

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

CIRCULAR LETTER 13

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 is pleased to inform that answers have been provided to the Fourth 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:

Among the documents to be submitted as part of Envelope 2 is a Sworn Statement indicating that “data, representations, certifications and, in general, all the information included in Envelope 1 are current and shall remain so until the Closing Date” (Point 7.1 of the Tender Documents). Nonetheless, one of the documents of Envelope 2 to be declared current is a Sworn Statement of the intention to incorporate a Concessionaire that meets the following requirements (second paragraph of Sub-point 5.2.2.8.1 of the Tender Documents):

“(…) The minimum required capital of the Concessionaire is 20% of the Work and Equipment Official Estimated Budget, which must be subscribed and paid up pursuant to the Concession Contract.”

The first paragraph of Sub-point 5.2.2.8.1 states that “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.” This implies that a corporation must be organized, as provided for in the Business Corporations’ Law, in which case the capital stock must not be subscribed and paid up in full¹. Nevertheless, the Concession Contract appears to establish the obligation to subscribe and pay the minimum capital stock in full.

¹ Business Corporations’ Law

Article 52: Subscription and payment of the capital stock

For a company to be incorporated, the capital stock thereof must be fully subscribed and at least one fourth of each subscribed share must be paid-up. The same rule applies to any capital increase agreed upon.

As a matter of fact, in accordance with Point 3.3, Item a), the Concessionaire is to demonstrate that “it has an equivalent Minimum Capital Stock which must be subscribed and paid-up in accordance with the provisions of the Business Corporations Law.”

We understand that this reference to the Business Corporations Law implies that the Minimum Capital Stock must not be paid up in full, but only 25%, as it is precisely set forth in said Law.

We consider that the interpretation that the minimum capital stock must be fully paid up upon incorporation of the Concessionaire is incorrect and unreasonable, since, considering that the amount of the Minimum Capital Stock is fairly high, such a requirement would represent a significant financial cost for the shareholders or partners of the Concessionaire, which will undoubtedly have an effect on the rates charged to the users. Moreover, the entire amount will not be required in such stage, particularly taking into account that the Concessionaire will obtain financing from third parties for the execution of the Works. We accept that the Minimum Capital Stock must be fully subscribed as of the Contract Execution Date, but we consider that payment of such capital must be left to the Concessionaire’s will, subject only to the provisions of the Business Corporations Law.

Based on the foregoing, we request confirmation of the interpretation that the Minimum Capital Stock must be subscribed in full and paid up in at least 25%, as prescribed in the Business Corporations Law.

ANSWER:

Your interpretation is correct. The Tender Documents establish that the Concessionaire must have a minimum capital stock equivalent to 20% of the Work Official Estimated Budget, which is to be subscribed in full and paid up in a 25%, as provided for in the Business Corporations Law. The relevant clarification will be made in the Concession Contract.

INQUIRY 2:

We request once again that 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, be determined.

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 3:

The Technical Proposal is to be submitted as part of Envelope 2 (Point 7.1 of the Tender Documents), for which reason it is indispensable that it be confirmed that the

State will hire a specialized entity in order to define whether the intake to the port is wide enough to allow the entry of “panamax” and “post-panamax” type vessels, and that the State will assume the responsibility for making the necessary rectifications to the intake to the port in case it is not wide enough.

The answer to Inquiry 34 of Circular Letter 10 states that: “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.”

We consider that said studies must be conducted as soon as possible. It is necessary for the State to guarantee to bidders that there will no problems as to the good operating conditions of the New Container Terminal – Southern Zone as a result of the deficiencies in the entry width. This requires the opinion of a qualified entity specialized on the subject.

In this connection, we request that the studies to define whether it is necessary to extend the Terminal intake so that both panamax and post-panamax vessels can have access to the inlet, be undertaken by a qualified entity as soon as possible, fixing a date for that purpose.

Furthermore, we request confirmation that, should the necessity to extend the intake be determined, the State (Grantor) will be responsible for carrying out such work.

ANSWER:

The answer to Inquiry 34 of Circular Letter 10 is reiterated.

INQUIRY 4:

In Circular Letter 001, the Minimum Complementary Investment is defined as an amount:

The Complementary Investment Amount is composed of two elements:

- **Minimum Complementary Investment:** The mandatory investment commitment for the execution of the common works required for the operation of the New Container Terminal at El Callao Port Terminal – Southern Zone. This investment shall comprise the execution of dredging works (access channel and maneuvering area) and the restoration and/or improvement of the southern breakwater of El Callao Port Terminal, pursuant to the requirements to be set forth through a Circular Letter.

