

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

CIRCULAR LETTER 010

As provided for in Sub-point 1.4.1 of the Tender Documents of the Comprehensive Projects Tender for the Concession of the New Container Terminal at El Callao Port Terminal – Southern Zone, PROINVERSION Committee for Investment in Infrastructure and Public Utility Projects hereby informs that answers have been provided to the third round of inquiries made by the Bidders concerning the Tender Documents, as amended, and that these have the favorable opinion of the National Port Authority (APN).

I. ANSWERS TO THE INQUIRIES REGARDING THE TENDER DOCUMENTS

INQUIRY 1:

Paragraph seven, Point 1.1 of the Tender Documents does not rule out the delivery of the New Container Terminal at El Callao – Southern Zone (the “Terminal”) to the private sector.

The granting of a preferential right or right of first refusal would be an incentive for investors.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 2:

In Sub-point 1.2.25, the definition of Effective Control makes reference to the term “control” in its first and third paragraphs.

Said term must not be included in the definition because it is unclear.

ANSWER:

Abide by the provisions of the Tender Documents. The definition refers to Effective Control.

INQUIRY 3:

In Sub-point 1.2.31, it should be made clear that the Concessionaire is the only Operator authorized to operate the Terminal and render the Standard Services, Special

Services and any other service directly or indirectly related thereto during the Concession term.

ANSWER:

The conditions for the provision of the Services by the Concessionaire are set forth in Point 2.5 of the Concession Contract.

INQUIRY 4:

In Sup-point 1.2.31, the reference to “private sector” must be understood as made to the “Concessionaire”.

ANSWER:

It is correct. The definition Exclusive Execution and/or Service Supply is amended to read as follows:

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

INQUIRY 5:

In Sub-point 1.2.37, the definition of Port Equipment makes reference to the qualification as port infrastructure. Please state who qualifies and what are the qualification criteria.

ANSWER:

The definition is amended to read as follows:

“Port Equipment: For purposes of the provisions set forth in the Tender Documents, they are the mechanical, electrical and electronic facilities which form an integral part of the Port Infrastructure of the New Container Terminal at El Callao Port Terminal – Southern Zone.”

INQUIRY 6:

Sub-points 1.2.43 and 1.2.44 establish two types of guarantee for US\$35 million and US\$17.5 million, respectively.

Guarantees increase the financial cost of an investment. Due to the inexistence of tangible assets delivered to the Successful Bidder, guarantees must be limited in DBFOT concessions. As risk is minimal, due to the fact that there is no operation in progress to be delivered and no assets to be entrusted to the successful bidder, it is not reasonable to request guarantees for such an amount. The guarantees are

undoubtedly the assets that are constructed, acquired and placed in the country. There is no doubt that the guarantee is the forfeiture clause contained in the concession contract. The increase of the financial costs of the investment results in higher costs for foreign trade operators. We request that the guarantees be reduced to reflect the actual risk faced by the Grantor.

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be notified accordingly once the approval is obtained.

INQUIRY 7:

The last paragraph of Sub-point 1.2.72 establishes that there is "open access" to the Standard Services. However, nothing is mentioned about Special Services.

ANSWER:

The definition of Special Services is amended to read as follows:

"Special Services: The services additional to the Standard Services that the Concessionaire is authorized to render. The Concessionaire shall render said services to all users who request them and shall be entitled to charge a fee called Price for the provision of said services. This does not affect the users' right to alternatively demand the provision of the Standard Services."

INQUIRY 8:

In Sub-point 1.2.72, it is clear that the services must be provided in such a manner that users are able to compete in time and quality. The Port Manager must not be allowed to benefit some parties to the detriment of others, reducing their competitiveness by reason of time or service quality.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 9:

Please provide us with the date of the documents mentioned in Sub-points 1.3.24 and 1.3.25 as well as the text thereof.

ANSWER:

Sub-points 1.3.24 and 1.3.25 of the Tender Documents are amended to read as follows:

“1.3.24 By Resolution dated October 28, 2005, APN Board of Directors issued a favorable opinion on these Tender Documents.”

“1.3.25 By Resolution of PROINVERSION Steering Council dated November 3, 2005, these Tender Documents were approved.”

INQUIRY 10:

Sub-point 1.4.3 provides that the Committee’s decisions are not subject to objection. This is customary in this type of proceedings. Nonetheless, there is an evaluation of the technical proposal, Envelope 2, that may lead to disqualification. May this decision on the Technical Offer be challenged? It does not seem to be reasonable that a matter submitted by the Tender Documents to the discretion of the evaluator may lead to the disqualification of a Short-Listed Bidder; particularly with respect to a technical and economic matter that largely depends on the practical know-how of the Short-Listed Bidder and the Operator and on their entrepreneurial decisions.

ANSWER:

Abide by the provisions set forth in Point 8.2 of the Tender Documents.

INQUIRY 11:

Sub-point 5.2.2, “Legal Requirements”, requires redundant documents: (1) In Sub-point 5.2.2.1, the sworn statement of existence is redundant, since, in order to register a power of attorney granted by a company not domiciled in Peru, it is necessary to submit a Certificate of Good Standing issued by the competent authority pursuant to the Regulations of the Registry of Companies. In the case of a national company, it is understood that the existence of the company is known by everybody when it is filed with the Public Records Office. (2) The joint and several liability mentioned therein must relate to the participation of the consortium member. (3) The consortium agreement should be requested. (4) In Sub-point 5.2.2.4, the sworn statement is useless; please review the sample form. In any case, a statement in these regards made in the Concession Contract is more than enough. (5) The statement in Sub-point 5.2.2.5 is unnecessary. There is a constitutional provision in that respect and there is always a similar clause in the Concession Contract. (6) The statement in Sub-point 5.2.2.7 is inconsistent with Point 6.2, second paragraph, which is reiterated in Point 7.1, Document 1, last paragraph. (7) The statement in Sub-point 5.2.2.8.1 is unnecessary: this is so established in the Tender Documents; if the successful bidder fails to incorporate the concessionaire company, the guarantee is enforced. There is nothing to declare.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 12:

In Peru, companies are not required to have a minimum capital stock, except in certain specific cases. Overcapitalization is a problem that generates financial costs and conditions leverage: Having a 20% capital stock as from the creation of the concessionaire company must be rather a decision of the investor and the banks. In any case, this should be established according to investments. It is necessary to consider that requiring such a large capital stock from the concessionaire is not practical with regard to the terms for the execution of a Legal Stability Agreement, Legislative Decrees 757 and 662, which establish that applicants may not capitalize its company until the Stability Agreement is executed.

We request that the minimum capital stock amount required for the concessionaire company be reconsidered and set at 10% of the Official Estimated Work Budget or that capitalization may be made according to the investment program, and that the terms be adjusted so that the concessionaire may obtain legal stability under Legislative Decrees 757 and 662.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 13:

The letter of the financial institutions referred to in Sub-point 5.2.3.1 (Form 6 of Exhibit 5) has no effect at all; it is useless and involves an unnecessary additional financial cost. The wording obliges to obtain a credit line. Furthermore, the wording could be understood by the financial institution as a guarantee, which would create an additional cost during the application stage.

We request that said document be eliminated, that the wording of the form of letter be amended or that each bidder be free to submit a Bank Letter of Reference that is as appropriate as possible for the Short-Listing purposes.

ANSWER:

See the answer to Inquiry 5 in Circular Letter 006.

INQUIRY 14:

The Committee's right set forth in Point 5.3 of the Tender Documents must be exercised within a reasonable term that is in accordance with the request and of no less than five (5) days. Or, it should be clarified that the documents to be requested may be presented up to twenty (20) days prior to the submission of Envelopes 2 and 3, provided that there is a term of at least five (5) days.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 15:

In Point 7.1, the statement as to familiarity with the contents of the Tender Documents and the Contract is unnecessary and redundant. As regards the Tender Documents, this is self-explanatory. As regards the concession contract, no other acknowledgment other than the signing of the concession contract stipulated in Document 6 of Envelope 2 should be required?

It is clear that the final version to be signed by the Short-Listed Bidder will be delivered long before Envelopes 2 and 3.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 16:

In Point 7.1, the wording of Document 4 is confusing. Please clarify it.

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 17:

Is the "Proposal to carry out the Works and install the Equipment" intended for the execution of the Benchmark Project?

ANSWER:

It is not correct. In order to prepare the Technical Proposal, the Bidder may take the Benchmark Study into consideration, as stated in the answer to Inquiry 16.

The term "Benchmark Project" is replaced by "Benchmark Study".

INQUIRY 18:

Does paragraph four of "Document 4" in Point 7.1 mean that the Alternative Works and Equipment replace the Proposal to carry out the Works and install the Equipment, set forth in the Benchmark Plan?

ANSWER:

Refer to the answer to Inquiry 16.

INQUIRY 19:

In Point 7.1, Document 5 - "Business Plan" is binding. If it is binding, it may not be amended. Nothing is more variable than a Business Plan. Please confirm. If so, what is the reason for submitting it?

ANSWER:

The answer to this question is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 20:

In Sub-point 7.2.1, "should" or will the Economic Proposal remain binding?

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 21:

In Sub-points 8.2.1 and 8.2.5, it is essential to make a broad explanation of the criteria based on which the Committee will accept a Technical Proposal (regarding the Benchmark Plan) or an Alternate Project.

We consider that the Committee must not be given the possibility to technically approve or disprove a Technical Proposal and that, if given, certain objectives and standards known by all Bidders should be in place.

ANSWER:

Abide by the provisions of the Tender Documents.

