

**PUBLIC AUCTION NOTICE NO. [⦁]/2021 – PPI/PND INVESTMENT PARTNERSHIPS PROGRAM – PPI**

**TRANSFER OF SHAREHOLDING CONTROL OF AUTORIDADE PORTUÁRIA DE SANTOS S.A. – SPA ASSOCIATED WITH THE CONCESSION OF THE PUBLIC UTILITY FOR ORGANIZED PORT ADMINISTRATION**

The Brazilian Development Bank – BNDES, a federal public company headquartered in Brasilia-DF and with an office in Rio de Janeiro-RJ, at Av. República do Chile, 100, registered under the Corporate Taxpayer Registry (CNPJ) No. 33.657.248/0001-89, in the use of the competence granted thereto by Law No. 9.491, dated September 9, 1997 and by article [⦁] of Decree no. [⦁], dated [⦁]/[⦁]/[⦁], by this **Public Notice**, and in accordance with its provisions, makes public the conditions for the privatization of **SPA**, through the sale of the shares representing the **SPA**’s capital stock, associated with the concession of public administration services for the **Organized Port** of Santos and indirect operation of the port facilities therein, according to the obligations and charges provided for in **Attachment 11 – Draft Concession Agreement**.

This bidding will be governed by the rules provided for in this **Public Notice** and its **Attachments**, by Law No. 9.491/1997, Law No. 12.462, dated August 4, 2011 and Decree No. 7.581, dated October 11, 2011, with subsidiary application of Law No. 8.987, dated February 13, 1995 and Law No. 8.666, dated June 21, 1993, by Law No. 10.233, dated June 5, 2001, by Law No. 12.815, dated June 5, 2013, by Law No. 13.334, dated September 13, 2016, by Decree No. 2.594, dated May 15, 1998, by Decree No. 8.033, dated June 27, 2013, by Decree No. 10.138, dated November 28, 2019, by Decree No. 10.245, dated February 18, 2020, by Decree no. [⦁]/[⦁], by **TCU** Normative Instruction no. 81, dated June 20, 2018 (“**TCU IN no. 81/2018**”), by **CPPI** resolution no. , dated [⦁]/[⦁]/[⦁] (“**CPPI Resolution no. /2017**”) and no. [⦁], dated [⦁]/[⦁]/[⦁] (“**CPPI Resolution no. [⦁]**”) and other standards in effect on the matter.

This bidding was preceded by a consultation and two public hearings, in accordance with paragraph 1 of article 34-A of Law no. 10.233/2001, article 39 of Law no. 8.666/1993, and paragraph 3 of article 11 of Decree no. 8.033/2013. A consultation held by **ANTAQ**, from [•]/[•]/2022 to [•]/[•]/2022, with the Notice of Public Hearing published in the Brazilian Federal Register (DOU) on [•]/[•]/2022 and a telepresence hearing held by **ANTAQ** on[•]/[•]/2022 with the publication of the call in the DOU on [•]/[•]/2022. Another hearing held by the **BNDES**, with notice by publication in the DOU on [•]/[•]/2022, and in newspapers of broad circulation on [•]/[•]/2022, with a virtual session held on [•]/[•]/2022, on the platform indicated in the regulations published on the **BNDES**' website.

Notice about this **Public Notice** will be published in the DOU. It must be emphasized that all subsequent publications related to the bidding will be made on the **BNDES**, **Ministry of Infrastructure and ANTAQ websites**, with the exception of the declaration of the winning bidder, which will also be published in the DOU.

The **Public Notice** and the other documents that are part of it will be available for consultation via the Internet, as of [•]/[•]/2022, on the **BNDES, Ministry of Infrastructure and ANTAQ websites.**

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# CHAPTER I – INITIAL PROVISIONS

# Section I – Definitions

* 1. For the purposes of this **Public Notice**, as well as its **Attachments**, unless otherwise defined herein and/or in the **Attachments** hereto, and without prejudice to other definitions set forth herein, the following respective terms and expressions used in this **Public Notice** and its **Attachments**, always beginning with a capital letter and in boldface type, are defined as follows:
     1. **Minority Shareholder of SPA:** Municipality of Santos, holder of 218 (two hundred and eighteen) common shares and 218 (two hundred and eighteen) preferred shares of **SPA**, corresponding to [•]% of equity stake in the company;
     2. **Winning Bidder: Bidder** that wins the **Auction**, to whom the **Auction Object** is awarded, to be called to sign the **Purchase and Sale Agreement for Shares of SPA**, which will become the new parent company of **SPA** after its signature and the **Auction Settlement**;
     3. **Seller:** the Federal Government;
     4. **ANTAQ:** National Agency for Waterway Transportation, an autonomous public corporation under a special system, created by Law No. 10.233/2001, whose activities include, among other aspects, the regulation, supervision and inspection of activities related to the provision of waterway transportation services and the development of port and waterway infrastructure, exercised by third parties, including the authority to monitor the technical studies contracted by the **BNDES** for the structuring and implementation of the privatization measures for **SPA** and to approve the draft public notice and service concession agreement, without prejudice to the authority attributed to the **BNDES**, under the terms of [•] of Decree no. [•]/[•];
     5. **Shipowner**: individual or legal entity that, on its behalf or under its responsibility, prepares the vessel for commercial exploration, pursuant to Normative Resolution No. 32/2019-ANTAQ;
     6. **B3:** B3 S.A. – Brasil, Bolsa Balcão, headquartered at Praça Antonio Prado, nº 48 – Centro – São Paulo/SP, responsible for the provision of specialized technical advisory and operational support services related to the procedures necessary to conduct the **Auction**, including the analysis of the documents required for qualification of the **Bidder** ranked first; operationalization of the **Offer to Employees and Retirees**; and **Auction Settlement** and **Offer to Employees and Retirees**;
     7. **BNDES**: Brazilian Development Bank – **BNDES**, with the qualification indicated in the preamble, as responsible for the execution and monitoring of the privatization process, as provided in Law 9.491/1997 and Decree no. [•]/[•];
     8. **Concession Bonus:** The amount to be paid to the **Concession Authority** by the Winning **Bidder** of the **Auction** in return for the right to provide the public administration services for the **Organized Port,** which is the object of the **Concession Agreement**;
     9. **CADE**: Administrative Council for Economic Defense, a federal agency linked to the Ministry of Justice, under the terms of Law No. 12.529, dated 11/30/2011 (“Law No. 12.529/2011”), which is responsible for ensuring fair trade;
     10. **CEF**: Caixa Econômica Federal;
     11. **CND**: The National Privatization Council, a higher decision-making body of the **PND** whose competencies defined in Law No. 9.491/1997 were assigned to the **CPPI** under Law No. 13.334/2016;
     12. **Affiliate:** the company in which another investing company has significant influence, that is, when the investing company holds or exercises the power to participate in decisions on the financial or operational policies of the invested company, without controlling it, and significant influence is assumed when the investing company holds 20% (twenty percent) or more of the votes conferred by the capital of the invested company, without controlling it;
     13. **Bid Committee:** Committee that will be responsible for conducting the procedures related to the **Auction**, in addition to examining and adjudging all relevant documents, to be comprised of 5 (five) members, 3 (three) of which will be appointed by the **BNDES**, 1 (one) member appointed by **MInfra**, and 1 (one) member appointed by **ANTAQ**, as well as their alternates;
     14. **Purchaser:** **Winning Bidder** that enters into the **Agreement** with the **Seller** and other intervening parties, after the **Auction Object** is awarded and the **Auction** result is ratified, becoming the new parent company of **SPA**;
     15. **Concessionaire:** will be **SPA** after it signs the **Concession Agreement**.
     16. **Consortium**: Group of **Bidders** participating jointly in the **Auction**, all jointly and severally responsible for the full and timely fulfillment of the obligations arising from this **Public Notice**, both in the proposal judgment and qualification phases, as well as during **Auction Settlement**, pursuant to applicable legislation and regulations;
     17. **Consortium A**: **[°]** company hired by the **BNDES** to execute **Service A**;
     18. **Consortium B**: consortium of consultants made up of DTA Engenharia Ltda.; Alvarez & Marsal Consultoria em Engenharia Ltda.; Garín Infraestrutura Assessoria e Participações Ltda.; Navarro Prado Advogados; and Lobo de Rizzo Sociedade de Advogados, hired by the BNDES to execute **Service B**;
     19. **Purchase and Sale Agreement for Shares of SPA:** the Purchase and Sale Agreement for Shares, to be entered into between, on the one hand, the **Seller** and, on the other hand, the **Winning Bidder** of the **Auction**, in addition to the intervening parties, the object of which will be the transfer of shares representing the shareholding control of **SPA** to the **Winning Bidder** of the **Auction**;
     20. **Purchase and Sale Agreement for the Minority Shareholder’s Shares of SPA:** the Purchase and Sale Agreement for Shares, to be entered into on the date of the **Auction Settlement** between the **Winning Bidder** of the **Auction** and the **Minority Shareholder of SPA**, pursuant to **Attachment 12** of this Public Notice, ensuring tag along rights;
     21. **Concession Agreement:** agreement to be entered into between the **Concession Authority** and **SPA**, pursuant to **Attachment 11**;
     22. **Stock Option Agreement for the Purchase of Shares of Túnel S.A**:agreement to be executed by **SPA** with the **Concession Authority**, pursuant to Attachment 11 of the **Concession Agreement**;
     23. **Fixed Contribution:** a fixed contractual charge to be paid by the **Concessionaire** to the **Concession Authority** pursuant to Section 6 of the **Concession Agreement** in exchange for operating the **Organized Port**;
     24. **Variable Contribution:** a variable contractual charge to be paid by the **Concessionaire** to the **Concession Authority** pursuant to Section 6 of the **Concession Agreement** in exchange for operating the **Organized Port**;
     25. **Subsidiary:** a company in which the **Parent Company**, directly or through other **Subsidiaries** or **Affiliates**, holds partner rights that permanently ensure the majority of votes in corporate resolutions and the power to elect the majority of the company’s administrators; effectively using its power to direct corporate activities and guide the functioning of the company’s bodies;
     26. **Parent Company**: individual, legal entity or group of persons bound by a voting agreement, or under common control, that: (i) holds partner rights that permanently ensure the majority of votes in the resolutions of the general shareholders’ meeting and the power to elect the majority of the company’s administrators; and (ii) effectively use such power to guide the company’s activities and the operation of the company’s bodies.
     27. **Common Control:** attribution of a company that shares the function of **Parent Company** with another company.
     28. **Corporate Control**: quality of the shareholder or group of persons bound by a shareholders’ agreement that implies the ownership of partner rights that permanently ensure the majority of votes in the resolutions of the general shareholders’ meeting and the power to elect the majority of the company’s administrators, as well as the effective use of such power to guide the company’s activities and the operation of the company’s bodies;
     29. **CPPI:** Investment Partnerships Program Council, a higher decision-making body created by Law No. 13.334/2016, with competence to perform the functions assigned to the **CND**, pursuant to Law No. 9.491/1997;
     30. **CVM:** Brazilian Securities and Exchange Commission;
     31. **Public Session Director:** The director of the **Public Auction Session**, designated by **B3**;
     32. **Qualifying Documents:** Set of documents listed in the **Public Notice**, which makes up **Volume 3,** to be obligatorily submitted by the **Bidders**, intended to prove their legal, fiscal, labor and economic-financial regularity;
     33. **Public Notice:** This document, which stipulates the rules for the transfer of shares issued by **SPA**, representing its shareholding control, associated with the granting of the concession of public administration services for the **Organized Port** according to the obligations, rights and charges provided for in **Attachment 11**;
     34. **Employees and Retirees**: for the purpose of participating in the **Offer to Employees and Retirees, SPA** employees and retirees are considered to be: (i) employees with an original employment relationship, even if transferred to another entity, on the date of publication of this Public Notice in the Brazilian Federal Register; (ii) retirees who meet at least one of the following requirements: (a) have an original employment relationship with **SPA** on the date of requesting their respective retirements; or (b) have the last social security contribution made as an employee of **SPA**; or (c) have the last social security contribution funded by **SPA**, as the case may be, due to severance incentive plans;
     35. **Document Delivery**: act in which the **Bidders** must submit to **B3**, on the day indicated in the Chapter VII timetable, the documents required in this **Public Notice;**
     36. **FIP**: Equity Investment Funds;
     37. **Bid Guarantee:** Guarantee of compliance with the conditions of the **Public Notice** and **Economic Proposal** to be submitted by the **Bidders**, pursuant to CHAPTER IV, Section IV, of this **Public Notice**;
     38. **Economic Group**: companies that are, in relation to the **Concessionaire**, (i) **Parent Companies**, directly or indirectly, (ii) **Subsidiaries**, directly or indirectly, (iii) under **Common Control**, and (iv) **Affiliates;**
     39. **IBGE:** Brazilian Institute of Geography and Statistics;
     40. **IPCA**:Extended National Consumer Price Index, defined by **IBGE;**
     41. **Auction:** Bidding mode for the transfer of the shareholding control of **SPA,** associated with the granting of the **Organized Port** concession, to be carried out according to and under the conditions described in the **Public Notice;**
     42. **Auction Settlement:** Timely and full payment by the **Winning Bidder** to the **Seller** in exchange for the transfer of ownership of the **Auction Object** shares, to be operationalized by **B3**;
     43. **Settlement of the Offer to Employees and Retirees:** Timely and full payment by the **Employees and Retirees** to the **Seller** in exchange for the transfer of ownership of the shares which are contemplated in the **Offer to Employees and Retirees**, to be operationalized by **B3**;
     44. **Due Diligence Procedure Manual:** Document detailing the content and procedures applicable to the **Data Room**, conducting technical visits and holding meetings, available on the **BNDES, MInfra and ANTAQ websites**;
     45. **Offer to Employees and Retirees Manual:** Document that gathers the information concerning the **Offer to Employees and Retirees**, in accordance with the provisions of **Attachment 8** herein;
     46. **B3 Auction Procedure Manual:** Document prepared by **B3** and validated by **BNDES**, containing guidelines, rules and document templates for the operational procedures of the **Auction**, as well as all other procedures relevant to the realization of the bidding process, to be disclosed on the **BNDES, Ministry of Infrastructure and ANTAQ websites** on the date indicated in Chapter VII of this **Public Notice**;
     47. **B3 Procedure Manual for the Offer to Employees and Retirees:** Document prepared by **B3** and validated by the **BNDES**, containing guidelines, rules and details related to the **Offer to Employees and Retirees** and the **Settlement** thereof, as well as all other procedures relevant to the realization of said **Offer**, to be disclosed on the **BNDES, Ministry of Infrastructure and ANTAQ websites** on the date indicated in Chapter VII of this **Public Notice**;
     48. **Ministry of Infrastructure (MInfra):** a direct federal Public Administration body responsible for the areas of rail, road, waterway and air transportation, policies and guidelines for the development and promotion of the maritime, river and lake port and port facilities sector and execution and evaluation of measures, programs and projects to support the development of the infrastructure and superstructure of maritime, river and lake ports and port facilities, designated as responsible for coordinating and monitoring **SPA**’s privatization measures, including the authority to approve the partial and final results of the studies prepared by the **BNDES**;
     49. **Auction Object:** (i)sale of the common and preferred shares held by the **Seller** in **SPA**, equivalent to [•]% of the Company’s total capital stock, duly paid, associated with **(ii)** granting of the **Concession** for public administration services of the **Organized Port**, for the performance of the duties of port authority and the indirect exploitation of the port facilities existing therein, in accordance with the obligations, rights and charges set forth in the **Concession Agreement,** pursuant to **Attachment 11**;
     50. **Offer to Employees and Retirees: (i)** The offer of common and preferred shares equivalent to 10% (ten percent) of the total **SPA** shares held by the **Seller**, equivalent to approximately 10% of the company’s capital stock, prior to the sale to the **Winning Bidder**;
     51. **Related Parties:** regarding the **Concessionaire**, any parent company, affiliate and respective subsidiaries, as well as those deemed as such by the Accounting Standards in effect;
     52. **Accredited Participant:** Brokerage company qualified by the Central Bank of Brazil and **CVM**, duly authorized to operate in **B3** and contracted by the **Bidder** to represent it in all acts with **B3** related to the **Auction**;
     53. **PGFN**: Attorney General's Office of the National Treasury;
     54. **Concession Authority:** The Federal Government, a legal entity governed by internal public law, headquartered in Brasília, Federal District, through intermediation by the **Ministry of Infrastructure;**
     55. **Organized Port:** Organized Port of Santos, a public asset built and equipped to meet the needs of navigation, passenger transport or the transport and storage of goods in the areas delimited by Ordinance No. [•], dated [•] [•], [•], of the **Ministry of Infrastructure,** managed by **SPA** pursuant to the **Concession Agreement** to be entered into;
     56. **PND**: National Privatization Program, governed by Law No. 9.491/1997;
     57. **Bidder: Auction** participant, acting individually or as a member of a **Consortium**, pursuant to Chapter III of this **Public Notice**;
     58. **Qualified Bidder: Bidder** whose submitted **Economic Proposal** meets all the requirements established in the applicable legislation and regulations and is subject to the conditions and terms set forth in this **Public Notice**;
     59. **Economic Proposal:** Proposal submitted by the **Bidder** in the scope of the **Auction**, which must meet the requirements set out in this **Public Notice**;
     60. **Accredited Representatives:** Individuals authorized to represent the **Bidders** in all documents and acts related to the **Auction**;
     61. **RFB**: Brazilian Federal Revenue Service;
     62. **Data Room**: Documents, data, reports, access to systems and any other type of information about the **Organized Port** and **SPA** made available in a virtual environment, which can be accessed on the **BNDES, Ministry of Infrastructure and ANTAQ websites** by registered interested parties that meet the requirements of **Attachment 15**;
     63. **Service A**: economic and financial evaluation;
     64. **Service B**: economic and financial evaluation and legal, accounting, technical-operational, and other specialized professional services;
     65. **Public Auction Session: Auction** phase started with the opening of the envelopes containing the respective **Economic Proposals** submitted by the **Bidders**, during which the oral bidding stage of the **Auction** will be conducted, if applicable, on the day indicated in the Chapter VII schedule;
     66. **BNDES, Ministry of Infrastructure and ANTAQ websites**: websites of said bodies in which the information on the privatization of **SPA** will be provided, especially regarding its respective **Auction**, accessed at the following addresses: [www.bndes.gov.br](http://www.bndes.gov.br); [www.infraestrutura.gov.br](http://www.infraestrutura.gov.br) and www.ataq.gov.br.
     67. **SPA**: Autoridade Portuária de Santos S.A., a public company in the form of a private limited company, linked to the Ministry of Infrastructure, with headquarters and jurisdiction in the city of Santos, state of São Paulo, at Avenida Cons. Rodrigues Alves, S/N, registered under the Corporate Taxpayer Registry (CNPJ) no. 44.837.524/0001-07;
     68. **SUSEP**: Superintendency of Private Insurance; and
     69. **TCU**: Brazilian Federal Court of Accounts;
     70. **Maritime Carrier:** anyone who performs cabotage or long-haul transportation, in their own or a third-party’s vessel, issuing bill of lading – single, generic, or master, in accordance with Normative Resolution No. 18-2017-ANTAQ.
     71. **Túnel S.A.**: wholly-owned subsidiary to be constituted by **SPA** after the signing of the **Purchase and Sale Agreement for Shares of SPA**, which shall be the object of a stock option agreement in favor of the **Federal Government** to be subsequently assigned to the winning bidder to execute the project for implementing the tunnel connecting Santos to Guarujá, which shall cross the access channel of the **Organized Port.**
     72. **Concession Agreement Price:** Present value of projected **Concession Agreement** revenues, in the amount of BRL [...] ([...]). The **Concession Agreement Price** is merely indicative, and cannot be used to seek restoration of the economic-financial balance.
     73. **Economic Value of the Transaction:** sum of (i) the sale value of SPA’s shares, as established in **Attachment 1 – Purchase and Sale Agreement for Shares**, (ii) the **Concession Bonus**, (iii) the current value of the Fixed Contributions, and (iv) the contribution to be made to **Túnel S.A.** The **Economic Value of the Transaction** is merely indicative, and cannot be used to seek restoration of the economic-financial balance.
  2. Except when the context does not allow such an interpretation, the definitions of the **Public Notice** will be equally applied in their singular and plural forms.
  3. When counting the terms established in this **Public Notice** and its **Attachments**, the following shall be observed: (i) the start day shall be excluded and the deadline day shall be included; (ii) the terms will only start and expire on business days at the **BNDES** office located in Rio de Janeiro; and (iii) the times provided for in this **Public Notice** refer to the official Brasília time.

