

**REPUBLIC OF PERU**



# **NATIONAL PORT AUTHORITY (APN)**



## **Consolidated Amended Text (TUO) of Tender Documents**

### **COMPREHENSIVE PROJECTS TENDER FOR THE CONCESSION OF THE GENERAL SAN MARTIN - PISCO PORT TERMINAL**

**May 2009**

The Consolidated Text of the Tender Documents (or "the document") has been prepared by PROINVERSION and is provided only as a reference to the potential investors of the official document written in Spanish and published in PROINVERSION's web site in order to assist them in defining their interest in participating in the Bid for Integral Projects for the Concession General San Martín - Pisco Port Terminal (or GSM PT) (the "transaction"). Should there be any difference with the official version of the Consolidated Text of the Tender Document written in Spanish, the later will prevail.

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## 1. TENDER PURPOSE AND CHARACTERISTICS

### Introduction

The present Tender Documents aim to regulate the Comprehensive Project Tender procedure for granting the General San Martín - Pisco Port Terminal (**or GSM PT**) in concession to the private sector. The Tender Documents' objectives are the following:

- Ensure that the procedure is transparent, simple, objective and fair.
- Promote the participation of the largest possible number of bidders with experience in providing the services required.
- Promote the participation of the largest possible number of investors with the capacity of financing the infrastructure and equipment required to provide the services.
- To define the basic rules the bidder will look at when preparing its Bid.

In this way, basic aspects are established, mainly referring to the rules and terms for the Tender, the concession area, the competition factor, and the services to be provided by the concessionaire, the bidder requirements, among others. As is normal practice in this type of tender, the details, will be developed through circular letters and in the different Concession Contract versions.

### 1.1. Tender Call and Purpose

The State of the Republic of Peru, through the National Port Authority supported by the Private Investment Promotion Agency – PROINVERSION, calls for a Comprehensive Project Tender to grant the General San Martín - Pisco Port Terminal located in the Department of Ica, in concession to the private sector.

The Concessionaire will be responsible for the design, building, financing, conservation and exploitation of the General San Martín - Pisco Port Terminal.

The rehabilitation, modernization and development of General San Martín - Pisco Port Terminal referred to in the present Tender, will have the following general referential characteristics, in accordance with the technical specifications set forth in Exhibit 8 Appendix 2: Minimum requirements for the Port Terminal Works and Equipment and Concession Contract:

According to the type of contract as stipulated in the Concession Scheme, it involves a DBFOT based concession (Design, Build, Finance, Operate and Transfer).

The concession period will be of 30 years including the construction period, as specified by the concession contract and in accordance with Section 10.3 of Article 10 of the National Port System Law.

The Concessionaire must hire workers, who, on the date of the award, are listed in ENAPU SA payroll and working in the General San Martín (Pisco) Port Terminal. According to the list in Exhibit 14 of Tender Documents, the TP Pisco

has presently 39 employees. Exhibit 14 will be updated and forwarded to the awardee within the period stipulated in the concession contract.

At the end of the concession period, the concessioned port infrastructure, including the works, the port facilities and other assets associated with the concession will be transferred to the State of the Republic of Peru in the conditions set by the Concession Contract, who will have the right to directly operate it or hand\* it for administration to the private sector through a new process of promoting private investment, in accordance with applicable law, so that service continuity is assured.

For the execution of works and implementation of port equipment of this concession, parameters and minimum returns that must be met will be defined and will be specified in the present Tender Documents and in the Concession Contract.

In its Technical Bid, the bidder shall submit a project with technology updates and adjustments it deems appropriate, provided that such changes exceed the basic referential characteristics and the service and productivity levels to be observed, as stipulated in the present Tender Documents and in the Concession Contract.

The philosophy of this Concession is based on favouring the accelerated and sustainable development of General San Martin Port Terminal – Pisco. This will require a cooperation scheme of the public sector that permanently supports ongoing concessionaire activities, so as to increase the volume of revenue and improve service quality for the users. A consequence of this philosophy is that bidders may develop, under a DBFOT scheme, the business plans that will provide them with the best results considering the flexibility in the GSM TP development and operation stages. In this scheme, the bidder shall submit to the State of the Republic of Peru, in its Technical Bid, the design, business plan, its design and construction plan and its conservation and exploitation plan and operation indicators that are consistent with such planning, allowing the State to assume a promoting role in the General San Martin - Pisco Terminal Port.

For purposes of preparing the Bid, the existing studies are made available to the bidder. These are submitted as Appendix 2 of Exhibit No. 8 of the present Tender Documents.

The bidder is free to use that information, however, the Bid submitted by the bidder is his sole responsibility, not being able in the future, as dealer or in any other instance, plead or claim damages, compensation or indemnity for any errors, omissions, inaccuracies or failures of any kind, existing in said records and studies.

The services to be provided by the Concessionaire should be rendered to any user requesting them, under the principles of free competition, non-discrimination and equality before the law, neutrality, transfer price ban, separated accounting and free choice.

The Competition shall be conducted in accordance with the provisions of the Tender Documents herein.



## 1.2. Definitions

Any reference made herein to "Section", "Form", "and Appendix" and "Exhibit" should be understood as made to the sections, forms, appendices and Exhibits in these Tender Documents, unless otherwise specified.

The expressions in the singular include where appropriate, the plural and vice versa. All time references should be understood as being fixed in local time in Peru.

The terms in capital letters in the present Tender Documents, and those that are not specifically defined, relate to Applicable Laws or to the meaning given to them in the use of the activities related to the project or to terms that are currently used in upper case.

In the present Tender Documents, the following terms shall have the meanings set out below, and the definition in the concession contract will prevail, in case of discrepancy:

- 1.2.1 Non-Disclosure Agreement:** This is the agreement entered into by the Authorized Agents or Legal Representative before using the Data Room. The Non-Disclosure Agreement text appears in Exhibit No. 1 hereto.
- 1.2.2 Concession Award:** This is the statement to be made by the Committee announcing the succesful Bidder of the Concession subject of this Tender.
- 1.2.3 Awardee:** This is the Short-listed Bidder favoured with the Award.
- 1.2.4 Port Administrator:** For the purposes of these Tender Documents, the Port Administrator is the corporation responsible for the operation of the port infrastructure and the delivery of port services, in one or more Port Terminals, regardless of the name or title under which such exploitation is carried out. To this effect, when the Tender Documents herein refer to the Administration of a Port Terminal, the term shall be understood as the exploitation of such infrastructure and the delivery of port services therein.
- 1.2.5 Private Investment Promotion Agency - PROINVERSION:** This is the organization of the State of the Republic of Peru referred to in Supreme Decree No. 027-2002- PCM, as amended by Supreme Decree No. 095-2003-EF, responsible for the National Port Authority for the execution and development of this process.
- 1.2.6 Authorized Agents:** These are the individuals appointed as such by the Bidder for the purposes of this Tender.
- 1.2.7 Multi-purpose Berth:** This applies to the GSM TP area that will enclose the port infrastructure for the mooring of vessels and for the shipping and unloading of goods in general. For the purposes of these Tender Documents, it will also include the corresponding storage area.
- 1.2.8 Container Berth:** This applies to the GSM TP area that will include the port infrastructure that enables docking of container ships for loading and unloading of containers. For the purposes of these Tender Documents, it will also include the corresponding support area.

- 1.2.9 Concession Area:** These are the Maritime and land areas described in Exhibit 9, which shall be delivered to the Concessionaire for the purposes of this Concession.
- 1.2.10 Government Authorities:** This is any government or national, regional, departmental, provincial or municipal authority, or any of its regulatory or administrative offices or agencies, or any entity or body of the State of the Republic of Peru which, pursuant to law, exercises executive, legislative or judicial powers, or belongs to any of the preceding governments, authorities or institutions, with competence over the individuals, corporations or matters hereof.
- 1.2.11 National Port Authority (APN):** This is the technical entity created by the National Port System Law - Law No. 27943 responsible for the National Port System, attached to the Ministry of Transport and Communications, with legal representation in domestic public law, equity capital, and administrative, functional, technical, economic and financial autonomy, and regulatory power by delegation of the Ministry of Transport and Communications. It is in charge of the national private investment promotion process on port infrastructure and facilities owned by the State. Its Organization, Rules and Functions have been approved by Supreme Decree No. 034-2004- MTC.
- 1.2.12 Tender Documents:** This is the document herein, which contains administrative aspects, procedures and conditions, including its Exhibits, Forms, Appendixes and Circular Letters issued by the Committee, establishing the terms that shall govern the Tender and the Concession.
- 1.2.13 Circular Letters:** These are all guidelines issued in writing by the Committee, whether for specific or general purposes, aiming at complementing, clarifying, interpreting or modifying the contents hereof, other Circular Letter, or answering inquiries made by parties authorized to do so pursuant to the Tender Documents. These Circular Letters shall be an integral part hereto.
- 1.2.14 Committee:** This is the Committee of PROINVERSION for Port Infrastructure Projects – PRO - PUERTOS, constituted through Supreme Resolution No. 444-2001- EF and responsible for the execution and development of this Tender, as stipulated in the Agreement. The appointment of the Committee's permanent members was ratified by Supreme Resolution No. 065-2006-EF.
- 1.2.15 Evaluation Committies:** These are the committees appointed by the Committee for the purpose of evaluating the documentation submitted in Envelopes No. 1 and 2, pursuant to the provisions herein.
- 1.2.16 Grantor:** This is the State of the Republic of Peru, represented by the Ministry of Transport and Communications (MTC). For all purposes of the Tender, the Grantor, represented by MTC, shall act through the APN, who in accordance with the provisions of Article 24 of the National Port System Law (hereinafter "LSPN") has the power to perform, with the private sector, the binding commitments established in LSPN.
- 1.2.17 Concession:** This is the public law juridical relationship established between the Grantor and the Concessionaire as from subscription of the Contract through which the Grantor grants the Concessionaire the right to design, build,

maintain and generate profits from the Concession Assets during the concession term.

**1.2.18 Concessionaire:** This is the corporation constituted in Peru by the Awardee that will enter into the Concession Contract with the Grantor.

**1.2.19 Tender:** This is the Comprehensive Project Tender process regulated by the Tender Documents for granting the General San Martin - Pisco Port Terminal in concession.

**1.2.20 Conservation:** This is the set of regular activities performed with the intention of preserving, recovering or increasing the life span of concession assets, so that the Concessionaire may comply with the levels of service in accordance with the Tender Contract. Conservation includes maintenance, as stipulated in the Tender Documents.

**1.2.21 Consortium:** This is the grouping of two or more corporations which lacks corporate status independently from its members, and that has been established with the aim of participating in this Tender as Bidder.

**1.2.22 Building:** This comprises the necessary activities implementation and commissioning of the investments made in General San Martin - Pisco Port Terminal Concession, in accordance with the Concession Contract.

**1.2.23 Concession Agreement or Contract:** This is the Concession Contract and Exhibits included, which will rule the relations between the Concessionaire and the Grantor concerning the Concession of General San Martin - Pisco Port Terminal.

**1.2.24 Effective Control:** An individual or corporation is under the effective control of another individual or corporation as foreseen in Resolution CONASEV N° 005-2006-EF/94.10 or a modifying or substituting decree.

**1.2.25 Call:** This is the announcement by which those interested in participating in the Tender are invited to bid pursuant to the Tender Documents herein.

**1.2.26 Schedule:** This is the time frame for the activities that will take place during the present Tender Process and are shown in Exhibit N° 12.

**1.2.27 DBFOT:** (*Design, Build, Finance, Operate and Transfer*). This is an arrangement where by the Concessionaire can design, build, finance, control, operate and exploit the General San Martin - Pisco Port Terminal and has to transfer the Concession assets to the Grantor at the end of the Concession Term.

**1.2.28 Sworn Statement:** This is a written statement submitted by the Bidder in which he declares or makes a commitment pursuant to Section 5.1.

**1.2.29 Defect or non-substantive error:** This refers to any error in which the Bidder may incur when presenting the document submitted in Envelopes No. 1 and No. 2 which does not affect the validity of its Bid.

**1.2.30 Participation Fee:** This is the right the Bidder acquires to participate in the Tender, which is obtained by paying the amount of one thousand and 00/100

dollars (US\$ 1,000.00), including the value added tax - VAT. The payment of the Participation Fee is not reimbursable.

- 1.2.31 Days:** These are the working days, that is, not Saturday, Sunday or non-working holidays in the city of Lima. The days in which the banks in the city of Lima are not obliged to open to the public by provision of the Governmental Authority, are also considered holidays.
- 1.2.32 Dollar or American Dollar or US\$:** This is the legal currency of the United States of America.
- 1.2.33 Affiliated company:** A company will be considered affiliated to another company when the Effective Control of said companies is in the hands of the same Holding Company.
- 1.2.34 Holding Company:** This is the company that has the Effective Control of one or several companies. The company that has effective control of a Parent Company and so on, is also considered in this definition.
- 1.2.35 Subsidiary Company:** This is a company that is under the Effective Control of the Holding Company.
- 1.2.36 Related Company:** This is any Afiliated, Subsidiary or Holding.
- 1.2.37 Banking Companies:** These are companies defined as such by Law N° 26702, General Law for the Financial System and Insurance System and Organic Law of the Banking and Insurance Superintendence, listed in Exhibit N°2, Appendix2.
- 1.2.38 International Financial Entity:** This is a first class international financial entity acknowledged in Peru, and included in Exhibit No. 2, Appendix 1.
- 1.2.39 Port Equipment:** For the purposes of the Tender Documents herein, these are the assets and installations, whether mobile, fixed or floating, assigned to provide services to the vessel and cargo.
- 1.2.40 Existing Studies:** These are the technical character studies and reports made by or for several entities of the State of the Republic of Peru. These studies will be available for bidders in the Data Room, and they can be used to prepare the Technical and Economic Bids. The existing Studies are referential so their use is the Bidder's exclusive responsibility.
- 1.2.41 Competition Factor:** This is the variable that defines the Tender winner, pursuant to Section 7.2 of the Tender Documents.
- 1.2.42 Closing Date:** This is the date, place and time that will be communicated by the Committee through Circular Letter, on which the actions established in Section 10.1 of the Tender Documents will take place.
- 1.2.43 Additional Investment Execution Bond:** This is the stand-by Letter of Credit or banking bail submitted by the Concessionaire to ensure compliance with its contractual obligation of executing the A I Works up to the amount of the Additional Investments offered, according to specimen enclosed as Form No. 2 of Exhibit No. 2.

- 1.2.44 Concession Contract Performance Bond:** This is the stand-by Letter of Credit or banking bail submitted by the Concessionaire to ensure compliance with all the contract obligations including building, operation and maintenance of Works and Port Equipment as well as the penalties established in the Concession Contract, with exception of the obligations linked to the execution of the A I works, pursuant to specimen enclosed as Form No. 1 to Exhibit No. 2.
- 1.2.45 Bid Validity, Effectiveness and Seriousness Bond:** This is the stand-by Letter of Credit or banking bail submitted by the short-listed Bidder in favor of PROINVERSION to ensure the validity, effectiveness and seriousness of its Bids, pursuant to specimen enclosed as Form No. 3 of Exhibit No. 5.
- 1.2.46 Value Added Tax:** This is the General Sales Tax (or Value Added Tax) referred to by the Supreme Decree N° 055-99-EF, Consolidated Amended Text of the General Sales Tax Law and Selective Consumption Tax, or a regulation replacing it, as well as Municipal Promotion Tax referred to by Supreme Decree N° 156-2004.EF, Consolidated Amended Text of the Municipal System of Taxation, or regulation replacing them.
- 1.2.47 Standard Tariff Index:** This is the Mathematical expression that allows one to add up the components of the economic Bid of each short-listed bidder, pursuant to Appendix 2 of Exhibit 9.
- 1.2.48 Existing Infrastructure:** This is the existing Port Infrastructure in GSM PT at the time of entering into the Concession Contract.
- 1.2.49 Port Infrastructure:** These are the Works and Port Equipment built or located in the Ports to facilitate modal transport and exchange.
- 1.2.50 Monthly Gross Income:** This is the result of deducting the IGV tax from the total gross income obtained by the CONCESSIONAIRE, directly or through their companies linked to the delivery of services in GSM PT. The amounts obtained by the Concessionaire as a refund for payment of public services referred to in Section .... of the Contract, or income received by any of the related companies for mooring or towing on own account, are not considered as income.
- 1.2.51 Additional Investment (IA):** This is the amount offered by the short-listed Bidder in its Economic Bid and that will be assigned to the Works established in Appendix 1 of Exhibit 9. It is the Bidders' responsibility to determine the investments to be made and the instance of its execution, which should be clearly defined in the corresponding technical dossiers. The amount of the Additional Investment mentioned in the previous paragraph or the remainder of it, will be updated according to Section .... of the Concession Contract.
- 1.2.52 Applicable Laws:** These are the laws included in Section 1.3 of the Tender Documents herein and any others which, according to the juridical order of the Republic of Peru, are applicable.
- 1.2.53 LIBOR (London Interbank Offered Rate):** This is the six (6) months rate informed by Reuters at the time of closure in London.
- 1.2.54 Notices:** These are the documents described in Section 2.1.5.

- 1.2.55 Nuevo Sol:** This is Peru's legal currency.
- 1.2.56 Works:** This is the result of the construction works to be executed during the Concession Term, as stipulated in the Concession Contract.
- 1.2.57 Minimum Participation:** This is the voting stock kept by the Strategic Partner in the Concessionaire equity capital, during Concession Contract Term, pursuant to the conditions of the Tender Documents herein.
- 1.2.58 Concession Term:** This is the term between the Closing Date and the termination of the Concession.
- 1.2.59 Bidder:** This is the legal entity or Consortium participating in the Tender that has acquired the right to participate and is subject to the tender documents herein.
- 1.2.60 Short-listed Bidder:** This is the Bidder whose documentation, duly submitted in Envelope No. 1, has fulfilled the requirement set forth herein and is therefore expressly accepted by the Committee.
- 1.2.61 Price:** These are the amount charges by the Concessionaire for the provision of Special Services. The price will not be subject to regulation.
- 1.2.62 Bid:** This is the documentation to be submitted by the Short-listed Bidders, as stipulated in the Tender documents, either the Economic or the Technical Bids.
- 1.2.63 Economic Bid:** This is the Economic Bid to be submitted by the short-listed Bidder in Envelope No. 3 pursuant to Section 7.2 and Exhibit No. 6.
- 1.2.64 Technical Bid:** This refers to Document 4, submitted by the short-listed Bidder in Envelope No. 2 pursuant to Section 7.1.
- 1.2.65 Draft Contract:** This is the non-final Concession Contract model to be delivered to the Bidders for their suggestions. None of the terms and/or opinions therein shall bind APN, PROINVERSION, to the Committee and/or Grantor.
- 1.2.66 Regulator:** This is the Supervising Agency on Investment in Transport for Public Use, OSITRAN, pursuant to Law No. 26917 and its regulatory, complementary and modifying standards and provisions (autonomous regulations, general guidelines and particular regulations, referred to in Article 24 ° of the regulations adopted by the Supreme Decree No. 044-2006-PCM) as well as to administrative acts issued, which need to be complied with by the Concessionaire.
- 1.2.67 Legal Representative:** This is the individual residing in Lima or Callao (Peru) and appointed as such by the Bidder for the purposes of this Tender.
- 1.2.68 Short-listing Requirements:** These are the requirements mentioned in section 5 of the Tender Documents herein which include, among others, those regarding the technical, economic and legal solvency requisites that must be met by the Bidders to be declared Short-listed Bidder and to be able to continue to participate in the Tender.

