

## Comprehensive Projects Tender for the Concession of the New Container Terminal at El Callao Port Terminal – Southern Zone

### CIRCULAR LETTER 006

As provided for in Sub-point 1.4.1 of the Tender Documents of the Comprehensive Projects Tender of the New Container Terminal at El Callao Port Terminal – Southern Zone, PROINVERSION Committee for the Investment in Infrastructure and Public Utility Projects is pleased to inform that answers have been provided to the second round of inquiries made by the Bidders concerning the Tender Documents and the amendments thereto, same which have the favorable opinion of the National Port Authority (APN).

#### **I. ANSWERS TO THE INQUIRIES REGARDING THE TENDER DOCUMENTS**

##### **INQUIRY:**

1. *Sub-point 5.2.1 of the Tender Documents states that, in order to certify the technical and operational capacity of the Bidder's Strategic Partner<sup>1</sup>, the following provisions must be observed:*
  - a) *Annual traffic equal to or greater than 2,500,000 TEU (Twenty Feet Equivalent Units) considering traffic by transshipment. Traffic must refer to exclusive terminals where Effective Control is exercised over the Port Manager.*
  - b) *Effective Control over the exclusive Port Manager in at least one terminal with a traffic of 500,000 TEU or more, including traffic by transshipment.*
  - c) *Exclusive Effective Control over the exclusive Port Manager in at least one terminal whose main cargo is made up of containers and whose total added docking-length is 600 meters or more.*

*In accordance with the Tender Documents, the Strategic Partner must concurrently comply with the requirements described in the foregoing items. To this effect, it may refer to one or more terminals. Only in the case of the requirement outlined in Item a) may the experience of Related Companies be included as well as that of companies of which the Strategic Partner is a Subsidiary.*

*In this regard, we have the following inquiries:*

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<sup>1</sup> Capitalized terms have the meaning ascribed thereto in the Tender Documents.

- 1.1 *Is the requirement set forth in Sub-point 5.2.1, Item b) met by a company having effective control over a Port Manager that is the owner of a terminal with an annual traffic of more than 500,000 TEU, but without a total docking length of 600 meters or more.*
- 1.2 *Is the requirement set forth in Sub-point 5.2.1, Item c) met by a company having effective control over a Port Manager that is the owner of a terminal whose main cargo is made up of containers and whose total added docking-length is greater than 600 meters, but which does not have an annual traffic equal to or greater than 500,000 TEU.*
- 1.3 *We understand that the requirements outlined in Items b) and c) are independent and that it is not necessary for the same terminal to comply with the requirements of both items. Please confirm this interpretation.*

**ANSWER:**

The scope of the provisions set forth in Sub-point 5.2.1 of the Tender Documents is amended by replacing the fourth and fifth paragraphs thereof, which shall read as follows:

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

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

**INQUIRY:**

2. *In relation to the previous question, we request that the following be clarified:*
  - 2.1. *We understand that, in order to prove the effective control exercised by the Bidder over Port Managers, it is appropriate to submit a report issued by the auditors containing information about the companies of the economic group or the annual report of the company or its parent company charged with the consolidation of its financial statements. Please confirm this interpretation.*

- 2.2. *In order to prove the docking length, it is appropriate to submit expert's reports, or reports issued by the competent port authority, or similar documents certifying compliance with the requirement. Please confirm this interpretation.*
- 2.3 *We understand that, in order to prove the condition of exclusive Port Manager, it is appropriate to submit reports issued by the competent port authority or similar documents certifying satisfaction of the requirement. Please confirm this interpretation.*
- 2.4 *As regards the requirement that the terminal should have an annual traffic of 500,000 TEU or more and that the experience gained after January 1, 2002 must be taken into account, does it mean that the terminal must have had a traffic of 500,000 TEU or more during the years 2002, 2003, 2004 and 2005? Or is it enough that the required traffic has been achieved in any of such years? We suggest that a single year be considered, particularly the year 2004, so that it may be more feasible to obtain certified data.*

**ANSWER:**

- 2.1 We confirm your interpretation  
2.2 We confirm your interpretation  
2.3 We confirm your interpretation  
2.4 See Answer 1.

**INQUIRY:**

3. *Sub-point 5.2.3.1 of the Tender Documents establishes that the Bidder must certify that it has a Net Worth of US\$200 million. The information is submitted pursuant to Form 2 of Exhibit 5, entitled "Form of Letter of Financial Information Submission". Said form makes reference to the possibility of submitting the financial information of Related Companies; however, this possibility is not mentioned in the Tender Documents. Inasmuch as Sub-point 1.7.3 provides that, in the event of a contradiction between the provisions contained in the Tender Documents and those contained in any of the exhibits thereto, the former shall prevail, we request that it be clarified that the Bidder may use, for short-listing purposes, the Net Worth of the companies over which it has effective control and of the companies of which the Bidder is a Subsidiary, even though they are not members of a Consortium.*

**ANSWER:**

The following text is inserted as the third paragraph of Sub-point 5.2.3.1 of the Tender Documents:

"Only in the case of the Strategic Partner, it may alternatively present the Net Worth of the Companies Affiliated thereto for holding a majority share in the

capital stock of the Net Worth of the company, or in the company of which it is a Subsidiary for holding a majority share in the capital stock thereof. In the event that the Strategic Partner presents the Net Worth of the company of which it is a Subsidiary for holding a majority share in the capital stock, it may not present its own Net Worth or that of the other Subsidiaries. In no case may the same net worth be presented more than once.”

It is pointed out that, at the time of completing the form, the reference to related companies and shareholders/share interest holders must only be applied with respect to the Strategic Partner.

**INQUIRY:**

4. As regards the Net Worth referred to in the previous question, the Tender Documents establish the obligation to submit the Letter of Financial Information Submission (Form 2 of Exhibit 5) for purposes of certifying such Net Worth. We understand that this is an Affidavit and, therefore, no additional information is required to be submitted to certify the Net Worth. Please confirm this interpretation.

**ANSWER:**

Pursuant to the third paragraph of Point 5 of the Tender Documents, the information contained in Envelope 1 shall have the quality of an Affidavit. PROINVERSIÓN may perform a subsequent inspection in accordance with the Law on Administrative Procedures, which includes requesting additional information. In order to facilitate the short-listing procedure, PROINVERSIÓN recommends that supporting additional information be attached to the affidavit.

**INQUIRY:**

5. *We request that the requirement to submit a Letter of Reference (Sub-point 5.2.3.1) issued by a Banking Entity or an International Financial Entity, contained in Form 6 of Exhibit 5 to the Tender Documents, be deleted for being unnecessary and inexpedient, since during the short-listing stage the companies may not be required to have credit lines to cover the financing of the work. Furthermore, not only is it an unusual document but, as it is not a guarantee, it does not provide any type of security.*

**ANSWER:**

The provisions set forth in the last paragraph of Sub-point 5.2.3.1 of the Tender Documents are amended to read as follows:

“A letter of reference issued by a Banking Entity or an International Financial Entity shall be included as detailed in Exhibit 2 to the Tender Documents. It shall contain at least the following information: (i) the commercial standing of

the Strategic Partner or of the company of which it is a Subsidiary and (ii) the credit quality (general information on the credit history). The original copy of said letter must be included as part of the documents to be submitted”.

Consequently, Form 6 of Exhibit 5 is deleted.

**INQUIRY:**

6. According to the schedule disclosed by PROINVERSIÓN, Envelope 1 must be submitted for short-Listing no later than February 21, 2006. Our company requires that such term be extended for at least two weeks, for which reason we request that said extension be granted.

**ANSWER:**

Please review Circular Letter 003. The new deadline for submitting Envelope 1 is March 24, 2006.

**INQUIRY:**

7. *As regards the letter of reference issued by a Banking Entity or an International Financial Entity, referred to in Sub-point 5.2.3.1 of the Tender Documents:*
  - A. *May it be submitted in English? If so, is it necessary to submit an official Spanish translation or is an unofficial translation sufficient? If an official translation is required, please confirm that the letter does not need to be authenticated before a Peruvian Consulate and the Ministry of Foreign Affairs.*
  - B. *When Sub-point 5.2.3.1 of the Tender Documents states “explain the creditworthiness and current financial standing of the company”, should we understand that the letter of reference must refer to the parent company of the group to which the Strategic Partner belongs? The credit and financial rating of a Bidder for short-listing purposes should refer to the parent company of the group to which the Strategic Partner belongs and not to a company that belongs to the same group, just as any other company that is financially supported by the parent company but not analyzed in isolation. Furthermore, it should be considered that the companies belonging to the same group do not necessarily have independent banking relations from the group to which they belong.. This makes it difficult to determine the credit and financial rating of an individual company and prevents a Banking Entity or an International Financial Entity to issue the letter of reference in the requested terms. The objective should be the credit and financial standing of the group to which the Strategic Partner belongs.*
  - C. *When Sub-point 5.2.3.1 of the Tender Documents states “pursuant to Form 6 of Exhibit 5”, should we understand that it is not necessary to*

*strictly adhere to its text as long as the information and statements required by said Form are included? In the case of the English translation of the Tender Documents published by PROINVERSIÓN, while it is not an official translation, it contains the same information and statements as the official version of the Tender Documents, but they are presented in a different manner. Can the unofficial English translation of Form 6 of Exhibit 5 be taken as model in the event that it is possible to submit the letter of reference in English?*

- D. *When Form 6 of Exhibit 5 states “does not carry any financial burdens that may compromise its present or future economic standing”, is it possible to replace the term “may” by the term “are likely to” so that the sentence may read: “does not carry any financial burdens that are likely to compromise its present or future economic standing”? The statement that no financial burden may compromise the present or future economic standing of a company is absolute and it is very difficult for a Banking Entity or an International Financial Entity to issue such statement without making any type of reservation. The consulted inclusion would limit such statement to what is foreseeable, without affecting the possibility of PROINVERSIÓN to assess the credit and financial standing of the company.*

**ANSWER:**

- A. As provided for in Point 4.2 of the Tender Documents, the letter of reference issued by a Banking Entity or an International Banking Entity, mentioned in Sub-point 5.2.3.1 of the Tender Documents, said letter may be submitted in English, in which case it must be accompanied by an unofficial Spanish translation.
- B. The term "company" stated in the fourth paragraph of Sub-point 5.2.3.1 of the Tender Documents refers to the Strategic Partner.
- C. See the answer to Inquiry 5.
- D. See the answer to Inquiry 5.

**INQUIRY:**

8. *Concerning the requirement of having a minimum Net Worth of US\$200 million, as set forth in Sub-point 5.2.3.1 of the Tender Documents:*
- A. *If the Bidder is a Consortium, the aggregate Net Worth of its members will be considered. Contradictorily, the definition of “Strategic Partner” indicates that it must fulfill “each and every one of the requirements set*

forth in Point 5.2”, which includes the minimum Net Worth. Nonetheless, Form 2 of Exhibit 5 to the Tender Documents establishes the possibility that the Net Worth may correspond to a Related Company of one of the Consortium members. Considering that, pursuant to Sub-point 1.7.3 of the Tender Documents, in the event of a contradiction between the Tender Documents and Form 2 of Exhibit 5, the Tender Documents shall prevail, please confirm if, in those cases where the Bidder is a Consortium, the aggregate Net Worth of its members and, at least, of its respective Related Companies, shall be validly considered.