# Section II – Purpose

* 1. The object of this **Public Notice** is the transfer of **SPA**’s shareholder control, through the sale of all the shares owned by the Federal Government and issued by **SPA**, associated with the granting of the concession for public administration services of the **Organized Port**, object of the **Concession Agreement**, and the indirect exploitation of the port facilities therein.
     1. The **Winning Bidder**, in addition to acquiring the **SPA** shares as described in the **Auction Object**, subject to the provisions of Subsection I – **Offer to Employees and Retirees**, will also be required to acquire the shares of the **Minority Shareholder of SPA**, if it exercises its tag along rights, under the same conditions and prices paid by the **Winning Bidder** for the **Seller**’s shares.
  2. The following **Attachments** are an integral part of this **Public Notice**:
     1. **Attachment 1** – **Draft of the Purchase and Sale Agreement for Shares of SPA**
     2. **Attachment 2 – B3 Auction Procedure Manual**
     3. **Attachment 3 – Template for Declaration of Non-existence of Equivalent Foreign Document**
     4. **Attachment 4 – Economic Proposal Template**
     5. **Attachment 5 – Template for Declaration of Acknowledgment of the Terms of the Public Notice and Absence of Impediment to Participate in the Auction**
     6. **Attachment 6 – Template for Declaration of Regularity with respect to Art. 7, XXXIII, of the Federal Constitution**
     7. **Attachment 7 – Statement of Bid Ratification Template**
     8. **Attachment 8 – Offer to Employees and Retirees Manual**
     9. **Attachment 9 – B3 Procedure Manual for the Offer to Employees and Retirees**
     10. **Attachment 10 – Template for Declaration of Submission to Brazilian Legislation**
     11. **Attachment 11 – Draft Concession Agreement**
     12. **Attachment 12 – Draft Agreement for the Purchase and Sale of Shares of the Minority Shareholder of SPA**
     13. **Attachment 13 – Technical Visit Certificate Template**
     14. **Attachment 14 – Template for Declaration of Full Awareness**
     15. **Attachment 15 – Due Diligence Procedure Manual**
     16. **Attachment 16 – Template for the Statement on the fulfillment of the prerogatives related to the tie-breaking criteria established in art**. **45, paragraph 2, and art. 3, paragraph 2, of Law No. 8.666/93**
  3. In case of conflict or inconsistency between any provision of this **Public Notice** and any of the **Attachments**, which cannot be resolved by the context in which they are used, the **Bid Committee** will decide on the matter based on the provisions of the **Public Notice**.
  4. In case of divergence between the Portuguese version and the English verson, the provisions of the Portuguese version will prevail.

# Subsection I – Offer to Employees and Retirees

* 1. Under the terms of item 1.1.50 above, **SPA** shares will be offered to **Employees and Retirees**, pursuant to **Attachment 8**.
  2. On the date that is 3 (three) years from the date of signing the **Purchase and Sale Agreement for Shares of SPA**, the new parent company will have the obligation to repurchase the shares acquired by the **Employees and Retirees**, should they wish to sell them, under the terms and conditions set forth in the **Attachment 8**.
  3. **Details** of the operational conditions and procedures of the **Offer to Employees and Retirees** can be found in **Attachment 8** and in **Attachment 9**.
  4. The **Settlement of the Offer to Employees and Retirees** will be subject to the effective transfer of control of **SPA**, pursuant to this **Public Notice**.
  5. If the transfer of control of **SPA** does not take place, the **Settlement of the Offer to Employees and Retirees** will not occur, in which case the right to acquire the shares will not be granted.

# Section III – Access to the Public Notice

* 1. The **Public Notice** for this **Auction**, its **Attachments**, as well as all the information about the concession of the **Organized Port** may be obtained from the **BNDES, Ministry of Infrastructure and ANTAQ websites**.
  2. Interested parties must obtain the **Public Notice** by the means specified above to guarantee the authenticity of the texts and that all documents and **Attachments** that make up the **Public Notice** are in their possession.
  3. The **BNDES** is not responsible for the text and attachments of public notices obtained or learned of in a manner or in places other than those indicated herein.

# Section IV – Clarifications on the Public Notice

* 1. The **Bid Committee** may provide clarifications on the **Public Notice** and its **Attachments,** ex officio or at the request of any interested parties, and such clarifications will bind the interpretation of its rules.
  2. Requests for clarification must be submitted by the deadline defined by the schedule in Chapter VII, by means of email sent to the following email address: [⦁].
     1. Requests for clarification will be considered delivered on the date of their receipt, unless received after 6 p.m., in which case they will be considered received on the next business day, a business day being understood to mean days between Monday and Friday, excluding national holidays.
  3. All responses from the **Bid Committee** to requests for clarification made under the terms of the previous item will be compiled and made available on the date defined in the Chapter VII schedule, becoming part of the bidding procedure.

# Section V – Technical Visits

* 1. Interested parties may conduct up to [•] ([•]) technical visits aimed at obtaining additional information about the current area, infrastructure and public facilities that are contemplated in the **Concession Agreement**, at which time the **Bidders** may also assess any environmental issues and conduct more specific inspections, studies and observations, such as bathymetry, soil sounding, among others, as long as it does not disrupt the existing port operation and is also compatible with the project and legal and regulatory provisions in force.
  2. The interested parties may indicate up to 6 (six) representatives to participate in the technical visits, which must be conducted with the minimum number of people necessary due to the COVID-19 pandemic.
     1. It is strongly recommended that anyone who is in the risk groups for COVID-19 should not attend.
     2. Symptomatic people are not allowed, being those who present cough, fever, or other symptoms, as recommended by the Ministry of Health.
     3. Everyone present should respect safe distancing and avoid touching eyes and mouth, as well as sharing objects.
     4. It is mandatory to wear a mask at all times while at the facilities of the **Organized Port**. All parties must arrive with their protective masks.
  3. Participation in the technical visit is optional. Among its **Qualifying Documents**, the **Bidder** shall submit a statement issued in the form of **Attachment 13** or **Attachment 14**, declaring that it has full knowledge of the area, infrastructure and public facilities that are contemplated in the **Concession Agreement**, as well as the conditions that may affect its execution, access to the area, materials and equipment to be used, as well as other information required to attain the purpose of the **Concession Agreement**, wherein it is liable for the occurrence of any damages by reason of its omission in the verification of the purpose.
  4. Technical visits must be scheduled directly with **SPA**, through the person in charge, e [⦁], established at [⦁], email: [⦁], and will be accompanied by [⦁].

# Section VI – Challenging the Public Notice

* 1. Any challenge must be sent to the **Bid Committee**, to the e-mail [⦁], by the deadline defined by the schedule in Chapter VII.
     1. The challenge must be accompanied by a copy of the identity document of its signatory, when made by an individual, or proof of the powers of legal representation, when made by a legal entity.
     2. Challenges submitted via email will be considered as filed on the date of receipt, except when received after 6 p.m., in which case they will be considered as having been filed on the next business day.
     3. Challenges submitted to the **BNDES**’ physical address will not be accepted.
  2. Challenges to the **Public Notice** must be addressed to the chairman of the **Bid Committee**.
     1. The challenge protocol will not prevent the interested party from participating in the **Auction**.
  3. The **Bid Committee** shall adjudge and respond to any challenges based on article 45 of Law No. 12.462/2011.
     1. The opinion of the **Bid Committee** in favor of the challenge will only change the date for receiving the envelopes when the change made to the **Public Notice** substantially affects the conditions for offering the **Bid Guarantee**, preparing the **Economic Proposal** or submitting the required **Qualifying Documents**.
     2. Responses to challenge requests will be published on the **BNDES, Ministry of Infrastructure and ANTAQ websites** within the timeframe defined by the schedule in Chapter VII.

