

Integral Project Tender for the Concession of a New Containers Terminal at the Callao Port Terminal – Southern Zone

CIRCULAR LETTER N° 004

In accordance with section 1.4.1 of the Integral Project Tender for the Concession of the New Containers Terminal at the Callao Port Terminal – Southern Zone, the PROINVERSION Infrastructure and Public Utilities Committee reports the resolution of queries made by the Bidders on the Tender Documents and modifications to same, which have received a favorable opinion from the APN.

I. RESOLUTION OF QUERIES ABOUT TERMS OF BIDDING

Query:

1. *Section 1.1, third paragraph, of the Terms establishes that the Harbor Terminal in reference must have the initial basic referential characteristics indicated in this section, within which is included, among others, a Minimum Capacity of 600.000 TEUs. We request that you specify whether this minimum capacity is annual.*

Response:

The minimum capacity of 600.000 TEUs established in section 1.1 of the Terms must be considered as a minimum annual capacity.

Query:

2. *Section 1.1, third paragraph, of the Terms establishes that the Harbor Terminal in reference must have the initial basic referential characteristics indicated in this section, that includes a minimum of 6 Wharf Gantry-type Cranes. We consider in this respect that initially the efficient operation of a wharf of the kind that is sought to be constructed does not require the number of cranes required. In this sense, we request that you set forth a timetable within which the minimum number of cranes demanded must be reached based on cargo movement.*

Response:

For the beginning of operations, each dock berth must have a minimum of two Wharf Gantry-type Cranes. More cranes must be added as demand is increased in order to be able to fulfill the Service and Productivity levels, and to increase the Terminal's capacity. The NTC must have at a minimum six Wharf Gantry-type Cranes before the end of the Concession term.

Query:

3. *Section 1.1 of the Terms, sixth paragraph, indicates that the term of the Concession will be 30 years, according to the provisions in section 10.3 of article 10 of the National Harbor System Law. We wish to mention in this respect that, according to article 50 of the Regulations to the National Harbor System Law, the contracts that are executed with the private sector for the administration of harbor infrastructure may be extended for up to thirty additional years, "...having to set forth the extension conditions in the contest Terms and in the corresponding contract." In this sense we consider it necessary to set forth in the Terms the conditions for extending the Concession.*

Response:

Subject to the provisions in the Terms.



Query:

4. *As indicated in section 1.1 of the Terms, seventh paragraph, part of the workers that could be redundant in ENAPU S.A. must be hired by the Concessionaire, assuring therefore the labor continuity and training for these workers. We request that you specify that the **hiring of redundant ENAPU S.A. personnel** is a choice of the Concessionaire but shall not constitute a contractual obligation for it.*

Response:

Subject to the provisions in the Terms. Further information will be found in the Contract.

Query:

5. *As indicated in section 1.1 of the Terms, last paragraph, the services charged to the Concessionaire will be provided under the principles of free competition, nondiscrimination and equality before the Law, neutrality, prohibition of price transfers, separate accounting and free choice. Concerning this matter we must indicate that the system known as "Berthing Windows" is an international practice in providing harbor services; by virtue of it the operator of a port offers the market regular service of tending ships, reserving berthing spaces for certain times. We request that you specify that this system does not infringe the principles of free competition, nondiscrimination and equality before the Law and that therefore the concessionaire will be authorized to contract with customers under such system.*

Response:

The query is being analyzed. The result of the analysis could be a matter for the Concession Contract.

Query

6. *Section 1.2 of the Terms indicates that the references to "Days" must be understood as "working days". On the other hand, section 1.2.28 defines the concept of "Days" as "calendar". We request that you specify.*

Response:

Section 1.2.28 of the Terms is modified in accordance with the following text:

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

Query

7. *From the definition of Investment Commitment contained in section 1.2.17 of the Terms it may be understood that this Commitment is different from the Concessionaire's obligation to construct the New Container Terminal in the Callao Harbor Terminal. We request that you confirm this interpretation and, if necessary, make known to bidders as soon as possible the amount and other conditions of this Investment Commitment, given the impact that it would have on the offer.*

Response

The definition of Investment Commitment has been modified by means of Circular Letter 001. It is specified that this commitment is different from the obligation to construct the New Container Terminal. The amount and scope will be communicated by means of Circular and established in the Contract.