Answer to Inquiry 32 of Circular Letter 10 states as follows:

- 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 shall 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.

This leads us to confusion and we would like to clarify the following:

- 1) The investment amount is determined by the Grantor and will be paid by the Concessionaire.
- 2) The aforesaid works will be executed by the Grantor and the Grantor will bear any unforeseen cost.
- 3) In addition, we suggest that the aforementioned dredging works be combined with those required for the construction and that the mobilization expenses be shared by the Concessionaire and the Grantor on a 50/50 basis.

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 5:

Please state in Sub-points 1.2.46 and 1.2.76 and in all references to the Standard Rate Index that it has been previously approved by the Regulator – Supervisory Body of Investment in Transport Infrastructure for Public Use (OSITRAN) and that there is a formula to adjust it pursuant to the provisions of Article 7.b.(ii) of Law 26917.

ANSWER:

The readjustment formula will be incorporated to the Contract. As set forth in Law 27701, OSITRAN must issue an opinion on the draft version of the final Contract.

INQUIRY 6:

In accordance with Articles 54 and 59 a) of the Regulations to the National Port System Law (LSPN) approved by Supreme Decree 003-2004-MTC, we request confirmation that the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) has issued an opinion on the granting of exclusivity rights to render services at the Terminal to be built in the South Dock as a result of the Tender.

ANSWER:

It is not necessary for INDECOPI to issue an opinion, since the exclusivity to render services, for this case, i.e., the construction of new infrastructure, is established in Article 11.3 of the LSPN.

Article 54 does not apply because it refers to private ports.

INQUIRY 7:

The Terminal will be classified as an International Port; for purposes of Article 15 of Law 27943, it is indispensable to know this fact in advance for shaping the business.

ANSWER:

El Callao Port (of which the New Container Terminal – Southern Zone forms part) is considered a National Port by the National Port Development Plan. Pursuant to Article 21 of the Regulations to the LSPN, this means that it necessarily handles international traffic.

INQUIRY 8:

Has a preliminary port authorization be granted for the area to be covered by the Terminal?

ANSWER:

Please abide by the provisions of the Final Contract Draft. Without prejudice to the foregoing, it should be mentioned that, as coordinated with the APN, given that this is a State-owned port terminal for public use, no port authorization or preliminary port authorization is required. However, the allocation of those portions of the Concession Area beyond the limits of the current El Callao Port Terminal for port use (Article 7 of LSPN and Article 24 of the Regulations thereto) is still pending.

INQUIRY 9:

Will you provide any warranties that the South Dock Terminal will be considered by APN a Logistic Activity Area pursuant to the provisions of Law 27943, Article 16?

ANSWER:

No. The New Container Terminal – Southern Zone is not in itself a Logistic Activity Area (ZAL). Nevertheless, there is no impediment for APN to establish a ZAL within the port grounds, as prescribed in Article 16 of LSPN.

INQUIRY 10:

Will the regulations referred to in Article 24 j), k) and v) of Law 27943 be stabilized for the South Dock Terminal to provide security as to the conditions and requirements, thereby reducing the regulatory risk?

ANSWER:

Please abide by the provisions of the Applicable Laws.

INQUIRY 11:

What is the participation of the regional port authority of El Callao and the District Municipality in this process? Have they been consulted? Have they approved the documents? Have they had any type of participation?

ANSWER:

Pursuant to the provisions of Article 11 of the National Port System Law and Article 48 of the Regulations, APN is responsible for conducting this process. In this regard, Subpoint 1.3.24 of the Tender Documents states that, by resolution dated October 28, 2005, the Board of Directors of the National Port Authority (APN) issued a favorable opinion regarding the Tender Documents.

INQUIRY 12:

Once the South Dock Terminal has been built, will it be considered or not that it competes with the ENAPU Terminal?

ANSWER:

This inquiry is not a subject matter of the Tender Documents. However, it should be mentioned that, in accordance with OSITRAN Regulations on Rates, said entity has authority to refrain from establishing a rate regulation or from abolishing the existing one, either on its own motion or upon request of a party, in those cases where the existence of effective competition conditions in the regulated market is verified. Pursuant to the conditions of the Contract, the rate system will be evaluated every five (5) years.