Sub-point 8.2.5 is amended to read as follows:

"8.2.5 The proposal included in Envelope 2 will be declared technically acceptable when the following conditions are jointly met:

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

INQUIRY 22:

We consider that the Committee should establish minimum conditions applicable to the service, equipment and service quality, which would form an integral part of the

Concession Contract, and noncompliance with them should give rise to an investigation and sanctioning by the Supervisory Body of Investment in Transport Infrastructure for Public Use (OSITRAN).

Only the investor knows how to carry out its business as efficiently as possible.

ANSWER:

Refer to Exhibit 11 and Appendix 1 thereto, as amended and incorporated, respectively, by this Circular Letter. Without prejudice to the foregoing, the Concession Contract establishes the minimum service and productivity levels required.

INQUIRY 23:

The decision not to technically accept a Committee's Proposal under Sub-point 8.2.6 must be fully supported and this must be indicated in the Tender Documents.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 24:

The provisions of Sub-point 9.1.5 must be adjusted, when appropriate, to the provisions of the Free Trade Treaty with third countries.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 25:

In Sub-point 10.2.2, it should be clarified that the concession contract included in Envelope 2 must have been signed by the Port Authority and the concessionaire.

ANSWER:

As at the Closing Date, both the Concessionaire and the Grantor, acting by and through APN, execute the Concession Contract.

It should be understood that Document 6 of Point 7.1 of the Tender Documents requires the submission of a copy of the final version of the Concession Contract, duly signed and sealed in each of its pages by the Short-Listed Bidder's Legal Representative. Such requirement is aimed at expressing the agreement of said Short-Listed Bidder with the terms of the Concession Contract.

Sub-point 10.2.2 of the Tender Documents is amended to read as follows:

“Execution of the Contract by the Grantor, acting by and through APN, and the Concessionaire.”

INQUIRY 26:

The concept of Start-up of the Commercial Operations should be included in the Tender Documents so that the absence thereof or the absence of its text constitutes sufficient grounds to limit or hinder the early recovery benefit of VAT (Value Added Tax).

ANSWER:

Abide by the provisions of the Tender Documents.

It should be understood that the start-up of the operations is the start-up of the Exploitation, pursuant to the terms and conditions set forth in the Concession Contract.

INQUIRY 27:

In Point 11.4, it must be stated that the Environmental Impact Study has been approved by all the competent authorities, there being no additional administrative approval.

ANSWER:

The Environmental Impact Study must be prepared by the Successful Bidder, who must submit it to the Competent Environmental Authority for approval, as provided for in the Concession Contract.

INQUIRY 28:

As regards the Works Execution and Equipment Installation Performance Bond mentioned in Sub-point 1.2.43, which proportional reduction has been established in Circular Letter 004, we request that the following be stated:

- a. The reduction shall be on an annual basis.
- b. It has been further stated that said Performance Bond shall be reduced until reaching an amount equivalent to at least 20% of the initial guarantee, but the amount by which it shall be reduced each year has not been indicated. In this regard, we make the following inquiries:
 - i. What is the degree/level of work progress that justifies a specific reduction? In other words, what percentage of work progress will imply such percentage of reduction?
 - ii. By what amount is the guarantee for the work progress of a berth reduced?

ANSWER:

Refer to the answer to Inquiry 6.

INQUIRY 29:

Circular Letter 1 creates the definition of Complementary Investment Amount.

- a. (i) This concept must be defined in such a manner that it may be amortized or depreciated on a tax basis depending on the nature given to it.
- b. (ii) Therefore, it must comply with the causality requirement established in the Income Tax Law.
- c. (iii) It must be possible to recover the VAT derived from it.
- d. Otherwise, its effects on the economic model would be substantial.

ANSWER:

As it is defined, the Complementary Investment Amount is a cost of the Concession which "may be activated" as an investment necessary for production but which does not imply a right for the exploitation of a fixed asset owned by the State of the Republic of Peru and, consequently, the term for amortization of intangible assets established in Article 44, Paragraph g) of the Income Tax Law, i.e., from 1 to 10 years, is applied.

INQUIRY 30:

When the definition of Complementary Investment Amount contained in Circular Letter 1 states that the Investment Amount is divided into two parts, does it mean that the Complementary Investment Amount is divided into two parts?

ANSWER:

It is correct.

INQUIRY 31:

Does TPC mean El Callao Port Terminal?

ANSWER:

It is correct.

INQUIRY 32:

In Sub-point 1.2.17, Investment Commitment is defined as a contribution to APN for common works, which implies the following questions:

- a. (1) How would such contribution be recorded in the concessionaire's accounting books?
- b. (2) Will APN deliver an invoice for said amount?
- c. (3) How can the concessionaire control the use of the resources by APN?
- d. We consider that the application of the resources, the party who spends them and the manner how they are spent are three different things.

Accordingly, we propose that the Minimum Complementary Investment Amount be spent by the Concessionaire in such works as APN and the Concessionaire may technically designate by mutual agreement, and that the expense be controlled by APN through an escrow account, providing specific instructions for a better administration of the APN expenses. Thus, and with a proper definition, said investments would be expenses for Income Tax purposes and the VAT would be a tax credit.

ANSWER:

- a. See the answer to Inquiry 29.
- b. The inquiry is not directly related to the Tender Documents, for which reason it falls to each Bidder to carry out the pertinent analysis.
- c. By way of the Minimum Complementary Investment Amount, the Concessionaire shall be bound to deliver one or more Works to the Grantor, as established in the Contract. In the case of the Additional Complementary Investment Amount, as provided for in the Tender Documents and the Contract, these resources will be administered by a trust, which implies that the resources shall be applied according to the conditions set forth in the respective trust agreement and the Concession Contract.
- d. Abide by the provisions of the Tender Documents.

INQUIRY 33:

Similarly, in the event that the Additional Complementary Investment (ICA) is made, it should receive a similar treatment to that described in the previous inquiry and its second paragraph. How would the ICA be applied? How would the concessionaire control the use of the ICA?

ANSWER:

See the answer to Paragraph c) of Inquiry 32 above.

INQUIRY 34:

We request confirmation that the Minimum Complementary Investment Amount referred to in Sub-point 1.2.17 of the Tender Documents (as amended by Circular Letter 1) does not include the extension of the intake to the port and that the State will assume the responsibility for making the required changes in said intake. This is based on the fact that it would be senseless for the Bidder to assume the commitment to build a Terminal with capacity for “panamax” and “post-panamax” type vessels if the State does not first guarantee that the entry to the Terminal is large enough to accommodate this type of vessels.

ANSWER:

The Minimum Complementary Investment Amount will be only used for the execution of the common Works, as stipulated in Sub-point 1.2.17, as amended by Circular Letter 1.

The Grantor must conduct, in due course, the necessary studies to define whether it is convenient to extend the intake/entry to the Terminal and design a new access channel, if applicable.

INQUIRY 35:

With respect to the previous inquiry, we request confirmation that the State will instruct that a study be conducted urgently and as soon as possible to determine whether or not it is necessary to widen and deepen the intake / entry to the port so as to enable the entry of “panamax” and “post-panamax” type vessels, which constitutes an essential part of the operation of the New Container Terminal – Southern Zone.

ANSWER:

See the answer to Inquiry 34.

INQUIRY 36:

Furthermore, we request that the Compensation foreseen in Sub-point 1.2.70 of the Tender Documents be fixed as soon as possible.

ANSWER:

The Compensation shall be fixed in the final version of the Concession Contract at the latest.

INQUIRY 37:

As stated in the answer to Inquiry 28 of Circular Letter 6, we request confirmation that it is not necessary that the signature affixed to the certificates issued by Port Authorities

to support the Bidder's technical and operational capacity (Sub-point 5.2.1 of the Tender Documents) be authenticated by the Peruvian Consulate or countersigned by the Ministry of Foreign Affairs of Peru.

ANSWER:

Pursuant to the provisions of Point 4.3 of the Tender Documents, the documents submitted as originals do not require an authentication or countersignature. Said original documents shall be submitted together with two (2) copies, which do not need to be authenticated either.

INQUIRY 38:

By Circular Letter 6 (answer to Inquiry 51B), the text of Point 2 of Form 5 – Exhibit 4, referred to in Sub-point 5.2.2 of the Tender Documents, was amended to read as follows:

“2. File 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.”

The amended text could be interpreted as an express waiver of any claim, even if not filed through diplomatic channels, against any type of noncompliance by the Grantor. If this text is kept, this could lead to the interpretation that the Successful Bidder may not file claims through arbitration proceedings against any acts of the Grantor implying a breach of the Concession Contract. This is contrary to the provisions of Point 16.10 of the Concession Contract, since the Bidder is expected to undertake not to file claims by diplomatic means, but not to waive the filing of claims through arbitration or other available proceedings, as the case may be. For this reason, the Concession Contract itself establishes a proceeding for the Settlement of Disputes, based on the Parties' right to file claims in the event of any conflict or uncertainty of legal relevance that may arise between them.

In this regard, we suggest that the original text of Point 2 of Form 5 – Exhibit 4 be restored or that the phrase “and any claims” be deleted from the text proposed by Circular Letter 6 so as to clearly establish that the waiver refers to diplomatic claims.

We should note that this does not affect the limitation of responsibility foreseen in Sub-points 3.4.2, 3.4.3, and 3.4.4 of the Tender Documents.

ANSWER:

The scope of Sub-point 5.2.2.5 and the text of Point 2 of Form 5 – Exhibit 4 of the Tender Documents are amended to read as follows:

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

Point 2 of Form 5 – Exhibit 4 of the Tender Documents:

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

INQUIRY 39:

We request you to specify the maximum term for the Evaluation Committee to issue its decision identifying the Short-Listed Bidders, referred to in the last paragraph of Point 6.1 of the Tender Documents.