**1.2.69 Remuneration:** This is the economic consideration that the Concessionaire is obliged to periodically pay the Grantor, during the effective period of the Concession, in the terms set forth by the Concession Contract.

**1.2.70 Data Room:** This is an area at PROINVERSION's offices located on floor 7 in the building at Av. Paseo de la Republica 3361, San Isidro, Lima 27, Peru, which will contain the Existing Studies related to GSM PT and which shall be available to the Bidders' for revision.

**1.2.71 Services:** These are all the services that the Concessionaire will supply in or through the area of Concession, either directly or by means of its related companies.

**1.2.72 Special Services:** These are the services other than the Standard Services that the Concessionaire may supply the users, of which the terms and conditions are freely agreed by the parties, and for which it will have the right to charge a Price. Said services will be supplied while respecting the principles established in Article 14.3 of LSPN, as corresponds. This shall not prejudice the users' right to alternatively request the provision of Standard Services.

**1.2.73 Standard Services:** These are the services the Concessionaire will supply to the ship and the cargo, for which it will charge, at most, the Maximum Tariff pursuant to the Tender Documents and the Contract. These services will be supplied on a mandatory basis to every user requiring them, complying with Service and Productivity Levels, pursuant to the Contract.

Standard Services are itemized as:

- Services to the ship: comprising the use of the Terminal berths of GSM PT.
- Services to cargo: comprising the unloading and/or embarking services of any kind of freight or merchandise by using the Terminal equipment and infrastructure.

**1.2.74 Envelope(s):** This individually or collectively refers to Envelopes No. 1, 2 and 3.

**1.2.75 Envelope No. 1:** This is the envelope containing the documents mentioned in Section 5 herein, to be submitted by the Bidder.

**1.2.76 Envelope No. 2:** This is the envelope containing the documents mentioned in Section 7.1 herein, to be submitted by the Short-listed Bidder.

**1.2.77 Envelope No. 3:** This is the envelope containing the Economic Bid to be submitted by the Short-listed Bidder, pursuant to the provisions of Section 7.2.

**1.2.78 Strategic Partner:** In the case of a Consortium, this is the Bidder, or one of its members, who independently has complied with the Operational Experience short-listing Requirements and who is awarded the Bid and who shall demonstrate upon the incorporation of the Concessionaire, the ownership of the Minimum Participation. There must be one Strategic Partner during the effective period of the Concession.

**1.2.79 Tariff (s):** This is the economic compensation charged by the Concessionaire for the delivery of Standard Services, as stipulated in the Concession Contract.

Tariffs may be lower than the Maximum Tariffs, in accordance with the Concessionaire's marketing policies.

**1.2.80 Maximum Tariff(s):** For the purposes of the Tender Documents herein, it is the amount expressed in dollars referred to in Exhibit 13 that the Concessionaire may charge for Standard Services supply, as stipulated in the Tender Documents.

**1.2.81 General San Martin - Pisco Port Terminal or GSM PT:** For the effects of the Tender Documents herein, it includes the existing infrastructure and Works to be integrated, and constitutes the Port infrastructure that shall be granted in Concession.

**1.2.82 Transshipment:** For the effects of the Tender Documents herein, it refers to the transit cargo, declared as such, unloaded from a ship and loaded into another, or to the same one, in a different trip, for withdrawal from terminal.

### **1.3. Tender Legal Framework**

**1.3.1** By Supreme Decree No. 059-96-PCM dated December 26, 1996, the Consolidated Amended Text of the legal regulations ruling the granting in concession of public infrastructure and utility works to the private sector (Concession TUO) were approved.

**1.3.2** By Supreme Decree No. 060-96-PCM dated December 27, 1996, the Regulations of the Consolidated Amended Text of the legal regulations governing the granting in concession of public infrastructure and utility works to the private sector were enacted.

**1.3.3** Dated March 1, 2003, Law No. 27943, National Port System Law (LSPN), was published. By Supreme Decree No. 003-2004-MTC, dated February 4, 2004, this Law's Regulations were approved. These regulations rule activities and services at terminals, infrastructure and facilities comprising the National Port System (SPN).

**1.3.4** LSPN creates APN as Public Decentralized Organism in charge of SPN.

**1.3.5** LSPN establishes that APN is incharged of promoting private sector participation preferably through investment in port infrastructure and equipment development. To do so, it is supported by PROINVERSION. In this regard, LSPN regulations determine that the promotion of private investment in national port infrastructure and equipment corresponds to APN. To that effect, they shall enter into cooperation agreements with PROINVERSION.

**1.3.6** According to LSPN, by Supreme Decree No. 006-2005-MTC, published on March 10, 2005, the National Port Development Plan (PNDP) was approved. According to LSPN every investments on public port infrastructure shall be previously be considered in the document herein.

**1.3.7** Dated March 10, 2005, Cooperation Framework Agreement (the AGREEMENT) was signed. It establishes that APN charges PROINVERSION with the development and execution of private investment promotion processes on port infrastructure and facilities owned by the State, which will be carried out according to promotion plans previously approved by APN and proposed by



PROINVERSION, made up by the National Port Development Plant (PNDP) guidelines prepared by APN.

- 1.3.8** PROINVERSION's Board of Directors, in its meeting of June 30, 2005, accepted to take under its charge the promotion of private investments in port infrastructure and facilities owned by the State within the scope of Law No. 27943, National Port System Law, and Urgency Decree No. 054-2001, and under the mechanisms and procedures of the Single Text approved by Supreme Decree No. 059-96-PCM and Legislative Decree No. 674, its regulatory and complementary regulations.
- 1.3.9** In said meeting, the development and execution of the process were trusted to PROINVERSION's Committee on Public Infrastructure and Utilities Projects.
- 1.3.10** Supreme Resolution No. 098-2005-EF dated August 10, 2005 ratified PROINVERSION's Board of Directors Agreement mentioned in the preceding section.
- 1.3.11** Pursuant to Clauses 3.1.2 and 3.1.3 of the Cooperation Agreement, through Official Letters No. 252-2005-APN/PD and No. 392-2005-APN/PD, APN requested PROINVERSION to determine the economic-financial feasibility and to prepare the Promotion Plans of the following projects, among others: a) General San Martín - Pisco Port Terminal, b) Chimbote Port Terminal, c) Salaverry Port Terminal, d) General San Martín-Pisco Port Terminal, and e) Ilo Port Terminal.
- 1.3.12** Supreme Decree No. 011-2008-MTC amended the National Port Development Plan concerning modernization and development of the General San Martín - Pisco, General San Martín (Pisco), Ilo, Pucallpa and Iquitos Port Terminals.
- 1.3.13** Dated March 25, 2008, APN and PROINVERSION's Board of Directors approved the General San Martín - Pisco Port Terminal Promotion Plan.
- 1.3.14** Supreme Resolution No. 041-2008-EF ratified PROINVERSION's Board of Directors agreement approving the General San Martín - Pisco Port Terminal Promotion Plan.
- 1.3.15** By agreement dated April 9, 2008, APN's Board of Directors issued a favourable opinion concerning the Tender Documents herein.
- 1.3.16** PROINVERSION's Board of Directors agreement dated April 10, 2008, approved the Tender Documents herein.
- 1.3.17** On May 13, 2008, the Legislative Decree No. 1012 was issued, which approved the Framework Law on Public-Private Partnerships for the generation of productive employment and sets standards for streamlining the process of promoting private investment. Regulation of this standard was approved by Supreme Decree No. 146-2008-EF.
- 1.3.18** By means of Emergency Decree No. 047-2008 published on December 18, 2008, the promotion of private investment in General San Martín-Pisco Port Terminal was declared of national necessity and of priority execution by ProInversión, among other projects.

**1.3.19** By means of Decree Law N° 018-2009-MTC, the National Port Development Plan was modified, in the part related to modernization and development of General San Martín - Pisco Port Terminal.

**1.3.20** It is considered, without submitting proof against it, that any Bidder, Short-listed Bidder or Person who, directly or indirectly, participates in the Tender knows the contents of the Tender Documents herein and the Applicable Laws.

**1.3.21** The Tender process referred to in the Tender Documents herein will be carried out pursuant to provisions in the Tender Documents and what is not set forth in them, the National Port System Law and its Regulations will be applicable in the process hereto, as well as the Consolidated Amended Text (TUO), and its complementary, regulatory and amending norms.

**1.3.22** By virtue of COPRI Agreement No. 355-4-2001, the regulations contained in the Consolidated Amended Text (TUO) of the State Hiring and Procurement Law approved by Supreme Decree No. 083-2004-PMC<sup>1</sup> are not to be applied in the Tender herein.

**1.3.23** Sub-Section L, Article 22 of Law No. 27785, Law of the National Control System and General Comptroller's Office, the General Comptroller's Office power about previously informing on operations, guarantees, bails and other bonds granted by the State of the Republic of Peru is established, including agreement projects which may, in any way, compromise its credit or financial capacity, whether by negotiations in the country or abroad.

**1.4. Execution of the Assignment entrusted to PROINVERSION by APN and and PROINVERSION powers**

According to the Agreement, APN is authorized, among others, to conduct private investment promotion processes through approval of the respective Promotion Plans, request PROINVERSION to determine the process economic-financial feasibility, to issue an opinion concerning bid and/or tender document contents and of contracts to be entered into with the private sector and to enter into contractual commitments with the private sector deriving from the referred processes.

Regarding PROINVERSION, the Agreement establishes the entity is in charge, among others, of executing and developing the Port Terminal promotion processes which promotion plans are approved by APN, and that it shall undertake any necessary action to carry out the processes up to the awarding of port infrastructure and facilities, owned by the State, to the private sector under any of the private participation modalities, and according to the conditions set forth in the promotion plans approved by APN and based upon the competences Applicable Laws assign it.

**1.4.1** In that regard, within the Agreement scope and pursuant to competences assigned to the Committee by the concessions TUO regulations and other Applicable Laws, the Committee is authorized, among other aspects, to promote, program, regulate, modify, direct, supervise, control, extend the term pointed out in these Tender Documents, suspend or cancel the Tender, pursuant to Section 9.4 and issuing any pertinent provision or which are

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<sup>1</sup> Modificado mediante Circular N° 6

deemed necessary for the execution of the Comprehensive Project Tender hereto for granting the General San Martín - Pisco Port Terminal in concession to the private sector. It can deal with anything that is not foreseen in the Tender Documents or the Applicable Laws and, generally, exercises all the other attributions assigned by the aforementioned legal framework.

**1.4.2** Any amendment to the Tender Documents herein shall be communicated through Circular Letters to the Bidders and Short-listed Bidders, as stipulated in Section 3.1.3.1. Any changes implying substantial amendments of the Tender Documents will require APN's favorable opinion.

**1.4.3** The sole submission of the information foreseen in the Tender Documents and/or requested by the Committee for purposes of Short-listing by a Bidder does not oblige the Committee to declare it as the Short-listed Bidder. Neither does the submission of a Bid oblige the Committee to accept it. The sole submission by the Bidder of the necessary documents to become short-listed implies full knowledge, acceptance and unconditional submission by the Bidder, the Short-listed Bidder or the Successful Bidder, as corresponds, of every and each one of the procedures, obligations, conditions and rules— without exception—set forth in the Tender Documents, the same which are juridically binding for them, as well as their irrevocable and unconditional waive to file any action, claim, demand or compensation request against the State of the Republic of Peru, APN, PROINVERSION, the Committee, the advisers or any other entity, organ or official of the Government of the State of the Republic of Peru, before any jurisdiction or authority for the exercise of the power foreseen in these Tender Documents.

**1.4.4** PROINVERSION's Committee decisions in connection with the Tender hereto are definitive, will not give place to indemnity of any kind and are not subject to challenge in the administrative or judicial field, unless expressly set forth in the Tender Documents hereto. Consequently, by simply participating in the Tender, the people comprised under the scope of these Tender Documents waive to file any challenging recourse against said decisions.

## **1.5. Concession Contract**

**1.5.1** Draft Contract will be made available to Bidders pursuant to the Schedule in Exhibit No. 12 of the Tender Documents herein.

**1.5.2** The Bidders may submit suggestions to Draft Contract within the terms mentioned in Exhibit No. 12 of the Tender Documents herein, with the same formalities set forth in Section 3.1.1 and 3.1.2. The Committee will not be obliged to gather the suggestions the Bidders or Short-listed Bidders propose to Draft Contract.

## **1.6. Tender Schedule**

Schedule activity dates are included in Exhibit No. 12.

The Committee may change the Schedule dates at any time which shall be communicated to the interested parties through Circular Letter.

Otherwise expressly set forth, the maximum term of the day is due at 17.30 hours of Lima, Peru.

## **1.7. Interpretation and references**

**1.7.1** The terms and expressions used in the Tender Documents herein shall be construed in their natural and obvious sense, unless another meaning has been specifically assigned to them in the document hereto or its exhibits, or if it is inferred from its contents, in any case, according to current regulations of the State of the Republic of Peru. It will be considered, without admitting proof in contrary, that any participant in this process knows the laws and regulations current in the State of the Republic of Peru which are applicable in this case.

**1.7.2** The titles of chapters, sections, forms and exhibits of the Tender Documents herein are exclusively used as indication and shall not affect the contents' interpretation.

**1.7.3** In case of contradiction between what is stipulated in these Tender Documents and in any of its exhibits, what is stipulated in the Tender Documents shall prevail unless it has the exhibits expressly, clearly, and unequivocally stating that their contents amend what is stipulated in the Tender Documents. In every case, "amendments" and Circular Letters contents referred to in the Tender Documents herein prevail over Tender Documents provisions even if not expressly stated.

## **1.8. Technical background made available to the Bidders**

Different technical background and studies performed by the State of the Republic of Peru shall be made available to Bidders in the Data Room referred to in Section 3.2 of the Tender Documents herein.

The Existing Studies making up the technical background made available to Bidders are shown in Appendix No. 1 of Exhibit No. 8 in the Tender Documents.

## **2. AUTHORIZED AGENTS AND LEGAL REPRESENTATIVE**

### **2.1 Authorized Agents**

#### **2.1.1 Authorized Agent Appointment**

Each Bidder shall appoint up to two individuals domiciled in the city of Lima as their Authorized Agents for the purposes of the Tender herein.

#### **2.1.2 Appointment Letter**

The Appointment of Authorized Agents shall be presented by a simple letter signed by the Bidder expressly stipulating their powers and including the corresponding information, in accordance with the Points 2.1.3 and 2.1.4.

#### **2.1.3 Granted Powers**

The duly appointed Authorized Agents may act individually and not necessarily jointly and they will be the only people authorized by the Bidder to:

- I. Represent the Bidder before PROINVERSION, the Committee and the advisors on every affair other than those which are exclusive jurisdiction of the Legal Representative, pursuant to Point 2.2.1;

- II. Reply, on behalf of the Bidder and with binding effect for their power grantor, all the questions the Committee may formulate.
- III. Receive judicial and extrajudicial notices; and
- IV. Subscribe, with a binding effect for the Bidder, the Confidentiality Agreement mentioned in Point 3.2.2.

#### **2.1.4 Information**

The information provided by the Bidder related to each one of the Authorized Agents shall be the following: name, identity document, common domicile in the city of Lima, telephone numbers, fax numbers and e-mail address.

#### **2.1.5 Notices**

Every extrajudicial notification addressed to the Bidder may be sent to any of the Authorized Agents through fax and/or e-mail, with a complete transmission confirmation issued by the respective communication addressee through another fax and/or e-mail, in which case it will be understood as received on the date in which the sender completed the transmission; or through a letter delivered by courier or notary, in which case it will be understood as received on the delivery date, and any notice made in the common address pointed out by the Authorized Agents referred in Point 2.1.4 is understood as well done and effective.

#### **2.1.6 Substitution**

The Bidder, with a previous written communication addressed to the Committee, that meets all the requirements mentioned in Point 2.1.2, may substitute any of the Authorized Agents at any time, or he can change domicile, telephone numbers or fax numbers identified by the Authorized Agents, taking into consideration that both the new common address and the telephone and fax numbers, and e-mail shall be within of the city of Lima. The appointment of the Authorized Agents or any variation of the domicile, telephone or fax, as appropriate, take effect from the date that the respective communication sent by the Bidder is received by the Committee.

### **2.2 Legal Representative**

#### **2.2.1 Appointment and Powers**

The documents submitted in Envelopes No. 1, No. 2 and No. 3 and, generally, every document submitted by any Bidder in relation to the Tender, shall be signed by the Legal Representative of the person who submits said documents and he/she shall be duly authorized to that effect, according to the Point hereto.

The Bidder may only appoint up to two common Legal Representatives to represent him jointly or individually, in accordance with what is stipulated in this Point. The Legal Representatives domicile, telephone number, fax number and e-mail address, as well as their substitution, are subject to what is stipulated in Points 2.1.4, 2.1.5 and 2.1.6.

The powers granted to the Legal Representatives shall be as broad enough **to have the established powers in Point 2.1.3**, as well as to be able to sign,

***jointly and individually***, on behalf of their power grantor any documents that the Term Documents require, including specially, the power to begin the challenge procedures foreseen in the Term Documents, to sign the Bid Submission Letters and to sign the Contract.

In case the Bidder is a Consortium, the appointment shall be made by the legal representatives of the Consortium members who have the authorization to do so. These authorizations shall be accredited submitting a ***simple*** copy of the power of attorney or any similar document.

## **2.2.2 Power of Attorney Submission**

The power of attorney by which the Legal Representatives are appointed shall contain the corresponding representation powers, as well as the information referred in Point 2.1.4 of the Term Documents. ***Plus, the information established in Point 2.1.4 can also be submitted through a simple letter with the authenticated signature of the Bidder's Legal representative.*** It will be submitted along with the Credentials in the Envelope No 1.

The appointment of a new Legal Representative will only take effect from the date that the Committee receives the documents that duly certify said appointment.

## **2.2.3 Place for Granting the Power of Attorney**

The powers granted in Peru shall be registered through public deed or by a notary-certified copy of the record in which the corresponding corporation body grants them.

The power granted abroad appointing a Legal Representative shall be:

- I. Duly submitted and legalized before the competent Peruvian consulate and a simple Spanish translation shall be attached in case it was issued in different language;
- II. Countersigned before the Ministry of Foreign Affairs of Peru;

## **2.2.4 Registration in the Public Record Office**

In no case it will be demanded that, when submitted, the Legal Representative's powers are registered in the Public Registry. However, they shall be registered in the corresponding Public Record Office before the Closing Date in case his representative becomes a Successful Bidder.

# **3. INQUIRIES AND INFORMATION**

## **3.1 Inquiries about the Term Documents and Suggestions to the Contract Project**

### **3.1.1. Term for inquiries and suggestions**

From the indicated dates in Exhibit No. 12 to the dates mentioned in the same Exhibit, the Bidders and Pre-qualified Bidders, through their Authorized Agents

and/or Legal Representatives, as appropriate, may make any inquiries about the Term Documents and suggestions to the Draft Contract.