# Section VII – General Provisions

* 1. All **Auction** documents, as well as the correspondence exchanged between the **Bidders** and the **Bid Committee**, must be written in Portuguese, with all documentation being consulted and interpreted according to this language.
     1. All documentation submitted by the **Bidders** must be in force on the **Document Delivery** date indicated in Chapter V, Section I of this **Public Notice**.
  2. Documents of foreign origin submitted in other languages without (i) authentication from the respective Brazilian consulates, and (ii) a sworn translation into Portuguese, as well as those submitted in disagreement with the requirements of the legislation in force regarding the necessary requirements for confirmation of their legal validity, will not be considered for evaluation and judgment of the **Proposals**.
     1. For companies in countries that are signatories to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, signed by the Federative Republic of Brazil on October 5, 1961, and promulgated by Decree No. 8.660, dated January 29, 2016, there will be no requirement for diplomatic or consular legalization of foreign public documents, provided that the provisions of that convention are observed and complied with.
  3. The documents must be submitted according to the templates contained in the **Public Notice**, if any.
  4. The events provided for herein and in the schedule contained in Chapter VII are directly subordinate to the completion of the different stages of the privatization process.
  5. The BNDES may review the occurrence of facts supervening the publication of the **Public Notice** that may delay or in any way impede the progress of the concession process of the **Organized Port.**
  6. Changes to the **Public Notice** referring to the dates for **Document Delivery** or the date of the **Public Auction Session**, as well as other conditions that materially affect the formulation of the **Economic Proposals**, shall be disclosed in the Brazilian Federal Register and on the **BNDES, Ministry of Infrastructure and ANTAQ websites**.
     1. Changes that do not fall under the provisions in item 1.30 will be published only on the **BNDES, Ministry of Infrastructure and ANTAQ websites**.
  7. Participation in the **Auction** implies full and unconditional acceptance of all terms, provisions and conditions of the **Public Notice** and its **Attachments**, as well as other standards applicable to the **Auction**.
  8. Access to the **Data Room**, performance of technical visits and meetings will be in accordance with the available in **Attachment 15**.
  9. Subject to the specific rules of this **Public Notice**, the values foreseen in the **Public Notice** are based on the base date of June 2021, and must be readjusted by applying the **IPCA**.

# Section VIII – Justification for Privatization

* 1. The privatization of **SPA** is justified due to the need for restructuring of this company, in order to provide an increase in investments in the **Organized Port**, operational management improvements, an increase in the quality of services provided and an improvement in its economic and financial performance, generating an increase in the financial return for capital invested by shareholders, economic expansion through the opening of new businesses and expansion of existing ventures in the **Organized Port** areas.
  2. As such, this privatization is able to achieve the fundamental objectives defined in the **PND** by (i) promoting the reordering of the State's strategic position; (ii) allowing the Public Administration to concentrate efforts and resources on activities where the State's presence is fundamental, such as the regulation of public services; (iii) permitting the resumption of investments in the company; and (iv) contributing to the economic restructuring of the private sector by modernizing port infrastructure.
  3. In addition, the linking the privatization of **SPA** to the concession of the **Organized Port** intends to achieve the goal of increasing the competitiveness and development of the country, as provided for in the public port policy established under Law No. 12.815/2013, as well as the fulfillment of the respective guidelines to promote the expansion, modernization and optimization of the infrastructure and superstructure that integrate the **Organized Port** and port facilities, ensure the moderateness and publicity of fees and prices charged in the sector, the quality of the activities provided and the effectiveness of users’ rights, and stimulate the modernization and improvement of the management of the **Organized Port** and competition by encouraging private participation.
  4. These guidelines and objectives can be achieved with this privatization to the extent that it will allow for decreased bureaucracy of the internal management of the Port Authority, which will become private, remove ties to the efficiency of the real estate management of the **Organized Port**, which will occur in the Private Landlord Port model with freedom to negotiate with potential investors, as well as attract investments for the expansion and modernization of the existing infrastructure as mandatory investments foreseen in the **Concession Agreement**, and the improvement of the operational efficiency of the **Organized Port**.
  5. In addition, making use of performance indicator mechanisms linked to remuneration, economic regulation guided by the minimum intervention necessary, based on an average fee mechanism with commercial flexibility for services that constitute a monopoly or are subject to infrastructure scarcity, adequate incentives are created to guarantee efficiency, quality, and moderateness in the provision of services.

# Section IX – Information about SPA

# History

* 1. **SPA** was incorporated under the original name of Companhia Docas de São Paulo (CODESP) as a subsidiary of the now extinct PORTOBRÁS, and was registered in the 2nd Notary Office of Brasília – DF, on October 1, 1980, under Public Deed of Constitution No. 194.
  2. The constitution of the then CODESP was previously approved by the President of the Republic, according to the authorizing order issued in explanatory memorandum No. 08/80, dated September 3, 1980, of the Ministry of Transportation at the time, published in the Brazilian Federal Register on September 10, 1980, page 17979, section I. In addition, PORTOBRÁS had deliberated favorably for the constitution of CODESP in its Extraordinary General Meeting held on September 15, 1980, according to the provisions of item VI of art. 189 of its Bylaws.
  3. Later, through Decree No. 85.309/1980, CODESP was entrusted with the administration, operation and exploitation powers of the **Organized Port**. As of the publication of Law No. 8.630/1993, however, the company started to perform only the management and administration roles of the **Organized Port**.
  4. With Law No. 8.029/1990, the dissolution of PORTOBRÁS was authorized by Decree No. 99.226/1990. Thus, all companies previously controlled by PORTOBRÁS had their control taken over directly by the Federal Government, including CODESP.
  5. Until the year 2018, the former CODESP was a semi-public company. That same year, however, the Federal Government acquired the shares held by private shareholders in the company. Today, the municipality of Santos holds 0.00000016% of **SPA**’s capital stock, with the remaining 99.99999984% belonging to the Federal Government.
  6. Following the precepts of Law No. 12.815/2013, **SPA** is currently responsible for the management and supervision of the port facilities and public infrastructure existing in the **Organized Port**, as well as the management and supervision, together with **ANTAQ** and **MINFRA**, of contractual instruments signed to exploit areas in the **Organized Port**.

# Short and Long-term Liabilities

* 1. Short-term and long-term liabilities constitute **SPA**’s obligations to third parties. On June 30, 2020, short-term liabilities, that is, those maturing in less than 12 months, totaled BRL 553.8 million, while long-term liabilities totaled BRL 2.2 billion. The amounts reported herein are available in the company’s audited financial statements.
  2. The main short-term liability as of June 30, 2020 refers to provisions for contingencies, amounting to BRL 369.5 million, which impacted the long-term liability by BRL 120.1 million. The balance reported is composed of a provision for labor (BRL 225 million) and civil (BRL 265 million) contingencies classified as probable loss by the company’s lawyers. Contingencies with risk of possible loss are not provisioned in the **SPA**’s balance sheet; however, they are shown in the respective explanatory notes.
  3. In addition to the portion of provisions for contingencies described above, the long-term liabilities were impacted mainly by the balances related to (i) the Portus pension plan (BRL 873.6 million), as described in item b.1 below, and (ii) credits from the Federal Government for a capital increase of BRL 857.1 million on June 30, 2020, referring to funds reposted by the Federal Government, intended for **SPA**’s investment program.

# (b.1) Portus Pension Plan

* 1. The management of the complementary pension plan sponsored by the company is the responsibility of Portus – Instituto de Seguridade Social, which manages a single benefit plan – Portus Benefit Plan 1 PBP1, structured in the Defined Benefit modality – BD, enrolled in Previc's National Registry of Benefit Plans – CNPB under no. 19.780.055-29 and sponsored by 14 companies, 13 of which are of a public nature (8 federal, 4 state and 1 municipal) and 1 governed by private law (Portus itself), under federal intervention decreed by the Collegiate Board of Directors of the National Superintendence of Complementary Pensions – Previc, on August 22, 2011, by means of Ordinance no. 459, published in the Brazilian Federal Register – DOU on August 23, 2011. The plan has 4,471 participants, of which 2,511 are retirees, 1,583 pensioners, and 377 active participants, and has been closed to new enrollments since 2011.
  2. The liabilities related to the plan on June 30, 2020 totaled BRL 908.3 million, of which BRL 34.7 million were recorded in the short term and BRL 873.6 million in the long term, and are segregated as follows:
  3. Monthly contribution: represents the monthly balance due to Portus, which will be paid in the following month. The reported balance was BRL 3.0 million.
  4. Provision for the actuarial deficit: refers to the company’s obligations with post-employment benefits for former employees, calculated in accordance with accounting standard CPC 33, by a company hired by the sponsor (Rodarte Nogueira). The reported balance was BRL 430.3 million.
  5. Financial Commitment Agreement (TCF): term signed with Portus aiming at the solvency of PBP1 (Portus 1 Pension Benefit Plan). In this agreement, the company assumed the responsibility to pay the amount of BRL 589.1 million, and made the payment of BRL 117.8 million in June 2020, referring to the initial installment of the actuarial deficit. The balance reported was BRL 475.0 million (equivalent to the remaining 80%), and will be paid in 180 monthly installments.

# Economic-Financial Situation

* 1. Based on the company’s accounting results for the last twelve months ended June 30, 2020 (the period from July 2019 to June 2020, referred to as “LTM20”), **SPA** achieved a reported accounting EBITDA (an indicator representing Earnings Before Interest, Taxes, Depreciation and Amortization) of BRL 279.4 million, which represents an increase of BRL 33.2 million (13.5%) over the full year of 2019. Despite the recession scenario in the Brazilian economy from July 2019 to June 2020, the company maintained its focus on recovering economic and financial results by promoting actions aimed at controlling expenses and increasing operating income.
  2. The increase in the reported accounting EBITDA was driven mainly by the variation in the following accounting headings: c.1) Net revenue – increase of BRL 39.1 million, c.2) Cost of services rendered – decrease of BRL 8.8 million, c.3) General and administrative expenses – increase of BRL16.7 million, better detailed in the items described below.
  3. Adjusted EBITDA showed an important evolution, rising from BRL 327.1 million in 2019 to BRL 390.3 million in LTM20. The adjusted EBITDA margin climbed from 33.0% to 38.2%. **SPA** had a net cash position at June 30, 2020, meaning that the cash and cash equivalents position was BRL 608.0 million higher than total debt, which was zero for the period. In this same period, the net cash/adjusted EBITDA ratio was 1.5x.
  4. It should be noted that a large part of the agreements signed by the company’s previous management were finalized in early 2019. However, some of these agreements were subject to external investigations and internal reviews and therefore comparability of periods prior to this date with later years was impaired.

**(c.1) Net revenue**

* 1. The net revenue earned in 2019 was BRL 74.4 million higher compared to 2018. The increase in revenue in the first six months of 2020 was BRL 39.1 million higher compared to the same period in 2019.
  2. Despite the Covid-19 pandemic impacting the import and export market as a whole, the fee revenue in LTM20 showed an increase of BRL 35.7 million, mainly linked to the increase in cargo movement in 2020 (also a consequence of a higher export volume, driven by the strong U.S. dollar that boosted higher shipments of soybeans and sugar in the period), and to the increase in berthing periods for ships at the **Organized Port**. On the other hand, fee revenues from the use of land infrastructure fell by BRL 6.5 million in LTM20, due to an increase in cargo handling at terminals with adjacent berths, which do not require the use of the land infrastructure of the **Organized Port** and, therefore, do not generate revenues in this service line.
  3. Property revenues showed an increase of BRL 21.7 million in 2019 (compared to 2018) and BRL 9.2 million in LTM20 (compared to LTM19) related mainly to the increase in collection and cargo handling, and the increase in the amounts charged per square meter, resulting from contractual adjustments made based on the IGP-M. Additionally, new transition agreements were signed for the Saboó region in LTM20, which had been unused since the agreements with Rodrimar and Terminal Marítimo de Valongo were terminated throughout 2019.

**(c.2) Cost of services rendered**

* 1. The cost showed a reduction of BRL 8.8 million (3.0%) in LTM20 compared to 2019. This reduction was driven by the decrease in costs with (i) payroll of BRL 6.8 million, equivalent to 3.3% and (ii) operations and maintenance of BRL 6.3 million. On the other hand, the company showed a significant increase in costs with (iii) third-party services – mainly in relation to the cost of the access channel, which totaled BRL 3.2 million.
  2. Below we list the reason for the variations mentioned above.
  3. The 3.3% decrease is related to the decrease in the number of operational employees (average of 926 and 889 in, 2019 and LTM20, respectively), driven by the Voluntary Dismissal Incentive Program (“PIDV”), the Mutually Agreed Dismissal Plan (“PDMA”) and by the resignations of employees occupying terminated positions (without attribution). Note that the PIDV expenses were fully allocated to the “General and administrative expenses” and “Other operating income” headings.
  4. Reduction mainly related to additional maintenance at the Itatinga Plant of BRL 7.4 million, which occurred mainly in 2019.
  5. Increase related to the additional services of ship traffic organization and coordination, with an annual cost of about BRL 7.2 million, which were contracted as of August 2019.

**(c.3) General and administrative expenses**

* 1. In LTM20 general and administrative expenses climbed BRL16.7 million compared to 2019. The variation presented was mainly driven by (i) the increase in personnel expenses due to the recording of PIDV expenses of approximately BRL 30.5 million in LTM20, (ii) a decrease of BRL 8.9 million in legal expenses, resulting from a lower number of labor and civil lawsuits raised against the company in the first half of 2020, and (iii) a reduction of BRL 1.5 million in administrative personnel expenses that were allocated to Terminal Pesqueiro de Laguna.