INQUIRY 13:

As regards Dock 5 and the ENAPU Terminal, we suggest that the Concessionaire of the South Dock Terminal be given a rate and regulatory treatment that may be referred to as "treatment of the most favored Concessionaire", so that the result of any eventual tenders does not become an unfair competition factor.

ANSWER:

Please abide by the Tender Documents. It is important to remember that there are organizations that supervise unfair competition. Without prejudice to the foregoing, your suggestion is being analyzed for purposes of being regulated in the Contract, if applicable.

INQUIRY 14:

We request the preparation of a quantified list of all the charges payable by the Concessionaire to the various Governmental Authorities, such as:

Charge payable to APN for no less than 3% (over what amount?)

Charge payable to the Private Investment Promotion Fund (FOPRI)
Charge payable to the Maritime Authority equivalent to % (?)
Reimbursement of tender expenses
Payment to the Regulator equivalent to 1% of the annual invoicing
Port share fee

ANSWER:

Except for the amounts payable to FOPRI (see answer to Inquiry 74 of Circular Letter 6) and the expenses of the process (which will be made known at least 20 days prior to the delivery of the Economic Proposal and will not exceed US\$2 million), the other charges will be subject to the provisions of the Applicable Laws. Without prejudice to the foregoing, as regards the charges payable to the Maritime Authority and the port share fee, the pertinent arrangements are being carried out to define them.

INQUIRY 15:

Even though Point 7.1, Document 4 "Technical Proposal", as amended, does not longer refer to "Preparatory Activities", Point VII Exhibit 11 makes mention of prior activities. Could you be more specific?

ANSWER:

Please abide by the Tender Documents. The schedule mentioned in Section VII of Exhibit 11 must include any activities prior to Construction start.

INQUIRY 16:

The definition in 1.2.44 is now senseless.

ANSWER:

As per the amendments to the Tender Documents, the definition in Sub-point 1.2.44 refers to the Value Added Tax (VAT).

Without prejudice to the foregoing, it should be mentioned that the definition of "Works Execution and Equipment Implementation Performance Bond" was amended by Circular Letter 004 and subsequently deleted by Circular Letter 012.

INQUIRY 17:

In Sub-point 5.2.3.1, when it is stated that the Strategic Partner may present the Net Worth of the Affiliated Companies or of the company it is a Subsidiary, does it mean that, if the controlling shareholder (owning more than 51% of shares) of a Bidder is an insurance company or a bank, its net worth may be used to satisfy the financial requirement of the Tender?

ANSWER:

Pursuant to the provisions of Sub-point 5.2.3.1 of the Tender Documents, the Strategic Partner may present the Net Worth of the company of which it is a Subsidiary for holding a majority share in the capital stock. The Tender Documents does not establish any limitation as to the line of business of the company of which the Strategic Partner is a Subsidiary for holding a majority share in the capital stock.

INQUIRY 18:

Is INDECOPI or OSITRAN (the Regulator) considering the enactment of a provision or regulation related to the possible anticompetitive effects that may take place if a Port Administrator of the South Docket is an international shipping company? This question is asked due to the possibility that monopoly earnings may be drawn from the freight rather than from the services, thus distorting competition in this Tender, such as, for example, the application of Berthing Windows practices? Please refer to Inquiry 24 -- Circular Letter 6.

Is it possible that American Airlines controls the Jorge Chavez International Airport and has reserved spaces at the ramps only for its aircraft?

For this reason, the aforesaid report issued by INDECOPI is particularly important.

ANSWER:

The issue of "Berthing Windows" is being analyzed and will be incorporated to the Contract, if applicable.

INQUIRY 19:

As of this date, the Concession Contract does not include the issue stated in Inquiry 38 of Circular Letter 4 regarding easements, the road infrastructure required for a fluid entry and exit of road transportation means and the formalities to be carried out before the Customs Authority for the merchandise to be dispatched expeditiously.

ANSWER:

This inquiry does not refer to the Tender Documents. If applicable, such issues will be incorporated to the Concession Contract.

INQUIRY 20:

The answer to Inquiry 10 of Circular Letter 6 implies that the Contract would clearly establish the treatment of ENAPU redundant workforce. However, we have verified that there is no information on how many, who, how, when and where is not contained.

ANSWER:

This issue is being analyzed and will be incorporated to the Concession Contract by expressly stating the maximum number of ENAPU redundant workers that is to be hired by the Concessionaire and the term to do this.