### 3.1.2. Formality of inquiries and suggestions

The inquiries and suggestions should be written in Spanish to:

**Comité de PROINVERSIÓN en Proyectos de Infraestructura Portuaria – PRO PUERTOS**

**Subject: Jefatura del Proyecto Puertos**

**puertos@proinversion.gob.pe**

Av. Paseo de la República 3361, Piso 8, San Isidro - Lima, Perú

Telephones: [511] 612-1200 extensions: 1245

Fax [511] 421-2616

### 3.1.3. Circular Letters

**3.1.3.1** The Committee answers to the inquiries made shall be communicated through Circular Letter to all the Bidders or Short-listed Bidders, as appropriate, without telling who made the inquiry.

The Committee is not obliged to reply the inquiries on the Term Documents that do not fulfill the requirements for the Tender.

If the Committee, at any time, considers it necessary to clarify, amend or complete the Tender Documents, it shall issue a Circular Letter to that effect. Said Circular Letter shall be addressed at the Authorized Agents and sent to the common domicile pointed out in Point 2.1.4 of the Tender Documents herein. All the issued Circular Letters shall be available for revision in the Data Room.

After the deadline **to submit the Envelope No. 1**, the Circular Letters will be only notified to the **Bidders that submitted said envelope; after the date of communicating the short-listing results**, they will be notified to the Short-listed Bidders and after the submission of Envelopes No. 2 and 3, only to the **Short-listed Bidders that submitted Bids; without detriment to its publication on the PROINVERSION web page**

**3.1.3.2** The Circular Letters issued by the Committee will make integral part of the Tender Documents hereto and they are, hence, juridically binding for all the Bidders and Short-listed Bidders.

## 3.2 Access to Information – Data Room

### 3.2.1. Access to Data Room

**3.2.1.1** *The Bidders who have paid the participation fee and have submitted the Confidentiality Agreement duly signed, shall have access to the information related to the General San Martín – Pisco Port Terminal for any consultation in the Data Room up to one day before the Submission of Envelopes No. 2 and No. 3 established in the Tender Schedule.*

**3.2.1.2** The use of the Data Room shall be coordinated with the Data Room management stipulated in the rules set forth for its operation contained in the “Data Room User Guide”, Exhibit No. 8.

**3.2.1.3** The Bidders, through written communication sent to the Committee, ***in accordance with Point 3.1.2***, by any of their Authorized Agents or the Legal Representative shall include the name of the people who will have access to the Data Room. ***The Data Room management*** will opportunistically coordinate the effective organization of visits to the Data Room.

**3.2.1.4** The Bidders who have paid the participation fee at the Short-listing Stage will have Access to the Data Room until the date indicated in the Schedule.

### **3.2.2. Confidentiality Agreement**

***The Authorized Agent or the Legal Representative*** shall sign the Confidentiality Agreement included in Exhibit No. 1 ***so that the Bidder has*** access to the Data Room.

### **3.2.3. Contents of the Information in the Data Room**

The list of documents is attached to the Appendix No. 2 in Exhibit No. 8.

If it is the case, the inclusion of any document to the Data Room shall be communicated through Circular Letter.

### **3.3. Request of interviews and visits to the TP GSM**

Every Bidder, through the Authorized Agents and/or Legal Representatives, as appropriate, shall have the right to interview officials from the Committee ***and the NPA (National Port Authority) and to make visits to the TP GSM***, up to the day before the last day ***established*** to submit the Envelope No. 1, and in case of the Short-listed Bidders, they may do so until the submission date of Envelopes No. 2 and 3, with a previous coordination with the Committee, according to Point 3.1.2 for the organization of such interviews and visits.

### **3.4. Liability Limitation**

#### **3.4.1. Bidder independent decision**

All Bidders shall base their decision of submitting or not their Technical and Economic Bid in their own research, examination, inspection, visits, interviews, analyses and conclusions on available information and on which they have specifically sought as their own entire risk.

#### **3.4.2. Liability Limitation**

The State of the Republic of Peru or any agency, NPA, PROINVERSION, the Committee, or the advisors are not liable, do not guarantee either expressly or implicitly, the totality, integrity, reliability or truthfulness of oral or written information supplied to the effect or within the Tender. Consequently, none of the persons participating in the Tender may attribute any responsibility to any of the aforementioned parties or their representatives, agents or dependents for the use that can be given to such information or for any inaccuracy,



insufficiency, default, outdated or for any other reason not expressly considered in the Point hereto.

### **3.4.3. Liability Limitation Scopes**

The limitation referred to in Section 3.4.2 reaches, in the broadest way possible, every information related to the Tender that is effectively known, unknown information and information that should have been known sometimes including the likely errors or omissions therein contained, by the State of the Republic of Peru or any other agency, organ or official pertaining to it or by NPA, PROINVERSION, the Committee or its advisors. Likewise, said liability limitation reaches every information, be it supplied or not or prepared directly or indirectly by any of the aforementioned parties.

The liability limitation also reaches every information available in the Data Room as well as that supplied through Circular Letter or any other kind of communication, which is acquired during visits to facilities connected to the Tender and those mentioned in the Tender Documents herein, including all its Forms and Exhibits.

### **3.4.4. Acceptance by the Short-listing Bidder of stipulations in Points 3.4**

The sole submission of short-listing documents shall constitute, with no need of any further act, acceptance of stipulations in Point 3.4 by the Bidder and, correspondingly, the Concessionaire, as well as its irrevocable and unconditional waiving, in the broadest way possible that Applicable Laws so permit, the right to file any action, reconvention, exception, claim, demand or indemnity request against the State of the Republic of Peru or any agency, organ or official, or PROINVERSION, NPA, the Committee or its advisers.

## **4. SUBMISSION OF ENVELOPES No. 1, No. 2 and No. 3**

### **4.2. Submission**

Any document added to those pointed out as required in the Envelopes No. 1, 2 and 3 shall be considered as not submitted.

#### **4.2.1. Submission of General Documentation for Short-listing (Envelopes No. 1)**

Submission of documentation for short-listing contained in Envelope No. 1 will be carried out to the Committee or the Evaluation Committee of the Envelope No. 1 at PROINVERSION offices located at Av. Paseo de la Republica 3361, San Isidro, Lima, Peru, within the term included in Exhibit N° 12.

#### **4.2.2. Submission of Envelopes No. 2 y No. 3**

The **Short-listed** Bidders shall submit Envelope No. 2 and Envelope No. 3 to the Committee or **any person that it appoints** and before the presence of a Public Notary at the place and time that shall be opportunely communicated by Circular Letter and on the date referred to in Exhibit No. 12.

#### **4.2.3. Submission of Envelopes by Authorized Agents or Legal Representative.**

Envelopes No. 1, No. 2 and No. 3 may only be submitted personally by one of the Authorized Agents or by the Bidder's Legal Representative. Documents issued by postal mail, fax or any other type of communication shall not be accepted or received.

#### **4.3. Language**

Unless expressly stipulated on the contrary by the Tender Documents herein, all the documents shall be submitted in Spanish language or accompanied by a simple translation into the Spanish language.

In case brochures and catalogues not required in the Tender Documents are submitted in a foreign language for a better understanding of the Credential, the Committee may request their translation into the Spanish language.

#### **4.4. Original Documents and Copies**

The Credentials making part of Envelope No. 1 and the Documents of Envelope No. 2 shall be submitted in original or notary or consular authenticated copy and two copies, duly marked as "Original", "Copy 1" and "Copy 2" on the first page. The copies shall not require notary or consular authentication.

#### **4.5. Submission Method for Envelopes No. 1, No. 2 and No. 3**

4.5.1. The Envelopes shall be submitted conveniently closed and clearly marked on the obverse with the indications "Envelope No. 1" or "Envelope No. 2" or "Envelope No. 3", respectively, and the Bidder's name.

4.5.2. All the documentation submitted in the Envelope shall be perfectly legible and shall be clearly paged, in a correlative way and initialed on each page by the Legal Representative. Likewise, a detailed list of all the documents included in each Envelope shall be added.

4.5.3. In case there is any discrepancy between a figure expressed in numbers and written, the amount expressed written shall prevail.

#### **4.6. Cost of Preparation and Submission**

The Bidder shall pay for all the direct or indirect costs or expenses incurred in connection with preparing and submitting Envelopes No. 1, No. 2 and No. 3, be it the case. The State of the Republic of Peru or any agency, organ or official pertaining to it, or PROINVERSION, NPA, the Committee or the advisors shall not be responsible in any case for such costs, whatever the way in which the Tender or its result are carried out.

### **5. SHORT-LISTING REQUIREMENTS: ENVELOPE No. 1 CONTENTS (CREDENTIALS)**

Only individuals or Consortia may participate in the Tender herein.

The amount of the Participation Fee is one thousand and 00/100 Dollars of the United States of America (US\$1,000.00) and grants its holder the right to

participate in the Comprehensive Project Tender for the granting in Concession of the General San Martín - Pisco Port Terminal to the private sector.

To be able to submit Envelope No. 1, the Bidder shall have paid the Participation Fee and provide, through submission of Envelope No. 1, the information detailed below, which would have the character of a Sworn Statement.

The acquirer of the Participation Fee who decides not to participate in the Tender may transfer this right to an **individual** in its group or to a third party. To that effect, the **grantee** of said right shall submit a communication in Envelope No. 1 through which it certifies the transfer on its behalf with an authenticated signature of the transferor, **in accordance with the Form 4 in Exhibit No. 4.**

**5.1. Simplification mechanism in the submission of documentation required in Short-listing Envelopes (Envelopes No. 1)**

***Such mechanism shall be applied in accordance with the following rules:***

- 1. The Bidder shall require the Committee provide with a “Validity Certification of Short-listing Documents/Credentials” indicating the documentation that he may have submitted in another process for the purposes of short-listing or Credentials submission, as well as the submission date of said documentation. Such certification shall not be issued in relation to the documentation that the Committee may have used in more than two years.***
- 2. The Bidder that submitted short-listing documents or Credentials in a specific process, shall only submit, in order to apply for the short-listing or submit Credentials in another process: i) the Validity Certification of short-listing Documents; ii) a sworn statement indicating that the documentation referred to in the “Validity Certification of Short-listing Documents/Credentials” is still valid; iii) new or extra documentation related to the one submitted before, pursuant to each Term Documents’ requirements; iv) The Participation Fee Receipt.***

***The Committee shall verify the sworn statement effectiveness, as well as its eligibility for the short-listing process to which it is subject, and shall proceed to carry out the corresponding evaluation pursuant to what is stipulated in the Terms Documents.***

***For this purpose, the Bidder shall submit the Sworn Statement model referred in the preceding paragraph ii) Point 2), in accordance with Form No. 1 in Exhibit No. 3.***

**5.2. General Information**

The Bidder shall certify its commitment to submitting reliable information by submitting Form No. 2 in Exhibit No. 3 that will be considered as a Sworn Statement. The Sworn Statement shall be submitted to the Committee by simple document signed by the Bidder’s Legal Representative, whose signature shall be authenticated by Public notary or by the Consul of Peru in the country where **the Sworn Statement was issued.**

The Committee reserves the right to verify the truthfulness of all the documentation submitted by the Bidder at the different Tender stages, notwithstanding in any way any limitation of the Bidder's liability for possible insufficiency or untruthfulness of submitted data or information.

Untruthfulness or insufficiency in the data or information submitted by the Bidder in this Tender detected by the Committee may cause Bidder disqualification at any stage.

In the case of a Consortium, as many\* Exhibits No.3 – Form 2 as companies making up the Consortium shall be submitted.

### 5.3. Bidder Qualification Requirements

To be able to be declared as a Short-listed Bidder and continue participating in the Tender, the Bidder shall certify strict compliance with the following requirements concerning technical-operational, legal and economic-financial material:

#### 5.3.1. Legal Requirements:

The Bidder shall certify it is a corporation or a Consortium by submitting the following:

- **Simple** copy of the Bidder's articles of incorporation and **its modifications**. In case it is a Consortium, the articles of incorporation of each one of its members or a **simple** copy of the same and **its modifications** are required. Alternatively to the Bidder's articles of incorporation or those of the Consortium members, the currently effective By-law or equivalent instruments issued by the competent authority in their country of origin, be it the Bidder's or the Consortium members', shall be accepted.
- A Sworn Statement signed by the Bidder's Legal Representative in case it is a corporation, confirming its existence, pursuant to the legal regulations applicable according to the origin legislation, drafted as per the model appearing in Form No. 1 in Exhibit No. 4.

In case the Bidder is a Consortium, it shall submit a Sworn Statement signed by the Bidder's Legal Representative instead of the aforementioned form, confirming the existence and solidarity of the Consortium members concerning the obligations assumed and Sworn Statements submitted, drafted pursuant to the specimen attached as Form No. 2 to Exhibit No. 4.

The Legal Representative's signature in this Sworn Statement shall be authenticated by Notary in Peru or, if the document is formalized abroad, what is stipulated in Point 2.2.3 shall apply.

- A Sworn Statement pursuant to the specimen in Form No. 3 in Exhibit No. 4 signed by the Bidder's Legal Representative **containing information on the shareholders or the Bidder's partners**. In the case of Consortia, such information shall also be required concerning each one of its members, as corresponds, **pursuant to the aforementioned specimen with the legal representative's signature of each company**.

- The Bidder, one of its shareholders or partners or members, or a Company Related to the Bidder or to any of its shareholders or partners or members has been the person who paid the Participation Fee. To certify this fact, submitting a copy of the receipt for said Fee **issued by PROINVERSION. In case the Bidder has obtained a third Participation Right through an assignment of rights, he shall certify it through a communication confirming the transfer in his favor.** Likewise, **if that is the case, the Bidder shall submit** a Sworn Statement explaining the relationship between the Bidder and said person, pursuant to the **Form 4 in Exhibit No. 4.**
- Having a Legal Representative according to the requirements set forth in Point 2.2 accrediting it by submitting an authenticated copy of the respective power of attorney, **as well as the corresponding documents to the power of attorney in case of delegation of powers.**
- A Sworn Statement according to the specimen attached as Form No. 5 to Exhibit No. 4, signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders or partners and its members and shareholders or their partners, in case the Bidder is a Consortium, do not incur in any cases of non compliance with their contractual obligations as detailed in said specimen.

Once the award is obtained, said requirements shall be complied with at the same time by the company subscribing the Agreement.

Likewise, those who are within the scope of Article 1366 of the Civil Code **and the Fifth Complementary Regulation of the Act No. 29290 – Act of the Public Sector Indebtedness for the Fiscal Year 2009** cannot be bidders.

- A Sworn Statement, pursuant to the specimen attached as Form No. 6 to Exhibit No. 4 signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders or partners and its members and their shareholders or partners, in case the Bidder is a Consortium, have waived the right to invoke or exercise any privilege or diplomatic immunity or other, or any claim by diplomatic way and to compensation or other in connection with such claim that can be started by or against the State of the Republic of Peru, NPNA, PROINVERSION or the Committee, its members and advisors, under the Peruvian law or under any other legislation in connection with their obligations on the Tender Documents herein, the Economic Bid, the Technical Bid and the Contract.
- A Sworn Statement, pursuant to the specimen attached as Form No. 7 to Exhibit No. 4 signed by the Bidder's Legal Representative, declaring that the Bidder's advisors for the current process have not directly supplied any kind of services to NPA, PROINVERSION or the Committee in the last year **and during the development of the Tender<sup>2</sup> herein**, whether full time, part time or temporary, in connection with the current private investment promotion process.

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<sup>2</sup> Modified by Circular Letter No. 6

- A Sworn Statement, pursuant to the specimen attached as Form No. 8 to Exhibit No. 4 signed by the Bidder's Legal Representative, declaring that the Bidder, its shareholders or members, in case of a Consortium, as well as their partners or shareholders, in case of a Consortium, do not have direct or indirect share in any other Bidder.
- For the case of corporations which have their shares listed in stock markets, the sharing mentioned in the preceding paragraph shall be limited where another bidder's management control is exercised, or that of any of its members, in case of a Consortium, pursuant to the Indirect Property, Relatedness and Economic Group Regulations approved by CONASEV RESOLUTION No. **005-2006-EF/94.10** or the regulation that **modifies** or substitutes it. To certify this fact, submission of a Sworn Statement in that sense shall suffice. It shall be drafted pursuant to Form No. 9 to Exhibit No. 4 and shall be duly signed by the Legal Representative.
- The Bidder in each of its members, in case of a Consortium, shall submit a Sworn Statement of their intention of organizing a corporation<sup>3</sup> in Peru, same which may adopt any of the corporate modalities regulated by the General Corporations Law.

The Sworn Statement form that shall be used is attached to Exhibit No. 4 as **Form No. 10 and 11, in case the Bidder is a corporation or a Consortium respectively.**

Regarding to the corporate capital of the Consortium<sup>4</sup>, the minimum required is ..... **Dollars (US\$.....)**, which shall be underwritten and paid pursuant to what is stipulated in the Concession Contract.

In the Concessionaire's shareholder structure, there will always be Strategic Partner which shall own and keep a Minimum Share that shall never be less than 25%<sup>5</sup>.

The Strategic Partner shall own and keep a Minimum Share according to the terms and conditions established in the Concession Contract and may not transfer or assign it so it results with lesser participation than that stipulated in the preceding **paragraph<sup>6</sup>**.

### **5.3.2. Technical-operational requirements**

In order to certify the **Bidder's** technical-operational capacity, according to the requirements pointed out below, Form 1 in Exhibit No. 5 of the Tender Documents herein shall be completed, besides the respective documentation certifying the submitted information. This documentation shall be made up of third party reports for **certification**, accreditation, supervision or inspection, **reports and similar public character documents through the submission of a communication from an external audit company duly registered in the**

<sup>3</sup> Modified by Circular Letter No. 6

<sup>4</sup> Modified by Circular Letter No. 6

<sup>5</sup> Modified by Circular Letter No. 5

<sup>6</sup> Modified by Circular Letter No. 6

**registry of companies authorized for the General Controllershship of the Republic appointment and contracting, indicating the amount of mobilized metric tons.**

In order to certify the Bidder's technical-operational capacity established in the Tender Documents, the following provisions shall be observed:

**Experience in operation<sup>7</sup>:**

**The *Bidder* shall certify *in one or more port terminals a total annual movement that is equal or greater than 16'800,000 MT of cargo. For that purpose, the general cargo movement (stored and non-stored in containers), solid bulk and liquid bulk are considered. Transferring movements are also considered.***

***The aforementioned certification may be made according to the following:***

- Directly through the Strategic Partner, who shall certify the Effective Control of one or more Port Managers***

***The Strategic Partner may add the experience of its Related Companies.***

- In case the Bidder is a Consortium, it may certify this requirement adding the experience of its Strategic Partner or Related Companies and even two of its other members, as long as, at least the 60% of the experience demanded, belongs to the Strategic Partner o its Related Companies.***

***The Tm movement that does not belong to the Strategic Partner shall be only certified through stowage and unstowage operations.***

***For the short-listing purpose, the aforementioned stowage and unstowage operations will be understood as the following operations carried out in the port facilities: loading, downloading, load-transshipment, download-transshipment, dock transportation, on-board transportation.***

- The Strategic Partner and the other Consortium members, as the case may be, shall certify that the required experience consists of activities carried out in a period of (12) twelve months after January 1<sup>st</sup>, 2004.***

### **5.3.3. Financial Requirements**

The Bidder shall certify the compliance with the following financial requirements:

**The Bidder shall certify he owns a minimum Net Worth of One hundred million Dollars (US\$ 100'000,000) by December 31<sup>st</sup>, 2008 or at the end of the last fiscal year, through the submission of a simple copy of the audited financial balances, or alternatively through records or similar public character documents, or through the submission of a document issued by**

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<sup>7</sup> Modificado mediante Circular N° 5

***an external audit company duly registered in the registry of companies authorized for the General Controllorship of the Republic appointment and contracting, indicating the evaluation of the Bidder's financial balances (or its members in case of consortium) on December 31<sup>st</sup>, 2008 or at the end of the last fiscal year and confirming the total Net Worth and the other information contained in the Form No. 1 in Exhibit No. 6.***

To the effect of certifying the minimum Net Worth, the Bidder's minimum net worth or the addition of the net worth of each one of the members, in case the Bidder is the Consortium, shall be considered.

