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**UNION**

**MINISTRY OF TRANSPORT, PORT AND CIVIL AVIATION**

**NATIONAL WATERWAY TRANSPORTATION AGENCY**

**AUCTION NOTICE**

**AUCTION NO. 01/2017-ANTAQ, FOR THE LEASE OF PUBLIC AREA AND INFRASTRUCTURE FOR  
THE MOVEMENT AND STORAGE OF SOLID BULK OF PLANT ORIGIN, ESPECIALLY WHEAT,  
LOCATED INTO THE ORGANIZED PORT OF RIO DE JANEIRO, IN THE STATE OF RIO DE JANEIRO,  
DENOMINATED RDJ05**



## Summary

PREAMBLE .....	4
CHAPTER I - INITIAL PROVISIONS .....	5
Section I - Definition .....	5
Section II - Object.....	8
Section III – Access to the Auction Notice.....	9
Section IV – Clarifications of the Auction Notice .....	10
Section V - Technical Visits .....	11
Section VI – Challenges to the Auction Notice.....	12
Section VII - General Provisions .....	13
CHAPTER II - SPECIAL TENDER COMMITTEE.....	14
CHAPTER III - PARTICIPATION IN THE AUCTION .....	15
Section I - Participation of Foreign Companies.....	16
Section II - Participation in Consortium.....	17
Section III – Limits to Participation.....	18
CHAPTER IV - DOCUMENTATION .....	20
Section I - Preliminary Statements.....	21
Section II - Representatives .....	22
Subsection I - Accredited Representatives .....	22
Section III - Bid Security.....	24
Section IV - Lease Proposal .....	27
Section V – Eligibility.....	28
Subsection I - Legal Eligibility .....	28
Subsection II - Economic-Financial Qualification .....	30



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



Subsection III – Tax and Labor Compliance .....	31
Subsection IV – Technical Qualification.....	32
CHAPTER V – STAGES OF THE AUCTION.....	33
Section I – Submission of Documents .....	33
Section II – Analysis of Preliminary Statements, Representation Documents and Bid Security .....	36
Section III – Public Auction.....	36
Section IV – Examination of Other Documents.....	38
Section V - Administrative Appeals .....	39
Section VI - Homologation of the Auction and Award of its Object .....	41
Section VII - Schedule of the Events .....	41
CHAPTER VI - LEASE CONTRACT .....	42
Section I - Obligations Prior to Signing the Contract .....	42
Section II - Signing of the Lease Contract .....	45
Section III - General Provisions of the Lease Contract.....	46
CHAPTER VII - PENALTIES .....	46
CHAPTER VIII - FINAL PROVISIONS .....	47

**Important Note:** For legal purposes, it will only be valid to contest the Notice 01/2017 in the Portuguese version, due to its effective publication in the Federal Official Gazette (DOU), determining factor for its validity. Therefore, the English version of this notice is merely referential, because it aims to better understand and publicize the foreigners interested in the Auction of Leases of Areas in the Brazilian Public Ports.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## PREAMBLE

The **AGÊNCIA NACIONAL DE TRANSPORTES AQUAVIÁRIOS – ANTAQ (NATIONAL WATERWAY TRANSPORTATION AGENCY)** informs the public and whomsoever it may concern that it will be holding a Tender, in the form of an Auction, in accordance with procedures described in this Auction Notice, **Auction Procedures Manual – 01/2017-ANTAQ**, for the purpose of selecting the most advantageous proposal for signing of a lease contract for an area and public infrastructure located within an public port. The Bid will observe the Differentiated Regime of Public Procurement (RDC) according to the Federal Law 12,462/11, as well as the rules and procedures established in Federal Law 12,815, of June 5th, 2013 and in Federal Decree 8,033, of June 27th, 2013, and also in Federal Laws 8,666/93, 8,987/95.

The Representation Documents, Preliminary Declarations, Bid Security, Qualification and Bid for Lease related to the Auction will be received only on 04/17/2017, from 10 am to 1 pm, at ANTAQ headquarters, located at SEPN, Quadra 514, Joint " E ", ANTAQ Building, Brasília, Distrito Federal, Post Code 70760-545.

The Public Auction and opening of the Bidders' Lease Proposals shall take place on 04/20/2017, as of 10 a.m., at ANTAQ headquarters, located at SEPN, Quadra 514, Joint " E ", ANTAQ Building, Brasília, Distrito Federal, Post Code 70760-545.

This Auction Notice shall be published in the Official Gazette (DOU). Note that all subsequent notices relating to the bidding shall be via the Official Gazette (DOU) and the ANTAQ and Ministry of Transport, Port and Civil Aviation website.

The Auction Notice and other documents pertaining thereto shall be available for consultation and acquisition since 01/09/2017, via Internet, on the ANTAQ website, [www.antaq.gov.br](http://www.antaq.gov.br) and on the Ministry of Transport, Port and Civil Aviation website, [www.transportes.gov.br](http://www.transportes.gov.br). The Auction Notice may also be obtained at the offices of ANTAQ, located at SEPN, Quadra 514, Joint "E", ANTAQ Building, Brasília, Distrito Federal, Post Code 70760-545.

The tender was preceded by a Public Hearing, in accordance with article 39 of Federal Law 8,666/93, and article 11, paragraph 3, of Federal Decree 8,033/2013, having been duly published in the Official Gazette (DOU) of 10/29/2014 and held on 11/25/2014, as was also the Public Consultation foreseen in article 34-A, paragraph 1, of Federal Law 10,233/2001, held between 10/29/2014 and 11/27/2014, having also been published in the Official Gazette (DOU), on 10/29/2014.

Brasília/DF, January 9th, 2017.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## CHAPTER I - INITIAL PROVISIONS

### Section I - Definition

1.1. For purposes of this Auction Notice, and notwithstanding other definitions herein, the following expressions shall be thus defined:

1.1.1. **Winning Bidder:** winner of the tender;

1.1.2. **ANTAQ:** National Waterway Transportation Agency, an entity created by Federal Law 10,233/2001, responsible for holding these tender proceedings;

1.1.3. **Annex to the Contract:** each of the annexes to the Lease Contract

1.1.4. **Area of the Public Port:** an area demarked by an act of the Executive Branch, comprising port installations and infrastructure for protection of and access to the Public Port;

1.1.5. **Lease:** assignment for consideration of an area and public infrastructure located within the Public Port, as described in the Contract and its Annexes, for exploitation for a specified period;

1.1.6. **Lessee:** Special Purpose Entity to be constituted by the Winning Bidder, in the form of a corporation, in accordance with Brazilian law and with headquarters and management in Brazil;

1.1.7. **Activities:** port activities to be exploited by the Lessee within the area indicated in the Contract and its Annexes and as described therein.

1.1.8. **Affiliates:** companies under significant influence of another company that holds or exercises power to participate in financial or operational policy decisions, without

controlling them. Significant influence is presumed when the holding is of twenty percent (20%) or more of voting capital of the company, without control thereof;

1.1.9. **Special Tender Committee:** a committee established by ANTAQ, responsible for conducting proceedings relating to the Auction, for examining and judging all documents and proposals, and for responding to requests for clarification submitted in accordance with this **Auction Notice** and **Lease Contract Draft**;

1.1.10. **Consortium:** a group of Bidders, jointly liable for fulfilling obligations arising from this Tender, linked via the Term of Commitment to Constitute a Special Purpose Entity, in accordance with Appendix 1 – Auction Notice Models.

1.1.11. **Contract:** the Lease Contract to be signed between the Grantor Authority and the Lessee, under the terms of **Lease Contract Draft**;

1.1.12. **Subsidiary:** a company in which the Controller, either directly or through other subsidiary or affiliate companies, is holder of shareholder rights that permanently ensure a majority of voting rights in corporate decisions and the power to elect the majority of the company's administrators; effectively using its power to direct corporate activities and orient the functioning of company bodies;

1.1.13. **Controller:** person or entity which:

1.1.13.1. Is the holder of shareholder rights that permanently ensure a majority of voting rights at deliberations of the general meeting and the power to elect a majority of the company's administrators ; and

1.1.13.2. Effectively uses power to direct corporate activities and orient the functioning of company bodies.

1.1.14. **Date for Receipt of Envelopes:** Day at which the **Bidders** shall deliver to **ANTAQ**, all documents necessary for participation in the **Auction**.

- 1.1.15. **Eligibility Documents:** a set of documents listed in the **Auction Notice** designed to show respective legal, fiscal, technical and economic-financial regularity;
- 1.1.16. **Auction Notice:** this document and its specific conditions, which stipulate the rules of the Auction;
- 1.1.17. **Leading Company of the Consortium:** a company indicated by the Bidders participating in the tender as Members of a Consortium, responsible before the Grantor Authority for compliance with obligations contained in this **Auction Notice** and **Lease Contract Draft**, notwithstanding joint liability of other consortium partners;
- 1.1.18. **Bid Security:** a guarantee of full compliance by the Winning Bidder with the Lease Proposal that may be executed under terms foreseen in this **Auction Notice**;
- 1.1.19. **Auction:** a modality of Tender for selection of a Winning Bidder who shall, in turn, set up a Special Purpose Entity responsible for performance of the object of this Contract, in the form of a Specific Purpose Entity.
- 1.1.20. **Auction Procedures Manual:** a document published by ANTAQ on its Internet page, consigning guidelines, rules and models of documents for the Public Auction, and also procedures for provision of Bid Security;
- 1.1.21. **NCM:** MERCOSUR Common Nomenclature;
- 1.1.22. **Port Operator:** a prequalified corporate entity to carry out activities for handling/storage of cargo/goods, for or from water transport, within the area of the Public Port;
- 1.1.23. **Grantor Authority:** the Union, through the Ministry of Transport, Ports and Civil Aviation;

1.1.24. **Public Ports:** a public asset, built and equipped to serve the needs of shipping, movement of passengers, or movement and storage of goods, the transit and port operations of which are under jurisdiction of the port authority;

1.1.25. **Bidders:** corporate entities, investment funds and private pension funds participating in the Auction, individually or as a Consortium;

1.1.26. **Accredited Representatives:** persons authorized to represent Bidders in all documents and sessions relating to the Auction.

