**REPUBLIC OF PERU**



**PRIVATE INVESTMENT PROMOTION AGENCY**

**BIDDING DOCUMENTS**

**PUBLIC BID**

**PRIVATE INVESTMENT PROMOTION PROCESS FOR THE EXECUTION OF**

**“Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” Project**

**PROINVERSION COMMITTEE FOR**

**ENERGY AND HYDROCARBON PROJECTS - PRO CONECTIVIDAD**

**AUGUST 2014**

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FINANCING CONTRACT

1. **PURPOSE AND CHARACTERISTICS OF THE BID**
   1. **Call**

The Telecommunications Investment Fund (FITEL), acting through the Private Investment Promotion Agency (PROINVERSION), hereby calls for a Public Bid to transfer the execution of the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” Project to the private sector.

This PUBLIC BID is open for all PERSONS or LEGAL REPRESENTATIVES (in the case of CONSORTIUM or CONSORTIA) that meet the requirements provided in these BIDDING DOCUMENTS

* 1. **Purpose of the Bid**
     1. The BID has as its purpose to appoint a legal person or CONSORTIUM that will be awarded non-reimbursable financing (provided by FITEL) to execute the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” Project, also called APURIMAC PROJECT.
     2. The appointment of an AWARDEE to be responsible for the design, construction and transfer to the Peruvian Government of the TRANSPORTATION NETWORK of the AWARDED PROJECT.
     3. The AWARD will also entitle the PROJECT AWARDEE to design, build, maintain and operate the NETWORK for the ACCESS COMPONENT of the AWARDED PROJECT.
  2. **Definitions**

Any references made within this document to any “Section,” “Subsection,” “Form,” and “Annex” should be interpreted to be respectively made to the sections, subsections, forms and annexes of these BIDDING DOCUMENTS, unless otherwise provided.

Whether in singular or in plural, these words will have the meanings established in this section. Any time references should be interpreted as made to the Peru local time.

* + 1. **MINUTES OF AWARD OF THE TRANSPORTATION NETWORK ASSETS:** The document by which the CONTRACTOR transfers to MTC (represented by FITEL) the property of the assets of the TRANSPORTATION NETWORK, after its installation.
    2. **NON-DISCLOSURE AGREEMENT:** The agreement that all BIDDERS must sign before using the DATA ROOM, through their AUTHORIZED AGENTS, a common LEGAL REPRESENTATIVE (for CONSORTIA) or any other individuals appointed by the BIDDER. The NON-DISCLOSURE AGREEMENT is attached to these BIDDING DOCUMENTS as Annex No. 1.
    3. **AWARDEE:** The ELIGIBLE BIDDER that was granted the AWARD of the PUBLIC BID.
    4. **AWARD:** The declaration, made by the COMMITTEE, to appoint the ELIGIBLE BIDDER that has submitted the BEST PROPOSAL (as defined in the terms and conditions in these BIDDING DOCUMENTS) and has, as such, won the BID.
    5. **AUTHORIZED AGENTS:** The natural persons appointed as such by the BIDDER for the purposes of this BID.
    6. **BIDDING DOCUMENTS:** This document, and all its Annexes, Forms, and Appendixes, and the NOTICES issued by the COMMITTEE, which provide the terms that, will govern the BID.
    7. **TRAINING:** The learning and educational activities to be conducted by the CONTRACTOR in order to provide knowledge on hardware, software, Internet implementation, regular use and productive practices to students, local authorities and staff members at MANDATORY SUBSCRIBED INSTITUTIONS in BENEFICIARY COMMUNITIES.
    8. **NOTICES:** Any directives, specific or general in scope, that are issued in writing by the COMMITTEE to complete, clarify, specify, interpret or amend the contents of these BIDDING DOCUMENTS, or another NOTICES, or to address inquiries made by any entities authorized in the BIDDING DOCUMENTS to do so. NOTICESS are an integral part of the BIDDING DOCUMENTS.
    9. **COMMITTEE:** The PROINVERSION Committee for Energy and Hydrocarbon Projects (PRO CONECTIVIDAD), created by Supreme Resolution No. 010-2012-EF of February 9, 2012, which is responsible for the execution and development of this BID.
    10. **CONSORTIUM:** The gathering of two or more PERSONS that has no legal personality independently from its members, and has been created in order to participate as a BIDDER in this BID. All CONSORTIA must include a member that meets the technical shortlisting requirements.
    11. **SKILLS BUILDING:** The processes intended to facilitate the appropriation of telecommunications and Internet services by the population of BENEFICIARY COMMUNITIES, and the use of information technologies for them to become tools for local development. It consists of the following processes: (i) AWARENESS RAISING AND DIFUSSION, (ii) TRAINING and (iii) PREPARATION OF CONTENTS in BENEFICIARY COMMUNITIES, as applicable.
    12. **BID:** The process governed by these BIDDING DOCUMENTS, which is conducted to appoint a LEGAL PERSON or CONSORTIUM that will be awarded non-reimbursable financing (provided by FITEL) to execute the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” Project.
    13. **CONTRACTOR:** The legal person that, together with FITEL, enters into the FINANCING CONTRACT and performs the AWARDED PROJECT.
    14. **CONTRACTING PARTY:** The MANDATORY SUBSCRIBED INSTITUTION and any other PERSONS that enter into a contract with the CONTRACTOR for the provision of Internet or Intranet access services.
    15. **FINANCING CONTRACT:** The legal and property relationship entered into by FITEL and the CONTRACTOR, governing:

a) The installation of a TRANSPORTATION NETWORK and an ACCESS NETWORK, under the applicable TECHNICAL SPECIFICATIONS;

a) The operation and maintenance of an ACCESS NETWORK, under the applicable TECHNICAL SPECIFICATIONS;

c) The execution of SKILLS BUILDING; and

d) The use of the AWARDED FINANCING for the execution of the AWARDED PROJECT.

e) The disbursement of the AWARDED FINANCING to the CONTRACTOR, by the Telecommunications Investment Fund (FITEL).

* + 1. **EFFECTIVE CONTROL:** For the purposes of this Bid, a natural or legal person has the effective control of another legal person, or shares effective control with it, when: (i) the former, directly or indirectly, has more than fifty percent (50%) of the latter's share capital with rights to vote; (ii) the former, directly or indirectly, has a share in the latter’s board of directors (or any equivalent management body) above fifty percent (50%) of its members; or (iii) due to any mechanism or circumstance (contractual or not), the former effectively controls the latter’s decision-making.
    2. **SCHEDULE:** The timeline of activities to be performed during the BID, as provided in Section 1.7 and detailed in Annex No. 9 to the BIDDING DOCUMENTS.
    3. **AFFIDAVIT:** A written statement submitted by a BIDDER, by which it declares or undertakes a commitment that is deemed to be true for the purposes of this BID, without prejudice to subsequent control.
    4. **PARTICIPATION RIGHT:** The entitlement acquired by its holder to participate in the BID. It is acquired by making a payment to PROINVERSION and demonstrated by a proof of payment issued by PROINVERSION.
    5. **DAYS:** Calendar days (working and non-working days, and holidays), unless otherwise provided.
    6. **WORKING DAYS:** The days that are not Saturdays, Sundays or non-working days in the city of Lima (including non-working days for public administration entities). Any days on which the banks in the city of Lima are not obliged to serve the public as per the provisions of the Government Authority, and any days established as such by the competent authority of the Apurimac Region will also be considered as holidays.
    7. **DOLLAR, UNITED STATES DOLLAR, OR US$:** The currency of legal tender in the United States of America, used for all the purposes of this BID.
    8. **PREPARATION OF CONTENTS:** The group of activities that the CONTRACTOR must perform in order to implement and manage the platform (hardware and software) required to develop and implement all the portals, applications, and contents detailed in the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK and keep them active during the effective term of the FINANCING CONTRACT.
    9. **AFFILIATED COMPANY:** A company is considered as affiliated to another company if the EFFECTIVE CONTROL of both companies is exercised by the same PARENT COMPANY or a SUBSIDIARY COMPANY.
    10. **LOCAL BANK or LOCAL INSURANCE COMPANY:** The companies so defined by Law No. 26702, General Law of the Financial and Insurance Systems and Organic Law of the Superintendence of Banking, Insurances and Private Pension Funds, referred to in Appendix No. 2 of Annex No. 2 to the BIDDING DOCUMENTS, which are authorized to issue guarantees for the purposes of this BID.
    11. **PARENT COMPANY:** The Company that, individually or jointly, has EFFECTIVE CONTROL over another company. This definition also includes companies that have the EFFECTIVE CONTROL of a PARENT COMPANY (as defined herein) and so forth.
    12. **SUBSIDIARY COMPANY:** The company which EFFECTIVE CONTROL is exercised by a PARENT COMPANY. This definition also includes the company which EFFECTIVE CONTROL is exercised by a SUBSIDIARY COMPANY (as defined herein) and so forth.
    13. **RELATED COMPANY:** The companies related to each other as PARENT COMPANY-SUBSIDIARY COMPANY (or vice versa), or AFFILIATED COMPANY-AFFILIATED COMPANY, according to the definitions above. The special regulations on relationship and economic groups, as approved by SBS Resolution No. 445-2000, and CONASEV Resolution No. 090-2005-EF-94.10 amended by CONASEV Resolution No. 005-2006-EF-94.10, will also apply.
    14. **INTERNATIONAL FINANCIAL ENTITIES:** The financial entities listed in Appendix No. 1 of Annex No. 2 to the BIDDING DOCUMENTS, which are authorized to issue guarantees for the purposes of this BID, as provided in these BIDDING DOCUMENTS.
    15. **TECHNICAL SPECIFICATIONS:** The minimum requirements to be fulfilled by the SHORTLISTED BIDDER in its TECHNICAL PROPOSAL, and the main features of the services that FITEL requires the CONTRACTOR to provide. They are described in Annex No. 8 to the BIDDING DOCUMENTS. They include technical specifications of the ACCESS NETWORK & the TRANSPORTATION NETWORK
    16. **FIELD STUDY:** The document that contains the results of visits and on site verification of geographical and technical conditions for the installation of the ACCESS NETWORK and the TRANSPORTATION NETWORK, including the information detailed in Annex No. 8.
    17. **INSTALLATION STAGE:** The period of no more than ten (10) months after the CLOSING DATE, in which the CONTRACTOR implements the infrastructure, equipment and other elements of the ACCESS NETWORK and the TRANSPORTATION NETWORK, under observance of the provisions established in the TECHNICAL SPECIFICATIONS.
    18. **CLOSING DATE:** The day, time and place where the activities described in Section 11.3 of the BIDDING DOCUMENTS will take place.
    19. **FITEL:** The Telecommunications Investment Fund, created by Law No. 28900, which granted this entity legal personality under public law, attached to the Ministry of Transportation and Communications.
    20. **AWARDED FINANCING:** The value of the FINANCING FOR THE ACCESS NETWORK and the FINANCING FOR THE TRANSPORTATION NETWORK, including the AWARDED PROJECT, as established in the TECHNICAL PROPOSAL and in agreement with the TECHNICAL SPECIFICATIONS. It includes all the applicable taxes and the contributions to MTC, OSIPTEL and FITEL.
    21. **MAXIMUM PROJECT FINANCING:** The highest non-reimbursable financing value that FITEL may assign to the APURIMAC PROJECT. This value includes financing for the implementation of the ACCESS NETWORK and the TRANSPORTATION NETWORK.
    22. **ACCESS NETWORK FINANCING:** The non-reimbursable value determined in the ECONOMIC PROPOSAL of the CONTRACTOR, expressed in UNITED STATES DOLLARS, which FITEL will grant to the CONTRACTOR as part of its obligations under the FINANCING CONTRACT. It includes financing for the CONTRACTOR to design, purchase, install, operate and maintain the ACCESS NETWORK of the AWARDED PROJECT, perform SKILLS BUILDING and provide all the services under the TECHNICAL PROPOSAL, according to the applicable TECHNICAL SPECIFICATIONS. It includes all the applicable taxes and the contributions to MTC, OSIPTEL and FITEL.
    23. **TRANSPORTATION NETWORK FINANCING:** The non-reimbursable value determined in the ECONOMIC PROPOSAL of the CONTRACTOR, expressed in UNITED STATES DOLLARS, which FITEL will grant to the CONTRACTOR as part of its obligations under the FINANCING CONTRACT. It includes the financing required by the CONTRACTOR to purchase and install the TRANSPORTATION NETWORK, in accordance with the applicable TECHNICAL SPECIFICATIONS. It includes all the applicable taxes.
    24. **ADVANCE GUARANTEE** A several, unconditional, irrevocable, without the benefit of excussion, indivisible and automatically enforceable guarantee in favor of FITEL that must be provided by the CONTRACTOR on the CLOSING DATE, in order to support the appropriate use of the first disbursement to the CONTRACTOR. It must be issued by any of the entities listed in the BIDDING DOCUMENTS, observe the conditions established in Section 11.6 and be based on the sample in Annex No. 11 to the BIDDING DOCUMENTS.
    25. **GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL:** The guarantee obtained by a SHORTLISTED BIDDER in favor of PROINVERSION to guarantee the validity, validity term and seriousness of the proposal, according to the sample attached as Form No. 2 of Annex No. 4, which must be issued by one of the financial entities listed in the BIDDING DOCUMENTS.
    26. **FINANCING CONTRACT PERFORMANCE GUARANTEE:** A several, unconditional, irrevocable, without the benefit of excussion, indivisible and automatically enforceable guarantee in favor of FITEL that must be provided by the CONTRACTOR on the CLOSING DATE, in order to support the fulfillment of the obligations under the FINANCING CONTRACT. It must be issued by any of the entities listed in the BIDDING DOCUMENTS, observe the conditions established in Section 11.4 and be based on the sample in Annex No. 10 to the BIDDING DOCUMENTS.
    27. **PROCESS EXPENSES:** The activities and expenses incurred by PROINVERSION to contract studies and advisory projects, and any other expenses required for the execution of the BID until its completion, which must be reimbursed to PROINVERSION by the AWARDEE not later than the CLOSING DATE.
    28. **MANDATORY SUBSCRIBED INSTITUTIONS:** The public institutions listed in Annex No. 8 for which the CONTRACTOR agrees to install the equipment required to provide the services under the AWARDED PROJECT, during the validity term of the FINANCING CONTRACT.
    29. **APPLICABLE LAWS:** The regulations provided in Section 1.4 of the BIDDING DOCUMENTS, and any other regulations that may be applicable according to the legal system of the Republic of Peru.
    30. **LIBOR:** The London Interbank Offered Rate at 180 days, as reported by Reuters at London closing time.
    31. **BENEFICIARY COMMUNITIES:** The communities where the CONTRACTOR must install, operate and maintain the networks required to provide the services offered in the AWARDED PROJECTS, according to the terms established in the FINANCING CONTRACT.
    32. **BEST PROPOSAL:** The PROPOSAL submitted by any of the SHORTLISTED BIDDERS that has reached the highest score, as provided under Section 9.1.3 of the BIDDING DOCUMENTS.
    33. **OPERATOR:** The company with the technical capacity and skills to operate and maintain the ACCESS NETWORK and provide public telecommunications and internet access services, as described in the AWARDED PROJECT. The OPERATOR must demonstrate its fulfillment of the technical requirements listed in the BIDDING DOCUMENTS, according to the provisions in Sections 5.2.1. and 5.2.2 of the BIDDING DOCUMENTS. If the BIDDER is not a CONSORTIUM, the OPERATOR will be deemed to be the BIDDER.
    34. **OSIPTEL:** The Supervisory Agency of Private Investments in Telecommunications.
    35. **MINIMUM PARTICIPATION:** The minimum portion of participation in the subscribed and paid-in share capital, with right to vote, that the OPERATOR must maintain in the CONTRACTOR during the validity term of the FINANCING CONTRACT. The minimum participation is at least fifty-one percent (51%) of the subscribed share capital.
    36. **PERIOD OF INVESTMENT IN THE ACCESS NETWORK:** The period not longer than twelve (12) months after the CLOSING DATE, which includes any activities scheduled for the INSTALLATION STAGE, as well as supervision activities required to approve built facilities (as established in the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK), and ends with the signing of the MINUTES OF ACCEPTANCE OF THE FACILITIES AND COMMMISSIONING TEST OF THE ACCESS NETWORK.
    37. **PERIOD OF INVESTMENT IN THE TRANSPORTATION NETWORK:** The period not longer than twelve (12) months after the CLOSING DATE, which includes any activities scheduled for the INSTALLATION STAGE, as well as supervision activities required to approve built facilities (as established in the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK), and ends with the signing of the MINUTES OF ACCEPTANCE OF THE FACILITIES AND COMMMISSIONING TEST OF THE TRANSPORTATION NETWORK.
    38. **OPERATION PERIOD:** The period of one hundred twenty (120) months starting on the day following the end of the PERIOD OF INVESTMENT. During this time, the CONTRACTOR will operate and maintain the ACCESS NETWORK, ensuring its operation and the provision of the services under the AWARDED PROJECT. During this period, the services will be provided commercially.
    39. **TESTING PERIOD:** The period in which the CONTRACTOR will operate and maintain, as applicable, the TRANSPORTATION NETWORK for the exclusive use of the AWARDED PROJECT, and will operate the ACCESS NETWORK. It will have a duration of no more than twelve (12) months, starting from the day following the end of the PERIOD OF INVESTMENT and finishing upon the signing of the MINUTES OF AWARD OF THE TRANSPORTATION NETWORK ASSETS.
    40. **PERSON:** Any Peruvian or foreign, natural or legal person, entitled to perform legal acts and assume obligations in Peru.
    41. **BIDDER:** The PERSON or CONSORTIUM that has paid for the PARTICIPATION RIGHT under this BID, and submits proposals according to the provisions in these BIDDING DOCUMENTS.
    42. **SHORTLISTED BIDDER:** The BIDDER that has demonstrably fulfilled the requirements established in the BIDDING DOCUMENTS for ENVELOPE No. 1, and is eligible for submitting ENVELOPE No. 2 and ENVELOPE No. 3.
    43. **ELIGIBLE BIDDER:** The BIDDER whose TECHNICAL PROPOSAL and documents submitted in ENVELOPE No. 2 have been deemed acceptable by the COMMITTEE, and whose ENVELOPE No. 3 may be opened.
    44. **PROINVERSION:** The Private Investment Promotion Agency that includes the COMMITTEE responsible for conducting this BID according to the provisions in the APPLICABLE LAWS.
    45. **PROPOSAL:** The TECHNICAL PROPOSAL and the ECONOMIC PROPOSAL by the SHORTLISTED BIDDER.
    46. **ECONOMIC PROPOSAL:** The non-reimbursable financing required by the ELIGIBLE BIDDER, expressed in DOLLARS, for the implementation of the ACCESS NETWORK and the TRANSPORTATION NETWORK, and for all the obligations under the FINANCING CONTRACT.
    47. **TECHNICAL PROPOSAL:** Document No. 3 that must be submitted by every SHORTLISTED BIDDER in ENVELOPE No. 2, as provided in Section 7.1. The technical proposal must take the contents of Annex No. 8 into consideration, the inquiries in which must be answered by submitting Forms Nos. 3-6 of Annex No. 4 to the BIDDING DOCUMENTS.
    48. **AWARDED PROJECT:** The PROPOSAL of the ELIGIBLE BIDDER that is granted the AWARD by the COMMITTEE.
    49. **DRAFT FINANCING CONTRACT:** The document that serves as basis for the BIDDERS to submit inquiries and suggestions within the time limits and formalities established in Section 1.6 of these BIDDING DOCUMENTS.
    50. **APURIMAC PROJECT:** The “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” Project.
    51. **REGIONAL PROJECT(S):** Any projects of regional scope other than the APURÍMAC PROJECT, proposed by FITEL in the framework of Law No. 28900, Law No. 29904 and other applicable regulations.
    52. **COMMISSIONING:** The date on which the CONTRACTOR begins the provision of the services under the FINANCING CONTRACT, thus initiating the OPERATION PERIOD of the ACCESS NETWORK.
    53. **LEGAL REPRESENTATIVE:** The natural person appointed by the BIDDER under Section 2.4. of the BIDDING DOCUMENTS, who is granted the powers listed under such Section.
    54. **ACCESS NETWORK:** The telecommunications network, implemented according to the TECHNICAL SPECIFICATIONS, which allows final users to access the public telecommunications services and intranet services under the AWARDED PROJECT, by means of the TRANSPORTATION NETWORK.
    55. **TRANSPORTATION NETWORK:** The high-speed, high availability and reliability network based on optic fiber cabling with a redundancy scheme and with access points in district capitals, as provided under Section 7.4 of Article 7 of Law No. 29904. It will be implemented by the CONTRACTOR.
    56. **AWARENESS RAISING AND DIFUSSION:** The group of activities to be performed by the CONTRACTOR to inform the BENEFICIARY COMMUNITIES about the implementation of the AWARDED PROJECT, and communicate any advantages that the use of the services to be provided by the CONTRACTOR may create to support personal, family, local, regional and national development. These activities are intended to make the AWARDED PROJECT have the social acceptance necessary to facilitate its execution by the CONTRACTOR.
    57. **ENVELOPE No. 1:** The envelope containing the documents listed under Section 5 of the BIDDING DOCUMENTS, that must be submitted by the BIDDER in order to become a SHORTLISTED BIDDER.
    58. **ENVELOPE No. 2:** The envelope that contains the TECHNICAL PROPOSAL and the documents listed in Section 7.1, to be submitted by the SHORTLISTED BIDDER.
    59. **ENVELOPE No. 3:** The envelope that contains the ECONOMIC PROPOSAL to be submitted by the SHORTLISTED BIDDER, as established in Section 7.2 of the BIDDING DOCUMENTS.
    60. **ENVELOPES:** This term may be interchangeably used to refer to ENVELOPE No. 1, ENVELOPE No. 2 and ENVELOPE No. 3.
  1. **LEGAL FRAMEWORK OF THE BID:**
     1. The Law of Promotion of Private Investments in Government-Owned Enterprises, Legislative Decree No. 674, its regulations, supplementary and amending provisions.
     2. Law No. 26440, providing that the projects and organizations under responsibility of public entities are included in the private investment promotion process.
     3. Regulations to the Law of Private Investments in Government-Owned Enterprises, as approved by Supreme Decree No. 070-92-PCM.
     4. Law No. 28660, establishing the legal nature of the Private Investment Promotion Agency (PROINVERSION) as a Public Decentralized Institution under the Ministry of Economy and Finances, with legal personality, and technical, functional, administrative, economic and financial autonomy, and a budgetary body.
     5. Regulations on the Organization and Functions of the Private Investment Promotion Agency (PROINVERSION), approved by Ministerial Resolution No. 083-2013-EF/10.
     6. Supreme Resolution No. 010-2012-EF, which appoint the permanent members of the PROINVERSION COMMITTEE for Energy and Hydrocarbon Projects - PRO CONECTIVIDAD.
     7. Law No. 28900, which grants the Telecommunications Investment Fund (FITEL) legal personality under public law, attached to the Ministry of Transportation and Telecommunications.
     8. Regulations to Law No. 28900, granting legal personality under public law to the Telecommunications Investment Fund (FITEL), approved by Supreme Decree No. 010-2007-MTC.
     9. Regulations on Management and Functions of the Telecommunications Investment Fund (FITEL), approved by Supreme Decree No. 036-2008-MTC.
     10. Consolidated Text of the General Telecommunications Law, approved by Supreme Decree No. 013-93-TCC.
     11. Law No. 29904, promoting the Use of Broadband and the Building of a National Optic Fiber Backbone Network.
     12. Regulations to Law No. 29904, promoting the Use of Broadband and the Building of a National Optic Fiber Backbone Network, approved by Supreme Decree No. 013-2014-MTC.
     13. General Regulatory Framework for the Promotion of the Development of Public Telecommunications Services in Rural Areas and Locations of Preferred Social Interest, approved by Supreme Decree No. 024-2008-MTC.
     14. Guidelines for a Policy of Openness of the Peruvian Telecommunications Market, approved by Supreme Decree No. 020-98-MTC.
     15. Guidelines for Policies to Promote Greater Access to Telecommunications Services in Rural Areas and Locations of Preferred Social Interest, approved by Supreme Decree No. 049-2003-MTC.
     16. Consolidated Text of the General Regulations to the Telecommunications Law, approved by Supreme Decree No. 020-2007-MTC.
     17. Legislative Decree No. 1012, Approving the Framework Law of Private-Public Partnerships for the Generation of Productive Employment, and Providing Regulations to Streamline Private Investment Promotion Processes.
     18. Official Letter No. 1179-2014-MTC/24 of July 2, 2014, by which the Private Investment Promotion Agency (PROINVERSION) was commissioned to conduct a selection process BID to appoint an AWARDEE for the implementation of the APURÍMAC PROJECT.
     19. Supreme Resolution No. 037-2014-EF, published on August 19, 2014, which endorsed the agreement adopted in the PROINVERSION Governing Council Session of July 14, 2014 that incorporated the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” project to the Private Investment Promotion Process.
     20. Supreme Resolution No. 043-2014-EF, published on August 26, 2014, which ratified: (i) the agreement adopted in the PROINVERSION Governing Council Session of July 14, 2014, which established that the modality of private investment promotion for the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” project would be the one described under paragraph a) of Article 2 of Legislative Decree No. 674; (ii) the agreement adopted in the PROINVERSION Governing Council Session of July 24, 2014, approving the Promotion Plan for the “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region” project.

