

REPUBLIC OF PERU



**AUTORIDAD PORTUARIA NACIONAL
(APN)**



TENDER DOCUMENT

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

October, 2005

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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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, 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 Agreement versions.

1.1 Call for Bids and Tender Objective

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

The Concessionaire will be in charge of Designing, Building, Financing, Operating, Managing and Maintaining the New Container Terminal at the 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 execution and/or exclusive supply of port activities and services by the Concessionaire.

The Port Terminal referred to in this tender shall have the following initial basic referential characteristics according to the Referential Project and these tender documents, which details will be defined in the Concession Agreement:

Minimum Docking Sites	2
Minimum Length	600 m
Minimum Gantry Cranes	6
Minimum Capacity	600,000 TEUs
Minimum Backup Maritime Area	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.

The concession term shall be for 30 years including the Construction Period pursuant to the Concession Agreement and paragraph 10.3 under article 10 of the National Port System Law.

Part of ENAPU's redundant work force will be hired by the Concessionaire, and ensured job continuity and training.

At the end of the Concession Term, the granted Port Infrastructure, 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 Agreement, 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, according to 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 Agreement. In their Technical Proposals, the Bidders may submit alternative projects with the technological changes and updating they deem convenient, provided the proposed changes are an improvement over the basic reference characteristics and Serviceability Indexes set forth in these Tender Documents and the Concession Agreement.

The Serviceability Index 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 shall be specified in the first draft Agreement.

To prepare their proposals the Bidders shall have access to the technical background documentation and studies available at different State agencies, listed in Appendix N° 1 of Annex N° 8 of the Tender Documents herein.

The Bidder is free to use said information. However, the Proposal submitted by the Bidder is of their exclusive responsibility and in the future, as Concessionaire or in any 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 requiring them under the free competition, non-discrimination and equality guarantees afforded by the law's principles of neutrality, price collusion prohibition, separate accounting and freedom of choice.

The Tender will be carried out according to what is 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 **Award Winner:** The Bidder who won the Contract Award.
- 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 State agency created by Supreme Decree N° 027-2002-PCM, as amended by Supreme 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 Authorities:** Any judicial, legislative, political or administrative authorities of the State of the Republic of Peru authorized pursuant to the Applicable Laws and authorized to issue or interpret general or specific mandatory regulations or decisions, within their jurisdiction.
- 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 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 Investment Commitment:** It is the obligation the Concessionaire has to execute Port Infrastructure work, which detail, amount, conditions and execution modality shall be communicated through Circular Letters. This commitment does not comprise the cost of designing, building, financing, maintaining, operating and exploiting the New Container Terminal at the Callao Port Terminal – Southern Zone.

The investment commitment is independent of the percentage fixed in the Fifteenth Transitory and Final Provision of the National Port System Law and will not exempt the Concessionaire from complying with other prices, retributions or taxes under its charge as established by the Applicable Law, the Tender Documents herein, the Concession Agreement and, generally, Peru's legislation.

- 1.2.18 Grantor:** It is the State of the Republic of Peru, acting through the Ministry of Transportation and Communications (MTC) and represented by APN.
- 1.2.19 Concession:** It is the administrative act comprised in the Agreement, concerning the New Container Terminal at the Callao Port Terminal – Southern Zone, pursuant to the Concession Agreement and subject to the Applicable Laws, through which the Grantor and the Grantee agree on the following rights and obligations:
- a) Designing, building, financing,
 - b) Operating, exploiting and maintaining
- 1.2.20 Concessionaire:** The corporation organized in Peru by the Awardee, that enters into the Concession Agreement with the Grantor.
- 1.2.21 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.
- 1.2.22 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.
- 1.2.23 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.
- 1.2.24 Concession Agreement or Agreement:** It is the Concession Agreement 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.
- 1.2.25 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
 - 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.
- 1.2.26 Call:** It is the announcement by which those interested in participating in the Tender are invited to bid pursuant to the Tender Documents herein.
- 1.2.27 Schedule:** It is the time frame for the activities being developed pursuant to the Tender herein as shown in Annex N° 12
- 1.2.28 Days:** Unless explicitly stated otherwise, days are calendar days.

- 1.2.29 Sworn Statement:** Written statement submitted by the Bidder in which it declares or makes a commitment pursuant to Paragraph 5.1.
- 1.2.30 Dollar or American Dollar or US\$:** It is the legal currency of the United States of America.
- 1.2.31 Exclusive execution and/or Supply:** In the Tender Documents herein, it is the power established in the Concession Agreement signed by APN with a private company for the use by the Concessionaire of the Port Infrastructure subject-matter of the Tender, for the execution and/or supply of all and each one of the Standard and Special Services.
- 1.2.32 Affiliated Companies:** This is the company which, although it has common shareholders, does not have an Effective Control over another company.
- 1.2.33 Subsidiary Company:** It is a company that is under the Effective Control of another company.
- 1.2.34 Related Company:** It is any Affiliate or Subsidiary Company.
- 1.2.35 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.
- 1.2.36 International Financial Entity:** It is a first class international financial entity, acknowledged in Peru and listed in Annex N° 2, Appendix 1.
- 1.2.37 Port Equipment:** For the Tender Documents herein, they are the mechanic, electric and electronic facilities understood as port infrastructure.
- 1.2.38 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.
- 1.2.39 Competition Factor:** The variable determining the Tender winner, 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 Pre-Qualified 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 Pre-qualified Bidder which is not an Award Winner, will be returned within fifteen (15) days after the Closing Date.

1.2.43 Performance Bond for Work Execution and Equipment Installation

This Guarantee amount will be equivalent to 20% of the Official Work and Equipment Estimated Budget.

This Guarantee shall guarantee the proper execution of the Work and installation of the Equipment, pursuant to the Award Winner's Technical Proposal and the Concession Agreement.

This bond shall be made up by a joint and several, unconditional, irrevocable bank warrant bond, with no benefit of excussion or division, and of automatic performance. It will be issued by Banking Company or an International Financial Institution, pursuant to Annex N° 2 herein. This Guarantee shall be effective as from the Closing Date, and will be annually renewed to be effective, pursuant to provisions in the first paragraph above.

Alternatively, a *stand-by* letter of credit may be acceptable, provided the banking institution carrying out this operation meets all the requirements set forth in the specimen listed as Form N° 2-A in Annex N° 2, or is issued by a First Class Foreign Bank and accepted by a Local Banking Institution.