Only in the case of Strategic Partner, it may alternatively submit the Affiliate Company Net Worth by majority in its corporate capital or that of the ***Parent Company*** by majority in corporate capital. In case the Strategic Partner submits the Company Net Worth its ***Parent Company*** by majority in the corporate capital it may not submit its own Net Worth or that of the other ***Affiliate Companies*** or Subsidiaries. In no case shall the same net worth be accredited more than once.

The financial information referred to in this Point shall be submitted in Spanish or English and no translation is required in the last case. ***In addition, the Bidder*** shall submit the original ***Form No. 1 in Exhibit No. 6*** signed by the Legal Representative.

#### **5.4. Verification of the information submitted before the Committee**

As from documentation presentation referred to in Point 5 and to the Closing Date, the Bidder commits to make available to the Committee every document required by it in order to verify the truthfulness of the documentation submitted according to said Point.

#### **5.5. Verification of legal requirements**

***Up to the closing date, the Successful Bidder and each one of its members, in the case of a Consortium,*** shall submit to the Committee the certification of not being prohibited from participating in the selection process or to hire with the State of the Republic of Peru issued by the ***State Contracting Supervisory Body (OSCE, Organismo Supervisor de Contrataciones del Estado)***. In case the existence of falsehood in the provided information is determined, the Award will be revoked and the stipulations included in Point 10.3.2 shall be applied.

### **6. SUBMISSION OF THE CONTENTS OF ENVELOPE No. 1 AND SHORT-LISTING RESULTS**

#### **6.1. Submission of the contents of Envelope No. 1**

The Bidder shall submit Envelope No. 1, prior appointment, in the place and term established for each one.

Envelope No. 1 shall be received by the Committee or by an Envelope No. 1 Evaluation Committee appointed by the Committee, and shall be opened before a Public Notary. A certificate confirming the submission of the corresponding Bidder and the number of pages in the documents included in ***said Envelope***.



The certificate referred to in the preceding paragraph shall indicate the acceptance or rejection, as the case may be, of the submitted documents, the observations made by the Bidder and the contents of Envelope No. 1 submitted at that time **and as the case may be, the observations made by the Bidder. Envelope No. 1 may be only rejected if none of the following forms referred to technical-operational capacity and financial requirements are submitted: Form 1 in Exhibit No. 5 and Form 1 in Exhibit No. 6.**

**In the evaluation prior to the Envelope No. 1 delivery**, in case the **Committee or the** Evaluation Committee found the documents included in Envelope No. 1 having Defects, it shall urge the Bidder to remedy or fulfill the observations within the period established in Exhibit No. 12, being warned that it may be excluded from the qualification.

Additionally, in order to facilitate the data and requirements' examination, verification and comparison, the Envelope No. 1 Evaluation Committee may **formulate written observations non-essential** to the information contained in Envelope No. 1, without modifying its contents. **The non-essential observations** shall be made in writing, in accordance with what is stipulated in the preceding paragraph.

At the suggestion of the Envelope No. 1 Evaluation Committee, the Committee shall issue its pronouncement, within the maximum period established in the Schedule, on which Pre-qualified Bidders are permitted to participate in the following stages of the **Tender**.

## **6.2. Announcement of Short-listed Bidders**

The Committee shall inform of the results of the Short-listing process on the date indicated in Exhibit No. 12 by sending a special communication to each Bidder **that has submitted Envelope No. 1.**

Any Short-listed Bidder may form a Consortium up to fifteen (15) calendar days prior to the submission of Envelopes No. 2 and No. 3. Likewise, during such term, the Short-listed Bidders, in case of a Consortium, may change their composition. **In any of both cases (a Consortium composition or the modification of an established Consortium), the Short-listed Bidders may associate with other corporations or inclusive with other Short-listed Bidders. The possible changes shall certify the Bidder still has technical-operational experience and the financial requirements referred in the Term Documents, and for that effect supporting documentation shall be submitted, if it is the case and it may not decrease the Minimum Participation. Likewise, sworn statements and any documentation required in the legal requirements shall be submitted for the Consortium new members. The new Bidder composition shall respect the condition of not having direct nor indirect participation in any other Bidder.**

**The composition of new Consortia or the** changes in the **composition** shall be considered by the Committee within the term indicated before. The Committee reserves the right to accept these changes.

***Every extra document submitted pursuant to the Point herein, shall be part of***

***Envelope No. 1 for all the purposes considered in the Term Documents and the Contract.***

The Committee's decision regarding Short-listed shall be final and may not be challenged.

## **7. CONTENTS OF ENVELOPES N° 2 AND N° 3**

### **7.1. Contents of Envelope No. 2**

The content of Envelope No. 2 shall be divided into **five (5)** documents, according to the following:

#### Document No. 1: Sworn Statement

The **Short-listed** Bidder shall submit a Sworn Statement in accordance with the Form No. **1 in Exhibit No. 7**, the same that shall state the following:

That the information, statements, certification and, in general, all information submitted in Envelope No. 1 are currently in force and that they shall be so until the Closing Date.

#### Document No. 2: Acceptance of the Term Documents and Contract<sup>8</sup>

The **Short-listed** Bidder shall submit a Sworn Statement declaring that it knows the Tender Documents and accepts the final version of the Contract to be delivered on the date specified in Exhibit No. 12, and that if it is declared the Concessionaire, the Concession Contract shall be signed by the Concessionaire Company organized under stipulations of Section 5.3.1.

This document shall be delivered according to the Form **2 in Exhibit No. 7**.

#### Document No. 3: Bond of Validity, Effectiveness and Seriousness of the Bid

The **Short-listed** Bidder shall guarantee the validity, effectiveness and seriousness of the Economic **Bid** by submitting a bond in accordance with the Form 3 in Exhibit No. **2**, which is an integral part of the Tender Documents, for the amount of US\$ 1,000,000 (one million and 00/100 United States Dollars).

The Bond shall be issued by Banking Company or International Financial Entity, in accordance with the details in Exhibit No. 2, and shall be joint, unconditional, and irrevocable, without benefit of excussion or division and of automatic execution. Such Warrant shall be enforceable for a term not less than ninety (90) days from the date of submission of the Envelopes No. 2 and No. 3. The Committee may decide on the mandatory extension of the Warrant and the **Short-listed** Bidder shall renew it for the provided terms for that purpose.

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<sup>8</sup> Modified by Circular Letter No. 6

The Bond submitted by a Short-listed Bidder who is not a Concessionaire, shall be returned within fifteen (15) day following the Closing Date.

Where a bail or a stand-by letter of credit is issued by an International Financial Entity, it shall be endorsed and confirmed by any of the Banking Companies listed in Appendix 2 in Exhibit No. 2.

Document No. 4: **Technical Bid**

***It shall contain the following:***

**Design and Construction Proposal:** It contains the **Short-listed** Bidder's proposal for the design and construction of the General San Martin – Pisco Port Terminal.

**Conservation and exploitation Proposal:** It contains the **Short-listed** Bidder's proposal for conservation and exploitation of the General San Martin – Pisco Port Terminal.

**Reference Business Plan:** The Reference Business Plan shall contain the basic guidelines referring to, at least, the following issues in order to evaluate the soundness of ***the previous issues***:

- Marketing Strategy
- Forecast as for freight and ships
- Infrastructure and Equipment Development Plan
- Operational Plan
- Service guide, fee plan and service indicators
- Human resource development plan
- Information systems plan
- Investment and acquisition plan
- Financial plan
- Other logistics-related business areas

***The Technical Bid shall contain, at least, the minimum information and requirements established in Appendixes No. 1 and 2 in Exhibit No. 8 of the Term Documents herein.***

***What is stipulated in the Technical Bid of the Short-listed Bidder that might be Concessionaire, shall be used as Term Documents to carry out the Technical File which the Concessionaire will be in charge of. The Concessionaire shall act in accordance with said file and pursuant to what is stipulated in the Concession Contract.***

Document No. 5: Final Version of the Concession Contract

Besides the abovementioned documents, the **Short-listed** Bidder shall submit a copy of the final version of the Concession Contract, including its exhibits, duly signed **on each page** by the Short-listed Bidder's Legal Representative.

## **7.2. Contents of Envelope N° 3: Economic Bid-Proficiency Factor**

**7.2.1** The Short-listed Bidder must submit his economic Bid in the Envelope N° 3 , by means of the following documents:

- ***Form 1 of Exhibit N° 9, Economic Bid Model – Rates (Envelope N° 3 - Rate): It shall be necessary to state the rates for Standard Services, offered by the Short-listed Bidder.***

***Only in the case in which the offered rates, in application with the formula contained in Appendix 2 of Exhibit N° 9 of the Terms, resulted in the inferior limit of the ITE, Envelope N° 3 should in addition contain, as well as Envelope N° 3-Rate, Form 2 of Exhibit N° 9, Example of Economic Bid – IA in which the Short-listed Bidder will state the amount of the Additional Investment (IA) offered (Envelope N° 3- IA).***

**7.2.2** ***Each one of the mentioned forms will be submitted, inside of Envelope N° 3, in separate envelopes correctly sealed and marked on the front as “Envelope N° 3 -Rate” and “Envelope N° 3 – IA”, as corresponds.***

**7.2.3** ***For developing its economic bid, and with the aim of making a valid and competitive proposal, the Bidder must consider that which is established in Appendix 2 of Exhibit N° 9, Index Standard Rating.***

**7.2.4** The Economic Bid should be valid at least sixty (60) Days after the Closing Date, even when said Economic Bid has not been declared as winner.

All Economic Bids which have less validity will be void. The Committee shall be able to decide on the obligatory extension of the Economic Bids.

**7.2.5** For the effects and purposes of this Tender, the delivery of Envelope N° 3 on behalf of a Short-listed Bidder constitutes an irrevocable economic bid for the purposes of this Tender. An economic bid implies the acceptance of the Short-listed Bidder of all the terms and conditions, without exception, of the Contract and of its Economic Bid.

## **8. RECEPTION ACTS OF ENVELOPES N° 2 AND N° 3 AND OPENING OF ENVELOPE N° 2.**

### **8.1. Presentation Act of Envelopes N° 2 and 3 and opening of Envelope N° 2**

**8.1.1** The presentation of Envelopes N° 2 and N° 3 should be carried out according to the general rules provided in Subsection 4 of these Terms. Without prejudice of this, the Committee will grant thirty (30) minutes of tolerance for its presentation.

In case all the Short-listed bidders are present before the Committee or one of its members, before the tolerance limit has transpired, the Committee shall be able to begin the act.

**8.1.2** The Chairman of the Committee or the person replacing him, will receive Envelopes N° 2 and N° 3, in presence of the Public Notary, who in each case,

shall proceed to the opening of the Envelopes N° 2, in the order in which they were submitted by the Short-listed Bidders.

**8.1.3** Once opened the Envelopes N° 2, the Notary will sign and seal all the pages of the original documents contained therein and will hand them to the Committee, for their evaluation, which shall be carried out according to that established in Sub Section 8.2.

**8.1.4** Envelopes N° 3 without being opened will remain in custody of the Public Notary, until the date of the opening of Envelopes N° 3, specified in the Schedule.

**8.1.5** The Public Notary will draw up a legal instrument, in which the reception of Envelopes N° 2 and N° 3 will be stated and the opening of Envelope N° 2, the same which will be signed by the Committee members and the Short-listed Bidders who wish to do so.

## **8.2. Evaluation of the contents of Envelope N° 2**

**8.2.1** ***The contents of Envelope N° 2 shall be evaluated by the Committee or the person assigned by it, being the Committee who shall pronounce if Envelope N° 2 of each Short-listed Bidder who has submitted Bids will be admitted. To this effect, a separate communication shall be sent to each Short-listed Bidder, declaring valid or not their Envelope N° 2.***

**8.2.2** The Technical Bids will be evaluated by the Committee, or by the Evaluation Committee of Technical Bids.

**8.2.3** If the Committee or the Evaluation Committee of **Technical Bids** should make a non essential observation to the Technical Bid contained in Envelope N° 2, it could make a request to the Short-listed Bidder for the non essential precisions, explanations, adjustments and/or modifications to the Technical Bid presented. These should be rectified within the given time.

**8.2.4** ***The Technical Bid*** contained within Envelope N° 2 will be declared technically acceptable by the **Committee** when they jointly comply with the following conditions:

- a)** When the dispositions in Sub Sections **7.1 y 8.2.2** have been complied with, ***if it be the case.***
- b)** When the Technical Bid has been accepted by the Committee, by recommendation of the Evaluation Committee **of Technical Bids**, for which the compliance of all requirements contained in Appendixes 1 and 2 of Exhibit N° **8 and that the mentioned document is not conditioned.**

***To that effect,*** the evaluation results of **the Technical Bids** contained with the Envelopes N° 2 will be consigned in an evaluation document, which will be signed by the Committee members or the Evaluation Committee of Technical Bids and those results will be the base for the Committee to pronounce if the Technical Bid contained in Envelope N° 2, is technically acceptable or not.

**8.2.5** ***With respect to the other documents contained in Envelope N° 2,*** if the Committee or whomever it should designate, should determine that there is a

Deficiency regarding any of the documents, with the exception of the Technical Bid, it will proceed to communicate with the short-listed Bidders so that within the established time limit, they rectify the Deficiencies. In no case will the non presentation of any of the documents which should be included in Envelope N° 2 be considered as a rectification of a deficiency.

- 8.2.6** The decision of the Committee on the results of the evaluation of the documentation contained in Envelopes N° 2 is final and there is no chance of any contesting or claim on behalf of the Short-listed Bidders.
- 8.2.7** Only the Short-listed Bidders whose Envelopes **N° 2** have been declared as valid, will proceed to the following stage of the Tender which is the opening of Envelope N° 3.

## **9. OPENING OF ENVELOPE N° 3 AND AWARDING**

### **9.1 Opening of Envelope No. 3 and Awarding**

- 9.1.1** The Chairman of the Committee or the person representing him, will begin the act of the opening of Envelopes N° 3 and the Awarding, in presence of the Public Notary at the specified time and place, communicating the results of the evaluation of Envelopes of the Short-listed Bidders, to those present in said act.
- 9.1.2** Following this, the opening of Envelopes N° 3 will take place **and at the same time, “Envelope N° 3 – Rates”** of the Short-listed Bidders whose Envelope N° 2 were declared valid and their contents will be read, verifying that the offers comply with that established in Form 1 of Exhibit N° 9.
- 9.1.3** Should any of the Economic Bids contained in Envelope N° 3 not comply with the requirements established by these Terms, said Economic Bid will not be considered as a valid Economic Bid by the Committee.

***Likewise, any Economic Bid (“Envelope N° 3 – Rates” or “Envelope N° 3 – IA”) which is presented in a conditioned manner will be considered invalid. Therefore, said Bid will not be considered for the dispositions established in Points 9.1.4. and 9.1.6, accordingly.***

- 9.1.4** ***Subsequently, the ITE, will be calculated, according to that established in Appendix 2 of Exhibit N° 9 and the offers will be ranked from less to more depending on the ITE obtained, possibly resulting in the following cases:***
- a) If one of the resulting ITE is out of range of the pre established ITE, the Bid will be considered as invalid and will not be taken into account for the dispositions established in the present Point..***
  - b) If the resulting ITE are different to the inferior limit of the pre established ITE ranking, there will be a verification to see if the offers comply with that established in the Terms and the procedure will be in compliance with that established in Point 9.1.5.***
  - c) If one or more ITE are the same as the inferior limit of the pre established ITE ranking, “Envelope N° 3-IA” of those Short-listed Bidders who obtained the mentioned ITE will be opened. Following this, their contents will be read, verifying that the offers comply with***

***that established in Form 2 of Exhibit N° 9 and proceeding in accordance to that established in Point 9.1.5.***

***In the case of “Envelope N° 3 – IA” not having been presented, the offer for said concept will be considered as equivalent to zero (0).***

***In the suppositions foreseen in the previous Paragraphs a) and b), if the case may be, the “Envelopes N° 3 – IA” which may have been presented, will be returned, in accordance with the verification carried out by the Committee.***

**9.1.5** <sup>9</sup>The Committee will select as Successful Bidder the Short-listed Bidder who has presented the best economic Bid; that is ***who obtained the less ITE in the case of the previous Paragraph b); or who proposed greater Additional Investment, for the case of the previous Paragraph c).***

**9.1.6** ***In the case of an ITE tie, the procedure will be as follows:***

***a) In the case of an ITE tie:***

***If the ITE are superior to the inferior limit of the pre established ITE ranking, the Short-listed bidders who came to a tie will have a two (2) hour limit to present a new Economic Bid according to Point 7.2.1. If the tie continues, the Short listed bidders will have a new limit of an additional two (2) hours to present a new Economic Bid. If in spite of this the tie continues, the Award will take place by means of a draw directed by the Public Notary in the same act, according to the mechanism established by the Committee at that moment.***

***The Short-listed Bidder who presents a new Economic Bid should do so by means of submitting a new Envelope N° 3, which will replace the prior one and which should contain: (i) a new Form 1 of Exhibit N° 9. Only in the case of the offered rates, in accordance with the formula contained in Appendix 2 of Exhibit N° 9, should give as a result the inferior limit of the ITE ranking, the Bidder should additionally present a new Form 2 of Exhibit N° 9; both signed by the respective Legal Representative of the Short-listed bidder.***

***The new Economic Bid should imply a lesser ITE with respect to that previously obtained.***

***b) In the case of an IA tie:***

***The Short-listed bidders who drew a tie with the offered IA will have a limit of up to two (2) hours to present a new IA Bid. If the tie continues said Short-listed Bidders will have a new limit of an additional two (2) hours to present a new IA Bid. If in spite of this, the tie continues, the Awarding will take place by means of a draw directed by the Public Notary in the same act, according to the mechanism established by the Committee at that moment.***

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<sup>9</sup> Modificado mediante Circular N° 5

***The Short-listed Bidder who presents a new IA Bid should do so by means of the submission of a new “Envelope N° 3 – IA”, which would replace the prior one and which should contain a new Form 2 of Exhibit N° 9, signed by the respective Legal Representative of the Short-listed Bidder.***

***The new IA Bid should imply an amount greater to that previously offered.***

***In case any Short-listed Bidder does not submit a new “Envelope N° 3 – Rates” or a new “Envelope N° 3 – IA”, as the case may be, the bid previously submitted shall be considered to be valid.***

***In the suppositions mentioned in the previous Paragraphs a) and b), the procedure established in Points 9.1.2 al 9.1.6 shall be applied.***

- 9.1.7** Having concluded the procedure of the Awarding, the Public Notary will draw up a legal instrument, which should be signed by the Committee members, Successful Bidders and the rest of the Short-listed Bidders who wish to do so.