ANSWER:

Refer to the Schedule.

INQUIRY 40:

We request that the Standard Rate Index described in Point 7.2 of the Tender Documents and amended by Point 2 of Circular Letter 1 be set as soon as possible. The analysis and preparation of proposals are subject to the knowledge on this index. Please take into account that a reasonable time is required to prepare serious proposals.

ANSWER:

It will be set in the final version of the Concession Contract at the latest.

INQUIRY 41:

We request you to establish, as soon as possible, the composition and scope of the maximum and/or minimum values of the Domestic Component referred to in Sub-point 9.1.5 of the Tender Documents, as amended by Circular Letter 1.

ANSWER:

It will be fixed in due course by means of a circular letter.

INQUIRY 42:

Point 11.5 of the Tender Documents states that the Successful Bidder shall pay PROINVERSIÓN the expenses incurred in the process to promote private investment. Furthermore, the answer to Inquiry 76 contained in Circular Letter 6 states that said amount will be communicated in due course. We request that it be fixed and communicated as soon as possible, since it is indispensable to know it to prepare a proposal that is in accordance with reality.

ANSWER:

It will be fixed in due course by means of a circular letter.

INQUIRY 43:

Firstly, we request the modification of the Schedule of the Comprehensive Projects Tender for the Concession of the New Container Terminal at El Callao Port Terminal – Southern Dock, previously amended by Circular Letter 3, so that new inquiries concerning the Tender Documents may be presented subsequently to the third round of inquiries, provided that the new inquiries do not deal with the documents that a Bidder is required to submit to be short-listed. It should be borne in mind that, according to the Schedule, the maximum term to make inquiries is March 6, 2006; however, the deadline to submit Envelopes 2 and 3 is April 19, 2006. During such interim period of more than six (6) weeks, doubts may arise regarding, for example, Envelopes 2 and 3 and it does not seem reasonable that a deadline for making inquiries be set with so much time in advance.

ANSWER:

This suggestion is being evaluated.

INQUIRY 44:

As regards paragraph five of Sub-point 5.2.1 of the Tender Documents, previously amended by Circular Letter 6 (see Inquiry 1), please confirm that the statement that “it shall suffice that the Operational Experience has been attained in any annual period subsequent to such date” does not mean that the requirements set forth in Items a), b) and c) of the same Sub-point must be satisfied in, and certified in respect of, the same annual period. Thus, for example, the requirement outlined in Item b) may be satisfied in, and certified in respect of, the year 2003 and the requirement outlined in Item c) may be satisfied in, and certified in respect of, the year 2004.

ANSWER:

Your interpretation is correct.

INQUIRY 45:

As regards Point 4.2 of the Tender Documents, please confirm that, in the case of documents submitted in a language other than Spanish, it is possible to accompany a simple Spanish translation of the pertinent parts only, without being necessary to enclose a simple Spanish translation of the entire document. This is particularly relevant in the case of extensive documents which are important solely because they certify a requirement established in the Tender Documents, such as the annual report or the report issued by the auditors of the Strategic Partner or its parent company (see Inquiry 2.1 in Circular Letter 6).

ANSWER:

Your interpretation is correct.

INQUIRY 46:

Please clarify the contradiction between Inquiries 5 and 7-B of Circular Letter 6. In Inquiry 5, Sub-point 5.2.3.1 of the Tender Documents is amended for the bank letter of reference to state, among others, the “commercial standing of the Strategic Partner or the company of which it is a Subsidiary”; however, in Inquiry 7-B, it is clarified that the term “company” refers to the Strategic Partner. It is evident that Inquiry 7-B refers to Sub-point 5.2.3.1 of the Tender Documents, previously amended by Inquiry 5, but the result is that the bank letter of guarantee is limited to the Strategic Partner. It should be made clear that, as permitted by Inquiry 5 itself, the letter of reference may refer to either the Strategic Partner or the company of which it is a Subsidiary (Subsidiary is not a defined term in itself). Moreover, it must be made clear that the “credit quality” mentioned in Item (ii) of the last paragraph of Sub-point 5.2.3.1 of the Tender Documents, as amended by Inquiry 5, also refers to either the Strategic Partner or the company of which it is a Subsidiary.

ANSWER:

Your interpretation is correct. Consider the answer to Inquiry 5 of Circular Letter 006.

The answer to Inquiry 7-B of Circular Letter 006 is amended to read as follows:

“Refer to the answer to Inquiry 5”.

In addition, it is pointed out that the information to be included in the bank letter of reference mentioned in the last paragraph of Sub-point 5.2.3.1, as amended by Circular Letter 6, refers to the Strategic Partner or the company of which it is a Subsidiary.

INQUIRY 47:

Please clarify the contradiction between Inquiries 9 and 40-C of Circular Letter 6. Inquiry 9 asserts that the technical and operational capacity of the Related Companies and/or the parent company of the Strategic Partner may not be added to satisfy the requirements set forth in Items b) and c), Sub-point 5.2.1 of the Tender Documents. Nonetheless, Inquiry 40-C states that the technical and operational capacity of the Subsidiaries of the Strategic Partner may be added to that effect. Related Companies include Subsidiaries. It should be made clear that, as permitted by Inquiry 40-C itself, the technical and operational capacity of the Strategic Partner's Related Companies may be added to satisfy the requirements set forth in Items b) and c), Sub-point 5.2.1 of the Tender Documents. What is not permitted is to add the technical and operational capacity of the Affiliated Companies and/or parent company of the Strategic Partner.

ANSWER:

The Strategic Partner may certify the technical and operational capacity referred to in Items b) and c) of Sub-point 5.2.1 through one or more Subsidiaries. Refer to the answer to Inquiry 1 of Circular Letter 006.

INQUIRY 48:

As confirmed by Inquiries 45-A and 53-F of Circular Letter 6, the legal representative of each Consortium member must not be necessarily the same individual as the Legal Representative. Consequently, with respect to Inquiry 13 of Circular Letter 6, please clarify the following statement contained in Sub-point 5.2.2.1 of the Tender Documents: “in its double capacity as Legal Representative of the Bidder and of each one of its members”. Reference must be made to the Legal Representative and the legal representative of each Consortium member, but not necessarily in their “double capacity”, since they may be two different individuals.

ANSWER:

Your statement is correct. Sub-point 5.2.2.1 of the Tender Documents is amended to read as follows:

5.2.2.1 (...)

- “A Sworn Statement signed by the Bidder’s Legal Representative, (...). In the case the Bidder is a Consortium, besides complying with this requirement concerning each one of its members, the Bidder must submit a Sworn Statement signed by its Legal Representative **and by the legal representative(s) of each one of its members**, confirming its existence and the joint and several liability (...).”

INQUIRY 49:

As regards Inquiry 40-A of Circular Letter 6, the requirement to submit the documents certifying the Effective Control mechanism or the Type of Relationship was not foreseen in the original Tender Documents. The Committee always had the possibility to request the respective supporting documentation, as provided for in Point 5.3 of the Tender Documents, but this was subsequently to the submission of Envelope 1. We request that the new documentation established in Inquiry 40-A is not a requirement for submitting Envelope 1 or that, in any case, the maximum term to submit Envelope 1 be extended so that bidders may obtain this new documentation in compliance with the formalities stipulated in the Tender Documents (original or authenticated copy, etc.).

ANSWER:

Your interpretation is incorrect. All certifications regarding the technical and operational capacity and the financial requirements must be contained in Envelope 1.

INQUIRY 50:

As regards Inquiry 46-A of Circular Letter 6, please confirm that the respective statement may be made in Form 2 of Exhibit 4.

ANSWER:

Your statement is correct. Form 2 of Exhibit 4 is attached hereto.

INQUIRY 51:

We do not agree with Inquiry 49. Why does the information of each Legal Representative required in Sub-point 2.1.4 of the Tender Documents have to be included in the power of attorney (address, telephone, fax, e-mail)? What benefit does it produce? On the contrary, it should be taken into account that such information may be modified, which would entail amending the power of attorney, with the resulting delay (particularly if the power of attorney is amended abroad, complying with the formalities established in the Tender Documents in that case). The possibility to quickly modify the information required in Sub-point 2.1.4 of the Tender Documents is important because, in accordance with Sub-point 2.1.6, applicable to the Legal Representatives under the terms of Sub-point 2.2.1, such modification is effective as from the time it is communicated to the Committee. Furthermore, the modification may

take place due to reasons beyond the Bidder's control, such as a change of telephone and/or fax number decided by the telephone company. We insist that the information of each Legal Representative required in Sub-point 2.1.4 must be furnished through a simple letter signed by the Bidder's Legal Representative. Moreover, in our case, the power of attorney has been already granted abroad and authenticated by the Ministry of Foreign Affairs in Lima, but it does not contain the information of each Legal Representative required in Sub-point 2.1.4, since this requirement was not contemplated in the Tender Documents. If this requirement is not modified, we request that the deadline to submit Envelope 1 be extended so that we may obtain a power of attorney that complies with this new requirement and with the formalities set forth in the Tender Documents.

ANSWER:

Your suggestion has been accepted. A second paragraph is inserted in Sub-point 2.2.2 of the Tender Documents as follows:

"Alternatively, the information mentioned in Sub-point 2.1.4 may be provided through a simple letter, with the authenticated signature of the Bidder's Legal Representative."

INQUIRY 52:

In Item a) of Form 4 – Exhibit 4, as amended by Circular Letter 6, please indicate that both references to the State correspond to the State of the Republic of Peru, as mentioned in Item b) of the same Form.