**(c.4) Assets and liabilities**

* 1. Current assets increased by BRL 43.8 million (6.8%) at June 30, 2020, compared to the balance at December 31, 2019, influenced by the BRL 46.3 million increase in cash and financial investments. Long-term receivables recorded a decrease of BRL 32.0 million (1.4%) mainly due to (i) the decrease in reported property, plant and equipment, and intangible assets of BRL 21.8 million, since capital investments were not intensive in the operation, which led the balances to drop (depreciation of the assets was higher than purchases), (ii) the decrease of BRL 20.4 million in deferred income tax and social contribution assets, due to the decrease of the CSLL negative base and the IRPJ tax loss for the period, and (iii) the increase of BRL 14.8 million in judicial deposits.
  2. Current liabilities grew by BRL 50.1 million (10.0%), mainly due to the recording of the short-term installments originated from the Financial Commitment Agreement signed for equating the Pension Plan of BRL 31.7 million and by the recording of the PIDV provisions that increased by BRL 15.4 million in the period. The non-current liabilities recorded a decrease of BRL 211.0 million (8.6%), essentially related to the registration of the Financial Commitment Agreement for equating the Pension Plan of BRL 443.3 million and by the decrease in the provision for the actuarial deficit of the Pension Plan in the amount of BRL 651.7 million. The net equity presented an increase of BRL 172.7 million in the period, resulting from the appropriation of the result of the first half of 2020 (BRL 80.3 million) and the recording of adjustments to the Pension Plan’s equity valuation, in the amount of BRL 88.8 million.

# Payment of Dividends to the Federal Government and Transfer of Funds to the Capital Account, Provided Directly or Indirectly by the Federal Government, in the Last Fifteen Years

* 1. Information on **SPA**’s dividends and the contribution of funds to its capital account can be viewed in the company’s own financial statements, disclosed to the public through legal means. It is observed that, given the scenario of accumulation of losses in recent years, **SPA** has not distributed dividends in recent fiscal years.
  2. As of June 30, 2020, the company reported a balance of BRL 857.1 million of credits from the Federal Government for capital increase. On September 28, 2020 a Decree was issued by the Presidency of the Republic (No. 10.498) authorizing an increase in **SPA**’s capital stock in the amount of 538.8 million (Dec/20 base) and the management is in negotiations with the control bodies for the realization of the capital increase of the remaining portion.

# Summary of Appraisal Studies

* 1. The model for the privatization of **SPA** was designed so that it will take place: (i) by the operational modality of sale of ownership interest, including shareholding control, with the sale of all of the shares held by the Federal Government – wherein 10% (ten percent) of these shares are offered to **Employees and Retirees** – thus there will be the sale of a single lot of 90% (ninety percent) of the shares owned by the Federal Government, corresponding to [o]% ([o] percent) of the company’s capital stock; and (ii) as soon as the shares are sold, the concession of the **Organized Port** will be granted to **SPA** upon the payment of an amount corresponding to the **Concession Bonus**. The selection criterion for the **Auction** will be the highest value of the **Concession Bonus** offered by the winning bidder.
  2. Whereas, therefore, the current model for the privatization of **SPA** consists not only in the privatization of the company, but also in the granting of a concession to exploit a public good and public services, it was necessary to determine the **Economic Value of the Transaction** taking as a parameter the sum of the value of **SPA**’s shares and the estimated value of the **Concession Agreement**.
  3. The determination of the **Economic Value of the Transaction** relied on the evaluation performed by two consultants, **Consortium A** and **Consortium B**. As such, it was determined by the arithmetic mean of the results obtained by each consultancy, corresponding to BRL [o] ([o]).
  4. **Consortium A** [describe criteria and methodology adopted by Consortium A].
  5. In turn, **Consortium B** adopted as a criterion to define the value of the sale of **SPA**’s shares, according to an economic-financial evaluation, the net book value of the shares projected for the moment of settlement. To do this, we estimated both the cash generation of **SPA** while public, as well as the changes in equity that must be made in **SPA** while still public until the date of sale of its control. Based on this, the amount of BRL [o] ([o]) was defined, which will be paid in the act of **Auction Settlement**.
  6. The method used by **Consortium B** to assess the financial value was the Discounted Cash Flow (“DCF”) method, based on future profitability. Within the discounted cash flow methodology, the Free Cash Flow to Equity (“FCFE”) criterion was adopted, where the cash flows coming from operating and investment activities of the evaluated company and the flows from financial debt, financial results and debt equivalents are considered, discounted by a rate equivalent to the cost of equity capital (“Ke”), resulting in the fair value of 100% of the company’s shares (“Equity Value”).
  7. From the valuation results of both consultancies, therefore, the values for the acquisition of **SPA** shares were set to be BRL [o] ([o]). To determine the minimum value of the **Concession Bonus**¸ to be paid as consideration for the signing of the **Concession Agreement**, the value of BRL [o] ([o]) was defined. To determine this amount, the disbursements of the **Buyer** and the **Concessionaire** were considered, with the following charges provided for in the **Concession Agreement**: (i) 25 (twenty-five) annual installments of a **Fixed Contribution** in the amount of BRL 63,326,900 (sixty-three million, three hundred and twenty-six thousand and nine hundred Brazilian reais) each, from year 8 to year 32 from the effective date; (ii) **Variable Contribution** of 2.25% (two point twenty-five percent) applicable annually on the consolidated gross revenue of the previous year; (iii) annual payment of the inspection fee to ANTAQ in the amount of BRL 6,422,938.00 (six million four hundred and twenty-two thousand nine hundred and thirty-eight Brazilian reais), during the entire term of the **Concession Agreement**; (iv) contribution of BRL 2,988,167,356.00 (two billion nine hundred and eighty-eight million one hundred and sixty-seven thousand three hundred and fifty-six Brazilian reais) in the Túnel Account for the constitution of the wholly-owned subsidiary **Túnel S. A.**; and (v) deposit of funds linked to the project, including the initial amount of BRL 200,000,000.00 and annual installments equivalent to 2.25% of the **Concessionaire**’s consolidated Gross Revenue.
  8. Such considerations capture the financial value assessed by the DCF method and not captured by the defined value for acquiring the shares.

# CHAPTER II – BID COMMITTEE

* 1. The **Auction** will be processed and judged by the **Bid Committee**, which will be assisted by **B3**, and is responsible for conducting the necessary work for the realization of the bidding process, as demanded by the **Bid Committee**.
  2. The **Bid Committee** may request information from any bodies and entities involved in this **Auction**, as well as from all the members of the Federal Public Administration.
  3. In addition to the prerogatives that implicitly derive from its legal role, the **Bid Committee** may:
     1. request the **Bidders**, at any time, to provide clarification on the documents submitted by them, as well as adopt criteria to remedy formal failures in the course of the **Auction**, and the subsequent inclusion of a document that should originally be included in the documents submitted by the **Bidders** isprohibited;
     2. promote due diligence and request complementary information to clarify the content and confirm the authenticity of the information contained in the documents, or complementary to the **Auction**’s instruction; and
     3. extend the deadlines addressed in the **Public Notice** in the event of public interest, unforeseeable circumstances or force majeure, without the right to indemnity or reimbursement of costs and expenses for any reason whatsoever.
  4. Refusal to provide clarifications and documents or to comply with the requirements requested by the **Bid Committee**, within the deadlines determined thereby and pursuant to the terms of this **Public Notice**, may lead to the disqualification of the **Bidder** and the execution of the respective **Bid Guarantee**, as provided for in this **Public Notice**.

# CHAPTER III – PARTICIPATION IN THE AUCTION

* 1. Under the terms of this **Public Notice**, Brazilian or foreign legal entities, including financial institutions, as well as **FIPS** and supplementary pension plan entities, acting alone or in a **Consortium**, may participate in the **Auction**.
  2. Foreign **Bidders** must submit the equivalent **Qualifying Documents** in such a way as to enable the analysis of their validity and enforceability, observing the provisions in item 1.26 of this **Public Notice**.
     1. In the event of non-existence of documents equivalent to those requested in this **Public Notice** or from body(ies) in the country of origin that authenticate them, a statement must be submitted in accordance with the template in **Attachment 3**, informing such fact, under the penalties of law, and signed by the **Bidder**.
        1. The foreign **Bidder**, participating alone or in a **Consortium**, must also submit, along with the documents of Volume 1, the statement that, in order to participate in this **Auction**, it will comply with the terms of the law of the Federative Republic of Brazil and that it waives the right to file any claim through diplomatic channels, as per **Attachment 10**.
  3. The participation of **Bidders** in a **Consortium** will be allowed upon presentation of a commitment to constitute a **Consortium**, governed by Brazilian law.
     1. In forming and organizing **Consortiums**, the **Bidders** must observe the provisions of this section and applicable legislation.
        1. The commitment to constitute a **Consortium** must include:

1. name, organization and purpose of the **Consortium**;
2. qualification of the **Consortium** companies;
3. composition of the **Consortium**, with the respective investments of its members;
4. indication of the leading company, responsible for conducting the actions that the **Consortium** fulfills;
5. provision of joint and several liability of the consortium members for the full and timely fulfillment of the obligations set forth in the **Public Notice** (which will include all its **Attachments**, including, without limitation, the **Agreements**).
   * 1. Each **Consortium** member must individually meet the requirements related to legal, fiscal and labor regularity, as well as economic-financial qualification contained in Chapter IV, Section V, of this **Public Notice**, in addition to individually submitting the statements contained in Chapter IV, Section I, of this **Public Notice**.
     2. No **Bidder** can participate in more than one **Consortium**, directly or through its **Economic Group**, even if with distinct interests or members.
     3. If a **Bidder** participates in a **Consortium**, it will also be impeded from participating in the **Auction** on its own, a restriction that will also include its **Economic Group**.
     4. The disqualification of any consortium member will result in the automatic disqualification of the **Consortium** and other **Bidders** belonging to it.
     5. There is no limit on the number of participants to form the **Consortium.**
     6. The inclusion, substitution, withdrawal, exclusion or alteration in the participation percentages of the consortium members will not be allowed as of the date of the **Document Delivery** until the signing of the **Concession Agreement**.
     7. In the case of a **Consortium** with foreign and national members, the leadership will necessarily belong to a national company.
     8. The permission to form a **Consortium**, especially among competitors, to participate in the **Auction** does not preclude **CADE**’s competence to ascertain the **Consortium**’s compliance based on Law no. 12.529/11 (Antitrust Law), and, thus, to investigate possible antitrust violations.
   1. The **Bidders** will necessarily be represented at the **Auction** by **Accredited Representatives** and **Accredited Participants**.
   2. **Bidders** that may not participate in this **Auction** are those that:
      1. have been declared unsuitable by an act of the Government;
      2. are prevented or suspended from bidding or contracting with the Federal Public Administration;
      3. have been sentenced, by an unappealable judgement, to the penalty of legal disability due to the practice of environmental crimes, as provided for in art. 10 of Law No. 9.605, dated February 12, 1998;
      4. have directors or technicians in charge that are or have been occupying a commissioned position, effective position, or job in the contracting agencies or entities or those responsible for the bidding, in the last 180 (one hundred and eighty) days prior to the publication date of the **Public Notice**;
      5. are under judicial/extrajudicial reorganization process or bankruptcy and composition with creditors, civil insolvency, under concurrence of creditors, in dissolution or liquidation, or that has been decreed bankrupt;
         1. if the **Bidder** is undergoing judicial or extrajudicial reorganization, the impediment does not apply if its reorganization plan is accepted by the courts or if there is a certificate issued by the competent judicial body attesting that the interested party is economically and financially able to comply with the **Concession Agreement** conditions.
      6. have undergone adjudication of bankruptcy or dissolution;
      7. are legal entities whose directors, managers, shareholders, or holders of more than 5% (five percent) of the voting capital, direct or indirect controller, and/or subcontractor has participated in the preparation of the studies that served as a basis for it;
      8. are, on the date of **Document Delivery**, (i) holders of leases in the **Organized Port**, (ii) holders of transition agreements in the **Organized Port**, (iii) holders of Adhesion Agreements to explore Private Use Terminals (TUPs) integrating the Santos Port Complex as defined in the **Organized Port** Master Plan, (iv) **Shipowners**, (v) **Maritime Carriers**; (vi) **Port Operators** pre-qualified to operate in the **Organized Port**; (vii) holders of concession or sub-concession agreements for railroads that, directly or by right of way, interconnect with the **Organized Port** and (viii) participants of the respective **Economic Groups** of any of the companies mentioned in items (i) to (vii), pursuant to the provision in item 3.5.8.1.
         1. The participation of the legal entities defined in item 3.5.8 is acceptable, provided that as a **Consortium** member, observing the following conditions:
            1. Individual investments cannot exceed 15% (fifteen percent) in the **Consortium**;
            2. The sum of the participations, when in conjunction, does not exceed 40% (forty percent) in the **Consortium**;
            3. Such legal entities may not participate, by means of a shareholders’ agreement or similar instrument, in the **Concessionaire**’s **Corporate Control** group, in case the **Consortium** wins the bidding process, and such obligation must be included in the respective instrument to establish the **Consortium**.
   3. The participation of **Bidders** or **Consortium** members with operations (their own or their **Related Parties**) in the port sector must take place in accordance with the applicable legislation and sectorial standards in force.
   4. The practice of acts by the **Bidders** at each stage of the **Auction** is subject to preclusion, and the exercise of powers referring to stages of the **Auction** already completed is prohibited, unless allowed in this **Public Notice**.

# CHAPTER IV – DOCUMENTATION

* 1. **Bidders** must submit documentation relating to the **Auction**. All documents relating to the **Auction** must be physically submitted by the **Bidders** in 2 (two) identical copies and separately bound, in their original form or a notarized copy, and all pages must be sequentially numbered and initialed by the respective **Accredited Representatives**.
     1. The **Bid Guarantee**, in the form of bank guarantee or insurance policy, must be presented in its original copies, subject to digital authenticity.
     2. The certificates submitted for the purpose of meeting the requirements of the **Public Notice** will be accepted, unless otherwise provided for herein and when they do not contain an expiration date, if issued within 90 (ninety) days before the **Document Delivery** date.
     3. Electronic and/or digital signatures will be accepted, provided that the document submitted contains efficient means for verifying its authenticity, including, but not limited to QR Codes and codes for validation on website links expressly indicated in the document in question.
  2. One copy of the documents submitted by the **Bidders** will be kept by **B3** and the other by the **Bid Committee** until the expiration of a period of 15 (fifteen) days from the date of signature of the **Concession Agreement**.
  3. Documents submitted by the non-winning **Bidders** may be withdrawn at **B3** and/or the **BNDES** after the execution of the **Concession Agreement**.
     1. Thirty days after the signing of the **Concession Agreement** without a pronouncement from the **Bidders**, the **BNDES** will render useless any documents not withdrawn.