The regulations above include their respective amending and/or repealing provisions.

* 1. **Authority of the COMMITTEE and PROINVERSION**
     1. The function of the COMMITTEE is to conduct the private investment promotion process of the BID subject matter of these BIDDING DOCUMENTS. The COMMITTEE is empowered to promote, schedule, regulate, amend, specify, clarify, guide, supervise, control and prepare all the provisions that may be relevant or deemed necessary for the execution of the process, to solve all matters not included in the BIDDING DOCUMENTS or the APPLICABLE LAWS and, in general, to exercise any other powers granted by the APPLICABLE LAWS.
     2. The COMMITTEE may modify the BIDDING DOCUMENTS and any time periods established in these BIDDING DOCUMENTS. This BID may be postponed or cancelled if the COMMITTEE deems it appropriate, without the need of expression of cause and without incurring in any liability as a consequence of such decision. Any amendment to these BIDDING DOCUMENTS will be informed in a NOTICES.
     3. The mere submission of information described in these BIDDING DOCUMENTS and/or requested by the COMMITTEE for the purpose of shortlisting a BIDDER does not obligate the COMMITTEE to declare such BIDDER a SHORTLISTED BIDDER, nor does the submission of a PROPOSAL imply any acceptance by the COMMITTEE.

The BIDDER’s mere submission of the documents required to be declared a SHORTLISTED BIDDER by the COMMITTEE entails:

1. The BIDDER’s full knowledge, acknowledgement and unconditional acceptance of each one of the procedures, obligations, conditions and rules established in the BIDDING DOCUMENTS, without exception, which are binding on the BIDDER;
2. The BIDDER’s final and unconditional waiver to its right to file, before any judge, arbitrator, court, venue or national or foreign authority, any action, claim, complaint, lawsuit, request for arbitration, request for compensation or any other action against the Government of the Republic of Peru, MTC, FITEL, PROINVERSION, the COMMITTEE, the advisors, or against any other entity, institution or officer of the Government of Peru on the exercise of the powers described in these BIDDING DOCUMENTS.
   * 1. Unless specifically established otherwise in these BIDDING DOCUMENTS, the decisions made by the COMMITTEE or PROINVERSION, as applicable, with regard to this BID are final, will not result in a compensation of any kind and will not be subject to challenge in any administrative or court proceedings. Consequently, by participating in the BID, any entity that falls under the scope of these BIDDING DOCUMENTS waives its right to file a challenge or any type of contestation against these decisions.
   1. **Draft Financing Contract**
      1. The COMMITTEE will prepare a DRAFT FINANCING CONTRACT and forward it to the addresses or emails of the AUTHORIZED AGENTS or LEGAL REPRESENTATIVES of the BIDDERS. The DRAFT FINANCING CONTRACT will be published on the web site of PROINVERSION within the time limit established in Annex No. 9 to these BIDDING DOCUMENTS.
      2. The BIDDERS may submit their suggestions to the DRAFT FINANCING CONTRACT within the period established in the SCHEDULE, under the formalities provided on Section 3.1.2. of the BIDDING DOCUMENTS. The COMMITTEE is not obliged to accept or reply to the suggestions to the DRAFT FINANCING CONTRACT made by the BIDDERS.
      3. After analyzing the suggestions submitted by the BIDDERS to the DRAFT FINANCING CONTRACT, the COMMITTEE will issue a final version of the FINANCING CONTRACT on the date established in the SCHEDULE.
   2. **Schedule of the Bid**

The SCHEDULE of the BID is attached to these BIDDING DOCUMENTS as Annex No. 9. The COMMITTEE will be entitled to amend the dates in the SCHEDULE at any moment; such amendments will be informed to the BIDDERS in a NOTICES.

Unless otherwise specified, any term will expire at 5:00 p.m. of the deadline (Lima, Peru time).

* 1. **Interpretation and References**
     1. The terms and expressions used in these BIDDING DOCUMENTS will be construed in their natural, literal sense, unless they have specifically been assigned another meaning within this document or its annexes, or such a meaning may be inferred from their context; in any case, this interpretation will be made in accordance with the regulations in force in the Republic of Peru. Without admitting proof to the contrary, any participant in this process is deemed to be aware of the laws and regulations in force in the Republic of Peru that are applicable to this process.
     2. The titles of the chapters, sections, subsections, forms and annexes of the BIDDING DOCUMENTS are exclusively used for illustrative purposes, and do not have any impact on the interpretation of their contents.
     3. In case of contradiction between the provisions in these BIDDING DOCUMENTS and those in any of the annexes hereto, the provisions in the BIDDING DOCUMENTS will prevail, unless the annexes include a clear and unambiguous indication that their contents are an amendment to those in the BIDDING DOCUMENTS. In all cases, the contents of the NOTICESS referred to in the BIDDING DOCUMENTS will prevail over the provisions in the BIDDING DOCUMENTS, even if this indication is not expressly stated.
  2. **Considerations Governing the Bid**

The procedure applied for the BID will be used to:

* + 1. Call for and promote participation of the highest number of BIDDERS in the BID.
    2. Conduct a transparent, simple, objective and with conditions for the participation of the BIDDERS.
    3. Determine basic rules to be observed by the BIDDERS to prepare TECHNICAL PROPOSALS and ECONOMIC PROPOSALS.

Accordingly, these BIDDING DOCUMENTS provide the basic aspects of the BID regarding its rules and timeline, competition factor, BIDDER shortlisting requirements, etc. However, it is possible to introduce clarifications, extensions, amendments and other additional details through NOTICESS.

1. **BIDDERS’ PARTICIPATION RIGHT, AUTHORIZED AGENTS AND LEGAL REPRESENTATIVES**
   1. **Participation Right**

For the purposes of this BID, any natural or legal person or CONSORTIUM that has paid for the PARTICIPATION RIGHT will be deemed a BIDDER.

After making the payment, the BIDDER must send a letter to the Project Telecommunications Manager, signed by its General Manager, Agent, Legal Representative or by any official with powers to represent the BIDDER in the BID, or by the natural person interested in participating in the BID to the address indicated in Section 3.1.2. of the BIDDING DOCUMENTS, including:

1. The legal name of the company or CONSORTIUM[[1]](#footnote-1),
2. The address and telephone of the company or CONSORTIUM,
3. The name, address and email address of the Manager, Agent, Legal Representative of official that acts as sender, or of the natural person,
4. The express will of the company, CONSORTIUM or PERSON to participate in the BID, and
5. An uncertified copy of the proof of payment or assignment issued by a bank, or the proof of payment of the PARTICIPATION RIGHT, issued by PROINVERSION to the company, any of the member companies, or the natural person[[2]](#footnote-2).

The letter referred to in the paragraph above may also be sent by email, as a scanned copy (PDF), to the address provided in Section 3.1.2. of the BIDDING DOCUMENTS. A photocopy of the proof of payment issued by a bank will be replaced by a PDF scanned copy of this document. The Head of Project for Telecommunications, on behalf of the COMMITTEE, will send an acknowledgement of receipt in the same manner. To confirm the submission of the letter and its acceptance by the COMMITTEE, the BIDDER must provide the COMMITTEE with a written or physical version in ENVELOPE No. 1.

If the BIDDER does not include in ENVELOPE No. 1 a written copy of this letter or the proof of payment, the COMMITTEE will not acknowledge receipt of the envelope.

The payment for the PARTICIPATION RIGHT is US$ 1,000.00 (one thousand and 00/100 UNITED STATES DOLLARS) VAT included, and must be deposited to the USD Account No. 0011-0661-66-0200035113 (SWIFT: BCONPEPL, ABA: UID011517) with BBVA Banco Continental. This amount is not reimbursable.

* 1. **Assignment for the Participation Right**

The purchaser of the PARTICIPATION RIGHT in the short-listing stage that, after paying for the PARTICIPATION RIGHT decides not to participate in the BID, may transfer the acquired right to another company, CONSORTIUM or natural person up to five (5) days prior to the date of submission of Envelope No. 1. For this purpose, the transferee of the right must submit, in ENVELOPE No. 1, a letter addressed to the COMMITTEE supporting the transfer, which must bear the legalized signature of the transferor’s representative and be accompanied by the information required to appoint new AUTHORIZED AGENTS and LEGAL REPRESENTATIVES, pursuant to Sections 2.3 and 2.4 of these BIDDING DOCUMENTS.

If the BIDDER, one of its shareholders or partner members, a RELATED COMPANY of the BIDDER (or a shareholder or partner member thereof) was the PERSON that paid for or acquired the PARTICIPATION RIGHT through a transfer of rights, the BIDDER in turn may transfer these rights to a PERSON in its group or a third party. To demonstrate this fact, the BIDDER must submit to the COMMITTEE an uncertified copy of the proof of payment and the document supporting the transfer, as applicable. Additionally, an AFFIDAVIT explaining the relationship between the BIDDER and this PERSON must be submitted according to the provisions above.

* 1. **Authorized Agents:**
     1. **Appointment of Authorized Agents**

Every BIDDER, through a letter signed by its General Manager or an official duly authorized to do so, must appoint up to two (2) natural persons with a common address in the city of Lima or Callao as its AUTHORIZED AGENTS for the purposes of this BID.

* + 1. **Appointment Letter**

The appointment of AUTHORIZED AGENTS will be made in an uncertified letter addressed to the Head of Project for Telecommunications, to the address established in Section No. 3.1.2 of the BIDDING DOCUMENTS. The letter must include the AUTHORIZED AGENTS’ full names, powers granted and any other information applicable, pursuant to Sections 2.3.3 and 2.3.4 of the BIDDING DOCUMENTS.

The letter, in PDF format, may also be sent by email to the address provided in Section 3.1.2. of the BIDDING DOCUMENTS. The Head of Project for Telecommunications, on behalf of the COMMITTEE, will send an acknowledgement of receipt in the same manner.

The appointment of the AUTHORIZED AGENTS, or any changes to their address, telephone or fax numbers, or email, as applicable, will become effective on the date on which the letter issued by the BIDDER is effectively received by the respective COMMITTEE, i.e. the date of receipt on the Reception Desk at PROINVERSION or date of receipt by email in the address mentioned in Section 3.1.2 of the BIDDING DOCUMENTS and confirmed by email by the Head of Project for Telecommunications.

In order to confirm the appointment of an AUTHORIZED AGENT, the receipt of the corresponding appointment letter by email, or a change to his or her address, telephone, fax or email, as applicable, as well as the acceptance of the COMMITTEE, the BIDDER must submit to the COMMITTEE, in ENVELOPE No. 1, a written or physical copy of the appointment of the AUTHORIZED AGENTS, or the letter communicating the changes to their contact information.

If the BIDDER does not include in ENVELOPE No. 1 a written copy of these letters, the COMMITTEE will not acknowledge receipt of the envelope.

* + 1. **Powers Granted to Authorized Agents**

The duly appointed AUTHORIZED AGENTS will be entitled to act independently from each other, and not necessarily together. They will be the only natural persons empowered by the BIDDER to:

* 1. Represent the BIDDER before PROINVERSIÓN, the COMMITTEE and its members and advisors regarding all the matters that do not fall under the exclusive competence of the LEGAL REPRESENTATIVE, as provided in Section 2.4.1 of the BIDDING DOCUMENTS;
  2. Answer, in the name of, and with binding effect for the BIDDER, all the questions made by the COMMITTEE;
  3. Receive NOTICESS and any other communications regarding this BID;
  4. Access the DATA ROOM;
  5. Sign, with binding effect upon the BIDDER, the NON-DISCLOSURE AGREEMENT referred to in Section 3.2.2 of the BIDDING DOCUMENTS.
  6. Submit Envelopes No. 1, No. 2 and No. 3 to the COMMITTEE, a requirement that can also be fulfilled by the BIDDER’s LEGAL REPRESENTATIVES.
     1. **Information about Authorized Agents**

The information that must be provided about each one of the AUTHORIZED BIDDERS is the following:

1. Given names and family names.
2. Identity Document (*Documento Nacional de Identidad*, Passport or Alien ID Card).
3. Common address in Lima or Callao.
4. Telephone numbers, fax numbers and email addresses.
   * 1. **Notifications**

All notifications, including NOTICESS, addressed to the BIDDER, SHORTLISTED BIDDER or ELIGIBLE BIDDER will be sent to any of the AUTHORIZED AGENTS by fax or email, and acknowledged by a confirmation of complete transmission, in the former case, and an electronic acknowledgement of receipt, in the latter. In any case, the communication will be deemed received on the date the fax or email is sent. Additionally, a notification may be served as a letter delivered via courier or through a notary’s office, in which case the notification will be deemed received on the date of delivery. Any notification received in the common address indicated by the AUTHORIZED AGENTS or LEGAL REPRESENTATIVES, as provided in paragraph c. of Section 2.3.4, will be deemed to have been effectively delivered.