- B. The definition of “Related Company” solely refers to an Affiliated Company or a Subsidiary. In order to comply with the minimum Net Worth required, is it possible to include also the parent company of the group to which the Bidder or the company that is a Consortium member belongs? Again, the credit and financial rating of a Bidder for short-listing purposes should correspond to the parent company of the group to which it belongs rather than to a company that, just as any other company belonging to the same group, is financially supported by the parent company but is not analyzed in isolation. If it is permitted to include Affiliated Companies and Subsidiaries which, by definition, form part of the same group, there is no reason not to allow the inclusion of the parent company of the group. This is particularly relevant when submitting the documentation that certifies the minimum Net Worth, since, if the parent company of the group is not included, it would be necessary to submit the financial statements of each company (not necessarily audited individually and not necessarily in Spanish or English, which are the sole languages that do not require translation). On the contrary, if the parent company of the group is also allowed to be included, the minimum Net Worth could be certified by submitting the audited consolidated financial statements of the parent company, which consolidate the financial statements of the entire group (including those of the Bidder or the company belonging to a Consortium and its Affiliated Companies and Subsidiaries). For example, it should be considered that, in order to comply with the 2.5 million TEU requirement set forth in Sub-point 5.2.1, Item a) of the Tender Documents, the capacity of the parent company may be included.

**ANSWER:**

- A. The requirements applicable to the Strategic Partner, as detailed in Point 5.2 of the Tender Documents, are those expressly referred to the Strategic Partner in the text of such point. Sub-point 5.2.3 refers to the Bidder's Net Worth, without prejudice to the provisions incorporated by this Circular Letter to the extent expressly applicable to the Strategic Partner.

Form 2 of Exhibit 5 to the Tender Documents is amended.

- B. See the answer to Inquiry 3.

**INQUIRY:**

9. *Concerning the technical and operational capacity requirement set forth in Sub-point 5.2.1 of the Tender Documents.*
- A. *The intention of PROINVERSION by establishing the requirement of a terminal with an annual traffic of 500,000 TEU or more and with a total docking length of 600 meters or more is to ensure that the Strategic Partner is capable of operating terminals with similar characteristics to those that the South Dock would have. Nonetheless, the capacity of a specific terminal operator should not be analyzed separately from the capacity of the group to which it belongs, since such operator enjoys the capacity of such group by benefiting from its experience, know-how and qualified personnel. For example, if a specific operator operates a terminal with an annual traffic equal to or greater than 350,000 TEU, but the group to which it belongs operates multiple terminals with an annual traffic equal to or greater than 500,000 TEU, may it be truly asserted that the operator does not have the capacity required in Sub-point 5.2.1, Item b) of the Tender Documents? Just as in the case of the requirement of a minimum Net Worth, the technical and operating assessment of a Bidder for short-listing purposes should refer to the capacity of the group to which it belongs rather than to a company that, just as any other company belonging to the same group, has the technical and operating support of the parent company. What would occur in the case of a group that, by virtue of a world policy, organizes its operations by regions, and whose operators in the region to which Peru belongs do not meet the technical and operational capacity requirements set forth in Sub-point 5.2.1, Items b) and (c) of the Tender Documents, but whose operators in other regions do meet such requirements? Should such group break its world organizational policy? The inquiry is concretely whether the technical and operational capacity of the related companies and/or the parent company of the Strategic Partner may be included to satisfy the technical and operational capacity requirements set forth in Sub-point 5.2.1, Items (b) and (c) of the Tender Documents?*

**ANSWER:**

See the answer to Inquiry 1. The technical and operational capacity of the Related Companies and/or the parent company of the Strategic Partner may not be included to comply with the technical and operational capacity requirement set forth in Sub-point 5.2.1, Items (b) and (c) of the Tender Documents.



**INQUIRY:**

10. *As regards redundant workforce, pursuant to the provisions of Point 1.1 of the Tender Documents, part of ENAPU redundant work force shall be hired by the Concessionaire, thereby ensuring their job continuity and training. Do you know the approximate number of workers that would be redundant as a result of the operation of the container terminal?*

**ANSWER:**

In labor matters, the provisions set forth in the Concession Contract must be complied with.

**INQUIRY:**

11. *Regarding compensation, in accordance with Sub-point 1.2.70 of the Tender Documents, the compensation is the economic consideration that the Concessionaire is obliged to pay to the grantor on a periodical basis, during the term of the concession. Has it be determined what will be the amount of such compensation or the criteria to fix it? Considering that it is necessary to take this variable into account in order to know the terminal operating costs, it would be convenient to determine the amount of the compensation as soon as possible.*

**ANSWER:**

Said amount shall be included in the final version of the Concession Contract.

**INQUIRY:**

12. *Technical and Operational Capacity: The Tender Documents set out the technical and operational capacity requirements to be met by the Bidder (Sub-point 5.2.1) particularly with regard to the experience in the operation. Three requirements regarding the operational experience have been established (Items a, b and c, Pages 28 and 29). The Tender Documents state that only in the case of the requirement outlined in Item a) may the experience of Related Companies be included. Nothing is stated with respect to Items b) and c). Due to the nature of the requirements set forth in Items b) and c), it is understandable that no added experience is admitted. However, we suggest that the requirements mentioned in Items b) and c) may be certified by a company related to the Strategic Partner.*

**ANSWER:**

See the answer to Inquiry 1.

**INQUIRY:**

13. Legal requirements: The Tender Documents prescribe that an affidavit should be submitted confirming the existence of the company (Sub-point 5.2.2.1). If the Bidder is a Consortium, besides submitting the affidavit issued by each one of its members, the Bidder (in this case the Consortium) must submit an affidavit signed by its Legal Representative, in **its double capacity as Legal Representative of the Bidder and of each one of its members**. Please clarify what “double capacity as legal representative” means. We understand that each Consortium member has its own legal representatives appointed by its corporate bodies pursuant to its by-laws. In turn, the Consortium also has its legal representatives, who are designated in the consortium agreement executed by the parties. In this connection, it is not clear for us what such double capacity as legal representative stated in the Tender Documents means, also taking into account that there is such term is not defined.

**ANSWER:**

If the Bidder adopts the form of a Consortium, its members must appoint a common legal representative, who shall act as the legal representative of the Consortium.

**INQUIRY:**

14. *Financial requirements: The Tender Documents establish that the Bidder must certify that it has a minimum Net Worth of US\$200 million and that, for purposes of determining the minimum Net Worth, the Bidder's Net Worth or the aggregate Net Worth of the Consortium members shall be considered in the event that the Bidder is a Consortium (Sub-point 5.2.3.1). In this regard, we make the following inquiry: in the case of a consortium, is it possible to certify the minimum Net Worth of each Consortium member through one or more companies related to such member? We consider that the answer must be positive, since Form 2 of Exhibit 5 contains blank spaces to complete the data of the related companies; however, we request that this be clarified so as to give more security to Bidders.*

**ANSWER:**

See the answer to Inquiry 3.

**INQUIRY:**

15. Financial requirements: The Tender Documents prescribe that a letter of reference issued by a banking entity or an international financial entity must be included, pursuant to Form 6 of Exhibit 5. In this regard, we request that the following amendments be made: i) in the case of consortiums, this letter must be solely required from the member that individually has the required minimum Net Worth, and ii) amend the contents of the letter by deleting the antepenultimate paragraph of the sample contained in Form 6 of Exhibit 5 or

make such contents more flexible, considering that the various banks have pre-established forms and are not willing to change them.

**ANSWER:**

See the answer to Inquiry 5.

**INQUIRY:**

16. *As regards Technical Proposals, the Tender Documents state that the Committee's decision on the qualification results of the technical proposals are final and may not be claimed by the Bidders (Sub-point 8.2.6 of the Tender Documents). We suggest that this provision be amended for the sake of the transparency of the process. In this regard: i) we propose that the reasons why the technical proposals are rejected be communicated to the disqualified bidder and ii) that the disqualified bidder may file an objection against such decision.*

**ANSWER:**

The provisions of the Tender Documents must be abided by.

**INQUIRY:**

17. *With respect to the domestic component, the Tender Documents establish that, pursuant to Law 28242, a premium shall be granted based on the offered Domestic Component. How would the premium for the Domestic Component be applied in this process? We request that the following considerations and/or suggestions be taken into account: i) Law 28242 aims at granting a premium for the use of domestic products and services, since the equipment that would be required by the container terminal is not offered by domestic manufacturers, and (ii) we suggest that, for purposes of applying the premium for the domestic component, only the first year of the concession be considered and that a specific domestic component amount be established for the first year of the concession, which grants 100% of the premium if accepted by the Bidder.*

**ANSWER:**

The terms of Circular Letter 1 are reiterated, in the sense that the minimum and/or maximum values of the Domestic Component to be considered shall be established by means of a Circular Letter.

**INQUIRY:**

18. *With respect to Dock 5: Taking into account that the purchase of gantry cranes and the reinforcement of Dock 5 are being considered and that such Dock could be operated in the future by the State or a third party (which has not been*

*defined yet) will there be any type of coordination (referred to rates) between the operation of Dock 5 and the Southern Terminal? If so, what would this coordination entail? Will the coordination be imposed or will it be free?*

**ANSWER:**

This inquiry is being analyzed. The answer may be the subject matter of the Contract.

**INQUIRY:**

19. *As regards Dock 5 and the Minimum Supplementary Investment, the Concessionaire of the Southern Terminal must assume, as minimum supplementary investment, the dredging works for the access channel and the maneuvering area. Likewise, it is possible that a third party may also benefit from said works in the future (for example the Concessionaire of Dock 5, in the event that it is granted in concession; it should be mentioned that these works will make the concession of Dock 5 more attractive). In our opinion, it would be advisable to include in the Tender Documents and/or the Concession Contract a provision establishing that any third party benefiting from the dredging works must pay any type of "compensation" to the Concessionaire of the terminal for the use of such work. For example, the benefited third party could, in turn, be obliged to build certain works that may also benefit the Concessionaire of the terminal and authorize said Concessionaire to use them at no cost or pay a compensation to the Concessionaire of the Southern Terminal for the use of the works executed by the latter.*

**ANSWER:**

This inquiry is being analyzed. The answer may be the subject matter of the Contract.

**INQUIRY:**

20. *Do you know if any establishments lend construction material in the maritime sector which can be borrowed and used by the Concessionaire?*

**ANSWER:**

The analysis of the availability of construction materials falls to the Bidder. It is stated that referential information on this matter may be found in the Data Room.

**INQUIRY:**

21. *Additional works: What works would qualify as additional for purposes of breaking a tie? In the event that additional works are presented and that they*

are developed under a schedule, may the disbursement be made according to the progress schedule?

**ANSWER:**

The Concession Contract will develop the application of the ICA (Additional Supplementary Investment).

**INQUIRY:**

23. *Concession Area: We request that the concession area outlined in Exhibit 9 to the Tender Documents be more clearly defined. Furthermore, we request clarification as to whether there is any area outside the "concession area" that will be granted in beneficial use, usufruct, or a modality other than concession for being necessary for the operations of the Southern Terminal. If so, what would be the beneficial use conditions? Would there be any additional cost for the beneficial use?*

**ANSWER:**

The Contract shall define the Concession Area. The other part of the inquiry is being analyzed. The answer may be the subject matter of the Contract.