1.1.27. **Public Auction:** a public session for opening of Lease Proposals submitted by Bidders;

1.1.28. **Users:** all persons and corporations that are users of **Activities** provided by the Lessee, or by third parties he may indicate, in the Area of the Public Port;

1.1.29. **Lease Value:** the sum owed by the Lessee to the Port Administration, for exploitation of the Lease, under the terms of the **Lease Contract Draft**;

1.1.30. **Bid Value:** Sum offered by the Winning Bidder to obtain the right to exploit the Lease, under the terms of the **Lease Contract Draft**.

1.2. Except when the context disallows such interpretation, the definitions in the **Auction Notice** shall be equally applied in both singular and plural forms.

## Section II - Object

2.1. The purpose of this Auction is the lease of Public Port Areas, Infrastructures and Facilities located in the Port of Rio de Janeiro – State Rio de Janeiro to carry out the Activities, according to specifications and requirements established in the **Auction Notice** and in the **Lease Contract Draft**.



- 2.1.1. The total area of the **lease** in Rio de Janeiro, whose ID code is **RDJ05**, 13,453 m<sup>2</sup> (thirteen thousand, four hundred and fifty three square meters), consisting of the land on which the equipment and buildings to be used (Landing, internal movement, storage and shipment) and embarkation (reception, storage, internal movement and shipment) of solid bulk of vegetable origin, especially wheat, according to the rules set forth in the **Contract** and in its **Annexes**.
- 2.2. A complete description of the areas, infrastructures and port facilities can be found in the **Lease Contract Draft**.
- 2.3. The **Activities** to be performed by the Lessee in the Leases consist of the movement and storage of solid bulk of vegetable origin, especially wheat, under the terms and conditions set forth in the **Contract** and its **Annexes**.
- 2.4. Remuneration of the Lessee shall be in the form of revenues charged directly from Users of the **Activities** provided, as foreseen in the Contract.
- 2.5. This **Auction Notice** comprises: **Lease Contract Draft**.

### Section III – Access to the Auction Notice

- 3.1. The Auction Notice for this Tender, its **Lease Contract Draft**, and all available information, studies and projects can be obtained:
- 3.1.1. On the ANTAQ website, [www.antaq.gov.br](http://www.antaq.gov.br) , and on the Ministry of Transport, Port and Civil Aviation website, [www.transportes.gov.br](http://www.transportes.gov.br), since 01/09/2017, with delivery of such studies and information subject to rules foreseen in this **Auction Notice** and **Lease Contract Draft**; and
- 3.1.2. At the offices of ANTAQ, located in Brasília, Distrito Federal, at SEP, Quadra 514, Joint "E", ANTAQ Building, Brasília, Distrito Federal, Post Code 70760-545.

- 3.2. Interested parties shall obtain the **Auction Notice** and **Lease Contract Draft** by the means specified, so as to guarantee the authenticity of the texts and ensure that they are in possession of all documents and Annexes that comprise the bid announcement.
- 3.3. ANTAQ shall not be held responsible for text and **Lease Contract Draft** and of the **Auction Notice** obtained by other means or at locations other than those indicated in this bid announcement.
- 3.4. Obtaining of the **Auction Notice** and **Lease Contract Draft** shall not be a condition for participation in the Auction, it being sufficient for this end, that the Bidder have knowledge of and accept all its terms and conditions.

#### Section IV – Clarifications of the Auction Notice

- 4.1. The Special Tender Committee shall provide clarifications on the **Auction Notice** and **Lease Contract Draft**, *ex officio* or at the request of Bidders and such clarifications shall be duly recorded in the meeting minute and, in accordance with Item 4.5, shall be of a binding nature for purposes of interpretation of its rules.
- 4.2. Any requests for clarification shall be submitted no later than 6 p.m. of 02/20/2017, in the following manner:
- 4.2.1. Electronically, on the ANTAQ website, on a specific form which will be made available; or
- 4.2.2. Filed by matching receipt at ANTAQ headquarters, including the file in printed form and electronically recorded in “.doc” format.
- 4.3. The Special Tender Committee shall not provide clarifications:
- 4.3.1 Presented in any format other than that presented in item 4.2;



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



- 4.3.2 Which are not directly related to the contents of the **Auction Notice** and of the **Lease Contract Draft**; and
- 4.3.3 Which are subject to information, studies, surveys, investigations, surveys, projects, spreadsheets and other documents or data, which are not expressly set forth in the **Auction Notice** and of the **Lease Contract Draft**;
- 4.4. All answers of the Special Tender Committee to requests for clarification submitted under the terms of this Item shall be recorded in the meeting minute, which shall be an integral part of the bidding process.
- 4.5. The minutes of meeting shall be disclosed on the ANTAQ website no less than 8 (eight) days prior to the **Date for Receipt of Envelopes** described in Item 20.1, and shall be available to interested parties at the headquarters of the Agency for consultation, without identifying the sources of the questions. Bidders may also obtain a copy of the meeting minute at ANTAQ headquarters, upon payment of copying charges.

## Section V - Technical Visits

- 5.1. Bidders may conduct up to 2 (two) technical visits for purposes of obtaining additional information on the current area, infrastructure and public facilities object of the Lease, at which time said Bidders may also assess any potential environmental issues, observing the procedure the additional instructions to be disclosed by the Special Tender Committee.
- 5.2. Bidders may indicate up to 6 (six) representatives to participate in technical visits.
- 5.3. Participation in technical visits is optional. The Bidder shall present among his eligibility documentation a Certificate of Technical Visit or Declaration of Full Knowledge, stating that he has full knowledge of the areas, infrastructure and public facilities in which the **Activities** are to be performed and of conditions that may affect their performance, of accesses to the areas, of the material and equipment to be



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



used, and of other information necessary for achieving the purposes of the Lease, and its responsibility is the occurrence of possible damages due to its omission in the verification of the object.

5.4. Technical visits must be scheduled directly at the Port Management Superintendence in Rio de Janeiro and Niteroi, established on Av. Rodrigues Alves, nº 20, Rio de Janeiro, with Carlos Alberto Pedro de Medeiros or Alexandre Tavares de Oliveira - Phone (21) 2233-2370 and (21) 2233-2416).

## **Section VI – Challenges to the Auction Notice**

6.1. Any challenge to the Bidding shall be filed at ANTAQ's headquarters within 5 working days of the date of opening of the proposals, under penalty of decay of this right.

6.2. The challenge to the Auction Notice shall be addressed to the president of the Special Tender Committee and delivered in physical and electronic form at ANTAQ headquarters, or electronically on the ANTAQ website, no latter than 6 p.m. If there are discrepancies of information among the versions, the content of the physical version shall prevail.

6.3. The Special Tender Committee shall judge and respond to possible challenges in up to 3 (three) business days before the **Public Auction**.

6.3.1. The judges of the Special Tender Committee to possible challenges submitted under the terms of this Item shall be recorded in the meeting minute, which shall be an integral part of the bidding process.

6.3.2. The minutes of meeting shall be disclosed on the ANTAQ website and shall be available to interested parties at the headquarters of the Agency for consultation. Bidders may also obtain a copy of the meeting minute at ANTAQ headquarters, upon payment of copying charges.

## Section VII - General Provisions

- 7.1. All the Tender documents, including correspondence exchanged between Bidders and the Special Tender Committee, shall be written in the Portuguese language, as all documentation shall be consulted and interpreted in said language.
- 7.2. Documents of foreign origin presented in other languages without (i) the authentication of the respective Brazilian consulates, and (ii) the sworn translation into the Portuguese language, shall not be considered for evaluation and judgment of the Proposals.
- 7.3. Except when expressly authorized in this Auction Notice, the documents must observe models in the bid announcement, if such there be.
- 7.4. All times mentioned in this Auction Notice refer to official time in Brasília.
- 7.5. Correspondence relating to the Auction Notice and sent to the Special Tender Committee shall be considered delivered on the date of receipt, by means of a protocol receipt or other form of message-receipt confirmation, in the case of electronic mail.
- 7.6. Correspondence received after 6 pm, including those sent to an electronic address, will be considered as received on the following business day.
- 7.7. Any alteration in the Auction Notice shall be announced in the Official Gazette (DOU) and on the ANTAQ and Ministry of Transport, Port and Civil Aviation websites.
- 7.8. Documents submitted in electronic format may not contain access restrictions or content protection.
- 7.9. If there is any discrepancy between information submitted in physical and electronic form, those presented in hard copy shall prevail.

- 7.10. The information, studies, research, investigations, surveys, projects, spreadsheets and other documents or data available on the ANTAQ website were obtained or carried out exclusively for purposes of pricing of the Auction, and do not have any binding effect or liability upon ANTAQ and/or the Grantor Authority before Bidders and/or the future Lessee.
- 7.11. Bidders are responsible for direct analysis of conditions of the respective area, infrastructure and public facilities of the Lease, for all data and information on its exploitation, and also for examination of all instructions, conditions, requirements, laws, decrees, standards, specifications and regulations applicable to the Auction, to the Lease and to the Public Port, and shall bear their respective costs and expenses and any resulting damages, including those relating to performance of studies, investigations, technical visits, surveys, projects and investments.
- 7.12. Participation in the Auction implies full and unconditional acceptance of all terms, provisions and conditions of the Auction and of all other applicable standards.
- 7.13. Subject to the specific rules of this Auction Notice, the values provided in the Auction Notice and Annex 1 - Auction Specific Conditions shall be adjusted by applying the IPCA, released by the Instituto Brasileiro de Geografia e Estatística - IBGE. Values will be adjusted every 12 (twelve) months from the reference date.

## **CHAPTER II - SPECIAL TENDER COMMITTEE**

- 8.1. The Auction shall be judged by the Special Tender Committee, which shall conduct the necessary work for holding of the event.
- 8.2. The Special Tender Committee may request information from any bodies and entities involved in this Tender, as well as all those of the Federal, State and Municipal Public Administration.

- 8.3. Aside from the prerogatives pertaining implicitly to its legal function, the Special Tender Committee may:
- 8.3.1. Request from Bidders, at any time, proceedings aimed at determining, clarifying and solving any issue relating to documents submitted, including, but without limitation, formal flaws, discrepancies of information, translations to or from another language;
  - 8.3.2. Adopt criteria for solution of flaws and defects of a formal nature and complementation of insufficiencies during the course of the Auction;
  - 8.3.3. Take steps to clarify or complement instructions for the Auction, subsequent inclusion of any document or information that ought to have been included among the Volumes described in Item 20.1 submitted by the Bidder being expressly forbidden;
  - 8.3.4. Extend deadlines set in the Auction Notice, in cases of public interest, fortuitous event or force majeure, without Bidders having the right to compensation or reimbursement of costs and expenses for any reason;
  - 8.3.5. In the event of an alteration that unequivocally affects the drafting of Proposals, change the **Date for Receipt of Envelopes** described in Item 20.1.
- 8.4. Refusal to provide explanations and documents or to fulfill requirements requested by the Special Tender Committee, within the period determined by it and in accordance with the terms of this Auction Notice, may result in disqualification of the Bidder, with consequent forfeiture of Bid Security.