* + 1. **Replacement**

The BIDDER, after notifying the COMMITTEE according to the requirements in Section 2.3.2 of the BIDDING DOCUMENTS, will be able to replace any of its AUTHORIZED AGENTS at any time, or to change the common address, telephone or fax numbers or email addresses designated for the replaced AUTHORIZED AGENTS, taking into account that the new common address, telephone and fax numbers, and email address must be within the city of Lima or Callao.

The replacement of AUTHORIZED AGENTS, or any modifications to their address, telephone, fax or email address, as the case may be, will become effective on the date of receipt of the BIDDER's notification by the applicable COMMITTEE, which is the date of receipt at the PROINVERSION Reception Desk.

For email letters notifying the replacement, the provisions in the two last paragraphs of Section 2.3.2 will apply, as applicable.

* 1. **Legal Representative**
     1. **Appointment and Powers**

The BIDDER may appoint by power of attorney up to two (2) common LEGAL REPRESENTATIVES to act on its behalf, individually or jointly, as provided under this Section. The address, fax number, telephone number and email address of the LEGAL REPRESENTATIVES, as well as their replacement, are subject to the provisions under Sections 2.3.4, 2.3.5 and 2.3.6.

For CONSORTIA, in addition to the appointment of LEGAL REPRESENTATIVES for each of the members, the members must appoint one or two common LEGAL REPRESENTATIVES (which may be the LEGAL REPRESENTATIVES for individual members) who will have the same powers and capacity as the LEGAL REPRESENTATIVES. The common LEGAL REPRESENTATIVE must sign the documents required in these BIDDING DOCUMENTS and submit the ENVELOPES to the COMMITTEE.

The documents submitted in ENVELOPES No. 1, No. 2 and No. 3 and, in general, any documents that a BIDDER may submit with regard to the BID, must be signed by the LEGAL REPRESENTATIVE of the BIDDER submitting the documents, who will be duly authorized for such purposes as provided under this Section.

If the BIDDER is a natural person, he or she will be free to appoint or not a LEGAL REPRESENTATIVE, under the provisions in the paragraphs above. If a LEGAL REPRESENTATIVE is not appointed, the BIDDER will be considered his or her own LEGAL REPRESENTATIVE, and must submit a letter with the information listed in Section 2.3.4, accompanied by a copy of his or her DNI, Passport or Alien ID Card.

The powers granted to each one of the LEGAL REPRESENTATIVES or common LEGAL REPRESENTATIVES will be sufficiently broad to include the powers defined in Section 2.3.3, and entitle them to sign, in the name and on behalf of their Principals, individually or jointly, all the documents required in the BIDDING DOCUMENTS, including, in particular, any powers to initiate the challenge procedures provided in the BIDDING DOCUMENTS, sign cover letters for the TECHNICAL PROPOSAL and the ECONOMIC PROPOSAL, sign all the documents submitted in ENVELOPES Nos. 1, 2 and 3, and sign the FINANCING CONTRACT.

* + 1. **Submission of a Power of Attorney for the Legal Representative**

The power of attorney appointing LEGAL REPRESENTATIVE(S) must include any applicable powers of representation, including those listed in Section 2.3.3 of these BIDDING DOCUMENTS, and the applicable items in the preceding Section. It must be submitted, together with other documents, in ENVELOPE N° 1.

The appointment of a new LEGAL REPRESENTATIVE, or the replacement of those previously appointed, will be effective only after the date on which the COMMITTEE receives the documents that support such appointment, which is the date of receipt at PROINVERSION Reception Desk.

* + 1. **Place and Formalities for the Power of Attorney**

The granting of powers in Peru must be executed as a public deed, or be stated in a notarized copy of the principal’s deed of incorporation.

Any powers of attorney granted outside Peru appointing a LEGAL REPRESENTATIVE, must be:

1. Duly issued or legalized by a competent Peruvian consulate; a translation into Spanish must be attached if the document is in any other language;
2. Endorsed by the Ministry of Foreign Affairs of Peru.

However, if the grantor of the power of attorney comes from a signatory of the “Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents” adopted on October 5, 1961 in the City of La Hague, The Netherlands, as approved by Resolution No. 29445 and ratified by Supreme Decree No. 086-2009-RE, such foreign document appointing a LEGAL REPRESENTATIVE will not require to be issued or legalized as provided in the paragraph above; it will be sufficient that the document fulfill the conditions established in the convention above, provided that the country of origin has not made an objection to the accession of Peru.

* + 1. **Registrations with the Registry Office**

Under no circumstance it will be required that, by the time of their submission, the powers of attorney for the LEGAL REPRESENTATIVE are registered in the Public Registry Office of Peru.

However, as of the CLOSING DATE, the powers of attorney of the LEGAL REPRESENTATIVE acting on behalf of the AWARDEE (or the CONTRACTOR) must be registered in the Registry Office.

1. **INQUIRIES AND INFORMATION**
   1. **Inquiries about the BIDDING DOCUMENTS and SUGGESTIONS TO the DRAFT FINANCING CONTRACT**
      1. **Term to make inquiries and suggestions**

During the time periods established in the SCHEDULE of the BID, the BIDDERS (through their AUTHORIZED AGENTS or LEGAL REPRESENTATIVES) will be authorized to make inquiries and suggestions regarding the BIDDING DOCUMENTS, and suggestions to the DRAFT FINANCING CONTRACT.

* + 1. **Form of inquiries and suggestions**

Any inquiries and suggestions regarding the BIDDING DOCUMENTS and suggestions to the DRAFT FINANCING CONTRACT will be made in writing in Spanish language, and will be delivered in a closed envelope to the Reception Desk at PROINVERSIÓN, together with a digital storage carrier (CD, USB, or another) containing the same information in MS Word format, or sent to PROINVERSION by email with these files attached.

The submission of inquiries and suggestions regarding the BIDDING DOCUMENTS and the suggestions to the DRAFT FINANCING CONTRACT will become effective on the date on which the letter issued by the BIDDER is effectively received by the respective COMMITTEE, i.e. the date of receipt on the Reception Desk at PROINVERSION or date of receipt by email in the address mentioned in Section 3.1.2 of the BIDDING DOCUMENTS and confirmed by email by the Head of Project for Telecommunications.

Each of the inquiries or suggestions regarding the BIDDING DOCUMENTS will be made according to the following sample:

Lima, [month and day] . . . 2014.

**Messrs,**

**PROINVERSIÓN Committee for Energy and Hydrocarbon Projects**

**PRO CONECTIVIDAD**

**Attention: Mr. Jesús Guillén Marroquín**

Head of Project for Telecommunications

PROINVERSION

Av. Canaval y Moreyra Nº 150, San Isidro - Lima, Peru

Tel.: (51) (1) 200-1200 Ext. 1357

email address: [jguillen@proinversion.gob.pe](mailto:jguillen@proinversion.gob.pe)

|  |  |
| --- | --- |
| Inquiry or Suggestion No. |  |
| Section, paragraph or other part of the BIDDING DOCUMENTS |  |
| Contents of the Inquiry or Suggestion | |

Suggestions to the DRAFT FINANCING CONTRACT will be made according to the following sample:

Lima, [month and day] . . . 2014.

**Sirs,**

**PROINVERSIÓN Committee for Energy and Hydrocarbon Projects**

**PRO CONECTIVIDAD**

**Attention: Mr. Jesús Guillén Marroquín**

Head of Project for Telecommunications

PROINVERSION

Av. Canaval y Moreyra Nº 150, San Isidro - Lima, Peru

Tel.: (51) (1) 200-1200 Ext. 1357

email address: [jguillen@proinversion.gob.pe](mailto:jguillen@proinversion.gob.pe)

|  |  |
| --- | --- |
| Suggestion No. |  |
| Section, paragraph or other part of the DRAFT FINANCING CONTRACT |  |
| Contents of the Suggestion: | |

The COMMITTEE’s answers to the inquiries made to the BIDDING DOCUMENTS will be informed in NOTICESS issued by email, hard copies or both, and addressed to all the BIDDERS or SHORT-LISTED BIDDERS, as applicable, without including the name of who made the inquiry.

The COMMITTEE is only obliged to answer the inquiries specifically related to the contents of the BIDDING DOCUMENTS. Regarding the suggestions to the DRAFT FINANCING CONTRACT, they will be assessed and, at the discretion of the COMMITTEE, rejected, accepted or adapted to the contents of the contract, without the need to justify their decision before the BIDDER.

The COMMITTEE is not obliged to answer inquiries nor comments about the BIDDING DOCUMENTS that are not related with this BID.

* + 1. **NOTICESs**
       1. If, at any time, the COMMITTEE deems it necessary to clarify, amend or complement the BIDDING DOCUMENTS or NOTICESS, it will issue a NOTICES for this purpose. This NOTICES will be forwarded to the AUTHORIZED AGENTS or the LEGAL REPRESENTATIVE, by email, to the common address, or to the fax number provided in Section 2.3.4 of the BIDDING DOCUMENTS. All the NOTICES Letters will be published in the PROINVERSIÓN website [www.proinversion.gob.pe](http://www.proinversion.gob.pe/).
       2. Answers to the inquiries about the BIDDING DOCUMENTS will be issued by the COMMITTEE in NOTICESS to all the BIDDERS or SHORTLISTED BIDDERS, as applicable, without mentioning the name of the inquirer.
       3. After the BIDDERS have been shortlisted, the NOTICESS will only be forwarded to the SHORTLISTED BIDDERS and, after the submission of ENVELOPES No. 2 and No. 3, only to the ELIGIBLE BIDDERS that submitted these envelopes. However, all the NOTICESS will be published in the PROINVERSION website.
       4. Any NOTICESS issued by the COMMITTEE are an integral part of these BIDDING DOCUMENTS and, as such, are legally binding to all the BIDDERS, SHORTLISTED BIDDERS, and ELIGIBLE BIDDERS that have submitted ENVELOPES No. 2 and No. 3.
  1. **Access to Information - Data Room**
     1. **Access to the Data Room**
        1. Any BIDDERS that have paid for the PARTICIPATION RIGHT and submitted a duly signed NON-DISCLOSURE AGREEMENT will be granted access to the information available for review in the DATA ROOM.
        2. The use of the DATA ROOM must be arranged with the management of the DATA ROOM, according to the regulations for these purposes detailed in the “Data Room User Guide,” which is attached to these BIDDING DOCUMENTS as Annex No. 7.
        3. The BIDDERS, through a written communication sent by mail or email to the Head of Project for Telecommunications signed by any of their AUTHORIZED AGENTS or LEGAL REPRESENTATIVE(S), will indicate the name of the individuals who will have access to the DATA ROOM. The BIDDERS will coordinate the visits with the DATA ROOM Coordination Center.
     2. **Non-Disclosure Agreement**

The AUTHORIZED AGENTS must sign the NON-DISCLOSURE AGREEMENT attached to these BIDDING DOCUMENTS as Annex No. 1, to allow the BIDDERS to access the DATA ROOM.

* + 1. **Contents of the Information in the DATA ROOM**

Technical background information, documents and existing Studies will be available to the BIDDERS in the DATA ROOM, located in the 7th floor of the PETROPERÚ Building, at Av. Canaval Moreyra 150, San Isidro, Lima.

The BIDDERS are free to use this information in the formulation of their proposals; however, any TECHNICAL PROPOSALS submitted by the SHORTLISTED BIDDERS will be their own and exclusive responsibility. As such, no BIDDER, either acting as AWARDEE or CONTRACTOR, will be entitled to claim damages, indemnifications of compensations for possible or eventual mistakes, omissions, inaccuracies or deficiencies of any nature found in the background information and studies.

The list of available documents is provided as Appendix No. 2 of Annex No. 7 to these BIDDING DOCUMENTS, and will be detailed in a NOTICES.

Any incorporation of documents into the DATA ROOM will be notified to the AUTHORIZED AGENTS or LEGAL REPRESENTATIVES of the BIDDERS, SHORTLISTED BIDDERS or ELIGIBLE BIDDERS that submitted ENVELOPES Nos. 2 and 3, in an email sent by the Head of Project for Telecommunications.

* 1. **Request for Interviews**

Any BIDDER, through its AUTHORIZED AGENTS and/or Legal Representatives, as applicable, will be entitled to hold an interview with members of the COMMITTEE or the Head of Project for Telecommunications until the day prior to the submission of ENVELOPE No. 1, and, for SHORTLISTED BIDDERS, until the day prior to the submission of Envelopes No. 2 and No. 3. The meetings will be arranged with the Head of Project for Telecommunications.

Any requests for interviews or meetings will be submitted to the email address mentioned in Section 3.1.2. of the BIDDING DOCUMENTS. The Head of Project for Telecommunications will inform of the date and time set for the interviews and meetings, by an email to the AUTHORIZED AGENTS or LEGAL REPRESENTATIVES who sent the requests.

If technical matters are to be discussed in the interviews, the COMMITTEE or the Head of Project for Telecommunications will request the presence of personnel from FITEL in said meetings.

Before the end of the interviews, any officials, directors, managers, technicians, AUTHORIZED AGENTS, LEGAL REPRESENTATIVES, etc., who may have participated in them will sign minutes to prove their attendance and the more relevant matters discussed in the interviews. The minutes will be taken by members of the telecommunications team at PROINVERSION.

* 1. **Limitations of Liability**
     1. **Independent Decision of Bidders**

All BIDDERS or SHORTLISTED BIDDERS will support their decision of whether or not submitting a TECHNICAL PROPOSAL and an ECONOMIC PROPOSAL on their own research, field studies, inspections, visits, interviews, analyses and conclusions derived from the information available in the Data Room or that obtained on its own, at its sole discretion.

* + 1. **Limitations of Liability**

The Government of the Republic of Peru or any of its agencies, MTC, FITEL or any of its agencies, PROINVERSION, the COMMITTEE, its members, advisors and technical staff do not guarantee the completeness, integrity, sufficiency, reliability or truth of the verbal or written information that is provided for purposes of the BID, expressly of implicitly.

In consequence, none of the persons participating in the BID can attribute any responsibility to any of the parties mentioned above or to their representatives, agents or servants, for the use that may be given to such information or for any inaccuracy, insufficiency, defect, lack of updating or for any other cause not expressly indicated in this Section.

* + 1. **Scope of the Limitation of Liability**

The limitation stated in Section 3.4.2 includes, to the broadest extent possible, all the information related to the BID that is effectively known, any unknown information and the information that should have been known at a given time—including any errors and omissions in it—by the Government of the Republic of Peru or any of its agencies, MTC, FITEL or any of its agencies, entities, or officials, PROINVERSION, the COMMITTEE, its members, advisors and technical staff. In the same way, this limitation of liability includes any information that is directly or indirectly provided and prepared by any of the parties above, or not.

The limitation of liability also includes any information available in the DATA ROOM, the interviews requested by BIDDERS or SHORTLISTED BIDDERS, as well as any information provided in NOTICESS or any other means of communication, the information acquired during visits to the facilities related to the BID, and the information in these BIDDING DOCUMENTS, including any Forms and Annexes attached hereto.

* + 1. **BIDDER's Acceptance of the Provisions under Section 3.4**

The submission of the shortlisting documents will imply, without the need for any further action, the acceptance of all the provisions in Section 3.4 of the BIDDING DOCUMENTS by the BIDDER and, if applicable, by the CONTRACTOR, as well as an irrevocable and unconditional waiver, to the broadest extent allowed by the applicable laws, to its rights to initiate any action, counterclaim, exception, complaint, claim or request for compensation against the Government of the Republic of Peru or any of its agencies, entities or officials, MTC, FITEL, any of its agencies, PROINVERSION, the COMMITTEE, its members and advisors.

1. **SUBMISSION OF ENVELOPES**
   1. **Submission of Envelopes**

ENVELOPES No. 1, No. 2 and No. 3 can only be submitted personally by one of the AUTHORIZED AGENTS or by the LEGAL REPRESENTATIVE of the BIDDER. No documents received by mail, fax or any other means or types of communication will be received nor accepted.

4.1.1. **Submission of Documentation for Shortlisting of BIDDERS**

The submission of documents in ENVELOPE No. 1 for the shortlisting of BIDDERS will take place in the COMMITTEE’s office in the PROINVERSION headquarters, at Av. Enrique Canaval Moreyra N° 150, San Isidro - Lima, Peru (PETROPERU Building), within the term established in the SCHEDULE attached to these BIDDING DOCUMENTS as Annex No. 9.

4.1.2. **Submission of ENVELOPES No. 2 & No. 3**

A BIDDER that is declared a SHORTLISTED BIDDER by the COMMITTEE, according to the SCHEDULE of the BID, must submit an ENVELOPE No. 2 and an ENVELOPE No. 3 to the COMMITTEE (which may be represented by one or more members, or by any individuals appointed by the COMMITTEE), in the presence of a Notary Public, at a place and time to be established in a NOTICES.

* 1. **Language**

Unless expressly stated otherwise in these BIDDING DOCUMENTS, all the submitted documents must be written in the Spanish language or, if written in another language, accompanied by an uncertified translation into the Spanish language. If any discrepancy between a text in two languages is identified, the Spanish version will prevail.

Any submitted technical or specialized brochures or catalogs that are not required in the BIDDING DOCUMENTS and are written in a foreign language may be translated into Spanish, at the request of the COMMITTEE.

* 1. **Original Documents and Copies**

The documents in ENVELOPES No. 1 and ENVELOPES No. 2 must be submitted as one original or one copy certified by a Notary Public, and two (2) uncertified copies. The documents must be marked as “Original,” “Copy 1,” and “Copy 2” on their first pages. Uncertified copies do not require legalization by a Notary Public or a consulate.

* + 1. If the documents are copies issued in a signatory of the “Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents,” adopted on October 5, 1961 in the City of La Hague, The Netherlands, as approved by Resolution No. 29445 ratified by the Supreme Decree No. 086-2009-RE, they will not require the legalization mentioned in the paragraph above; it will be sufficient that the documents fulfill the conditions established in the convention above, provided that the country of origin has not made an objection to the accession of Peru.
    2. Without prejudice to the requirements above, if the documents are issued or granted abroad, by the CLOSING DATE, the AWARDEE must submit these documents, duly legalized by the corresponding Peruvian Consulate and endorsed the Ministry of Foreign Affairs in the city of Lima, except for audited financial statements or tax payment affidavits filed with the competent tax authority, in which case they must only be filed as uncertified copies.
    3. Any documents in ENVELOPE No. 3 must be submitted as originals, without copies.
  1. **Form of Submission of Envelopes No. 1, No. 2 & No. 3**
     1. The ENVELOPES must be closed and clearly marked on the obverse with the words “ENVELOPE No. 1,” “ENVELOPE No. 2” or “ENVELOPE No. 3,” respectively, and the name of the BIDDER or QUALIFIED BIDDER, for ENVELOPES Nos. 2 & 3.

