's final version, which will be delivered at

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<sup>73</sup> Modified by Circular Letter N° 010.

<sup>74</sup> Modified by Circular letter N° 018

the date mentioned in Annex N° 12; and that if awarded the Bid, the Concession Contract will be signed by the Concession Company created pursuant to Paragraph 5.2.2.8.

This document must be prepared following the specimen included as Form 1 in Annex N° 10 to these Tender Documents.

#### Document N° 3: Validity, Effectiveness And Seriousness Bond

The Bidder shall guarantee the validity, currency and performance of the Economic Supply for which purpose he will submit a bond following the specimen shown in Form N° 3 attached hereto as Annex N° 5.

#### Document 4: Technical Proposal<sup>75</sup>

It contains the Bidder's proposal for the design, Construction, Conservation and Exploitation of the New Container Terminal – Southern Zone, which may take into consideration the Benchmark Study. The proposal shall contain the minimum information and requirements stated in Annex 11 to these Tender Documents.

A Technical Proposal shall be rejected only if it is anticipated that it will not be able to meet the minimum service and productivity levels established in these Tender Documents and/or if it does not conform to the minimum parameters set therein.

The Works of the New Container Terminal – Southern Zone must be executed as provided for in the Concession Contract, for which purpose the Bidder's Technical Proposal approved by the Committee will be taken into account, and pursuant to the Technical File, which shall be prepared by the Concessionaire.

#### Document 5: Benchmark Business Plan:<sup>76</sup>

With a view to evaluating the consistency of the Bidder's Technical Proposal, the Benchmark Business Plan shall contain the basic guidelines on at least the aspects detailed below.

- **Marketing strategy**
- **Cargo and vessel forecast**
- **Infrastructure and Equipment development plan**
- **Operations Plan**
- **Human resources development plan**
- **Information system plan**
- **Investment and acquisitions plan**
- **Financial plan**
- **Other logistic business items**

#### Document 6: Final Version of the Concession Contract

In addition to the documents listed above, the Bidder will include a copy of the final version of the Concession Contract enclosed as an Annex and duly signed by the Short-listed Bidder's Legal Representative<sup>77</sup>.

<sup>75</sup> Modified by Circular Letter N° 012.

<sup>76</sup> Modified by Circular Letter N° 012.

## **7.2 Contents of Envelope N° 3: Economic Proposal-Competition Factor<sup>78</sup>**

**7.2.1** The Short-listed Bidder shall include in Envelope 3 *its Economic Proposal, through the following documents:*

***Form 1 of Annex 6, Economic Proposal Form – Rates:***

**It should include the rates for Standard Services according to the cargo with respect to the containers with 20 and 40 feet cargo, and the National Component Investment submitted by the Short-listed Bidder.**

**Form 2 of Annex 6, Economic Proposal Letter Form – ICA**

**It should consign the Additional Complementary Investment (ICA) submitted by the Short-listed Bidder.**

**7.2.2** Each one of the forms indicated shall be submitted in Envelope 3, in individual envelopes duly sealed and clearly marked on their back with the indications “Envelope 3 - Rate” and “Envelope 3 – ICA”, as applicable.

**7.2.3** For the preparation of its economic proposal, the Bidder shall take into consideration the provisions set forth in Form 3 of Annex 6, Standard Rate Index.

**7.2.4** The Economic Proposal shall remain in full force at least sixty (60) days after the Closing Date, even if that Economic Proposal was not awarded the Contract.

The Committee may determine the mandatory extension of the Economic Proposals

**7.2.5** For purposes of this Tender, the submission of Envelope 3 by a Short-listed Bidder will be considered an irrevocable Economic Proposal for the purposes of this Tender. An Economic Proposal implies the acceptance by the Short-listed Bidder of all the terms and conditions, without exceptions, included in the Contract and the Presentation Letter for the Economic Proposal.

## **8 CEREMONY FOR RECEPTION OF ENVELOPES N° 2 AND N° 3 AND OPENING OF ENVELOPE N° 2.**

### **8.1 Presentation ceremony for Envelope N° 2 and 3 and Opening of Envelope N° 2**

**8.1.1** Presentation of Envelopes N° 2 and N° 3 will be made in compliance with the general rules foreseen in Paragraph 4 to these Tender Documents. Nevertheless, the Committee will provide thirty (30) minutes tolerance for the submission.

If all the Short-listed Bidders are present before the Committee or its members, the Committee may start the ceremony before the tolerance period expires.

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<sup>77</sup> It must be understood that it is required the presentation of a copy of the final version of the Contract, duly signed in each page by the Short-listed Bidder’s Legal Representative, according to the Circular Letter N° 010.

<sup>78</sup> Modified by Circular Letters N° 001 and N° 018

**8.1.2** The Committee's Chairperson or his/her replacement will accept Envelopes N° 2 and N° 3, before a Notary Public who, in each individual case, will open Envelopes N° 2 in the order in which they were submitted by the Bidders.

**8.1.3** Once Envelopes N° 2 have been opened, the Notary will sign and stamp all the pages of the original documents included in the envelopes and will deliver them to the Committee for their review, which will be made as set forth in Paragraph 8.2 below.

**8.1.4** The unopened Envelopes N° 3 will remain under the custody of the Notary Public until the date set forth in the Time Table for the opening of Envelopes N° 3.

**8.1.5** The Notary Public will write a document stating that the Envelopes N° 2 and N° 3 have been received and Envelopes N° 2 were opened. The document will be signed by the Committee members and the Bidders who wish to do so.

## **8.2 Evaluation of Envelope N° 2 Contents**

**8.2.1** The Technical Proposals will be reviewed by the Committee or by a Technical Proposal Evaluation Committee. The Committee will accept or reject the Technical Proposals submitted by the Bidders.

**8.2.2** If the Committee or the Evaluation Committee makes any non-material comment about the Technical Proposal included in Envelope N° 2, they may request the Bidder to provide the corresponding non-material clarifications, corrections, adjustments and/or modifications to the submitted Technical Proposal, same which shall be made within the deadline granted.

**8.2.3** If the Committee or the Evaluation Committee decide that there is a non-material error that requires correction concerning any of the documents included in Envelope N° 2, other than the Technical Proposal, the Short-listed Bidder will be notified so that within the deadline granted he will correct the mistakes made. Under no circumstance the failure to submit any of the documents that must be included in Envelope N° 2 will be considered as a mistake that can be corrected.

**8.2.4** <sup>79</sup>The proposal included in Envelope 2 will be declared technically acceptable when the following conditions are jointly met<sup>80</sup>:

- a) **When complying with provisions set forth in Points 7.1, 8.2.2 and 8.2.3, as applicable, of the Tender Documents.**
- b) **When the Technical Proposal has been approved by the Committee, at the Evaluation Committee's suggestion, for which purpose compliance with all the requirements set forth in Appendix 1 to Annex 11 shall be verified."**

**8.2.5** The results of evaluating the contents of Envelope N° 2 will be written down in an evaluation document to be signed by the members of the Evaluation Committee.

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<sup>79</sup> The former paragraph included in this sub-point regarding the Alternative Works and Equipment for the Alternative project was eliminated by Circular Letter N° 010.

<sup>80</sup> Modified by Circular Letter N° 010

These results will provide the grounds for the PROINVERSIÓN Committee to technically accept or reject the proposal included in Envelope N° 2.

**The results of evaluating the documents included in Envelopes 2 will be made known personally to the Short-Listed Bidders on the date mentioned in Annex 12.<sup>81</sup>**

The Committee's decision on the qualification results for the proposal included in Envelope N° 2 are final and may not be claimed or challenged by the Bidders.

- 8.2.6** Only Bidders whose Technical Proposals were technically acceptable, will proceed to the next stage of the Bid, i.e. opening of Envelope N° 3.

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

### **9.1 Opening of Envelope N° 3 and Bid Award<sup>82</sup>**

**9.1.1** The Committee's Chairman *or the person substituting him*, will start the ceremony to open Envelopes 3 *and to Award the Contract, in the presence of a Notary Public in the place and hour indicated, informing those attending the ceremony the results of the evaluation of Envelopes 2 of Short-listed Bidders.*

**9.1.2** *Subsequently, Envelopes 3 and "Envelope 3 – Rates" of the Short-listed Bidders whose Technical Proposals were found to be technically acceptable will be opened and their contents read, ensuring that the Proposals meet the Tender Documents' requirements.*

**9.1.3** *Next, the ITE will be calculated, as established in Form 3 of Annex 6 and the National Component (CN) will be calculated as established in Sub-point 9.1.6. The proposals shall be put in order of the least to the highest ITE obtained, and the following cases may occur:*

a) *If the resulting ITE are different from the pre-established minimum, "Envelope 3 – ICA" of the Short-listed Bidders shall be returned and the scores shall be calculated pursuant to Sub-point 9.1.6. In this case, they shall be assigned an ICA<sub>x</sub> equal to cero in the application of the score formula of Sub-point 9.1.6.*

b) *If one or more ITE are equal to the pre-established lower limit, "Envelope 3 – ICA" of those Short-listed Bidders that did not obtain the said ITE, shall be returned. Next, "Envelopes 3 – ICA" of those Short-listed Bidders that obtained a ITE value equal to the minimum limit will be opened and their contents read, ensuring that the Proposals meet the Tender Documents' requirements and the scores shall be calculated based on Sub-point 9.1.6.*

**9.1.4** If any of the Economic Proposals included in Envelopes N° 3 fail to meet the requirements set forth in these Tender Documents, the Committee will disregard such Economic Proposal as a non-valid Economic Proposal.

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<sup>81</sup> Modified by Circular Letter N° 010

<sup>82</sup> Modified by Circular Letter N° 018.