Query:

8. *According to section 1.2.43 of the Terms, the Awardee must provide a Guarantee of Faithful Fulfillment of Work Execution and Implementation of Equipment (Performance Bond). In addition, in accordance with section 1.2.44 of the same Terms, the Awardee must also provide a Guarantee of Faithful Performance of the Concession Contract. On the matter of both guarantees it is indicated in the Terms that they must be constituted by a bank letter of guarantee issued by a Banking Company or International Financial Entity that must be jointly liable, unconditional, irrevocable, without division nor right of exclusion and of automatic execution from the Closing Date. We believe that only the Guarantee of Faithful Fulfillment of Work Execution and Implementation of Equipment must be constituted from the Date of Closing and that the Guarantee of Faithful Performance of the Concession Contract must be constituted upon conclusion of the works and in replacement of the Guarantee of Faithful Fulfillment of Work Execution and Implementation of Equipment.*

Response:

The query about the Guarantee of Faithful Performance of the Concession Contract is being analyzed.

Section 1.2.43 of the Terms is modified as follows:

1.2.43 Performance Bond for Work Execution and Equipment Installation:

*The amount of this Guarantee shall be equivalent to 20% of the Official Budget Estimates of Work and Equipment. **This amount will be reduced proportionally to the advance of work, down to a minimum amount equivalent to 20% of the initial guarantee. In order to be able to make this reduction, the Bidder must have advanced at least one dock berth in the work.***

This Guarantee will have the object of guaranteeing the correct Work Execution and Implementation of Equipment according to the Technical Proposal presented by the Awardee and as indicated in the Concession Contract.

*It shall be established by a bank letter of guarantee issued by a Banking Company or International Financial Entity, as detailed in Appendix N° 2 of these Terms, that must be jointly liable, unconditional, irrevocable, without division nor right of exclusion and of automatic execution from the Closing Date, that shall be renewed annually to maintain it in force as indicated in the first paragraph of the definition. **The Guarantee of Faithful Fulfillment of Work Execution and Implementation of Equipment must be in force from the Closing Date to the acceptance of Works.***

Alternatively, a stand-by letter of credit may be accepted, which must follow the formal procedures required by the bank that conducts the operation, which must fulfill the requirements established in the model Form N° 2-A in Appendix N° 2, and issued by a top ranking Foreign Bank and confirmed by a Local Banking Company.

Query:

9. *In the definition of Standard Services in section 1.2.72 of the Terms loading and unloading services are described as Loading Services. It is the practice in Peru that these services are taken care of by the ship. We request that you consider such situation and describe the loading and unloading services as Services to the ship.*

Response:

Indeed, the loading and unloading services must be taken care of by the ship. A proposal is being worked on that will be incorporated in the Concession Contract.

Query:

10. *In accordance with section 5.2.1 of the Terms, in order to accredit the technical-operative capacity demanded, the Bidder's Strategic Partner must concurrently fulfill the following requirements:*

Experience in Operations (Harbor Administration):

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 Terms also indicate that, in order to fulfill the requirements indicated, the Strategic Partner can indicate one or more terminals; and that the activities that are indicated as Experience in Operation must have been performed subsequent to January 1, 2002. Finally it indicates that, in the case of the requirement indicated in paragraph a) the experience of related companies may be added and that of those companies with respect to which the Strategic Partner is a Subsidiary Company, not being able to add the experience of other members of the Partnership.

We request that you confirm that, although for effects of accrediting the technical-operative capacity demanded in paragraphs b) and c) the Bidder's Strategic Partner may not add the experience from more than one company related to itself, but it will be able to present the experience of a related company or affiliate of such Strategic Partner or of a company with respect to which the Strategic Partner is a subsidiary.

Response:

Subject to the provisions in Terms. The concept of adding experience is only applicable to point a).

Query:

11. *In accordance with the provisions in section 5.2.3.1 of the Terms, for the effects of accredit the Minimum Net Worth in the case in which the Bidder is a Consortium the sum of the net worth of each one of the members of this bidder will be considered. We request that you confirm that, for the above-indicated effects, the total net worth of each one of the members of the Partnership will be considered, and not a percentage of the net worth of each bidder calculated according to the participation of each member in the partnership.*

Response:

In effect, it is confirmed that, for the effects of accredit the Minimum Net worth in the case in which the Bidder is a Partnership, the total net worth of each one of the members of the Partnership will be considered.