# Section I – Declarations

* 1. **Bidders** must submit the following declarations, when applicable, according to the templates contained in the **Attachments** to the **Public Notice**:
     1. **Attachment 3 – Template for Declaration of Non-existence of Equivalent Foreign Document**;
     2. **Attachment 5 – Template for Declaration of Acknowledgment of the Terms of the Public Notice and Absence of Impediment to Participate in the Auction**;
     3. **Attachment 6 – Template for Declaration of Regularity with respect to Art. 7, XXXIII, of the Federal Constitution**;
     4. **Attachment 7 – Statement of Bid Ratification Template**;
     5. **Attachment 10 – Template for Declaration of Submission to Brazilian Legislation**;
     6. **Attachment 13 – Technical Visit Certificate Template**;
     7. **Attachment 14 – Template for Declaration of Full Awareness**; and
     8. **Attachment 16 – Template for the Statement on the fulfillment of the prerogatives related to the tie-breaking criteria established in art**. **45, paragraph 2, and art. 3, Paragraph 2, of Law no. 8.666/93**.

# Section II – Representatives

# Subsection I – Accredited Representative

* 1. Each **Bidder** participating separately in the **Auction** may have up to 2 (two) **Accredited Representatives**. In the event of participation in a **Consortium**, the participation of up to 2 (two) **Accredited Representatives** per **Consortium** will be allowed.
  2. Representation powers will be granted to the **Accredited Representatives**:
     1. In the case of brazilian **Bidders** or branches of foreign legal entities authorized to operate in Brazil, by means of a public or private power of attorney that proves the powers to perform, on behalf of the **Bidder,** all acts relating to the **Auction** (including the powers to represent the **Bidder** administratively, make agreements and waive rights, such as right of appeal), with a notarized signature and accompanied by documents proving the powers of the grantor(s), according to the last amendment filed in the competent business or civil registry.
     2. In the case of a foreign **Bidder** that does not operate in Brazil, upon submission of:
        1. power of attorney granted to a representative residing in Brazil, with the signature(s) duly notarized by a notary or other entity in accordance with the legislation applicable to the documents, legalized by the Brazilian consular agency, subject to the provisions of item 1.26, which proves powers to:
           1. perform, on behalf of the **Bidder**, all acts related to the **Auction**, except those referred to in item 4.9;
           2. receive summons and represent the **Bidder** administratively and judicially, pursuant to Article 32, Paragraph 4, of Law No. 8.666/1993; and
           3. make agreements and waive rights.
        2. documents proving the powers of the grantors, legalized by the Brazilian consular agency, subject to the provisions of item 1.26, whereas in any event, the documents must be accompanied by the respective sworn translation into Portuguese, conducted by a sworn translator registered in any of the Brazilian Boards of Trade, according to the last change filed in the competent corporate or civil registry, or equivalent requirement of the country of origin.
     3. In the case of a commitment to form a **Consortium**, proof of the powers of each **Consortium** member must be submitted, by means of the exhibition of the respective corporate documents of the **Consortium** members and/or a notarized power of attorney, or, in the event of a foreign document, covered by the formalities of item 1.26, accompanied by:
        1. powers of attorney granted by the other **Consortium** members to the leading company, granting it express, irreversible and irrevocable powers to agree to terms, compromise, commit, sign any papers, documents and contracting instruments related to the **Auction Object;**
        2. documents that prove the powers of all grantors, according to the last change filed in the competent business or civil registry; and
        3. commitment to establish a **Consortium**.
  3. **Accredited Representatives** will not be allowed to intervene or perform acts during the **Public Auction Session**, considering that such representation will be exercised exclusively by the **Accredited Participants**.
  4. Each **Accredited Representative** may only represent a single **Bidder** participating alone or a single **Consortium**.

# Subsection II - Accredited Participants

* 1. The **Accredited Participants** must represent the **Bidders** before **B3** in the delivery of all documents required in this **Public Notice**, especially the **Bid Guarantee**, the **Economic Proposal** and the **Qualifying Documents**, as well as in the acts of the **Public Auction Session**.
  2. The intermediation agreement between the **Accredited Participant** and the **Bidder** will have the minimum content specified in **Attachment 2** and must be presented in Volume 1, duly signed and notarized.
  3. Each **Accredited Participant** may only represent a single **Bidder** and each **Bidder** may only be represented and participate in the **Auction** through a single **Accredited Participant**.
  4. In the case of a **Consortium**, an agreement must be signed between the leading company of the **Consortium**, acting on behalf of the **Consortium**, and the **Accredited Participant**.

# Section III – Economic Proposal

* 1. The **Economic Proposal**, to be presented in Volume 2, must indicate the amount of the **Concession Bonus**, by means of filling out the **Attachment 4**, which will bind the **Proposal** to the object of the **Auction**.
  2. The **Concession Bonus** must be paid by the **Winning Bidder** in accordance with the conditions set forth in Chapter V,Section X, of this **Public Notice**.
  3. The values ​​will be proposed pursuant to this **Public Notice**, written numerically and in full, and must also contain the identification of the respective **Bidder(s)**, by completing **Attachment 4**.
  4. In the event of discrepancy between the numerical and long forms of the proposed value, the long form will prevail.
  5. The **Economic Proposal** must have the same validity as the **Bid Guarantee**, that is, 360 (three hundred and sixty) days from the **Document Delivery** date, stipulated in the Chapter VII schedule.
  6. If the **Auction** is postponed or extended, the corresponding **Economic Proposal** must be renewed for an equal period up to the fifth business day prior to its expiration, under penalty of disqualification.
  7. In case of delay in signing the **Concession Agreement**, for any reason, after the ratification of the bidding result and the awarding of the object, the winner must obligatorily renew the **Economic Proposal** for the same period only once, by the fifth business day prior to its expiration, under penalty of application of the penalties foreseen in this **Public Notice**
  8. The **Economic Proposal**, as well as the bids made during the oral stage of the **Auction**, shall be unconditional, irrevocable and irreversible, and shall consider all the values indicated in this **Public Notice** as of the base date of June 2021.
  9. If all proposals are disqualified or all **Bidders** are unqualified, the **Bid Committee** may provide an opportunity to submit new documentation within 8 (eight) business days from the date of disclosure of the respective disqualification or lack of qualification decision, as applicable.

# Section IV – Bid Guarantee

* 1. The **Bid Guarantee** must be specific for the **Auction Object**.
  2. The **Bid Guarantee** must be presented in the form of cash deposit, federal government bonds, insurance-guarantee or bank guarantee, according to the instructions in **Attachment 2**, in the minimum amount of **BRL [...] [1% of the Concession Agreement Price]**.
  3. The **Bid Guarantee** must have a minimum term of 360 (three hundred and sixty) days from the **Document Delivery** date, stipulated in Chapter VII of this **Public Notice.**
     1. The **Bid Guarantee** instrument cannot contain a clause or condition that excludes any responsibilities incurred by the **Bidder** in relation to participation in the **Auction**, except for the exclusions expressly provided for the insurance-guarantee in the **SUSEP** regulations.
  4. If the expiration date of the **Bid Guarantee** falls before the signature of the corresponding **Concession Agreement**, the **Bidders** must, up to the 30th (thirtieth) day prior to expiration, renew the **Bid Guarantee** for an equal period, under penalty of disqualification.
  5. In the case of renewal and if one year has passed from the date of submission of the **Economic Proposal**, the index used for monetary restatement of the **Bid Guarantee** will be the **IPCA** or index that comes to replace it, calculated based on the positive variation found between the month of submission of the sealed volumes and the month immediately preceding the renewal of the **Bid Guarantee**.
  6. The terms of the **Bid Guarantee** may not be altered, except in cases expressly permitted by the **Bid Committee**, in the hypotheses of loss of financial value, change in quality, or the need for its replacement.
  7. If the **Bidder** participates in the **Auction** alone, the **Bid Guarantee** must be submitted in its own name.
  8. In the event of participation in a **Consortium**, both the total contribution of the **Bid Guarantee** by only one of the consortium **Bidders** (for the benefit of all remaining consortium members) and the joint contribution by two or more consortium members will be admissible, provided that the sum of the guarantees attains the amount required in item 4.23.
     1. In the case of joint contribution of the **Bid Guarantee**, each consortium member may opt separately for one of the types of guarantee accepted in this **Public Notice**, without prejudice to the choice by the other consortium members of a different type.
  9. If the **Bidder** participates in a **Consortium**, **Bid Guarantees** that use the name of the **Consortium** as guarantor as the borrower/guaranteed party/holder/depositary will not be accepted. In this case, the **Bid Guarantee** may be presented:

1. in only one instrument on behalf of only one of the duly constituted legal entities belonging to the **Consortium**; or
2. in different instruments, each on behalf of a **Consortium** member.
   * 1. In all cases:
        1. the **Bid Guarantee** shall ensure the responsibility of the **Consortium**, being prohibited an instrument that guarantees only the participation of the **Consortium** member; and
        2. the name of the **Consortium**, the corporate names of all the **Consortium** members and the indication of the participation percentages must be included in the **Bid Guarantee**.
   1. The **Bid Guarantee** must be included in Volume 1 and contain, as the case may be: (i) the bank guarantee instrument, in favor of the **BNDES**; (ii) the performance bond policy, with the **BNDES** as the insured; or (iii) bank deposit slips for the cash bond produced in a **CEF** branch.
   2. In the case of a **Bid Guarantee** provided in the form of a performance bond, the following additional requirements must be observed:
      1. the policy must indicate the **Bidder** as the borrower and the **BNDES** as the beneficiary and must also observe the applicable legislation and regulations, including, without limitation, the normative acts of **SUSEP** applicable to performance bonds;
      2. the policy must be issued by an underwriter duly incorporated and authorized to operate by **SUSEP** and that has a registration with **B3**; and
      3. the authenticity of performance bond policies with digital certification must be verified on the website of the insurer or **SUSEP**.
   3. In the case of a **Bid Guarantee** provided in the form of a bank guarantee, the following requirements must be observed:
      1. the bank guarantee must indicate the **Bidder** as the guaranteed party and that the obligations of the bank guarantee hold the **BNDES** as the beneficiary;
      2. the chosen guarantor must be registered with **B3**;
      3. the guarantor must waive any benefit of order;
      4. the bank guarantee must comprise the amount determined in item 4.23 of this **Public Notice**;
      5. the provisions of item 4.34 of this **Public Notice** must be observed;
      6. the guarantor must be a commercial, investment and/or multiple bank, authorized to operate in Brazil, according to Brazilian legislation and the financial sector’s own regulation and must observe the prohibitions of the National Monetary Council as to indebtedness limits and risk diversification;
      7. the guarantor must be a financial institution rated between the first and second tiers, that is, between “A” and “B” on the long-term rating scale of at least one of the following risk rating agencies: Fitch Ratings, Moody’s or Standard & Poors; and
      8. the financial institution must have the EMVIA system for **B3** to verify the authenticity of the bank guarantee letter.
   4. In the performance bond and bank guarantee modalities, the surety instruments must have:
      1. their value expressed in Brazilian reais (BRL); and
      2. signature of the administrators of the issuing company (which may be a signature with digital certification, in the case of a policy issued in this manner), with proof of the respective representation powers.
   5. In the case of the **Bid Guarantee** deposited in the form of a federal government bond:
      1. the **Bidder(s)** holder(s) of their own portfolio of federal government securities must provide the **Bid Guarantee** by transferring these securities in the Special System for Settlement and Custody (SELIC), to the account maintained by **B3** in the system.
      2. Public bonds will be appraised daily at their economic value, as defined by the Ministry of Economy and determined by **B3.**
      3. only the following federal government securities will be accepted: National Treasury Bills – LTN, Financial Treasury Bills – LFT, National Treasury Notes – series C – NTN -C, National Treasury Notes Series B (NTN-B), National Treasury Notes Series B Principal (NTN-B Principal) or National Treasury Notes – series F – NTN-F.
   6. **B3** will analyze the regularity and effectiveness of the **Bid Guarantees** submitted, informing the **Bid Committee** of the result of such evaluation. The **Bid Committee** will be responsible for the final decision on the acceptance of the **Bid Guarantees** submitted.
   7. The **Bid Guarantee** can be returned 15 (fifteen) days after the signature of the **Concession Agreement** or 15 (fifteen) days after the publication of the decision informing the failure of the **Auction**, if applicable.
   8. The **Bid Guarantees** presented in favor of the **BNDES** may be executed, after a previous adversarial procedure in an administrative proceeding, without prejudice to the other sanctions provided for in Chapter VIII of this **Public Notice** and in the applicable legislation, in the following cases:
      1. full or partial default, by the **Bidders**, on the obligations undertaken by them by reason of their participation in the **Auction**;
      2. submission, by the **Bidder**, of documents that do not comply with the provisions of this **Public Notice**;
      3. absence of submission of an **Economic Proposal**;
      4. absence of proposal ratification by the **Bidder**, as the case may be;
      5. withdrawal of the **Economic Proposal**, by the **Bidder**, within the validity period;
      6. noncompliance, by the **Bidder**, with obligations prior to the **Auction Settlement**;
      7. delay in submitting documents and information to **CADE** and **ANTAQ** as provided for in items 5.41.1 and 5.41.2, respectively;
      8. delay in proving the effective constitution of the **Consortium**, if this is the case;
      9. non-approval by **CADE** and/or **ANTAQ**, in the hypotheses of items 5.41.1 and 5.41.2, respectively, if applicable, for reasons attributable to the **Bidder**;
      10. refusal of the **Winning Bidder** to execute the respective **Concession Agreement**, **Purchase and Sale Agreement for Shares of SPA** and/or **SPA Minority Shareholder Purchase and Sale Agreement**;
      11. failure to perform, due to a fact attributable to the **Winning Bidder**, the acts necessary for the effective and timely transfer of the **Shares**;
      12. refusal of the **Winning Bidder** to carry out the mandatory capital increase so that **SPA** can pay the **Concession Bonus**, as the case may be;
      13. refusal of **SPA**, after the execution of the **Purchase and Sale Agreement for Shares of SPA**, to pay the **Concession Bonus** by the deadline determined in the **Concession Agreement**;
      14. refusal to make full and timely payment of the amounts provided for in this **Public Notice** (even if the refusal is manifested only by a consortium member of the **Bidding Consortium**);
      15. practice of acts intended to defraud the **Auction** or frustrate its objectives;
      16. to cover fines, sanctions, compensation of **B3** and indemnities that may be due to the **BNDES**, without prejudice to any other consequences, as applicable to each case, such as specific execution, application of other sanctions, and/or liability of the **Bidder(s)** for amounts due or indemnifiable that exceed the **Bid Guarantee**; and
      17. refusal to provide clarifications and documents or to comply with the requirements requested by the **Bid Committee**, within the time frames determined thereby and in accordance with the provisions of this **Public Notice**.