**INQUIRY:**

24. *Is the Concessionaire allowed to maintain contracts with shipping lines and to provide preferential customer service to such companies with respect to eventual customers? We understand that preferential customer service means, for example, that a permanent customer is not subject to a waiting period or is subject to a minimum waiting period, whereas an eventual customer may have to wait longer to be served.*

**ANSWER:**

See Answer 5 in Circular Letter 4.

**INQUIRY:**

25. *If a contract, due to its nature, is qualified as a management, executive or similar contract whereby the operation and administration of a port is entrusted to a company, this may be considered a contract mechanism through which the decision power is held, i.e., a contract mechanism which serves to demonstrate the Effective Control held by the Strategic Partner, pursuant to Sub-point 5.2.1., Item a) of the Tender Documents, so that it may be taken into account for short-listing purposes.*

**ANSWER:**

Management, executive or similar contracts may be used to certify the technical and operational capacity of the Strategic Partner, provided that the Effective Control of the legal entity is involved.

**INQUIRY:**

26. *All the documentation supporting the Technical and Operational Capacity of the Bidder or Strategic Investor, described in Form 2 of Exhibit 3, must be also authenticated by the Consulate.*

**ANSWER:**

Form 2 of Exhibit 3 to the Tender Documents must be submitted subject to the provisions set forth in Point 4.3 thereof.

**INQUIRY:**

27. *Form 1 of Exhibit 5 must be also included in Envelope 1 for Short-Listing.*

*The Tender Documents prescribe that the **Short-listed Bidder** shall submit an affidavit expressing its intention to incorporate a company. This implies that the bidder should be short-listed before the aforesaid Affidavit is submitted.*

**ANSWER:**

As a matter of fact, Form 1 of Exhibit 5 must be included in Envelope 1.

The first paragraph of Sub-point 5.2.2.8.1 is amended to read as follows:

“The Bidder and each one of its members, if it is a Consortium, must submit an Affidavit expressing their intention to incorporate a Concessionaire in Peru, which may adopt any of the corporate structures regulated by the Business Corporations’ Law.”

**INQUIRY:**

28. *All the requested Affidavits must bear a signature authenticated by a Notary Public or, in any case, must be duly certified by the Consul of Peru in the country where such Affidavits are issued, or this requirement applies only to those Affidavits for which the Tender Documents expressly establishes such requirement.*

**ANSWER:**

Only in those cases where the Tender Documents so require expressly, the signature of the Legal Representative on the Affidavits shall be authenticated by

a notary in Peru or, if the document is issued outside Peru, the provisions of Sub-point 2.2.3 of the Tender Documents shall be applied.

**INQUIRY:**

29. *Sub-point 5.2.3.1: It is requested that Envelope 1 include, as part of the financial requirements, a letter of reference issued by a Banking Entity or an International Financial Entity... pursuant to Form 6 of Exhibit 5.*

*Nevertheless, the text and what is required as evidence in said form exceeds by far the quality of a "letter of reference", and rather converts the contents of the form into a comfort letter and a confirmation of specific credit lines for the Callao South Dock project. In both cases, the degree of responsibility, the costs involved, the vagueness of a specific budget and the uncertainty of a business plan for the project at the time of short-listing make it impossible to obtain said letter from any responsible entity.*

***Inquiry:** Will the terms be maintained as currently stipulated or are they prone to review and adjustment to the basic circumstances of the process? If the required content is to be changed, the effective date of the change must be duly indicated, as the arrangements and certification formalities, required to obtain the letter from PROINVERSION with the exact wording, will take time.*

**ANSWER:**

See the answer to Inquiry 5.

**INQUIRY:**

30. *Point 1.1, paragraph on Page 6, states: "The design should allow for future expansion to meet growing demand."*

*Inquiry: Is the projected growth and development of the works exclusively associated to the stage following the base or referential project or does it also anticipate that the Concessionaire may commercially operate in partial infrastructure works within the total work term of three (3) years?*

**ANSWER:**

The 36-month work term refers to the completion of the minimum works set out in Exhibit 4 of the Concession Contract. The projected growth mentioned in the aforesaid text refers to additional works to those contemplated in such Exhibit 4.

The Concession Contract shall outline the conditions in which the operations may be started, which shall include at least the acceptance of the works pertaining to a berth, which shall not affect the delivery of the total Work within the terms stipulated in the Contract.

**INQUIRY:**

31. *Point 1.1, paragraph on Page 6, states: "part of ENAPU redundant work force..."*

*Inquiry: This point creates uncertainty taking into account that it involves labor costs and efficiency in general. It would be necessary to accurately define the extent of this eventual commitment.*

**ANSWER:**

See the answer to Inquiry 10.

**INQUIRY:**

32. *Point 1.1, paragraph on Page 6, states: "At the end of the Concession Term, the Port Infrastructure granted in concession, including the works, the equipment and other assets concerning this operation shall be transferred to the State..."*

*Inquiry: In view of the current unawareness of the contract terms, it is necessary to have at least an idea (feasibility evaluation) about the prevailing criterion regarding "reversible" assets. In this regard, it is pertinent to ask whether depreciation formulas that, at the end of the Concession Term, will consider any type of remnant and/or final value will be used. If so, please indicate what such assets would be.*

**ANSWER:**

See Section 15 of the First Draft Concession Contract.

**INQUIRY:**

33. *Confirm that, if the Bidders successfully complete and pass the first stage as a result of a tie of bids based on the lowest standard rate index (ITEMin), they would be admitted to the second stage of the process, in which case the maximum bid to be submitted shall be defined by ICAMax (Maximum Additional Supplementary Investment). If so, describe the process that will be applied to define a successful bidder if more than one bidder offers the ICAMax.*

**ANSWER:**

The procedure to be followed in case of a tie of Bidders in both stages of the Competition Factor is established in Sub-point 9.1.7 of the Tender Documents (Point 4 of Circular Letter 001).



Circular Letter 001 has not fixed a cap for the ICA. ICA<sub>max</sub> is the maximum Additional Supplementary Investment **offered** by the Bidders to be evaluated.

**INQUIRY:**

34. *The modification of the Tender schedule due to the lack of the Contract will entail the postponement of the deadline to submit Envelope 1 for Short-Listing purposes.*

**ANSWER:**

See the answer to Inquiry 6.

**INQUIRY:**

35. It is requested that the third paragraph of Sub-point 5.2.3.1 of the Tender Documents be amended so that the letter of reference to be issued by a Banking Entity or an International Financial Entity may comply with the substantial terms of the sample presented as Form 6 of Exhibit 5. In this manner, such letter would not be required to be identical to Form 6 of Exhibit 5, the final wording of which is subject to the decision of a third party.

In this regard, we request you to confirm us whether the form of letter attached hereto would be valid and, consequently, whether submission thereof would be accepted in compliance with the Tender Documents.

**ANSWER:**

See the answer to Inquiry 5.

**INQUIRY:**

36. *We understand that there is a mistake in Form 2 of Exhibit 5 to the Tender Documents, since it not only requires the signature of the Bidder's Legal Representative but also the signature of the "Legal Representative of the Company". We request that the pertinent correction be made or, in any case, that it be clarified what do they mean by "Legal Representative of the Company".*

**ANSWER:**

In fact, there is a mistake. Form 2 of Exhibit 5 is replaced under this Circular Letter.

**INQUIRY:**

37. *We request that the ownership of the area to be granted in concession be confirmed. With respect to the land area to be granted in concession, we understand that it is owned by ENAPU S.A. (hereinafter "**Enapu**"). If this is the case, we kindly ask you to confirm that such land area will be transferred by ENAPU to the National Port Authority, given that only having the ownership rights over such area will the National Port Authority be able to grant it in concession for a term of thirty (30) years, also considering any possible extension of the Concession term, in the event any grounds for the suspension thereof take place.*

*It may not be considered that the National Port Authority has any of the following titles:*

- (i) Lessee, since the maximum term of the lease agreement is ten (10) years and the concession is granted for thirty (30) years.*
- (ii) Beneficial owner, since the maximum term of the beneficial use agreement is thirty (30) years and, eventually, the concession contract may exceed such term if any grounds for suspension of the concession take place.*
- (iii) Bailee, since the bailor may request that the property be returned if the bailor has an urgent need for it, thus generating instability for the Concession Contract.*
- (iv) Holder of surface rights or owner of a dominant estate, since they do not suit the legal nature of any of both institutions (easement and surface).*

*Only having ownership rights may the National Port Authority provide sufficient legal safety at the time the respective land area is granted in concession.*

**ANSWER:**

The details on the ownership of the Concession Area are the subject matter of the Concession Contract.

**INQUIRY:**

38. *As regards the land area to be delivered in concession, we request that the training area currently used by ENAPU be included in such land area. Our request is based on the following grounds: (i) the training area used by ENAPU is located in the middle of the entire front of the South Dock, interrupting the continuity necessary to design the entrance, exit and circulation of trucks, and (ii) there is a well in front of the perimeter walls of the land area which will obstruct the circulation of trucks within the area opposite such walls. As a result, the possibilities to design the entrance to the South Dock are rather limited, particularly if the training area currently used by ENAPU is sidetracked. It is not only a matter of having a wider area to develop the port activities, but also of avoiding congestions and difficulties upon entrance and exit of trucks.*

*It is proposed that ENAPU move its current training area to an area closer to the docks it will operate.*

**ANSWER:**

See Answer 13 to Circular Letter 4.

**INQUIRY:**

39. *We request that the note included at the bottom of Page 66 of the Tender Documents be amended by stating that the exchange rate published by the Superintendency of Banking and Insurance (SBS) on the business day immediately before the submission of Envelope 1 shall be used, since, eventually, the exchange rate may change at the close of the day in which Envelope 1 is submitted.*

**ANSWER:**

The suggestion is accepted. The aforementioned note is amended to read as follows:

*“The exchange rate published by the Superintendency of Banking and Insurance (SBS) on the business day immediately before the submission of Envelope 1.”*

**INQUIRY:**

40. *With regard to the certification of the technical and operational capacity of the Strategic Partner, as required in Sub-point 5.2.1 of the Tender Documents:*
- A. *As provided for in the Tender Documents, “the respective documents supporting the submitted information” must be presented. Form 2 of Exhibit 3 includes multiple information. Please confirm that the supporting documentation is only required for the columns “Annual Terminal Traffic ” and “Total Docking Length” in Form 2 of Exhibit 3 and not for the other columns. Such columns are the only ones that are required to certify the satisfaction of the experience requirements outlined in Items (a), (b) and (c). If so, what supporting documentation should be submitted for the other columns, such as the column “Effective Control Mechanism”? The reports issued by third parties for certification, accreditation, supervision or inspection purposes do not necessarily substantiate the information of all the columns appearing in Form 2 of Exhibit 3.*
- B. *Form 2 of Exhibit 3 includes the column “Certification of Effective Control”, which is subdivided into the columns “Name of the Terminal Operator/Management Company” and “Effective Control Mechanism”.*

How are these columns used in the case of the terminal of an Affiliated Company or the parent company of the Strategic Partner, which may be the case when accrediting the experience referred to in Item (a), as the Strategic Partner does not exercise any Effective Control?