**9.1.5 Subsequently, the Committee's Chairman or the person substituting him, will announce the valid Economic Proposals submitted in compliance with provisions of Forms 1 and 2 of Annex 6, when applicable, being its score determined.**

**9.1.6 Scoring of the Economic Proposals made by the Short-listed Bidders shall be carried out according to the following formulas:<sup>83</sup>**

$$\text{Initial Score (Pi)} = (\text{ITE}_{\text{Min}} / \text{ITE}_x) \times 100 + (\text{ICA}_x / \text{ICA}_{\text{Max}})^{84} \times 100$$

$$\text{Adjusted Score (Pa)} = \text{Pi} \times (1 + 0.2 \times \text{CN})$$

**where:**

- **ITE<sub>Min</sub> is the minimum Standard Rate Index obtained by the Short-listed Bidders.**
- **ITE<sub>x</sub> is the Standard Rate Index obtained by the Short-listed Bidder on being evaluated.**
- **ICA<sub>x</sub> is the Additional Complementary Investment submitted by the Short-listed Bidder to be evaluated.**
- **ICA<sub>Max</sub> is the maximum Additional Complementary Investment submitted by the Short-listed Bidder(s).**
- **CN is the percentage resulting from dividing the Investment in National Component submitted by the Short-listed Bidder on the Work Official Estimated Budget.**  
**The factor that the CN contains, corresponds to a bonus that pursuant to Law 28242 is granted to the proposals presented by the Short-listed Bidders.**  
**The CN does not have any relation with acceptance of the Bidder.**

**9.1.7 The Committee will award the Contract to the Short-listed Bidder who has obtained the highest Adjusted Score by the application of the formula indicated in Sub-point 9.1.6**

**9.1.8 In the case of a tie<sup>85</sup> of the Adjusted Scores obtained, as indicated in Sub-point 9.1.6, the following procedure shall be followed:**

- a) **If the ITE are higher than the pre-established minimum limit, the Short-listed Bidders that tied will be granted up to two (02) hours to submit a new Economic Proposal, pursuant to Sub-point 7.2.1. If the tie still persists with the ITE higher than the pre-established minimum limit, the Short-listed Bidders that tied will be granted up to an additional two (02) hours to submit a new Economic Proposal. If in spite of this, the tie continues, "Envelope 3 – ICA" will be opened and the Adjusted Store will be recalculated. If a winner is not determined, the Contract will be awarded through a raffle, conducted by the Notary Public during the ongoing ceremony and in compliance with the procedures that the Committee will determine at that time.**

<sup>83</sup> Modified by Circular Letters N° 001 and N° 018.

<sup>84</sup> If it is not necessary to open "Envelope 3 - ICA" or if the maximum ICA offered is zero, the second sum of the formula  $((\text{ICA}_x / \text{ICA}_{\text{Max}}) \times 100)$  will be zero.

<sup>85</sup> Modified by Circular Letters N° 001 and N° 018.



***The Short-listed Bidder submitting a new Economic Proposal will do so by delivering a new Envelope 3 which must include: (i) a new Form 1 of Annex 6, with the same amount of the Investment in the National Component presented previously; and (ii) a new Form 2 of Annex 6; both signed by the respective Legal representative of the Short-listed Bidder.***

***The new Economic Proposal should imply a lesser ITE than the one obtained previously.***

- b) If the ITE are equal to the pre-established minimum limit and therefore “Envelope – ICA” is opened, the Short-listed Bidders that tied will be granted up to two (2) hours to submit a new ICA Proposal. If the tie still persists, the afore-referred Short-listed Bidders that tied will be granted up to an additional two (2) hours to submit a new ICA Proposal. If in spite of this, the tie continues, the Contract will be awarded through a raffle, conducted by the Notary Public during the ongoing ceremony and in compliance with the procedures that the Committee will determine at that time.***

***The Short-listed Bidder submitting a new ICA Proposal will do so by delivering a new “Envelope 3-ICA” which must include a new Form 2 of Annex 6, signed by the respective Legal representative of the Short-listed Bidder.***

***The new ICA Proposal should imply an amount higher than the one previously submitted.***

***In the event that any Short-listed Bidder does not submit a new Economic Proposal or a new “Envelope 3-ICA”, as the case may be, or the new proposal submitted is invalid, the Economic Proposal or the “Envelope 3-ICA” presented previously will be considered as valid.***

***In the hypothetical cases mentioned in the afore-referred Paragraphs a) and b), the procedure established in Sub-points 9.1.3 to 9.1.7 shall be applied.***

- 9.1.9** After the Contract Award procedure has concluded, the Notary Public will prepare a document that will be signed by the members of the Committee, the Successful Bidder and other Short-listed Bidders that wish to do so.

## **9.2 Challenges**

### **9.2.1 Challenge Procedure**

- 9.2.1.1** Any Short-Listed Bidder may file a **motion for reconsideration** against the Contract Award before the Committee. To that effect, the challenge must be entered as a comment to the notarized ceremony minutes for the opening of Envelope 3 and must be supported in writing within a term not to exceed three (3) days after the date of the Contract Award. The Committee will issue a decision on the **motion** within a term not to exceed ten (10) days as from the day when the bank guarantee described in Sub-point 9.2.2 was delivered<sup>86</sup>

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<sup>86</sup> Modified by Circular Letter N° 013.

**9.2.1.2** The affected Bidder may file an appeal against the Committee's decision **within three (3) Days after the decision was received before the same Committee, which shall submit it to PROINVERSIÓN Steering Council for it to issue a decision.** The appeal may also be filed against an implied decision denying the challenge if, after the ten (10) Day period granted to the Committee to resolve the submitted challenge, the latter has not made a decision in this respect. In the latter case, the deadline to file an appeal will start running on the day after the then (10) Day term mentioned above expires<sup>87</sup>.

**9.2.1.3** Challenges against the explicit or implicit decision by the Committee will be resolved by PROINVERSIÓN's Steering Council within thirty (3) Days after it was filed. The Second and final instance resolution will be definitive and not subject to administrative appeal.

## **9.2.2 Challenge Bond**

**9.2.2.1** No challenge will be considered as valid, and will have no effect whatsoever, unless within the three (3) Days after the Contract Award, the challenging Bidder delivers to the Committee a joint and several, irrevocable, unconditional, non-excusable, non-dividable and automatic Letter of Guarantee, as shown in Annex 7, written on behalf of PROINVERSIÓN. The aforementioned Letter of Guarantee will be issued by a Banking Entity or an International Financial Institution as described in Annex 2 to these Tender Documents, for an amount equal to 1% of the **Work Official Estimated Budget**<sup>88</sup>.

**In the case of a Letter of Guarantee issued by an International Financial Institution, the Letter of Guarantee must be endorsed and confirmed by any of the Banking Entities detailed in Appendix 2 of Annex 2.**<sup>89</sup>

**9.2.2.2** The challenge warrant bond may be executed by PROINVERSIÓN, if the appeal filed by the Bidder is declared groundless or inappropriate, or if such appeal is not filed within the deadline prescribed in Paragraph 9.2.1, and the Committee's (explicit or implicit) resolution is accepted. If the challenge or appeal is declared grounded, the challenge warrant bond will be returned to the corresponding Bidder, with no interest accrued.

**9.2.2.3** The challenge warrant bond described in this Section will remain in force from the day when the challenge was filed until sixty (60) Days later counted starting on the Competition's Closing Date.

## **9.3 Deserted Competition**

This competition may be declared deserted unless at least one Valid Economic Proposal is submitted or when no valid proposals are submitted.

In either of the two cases above, the Autoridad Portuaria Nacional may make a new call for Bids at a later date.

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<sup>87</sup> Modified by Circular Letter N° 013

<sup>88</sup> Replaced by Circular Letter N° 010 and modified by Circular letter N° 018.

<sup>89</sup> Added by Circular Letter N° 018.

#### **9.4 Competition Suspension or Termination**

The Competition may be suspended or terminated or declared null and void at any moment before the closing date without need for explicitly proposing a reason if so decided by the Committee which will not be held liable in any respect for this decision.

This decision may not be challenged.

### **10 CLOSING PROCEDURE**

#### **10.1 Closing Ceremony**

The Closing Ceremony will take place at the time and location mentioned in the circular letter before a Notary Public who will certify the acts described in paragraph 10.2. The Notary's fees for this ceremony will be borne by the Successful Bidder.

#### **10.2 Closing Act**

The following acts will take place on the Closing Date:

**10.2.1** The Successful Bidder will deliver the following documents:

**10.2.1.1** Successful Bidder accreditation of his registration in the corresponding registry office, comprising the powers awarded to the Company's Legal Representative who will sign the contract pursuant to the paragraph 2.2.4 of the Tender documents.

**10.2.1.2** Documents certifying the registration in the corresponding Registration Office of the Bylaws governing the company that will sign the Contract. This company must be organized in Peru and include the same partners, shareholders or members, in the same proportion they held at the date of the Bid Award, and establish with a minimum paid in company capital pursuant to paragraph 5.2.2.8.1.

**10.2.1.3** Notarized copy of the share registration entries or equivalent documents showing the shareholders structure or interest in the concession-holding company at the Closing Date.

**10.2.1.4** A Performance Bond for the Concession Contract described in paragraph 1.2.43.<sup>90</sup>

**The specimen of the warrant bond appear as Form 2 in Annex N° 2.**

**10.2.1.5**<sup>91</sup> The Successful Bidder shall deliver the other documents indicated in Clause 3.3 of the Concession Contract.

**10.2.2. Execution of the Contract by the Grantor, acting by and through APN, and the Concessionaire<sup>92</sup>**

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<sup>90</sup> According to Circular Letter N° 012, the Performance Bond for the Work and Equipment Installation was eliminated.

<sup>91</sup> Added by Circular Letter N° 018

<sup>92</sup> Modified by Circular Letter N° 010.

**10.2.3** PROINVERSIÓN will return to the Successful Bidder the guarantee mentioned in Document N° 3 and Paragraph 7.1 of the Tender documents.

**10.2.4** A list of the movable and immovable assets to be handed over at for which the Concession Holder will prepare the initial inventory, pursuant to the Concession Contract.

**10.2.5**<sup>93</sup>

### **10.3 Execution of the Validity, Currency and Performance Warrant Bond for the Economic Proposal**

**10.3.1** If the Successful bidder fails to comply with any of his duties at the Closing Date pursuant to paragraph 10.2 for reasons that may be solely attributed to him, PROINVERSIÓN may execute the Bidder's Validity, Currency and Performance Warrant Bond immediately without sending prior notice to the Successful bidder. The execution of this Warrant Bond does not limit or restrict any other rights pertaining to PROINVERSIÓN before the Successful bidder who failed to comply with his proposal-related obligations.

**10.3.2** The Committee is empowered but not obliged, if the Successful Bidder fail to comply, to accept the proposal of a different Bidder who receives the second higher store pursuant to **Sub-point 9.1.6**<sup>94</sup> of this Tender Documents. If so, the Committee will inform the Bidder who submitted that proposal, informing the Bidder about the decision to declare him as new Successful Bidder and of the arrangements for the Closing Ceremony as well as the date, time and place were it will be held".

**10.3.3** Notwithstanding this section 10.3, PROINVERSIÓN and/or the Committee may initiate all legal proceedings allowed by the Applicable Law as a direct or indirect consequence of the original Successful bidder failure to comply.