ANSWER:

Your interpretation is correct. Form 4 of Exhibit 4 is attached hereto, incorporating such indication.

INQUIRY 53:

In Point 3, Form 1B of Exhibit 5, as amended by Circular Letter 6, please correct the reference in parenthesis to "Southern Side". The reference must be made to "Southern Zone".

ANSWER:

The suggestion is accepted. Form 1B of Exhibit 5 is attached hereto, incorporating the proposed amendment.

INQUIRY 54:

The note to Section C in Form 2 of Exhibit 5, as amended by Circular Letter 6, does not apply the suggestion accepted in Inquiry 39 of Circular Letter 6. Please make the respective correction.

ANSWER:

Form 2 of Exhibit 5 is attached hereto, duly amended.

INQUIRY 55:

Announcement of Short-Listed Bidders: Taking into account:

- (i) the short term to submit Envelope 1, which prevents many bidders from taking the necessary corporate actions to be able to participate according to their internal policies; and
- (ii) the Tender Documents authorize a Short-Listed Bidder to create a Consortium up to fifteen (15) calendar days prior to the submission of Envelopes 2 and 3, that changes are made in the Short-Listed Consortia and that new partners participate (provided they satisfy the short-listing requirements and the Bidder continues to have technical and operational experience);

We consider that it is pertinent for the Tender Documents to incorporate in Point 6.2 the possibility that a Short-Listed Bidder may assign or transfer its qualification as such to a Related Company, previously notifying PROINVERSIÓN with the same time in advance as that required to create new consortia, provided that the Related Company demonstrates that it satisfies all short-listing requirements and that the replacement does not affect the technical and operational experience certified by the original Short-Listed Bidder.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 56:

5.2.3.1: It is stated herein that the Strategic Partner is the only one that may present the Net Worth of the Affiliated Companies or of the company it is a Subsidiary as it holds the majority share in the capital stock thereof. In this regard, we request that the following clarifications be made:

- (i) What does Net Worth mean? This is a term used in capital letters but it is not defined.
- (ii) What does the reference “for holding a majority share in its capital stock” imply? In other words, what share percentage will be required to satisfy this requirement?
- (iii) In addition to the information to be included in Form 2 of Exhibit 5, will it be necessary to include any additional documentation to demonstrate the relationship with the Affiliated Company/Subsidiary?
- (iv) We have noted that the aforementioned Form does not provide a space to support the relationship with the Subsidiary. Should we understand that Point D is to be used for this purpose?

- (v) In order to certify the Net Worth of the Bidder/Related Companies/Subsidiaries, would the submission of a letter signed by the accounting auditors of such companies be sufficient to certify the value of said declared Net Worth?
- (vi) Does the fact that a Bidder certifies its Net Worth through a Subsidiary company prevent it from certifying compliance with the technical requirements through Related Companies and, at the same time, through the Subsidiary company or through any other company?

Finally, when the Bidder is a single legal entity, it is understood to be a Strategic Partner, for which reason it may benefit from what it is established in Circular Letter 006 concerning the use of the Net Worth of the Affiliated Company/Subsidiary.

ANSWER:

- (i) Net Worth is understood as the difference between assets and liabilities. It is worth mentioning that the Net Worth is not equivalent to capital stock and that it may include retained earnings, losses from previous fiscal years, premiums on capital stock, among others.
- (ii) It should be understood as more than 50% of the capital stock.
- (iii) It will not be necessary, without prejudice to the Committee's powers established in Point 5.3 of the Tender Documents.
- (iv) Refer to Form 2 of Exhibit 5 attached hereto.
- (v) It is correct, without prejudice to the Committee's powers established in Point 5.3 of the Tender Documents
- (vi) The certification of the technical and operational capacity is independent from the certification of compliance with the financial requirements.

Lastly, as regards your last inquiry, the Bidder, whether it is a legal entity or a Consortium, may certify its net worth as indicated in Sub-point 5.2.3.1.

INQUIRY 57:

1.2.17: Will PROINVERSIÓN establish guidelines for Bidders to determine the ICA value they may offer? This must be defined, since establishing an additional investment value to be used at the Concessionaire's discretion is not the same as establishing a value to be allocated to the attainment of certain goals and objectives. Please clarify.

On the other hand, please indicate whether there will be a minimum amount for ICA.

ANSWER:

It will be communicated in due course by means of a circular letter.

INQUIRY 58:

Determination of the Best Economic Proposal: With regard to the determination of the Best Economic Proposal, the Tender Documents basically regulate the formal aspect of the proceeding. The composition and scope of the Standard Rate Index (ITE), the

minimum and maximum values of ITE and CN (Domestic Component), among others, constitute necessary and urgent information for Bidders. It has been stated that this information will be made known in due course; however, we request that a specific date be designated so that each bidder may determine the terms it has to forecast its economic proposal.

ANSWER:

It will be communicated in due course by means of a circular letter.

INQUIRY 59:

9.1.5: Circular Letter 001 states that the score will be obtained by applying two formulas included in Sub-point 9.1.5 of the Tender Documents. Nevertheless, Point 7.2 of the Tender Documents (as amended by Circular Letter 001) establishes that "*the Committee will choose as the Best Economic Proposal the one submitted by the Short-Listed Bidder which has reached the highest scoring when applying the formula described under Article 9.1.5.*" (the underlining is ours).

In this connection, we request clarification as to whether the result of applying the "Adjusted Score (AS)" formula is the one that will determine the Best Economic Proposal. In any case, please clarify.

If the foregoing is correct, then the statement contained in the first paragraph of Article 9.1.5 in the sense that "*bidders will compete by presenting the lowest Standard Rate Index*" is not accurate, since the Domestic Component is also a relevant competition factor.

With respect to the Second Segment, we make the same inquiry regarding the Adjusted Score for the Second Segment and the same statement regarding the application of the Domestic Component.

ANSWER:

The result of applying the "Adjusted Score (AS)" formula will determine the Best Economic Proposal. Nevertheless, in case of a tie, Bidders will be under equal conditions and will compete considering the factor established in the Second Segment: "Adjusted Score for the Second Segment" (Past).

In both cases, the Domestic Component will form part of the evaluation.

INQUIRY 60:

1.2.43 / 1.2.44 Works Execution and Equipment Installation Performance Bond and Concession Contract Performance Bond: The Works Execution and Equipment Installation Performance Bond and the Concession Contract Performance Bond should not coexist during the term of the Concession Contract. We understand that you are evaluating this proposal.

In the event that said proposal is not accepted by you, we consider that the Concession Contract Performance Bond should exclude from its scope those obligations already covered by the Works Execution and Equipment Installation Performance Bond.

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSION Steering Council and will be communicated once the approval is obtained.

INQUIRY 61:

1.2.49 Applicable Laws: It must be stated that they are regulations forming part of the "body of laws of the Republic of Peru".

ANSWER:

Sub-point 1.2.49 of the Tender Documents is amended to read as follows:

"1.2.49 Applicable Laws: The regulations set forth in Point 1.3 of these Tender Documents and any other regulation that, in accordance with the body of laws **of the Republic of Peru**, may be applicable.

INQUIRY 62:

1.2.60. Official Estimated Work and Equipment Budget: The Tender Documents make reference to this definition to determine a series of money obligations of the Bidders / Successful Bidder. For that reason, we consider that the term "estimated" must be deleted, since this is already understood and it may eventually cause confusion as to whether the value of US\$175,000 may be defined in an act.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 63:

1.3.24 and 1.3.25: It is necessary that it be certified to the Bidders that the Tender Documents have been duly approved by APN and PROINVERSIÓN in order to verify their validity.

ANSWER:

See the answer to Inquiry 9.

INQUIRY 64:

2.2.1. Appointment and Powers of the Legal Representative: The last paragraph of this Sub-point establishes that the Bidder's Legal Representative must be authorized to sign the Concession Contract. This seems to be a mistake, since the Bidder will not sign the Concession Contract but the legal representative of the Concessionaire created by such Bidder pursuant to the Tender Documents.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 65:

Reference to the term "State": To the extent that reference is made to the "State of the Republic of Peru", in some cases, and simply to the "State", in other cases, it must be pointed out that the use of either term under the Tender Documents and the Exhibits thereto refers to the Peruvian State. (See Form 4 of Exhibit 4 as an example).

ANSWER:

The interpretation is correct. In this regard, it is pointed out that the terms "State" and "Peruvian State" used in the Tender Documents and the Exhibits thereto refer to the State of the Republic of Peru.

INQUIRY 66:

5.2.2.1: The Bidder is required to submit its incorporation documents. As provided for in Point 4.2 of the Tender Documents, all the documents required therein must be submitted in Spanish, accompanied by a simple Spanish translation. In this respect, we request you to confirm that, if the aforementioned original documentation is submitted in another language, the presentation of such original and a simple translation thereof will suffice to comply with said formality.

On the other hand, please state that the clarification made to Sub-point 5.2.2.1 in Circular Letter 004 allows Bidders to present a certificate of good standing.

ANSWER:

It is correct. If the original documentation or an authenticated copy of the incorporation document(s) is submitted in another language, a simple Spanish translation must be accompanied.

On the other hand, it is stated that the clarification made to Sub-point 5.2.2.1 in Circular Letter 004 allows Bidders to submit the Bylaws in effect or an equivalent instrument issued by the competent authority in its country of origin, which is not the same as a certificate of good standing.

INQUIRY 67:

5.2.2.5 and Form 5 – Exhibit 4: They establish the Bidder's obligation to waive its right to invoke or exercise any diplomatic or other privilege or immunity, or claim through the diplomatic channel, and any claim that may be invoked by or against the State or its branch offices, APN, PROINVERSIÓN, the Committee, its members and advisors under the Peruvian law or any other law in connection with its obligations as related to the Tender Documents, the Economic Proposal, the Technical Proposal and the Concession Contract.