## **9.2 Challenge**

### **9.2.1 Challenge Procedure**

- 9.2.1.1** Any Short-listed Bidder ***whose Envelope N° 2 had been declared valid by the Committee*** shall be able to file a motion for reconsideration before the Committee against the Awarding. Said motion should appear as an observation in the true copy of the Opening Act of Envelope N° 3, and should be duly supported in written, within a maximum period of three (3) days as from the Awarding date, the Committee will settle the appeal within a maximum period of ten (10) days as from the day of the deposit of the bank bond, referred to in Point 9.2.2.

- 9.2.1.2** If in disagreement with the Committee's settlement, the Short-listed Bidder concerned can file an appeal within the period of three (3) Days following by a signed reception, before the same Committee, who will present it to the PROINVERSION's Steering Council for its decision. The appeal may also be submitted against an implied resolution denying the challenge, in the case in which the ten-day (10) period for the Committee to settle the presented appeal having lapsed and it would not have emitted the corresponding settlement. If the latter, the time limit to present the appeal will be calculated as from the day following the expiry date of the indicated ten-day (10) period.

- 9.2.1.3** The appeal filed against the express or alleged settlement of the Committee shall be settled by the PROINVERSION's Steering Council within a period of thirty (30) Days following its presentation. The settlement in the court of appeal will be final and non appealable in the administrative system.

### **9.2.2 Appeal Bond**

- 9.2.2.1** No appeal will be considered validly presented and will be void unless, with a period of the three (03) Days following the Awarding date, the appealing ***Short-listed*** bidder delivers to the Committee a joint liability, irrevocable, unconditional, with a no excussion right, no division and of automatic execution



Bank Bond Letter, in compliance with **Form 4 of** Exhibit N° 2, in favor of PROINVERSIÓN. Said bank bond must be issued by a Banking Entity or an International Financial Entity, according to that stated in Exhibit N° 2 and its amount will be equivalent to ..... **Dollars (US\$ .....**).

In the case of it being a bond issued by an International Financial Entity, it will be necessary for it to be endorsed and confirmed by one of the Banking Entities stated in Appendix 2 of Exhibit N° 2.

**9.2.2.2** Said appeal bond shall be executed by PROINVERSIÓN, in case of the appeal being presented by the Short-listed Bidder is declared unfounded or non admissible or in case said appeal was not presented within the period established in Point 9.2.1 the Committee's respective settlement (express or alleged) will remain. In case the appeal or contest is admitted, the appeal bond will be returned to the respective Short-listed Bidder, with no interest added.

**9.2.2.3** The validity of the challenge bond referred to in this Point will be as from the day in which the contest is presented until sixty (60) Days as from the Closing date of the Tender foreseen in the Schedule.

### **9.3 Void Tender**

The present Tender shall be declared void, when at least one ***“Envelope N° 3 – Rates”, has not been declared as valid.***

In the aforementioned case, the National Port Authority can call for a new tender on a new date.

### **9.4 Suspension or Cancellation of Tender**

The Tender may be suspended, cancelled or left null and void, at any time, until before the Closure Date, without the necessity of giving any explanation, if the committee considers it convenient, with no responsibility whatsoever.

This decision is non appealable.

## **10. CLOSING PROCEDURE**

### **10.1 Closing Date**

The Closing Date will take place at the time and place indicated by Circular Letter and will take place in presence of a Public Notary, who will certify the acts which are referred to in Point 10.2. The notary fees of said intervention will be covered by the Successful Bidder.

### **10.2 Closing Acts**

On the Closing Date, there will be verification if the following acts have complied with:

**10.2.1** The Successful Bidder has submitted the following documents:

**10.2.1.1** *The documents of Envelope N° 1 submitted in a simple copy must be presented in original form or by way of a legalized copy or with a*

***consular endorsement by the Ministry of Foreign Affairs, depending on the case.***

**10.2.1.2** Accreditation, on behalf of the Successful Bidder, of the inscription in the Registrar's Office corresponding to the proxy of the Legal Representative of the legal entity who will sign the Contract, in compliance with that stated in Point 2.2.4 of the Terms.

**10.2.1.3** ***Deliver the Statement of the Public Deed of Incorporation and status of the legal entity set up by the Successful Bidder who will sign the Concessionary Contract, with the proof of registration. The company shall be set up in Peru,*** with the same associates, shareholders or members and in the same proportions that they maintain on the date of the Awarding, with a minimum equity underwrite according to Point 5.3.1.

**10.2.1.4** A copy, certified by a notary of the entries of the book of matriculation of shares or an equivalent document, where, at the Closing Date, the composition of shareholders or participations of the constituted legal entity as Concessionary, are stated.<sup>10</sup>

**10.2.1.5** Guarantee of the Bid Bond of the Concessionary Contract, which is referred to in Point 1.2.44.

The example of said bond letter appears in Form 1 of Exhibit N° 2.

**10.2.1.6** Guarantee of the ***Implementation of Additional Investments*** which is referred to in Point 1.2.43, ***that "Envelope N° 3– IA"*** has been presented and opened.

The example of said bond letter appears in Form 3 of Exhibit N° 2

**10.2.1.7** ***Payment by the Successful Bidder of the process fees, according to the instructions by the Committee.***

**10.2.1.8** The Successful Bidder shall deliver the remaining documents stated in the Concession Contract.

**10.2.2** Signing of the Contract, by the Grantor, represented by the APN and the Concessionaire.

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<sup>10</sup> Modificado mediante Circular N° 6

**10.2.3** PROINVERSIÓN will return the Bond of Validity, Effectiveness and Reliability to the Successful Bidder, which is referred to in Point 7.1.

**10.2.4** Handing in of the real estate property and furniture and Port Equipment of the **TP GSM** which will be delivered in the presentation of the Grantor, on which the Concessionaire will write up an inventory, according to that established in the Concession Contract.

**10.2.5** *Handing over, on behalf of the Grantor, of the commercial and administrative contracts that the Successful Bidder would need to receive from ENAPU, as well as the notary letters by which the mentioned transfer to the receivers is communicated.*

**10.3 Implementation of the Bond of Validity, Effectiveness and Reliability of the Bid**

**10.3.1** If the Successful Bidder does not comply with any of the obligations foreseen for the Closure Date stated in Point 10.2 for reasons solely responsible to himself, PROINVERSIÓN will implement his Guarantee of Validity, Effectiveness and Reliability of the Offer, immediately and without the need to previously inform the Successful Bidder. The implementation of said guarantee does not limit or restrict any other right which PROINVERSIÓN could have concerning the Successful Bidder who did not comply with his responsibilities regarding his Bid.

**10.3.2** *The Committee, in case of the non compliance of the Successful bidder, will accept, if the case may be, the Bid of the Short-listed Bidder who obtained the second least ITE, in accordance with the order specified in Point 9.1.4, or of the Short-listed bidder who presented the second largest IA, accordingly; on the contrary the Tender will be declared null and void.* The Committee will notify the Successful-bidder Bid bearer, communicating its decision to declare him the new Successful Bidder, informing him in addition, of the closing procedure and the date, time and place where it shall take place. *In case the new Successful Bidder does not comply with any of the responsibilities established in Point 10.2, the Committee will accept the Bid of the Successful Bidder who obtained the following least ITE or greatest IA, following the aforementioned procedure.*

**10.3.3** With no prejudice to that established in this Point 10.3, PROINVERSIÓN and/or the Committee will be able to initiate all legal actions that are permitted by Applicable Law as a direct or indirect consequence of the non compliance of the original Successful-bidder.

**10.4 Guarantees:**

*They will consist in a Bank Bond Letter issued by a Banking Entity or by an International Banking Entity, according to the detail in Exhibit N° 2, which should be submissive, unconditional, irrevocable, without excussion benefit, nor division and with immediate effect, as from the Closure Date, the same which will have to be renewed annually to maintain their validity.*

*Alternatively, a stand-by letter of credit will be acceptable, which could cover the formality which the bank or entity who carries out the operation*

***employs, as long as it complies with the requirements of the Forms 1 and 2 of Exhibit N° 2, and is issued by an International Financial Entity established in Appendix 1 of Exhibit N° 2, which should be endorsed and validated by a Banking Entity mentioned in Appendix of Exhibit N° 2.***

#### **10.4.1 Performance Bond:**

***The Concessionaire will give the Grantor a Performance Bond of the Concession Contract, according to the following:***

- ***As from the Closing Date, until the approval of the technical dossier, according to the Concession Contract: US\$ ..... MM.***
- ***As from the before mentioned date limit, until the approval of the Works, according to the Concession Contract: US\$ ..... MM.***
- ***As from the before mentioned date limit until twelve (12) months after the Concession Expiry: US\$ ..... MM.***

The object of said guarantee will be to ensure the compliance of each and every one of the contractual obligations, including those of design, construction, with the exception of the carrying out of the Construction Works, exploitation and Construction Maintenance, the Port Equipment and Construction IA, as well as the penalties established in the Concession Contract.

#### **10.4.2 Bond of Implementation of Additional Investments:**

***With the aim of guaranteeing each and every one of the responsibilities linked with the implementation of the construction Works IA established in the Contract, the Concessionaire will deliver, on the Closure Date, the Implementation Guarantee of IA to the Grantor, whose amount shall be equivalent to 100% of the amount offered by the Successful Bidder in its Economic Bid. Said guarantee should be renewed annually maintaining a 100% coverage of the Additional Investment in compliance with the Contract. Without prejudice from this, the amount of said guarantee could be reduced, on petition from the Concessionaire, depending on the amount of the Construction Works IA carried out.***

#### **10.5 Contract Effective Date**

For purpose of signing the Contract, the Ministry of Transport and Communication, in compliance with the provisions in article 10.2 of the LSPN and article 48 of its regulations, shall, via Executive Order, approve the Contract.

The Contract will become effective and will have full judiciary powers on the Closing Date, after having been signed by the APN in compliance with the provisions in the **LSPN**. The Closing Date will be identified for all its effects as the date in which the Contract is signed.

## 11.FINAL PROVISIONS

### 11.1 Applicable Legal Status

These Terms, the documents which are included and the Contract will be enforced and interpreted according to the Applicable Laws, stated in Point 1.3.

### 11.2 Jurisdiction and Competence

**11.2.1** Without prejudice to the relinquishments made in Points 1.4.3, 1.4.4 and the other sections of the present Terms, the Short-listed Bidders and the people who are members of Consortia and of the Concessionaire<sup>11</sup> submit themselves and irrevocably accept the jurisdiction and competence of the judges and tribunals of the city of Lima, Peru, to settle any of the disputes that could arise between them and the State of the Republic of Peru regarding these Terms, expressly and irrevocably relinquishing any diplomatic claim, as well as all right to initiate actions of any other jurisdiction.

**11.2.2** However, as from the signing of the Contract, the Concessionaire and the grantor submit themselves exclusively to the dispositions in the Concession Contract for the settlement of the disputes that arise, including those related to the present Terms.

**11.2.3** No provision which modifies, alters o reduces the right of the State of the Republic of Peru, the APN, PROINVERSION, the Committee will be applicable, to initiate any legal action or carry out a sentence obtained in Peru, before the judges and courts of other jurisdictions, the Short-listed Bidders and the members of Consortia, to invoke or exercise any immunity or privilege to which they would have Access to in other jurisdictions, without any reserve or limitation, accepting as from now and for the sole reason of participating in the Tender, the election of the alternate jurisdiction or jurisdictions carried out by the State of the Republic of Peru, APN, PROINVERSION, the Committee accordingly.

### 11.3 Social Fund

***In accordance with the Emergency Decree N° 047-2009, the total amount of the payback will be destined to the financing of social aid programs in benefit of the population located in the influence zone of the Project, in the framework of that established in the Legislative Decree N° 996, its regulatory, complementary and modification rules, according to that established in the Concession Contract.***

***For the effect of that established in the previous paragraph, it is understood as influence zone of the Project, the area included within.....***

### 11.4 Environment

The evaluations of environmental impact, if any, will be available for the Bidders in the Data Room. The Bidders should consider these aspects and those which they identify after the field studies they carry out to prepare their Bids.

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<sup>11</sup> Modificado mediante Circular N° 6

#### **11.5 Process Costs**

The Successful Bidder is in the obligation to pay PROINVERSION, the corresponding costs of the promotion process of private investment. The Committee will inform the Bidders the amount of the mentioned payments via Circular Letter.

#### **11.6 Transfer of contract position in the ENAPU contracts**

***In a period no greater than thirty (30) calendar days as from the Awarding date, the Successful Bidder must communicate in written with a copy to the Committee, the contracts consigned in Exhibit N° 15, which will be updated up to the Award date, whose transfer of contract position must be formalized by ENAPU, to the effects that this entity communicates it to the respective contenders.***

**EXHIBIT N° 1**

**CONFIDENTIALITY AGREEMENT <sup>12</sup>**  
(Reference: Point 3.2.2. of Tender Terms)

Lima, .....of ..... 2009

To  
**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura Portuaria – PRO PUERTOS**  
**Private Investment Promotion Agency- PROINVERSIÓN**  
Lima.-

Bidder: .....

..... (Bidder's name) duly represented by  
his..... (position of the person signing), Mr.  
..... (name of the person  
signing), identified by ....., N° ..... with domicile  
in.....

herewith state our interest in having access to the Data room which the Committee makes available, according to the Terms of the Comprehensive Projects Tender for the awarding of the concession to the private sector of the General San Martin Port Terminal – Pisco. Regarding that, we commit ourselves to maintain confidentiality regarding all information obtained in the Data Room, to not disclose any material or information to third parties without the prior written authorization from the Committee, to not utilize the information for any other purpose not related with the Tender process and to not utilize the information in any way in which it could generate conflicts with the interests of the State, its officials or departments, the APN, PROINVERSION and Committee.

***The present agreement will remain valid until the signing of the concession contract.***

The materials obtained from the Date Room will only be made available to our personnel, executives and consultants, for reasons related to the Tender process. Said personnel will be aware of this agreement and will equally be in the obligation to maintain confidentiality regarding the before mentioned information. We will take all reasonable actions to prevent the diffusion of any information by anyone, without the prior written consent of the Committee.

No license or privilege has been or will be granted to our advisors regarding the availability of any information contained in the present Agreement.

We accept that neither the State, its officials or departments, nor the APN, PROINVERSION, nor its advisors or members, are stating or guaranteeing, expressly or implicitly, the exactness, reliability or totality of the information made available and that none of these parties or their respective directors, officials, employees or representatives shall be held responsible before us or any other person as a

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<sup>12</sup> Modified by Circular Letter N° 6

consequence of the use of such information and/or materials. We accept making our own decisions regarding the information made available and we acknowledge that we will not depend on or be led by such information when we decide our intentions regarding the Tender process.

We accept that none of the information made available, no material, discussion, negotiation or any related items, form part of an offer on behalf of the Committee or on behalf of them, and will not be used as foundation or be considered concerning any agreement, except when it has been expressly agreed to in writing by the Committee.

We accept, under the Committee request, to give back immediately every copy of all the documents available to us or to our representatives or advisors.

Likewise, we accept that the Committee does not commit itself nor finds itself under the obligation to provide Access to additional information or update the available information and materials or to rectify any inexactness which might appear.

This agreement will not be applicable to the information which: (i) on the date on which it was provided to us or our advisors was of public knowledge or at any other time as from that moment will be of public knowledge (excepting that of non compliance of this agreement by us or our advisors), or (ii) to date, is already legally in our possession and, therefore, is not subject to the confidentiality agreement.

The rights and obligations established in this document will be interpreted and carried out according to that established in the Peruvian laws and the parties agree to submit themselves irrevocable to the jurisdiction and competence of the judges and courts of Lima, Peru.

As proof of acceptance and in compliance with all the terms and conditions of this confidentiality agreement we sign and deliver an copy to the Committee, on the ..... of month ..... 2009

Legalized signature .....

Name ..... (Legal Representative **or Authorized Agent** of the Bidder and/or Buyer)

Entity ..... (Bidder)



**EXHIBIT Nº 2**  
**EXAMPLES OF GUARANTEES AND LIST OF ENTITIES AUTHORIZED FOR THEIR**  
**ISSUANCE**

**Form 1 : PERFORMANCE BOND OF THE CONCESSION CONTRACT**

(Reference Point 10.4 of Tender Bases)

Lima, .....of ..... 2009

To

**Ministry of Transport and Communication**

Lima.-

Ref.: Bond Letter No.....

Expiry:.....

Dear Sirs:

Hereby and on behalf of our clients..... (name of the company) (hereinafter referred to as "Concessionaire") we constitute this surety, irrevocable, unconditional and with immediate effect bond, without benefit of excussion, nor division, up to the amount of ..... in favor of the Ministry of Transport and Communication to guarantee the correct and expedient fulfillment of each and every one of the Concessionaire's responsibilities, including those of designing, Construction, Maintenance and Exploitation, , **except those referred to the implementation of the IA Construction works**, resultant from the signing of the Concession Contract of the General San Martin Port Terminal - Pisco ( hereinafter referred to as "the Contract".

The present Bond shall also guarantee the correct and expedient fulfillment of the Concessionaire's responsibilities established by virtue of the provisions contained in the Amended Consolidated Text regulations with executive orders which regulate the concession award of the infrastructure and public services construction works to the private sector approved by Supreme Decree No. 059-96-PCM.

To honor the present Bond in your favor a written petition via Notary Public of the OSITRAN shall suffice. This petition shall be signed by the Chairman of your Steering Council or some other person duly authorized by this organism. Payment will be made effective within 24 hours following your petition at our offices situated in .....

Any delay on our behalf to fulfill with the payment will incur an interest equivalent to the LIBOR plus a margin (spread) of 3%, accruing interests as from the date of its payment until the effective pay date.

Our responsibilities under the present Bond will not be compromised by any dispute between yourselves and our clients.

This Bond shall be valid as from the .... of ..... 200..., until the .... of ..... 200..., inclusively.

Sincerely,

Signature .....

Name .....

Banking Entity .....

**EXHIBIT Nº 2**  
**EXAMPLES OF GUARANTEES AND LIST OF ENTITIES AUTHORIZED TO EMIT THEM**  
**Form 2 : BOND OF IMPLEMENTATION OF ADDITIONAL INVESTMENTS**  
(Reference Point 10.5 of Tender Bases)

Lima, .....of..... 2009

To  
***Ministry of Transport and Communications***  
Lima.-

Ref.: Bond Letter.....  
Expiry:.....