- C. *In accordance with the Tender Documents, the experience of the Related Companies of the Strategic Partner may be included to certify the experience referred to in Item a). The Related Companies include the Subsidiaries. Nevertheless, the experience mentioned in Items (b) and (c) require the Strategic Partner to have Effective Control over the Port Manager. Sub-point 1.2.25 of the Tender Documents establishes that there is Effective Control when a company has indirect control over more than 50% of the voting capital stock. In that case, such company would be a Subsidiary of the Strategic Partner. Please confirm that, for purposes of the experience requirement set forth in Items (b) and (c), the experience of the Subsidiaries of the Strategic Partner may be included.*
- D. *Pursuant to the Tender Documents, the supporting documentation may include reports issued by third parties for certification, accreditation, supervision or inspection purposes. Said reports may be extensive. May they be submitted in English without the need to accompany an unofficial Spanish translation?*
- E. *May a written confirmation from a port authority be submitted instead of the reports issued by third parties for certification, accreditation, supervision or inspection purposes?*
- F. *May compliance with the experience requirement outlined in Item (b) be certified by logical deduction from the information contained in a written confirmation issued by a port authority? For example, if the written confirmation makes reference to three terminals with a total annual traffic greater than 1,600,000 TEU, it may be logically deducted that at least one of such terminals must necessarily have an annual traffic of more than 500,000 TEU, even though the aforesaid written confirmation does not state it expressly.*
- G. *The experience mentioned in Item (c) requires a “terminal whose main cargo is made up of containers”. How can this be demonstrated? In order to certify the satisfaction of the experience requirement established in Item (c), is it sufficient to demonstrate that a terminal with a total docking length equal to or greater than 600 meters has an annual traffic of more than 500,000 TEU, for example, regardless of the volume of other type of cargo?*
- H. *Whatever the supporting documentation that may be submitted to certify compliance with the experience requirement referred to in Items (a), (b) and (c), please confirm that a simple copy may be presented.*

**ANSWER:**

- A. The statement is not confirmed. Besides the Annual Terminal Traffic and the Total Docking Length, it is necessary to certify the Effective Control Mechanism or Type of Relationship. In the latter case, the documents to be submitted shall depend upon the contractual or legal mechanism or circumstance, which may include an annual report, a shareholders' agreement, a share register or an equivalent document.
- B. Form 2 of Exhibit 3 is amended pursuant to the attached document.
- C. Your statement is confirmed, provided that Effective Control is exercised over the Subsidiary.
- D. The provisions of Point 4.2 of the Tender Documents must be abided by.
- E. As part of the reports issued by third parties for certification, accreditation, supervision or inspection purposes, a written confirmation from a port authority may be submitted, provided that such document substantiates the submitted information.
- F. It is correct. The supporting documentation must demonstrate the technical and operational capacity of the Strategic Partner, as required in the Tender Documents.
- G. A second paragraph is inserted in Item c) of Sub-point 5.2.1:  
"To certify that the main cargo is made up of containers, the Bidder may elect any of the following alternatives:
- That the cargo percentage destined to containers, measured in Metric Tons (MT), during a year as from 2002 is greater than 50%.
  - That the occupancy of the docking sides used per containerized cargo is greater than 50% during a year as from 2002.
  - That the percentage of income derived from the traffic and storage of containers is higher than 50% of the total income earned by the Terminal in any annual period counted as from 2002.
  - That the traffic of containers exceeds 500,000 TEUs in any annual period counted as from 2002."
- H. The provisions contained in Point 4.3 of the Tender Documents must be abided by.

**INQUIRY:**

41. *Concerning the requirement of having a minimum Net Worth of US\$200 million, referred to in Sub-point 5.2.3.1 of the Tender Documents:*

- A. *If the Bidder is a Consortium, the aggregate Net Worth of all its members shall be considered. Please confirm that, if the Net Worth of one of the Consortium members is individually greater than US\$200 million, it is not necessary to submit the financial information of the other members of such Consortium.*
- B. *Regarding financial information, the Tender Documents prescribe that it is to be submitted pursuant to Form 2 of Exhibit 5 and its sections, which shall be "signed in original by the Legal Representative". Please confirm that "original" refers to the signature of the Legal Representative and not to the document containing the financial information. Please further confirm that a simple copy of the document containing the financial information may be submitted and that it does not necessarily have to be audited financial information.*
- C. *In Section B of Form 2 of Exhibit 5, it is not clear what total amount should be carried to Section A. Should the Net Worth of each Consortium member be multiplied by its percent interest in the Consortium? Why? This is contrary to the provisions set forth in Sub-point 5.2.3.1 of the Tender Documents, under which "in order to certify the minimum Net Worth, (...) the aggregate Net Worth of the Consortium members shall be taken into account if the Bidder is a Consortium". Such Sub-point does not state at all that the Net Worth of each Consortium member shall be proportional to its share in the Consortium. What if the Net Worth of a Related Company is used? It should be borne in mind that, as provided for in Sub-point 1.7.3, in the event of a contradiction between the Tender Documents and Form 2 of Exhibit 5, the Tender Documents shall prevail.*
- D. *According to the note to Section C in Form 2 of Exhibit 5, the exchange rate published by the Superintendency of Banking and Insurance on the date the documentation is submitted shall be used. It should be taken into consideration that the documentation is prepared some time in advance and it is unadvisable to complete the information just on the last day. Can the exchange rate published by the Superintendency of Banking and Insurance (SBS) be used a reasonable maximum time in advance, for example, five (5) business days?*
- E. *Form 2 of Exhibit 5 states that it must be signed by the Legal Representative of the Bidder and the Company. What company does it refer to? Is the signature of the Bidder's Legal Representative sufficient?*

**ANSWER:**

- A. Your statement is not confirmed.

- B. The provisions contained in Point 4.3 of the Tender Documents must be abided by. Furthermore, it is stated that the Tender Documents do not require the submission of audited financial information.
- C. As a matter of fact, pursuant to the provisions of Sub-point 5.2.3.1 of the Tender Documents, the aggregate Net Worth of the Consortium members shall be taken into account for purposes of certifying the minimum Net Worth, if the Bidder is a Consortium. Hence, the aggregate Net Worth of its members is the total amount to be carried to Section B in Form 2 of Exhibit 5.
- D. See the answer to Inquiry 39.
- E. See the answer to Inquiry 36.

**INQUIRY:**

- 42. *Sub-point 2.2.1 of the Tender Documents establishes that the documents contained in Envelopes 1, 2 and 3 and, in general, "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". When "Legal Representative" is used as a defined term, it is understood to refer only to the legal representative of a Bidder. Please confirm that these are two different concepts. Firstly, please confirm that all the documents submitted by a Bidder must be signed by the legal representative of the party responsible for signing them pursuant to the Exhibits (who may not be a Legal Representative, as in the case of the letter of reference mentioned in Sub-point 5.2.3.1 of the Tender Documents). Secondly, please confirm that the Legal Representative must initialize each page of all the documents submitted in Envelopes 1, 2 and 3, as Point 4.4.2 of the Tender Documents appear to establish (it does not state who must sign and seal them).*

**ANSWER:**

Both interpretations are confirmed. Sub-point 4.4.2 of the Tender Documents is amended to read as follows:

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

**INQUIRY:**

- 43. *Point 4.4.2 of the Tender Documents establishes that each Envelope must include a detailed list of all the documents contained therein. Please confirm that said list does not need to be signed by the Legal Representative.*

**ANSWER:**

The provisions set forth in Sub-point 4.4.2 of the Tender Documents must be abided by. In this regard, all the documentation contained in the Envelopes, including the detailed list of all the documents contained in the Envelope must be initialized in each of their pages.

**INQUIRY:**

44. *Regarding the requirement to submit as many Forms 1 of Exhibit 3 as Consortium members, as set forth in Point 5.1 of the Tender Documents:*
- A. *Form 1 of Exhibit 3 includes the signatures of several Consortium members. As long as all the signatures are authenticated by a notary, may a single Form 1 of Exhibit 3 be used for all the Consortium members?*
  - B. *Please confirm that, in the case of a Consortium, Form 1 of Exhibit 3 is not required to be additionally signed by the Legal Representative, as the first paragraph of Point 5.1 of the Tender Documents appears to establish.*

**ANSWER:**

- A. It is correct. A single Form 1 of Exhibit 3 may be used for all Consortium members.
- B. The provisions set forth in the first paragraph of Point 5.1 of the Tender Documents must be abided by, which shall now read as follows:

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

**INQUIRY:**

45. *Concerning the requirement that Form 1 of Exhibit 4 must be submitted by each Consortium member, as set forth in Sub-point 5.2.2.1 of the Tender Documents:*
- A. *Please confirm that the legal representative of each Consortium member shall not necessarily be the same individual as the Legal Representative.*
  - B. *Please indicate whether or not the signatures of the legal representatives of each Consortium member must be also authenticated by a notary. Both Sub-point 5.2.2.1 of the Tender Documents and Form 1 of Exhibit 4 establish that the signature of the Legal Representative must be authenticated. When "Legal Representative" is used as a*



*defined term, such term is understood to refer only to the legal representative of the Consortium.*

**ANSWER:**

- A. Your statement is confirmed.
- B. Where it is required that a form be submitted by each member of a Consortium, the signature of the legal representative of each Consortium member must comply with the same formality established for the signature of the Legal Representative.

**INQUIRY:**

- 46. *Concerning the requirement to submit Form 2 of Exhibit 4, referred to in Sub-point 5.2.2.1 of the Tender Documents:*
  - A. *When Form 2 of Exhibit 4 states that the Consortium members “are companies duly organized and existing under the laws”, please clarify what “under the laws of the place of incorporation” means.*
  - B. *In Form 2 of Exhibit 4, it is declared under oath that the Consortium members are responsible in a joint, several and indivisible manner. Why is the term "indivisible" added? This is contrary to the provisions contained in Sub-point 5.2.2.1 of the Tender Documents, under which only the “existence and joint and several responsibility of the Consortium members” is to be confirmed. Such Point does not require the members of a Consortium to confirm the indivisibility of the obligations undertaken or the affidavits submitted. It should be borne in mind that, as provided for in Sub-point 1.7.3, in the event of a contradiction between the Tender Documents and Form 2 of Exhibit 4, the Tender Documents shall prevail.*
  - C. *Please indicate whether or not the signatures of the legal representatives of each Consortium member must be also authenticated by a notary. Both Sub-point 5.2.2.1 of the Tender Documents and Form 2 of Exhibit 4 establish that the signature of the Legal Representative must be authenticated.*
  - D. *Please confirm that a copy of the consortium agreement signed by the Consortium members is not required to be submitted. When "Legal Representative" is used as a defined term, such term is understood to refer only to the Legal Representative of the Consortium.*

**ANSWER:**

- A. Your statement is confirmed.

- B. The provisions of Sub-point 5.2.2.1 of the Tender Documents remain as stipulated. In this regard, the last paragraph of Form 2 of Exhibit 4 is amended to read as follows:

“..... (name of all Consortium members) are *jointly and severally* responsible for each and every one of the obligations undertaken and the affidavits issued by the Bidder before the Republic of Peru, APN, PROINVERSIÓN and the Committee in connection to this Tender.”