# Section V – Qualification

* 1. The **Qualifying Documents** will consist of documents that prove legal, fiscal, labor and economic-financial regularity of the **Bidders**.
  2. Foreign **Bidders** must submit documents equivalent to those required in this **Public Notice**, as instructed in item 1.26 et seq.
  3. If any of the certificates listed in the Chapter IV, Section V are positive, and the updated status of the lawsuit is not recorded therein, it shall be accompanied by proof of discharge and/or certificates showing the updated status of the lawsuit or of the administrative procedures evidencing fiscal regularity, with a maximum period of 90 (ninety) days prior to the date of the **Public Auction Session**.

# Subsection I – Legal Qualification

* 1. **Bidders** must submit the following list of documents in physical and electronic copies:
     1. For any type of company, a charter, bylaws or articles of incorporation, accompanied by proof of incumbent administrators (last acts of election of the directors and of the board of directors that elected the last executive board, as well as respective instruments of investiture, as the case may be), duly registered with the competent trade board or registry office and certificate issued by the competent trade board or registry office, with updated information on the company’s registration;
     2. In the case of a financial institution, confirmation of authorization to operate by the Central Bank of Brazil, in addition to the other applicable documents provided for in the item 4.42.1;
     3. In the case of a **FIP**, the following additional documentation, in addition to the other applicable documents provided for in the item 4.42.1:
        1. notarized copy of the instrument of incorporation and the entire content of the Regulation in force, duly accompanied by a certificate proving its registration in the Registry of Deeds and Documents;
        2. notarized copy of the proof of registration of the **FIP**’s operation with the **CVM**;
        3. proof of hiring a manager, if any, as well as the election of the incumbent administrator;
        4. proof of registration of the administrator and, if any, of the manager of the **FIP**, with the **CVM**; and
        5. proof that the **FIP** is duly authorized to participate in the **Auction** and that its administrator can represent it in all acts and for all purposes of the **Auction**, undertaking on behalf of the **FIP** all obligations and rights arising from the **Auction**.
     4. In the case of an open or closed supplementary pension plan entity, proof of specific authorization as to its formation and operation, issued by the respective supervisory body and declaration issued by the National Superintendence of Complementary Pensions (PREVIC), of the Ministry of Social Security (MTP), that the plans and benefits managed thereby are not under liquidation or intervention, in addition to the other applicable documents provided for in item 4.43.1;
     5. In the case of foreign **Bidders** operating in Brazil, the acts of authorization and registration for operation will be required, issued by the applicable agencies, when the activity so requires, in addition to the other applicable documents set forth in item 4.43.1;

# Subsection II – Economic-Financial Qualification

* 1. The **Bidder** must submit the following list of documents:
     1. Balance sheet and respective income statement, already required by law, duly approved by the general meeting or partners, as the case may be, presented in the form of the law, the presentation of interim balance sheets or balance sheets being prohibited. These documents must be presented in accordance with the accounting practices adopted in Brazil.
     2. for any type of business company: Clearance Certificate for Requests for Bankruptcy, Composition with creditors, Judicial and Extrajudicial Reorganization, issued by the judicial distributor of the district (civil courts) of the city where the **Bidder** is headquartered, dated not more than 90 (ninety) days prior to the date of the **Public Auction Session**, accompanied by a certificate of proof from the distributor offices of the **Bidder**’s district. In the event of a judicial action distributed in the name of the **Bidder** or filed against it with the object of a request for judicial reorganization, a narrative certificate of the action must be enclosed, indicating the updated status of the proceedings, comprising the period of 90 (ninety) days prior to the date of the **Public Auction Session**, as well as the documents requested in item 3.5.5.1 of this **Public Notice**;
     3. for simple companies: certificate issued by the judicial distributor of the civil courts in general (Asset Enforcement) of the district in which the **Bidder** is headquartered, dated no more than 90 (ninety) days prior to the date of the **Public Auction Session**, accompanied by a certificate of proof from the distribution offices in the **Bidder**’s district. In the event of a distributed judicial action, a narrative certificate of the action must be enclosed that indicates the updated status of the proceedings, comprising the period of 90 (ninety) days prior to the date of the **Public Auction Session**;
     4. for **FIP**, additionally: bankruptcy clearance certificate for the administrator entity and the fund management entity;
     5. if the headquarters is not the **Bidder**’s main establishment, judicial certificates relating to the main establishment must be submitted, in addition to those for the headquarters; and
  2. The **Bidder** must prove, through the balance sheet indicated in item 4.43.1 above, that, on the date established for the delivery of envelopes provided in the **Public Notice**, it has a shareholders’ equity of at least BRL [...] ([...] Brazilian reais), on the base date of [...], 20[...], subject to the specific rules below for open or closed complementary pension entities and investment funds, respectively.
  3. When dealing with an open or closed complementary pension entity, the proof of equity, considering the legal standards in effect, will correspond to the sum of the accounts of the Actuarial Liabilities and the Reserves and Funds.
  4. For **FIPs**, the minimum shareholders’ equity required in item 4.44 for economic-financial qualification purposes may be proven by: (i) shareholders’ equity of the investment fund, ascertained in its balance sheet or pointed out in the last Quarterly Report forwarded to the **CVM**; (ii) total amount of subscribed capital of the investment fund, pointed out in the last Quarterly Report forwarded to the **CVM**; or (iii) proof of investment commitments signed after the forwarding to the **CVM** of the last Quarterly Report.
  5. For the purposes of proving shareholders’ equity, the amounts expressed in foreign currency by the **Bidders** will be converted into Brazilian reais (BRL) by applying the commercial exchange rate for sale disclosed by the Central Bank of Brazil (PTAX800), referring to the closing date of the fiscal year indicated in the balance sheet.
  6. The **Bidder** in the form of a **Consortium** must present all the documents foreseen in the previous items for each one of the consortium members, as the case may be.
     1. If the **Consortium Member** is a subsidiary/branch, it must present the balance sheet and respective consolidated income statement of the parent company.
  7. The minimum shareholders’ equity to be considered for the economic-financial qualification of the **Consortium** will be obtained from the sum of the shareholders’ equity of each **Consortium Member**, in proportion to their respective participation. In this case, the qualification requirement is considered met in any of the following situations:
     1. when the minimum shareholders’ equity foreseen in item 4.44 is reached by the sum of the products of the multiplication of the shareholders’ equity of each **Consortium Member** by the percentage interest they hold in the **Consortium**; or
     2. when the shareholders’ equity of all the **Consortium Members** is equal to or greater than the percentage of their participation, multiplied by the value of the minimum shareholders’ equity foreseen in item 4.44.

# Subsection III – Fiscal and Labor Regularity

* 1. The **Bidder** must submit the documents listed below to prove its fiscal and labor regularity:
     1. proof of registration in the Corporate Taxpayer Registry of the Ministry of Economy – CNPJ;
     2. a simple copy of the enrollment card in the state taxpayer registry relating to the **Bidder**’s domicile or headquarters, or a non-taxpayer certification, as the case may be;
     3. a simple copy of the enrollment card in the municipal taxpayer registry relating to the **Bidder**’s domicile or headquarters, or a non-taxpayer certification, as the case may be;
     4. certificate of regularity before the FGTS, which is within the validity period attested therein;
     5. proof of fiscal regularity before the National Treasury, based on submission of the joint certificate issued by the Secretary of the RFB and by the PGFN, in relation to the taxes administered by the RFB, social security contributions and Overdue Federal Tax Liability managed by the PGFN;
     6. proof of fiscal regularity before the state and municipal treasuries, the latter referring to securities and real estate taxes, or non-taxpayer certification, if applicable, all from the respective domicile or headquarters of the **Bidder** and dated no more than 180 (one hundred and eighty) days prior to the date of the **Public Auction Session**, wherein the validity period attested therein prevails;
     7. labor debt clearance certificate, under the terms of Title VII-A of the Consolidated Labor Laws, approved by Decree-Law No. 5.452, dated 05/01/1943; and
     8. proof of fiscal regularity with the State Treasury of São Paulo and the Treasury of the Municipalities of Santos and Guarujá/SP within a maximum period of 90 (ninety) days prior to the **Document Delivery** date, the validity term evidenced therein prevailing.

# Subsection IV – Declaration of Regularity to art. 7, XXXIII, of the Federal Constitution

* 1. Declaration of Regularity to art. 7, XXXIII, of the Federal Constitution, according to the template in **Attachment 6** of this **Public Notice**.

# Subsection V – Statement on the Fulfillment of the Legal Tie-breaking Prerogatives established in Art. 45, paragraph 2 and Art. 3, paragraph 2 of Law No. 8.666/1993

* 1. The Bidder must submit the Statement on the Fulfillment of the Legal Tie-breaking Prerogatives established in Art. 45, paragraph 2 and Art. 3, paragraph 2 of Law No. 8.666/1993, according to the template in **Attachment 16** of this **Public Notice**, in which it will highlight which of the prerogatives referring to the established tie-breaking criteria it falls under, and, in case it is the winner from the application of said prerogatives, it must prove its compliance by means of the delivery of documents in a single copy for analysis by the **Bid Committee**, in a period to be established thereby.
     1. In case of participation of bidders in **Consortium**, the tie-breaker criteria declared by the leading company will be considered, which will take advantage of the entire **Consortium** for the purpose of exercising the tie-breaking prerogatives addressed in item 4.52.

# CHAPTER V – AUCTION STAGES

# Section I – Document Delivery

* 1. **Bidders**, under penalty of disqualification, must submit to **B3**, on the day indicated in the schedule set forth in Chapter VII of this **Public Notice**, by a representative of the **Accredited Participants**, a single sealed envelope, containing 2 (two) copies of Volumes 1 and 2 sealed by the **Bidder**, distinct and identified on their covers as follows:

# VOLUME 1:

“AUCTION NO. [•]/2021-PPI/PND – TRANSFER OF SHAREHOLDING CONTROL OF SPA ASSOCIATED WITH THE CONCESSION OF THE PUBLIC UTILITY FOR ORGANIZED PORT ADMINISTRATION.

CORPORATE NAME OF THE BIDDER OR NAME OF THE CONSORTIUM, INDICATING ITS MEMBERS AND RESPECTIVE LEADING COMPANY

ACCREDITED PARTICIPANT

NAME, PHONE AND E-MAIL OF THE REPRESENTATIVES OF THE BIDDER AND ACCREDITED PARTICIPANT

VOLUME 1 – DECLARATIONS, REPRESENTATION DOCUMENTS AND BID GUARANTEE”

# VOLUME 2:

“AUCTION NO. [•]/2021-PPI/PND – TRANSFER OF SHAREHOLDING CONTROL OF SPA ASSOCIATED WITH THE CONCESSION OF THE PUBLIC UTILITY FOR ORGANIZED PORT ADMINISTRATION.

CORPORATE NAME OF THE BIDDER OR NAME OF THE CONSORTIUM, INDICATING ITS MEMBERS AND RESPECTIVE LEADING COMPANY

ACCREDITED PARTICIPANT

NAME, PHONE AND E-MAIL OF THE REPRESENTATIVES OF THE BIDDER AND ACCREDITED PARTICIPANT

VOLUME 2 – ECONOMIC PROPOSAL”

* 1. The **Winning Bidder** must submit to **B3**, on the day indicated in the schedule set forth in Chapter VII of this **Public Notice**, by a representative of the **Accredited Participant**, a single sealed envelope containing 2 (two) copies of Volume 3, identified on their covers as follows:

# VOLUME 3:

“AUCTION NO. [•]/2021-PPI/PND – TRANSFER OF SHAREHOLDING CONTROL OF CODESA ASSOCIATED WITH THE CONCESSION OF THE PUBLIC UTILITY FOR ORGANIZED PORT ADMINISTRATION

CORPORATE NAME OF THE BIDDER OR NAME OF THE CONSORTIUM, INDICATING ITS MEMBERS AND RESPECTIVE LEADING COMPANY

ACCREDITED PARTICIPANT

NAME, PHONE AND E-MAIL OF THE REPRESENTATIVES OF THE BIDDER AND ACCREDITED PARTICIPANT

VOLUME 3 – QUALIFYING DOCUMENTS”

* 1. The copies of each of the volumes must contain, in addition to the identification described in items 5.1 and 5.2, the subtitles “1st Copy” and “2nd Copy”, respectively.
  2. The copies of each of the volumes must be bound separately, with all pages numbered sequentially, including the separation pages, catalogs, drawings or similar, if any, regardless of whether there is more than one booklet, from the first to the last page, so that the numbering of the last page of the last notebook reflects the number of pages in each volume, with no amendments, erasures or reservations being allowed, and each volume must have a closing statement indicating the number of pages.
  3. One of the **Accredited Representatives** must place their initials on the seal of each of the volumes specified in items 5.1 and 5.2, indicating next to the initials, in their own handwriting, the date and time it was sealed.
  4. Digital signatures will be accepted, provided that the document submitted contains efficient means for verifying its authenticity, including, but not limited to QR Codes and codes for validation on website links expressly indicated in the document in question.
  5. In case electronic and/or digital signatures are used, signature certification is not required.