### **10.4 Contract's Coming into Force**

For the effects of signing the Contract, the Ministry of Transport and Communications, pursuant to the provisions set forth in Article 10.2 of the LSPN and Article 48 of its Regulation, shall, by Supreme Decree, approve the Contract.<sup>95</sup>

The Contract will come into force and will be fully valid for all legal purposes on the Closing Date after signing by the APN, pursuant to the National Port System Law N° 27943. For all purposes, the Closing Date will be the date when the Contract is signed.

## **11 FINAL DISPOSITIONS**

### **11.1 Applicable Legal Framework**<sup>96</sup>

These Tender documents, the documents herein, and the Contract will be governed and construed pursuant to the Applicable Law described in paragraph 1.3.

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<sup>93</sup> Modified by Circular Letter N° 006 and eliminated by Circular Letter N° 018.

<sup>94</sup> Modified by Circular Letter N° 018

<sup>95</sup> Added by Circular Letter N° 018

<sup>96</sup> Modified by Circular Letter N° 010.

## 11.2 Jurisdiction and Competence

11.2.1 Notwithstanding the waivers made in Sub-points 1.4.2, 1.4.3 and other sections of these Tender Documents, the Short-Listed Bidders and the members of the consortia submit to and irrevocably accept the jurisdiction and venue of the judges and courts in and for the city of Lima, Peru, to settle any conflict that may arise between them and the State of the Republic of Peru in connection with these Tender Documents and expressly and irrevocably waive their right to file any diplomatic claim as well as their right to bring actions of any kind before any other instance or jurisdiction.

**Nevertheless, as from the execution of the Contract, the Concessionaire and the Grantor exclusively submit to Section XVI of the Concession Contract to settle any disputes that may arise, including those related to these Tender Documents.**<sup>97</sup>

11.2.2 No provision modifying, altering or limiting the rights of the State of the Republic of Peru<sup>98</sup>, APN, PROINVERSIÓN, or the Committee to file legal actions or to execute a sentence issued in Peru, filed before the judges and courts of other jurisdictions will be applicable. The pre qualified Bidders and the members of the Consortia waive their right to invoke or exercise any type of immunity or privilege that they may hold in those jurisdictions, without reserve or limitation whatsoever, and accept from this moment and for the sole reason of participating in this competition, the alternative jurisdiction or jurisdictions eventually chosen by the State of the Republic of Peru<sup>99</sup>, APN, PROINVERSIÓN, or the Committee, as applicable.

## 11.3 Contribution to FONCEPRI

**Pursuant to the Third Supplementary Provision of the Law of Bases for Decentralization, Law 27783, FOPRI will receive 2% of the resources actually received, i.e., of the Compensation.**<sup>100</sup>

## 11.4 Environment

The Environmental Impact Assessments are available to the Bidders in the Data Room. The Bidders will take them into consideration together with those issues resulting from the field studies they must carry out when preparing their Proposals.

## 11.6 <sup>101</sup>Conformance by the Controller General

These Tender documents as well as the Contract resulting from the process underway shall include all the reporting considerations, if any, issued by the General Controller of the Republic, as applicable, pursuant to paragraph L Article 22 and their Law N° 27785 as follows:

“Article 22.- Attributions

The Controller’s attributions include:

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<sup>97</sup> Modified by Circular Letter N° 013.

<sup>98</sup> Specified by the Circular Letter N° 010.

<sup>99</sup> Specified by the Circular Letter N° 010.

<sup>100</sup> Modified by Circular Letter N° 006.

<sup>101</sup> The paragraph regarding the Process Expenses was eliminated by Circular Letter N° 018.

L) “To report in anticipation, about the operations, warrants, guarantees provided by the state, including draft contracts which in any way may compromise its credit documents or financial capacities, during negotiations whether in Peru or abroad.”

Agreement N° 103-02-2005 by PROINVERSIÓN's Steering Council reached at its meeting on June 30, 2005, determines only the Technical and Economic Proposals submitted by the Bidders in this Competition will be accepted to the extent at this Republic's General Controller prior report was received. This report must not include any objections, or the corrections to those objections must have been already made.

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**ANNEX N° 1**

**CONFIDENTIALITY AGREEMENT**  
(Reference: Paragraph 3.2.2. of Tender Documents)

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

Messrs  
**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura y de Servicios Públicos  
Agencia de Promoción de la Inversión Privada - PROINVERSIÓN**

Bidder: .....

..... (name of Bidder) represented by  
..... (position of signing person) Mr.  
..... (name of signing person),  
identified with ....., N° ..... with office of record at  
..... hereby  
declare our interest in having access to the Data Room made available by the Committee  
pursuant to Tender Documents for Comprehensive Projects for the transfer to private  
companies of the New Containers Terminal at the Callao Port Terminal – South Zone. In this  
respect we commit to keep strict confidentiality on all the information therein, not to  
disseminate any materials or information to third parties without prior written authorization  
granted by the Committee, not to use the information therein for purposes other than those  
relating to the Competitive Tender and not to use the information in any manner that may  
raise a conflict between the interests of the State, its officials or agencies, APN,  
PROINVERSION and the Committee.

The materials obtained from the Data Room will be made available only to our management  
and consultants in relation to the Competitive Tender. These personnel will be made aware  
of this agreement and will likewise be obliged to maintain strict confidentiality regarding the  
abovementioned information. We will take every reasonable measure to prevent the  
dissemination of this information to anyone person without prior written authorization from the  
Committee.

No license or right has been granted to our advisors concerning the disposal of any  
information comprised by this Agreement.

We hereby accept that neither the State, nor its officials or agencies, the APN,  
PROINVERSION, or the Committee, its advisors or members, have declared or guaranteed,  
explicitly or implicitly, the accuracy, reliability or integrity of the information made available to  
us, and that none of these parties, or their respective directors, officials employees or  
representatives will be held liable before us and/or anyone else as a consequence of the use  
of this information and materials. We represent that we will make our own independent  
decisions concerning the information made available to us and recognize that we will not  
depend on or be induced by such information when deciding on our intention to join the  
Competitive Tender.

We accept that no information supplied, nor any material, debate, negotiation or related issue constitute an offer made by the Committee or on its behalf, and that the former will not become grounds or be taken into consideration in relation to any agreement, unless explicitly agreed to in writing by the Committee.

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

We also accept that the Committee will not commit nor be obligated to provide access to additional information or to update the available information and materials nor to correct any eventual inaccuracy therein.

This agreement will not apply to information that: (a) was in the public knowledge at the time when provided to us or our advisors or that became of public knowledge after that time (excepting information that was made public in breach of this agreement by us or our advisors); or (b) to date was already legally in our possession and therefore is not subject to the confidentiality agreement.

The rights and obligations prescribed in this document will be governed by and construed according to Peru's laws and regulations and the parties hereto irrevocably agree to submit to the jurisdiction of the judges and tribunals of Lima, Peru.

As a sign of acceptance of and conformance with the terms and conditions set forth in this confidentiality agreement, we sign it and deliver a copy of same to the Committee on the [...<sup>xx</sup>] day of [...] of 200 [...]

Notarized signature .....

Name .....

(Bidder's and/or Purchaser's Legal Representative)

Organization .....

(Bidder)



**ANNEX 2<sup>102</sup> Form 2-A Eliminated**

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<sup>102</sup> Eliminated by Circular Letter N° 012

## ANNEX 2

### Form 2: FORM OF CONCESSION CONTRACT PERFORMANCE BOND<sup>103</sup> (Reference Sub-point 10.2.1.4 of the Tender Documents)

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

Messrs  
**Ministry of Transportation and Communications**  
LIMA-PERU

Ref.: Letter of Guarantee No.....  
Due date:.....

Dear Sirs,

This is to certify that at the request of our clients, [.....] [name of corporation] (hereinafter the "Concessionaire"), we have issued this joint and several, irrevocable, unconditional letter of guarantee of immediate execution, without benefit of discussion or division, up to the amount of [.....] in favor of the Ministry of Transportation and Communications to guarantee the proper and timely performance of each and every obligation of the Concessionaire, including its **Construction, Conservation and Exploitation** obligations under the Concession Contract for the New Container Terminal at El Callao Port Terminal – South Zone (**hereinafter the "Contract"**).

This Performance Bond also guarantees the proper and timely performance of each and every obligation of the Concessionaire pursuant to the provisions set forth in the Consolidated Text of the rules with the status of a law that govern the concession to the private sector of public infrastructure and services works as approved by Supreme Decree 059-96-PCM.

To honor this Performance Bond in your favor, a written notice from the Supervisory Body of Investment in Transport Infrastructure for Public Use (OSITRAN) forwarded by notarial means shall suffice. Such notice shall be signed by the Chairman of the Board of Directors or by any duly authorized official of said organization. Payment shall be made effective within twenty-four (24) hours following receipt of the notice at our offices located at [.....].

Any delay on our side to honor this bond shall accrue interest at the **LIBOR rate plus a 3% spread. Interest shall** accrue starting on the date when the request to honor the bond was made until the actual date of payment.

Our obligations pursuant to this Bond shall not be affected by any dispute that may arise between you and our clients.

This Performance Bond shall remain in full force and effect from [...] 200... until and including [...], 200...

<sup>103</sup> Modified by Circular Letter N° 012.

Yours very truly,

Signature .....

Name .....

Banking Entity .....

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## ANNEX N° 2

### Appendix 1: FIRST CLASS FOREIGN BANKS AND INTERNATIONAL FINANCIAL ORGANIZATIONS AUTHORIZED TO ISSUE WARRANT BONDS AS REQUIRED IN THE TENDER DOCUMENTS

- **Foreign Banks:**

First class foreign banks included in the list approved by the Central Reserve Bank of Peru through Circular Letter No. 010-2005-BCRP published in the El Peruano official gazette on June 30, 2005 will be considered, as well as the branches and offices of the above-mentioned foreign banks.

- **Multinational organizations:**

- ⇒ Fondo Latinoamericano de Reservas (FLAR) Colombia
  - ⇒ Banco Latinoamericano de Exportaciones S.A. (BLADEX) Panama
  - ⇒ Corporación Andina de Fomento (CAF) Venezuela
  - ⇒ Banco Interamericano de Desarrollo (BID) United States of America
  - ⇒ World Bank (IBRD)
- Any multilateral credit organization where the State of the Republic of Peru is a member.
  - Any other international financial organization approved by the Concession giver holding a risk rating not below AA pursuant to an evaluation made by a recognized organization that is acceptable to the National Supervising Commission for Companies and Securities (CONASEV).