Query:

12. *Although Appendix N° 12 of the Terms includes a Timetable, this refers to days and not to fixed dates. In another area, the PROINVERSIÓN Web page contains a timetable according to which the prequalification of bidders ends February 21, 2006 and the presentation of bids is anticipated for March 13. We would be thankful if you could communicate the updated timetable by means of Circular Letter, referring to fixed dates. We also request that this timetable include an extension of 30 working days for the pre-qualification, thus fully modifying it.*

Response

See Circular Letter N° 003.

Query:

13. *As shown in a photograph on the PROINVERSIÓN Web page, the building currently occupied by INFOCAP is located within the Area of the concession. We wonder if whether this building will form part of the concession goods to be given to the Awardee.*

Response:

With respect to the building currently occupied by INFOCAP, it is specified that this does not form part of the Concession Area.

Query:

14. *We request that you include the Grantor's obligation to arrange the signing of the Guarantee Contract with the State in accordance with the provisions in Article 2 of Decree Law N° 25570, replaced by Article 6 of Law N° 26438, and Article 4 of Law N° 26885, in the Terms*

Response:

The Services Contract will set forth that the GRANTOR will undertake all the arrangements and coordination that may be pertinent so that, by virtue of the provisions in Article 4 of Law N° 26885, Law of Incentives for Concessions of Infrastructure Works and Public Services, the executive branch issues the Supreme Decree referred to in Article 2 of Decree Law N° 25570, replaced by Article 6 of Law N° 26438, by which it will grant the State's guarantee in support of the obligations, declarations and guarantees of the GRANTOR established in the Contract.

Query:

15. *We request an extension of the term between the date of delivery of the last version of the Concession Contract and the date for presentation of envelopes 2 and 3, so that the latter is programmed for the first half of May. The idea is to have more time to prepare the technical proposal and the business plan.*

Response:

See Circular Letter N° 003.

Query:

16. *We request a specification of the dates for issuance of each one of the draft Concession Contracts, the terms for queries or observations to draft Concession Contracts and the terms for resolving queries and observations to draft Concession Contracts be specified.*

This information is urgently needed since the overall timetable has been changed and it is necessary to program the internal times within this timetable.

Response:

See Circular Letter N° 003.

Query:

17. *We request that you clarify the eighth paragraph of section 1.1 of the Terms and determine what the Concessionaire's incorporation of personnel that could be redundant in ENAPU S.A. will consist of. Specifically we request that you specify who the workers that must be incorporated will be or if it is only required to incorporate a certain number of workers. In the latter case, we request that you specify if the positions of the workers to be incorporated will be mentioned in the Concession Contract. We also request that ENAPU S.A. and/ or the Peruvian State issue a guarantee in the sense that the ENAPU S.A. personnel to be contracted by the Concessionaire have concluded their labor bond with ENAPU S.A. by means of (i) resignation, (ii) individual agreement to terminate a labor relationship or (iii) a collective discharge process transacted in accordance with the laws of the Republic of Peru or (IV) any another form allowed by Peruvian law. We suggest that the Concessionaire not be obliged to contract those workers who have been dismissed by ENAPU S.A. In all cases, the workers to be incorporated by the Concessionaire must have received their settlements of fringe benefits. Finally, we request that you specify the stage of harbor operations in the South Wharf starting from which these workers must be incorporated by the Concessionaire. We believe that this obligation must be made effective only after having concluded the construction and implementation of the South Wharf and when the harbor works indeed begin.*

Response:

Subject to the provisions in the Terms. Further information will be found in the Contract.

Query:

18. *We request that you clarify section 1.2.17 of the Terms as to how the Investment Commitment is determined, of what it will consist and how it will be executed.*

Response:

The definition of Investment Commitment has been modified by means of Circular Letter 001.

It is specified that this commitment is different from the obligation to construct the New Container Terminal. The amount and scope will be communicated by means of a Circular and established in the Contract.