Dear Sirs:

Hereby and on behalf of our clients..... (name of the company) (hereinafter referred to as "Concessionaire") we constitute this irrevocable, unconditional and with immediate effect surety, without benefit of excussion, nor division, up to the amount of ..... in favor of the Ministry of Transport and Communication to guarantee the correct and expedient fulfillment of each and every one of the Concessionaire's responsibilities, including those of designing, Construction, Maintenance and Exploitation, ***except those referred to the implementation of the IA Construction works***, resultant from the signing of the Concession Contract of the General San Martin Port Terminal - Pisco (hereinafter referred to as "the Contract").

To honor the present Bond in your favor a written petition via Notary Public of the OSITRAN shall suffice. This petition shall be signed by the Chairman of your Steering Council or some other person duly authorized by this organism. Payment will be made effective within 24 hours following your petition at our offices situated in .....

Any delay on our behalf to fulfill with the payment will incur an interest equivalent to the LIBOR plus a margin (spread) of 3%, accruing interests as from the date of its payment until the effective pay date.

Our responsibilities under the present Bond will not be compromised by any dispute between yourselves and our clients.

This Bond shall be valid as from the .... of ..... 200..., until the .... of ..... 200..inclusively.

Sincerely,

Signature .....

Name .....

Banking Entity .....

**EXHIBIT N° 2**  
**EXAMPLES OF GUARANTEES AND LIST OF ENTITES AUTHORIZED TO EMIT THEM**

**Form 3: VALIDITY, EFFECTIVENESS AND SERIOUSNESS OF THE BID**  
(Reference: Point 7.1 of Tender Terms)

Lima, ..... of ..... 2009

To  
**Private Investment Promotion Agency - PROINVERSIÓN**  
Lima.-

Ref. : Bond Letter No .....

Expiry: .....

Dear Sirs:

Hereby and on behalf of our clients, ..... (name of Short-listed Bidder) we constitute this irrevocable, unconditional and with immediate effect surety, without benefit of excussion, nor division, up to the amount of .....million and 00/100 American Dollars (US\$.....) in favor of PROINVERSION, to guarantee the Validity, effectiveness and reliability of the Bids presented by our client, in accordance with the terms and conditions established in the Tender Terms of Comprehensive Projects for the granting in concession to the private sector of the General San Martin Port Terminal – Pisco.

Likewise, we document that the present guarantee will be made effective in case our client be declared Successful Bidder by the Committee and does not comply with his responsibilities on the Closure Date of the before mentioned Tender.

To honor the present guarantee in favor of yourselves a written petition via Notary Public from the Executive Director of PROINVERSION or whoever represents him shall suffice, in our offices situated in .....

Any delay on our behalf to fulfill with the payment will imply an interest equivalent to the LIBOR plus a margin (spread) of 3%, accruing interests as from the date of its payment until the effective pay date.

Our responsibilities under the present Bond will not be compromised by any dispute between yourselves and our clients.

The period of validity of this guarantee shall begin on the presentation date of the Economic Bid until the .....of ..... .....

The terms utilized in this guarantee have the same meaning as those defined in the Tender Terms.

Sincerely,

Signature.....

Name .....

Banking Entity .....

**EXHIBIT N° 2**  
**EXAMPLES OF GUARANTEES AND LIST OF ENTITIES AUTHORIZED TO EMMIT THEM**

**Form 4: GUARANTEE OF OBJECTION OF AWARDING**  
(Reference: Point 9.2 of the Tender Terms)

Lima, ..... of ..... 2009

To  
**Private Investment Promotion Agency- PROINVERSIÓN**  
Lima.-

Ref. : Bond Letter N° .....

Expiry: .....

Dear Sirs:

Hereby and behalf of our clients ..... (name of the **Short-listed Bidder who presents the motion for reconsideration**), we constitute this irrevocable, unconditional and with immediate effect surety, without benefit of excussion, nor division, up to the amount of .....thousand and 00/100 American Dollars (US\$ .....000.00) in favor of PROINVERSIÓN to guarantee our clients in the payment of this amount in any of the suppositions indicated in the fourth paragraph of this bond letter.

This surety will have a duration period from the moment of the motion for reconsideration and up to **sixty** (60) Days as from the Closure Date of the Tender foreseen in the Terms; and it will become effective in case of the reconsideration being presented is definitely inadmissible or unfounded by the PROINVERSIÓN's Steering Council.

We expressly understand that this guarantee can be executed by PROINVERSIÓN in compliance with the provisions of Section 1898 of the Peruvian Civil Code.

It is expressly convened that in order to proceed to honor this guarantee, a simple petition via Notary Public from the Executive Director of PROINVERSION or its representative shall suffice. The mentioned petition will be presented in our offices situated at the given address, and will indicate that the reconsideration presented in the comprehensive Projects Tender for the awarding of the concession to the private sector of the General San Martin Port Terminal – Pisco, has been declared unfounded or inadmissible by the PROINVERSION's Steering Council; or, having obtained a resolution in that sense on behalf of the Committee, there is no appeal.

Any delay on our behalf to honor it will give place to the payment of interest in your favor which will be calculated on the LIBOR plus a margin (spread) of 3.0%, accruing the interest as from the date in which the honoring of the present surety becomes effective.

Sincerely,

\_\_\_\_\_  
SIGNATURE AND STAMP

Name of bank which issues guarantee:

Bank's address:

**EXHIBIT N° 2**  
**EXAMPLES OF GUARANTEES AND LIST OF ENTITIES AUTHORIZED TO EMIT THEM**

**Appendix 1: LIST OF INTERNATIONAL FINANCIAL ENTITIES AUTHORIZED TO EMIT THE GUARANTEES ESTABLISHED IN THE TERMS**

- **Foreign Banks:**

The international prime Banks will be taken into consideration, included in the list approved by the Central Reserve Bank by means of ***Circular Letter N° 047-2008-BCRP dated 14<sup>th</sup> of November, 2008***, or the regulation which substitutes it. Likewise, the branches and/or subsidies of the before mentioned foreign Banks.

- **Multinational Organisms:**

- ⇒ Fondo Latinoamericano de Reservas (FLAR) Colombia
  - ⇒ Banco Latinoamericano de Exportaciones S.A. (BLADEX) Panama
  - ⇒ Corporación Andina de Fomento (CAF) Venezuela
  - ⇒ Banco Interamericano de Desarrollo (BID) United States of America
  - ⇒ World Bank (IBRD)
- Any multilateral credit institution of which the State of the Republic of Peru is member.
  - Any other international financial institution approved by the GRANTOR having a classification risk of no less than "AA", evaluated by an entity of recognized prestige accepted by the National Supervising Commission of Companies and Values (CONASEV).

**EXHIBIT N° 2**

**EXAMPLES OF GUARANTEES AND LIST OF ENTITIES AUTHORIZED TO EMIT THEM**

**Appendix 2: LOCAL BANKING COMPANIES AUTHORIZED TO EMIT THE GUARANTEES ESTABLISHED IN THE TERMS**

| <b>BANKING COMPANIES</b>                |
|---|
| <b>BANCO DE CRÉDITO DEL PERÚ</b>        |
| <b>BANCO FINANCIERO</b>                 |
| <b>BANCO INTERAMERICANO DE FINANZAS</b> |
| <b>BANCO SANTANDER</b>                  |
| <b>BBVA BANCO CONTINENTAL</b>           |
| <b>INTERBANK</b>                        |
| <b>CITIBANK</b>                         |
| <b>DEUTSCHE BANK</b>                    |
| <b>HSBC BANK</b>                        |
| <b>MI BANCO</b>                         |
| <b>SCOTIABANK</b>                       |

**EXHIBIT N° 3**  
**Form 1: Example of Sworn Statement**  
**Simplification Mechanism in the presentation of required documentation in the**  
**Short-Listing or Credentials Envelopes**  
(Reference: Point 5.1. of Terms)

Lima, ..... of .... 2009.

To  
**Comité de PROINVERSIÓN en Proyectos de**  
**Infraestructura Portuaria – PRO PUERTOS**  
Lima.-

**Reference: Comprehensive Projects Tender for the Concession to the Private**  
**Sector of the General San Martin Port Terminal - Pisco.**

Dear Sirs:

Hereby, we declare under oath that the documentation presented in the Tender.....(state the name of the process in which the documentation was duly presented for Short-Listing or Credentials) for the effects of obtaining our Short-listing or regarding that in which we presented our Credentials, in the quality of bidder, or as member of a consortium, en la inscription date which is effective, there being no variations in said documentation.

The documentation, to which we make reference, is the following:

1. *(list)*
- 2.
- 3.
- 4.

Sincerely,

\_\_\_\_\_  
(Bidder's Name)

\_\_\_\_\_  
(Name of Legal Representative)

\_\_\_\_\_  
(Signature of Legal Representative)

**EXHIBIT N° 3**  
**CREDENCIALES PARA CALIFICACIÓN – INFORMACIÓN GENERAL**

**Form 2: Sworn Statement – Commitment of Reliable Information**  
(Reference Point 5.2. in Tender Terms)

Hereby, we declare under oath the following:

That all the information submitted to accredit our expertise in the administration and operation supplied in the present documents is reliable.

Place and Date: ....., ..... of ..... 2009

**Name, representative and signature of Bidder**

Entity .....  
Bidder

Name .....  
Name of Legal Representative of Bidder

Signature .....  
Signature of Legal Representative of Bidder

*(The signature of the Legal Representative must be legalized by Notary Public or by the Consul of Peru in the country where the present sworn statement has been issued)*



**EXHIBIT N° 4**  
**CREDENTIAL TO QUALIFY – LEGAL REQUIREMENTS**

**Form 1: Sworn statement of the Bidder (as established corporate body)**  
(Numeral Reference 5.3.1. of the Tender Terms)

We hereby declare under oath that..... (name of the Bidder) is a properly established corporate body under the laws of ..... and that it's in force of consent with the applicable legal principle of the origin country.

Place and Date: ....., ..... of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder Legal Representative

Signature .....  
Bidder Legal Representative

(The Legal Representative signature should be legalized by a notary **or a consulate**)

**EXHIBIT N° 4**  
**CREDENTIAL TO QUALIFY– LEGAL REQUIERMENTS**

**Form 2: Sworn Statement of the existence of the Bidder (as a Consortium)**

(Numeral Reference 5.3.1. of the Tender terms)

It is hereby declared under oath the following:

That.....  
..... (name of each one of the Consortium members) have associated through a consortium to participate in the Tender.

That.....  
..... (name of each one of the Consortium members) are companies established according to the legislation of their origin country and they maintain their existence.

That.....  
..... (name of each one of the Consortium members) are Jointly and severally liable opposite to each and every one of the assumed obligations and sworn statements presented by the Bidder in relation to the present Tender.

Place and Date: ..... , ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

Entity .....  
Legal representative of (member1)

Name .....  
Legal representative of (member1)

Signature .....  
Legal representative of (member1)

Entity .....

Legal representative of (member 2)

Name .....  
Legal representative of (member 2)

Signature .....  
Legal representative of (member 2)

(...)

Entity .....  
Legal representative of (member n)

Name .....  
Legal representative of (member n)

Signature .....  
Legal representative of (member n)

(The Legal Representative signature on this sworn statement should be legalized by a notary **or a consulate**)

**EXHIBIT N°4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 3: Sworn Statement- Bidder's Participation**  
(Numeral Reference 5.3.1. of the Tender terms)

**In case if the Bidders are not a Consortium:**

***It is hereby declared under oath that the participation percentage major than 5%, of each one of our shareholders or partners, correspond to the following:***

**Participation percentage up to 50%**

| Name of shareholders or partners |
|----------------------------------|
| 1.                               |
| 2.                               |
| ...                              |
| <b>Total % of participation:</b> |

**Participation percentage over 50%**

| Name of shareholders or partners |
|----------------------------------|
| 1.                               |
| 2.                               |
| ...                              |
| <b>Total % of participation:</b> |

**In case if the Bidders are a Consortium(\*):**

***It is hereby declared under oath that the participation percentage of each one of our members is the following:***

| Members      | Bidder's participation percentage |
|--------------|-----------------------------------|
| 1.           |                                   |
| 2.           |                                   |
| ...          |                                   |
| <b>TOTAL</b> |                                   |

Place and Date: ....., ..... Of ..... 2009

Entity .....

Bidder

Name .....

Bidder's Legal Representative

Signature .....

Bidder's Legal Representative

(\*) Each Consortium member should present a sworn statement with the information of the first part, with the signature of the legal representative of each company member.

**EXHIBIT N°4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 4: Sworn Statement- Entailment with the one that paid for the Participation Right**  
(Numeral Reference 5.3.1. of the Tender terms)

It is hereby declared under oath the following:

That ----- (Bidder's name), acquire the Participation Right, through ----- (name of the person that paid for that right), the same as ----- (if it is the case, write: One of our shareholders or partners or members, or a Company linked to us or to one of our shareholders or partners or members, or a third person who transfer he's Participation Right, through a cession of rights).

Place and Date: -----, ----- Of ----- 2009

Entity -----  
Bidder

Name -----  
Bidder's Legal Representative

Signature -----  
Bidder's Legal Representative

In case of this Cession of Participation Right does exist, the grantor should also subscribe the present statement:

Entity -----  
Grantor

Name -----  
Grantor's Legal Representative

Signature -----  
Grantor's Legal Representative

**EXHIBIT N°4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 5: Sworn Statement that the Company is eligible by law to enter into  
contracts with the State**

(Numeral Reference 5.3.1. of the Tender terms)

We hereby declare under oath that.....**(1)** and  
.....**(2)**, members of  
the Consortium:

- a. Are not administratively sanctioned with temporary or permanent disqualification in the exercise of their rights to participate in selection processes called by the Republic of Peru and to enter into agreements with the Peruvian government.
- b. Have not lost their condition as Concessionaires due to the breach of the Concession Contract entered into with the Peruvian State within the framework of the process for private investment promotion referred to in the Consolidated Text (TUO) on Concessions approved by Supreme Executive Order (Decreto Supremo) 059-96-PCM or Law 28059, Framework Law on the Promotion of Decentralized Investments.
- c. We are not included within the scope of Article 1366 of the Civil Code and/or within any legal provision which is applicable to the limitations specified in Law 29290.

Place and Date: .....

Entity: .....  
Bidder

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

Signatura: .....  
Bidder's Legal Representative

**EXHIBIT Nº4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 6: Sworn Statement- Waiver of diplomatic immunity or claim**  
(Numeral Reference 5.3.1. of the Tender terms)

We hereby declare under oath that [.....] (Bidder's name), as well as its shareholders, members or partners, and the latter's shareholders and partners, as applicable, waive their right to:

***In case the Bidder is a Consortium, the previous paragraph will be replaced by the following:***

***We hereby declare under oath that  
..... (Bidder's name), and his  
members and shareholders or partners waive their right to:***

1. Call for or exercise any privilege or diplomatic or any other type of immunity
2. File claims by diplomatic means, as well as their right to any compensation or other rights concerning any claims that may be brought against the State, PROINVERSION, the Committee, its members and advisors by virtue of Peruvian law or pursuant to any other law with respect to our obligations arising from the Tender Documents, the Economic Bid, the Technical Bid and the Concession Contract.

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT Nº4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 7: Sworn Statement- Bidder's advisers**  
(Numeral Reference 5.3.1. of the Tender terms)

We hereby declare under oath that our legal advisers and technicians have not rendered any kind of services in favour of the APN, PROINVERSION or the Committee during the development of the present Tender, being full time, part time or eventual type, linked with the present promotion process of private investment.

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative



**EXHIBIT N°4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 8: Sworn Statement- Non participation in other Bidder**  
(Numeral Reference 5.3.1. of the Tender terms)

It is hereby declared under oath that .....  
(Bidder's name), his shareholders **or** partners **do not** have direct or indirect participation in any other Bidder.

***In case the Bidder is a Consortium, the previous paragraph will be replaced by the following:***

***It is hereby declared under oath that ..... (Bidder's name), neither his members nor his partners nor the shareholders partners, have direct or indirect participation in any other Bidder.***

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT Nº4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 9: Sworn Statement- Non participation in other Bidder**  
(Applicable to Stock Exchange Listed Companies)

(Numeral Reference 5.3.1. of the Tender terms)

We hereby declare under oath that .....(1) (name of Bidder), its shareholders, partners or members have no direct or indirect interest in any other Bidder where they exert control of the management or of any of its members, in the case of a Consortium, pursuant to the provisions contained in the Regulations on Indirect Ownership, Relationships and Economic Groups passed by Peruvian Securities and Exchange Commission (CONASEV) Resolution 090-2005-EF-94.10.

If the Bidder is a Consortium, the former paragraph shall be replaced by the following:

We hereby declare under oath that .....(1) (name of Bidder), its shareholders, partners or members thereof have no direct or indirect interest in any other Bidder where they exert control of the administration, or any of its members in the case of a Consortium, pursuant to the provisions contained in the Regulations on Indirect Ownership, Relationships and Economic Groups passed by Peruvian Securities and Exchange Commission (CONASEV) Resolution 090-2005-EF-94.10.

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT N°4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 10:**  
**SWORN STATEMENT OF INCORPORATION OF LEGAL ENTITY**  
**(Applicable if the Bidder is a Corporate Body)**

(Reference: (Numeral 5.3.1. of the Tender terms)

We hereby declare under oath that:

1. .... states its intention to establish a legal entity domiciled in the Republic of Peru, with a capital stock pursuant to the provisions established in the Concession Contract, if the aforesaid legal entity becomes the Successful Bidder.
2. The legal entity to be incorporated shall enter into the Concession Contract of General San Martin Port Terminal – Pisco.
3. If we become the Successful Bidder, we undertake to submit the Notarially Recorded Instrument evidencing the Articles of Incorporation of the Concessionaire, together with the certificate of registration at the pertinent Public Records Office, in force on the Closing Date.

Accordingly, we acknowledge and accept that our failure to comply with this commitment may be used as grounds to declare the Awarding of the Contract to us null and void.

Place and Date: ....., .... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT Nº4**  
**CREDENTIAL TO QUALIFY- LEGAL REQUIERMENTS**

**Form 11: SWORN STATEMENT OF INCORPORATION OF LEGAL ENTITY**  
**(Applicable if the Bidder is a Consortium)**

(Reference: (Numeral 5.3.1. of the Tender terms)

We hereby declare under oath that:

1. .... (each of the members of the Consortium) have joined into a partnership through a Consortium in order to participate in this Tender.
2. We, ....., hereby state our intention to establish a legal entity with principal place of business in the Republic of Peru and with a capital stock fixed pursuant to the provisions set forth in the Concession Contract, if declared the Successful Bidder.
3. The legal entity to be incorporated shall enter into the Concession Contract of General San Martin Port Terminal -Pisco.
4. If we are awarded the Contract, we undertake to submit the Notarially Recorded Instrument evidencing the Articles of Incorporation of the corporate body that as will subscribe the concession contract of General San Martin Port Terminal - Pisco, together with the certificate of registration at the pertinent Public Records Office, in force on the Closing Date established in the Exhibit 12 hereof.

Accordingly, we acknowledge and accept that our failure to comply with this commitment may be used as grounds to declare the Awarding of the Contract null and void.