1.2.44 Performance Bond for the Concession Contract:

This Guarantee will be equivalent to 10% of the Official Work and Equipment Estimated Budget.

This Warrant Bond will guarantee the performance of all contractual obligations, including Works and Equipment exploitation and maintenance.

It will be made up by a bank guarantee letter issued by a Banking Institution or International Financial Organization, pursuant to Annex N° 2 herein, and shall be joint and several, unconditional, irrevocable, with no benefit of excussion or division, and will be of automatic performance starting on the Closing Date, and annually renewed to be effective.

Alternatively, a *stand-by* letter of credit may be acceptable, provided the banking institution carrying out this operation meets all the requirements set forth in the specimen listed as Form N° 2-A in Annex N° 2, or is issued by a First Class Foreign Bank and accepted by a Local Banking Institution.

1.2.45 IGV: Value Added Tax.

- 1.2.46 Standard Tariff Index:** The amount the Concessionaire may charge, based a on a Dollar Tariff Index, to the users as the maximum amount for rendering Standard Services, pursuant to the Concession Agreement and considering the tariffs at the main competing ports .
- 1.2.47 Port Infrastructure:** Civil work and mechanical, electrical and electronic, fixed and floating installations built or located at the ports to provide better modal transport and exchange.
- 1.2.48 Common Port Infrastructure:** used by port users, operators, and administrators.
- 1.2.49 Applicable Law:** The regulations set forth in paragraph 1.3 herein and any other applicable law.
- 1.2.50 Notices:** The documents described in paragraph 2.1.5.
- 1.2.51 Nuevo Sol:** Peru's legal tender.
- 1.2.52 Works:** All the goods which cannot be moved and are part of the Port Infrastructure.
- 1.2.53 Alternative Work(s) and Equipment(s):** Proposed by the Bidder in the Technical Proposal to replace the ones mentioned in the Reference Project, provided that they comply with the Serviceability Standards set forth in the Concession Agreement.
- 1.2.54 Minimum Shareholding:** Voting stock kept by the Strategic Partner in the Consortium, up to five years after beginning the operations, pursuant to paragraph 5.2.2.8.2 herein.
- 1.2.55 Person:** Any natural or legal person, Peruvian or foreign, that may carry out juridical acts and undertake obligations in Peru.
- 1.2.56 Concession Term:** The term between the Closing Date and the termination of the Concession.
- 1.2.57 Bidder:** A legal entity or Consortium participating in this Tender that is granted the right to participate and subjected to the provisions herein.
- 1.2.58 Pre-qualified 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.
- 1.2.59 Price:** Any consideration the Concessionaire charges the users for the rendering of the Special Services. The Price will not be subject to adjustments, and will be established by an agreement between the parties.
- 1.2.60 Official Work and Equipment Estimated Budget:** An initial estimated budget of US\$ 175,000,000 (One Hundred and Seventy Five Million Dollars) for the first stage of the Reference Project. This budget is only applicable to the provisions herein and in the Concession Contract.
- 1.2.61 Proposal:** The documentation to be submitted by the Pre-qualified Bidders; the Economic or Technical Proposals.

- 1.2.62 Economic Proposal:** The Pre-qualified Bidder's Economic Proposal to be submitted pursuant to paragraph 7.2 and Annex N° 6.
- 1.2.63 Technical Proposal:** The set of documents submitted by the Pre-qualified Bidder in Envelope N° 2, pursuant to paragraph 7.1.
- 1.2.64 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.
- 1.2.65 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.
- 1.2.66 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.

- 1.2.67 Regulator:** The Supervising Agency on Investment in Transport for Public Use, OSITRAN, pursuant to Law N° 26917.
- 1.2.68 Legal Representative:** The individual residing in Peru and appointed as such by the Bidder for the purposes of this Tender.
- 1.2.69 Pre-Qualification 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 Pre-Qualified Bidder and to continue to participate in the Tender.
- 1.2.70 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 Agreement.
- 1.2.71 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.
- 1.2.72 Standard Services:** Are the services for the ship and the cargo, for which a Standard Tariff Index will be charged.

The Standard Services are itemized in the services specified below, which provision and serviceability levels meeting is mandatory for any and all of them

Ship Services

1	Mooring and unmooring
2	Use of berth

Cargo Services

1	Pier Use
2	Loading and Unloading
3	Handling of Containers or Split Freight, as needed
4	Transfer
5	Storage
6	Weighing, as the case may be

Supply of these services shall be mandatory at user request.

1.2.73 Special Services: Are the services other than the Standard Services that the Concessionaire may present to the users, and for which it will have the right to collect a consideration referred to as Price. This shall not prejudice the users' right to alternatively request the provision of Standard Services.

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

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

1.2.76 Envelope N° 2: The envelope containing the documents mentioned in paragraph 7.1 herein, to be presented by the Pre-Qualified Bidder.

1.2.77 Envelope N° 3: The envelope containing the Economic Proposal to be presented by the Pre-Qualified Bidder, pursuant to the provisions of paragraph 7.2.

1.2.78 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 Pre-Qualification 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.

1.2.79 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.

1.2.80 Terms of Reference: They are the description of the specific technical conditions and scope the Bidder shall consider for the preparation of his Technical Proposal, for the execution of Works and implementation of the Equipment, its operation and maintenance.

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 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 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 Directive 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 Directive 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 Directive Council.
- 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 Directive Council's Agreement approving the Promotion Plan for the New Container Terminal at the Callao Port Terminal - Southern Zone.
- 1.3.24** The APN Board's agreement dated ____ gave its favorable opinion about the Tender Documents herein.
- 1.3.25** PROINVERSIÓN Directive Council's Agreement dated ____ approved the Tender Documents herein.
- 1.3.26** All Bidders, Pre-Qualified 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, 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

- 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 Pre-Qualified 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 Pre-Qualify the Bidders does not oblige the Committee to declare it as Pre-Qualified 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 Pre-Qualified, implies full knowledge, acceptance and unconditional submission by the Bidder, the Pre-Qualified Bidder or the Award Winner, 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, 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 Agreement

- 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 Pre-Qualified Bidders' suggestions in the Draft Agreement.

1.6 Tender Schedules

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

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.

2.2.2 Power-of-Authority submission

The power-of-attorney by which the Legal Representative is appointed shall contain the corresponding representation powers. It shall be submitted together with the Credentials in Envelope N° 1.