# Section II – The content and analysis of the Declarations, Representation Documents and Bid Guarantee contained in Volume 1

* 1. The **Bidders**’ participation in the **Auction** will be subject to the submission of the following documents to be included in Volume 1:
     1. Declarations referred to in items 4.4.2, 4.4.3, 4.4.5 and 4.4.8 of the **Public Notice**;
        1. The declarations set forth in item 5.8.1 must be delivered in a single copy;
        2. In the declaration of **Attachment 16,** the **Bidder** must highlight which of the prerogatives related to the tie-breaking criteria established in art. 45, paragraph 2, and art. 3, Paragraph 2, of Law no. 8.666/93 it falls under and, in case it is the winner from the application of said prerogatives, it must prove its compliance by means of the delivery of documents in a single copy for analysis by the **Bid Committee**, in a period to be established thereby.
     2. Representation Documents, referred to in Chapter IV, Section II, of the **Public Notice;**
     3. **Bid Guarantee**, under the terms established in this **Public Notice** and in **Attachment 2**; and
     4. Intermediation agreement between the **Accredited Participant** and **Bidder** (accompanied by the signatories’ powers), according to the template contained in **Attachment 2**, to be disclosed in due course on the **BNDES, Ministry of Infrastructure and ANTAQ websites**.
  2. **B3** will analyze the regularity of the preliminary declarations, representation documents and **Bid Guarantees** submitted, informing the **Bid Committee** of the result of its evaluation. It will be up to the **Bid Committee** to decide on the acceptability of such documents.

# Section III – Public Auction Session

* 1. The **Auction** will take place in a public session held at **B3**, which will comprise, sequentially, the following stages: (i) opening of the economic proposals; (ii) classification of the **Bidders**; and (iii) oral bid stage, as the case may be, pursuant to the rules of the **B3 Auction Procedure Manual**.
  2. In the **Public Auction Session**, the **Economic Proposals** of the **Bidders** that have Volume 1 accepted by the **Bid Committee** will be initially opened;
  3. Once the **Economic Proposals** are opened, those that meet all the requirements established in this **Public Notice** will be classified;
  4. The criterion for judging the **Auction** is the highest **Concession Bonus** amount to be paid to the **Concession Authority**, and the amount must be presented in Brazilian reais, with a maximum of 2 (two) decimal places.
  5. Once the bid proposals are opened, they will be sorted by the criterion of the highest **Concession Bonus**.
  6. The **Economic Proposal** that does not respect the provisions of this **Public Notice** will be disqualified, especially in the following cases:
     1. failure to observe the template addressed in **Attachment 4;**
     2. offers an amount less than **[o] ([o])**;
     3. contains erasures, smudges, space between lines or language that makes it impossible to accurately understand the wording;
     4. contains amendments, reservations or omissions; or
     5. submits itself to the condition or term not provided for in this **Public Notice**.
  7. The classified **Bidders** will be those whose bid meets all the requirements established in the applicable legislation and this **Public Notice**.
  8. In the event the **Auction** receives a bid from only one **Classified Bidder**, it will be considered the winner of the **Auction**.
  9. If the **Auction** receives 2 (two) or more bid proposals, an oral **Auction** will be held.
  10. The classified **Bidders** whose **Economic Proposal** meets at least one of the following conditions will participate in the oral **Auction**:
      1. Be among the 03 (three) highest **Economic Proposals** for the **Auction**; or
      2. The value of the **Economic Proposal** is equal to or greater than 90% (ninety percent) of the **Concession Bonus** amount, offered by the **Bidder** whose **Economic Proposal** corresponds to the highest bid in the **Auction**.
  11. **Bidders** may only submit bids in the oral stage if their bids satisfy the terms of item 5.19.
  12. Each bid must exceed the bid amount of the **Bidder** itself for the **Auction**, considering that the bid:
      1. must respect the minimum interval between bids, which will be determined by the **Director of the Public Auction Session** and which must take as reference the last bid offered by the **Bidder**;
      2. must respect the maximum time between bids set by the **Director of the Public Auction Session**;
      3. must change the **Bidder**’s classification; and
      4. may not have the same value as another **Bidder**’s bid.
  13. The **Director of the Public Auction Session** will declare the **Auction** to be closed when, after the deadline for offering new bids, no **Bidder** manifests itself with a new bid under the conditions established in item 5.21.
  14. Once the **Auction** is closed, the **Bidder** that has submitted the highest bid for the value of the **Concession Bonus** to be paid to the **Concession Authority** will be declared the winner.
  15. Immediately after the closing of the **Auction**, if there is an oral bid, all **Bidders** must ratify their final bids by signing a letter to be issued by the **Bid Committee** containing their final offer.
  16. In the event of a tie between **Bids**, which is not resolved by oral bidding pursuant to items 5.18 to 5.20, the tie-breaking will occur through the resubmission of written **Economic Proposals**, with the **Bidder** presenting the highest written **Economic Proposal** being declared the winner.
  17. If the tie breaker is not resolved in the manner described in item 5.23, the legal criteria for preference will apply, in accordance with art. 45, paragraph 2, and art. 3, Paragraph 2, of Law no. 8.666/93, observing the declarations made in the form of **Attachment 16**, and if the tie still persists, the tie-breaker criterion will be a draw, to be held in the same Public Auction Session, as described in **Attachment 2**.

# Section IV – Analysis of Qualifying Documents

* 1. On the date provided for in the Chapter VII schedule, the **Winning Bidder** will be summoned to submit Volume 3 to the **Bid Committee**, containing the **Qualifying Documents** listed in Chapter IV, Section V, and the declarations provided for in items 4.4.1, 4.4.6 and 4.4.7, as applicable.
  2. The **Qualifying Documents** and other documents included in Volume 3 will be analyzed in a reserved environment.
  3. The **Bidder** that presents **Qualifying Documents** or other documents belonging to Volume 3 that are noncompliant with the requirements of this **Public Notice** will be disqualified from the bidding process.
  4. Any failures in delivery or formal defects in the documents belonging to Volume 3 may be remedied, pursuant to item 2.3 of this **Public Notice**, according to the procedure and deadline to be defined by the **Bid Committee**.
     1. A formal failure or defect is considered to be that which (i) does not detract from the substantial object of the document presented, and which (ii) does not prevent the verification, with due security, of the information contained in the documentation.
  5. In the event of the disqualification of the **Winning Bidder**, the **Bid Committee** will invite the other **Bidders**, in order of ranking, to submit their **Qualifying** **Documents** (Volume 3) within 3 (three) business days from the time of the invitation, until one **Bidder** is deemed qualified.
  6. The disqualification of the **Bidder** that has been considered the winner of the bidding process, once having been guaranteed ample defense and adversary proceedings, will result in the establishment of a fine, equivalent to the value of the **Bid Guarantee**, which will be fully enforced to settle the debt.
  7. The **Bidder** undertakes to communicate to the **Bid Committee**, immediately after its occurrence, any supervening fact or condition that alters or compromises its qualification conditions.

# Section V – General instructions for filing administrative appeals

* 1. After the end of the qualification phase, there will be a single appeal phase, in which **Bidders** that participate in the **Auction** may appeal against all decisions made by the **Bid Committee**.
     1. Despite the single appeal phase after the end of the qualification phase, the **Bidders** who wish to appeal against the **Bid Guarantee**, **Economic Proposal**, or qualification judgment acts must manifest their intention to appeal immediately after the end of each session, under penalty of preclusion.
  2. If all **Bidders** expressly waive the right of appeal, the bidding process will be submitted for ratification immediately after the publication of the **Auction** judgment minutes.
  3. The appeals must be submitted electronically, on the **BNDES, Ministry of Infrastructure and ANTAQ websites**, in an area suitable for the **Auction**, within 5 (five) business days, counted from the publication of the decision that judges the qualification, and must be directed to the higher authority of the **BNDES** for judgement of the appeal in the final instance.
     1. The filing of appeals must observe the deadline of 6 p.m. on the last day of the term.
     2. The deadline for submitting briefs of the appellee will be 5 (five) business days, starting from the conclusion of the appeal period, respecting the deadline of 6 p.m. on the last day of the term.
     3. The **Bid Committee** may, on its own initiative or upon provocation, reconsider its decision within a period of up to 5 (five) business days after the deadline for briefs of the appellee has lapsed, or within the same period, if the appealed decision is maintained, forward the appeal to the **BNDES**’ higher authority, duly instructed, for appreciation in the final instance.
     4. If the **Bid Committee** does not reconsider its decision, under the terms of item 5.36.3, the **BNDES**’ higher authority must pronounce a decision about the appeal filed within 5 (five) business days, counted from the date of its receipt.
     5. Any filing of appeals will be communicated on the **BNDES, Ministry of Infrastructure and ANTAQ** **websites** by the 5th business day of the appeal period set out in item 5.36, with the publication of the full content of the administrative appeals.
  4. The appeals will only be accepted when signed by legal representative(s), **Accredited Representatives** or an attorney-in-fact with specific powers, armed with the instrument(s) that demonstrate powers to do so, and will be so identified:

“ADMINISTRATIVE APPEAL

AUCTION NO. [•]/[•]-PPI/PND – TRANSFER OF SHAREHOLDING CONTROL OF SPA ASSOCIATED WITH THE CONCESSION OF THE PUBLIC UTILITY FOR ORGANIZED PORT ADMINISTRATION

C/O MR. CHAIRMAN OF THE BID COMMITTEE”

* 1. If appeals are filed regarding the qualification of the **Bidders** or the preliminary result of the **Auction**, a new Schedule may be disclosed by the **Bid Committee**, respecting all legal deadlines in the definition of a new date.
  2. The result of the judgment of any appeals that may be filed will be published in the Brazilian Federal Register and on the **BNDES, Ministry of Infrastructure and ANTAQ** **websites**[.](http://www.bndes.gov.br/distribuidoras-eletrobras)

# Section VI – Ratification and Adjudication of the Auction Object

* 1. Once the conditions for qualification and classification are met by the **Winning Bidder**, the bidding process will be forwarded for ratification and adjudication of its object by the **BNDES**.

# Section VII – Submission of documents to CADE, ANTAQ and the Bid Committee

* 1. Up to 2 (two) business days after the disclosure of the final result of the **Auction**, the winning **Bidder** of the respective **Auction** must submit:
     1. to **CADE,** pursuant to Law No. 12.529/2011 and **CADE**’s Internal Regulation, all information and documents essential for the initiation of an administrative proceeding for the analysis of a monopolistic act, as defined by **CADE** Resolution No. 2/2012, together with the proof of payment of the procedural fee set forth in art. 23 of Law No. 12.529/2011, pursuant to the terms of Law No. 12.529/2011 and **CADE**’s Internal Rules; and
     2. to **ANTAQ** all the information and documents that are essential for the analysis of the transfer of control of **SPA**, following the procedure foreseen in Resolution no. 57/2021-ANTAQ.
  2. If the winner of the **Auction** does not submit the documents mentioned in the above item, under the terms and by the deadlines provided for in the **Public Notice**, the second place participant in the **Auction** will be summoned by the **Bid Committee**, pursuant to item 5.31, to submit the respective **Qualifying Documents** (Volume 3) within a period of up to 3 (three) business days as of the summoning act, thus applying, as applicable, the provisions of Chapter V, Sections IV, V, VI, and VII of this **Public Notice**, in which case a new schedule may be disclosed by the **Bid Committee**, without prejudice to the enforcement of the **Bid Guarantee** for the original winner of the **Auction**.
  3. If the operation is not approved by **CADE** or **ANTAQ,** the second place participant in the **Auction** will be summoned by the **Bid Committee**, pursuant to item 5.31, to submit the respective **Qualifying Documents** (Volume 3) within a period of up to 3 (three) business days as of the summoning act, thus applying, as applicable, the provisions of Chapter V, Sections IV, V, VI and VII of this **Public Notice**, in which case a new schedule may be disclosed by the **Bid Committee**, without prejudice to the enforcement of the **Bid Guarantee** for the original winner of the **Auction**.
  4. If the same occurs with the second place participant in the **Auction**, the third place participant will be summoned by the **Bid Committee** under the terms of item 5.31, and so on.
  5. The **Bidders** called under the terms of the items above will have the **Auction Object** awarded under the technical and economic conditions offered by it, pursuant to article 4, paragraph 4, IV, of Law No. 9.491/1997.

# Section VIII – Auction Settlement and Conclusion of the Concession Agreement

* 1. The signing of the **Purchase and Sale Agreement for Shares of SPA**, the **Auction Settlement** and the signing of the **Concession Agreement** are conditional upon the following preconditions being met:
     1. prior approval by **CADE** and consent by **ANTAQ** to the transfer of shareholding control of **SPA** to the **Winning Bidder**, pursuant to applicable legislation;
     2. full payment, by the **Winning Bidder**, of the compensation due to **B3**, corresponding to:
        1. success fee paid by the **Winning Bidder**, consisting of BRL [•]; and
        2. asset distribution fee consisting of [•]% of the **Auction Settlement** amount;
     3. full payment, by the **Winning Bidder**, of the amount due to the **BNDES** as compensation and reimbursement of expenses with third parties, pursuant to article 21 of Law No. 8.987/1995, corresponding to:
        1. BRL [⦁] ([⦁]) plus the amount resulting from applying the percentages indicated in the table on the value of the **Concession Bonus** resulting from the auction or BRL [⦁] ([⦁]), whichever is greater, as compensation for the implementation and structuring of the privatization process; and
        2. BRL [•], as reimbursement of expenses incurred with third parties for the implementation and structuring of the privatization project.
     4. submission, by the **Winning Bidder**, of a certificate able to prove compliance before **ANTAQ**, regarding itself and the legal entities that, directly or indirectly, are **Parent Companies**, **Subsidiaries**, **Affiliates**, or are under **Common Control** with the **Winning Bidder**.
     5. submission, by the **Winning Bidder**, of the **Contractual Performance Guarantee**, in accordance with the **Concession Agreement**; and
     6. compliance with the other preconditions, as foreseen in this **Public Notice** and its **Attachments.**
  2. If there is a refusal or lack of full payment by the **Winning Bidder** to make the **Auction Settlement** unfeasible, the **Bidder** ranked second will be called, and so on, without prejudice to the enforcement of the respective **Bid Guarantee** and the imposition of applicable penalties.
  3. In the case provided for in item 5.42, the **Qualifying Documents** for the **Bidder** ranked second (and so on, as the case may be) shall be analyzed after summoning, pursuant to item 5.31, thus applying, as applicable, the provisions of Chapter V, Sections IV, V, VI and VII, of this **Public Notice**. Under these conditions, a new schedule may be disclosed by the **Bid Committee**.
  4. The **Auction Settlement** will occur on the same date as the signature of the **Purchase and Sale Agreement for Shares of SPA** with the **Winning Bidder** of the **Auction** and signature of the **Concession Agreement** between **SPA** and the **Concession Authority**, as indicated in the Chapter VII schedule.
  5. **B3** will operationalize the **Auction Settlement** as described in **Attachment 2**.
  6. In order for the **Auction Settlement** to be conducted by **B3**, the **Seller** must have deposited the **Auction Object** shares at the **B3** Central Securities Depository.
  7. In the event the payments due are not made for the shares pursuant to **Attachment 1**, either in whole or in part, even if by default of a single member of the **Consortium**, the **Auction Settlement** will not be conducted, the **Consortium** will be disqualified and the **Bid Guarantee** will be executed, without prejudice to the applicable penalties.
  8. **B3** will not act as a contractual counterparty, nor as a substitute or joint obligor of the defaulting party within the scope of the **Auction**, such that, in the event that the **Winning Bidder** fails to make the payments due, **B3** will not be required to honor such payments, thus not making any payments in place of the **Winning Bidder**.