INQUIRY 21:

While Inquiries 18 and 19 of Circular Letter 6 state that the relation between Dock 5 under equipping and the South Dock Terminal would be defined in the Contract, this has not been done yet. Could you please explain the treatment of such investment in Dock 5?

ANSWER:

This issue will be established in the Concession Contract. Without prejudice to the foregoing, it is worthwhile mentioning that, as reported by APN, such entity has requested ENAPU to provide it with the Investment Plan for Dock 5, which will be made know to the Bidders.

INQUIRY 22:

How will the Concessionaire of the South Dock be compensated by the party benefiting from the investments for the common benefit of the Complementary Investment and the Additional Complementary Investment? This question has not yet been answered.

ANSWER:

The common works will be executed in favor of the Grantor, chargeable against the resources contributed to the trust, as established in the Contract, and will form part of the consideration payable by the Concessionaire for the granting of the Concession right.

INQUIRY 23:

What type of title to the Concession Area will the Concessionaire have: beneficial ownership?

ANSWER:

The purpose of this Tender is the granting in Concession of the area referred to in Exhibit 1 to the Tender Documents for the design, Construction, financing, conservation and exploitation of the New Container Terminal at El Callao Port Terminal – Southern Zone. The Concessionaire will in no way have the ownership title to said area.

INQUIRY 24:

Although efforts have been made to reduce the amount of the Contract Performance Bond, it is still too high, taking into account that a paid-up capital stock of

US\$35,000,000 (Thirty-Five Million US Dollars) and a bond in a similar amount for the construction stage are required. Consequently, there would be an inactive amount of US\$70,000,000 (Seventy Million US Dollars), which is equivalent to 40% of the Budget. We request that the bond be reduced to 10% and that a capital stock of US\$17,500,000 (Seventeen Million Five Hundred US Dollars) be accepted.

ANSWER:

Please abide by the provisions of the Tender Documents. See the answer to Inquiry 1.

INQUIRY 25:

Does the Trust apply to both the Minimum Complementary Investment and the Additional Complementary Investment? If the answer is negative, we request that both of them form part of the Trust. If the answer is negative, who receives the Minimum Complementary Investment and is any invoice granted for such amount?

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 26:

When will the final version of the Trust Agreement be available? Will it be ready before the Closing Date?

ANSWER:

The Concession Contract (Exhibit 9) will regulate the conditions and purpose of the Trust. A draft Trust Agreement will not be included.

INQUIRY 27:

We insist that a definition of COMMERCIAL START-UP be included both in the Tender Documents and the Concession Contract. Otherwise, the National Superintendency of Tax Administration (SUNAT) will reduce the VAT Anticipated Recovery Benefit according to its interpretation upon the commercial start-up.

ANSWER:

Please abide by the Tender Documents. See the answer to Inquiry 26 of Circular Letter 10.

INQUIRY 28:

In the case of Consortiums, please confirm that the Bid Bond must be issued in the name of the Consortium and that, therefore, the name of the Consortium must be inserted in the second line of Form 3 of Exhibit 5 to the Tender Documents.

ANSWER:

It is correct.

INQUIRY 29:

Define the “preparatory activities” mentioned in Point 7.1 of the Tender Documents.

ANSWER:

Document 4, in Point 7.1, has been amended by Circular Letter 012. Please refer to the answer to Inquiry 15.

INQUIRY 30:

Appendix 1 to Exhibit 11 (Reference to Point 7.1 of the Tender Documents) mentions that, at the beginning of the Terminal operations, the back up Dock area must not be less than 145,000 m².

In this connection, we assume that such area must be filled (hydraulic fill), without this implying that it must be entirely paved for the commencement of the operations. Is this statement correct?

ANSWER:

If the Exploitation is started with a single Berth, it will be only necessary to pave the required area, according to the Bidder's Technical Proposal, complying from the beginning with the minimum requirements set forth in the Contract and with the service and productivity levels.

INQUIRY 31:

As regards access to the container terminal (entry and exit):

- a. Will there be a direct connection to a public road or to the port?
- b. We request information as to the place where this connection would be located and its access roads in order to consider the location and plantation of access points.

ANSWER:

- a) The New Container Terminal - Southern Zone will have a direct connection to the public road (Av. Manco Capac). As it is considered an independent

business unit, it will not necessarily have road access to the other facilities of El Callao Port Terminal.

- b) The location of the access points is a subject matter of the Bidder's Technical Proposal, according to the Concession Area granted.