- C. See the answer to Item B of Inquiry 45.  
D. Your statement is confirmed.

**INQUIRY:**

47. *Concerning the requirement to submit Form 3 of Exhibit 4, referred to in Sub-point 5.2.2.1 of the Tender Documents, as amended by Circular Letter 4 (see Inquiry 32), please confirm that, in the case of a Consortium, the initial paragraph of said Form may simply read as follows: “We hereby declare under oath that the interest held by each one of our members is as follows:”*

**ANSWER:**

Your statement is confirmed.

**INQUIRY:**

48. *Concerning the requirement to evidence the payment of the right to participate in the Short-Listing Stage, referred to in Sub-point 5.2.2.2 of the Tender Documents, as amended by Circular Letter 4 (see II.1.a)):*
- A. *Please confirm that the copy of the Payment Voucher does not need to be authenticated by a notary.*
- B. *The amendment made by Circular Letter 4 (see II.1.a)) deletes the reference to Form 1-A of Exhibit 3. Please indicate whether said Form must be used for purposes of the affidavit referred to in Sub-point 5.2.2.2 of the Tender Documents, as amended by Circular Letter 4.*
- C. *Please indicate who must sign the affidavit referred to in Sub-point 5.2.2.2 of the Tender Documents, as amended by Circular Letter 4 (see II.1.a)). Is the signature of the Bidder’s Legal Representative sufficient?*

**ANSWER:**

- A. Your statement is confirmed.

- B. It is correct. Form 1-A of Exhibit 3 must be used for purposes of the affidavit mentioned in Sub-point 5.2.2.2 of the Tender Documents, as amended by Circular Letter 004.
- C. As a matter of fact, the Bidder's Legal Representative must sign Form 1-A of Exhibit 3. Form 1-A of Exhibit 3 provides a space to complete the name and signature of the Legal Representative.

**INQUIRY:**

- 49. *Concerning the requirement to certify having a Legal Representative, referred to in Sub-point 5.2.2.3 of the Tender Documents, please describe how we should submit the information of each Legal Representative required in Sub-point 2.1.4 of the Tender Documents, applicable to the Legal Representatives pursuant to Sub-point 2.2.1 of the Tender Documents. Is a simple letter signed by the Bidder's Legal Representative sufficient? Should it be included in Envelope 1?*

**ANSWER:**

The information of each Legal Representative required in sub-point 2.1.4 of the Tender Documents, applicable to the Legal Representatives pursuant to Sub-point 2.2.1 of the Tender Documents, must be included in the power of attorney referred to in Sub-point 2.2.2 of the Tender Documents.

Therefore, considering your inquiry, Sub-point 2.2.2 of the Tender Documents is amended to read as follows:

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

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

**INQUIRY:**

- 50. *Concerning the requirement to submit Form 4 of Exhibit 4, referred to in Sub-point 5.2.2.4 of the Tender Documents:*
  - A. *Please amend Sub-point 5.2.2.4 of the Tender Documents to include the 5% threshold specified in Form 4 of Exhibit 4. It should be borne in mind that, as provided for in Sub-point 1.7.3, in the event of a contradiction between the Tender Documents and Form 4 of Exhibit 4, the Tender Documents shall prevail.*
  - B. *Please confirm that, in the case of a Consortium, the initial paragraph of said Form may simply read as follows: "We hereby declare under oath*

*that neither [name of Consortium] nor its members nor the shareholders and partners of the latter holding more than 5% interest in the respective corporation.”*

- C. *In Item b) of Form 4 of Exhibit 4, please indicate that both references to State correspond to the State of the Republic of Peru, as set forth in Item a) of the same Form.*

**ANSWER:**

- A. As stated below in Point II of this Circular Letter, Form 4 of Exhibit 4 is replaced by the Form attached hereto.
- B. See the answer to Item A above.
- C. See the answer to Item A above.

**INQUIRY:**

51. *Concerning the requirement to submit Form 5 of Exhibit 4, referred to in Sub-point 5.2.2.5 of the Tender Documents:*

- A. *Please confirm that, in the case of a Consortium, the initial paragraph of said Form may simply read as follows: “We hereby declare under oath that [name of Consortium], its members and the shareholders and partners of the latter waive their right to the following:”*
- B. *Please conform Point 2 in Form 5 of Exhibit 4 to the requirements set forth in Sub-point 5.2.2.5 of the Tender Documents, under which the Bidder must waive the right “to invoke or exercise any claim through the diplomatic channel or any claim that may be invoked.” It should be borne in mind that, as provided for in Sub-point 1.7.3, in the event of a contradiction between the Tender Documents and Form 5 of Exhibit 4, the Tender Documents shall prevail.*

**ANSWER:**

- A. Review the format of Form 5 of Exhibit 4 to the Tender Documents.
- B. Point 2 in Form 5 of Exhibit 4 should read as follows:  
“2. Filing claims by diplomatic means and any claims that may be invoked by or against the State or its branch offices, APN, PROINVERSIÓN, the Committee, their members and advisors, under the Peruvian law or any other law in connection with our obligations as related to the Tender Documents, the Economic Proposal, the Technical Proposal and the Concession Contract.”

**INQUIRY:**

52. *Concerning the requirement to submit Form 7 of Exhibit 4, referred to in Sub-point 5.2.2.7 of the Tender Documents, please confirm that, in the case of a Consortium, the only paragraph of said Form may simply read as follows: "We hereby declare under oath that neither [name of Consortium] nor its members nor the partners or shareholders of the latter have a direct or indirect interest in any other Bidder."*

**ANSWER:**

Review the format of Form 7 of Exhibit 4 to the Tender Documents.

**INQUIRY:**

53. *Concerning the requirement to submit Form 1 of Exhibit 5, referred to in Sub-point 5.2.2.8.1 of the Tender Documents:*

- A. *Please indicate whether or not said form is to be included in Envelope 1. On the one hand, Sub-point 1.2.75 and 5 of the Tender Documents state that Envelope 1 contains all the documents listed in Point 5 of the Tender Documents, which includes Sub-point 5.2.2.8.1. On the other hand, however, Sub-point 5.2.2.8.1 of the Tender Documents states that the affidavit is to be submitted by a Short-Listed Bidder, whose identity will be known just after Envelope 1 is presented.*
- B. *Form 1 of Exhibit 5 contains several statements under oath which exceed those required by Sub-point 5.2.2.8.1 of the Tender Documents. Please delete Points 1, 3 and 4 of Form 1 of Exhibit 5 to conform it to the requirements of Sub-point 5.2.2.8.1 of the Tender Documents. It should be borne in mind that, as provided for in Sub-point 1.7.3 of the Tender Documents, in the event of a contradiction between the Tender Documents and Form 1 of Exhibit 5, the Tender Documents shall prevail.*
- C. *As regards Point 2 in Form 1 of Exhibit 5, why should a Letter of Intent be signed? The term "Letter of Intent" is not defined. What is it? Can such letter not be included as part of the consortium agreement? In any case, it should be stated that the intention to organize a corporation is contingent upon the awarding of the Contract to the Bidder.*
- D. *If Point 3 in Form 1 of Exhibit 5 is maintained, it should be stated that both the organization of a corporation and the execution of the Consortium Agreement are contingent upon the awarding of the Contract to the Bidder.*
- E. *If Point 4 in Form 1 of Exhibit 5 is maintained, it would be necessary to solve the conflict with Sub-point 10.2.1.2 of the Tender Documents with regard to the possibility to submit, on the Closing Date, a certificate evidencing the registration of the notarized dockets with the Public Records Office.*

- F. *Please confirm that the Legal Representative of each Consortium member shall not necessarily be the same individual as the Legal Representative.*

**ANSWER:**

- A. See the answer to Inquiry 27.
- B. Form 1 of Exhibit 5 has been exclusively adjusted to the case of individual Bidders (now Form **1A** of Exhibit 5) and Form **1B** has been included in Exhibit 5 for the case of Consortiums.
- C. See the answer to Item B above.
- According to the above-referred amendment, Form 1 of Exhibit 5 to the Tender Documents contains the letter of intent to organize a corporation should the Bidder be awarded the Contract.
- D. See the answer to Item B above.
- E. See the answer to Item B above.
- F. Your statement is confirmed.

**INQUIRY:**

54. *We consider that the Investment Amount is an important issue in the process. In this regard, we are preparing the respective suggestions to be submitted at the time of commenting on the concession contract. Without prejudice to the foregoing, it should be noted that Sub-point 1.2.17 of the Tender Documents, as amended by Circular Letter 001, establishes that the Investment Amount is divided into two parts, one of which is the Minimum Supplementary Investment. We request that a cap be established for such investment.*

**ANSWER:**

The scope of the Minimum Supplementary Investment shall be made known according to the results of Final Financial Rating underway.

**INQUIRY:**

55. *According to Sub-point 1.2.43 of the Tender Documents, as amended by Circular Letter 004, the Performance Bond for Execution of the Works and Equipment Installation will be equivalent to 20% of the Official Work and Equipment Estimated Budget. Sub-point 1.2.60 of the Tender Documents states that said Budget is equivalent to an approximate initial cost of US\$175,000,000. We request confirmation that the amount of the Performance*

*Bond for Execution of the Works and Equipment Installation is equivalent to US\$175,000,000.*

**ANSWER:**

Indeed, as set forth in the Tender Documents, the amount of the Performance Bond for Execution of the Works and Equipment Installation will be equivalent to 20% of the Official Work and Equipment Estimated Budget.

**INQUIRY:**

56. *According to the Tender Documents (Sub-points 1.2.58, 1.2.62 and 1.2.63 among others) in case of satisfying the Short-Listing Stage, the Bidder may submit Envelopes 2 and 3 to the Committee. Please confirm that no responsibility is generated for the Bidder vis-à-vis PROINVERSION or the State of the Republic of Peru in case the Bidder is short-listed but later decides not to submit Envelopes 2 and 3.*

**ANSWER:**

Right. The short-listed Bidder who decides not to submit Envelopes 2 and 3 will have no responsibility vis-à-vis PROINVERSION or the State of the Republic of Peru.

**INQUIRY:**

57. *Sub-point 1.2.68 of the Tender Documents stipulates that the Bidder's Legal Representative must domicile in Peru. Also, Sub-point 2.2.1. of the Tender Documents prescribes that the domicile of the Legal Representative will be subject to – among others – Sub-point 2.1.4. that prescribes as a requirement to give as a common domicile the City of Lima or El Callao. We request confirmation that it is possible to designate non-domiciled persons as the Bidder's Legal Representatives, provided they indicate a domicile within Peru.*

**ANSWER:**

Sub-point 1.2.68 is amended to state that the Legal Representative must indicate a domicile in Lima or El Callao. Accordingly, it shall henceforth read as follows:

“1.2.68 Legal Representative: the individual person with a domicile in Lima or El Callao (Peru) appointed as such by the Bidder for the purposes of this Tender.”