The name of the 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

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

Duly executed or legalized before the consulate of Peru. A simple translation into Spanish must be attached if issued in a different language;

Confirmed before the Ministry of Foreign Affairs of Peru;

The power-of-attorney granted in Peru must be expressed in a public deed or in a notarized certified copy of the Ministry of the corresponding corporate organ by which it is granted.

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.

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 Pre-Qualified 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

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 Pre-Qualified 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' Pre-Qualification, the Circular Letters shall be sent only to Pre-Qualified 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 Pre-Qualification 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 Pre-Qualification 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 Pre-Qualified 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 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 Pre-Qualified Bidder of what is provided in Paragraph 3.4

The sole presentation of the Pre-Qualification Form will 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 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 Pre-Qualification (Envelope N° 1)

The submission of documentation for pre-qualification 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.

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 paged clearly in a sequential fastener and initialized on each page. 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 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 Pre-Qualification Stage is Ten Thousand and 00/100 United States Dollars (US\$ 10,000.00) and it gives its holders the right to

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.

5.1 General Information

The Bidder must certify his commitment to submit truthful information through the presentation of Form N° 1 of Annex N° 3, which will be a Sworn Statement. The Sworn Statement shall be submitted to the Committee through a simple 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 he is domiciled.

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 Pre-Qualification Requirements:

For Pre-Qualification, 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 Pre-Qualification 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:

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.

The Strategic Partner must also comply with the requirements described in sections a), b), c) and d) above. To this effect it may refer to one or more terminals. Similarly, the Bidder must certify that the activities mentioned as operational experience were carried out later than January 1, 2002.

Only in the case of the requirement pointed out in section a) may a related company's experience be added as well as that of companies where the Strategic Partner is a Subsidiary Company. The experience of other Consortium members cannot be added.

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:

- 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;
- 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 participants, the Bidder must submit a Sworn Statement signed by its Legal Representatives, as both Legal Representatives of the Bidder and of each one of the Consortium's members, confirming its existence and the joint obligation 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 of its shareholders or partners or members, or a Company related to the Bidder or any of its shareholders or partners or members paid for the right to participate in the Prequalification Stage. To certify this fact, it will suffice to submit a copy of the receipt of payment for said right and, in each case, a Sworn Statement explaining the relationship between the Bidder and said person, as mentioned before. Form 1A of Annex 3 shall be used for the Sworn Statement.

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.

5.2.2.5 A Sworn Statement according to the model that appears in Form N° 5 of Annex N° 4, signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders, partners and his participants and shareholders or partners of his participant in case the Bidder is a Consortium, has waived to involve or exercise any diplomatic or other privileges or immunity or claim through the diplomatic way or any claim that can be evoked by or against the state or its agencies, APN, PROINVERSIÓN; the Committee, their participants and advisors, under Peruvian Law or any other legislation concerning their obligation and evoke the Tender documents herein, the Economic Offer, the Technical Proposal and the Agreement.

5.2.2.6 A Sworn Statement, according to the model that appears as Form N° 6 of Annex N° 4, signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders or participants in case of the Consortium as well as the partners or shareholders of these participants in case of a Consortium do not have a direct or indirect interest in any other Bidder. This statement will be signed by the Bidder's Legal Representative and declare the Bidder's advisors have not provided any services to APN, PROINVERSION, or the Committee during this process, whether on a full time, part time or occasional basis in relation to the private investment promotion process.

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.

5.2.2.8 Incorporation Commitment

5.2.2.8.1 The Pre-Qualified Bidder and each one of its participants if it is a Consortium must submit a Sworn Statement of their intention of incorporating a Concessionaire company in Peru, same which may adopt any of the corporate types regulated by the General Corporations Law.

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 Agreement.

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

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 operations 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.

5.2.3 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.

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.

A Letter of Reference issued by a Banking Company or by an International Financial Entity shall be included as detailed in Annex N° 2 of the Tender documents, explaining the creditworthiness and the current financial standing of the Company. The original copy will be included as part of the documents submitted according to Form 6 in Annex N° 5.

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.

6 SUBMISSION OF CONTENTS OF ENVELOPE N° 1 AND RESULTS OF PRE-QUALIFICATION

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 pre-qualification 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.

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 Pre-Qualified 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 Pre-Qualified Bidders

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

Any Pre-Qualified Bidder may organize a Consortium up to fifteen (15) calendar days before the submission of Envelopes N° 2 and N° 3. Likewise, within that time, Pre-Qualified Bidders, if associated in Consortia, may change their configuration, and may enter into partnerships with other Pre-Qualified Bidders. The new members must meet all the pre-qualification requirements, including the Bidders' having the technical-operational expertise described in the Tender Document.

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 Pre-Qualification 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

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.
- That the Pre-Qualified Bidder or its members do not directly or indirectly have an interest in another Pre-Qualified member or member of same.

Document N° 2: Acceptance of Bid 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 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: Bid Validity, Currency and Performance 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 N° 4: Technical Proposal

The Bidder's Technical Proposal shall include the Proposal to carry out the Work and install the Equipment. In addition to provisions herein, the minimum contents of this Proposal are further detailed in Annex 11 to these Tender Documents.

The Bidder shall submit his proposal for the execution of the Reference Project, including the Preparatory Activities as identified in the Concession Contract, for which purpose he will take into consideration the stages for Works Execution and Equipment installation, as well as the minimum requirements established in the Concession Contract.

In addition, the Bidder may submit, as part of his Technical Proposal, other Alternative Works and Equipment which may be acceptable to the Committee. The Alternative Works and Equipment may be rejected only if it is considered that they do not meet the minimum Serviceability Indicators described in the Concession Contract and/or do not suit the minimum parameters determined by the Concession Contract. The Bidder shall clearly mention what Works and Equipment in the Reference Project have been replaced by Alternative Works and Equipment.

The identification and acceptance by the Committee of an Alternative for Works and Equipment implies the Concession Holder will execute such Work and provide the Equipment in conformance with the terms and conditions under which it was submitted.

The execution of the Works and the installation of the Equipment must be carried out following the conditions introduced by the Concession Contract, for which purpose the Committee-Approved Bidder Technical Proposal will be taken into account, as will the Definitive Study to be prepared by the Concession Holder.

Document 5: Business Plan

With a view at evaluating the viability of the Bidder's proposal, the Bidder shall submit a Business Plan including, at least, the following elements:

- Marketing strategy
- Cargo and vessel forecast
- Infrastructure and Equipment development plan
- Operations Plan
- Human resources development plan
- IT system plan
- Investment and acquisitions plan
- Financial plan

- Other logistic business items
- Demand for port services met during the term of the concession

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 Pre-Qualified Bidder's Legal Representative.