### CHAPTER III - PARTICIPATION IN THE AUCTION



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



9.1. Under the terms of this Auction Notice, Brazilian or foreign legal entities, pension funds and investment funds, alone or as Consortia, may participate in the Auction.

9.2. Bidders must be represented at the Auction by Accredited Representatives.

### **Section I - Participation of Foreign Companies**

10.1. Bidders that are foreign corporate entities that do not function in Brazil must submit, either for stand-alone participation or as Consortia, documents equivalent to those required for eligibility of Brazilian Bidders, which must be authenticated by the Brazilian consular authority in their country of origin, and translated by a sworn translator.

10.2. Bidders that are foreign corporate entities that do not function in Brazil must submit a statement, according to the model in **Appendix 1 - Auction Notice Models**, certifying correlation between the administrative-legal documents normally required for tenders in Brazil and the corresponding ones of the country of origin, also indicating correlation of their respective validities.

10.3. The equivalent Eligibility Documents must be submitted, so as to enable analysis by the Special Tender Committee, of their validity and enforceability.

10.4. In the event of non-existence of documents equivalent to those requested in this Auction Notice or of a body in the country of origin that authenticates them, the Bidder shall submit a statement informing this fact, in accordance with the model in **Appendix 1 - Auction Notice Models**.

10.4.1. If any of the documents required in Subsection III, Section V, and Chapter IV of this Auction Notice corresponds to the hypothesis in the previous Item, a statement of non-existence of equivalent document must be added to the corresponding declaration of absence of tax and labor debts.





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



10.5. The Legal Representative of a foreign Bidder shall be a legally accredited person domiciled in Brazil, with express powers, of proxy by private or public instrument, legalized and attested by consulate, if appropriate, notarized as authentic by a notary or other entity, in accordance with rules applicable to documents, to receive citation and respond administratively and in court for the Bidder in Brazil, and to represent the foreign legal-entity Bidder in all phases of the tender process, observing the provisions of Item 7.1.

10.6. The foreign Bidders that are authorized to function in Brazil must present the same documents to legal entities constituted under Brazilian laws.

## **Section II - Participation in Consortium**

11.1. In relation to Consortia, the following rules shall apply, notwithstanding others in this Auction Notice:

11.1.1. For formation and organization of Consortia, Bidders shall comply with the provisions of this section and applicable legislation;

11.1.2. Each Consortium member must, individually, comply with provisions of this Auction Notice relating to Preliminary Statements, and to Eligibility Documents;

11.1.3. Disqualification of any Consortium member shall result in automatic disqualification of the Consortium;

11.2. There is no limit to the number of participants for formation of a Consortium.

11.3. Inclusion, replacement, withdrawal, exclusion or even alteration in the percentage shares of Consortium members shall not be accepted, as of the **Date for Receipt of Envelopes** described in Item 20.1, until signing of the Contract.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



11.4 Aside from other documents required by the Auction Notice, participation of a Bidder under a Consortium shall be conditioned to presentation of a commitment to Formation of a Special Purpose Entity, subscribed by Consortium members, under the Terms of **Appendix 1 - Auction Notice Models**.

11.5 At the same Auction, each legal entity can participate in only one Consortium, a restriction that shall extend to their Subsidiaries, Affiliates and entities under the same common control.

11.6. In the event that a Bidder participates in a Consortium, he will also be barred from participating in isolation in the Auction, or for any of the Leases under said Auction, and this restriction shall extend to all Subsidiaries, Controllers, Affiliates and entities subject to the same common control.

11.7. Joint liability of Consortium members will cease, for purposes of the obligations assumed as a consequence of the Auction:

11.7.1. If the Consortium is declared members winner, on the date of signing of the Contract; and

11.7.2. If the Consortium is not the winner, after up to 15 (fifteen) days, counted as of the date of signing of the Contract.

11.8. If a Consortium is comprised of foreign and Brazilian companies, leadership shall be exercised by a Brazilian company, freely chosen among members of the Consortium.

### **Section III – Limits to Participation**

12.1. Participation in this Auction is disallowed for corporate entities, individually or in Consortium, that:

- 12.1.1. Have been declared ineligible by act of the Public Authorities;
  - 12.1.2. Are suspended or barred from participation in tenders or signing of contracts with Public Administration, under provisions of Law 8,666, of June 21, 1993;
  - 12.1.3. Have been condemned by final judgment, to a disqualification penalty, owing to environmental crimes, as disciplined in art. 10 of Federal Law 9.605, of February 12, 1998;
  - 12.1.4. Have been condemned, by final administrative decision, to a penalty provided for in art. 38, II, of Federal Law 12.529, of November 30, 2011;
  - 12.1.5. Have leaders or technical managers who are in, or who have held, appointed positions, staff positions or jobs at ANTAQ and/or at Ministry of Transport, Port and Civil Aviation, or have been board members, high-level advisors or intermediate assistants in the Direct Administration of the Union, within the previous 180 (one hundred and eighty) days prior to the date of publication of the Auction Notice;
    - 12.1.5.1. The restriction in Item 12.1.5 does not apply to members of the Administrative Council, the Fiscal Council and the Consultative Council of potential Bidders;
  - 12.1.6. Have final civil convictions for an act of improper conduct, under the terms of Federal Law 8.429, of June 2, 1992;
  - 12.1.7. Are under judicial/extrajudicial or bankruptcy protection or/and civil insolvency, accommodation with creditors, in dissolution or in liquidation.
- 12.2. For verification of events mentioned in items 12.1.1, 12.1.2 and 12.1.6 the Unified Registration System and Suppliers (SICAF), the National Registry of Disreputable



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



and Suspended Companies (Ceis) of the Comptroller General (CGU), the Transparency Portal and the CNJ Portal must be consulted.

#### CHAPTER IV - DOCUMENTATION

13.1. With the exception of Guarantees in the form of bank guarantees and guarantee insurance, which must be in original form, in first-copy of Volume 1, described in Item 20.1, all other Documents shall be presented in their original form or certified copy, and initialed by the respective Accredited Representatives. The Bidders may submit certified copies of guarantee insurance policies to instruct the 2<sup>nd</sup> and 3<sup>rd</sup> copies of the 1<sup>st</sup> Volume.

13.1.1. Certificates that do not specify duration will be accepted if they have been issued within 90 (ninety) days prior to the **Date for Receipt of Envelopes**.

13.1.2. Certificates obtained electronically with digital authentication will be considered as valid. Electronic certificates not bearing the digital authentication are valid as long as issued by the official electronic site of the competent organ.

13.2. All documents submitted by Bidders shall remain in custody of ANTAQ until after the 15 (fifteen) day deadline, counted as of signing of the Contract, with exception to the documents of the winning bidder, which will be permanently in the process.

13.3. As of the period provided for in the previous Item, the documents submitted by unsuccessful Bidders may be removed by said Bidders upon notification of completion of all steps of inspection by the Federal Court of Auditors (TCU) as provided for in Normative Instruction 27, of December 2, 1998.

13.3.1. The Bid Security will be returned within 15 (fifteen) days after signing the Contract.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



13.3.2. Thirty (30) days after receipt of notification of completion of the inspection mentioned in Item 13.3, ANTAQ shall destroy documents not withdrawn by the Bidders.

## Section I - Preliminary Statements

14.1. Bidders shall submit Preliminary Statements, in accordance with models in the **Appendix 1 to this Auction Notice**, to the effect that:

14.1.1. They are aware of all the requirements foreseen in the Auction Notice and its Annexes, in accordance with models in the **Appendix 1 - Auction Notice Models**;

14.1.2. They are not affected by the hypotheses of limitation to participation in the event specified in the Auction Notice, in accordance with models in the **Appendix 1 - Auction Notice Models**;

14.1.3. They are not in a process of bankruptcy, self-declared bankruptcy, judicial or extrajudicial recovery, judicial or extrajudicial liquidation, insolvency, special temporary administration or under intervention of a competent inspection agency, in accordance with models in the **Appendix 1 - Auction Notice Models**; and

14.1.4. They comply with the provisions of art. 7, inset XXXIII, of the Federal Constitution, which includes among the rights of urban and rural workers a prohibition against night work, dangerous or unhealthy labor for children under the age of eighteen, and of any work for those under sixteen except as apprentices from age fourteen, in accordance with models in the **Appendix 1 - Auction Notice Models**.

## Section II - Representatives

### Subsection I - Accredited Representatives

15.1. Each Bidder or each Consortium may have up to 2 (two) Accredited Representatives.

15.2. Proof of the powers of Accredited Representatives shall be in the form of:

15.2.1. In the case of Brazilian companies, by power of attorney attesting powers to perform, on behalf of the Bidder, all acts referent to the Auction (including powers to receive citations, represent the Bidder administratively and judicially, sign contracts and waive rights) in accordance with models in the **Appendix 1 - Auction Notice Models**, notarized and accompanied by documents proving the powers of the assignee(s) (in accordance with the latest amendment filed with the competent civil or business registration authority);

15.2.2. In the case of Bidders in Consortium, the power of attorney mentioned in the previous Item must be granted by the Leading Company, notarized and using the model in the **Appendix 1 - Auction Notice Models**, and shall be accompanied by:

15.2.2.1. Indication that the Leading Company is responsible for actions taken by the Consortium before the Grantor Authority;

15.2.2.2. Powers of attorney assigned by Consortium members to the Leading Company, in accordance with those in the **Appendix 1 - Auction Notice Models** (Bidders in Consortium) with express, irreversible and irrevocable powers to agree to conditions, condescend, make commitments, sign any papers, contract documents and instruments related to the object of the Auction;

- 15.2.2.3. Documents proving the powers of all parties (in accordance with the latest amendment filed with the competent civil or business registration authority); and
- 15.2.2.4. A commitment to establish a Special Purpose Entity subscribed by Consortium members, in accordance with those in the **Appendix 1 - Auction Notice Models**.
- 15.2.2.5. In the case of a foreign corporate Bidder by means of presentation of: power of attorney granted to a representative resident and domiciled in Brazil, in accordance with the **Appendix 1 - Auction Notice Models** (Foreign Bidders), proving powers to: perform, on behalf of the Bidder, all acts referent to the Auction; receive citations and represent the Bidder administratively and in court; and make contracts and waive rights and, if appropriate, assign powers to Accredited Representatives, accompanied by documents proving powers of the assignees, with signature(s) duly authenticated by a notary or other entity in accordance with applicable law, recognized by the nearest Brazilian consular representation, duly translated into Portuguese by a sworn translator and registered in the Registry of Deeds and Documents (in accordance with the latest amendment filed in the competent business or civil registry or as required by the equivalent body in the country of origin).
- 15.3. At least 1 (one) of the Accredited Representatives shall sign all declarations and documents referred to in this Auction Notice.
- 15.4. Each Accredited Representative may exercise representation of only one Bidder.
- 15.5. Accredited Representatives will be allowed to intervene and perform acts during the Auction Public Session.