**INQUIRY:**

58. *Sub-point 2.2.1 of the Tender Documents provides that the Bidder can appoint up to two common Legal Representatives to represent the Bidder in the Tender.*

*We request that Bidders may be authorized to appoint more than two legal representatives, as well as the possibility to submit only one Power of Attorney designating more than two representatives, so that in the future it will be possible to substitute one or the other with no need to submit new powers of attorney.*

**ANSWER:**

Abide by the provisions of the Tender Documents.

**INQUIRY:**

59. *Sub-point 5.2.2.1 of the Tender Documents, as amended by Circular Letter 004 requires Bidders to prove their condition of Legal Entity or Consortium in order to be recognized as such. Accordingly, the Bidder must present an authenticated copy of its articles or incorporation or its current By-laws. Please specify if documents issued abroad require to be authenticated by the Peruvian Consulate and the Ministry of Foreign Affairs.*

**ANSWER:**

Abide by the provisions of Point 4.3 of the Tender Documents.

**INQUIRY:**

60. *Sub-point 5.2.2.2. of the Tender Documents specifies that in case the payment has been made by a shareholder, partner or member of the Bidder, an affidavit must be presented explaining the existing relationship (Form 1-A of Exhibit 3). The form contains no space for any signature, and does not specify who is to sign it. We understand that the Bidder's legal representative must sign such document. Please confirm.*

**ANSWER:**

See answer to Inquiry 48

**INQUIRY:**

61. *According to Sub-point 5.2.2.8.1. of the Tender Documents, the Bidder must submit Form 1 of Exhibit 5 concerning the Incorporation Undertaking of the Concessionaire, which contains a first paragraph applicable only to Consortiums. In order that such form may be applicable to Individual Bidders too, please modify it by eliminating the phrase "...have been associated through a Consortium in order to participate in this Tender."*

**ANSWER:**

See answer to Inquiry 53 B.



**INQUIRY:**

62. *Reading Sub-points 5.2.2.8.2, 5.2.2.8.3 and 1.2.78 of the Tender Documents, we understand that the Strategic Partner shall maintain during the first five years of the concession at least 51% of the shares. Please clarify if it is possible that after such period of time the Strategic Partner may –although being the partner with the highest number of shares – hold less than 51%.*

**ANSWER:**

According to Sub-point 5.2.2.8.2. of the Tender Documents, the Strategic Partner may not hold less than 51% of the Concessionaire.

**INQUIRY:**

63. *With regard to the Concessionaire's shareholding structure indicated in Sub-point 5.2.2.8.2. of the Tender Documents, please clarify if it is possible that while complying with the condition that the Strategic Partner maintains 51% of the shareholding interest, the percentages of the minority partners may vary without the approval of the Grantor.*

**ANSWER:**

It is possible. Yes, but subject to the restrictions of free transferability that must be included in the Concessionaire's Bylaws as provided in the Concession Contract.

**INQUIRY:**

64. *Sub-point 5.2.3.1. of the Tender Documents stipulates the presentation by the Bidder of a Letter of Reference issued by a Banking Entity as per Form 6 of Exhibit 5. We believe such a letter is not related to any requirement in the Tender Documents, which contain precise references to clearly prove the existence, experience and net worth of the Bidder. It is obvious such a letter is of no use whatsoever in evidencing any requirement within the short-listing process and it is not usual for local or foreign financial entities to issue a letter of such type. We, therefore, request the elimination of such requirement.*

**ANSWER:**

See answer to Inquiry 7 of Circular Letter 006

**INQUIRY:**

65. *Sub-point 5.2.3.1. of the Tender Documents establishes the presentation by the Bidder of a Letter of Reference issued by a Banking Entity as per Form 6 of Exhibit 5. However, it is unusual in banking practice to issue this type of letter in favor of companies, but rather, in the case of individual persons. This entails a major difficulty for obtaining the document, aggravated by the contents mentioned in the Form. The letter may even be not applicable if the Bidder is not considering the possibility of obtaining credit lines from a banking entity to finance the work but rather using its own resources. As it is known, the financing of this kind of projects is not made through credit lines with a bank. Moreover, at this stage of the process it is difficult to quantify the amount of the investment required for the work, and so a bank will hardly be in a position to estimate the amount of credit lines that would be required to cover the financing of the work. Therefore, should this letter be required, we request restricting the text to the mere proof that the company or its economic group are and have been clients of the bank for a certain period of time.*

**ANSWER:**

See answer to Inquiry 7 of Circular Letter 006.

**INQUIRY:**

66. *As regards the Competition Factor described in Point 7.2 of the Tender Documents and notified by Circular Letter 001, we believe the way to fix it is not the most appropriate, taking into consideration the nature of the project (a "greenfield site") and the additional investment levels that are being required. Trying to limit the tariffs here reduces the possibility for the Bidders to obtain return levels consistent with the investment levels, and will lead to a greater perception of risk. As a result, this will limit the efficiency in the investment, both to the detriment of the Bidder and to the Peruvian State. Therefore, we suggest to modify the basis of the Competition Factor so that it will be determined on the basis of other concepts usually admitted in this type of processes such as for example, a greater retribution to the State, a greater investment commitment in the work, etc.*

**ANSWER:**

Abide by the Tender Documents.

**INQUIRY:**

67. *With regard to the Competition Factor of Point 7.2 of the Tender Documents, as amended by Circular Letter 001, we request notifying Bidders as soon as possible as to the maximum and minimum limits of the standard tariff index, in view of the impact it would have on the proposal.*

**ANSWER:**

The maximum and minimum limits of the standard tariff index will be notified in due course.

**INQUIRY:**

68. *Sub-point 7.2.1. of the Tender Documents stipulates that should the Economic Proposal not be the winner in first instance, it shall remain valid for sixty (60) business days during which time the Committee could accept such proposal. Please confirm.*

**ANSWER:**

In line with Sub-point 10.3.2 of the Tender Documents, such interpretation is confirmed.

**INQUIRY:**

69. *Sub-point 9.1.7 of the Tender Documents establishes that in case of a tie the Bidders will have two (2) hours to submit a new economic proposal. We believe this is an extremely short period of time and request that it is extended to four (4) hours.*

**ANSWER:**

Abide by the Tender Documents.

**INQUIRY:**

70. *Sub-point 9.2.2.1 of the Tender Documents sets forth that the amount of the Bank Guarantee which constitutes a warrant to challenge the awarding of the contract will be equal to 1% of the cost of the Referential Project. However, Sub-point 1.2.60 mentions US\$175 million for the First Stage of the Referential Project. Please specify the exact amount of the bank guarantee.*

**ANSWER:**

Sub-point 1.2.60 of the Tender Documents is hereby amended to read as follows:

- “1.2.60 Official Estimated Work and Equipment Budget: It is equivalent to an approximate cost of US\$175,000,000 (One Hundred and Seventy Five Million US Dollars) according to the Referential Project. This budget is only applicable to what is specifically contemplated in the provisions herein and in the Concession Contract”.

**INQUIRY:**

71. *Sub-point 10.3.1 of the Tender Documents sets forth that if the Successful Bidder fails to fulfill any of its obligations under Point 10.2 by the Closing Date due to causes attributable to it, PROINVERSION may execute the Bid Bond. Sub-point 10.3.3 stipulates that PROINVERSION may file legal actions as a result of default of the Successful Bidder. Please confirm the amount of such Bond is the top limit of responsibility of the Successful Bidder in case it would fail to comply with its obligations under Point 10.2 for the Closing Date due to causes attributable thereto.*

**ANSWER:**

We do not confirm the interpretation. Under Sub-point 10.3.1 of the Tender Documents, the execution of such bond does not limit or restrict any other right PROINVERSION may have over the Successful Bidder who failed to comply with its duties under its proposal.

**INQUIRY:**

72. *Sub-point 10.3.1 of the Tender Documents specifies that if the Successful Bidder fails to comply with its obligations as of the Closing Date due to causes attributable to it, PROINVERSION may execute the Bid Bond. Sub-point 10.3.2 states that under such assumption the Committee may accept the proposal of the Bidder who obtained the second highest score. Please clarify if the substitute of the original Successful Bidder would also be subject to this in the event it should also fail to comply with its obligations due to causes attributable to it, with respect to both the right of PROINVERSIÓN to claim for damages and the execution of the Bid Bond (10.3.1).*

**ANSWER:**

Interpretation confirmed.

**INQUIRY:**

73. *As indicated in Sub-point 10.3.2. of the Tender Documents, in case of non-compliance by the original Successful Bidder with its obligations under Point 10.2 as of the Closing Date, the Committee may accept the proposal of another Bidder. Sub-point 7.2.1. states that the Economic Proposal must remain valid until at least sixty (60) days after the Closing Date. On the other hand, Sub-point 1.2.42 stipulates the Bid Bond must be valid for up to sixty (60) days following the Closing Date. Please establish in the Tender Documents a mechanism that will extend the validity of the Bidder's Economic Proposal and of the Bond should it be necessary, so that the substitute Bidder of the original Successful Bidder may be in a position to meet the corresponding requirements on the new Closing Date.*

**ANSWER:**

According to Sub-point 10.3.2 of the Tender Documents, the Committee shall be authorized to notify the Bidder whose proposal obtained the second highest score of its decision to appoint it as the new Successful Bidder, and also as to the closing procedure and the date, time and place in which it will take place. This procedure may imply the extension of the closing date and the Bid Bond.

**INQUIRY:**

74. *Point 11.3 of the Tender Documents states that, pursuant to Supreme Decree 021-98-PCM, Article 1, Paragraph c), the Successful Bidder must pay the Fund for the Promotion of Private Investment in Public Infrastructure and Utility Works (FONCEPRI) a percentage on the amount of the Official Estimated Work and Equipment Budget. Supreme Decree 021-98-PCM, Article 1, Paragraph c) establishes the following with respect to such payment: "For concessions co-financed by the State: an amount that will be previously established in the Tender Documents, to be paid by the Successful Bidder, which shall not exceed 2% of the amount of the investment needed for the development of the concession, the co-financing by the State being deducted." However, according to Point 2.6 of the First Version of the Concession Contract "The modality of the Contract is for valuable consideration, as stipulated by the Consolidated Text -- TUO, Article 14, Paragraph a)" Considering such modality, Supreme Decree 021-98-PCM, Article 1, Paragraph a) is applicable, which provides that such contribution is "For concessions for valuable consideration: two percent (2%) of the amount received by the State for the Concession right". As no amount for the right of Concession has been established in this tender, we request that the applicability and the method for calculating such contribution to FONCEPRI be specified.*

**ANSWER:**

Sub-points 10.2.5 and 11.3 of the Tender Documents are hereby amended to read as follows:

*"10.2.5 The Concessionaire shall pay the amount referred to in Point 11.5 hereof as indicated in the Concession Contract".*

*"11.3 Pursuant to the Third Supplementary Provision of the Law of Bases for Decentralization, Law 27783, FOPRI will receive 2% of the resources actually received, i.e., of the Compensation."*

**INQUIRY:**

- 75 *Point 11.5 of the Tender Documents states the Successful Bidder shall pay PROINVERSION the expenses incurred in the process for the promotion of private investment. We request that these expenses be included within the amount the Successful Bidder must pay by way of contribution to FONCEPRI,*

*if applicable, so as not to duplicate the collection, as the objectives of FONCEPRI are precisely to finance the activities in the concession process, according to Supreme Decree 059-96-PCM, Article 11, second paragraph*

**ANSWER:**

Abide by the Tender Documents.