7.2 Contents of Envelope N° 3: Economic Proposal-Competition Factor

The Pre-Qualified Bidder shall include in Envelope N° 3 an Economic Proposal.

The Committee will choose the Best Economic Proposal among those submitted by Pre-Qualified Bidders and which has reached the highest scoring when applying the formula described under Article 9.1.5.

The Competition Factor will be determined as a function of the assessment of the economic impact of the Tariff Index, the Investment Commitment and the Remuneration as leading to the achievement of the Concession's objective, i.e. to increase the Callao Port Terminal's Competition and efficiency, and thereby the nation's, through competitive tariffs and services, notwithstanding efforts to reach a balance between the needs of the users, the State of the Republic of Peru, and the investors.

The Competition Factor will be informed by a Circular Letter.

Annex 6 to the Tender Documents provides a model for the Bidders' Economic Proposal.

7.2.1 The Economic Proposal shall remain current at least sixty (60) days after the Closing Date, even if that Economic Proposal was not awarded the Bid.

All other Economic Proposals with a shorter life will be discarded. The Committee may determine the mandatory extension of the Economic Proposals.

7.2.2 For purposes of this Tender, the submission of Envelope N° 3 by a Pre-Qualified Bidder will be considered an irrevocable Economic Proposal for the purposes of this Tender. An Economic Proposal implies the acceptance by the Pre-Qualified 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 Pre-Qualified Bidders are present before the Committee or its members, the Committee may start the ceremony before the tolerance period expires.

- 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 Numeral 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 Pre-Qualified 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** In evaluating the Technical Proposals, all members of the Committee will determine whether each of the Alternative Works and Equipment included in the Alternative Project may be accepted or rejected.
- 8.2.5** The proposal included in Envelope N° 2 will be declared technical acceptable when the Proposals, as a whole, meet the following conditions:
- a)** When complying with provisions set forth in Paragraph 7.1, 8.2.2 and 8.2.3, as applicable, in the Tender Documents.
 - b)** When the Technical Proposal has been approved by the Committee, at the Evaluation Committee's suggestion, in which case the Reference Project shall also be taken into account.
- 8.2.6** 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.

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 N° 2 will be made known directly to the Pre-Qualified Bidders at the date mentioned in Annex N° 12, explicitly indicating the Alternative Works and Equipment that may have been accepted, if any.

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.

- 8.2.7** 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

9.1.1 The Committee's Chairperson will start the ceremony to open Envelopes N° 3 of Pre-Qualified Bidders whose Technical Proposals were found to be technically acceptable, before a Notary Public at the designated place and time.

9.1.2 Envelopes N° 3 of the Pre-Qualified Bidders will be opened and their contents read, ensuring that the Proposals meet the Tender Documents' requirements.

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

9.1.4 Next, the Committee's Chairman will proclaim the valid Economic Proposals submitted in compliance with provisions of Annex N° 6.

9.1.5 Scoring of the Economic Proposals made by the Pre-Qualified Bidders will apply a formula where the Competition Factor will be computed as 100 to determine the initial score (IS).

This score will get a premium, in compliance with Law N° 28242 based on the offered Domestic Component, with a final adjusted resulting score (AS), and calculated as per the following equation:

Final adjusted score (AS):

$$AS = IS \times (1 + 0.2 \times DC)$$

Where:

IS is the Initial Score

DC is the Domestic Component (displayed by the Bidder in Annex N° 6 to the Tender Documents, and as a sworn statement), as a percentage of the total value of the Works and Equipment Budget, to be executed in compliance with the Bidder's Technical Proposal, according to Law N° 28242.

A Circular Letter may establish the maximum and/or minimum values for the Domestic Component to be included.

- 9.1.6** Excepting in case of tie, the Committee will award the Bid to the Pre-Qualified Bidder who submitted the Best Economic Proposal, in compliance with Article 7.2. At that moment, the Committee will announce, during the ongoing ceremony, the Best Economic Proposal and the Identity of the Award Winner.
- 9.1.7** In case of a tie in scores according to Paragraph 7.2, the Bidders will be granted up to two (02) hours to submit a new Economic Proposal which must be higher than the initial proposal. In case of a new tie, one (01) additional hour will be granted to prepare a new Economic proposal, which, likewise, must be higher than the initial proposal. If there is still a tie, a decision will be reached 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.

If one of the Bidders fails to make a new Economic Proposal, the initial Economic Proposal will be considered as valid.

- 9.1.8** The Bidder submitting a new Economic Proposal will do so by delivering a new Envelope N° 3 which must include only a Letter of Submission of the Economic Proposal, as per Annex N° 6, and signed by its legal representative.
- 9.1.9** After the Bid Award procedure has concluded, the Notary Public will prepare a document that will be signed by the members of the Committee, the Award Winner and other Bidders that wish to do so.

9.2 Challenges

9.2.1 Challenge Procedure

- 9.2.1.1** Any Pre-Qualified Bidder may file a challenge against the Bid Award before the Committee. The challenge must be entered as a comment to the notarized ceremony minutes for the opening of Envelope N° 3 and must be supported in writing within three (3) days after the date of the Bid Award. The Committee will issue a decision on the challenge within ten (10) days as from the day when the bank warrant bond described in Paragraph 9.2.2 was delivered.
- 9.2.1.2** The challenging Bidder may challenge the Committee's decision by submitting an appeal to PROINVERSIÓN's Directive Council within three (03) days after the Committee's decision was received. The appeal may also be filed against a decision denying the challenge if, after the ten (10) Day period when the Committee should resolve this submitted challenge, the latter has not made a decision in this respect. If so, the deadline to file an appeal will start running on the day after the then (10) Days term mentioned above expires.
- 9.2.1.3** Challenges against the explicit or implicit decision by the Committee will be resolved by PROINVERSIÓN's Directive 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 (03) Days after the Bid Award, the challenging Bidder delivers to the

Committee a joint and several, irrevocable, unconditional, non-excusable, non-dividable and automatic bank warrant bond, as shown in Annex N° 7, written on behalf of PROINVERSIÓN. The aforementioned warrant bond will be issued by Banking Company or an International Financial Organization as described in Annex N° 2 to these Tender Documents, for an amount equal to 1% to the Reference Project cost.

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.

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 Award winner.