Query:

19. *We request that you modify paragraphs b) and c) of section 5.2.1 of the Terms to allow that these requirements can be fulfilled through the first company or some company related to the Bidder or the Strategic Partner. In this way the Bidder will be allowed to choose the subsidiary that generates a greater efficiency in investment, benefiting not only the Bidder, but also the Peruvian State, because the greater the efficiency in investment, the greater the possibility of making a better offer.*

Response:

Subject to the provisions in Terms. The concept of cumulative experience is only applicable to point a) of the section at issue

Query:

20. *We request that the Guarantee of Faithful Fulfillment of Execution of Works and Implementation of Equipment referred to in section 1.2.43 of the Terms be reduced as progress occurs in the work and implementation of equipment, in fulfillment of the proportionality principle. In this sense, it is suggested that the guarantee demanded be reduced proportionally with the advance of works and implementation of equipment, thus avoiding unnecessary costs for the Concessionaire.*

Response:

See Response to Query 8.

Query:

21. *Please confirm that the purchaser of the Terms can formulate queries to Terms and to the Concession Contract, access the Data Room, name Authorized Agents, etc., acting as Bidder in this process and that before presenting Envelope No. 1 can (i) form a Partnership, so that the Bidder is not the purchaser of the Terms but the Partnership, which starting from that moment will be the one that, as Bidder, performs all the acts in this process, or (ii) use a related company, so that Bidder is not the purchaser of the Terms, but a company related to the purchaser of the Terms, and this related company will, starting from that moment, be the one that, as Bidder, performs all the acts in this process.*



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Response:

The Contest does not anticipate the acquisition of the Terms or the concept of "Acquisition of Terms", but rather the payment of a right to participate.

In accordance with the provisions in the Terms, the Bidder is that legal entity or Partnership that applies and has acquired the right to participate in the contest pursuant Section 5 of the Terms.

According to Section 6.2 of the Terms, a Prequalified Bidder can form a Partnership up to 15 calendar days before presenting envelopes Nos. 2 and 3, in which case, once approved by the Committee, this Partnership will be the Bidder for all effects of the process for promoting private investment.

Query:

22. *We request that you eliminate the reference to section d) in the penultimate paragraph of section 5.2.1 of the Terms.*

Response:

The penultimate paragraph of Section 5.2.1 of the Terms is modified as follows:

"The Strategic Partner must concurrently fulfill the requirements indicated in paragraphs a), b), and c) above. For these effects, it may indicate one or more terminals. Also, the bidder must accredit that the activities that are indicated as Experience in Operations is subsequent to January 1,2002."

Query:

23. *We request that you eliminate the requirement to submit the articles of incorporation for the Bidder or the members of the Partnership, given that this document could, in some cases, be very old; it being sufficient to have a certificate of validity or equivalent instrument issued by a competent authority in their country of origin, whether for the Bidder or members of the Partnership. In the case of an old corporation, the articles of incorporation may be completely out of date, due to the diverse modifications that may have been made over time, having lost all practical usefulness.*

Response:

The first line of section 5.2.2.1 is modified in accordance with the following text:

5.2.2.1 That the Bidder be a legal entity or a Partnership, having to accredit to this requirement through the presentation of the following:

- "Legalized Copy of the Bidder's articles of incorporation. In case of a Partnership, the articles of incorporation for each one of its members or a legalized copy of such will be required. As an alternative to the articles of incorporation of the Bidder or the members of the Partnership, the by-laws currently in force or equivalent instrument issued by a competent authority in their country of origin will be accepted, whether for the Bidder or members of the Partnership."

Query:

24. *We request that you allow the Concessionaire freedom to fix the amount of its share capital (section 5.2.2.8.1 of the Terms), because it will be the market itself that determines the need for greater or lesser capital. As an example, we refer to the minimum capital that may be required by financial and banking institutions or third-party providers with which the Concessionaire has to deal. In addition, this share capital would have to be subscribed and to be paid in depending on the different possibilities provided for in the General Company Law.*

Response:

Subject to Section 5.2.2.8.1 of the Terms.

Query:

25. *We request that you clarify section 5.2.2.8.3 of the Terms for the case in which the Bidder is not a Partnership, but a foreign legal entity; said legal entity will have the capacity of Strategic Partner and that when constituting the Peruvian entity that is to be the concessionaire of the South Wharf, the winning Bidder must participate in this Peruvian entity with at least 51%, which may be from the beginning (by means of incorporation) or later (by means of transfer) having other proprietary shareholders for the remaining 49% at most.*

Response:

The Concessionaire may have other shareholders provided that the Strategic Partner has and maintains a Minimum Participation of 51%.