The reference to the Concession Contract must be deleted, since this statement could be interpreted as a waiver of the right of bidders as Concessionaire's shareholders, as Strategic Partner or eventually as Concessionaire, to file claims or defend themselves against said claims under the Concession Contract or in connection therewith, which we consider it is not the intention of the Tender Documents.

On the other hand, Bidders may not be required to waive their right of defense in the event that APN, PROINVERSIÓN, the Committee, etc. invokes a claim against them (it is expressly stated that "any claim that may be invoked by ... the Peruvian State ..."). Accordingly, said references contained in Sub-point 5.2.2.5 and the aforesaid form must be deleted.

ANSWER:

See the answer to Inquiry 38.

INQUIRY 68:

Form 1A – Exhibit 5: In this form, the bidder expresses its intention to "become a corporation with principal place of business in the Republic of Peru"; it should state: "to organize a corporation with principal place of business in the Republic of Peru".

ANSWER:

The suggestion is accepted. Form 1-A of Exhibit 5 is attached hereto, incorporating the proposed amendment. Furthermore, Form 1-B of Exhibit 5 is amended accordingly, according to the attached form.

INQUIRY 69:

6.1. Submission of contents of Envelope 1: Paragraph four establishes that "if errors that can be corrected are found in Envelope 1, at the judgment of the Evaluation Committee, the latter will instruct the Bidder to correct the mistakes or comply with the observation..." In this connection, we consider that, as there is not a clear concept in the Tender Documents that defines which mistakes will be considered as liable to correction and which ones not, and in order to avoid possible arbitrary actions, any mistake that may be found in Envelope 1 should be informed to Bidders, who will be

entitled to the term set in Exhibit 12. If said mistakes are not corrected within such term, those bidders will be automatically disqualified.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 70:

7.1. Bid Bond: This guarantee should be returned to all bidders that were not awarded the Contract once all the Closing Date requirements have been complied with.

ANSWER:

Refer to the last paragraph of the definition of Bid Bond.

INQUIRY 71:

7.1. Document 5: Business Plan: What level of detail does PROINVERSIÓN expect regarding the preparation of the Business Plan?

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 72:

7.1. Document 6: Final Version the Concession Contract: This Point establishes the obligation of the Representative to sign the Concession Contract. This does not seem to be reasonable, since the legal Representative of the Bidder is not the Legal Representative of the Concessionaire. In any case, the usual practice is to request Bidders to submit a duly signed and sealed copy of the contract.

ANSWER:

Refer to the answer to Inquiry 25.

INQUIRY 73:

9.3. Tender declared null and void: In case of occurrence of the events described in the first paragraph of this Point, APN should be given the option to set new dates in this tender or, alternatively, call a new tender.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 74:

11.1. Applicable Law: Pursuant to this Point, the Tender Documents and the Contract are only subject to the “Applicable Laws outlined in Point 1.3”. The reference to Point 3 must be deleted, since it contradicts the definition of Applicable Laws, which incorporates any other regulations forming part of the body of laws.

ANSWER:

The heading of Pont 11.1 is replaced by “Applicable Legal Framework”.

INQUIRY 75:

11.3. Contribution to FONCEPRI: It is stated that this contribution shall be calculated on the basis of the Compensation. To the extent that the Compensation is a periodical payment, it should be pointed out that said contribution is calculated on the basis of a Compensation and constitutes a single payment.

ANSWER:

Abide by the provisions of the Tender Documents.

INQUIRY 76:

The Standard Services specified in Sub-point 1.2.72 of the Tender Documents are subject to compliance with the mandatory serviceability levels, which are set out in Exhibit 3 of the Draft Concession Contract.

In preparing their annual statistics on Port traffic, Port Authorities do not include a percentage of traffic in Port Facilities (movements on board, through the dock, opening/closing of hold lids, etc.) because it is beyond the control of the Port Authority in view that it is not in charge of any official processing of documents.

These movements on board may reduce the container transfer capacity of the Concessionaire.

Will this traffic be considered for purposes of calculating the minimum yields to be satisfied by the Concessionaire of the Southern Terminal?

Will these services be considered within the Standard Services or the Special Services?

ANSWER:

The inquiry is subject matter of the Contract and will be evaluated.

INQUIRY 77:

As regards the Legal Representatives:

Sub-point 2.2.1 of the Tender Documents, which has not been amended by any circular letter, states: "... *the Bidder (whether it is a corporation or a consortium) may appoint up to two (2) common legal representatives to represent it, jointly or individually, pursuant to this Sub-point.... The powers granted to each one of the legal representatives must be sufficiently broad so that any of them can sign on behalf and in representation of their principal all the documents required in the Tender Documents, specifically including the power to initiate the challenge procedures foreseen in the Tender Documents, sign the proposal submission letters and execute the Contract.*"

In Circular Letter 6, the answer to Inquiry 13 regarding the scope of Sub-point 5.2.2.1 of the Tender Documents mentions that "...*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.*"

Consequently, we still have doubts as to whether, in the scenario that the Bidder is a Consortium, the Bidder may have up to two (2) legal representatives with the powers outlined in Sub-point 2.2.1 of the Tender Documents or as to whether, on the contrary, the Committee will only accept that a Consortium has a single Legal Representative appointed by the legal representatives of the Consortium members.

ANSWER:

Each Bidder, whether it is a corporation or a Consortium, may appoint up to two Legal Representatives vested with the powers mentioned in Sub-point 2.2.1 of the Tender Documents.

INQUIRY 78:

In relation to Consortium members:

We understand that a member (A) of the Bidding Consortium, which is not the Strategic Partner, may be replaced prior to the execution of the Concession Contract by another company related thereto (B) where it is a majority shareholder (between 80% and 99%).

ANSWER:

This is possible provided that the provisions set forth in the second paragraph of Point 6.2 are met.

The second paragraph of Point 6.2 is amended to read as follows:

"Any Short-Listed Bidder may organize a Consortium up to fifteen (15) calendar days before the submission of Envelopes 2 and 3. Likewise, within that term, Short-Listed

Bidders, if associated in Consortia, may change their configuration, and may enter into partnerships with other Short-Listed Bidders. The new members must meet all the short-listing requirements, including the Bidders' having the technical and operational expertise **and the financial requirements** described in the Tender Documents."

INQUIRY 79:

Documentation:

We understand that, in the documents evidencing the incorporation or the bylaws of the Consortium members (or any other document, if applicable), which are to be submitted duly authenticated, the aspects of interest for a faster and better visualization by the Committee at the time of evaluating these documents may be highlighted in yellow.

ANSWER:

It is correct.

INQUIRY 80:

Sub-point 5.2.1, Paragraph a) of the Tender Documents, referring to the technical and operational capacity of the Strategic Partner, provides that the annual throughput equal to or higher than 2,500,000 TEU (Twenty Feet Equivalent Unit) must correspond to those exclusive use terminals where there is Effective Control over the Port Manager.

Sub-point 1.2.25 of the Tender Documents, referred to the definition of Effective Control, establishes in its last paragraph that there is Effective Control when, through any other mechanism or circumstance (contractual or legal), it effectively controls decision making at the other company.

Inquiry:

We understand that, in order to certify the Effective Control of the Bidder over a Terminal, it is valid to submit a contract that, due to its nature, is qualified as a management, executive, operation, advice or similar contract whereby the operation, operating advice and/or administration of this Terminal is entrusted to the Bidder.

In other words, this type of contract relationship serves to certify the Effective Control of the Strategic Partner, as provided for in Sub-point 5.2.1, Paragraph a) of the Tender Documents, so that it may be taken into account for Short-Listing purposes.

ANSWER:

As set forth in Sub-point 5.2.1, it is necessary to certify the Effective Control over the Port Manager and not over the Terminal.

Management, executive, operation or similar contracts may be use to certify its capacity as Port Manager.

INQUIRY 81:

As regards Point 7.1, Document 5:

What does "Demand for Port Services met during the Term of the Concession" mean?

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 82:

As regards Document 5, to be included in Envelope 2, please indicate the scope and purpose of the Business Plan. Several chapters are repeated with those of Document 4 "Technical Proposal". We consider that this document is unnecessary, since the Bidder, by certifying the technical and operational capacity of the Strategic Partner, is already guaranteeing that it has the "know how" necessary to make its proposal viable, effective and efficient.

We request that the elimination of Document 5 from Envelope 2 be evaluated.

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 83:

With regard to the Evaluation of the contents of Envelope 2, Point 8.2 of the Tender Documents states as follows. *"The Technical Proposals shall be reviewed by the Committee or by a Technical Proposal Evaluation Committee. The Committee shall accept or reject the Technical Proposals submitted by Bidders."*

We understand that the Evaluation Committee will verify that the contents of Envelope 2 comply with the provisions of Point 7.1 and that it will only evaluate Document 4, based on which it will declare the Bidder's proposal as technically acceptable or not.

ANSWER:

Abide by the provisions of Sub-point 8.2.5 of the Tender Documents.

INQUIRY 84:

In relation to Envelope 2, Document 5 “Business Plan”, we request that the contents desired by APN and PROINVERSIÓN to be included in the following chapters be more clearly defined:

VIII Financial Plan

IX Other Logistic Business Items

X Demand for Port Services met during the Term of the Concession

ANSWER:

The answer to this inquiry is subject to the approval of PROINVERSIÓN Steering Council and will be communicated once the approval is obtained.