10.2 Closing Act

The following acts will take place on the Closing Date:

10.2.1 The Award winner will deliver the following documents:

10.2.1.1 Award winner 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 Work and Equipment Installation and a Performance Bond for the Concession Contract described in paragraph 1.2.38 and 1.2.39, respectively.

The specimens of the warrant bond appear as Forms 2-A and 2-B in Annex N° 2.

10.2.2 Contract Signing.

10.2.3 PROINVERSIÓN will return to the Award Winner 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 The Concession Holder will pay the dollar amounts mentioned in paragraphs 11.3 and 11.5 of these Tender Documents pursuant to the Concession Contract.

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

10.3.1 If the Award Winner 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 Award Winner. The execution of this Warrant Bond does not limit or restrict any other rights pertaining to PROINVERSIÓN before the Award Winner who failed to comply with his proposal-related obligations.

10.3.2 The Committee is empowered but not obliged, if the Award Winner fail to comply, to accept the proposal of a different Bidder who receives the second higher store pursuant to paragraphs 7.2.1 and 7.2.2 to this Tender Documents, If so, the Committee will inform the Bidder who submitted that proposal of the purpose to declare him as new Award Winner 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 Award Winner failure to comply.

10.4 Contract's Coming into Force

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 Law

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

11.2 Jurisdiction and Competence

11.2.1 Notwithstanding the waivers made in paragraphs 1.4.2, 1.4.3 and other sections to these Tender documents, the pre-qualified Bidders and the members of the consortia an Concession Holding Company submit to and irrevocably accept the jurisdiction and competent of the judges and courts of the city of Lima, Peru, to resolve any conflict that may arise between them and the State of the Republic of Peru as concerned these Tender documents and expressly and irrevocably waives his right to file any diplomatic claim as well as their right to press charges of any kind before any other instance or jurisdiction.

11.2.2 No provision modifying, altering or limiting the rights of the state, 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, APN, PROINVERSIÓN, or the Committee, as applicable.

11.3 Contribution to FONCEPRI

Pursuant to paragraph c) of Article 1° in Supreme Decree N° 021-98-PCM dated May 20, 1998, the Award Winner will contribute to FONCEPRI a percentage of the Official Estimated Budget for Work and Equipment. This percentage is fixed at 2%.

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.

11.5 Process Expenses

The Award Winner commits to pay PROINVERSIÓN the expenses incurred in the process to promote private investments. The Committee will inform the Bidders of the amount of such expenses by means of a Circular Letter issued at the latest on the date when the Contract's final version is delivered.

11.6 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:

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 Directive 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.

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 Bid 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 Bid. 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 Bid.

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 [...^{xx}] day of [...] of 200 [...]

Notarized signature

Name

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

Organization

(Bidder)

ANNEX Nº 2
Form 2 - A:
PERFORMANCE BOND SPECIMEN FORM
FOR WORKS AND EQUIPMENT IMPLEMENTATION.
(Reference: Paragraph 10.2.1.4 of Tender Documents)

Lima, [...], 200....

Messrs.

Autoridad Portuaria Nacional

Ref.: Warrant Bond No.....
Date due :.....

Gentlemen,

This is to certify that at the request of our clients, [...] [name of corporation] hereafter the Concession holder we have issued this joint and several, irrevocable, unconditional, and automatic execution warrant bond without benefit of excussio or division up to the amount [...] in favor of the Ministry of Transportation and Communications to guarantee the appropriate and timely execution of the works and implementation of equipment in conformance with the Technical Proposal and Concession Contract for the New Container Terminal at the Callao Port Terminal – South Zone.

To honor this warrant bond it will suffice a requirement in writing by notarized channel from the Supervising Organization for Investment in Public Use Transportation Infrastructure (OSITRAN) signed by the Chairman of the Directive Council or any duly authorized official from said organization. The payment will be made within 24 hours after the request was made at our offices located at [...].

Our delay to honor this warranty will accrue interest at the maximum LIBOR rate plus a 3% spread. The LIBOR rate will be that published daily by Reuter Cable broadcast in Lima at 11:00 a.m. Interest will accrue starting on the date when the request to honor the bond was made until the actual day of payment.

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

This Warrant Bond will remain in force from [...] 200.. until [...], 200... inclusive.

Sincerely,

Signed by and for
Name
Bank

ANNEX N° 2

Form 2 - B:
CONTRACT PERFORMANCE BOND SPECIMEN FORM
(Reference Paragraph 10.2.1.4 of Tender Documents)

Lima, [...], 200....

Messrs.

Autoridad Portuaria Nacional

Ref.: Warrant Bond No.....
Date due :.....

Gentlemen,

This is to certify that at the request of our clients, [...] [name of corporation] hereafter the Concession holder we have issued this joint and several, irrevocable, unconditional, and automatic execution warrant bond without benefit of excussio or division up to the amount [...] in favor of the Ministry of Transportation and Communications to guarantee the appropriate and timely performance of each and every obligation by the Concession holder, including operation and maintenance derived from the signing of the Concession Contract for the New Container Terminal at the Callao Port Terminal – South Zone.

This warrant bond also guarantees the appropriate and timely performance of each and every obligation by the Concession holder pursuant to the provisions set forth in the Single Conformed Text of the regulations with the rank of law that govern the concession awards to the private sector of public infrastructure and services works as approved by Supreme Decree No. 059-96-PCM.

To honor this warrant bond it will suffice a requirement in writing by notarized channel from the Supervising Organization for Investment in Public Use Transportation Infrastructure (OSITRAN) signed by the Chairman of the Directive Council or any duly authorized official from said organization. The payment will be made within 24 hours after the request was made at our offices located at [...].

...///

Our delay to honor this warranty will accrue interest at the maximum LIBOR rate plus a 3% spread. The LIBOR rate will be that published daily by Reuter Cable broadcast in Lima at 11:00 a.m. Interest will accrue starting on the date when the request to honor the bond was made until the actual day of payment.

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

This Warrant Bond will remain in force from [...] 200.. until [...], 200... inclusive.

Sincerely,

Signed by and for
Name
Bank

UNOFFICIAL TRANSLATION

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

UNOFFICIAL TRANSLATION

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 N° 3

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

(Reference paragraph 5.2.2. of the Tender Documents)

We hereby under oath declare as follows:

That [...] who paid for our right to participate in the Prequalification Stage is one of our [choose: shareholders, partners, members, or a Company Related to us or one of our shareholders, partners or members].

Place and date:, 200...