## ANNEX N° 2

### Appendix 2: LOCAL BANKS AUTHORIZED TO ISSUE WARRANT BONDS AS REQUIRED IN THE TENDER DOCUMENTS

Local banks and financial organizations authorized to issue warrant bonds are those holding at least CP1 rating for short term securities; A, global financial strength and AA for short term securities.

To date the local banks holding the minimum rating detailed in the preceding paragraph are as follows.

- BIF
- Citibank
- Continental
- Crédito
- Financiero
- Interbank
- Paribas
- Sudamericano
- Wiese-Sudameris

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**ANNEX N° 3**

**Form 1: SWORN STATEMENT (Commitment to provide truthful information)**  
(Reference paragraph 5.1. of Tender Documents)

We hereby under oath declare as follows:

That all the information provided to certify our experience in management and operation as shown in the documents delivered so far is truthful.

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

**Name, representative and signatures for the company or companies included in the consortium.**

Organization .....

Corporation

Name .....

Name of Corporation's Legal Representative

Signature .....

Signature of Corporation's Legal Representative

Organization .....

Corporation

Name .....

Name of Corporation's Legal Representative

Signature .....

Signature of Corporation's Legal Representative

**ANNEX 3<sup>104</sup>**

**Form 1-A: SWORN STATEMENT (Relationship with payer of right to participate in the Short-Listing Stage)**

(Reference Sub-point 5.2.2. of the Tender Documents)

We hereby declare under oath that:

\_\_\_\_\_ (*name of Bidder*) acquired the right to participate in the Short-Listing Stage through \_\_\_\_\_ (*name of the person who paid for said right*), who is \_\_\_\_\_ (*as the case may be, choose: one of our shareholders, partners, members, or a company related to us or to one of our shareholders, partners or members, or whoever transferred its right to participate in the Short-Listing Stage, through assignment of rights*).

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

In the event of an assignment of rights, this sworn statement must be also signed by:

Organization .....  
Assignor

Name .....  
Assignor's Legal Representative

Signature .....  
Bidder's Legal Representative

<sup>104</sup> Modified by Circular Letters N° 006 and N° 010  
Concession of the New Container Terminal - Callao Port Terminal – Southern Zone

**ANNEX 3<sup>105</sup>**  
**Form 2: Technical and Operational Capacity**

**SWORN STATEMENT**

**BIDDER:** .....

**STRATEGIC PARTNER:** .....

OPERATIONAL EXPERIENCE (Port Management)

CERTIFICATION OF EFFECTIVE CONTROL		TERMINAL LOCATION	PORT AUTHORITY OR EQUIVALENT	ANNUAL TERMINAL TRAFFIC	TOTAL DOCKING LENGTH	% TERMINAL FOR CONTAINERS 1) <sup>106</sup>
Name of Terminal Operator/Management Company	Effective Control Mechanism or Type of Relationship					
<b><u>I. Companies over which the Strategic Partner has effective control</u></b>						
<b><u>II. Other related companies or with respect to which the Strategic Partner is a subsidiary</u></b>						

<sup>105</sup> Modified by Circular Letter N° 006.

<sup>106</sup> Required only in those cases where 600 m docking length are evidenced.



TOTAL						
-------	--	--	--	--	--	--

Name: Bidder's Legal Representative  
Signature: Bidder's Legal Representative

UNOFFICIAL TRANSLATION

**ANNEX N° 4****Form 1: CREDENTIALS FOR QUALIFICATION (Organized Corporation)  
(Reference paragraph 5.2.2 of the Tender Documents)****SWORN STATEMENT**

We hereby represent under oath that [...] (name of Bidder) is a corporation organized under the laws of [...] and existing under the laws in force in the country of its incorporation.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

(The signature of the Bidder's Legal Representative affixed to this Sworn Statement shall be notarized.)

NOTE: This document must also be submitted for each of the companies included in a Consortium.

**ANNEX 4****Form 2<sup>107</sup>: CREDENTIALS FOR QUALIFICATION (Only for Consortia)**  
(Reference Sub-point 5.2.2 of the Tender Documents)**SWORN STATEMENT**

We hereby represent under oath that:

.....  
(Name of all Consortium members) have formed a consortium to participate in the Tender.

.....  
(Name of all Consortium members) are companies duly organized and existing under the laws **of their country of origin**.

.....  
(Name of all Consortium members) are responsible on a joint and several and indivisible manner for each and everyone of the obligations undertaken and the sworn statements made by the Bidder in connection with this Tender, before the Republic of Peru, APN, PROINVERSIÓN and the Committee.

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

Organization .....

Bidder

Name .....

Bidder's Legal Representative

Signature .....

Bidder's Legal Representative

Organization .....

Legal Representative for (Member 1)

Name .....

<sup>107</sup> Modified by Circular Letters N° 006 and N° 010.

Legal Representative for (Member 1)

Signature .....  
Legal Representative for (Member 1)

Organization .....  
Legal Representative for (Member 2)

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

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

(...)

Organization .....  
Legal Representative for (Member n)

Name .....  
Legal Representative for (Member n)

Signature .....  
Legal Representative for (Member n)

(The signature of the Legal Representative in this sworn statement must be authenticated by a notary)

UNOFFICIAL TRANSLATION

**ANNEX N° 4**
**Form 3: CREDENTIALS FOR QUALIFICATION (Organized corporation)  
(Reference paragraph 5.2.2 of Tender Documents)**
**SWORN STATEMENT**

We hereby represent under oath that our shareholders, members or partners' interest in the Consortium is as follows:

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

For Tender Consortia:

Members	Percent interest in Bidder
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
<b>TOTAL</b>	

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

Organization .....  
Bidder

Name .....



Bidder's Legal Representative

Signature

.....  
Bidder's Legal Representative

UNOFFICIAL TRANSLATION

**ANNEX 4****Form 4<sup>108</sup>: CREDENTIALS FOR QUALIFICATION**  
(Reference Sub-point 5.2.2 of the Tender Documents)**SWORN STATEMENT**

We hereby declare under oath that [..... (name of Bidder)], [.....  
(the Members of the Consortium)]:

- a. **Are not administratively sanctioned with temporary or permanent disqualification from exercising their rights to participate in selection processes called by the State of the Republic of Peru, or to enter into contracts with the State of the Republic of Peru.**
- b. **Have not lost their condition as concessionaires due to the breach of a concession contract entered into with the State of the Republic of Peru within the framework of the process for the promotion of private investment referred to in the Consolidated Text of Concessions approved by Supreme Decree 059-96-PCM or Law 28059, Framework Law for the Promotion of Decentralized Investments.**

Place and Date: .....

Organization .....

Name: .....  
Bidder's Legal Representative

Signature: .....  
Bidder's Legal Representative

---

<sup>108</sup> Modified by Circular Letter N° 006 and N° 010

## ANNEX N° 4

Form 5<sup>109</sup>: CREDENTIALS FOR QUALIFICATION (Organized corporation)  
(Reference paragraph 5.2. 2 of the Tender Documents)

## SWORN STATEMENT

We hereby represent under oath that [...] (name of Bidder) and its shareholders, members or partners, and the latter's shareholders and partners, as applicable, give their right to the following:

1. Calling for or exercising any privilege or diplomatic or any other type of immunity or
2. File claims by diplomatic means and any **compensation or other in connection with said claim** which may be **filed** by or against the State, APN, PROINVERSIÓN, the Committee, their members and advisors, under the Peruvian law or any other law in connection with our obligations as related to the Tender Documents, the Economic Proposal, the Technical Proposal and the Concession Contract.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

<sup>109</sup> Modified by Circular Letters N° 006 and N° 010



**ANNEX 4****Form 5.1<sup>110</sup>: CREDENTIALS FOR SHORT-LISTING**  
(Applicable to companies listed on the Stock Exchange)**SWORN STATEMENT**

We hereby represent under oath that ..... (name of Bidder) and its shareholders, members or partners waive their right to:

1. Invoke or exercise any diplomatic or any other type of privilege or immunity.
2. File claims by diplomatic means and any compensation or other in connection with said claim that may be filed by or against the State, APN, PROINVERSIÓN, the Committee, their members and advisors, under the Peruvian law or any other law in connection with our obligations as related to the Tender Documents, the Economic Proposal, the Technical Proposal and the Concession Contract.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

---

<sup>110</sup> Added by Circular Letter N° 013.

**ANNEX 4<sup>111</sup>****Form 6: CREDENTIALS FOR QUALIFICATION**  
(Reference Sub-point 5.2.2 of the Tender Documents)**SWORN STATEMENT**

We hereby represent under oath that our legal and technical advisors have not provided any type of direct services to APN, PROINVERSIÓN or the Committee during the development of this **Tender**, whether on a full time, part time or occasional basis, in connection with **this** private investment promotion process.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

---

<sup>111</sup> Modified by Circular Letter 010.

**ANNEX N° 4****Form 7: CREDENTIALS FOR QUALIFICATION  
(Reference paragraph 5.2.2 of the Tender Documents)****SWORN STATEMENT**

We hereby represent under oath that [...] (name of Bidder) its shareholders, partners or members, or the latter's partners or shareholders, as applicable, have a direct or indirect interest in any other Bidder.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

UNOFFICIAL TRANSLATION

**APPENDIX N° 4****Form 7.1<sup>112</sup>: CREDENTIALS FOR QUALIFICATION  
(Reference Section 5.2.2 of the Contest Terms)****SWORN DECLARATION**

By means of the present, we solemnly swear that ..... (name of the Bidder), its shareholders, partners or members, if being the case, have direct or indirect participation in no other Bidder where it exerts control over the administration or any of its members in case of partnership as provided in the Regulations on Indirect Ownership, Entailment and Economic Groups approved by means of CONASEV RESOLUTION N° 722-97-EF-94.10.

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

Entity .....  
Bidder

Name .....  
Legal representative of the Bidder

Company.....  
Legal representative of the Bidder

---

<sup>112</sup> Added by Circular Letter N° 004.

**ANNEX 5****Form 1A<sup>113</sup>: UNDERTAKING OF INCORPORATION****SWORN STATEMENT**

(Reference Sub-point 5.2.2.8 of the Tender Documents)

We hereby declare under oath that:

1. .... (name of Bidder) states its intention to organize a Corporation with principal place of business in the Republic of Peru and with the capital stock required by the Concession Contract, in case it is awarded the Contract.
2. The future corporation shall sign the Concession Contract for the New Container Terminal (Southern Zone) at El Callao Port Terminal (TPC).
3. Should we be the Successful Bidder, we undertake to deliver the Notarial Certified Copy of the Articles of Incorporation of the Concessionaire, including the certificate of registration with the pertinent Public Records Office, on the Closing Date indicated in Annex 12 to the Tender Documents.