The ENVELOPES must be addressed to:

**Messrs,**

**PROINVERSIÓN Committee for Energy and Hydrocarbon Projects - PRO CONECTIVIDAD.**

**Public Bid: “Broadband Installation for Integral Connectivity and Social Development of the Apurimac Region”**

**Name of the BIDDER: ……………………………………………………………**

**Date of Submission: ………………………………………………………**

* + 1. All the documentation submitted in the ENVELOPES must be fully readable; all the pages must be clearly and consecutively numbered and initialed by the LEGAL REPRESENTATIVE of the BIDDER. Additionally, a Table of Contents must be included, with a list of all the documents in ENVELOPES Nos. 1 & 2.
    2. If any discrepancy between a number written in digits and in words is found, the amount expressed in words will prevail.
  1. **Costs of Preparation and Submission**

The BIDDER will cover all the direct or indirect expenses which the BIDDER may incur in relation to the preparation and submission of ENVELOPES No. 1, No. 2 and No. 3, as applicable. The Government of the Republic of Peru, MTC, FITEL or any of their agencies, entities or officials, PROINVERSION, the COMMITTEE, the advisors, or the technical staff will not be responsible under any circumstances for these expenses, regardless of the modality applied to conduct the BID, or its results.

* 1. **Effects of the Submission of Documents and Binding Nature of these BIDDING DOCUMENTS**
     1. The submission of the documents for shortlisting in ENVELOPE No. 1, the documents in ENVELOPES Nos. 2 & 3, or any other document or communication to the COMMITTEE, implies full knowledge, acknowledgement and unconditional acceptance by the BIDDER, SHORTLISTED BIDDER, ELIGIBLE BIDDER, the AWARDEE or the CONTRACTOR, as applicable, of each one of the procedures, obligations, conditions and rules established in the BIDDING DOCUMENTS, without exception, and, in particular, in the provisions under Section No. 3.4 of the BIDDING DOCUMENTS.
     2. Additionally, the submission implies an irrevocable and unconditional waiver, to the broadest extent allowed by the APPLICABLE LAWS, to the rights to initiate any action, counterclaim, exception, complaint, claim, request for arbitration, request for compensation or any other type of request against MTC, FITEL, any of its agencies, entities, or officials, or against PROINVERSION, the COMMITTEE, its members, advisors and technical staff.
     3. If the requirements in this Section are not met, the COMMITTEE or FITEL, as applicable, will be entitled to disqualify the BIDDER, SHORTLISTED BIDDER or AWARDEE or revoke their rights.
     4. The COMMITTEE reserves the right to verify the accuracy of all the documents submitted by the BIDDER during the stages of the BID, without involving a limitation to the BIDDER's liability for the possible incompleteness or inaccuracy of the submitted data or information.
     5. The lack of accuracy or completeness of the documents and/or information submitted by the BIDDER in this BID, identified by the COMMITTEE, may cause its disqualification during any of the stages of the BID. This provision includes any infringement and/or misrepresentation incurred by the BIDDER in any of the affidavits submitted during its participation in this BID.
     6. The BIDDING DOCUMENTS are legally binding on all the natural persons, companies and entities mentioned in the paragraph above.

1. **CONTENTS OF ENVELOPE No. 1**

This PUBLIC BID is open for all the PERSONS or CONSORTIA that fulfill the requirements provided in these BIDDING DOCUMENTS.

In order to submit ENVELOPE No. 1, the BIDDER must have paid for the PARTICIPATION RIGHT to the BID, and must have submitted, in ENVELOPE No. 1, the information described below, which will have the effect of an AFFIDAVIT.

A PERSON cannot participate in more than one PROPOSAL, directly or indirectly, individually or in a CONSORTIUM. If the CONSORTIUM that a legal person is a member of is not granted the AWARD, the legal person may not become a member of another CONSORTIUM or the company that it may create to sign the FINANCING CONTRACT.

Any PERSON that falls within the scope of Article 1366 of the Civil Code and/or the limitations provided in Law No. 29953, may not become a BIDDER.

* 1. **General Information**
     1. The BIDDER must attach a copy of the proof of payment or assignment issued by a bank, or the proof of payment of the PARTICIPATION RIGHT, issued by PROINVERSION to the company, any of the member companies (for CONSORTIA), or the natural person.
     2. If the BIDDER has submitted to PROINVERSION, by email, a statement of the intention of the company, CONSORTIUM or PERSON to participate in the BID, as required in Section 2.1 of these BIDDING DOCUMENTS, a hard copy of this document must be submitted in ENVELOPE No. 1, including a copy of the acknowledgement of receipt of the email issued by the Head of Project for Telecommunications.
     3. In the event of transfer of the PARTICIPATION RIGHT, the BIDDER must submit in ENVELOPE No. 1 an uncertified letter supporting this transfer and an AFFIDAVIT describing the relationship between the BIDDER and the PERSON, as provided in Section 2.2 of these BIDDING DOCUMENTS.
     4. If the BIDDER has informed the COMMITTEE of the appointment of its AUTHORIZED AGENTS or any changes to its address, telephone number, fax number or email address, the BIDDER must submit a hard copy of these communications, as provided in Section 2.3.2.
     5. If the AUTHORIZED AGENT has been replaced and this change has been informed to the COMMITTEE by email, the BIDDER must submit a hard copy of this communication, as provided in Section 2.3.6.
     6. The BIDDER must submit Form No. 1 of Annex No. 3 to these BIDDING DOCUMENTS, which will have the effect of an AFFIDAVIT, stating its commitment to submit reliable information. The AFFIDAVIT must be submitted to the COMMITTEE as an uncertified document, and be signed by the BIDDER’s LEGAL REPRESENTATIVE(S).
  2. **Shortlisting Requirements**

**Technical Requirements**

If the BIDDER is a CONSORTIUM, at least one of its members must demonstrate compliance with the technical requirements. This member will be recognized as the OPERATOR.

If the BIDDER submits information about a RELATED COMPANY, and this RELATED COMPANY is a PARENT COMPANY or an AFFILIATED COMPANY, the BIDDER must submit a letter signed by an executive of the RELATED COMPANY certifying this relationship. This letter will have the effect of an AFFIDAVIT. The individual who signs the letter must declare that he or she has sufficient powers to make such statements in the name of the RELATED COMPANY. If the RELATED COMPANY is a SUBSIDIARY COMPANY, the BIDDER must submit only an official document demonstrating this relationship, signed by the LEGAL REPRESENTATIVE of the BIDDER.

* + 1. The BIDDER must submit Form No. 2 of Annex No. 3, as an original signed by the LEGAL REPRESENTATIVE of the BIDDER, including the Letter of Submission of TECHNICAL REQUIREMENTS for Shortlisting stating that the BIDDER:
       1. Has been awarded Exclusive Concession rights to provide public telecommunications services in Peru, and has completed a specific number of registered services (the number will be disclosed by the COMMITTEE in a NOTICES).

To demonstrate its experience, the BIDDER must attach a copy of the document that proves the availability of the Exclusive Concession and the registered public services.

Or,

* + - 1. Concessions, licenses, registrations or other titles enabling the BIDDER to provide public telecommunications services in one or more countries.

To demonstrate this experience, the BIDDER must attach copies of the enabling titles.

AND,

* + 1. The BIDDER must demonstrate a minimum time of experience in the provision of public telecommunications services, the time and conditions of which will be disclosed in a NOTICES.

**Financial Requirements**

* + 1. The BIDDER must demonstrate that it meets all of the following financial requirements, the values of which will be informed in a NOTICES:
    2. Sales volume for at least US$ ……… (……………. UNITED STATES DOLLARS), for each one of the years …………

The sales volume of the BIDDER will be taken into account to demonstrate the minimum sales volume for each one of the years above; if the BIDDER is a CONSORTIUM, the amount considered will be the sales volumes of at least one of its members, or the sum of the sales volumes of all its members.

* + 1. Net Worth of at least US$ …………….. (………………UNITED STATES DOLLARS), for each one of the years …………

The sales volume of the BIDDER will be taken into account to demonstrate the net worth for each one of the years above; if the BIDDER is a CONSORTIUM, the amount considered will be the net worth of at least one of its members, or the sum of the net worth amounts for all its members.

* + 1. Net Assets of at least US$ …………….. (……………… 00/100 UNITED STATES DOLLARS), for each one of the years …………

The net assets of the BIDDER will be taken into account to demonstrate the net assets for each one of the years above; if the BIDDER is a CONSORTIUM, the amount considered will be the net assets of at least one of its members, or the sum of the net assets of all its members.

* + 1. To demonstrate compliance with the financial requirements, the BIDDER must submit the following documents:

An uncertified copy of the Audited Financial Statements of the BIDDER (or the BIDDER’s RELATED COMPANY) for years .............; or, if the BIDDER does not have Audited Financial Statements, an uncertified copy of the Income Tax Return filed with the competent tax authority for the last two years of economic activity of the BIDDER or the BIDDER’s RELATED COMPANY the information of which is being used.

The information may be submitted in Spanish or any other language; in the latter case, an uncertified translation into Spanish is required.

Alternatively, a copy of the latest Annual Report (or a similar document), if the BIDDER is listed in the CONASEV Public Registry of the Stock Market, is registered with a competent authority, and has the obligation to provide this financial information under Article 29 of the Consolidated Text of the Law of the Stock Market, as approved by Supreme Decree No. 093-2002-EF.

* + 1. A letter of Submission of Financial Information for Shortlisting, according to Form No. 3 of Annex No. 3, files as an original and signed by the BIDDER’s LEGAL REPRESENTATIVE.

If the BIDDER submits information about a RELATED COMPANY, and this RELATED COMPANY is a PARENT COMPANY or an AFFILIATED COMPANY, the BIDDER must submit a letter signed by the LEGAL REPRESENTATIVE of the RELATED COMPANY certifying this relationship. This letter will have the effect of an AFFIDAVIT. The individual who signs the letter must declare that he or she has sufficient powers to make such statements in the name of the RELATED COMPANY.

If the RELATED COMPANY is a SUBSIDIARY COMPANY, it must submit only the official document demonstrating this relationship, signed by the BIDDER’s LEGAL REPRESENTATIVE, as well as the power of attorney for the RELATED COMPANY’s LEGAL REPRESENTATIVE who signs the letter. The powers granted to the RELATED COMPANY’s LEGAL REPRESENTATIVE must meet the requirements of form provided in Section 2.2 of the BIDDING DOCUMENTS.

The BIDDER may include here its own financial figures, its shareholders or partners’, or those of its RELATED COMPANY.

If the BIDDER submits information about the sales volume, net worth or net assets of the PARENT COMPANY that owns the majority of its share capital, the BIDDER may not submit its own sales volume, net worth or net assets, nor those of the other SUBSIDIARY COMPANIES. Under no circumstances may the same sales volume, net worth or net assets be claimed more than once. These provisions will also be valid for each member of a CONSORTIUM, if applicable.

**Legal Requirements**

The BIDDER must demonstrate strict compliance with the following legal requirements:

* + 1. Being a PERSON or a CONSORTIUM, a status that must be demonstrated by submitting the following documents:

1. An uncertified copy of the document of incorporation of the BIDDER. If the BIDDER is a foreign entity, an uncertified translation into Spanish of this document. If the BIDDER is a CONSORTIUM, an uncertified copy of the document of incorporation of each one of its members, and an uncertified translation into Spanish for the members that are foreign entities.

Alternatively to the documents of incorporation of the BIDDER or the CONSORTIUM members, the COMMITTEE will also accept an uncertified copy of the articles of incorporation (or an equivalent document) in force, originally issued by the competent authority in the BIDDER's country of origin.

The corporate purpose stated in the articles of incorporation must be sufficiently broad to allow the BIDDER’s participation in this BID, or its participation as shareholder in other companies with corporate purposes that allow them to provide the services involved in this BID.

If the BIDDER is a CONSORTIUM, the BIDDER must also submit an uncertified copy of the document by which the CONSORTIUM was created.

1. An AFFIDAVIT signed by the LEGAL REPRESENTATIVE of the BIDDER, certifying its existence, in accordance with the legal requirements applicable under the laws of its country of origin, and according to the sample in Form No. 4 of Annex No. 3.
2. If the BIDDER is a CONSORTIUM, in addition to the requirement above for each one of its members, the BIDDER must submit an AFFIDAVIT, signed by its common LEGAL REPRESENTATIVE and the LEGAL REPRESENTATIVES of each one of its members, to confirm its existence and the several liability of its members regarding the obligations taken and the AFFIDAVITS submitted by the BIDDER, according to the sample in Form No. 5 of Annex No. 3. The LEGAL REPRESENTATIVE’s signature on these AFFIDAVITS must be certified by a Notary Public in Peru.
3. An AFFIDAVIT according to the sample in Form No. 6 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER or the common LEGAL REPRESENTATIVE (if the BIDDER is a CONSORTIUM), indicating the percentage of participation of each one of the BIDDER’S main shareholders, partners or members.

If the BIDDER is a CONSORTIUM, the information above must also be submitted for each one of its members on Form No. 6 of Annex No. 2, which must be signed by the LEGAL REPRESENTATIVES of each member.

* + 1. Having acquired the PARTICIPATION RIGHT. If the PARTICIPATION RIGHT was directly purchased, the BIDDER must submit a copy of the proof of payment issued by PROINVERSION. If the PARTICIPATION RIGHT was indirectly purchased (through a shareholder, partner, member or third party), the BIDDER must submit an AFFIDAVIT explaining the relationship between the BIDDER and the purchased of the PARTICIPATION RIGHTS, according to the model in Form No. 7 of Annex No. 3.
    2. The BIDDER must have a LEGAL REPRESENTATIVE, according to the requirements established in subsection 2.4 of the BIDDING DOCUMENTS, who will be credited as such by submitting a legalized copy of his or her Power of Attorney.
    3. Submitting an AFFIDAVIT, according to the sample in Form No. 8 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER or the common LEGAL REPRESENTATIVE (if the BIDDER is a CONSORTIUM), stating that the BIDDER, its shareholders or partners, or its partners’ members and partners (if the BIDDER is a CONSORTIUM), do not fall within any of the unsuitability cases for the fulfillment of the contractual obligations detailed in such sample.
    4. An AFFIDAVIT according to the sample in Form No. 9 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER), stating that the BIDDER or the common LEGAL REPRESENTATIVE (if the Bidder is a CONSORTIUM), its shareholders or partners, or its partners’ members and partners (if the BIDDER is a CONSORTIUM) have waived their rights to invoke or exercise any privilege, diplomatic immunity or other immunity, seek compensation, or exercise any other similar rights related to any claim that may be initiated by or against the Government of the Republic of Peru, the Ministry of Transportation and Communications, FITEL, PROINVERSION, the COMMITTEE, its members and advisors, under Peruvian laws or under any other laws, with regard to their obligations under these BIDDING DOCUMENTS, the TECHNICAL PROPOSAL, the ECONOMIC PROPOSAL and the FINANCING CONTRACT.
    5. An AFFIDAVIT, according to the sample in Form No. 10 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER or the common LEGAL REPRESENTATIVE (if the BIDDER is a CONSORTIUM), stating that the BIDDER’s advisors for this BID have not directly provided any type of services related to this Private Investment Promotion Process to MTC, FITEL, PROINVERSION or the COMMITTEE in the last year and during the course of this BID, whether on a full-time, part-time or temporary basis.
    6. An AFFIDAVIT according to the sample in Form No. 11 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER or the common LEGAL REPRESENTATIVE (if the BIDDER is a CONSORTIUM), stating that the BIDDER, its shareholders or partners, or its partners’ members and partners (if the BIDDER is a CONSORTIUM) do not have any direct or indirect participation in any other BIDDER.

For companies listed on stock exchanges, the participation requirement above will be limited to cases where these companies have the control of the management of said company or of any of its members (if the BIDDER is a CONSORTIUM), according to the provisions in the Regulations on Indirect Property, Entailment and Economic Groups approved by CONASEV Resolution No. 090-2005-EF-94.10 and amended by CONASEV Resolution No. 005-2006-EF-94.10, its amending or substituting regulations. To demonstrate this fact, the BIDDER must submit an AFFIDAVIT signed by the LEGAL REPRESENTATIVE of the BIDDER, according to the sample in Form No. 12 of Annex No. 3.

* + 1. An AFFIDAVIT, according to the sample in Form No. 13 of Annex No. 3, signed by the LEGAL REPRESENTATIVE of the BIDDER or the common LEGAL REPRESENTATIVE (if the BIDDER is a CONSORTIUM), stating that the BIDDER visited, at least once, the General Directorate of Communications Concessions (DGCC) at MTC and formulated inquiries regarding the viability of the use of the radioelectric spectrum bands, which will be proposed in the BIDDER’s TECHNICAL PROPOSAL. Additionally, the AFFIDAVIT must state that the BIDDER has reviewed Peru’s National Frequency Allocation Plan (PNAF, in Spanish) and made inquiries, if any, to the DGCC at MTC.
    2. The BIDDER, and each one of its members (if the BIDDER is a CONSORTIUM) must submit an AFFIDAVIT according to the sample in Form No. 14 of Annex No. 3, stating its commitment to create a legal person in the Republic of Peru under any of the corporate forms governed by the General Law of Companies. The company or firm must be created at least with the same shareholders, partners or members that the BIDDER encompassed as of the date of submission of ENVELOPE No. 2.

The minimum required Share Capital of the new company or firm that will enter into the FINANCING CONTRACT as CONTRACTOR will be announced by the COMMITTEE in a NOTICES, and must be subscribed and paid-in according to the provisions in the FINANCING CONTRACT.

In the CONTRACTOR’s shareholding structure, the member of which the TECHNICAL REQUIREMENTS for SHORTLISTING were claimed must have a MINIMUM PARTICIPATION of fifty-one percent (51%) of the CONTRACTOR’s shares.

* + 1. The BIDDER must submit a document prepared in the BIDDER’s language, including the personal information of its Directors, members of the Board of Directors, the Surveillance Council or any other high management body, and of the main executives in charge of the company’s management or legal representation.
  1. **Submission of Information**

Information regarding the BIDDER or one of its RELATED COMPANIES may be submitted for purposes of compliance with the FINANCIAL REQUIREMENTS and TECHNICAL REQUIREMENTS.

* 1. **Currency Conversion**

Any figures expressed in a currency other than the UNITED STATES DOLLAR must be converted into this currency at the exchange rate at the close of business on the date of the information where they appear, in compliance with the publications of the Superintendence of Banking, Insurances and Private Pension Funds ([http://www.sbs.gob.pe](http://www.sbs.gob.pe/)).

The conversion of any figures provided to meet the financial requirements will be included in ENVELOPE No. 1 by the BIDDER, as a spreadsheet that clearly shows the exchange rates used for the conversion.