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative

**EXHIBIT Nº5**  
**CREDENTIAL TO QUALIFY- OPERATIVE TECHNIQUE REQUIERMENTS**  
**Form 1: Operative Technique Capacity**

**SWORN STATEMENT**

**BIDDER:** .....  
**STRATEGICAL PARTNER:** .....

**OPERATION EXPERIENCE**

| <b>AUTHORIZED EFFECTIVE CONTROL</b>   |  | <b>PORT TERMINAL CHARACTERISTIQUES</b> |      |                       |   |
|---|--|--|------|-----------------------|---|
|   |  | NAME<br>LOCATION                       | PORT | MOVEMENT<br>LOAD (TM) | MOVEMENMT PERIOD<br>(from mon/day/year- to<br>mon/day/year) |
| Port Manager's Name   | Mechanism of Effective Control and/or way of<br>link |  |      |                       |   |
| <b>I. Port Managers on whom the Strategic Partner has<br/>all the Effective Control:</b>                      |  |  |      |                       |   |
|   |  |  |      |                       |   |
|   |  |  |      |                       |   |
| <b>II. Port Managers on whom the Companies link to<br/>the Strategic Partner have the Effective Control*:</b> |  |  |      |                       |   |
|   |  |  |      |                       |   |
|   |  |  |      |                       |   |
| <b>TOTAL</b>  |  |  |      | XXX                   |   |

Name: Bidder's Legal Representative

Signatura: Bidder's Legal Representative

*\* In case the experience is proved by one or more Related Companies, explain and authorize the Effective Control of the Port Manager and the link with the Strategic Partner.*

**EXHIBIT N°5**  
**CREDENTIAL TO QUALIFY- FINANCIAL REQUIREMENTS**  
**Form 1: Financial Information**

(Reference: (Numeral 5.3.3. of the Tender terms)

Lima, ..... Of ..... 2009

Señores

**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura Portuaria – PRO PUERTOS**

Bidder : .....

Ref: Comprehensive Projects Tender for the Concession of the  
General San Martín Port Terminal-Pisco.

Pursuant to the provisions of the Tender Documents, we hereby comply with submitting  
our Financial Information Letter.

**A.1 Bidder's Net Equity in case of corporate body** (see Notes 1 and 2)

|                             |
|-----------------------------|
| NET EQUITY      US\$ [    ] |
|-----------------------------|

**A.2 Bidder's Net Equity in case of Consortium** (see Note 2)

| Members                        | Net Equity US\$ |
|--------------------------------|-----------------|
| Strategic Partner (See Note 3) |                 |
| [Member 2]                     |                 |
| ...                            |                 |
| [Member n]                     |                 |
|                                |                 |
| NET EQUITY:                    | US\$ [    ]     |

**B. Strategic Partner's Net Equity, if it's authorized through an Affiliate Company or  
Parent Company** (see Note 2 and 4)

| Strategic Partner's Affiliate Company or<br>Parent Company | Net Equity US\$ |
|--|-----------------|
|  |                 |
|  |                 |
|  |                 |

|                                  |  |
|----------------------------------|--|
| <b>Strategic Partner's Total</b> |  |
|----------------------------------|--|

- C. If it is the case, amounts conversion expressed in currency other than Dollars. (See Note 5)

| Bidder/ Member/ Affiliate Company or Parent Company of the Strategic Partner | Figures (Original Currency) | Exchange Rate | Figure (US\$) |
|--|-----------------------------|---------------|---------------|
|  |                             |               |               |
|  |                             |               |               |
|  |                             |               |               |
|  |                             |               |               |

- D. *Explanation of the relation between the Strategic Partner, his Affiliated Company or its Parent Company*

| Strategic Partner's Affiliate Company or Parent Company | Relationship with the Strategic Partner |
|---|---|
|   |   |
|   |   |
|   |   |

Note 1: In case the Bidder authorizes it through an Affiliate Company or his Parent Company, the given amount should be the same that appears on the Total at Table B.

Note 2: In case the equity is registered in figures expressed in currencies other than US\$, the Table C shall be used for conversion.

Note 3: The given amount should be the same that appears on the total at Table B.

Note 4: In addition, complete the Section D.

Note 5: The average exchange rate for sale to be used shall that published by the Peruvian Superintendency of Banking and Insurance and AFP corresponding to the working day before to the Envelope N°1 Presentation.

Sincerely,

Signature .....

Name .....  
Bidder's Legal Representative

Entity .....  
Bidder

**EXHIBIT N°7**  
**Sworn Statement of the Envelope N° 2**

**Form 1: Information's Validity**  
(Reference: (Numeral 7.1. of the Tender terms))

We hereby declare under oath that the information, declarations, certification and, in general, all the presented documents in Envelope N°1 have validity to the date and will be the same until the Closing Date.

Place and Date: ....., ..... Of ..... 2009

Entity .....  
Bidder

Name .....  
Bidder's Legal Representative

Signature .....  
Bidder's Legal Representative



**EXHIBIT N°7**  
**Sworn Statement of the Envelope N° 2**

**Form 2: Terms and Contract Agreement**  
(Numeral 7.1. of the Tender terms)

We, ..... (1), hereby declare under oath that:

1. We accept all the provisions pertaining to the Tender and Awarding of the Contract; the provisions set forth in Supreme Executive Order (Decreto Supremo) 059-96-PCM, the Consolidated Text (TUO) of the Legal Regulations with the force or status of Law governing the Awarding in Concession to the Private Sector of Public Infrastructure Works and Public Utilities, and their corresponding regulations pursuant to Supreme Executive Order (Decreto Supremo) 060-96-PCM, the Tender Documents and their Circular Letters.
2. We have examined and agree with the Tender Documents, the Contract and their supporting and related documentation, and expressly accept the obligations derived from the fulfillment of the Tender Documents and other regulations applicable to the Concession Contract, and raise no objection to the documents referred to herein. We, therefore, hold PROINVERSION and its advisors harmless from all responsibility for possible mistakes or omissions that said documents and background may have.
3. If we are awarded the Contract, we undertake to enter into the Concession Contract.

\_\_\_\_\_  
Bidder's Legal Representative

\_\_\_\_\_  
**Bidder's** Legal Representative Signature

Place and Date: ..... , ..... Of ..... 2009

## EXHIBIT N°8

### Appendix 1: Contain specifications for the Technical Bid: (Reference: (Numeral 7.1 of the Tender terms)

The **Short-listed** Bidder shall present a technical support that can back up the Work and the **Port** equipment offered and identified on its Technical Bid, **corresponding to the Minimum Works, in accordance with the Concession Contract**, with the minimum contain that are indicated and that consider at least the following chapters:

#### I.- SEA INFRASTRUCTURE

- Depth request at the access canal and manoeuvre area, related to the design and operation of the **TP GSM**.
- Help request for navigation.
- Maximum permissible swell for the load and unloading operations
- Plan of dredging of the pier area, implementation stages.
- Environmental impact control.
- Construction procedure

#### II.- CIVIL WORKS

- Layout of the **TP GSM** registered at the Concession Area; development stages.
- Front berth description:
  - Type and material of foundations, depth of design, implementation stages.
  - Carrier capacity of the berth structure elements.
  - **Pier flagstone characteristics.**
  - Filler and upgrades on the back-up area (storage area, container yard and other areas); system and material.
  - Pavement type of the back-up area; carrying capacity.
  - Beams: head , longitudinal, of edge, of anchorage, of lane, etc.
  - **Stilts: Leaned, verticals.**
  - Description of tiding, defense elements.
- Complementary work description.

- Technical rules that will be used, besides Peruvian rules.

### III.- ELECTRIC INSTALLATIONS

- Energy request (Interconnection of the **TP GSM** with the electric system of Mantaro or another alternative).
- Substations and other basic installations.

### IV.- EQUIPMENT

#### IV.1 MULTIPLE CHOICES BOLLARD

- **Board equipment and chips discharge**
  - **Type of equipment and characteristics**
  - **Number**
- **Traction equipment**
  - **Type of equipment and characteristics**
  - **Number**
- Storage area equipment
  - Type of equipment and characteristics
  - Number
- Complementary and auxiliary equipment
- Description of the electronic system operation and management control (infrastructure)

#### IV.2 CONTAINER BOLLARDS

- Wharf Gantry Crane
  - Implementation stages
  - Number of cranes
  - Operation schedule (containers per hour)
  - Maximum estimated capacity per year in container numbers
- **Board equipment and unloading of vessels**
  - **Type of equipment and characteristics**
  - **Number**
- **Traction equipment**
  - **Type of equipment and characteristics**

- **Number**
- Storage area equipment
  - Type of equipment and characteristics
  - Number
- Complementary and auxiliary equipment
- Description of the electronic system operation and management control (infrastructure)

## V.- SERVICES AND SUPPLY ACTIVITIES PLAN

- **Service description:**
  - **Infrastructure supply**
  - **Mobilization of other type of load**
  - **Containers mobilization**
  - **Services rendered by third person**
  - **Vessel assistance**
  - **Material supply**
  - **Machinery and equipment mobilization and supply**
  - **Security and protection**
  - **Other services**
- Logistic chain:
  - “Type” description of activities along the **TP GSM Port** (times and movements scheduled), importation, exportation. **Coastal shipping** and transshipping.

## VI.- ENVIRONMENTAL CONSIDERATIONS DURING THE CONSTRUCTION STAGE, ENVIRONMENTAL CONTROL PLAN DURING THE CONSTRUCTION AND THE EXPLOTATION OF THE TERMINAL.

It should at least include the following:

- i) General objectives of the Environmental Impact Study to be executed.
- ii) General aspects of the proposed methodology to the Environmental Impact Study development.

## VII.- PROCESS TIMETABLE BY STAGES

- Previous activities to the initiation of the Works
- Works execution
  - Sea
  - Land
  - Others

- Acquisition, installation and testing program of the Port Equipment
- Start of operations

## VIII- REFERENTIAL BUDGET OF THE PORT'S WORK AND EQUIPMENT

Note: In any of the before mentioned chapters the **Short-listed** Bidder is allowed to use some of the **Existent Studies**. So, he must declare the following on the pertaining chapter:

*"The **Short-listed** Bidder has used for this chapter the precedent denominated "... (write the study name to which its referring including the consultant name and the year of elaboration)..." in the pages -----to----- and/or plans N° ----- to N° -----, which will be considered as the specification to be adopted for the execution of the works in case we win the Concession process".*

## EXHIBIT Nº 8

### Appendix 2: Minimal requirements for Works and Port Terminal Equipment. (Reference: Point 7.1. of the Tender Terms)

#### 1. MULTIPURPOSE BERTH

##### 1.1 Basic characteristics of the minimal initial Works.

| Concept                           | Minimal requirement |
|-----------------------------------|---------------------|
| <i>Mooring place</i>              | <b>1</b>            |
| <i>Dock length</i>                | <b>350 m</b>        |
| <i>Movable crane on wheels</i>    | <b>1</b>            |
| <i>Reach stacker</i>              | <b>1</b>            |
| <i>RTG Crane</i>                  | <b>2</b>            |
| <i>Side Pick</i>                  | <b>1</b>            |
| <i>Containers chasis</i>          | <b>6</b>            |
| <i>Yard Tractor</i>               | <b>1</b>            |
| <i>Movable equipment for bulk</i> | <b>1</b>            |
| <i>Minimal support area</i>       | <b>1.9 Ha</b>       |

##### 1.2 Technical indicators of Works:

###### 1.2.1 Referred to capacity of vessels service:

**TP GSM** must be planned to attend 24 hours a day (working days, Sundays and holidays).

The occupation rate of **Multipurpose Berth** must not be higher to ..... per cent (...%) ratio between total period of berthing annual occupation and total period of annual availability. Its estimation determines the time when the Concessionaire shall have the new structure and/or the additional **Port Terminal** Equipment operative, according to its Technical Bid.

The occupation rate of **Multipurpose Berth** will be calculated from and to the implementation of the maximum capacity offered in its Technical Bid.

###### 1.2.2 Referred to the infrastructure of **Multipurpose Berth**:

The **Multipurpose Berth** involves repairing, upgrading and adjustment of **current mooring 3 and pulling down and total rebuilding of current mooring 4**. The size of the dock shall be **350m x 28m**. It must have a minimal water draught of **14.0 m**. referred to the mean low water springs (MLWS). At the beginning of the operations the support area of **Multipurpose Berth** shall not be less than **1.9 ha**.

### 1.2.3 Referred to support area.

The Multipurpose Berth support area shall be larger than 1.9 ha. Including filling and upgrading in said area (storage area, containers yard and other areas).

The filling for the storage yard for bulk and break bulk will be reinforced with gravel piles, as the pavement is made of asphalt. The first stage will have an area of 1.9 Ha included 1.65 Ha of asphalt and 0,25 Ha of paving stones to be as provisional containers yard.

The filling of the containers yard will also be reinforced with gravel piles and its pavement will be built with paving stones which resist up to 4 ton/m<sup>2</sup>.

Building of the support infrastructure of storage yard: south stony wall, south surveillance tower; and rehabilitation of warehouses 2.

### 1.2.4 Referred to Port Terminal Equipment:

The Multipurpose Berth will have 1 mobile crane as minimum and 2 new yard cranes; as well as other equipment established in the previous chart. All equipments must be new. According the demand increases and to reach with the levels of service and productivity, more cranes will have to be set up to increase the Multipurpose Berth capacity. The transfer and court equipment will have to keep in capacity and performance the pace required to optimize time in the logistical chain. The concessionaire will detail in the Technical File the characteristics of the Port Terminal Equipment engaged to acquire.

### 1.2.5 Referred to Dredging:

The minimal demand of dredging works shall be to reach a depth of up to -14 m, in the Multipurpose Dock (for bulk and other cargos), handling area and entrance channel.

## 2. BERTH FOR CONTAINERS

The Berth for Containers includes a provisional rehabilitation of current berth 1 and 2, which will consist as a minimum of:

- Rehabilitation of crosspieces system, replacing those damaged.
- Placement of inclined plies addressed longitudinally to the dock; according to that established in the Reformulation Study of the Referential Project to private investment of TP GSM.
- Repairing damages to the junction between piles and the plane slab

## 3. ELECTRICAL SYSTEM

The interconnection of **TP GSM** with the electrical system of Mantaro or other alternative.

## 4. SUPPORT INSTALLATIONS

Rehabilitation and renewal of electrical, sanitary, fireproof installations; remodeling of the administrative building and the Customs / SUNAT installations.

5. The following Minimal Works will be made by the Concessionaire, according to established in the Concession Contract, after reaching a demand of .....:

- Rehabilitation and renewal of Mooring for containers (current moorings 1 and 2) which will have 350 m in length of and 36m in width, with capacity to hold up gantry cranes.
- Containers yard of 4.3 Ha area (initial)
- Building of support infrastructure of the containers yard: north stony wall, north surveillance tower and administrative building.
- Dredging to reach a deepening until -14 m, in the Mooring for containers / Ro – ro, area of maneuvers and entering duct.
- Enlargement of storage court for bulk cargo and other cargos until reach a de 5.25 Ha area.
- A (01) gantry crane of dock to the Mooring for containers.

#### **5. LEVELS OF SERVICES AND PRODUCTIVITY:**

The Works that the Short-listed Bidder proposes to execute in its Technical Bid will allow, as a minimum, to reach levels of services and productivity established in the Concession Contract.



**EXHIBIT N° 9**

**Form 1: MODEL OF ECONOMIC BID – RATES <sup>13</sup>**  
(Reference: Point 7.2 of the Tender Terms)

Lima, ..... , 2009

Señores  
**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura Portuaria – PRO PUERTOS**

**Bidder:** .....

According to point 7.2 of the Tender Document, we are pleased to present to you our Economic Bid, under the conditions established for this Tender, as follows:

| Standard Service Rate |               |
|-----------------------|---------------|
| For cargo .....       |               |
| Amount in letters:    | ..... Dollars |
| Amount in numbers:    | US\$ [     ]  |
| For cargo .....       |               |
| Amount in letters:    | ..... Dollars |
| Amount in numbers:    | US\$ [     ]  |

Said rates do not include applicable taxes.

We declare that our Economic Bid is irrevocable and will be in force until sixty (60) Days after the Closing Date. In case the Committee requires the extension, we hereby commit to do this.

Bidder .....  
Name

Name .....  
Legal Representative of the Bidder

Signature .....  
Legal Representative of the Bidder

<sup>13</sup> Modified through Circular Letter N° 5

**EXHIBIT N° 9**

**Form 2: MODEL OF ECONOMIC BID – ADDITIONAL INVESTMENT (AI)**  
(Reference: Point 7.2 of the Tender Terms)

**Lima, ....., 2009**

Señores  
**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura Portuaria – PRO PUERTOS**

**Bidder:** .....

According to point 7.2 of the Tender Terms, we are pleased to present to you our Economic Bid in accordance with the conditions established for this Tender, as follows:

|                                    |                   |
|------------------------------------|-------------------|
| <b>Additional Investment (AI):</b> |                   |
| Amount in letters:                 | [ ..... ] Dollars |
| Amount in numbers:                 | US\$ [ ..... ]    |

**Said investment amount does not include Value Added Tax (IGV).**

We declare that our Economic Bid is irrevocable and will be in force until sixty (60) Days after the Closing Date. In case the Committee requires the extension of it, we hereby commit to do this.

**Bidder** .....

**Name**

**Name** .....

**Legal Representative of the Bidder**

**Signature** .....

**Legal Representative of the Bidder**

**EXHIBIT N° 9**  
**Appendix 1: Additional Investment <sup>14</sup>**

***The Additional comprises the execution of Works composed of:***

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<sup>14</sup> It will be communicated through Circular Letter

**EXHIBIT Nº 9**  
**Appendix Nº 2: Standard Rate Index**  
(Reference: Point 7.2.3 of the Tender Terms)

**EXHIBIT N° 10**  
**CONCESSION AREA**

## EXHIBIT N° 11

### USERS GUIDE OF THE DATA ROOM (Reference: Point 3.2 of the Tender Terms)

#### I. AVAILABILITY

##### 1. Authorized users

The authorized Users for access to the Data Room are those companies' representatives who have acquired Terms and have been properly presented and identified before the Data Room management with forms duly filled in.

##### 2. Capacity and services

The Data Room will have a meeting room with a maximum capacity of attention of 6 people. The users will have facilities to access printers, copying machine, telephones, faxes and other services that facilitate the work, as well as all available documentation about Tender for Comprehensive Projects for the delivery in concession to private sector of General San Martín Port Terminal - Pisco.

##### 3. Opening hours

Data Room will attend from 9:00 a.m. to 13:00 p.m. and from 15:00 to 18:00, from Monday to Friday.

##### 4. Procedure for the attention

The Purchaser or Bidder who wants to make use of the Data Room will have to sign a Confidentiality Agreement and present his/her request using the respective form, pointing out his/her preferences of hours, time needs and people that will attend. The Data Room **management** will answer the request according to availability and equity and balance criteria. Preferentially, the Data Room should be used for inquiries and work related to inquiry documents. Under no circumstances shall it turn into the Bidders trading room.

All documents and services will be requested from the Data Room **management** through respective forms.

#### II. OFFERED SERVICES

The use of the Data Room is free, but the cost of the different services will be charged, as for photocopies, printings, book bindings, file savings in floppy disks, CDs, telephone, fax, break time, etc. Additional services as plot copies, images scanning, internet use and some others could eventually be brought up only if they have been requested with the proper time in advance and they will be also charged in terms of its cost, which will be previously informed by the Data Room management.