### Section III - Bid Security

- 16.1. The Bid Security must be paid in the amount of R\$ 5.157.970,14 (five million, one hundred and fifty-seven thousand, nine hundred and seventy reais and fourteen centavos).
- 16.2. To post Bid Security, Bidders should observe the rules and values described in the **Manual of Auction Procedures**, notwithstanding the guidelines contained in this Section.
- 16.3. Bid Security may be paid in cash, federal debt bonds, guarantee insurance or bank guarantees, or a combination of these forms may be used, observing the following conditions:
- 16.3.1. Proposal Guarantees submitted in the form of guarantee insurance and bank guarantees must comply with the minimum information requirements indicated in the **Appendix 1 - Auction Notice Models** and submitted in original form. No copies of any kind will be accepted. However, submission of guarantee insurance policies certified by the Superintendence of Private Insurance – SUSEP delivered by digital means and signature by digital certification shall be accepted. Proposal Guarantees submitted in the form of guarantee insurance and bank guarantees must have values expressed in reais and follow the conditions set out in the **Manual of Auction Procedures**;
- 16.3.2. In the event that Bid Security is posted in government bonds, only National Treasury Bills - LTN, Treasury Bills- LFT, National Treasury Notes- C series - NTN-C, or National Treasury Notes- F series - NTN-F, shall be accepted;
- 16.3.3. In the case of a cash bond, the deposit shall be made in a branch of Caixa Econômica Federal defined by the Bidder, based on art. 82 of Federal Decree 93.872, of December 23, 1986, and Federal Decree Law 1.737, of December





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



20, 1979, and the beneficiary's copy of receipt of deposit shall be included in the envelope;

16.3.4. If the Bidder participates alone, the Bid Security shall be presented in his own name;

16.3.5. If the Bidder is a Consortium, the Bid shall be submitted in the name of one or more Consortium members and shall indicate, expressly, the name of the Consortium and of all its members with their respective percentile of shares, regardless of whether the Bid Security was posted by one or more of the participants. In such a case, it is also admissible that the total amount of the posting be divided among Consortium members, which may individually opt for one of the modalities of guarantee foreseen in Item 16.3, notwithstanding the choice, by other members, of a different modality; and

16.4. In the case of Bid Security provided in the form of government bonds, in accordance with Item 16.3.2, these shall be issued in book-entry form, upon registration in a centralized settlement and custody system authorized by the Central Bank of Brazil and evaluated by their economic values, as defined by the Ministry of Finance.

16.5. The Bid Security will name ANTAQ as beneficiary and the Bidder as borrower, and have validity of no less than 1 (one) year, counting as of the **Date for Receipt of Envelopes**, and should be renewed by the Bidder prior to expiry, if the event is not concluded within this period.

16.5.1. Validity of the Bid Security will be extended at least 30 (thirty) days prior to its expiry, at the Bidders own expense, if it expires prior to the date stipulated, under penalty of disqualification of the event. The Bid Security shall be renewed for a period of no less than 6 (six) months.

16.6. In the case of renovation, the Bid Security shall be readjusted according to the Broad Consumer Price Index (IPCA) published by the Instituto Brasileiro de Geografia e

Estática - IBGE for the period encompassing the **Date for Receipt of Envelopes** and the latest officially published index prior to renovation of the Bid Security.

16.7. Proposal Guarantees may be executed by ANTAQ, through prior notification and conclusion of a regular administrative procedure, notwithstanding other penalties foreseen in the Auction Notice and applicable legislation, in the following cases:

16.7.1. Total or partial default, on the part of Bidders, of obligations they have assumed as a consequence of their participation in the Auction;

16.7.2. Submission, by the Winning Bidder, of Eligibility Documents not in compliance with that established in the Auction Notice;

16.7.3. Submission, by the Winning Bidder, of a Lease Proposal that does not fully comply with requirements established in applicable legislation and in the Auction Notice;

16.7.4. Noncompliance, by the Winning Bidder, of obligations prior to signing of the Contract;

16.7.5. Refusal by the Winning Bidder to sign the Contract;

16.7.6. If the Bidder performs acts aimed at thwarting goals of the event;

16.7.7. Coverage of any fines, penalties and compensation owed by Bidders to ANTAQ or to the Grantor Authority, as a consequence of their participation in the Auction, encompassing the **Date for Receipt of Envelopes** until the deadline foreseen in Item 20.1, notwithstanding application of other penalties and residual liability for values that extrapolate the Bid Security; and

16.7.8. If the Bidder withdraws his Proposal within its respective period of validity.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



16.8. Any modification to the terms and conditions of the Bid Security after its submission to the Special Tender Committee is forbidden, excepting if approved by the Special Tender Committee in the event of loss of financial value or need for its substitution.

16.9. The Bid Security shall not contain a clause excluding any liability of the borrower in relation to participation in the Auction, except as expressly provided for in exclusive guarantee insurance under SUSEP rules.

#### **Section IV - Lease Proposal**

17.1. The Bidder shall submit its Bid for the Lease in accordance with the model in **Appendix 2 - Lease Proposal Presentation Form** and observe the rules contained in the **Manual of Procedures of the Auction**, notwithstanding the guidelines set out in this Section.

17.2. The Bidder shall indicate, in its Proposal for the Lease, the Value of the Grant in Reals to be paid to the UNION with a maximum of two (two) decimal places, being prohibited the presentation of an amount less than R\$ 1.00 (one real).

17.3. The Lease Proposal will be valid for 1 (one) year, counting as of the **Date for Receipt of Envelopes**, and may be extended for an equal period, by request of the Special Tender Committee, of ANTAQ, or of the Grantor Authority.

17.3.1. In the case of renovation, the Bid Value stated in the Proposal shall be readjusted by the Broad Consumer Price Index (IPCA) published by the Brazilian Institute of Geography and Statistics (IBGE) for a period encompassing the **Date for Receipt of Envelopes** and the latest officially published index prior to the renewal of the Proposal.

17.4. Lease Proposals shall be unconditional, irrevocable and irreversible, and shall observe that all figures in this Auction Notice and its Annexes are referenced to



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



June 2015, excepting the Bid Value, the basis of which shall be the **Date for Receipt of Envelopes**.

## Section V – Eligibility

18.1. Eligibility Documents shall be presented in accordance with models in the **Appendix 1 - Auction Notice Models**.

18.2. Foreign corporate bidders that do not function in Brazil, shall submit, in the case of isolated participation and participation in Consortia, similar documents to those required in this Auction Notice, in accordance with instructions in Items 10.1, 10.2, 10.3, 10.4 and 10.5.

### Subsection I - Legal Eligibility

19.1. The Bidder shall present the following listed documents, both in the case of isolated participation and in a Consortium, when available:

19.1.1. Bylaws or Articles of Incorporation, accompanied by proof of currently serving administrators, duly registered with the Board of Trade or the competent Registry Office (The Consortium may not be registered at the Registry Office);

19.1.2. A Certificate issued by the Board of Trade or competent Registry Office, with up to date information on registration of the company.

19.1.3. Present corporate structure, indicating direct and indirect shares of its capital to its last level, and displaying partner or shareholder agreements or declaration of their non-existence, excepting the possibility of requiring that access to any contract between partners or shareholders be limited to the Special Tender Committee.

19.1.3.1. For purposes of compliance with the provisions of Item 19.1.3, the Bidder shall consider all types of participation, including minority, above 5% of capital, voting or otherwise, including for Investment Funds.

19.2. When the Bidder is an open or closed supplementary pension entity, it shall submit, in addition to the documentation described in Item 19.1, a certificate of specific and express authorization regarding its constitution and functioning, granted by the competent supervisory body, and a statement that the plans and benefits Which it operates are not under liquidation or intervention of the National Superintendence of Complementary Pensions in the Ministry of Finance.

19.3. When the Bidder is an investment fund, in addition to the documentation described in Item 19.1, it must submit the following documents:

19.3.1. Constitutive act with the last amendment filed with the competent body;

19.3.2. Proof of registration of the investment fund in the Securities and Exchange Commission;

19.3.3. Consolidated regulation of the investment fund with its subsequent amendments, if any;

19.3.4. Proof of registration of regulations of the investment fund with the competent Registry of Titles and Documents;

19.3.5. Proof of registration of the administrator and, if so there be, of the manager of the investment fund before the Securities and Exchange Commission; and

19.3.6. Proof that the investment fund is duly authorized to participate in the event, through the Draft of the General Meeting authorizing the participation of the investment fund in the bidding process or another equivalent document.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



- 19.3.7. Presentation of the Draft of the General Meeting that appointed the administrator of the investment fund, as well as instrument of specific proxy of representation of the administrator before the investment fund, including for all acts and for all purposes of the auction, assuming on behalf of the fund All obligations and rights arising from its participation in the contest.
- 19.4. In the case of foreign corporate entities functioning in Brazil, a decree of authorization and act of registration to operate will additionally be required issued by the competent body, when the activity so requires.
- 19.5. A foreign corporate entity that does not function in Brazil and that is participating in the Tender, alone or as part of a Consortium, must provide the documentation set forth in this Subsection, in accordance with legislation in their country of origin and, additionally, must submit a power of attorney attesting to Legal Representation in Brazil and an express statement of submission to Brazilian law and waiving any complaint through diplomatic channels, as foreseen in the **Appendix 1 - Auction Notice Models.**

#### **Subsection II - Economic-Financial Qualification**

- 19.6. The Bidder shall present the following listed documents, either in the case of isolated participation or in a Consortium, when they exist:
- 19.6.1. For business enterprises: a Negative Certificate of Request for Bankruptcy, adjustment with creditors, judicial and extrajudicial recuperation, issued by the Judicial Distributor of the Court District (Civil Courts) of the town where the company is headquartered, issued no greater than 90 (ninety) days prior to the **Date for Receipt of Envelopes**, accompanied by a supporting certificate from the distributor of the records department of the court district of the Bidder. If a lawsuit has been distributed, a certificate must be added describing the



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



updated status of the case, encompassing the period of 90 (ninety) days prior to the **Date for Receipt of Envelopes**.