* 1. **Simplification Mechanism**
     1. It is the procedure by which a BIDDER that has been shortlisted in another process conducted by PROINVERSION may submit to the COMMITTEE a request for a “Certificate of Good Standing of Shortlisting Documents,” in which the BIDDER must indicate the names and submission dates of the documents submitted within other processes that should be considered for SHORTLISTING purposes of this BID. This certificate will not be issued for documents that have been submitted to the COMMITTEE more than two (2) years counted since the date of the CALL for the BID.
     2. The BIDDER that has submitted Shortlisting documents in a previous bid process will only be required to submit the following documents for purposes of requesting its shortlisting for this BID:
* Certificate of Good Standing of Pre-Shortlisting Documents.
* An AFFIDAVIT stating that the documents referred to in the “Certificate of Good Standing of Pre-Shortlisting Documents” are still in force, according to the sample in Form No. 15 of Annex No. 3.
* Any new or additional documents required for Shortlisting purposes in these BIDDING DOCUMENTS.

A copy of the Proof of Payment for the Participation Right.

* + 1. The COMMITTEE will ensure that the AFFIDAVIT is valid and applicable to the Shortlisting process of the BID, and will conduct an assessment of compliance according to the provisions in the BIDDING DOCUMENTS.

1. **SUBMISSION OF THE CONTENTS OF ENVELOPE No. 1 & SHORTLISTING RESULTS**

## **Submission of the Contents of Envelope No. 1**

* + 1. The BIDDER will submit ENVELOPE No. 1 within the terms established in the BID SCHEDULE, at the date and time that will be communicated by the COMMITTEE, by email, to the LEGAL REPRESENTATIVES or AUTHORIZED AGENTS of the BIDDERS.
    2. ENVELOPE No. 1, containing the documents in Sections 5.1.1, 5.1.2., 5.1.3., 5.1.4. and 5.1.5, as applicable, as well as the documents in Sections 5.1.6, 5.2. (second paragraph), 5.2.1, 5.2.2., 5.2.3., 5.2.4., 5.2.5, 5.2.6., 5.2.7., 5.2.8., 5.2.9., 5.2.10, 5.2.11., 5.2.11., 5.2.12., 5.2.13, and 5.2.14, will be received by the COMMITTEE or a person appointed by it, and will be opened in the presence of a Notary Public. Afterwards, minutes will be taken to record the submission of the ENVELOPE by the BIDDER and the number of pages of each document in it.

The minutes mentioned in the paragraph above will include a statement of the acceptance or refusal of the contents of ENVELOPE No. 1, due to the absence of one or more of the documents required in these BIDDING DOCUMENTS. Any objections that the BIDDER may make will also be included.

An ENVELOPE No. 1 that has been refused may be submitted again, by appointment only, pursuant to Section 6.1.1, and within the shortlisting stage established in the SCHEDULE. The second submission of the ENVELOPE must be recorded in the minutes referred to in this Section.

* + 1. During the evaluation following the receipt of ENVELOPE No. 1, if the COMMITTEE (or a person appointed by it) identifies the existence of repairable defects (specifications or clarifications) in any of the documents, the BIDDER will be required to solve or repair the objections within the time period established in Annex No. 9, under penalty of being excluded from the shortlisting process.

The answers to the objections will be submitted in writing, as provided in the paragraph above and in Section 4.3, through the Reception Desk at PROINVERSION.

* 1. **Announcement of SHORTLISTED BIDDERS and Changes to Consortia**
     1. Within the term established in the SCHEDULE, the COMMITTEE will issue a statement with the names of the SHORTLISTED BIDDERS authorized to participate in the following stages of the process. For this purpose, the COMMITTEE will send a letter to each one of the BIDDERS that submitted an ENVELOPE No. 1.
     2. Within the term established in the SCHEDULE, the COMMITTEE will publish the names of the SHORTLISTED BIDDERS in a NOTICES and on PROINVERSION’s website.
     3. Any SHORTLISTED BIDDER may create a CONSORTIUM until fifteen (15) calendar days before the submission of ENVELOPES No. 2 and No. 3. In this case, the new CONSORTIUM must not include more than one (1) SHORTLISTED BIDDER.

Any documents submitted under this Section will be considered a part of ENVELOPE No. 1, for all the purposes considered in the BIDDING DOCUMENTS and the FINANCING CONTRACT.

These changes will be proposed to the COMMITTEE within the terms established above. The COMMITTEE reserves the right to accept these changes.

6.2.3 The COMMITTEE’s decision regarding the SHORTLISTED BIDDERS is final and may not be challenged.

1. **CONTENTS OF ENVELOPES No. 2 & No. 3**
   1. **Contents of Envelope No. 2: Technical Proposal**

The contents of ENVELOPE No. 2 will be divided in five (5) documents, according to the following:

**Document No. 1: AFFIDAVIT**

The SHORTLISTED BIDDER must submit an AFFIDAVIT, according to the sample in Form No. 1 of Annex No. 4, stating that:

* The information, statements, certification and, in general, all the information submitted in ENVELOPE No. 1 remain valid to date, and will remain valid until the CLOSING DATE.

**Document No. 2: GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL**

The SHORTLISTED BIDDER must submit a guarantee according to the sample in Form No. 2 of Annex No. 4, for a value to be informed in a NOTICES, covering the validity, validity term and seriousness of the proposal.

The GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL must be issued by a LOCAL BANK, a LOCAL INSURANCE COMPANY, or an INTERNATIONAL FINANCIAL ENTITY, provided that this guarantee has been confirmed by a LOCAL BANK according to the sample in Annex No. 2 to these BIDDING DOCUMENTS, and is several, unconditional, irrevocable, without the benefit of excussio, indivisible and automatically enforceable. The confirmation above obliges the LOCAL BANK to issue a GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL, according to the sample in Form No. 2 of Annex No. 4.

This Guarantee must remain in force for a term of no more than ninety (90) DAYS after the date of submission of ENVELOPES Nos. 2 & 3. The COMMITTEE may provide for the extension of the term of the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL, thus requiring the SHORTLISTED BIDDER to renew it for the period established for this purpose.

The GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL submitted by the AWARDEE will be returned after the signing of the FINANCING CONTRACT, upon the completion of the conditions for the CLOSING DATE.

Provided that a FINANCING CONTRACT has been entered into with the AWARDEE, the SHORTLISTED BIDDERS that have not been granted the award must request, in an email sent to the Head of Project for Telecommunications, the return of the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL. The Head of Project for Telecommunications will reply through the same medium, indicating the place, date and time where the guarantee will be returned.

**Document No. 3: TECHNICAL PROPOSAL**

The TECHNICAL PROPOSAL for the APURIMAC PROJECT must include:

1. An AFFIDAVIT stating that the INSTALLATION STAGE of the APURÍMAC PROJECT will not take more than ten (10) months.
2. Engineering for the APURÍMAC PROJECT, consisting of a preliminary and a processing description of the TRANSPORTATION NETWORK and the ACCESS NETWORK. This document is proposed by each SHORTLISTED BIDDER according to the technology and topology that will be used to provide Internet and Intranet access for MANDATORY SUBSCRIBED ENTITIES, other public and private institutions and the population in BENEFICIARY COMMUNITIES selected by FITEL, according to the requirements in the TECHNICAL SPECIFICATIONS. The document must include, but is not limited to, the following:
3. Topology of the ACCESS NETWORK and the TRANSPORTATION NETWORK, as well as any technical information required in the TECHNICAL SPECIFICATIONS for this stage.
4. Hard and digital copies of the preliminary schedule for the implementation of the TRANSPORTATION NETWORK and the ACCESS NETWORK, including FIELD STUDY activities, construction of civil works, manufacturing and/or supply of materials and equipment, international transportation, equipment storage, local transportation and installation, testing, COMMISSIONING, SKILLS BUILDING and other activities deemed necessary.
5. Proposals for AWARENESS RAISING AND DIFUSSION and PREPARATION OF CONTENTS.
6. Forms Nos. 3 & 4 of Annex No. 4, Summary of TECHNICAL SPECIFICATIONS, with sections matching the TECHNICAL SPECIFICATIONS document. These forms will have the effect of an AFFIDAVIT.
7. The BIDDER must attach any supporting brochures or manuals, in Spanish or English, showing the features of the goods and services offered in the TECHNICAL PROPOSAL.
8. Form No. 5 of Annex No. 4, Description of the Referential Maintenance Program for the ACCESS NETWORK, according to the TECHNICAL SPECIFICATIONS. This form must include: **(i)** a description of the infrastructure, equipment and technical support available to perform the operation and maintenance activities, if applicable, **(ii)** a preliminary proposal for the implementation of Operation and Maintenance Centers, and **(iii)** a description of the Referential Maintenance Program.
9. A schedule and the contents of the training courses on the proposed technology, to be given by the CONTRACTOR to the personnel appointed by the Technical Secretariat of FITEL, as well as the minimum professional qualifications required for these courses.
10. An AFFIDAVIT signed by the SHORTLISTED BIDDER, guaranteeing that the equipment will be new and manufactured with high-quality processes and materials. Form No. 6 or Annex No. 4.
11. If the BIDDER is a concessionaire of, and/or owns a registration for, any of the public telecommunications services in Peru required under Annex No. 8 to the BIDDING DOCUMENTS, the BIDDER must submit uncertified copies of all its enabling titles.

**Document No. 4: Final Version of the FINANCING CONTRACT**

The SHORTLISTED BIDDER must submit one (1) copy of the final version of the FINANCING CONTRACT, including Annexes, initialed on all pages and signed by the LEGAL REPRESENTATIVE(S) of the SHORTLISTED BIDDER. The final version will be forwarded by PROINVERSION to the SHORTLISTED BIDDERS in due time.

**Document No. 05: Capacity of Making Investments**

In addition to the documents mentioned above, the SHORTLISTED BIDDER must submit, in ENVELOPE No. 2, one (1) or more letters of intention of financing from LOCAL BANKS or INTERNATIONAL FINANCIAL INSTITUTIONS to support the investments of APURÍMAC PROJECT, for a value to be announced in a NOTICES. If the BIDDER is a CONSORTIUM, this requirement may be fulfilled by any of its members.

The information that needs to be included in the FINANCING CONTRACT will not be a part of its text; it will be written on the CLOSING DATE.

* 1. **Contents of Envelope No. 3: Economic Proposal**
     1. The SHORTLISTED BIDDER must submit, in ENVELOPE No. 3, a Letter of Submission of the ECONOMIC PROPOSAL according to the sample in Annex No. 5, the contents of which will be determined in a NOTICES.
     2. The ECONOMIC PROPOSAL must remain in force for at least one hundred fifty (150) DAYS after the Receipt of ENVELOPES No. 2 and No. 3 and Opening of ENVELOPES No. 2, even if the proposal does not receive the best score.

Any ECONOMIC PROPOSAL that is valid for a shorter term will be disqualified. The COMMITTEE may extend the time limit to submit ECONOMIC PROPOSALS.

* + 1. For the purposes of this BID, the submission of ENVELOPE No. 3 by a SHORTLISTED BIDDER constitutes an irrevocable offer by which the SHORTLISTED BIDDER agrees to submit to all the terms and conditions of the FINANCING CONTRACT and the Letter of Submission of its ECONOMIC PROPOSAL.
    2. The amount of the MAXIMUM PROJECT FINANCING will be communicated in a NOTICES. Under no circumstances will the ECONOMIC PROPOSAL of the SHORTLISTED BIDDER exceed the MAXIMUM PROJECT FINANCING, nor will it be lower than a percentage of such value, which will be announced to the SHORTLISTED BIDDERS in a NOTICES. A SHORTLISTED BIDDER that has submitted an ECONOMIC PROPOSAL exceeding the MAXIMUM PROJECT FINANCING, or below the percentage announced in a NOTICES, will be disqualified.

1. **RECEIPT OF ENVELOPES NO. 2 AND NO. 3 AND OPENING OF ENVELOPE NO. 2**
   1. **Receipt of Envelopes No. 2 and No. 3 and Opening of Envelope No. 2**
      1. The submission of ENVELOPES No. 2 and No. 3 must be conducted according to the general regulations provided in Section 4 of these BIDDING DOCUMENTS, at the date and time established in the SCHEDULE. If any of the SHORTLISTED BIDDERS is not present at the place and time established, the COMMITTEE may grant up to thirty (30) minutes of tolerance before opening the ENVELOPES.

If all the SHORTLISTED BIDDERS, any of its members agents appointed by them, are present before the COMMITTEE before the end of the tolerance period, the COMMITTEE will initiate the act.

* + 1. The President of the COMMITTEE, or any member replacing him of her, will receive ENVELOPES No. 2 and No. 3 before a Notary Public who will subsequently open ENVELOPES No. 2 in the order in which they were submitted by the SHORTLISTED BIDDERS.
    2. Once the ENVELOPES No. 2 have been open, the Notary Public will initial and stamp all the pages of the original documents in the envelopes, and will hand them over to the COMMITTEE for their assessment, which will be conducted according to the provisions in Section 8.2.
    3. All the unopened ENVELOPES No. 3 will be deposited into one envelope. This envelope will be sealed, signed and stamped by the Notary Public, who will then ask the LEGAL REPRESENTATIVES to sign the envelope as a sort of guarantee. ENVELOPES No. 3 will remain in custody of the Notary Public until the date of opening of ENVELOPES No. 3, indicated in Annex No. 9.
    4. The Notary Public will take minutes to record the receipt of ENVELOPES No. 2 and No. 3 and the opening of ENVELOPES No. 2. The minutes will be then signed by the COMMITTEE members and the LEGAL REPRESENTATIVES of the SHORTLISTED BIDDERS that may wish to do so.
  1. **Evaluation of the Contents of ENVELOPE No. 2**
     1. If any of the documents required in Section 7.1 of these BIDDING DOCUMENTS is not submitted, the SHORTLISTED BIDDER will be disqualified from the BID.
     2. The contents of ENVELOPE No. 2 will be evaluated by the COMMITTEE through the team of the Head of Projects and the staff appointed by FITEL. The COMMITTEE will later decide whether to accept the content of ENVELOPES No. 2 submitted by the SHORTLISTED BIDDERS.
     3. If the COMMITTEE makes a non-substantive objection on the TECHNICAL PROPOSAL in ENVELOPE No. 2, the Head of Project for Telecommunications may require, in a letter sent by mail or email, the LEGAL REPRESENTATIVE or the AUTHORIZED AGENT of the SHORTLISTED BIDDER, to make any non-substantive clarifications, specifications, adjustments and/or modifications regarding its TECHNICAL PROPOSAL, which must be solved within the term granted to do so.
     4. In a similar way, if the COMMITTEE or the person appointed for the assessment determines that there are defects or omissions to be addressed in any of the documents in ENVELOPE No. 2, the Head of Project for Telecommunications will require, by mail and email, the LEGAL REPRESENTATIVE or the AUTHORIZED AGENT of the SHORTLISTED BIDDER to address these defects within a certain time period. Under no circumstances will the failure to submit a document that should have been in ENVELOPE No. 2 be considered a repairable defect.
     5. In the cases mentioned in Sections 8.2.3 and 8.2.4 above, the LEGAL REPRESENTATIVE or the AUTHORIZED AGENT of the SHORTLISTED BIDDER must satisfactorily address any requirements in a written communication delivered to the address in Section 3.1.2, within the term established by the Head of Project for Telecommunications.
     6. ENVELOPE No. 2 will be declared technically acceptable if the following conditions are met at the same time:

1. The provisions in Sections 7.1, 8.2.2, 8.2.3, 8.2.4 and 8.2.5 of these BIDDING DOCUMENTS, as applicable.
2. Acceptance by the COMMITTEE, according to the compliance of the TECHNICAL SPECIFICATIONS.
   * 1. Any of the following will invalidate a TECHNICAL PROPOSALS: (i) if the TECHNICAL PROPOSAL is conditioned upon the compliance or commitment of FITEL or a government authority with any requirement of the SHORTLISTED BIDDERS, or (ii) if the BIDDER fails to satisfactorily address the requirements made under Sections 8.2.3, 8.2.4 and 8.2.5. All the additional documents that are not required in the BIDDING DOCUMENTS for the submission of ENVELOPE No. 2 will not be considered to determine whether a TECHNICAL PROPOSAL is technically acceptable or binding.
     2. The results of the assessment of ENVELOPES No. 2 will be recorded in assessment minutes, which will be signed by the COMMITTEE members (or the persons appointed by it). These results will be used by the COMMITTEE to determine whether ENVELOPES No. 2 are acceptable or not.

The results of the assessment of the documents in ENVELOPES No. 2 will be announced during the Opening of ENVELOPE No. 3 and Award.

The decision of the COMMITTEE on the results of the assessment of TECHNICAL PROPOSALS in ENVELOPES No. 2 is final, and cannot be the subject of a claim or challenge by any of the BIDDERS.

* + 1. Only the SHORTLISTED BIDDERS whose ENVELOPES No. 2 have been accepted will move on to the following stage of the BID, Opening of ENVELOPE No. 3.

1. **OPENING OF ENVELOPE No. 3 AND AWARD**
   1. **Opening of Envelopes No. 3** 
      1. The President of the COMMITTEE (or the person appointed for this purpose) will initiate the opening of ENVELOPES No 3 and AWARD in the presence of a Notary Public, at the place and time established in the SCHEDULE or announced in a NOTICES.

The President of the COMMITTEE, or the appointed person, will read the Minutes that include the names of the SHORTLISTED BIDDERS that have passed the assessment of ENVELOPES No. 2, and will declare them ELIGIBLE BIDDERS.

After this, the President of the COMMITTEE, or the appointed person, will request that the Notary Public open the ENVELOPES No. 3 submitted by the ELIGIBLE BIDDERS.

* + 1. Then, the Notary Public and the team under the Head of Project for Telecommunications will review the contents of each one of ENVELOPES No. 3. If any of the ECONOMIC PROPOSALS in an ENVELOPE No. 3 does not comply with the requirements provided in these BIDDING DOCUMENTS, such ECONOMIC PROPOSAL will not be considered a valid ECONOMIC PROPOSAL by the Committee, a decision that will be recorded in the minutes. Otherwise, the Notary Public will give ENVELOPE No. 3 to the President of the Committee or to the person appointed by him or her.

Any ECONOMIC PROPOSAL that exceeds the MAXIMUM PROJECT FINANCING, is below the percentage established in Section 7.2.4, or is submitted without observing the Form in Annex No. 5 to the BIDDING DOCUMENTS, or on a conditioned basis, will be declared ineligible. Additionally, any additional documents that are not required in the BIDDING DOCUMENTS for the submission of ENVELOPE No. 3 will not be considered for the assessment and will not be binding.

In due time, the President of the COMMMITTEE, or his or her replacement, will announce the valid ECONOMIC PROPOSALS that were submitted as provided in Annex No. 5 to these BIDDING DOCUMENTS. These proposals will be assessed according to criteria and procedures to be announced in a NOTICES.

* + 1. The COMMITTEE will choose and declare the ELIGIBLE BIDDER with the BEST PROPOSAL (the one with the highest score) the AWARDEE of the BID. In the event of a tied score, as defined in Section 9.1.2, the ELIGIBLE BIDDERS tied will have two (2) hours to submit a new PROPOSAL, which must be better than the one previously submitted. In case of a new tie, one (1) additional hour will be granted to submit new PROPOSALS, which must be better than the ones submitted in the first tie-break. If the tie remains after the second submission, the AWARD will be granted by flipping a coin (even if there are more than two tied proposals), in the presence of the Notary Public and in the same public act.

