

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

CIRCULAR LETTER 12

As provided for in Sub-point 1.4.1 of the Tender Documents of the Comprehensive Projects Tender for the Concession of the New Container Terminal at El Callao Port Terminal – Southern Zone, PROINVERSIÓN Committee for Investment in Infrastructure and Public Utility Projects is pleased to inform that answers have been provided to Inquiries 6, 16, 17, 18, 19, 28, 60, 71, 81, 82 and 84 of the Third Round of Inquiries made by the Bidders concerning the Tender Documents and the new Tender Schedule, same which have the favorable opinion of the National Port Authority (APN).

I. ANSWERS TO THE INQUIRIES REGARDING THE TENDER DOCUMENTS

INQUIRY 6:

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

Guarantees increase the financial cost of an investment. Due to the inexistence of tangible assets delivered to the successful bidder, guarantees must be limited in DBFOT concessions. As risk is minimal, due to the fact that there is no operation in progress to be delivered and no assets to be entrusted to the successful bidder, it is not reasonable to request guarantees for such an amount. The guarantees are undoubtedly the assets that are constructed, acquired and placed in the country. There is no doubt that the guarantee is the forfeiture clause contained in the concession contract. The increase of the financial costs of the investment results in higher costs for foreign trade operators. We request that the guarantees be reduced to reflect the actual risk faced by the Grantor.

ANSWER:

The definition of Works Execution and Equipment Installation Performance Bond is deleted and the definition of Concession Contract Performance Bond is amended to read as follows:

Concession Contract Performance Bond:

“The amount of this Bond shall be a percentage of the Work Official Estimated Budget, as detailed below:

**From the Closing Date until the approval of the Works corresponding to a berth:
20%**

From the approval of the Works corresponding to a berth until the approval of the initial minimum Works referred to in Appendix 1 to Exhibit 11: 15%

From the approval of the initial minimum Works referred to in Appendix 1 to Exhibit 11 until two (02) years following the expiry of the Contract term: 10%.

The purpose of said bond is guarantee compliance with all contractual obligations, including the **Construction**, exploitation and **conservation** of the Works and Equipment, **as well as the penalties established in the Concession Contract.**

It shall consist of a bank letter of guarantee issued by a Banking Entity or an International Financial Entity, as detailed in Exhibit 2 to these Tender Documents. Said bank letter of guarantee shall be joint and several, unconditional, irrevocable, without benefit of discussion or division, and of automatic execution, as from the Closing Date, and shall be renewed on an annual basis to remain in full force and effect.

Alternatively, a stand-by letter of credit may be accepted, which may be subject to the formalities used by the bank carrying out the transaction, provided that the requirements set forth in Form 2-B of Exhibit 2 are met and provided that it is issued by a Prime Foreign Bank and confirmed by a Banking Entity of the National Financial System.

In the case of a bank letter of guarantee issued by an International Financial Entity, it shall be certified and confirmed by any of the Banking Entities listed in Appendix 2 to Exhibit 2.”

The Form of the Concession Contract Performance Bond is attached hereto, duly amended (Form 2 of Exhibit 2), and Form 2-A of Exhibit 2 is deleted.

INQUIRY 16:

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

ANSWER:

Document 4, contained in Point 7.1, is amended to read as follows:

“Document 4: Technical Proposal

It contains the Bidder's proposal for the design, Construction, Conservation and Exploitation of the New Container Terminal – Southern Zone, which may take into consideration the Benchmark Study. The proposal shall contain the minimum information and requirements stated in Exhibit 11 to these Tender Documents.

A Technical Proposal shall be rejected only if it is anticipated that it will not be able to meet the minimum service and productivity levels established in these Tender Documents and/or if it does not conform to the minimum parameters set therein.

The Works of the New Container Terminal – Southern Zone must be executed as provided for in the Concession Contract, for which purpose the Bidder's Technical Proposal approved by the Committee will be taken into account, and pursuant to the Technical File, which shall be prepared by the Concessionaire.”

INQUIRY 17

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

ANSWER:

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

The term “Benchmark Project” is replaced by “Benchmark Study”.

INQUIRY 18:

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

ANSWER:

Refer to the answer to Inquiry 16.

INQUIRY 19:

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

ANSWER:

Document 5, “Business Plan”, in Point 7.1 is amended to read as follows:

“Document 5: Benchmark Business Plan:

With a view to evaluating the consistency of the Bidder’s Technical Proposal, the Benchmark Business Plan shall contain the basic guidelines on at least the aspects detailed below.

- Marketing strategy
- Cargo and vessel forecast
- Infrastructure and Equipment development plan
- Operations Plan
- Human resources development plan
- Information system plan
- Investment and acquisitions plan
- Financial plan
- Other logistic business items”

INQUIRY 28:

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

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

ANSWER:

Refer to the answer to Inquiry 6.

INQUIRY 60:

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

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

ANSWER:

See the answer to Inquiry 6.

INQUIRY 71:

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

ANSWER:

See the answer to Inquiry 19.

INQUIRY 81:

As regards Point 7.1, Document 5.