19.6.2. For simple companies: a Certificate issued by the Distributor of the Civil Courts in general (Property Execution) of the Court District where the company is based, issued no more than 90 (ninety) days prior to the **Date for Receipt of Envelopes**, accompanied by a supporting certificate from the distributor of the records department of the Court District of the Bidder. If a lawsuit has been distributed, a certificate must be added describing the updated status of the case, encompassing the period of 90 (ninety) days prior to the **Date for Receipt of Envelopes**.

19.7. When the Bidder is an open or closed pension fund, it must present, in addition to the documentation described in Item 19.6, a statement to the effect that the plans and benefits it manages are not under liquidation or intervention by a supervisory body.

19.8. When the Bidder is an investment fund, it should present, in addition to the documentation described in Item 19.6, a Negative Certificate of Bankruptcy and others on the administrator and manager of the fund, issued by the court records department(s) of their respective headquarters, issued no less than 90 (ninety) days prior to the **Date for Receipt of Envelopes**.

19.9. The Bidder and, in the case of a Consortium, each of its members, in proportion to their share in the Consortium, must declare that they have sufficient own financial resources to fulfill the contribution obligations necessary for achievement of the object of the Lease, under the terms of the **Appendix 1 - Auction Notice Models**.

### **Subsection III – Tax and Labor Compliance**

19.10. The Bidder shall present the following listed documents, both in the case of isolated participation and of a Consortium, when they exist:



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



19.10.1. Proof of enrollment in the National Register of Corporate Entities of the Ministry of Finance (CNPJ/MF);

19.10.2. Certificate of Compliance before the Time of Service Guarantee Fund (FGTS) within the expiration date on the certificate;

19.10.3. Proof of tax compliance before the National Treasury, through presentation of a certificate jointly issued by the Secretariat of the Federal Revenue of Brazil (RFB) and by the Office of the Attorney General of the National Treasury (PGFN), referent to all federal tax credits and the Record of Current Debts of the Union (DAU) managed by them, including tax credits relating to the social charges foreseen in lines "a", "b" and "c" of the Sole Paragraph of art. 11 of Law 8.212, of July 24, 1991, charges instituted as replacements, and charges owed, by law, to third parties, including those inscribed in the DAU.

19.10.4. Proof of tax compliance before the State and Municipal Treasuries, referent to property taxes, all within the respective domicile and with a validity of no less than, 180 (one hundred and eighty days) prior to the **Date for Receipt of Envelopes**, the validity deadline thereon prevailing. If the Bidder is not registered in State Treasury it must present a certificate describing this situation.

19.11. Negative Certificate of Labor Debts, in accordance with provisions of Federal Law 12.440, of July 7, 2011.

#### **Subsection IV – Technical Qualification**

19.12. Documentation related to the Technical Qualification of Bidders is limited to the presentation, by the Bidder, of the Technical Visit Certificate or Declaration of Full Knowledge, as provided in item 5.3 and of the commitment, under the penalties of the law, to obtain the pre-qualification of the Specific Purpose Company to be





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



established as a port operator, or contract a pre-qualified operator, in case that this company comes to be the winner of the tender, in accordance to the model in the Appendix 1 - Auction Notice Models.

19.12.1. In the case of contracting pre-qualified port operators, it shall henceforth be established that the Lessee and the Port Operator shall be jointly liable for reparation of damages, in the case of events described in insets I, II and III, of art. 26 of Law 12,815/13.

## CHAPTER V – STAGES OF THE AUCTION

### Section I – Submission of Documents

20.1. Bidders shall submit, on the **Date for Receipt of Envelopes**, 04/17/2017, from 10 am to 1 pm, as provided in Preamble and at the schedule of item 26.1.1, the 3 (three) sealed volumes, in 3 (three) copies each, observing the provisions of Item 26.1.1, containing:

20.1.1. **1<sup>st</sup> Volume** - Preliminary Statements, Representation Documents and Bid Security; and,

20.1.2. **2<sup>nd</sup> Volume** - Proposed by the Lease, duly signed, according to the model foreseen in Appendix 2 - Lease Proposal Presentation Form.

20.1.3. **3<sup>rd</sup> Volume** - Eligibility Documents.

20.2. The 3 (three) Volumes shall be presented sealed, distinct and identified on the cover of each, as follows:

AUCTION N. [●] - LEASE OF AREA AND PUBLIC INFRASTRUCTURE  
LOCATED WITHIN PUBLIC PORT

**LEASE [●]**

CORPORATE NAME OF THE BIDDER OR THE CONSORTIUM  
NAME, TELEPHONE AND E-MAIL OF REPRESENTATIVES

**VOLUME 1 - PRELIMINARY STATEMENTS, REPRESENTATION  
DOCUMENTS AND BID SECURITY**

AUCTION N. [●] - LEASE OF AREA AND PUBLIC INFRASTRUCTURE  
LOCATED WITHIN PUBLIC PORT

**LEASE [●]**

CORPORATE NAME OF THE BIDDER OR THE CONSORTIUM  
NAME, TELEPHONE AND E-MAIL OF THE REPRESENTATIVES

**VOLUME 2 - LEASE PROPOSAL**

AUCTION N. [●] - LEASE OF AREA AND PUBLIC INFRASTRUCTURE  
LOCATED WITHIN PUBLIC PORT

**LEASE [●]**

CORPORATE NAME OF THE BIDDER OR THE CONSORTIUM

NAME, TELEPHONE AND E-MAIL OF THE REPRESENTATIVES

**VOLUME 3 - ELIGIBILITY DOCUMENTS**

20.3. The copies of each of the Volumes shall contain, aside from the identification mentioned in Item 20.1, the subtitles "1st Copy", "2nd Copy " and "3rd Copy", respectively.

20.3.1. The copies of each of the Volumes shall be separately bound, with all pages sequentially numbered, including separation pages, catalogues, drawings or others, if such there be, regardless of whether there is more than one book, from first to last page, such that the last number on the last page of the last book reflects the quantity of pages in each Volume, amendments, deletions or restrictions are not permitted, such that each Volume shall have a term of closure indicating the number of pages.

20.4. Each of the Volumes, aside from hard copies, shall be presented in electronic form, by CD, DVD or Pen Drive in a known format with no restriction to access and without content protection, with identical content to the 3 (three) printed copies. The format may be .PDF, since it has no access restrictions or content protection. It may be one or more files, since they are related to the same Volume.

20.5. If there is discrepancy between the information presented in hard copy and in electronic form, those presented in hard copy shall prevail.

20.6. One of the Accredited Representatives shall insert his initials of the seal of each of the Volumes specified in Item 20.1, indicating beside his initials, in his own hand, the date and time.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## **Section II – Analysis of Preliminary Statements, Representation Documents and Bid Security**

21.1. Participation of the Bidder in the Public Auction is conditioned to prior presentation, in accordance with the requirements of the Auction Notice, and the following documents:

21.1.1. Preliminary Statements, referred to in Section I of Chapter IV of the Auction Notice;

21.1.2. Representation Documents, mentioned in Section II of Chapter IV of the Auction Notice; and

21.1.3. Bid Guarantee, referred to in Section III of Chapter IV of the Notice.

21.2. The Special Tender Committee shall examine the regularity of the Preliminary Statements, of the Representation Documents and of the Guarantees presented.

## **Section III – Public Auction**

22.1. The Lease Bid governed by this Notice will take place in a Public Auction Face-to-Face Session, which will include the opening of the Bids, the classification of the Bidders and, if applicable, the hands-on Auction, subject to the rules of the Manual of Auction Procedures.

22.2. The Auction judgment criterion is the most granting the amount to be paid to UNION the onerous assignment of the Lease Area, the amount is presented in Reais, with a maximum of 2 (two) decimal places.

22.3. Open the Proposals, they will be ordered by means of the criterion of greater Value of Grant.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



22.4. The classified Bidders shall be those whose proposal meets all of the requirements established in the applicable legislation and is still subject to the terms and conditions set forth herein.

22.5. In the event that the Lease receives a proposal from only one Classified Proposer, it will be deemed to be the winner of the Lease.

22.6. If the Lease receives 2 (two) or more proposals, the Auction will be held in the speakerphone.

22.7. The qualified Bidders whose bid meets at least one of the following conditions will participate in the Live Auction:

22.7.1. Be among the 03 (three) largest offers for Leasing;

22.7.2. The value of the offer is equal to or greater than 90% (ninety percent) of the Grant Amount, offered by the Proposer whose Proposal corresponds to the greater offer for the Lease.

22.8. The bidders can only submit bids on speakerphone if their offerings meet the terms of item 22.7.

22.9. Each bid must exceed the bid amount of the Bidder itself for that Lease, considering that the bid:

22.9.1. Shall respect the minimum interval between bids, which will be determined by the Director of Public Auction Session;

22.9.2. Shall respect the maximum time between bids fixed by the Director of the Public Session of the Auction;

22.9.3. Shall change the Bidder's classification; and



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



22.9.4. No more having be identical in value to the bidder of another Bidder.

22.10. The Director of the Public Session of the Auction shall declare the closing of the Auction when, after the deadline given for the bidding of new bids, no Bidder will manifest itself with a new bid according to the conditions established in item 22.9.

22.10.1. Closed Auction, will be declared the winner of the Proponent rent who has submitted the highest bid of Grant Amount to be paid to UNION the onerous assignment of the Lease Area.

22.10. The Director of the Public Session of the Auction shall declare the closing of the Auction when, after the deadline given for the bidding of new bids, no Bidder will manifest itself with a new bid according to the conditions established in item 22.9.

22.10.1. After closed the auction, will be declared winner the tenderer that offered the highest proposal to be payed to the UNION for the onerous assignment of the Lease Area.