UNOFFICIAL TRANSLATION

**Annex N° 3
Form 2: Technical and Operational Capability**

SWORN STATEMENT

BIDDER:

STRATEGIC PARTNER:

EXPERIENCE IN OPERATION (Port Management)

CERTIFICATION OF EFFECTIVE CONTROL		TERMINAL LOCATION	PORT AUTHORITY	ANNUAL TERMINAL BUSINESS	ANNUAL PORT BUSINESS	TOTAL MOORING LENGTH
Name of Terminal Operator/Management Company	Effective Control Arrangement					

Name: Bidder's Legal Representative

Signature: Bidder's Legal Representative

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 N° 4

Form 2: CREDENTIALS FOR QUALIFICATION (Consortia)
(Reference paragraph 5.2. 2 of the Tender Documents)

SWORN STATEMENT

We hereby represent under oath that:

.....
(Name of all Consortium members) have entered into a partnership by way of a Consortium to participate in the Call for Bids.

.....
(Name of all Consortium members) are legally organized and existing companies.

.....
(name of all Consortium members) are responsible on a joint and several and indivisible manner for each and everyone of the responsibilities assumed and sworn statements made by the Bidder before the Republic of Peru, APN, PROINVERSION and the Committee in connection to this Call for Bids.

Place and date:,, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

Organization
Legal Representative for (Member 1)

Name
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 3)

Name
Legal Representative for (Member 3)

Signature
Legal Representative for (Member 3)

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

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.	
TOTAL	

For bidding Consortia:

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

Place and date:, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

ANNEX N° 4

**Form 4: CREDENTIALS FOR QUALIFICATION
(Reference paragraph 5.2.2 of the Tender Documents)**

SWORN STATEMENT

We hereby represent under oath that neither[...] (name of Bidder) nor its shareholders or partners holding over 5% interest in the corporation or any of the Consortium's members, or their shareholders or partners owning more than 5% interest in their corresponding companies, as applicable:

- a. Is subjected to a sentence or court decision properly issued and executed or a firm arbitration decision issued in the last five years as part of a court proceeding or arbitration proceeding filed by the State, PROINVERSION or the Committee resulting from its failure to honor its contractual obligations with any agency of the State of the Republic of Peru.
- b. Is legally impeded, restricted or otherwise restrained to enter into contracts with the State or any of its agencies.
- c. Is impeded or restricted by contractual, court, legislative or other means, including provisions under Article 1366 of Peru's Civil Code to undertake and comply with the obligations resulting from these Tender Documents, the Economic Proposal, the Concession Contract and, generally, all obligations resulting from this Competitive Award. Bidder's Legal Representative

Place and date: 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

ANEXO N° 4

**Form 5: 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. Filing claims by diplomatic means and other rights to request indemnification or other remedies concerning any claims against the State, APN, PROINVERSION, the Committee, their members and advisors, under Peruvian law or any other law in connection with our obligations as related to the Tender Documents, our Economic Proposal, our Technical Proposal and the Concession Contract.

Place and date: , 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

ANNEX N° 4

Form 6: CREDENTIALS FOR QUALIFICATION

(Reference paragraph 5.2.2 of the Tender Documents)

SWORN STATEMENT

We hereby represent under oath that our legal and technical advisors have not provided direct services to APN, PROINVERSION or the Committee during the private investment promotion process whether on a full time, part time or occasional basis, in connection with the above mentioned private investment promotion process.

Place and date:, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

UNOFFICIAL TRANSLATION

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

ANNEX N° 5

Form 1: COMMITMENT TO INCORPORATE

SWORN STATEMENT

(Reference paragraph 5.2.2.8 of the Tender Documents)

We hereby declare under oath that:

1.-
(name of Bidder or each of Consortium members) have entered into an association by way of a Consortium to participate in this Competitive Bid).

2.-,
(name of the abovementioned Consortium members or Bidder's name for corporations) have signed a Letter of Intent to organize a corporation domiciled in the Republic of Peru with a corporate capital appropriate to the terms of the Concession Contract.

3.- The future corporation will sign the Concession Contract for the New Containers Terminal at the Callao Port Terminal – South zone.

4.- If awarded the Contract, we commit to deliver the corresponding incorporation public deed for the Concessionaire Corporation, including the certificate of registration at the corresponding Registration Office, or alternatively certify the filing of the notarized docket in the above mentioned Registry, at the Closing Date set forth in Annex 12 to the Tender Documents.

We therefore represent we know and accept that our failure to comply with this commitment may be used to declare null and void our Award of the Contract.

Place and date:, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

Organization
Legal Representative for (Member 1)

Name
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 3)

Name
Legal Representative for (Member 3)

Signature
Legal Representative for (Member 3)

UNOFFICIAL TRANSLATION

ANNEX N° 5

**Form 2: FINANCIAL REQUIREMENTS - ENVELOPE 1
(Reference paragraph 5.2.3 of the Tender Documents)**

**SUBMISSION OF FINANCIAL INFORMATION FOR QUALIFICATION.
SPECIMEN LETTER**

Lima, , 200...

Messrs
**PROINVERSION Committee for Infrastructure and Utilities Projects
Private Investment Promotion Agency PROINVERSION**

Bidder :

Ref.: Comprehensive Project Competitive Award for the private sector concession of the New Containers Terminal at the Callao Port Terminal – South Zone

Pursuant to Paragraph 5.2.3. of the Tender Documents, we hereby submit our Financial and Technical Information Letter.

I. FINANCIAL REQUIREMENTS

A. Bidder's Net Worth

NET WORTH US\$ []*

- The total amount here must be the same as in Table B.

B. Net Worth and percent interest held in Bidder

Shareholder, Related company or member	Note 1	US\$ Net Worth (Note 2)	Percent interest % (up to two decimal points)
		(I)	(II)
			TOTAL (Copy to Section A)

Note 1: Check “X” if Net Worth belongs to a Related Company. Also complete Section D.

Note 2: For Net Worth of Shareholders, Related Companies or members in non US\$ currencies, use Table C.

C. Currency conversion for non US\$ figures, as applicable.

Shareholder, Related company or member	Amount (Original currency)	Exchange rate	Amount (US\$)

Note: Exchange rates published by the Superintendent for Banks and Insurance companies on the date of document submission.

D. Explanation of the relationship between the Bidder, the shareholder(s) or members of the Bidder, and the corresponding Related Company.

If an amount shown for a shareholder or member belongs to a different individual, explain why the company is a Company, related to the Bidder, Shareholder or Member of the Bidder.