We therefore declare that we know and accept that our failure to comply with this undertaking may be taken into account to declare null and void the Award of the Contract in our favor.

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

Organization .....

**Bidder**

Name .....

**Bidder's Legal Representative**

Signature .....

**Bidder's Legal Representative**

<sup>113</sup> Added by Circular Letter N° 006 and modified by Circular Letter N° 010.

**ANNEX 5****Form 1 B<sup>114</sup>: UNDERTAKING OF INCORPORATION**

(CONSORTIA)

**SWORN STATEMENT**

(Reference: Sub-point 5.2.2.8 of the Tender Documents)

**We hereby declare under oath that:**

1. .... (each of the members of the Consortium) have formed a Consortium in order to participate in this Tender.
2. ....(the parties indicated in the foregoing point) hereby state our intention to organize a corporation with principal place of business in the Republic of Peru and with the capital stock required by the Concession Contract, in case they are awarded the Contract
3. The future corporation shall sign the Concession Contract for the New Container Terminal (Southern Zone) at El Callao Port Terminal (TPC).
4. If awarded the Contract, we undertake to deliver the Notarial Certified Copy of the Articles of Incorporation of the Concessionaire, including the certificate of registration with the pertinent Public Records Office, on the Closing Date set forth in Annex 12 to the Tender Documents.

We therefore declare that we know and accept that our failure to comply with this undertaking may be taken into account to declare null and void the Award of the Contract in our favor.

**Place and date:** ..... , 200...**Organization** .....  
**Bidder****Name** .....  
**Bidder's Legal Representative****Signature** .....  
**Bidder's Legal Representative**

<sup>114</sup> Added by Circular Letter N° 006 and modified by Circular Letter N° 010.

**Organization** .....  
**Legal Representative** (Member 1)

**Name** .....  
**Legal Representative** (Member 1)

**Signature** .....  
**Legal Representative** (Member 1)

**Organization** .....  
**Legal Representative** (Member 2)

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

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

(...)

**Organization** .....  
**Legal Representative** (Member n)

**Name** .....  
**Legal Representative** (Member n)

**Signature** .....  
**Legal Representative** (Member n)

UNOFFICIAL TRANSLATION

**ANNEX 5**

**Form 2<sup>115</sup>: FINANCIAL REQUIREMENTS - ENVELOPE 1**  
(Reference Sub-point 5.2.3 of the Tender Documents)

**FORM OF LETTER OF FINANCIAL INFORMATION SUBMISSION  
FOR QUALIFICATION**

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

Messrs  
**PROINVERSION Committee**  
**for Investment in Infrastructure and Public Utility Projects**  
**Private Investment Promotion Agency – PROINVERSION**  
**LIMA – PERU**

Bidder : .....

Ref.: Comprehensive Projects Tender for the Private Sector  
Concession of the New Container Terminal at El Callao  
Port Terminal – Southern Zone

Pursuant to Sub-point 5.2.3 of the Tender Documents, we hereby submit our financial information submission letter.

**I. FINANCIAL REQUIREMENTS**

**A.1 Bidder's Net Worth if it is a corporation (See Notes 1 and 2)**

NET WORTH      US\$ [                      ]
--

**A.2 Bidder's Net Worth if it is a Consortium (See Note 2)**

Members	US\$ Net Worth
Strategic Partner (See Note 3)	
[Member 2]	
...	
[Member n]	
<b>NET WORTH :</b>	<b>US\$ [                      ]</b>

<sup>115</sup> Modified by Circular Letters N° 006 and N° 010





- Note 1: If certified by the Bidder though an Affiliated Company or a company of which it is a Subsidiary, the amount to be specified must be the same as the total amount appearing in Table B.
- Note 2: In the case of a net worth registered in a non US\$ currency, Table C will be used for its respective conversion.
- Note 3: The amount indicated herein must be the same as the total amount appearing in Table B.
- Note 4: Complete also Section D.
- Note 5: The average selling exchange rate shall be that published by the Superintendency of Banking and Insurance (SBS) on the business date immediately before the date of submission of Envelope 1.

Sincerely,

Signature .....

Name .....  
Bidder's Legal Representative

Entity .....  
Bidder

UNOFFICIAL TRANSLATION

## ANNEX 5

Form 3<sup>116</sup>: VALIDITY, EFFECTIVENESS AND SERIOUSNESS BOND

(Reference: Point 7.1 of Tender Documents)

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

Messrs

**Agencia de Promoción de la Inversión Privada - PROINVERSIÓN**  
LIMA, PERU

Subject: Bond No .....

Maturity date: .....

Dear sirs: ,

This is to certify that at the request of our clients,..... **(name of Corporation, hereinafter referred to as "The Concessionaire")** we have issued this joint and several, irrevocable, unconditional, and automatic execution Bond without benefit of excussion or division up to the amount of US\$ 5,000,000 (Five Million US Dollars) in favor of PROINVERSION to guarantee the Validity, Effectiveness and Seriousness of the proposals submitted by our client in connection with the terms and conditions set forth in the Tender Documents of the Comprehensive Projects Tender for the Granting in Concession to the Private Sector of the New Container Terminal at El Callao Port Terminal – Southern Zone.

Likewise, we hereby state that we will honor this Bid if our client is awarded the contract by the Committee but fails to meet its obligations at the Closing Date of the abovementioned Tender.

To honor this Bid in your favor, it will suffice to send a notarized request by PROINVERSION Executive Director, **at our offices located at [...]** (address)

All delays on our part to honor this Bond, will result in interest accruing to you at the LIBOR rate plus a 3% margin. **Interest will accrue as from the date of the request to honor until the actual date of payment.**

Our obligations pursuant to this Bond will not be affected by any dispute between you and our clients.

---

<sup>116</sup> Modified by Circular Letter N° 018



This Bond will remain in force from the date of submission of the Economic Proposal until ..... , 200..

The language of this Bond has the same meaning as the language of the Tender Documents.

Yours very truly,

Signature .....

Name .....

Bank .....

UNOFFICIAL TRANSLATION

**ANNEX 5****Form 4<sup>117</sup>: VALIDITY OF THE INFORMATION**

(Reference: Point 7.1 of the Tender Documents)

**SWORN STATEMENT**

We hereby represent under oath that the information, representations, certifications and generally all documents submitted in Envelope 1 are current as of this date and will remain so until the Closing Date.

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

---

<sup>117</sup> Modified by Circular Letter N° 018

**ANNEX 5**

**Form 6<sup>118</sup>: ELIMINATED**

UNOFFICIAL TRANSLATION

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<sup>118</sup> Eliminated by Circular Letter N° 006





We hereby declare that our Economic Proposal is irrevocable and will remain in full force up to sixty (60) Days following the Closing Date, undertaking to mandatorily extend it if the Committee so requires.

Bidder .....  
Name

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

UNOFFICIAL TRANSLATION



**ANNEX 6**
**Form 2<sup>120</sup>: FORM OF LETTER OF ECONOMIC PROPOSAL - ICA**  
 (Reference Point 7.2 of the Tender Documents)

Lima, ..... , 2006

 Messrs:  
 Comité de PROINVERSIÓN en  
 Proyectos de Infraestructura y en Servicios Públicos  
 Agencia de Promoción de la Inversión Privada – PROINVERSIÓN  
 Lima, Peru

Bidder: .....

Pursuant to the provisions set forth in Point 7.2 of the Tender Documents, we are pleased to submit to you our Economic Proposal in accordance with the conditions established for this Tender, under the following terms:

<b>Additional Complementary Investment (ICA):</b>	
<b>Amount in Letters:</b>	[ ..... ] US Dollars
<b>Amount in Numbers</b>	US\$ [ ..... ]

We hereby declare that our Economic Proposal is irrevocable and will remain in force until sixty (60) Days alter the Closing Date, undertaking to mandatorily extend it if the Committee so requires.

 Bidder .....  
 Name

 Name .....  
 Bidder's Legal Representative

 Signature .....  
 Bidder's Legal Representative

<sup>120</sup> Added by Circular Letter N° 018

**ANNEX 6****Form 3<sup>121</sup>: STANDARD RATE INDEX**  
(Reference Point 7.2 of the Tender Documents)

The preparation of the Economic Proposal should consider the following aspects:

1. The Standard Rate Index consists of the following rates:

- Standard Ship Services
- Standard Cargo Services

1.1. Standard Ship Service Rates

The maximum rate shall be US\$ 0.70 (Seventy US Dollar cents) per meter of the Ship Length – hour or fraction of an hour.

It is calculated by the total time that the Ship stays moored to the Dock, as from the hour in which the first warp passes during the Docking operation till the hour in which the last warp leaves during the Undocking operation. The Rate includes Vessel Mooring and Unmooring services. This rate shall be charged to the ship.

1.2. Standard Cargo Service Rates

The maximum rates per 20 and 40 feet container with cargo shall be submitted by the Short-listed Bidder. The maximum rates per empty container and for trans-shipment shall be calculated based on the rates submitted, as indicated in Paragraph 4 of this Annex, detailing therein the calculation mechanism of the Standard Rate Index.

The Rate for this concept is applied per container and includes:

- i. Service of unloading and/or loading of the container, using the Dock gantry crane;
- ii. Container traction service between the side of the Ship and the storage area of the Terminal or vice versa in the case of loading;
- iii. Handling service – in the storage area – for the reception of the container from the ship and loading to the means of transport designated by the Consignee or user, or vice versa in loading; and,
- iv. Weighing service.

---

<sup>121</sup> Added by Circular Letter N° 018

The containers may remain stored up to forty-eight (48) hours at the Terminal, at the free disposal of the User, from the time the ship has completed unloading or once the container reaches the Terminal yard, as the case maybe. Upon expiry of such term, the Concessionaire may charge an amount of money for the warehousing service, in pursuance of the provisions contained in Article 8.15 of the Contract.

The Concessionaire shall attend every ship with no less than two (2) dock gantry, unless it is not possible due to the characteristics of the loading/unloading of the containers in the ship.

The Users may not demand the Concessionaire to provide, either separately or partially, one or more of the services making up the Standard Services. Nevertheless, the Concessionaire may satisfy the Users' request in this regard, in which case, it shall be considered a Special Service.

The Concessionaire may offer rate discounts and promotions to the Users, as stipulated in the General Regulation on Rates issued by OSITRAN and in Point 2.11 hereof.