INQUIRY 32:

If there is a direct entry to and exit from the terminal to a public road:

- a. Should there be any facilities intended for the inspection of containers by the Customs Authority inside the terminal?
b. If so, what type of facilities must be considered for the Customs Authority to perform the inspections?

ANSWER:

Yes, the Concessionaire must make some facilities available to SUNAT, as provided for in the Concession Contract and the Applicable Laws.

INQUIRY 33:

We request information on the port railways that may be used for connection to the container terminal.

ANSWER:

The Bidder is responsible for the strategy to operate the New Container Terminal – Southern Zone and to make the pertinent coordination with the respective entities. It is recommended that the information available in the data room be reviewed. The strategy will be a subject matter of the Bidder's Technical Proposal.

INQUIRY 34:

We request information on movement produced by swelling (wave height) inside the port, specifically in the area close to the intake (entry to the port between both breakwaters).

If this information is unavailable, we request to be provided with the statistics on swelling by ocean course, height ranges and period outside the port (external part of the intake).

ANSWER:

Please review the information available at the data room.

INQUIRY 35:

As regards the answer to Inquiry 11 of Circular Letter 006, referring to the time at which the amount of the compensation will be known, i.e., April 3, 2006, date scheduled for the delivery of the final version of the Contract, we consider that this amount must be known no later than March 17, 2006 (date of the final tender documents), taking into account that this variable is, in many cases, a determining factor in the decision to participate in the tender. Furthermore, given that the short-listing stage starts on March 24, 2006, it is important to know said amount in advance.

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 36:

Please state in Sub-points 1.2.46 and 1.2.76 and in all references to the Standard Rate Index that it has been previously approved by the Regulator – Supervisory Body of Investment in Transport Infrastructure for Public Use (OSITRAN) and that there is a formula to adjust it pursuant to the provisions of Article 7.b.(ii) of Law 26917.

ANSWER:

See the answer to Inquiry 5.

INQUIRY 37:

The sixth paragraph of Point 1.1 leaves open the possibility that the concession term be longer or be renewed.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 38:

Please state in Sub-point 1.2.47 that the Port Infrastructure is to be built or located by the Concessionaire. The following text is suggested:

1.2.47 Port Infrastructure: Civil works and mechanical, electrical and electronic, fixed and floating installations built or located at the ports by the Concessionaire to provide better modal transport and exchange.

ANSWER:

Please abide by the Tender Documents.

INQUIRY 39:

We recommend stating in Sub-point 1.2.56 that such period includes “the effective years” (effective because, in case of the suspension of the contract, an extension of the contract term could be generated).

ANSWER:

Please abide by the Tender Documents.

INQUIRY 40:

As regards the non-confirmation of Inquiry 41-A in Circular Letter 006, we request you to explain the reason why the financial information of the other Consortium members must be submitted for purposes of certifying the Minimum Net Worth, since the Consortium, as the bidder, has already complied with the financial requirement set forth in Sub-point 5.3.2.1 for short-listing purposes, taking into consideration that no fractional part has been required from the members to reach such amount. If so, this inquiry must be confirmed in that regard and, if applicable, a reason to request the financial information of the other Consortium members must be given, making it clear that it does not influence the certification of the Minimum Net Worth.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 41:

In Point 6.2, what does “special communication” mean? An individual and irrefutable communication? Please confirm

ANSWER:

Your statement is correct.

INQUIRY 42:

Sub-point 5.2.27 states that neither the members of the consortium nor the shareholders or partners of said members must own a direct or indirect interest in any other bidder, which is to be evidenced by a sworn statement, pursuant to Point 7.1. However, the second paragraph of Point 6.2 indicates that they may associate with other bidders. This is a contradiction. Please clarify.

ANSWER:

There is no contradiction. The purpose of the Sworn Statement required in Point 7.1 is the representation that the Short-Listed Bidder does not have a direct or indirect interest in the capital stock of other Short-Listed Bidders or its members.

Sub-point 6.2 sets forth a type of association among Short-Listed Bidders through a Consortium.

INQUIRY 43:

From Sub-points 9.2.1.1 and 9.2.2.1, it is inferred that the delivery of the challenge bond and the filing of a challenge are simultaneous, i.e., both of them are submitted within a term not to exceed three (3) days following the Contract Award date.

ANSWER:

Both documents must be submitted within a term not to exceed three (3) Days following the Contract Award date.