If an ELIGIBLE BIDDER does not submit a new PROPOSAL, the latest correct PROPOSAL will be considered instead.

The ELIGIBLE BIDDER that submits a new PROPOSAL must deliver it in a new ENVELOPE No. 3, which must include only a new Letter of Submission of PROPOSAL (according to Annex No. 5) signed by its LEGAL REPRESENTATIVE.

* + 1. Following the AWARD, the Notary Public will take minutes, which will be signed by all the members of the COMMITTEE, the AWARDEE and any ELIGIBLE BIDDERS that may wish to do so.
    2. If the AWARDEE, for reasons within its reach, fails to fulfill the obligations required for the CLOSING DATE to take place, the COMMITTEE will be entitled to forfeit the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL immediately, without the need of serving prior notice to the AWARDEE.

The guarantee will also be forfeited if the COMMITTEE, on any stage of the BID, finds that the BIDDER submitted false information during any of the BID stages, unless this information is derived from errors or omissions that, as deemed by the COMMITTEE, are irrelevant for its decisions or the results of the BID.

In case of non-compliance by the BIDDER, the COMMITEE may, but is not obliged to, accept the PROPOSAL of the ELIGIBLE BIDDER with the next best score as provided in Section 9.1.2 of these BIDDING DOCUMENTS, and so forth; or call for a new process, and so forth; or amend the BIDDING DOCUMENTS partially or totally and call for a new BID; and/or take any other decision that it may deem appropriate.

In such case, the COMMITTEE will inform this decision to the ELIGIBLE BIDDER who submitted the second best PROPOSAL, communicating its decision to declare it the new AWARDEE. The communication will include details on the closing proceedings and the date, time and place where they will take place.

The time period to meet the scheduled CLOSING DATE will be counted from the notification mentioned in the paragraph above, and will not be smaller than the period granted to the first AWARDEE, according to the SCHEDULE in force at the time of the notification.

* + 1. Without prejudice to the provisions in the Sections above, the COMMITTEE may initiate any legal actions allowed by the APPLICABLE LAWS that may be directly or indirectly derived from the failure to comply by the original or the new AWARDEE.
  1. **Challenge**
     1. **Challenge Procedure**
        1. Any ELIGIBLE BIDDER may file a challenge against the AWARD before the COMMITTEE. This challenge must be included as a remark in the notarized minutes of the Opening of ENVELOPES No. 3 AND AWARD, and be duly supported, in writing, within eight (8) WORKING DAYS starting on the day following the AWARD. The COMMITTEE will decide the challenge within ten (10) WORKING DAYS after the day of submission of the guarantee referred to in Section 9.2.2. of the BIDDING DOCUMENTS.
        2. The challenging ELIGIBLE BIDDER may file an appeal against this decision with the COMMITTEE itself, within three (3) WORKING DAYS after receiving the resolution. Subsequently, the COMMITTEE will refer the appeal to the Governing Council of PROINVERSION. The appeal may also be filed against the resolution of denial of the challenge by default, if the COMMITTEE fails to issue a resolution on the challenge within the term of ten (10) WORKING DAYS. In this case, the term to file the appeal will be counted from the day after the expiration date of such term of ten (10) WORKING DAYS.
        3. The appeal against the COMMITTEE’s express resolution or resolution by default will be decided by the Governing Council of PROINVERSIÓN within thirty (30) WORKING DAYS after the date of filing. The resolution in this second instance will be final and not open to appeal in an administrative procedure.
        4. Any spending of the recurrent SUITABLE BIDDER, which may arise from the challenge process OF THE AWARD, will be sole responsibility of the SUITABLE BIDDER.
     2. **Challenge guarantee**
        1. No challenge is considered validly filed and lack of any effect unless, within three (03) BUSINESS DAYS following the date of the OF THE AWARD, the objecting SUITABLE BIDDER delivers to the COMMITTEE a joint and several, irrevocable, unconditional guarantee without benefit of excussio or division, and of automatic execution, according to Exhibit No. 6, in favor of PROINVERSIÓN. Said bond or CHALLENGE GUARANTEE shall be issued by a LOCAL BANK, INSURANCE COMPANY or an INTERNATIONAL FINANCIAL INSTITUTION. In the latter case provided that the bond is issued and confirmed by a LOCAL BANK, as detailed in Exhibit No. 2 of these BIDDING DOCUMENTS AND CONDITIONS and for an amount that will be indicated by NOTICES.
        2. The CHALLENGE GUARANTEE may be executed by PROINVERSIÓN, if the appeal submitted by the SUITABLE BIDDER is unfounded or inadmissible or if said appeal was not filed within the period specified in Paragraph 9.2.1. of the BIDDING DOCUMENTS AND CONDITIONS and the respective resolution shall consent (express or tacit) of the COMMITTEE. If the objection or appeal filed is declared founded, the challenge guarantee shall be returned to the respective SUITABLE BIDDER, not generating interest in its favor.
        3. The validity of the CHALLENGE GUARANTEE referred to in this Paragraph shall be from the day the appeal is filed until sixty (60) WORKING DAYS, having to remain in force until express or implied resolution of the COMMITTEE or Steering Council of PROINVERSION, as appropriate.
  2. **Tender (declared) null and void**

This TENDER will be declared void when the COMMITTEE does not receive at least one (01) valid PROPOSAL.

In the case given above, it is possible to call a new TENDER on a new date

* 1. **Suspension or Cancellation of the Tender**

The TENDER may be suspended, canceled or rescinded at any time prior to the CLOSING DATE without indicating some reason, if it were considered appropriate by the COMMITTEE, in coordination with FITEL, without incurring in any liability. This decision cannot be challenged.

If the TENDER is cancelled or rescinded, the COMMITTEE shall establish in due course the term in which they will proceed with the return of the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL.

In case of cancellation, the COMMITTEE shall return the financial guarantee letters, as appropriate, within a period not exceeding three (03) WORKING DAYS.

1. **CONTRACTOR PARTY**
   1. **Incorporation**
      1. Before the CLOSING DATE, in the case of an AWARDEE which is not a legal entity registered in the country (whether a CONSORTIUM or a legal entity not domiciled in the country), is necessary to be incorporated as a society in Peru, meeting the requirements set forth in Paragraph 10.2. of the BIDDING DOCUMENTS AND CONDITIONS, in which case, once signed the FUNDING AGREEMENT shall be considered as the CONTRACTOR PARTY.
      2. The provisions of the preceding paragraph shall not be required if the AWARDEE is a company incorporated and domiciled in Peru. In this case the FUNDING CONTRACT can only be signed once fulfilled the obligations set out in Paragraph 11.3 of the BIDDING DOCUMENTS AND CONDITIONS for the CLOSING DATE.
   2. **Requirements of the legal entity of CONTRACTOR Party**
      1. The main object of the CONTRACTOR PARTY will allow the provision of public telecommunications services and access to intranet and its address must be set in the city of Lima, the Constitutional Province of Callao or any other city within the area of ​​influence of the APURIMAC PROJECT.
      2. In the founding document or agreement of the competent corporate body of the CONTRACTOR PARTY (Board Minutes, Minutes of the Meeting of Shareholders or other form of record) should be provided for to the satisfaction of the COMMITTEE, the ratification of all actions taken and documented signed by the LEGAL REPRESENTATIVES of the AWARDEE and the LEGAL REPRESENTATIVES of the CONTRACTOR PARTY, especially the FUNDING AGREEMENT subscription and any other rights or obligations applicable under these BIDDING DOCUMENTS AND CONDITIONS, the FUNDING AGREEMENT or APPLICABLE LAW.
      3. The OPERATOR either a member of the CONSORTIUM or the BIDDER that would have been declared by the COMMITTEE as AWARDEE meeting the TECHNICAL QUALIFICATIONS must have and maintain a MINIMUM HOLDING of fifty-one percent (51%) in the CONTRACTOR PARTY shareholding structure, for a minimum period to be served by NOTICES; during this period it cannot transfer or assign it so that it is a less than set forth in this Paragraph. Completed this term, it can only be transferred under express consent of FITEL.
      4. The CONTRACTOR PARTY must have a MINIMUM CAPITAL whose value will be communicated by the BIDDERS by NOTICES and shall be subscribed and paid according to the terms and conditions specified in the FINANCING CONTRACT.
      5. If the AWARDEE is a foreign company, it is required to constitute a national company fulfilling the provisions of the preceding Paragraphs.
2. **CLOSURE PROCEDURE**
   1. **Verification of Legal Requirements**

Before the CLOSING DATE, the AWARDEE that will sign the FUNDING AGREEMENT must submit to the Committee in respect of the AWARDEE and its members if CONSORTIUM, as applicable, the Information Certificate of not been disqualified from contracting with the State of the Republic of Peru issued by the OSCE (Supervising Agency of the Government Procurement). If it is determined the existence of false information provided, the AWARD will be revoked and may even proceed as provided in Paragraph 11.5.2. of the BIDDING DOCUMENTS AND CONDITIONS.

* 1. **Date of closure**
     1. The CLOSING DATE will be held at the place and time to be specified by NOTICES and will take place in the presence of a Notary Public, who shall certify the acts referred to in Paragraph 11.3 a. of the BIDDING DOCUMENTS AND CONDITIONS.
     2. If the AWARDEE fails to comply with the requirements of these BIDDING DOCUMENTS AND CONDITIONS for this act, the COMMITTEE will void the AWARD and provide for the enforcement of the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL of the BIDDER. In this case, the COMMITTEE shall follow the procedure outlined in Paragraphs 9.1.5 and 9.1.6.
  2. **Closure acts**

Up to the DATE OF CLOSURE the following acts should have been verified:

* + 1. The AWARDEE shall pay to PROINVERSION the amount of PROCESS COSTS referred to in Paragraph 11.3.42 of the BIDDING DOCUMENTS AND CONDITIONS. The value and the payment will be done according to the contents of the NOTICES to be issued by the COMMITTEE and communicated to the AWARDEE.
    2. Submission of the Testimony of the Public Deed of incorporation of the CONTRACTOR PARTY and accreditation from its registration in the Public Registry of Lima or other area of ​​influence of the AWARDED PROJECT. The CONTRACTOR PARTY must have been incorporated in Peru, with the same partners, shareholders or members in the same proportions as they held on the date of submission of ENVELOPE N° 2 in case of CONSORTIUM, with a subscribed share capital minimum as provided in Paragraph 5.2.13 of the BIDDING DOCUMENTS AND CONDITIONS. This same requirement must be met if the AWARDEE is a foreign company.
    3. Submission of the testimony of the power of attorney of the person who will sign the CONTRACT on behalf of CONTRACTOR PARTY with the certificate of registration in the respective Registry Office.
    4. Accreditation by the CONTRACTOR PARTY of the ratification of all actions carried out and documented signed by the LEGAL REPRESENTATIVES of the AWARDEE, especially the subscription of the FUNDING AGREEMENT and any other rights or obligations under applicable under the BIDDING DOCUMENTS AND CONDITIONS, or applicable law. Depending on the type of society, the nature of the act subject to ratification and the respective management bodies of the company powers, ratification will be evidenced by the filing of a certified copy of the relevant agreement.
    5. Submission by the AWARDEE of AFFIDAVITS of the AWARDEE and its partners or shareholders, of not been barred from contracting with the State or be involved in any limitations set forth in the applicable law. This information will be provided by the CONTRACTOR PARTY using the form given by the COMMITTEE in due course.
    6. Submission of the Preliminary Schedule for the Implementation of the Technical Proposal, in digital format.
    7. Submission of the single copy of the authorization certificates (concession, licenses and registrations) so as to provide public telecommunications services provided in the TECHNICAL SPECIFICATIONS. It will be required that AWARDEE also has the value added with a single concession (in Peru); in the case of CONSORTIUM at least one of its members must have a single concession (in Peru).
    8. If the AWARDEE does not have the authorization certificates and/or records that apply according to the applicable law, the AWARDEE will start the process of "Single Concession for the provision of public telecommunications services" within ten working days of the date of the AWARD, for which the AWARDEE must submit documentation established in the TUPAs (Single Unified Text) of the Ministry of Transportation and Communications and the General Regulation of the Telecommunications, approved by Supreme decree No. 020-2007-MTC.
    9. Submission of the financial economic model that supported the FINANCIAL PROPOSAL, including economic and financial indicators that justify said FINANCIAL PROPOSAL. The model should be presented in an electronic storage medium, in Excel format, unencrypted and with unrestricted access.
    10. Filing an AFFIDAVIT of the CONTRACTOR PARTY, through which confirms that remain valid all statements and documents submitted in ENVELOPE # 1 and # 2 and their FINANCIAL PROPOSAL.
    11. Submission of Certificate that proofs not being ineligible issued by the OSCE.
    12. Submission of the PERFORMANCE BOND OF THE FUNDING AGREEMENT and DEPOSIT GUARANTEE by the CONTRACTOR PARTY. The models of these documents are in Exhibits No. 10 and No. 11 respectively.
    13. Subscription of the FUNDING AGREEMENT by FITEL and or the LEGAL REPRESENTATIVES of the CONTRACTOR PARTY, in 3 copies
    14. Return by PROINVERSIÓN of the GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL referred to in Paragraph 7.1. of the BIDDING DOCUMENTS AND CONDITIONS.
    15. Submission by the AWARDEE of an AFFIDAVIT whereby assumes responsibility for the fulfillment of contractual obligations or use subcontractors to implement the PROJECT AWARDED.
    16. In case of documents issued or granted abroad, which have been submitted in ENVELOPE # 1 only notarized must be presented duly legalized by the Consulate of Peru to be competent and endorsed by the Ministry of Foreign Affairs of Peru.
  1. **Performance Bond of the Funding Agreement** 
     1. In order to ensure each and every one of the obligations that apply to the CONTRACTOR PARTY according to the FUNDING AGREEMENT, it shall deliver to the COMMITTEE on the DATE OF CLOSURE one PERFORMANCE BOND of the FUNDING AGREEMENT, whose value will be communicated by NOTICES.
     2. This guarantee will be provided by a letter of guarantee issued by a LOCAL BANK or LOCAL INSURANCE COMPANY as detailed in Appendix No. 2 of Exhibit No. 2 of these BIDDING DOCUMENTS AND CONDITIONS, which shall be joint and several, unconditional, irrevocable, without benefit of excussio or division and of automatic execution, effective from the CLOSING DATE. THE PERFORMANCE BOND of the FUDNING AGREEMENT shall be renewed annually and remain in effect according to the conditions of FUNDING CONTRACT.

The model of said letter of guarantee is provided in Exhibit No. 10.

* 1. **Execution of the Guarantee of Validity, Validity Term and Seriousness of the Proposal** 
     1. If the AWARDEE breaches any of its obligations foreseen by the CLOSING DATE mentioned in Paragraphs 11.3. and 11.4. of the BIDDING DOCUMENTS AND CONDITIONS, the COMMITTEE will void the AWARD and provide for the enforcement of the BID BOND, immediately and without prior notice to the SUITABLE BIDDER. The execution of this warranty does not limit or restrict any other rights it may have PROINVERSIÓN before the AWARDEE that breach with its obligations under Paragraphs 11.3. and 11.4 of the BIDDING DOCUMENTS AND CONDITIONS .
     2. In the cases mentioned in the preceding paragraph, the COMMITTEE, and in accordance with the provisions of Paragraphs 9.1.4 and 9.1.5, in its sole discretion, may award the Award to the SUITABLE BIDDER who submitted the following BEST OFFER; or proceed to a next call, and so on; or modify all or part of the BIDDING DOCUMENTS AND CONDITIONS and call again; and/or take any other decision it deems appropriate.
     3. The COMMITTEE, if decided to award the Award to the SUITABLE BIDDER with the next BEST OFFER, will notify of such offer, communicating its decision to declare the new AWARDEE also informing the process of closing and the date, time and place where this will be held also considering the procedure mentioned in the penultimate paragraph of paragraph 9.1.4 of these BIDDING DOCUMENTS AND CONDITIONS.
     4. Notwithstanding the provisions of this Paragraph, PROINVERSIÓN and/or COMMITTEE may initiate any legal action allow to them by applicable law as a direct or indirect result of a breach of the original or new AWARDEE.
  2. **Advance payment guarantee**
     1. In order to ensure the correct use of the first disbursement in favor of the CONTRACTOR PARTY, as provided in the FUNDING AGREEMENT, it shall deliver to the COMMITTEE on the DATE OF CLOSURE an ADVANCE PAYMENT GUARANTEE, according to the provisions of the FUNDING CONTRACT.
     2. This guarantee will be provided by a letter of guarantee issued by a LOCAL BANK or INSURANCE COMPANY or INTERNATIONAL FINANCIAL INSTITUTION as detailed in Appendix No. 2 of Exhibit No. 2 of these BIDDING DOCUMENTS AND CONDITIONS, which shall be joint and several, unconditional, irrevocable, without the benefit of excussio or division and of automatic execution, effective from the CLOSING DATE until the end of the INVESTMENT PERIOD, FITEL may provide for the mandatory extension of this guarantee, the CONTRACTOR PARTY must renew by the time they are preparing for this purpose.

The model of this letter of guarantee is provided in Exhibit No. 11

* 1. **Entry into Force of the Funding Agreement**

The FUNDING AGREEMENT shall become effective and shall take full legal effect in the CLOSING DATE, after being signed by the legal representative of FITEL. The CLOSING DATE will be identified for all purposes as the date on which the FUNDING AGREEMENT is subscribed.

1. **FINAL PROVISIONS**
   1. **Applicable law**

These BIDDING DOCUMENTS AND CONDITIONS, the documents that are part of it and the FUNDING AGREEMENT shall be governed by and construed in accordance with applicable law, as outlined in Paragraph 1.4 of the BIDDING DOCUMENTS AND CONDITIONS.

* 1. **Jurisdiction and competence**
     1. The Purchasers, the BIDDERS, QUALIFIED BIDDERS. SUITABLE BIDDERS, the PEOPLE who are members of CONSORTIA, the AWARDEE and CONTRACTOR PARTY irrevocably submit and consent to the jurisdiction and venue of the courts and tribunals of the city of Lima, Peru, to resolve any conflicts that may arise between them in respect of these BIDDING DOCUMENTS AND CONDITIONS, making expressly and irrevocably waiver to any diplomatic claim and all rights to initiate actions of any kind to any other jurisdiction.
     2. No provision amending, altering or cropping the right of MTC, FITEL, PROINVERSIÓN, the COMMITTEE, to begin any judicial action or enforce a judgment obtained in Peru, before the judges and courts in other jurisdictions shall be applicable; waiving the Purchasers, QUALIFIED BIDDERS, SUITABLE BIDDERS, CONTRACTOR PARTY and PEOPLE who are members of a CONSORTIUM and the AWARDEE to invoke or exercise any immunity or privilege which may be entitled in such jurisdictions, without reservation or limitation, accepting from now by the mere fact of participating in the TENDER, the choice of the jurisdiction or jurisdictions alternatives made ​​by the MTC, FITEL, PROINVERSIÓN and COMMITTEE, as the case may be.