INQUIRY 85:

For purposes of converting the Net Worth from Nuevos Soles into Dollars, will the selling or purchasing exchange rate published by the Superintendency of Banking and Insurance (SBS) on the business day preceding the Short-Listing date be used?

ANSWER:

The average selling exchange rate will be used. Form 2 of Exhibit 5 is attached hereto, duly amended.

INQUIRY 86:

In the second round of answers to the inquiries concerning the Tender Documents, the answer to Inquiry 39 changed the exchange rate to be used to convert the Net Worth.

Please publish Form 2 of Exhibit 5 with such change.

ANSWER:

Form 2 of Exhibit 5 is attached hereto, duly amended.

II. ADDITIONAL AMENDMENTS TO THE TENDER DOCUMENTS

1) Point 1.1 of the Tender Documents is amended to read as follows:

1.1 Call for Bids and Tender Objective

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

The Concessionaire will be in charge of the design, Construction, financing, conservation and exploitation of the New Container Terminal at El Callao Port Terminal – Southern Zone. Since this is a new port infrastructure facility, Article 11 of the National Port System Law authorizes the award of a concession for the Exclusive Execution and/or Supply of port activities and services by the Concessionaire.¹

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

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

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

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

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

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

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

To carry out the Works and install the Equipment in this Concession, mandatory minimum parameters and yields will be defined and detailed in the Concession

¹ Circular Letter 006 states that the port activities and services referred to in Article 11 of the National Port System Law are those established in Points 8.12 and 8.13 of the Draft Contract.

Contract. In their Technical Proposals, Bidders may submit projects with the technological changes and updating they may deem convenient, provided the proposed changes are an improvement over the basic referential characteristics and over the service and productivity levels set forth in these Tender Documents and the Concession Contract.

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

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

The Bidder is free to use said information. However, the Proposal submitted by the Bidder is its exclusive responsibility and in the future, as Concessionaire or in any other case, they may not allege or claim damages, indemnification or compensations for eventual errors, omissions, inaccuracies or deficiencies of any kind that may exist in said technical background documentation and studies.

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

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

2) The following definitions contained in Point 1.2 of the Tender Documents are amended pursuant to the Concession Contract as follows:

a) **Successful Bidder**

The Short-Listed Bidder who was awarded the Contract.

b) **Governmental Authority**

Any national, regional, departmental, province or municipal government or authority or any of its branches or agencies, either regulatory or administrative, or any entity or organization from the State of the Republic of Peru which, according to law, exercises executive, legislative or judicial powers or which belongs to any of the aforementioned governments, authorities or institutions, with jurisdiction over the persons or matters in question.

c) **Grantor**

The State of the Republic of Peru, represented by the Ministry of Transport and Communications (MTC). For all purposes of this Tender, the GRANTOR, represented by MTC, shall act by and through APN, which, as provided for in Article 24 of the LSPN, has the power, among others, to enter into with the private sector the contracts set forth in the LSPN.

d) **Concession**

The legal relationship under public law established between the Grantor and the Concessionaire as from the execution of the Contract, whereby the Grantor grants the Concessionaire the right to economically benefit from the Concession assets during the term of the concession.

e) **Exclusive Execution and/or Service Supply**

For purposes of these Tender Documents, it is the right to be granted to the Concessionaire to execute and/or supply, on an exclusive basis, the Services established in the Contract on the Port Infrastructure making up the New Container Terminal – Southern Zone, in accordance with Article 11.3 of the LSPN.

f) **Standard Rate Index**

The maximum amount that the Concessionaire may charge as a rate index expressed in Dollars for the provision of the Standard Services, as set forth in the Concession Contract.

g) **Port Infrastructure**

The civil works and mechanical, electrical and electronic facilities, both fixed and floating, built or located at the Ports to facilitate modal transport and exchange.

h) **Common Port Infrastructure**

The port infrastructure indistinctly used by any user, operators and Port Managers of El Callao Port Terminal to carry out the port activities.

i) **LIBOR**

The 180-day “London Interbank Offered Rate” established by the Cable Reuters daily received in Lima at 11 a.m.

j) **Works**

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

k) **Price**

It refers to the fee charged by the Concessionaire for the rendering of Special Services. The Price shall not be subject to regulation.

l) **Official Estimated Work Budget**

It is equivalent to a benchmark cost of US\$175,000,000 (One Hundred Seventy-Five Million US Dollars) for the implementation and startup of activities of the New Container Terminal, in accordance with the Benchmark Study. This budget only applies to what is expressly provided for in these Tender Documents.”

3) The following definitions are deleted from Point 1.2:

- a) Alternative Work(s) and Equipment
- b) Terms of Reference

4) Sub-point 2.2.3 of the Tender Documents is amended to read as follows:

2.2.3 Place for Granting the Power of Attorney

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

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

- I. (...)
- II. (...)”

5) A fourth paragraph is inserted in Sub-point 2.2.1 of the Tender Documents, as follows:

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

6) Sub-point 5.2.2.6 of the Tender Documents is amended to read as follows:

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

Said decision is incorporated in Form 6 of Exhibit 4 attached hereto.

- 7) Sub-point 8.2.4 is deleted and the second paragraph of Sub-point 8.2.6 is amended to read as follows:

8.2.6 (...)

“The results of evaluating the documents included in Envelopes 2 will be made known personally to the Short-Listed Bidders on the date mentioned in Exhibit 12.”

- 8) Form 1-A of Exhibit 3 is amended according to the attached document.
- 9) With regard to companies listed on the stock exchanges, the sworn statements established as legal requirements must be submitted previously coordinating with the Project Sector Technical Coordinator.

Lima, March 17, 2006

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

EXHIBIT 3

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

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

We hereby declare under oath that:

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

Place and date: , 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

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

Organization
Assignor

Name
Assignor's Legal Representative

Signature
Bidder's Legal Representative

EXHIBIT 4

Form 2: CREDENTIALS FOR QUALIFICATION (Only for Consortia)
(Reference Sub-point 5.2.2 of the Tender Documents)

SWORN STATEMENT

We hereby represent under oath that:

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

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

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

Place and date:, 200...

Organization

Bidder

Name

Bidder's Legal Representative

Signature

Bidder's Legal Representative

Organization

Legal Representative for (Member 1)

Name

Legal Representative for (Member 1)

Signature
Legal Representative for (Member 1)

Organization
Legal Representative for (Member 2)

Name
Legal Representative for (Member 2)

Signature
Legal Representative for (Member 2)

(...)

Organization
Legal Representative for (Member n)

Name
Legal Representative for (Member n)

Signature
Legal Representative for (Member n)

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

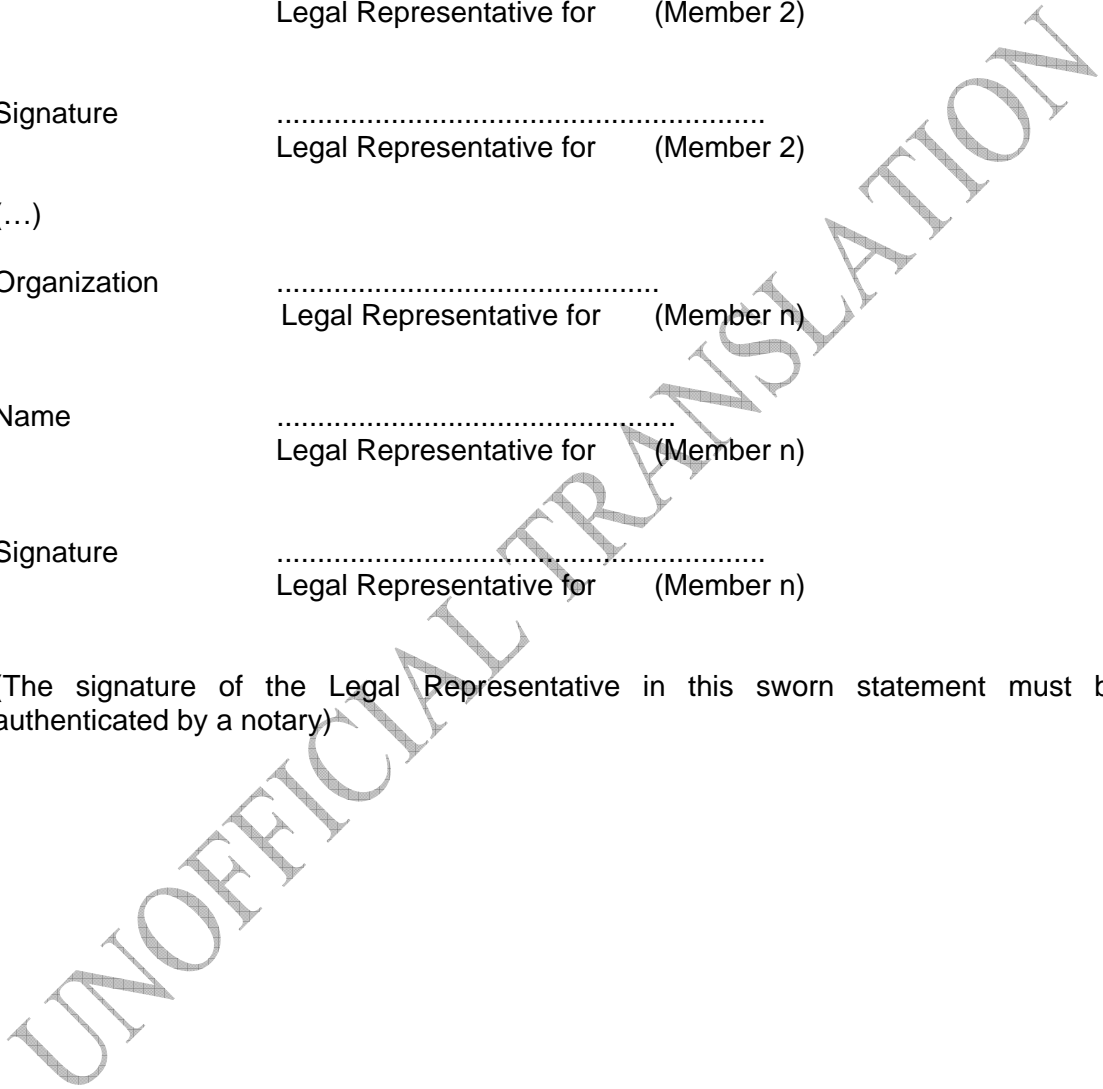


EXHIBIT 4

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

SWORN STATEMENT

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

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

Place and Date:

Organization

Name:

Bidder's Legal Representative

Signature:

Bidder's Legal Representative

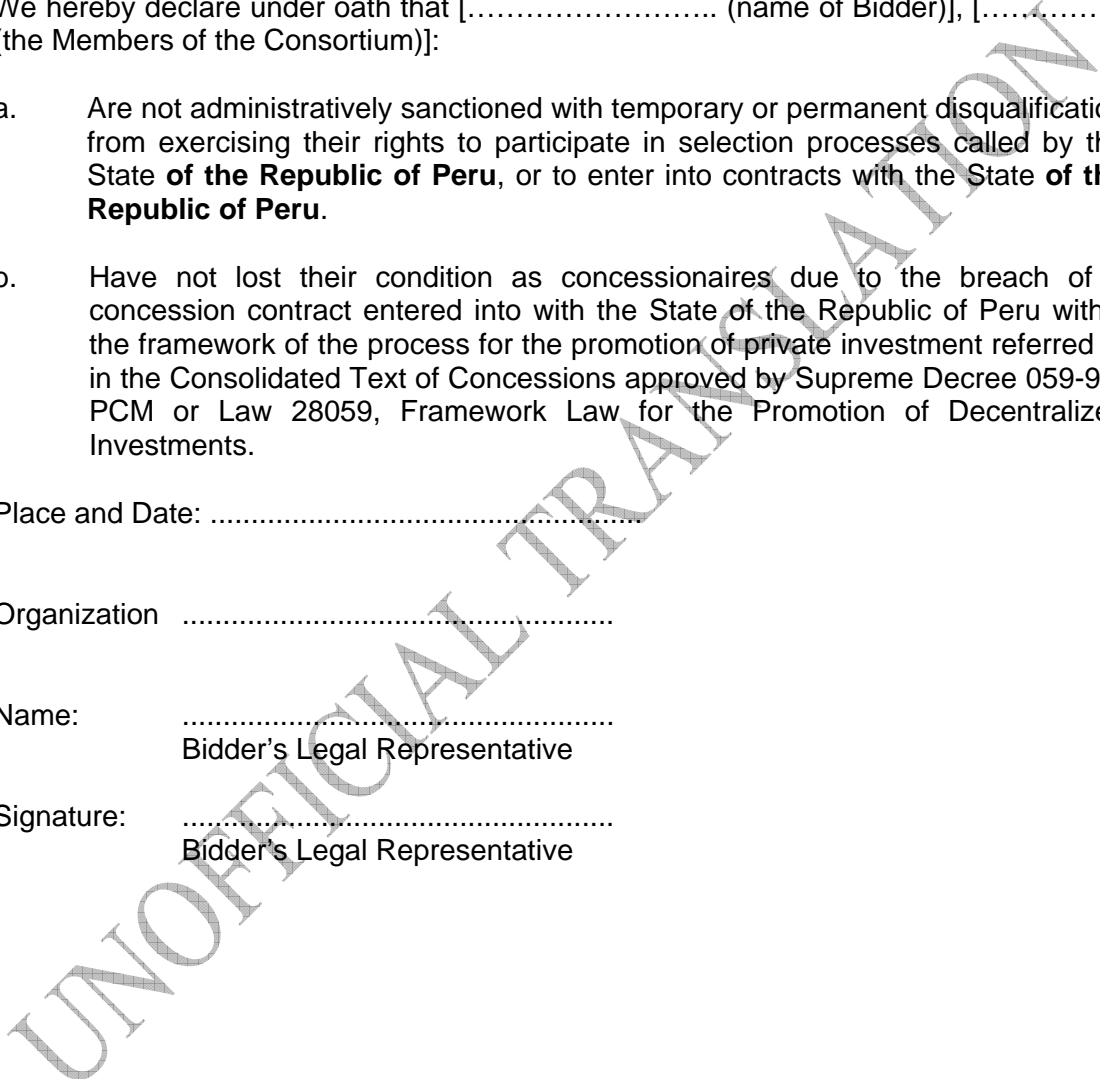


EXHIBIT 4

Form 5: CREDENTIALS FOR QUALIFICATION
(Reference Sub-point 5.2.2 of the Tender Documents)

SWORN STATEMENT

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

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

Place and date: , 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

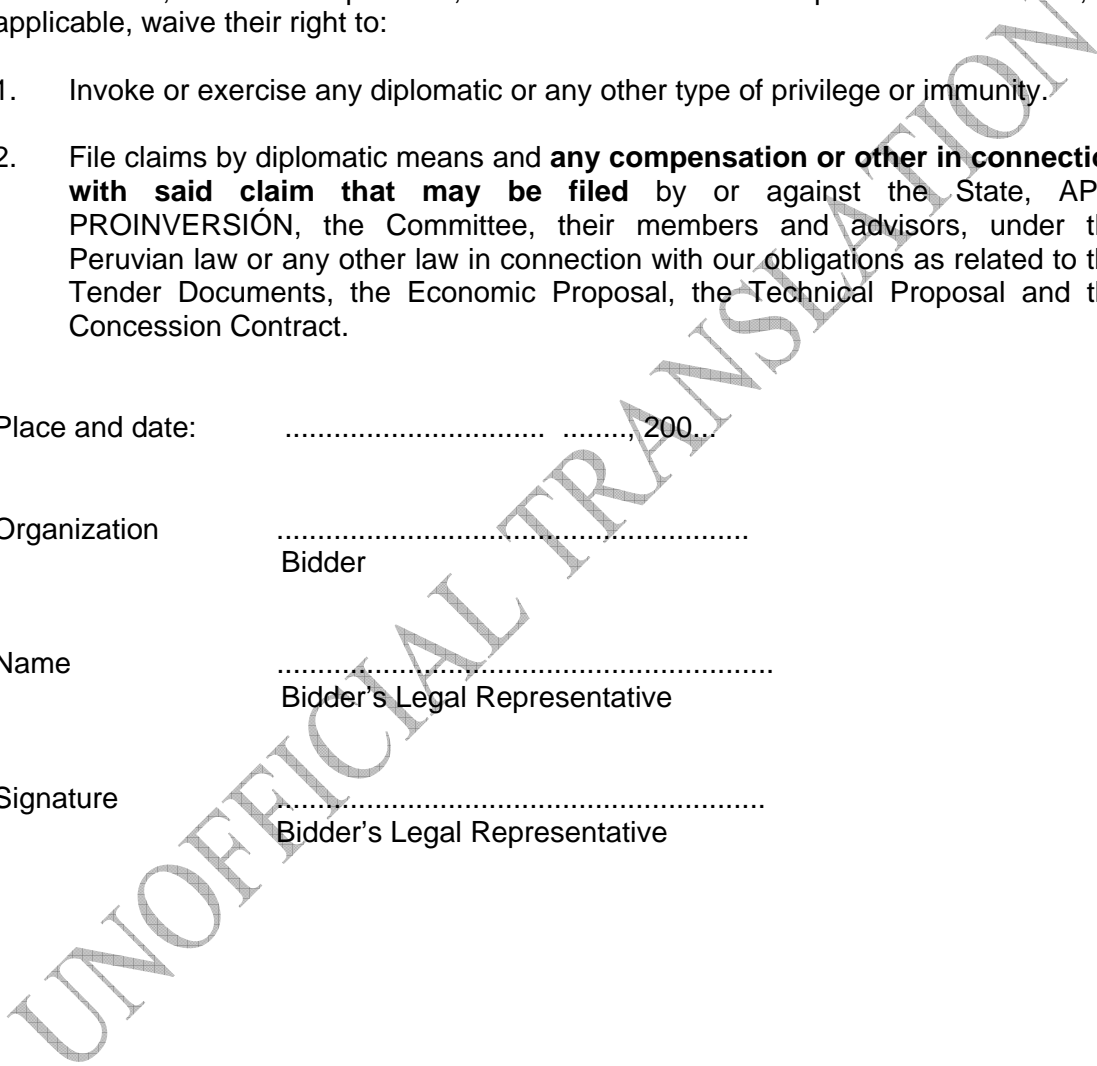


EXHIBIT 4

Form 6: CREDENTIALS FOR QUALIFICATION
(Reference Sub-point 5.2.2 of the Tender Documents)

SWORN STATEMENT

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

Place and date: , 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

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EXHIBIT 5

Form 1A: UNDERTAKING OF INCORPORATION

SWORN STATEMENT

(Reference Sub-point 5.2.2.8 of the Tender Documents)

We hereby declare under oath that:

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

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

Place and date: , 200...

Organization

Bidder

Name

Bidder's Legal Representative

Signature

Bidder's Legal Representative

EXHIBIT 5

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

SWORN STATEMENT

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

We hereby declare under oath that:

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

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

Place and date:, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

Organization
Legal Representative (Member 1)

Name
Legal Representative (Member 1)

Signature
Legal Representative (Member 1)

Organization
Legal Representative (Member 2)

Name
Legal Representative (Member 2)

Signature
Legal Representative (Member 2)

(...)