22.11. Immediately after the close of the Auction, the Proponent declared winner of the Lease must ratify its Proposal by presenting a letter, according to the model included in **Appendix 2 - Lease Proposal Form**, containing the winning bid.

22.12. In the event of a tie between Proposals, the tiebreaker will take place by lot, to be held in the same Public Session.

#### **Section IV – Examination of Other Documents**

23.1. Any Bidder who presents the Eligibility Documents in violation of the requirements of this Auction Notice shall be disqualified from the event.

- 23.2. Any failure in delivery or formal defects in the documents may be remedied, under Item 8.3 of this Auction Notice, according to procedures and deadlines to be defined by the Special Tender Committee. A failure or formal defect shall be deemed one that (i) does not substantially denature the object of the document presented, and that (ii) does not prevent verification, with due security, of information in the documentation.
- 23.3. In the event of ineligibility of a Bidder declared winner of a given Lease, the Commission will proceed to request and open the Eligibility Documents of the Bidder that has presented the second-best Proposal for said Lease, and thus forth, successively, until one of the competitors has fulfilled all the requisites of the Auction Notice, in which case he will be considered the winner of the event.
- 23.4. Ineligibility of the Bidder that had originally been considered winner of the event shall imply application of a fine, equivalent to the value of the Bid Security, which will be fully implemented for settlement of the debt.
- 23.5. The Bidder undertakes to inform ANTAQ, immediately after occurrence, any fact or supervening circumstance that alters or compromises his conditions of qualification.

## **Section V - Administrative Appeals**

- 24.1. Having concluded the eligibility phase, there will be a single appeals phase, in which Bidders participating in the Auction may appeal decisions of the Special Tender Committee that they have manifested prior and express intention to appeal against.
- 24.1.1. In the case of any decision taken in open session, the Bidders shall express their intention to appeal immediately after the session ends.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



- 24.1.2. In the case not taken in open session the intention to appeal shall be expressed in up to 1 (one) business day from the date that the decision is published in the Official Gazette (DOU).
- 24.2. Appeals will be received at ANTAQ headquarters or presented electronically on the ANTAQ website, and referred for judgment to the Board of ANTAQ, through the President of the Special Tender Committee, within 5 (five) business days, after publication of the final decision that declares eligibility of the Winning Bidder.
- 24.2.1 Appeals must comply with the deadline of 6 p.m. on the last day of the deadline.
- 24.2.2. The counterarguments must be presented within 5 (five) business days after the end of the Appeal period, subject to the 6 p.m. limit time.
- 24.2.3. The Special Bidding Commission may, on its own initiative or through provocation, reconsider its decision within 5 (five) business days after the deadline of the counter-arguments, or within that same period, forward the appeal to the Board of Directors of ANTAQ duly instructed.
- 24.2.4. The Board of ANTAQ shall render its decision within 5 (five) business days from the date of its receipt.
- 24.3. Appeals shall only be accepted when signed by the legal representative(s), Accredited Representatives or by proxy with specific powers, furnished with instrument(s) proving such powers, and identified as follows:

**ADMINISTRATIVE APPEAL**

AUCTION N. [●] - LEASE OF AREA AND INFRASTRUCTURE LOCATED WITHIN  
PUBLIC PORT

To: Mr. President of the Special Tender Committee



24.4. The outcome of judgment of the appeal shall be published in the Official Gazette (DOU), as well as on the ANTAQ website, [www.antaq.gov.br](http://www.antaq.gov.br) and the Ministry of Transport, Porto and Civil Aviation, [www.transportes.gov.br](http://www.transportes.gov.br) .

## Section VI - Homologation of the Auction and Award of its Object

25.1. Having verified compliance, by the Bidder declared winner, of eligibility and classification conditions, the Special Tender Committee shall submit the entire bidding process to the Grantor Authority, for approval and award.

25.2. The Grantor Authority may, at any time, postpone any stage of the Auction, under applicable legislation, without allowing Bidders the right to compensation or reimbursement of costs and expenses under any pretext.

## Section VII - Schedule of the Events

26.1. The development of stages of the Auction shall observe the order of events and schedule indicated in the table described in this Item.

26.1.1. Any alterations in dates will be posted on the website, [www.antaq.gov.br](http://www.antaq.gov.br) and the Ministry of Transport, Porto and Civil Aviation, [www.transportes.gov.br](http://www.transportes.gov.br) .

Events	Description of the Events	Deadline
1	Auction Notice	01/09/2017
2	Auction Procedures Manual publication	01/20/2017
3	Deadline to request clarification of the Auction Notice	From 02/01/2017 to 02/20/2017 (limits until 6 pm)
4	Publication of the Draft with clarifications of the Auction Notice	03/10/2017
5	Expiry of the deadline for challenges to the Auction Notice	04/07/2017 (limits until 6 pm)
6	Announcement of the results of the judgment of challenges to the Auction Notice	04/13/2017
7	Receipt, by ANTAQ, of all copies of the Volumes relating to: (i) Preliminary Statements, Representation Documents and Bid Security (Volume 1); (ii) Lease Proposal (Volume 2); and Eligibility Documents (Volume 3)	04/17/2017 from 10 am to 1 pm at ANTAQ

Events	Description of the Events	Deadline
8	Announcement of the decision (and respective motives) of the Special Tender Committee on possible non-acceptance of documents contained in Volume 1 - Preliminary Statements, Representation Documents and Bid Security – relating to each of the Leases that are the object of the Auction.	04/19/2017
9	Public Auction, to be held at ANTAQ. Opening of Lease – Volume 2	04/20/2017
10	Disclosure, on the ANTAQ website of the ranking of Lease Proposals	04/20/2017
11	Opening of the Eligibility Documents of the Winning Bidders, corresponding to the respective Lease (Volume 3)	04/20/2017
12	Publication of the Draft of judgment of analysis of the Eligibility Documents of the Winning Bidder(s)	05/08/2017
13	Start of the period for filing of appeals	05/10/2017
14	Approval of the outcome and award of the object by the Grantor Authority.	At discretion of the Grantor
15	Deadline for proof of compliance, by the Winning Bidder, with obligations foreseen in Section I of Chapter VI of this Auction Notice.	Up to forty-five (45) days counting as of publication of the act of approval and award, extendable, with justification, at the discretion of the Grantor Authority. (item 27.1)
16	The Winning Bidder is called to sign the Lease Contract.	At discretion of the Grantor

## CHAPTER VI - LEASE CONTRACT

### Section I - Obligations Prior to Signing the Contract

27.1. The obligations foreseen in this subsection, or more precisely in Item 27.2, must be fulfilled by the Winning Bidder of each Lease in up to 45 (forty-five) days counting as of publication of the act of approval and award, extendable, with justification, at the discretion of the Grantor Authority.

27.2. The Winning Bidder shall present to the Grantor Authority the following documents:

27.2.1. Proof of payment to the UNION of the amount corresponding to 25% (twenty five) percent of the Grant Value proposed by the Winning Bidder, the remainder of the Grant Amount paid in five annual installments, under the conditions set forth in the **Draft of the Lease Contract**;

27.2.2. Minutes of the general meeting for the constitution of the Lessee as a **Special Purpose Company (SPE)** in the form of a corporation, and its bylaws, with the corresponding certificate of the Commercial Registry and registration with the **CNPJ/MF (National Registry of Legal Entities of the Ministry Of the Treasury)**, which states:

27.2.2.1. the indication of its ownership structure, with the description of the types of actions and participation of shareholders by type of action;

27.2.2.2. its management bodies;

27.2.2.3. commitment to corporate governance principles in the management of the Lessee;

27.2.2.4 that its sole purpose will be to pursue the object of the Lease;

27.2.2.5. that its minimum initial capital is fully subscribed, under the terms of **Lease Contract Draft**, as well as proof of payment of 100% (one hundred percent) of this minimum initial capital in national currency;

27.2.3. Guarantee of Contract Execution, under the terms **Lease Contract Draft**;

27.2.3.1. The value of the **Guarantee of Contract Execution** to be presented by the Winning Bidder – indicated in Clause 16. **Lease Contract Draft** – shall be readjusted by the **IPCA**, applying the following formula:

$$P_t = P_{jun/15} * \left( \frac{IPCA_t}{IPCA_{jun/15}} \right)$$

In which:

$P_t$  corresponds to the value of the **Guarantee of Contract Execution**, duly readjusted;

$P_{jun/15}$  corresponds to the monetary value of the **Guarantee of Contract Execution** indicated in **Lease Contract Draft**, referenced to June 2016;

$IPCA_t$  corresponds to the Index Number of the IPCA, referenced to the date of readjustment;

$IPCA_{jun/15}$  corresponds to the Index Number of the IPCA, referenced to June 2016;

$\frac{IPCA_t}{IPCA_{jun/15}}$  Corresponds to 1 (one) plus the variance of the accumulated IPCA in the period comprising June 2015 and the date of readjustment;

$t$  corresponds to the period of the date of readjustment;

27.2.4. Proof of pre-qualification as a port operator from the Administration of the Public Port in which the Lease is located or of a contract with a Port Operator pre-qualified by the Port Administration, in the same period provided for in Item 27.1 of the Auction Notice;

27.2.5. Declaration that there is no port operator, licensee, leaseholder or concessionaire in the Brazilian port sector. If so, submit a certificate to prove its compliance and the legal entities, directly or indirectly, controlling, controlled, affiliated or common controller with the adjudicator before the **Ports Authorities**, where to carry out these activities, and with **ANTAQ**;

27.2.6. The Basic Project for Implantation (PBI) of the investments, required in **Lease Contract Draft**.

27.3. If the Winning Bidder is participating in the Auction individually, before signing the Contract, he should create a wholly-owned subsidiary, with the special purpose of manage and operate the Lease.

27.4. Each Lease shall correspond to one Contract, with a standard draft, annexed to the Auction Notice, which shall be adapted to its specific scope, with a view to removing references to other objects.

27.5. The summoning of the Winner Bidder for the execution of the Contract shall be preceded by a formal statement from the competent environmental agency, provided by the Government, with a view to guiding the environmental licensing of the Lease, pursuant to art. 14, item III, of Law 12,815 / 2013.

## Section II - Signing of the Lease Contract

28.1. Having fulfilled the requirements of the previous Items, the Lessee shall be called upon to sign, together with the Grantor Authority, the Contract referent to the corresponding Lease.