# Section IX – Formalization of the Sale of SPA shares

* 1. Together with the **Auction Settlement**, in a full and timely manner, by the **Winning Bidder**, **B3** will transfer the **Auction Object** shares to the winner’s custody account and the **Purchase and Sale Agreement for Shares of SPA** and the **Concession Agreement** will be signed.
  2. The **Winning Bidder** undertakes to directly insert or instruct and cause the insertion by **SPA**, by the bookkeeping agent of the shares issued by **SPA**, or by any third party, in the margin of the registration of the sold shares, in the **SPA** Registered Shares Record Ledger and in the respective share certificates, if issued, the notation that the sold shares are subject to the provisions of the **Purchase and Sale Agreement for Shares of SPA**, as long as the **Buyer**’s obligations provided for therein remain, from the signature date of the **Purchase and Sale Agreement for Shares of SPA.**
  3. The **Winning Bidder** shall agree and expressly authorize **SPA** and/or any third party indicated by **SPA** to perform all acts and sign all documents and instruments necessary for the due transposition of the registration of the shares sold to the corporate ledgers of **SPA**, granting them all powers necessary for **SPA** and/or any third party indicated by **SPA** to remove such shares from the Central Depository of **B3** and register them in the corporate ledgers of **SPA**, within up to 10 (ten) business days, counted from the **Auction Settlement** date.

# Section X – Transfer to the Seller of the amount collected at the Auction for transfer of control of SPA

* 1. **B3**, in being responsible for the operationalization of the **Auction Settlement**, pursuant to the agreement entered into with the **BNDES**, will transfer to the latter, as it is in custody of the shares, the entire amount received for the **Auction Settlement**, in the capacity of Settlement Bank for the **Seller**, and **BNDES**, as manager of the **FND**, must receive the funds in favor of the **Seller** and, in turn, transfer them thereto as follows: deductions will be made for the applicable discounts under the legislation of the **PND** and other applicable rules and regulations of the **CND** and the **CPPI**, as the case may be, including discounts related to remuneration and reimbursement of costs due to the **BNDES** and other applicable deductions.

# Section XI – SPA’s Capital Increase

* 1. The **Winning Bidder** undertakes to make a capital increase in **SPA** by the deadline and under the terms defined in Sub-Clause 5.1 (i) of the **Purchase and Sale Agreement for Shares of SPA**.

# Section XII – Payment of the Concession Bonus

* 1. **SPA** undertakes to pay the **Concession Authority** the entire **Concession Bonus** by the deadline and in accordance with the terms specified in Sub-clause 6.1 of the **Concession Agreement**.
     1. The value of the **Concession Bonus** must be readjusted by applying the **IPCA**. The amounts will be readjusted every 12 (twelve) months as of the **Document Delivery** date.

# Section XIII – Constitution of Túnel S.A. and Subscription and Payment of its Capital Stock

* 1. **SPA** undertakes to constitute **Túnel S.A.**, to subscribe and pay in its capital stock, and to sign the **Stock Option Agreement for the Purchase of Shares of Túnel S.A.** with the **Concession Authority** by the deadline and in accordance with the terms specified in Sub-clause 6.2 of the **Concession Agreement**.

# CHAPTER VII – RESOLUTIVE CONDITION OF THE PURCHASE AND SALE AGREEMENT FOR SHARES OF SPA

* 1. Failure by the **Winning Bidder** or the **SPA** to comply with any of the following resolutive conditions in a timely manner will result in the full termination of the **Purchase and Sale Agreement for Shares of SPA**, without prejudice to the application of applicable penalties:
     1. failure to conduct the capital increase provided for in Section IXChapter V of this **Public Notice**;
     2. non-payment of the **Concession Bonus** pursuant to the conditions set forth in Section X of the Chapter V of this **Public Notice**;
     3. failure to constitute **Túnel S.A.**, subscribe the totality of the capital stock and pay the first installment of the capital stock,
     4. failure to sign the **Stock Option Agreement for the Purchase of Shares of Túnel S.A.** with the **Concession Authority** as provided for in the **Concession Agreement**, in accordance with the conditions established in Section XI of Chapter V of this **Public Notice**; and
     5. failure to make full and timely payment of the amount due for the surplus shares of the **Offer to Employees and Retirees**.
  2. The enforcement of the express resolutive clause provided for in the **Purchase and Sale Agreement for Shares of SPA** shall entail forfeiture of the amounts paid at the time of **Auction Settlement**, including the amount for the purchase of the **SPA** shares and any other amounts already paid by the **Buyer**, without prejudice to the enforcement of the **Bid Guarantee**.

# CHAPTER VII – EVENT SCHEDULE

* 1. The development of the stages of the **Auction** will observe the order of events and schedule indicated in the following table.
     1. The **Bid Committee** will have the prerogative to modify the dates mentioned throughout this **Public Notice** and in the schedule below.

|  |  |
| --- | --- |
| **Date** | **Event** |
| [⦁] | Publication of the **Public Notice** and **Attachments.** |
| Opening of the period for challenging the **Public Notice.** |
| Opening of period for requesting clarification on the **Public Notice.** |
| [⦁] | Provision of the **Attachment 2 – B3 Auction Procedure Manual** and **Attachment 9 – B3 Procedure Manual for the Offer to Employees and Retirees** . |
| [⦁] | Deadline for submission of clarification request on the **Public Notice.** |
| [⦁] | Deadline for sending doubts and questions in the **Data Room**, pursuant to the **Attachment 9 – B3 Procedure Manual for the Offer to Employees and Retirees**. |
| [⦁] | Deadline for challenging the **Public Notice.** |
| [⦁] | Disclosure of responses to requested clarifications. |
| [⦁] | Delivery of the following volumes by the **Bidders** to **B3**: 1) Declarations, Representation Documents and Bid Guarantee; and 2) Economic Proposal. |
| [⦁] | Closing of the **Data Room**, pursuant to the **Attachment 15 – Due Diligence Procedure Manual**. |
| [⦁] | Disclosure of the result of the analysis of Volume 1 – Preliminary Declarations, Representation Documents and Bid Guarantees, with the indication of any documents not accepted and their reasoning. |
| [⦁] to [⦁] | Beginning of the **Public Auction Session** with the opening of the **Economic Proposals** (Volume 2) and oral bids. |
| By [⦁] | Delivery of Volume 3 by the **Winning Bidder** to **B3**: 1) Qualifying Documents |
| By [⦁] | Disclosure of the Judgment Minutes of Volumes 2 and 3 and preliminary result of the **Auction** and the beginning of the period for any appeals against the preliminary result of the **Auction**. |
| By [⦁] | Deadline for filing any appeals regarding the preliminary result of the **Auction.** |
| By [⦁] | Publication of the final result of the **Auction.** |
| By [•] | Deadline for submission of documents to **CADE** and **ANTAQ** |
| By [⦁] | Approval of the result of the **Auction** and adjudication of its object. |
| By [⦁] | Deadline for fulfillment of the obligations prior to the **Auction Settlement**, thesigning of the **Purchase and Sale Agreement for Shares of SPA** and signing of the **Concession Agreement.** |
| Between [•] and [•] | **Auction Settlement,** signing of the **Purchase and Sale Agreement for Shares of SPA** and signing of the **Concession Agreement** |
| Between [•] and [•] | Capital increase of **SPA** by the **Winning Bidder**, pursuant to this **Public Notice**. |
| Between [•] and [•] | Payment of the **Concession Bonus.** | |
| Between [•] and [•] | Incorporation of **Túnel S.A.**, full subscription and payment of the first installment of the new company’s capital stock. | |
| Between [•] and [•] | Conclusion between **SPA** and the **Concession Authority** of the **Stock Option Agreement for the Purchase of Shares of Túnel S.A.** |
| Between [•] and [•] | Settlement of **Offers to Employees and Retirees**, pursuant to the **B3 Procedure Manual for the Offer to Employees and Retirees**. |
| Between [•] and [•] | Disclosure of the remaining shares from the 2nd **Offer to Employees and Retirees**, pursuant to the **Offer to Employees and Retirees Manual**. |
| Between [•] and [•] | Purchase and settlement, by the **Winning Bidder**, of the final remaining shares from the **Offer to Employees and Retirees**. |

* + 1. Any changes to dates will be announced on the **BNDES, Ministry of Infrastructure and ANTAQ websites.**

# CHAPTER VIII – SANCTIONS

1. 1. The **Bidder**, **Winning Bidder** or **Buyer** who: summoned within the term of validity of its **Economic Proposal**, does not go through with the **Auction Settlement**, provided the prerequisites are met; does not submit the documents and information to **CADE** and **ANTAQ** by the indicated deadline; does not sign the **Concession Agreement**; fails to deliver the documentation required in this **Public Notice**; submits false documentation; causes a delay in the **Auction**; does not maintain the **Economic Proposal**; does not comply with the prerequisites for signing the **Concession Agreement** and for signing the **Purchase and Sale Agreement for Shares of SPA** established in this **Public Notice**; behaves in an improper manner; commits illicit acts, including those foreseen in section III, art. 89 et seq, of Law 8.666/1993; makes false statements; or commits tax fraud, as well as those who fail to comply with any other condition established in this **Public Notice**, will be subject to the following sanctions to be applied by the **BNDES**:
      1. warning;
      2. fine, to be calculated in an administrative proceeding, in which the adversary and full defense will be ensured, to be set at up to 1% (one percent) of the **Concession Agreement Amount**, and a ratio must be obtained between the seriousness of the infraction and the amount of the fine; and
      3. temporary suspension of the right to contract or participate in public tender processes for up to 2 (two) years.
   2. Without prejudice to the application of the penalties provided for in item 8.1 and the possible enforcement of the **Bid Guarantee**, the **Bidder** or **Winning Bidder** may be declared unfit to contract with the Public Administration as long as the reasons for the punishment persist or until the rehabilitation of the sanctioned entity is promoted before the authority.
   3. If the damage caused exceeds the value of the **Bid Guarantee** provided, due to its seriousness, the **Bidder** or **Winning Bidder** will be liable for the additional indemnity.

# CHAPTER X – FINAL PROVISIONS

* 1. The **Auction** may only be revoked by **BNDES** or by the **Concession Authority**, in the use of its competencies, for reasons of public interest resulting from a supervening fact duly proven, pertinent and sufficient to justify such revocation.
  2. The **BNDES** of the **Concession Authority**, on its own initiative or at the instigation of third parties, shall cancel the **Auction** if any illegality that cannot be remedied is verified.
  3. The nullity of the **Auction** implies the nullity of the **Purchase and Sale Agreement for Shares of SPA** and the **Concession Agreement**, and does not generate an obligation to indemnify by the **Concession Authority**, except if the **Concessionaire** has already started to execute the **Concession Agreement**, in which case it will be entitled to indemnity for what it has executed up to the date in which the nullity is declared, as well as for other losses regularly proven, as long as the cause of the nullity is not imputable thereto.
  4. The **Bidders** are responsible for analyzing all data and information about the **Auction**, and they are also responsible for bearing all costs and expenses related to the measures necessary for the preparation of their **Economic Proposal**, as well as for participating in the **Auction**.
  5. The **Bidder** undertakes to notify the **BNDES**, at any time, of any supervening fact or condition that impedes its qualification conditions, immediately following such occurrence.
  6. The information and documents submitted by the **Bidders** under the scope of this **Public Notice** will be processed with due confidentiality, in legal cases.
  7. The documentary archives of **SPA** will be identified, classified and evaluated by the **Buyer**, in accordance with the standards issued by the National Council of Archives (CONARQ), as provided in art. 3, Resolution No. 19/2003, of the National Archives, observing the other obligations foreseen in the legislation in effect relating to the management of public documents that are part of the documentary archives of **SPA**, especially those provided in Law No. 8.159/1991
  8. Public documents of permanent value that make up **SPA**’s archival assets will be collected from public archival institutions, within their sphere of competence, pursuant to art. 17 of Decree no. 4.073, dated January 3, 2002.
  9. The **Buyer** shall comply with the applicable laws pertaining to the protection of the **SPA**’s movable and immovable assets that comprise the national historic and artistic heritage, especially the provisions of Law 10.413/2002, and the normative provisions of the Institute of Historic and Artistic Heritage (IPHAN) and of the Brazilian Institute of Museums (IBRAM)
  10. The competent jurisdiction for resolving any disputes related to this bidding process will be the Judiciary Section of Distrito Federal.

Rio de Janeiro, [⦁] [⦁], [⦁]

[⦁]

Superintendent of the Investment Partnership Structuring Area – Banco Nacional de Desenvolvimento Econômico e Social