**EXHIBIT Nº 1 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONFIDENTIALITY AGREEMENT**

**Reference: Numerals 1.3.2. and 3.2.2. of the BIDDING DOCUMENTS**

Lima, …………, 20……

Messrs,

PROINVERSIÓN Committee for Energy and Hydrocarbons Projects - PROCONECTIVIDAD

Private Investment Promotion Agency - PROINVERSIÓN

Present.-

Ref. : Public Tender for the Project "Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region"

BIDDER: .........................

...................................(name of BIDDER) duly represented by its ........................... (position), Mr. ....................... (name of the undersigned), identified with ............,N°………….. domiciled at ................., by this letter we express our interest in accessing the DATA ROOM that the COMMITTEE offers, according to the BIDDING DOCUMENTS AND CONDITIONS of the Public Tender to transfer to the private sector the implementation of the Project "Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region".

In this regard, we pledge to maintain confidentiality of all information obtained in the DATA ROOM, not to disclose any material or information to third parties without the prior written permission of the COMMITTEE, not using the information for any purpose not related to the TENDER and not to use the information in any manner that could create conflicts with the interests of the State of the Republic of Peru, its officers or agencies, MTC, FITEL, its officers or agencies, PROINVERSIÓN and the COMMITTEE.

The materials obtained from the DATA ROOM shall only be made ​​available to our staff, executives and consultants, for reasons related to the process of CONTEST. Such staff aware of this agreement and will be also required to keep confidential the information above. We will take all reasonable actions to prevent the disclosure of any information to anyone without the prior written consent of the COMMITTEE.

No license or right has been or will be awarded to our advisors regarding the provision of any information contained herein.

We accept that neither the state of the Republic of Peru, its officers or agencies, MTC, FITEL, its officers or agencies, or PROINVERSIÓN, nor the COMMITTEE, nor its advisors or members, are declaring or guarantee, expressly or impliedly, the accuracy, reliability or completeness of the information available to us and none of these parties or their respective directors, officers, employees or agents shall be liable to us or to any other person resulting from the use of such information and/or materials. We accept make our own decisions related to information made ​​available to us and recognize that we will not be dependent or induced by such information when deciding our intention in relation to the process of CONTEST.

We accept that any of the information provided, no material, discussion, negotiation or other related matters, constitutes an offer by the COMMITTEE or on behalf of, and does not serve as a basis or will be taken into account in connection with any agreement, except when it has been expressly agreed in writing with the COMMITTEE.

At the request of the COMMITTEE accept return all copies of all documents made available to us or available to our representatives or advisors.

Also accept that no commitment or COMMITTEE agrees to provide access to additional information or to update the information and materials available or correct any inaccuracy which may appear.

This agreement does not apply to information that: (**i**) the date on which it was disclosed to us or our advisors was public knowledge or any time after that is opportunity of public knowledge (except that object failure this agreement by us or our agents), or (**ii**) to date, and is lawfully in our power and, therefore, is not subject to the confidentiality.

The rights and obligations herein shall be governed and construed in accordance with the provisions of Peruvian law and the parties irrevocably submit to the jurisdiction of the courts and tribunals of Lima, Peru.

In acceptance and compliance with all terms and conditions of this CONFIDENTIALITY AGREEMENT and deliver a copy signed on the COMMITTEE.

Legalized signature: …………………………

Name: …………………………

(Legal representative of the BIDDER or Authorized Agent and/or Purchaser)

Entity: …………………………

(BIDDER)

**EXHIBIT Nº 2 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**APPENDIX Nº 1**

**INTERNATIONAL FINANCIAL INSTITUTIONS**

**AUTHORIZED TO ISSUE THE WARRANTIES SET FORTH IN THE BIDDING DOCUMENTS AND CONDITIONS**

* Any financial institution designed as foreign bank designated as first class, included in the list approved by the Central Reserve Bank of Peru by NOTICES No. 024-2014 -BCRP published on July 13th, 2014 in the official gazette El Peruano or regulation amending or replacing it.
* **Any multilateral lending institution of which the State of the Republic of Peru is a member.**
* **Any international financial institution with investment grade, evaluated by a recognized entity authorized to worldwide as international classification.**
* **Confirmation for some LOCAL BANK undertaking to issue the relevant guarantee.**

**EXHIBIT Nº 2 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**APPENDIX Nº 2**

**LOCAL BANK AND INSURANCE COMPANIES AUTHORIZED TO ISSUE THE WARRANTIES SET FORTH IN THE BIDDING DOCUMENTS AND CONDITIONS**

**LOCAL BANKS**

National banks authorized to issue bonds are those that hold a minimum grade of CP-1, Category 1, CLA-1 and ECL-1 for short-term obligations; A for financial strength; and AA for long-term obligations.

As reference we indicate the list which, as of to date, is comprised of the following companies with the minimum qualification mentioned in the preceding paragraph:

|  |
| --- |
| BANCO DE CRÉDITO DEL PERÚ |
| BANCO INTERAMERICANO DE FINANZAS - BANBIF |
| BANCO SANTANDER PERÚ |
| BBVA BANCO CONTINENTAL |
| INTERBANK |
| CITIBANK PERÚ |
| DEUTSCHE BANK PERÚ |
| SCOTIABANK PERÚ |

**INSURANCE COMPANIES**

Insurance companies authorized by the Banking and Insurance Superintendence and AFP to issue letters of guarantee and that as of the date of issuance thereof have a minimum rating of A for financial strength.

As reference the list which, as of to date, is comprised of the following companies with the minimum qualification mentioned in the preceding paragraph:

|  |
| --- |
| ACE SEGUROS S.A. |
| MAPFRE PERÚ COMPAÑÍA DE SEGUROS Y REASEGUROS |
| RÍMAC SEGUROS Y REASEGUROS |
| SECREX COMPAÑÍA DE SEGUROS DE CRÉDITO Y GARANTÍAS S.A. |
| INSUR S.A. COMPAÑÍA DE SEGUROS |

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 1: Affidavit- Submission of reliable information**

**Reference, Numeral 5.1.6 of the BIDDING DOCUMENTS AND CONDITIONS of the TENDER**

Sirs,

PROINVERSIÓN Committee for Energy and Hydrocarbons Projects - PROCONECTIVIDAD

Private Investment Promotion Agency - PROINVERSIÓN

Present.-

Ref. : Public Tender for the Project "Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region”

By this letter we hereby state under oath that:

All the information contained in the documents submitted is accurate.

Place and date: ……………, 20……

Entity ...............................................

Name of BIDDER

Name and signature of Legal Representative (1)

...................................................... ............................

Name of Legal Representative Signature

Name and signature of Legal Representative (2)

...................................................... ............................

Name of legal representative Signature

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 2: Letter of Presentation of Technical Requirements for Qualification**

**Reference: Numeral 5.2.1. of the BIDDING DOCUMENTS AND CONDITIONS**

**(Will be informed by NOTICES)**

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 3: Letter of Presentation of Financial Information for Qualification**

**Reference: Numeral 5.2.4. of the BIDDING DOCUMENTS AND CONDITIONS**

**(Will be informed by NOTICES)**

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF EVELOPE Nº 1**

**Form Nº 4: Affidavit of Legal Entity duly incorporated and existing**

**Reference: Literal b. of Numeral 5.2.5. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that ......................... (Name of BIDDER) is a legal entity duly organized under the laws of ............ .. (insert country of origin) and remains in force in accordance with the applicable legal principles of the country of origin (indicate).

Place and date: ...................., 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 5: Affidavit in case of CONSORTIUM**

**Reference: Literal c. of Numeral 5.2.5. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

By this letter we hereby state under oath:

That ........................... (name of each of the members of the CONSORTIUM) have partnered through a consortium for the purposes to participate in the TENDER.

That ............................ (name of member 1 of the CONSORTIUM) is a corporation duly organized under the laws of ......... ...... ... (insert country of origin) and remains in force in accordance with the applicable legal principles of the country of origin.

That ............................ (name of member 2 of the CONSORTIUM) is a corporation duly organized under the laws of ......... ...... ... (insert country of origin) and remains in force in accordance with the applicable legal principles of the country of origin.

That ............................ (name of member 3 of the CONSORTIUM) is a corporation duly organized under the laws of ......... ...... ... (insert country of origin) and remains in force in accordance with the applicable legal principles of the country of origin

That ............................ (name of each of the members of the CONSORTIUM) are jointly and indivisibly responsible before the State of Republic of Peru, MTC, FITEL PROINVERSIÓN and the COMMITTEE for each and every one of the obligations assumed and affidavits submitted by the BIDDER in connection with this TENDER.

Place and date: …………………, 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of BIDDER

Signature: …………………………

Legal Representative of BIDDER

Entity: …………………………

Legal Representative of (Member 1)

Name: …………………………

Legal Representative of (Member 1)

Signature: …………………………

Legal Representative of (Member 1)

Entity: …………………………

Legal Representative of (Member 2)

Name: …………………………

Legal Representative of (Member 2)

Signature: …………………………

Legal Representative of (Member 2)

Entity: …………………………

Legal Representative of (Member 3)

Name: …………………………

Legal Representative of (Member 3)

Signature: …………………………

Legal Representative of (Member 3)

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF EVELOPE Nº 1**

**Form Nº 6: Percentage Share Affidavit**

**Reference: Literal d. of Numeral 5.2.5. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

In the case of BIDDERS which are not CONSORTIA:

We hereby state under oath that the percentage share of each of our shareholders or members is as follows:

|  |  |
| --- | --- |
| **Shareholder or partner** | **Percentage share in the BIDDER** |
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |
| 5. |  |
| **TOTAL** |  |

For BIDDERS which are CONSORTIA (\*):

We hereby state under oath that the percentage share of each of members is as follows

|  |  |
| --- | --- |
| **Members** | **Percentage share in the BIDDER** |
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |
| 5. |  |
| **TOTAL** |  |

Place and date: ........................, 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of BIDDER

Signature: …………………………

Legal Representative of BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 7: Affidavit for the indirect acquisition of the Right of Participation**

**Reference: Numeral 5.2.6. of the BIDDING DOCUMENTS AND CONDITIONS**

By this letter we hereby state under oath:

That \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of Bidder), acquired the Right of Participation, through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of legal entity who paid that right), which is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (as the case may be, insert: one of our shareholders, partners or members, or a company related to us or to one of our shareholders, partners or members, or a third party who transferred its Right of Participation, through transfer of rights).

Place and date: ...................., 20……

...............................................

Name of Bidder

.............................................................

Name of Legal Representative of the Bidder

............................................................

Signature of Legal Representative of the Bidder

If there is transfer of the Right of Participation, the Transferor must also sign this statement:

...............................................

Name of Transferor

.............................................................

Name of Legal Representative of the Transferor

............................................................

Signature of the Legal Representative of the Transferor

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 8: Affidavit of being authorized to contract with the State**

**Reference Numeral 5.2.8. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that [...................................... .... (name of BIDDER)], [..........., ....... and ...... (members of the CONSORTIUM)]:

a. We are not administratively sanctioned with temporary or permanent disqualification from exercising our rights to participate in the selection process organized by the State of the Republic of Peru, or to contract with the State of the Republic of Peru.

b. We have not breached any contract with the State of the Republic of Peru, the Ministry of Transportation and Communications and/or FITEL, signed under the framework of the promotion of private investment referred to in the TUO (Single Unified Text) for Concessions approved by Supreme Decree No. 059-96-PCM, No. Law 28059, Law Framework for Decentralized Investment Promotion and Legislative Decree No. 1012, Framework Law of Public-Private Partnerships for the generation of productive employment and indicates rules for speeding private investment promoting processes or under the Legislative Decree No. 674.

c. We are not involved in any prohibitions indicated in Article 1366º of the Civil Code and/or applicable to the limitations set forth in Law No. 29290.

Place and date: …………………, 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 9: Affidavit of Waiver to diplomatic immunity or claim**

**Reference Numeral 5.2.9. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that ..................... (name of BIDDER) as well as its shareholders, partners or members, and shareholders and members of the latter, if applicable, waive the following:

***If the Bidder is a Consortium, the above paragraph is replaced by the following:***

We hereby state under oath that ........................................ ............... (name of BIDDER) and its members and the shareholders or members of the latter renounce to the following:

***If the Bidder has its shares listed on the stock exchange, the first paragraph is replaced by the following:***

*We hereby state under oath that ............................. (name of Bidder) and its shareholders with more than 5% stake in the share capital waive to the following:*

***In case the Bidder is a Consortium integrated by companies having their shares listed on stock exchanges and companies that don’t have their shares listed on the stock exchange, the previous paragraph Consortium will be replaced by the following:***

*We hereby state under oath that ............................. (name of Bidder) and its members ... ........................ (name of the companies that don’t have listed their shares on the stock exchange) and the shareholders and members of the latter, and its members ........................... (name of companies having their shares listed on the stock exchange) and its shareholders with more than 5% stake in the share capital, waive to the following:*

1. To invoke or exercise any diplomatic privilege or immunity of any kind.

2. To file any claims through diplomatic channels and any compensation or other relative to any claim that could be invoked by or against the State of the Republic of Peru, MTC, FITEL, PROINVERSIÓN, the COMMITTEE, their members and advisors under Peruvian law or under any other law in relation to our obligations regarding the BIDDING DOCUMENTS AND CONDITIONS, TECHNICAL PROPOSAL, FINANCIAL PROPOSAL and FUNDING AGREEMENT.

Place and date: ……………………, 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 10: Affidavit of Advisors of the BIDDER**

**Reference Numeral 5.2.10. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that our legal, technical and financial advisors have not directly provided any services on behalf of MTC, FITEL, PROINVERSIÓN or the COMMITTEE within the last year and during the development of this Tender, whether full-time, part-time or temporary, in connection with this process of promoting private investment.

Place and date: .............., 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 11: Affidavit of No participation with another BIDDER**

**Reference Numeral 5.2.11. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that ........................... (name of BIDDER), its shareholders, partners or members, or the members or shareholders of the latter if it’s a CONSORTIUM, have no direct or indirect participation in any other BIDDER.

Place and time: ………………, 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 12: Affidavit- No participation in other BIDDER (Applicable to companies having their shares listed on stock exchanges)**

**Reference Numeral 5.2.11. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that ................... (name of BIDDER) and their shareholders, have no direct or indirect interest in any other BIDDER, which they exercise control or management of any of its members if it’s a CONSORTIUM, as provided in the Rules of Indirect Ownership, Relationship and Economic Group approved by Resolution No. 090-2005 CONASEV-EF-94.10 as amended by Resolution No. 005-2006 CONASEV-EF-94.10.

***In case the Bidder is a Consortium, the above paragraph is replaced by the following:***

We hereby state under oath that ........................................ ...... (name of BIDDER), its members and the shareholders or members of the latter have no direct or indirect interest in any other Bidder on which they exercise control or management of any of its members if it’s a CONSORTIUM under the provisions of Indirect Ownership Regulation, Relationship and Economic Group approved by Resolution No. 090-2005 CONASEV-EF-94.10 as amended by Resolution No. 005-2006 CONASEV-EF-94.10.

Place and time: ………………………., 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 13: Affidavit to verify availability of radioelectric spectrum**

**Reference Numeral 5.2.3.9. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that .............................. .. (name of BIDDER) have visited at least once the General Directorate for Communications Concessions (DGCC) of the MTC and have made inquiries about the viability of the use of radioelectric spectrum bands propose within our Technical Proposal. We also state that we have reviewed the Peruvian National Frequency Allocation Plan (NFAP) and have made the respective consultations, in case we've had, to the DGCC of the MTC.

Place and date: ………………………., 20……….

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 14: Affidavit of Incorporation Commitment in case of CONSORTIUM**

**Reference: Numeral 5.2.13. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

By this letter we hereby state under oath:

1.- That ......................................... (name of each of the members of the CONSORTIUM) have partnered through a consortium for the purpose of participating in this TENDER (in the case of a consortium).

2.- That we have signed a Commitment Intent to establish ourselves as a Legal Entity domiciled in the Republic of Peru and a minimum capital stock of ..................... (US$ .....................) of which an amount not less than ............... .. (US$ .....................) shall be paid in cash on the date of incorporation; and complete the amount of ..................... (US$ .....................) at the end of the second year of the FUNDING AGREEMENT, according to legal regulations.

3.- The legal entity to be constituted will engage in the provision of Public Telecommunications Services. In that sense, its object is the previously described.

4.- If we become the AWARDEE, we promise to deliver the corresponding Testimony of the Public Deed of incorporation with proof of registration in the Registry Office corresponding or the certificate attesting the submission of notary parties to the Register indicated above, the CLOSING DATE mentioned in the TENDER SCHEDULE.

In this regard, we state to be aware and accept that failure to comply with this commitment may be taken into account in order to rescind the AWARD granted in our favor.

Place and date: ................., 20……

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

Entity: …………………………

Legal Representative of (Member1)

Name: …………………………

Legal Representative of (Member 1)

Signature: …………………………

Legal Representative of (Member 1)

Entity: …………………………

Legal Representative of (Member 2)

Name: …………………………

Legal Representative of (Member 2)

Signature: …………………………

Legal Representative of (Member 2)

Entity: …………………………

Legal Representative of (Member 3)

Name: …………………………

Legal Representative of (Member 3)

Signature: …………………………

Legal Representative of (Member 3)

**EXHIBIT Nº 3 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 1**

**Form Nº 15: Affidavit should be applied to the Simplification Mechanism**

**Reference: Numeral 5.5.2. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that the documents presented in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (indicate the process in which the BIDDER participated) (\*) for the purpose of obtaining our Qualification as BIDDER (or as member of a consortium), upon the date of signing of this document remains unaltered, without changes and is fully in force.

The documents to which we refer are as follows:

1. (list)

2.

3.

4.

Sincerely,

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

(\*) Indicate the process carried out by PROINVERSIÓN during the last two (02) years from the date of submission of documents for Qualification to this TENDER.

**EXHIBIT Nº 4 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 1: Affidavit of validity of Information**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

By this letter we hereby state under oath:

* + - 1. That the information, statements, certification, and in general, all documents submitted in ENVELOPE # 1 remain in effect on the date and will remain force until the CLOSING DATE.
      2. We have no direct or indirect interest in any other QUALIFIED BIDDER or member thereof.

Place and date: ……………………, 20……

Entity: …………………………

QUALIFIED BIDDER

Name: …………………………

Legal Representative of the QUALIFIED BIDDER

Signature: …………………………

Legal Representative of the QUALIFIED BIDDER

**EXHIBIT Nº 4 OFTHE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 2: Model of GUARANTEE OF VALIDITY, VALIDITY TERM AND SERIOUSNESS OF THE PROPOSAL**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

Lima, ..............., 20……

Messrs,

Private Investment Promotion Agency

PROINVERSIÓN

Present.-

Ref.: Letter of Guarantee No ..............................

Expiration: .................................