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

ANSWER:

See the answer to Inquiry 19.

INQUIRY 82:

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

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

ANSWER:

See the answer to Inquiry 19.

INQUIRY 84:

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

VIII Financial Plan

IX Other Logistic Business Items

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

ANSWER:

See the answer to Inquiry 19.

II. Tender Schedule

Exhibit 12 to these Tender Documents is amended according to the attached document.

III. Form 2 of Exhibit 4

A form incorporating the amendments made by Circular Letters 006 and 010 is attached hereto.

Lima, March 23, 2006

Sergio Bravo Orellana

Chairman

PROINVERSIÓN Committee for Investment
in Infrastructure and Public Utility Projects

EXHIBIT 2**Form 2: FORM OF CONCESSION CONTRACT PERFORMANCE BOND**
(Reference Sub-point 10.2.1.4 of the Tender Documents)

Lima, , 200....

Messrs
Ministry of Transportation and Communications
LIMA-PERU

Ref.: Letter of Guarantee No.....
Due date:.....

Dear Sirs,

This is to certify that at the request of our clients, [.....] [name of corporation] (hereinafter the "Concessionaire"), we have issued this joint and several, irrevocable, unconditional letter of guarantee of immediate execution, without benefit of discussion or division, up to the amount of [.....] in favor of the Ministry of Transportation and Communications to guarantee the proper and timely performance of each and every obligation of the Concessionaire, including its Construction, Conservation and Exploitation obligations under the Concession Contract for the New Container Terminal at El Callao Port Terminal – South Zone (hereinafter the "Contract").

This Performance Bond also guarantees the proper and timely performance of each and every obligation of the Concessionaire pursuant to the provisions set forth in the Consolidated Text of the rules with the status of a law that govern the concession to the private sector of public infrastructure and services works as approved by Supreme Decree 059-96-PCM.

To honor this Performance Bond in your favor, a written notice from the Supervisory Body of Investment in Transport Infrastructure for Public Use (OSITRAN) forwarded by notarial means shall suffice. Such notice shall be signed by the Chairman of the Board of Directors or by any duly authorized official of said organization. Payment shall be made effective within twenty-four (24) hours following receipt of the notice at our offices located at [.....].

Any delay on our side to honor this bond shall accrue interest at the LIBOR rate plus a 3% spread. Interest shall accrue starting on the date when the request to honor the bond was made until the actual date of payment.

Our obligations pursuant to this Bond shall not be affected by any dispute that may arise between you and our clients.



This Performance Bond shall remain in full force and effect from [...] 200... until and including [...], 200...

Yours very truly,

Signature

Name

Banking Entity

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EXHIBIT 4
Form 2: CREDENTIALS FOR QUALIFICATION (Only for Consortia)
(Reference Sub-point 5.2.2 of the Tender Documents)

SWORN STATEMENT

We hereby represent under oath that:

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

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

.....
(Name of all Consortium members) are **jointly and severally** for each and everyone of the obligations undertaken and the sworn statements made by the Bidder in connection with this Tender, before the Republic of Peru, APN, PROINVERSIÓN and the Committee.

Place and date:, 200...

Organization
Bidder

Name
Bidder's Legal Representative

Signature
Bidder's Legal Representative

Organization
Legal Representative of (Member 1)

Name
Legal Representative of (Member 1)

Signature
Legal Representative of (Member 1)

Organization
Legal Representative of (Member 2)

Name
Legal Representative of (Member 2)

Signature
Legal Representative of (Member 2)

(...)

Organization
Legal Representative of (Member n)

Name
Legal Representative of (Member n)

Signature
Legal Representative of (Member n)

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

UNOFFICIAL TRANSLATION

EXHIBIT 12

Activity	Date
Call for bids	11/04/2005
Tender Documents:	
Answers to the inquiries already made	02/09/2006
Second Round of Inquiries to the Tender Documents until	02/16/2006
Answers to the second round of inquiries to the Tender Documents	02/27/2006
Third Round of Inquiries to the Tender Documents until	03/06/2006
Answers to the Third Round of Inquiries	03/17/2006
Fourth Round of Inquiries to the Tender Documents (only with respect to Envelopes 2 and 3)	03/29/2006
Answers to the Fourth Round of Inquiries to the Tender Documents	04/07/2006
Short-Listing:	
Submission of interested parties' credentials and short-listing of bidders (Envelope 1) until	04/21/2006
Correction of the observations made to Envelope 1 until	05/05/2006
Announcement of short-listed bidders until	05/12/2006
Contract:	
Delivery of the First Draft Contract	02/09/2006
Inquiries to the First Draft Contract until	02/22/2006
Second Draft Contract	03/10/2006
Inquiries to the Second Draft Contract until	03/27/2006
Delivery of the Final Draft Contract	04/12/2006
Delivery of the Final Contract	05/12/2006
Proposals:	
Submission of Envelopes 2 and 3 (economic and technical proposal)	05/29/2006
Announcement of the results of the evaluation of technical proposals until	05/31/2006
Opening of Envelope 3 and contract award	05/31/2006
Closing Date	30 business days after the contract award

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