This Rate may be charged to the Ship or to the User, pursuant to the contracting terms agreed by both parties in the Maritime Transport Contract ("Liner Terms"), which shall be included in the bill of lading.

2. The Successful Bidder may not apply any charge in addition to the rates for the provision of the Standard Services.
3. The Successful Bidder may freely establish rates for Standard Services, provided that they do not exceed those rates established in its Economic Proposal.

The proportion between the rates for Standard Cargo Services may vary freely, provided that the provisions indicated in the previous paragraph are respected.

4. In order to determine the Standard Rate Index (ITEI) the following table shall be taken into consideration:

		(a)	(b)	(c) = (a) * (b)
		Rate	<u>Weighing Ratio</u>	Partial ITE (US\$ x TEU)
(1)	Depending on the ship	0.7	2.39	1.67
(2)	Full 20' Container	X	0.18	0.18X
(3)	Full 40' Container	Y	0.33	0.165Y
(4)	Empty 20' Container	80%*(X)	0.04	0.032X
(5)	Empty 40' Container	80%*(Y)	0.16	0.064Y

(6)	Transshipment Full 20' Container	80%*(X)	0.06	0.048X
(7)	Transshipment Full 40' Container	80%*(Y)	0.13	0.052Y
(8)	Transshipment Empty 20' Container	80%*(X)	0.03	0.024X
(9)	Transshipment Empty 40' Container	80%*(Y)	0.07	0.028Y

<b>STANDARD RATE INDEX = 1.67 + 0.284X + 0.309Y</b>
---

Where:

X: is the rate for Standard Service depending on the cargo, submitted by the Short-listed Bidder, for a 20 feet container with cargo.

Y: is the rate for Standard Service depending on the cargo, submitted by the Short-listed Bidder, for a 40 feet container with cargo.

**5. The Short-listed Bidders shall submit their rates taking into consideration the following maximum limits, as follows:**

Maximum rate limit for Standard Cargo Services for a full 20' container: US\$ .....

Maximum rate limit for Standard Cargo Services for a full 40' container: US\$ .....

**6. The maximum and minimum limit that the Short-listed Bidders shall take into consideration for the proposals are as follows:**

Maximum ITE limit: ..... US\$/TEU

Minimum ITE limit: ..... US\$/TEU

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**FORM OF THE CHALLENGE BOND**  
(Reference Point 9.2 of Tender Documents)

Lima, ..... , 2006

Messrs.

**Agencia de Promoción de la Inversión Privada - PROINVERSIÓN**  
LIMA – PERU

Subject: Bond N° .....  
Maturity date : .....

Dear sirs,

This is to certify that at the request of our clients, [...] **[name of corporation]**, hereinafter referred to as **“The Concessionaire”**, we have issued this joint and several, irrevocable, unconditional, and automatic execution Bond without benefit of excussio or division up to the amount of US\$ ..... [...Thousand and 00/100 US Dollars] in favor of PROINVERSION to guarantee our warranted clients the payment of such amount in any of the events described in the fourth paragraph below.

This Bond will remain in force since the date of filing of the challenge until sixty (60) Days after the Closing Date of the Tender and will be made effective if the challenge filed were declared groundless or inappropriate in a final decision made by PROINVERSION Steering Council.

It is understood that this Bond may be executed by PROINVERSION pursuant to provisions in Article 1898 of the Peruvian Civil Code.

Likewise, It is hereby expressly agreed that to honor this Bond, it will suffice to send a requirement in writing by **the Executive Director of PROINVERSION**, through notarized letter, to our offices located at the address below stating that the challenge filed against the decision of the Comprehensive Project Tender to the Private Sector of the New Containers Terminal at El Callao Port Terminal - Southern Zone has been declared groundless or inappropriate by PROINVERSION Steering Council or having the Committee made a decision, the letter was not challenged.

We undertake to honor the total amount of the Bond within twenty -four (24) hours as from the date when the corresponding notarized request letter was received.

All delays on our part to honor this Bond will result in interest accruing to you at the **LIBOR rate plus a 3% margin**. Interest will accrue as from the date of the request to honor the Bond until the actual date of payment.

---

<sup>122</sup> Modified by Circular Letter N° 018



Yours very truly,

SIGNATURE AND SEAL  
Name of the issuing bank  
Bank address

UNOFFICIAL TRANSLATION

**ANNEX N° 8****DATA ROOM USER GUIDE**

(Reference: Paragraph 3.2 of the Tender Documents)

**I. AVAILABILITY****1. Authorized users**

Authorized Users of the Data Room are the representatives of companies that bought the Tender Documents, provided they are properly introduced and identified, before the Data Room management and have filled the necessary forms.

**2. Capacity and services**

The Data Room includes a meeting room with a maximum capacity for six persons. In addition to the documents available for the Comprehensive Project Competitive Award to the Private Sector of the New Container Terminal at the Callao Port Terminal South Zone the users will have access to printing, photocopying, facsimile and other services to facilitate their tasks.

**3. Opening hours**

The Data Room will be open from 9:00 to 13:00 hours and from 15:00 to 18:00 hours from Monday to Friday.

**4. Procedures for requesting services**

Purchasers or Bidders wishing to use the Data Room will sign a Confidentiality Agreement and file their request using the corresponding form where they will state their preferred visiting hours, the time they will stay and the names of visitors. The Data Room Coordinator will reply to the request according to available space and based on a principle of equitable and fair treatment. The Data Room will preferably be used to check reference documentation. Under no circumstance may it be used as the Bidders' working room.

All the documents and services will be requested using the respective forms and through the Data Room Coordinator.

**II. AVAILABLE SERVICES**

There are no charges for using the Data Room. However, photocopying, printing, binding, floppy recording and CD burning, telephone, facsimile, refreshments and other services are subject to charge. Additional services including plan copying, scanning, Internet access and others may be available

when requested in advance. The corresponding fees will be determined based on their cost and communicated by the Data Room coordinator.

CD recordings for most studies and digital plans for the Project, including all the feasibility study, will be available. CDs may be purchased for a single payment of US\$50.00.

### **III. DATA ROOM FORMS**

This annex includes Form 1 (Identification of authorized persons for Data Room use) and Appendix 1 (Data and Visiting Time Chart). The Bidder's representatives will fill the forms and send them by fax or e-mail to obtain access to the Data Room. This is an indispensable requirement to access information available in the Data Room. The information provided in these forms will be used to prepare visiting schedules and reservations for the Data Room.

This Annex also includes the following documents:

- Form 2 (MULTIPLE SERVICE REQUEST) used by vides to request services.
- Form 3 (TECHNICAL CONSULTATION REQUEST) used by Vides to make their written requests on Project issues.

UNOFFICIAL TRANSLATION



**ANNEX Nº 8**  
**Form 1: AUTHORIZED DATA ROOM USERS.**  
**IDENTIFICATION FORM**

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

Messrs

**Comité de PROINVERSIÓN en**  
**Proyectos de Infraestructura y de Servicios Públicos**  
**Agencia de Promoción de la Inversión Privada - PROINVERSIÓN**

I, [...] (name of representative) on behalf of [...] (name of Bidder) request authorization to use the Data Room within the visiting schedule proposed and for the persons listed in Appendix 1 hereto.

We are aware of the procedures to use the Data Room as shown in the Data Room User's Guide attached to the Tender Documents as Annex 8.

We also are aware that the information available in the Data Room is strictly confidential.

Sincerely.

\_\_\_\_\_  
Name of Representative

\_\_\_\_\_  
Identity Document

\_\_\_\_\_  
Signature of Committee Representative

**ANNEX Nº 8  
Form 1 – Appendix 1**

**DATA AND VISITING SCHEDULE**

Nº	First and last names	Identity Document	Nationality	Visiting date and time
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

UNOFFICIAL TRANSLATION

**ANNEX N° 8**
**Form 2: MULTIPLE SERVICE REQUEST**

<b>Date of Request</b>	
------------------------	--

<b>Requested by</b>	
---------------------	--

<b>User</b>	
-------------	--

	<b>Ref. N°</b>	<b>Service</b>	<b>Units</b>	<b>Amount</b>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

<b>Delivery date</b>	
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**ANNEX N° 8**  
**Appendix N° 1: Data Room Documents**

- National Port Development Plan prepared by the Autoridad Portuaria Nacional
- Callao Port Development Project prepared by Pacific Consultants International and **CESEL S.A.**<sup>123</sup> with JBIC funding. 1998
- Callao Port Feasibility Study Moffat & Nichol International, 2005. (Under review).
- ENAPU annual financial statements for TPC operations.
- ENAPU port service and longshoremen rate schedule

CRECER Project studies:

- Institutional alternatives for the Port Sector (2005)
- Regional production parameters
- Regional hubs – Callao
- Logistic industries in Peru
- Competitiveness in Peru compared to Chile and Colombia for inter and intra port levels
- Conceptual strategy for concession development
- Concentrate handling in Callao Port
- Transport and trade facilitation

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<sup>123</sup> Modified by Circular Letter N° 001

**ANNEX 9****CONCESSION AREA <sup>124</sup>****DESCRIPTION OF THE CONCESSION AREA**

The Concession Area comprises a water area and a land area, which enable the Construction of the New Container Terminal – Southern Zone, as well as auxiliary facilities and the accesses for entry and exit of containerized cargo.

**I. TOTAL CONCESSION AREA****BOUNDARIES AND PERIMETER MEASUREMENTS****▪ To the North:**

With the Pacific Ocean and El Callao Port Terminal, in a broken line of 7 sections:

A-B= 1,050.00m., B-C=60.00m., C-D= 257.64m., D-E= 2.88m., E-F= 7.73m., F-G=3.33m., y G-H= 41.65m.

**• To the East:**

With Av. Manco Capac and INFOCAP, in a broken line of 18 sections:

H-I= 1.82m., I-J= 52.77m., J-K=24.06m., K-L=71.80m., L-M=16.47m., M-N=99.79m.,

N-O=46.48m., O-P=8.94m., P-Q=6.38m., Q-R=8.94m., R-S=67.26m., S-T=20.76m.,

T-U=24.59m., U-V=3.91m., V-W=5.83m., W-X=5.95m., X-Y=11.46m. and Y-Z=83.64m.

**▪ To the South:**

With Plaza Grau and the Pacific Ocean, in a broken line of 17 sections:

Z-A1= 9.82m., A1-B1= 11.94m., B1-C1=7.94m., C1-D1=17.95m., D1-E1=58.55m.,

<sup>124</sup> Modified by Circular Letter N° 018

E1-F1=12.84m., F1-G1=15.85m., G1-H1=17.36m., H1-I1=40.68m., I1-J1=18.91m.,  
J1-K1=29.43m., K1-L1=8.88m., L1-M1=0.32m., M1-N1=21.63m., N1-O1=100.00m.,  
O1-P1=317.43m. y P1-Q1=932.17m.