To whom it may concern:

We hereby and upon request of our customers, ....................................... ..... (name of QUALIFIED BIDDER) we formed this joint, irrevocable, unconditional guarantee of immediate execution without benefit of excussio or division, up to the amount of ....................................... /100 (US$ ..................................) in favor of PROINVERSIÓN to ensure the Validity and Reliability of the Technical Proposal and the ECONOMIC PROPOSAL submitted by our client, according to the terms and conditions set out in the Public Tender BIDDING DOCUMENTS AND CONDITIONS for the Project " Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region”.

Also, we record that this guarantee will become effective in the case that our client is declared AWARDEE by the COMMITTEE and does not fulfill its obligations in the CLOSING DATE of the TENDER mentioned above.

To honor this guarantee in favor of you, is only necessary to have a notarial requirement through the Executive Director of PROINVERSIÓN or a representative thereof in our offices located at ………………….

Any delay on our part to comply with it will accrue interest equal to LIBOR plus a margin (spread) of 3% per annum, accruing interest from the date of the request to comply with it until the actual date of payment.

Our obligations under this letter of guarantee shall not be affected by any dispute between you and our clients.

The term of this Bond shall begin on the date of submission of the FINANCIAL PROPOSAL until .............................

The terms used in this bond have the same meaning as defined in the Tender.

Sincerely,

Signature: …………………………

Name: …………………………

Entity: …………………………

**EXHIBIT Nº 4 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 3: Summary of TECHNICAL SPECIFICATIONS for the TRANSPORTATION NETWORK and ACCESS NETWORK**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

NAME OF BIDDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(The BIDDER shall fill in this Form, freely, at its own style, with the summary of the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK and TRANSPORTATION NETWORK proposed).

**EXHIBIT Nº 4 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 4: Response to the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK and TRANSPORTATION NETWORK**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

NAME OF BIDDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The information contained in this Exhibit meets or exceeds the technical requirements in the BIDDING DOCUMENTS AND CONDITIONS.

| **TECHNICAL SPECIFICATIONS**  **(Consider all paragraphs of Exhibit No. 8 of the BIDDING DOCUMENTS AND CONDITIONS, even if they were redundant, third party liability or subjects listed)** | **COMPLIANCE** | **Page number of the TECHNICAL PROPOSAL of the bidder which shows the description of compliance** |
| --- | --- | --- |
| **1. INTRODUCTION** |  |  |
| **2. GENERAL ASPECTS OF THE PROJECT** |  |  |
| 2.1. Beneficiaries |  |  |
| 2.2. Services |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
| **3. SERVICE SPECIFICATIONS** |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
|  |  |  |
| So on, response compliance is required for all numerals of Exhibit No. 8 of the BIDDING DOCUMENTS AND CONDITIONS (TECHNICAL SPECIFICATIONS). |  |  |
|  |  |  |
|  |  |  |
| **4. CONTENT PREPARATION, TRAINING, DISTRIBUTION AND AWARENESS** |  |  |
| 4.1. General aspects |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
| **5. ABOUT THE IMPLEMENTATION OF THE PROJECT AWARDED** |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
| **6. SUPERVISION OF THE PROJECT AWARDED** |  |  |
| Continues with other items**………………** |  |  |
| **7. DUTY TO SAFEGUARD THE SECRET OF TELECOMMUNICATIONS** |  |  |
| Continues with other items**………………** |  |  |
| **8. EASEMENTS** |  |  |
| Continues with other items**………………** |  |  |
|  |  |  |
| **9. EXHIBITS** |  |  |
|  |  |  |

Place and date: ………………………., 20……

Name: …………………………

Legal Representative of the QUALIFIED BIDDER

Signature: …………………………

Legal Representative of the QUALIFIED BIDDER

**EXHIBIT Nº 4 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 5: Reference Maintenance Program of the ACCESS NETWORK**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

BIDDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1) Infrastructure, equipment and technical support description

Equipment that the BIDDER will assign for the technical of the PROJECT AWARDED:

|  |  |  |
| --- | --- | --- |
| **NAME OF EQUIPMENT, MACHINERY, HARDWARE, TOOLS, TRANSPORTATION, ETC** | **BRAND** | **YEAR** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**Infrastructure**

|  |  |  |  |
| --- | --- | --- | --- |
| **LOCAL / WORKSHOP** | **LOCATION** | **OWN**  **(Yes or No)** | **CONTRACT EXPIRATION (1)** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

(1) Complete only in case of lease facilities

**Staff scheduled for Maintenance and Operation**

|  |  |  |
| --- | --- | --- |
| **PROFFESIONAL LEVEL** | **NUMBER OF STAFF** | **ACTIVITY IN THE PROJECT** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

2) Description of the preliminary implementation Plan of the Operation and Maintenance Centers deemed most suitable for PROJECT AWARDED, indicating the number and location of the operation and maintenance facilities, as provided in the TECHNICAL SPECIFICATIONS.

3) Description of Reference Maintenance Program, as provided in the TECHNICAL SPECIFICATIONS of the ACCESS NETWORK: will consider the performance of PREVENTIVE MAINTENANCE and CORRECTIVE MAINTENANCE of the ACCESS NETWORK, taking into account the recommendations of the manufacturers and suppliers of infrastructure and equipment as well as its experience as operator.

Place and date: ………………………., 20……

Name: …………………………

Legal Representative of the QUALIFIED BIDDER

Signature: …………………………

Legal Representative of the QUALIFIED BIDDER

**EXHIBIT Nº 4 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 2**

**Form Nº 6: Affidavit ensuring that the equipment will new**

**Reference: Numeral 7.1. of the BIDDING DOCUMENTS AND CONDITIONS**

**AFFIDAVIT**

We hereby state under oath that the equipment for the implementation of the project: "Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region" will be new and manufactured with high quality processes and materials.

Sincerely,

Entity: …………………………

BIDDER

Name: …………………………

Legal Representative of the BIDDER

Signature: …………………………

Legal Representative of the BIDDER

**EXHIBIT Nº 5 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**CONTENT OF ENVELOPE Nº 3**

**LETTER OF PRESENTATION OF THE PROPOSAL**

**Reference: Numeral 7.2. of the BIDDING DOCUMENTS AND CONDITIONS**

**(Will be informed by NOTICES)**

**EXHIBIT Nº 6 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Model Letter of Guarantee for Challenge the Award**

**Reference: Numeral 9.2.2. of the BIDDING DOCUMENTS AND CONDITIONS**

Lima, ................., 20……

Sirs,

Private Investment Promotion Agency

PROINVERSIÓN

Present.-

Ref. : Letter of Guarantee Nº ..............................

Expiration: ....................................

To whom it may concern:

We hereby and upon request of our customers, ................................. (name of QUALIFIED BIDDER submitting the motion for reconsideration) we establish a joint and several, irrevocable, unconditional guarantee of immediate execution without benefit of excussio or division for the amount of ....................................... / 100 (US$ ..............................) in favor of PROINVERSIÓN to ensure our secured payment of such amount in any of the events listed in the fourth paragraph of this letter of guarantee.

This bond will have a term of sixty (60) working days from the filing of the challenge; and will be payable in the event that the challenge presented was declared unfounded or inadmissible ultimately by the Board of PROINVERSIÓN.

It is expressly understood by us that this bond may be executed by PROINVERSIÓN in accordance with the provisions of Article 1898 of the Peruvian Civil Code.

It is expressly agreed to proceed with this guarantee, is only necessary a request made through a notary public by the Executive Director of PROINVERSIÓN or his substitute, in our offices located at the address indicated next, and in which is expressed that the challenge filed in the Public Bidding of the project " Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region " has been declared unfounded or inadmissible by the Board of PROINVERSIÓN; or having obtained a resolution to that effect by the COMMITTEE, this was not appealed.

We undertake to pay the full amount of the deposit within a period of twenty-four (24) hours, counted from the date of receipt of the notarized letter of formal notice.

Any delay on our part in complying with this, will give rise to interest payments on your behalf to be calculated on the LIBOR plus a margin (spread) of 3.0%, accruing interest from the date on which compliance with this guarantee is requested.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE AND SEAL

Name of entity issuing the guarantee:

Address of the entity:

**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**User Guide for the DATA ROOM**

**Reference: Numeral 3.2. of the BIDDING DOCUMENTS AND CONDITIONS**

**I. AVAILABILITY**

**1. Authorized users**

Users authorized to access the DATA ROOM, are representatives of those companies that have acquired the BIDDING DOCUMENTS AND CONDITIONS and have been properly identified and submitted to the administration of the DATA ROOM, with the properly filled out forms.

**2. Capacity and services**

The DATA ROOM will have one (01) meeting room with a maximum capacity of six (06) people. The users, apart from all the documentation available to it, will have easier access to printer, copier, telephone, fax and other services to facilitate the work.

**3. Working hours**

The opening hours of the DATA ROOM shall be from 9:00 am to 13:30 and 15:00 to 18:30, Monday to Friday.

**4. Service procedure**

The Purchaser or BIDDER who wishes to use the DATA ROOM must sign the Confidentiality Agreement and submit its application using the appropriate form indicating their preference schedule, the time it will be used and who will be attending. The Coordination of the DATA ROOM will respond to the request according to availability and criteria of fairness and balance.

All documents and services will be required by the applicable forms and Coordination of the DATA ROOM.

**II. SERVICES PROVIDED**

The use of the DATA ROOM is free but the cost of various services, photocopying, printing, binding, burning files on CD, DVD or USB, phone, fax, refreshments, etc., will be charged. Additional services such as blueprints, scanning images, internet usage and others may eventually be always rendered as had been requested well in advance and will also be charged according to their cost, which is informed in advance by the Coordination of the DATA ROOM.

**III. USE FORMS IN DATA ROOM**

It has been included in this Exhibit Form No. 1 (Identification of the persons authorized to use the DATA ROOM) and Exhibit 1 (Table data and stay in DATA ROOM). These forms must be submitted before the first full day of use of the DATA ROOM, by fax or email, by the representatives of the BIDDER, this is a must to access the information provided in the DATA ROOM. It is based on the information provided in this database that schedules and reservations for use of the DATA ROOM will be developed.

It is also included in this Exhibit, the following documents:

- Form Nº 2 (Request of multiple services of the DATA ROOM) will be used for services required by the BIDDERS).

- Form Nº 3 (Request for technical consultations in the ROOM DATA), will enable BIDDERS to make written inquiries to the technicians responsible for the various items of the APURIMAC PROJECT)

**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Form Nº 1: Identification of people authorized to use the DATA ROOM**

Lima, ............., 20……

Sirs,

PROINVERSIÓN Committee for Energy and Hydrocarbons Projects - PROCONECTIVIDAD

Private Investment Promotion Agency - PROINVERSIÓN

Present.-

I hereby, .................... (Name of Authorized Agent) on behalf of ............... ........... (name of BIDDER) request to you the use of the DATA ROOM, during the visit program proposed and for the persons listed in the table of Appendix 1.

Regarding the procedures for using the DATA ROOM, we state having taken knowledge of the procedures contained in the User Guide of the DATA ROOM - Exhibit No. 7 of this TENDER.

Also, we state that the information found in the DATA ROOM is strictly confidential.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Representative National Identity Card DNI

**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Appendix Nº 1 of Form Nº 1**

**Data Table and permanence in the DATA ROOM**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Nº | Full name | National Identity Card | Nationality | Time of stay (indicate date) |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |
| 5 |  |  |  |  |
| 6 |  |  |  |  |
| 7 |  |  |  |  |
| 8 |  |  |  |  |
| 9 |  |  |  |  |
| 10 |  |  |  |  |
| 11 |  |  |  |  |
| 12 |  |  |  |  |
| 13 |  |  |  |  |
| 14 |  |  |  |  |
| 15 |  |  |  |  |
| 16 |  |  |  |  |
| 17 |  |  |  |  |
| 18 |  |  |  |  |
| 19 |  |  |  |  |
| 20 |  |  |  |  |

**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Form Nº 2: Request of multiple services in the DATA ROOM**

|  |  |
| --- | --- |
| Date of request |  |

|  |  |
| --- | --- |
| Applicant |  |

|  |  |
| --- | --- |
| User |  |

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

|  |  |
| --- | --- |
| Date of delivery |  |

**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Form Nº 3: Request for technical consultations in the DATA ROOM**

|  |  |
| --- | --- |
| **Date** |  |

**Data of the applicant**

|  |  |
| --- | --- |
| **Company:** |  |
| **Name of the applicant:** |  |
| **Position:** |  |

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**EXHIBIT Nº 7 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Appendix 2: List of documents in the DATA ROOM**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **CÓDE** | **DOCUMENT** | **LANGUAGE** | **DIGITAL** | **PHYSICAL** | **UPDATED AS OF** | **PAGES** |
| 1 | Feasibility Study APURIMAC PROJECT | SPANISH | YES | NO |  |  |
| 2 | List of Beneficiaries of the APURIMAC PROJECT with information about location, energy, telecommunications, population and housing | SPANISH | YES | NO |  |  |
| 3 | Topology of TRANSPORTATION NETWORK | SPANISH | YES | NO |  |  |
| 4 | Referential information of the ACCESS NETWORK | SPANISH | YES | NO |  |  |
| 5 | Details of MANDATORY INSTITUTIONS INCLUDED in the APURIMAC PROJECT | SPANISH | YES | NO |  |  |
| 6 | Georeferenced information of Protected Natural Areas and Buffer Zones | SPANISH | YES | NO |  |  |

**EXHIBIT Nº 8 OF THE BIDDING DOCUMENTS AND CONDITIONS**

TECHNICAL SPECIFICATIONS

**Reference: Numeral 1.3.30. of the BIDDING DOCUMENTS AND CONDITIONS**

**(Will be informed by NOTICES)**

**EXHIBIT Nº 9 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**SCHEDULE OF THE TENDER**

**Reference: Numeral 1.7. of the BIDDING DOCUMENTS AND CONDITIONS**

|  |  |
| --- | --- |
| **ACTIVITIES** | **DATES** |
|  |  |
| **1. Call and publication of Term and Conditions** | Until August 29th, 2014 |
| **2. Terms and Conditions** |  |
| 2.1. Inquiries to the BIDDING DOCUMENTS and Conditions | Until October 7th, 2014 |
| 2.2. Response to inquires | Until November 4th, 2014 |
| **3. Funding Agreement** |  |
| 3.1. Publication of Proposed Contract | Until September 9th, 2014 |
| 3.2. Suggestions of Proposed Contract | Until October 31st, 2014 |
| 3.3 Delivery of the Final Version of the Contract | Until November 18th, 2014 |
| **4. Qualification** |  |
| 4.1. Payment of Participation Fee | Until October 20th, 2014 |
| 4.2. Publication of Qualification Requirements | Until October 3rd, 2014 |
| 4.3. Submission of Envelopes N° 1 | From October 21st to 24th, 2014 |
| 4.4. Notice of Qualified Bidders | November 17th, 2014 |
| **5. Submission of proposals** |  |
| 5.1. Publication of Non-Reimbursable funding, value of collateral and others. | Until November 11th, 2014 |
| 5.2. Submission of Envelopes N° 2 and N° 3 | December 1st, 2014 |
| 5.4. Opening of Envelope N° 3 and Award | December 15th, 2014 |
| **6. Date of closure** | Within 10 business days after the Award |

**EXHIBIT Nº 10 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Model of PERFORMANCE BOND of the FUNDING AGREEMENT**

Lima, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20……

Messrs,

TELECOMMUNICATIONS INVESTMENT FUND – FITEL

City.-

Ref.: Letter of Guarantee No…………..

Expiration:......................

To whom it may concern:

We hereby and upon request of our customers, ......................... (name of company) (hereinafter the CONTRACTOR PARTY), we have issued this joint and several, irrevocable, unconditional and immediate execution, without benefit of excussio or division, up to the amount of ......... ..................................... for the TELECOMMUNICATIONS INVESTMENT FUND - FITEL, to ensure the proper and timely performance of each and every one of the obligations of the CONTRACTOR PARTY derived from the FUNDING AGREEMENT signed under the Public Tender organized by PROINVERSIÓN called Promotion of Private Investment Process for the Project " Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region”.

To execute this guarantee in your favor is enough a written request through a notary of the TELECOMMUNICATIONS INVESTMENT FUND - FITEL, which must be signed by the Technical Secretary or any person duly authorized by that entity. The payment will be paid within twenty-four (24) hours of your request at our offices located at ...............................

Any delay on our part to honor it will accrue interest equivalent to LIBOR six (6) months, plus a margin (spread) of 3.0% shall accrue interest from the date of the request to the actual date of payment.

Our obligations under this guarantee will not be affected by any dispute between you and our clients.

This guarantee shall be valid from ……………….., 20 ...... until ……………….., 20, inclusive.

Sincerely,

Signature: ……………………….

Name ……………………….

Entity ……………………….

**EXHIBIT Nº 11 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**Model of ADVANCE PAYMENT GUARANTEE**

Lima, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20……

Sirs,

TELECOMMUNICATIONS INVESTMENT FUND – FITEL

City.-

Ref.: Letter of Guarantee No…………..

Expiration:......................

To whom it may concern:

We hereby and upon request our customers, ......................... (name of company) (hereinafter the CONTRACTOR PARTY), we have issued this joint and several, irrevocable, unconditional and immediate execution guarantee, without benefit of excussio or division, up to the amount of ......... ..................................... for the TELECOMMUNICATIONS INVESTMENT FUND - FITEL, to ensure the correct and timely use of the first disbursement in favor of the CONTRACTOR PARTY, derived from the FUNDING AGREEMENT signed under the Public Tender organized by PROINVERSIÓN called Promotion of Private Investment Process for the Project " Installation of Broadband for the Comprehensive Connectivity and Social Development of the Apurimac Region”.

To execute this guarantee in your favor is enough a written request through a notary of the TELECOMMUNICATIONS INVESTMENT FUND - FITEL, which must be signed by the Technical Secretary or any person duly authorized by that entity. The payment will be paid within twenty-four (24) hours of your request at our offices located at ...............................

Any delay on our part to honor it will accrue interest equivalent to LIBOR six (6) months, plus a margin (spread) of 3.0% shall accrue interest from the date of the request to the actual date of payment.

Our obligations under this guarantee will not be affected by any dispute between you and our clients.

This guarantee shall be valid from ……………….., 20 ...... until ……………….., 20, inclusive.

Sincerely,

Signature: ……………………….

Name ……………………….

Entity ……………………….

**EXHIBIT Nº 12 OF THE BIDDING DOCUMENTS AND CONDITIONS**

**PROPOSAL OF FUNDING CONTRACT**

**(Will be informed by NOTICES)**

1. For purposes of identifying the CONSORTIA, the LEGAL REPRESENTATIVES of the companies that compose a CONSORTIUM will give it a name; e.g. “CONSORCIO Tele Apurímac.” [↑](#footnote-ref-1)
2. The representatives or the natural person that has paid for the PARTICIPATION RIGHT may request, by email, that the Head of Project for Telecommunications at PROINVERSION provides them with the invoices or receipts for the payment made. The Head of Project for Telecommunications will set the date and time for the BIDDER to pick up the invoices and receipts at the address provided in Section 3.1.2 of the BIDDING DOCUMENTS. [↑](#footnote-ref-2)