28.2. Refusal of the Lessee to sign the Contract, in up to 5 (five) business days, counted as of the summons, without justification acceptable to the **Grantor Authority**, subject to the terms of item 30.4, shall case:

28.2.1. Application of a fine, corresponding to the full value of the Bid Security, by way of compensation for damages, and immediate execution of the Bid Security by ANTAQ or by the Grantor Authority;

28.2.2. Barring of an individual Winning Bidder or, in the case of a Consortium, of all its members, from participating in new tenders and from contracting with the Grantor Authority for a period of 24 (twenty-four) months; and



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



28.2.3. Calling upon, at the discretion of the Grantor Authority, the remaining Bidders, by order of ranking, to execute it within the deadlines and conditions offered by the Winning Bidder;

28.2.4. In the event that none of the bidders accept the contracting under sub-item 28.2.3, the public administration may summon the remaining bidders, in the order of classification, for the conclusion of the contract, provided that the value is equal to or higher than the bidder;

28.3. Should it prove impossible to fulfill the necessary requirements for signing of the Contract, owing to events attributable to the Grantor Authority, the Winning Bidder shall not be penalized.

### **Section III - General Provisions of the Lease Contract**

29.1. The fiscal year of the Lessee and the financial year of the Contract shall coincide with the calendar year.

29.2. The assets linked to the Lease are all those indicated in **Lease Contract Draft**.

29.3. Brazilian law, with its informing principles, will be applied to the Contract; no mention of foreign or international law shall be accepted, even as a means of interpretation.

### **CHAPTER VII - PENALTIES**

30.1. Notwithstanding execution of guarantees, and while ensuring the right to challenges and full defense, failure to comply with any condition set forth in this Auction Notice shall empower the Grantor Authority to subject the Bidders and Winning Bidder to the following penalties:

- 30.1.1. Warning;
- 30.1.2. Fine; and
- 30.1.3. Temporary suspension of the right to contract and/or participate in tenders, and banning of any contracting with the Grantor Authority for a period not longer than 2 (two) years.
- 30.2. Notwithstanding the penalties foreseen in Item 30.1, the Lessee shall be the subject of a declaration of unfitness, by the competent authority, and barred from bidding or contracting with the Public Administration for as long as the reasons for such punishment prevail, or until rehabilitation of the Lessee has been effected before the Grantor Authority.
- 30.3. The summation of fines or penalty separate fine for infractions committed during the bidding process shall not exceed the amount equivalent to that required for the Bid Security.
- 30.4. Failure to comply with any prior requisite necessary for the Lease, especially the posting of guarantees within established deadlines, shall constitute refusal on the part of the Bidder or Winning Bidder to receive the Lease, making them liable for penalties typified in this chapter, notwithstanding other penalties foreseen in law, always through administrative proceedings brought especially for this purpose, while guaranteeing the right to challenges and full defense.

## **CHAPTER VIII - FINAL PROVISIONS**

- 31.1. In the event that ANTAQ and/or the Grantor Authority, at any time, become aware that any documentation presented by a Bidder is false or invalid, it shall be disqualified and shall not be eligible for compensation or reimbursement of



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



expenses under any pretext, notwithstanding possible compensation due to the Grantor Authority, as the case may be.

- 31.2. Notwithstanding the provisions of the above Item 31.1, the Auction shall only be cancelled, by the Grantor Authority, for reasons of public interest resulting from untoward and duly proven events, pertinent and sufficient to justify such cancellation.
- 31.3. The Grantor Authority, *ex officio* or at the instigation of others, shall annul the Auction upon verification of any illegality that cannot be remedied.
- 31.4. Nullity of the Auction shall imply nullity of the Contract, and shall not generate any obligation for compensation on the part of the Grantor Authority, excepting in the circumstances described in art. 59, sole paragraph, of Federal Law 8,666/93.
- 31.5. The competent jurisdiction for resolving any disputes relating to this tender will be the Federal Court of the Distrito Federal.

Brasília/DF, January 9th, 2017

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PRESIDENT OF THE SPECIAL TENDER COMMITTEE





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Appendix 1 - Auction Notice Models

### Model 1

#### Model Request for Clarifications of the Auction;

[place], [•] [•] 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice for Auction n. 01/2017 - Request for Clarifications**

Dear Sirs,

**[Bidder]**, through his legal representative(s), submits the following request for clarifications relating to the **Auction Notice**.

Area	Document	Item of the Auction Notice	Clarification Requested
Indicate the clarification of the object area	Indicate to which document (notice or contract) refers the clarification requested	Insert Bidding Item to which the requested clarification refers	Write clearly the request for clarification desired in question form
Indicate the clarification of the object area	Indicate to which document (notice or contract) refers the clarification requested	Insert Bidding Item to which the requested clarification refers	Write clearly the request for clarification desired in question form

**[Bidder]**

[Representative]

Point of contact: [•]

Phone: [•]

E-mail: [•]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Model 2

### Model Power of Attorney

By this power of attorney, **[the Bidder]**, [qualification], herein after referred to as the "**Principal**", appoints and constitutes his proxies, Messrs. **[•]**, [qualification], to jointly or separately, regardless of the order of appointment, perform the following acts in the Federative Republic of Brazil , in court and out of it:

- (a) Represent the Principal before any authorities, agencies or government departments, open or closed corporations and any government agencies including the National Waterway Transportation Agency – ANTAQ and Ministry of Transport, Port and Civil Aviation, to establish and maintain arrangements with these entities, agencies, bodies or departments, to receive citation, notice and summons of any kind, to request and/or promote consultations, to apply for certificates and other documents and to perform the acts necessary for the holding of the bidding event described in Auction Notice n. 01/2017, including filing of appeals and waiving the right to appeal;
- (b) Assume commitments and/or obligations on behalf of the Principal and in any manner, hire, sign contracts, waive rights, issue and receive quittance on behalf of the Principal;
- (c) Represent the Principal in defense of his interests in court, at any level and before any Court or Tribunal, including by contracting of lawyers, with special powers to confess, condescend, desist, make contracts, give and receive quittance;
- (d) Receive citation for lawsuits; and
- (e) At his discretion, delegate, in whole or in part, with the power to reserve any of the powers assigned herein under conditions he deems or they deem appropriate.

This power of attorney shall be valid during the tender procedure.

[Place], **[•]** **[•]**, 2017

**[Bidder]**

[legal representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 3

#### Model Power of Attorney (Bidders in Consortium)

By this power of attorney, [**Consortium member**], [qualification], herein after referred to as "**Principal**", irrevocably and irreversibly appoints and constitutes as its full attorney, the company [qualification], leader of the Consortium [Name of the Consortium], [qualification], to perform the following acts or assign them to Accredited Representatives, through a specific power of attorney:

- (a) Represent the Principal before any authorities, agencies or government departments, open or closed corporations and any government agencies including the National Waterway Transportation Agency - ANTAQ and Ministry of Transport, Port and Civil Aviation, to establish and maintain arrangements with these entities , agencies, bodies or departments , to receive citation, notice and summons of any kind, to request and/or promote consultations, to apply for certificates and other document and to perform the acts necessary for the holding of the bidding event described in Auction Notice n. 01/2017, including filing of appeals and waiving the right to appeals;
- (b) Assume commitments and/or obligations on behalf of the Principal and in any manner, hire, sign contracts, waive rights, issue and receive quittance on behalf of the Principal;
- (c) represent the Principal in defense of his interests in court, at any level and before any Court or Tribunal, including by contracting of lawyers, with special powers to confess, condescend, desist, make contracts, give and receive quittance;
- (d) Receive citation for lawsuits; and
- (e) At his discretion, delegate, in whole or in part, with the power to reserve any of the powers assigned herein under the conditions he deems or they deem appropriate.

This power of attorney shall be valid during the tender procedure.

[place], [•] [•] 2017

[Bidder]

[legal representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



#### Model 4

#### Model Power of Attorney (Foreign Bidders)

By this power of attorney, **[Bidder]**, [qualification], herein after referred to as "**Principal**", appoints and constitutes his proxies, Messrs. [•], [qualification], to jointly or separately, regardless of the order of appointment, perform the following acts in the Federative Republic of Brazil , in court and out of it:

- (a) Represent the Principal before any authorities, agencies or government departments, open or closed corporations and any government agencies, including the National Waterway Transportation Agency - ANTAQ and Ministry of Transport, Port and Civil Aviation, to establish and maintain understandings with these entities, agencies, bodies or departments, to receive citation, notice and summons of any kind, to request and/or promote consultations, to request certificates and other documents and to perform the acts necessary for the holding of the bidding event described in Auction Notice n. 01/2017, including the filing of appeals and waiving the right to appeals;
- (b) Assume commitments and/or obligations on behalf of the Principal and in any manner, hire, sign contracts, waive rights, issue and receive quittance on behalf of the Principal;
- (c) Represent the Principal in defense of his interests in court, at any level and before any Court or Tribunal, including by contracting of lawyers, with special powers to confess, condescend, desist, make contracts, give and receive quittance;
- (d) Receive citation for lawsuits and subpoenas in administrative proceedings; and
- (e) At his discretion, delegate, in whole or in part, with the power to reserve any of the powers assigned herein under the conditions he deems or they deem appropriate.
- (f) This power of attorney shall be valid during the tender procedure.

[place], [•] [•], 2017

**[Bidder]**

[legal representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**Model 5**

**Model Letter for Presentation of Proposal Guarantees**

[place], [•] [•], 2017

**Ref.: Auction n. 01/2017 - Presentation of Proposal Guarantees**

Dear Sirs,

("Bidder"), through his legal representative(s), in the terms of the Auction Notice in reference, hereby clarifies the procedures and values(s) of his Proposal Guarantee(s) herein presented, that amount to a total value of [fill in the applicable value]:

**Guarantee(s) Deposited**

<b>N.</b>	<b>Type</b>	<b>Value</b>
1		
2		
N		

Sincerely,

[place], [•] [•], 2017

[Bidder] [Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Model 6

### Minimum Terms and Conditions of Guarantee insurance

#### 1. Taker

1.1. Bidder

#### 2. Insured Party

2.1. ANTAQ

#### 3. Object of the Insurance

3.1. Ensure compensation, up to the sum of R\$ (Sum in Reais), in the event that the Bidder becomes liable for execution of bid security foreseen in the Auction Notice.