- **To the West:**  
With the Pacific Ocean, in a straight line of one section: Q1-A= 660.00m.

#### **TOTAL CONCESSION AREA**

An area of 738,898.59 m<sup>2</sup> is encompassed within the boundaries and perimeter measurements described above.

#### **PERIMETER**

The perimeter length of the land is 4,265.78 m

#### **II. LAND AREA**

#### **BOUNDARIES AND PERIMETER MEASUREMENTS**

- **To the North:**  
With Lands of El Callao Port Terminal, in a broken line of 5 sections:  
C-D= 257.64m., D-E= 2.88m., E-F= 7.73m., F-G=3.33m., y G-H= 41.65m.
- **To the East:**  
With Av. Manco Capac and INFOCAP, in a broken line of 18 sections:  
H-I= 1.82m., I-J= 52.77m., J-K=24.06m., K-L=71.80m., L-M=16.47m.,  
M-N=99.79m.,  
N-O=46.48m., O-P=8.94m., P-Q=6.38m., Q-R=8.94m., R-S=67.26m.,  
S-T=20.76m.,

T-U=24.59m., U-V=3.91m., V-W=5.83m., W-X=5.95m., X-Y=11.46m. y  
Y-Z=83.64m.

▪ **To the South:**

With Plaza Grau and the Pacific Ocean, in a broken line of 12 sections:

Z-A1= 9.82m., A1-B1= 11.94m., B1-C1=7.94m., C1-D1=17.95m., D1-E1=58.55m.,

E1-F1=12.84m., F1-G1=15.85m., G1-H1=17.36m., H1-I1=40.68m., I1-J1=18.91m.,

J1-K1=29.43m. y K1-L1=8.88m.

▪ **To the South:**

With the Pacific Ocean, in a straight line of one section: L1-C= 294.76m.

**LAND AREA**

An area of 83,214 m<sup>2</sup> is encompassed within the boundaries and perimeter measurements described above.

**PERIMETER**

The perimeter length of the land is 1,419 m.

**III. WATER AREA**

**BOUNDARIES AND PERIMETER MEASUREMENTS**

▪ **To the North:**

With the Pacific Ocean, in a straight line of one section: A-B=1050.00m.

▪ **To the East:**

With Lands of El Callao Port Terminal and the Land Concession Area, in a straight line of one section: B-M1=354.44 m.



- **To the South:**  
With the Pacific Ocean, in a broken line of 4 sections:  
M1-N1= 21.63 m., N1-O1=100.00 m., O1-P1=317.43 m. y P1-Q1=932.17 m.
- **To the West:**  
With the Pacific Ocean, in a straight line of one Section Q1-A=660.00m.

#### **WATER AREA**

An area of 655,684.53 m<sup>2</sup> is encompassed within the boundaries and perimeter measurements described above.

#### **PERIMETER**

The perimeter length of the land is 3,435.67 m.

The Terminal Project that the Short-listed Bidder may submit in its Technical Proposal, may extend towards the north east within El Callao Port and/or towards the south east away from the southern breakwaters in the amplitude necessary, within the water area of the Concession, complying with the conditions and requirements established in the Tender Documents and in the Contract, and pursuant to its Technical Proposal that it undertakes to develop within the Concession term.



## ANNEX 9

### Appendix 2<sup>126</sup>: LIST OF CONCESSION ASSETS COMPRISED WITHIN THE LAND AREA

- 1) Typical Toilet Services
- 2) Floating Equipment Shop
- 3) Former Yatch Club
- 4) Maritime Terminal Training and Supervision Room
- 5) Identification Office (Plaza Grau)
- 6) Former warehouse of Gyoren Agency
- 7) Well TM – 3: Registered as Building 9
- 8) Electric Substation 151
- 9) Topmen Offices
- 10) Electric Substation 7
- 11) Office and Toilet Services of Zone 2
- 12) Office, Toilet Services and Dressing Rooms of Zone 2A
- 13) Office, Toilet Services and Dressing Rooms of Zone 2B
- 14) Headquarter of Scales, Review and Documentation of Scales:
- 15) Electric Substation 8
- 16) Environment Office Store Room
- 17) Typical Toilet Services
- 18) Dock 9
- 19) Dock 10
- 20) Breakwaters

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<sup>126</sup> Added by Circular Letter N° 018

## ANNEX 9

### Appendix 3<sup>127</sup>: MAP OF BUILDINGS



<sup>127</sup> Added by Circular Letter N° 018

**ANNEX N° 10**

**Form 1: ACCEPTANCE OF TENDER DOCUMENTS AND CONTRACT**

(Reference paragraph 7.1 of the Tender Documents)

**SWORN STATEMENT**

We [...] (name of Bidder) and our shareholders, partners and members, and their shareholders and partners, hereby declare under oath that:

- 1° We accept all the provisions in connection with the Tender and Award; the provisions included in Supreme Decree N° 059-96-PCM, Single conformed Text of the Regulations with Rank of Law governing the Concession Award to the Private Sector of Infrastructure and Public Service Works (TUO) and the corresponding regulations pursuant to Supreme Decree N° 060-96-PCM; LSPN and its regulations, the Tender Documents and their Circular Letters.
- 2° We have examined and agree with the Tender Documents, the Contract and their supporting and related documentation, and explicitly accept the obligations derived from complying with the Law governing the Concession Award to the Private Sector of Infrastructure and Public Service Works, the LSPN and its regulations, these Tender Documents and other regulations that apply to the Concession Contract, and find no objection to or omission in the abovementioned background documents. We therefore release the Autoridad Portuaria Nacional, PROINVERSION and its advisors, of all responsibility for eventual mistakes or omissions that might have the mentioned antecedents and documents.
- 3° If we win the Award, we commit to sign the corresponding Concession Contract.

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Name of Bidder's Legal Representative

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Legal Representative's Signature

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

## ANNEX N° 11

### SPECIFICATIONS FOR THE CONTENTS OF THE TECHNICAL PROPOSAL (Reference Point 7.1 of the Tender Documents)

The Bidder shall provide a theoretical justification for the Works and Equipment offered and identified in its Technical Proposal, **including the minimum contents indicated in Appendix 1 of this annex<sup>128</sup>** and considering at least the following chapters:

#### I. MARITIME INFRASTRUCTURE

- Depth of the access channel and maneuvering area required for the Terminal's design and operation.
- Navigation aids
- Maximum allowed waves for normal equipment operation. Breakwater repairs needed.
- Dock area bottom dredging plan. Implementation stages. Dredging needed for the Construction of the backup area. Environmental impact control.
- Hydraulic fill, quarry location, construction procedure and environmental impact control.

#### II. CIVIL WORKS

- Terminal Layout within the concession area; development stages.
- Mooring fronts description
  - Type of and material for Foundations<sup>129</sup>; design depth, implementation stages.
  - Carrying capacity of structural berthing elements.
  - Backup area filling. System and materials.
  - Pavement type for backup area. Carrying capacity.
  - Beams: heads, longitudinal, edge, anchoring, rail type, etc.
  - Description of mooring elements, defenses and other elements.
- Description of complementary works

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<sup>128</sup> Modified by Circular Letter N° 010

<sup>129</sup> Modified by Circular Letter N° 001

- Technical standards that will be used, in addition to Peruvian technical standards

### **III. ELECTRIC INSTALLATIONS**

- Power required
- Substations and other basic installations

### **IV. EQUIPMENT**

- Gantry cranes
  - Implementation stages
  - Number of cranes
  - Operation speed (containers per hour)
  - Maximum estimated annual container handling capacity
- Yard equipment
  - Type and characteristics
  - Number
- Complementary and ancillary equipment
- Operations and administrative control electronic system (info-structure).  
Description.

### **V. OPERATIONS PLAN**

- Description of service
  - Infrastructure supplied
  - Vessel docking
  - Container handling
  - Consignee agent service rendering
  - Vessel assistance
  - Other services
- Logistic chain
  - Description of “type” of activities along the container terminal (scheduled times and motions, imports and exports, transshipment)

**VI. ENVIRONMENTAL CONSIDERATIONS DURING CONSTRUCTION STAGE AND ENVIRONMENTAL CONTROL PLAN DURING EXECUTION OF WORKS AND TERMINAL OPERATION <sup>130</sup>**

It must indicate at least the following:

- i) **General Objectives of the Environmental Impact Study to be conducted;**
- ii) **General aspects of the methodology proposed for the conduction of the Environmental Impact Study.**

**VII. STAGGERED PROCESS TIMELINE**

- Preparatory activities
- Execution of works
  - Maritime
  - Civil
  - Others
- Equipment procurement, installation and testing
- Beginning of operations

**VIII- WORK AND EQUIPMENT BUDGET**

Bidders are free to use any of the background chapters prepared by the State of the Republic of Peru when preparing any of the chapters outlined above. To this effect, the following must be included in the corresponding chapter:

*“In preparing this chapter, the Bidder used the background called “[...] (specify: name of study in question, including author and year prepared)...”, from pages [...] to [...], and/or drawings No. [...] to No. [...]. If awarded the contract, the Bidder will use the above specifications in executing the Works.”*

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<sup>130</sup> Added by Circular Letter N° 006.



## ANNEX 11

### **Appendix 1<sup>131</sup>: MINIMUM REQUIREMENTS FOR THE WORKS AND EQUIPMENT OF THE TECHNICAL PROPOSAL** (Reference to Point 7.1 of the Tender Documents)

**The initial minimum Works** subject matter hereof shall have the following basic characteristics:

Concept	Minimum Requirement
Number of Berths (Hooking places) Minimum	2
Minimum length of the Dock	600 m
Dock Gantry Cranes (Gantry Crane type) Minimum	4 (*)
Minimum Annual Capacity	600,000 TEU
Minimum Maritime Backup Area	14.5 Ha

(\*) The number of gantry cranes shall increase, to at least six (6), as set forth in Paragraph III.- Referring to Equipment, stipulated hereinbelow.

All the Works and Equipment that the Bidder proposes in his Technical Proposal, shall comply with the technical parameters referred to hereinbelow::

I. Capacity of attention of the Ships:

The Terminal shall be designed to attend, during the twenty four (24) hours a day (ordinary days, Sundays and holidays) and at least two ships simultaneously.