E. Attach International Financial Organization's Letter of Reference

Sincerely,

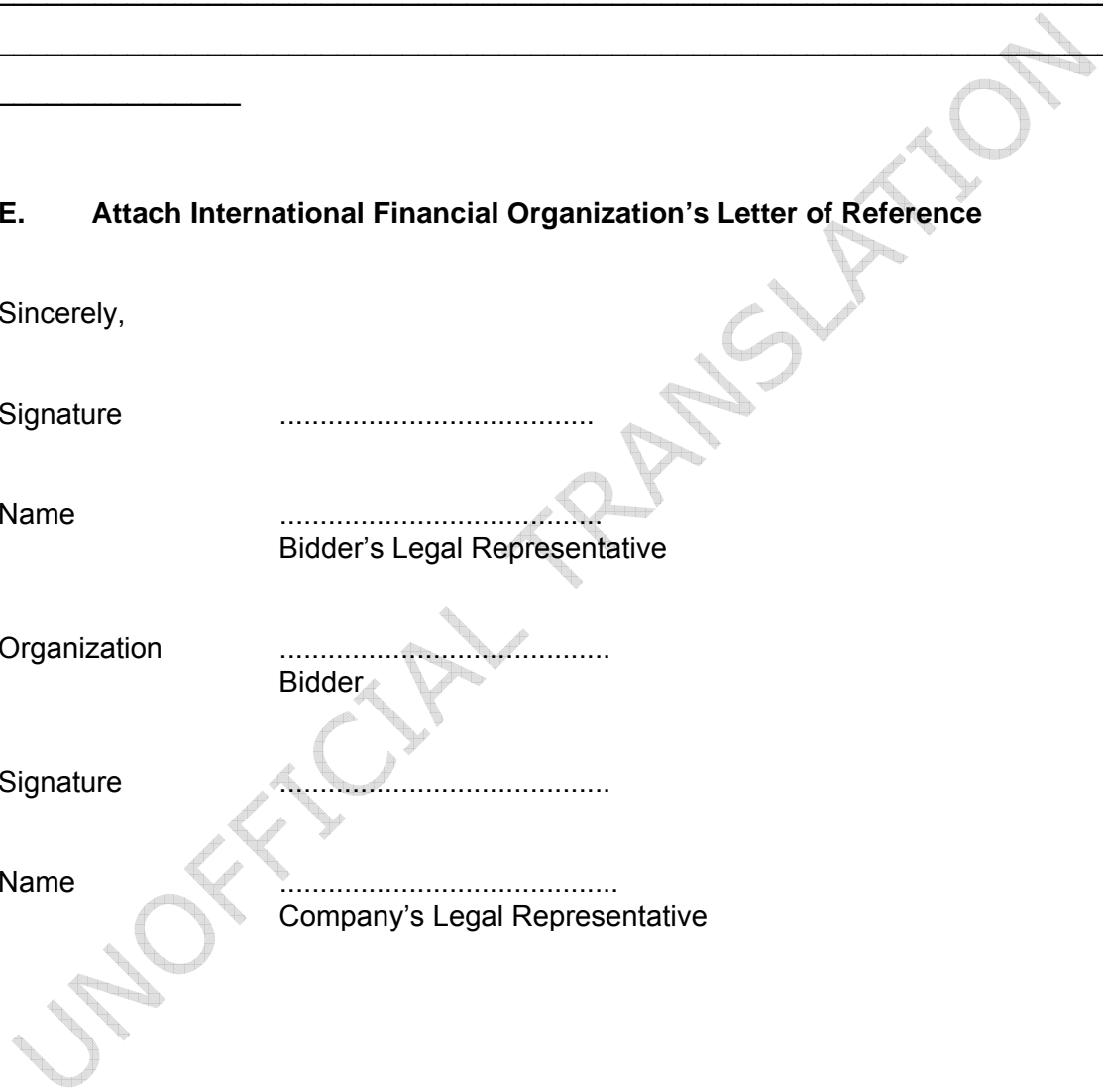
Signature

Name
Bidder's Legal Representative

Organization
Bidder

Signature

Name
Company's Legal Representative



ANNEX N° 5

**Form 3: WARRANT BOND FOR THE VALIDITY, CURRENCY AND SERIOUSNESS
OF THE PROPOSAL.**

(Reference: paragraph 7.1 of Tender Documents)

Lima, , 200....

Messrs
Private Investment Promotion Agency - PROINVERSIÓN
Presente.-

Ref. : Warrant Bond No

Date due:

Gentlemen:

This is to certify that at the request of our clients, [...] [name of corporation] we have issued this joint and several, irrevocable, unconditional, and automatic execution warrant bond without benefit of excussio or division up to the amount five million dollars of the United States of America (US\$ 5'000,000.00) in favor of PROINVERSION to guarantee the Validity, Currency And Seriousness of the proposals submitted by our client in connection with the terms and conditions set forth in the Tender Documents for the Competitive Award to the private sector of the Comprehensive Projects for the New Container Terminal at the Callao Port Terminal – South Zone.

We will honor this warrant bond if our client is awarded the contract by the Committee but fails to meet its obligations at the Closing Date of the abovementioned Competitive Bid.

Payment will be effected at the sole written request of PROINVERSION's Executive Director or his/her representative, at our offices located at [...] (address)

To honor this Warrant Bond in your favor, it will suffice to send a notarized request by PROINVERSION's Executive Director and all delays on our part will result in interest accruing to you at the maximum LIBOR rate plus a 3% margin.

The LIBOR rate will be that published by Cable Reuter daily in Lima at 11:00 hours and interest will accrue as from the date of the request to honor until the actual date of payment.

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

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

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

Sincerely,

Signature

Name

Bank

UNOFFICIAL TRANSLATION

ANNEX N° 5

Form 4: VALID INFORMATION

(Reference: paragraph 7.1 of the Tender Documents)

SWORN STATEMENT

We hereby represent under oath that:

1. The information, representations, certifications and generally all documents submitted in Envelope No. 1 are current as of this date and will remain so until the Closing Date.
2. We do not own a direct or indirect interest in any other Prequalified Bidder or member thereof.

Place and date:,, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

UNOFFICIAL TRANSLATION

ANNEX Nº 5

**Form 6: REFERENCE LETTER
(Reference paragraph 5.2.3.1 of Tender Documents)**

TO: Comité de PROINVERSIÓN en Proyectos de Infraestructura y de Servicios Públicos.
Agencia de Promoción De La Inversión Privada (PROINVERSIÓN).