**INQUIRY:**

76. *Point 11.5 of the Tender Documents establishes that the Successful Bidder shall pay to PROINVERSIÓN the expenses incurred in the process to promote private investments. We request a cap be defined for such expenses or, in any case, to notify the Bidders as soon as possible, of the amount of such payment, in view of the impact it could have on the proposal.*

**ANSWER:**

Such amount will be notified in due course.

**INQUIRY:**

77. *Please confirm there is no and there will be no restriction whatsoever as to the participation of the Bidder or the Successful Bidder in other tenders for terminals in the same geographic region.*

**ANSWER:**

This Tender has no restrictions as to the participation of the Bidder or the Successful Bidder in other tenders for terminals in the same geographic region.

**INQUIRY:**

78. *Page 6 of the Tender Documents mentions that part of the people that may be redundant in ENAPU S.A. may be hired by the Concessionaire, thus ensuring labor continuity and training of these workers.*

*Circular Letter 004 states that more information on the subject will be found in the Contract. Please specify which clauses refer to the mechanism whereby these personnel will be taken over by the Concessionaire.*

**ANSWER:**

See answer to Inquiry 10

**INQUIRY:**

79. *Page 42 of the Tender Documents states the Concessionaire shall pay to FONCEPRI 2% of the Official Estimated Work and Equipment Budget.*

*Please specify if such contribution will be a payment on account of the compensation of if it is an additional payment to be made to the State.*

**ANSWER:**

See answer to Inquiry 74

**INQUIRY:**

80. *The National Port System Law, Fifteenth Final and Temporary Provision, states the following:*

*“Fifteen.- In all contractual commitments to be entered into within Article 11 of this Law, a percentage of no less than 3% will be established to be invested by the National Port Authority in the National Port System (...).”*

*Please specify the exact percentage the Concessionaire shall pay to APN, the basis for the calculation of the percentage (% of gross income, profits, investment, and the method for paying the tax..*

**ANSWER:**

The exact percentage the Concessionaire shall pay to APN as well as the basis for calculating the percentage shall be notified in due course.

**INQUIRY:**

81. *According to Law 26917, Article 14, OSITRAN regulatory rate may not be higher than 1% of the annual billing of the supervised entity.*

*Please specify which will be the regulatory rate for the Concessionaire.*

**ANSWER:**

In accordance with Supreme Decree 104-2003-PCM, the regulatory contribution to OSITRAN shall be 1% of the annual billing of the companies and entities within its scope, after deduction of the Value Added Tax (VAT) and the Municipal Promotion Tax.

**INQUIRY:**

82. *Section VI of Exhibit 11, Page 85 contains the environmental considerations to be taken into account during the construction and the environmental control plan to be applied during the execution of the works and the operation of the Terminal.*

*Please specify any further details that the Bidders must consider in the Technical Proposal.*

**ANSWER:**

Section VI of Exhibit 11 to the Tender Documents shall at least state:

- i Objectives of the Environmental Impact Study (EIS) to be carried out.
- ii Methodology proposed for the development of the EIS.

Notwithstanding the above, the Concessionaire shall submit the EIS in due course in accordance with the Contract and the Applicable Laws.

**INQUIRY:**

83. *According to Appendix II of the Consolidated Text of the Value Added Tax and Excise Tax Law, the basic services rendered by the Concessionaire shall be exempted from the Value Added Tax (VAT).*

*Please specify if the Concessionaire will have any special system for the Value Added Tax whereby it may recover the VAT from the purchases of goods and services it will make during the term of the Concession.*

**ANSWER:**

The Concessionaire shall be subject to the applicable rules.

**INQUIRY:**

84. *Circular Letter 001 specifies the Investment Commitment is divided into two parts: Minimum Supplementary Investment and Additional Supplementary Investment (ASI)*

*Please confirm the amount of the Minimum Supplementary Investment as well as the method for paying it, and the Additional Supplementary Investment*

*Additionally, please confirm if it is to be fully paid on the closing date or if it will be paid according to the requirements of investment in common works, following a defined schedule before the presentation of proposals.*

**ANSWER:**

As to the Minimum Supplementary Investment, see answer to Inquiry 54.

As to the Additional Supplementary Investment, the appropriate conditions and schedules will be presented in the final version of the Concession Contract.



**INQUIRY:**

85. *Circular Letter 001 mentions that the maximum and minimum values of the National Component (NC) to be included in the Economic Proposal will be established by a Circular Letter.*

*When will such Circular Letter be sent?*

**ANSWER:**

The maximum and minimum values of the National Component (NC) to be included in the Economic Proposal will be notified in due course.

**INQUIRY:**

86. *Point 1.1 of the Tender Documents states: "As provided in Article 11 of the National Port System Law, in case of a new port infrastructure, the Concessionaire may execute and/or perform exclusive port activities and services"*

*Please specify which are such exclusive port activities and services by the Concessionaire.*

**ANSWER:**

These services are referred to in Points 8.12 and 8.13 of the Draft Contract.

**INQUIRY:**

87. *It is stated that the minimum capacity of 600,000 TEU is the minimum annual capacity the Terminal must have.*

*Please explain what is understood by minimum capacity*

*Further, please explain if this is the minimum annual capacity the Terminal must have on completion of the construction stage.*

**ANSWER:**

The Terminal is required to operate a minimum of 600,000 TEU per year.

**INQUIRY:**

88. *To whom does the Concession area described in Exhibit 9 belong? If it belongs to ENAPU, how are the disinvestment procedures applied in these areas for the handing over of the Terminal to the Concessionaire on the closing date?*

**ANSWER:**

See answer to Inquiry 23

**INQUIRY:**

89. *Please specify who are the professional members of the Evaluation Committee described in Sub-point 1.2.15.*

**ANSWER:**

Abide by the provisions in the Tender Documents.

**INQUIRY:**

90. *According to Circular Letter 004 Sub-point 1.2.43 of the Tender Documents, the Performance Bond for Execution of the Works and Equipment Installation, is amended to read as follows: "The amount of this Bond shall be equivalent to 20% of the Official Estimated Work and Equipment Budget. This amount will be deducted on a prorate basis from the progress of the work up to an amount equivalent to 20% of the initial guarantee. In order to be entitled to this deduction, the Bidder must have completed at least one berth in the work".*

*What is the competent authority to issue such certification?*

**ANSWER:**

Abide by the Applicable Laws.

**INQUIRY:**

91. *According to Sub-point 1.2.46, Standard Tariff Index,*

*Which will the validity period of the Standard Tariff Index be?  
When will the range of the Standard Tariff Index be notified?*

**ANSWER:**

See answer to Inquiry 67

**INQUIRY:**

92. *According to Sub-point 1.4.1. any amendment to the Tender Documents will be notified through Circular Letters to all Bidders and to the Short-listed Bidders. Any changes implying substantial amendments to the Tender Documents will have the approval of APN.*

*What is a substantial amendment considered to be?*

**ANSWER:**

Substantial amendments are those which change the rules set forth in the Tender Documents and which allow in certain cases to render flexible certain previously established minimum conditions or requirements. Their inclusion in the Tender Documents requires a greater analysis as they could eventually have an impact on the Bidders' decisions, their participation or not in the process; the determination of their bids, among other things.

By their nature, this type of amendments can be put in a list, which does not mean that the following are the only ones:

1. Criteria for qualifying technical and economic proposals
2. Fixing the Competition Factor
3. Decreasing the amount of the guarantees/bonds.
4. Changing the objection/challenging requirements.
5. Amendment of requirements for short-listing of bidders.
6. Period of concession
7. Approval of final version of Concession Contract
8. Impediments for being Bidders
9. Delaying the dates for presenting proposals.

**INQUIRY:**

93. *Once the improvements development and implementation works have been completed at Dock 5, will the port activities developed in this infrastructure compete directly with the Southern Terminal? If this is affirmative, we understand that the rendering of port services should be left in free competition and accordingly, no regulated tariffs should exist in both cases.*

**ANSWER:**

The answer to this inquiry falls within the scope of the Concession Contract. However, pursuant to the provisions of Point 13.1 of the National Port System Law, the utilization of public-use, private or public port assets, when performed outside the free competition practices, is subject to the payment of tariffs as determined by the tariff system established by OSITRAN at the proposal of the National Port Authority.

Now, Law 26917 establishes that one of the main duties of OSITRAN is to operate the tariff system of the infrastructure within its scope, in case there is no market competition and provided no Concession Contract has been entered into with the State.

Finally, OSITRAN Tariffs Regulations specify that the tariff provisions and criteria established in Concession Contracts will apply to Service Providers, holders of the same. However the Concessionaire Service Providers shall

submit themselves to the Regulations and to the tariff rules established by OSITRAN in all matters not contrary to the provisions of the respective Concession Contracts. These same Regulations establish specific provisions concerning port infrastructure.

**INQUIRY:**

94. *In your answer to inquiry 28 (Circular Letter 004), you indicate that the Tender Documents are subject to the jurisdiction of the Courts and Judges in and for Lima, whilst an arbitration clause has been considered for the Contract. We believe this ambivalence might generate conflicts, as many matters may be regulated simultaneously in the Tender Documents and in the Contract and, even if the Contract is in force, the Tender Documents could be invoked as a reference, with respect to this concrete case. Starting a discussion as to whether a conflict is under the Tender Documents or under the Contract in order to decide as to the submission to the Judge or to the Arbitration Court implies creating one further conflict. We insist an Arbitration Clause should be included for the interpretation and execution of the provisions on the Tender Documents.*

**ANSWER:**

Once the Contract is in force, only Section XVI of the Concession Contract - Settlement of Disputes - will be applicable.

**INQUIRY:**

95. *Are they identical or is there any difference between the operation plans mentioned in Pages 34 (as an integral part of the Business Plan) and 85 of the Tender Documents?*

**ANSWER:**

Right. The operations plan mentioned in Pages 34 and 85 of the Tender Documents are identical

**INQUIRY:**

96. *Which would be the minimum and/or maximum values to be considered by the Bidders with regard to the National Component referred to in Law 28242?.*

**ANSWER:**

See answer to Inquiry 85.

**INQUIRY:**

97. *We suggest providing Bidders with the UTM coordinates delimiting the area of the South Dock Concession Area*

**ANSWER:**

See answer to Inquiry 23 hereof.

**INQUIRY:**

98. *Sub-point 5.2.2.8.1 of the Tender Documents does not include a temporary limit on the obligation of maintaining a capital stock equivalent to 20% of the Official Estimated Work and Equipment Budget. Here we suggest such obligation be extinguished at the time the Construction of the Works is completed without observations, since at that time the Concessionaire shall have satisfied its essential obligation towards the State, and the level of its investment capital vis-à-vis the indebtedness level will depend on the company's financial structure.*

**ANSWER:**

Abide by the Tender Documents.