**The Dock Occupation Rate shall not be higher than seventy percent (70%) of the ratio between the Berth annual total occupation time and the annual total availability time. Its estimation defines the time in which the Concessionaire shall have the new infrastructure and/or additional equipment operative, according to its Technical Proposal.**

**The Dock occupation Rate shall be calculated from the date the CONCESSIONAIRE starts the exploitation with the two berths until the limit to the maximum capacity offered in its Technical Proposal is implemented.**

II. Dock Infrastructure:

The Terminal must be designed with at least two Berths of 300 meters each one and a minimum water depth of 14 meters as compared to the average level of mean low water spring (MLWS). The Dock cementation must be ready to dredge the operation area at 16 meters as compared to MLWS. Upon commencement of the Exploitation, the backup area at the Dock cannot be less than 145,000 m<sup>2</sup>. Dock cementation shall be alternatively made with steel pile, reinforced concrete piles, concrete bins or blocks.

Only in the event that the Exploitation is started with one Berth may the storage area be less than the 145,000 m<sup>2</sup> stated in the preceding paragraph.

<sup>131</sup> Added by Circular Letter N° 010 and modified by Circular Letter N° 018

### III. Equipment:

The Dock must have at least two (2) new gantry cranes per Berth, with an effective average annual capacity of twenty-five (25) containers per hour and per crane. As demand increases and to be able to comply with the service and productivity levels, more cranes shall be conditioned to increase the Terminal's capacity. The Terminal shall have at least six (6) new gantry cranes within the Concession term. The transfer and yard equipment, equally new, shall maintain, in capacity and yield, the required pace to optimize the logistic chain times. In the Technical File, the CONCESSIONAIRE shall detail the equipment characteristics it commits to acquire.

If Exploitation starts with a Berth, the Dock must be equipped with at least two (2) new gantry cranes and the necessary equipment in the storage area.

#### Service and Productivity Levels:

The Works that the Bidder proposes to execute in its Technical Proposal shall at least reach the **following service and productivity levels and those set forth in the Concession Contract**.

- **Time for commencement of Unloading:** No more than twenty (20) minutes **tolerance, at an average**, for the commencement of the unloading operations, counted from the moment in which the Ship, already moored, has secured all the necessary authorizations. **The duration of each individual operation may not be more than thirty (30) minutes.**
- **Time for departure of the Ship:** No more than twenty (20) minutes **tolerance, at an average**, for the departure of the Ship, counted from the moment the loading/unloading operations are completed and all the necessary authorizations are obtained. **The duration of each individual operation may not be more than thirty (30) minutes.**
- **Loading or Unloading Operation Performance (Yield of Operation):** An average of no less than twenty-five (25) containers per hour and per Gantry Crane of Dock:

$$\text{Yield of operation} = \frac{NC}{t \times n_g} \geq 30 \text{ containers per hour}$$

Where:

NC: Number of containers loaded or unloaded in the last **three (3) months**.

t: Accumulated operation time corresponding to the last **three (3) months**

$n_g$ : Number of cranes in operation

**The performance of each individual operation may not be less than twenty (20) containers per crane and per hour.**

"Accumulated operation time" means the addition of all the operating times of each ship attended by the Terminal during such quarterly period. The operation time of each ship is counted as from hooking the first container until unhooking the last container.

***In the last three (3) quarters of the first year of exploitation, the performance shall be no less than twenty (20) containers per hour and per Dock Gantry Crane.***

- ***Service time to Users for removing the merchandise: In the last three quarters of the first year of exploitation, no more than thirty (30) minutes, at an average, counted from the time in which the User requests its merchandise removal after having paid the received services and the time in which the Terminal makes it available to the User. Once the first twelve (12) months have elapsed from the commencement of the Exploitation, the Terminal shall hand the merchandise to the User within an average term of no more than twenty (20) minutes. The duration of each individual operation may not be more than forty five (45) minutes and thirty (30) minutes, respectively.***

UNOFFICIAL TRANSLATION

## ANNEX 11

### Appendix 2<sup>132</sup>: MINIMUM COMPLEMENTARY INVESTMENT WORKS

#### I. DEFINITION

The Works referring to the Minimum Complementary Investment comprises the following items:

- Dredging of the Access Channel to El Callao Port
- Dredging of the maneuvering area
- Repair of the Breakwater

#### II. SCOPE OF THE WORKS

##### 2.1. DREDGING OF THE ACCESS CHANNEL TO EL CALLAO PORT

###### CURRENT SITUATION

El Callao Port has an external access channel measuring 1000 m in length and 180 m in width, dredged at a depth between -11 m and -12 m, the beginning of which is marked by two (2) buoys and the end by the reefs of the Northern and Southern breakwaters. Inside, the channel extends along 400 m. At the level of the reefs, the channel narrows to around 130 m / 140 m, determining the width of the inlet; presently, the depth of the inlet varies at the axis, between -14 m and -16 m, and at the ends, between -10 m and -12 m.

###### SCOPE OF THE ACCESS CHANNEL DREDGING

The internal and external access channel must at least be dredged at a -14 m depth, along 1500 m and 400 m, respectively, and with a width of 180 m at the bottom. It has been considered that the natural slope of the dredged sea bottom is 1 vertical, on 5 horizontal.

Based on these parameters, the Concessionaire shall define the volume to be dredged.

##### 2.2. DREDGING OF THE MANEUVERING AREA

###### CURRENT SITUATION

This area has a 500-m diameter and depths ranging from -10.5 m to -12 m.

###### SCOPE OF THE MANEUVERING AREA DREDGING

This area must be dredged at -14 m, with a 600 m diameter. It has been considered that the natural slope is 1 vertical on 5 horizontal.

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<sup>132</sup> Added by Circular Letter N° 018.

## CONDITIONS OF THE AREA TO BE DREDGED

The soil characteristics and the hydrographic conditions were defined in the PCI-CESEL study, which is available at the DATA ROOM.

The location of the maneuvering Area shall be determined by the Concessionaire according to its operating requirements.

The dumpsite for the dredged material is to be defined in the Environmental Impact Study.

### 2.3. REHABILITATION OF THE SOUTHERN BREAKWATER IN EL CALLAO PORT

#### General Information

El Callao Port Southern breakwater was built in the first decades of the past century to protect the port from the swell; it extends in an East-West direction. It was built with a trapezoidal section and a length of 1100 m. This breakwater was built using hand-placed rock elements. In the 1960-1970 decade of the last century, the crest was raised with concrete blocks obtained from the demolition of Dock 8.

The breakwater is cemented on alluvial soil, made up of the debris cone of the Rimac River. The exterior and interior parts are located between -8 m and -6 m, respectively, referred to the average sea level.

#### Situation of the Southern breakwater

The breakwater has lost its design shape due to the loss of armor elements and middle layers as a result of the swell and has been subject to natural seismic settlements. The crest elevation in some sections is near the sea level and during high tide hours the water enters the port grounds. The access road, which extends along the breakwater, for entering up to the reef beacon and for making repairs, has disappeared.

#### Minimum repairs required

The repair of the remaining section of the breakwater that is not covered by the Southern terminal will entail recovering the characteristics of the breakwater section to meet at least the following conditions:

- *Minimum crest elevation of +4m above average sea level or the elevation that, based upon the studies conducted by the Concessionaire, ensures that waves will not surpass the breakwater during at least all the Concession term.*
- *The minimum crest width must be 6 m.*
- *The slope of the rock fill must be at least 1.2 on the seaside and 1:1.5 on the protected side.*

The following building system will be adopted (the contractor may propose an alternate procedure to APN, for its approval):

- Transportation and placement of material from land using heavy equipment. Placing of the armor material with a crane.
- Work level between +2.5 m and +3 m above the low tide level of ordinary syzygies.
- The armor rock weight must be defined according to the waves, which return period shall be 30 years.
- The blocks located above the breakwater crest may be reused.
- The repair includes the placing of rock underwater, which guarantees breakwater crest stability. In order to comply with this requirement, it will be necessary to perform a survey on the breakwater, with cross-sections every 5 m, in order to establish the axis of the section that will be adopted for the repair, the rock volume of each layer, and the crest level.

UNOFFICIAL TRANSCRIPTION

**ANNEX N° 12<sup>133</sup>**

**TIMETABLE**  
**(SEE QUERIES/ANSWERS/ VERSION 1 OF CONTRACT)**  
 (Reference: Paragraph 1.6 of the Tender Documents)

<b>Activity</b>	<b>Date</b>
<b>Announcement:</b>	04/11/2005
<b>Tender Documents:</b>	
<i>Responses to the formulated Inquiries</i>	09/02/2006
<i>Second Round of Inquiries to the Tender Documents</i>	Until 16/02/2006
<i>Responses to the Second Round of Inquiries</i>	27/02/2006
<i>Third Round of Inquiries to the Tender Documents</i>	Until 06/03/2006
<i>Responses to the Third Round of Inquiries</i>	17/03/2006
<i>Forth Round of Inquiries to the Tender Documents (only respect envelopes N° 2 and N° 3) until</i>	<b>29/03/2006</b>
<i>Responses to the Forth Round of Inquiries</i>	<b>12/04/2006</b>
<i>T.U.O. of the Tender Documents, until</i>	<b>19/05/2006</b>
<b>Short-listing:</b>	
Presentation of the interested credentials and short-listing (Envelope1)	Until <b>21/04/2006</b>
<b>Rectification to observations to Envelope N° 1</b>	<b>Until 7 calendar days before the presentation of envelopes N° 2 and 3</b>
Shortlist announcement	<b>Until 5 calendar days before the presentation of envelopes N° 2 and 3</b>
<b>Contract:</b>	
Submission of the First Draft of the Contract	09/02/2006
Consultations to the First Draft of the Contract	Until 22/02/2006
Second Draft of the Contract	10/03/2006
Consultations to the Second Draft of the Contract	<b>27/03/2006</b>
Submission of the Final Draft of the Contract	<b>20/04/2006</b>
Submission of the Final Contract	<b>31/05/2006</b>
<b>Proposals:</b>	
Presentation of envelopes N° 2 and N° 3 (technical and economic proposal)	<b>16/06/2006</b>
Announcement of the technical proposal evaluation results until	<b>19/06/2006</b>
Opening of Envelope N° 3 and awarding	<b>19/06/2006</b>
Closing Date	<b>20 working days after the awarding</b>

\* In case the deadline date is a non-working day, it will be considered the next working day.

<sup>133</sup> Modified by Circular Letters N° 003, N° 011, N° 012, N° 014, N° 016, N° 017