(NAME OF BANK LEGAL REPRESENTATIVE) as
Bank (name of Bank) legal representative

HEREBY CERTIFIES THAT :

..... with address of record at, is a company mainly engaged in [...] is a client of recognized experience and record at our organization and as can be drawn from the documentation available to us it has sufficient capacity to meet all its contract and financial obligations for the New Containers Terminal at the Callo Port Terminal – South Zone project and enjoy our confidence as a leading company in their industry.

The most recent information available to us reveals the abovementioned company does not carry any financial burdens that may compromise their present or future economic standing.

At present we have signed with our client Credit Lines that the Company may use to finance the works, free from other contract obligations.

This Letter shall not be construed as a guarantee or promise to guarantee.

This certification was issued at the request of our client on, 200...

.....
Bank signature

ANNEX Nº 6

**Envelope Nº 3: ECONOMIC PROPOSAL SUBMISSION.
SPECIMEN LETTER**

(Reference paragraph 7.2 of the Tender Documents)
To be sent as Circular Letter

UNOFFICIAL TRANSLATION

ANNEX Nº 7

BANK WARRANT FOR AWARD CHALLENGE. SPECIMEN
(Reference paragraph 9.2 of Tender Documents)

Lima, , 200...

Messrs.

Agencia de Promoción de la Inversión Privada- PROINVERSIÓN

Ref. : Warrant Bond N°

Date due:

Gentlemen,

This is to certify that at the request of our clients, [...] [name of corporation] we have issued this joint and several, irrevocable, unconditional, and automatic execution warrant bond without benefit of excussio or division up to the amount [...thousand and 00/100 dollars of the United States of America (US\$...,000.00)] in favor of PROINVERSION to guarantee our warranted clients the payment of this amount in any of the events described in the fourth paragraph below.

This warrant bond will remain in force since the date of filing of the challenge until Sixty (60) days alter the Closing Date of the Competitive Award and will be made effective if the challenge filed were declared groundless or inappropriate in a final decision made by PROINVERSION's Directive Council.

We understand this warrant bond may be executed by PROINVERSION pursuant to provisions in Article 1898 of Peru's Civil Code.

It is hereby likewise explicitly agreed that to honor this warrant bond it will suffice a requirement in writing by notarized channel sent to our offices located at the address below stating that the challenge filed against the decision of the Comprehensive Project Competitive Award to the Private Sector of the New Containers Terminal at the Callao Port Terminal South Zone has been declared groundless or inappropriate by PROINVERSION's Directive Council or having the Committee made a decision, the letter was not challenged.

We commit to honor the total amount of the Warrant Bond within 24 hours as from the date when the corresponding notarized request letter was received.

Our delay to honor this warranty will accrue compensatory interest to you at the maximum LIBOR yearly rate plus a 3% spread.

The LIBOR rate will be that published daily by Reuter Cable broadcast in Lima at 11:00 a.m. Interest will accrue starting on the date when the request to honor the bond was made.

Sincerely,

SIGNATURE AND STAMP

NAME OF ISSUING BANK

BANK ADDRESS

Concession of the New Container Terminal - Callao Port Terminal – South Zone

ANNEX Nº 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				

ANNEX Nº 8

Form 2: MULTIPLE SERVICE REQUEST

Date of Request	
------------------------	--

Requested by	
---------------------	--

User	
-------------	--

	Ref. Nº	Service	Units	Amount
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

Delivery date	
----------------------	--

ANNEX N° 8

Form 3: TECHNICAL CONSULTATION REQUEST

Date	
-------------	--

Requested by

Company:	
Requested by:	
Position:	

UNOFFICIAL TRANSLATION

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 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

ANNEX Nº 9

CONCESSION AREA

The Bidder may develop the New Container Terminal in the Callao Port Terminal – South zone in the Marine Area southwest of the line perpendicular to the coast line (Dock 11) starting at UTM coordinates North 266522 and East 8666817.

A back up land area of approximately 7 ha presently used by Zones 2 and 2B and adjoining properties enclosed by the ENAPU perimeter wall will also be available to the Bidder.

The limits of the concession area will be ultimately determined by the Concession Contract on the basis of the winning Bidder's Project.

UNOFFICIAL TRANSLATION

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.

Name of Bidder's Legal Representative

Legal Representative's Signature

Place and date: , 200...

ANNEX N° 11

TECHNICAL PROPOSAL SPECIFICATIONS (Reference paragraph 7.1. of the Tender Documents)

The Bidder shall provide a theoretical justification for the Works and Equipment offered and identified in his Technical Proposal including the following sections and at least minimum contents below.

I.- MARITIME INFRASTRUCTURE

- Depth of the access channel and maneuvering area required by the terminal's operational design.
- Navigation aids
- Maximum allowed waves for normal equipment operation. Wave breaker repairs needed.
- Dock area bottom dredging plan. Implementation stages. Dredging needed to create 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 and material for deep foundations, 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.
 - Mooring, defense and other elements. Description
- Complementary works, Description
- Technical standards that will use, 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
 - Type of activities along the containers terminal (scheduled times and motions, imports and exports, transshipment)

VI.- ENVIRONMENTAL CONSIDERATIONS DURING CONSTRUCTION STAGE. ENVIRONMENTAL CONTROLS PLAN DURING THE WORKS AND TERMINAL OPERATION.

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 documents prepared by the State of the Republic of Peru when preparing any of the chapters outlined above. In the corresponding chapter, provided the following citation is included:

“In preparing this chapter, the Bidder used [...] (citation: name of document, author and year prepared), from pages [...] to [...], and/or plans No. [...] to No. [...]. If awarded the contract, the Bidder will use the above specifications in executing the Works.”

ANNEX N° 12

TIMETABLE
(SEE QUERIES/ANSWERS/ VERSION 1 OF CONTRACT)
(Reference: Paragraph 1.6 of the Tender Documents)

ACTIVITIES	Probable date/period
Call for bids and publicity of Tender Documents	Day 1
Submission of interested parties' credentials and bidder prequalification (envelope 1)	Starting on Day 3 Ongoing process until about 20 days before the submission of the technical and economic proposals
Final contract version distributed	Day 89
Submission of economic and technical proposal (envelopes 2 and 3)	Until Day 129
Results of technical proposal evaluation, opening of economic proposal and contract award	Day 145
Closing of contract	Probable date to be determined depending on requirements for contract signing