**INQUIRY:**

99. *As stated in Circular Letter 003, the final version of the Contract would be given on April 3, 2006. Only then would we be aware of all the economic variables to the project. Therefore, only after that date could we finish the preparation of a serious proposal, submit it to the financial institutions entities from which funding could be requested so as to know their opinion concerning the economic feasibility of the project, and submit it to the corporate bodies of the bidding company for their approval; and all these formalities require time. Therefore, we request the date for the presentation of Envelopes 2 and 3 stated in such Circular Letter 003 be changed and a date be given that will consider a period of no less than sixty (60) days between the date of delivery of the final draft of the Contract and the date for the presentation of Envelopes 2 and 3.*

**ANSWER:**

Abide by the Schedule given in Circular Letter 3

**INQUIRY:**

100. *Point 1.1 of the Tender Documents, paragraph 6, states the period of the Concession will be thirty (30) years as provided in Point 10.3, Article 10 of the National Port System Law.*

*Economic Utilization is the right granted to the entity under administration by the provisions of Article 73 of the Peruvian Constitution, and is an essential element of any Infrastructure Concession. Different from other infrastructure*

*concessions, in the case of the South Dock, the Concessionaire will not be able to "economically use" the Concession during the Construction period.*

*Within this line of thought we should mention that in situations like this, Article 50 of the Regulations to the National Port System Law should be applicable. This article admits that contracts entered into with the private sector for the administration of the port infrastructure may be extended for up to thirty (30) additional years, and that "the conditions for the extension are to be specified in the Tender Documents of the Public Tender and in the appropriate contract".*

We reiterate our request that the conditions for an eventual extension of the Concession be included in the Tender Documents and the Contract. In agreement with Article 73 of the Constitution, this extension should be granted, at least and if so requested by the Concessionaire, for a period equal to the one existing between the Contract Execution Date and the Commencement of Commercial Operations in the South Dock

**ANSWER:**

Abide by the Tender Conditions

**INQUIRY:**

101. *Point 11.3 of the Tender Documents states the Successful Bidder shall pay FONCEPRI an amount equivalent to 2% on the amount of the Official Estimated Work and Equipment Budget. In accordance with applicable rules, only in the case of free Concessions is the Successful Bidder to pay such percentage. As the concession in this tender is for valuable consideration, we request the removal of such obligation.*

**ANSWER:**

See answer to Inquiry 74

**INQUIRY:**

102. *As it is well-known, most of the services to be rendered by the Concessionaire are exempt from the Value Added Tax, a fact which will make it impossible to recover such tax, and will render the project more expensive. We request that a mechanism whereby the Concessionaire will be tax-exempted or otherwise be allowed to recover such tax be considered.*

**ANSWER:**

See answer to Inquiry 83.

**INQUIRY:**

103. Pursuant to Sub-point 5.2.1 of the Tender Documents, in order to prove the required technical and operational capacity, the Bidder's Strategic Partner must concurrently satisfy the following requirements.

*Operational Experience (Port Management):*

- a) Annual traffic of 2,500,000 TEU or more. Traffic by transshipment is also considered. Traffic must refer to exclusive terminals where the operator has Effective Control over the Port Manager.
- b) Effective Control of the Port Manager in at least one terminal with an annual traffic equal to or greater than 500,000 TEU. Traffic by transshipment is also considered
- c) Effective Control of the Port Manager in at least one exclusive terminal where the main cargo is made up of containers and where total added docking-length is 600 meters or more.

*In addition, the Tender Documents state that, in order to comply with the requirements, the Strategic Partner may refer to one or more terminals, and that the activities mentioned as Operational Experience were carried out after January 1, 2002.*

*Finally, it is indicated that, in the case of the requirement pointed out in item (a), a Related Company's experience may be included, together with the experience of those companies where the Strategic Partner is a Subsidiary. The experience of other Consortium members cannot be included.*

*Accordingly, due to tax or other reasons, international corporations with multiple operations must handle all their operations through "special purpose companies", all of which belong in a proportion of 100% to a holding company that consolidates the share interests of the operating companies in the group or be under its control; such holding company may not effect any operations directly. Therefore, if a foreign corporation seeks to form part of a Consortium as a Strategic Partner, it shall have to incorporate an independent company whose purpose will be to participate in the tender and, eventually, if awarded the contract, participate as shareholder of the Concessionaire.*

*Therefore, we ratify our request that the company that makes up the Consortium as Strategic Partner, that is, a new company belonging in a 100% proportion to the holding company, be allowed –in order to prove the technical and operational capacity indicated in items b) and c) – to present the experience of the same company related to or affiliated to said Strategic Partner or of the same company of which the Strategic Partner is a Subsidiary.*

**ANSWER:**

Abide by the Tender Documents

**INQUIRY:**

104. According to Sub-points 1.2.72 and 1.2.73 of the Tender Documents and to Points 8.12 and 8.13 of the First Draft Concession Contract, the Concessionaire shall render “standard services” to any user that requests a service, for which it will charge a tariff, and may additionally render “special services”, which are different from the standard ones, for which it can charge a consideration referred to as price.

In accordance with the Tender Documents, the “standard services” include vessel services (“mooring and unmooring” and “use of berth”) and cargo services (“dock use”, “loading and unloading”, “handling of containers or split freight as needed”, “transfer”, “storage” and “weighing”. The First Draft Concession Contract partially amends it and develops it in greater detail.

Nevertheless, Appendix II of the Value Added Tax Law contains the services which are free from such tax. Item 3 of such Appendix exempts the “cargo transportation services made from Peru to abroad and those from abroad to Peru, as well as the supplementary services necessary to perform such transportation, provided they are performed in the primary customs area”.

This provision adds that such supplementary services include:

- a) Tugging;
- b) Tying or untying buoys
- c) Rental of berths
- d) Use of operations areas
- e) Cargo mobilization among vessel holds
- f) Transshipment of cargo
- g) Loading and unloading cargo or empty containers.
- h) Handling of cargo
- i) Stowage and unstowage
- j) Traction of cargo from and toward storage areas.
- k) Pilotage
- l) Support to aircraft on land (ramp)
- m) Air navigation in route
- n) Take off and landing
- o) Parking of aircraft.

As can be seen, the terms used in the Tender Documents and the First Draft Concession Contract to refer to the services to be rendered by the Concessionaire do not coincide in many cases with the terms used in Point 3 of Appendix II to identify the services that are exempted from the Value Added Tax. This complicates the determination of those services that fall within the list of VAT free services. It is very important that this information is reliable so that the Bidders may evaluate the fiscal cost the Concessionaire shall have to defray.



Therefore, the following clarifications are required in the Tender Documents and in the First Draft Concession Contract

1. Explain if any, some or all the “standard services” under Sub-point 1.2.72 of the Tender Documents and Point 8.12 of the First Draft Concession Contract can be assimilated to any, some or all the supplementary services for cargo transportation detailed in Item 3 of Appendix II of the Value Added Tax Law, even if they have been called differently in the Tender Documents / First Draft Concession Contract and in the said Appendix.

*It could happen that the same service is included both in the Tender Documents / First Draft Concession Contract (“standard service”) and in Point 3 of Appendix II, but with different names. In such case, the nature of the services shall prevail over the name that may have been given to them.*

2. Some of the services contemplated in the exemption often comprise several single services but they may as a whole include a single, more complex service, included within Point 3 of Appendix II.

*It could happen that some of the services included in the Tender Documents / First Draft Concession Contract form part of the services that are expressly exempted from the Value Added Tax for being included in Item 3 of Appendix II, so such specific service would be also exempted from the Value Added Tax if executed with other activities needed for performing a more complex service expressly contemplated in Item 3 of Appendix II.*

*In this connection, please specify if any, some or all the “standard services” mentioned in Sub-point 1.2.72 of the Tender Documents and in Point 8.12 of the First Draft Concession Contract form part, jointly with other activities, of any, some or all the supplementary services of cargo transportation detailed in Point 3 of Appendix II, Value Added Tax Law.*

3. If any, some or all of the services referred to in Sub-point 1.2.72 of the Tender Documents and in Point 8.12 of the First Draft Concession Contract can be assimilated to any, some or all the supplementary services for cargo transportation detailed in Point 3 of Appendix II, Value Added Tax Law, even if they have been named differently in the Tender Documents / First Draft Concession Contract and in the Appendix, it would be convenient to change the manner in which the “standard services” are called in the Concession Contract, so that there will be a similarity between them and those appearing in item 3 of Appendix II as exempted. In this way, any eventual objection by the tax authorities could be prevented.

**ANSWER:**

Abide by the tax provisions in effect.

## **II. ADDITIONAL AMENDMENTS TO THE TENDER DOCUMENTS**

1. The following text is incorporated as second and third paragraph of Sub-point 5.2.2.4:

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

Those who are included within the scope of Article 1366 of the Civil Code cannot be Bidders.

2. The following text is included as Point 5.4.

“5.4 Verification of legal requirements.

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

3. Form 4 of Exhibit 4, is substituted by the Form attached hereto.

Lima, February 2006

**Sergio Bravo Orellana**  
Chairman  
PROINVERSION Committee for  
Investment in Infrastructure and Public Utility Projects

**EXHIBIT 3**

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

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

We hereby declare under oath that:

[...], i.e., the person who paid for our right to participate in the Short-Listing Stage is \_\_\_\_\_ [choose: one of our shareholders, partners, members, or a company related to us or to one of our shareholders, partners or members].

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

Entity .....  
Bidder

Name .....  
Legal Representative of Bidder

Signature .....  
Legal Representative of Bidder

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**Exhibit 3**  
**Form 2: Technical and Operational Capacity**  
**AFFIDAVIT**

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

OPERATIONAL EXPERIENCE (Port Management)

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

<sup>1</sup> Required only in those cases where 600 m docking length are evidenced.

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

**EXHIBIT 4**

**Form 4: CREDENTIALS FOR QUALIFICATION**  
(Reference Sub-point 5.2.2 of the Tender Documents)

**AFFIDAVIT**

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

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

Place and Date: .....

Entity: .....

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

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

**EXHIBIT 5**

**Form 1 A : UNDERTAKING OF INCORPORATION**

**AFFIDAVIT**

(Reference Sub-point 5.2.2.8 of the Tender Documents)

We hereby declare under oath that:

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

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

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT 5**

**Form 1 B: UNDERTAKING OF INCORPORATION  
(CONSORTIA)  
AFFIDAVIT**

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

We hereby declare under oath that:

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

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

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

Organization .....  
Bidder

Name .....  
Bidder's Legal Representative

Entity .....  
Legal Representative (Member 1)

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

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

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

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

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

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

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

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

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**EXHIBIT 5**

**Form 2: FINANCIAL REQUIREMENTS - ENVELOPE 1**

(Reference *Sub-point 5.2.3.* of the Tender Documents)

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

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

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

Bidder : .....

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

Pursuant to *Sub-point 5.2.3.* of the Tender Documents, we hereby submit our  
Financial and Technical Information Letter.

**I. FINANCIAL REQUIREMENTS**

**A. Bidder's Net Worth**

NET WORTH      US\$ [    ]*
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- The total amount in this Table must be the same as in Table B.



**Note:** The exchange rates published by the Superintendency of Banking and Insurance (SBS) on the date this document was submitted shall be used.

**D. Explanation of the relationship between the Bidder, the shareholder or member of the Bidder, and its 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.

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**E. Enclose International Financial Entity's Letter of Reference**

Signature .....

Name .....  
Bidder's Legal Representative

Entity .....  
Bidder

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BA-JBC/TQ/MCP  
330600k6.157

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