Sub-points 9.2.1.1 and 9.2.2.1 of the Tender Documents do not require the simultaneous submission of these documents.

INQUIRY 44:

On the other hand, the term “challenge” stated in Sub-point 9.2.1.1 is a generic term that may also refer to an appeal. For this reason, we request you to confirm whether, in this case, said term refers to a motion for reconsideration, insofar as the same authority that issued the challenged decision (the Committee) will issue the relevant decision.

ANSWER:

Your interpretation is correct. Sub-point 9.2.1.1 is amended to read as follows:

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

INQUIRY 45:

Sub-point 9.2.2.2 only refers to the execution of the challenge bond if the appeal is dismissed or is not filed within the term set forth in Sub-point 9.2.1.

- a) Confirmation is requested as to whether such bond will be only executed in the case of the appeal stated in Sub-point 9.2.1.2 and not in the case of the challenge referred to in Sub-point 9.2.1.1 (whether it is filed after expiry of the term or is dismissed by the Committee).

- b) We request you to state that, when reference is made to Sub-point 9.2.1 in “Sub-point 9.2.2.2 Said bond may be executed by PROINVERSIÓN, if the appeal filed by the Bidder is declared groundless or inadmissible, or if such appeal is not filed within the term prescribed in Sub-point 9.2.1...

Does the term mentioned in Sub-point 9.2.1 refer to

- i) 9.2.1.1, or
- ii) 9.2.1.2?

Please clarify.

ANSWER:

- a) Please abide by the provisions of the Tender Documents. The challenge bond will be executed after exhausting the administrative proceedings.
- b) It refers to the term to file the appeal mentioned in Sub-point 9.2.1.2.

INQUIRY 46:

We request rectification of Sub-point 9.2.1.2 as to the statement that the appeal against the decision issued by the Committee is filed before PROINVERSIÓN Steering Council. The appropriate procedure is filing the appeal before the same authority that issued the challenged decision, which in this case is the Committee, who will then submit it to the hierarchical superior, i.e., PROINVERSIÓN Steering Council. Therefore, this text must be corrected.

ANSWER:

Your suggestion is accepted. In this regard, Sub-point 9.2.1.2 is amended to read as follows:

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

INQUIRY 47:

We request that the scope of the “other rights” of PROINVERSIÓN that may be affected as well as the form and amount of the redress, other than the optional execution of the bond, be stated in Sub-point 10.3.1

ANSWER:

Please abide by the provision of the Tender Documents.

INQUIRY 48:

As regards the answer to Inquiry 80 in Circular Letter 006:

The base for such calculation and the specified percentage are also variables that need to be known in due course, since these are some of the determining factors of the investment. Therefore, we request that they be made known no later than March 17, 2006, the date of the Final Tender Documents.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 49:

With regard to the answer to Inquiries 67 and 85 in Circular Letter 006 and others to which it is replied that such information would be provided promptly, we request that the maximum date to do this be March 17, 2006, date of publication of the Final Tender Documents.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 50:

Concerning the answer to Inquiry 94 in Circular Letter 006, which states that, once the contract comes into force, only Section XVI of the concession contract, referring to the Settlement of Disputes through an Arbitration Court, will apply.

Accordingly, we request that the "Concessionaire" be deleted from Sub-point 11.2.1 of the Tender Documents as to the following: "...and the Concessionaire submit to and irrevocably accept the jurisdiction and venue of the judges and courts in and for the city of Lima, Peru, to settle any conflict that may arise between them and the State of the Republic of Peru in connection with these Tender documents and expressly and irrevocably waive their right to file any diplomatic claim as well as their right to bring actions of any kind before any other instance or jurisdiction." (The underlining is ours).

This is explained by the fact that it is when the Contract comes into force that the existence of the Concessionaire starts. It is at this moment that Section XVI prevails, whereby the Concessionaire may only bring an action before an arbitration court. For this reason, the final part of the transcribed text must not refer to it.

ANSWER:

Your suggestion is accepted. In this regard, Sub-point is amended to read as follows:

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

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

INQUIRY 51:

As regards Inquiry 63 of Circular Letter 006, we request confirmation that the Grantor will not make any observation against the structure of the remaining 49% of the Concessionaire's shares as to its quality, share percentage of each minority shareholder or any other issue, only limiting to complying with the restrictions on free transferability established in the Concessionaire's bylaws.

ANSWER:

Your statement is correct.