Organization
Legal Representative (Member n)

Name
Legal Representative (Member n)

Signature
Legal Representative (Member n)

:

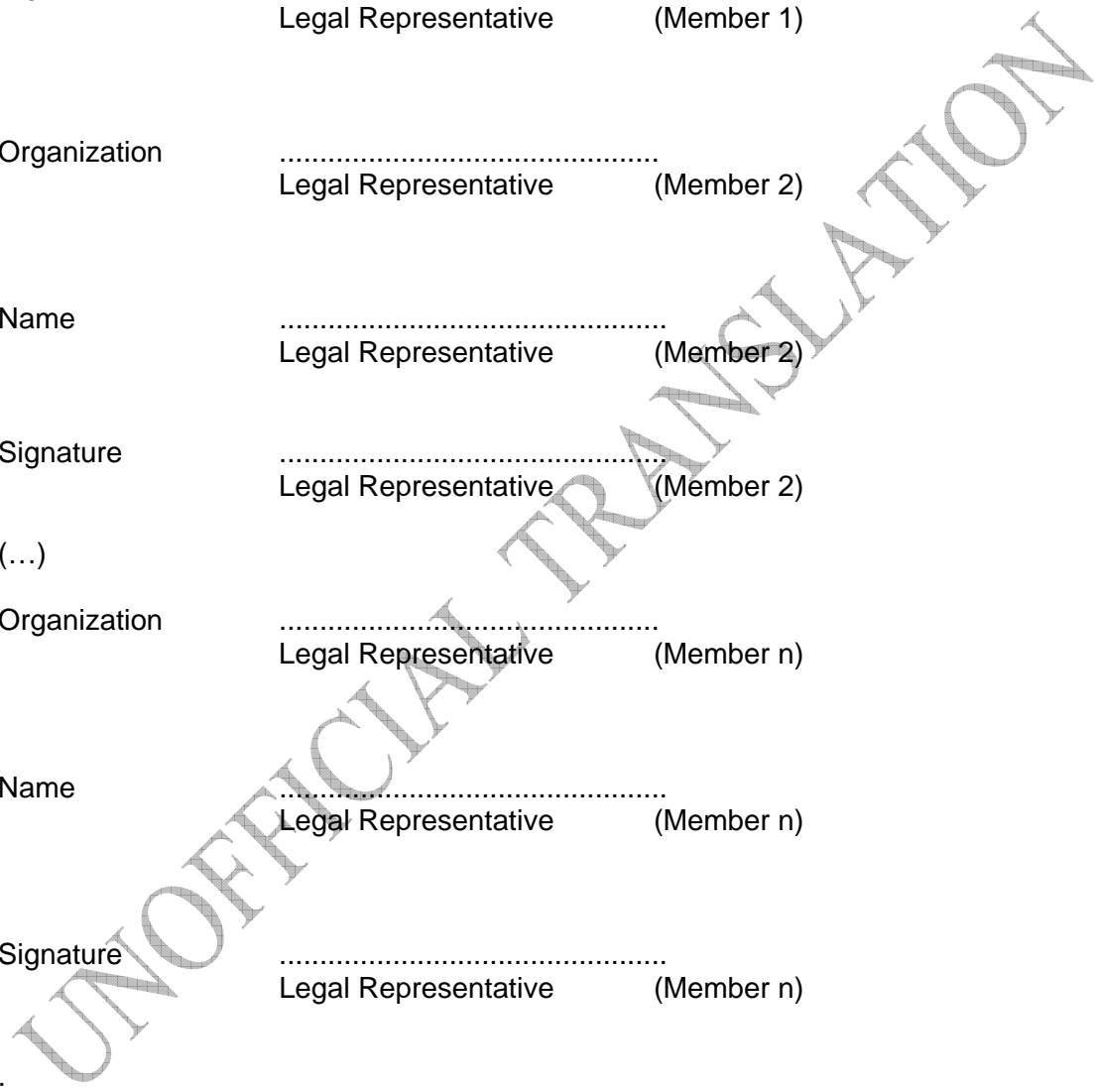


EXHIBIT 5

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 information submission letter.

I. FINANCIAL REQUIREMENTS

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

NET WORTH	US\$ []
-----------	-------------------------------

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

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

Note 1: If certified by the Bidder though an Affiliated Company or a company of which it is a Subsidiary, the amount to be specified must be the same as the total amount appearing in Table B.

Note 2: In the case of a net worth registered in a non US\$ currency, Table C will be used for its respective conversion.

Note 3: The amount indicated herein must be the same as the total amount appearing in Table B.

Note 4: Complete also Section D.

Note 5: The average selling exchange rate shall be that published by the Superintendency of Banking and Insurance (SBS) on the business date immediately before the date of submission of Envelope 1.

Sincerely,

Signature

Name
Bidder's Legal Representative

Entity
Bidder

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EXHIBIT 11**SPECIFICATIONS FOR THE CONTENTS OF THE TECHNICAL PROPOSAL**
(Reference Point 7.1 of the Tender Documents)

The Bidder shall provide a theoretical justification for the Works and Equipment offered and identified in its Technical Proposal, including the minimum contents indicated in Appendix 1 to this exhibit and considering at least the following chapters:

I. MARITIME INFRASTRUCTURE

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

II. CIVIL WORKS

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

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

III. ELECTRIC INSTALLATIONS

- Power required
- Substations and other basic installations

IV. EQUIPMENT

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

V. OPERATIONS PLAN

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

VI. ENVIRONMENTAL CONSIDERATIONS DURING CONSTRUCTION STAGE AND ENVIRONMENTAL CONTROL PLAN DURING EXECUTION OF WORKS AND TERMINAL OPERATION

It must indicate at least the following:

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

VII. STAGGERED PROCESS TIMELINE

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

VIII- WORK AND EQUIPMENT BUDGET

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

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

EXHIBIT 11

Appendix 1: Minimum Requirements for the Works and Equipment contemplated in the Technical Proposal

(Reference Point 7.1 of the Tender Documents)

The Port Terminal subject matter of this tender shall have the following initial basic characteristics:

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

(*) The number of cranes must be increased to at least six (6), as provided for in Point III – Referring to equipment below.

All the Works and Equipment proposed by the Bidder in its Technical Proposal shall meet the following technical parameters:

- I. **Referring to the capacity for serving ships:** The Terminal must be designed to serve at least two vessels at the same time, 24 hours per Day (business days, Sundays and Holidays).
- II. **Referring to Dock infrastructure:** The Terminal must be designed with at least two Berths of 300 m each, with a minimum 14.0 m headway referred to the mean level of ordinary low water syzygies (MLWS). The Dock foundations must be designed to bear the dredging of the operating area at 16 m referred to the MLWS. At the beginning of the operations, the back up Dock area must not be less than 145,000 m². The Dock foundations shall be either based on steel piles, reinforced concrete piles, or concrete boxes or blocks.

Only in the event that the Exploitation is started with a Berth may the storage area be less than the 145,000 m² stated in the preceding paragraph.
- III. **Referring to Equipment:** The Dock shall be provided with at least two (2) new Gantry type cranes per mooring berth, with an effective annual average capacity of 30 containers per hour and per crane. As the demand increases and in order to be able to comply with the service and productivity levels, additional cranes shall be placed in operation to increase the Terminal capacity. Within the Concession term, the Terminal must be provided with at least six (6) cranes. The transfer and yard equipment must be prepared to keep the required pace, as to capacity and yield, to optimize the logistic chain times. The CONCESSIONAIRE shall detail in the Technical File the specifications of the equipment it undertakes to acquire.

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

Service and Productivity Levels:

The Works proposed to be executed by the Bidder in its Technical Proposal must enable to achieve at least the service and productivity levels, which are comprised of indicators about the future Terminal's basic characteristics, capacity for serving the ships, the time ships remain docked, the pace of activities at the pier, the speed of freight delivery or reception, and compliance with legal regulations applicable to port operations. Said works refer to the following:

- **Idle time at berth:** Not more than one (1) hour, counted from the moment the ship moors at the dock to the beginning of the loading or unloading operations; and from the end of such operations to the commencement of the ship's undocking maneuvers.
- **Yield of Loading or Unloading operation (Yield of Operation):** An average of not less than thirty (30) containers per hour and per Dock Gantry Crane:

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

Where:

- NC: Number of containers loaded or unloaded in the last twelve (12) months.
 t: Accumulated operation time corresponding to the last twelve (12) months
 n_g : Number of cranes in operation

“Accumulated operation time” means the addition of all the operating times of each ship served by the Terminal during such period of twelve (12) months. The operation time of each ship is counted as from hooking the first container until unhooking the last container.

The first year of operation, calculation will be made on a quarterly accumulation basis, with a minimum rate of twenty-five (25) containers per hour and per Dock Gantry Crane.

- **Time of attention to User for the release of the merchandise:** Not more than thirty (30) minutes, counted from the time the User requests the release of its merchandise after having paid for the services received to the time when the Terminal places it at its disposal. After the first six (6) months of operation have elapsed, the Terminal shall release the merchandise to the User within a period not exceeding fifteen (15) minutes.

- **Dock occupation rate:** Not exceeding seventy percent (70%) of the relation between the total annual occupation of the berths and the total annual availability.

The estimate thereof determines the time when the CONCESSIONAIRE shall have its new infrastructure and/or additional equipment operative, according to its Technical Proposal.

The Dock occupation Rate shall be calculated from the date the CONCESSIONAIRE starts the exploitation with the two (2) berths until implementation of the limit to the maximum capacity offered in its Technical Proposal.

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