Query:

26. *We also request that you inform us, as soon as possible, with transparency and clarity, of the parameters to be taken into account in the economic proposal with the intention of awarding the bid.*

Response:

See Circular Letter N° 001 and the first version of the Concession Contract that will be sent according to the Timetable attached to Circular Letter N° 003.

Query:

27. *We request detailed information on the improvements that will be implemented in Wharf 5, not only as far as their characteristics, but also their conditions and terms. It is indispensable for any Bidder to know the conditions in which it is going to compete in providing harbor service.*

In this sense we request that you indicate what the perspectives and projects contemplated for Wharf 5 are, as well as their development plans, strategic associations, investments by the Peruvian State through ENAPU S.A. or another public agency, and the limitations to these projects and plans in order not to impair the position of investors in the South Wharf.

Response:

The subject of the query is under evaluation and may form part of the Contract.

Query:

28. *We request that you modify section 11.2 of the Terms with the purpose of replacing the jurisdiction and competition of the judges and courts of the city of Lima, Peru for an arbitration clause. This is indispensable to offering sufficient guarantees for investment. An arbitration clause not only projects impartiality, but also allows the parties to choose referees with ample knowledge of harbor matters. The necessity of having an arbitration clause becomes more urgent when we take into account that this is a long-term (30-year) relation where legal security plays a major role in an investor's decision.*

Response:

For effects of the Terms the jurisdiction of judges and courts of Lima remains to resolve any controversy arising with regard to the same.

In effect, in order to offer sufficient guarantee to investment, the Concession Contract will include the respective Arbitration Clause and the corresponding procedure for appointing the arbitrators.

Query:

29. *We request that you confirm that the titles corresponding to the land area and the marine area in the concession are duly cured, delineated and registered in the Public Records. Please provide the corresponding evidence.*

Response:

The pertinent information will be available in the Data Room.

Without prejudice to the foregoing the Concession Contract will include a declaration with respect to the exclusive use of the Concession Area.

Query:

30. *We request that you clarify whether the references to "Days" must be understood as working days (according to the provisions in the second paragraph of section 1.2 of the Terms) or to calendar days (according to provisions in section 1.2.28 of the Terms).*

Response:

See response to Query N° 6.

Query:

31. *Please specify what the "Qualification Form" referred to in section 3.4.4 of the Terms is.*

Response:

Section 3.4.4 of the Terms is modified in accordance with the following text:

"The mere presentation of prequalification documents shall constitute, with no need of any subsequent act, the acceptance of all the provisions in Section 3.4 on the part of the Bidder and, as applicable, of the Concessionaire, as well as their irrevocable and unconditional waiver, in the broadest manner allowed by Applicable Law, to raise any action, reconvention, exception, claim, demand or request for indemnification against the State or any of its dependencies, bodies or officials, or by PROINVERSIÓN, the APN, the Committee or its advisers."

Query:

32. *We request that you clarify with respect to the sworn statement that is indicated in the third paragraph of section 5.2.2.1 of the Terms (Form No. 3 of Appendix No. 4), as to whether in the case of Partnerships it must indicate, in addition to the participation of each one of its members in the Bidder, the participation of each one of its shareholders or partners in these members of the Partnership.*

Response:

In the case of Partnerships, the sworn statement that is indicated in the third paragraph of section 5.2.2.1 of the Terms (Form No. 3 of Appendix No. 4) must indicate only the percentage of participation of each one of its members in the Partnership (Bidder).

Query:

33. *We request that you grant a term of no less than 30 working days between the date of granting the Award and the Closing Date, in order to have sufficient time to organize an entity in the Republic of Peru or to increase its share capital in accordance with the requirements in the Terms and the Concession Contract.*

Response:

The suggestion is accepted. The term between the date of granting the Award and the Closing Date will be a term of no less than 30 working days.

Query

34. *We request that the Guarantee of Refutation referred to in section 9.2.2 of the Terms can be executed only once the administrative resolution is allowed or, if it is rejected in the Peruvian courts, a judicial resolution adverse for the respondent is issued that constitutes res judicata. This is because the respondent could well oppose the resolution on appeal and in the final administrative stage before Peruvian courts and the respondent prevail in this judicial process, for which reason it would be bad for PROINVERSION to execute upon the Guarantee of Refutation prior to an official and definitive ruling from the competent authorities.*

As a result of the foregoing, and only to the extent that the resolution of second and final administrative stage is challenged, the Guarantee of Refutation would have to be renewed up to 60 days progressively counted starting from the date that the respondent is notified with the judicial resolution that constitutes res judicata.