INQUIRY 52:

Point 1.1 of the Tender Documents makes reference to the concession term. We suggest leaving this open to negotiation in the Concession Contract.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 53:

When Paragraph 7 makes mention of part of ENAPU redundant workforce, does it refer to the redundant workforce as from the Closing Date?

ANSWER:

Please abide by the provisions of the Concession Contract.

INQUIRY 54:

Paragraph 8 states that the assets will be “transferred”, but this is not possible because the law establishes that said assets are NOT property of the Concessionaire.

ANSWER:

Please abide by the provisions of the Concession Contract referring to the Policy on Assets.

INQUIRY 55:

We request that the legal status of the Concession Area be clearly defined. It should be stated whether or not it has been allocated, whether or not it has been granted a preliminary authorization by APN, or whether or not it is registered.

ANSWER:

See the answer to Inquiry 8.

INQUIRY 56:

Please state: What is the role of the Maritime Authority and the Office of the Harbormaster in this process?

ANSWER:

This inquiry does not refer to the Tender Documents.

INQUIRY 57:

Could you prepare a list of all the charges, taxes and other amounts payable by the Concessionaire to the Governmental Authorities and establish its legal basis so that there are no doubts and the parties are in the same conditions?

ANSWER:

This analysis is to be made by the Bidder. See the answer to Inquiry 14.

INQUIRY 58:

We request that the term for submitting Envelope 1 is extended for three (3) weeks.

ANSWER:

Please abide by the Tender Schedule communicated by Circular Letter 012.

INQUIRY 59:

We insist that the Concession Contract Performance Bond is pretty high for an unlikely risk, which is basically a risk faced by the investor. In that respect, it is only necessary to answer this question: Who would be most affected in the event of a breach of the Concession Contract, taking into consideration the rights set forth in the Concession Contract, the financing agreements (step in) and the regulations that allow the Concessionaire to be intervened and even hire the operator?

ANSWER:

Please abide by the provisions of the Tender Documents and Circular Letter 012.

INQUIRY 60:

Sub-point 1.2.46 must reflect the peculiarities of the Peruvian economy and this process, such as the labor issue, its characteristics in Peru and the presence of ENAPU.

ANSWER:

Please abide by the provisions of the Tender Documents.

INQUIRY 61:

Given the magnitude of the amendments to the Tender Documents, it is suggested that a SINGLE CROSS-REFERENCED TEXT be submitted to provide a better background.

ANSWER:

The Consolidated Text of the Tender Documents will be submitted to the Bidders through a Circular Letter.

INQUIRY 62:

Despite the fact that this has been requested, the time between the date of the final version of the Contract (April 3, 2006) and the date for submission of envelopes 2 and 3 (April 19, 2006) is very short, especially if these envelopes contain very important information, such as the technical proposal and the economic proposal.

ANSWER:

Please abide by the Tender Schedule communicated by Circular Letter 012.

INQUIRY 63:

With respect to the over-regulation of the Concessionaire with the intervention of OSITRAN, Article 4 of Law 27332 (Framework Law on Regulatory Institutions) limits the participation of OSITRAN to the supervision of post-privatization activities. Furthermore, OSITRAN Supervision Regulations 036-CD/OSITRAN establish that the

intervention is limited to information gathering and verification of compliance with contractual, legal, technical and administrative obligations within its area of responsibility.

Meddling in wanting to give its prior approval to issues related to the amendment to bylaws does not fall within the scope of the tender, because these are decisions directly related to the Concessionaire's private life.

ANSWER:

Please abide by the provisions of the Tender Documents and the Applicable Laws.

II. AMENDMENTS TO THE TENDER DOCUMENTS:

It must be stated that, in the case of companies listed on the Stock Exchange, the fulfillment of the requirement referred to Sub-point 5.2.2.5 of the Tender Documents is to be evidenced by submitting Form 5.1 of Exhibit 4, duly signed by the Legal Representative. To that effect, Form 5.1 of Exhibit 4 is attached hereto.

Those Bidders that, before receiving this Circular Letter, have submitted the documents of Envelope 1 must also submit, if applicable, the form mentioned in the preceding paragraph.

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

EXHIBIT 4**Form 5.1: CREDENTIALS FOR SHORT-LISTING**
*(Applicable to companies listed on the Stock Exchange)***SWORN STATEMENT**

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

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

Place and date: , 200....

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

BA/mcp/pa
330980K6.157

UNOFFICIAL TRANSLATION