Furthermore, a large part of ***the Infrastructure and Equipment Necessity Study of the General San Martin Port Terminal – Pisco, elaborated by the Cesel-Louis Berger Consortium*** will be available on CD as well as the digitalized plots for the Project. The CDs will be given for free.<sup>3</sup>

### III. USE FORMS IN THE DATA ROOM

It has been included herein the Form 1 (AUTHORIZED PEOPLE IDENTIFICATION TO USE THE DATA ROOM) and its Appendix 1 (INFORMATION AND CONTINUANCE CHART). These formats shall be handed in once they have been filled before the first day of using the Data Room, via fax or e-mail, on behalf of the Bidder group representatives. This is an essential requirement to have access to data in the Data Room. The information supplied in this format is the basis from which the schedule and reservations of the Data Room will be elaborated.

This Exhibit also includes the following forms:

- Form 2 (MULTIPLE SERVICES APPLICATION), will be used according to the services that the Bidders need.
- Form 3 (TECHNICAL INQUIRY APPLICATION) for the Bidders to make written consultations about several projects issues.

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<sup>15</sup> Modified through Circular Letter N° 6

**EXHIBIT N° 11**

**Form 1: AUTHORIZED PEOPLE IDENTIFICATION TO MAKE USE OF DATA ROOM**

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

Señores

**Comité de PROINVERSIÓN en Proyectos de  
Infraestructura Portuaria – PRO PUERTOS**

I, ....., hereby request, on behalf of  
....., to use the Data Room within the visiting  
schedule proposed and for the persons listed in the chart on the reverse hereof.

With respect to the procedures for the use of the Data Room, we hereby confirm that we  
are familiar with the procedures as shown in the Data Room Users' Guide attached to  
the Tender Documents as Exhibit 11.

We are also aware that the information available in the Data Room is of a strictly  
confidential nature.

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\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Identification Number

\_\_\_\_\_  
**Information Data Room**  
representative signature



**Exhibit N° 11**  
**Appendix 1**

**DATA AND PERMANENCE CHART**

| N° | Full Name | Identification number | Nationality | Permanence period (point out the date) |
|----|-----------|-----------------------|-------------|--|
| 1  |           |                       |             |  |
| 2  |           |                       |             |  |
| 3  |           |                       |             |  |
| 4  |           |                       |             |  |
| 5  |           |                       |             |  |
| 6  |           |                       |             |  |
| 7  |           |                       |             |  |
| 8  |           |                       |             |  |
| 9  |           |                       |             |  |
| 10 |           |                       |             |  |
| 11 |           |                       |             |  |
| 12 |           |                       |             |  |
| 13 |           |                       |             |  |
| 14 |           |                       |             |  |
| 15 |           |                       |             |  |
| 16 |           |                       |             |  |
| 17 |           |                       |             |  |
| 18 |           |                       |             |  |
| 19 |           |                       |             |  |
| 20 |           |                       |             |  |

**EXHIBIT N° 11**

**Form 2: MULTIPLE SERVICE REQUEST FORM**

|                   |  |
|-------------------|--|
| <b>Order date</b> |  |
|-------------------|--|

|                  |  |
|------------------|--|
| <b>Applicant</b> |  |
|------------------|--|

|             |  |
|-------------|--|
| <b>User</b> |  |
|-------------|--|

|     | Ref. num. | Description of the Service | Unit number | Amount |
|-----|-----------|----------------------------|-------------|--------|
| 1.  |           |                            |             |        |
| 2.  |           |                            |             |        |
| 3.  |           |                            |             |        |
| 4.  |           |                            |             |        |
| 5.  |           |                            |             |        |
| 6.  |           |                            |             |        |
| 7.  |           |                            |             |        |
| 8.  |           |                            |             |        |
| 9.  |           |                            |             |        |
| 10. |           |                            |             |        |
| 11. |           |                            |             |        |
| 12. |           |                            |             |        |
| 13. |           |                            |             |        |
| 14. |           |                            |             |        |
| 15. |           |                            |             |        |

|                      |  |
|----------------------|--|
| <b>Delivery date</b> |  |
|----------------------|--|

EXHIBIT N° 11

Form 3: TECHNICAL INQUIRIES APPLICATION

|      |  |
|------|--|
| Date |  |
|------|--|

*Applicant Information*

|                 |  |
|-----------------|--|
| Company:        |  |
| Applicant Name: |  |
| Charge:         |  |

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**EXHIBIT N° 11**  
**Appendix N° 2: Documents list of the Data Room<sup>4</sup>**

| <b><u>CODE</u></b> | <b><u>DESCRIPTION</u></b>   |
|--------------------|---|
| <b>1</b>           | <b><u>LEGAL FRAMEWORK</u></b>   |
| 1.A                | NATIONAL PLAN of PORT DEVELOPMENT   |
| 1.B                | D.S. 011-2008-MTC : which modifies the National Plan of Port Development  |
| 1.C                | <i>D.S. 018-2009-MTC :which modifies the National Plan of Port Development</i>  |
| <b>2</b>           | <b><u>VARIED STUDIES</u></b>  |
| 2.A                | <b><u>Pre-investment Studies, Modernization and Development of the General San Martin Port Terminal– Pisco</u></b>                    |
| 2.A.1              | Pre-investment Study  |
| 2.A.2              | Exhibit Volume I  |
| 2.A.3              | Exhibit Volume II   |
| 2.A.4              | Exhibit Volume III  |
| 2.B                | <b><u>Final Report of the Infrastructure and Equipment Necessity Study of the General San Martin Port Terminal -Pisco</u></b>         |
| 2.B.1              | Volume I: Field Information – Current Situation   |
| 2.B.2              | Volume II : Environmental Economical Evaluation   |
| 2.B.3              | Study CD  |
| 2.B.4              | Pisco Port Final Presentation CD in Power Point   |
| 2.C                | <b><u>General San Martín Harbour Interconnection with the Mantaro Electrical System</u></b>   |
| 2.C.1              | Volume I – Technical File   |
| 2.C.2              | Volume II – Plots   |
| 2.C.3              | Technical Report N° 003-2001/AMM  |
| 2.C.4              | Final Report – Project Completion of the Archaeological Evaluation in the General San Martin Port Terminal – Paracas Interconnection. |
| 2.C.5              | Environmental impact assessment   |
| 2.D                | Re-formulation Study of the Referential Project for the General San Martin Port Terminal private investment.                          |

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<sup>4</sup> It will be added additional documents through Circular Letter N° 7

- 3**        **RATE**
- 3.A**      ENAPU S.A Rate (from June 1999 to January 2008)
  
- 4**        **Transport Intermodal Project Study**
- 4.A**      Final Report
  
- 5**        **General San Martin Port Master Plan**
  
- 6**        **Reconstruction of the Zone N° 5 of the General San Martin Port Terminal - Technical File**
  
- 7**        **Reconstruction of the Zone N° 6 of the General San Martin Port Terminal - Technical File**
  
- 8**        **Paíta and General San Martin Ports Demand Analysis**
  
- 9**        **General San Martin Terminal Port –Pisco Damages Analysis**
- 9.A**      General San Martin Terminal Port Inspection and Damages Report -Work 13149-07 (Volume I)
- 9.B**      General San Martin Terminal Port Inspection and Damages Report - Work 13149-07 (Volume II)
- 9.C**      General San Martin Terminal Port Damages Complementary Report (Exhibit 4: Damages Analysis Plan and topographic survey and Complementary Plans)
- 9.D**      General San Martin Terminal Port Damages Analysis Complementary Report (Exhibit 5 : Pillar Damages Report sheet - complementary) (Volume I)
- 9.E**      General San Martin Terminal Port Damages Analysis Complementary Report (Exhibit 5 : Pillar Damages Report sheet - complementary) (Volume II)
- 9.F**      Damages Report - Complementary  
(Exhibit 6: mooring pillars calibration Report Sheet) (Exhibit7: Soil Study)
- 9.G**      Report N° 2 Alternatives to repair the General San Martin Terminal Port Damages
- 9.H**      Estimated budget – San Martin Anchorage Reinforcement Summary
- 9.I**      Report N°3 Reparation Project of the damages caused by the earthquake in General San Martin Terminal Port  
Solution Descriptive Memory with Screen (Cm Solution)

- 9.J** Anchorage and Filling Area Situational Condition in the General San Martin Terminal Port, as a consequence of the earthquake of 15.08.08 – Proposed Restoration Alternatives by Gallegos – Civil Engineers
- 10** ***General San Martin Terminal Port Legal Physical Examination - Technical Report (October, 13 2008)***
- 11** ***Official Letter N° 0507-2008-INRENA-ATFFS-ICA and Technical Report N° 035-2008-INRENA-IANP-RNP-RNP – Natural Protected Areas located in the General San Martin Terminal Port***
- 12** ***Service of Taking of Inventory and General San Martin Terminal Port Valuation Final Report ENAPU 2008***

**EXHIBIT N° 12**  
**SCHEDULE <sup>17</sup>**

(Reference: Tender Documents numeral 1.6)

| <b>Activity</b>  | <b>Date</b>  |
|--|--|
| <b>Call for and Terms Publication</b>  | Friday, April 11 2008  |
| Publications of Terms TUO up to  | Thursday, May <b>21 2009</b>   |
| Terms Consultation, up to  | <b>Tuesday, August 4 2009</b>  |
| Reply to Consultation to the Terms, up to  | <b>Tuesday, August 18 2009</b>   |
| <b>Short-listing:</b>  |  |
| Presentation of Envelope N° 1 (credentials for short-listing), to  | <b>Monday, August 17 2009</b>  |
| Amendment of observations to Envelope N° 1, up to  | <b>Wednesday, August 26 2009</b>   |
| Announcement of Short-listed Bidders, up to  | <b>Monday, August 31 2009</b>  |
| <b>Contract:</b>   |  |
| First Draft Contract Delivery, up to   | <b>Tuesday, May 08 2008</b>  |
| First Draft Contract Consultation, up to   | <b>Friday, July 13 2008</b>  |
| Second Draft Contract Delivery, up to  | <b>Thursday, May 21 2009</b>   |
| Second Draft Contract Consultation, up to  | <b>Wednesday, June 3rd 2009</b>  |
| Third Draft Contract Delivery, up to   | <b>Tuesday, June 16 2009</b>   |
| Third Draft Contract Consultation, up to   | <b>Wednesday, July 1 2009</b>  |
| Delivery of the Contract Final Version approved by the Committee, up to  | <b>Tuesday, July 21 2009</b>   |
| Delivery of the Contract Final Version approved by the PROINVERSIÓN (Private Investment Promotion Agency) Steering Council | <b>Thursday, September 3 2009</b>  |
| <b>Bids Presentation:</b>  |  |
| Presentation of Envelopes N° 2 y N° 3 (Technical and economical bids)  | <b>Monday, September 21 2009 (*) or to 2 subsequent working days once the CGR previous report, without observations or if they have been modified by PROINVERSIÓN, reception has been informed</b> |
| Announcement of the results of evaluation of technical bids, up to   | <b>Thursday, September 24 2009 or to 3 subsequent working days to the Envelopes N°2 and N°3 Presentation</b>   |
| Opening of Envelope N° 3 and award   | <b>Friday, September 25 2009 or to 4 subsequent days to Envelopes N°2 and N°3 presentation</b>   |
| Closing Date, up to  | <b>At 60 business day of the award</b>   |

<sup>5</sup> Modified by Circular Letters N° 1, N°3, N° 4, N° 8, N° 9

*(\*) Subject to reception of the Previous Report of CGR without observations or made by PROINVERSIÓN.*

**EXHIBIT N° 13**

**MAXIMUM FEES<sup>6</sup>**

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<sup>6</sup> It will be communicated through Circular Letter



EXHIBIT N° 14

ENAPU – PISCO WORKERS LIST

| TRABAJADORES DEL TP. GENERAL SAN MARTIN |  |       |                         |                     |      |                  |
|---|--|-------|-------------------------|---------------------|------|------------------|
| SERV. N°                                | APELLIDOS Y NOMBRES                        | NIVEL | CARGO                   | AREA                | EDAD | FECHA DE INGRESO |
| 1                                       | 140990 ALAS CASTRO, JUAN ANTONIO           | 41    | AUXILIAR OPERATIVO      | AREA OPERATIVA      | 51   | 28/05/2007       |
| 2                                       | 140056 BARRUTIA LECANO, MARIO FEDERICO     | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 60   | 11/03/1970       |
| 3                                       | 140156 BENAVIDES HUASQUICHE, ISABEL INES   | 32    | TECNICO ADMINISTRATIVO  | CONTABILIDAD        | 59   | 23/06/1971       |
| 4                                       | 140733 CASTILLO GARCIA, ANA ISABEL         | 41    | AUX ADM (SECRETARIA)    | AREA ADMINISTRATIVA | 33   | 04/08/2007       |
| 5                                       | 140022 CHACON DE LA CRUZ, JUAN ALFREDO     | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 62   | 01/01/1970       |
| 6                                       | 140038 CHAMBILLA ALEJOS, LUIS ALBERTO      | 41    | AUXILIAR ADMINISTRATIVO | SEGURIDAD           | 57   | 01/06/1975       |
| 7                                       | 140189 DE LA CRUZ TASAYCO, ULISES DAVID    | 41    | AUXILIAR ADMINISTRATIVO | CONTABILIDAD        | 39   | 30/10/1987       |
| 8                                       | 140029 ESCALAYA VELARDE, MARCELINO MOISES  | 32    | TECNICO ADMINISTRATIVO  | PERSONAL            | 64   | 01/01/1970       |
| 9                                       | 140089 ESCATE CIUDAD, PABLO TEOFILO        | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 61   | 01/01/1970       |
| 10                                      | 140190 FERNANDEZ HERBIAS, EUSEBIO CARLOS   | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 68   | 30/10/1987       |
| 11                                      | 140045 GEREDA MARTINEZ, OCTAVIO LUIS       | 31    | TECNICO ADMINISTRATIVO  | SECRETARIA          | 69   | 04/05/1970       |
| 12                                      | 140016 GOYBURO VALENCIA, LUIS MIGUEL       | 41    | AUXILIAR ADMINISTRATIVO | OPERACIONES         | 64   | 02/05/1970       |
| 13                                      | 140032 GUERRA MUNANTE, JESUS ANTONIO       | 31    | TECNICO(JEF AREA OP)    | AREA OPERATIVA      | 61   | 21/12/1970       |
| 14                                      | 140187 GUERRERO HERNANDEZ, JORGE           | 32    | TECNICO ADMINISTRATIVO  | CONTABILIDAD        | 60   | 20/08/1971       |
| 15                                      | 140061 GUTIERREZ DAPOSO, JORGE             | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 58   | 10/05/1970       |
| 16                                      | 140132 HERNANDEZ PENA, GUILLERMO BALTAZAR  | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 58   | 13/04/1970       |
| 17                                      | 140092 LA ROSA PALOMINO, ISAIAS GABINO     | 41    | AUXILIAR ADMINISTRATIVO | PERSONAL            | 59   | 06/03/1970       |
| 18                                      | 140155 LI ELIAS, ORLANDO BERNARDO          | 31    | TECNICO(JEF AREA AD)    | AREA ADMINISTRATIVA | 59   | 10/10/1973       |
| 19                                      | 140098 MANCINI ECHEVARRIA, PEDRO LUIS      | 32    | TECNICO ADMINISTRATIVO  | SEGURIDAD           | 61   | 08/06/1970       |
| 20                                      | 140167 MENDIOLA MOSCAIZA, CARLOS EULOGIO   | 41    | AUXILIAR OPERATIVO      | MANTENIMIENTO       | 50   | 07/01/1982       |
| 21                                      | 140166 MOQUILLAZA FAJARDO, ELEODORO MARCOS | 41    | AUXILIAR ADMINISTRATIVO | OPERACIONES         | 57   | 11/06/1970       |
| 22                                      | 140049 NIETO CASTILLO, JUAN GILBERTO       | 32    | TECNICO OPERATIVO       | OPERACIONES         | 60   | 08/06/1970       |
| 23                                      | 140165 ORMENO VENTURA, JESUS               | 41    | AUXILIAR OPERATIVO      | PLANTA DE FUERZA    | 67   | 05/05/1970       |
| 24                                      | 140121 ORTIZ PACHECO, VICTOR HUGO          | 41    | AUXILIAR OPERATIVO      | PLANTA DE FUERZA    | 59   | 01/12/1971       |
| 25                                      | 140013 PEREZ CRISOSTOMO, JACINTO ROBERTO   | 41    | AUXILIAR ADMINISTRATIVO | ABASTECIMIENTO      | 59   | 14/05/1975       |
| 26                                      | 140127 QUISPE CAVERO, ENRIQUE              | 41    | AUXILIAR ADMINISTRATIVO | SECRETARIA          | 62   | 06/06/1970       |
| 27                                      | 140052 RAMOS CANAVAL, JULIO MANUEL         | 32    | TECNICO OPERATIVO       | OPERACIONES         | 64   | 22/09/1975       |
| 28                                      | 140002 ROJAS MATA, ROMUALDO                | 41    | AUXILIAR OPERATIVO      | MANTENIMIENTO       | 68   | 02/03/1970       |
| 29                                      | 140003 SALAS ALVAREZ, TITO ARMANDO         | 41    | AUXILIAR OPERATIVO      | PLANTA DE FUERZA    | 67   | 12/03/1974       |
| 30                                      | 140088 TELLO RAMIREZ, FELIBERTO GABRIEL    | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 60   | 01/01/1970       |
| 31                                      | 140158 TIZON HEREDIA, CARMEN MARIA         | 41    | AUXILIAR ADMINISTRATIVO | CONTABILIDAD        | 65   | 16/06/1970       |
| 32                                      | 140033 TRILLO ESCUDERO, PEDRO LUIS         | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 58   | 01/12/1971       |
| 33                                      | 140192 UCANAN SICCHE, LUIS ALBERTO         | 32    | TECNICO ADMINISTRATIVO  | ABASTECIMIENTO      | 49   | 02/07/1990       |
| 34                                      | 140195 VASQUEZ GOMEZ, WILFREDO             | 41    | AUXILIAR OPERATIVO      | OPERACIONES         | 64   | 01/01/1975       |
| 35                                      | 148449 VEGA ROCANO, CLEMER                 | 32    | TECNICO OPERATIVO       | MANTENIMIENTO       | 53   | 01/06/1979       |
| 36                                      | 148680 VIZCARDO MUNANTE, JULIO             | 41    | AUXILIAR ADMINISTRATIVO | ABASTECIMIENTO      | 69   | 02/05/1984       |
| 37                                      | 148580 ZAMORANO CALVO, JULIO CESAR         | 14    | GERENTE T.P. SAN MARTIN | GERENCIA            | 66   | 01/02/1970       |

Callao, 09 de abril de 2008

(\*) Plaza cubierta - mediante Contrato a Plazo Fijo

JOSE LUIS SOTELO TORPOCO  
GERENTE (e)

[Chart: Workers of TP General San Martín - Service N° - Full Names – Level – Position – Area – Age – Starting Date - Callao, April 9<sup>th</sup>, 2008]

**EXHIBIT 15**

**CONTRACTS LIST SUBSCRIBED BY ENAPU WITH ITS TP GSM SUPPLIERS**