Response:

Subject to the provisions in Section 9.2.2 of the Terms.

Query:

35. *We suggest that you clarify that the Strategic Partner can freely, that is to say, with no need of waiting for more than 5 years from the beginning of operations or requiring prior authorization from the Peruvian State, transfer the Minimum Participation in the Concessionaire to a company of the same economic group to the extent that both are 100% controlled by the same parent company.*

Response:

Section 5.2.2.8.4 is included in the Terms, which will have the following writing:

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

Query:

36. *We request that you indicate whether there is any benefit or special qualification if the Bidder is a partnership with one or more Peruvian member. If this is so, please confirm whether this benefit or special qualification would be applicable if this member is a legal entity legally established in Peru but whose capital is controlled completely or mainly by one or more foreign legal entities.*

Response:

The Terms do not contain any benefit or special qualification if the Bidder is a Partnership with one or more Peruvian members. In accordance with the Political Constitution of Peru, "national and foreign investment are subject to the same conditions."

Query:

37. *We request that you specify what the guarantees that the Peruvian State will offer are with respect to the infrastructure and/or collateral services that will be required by users of the South Wharf, in order to avoid inefficiency that would impair the Port of Callao as a whole. For example, we refer to, (i) the road infrastructure that allows inbound and outbound land transport, and (ii) Customs paperwork for expeditious goods clearance. In both examples, maintaining the present status would mean continuing with higher costs for users of the harbor services, when exactly the opposite is sought.*

Response:

The query is being analyzed. The Concession Contract may establish the treatment suggested.

Query:

38. We suggest the inclusion of the following arbitration clause in the Contest Terms and the Concession Contract for the Contest, which has been written up on the basis of the model elaborated by the CIADI:

ARBITRATION CLAUSE

The Peruvian State, the Peruvian State's Ministry of Transport and Communications, the Peruvian State's National Harbor Authority and the entities or organizations that succeed or replace them (hereinafter denominated the "Receiving State") and [name of the investor] (hereinafter denominated the "Investor") hereby agree to submit all differences that arises from this agreement or are related thereto to the International Center for the Adjustment of Differences Relative to Investment (hereinafter denominated the "Center"), for its adjustment by means of arbitration in accordance with the Agreement on Adjustment of Differences Relative to Investment between States and Nationals of Other States (hereinafter denominated the "Agreement").

The arbitration will be under law and the Arbitration Award shall be definitive and unappealable.

The number of arbitrators will be three (3) and their appointment, as well as the entire arbitration procedure, will follow the Agreement, to the standards of which the parties hereby submit unconditionally.

The referees may not be Peruvian nations in any case.

The arbitration will be conducted in the Center's main headquarters, in Spanish, and the Arbitration Award shall be binding upon the parties.

For all matters referring to the interpretation, fulfillment and/ or execution of the present Contract, the parties hereby submit to the laws of the Republic of Peru.

Response:

See response to query N° 28.

II. MODIFICATIONS To The TERMS

1. Assignment of the "Right to Participate"
 - a) The following text is incorporated as the Fourth Paragraph of Section 5 of the Terms:

"The purchaser of the right to participate in the Prequalification Stage that decides not to participate in the Contest may transfer the same to a person in its group or to a third person. To this end, the purchaser of such right must present a communication in Envelope N° 1 by means of which the transfer in its favor is accredited, with the assignor's legalized signature."
 - b) Section 5.2.2.2 is modified in accordance with the following text:

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

2. Participation in other Bidders

The following text is incorporated as the Second Paragraph of Section 5.2.2.7:

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

The present is attached to Form N° 7.1 of Appendix N° 4 of the Terms.

Lima, February , 2006.

Sergio Bravo Orellana
Chairman
PROINVERSIÓN Infrastructure and Public Utilities Projects Committee



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APPENDIX N° 4

Form 7.1: CREDENTIALS FOR QUALIFICATION (Reference Section 5.2.2 of the Contest Terms)

SWORN DECLARATION

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

Place and date: of of 200...

Entity
Bidder

Name
Legal representative of the Bidder

Company.....
Legal representative of the Bidder

UNOFFICIAL TRANSLATION