#### 4. Instrument

4.1. Guarantee insurance policy issued by an insurer duly constituted and authorized to operate by the Superintendence of Private Insurance (SUSEP), observing the terms of the normative acts of SUSEP.

#### 5. Value of the Guarantee

5.1. The Guarantee Insurance Policy shall provide for compensation up to the sum of R\$ (Sum in Reais) [as applicable].

#### 6. Period

6.1. The Guarantee Insurance Policy must have a minimum term of 1 (one) year counting as of the **Date for Receipt of Envelopes**, renewable in the hypotheses foreseen in the Auction Notice.

#### 7. Additional Provisions

7.1 The Guarantee Insurance Policy shall contain the following Additional Provisions: (i) declaration from the insured party that he knows and accepts the terms and conditions of the Auction Notice; (ii) declaration of the insured party that he will effect payment of the sums foreseen within a period of 30 (thirty) days, counted from the date of delivery of all documents listed by the insured party as necessary for the characterization and settlement of damages; and (iii) upon confirmation of breach by Taker of obligations covered by the Guarantee Insurance Policy, the Insured Party will be entitled to demand from the insurer due compensation, when notification of the Taker proves unfruitful.

Terms that have not been expressly defined in this Annex shall have meanings assigned to them in the Auction Notice.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Model 7

### Model Bank Guarantees

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

Ref.: Bank Guarantee Letter n. [•] (“Guarantee Letter”) R\$ \_\_\_\_\_ (\_\_\_\_\_ Reais) [in accordance with the value applicable, under terms of the Auction Notice]

1. By this Guarantee Letter, the Bank [•], with head offices in [•], enrolled with the CNPJ / MF under n. [•] (“Surety bank”), directly for itself and for its eventual successors, commits itself before ANTAQ as joint guarantor of [•], with head offices in [•], enrolled with the CNPJ / MF under n. [•] (“Secured Party”), with express waiver of rights provided for in articles 827, 835, 837, 838 and 839 of Federal Law 10.406, of January 10th, 2002 (Brazilian Civil Code), for faithful fulfillment of all obligations assumed by the secured party in the bidding process described in Auction Notice for Auction n. 01/207 of ANTAQ, the terms, provisions and conditions of which the Surety bank declares expressly that it knows and accepts.

2. The Surety Bank undertakes to pay ANTAQ the total amount of up to R\$ \_\_\_\_\_ (\_\_\_\_\_ Reais) [as the applicable value foreseen in the Auction Notice] (“Guarantee”) in the event that the Bidder becomes liable for execution of bid security foreseen in the Auction Notice.

3. The Surety Bank, within the scope of the sums identified above, also assumes liability for damages caused by the guarantee, including, but not limited to, fines imposed by ANTAQ relating to the bidding event, pledging to make payments arising from such liabilities when required, within a period of 48 (forty-eight) hours, counted as of receipt by the Surety Bank, of written notice from ANTAQ.



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



4. The Surety Bank shall not claim any objection or opposition to the guarantee or calls thereon for purposes of excusing itself of obligations assumed before ANTAQ, except when there is a formal manifestation from ANTAQ releasing it from obligation to effect such payment, or if there is a the court order preventing or suspending such payment.

5. In the event that ANTAQ takes legal action to demand compliance with the obligation referred to in this Guarantee Letter, the Surety Bank shall be required to pay up to fifty percent (50%) of the awarded amount by way of arbitration expenses, court fees and fines.

6. The guarantee shall remain in effect for 12 (twelve) months as of the **Date of Receipt of Envelopes**, in accordance with conditions mentioned in the Auction Notice.

7. The Surety Bank declares that:

7.1 this Guarantee Letter is properly accounted for, fully compliant with regulations of the Central Bank of Brazil currently in effect, and with applicable provisions of Banking Law;

7.2 The signatories of this instrument are authorized to provide the guarantee on their behalf and upon their responsibility; and

7.3 Its capital amounts to R\$ [•] ([•]), that it is authorized by the Central Bank of Brazil to issue Guarantee Letters, and that the value of this Guarantee Letter, in the amount of R\$ (Sum in Reais) is within limits authorized by the Central Bank of Brazil.

8. Terms not expressly defined in this Guarantee Letter shall have meanings ascribed to them in the Auction Notice.

[Notarized signature of the legal representatives]

Witness

Witness





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 8

#### Statement of independent drafting of proposal

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice for Auction n. 01/2017 - Lease Proposal**

[*The Bidder*], through his legal representative, declares for purposes of provisions of the Auction Notice in reference, subject to penalties of Law, particularly art. 299 of the Brazilian Penal Code, that:

- a) He prepared the Lease Proposal independently, and that its content was not, in whole or in part, directly or indirectly informed, discussed or received by any other potential or *de facto* participant in this tender, by any means or through any person;
- b) The intention of this Lease Proposal was not informed, discussed with or received by any other potential or *de facto* participant in this tender, by any means or through any person;
- c) He did not attempt, by any means or through any person, to influence the decision of any other potential or *de facto* participant in this tender as whether or not to participate therein;
- d) The content of the Lease Proposals shall not, in whole or in part, directly or indirectly, be communicated or discussed with any other potential or *de facto* participant in this tender prior to the award of its object;
- e) The content of the Lease Proposals was not, in whole or in part, directly or indirectly, informed, discussed or received by any member or body of the Grantor Authority, prior to the official opening of proposals; and
- f) He is fully aware of the content and the scope of this statement and has full powers and information to sign it.

Sincerely,

**[Bidder]**

[Accredited representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 9

#### Model Letter of Presentation of Eligibility Documents

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 – Presentation of Eligibility Documents**

Dear Sirs,

1. [The Bidder), through his legal representative(s), presents attached hereto the documents for his qualification in the bidding event in reference, in accordance with the Auction Notice in reference, organized in accordance with the order established therein, as reflected in the index.
2. The Bidder expressly states that he is fully aware of the terms of the Auction Notice in reference and fully accepts them, in particular, those regarding powers assigned to the Special Tender Committee to conduct special inquiries for ascertaining the veracity of documents presented and seek any clarifications needed to elucidate the information contained therein.
3. The Bidder expressly states that he has fulfilled all requirements and criteria for qualification and has submitted Eligibility Documents, as defined in the Auction Notice.
4. The Bidder declares, furthermore, that the Eligibility Documents herewith presented are complete, true and correct in every detail.

**[Bidder]**

[Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 10

## Statement of Knowledge of the Terms of the Auction Notice and Absence of Impediment to Participation in the Auction

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017**

Dear Sirs,

In compliance with the Auction Notice in reference, the [Bidder], through his undersigned representative(s) declares, under penalty of applicable law, that he is aware of the terms of this Auction Notice and is not barred from participating in contracting procedures with the Public Authorities.

**[Bidder]**

[Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**Model 11**

**Letter of Declaration of No Bankruptcy, Accommodation with Creditors, Judicial or  
Extrajudicial Recovery or Insolvency Proceeding**

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 – Declaration of No Bankruptcy, Accommodation with  
Creditors, Judicial or Extrajudicial Recovery or Insolvency Proceeding**

Dear Sirs,

In compliance with the Auction Notice in reference, the [Bidder], through his undersigned representative(s), declares, under penalty of applicable law, for himself, his successors and assignees, that he is not undergoing a process of bankruptcy, self-bankruptcy, accommodation with creditors, judicial or extra-judicial recovery, judicial or extrajudicial liquidation, insolvency, special temporary administration, or under intervention by a competent supervisory body.

Sincerely,

[Bidder]

[Accredited representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Model 12

### Formal Declaration of Express Submission to Brazilian Law and Waiver of Claims through Diplomatic Channels

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 - Formal Declaration of Express Submission to Brazilian Law  
and Waiver of Claims through Diplomatic Channels**

Dear Sirs,

In compliance with the Auction Notice in reference, the [Bidder], through his undersigned representative(s), declares, for all due purposes, his formal and express submission to Brazilian law and waives all claim to recourse, for whatsoever reason of fact or of law, to diplomatic channels.

**[Bidder]**

[Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 13

### Statement of Financial Capability

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 - Statement of Financial Capability**

Dear Sirs,

In compliance with the Auction Notice, the [Bidder], through his undersigned accredited representative(s), declares, under penalty of applicable law, that he possesses or is able to obtain sufficient financial resources to fulfill his own and third-party obligations required for achievement of the object of the Lease. He further declares that (i) he has the means to contract all insurance required for achievement of the object of the Lease, and (ii) has or is able to obtain resources to pay up the minimum stock capital of the SPE and present the **Guarantee of Contract Execution** within the period of forty-five (45) days as of publication of the act of approval and award of the tender.

**[Bidder]**

[Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**Model 14**

**Declaration of Compliance with Article 7, XXXIII, of the Federal Constitution**

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 - Declaration of Compliance with Article 7, XXXIII, of the Federal Constitution**

Dear Sirs,

In compliance with the Auction Notice in reference, the [Bidder], through his undersigned accredited representative(s), declares, under penalty of applicable law, for himself, his successors and assignees that he is in good standing with the Ministry of Labor, with regard to compliance with provisions of inset XXXIII of Article 7 of the Federal Constitution.

**[Bidder]**

[Accredited Representative]



MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Model 15

#### Instructions for formalization of the term of commitment to establish a Special Purpose Entity

The term of commitment to establish a Special Purpose Entity must contain at least the following information:

- i. Name of the consortium;
- ii. Qualification of the consortium members;
- iii. Composition of the SPE, indicating the percentage stockholdings of each consortium member;
- iv. Administrative bodies of the SPE;
- v. Indication of the Leading Company as responsible for actions taken by the consortium before ANTAQ; and
- vi. An express declaration from all consortium members accepting joint liability, under art. 33, V, of Federal Law 8.666/93, with respect to the object of this Auction, fully covering all obligations assumed for this Auction, as of the **Date for Receipt of Envelopes** up until the deadline foreseen in the Final Tender Protocol for the return of the Guarantee Proposal to the Proposer.





MINISTÉRIO DOS  
TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**Model 16**

**Certificate of Technical Visit**

**OBJECT:** [depending upon the Lease]

**REFERENCE:** Auction Notice n. 01/2017

We hereby attest that the representative company specified below today visited the site of the Lease [specify] in order to inspect the condition of the areas, port installations, buildings and existing equipment.

Company:

Name of the representative:

Position/Function:

Identity Document:

[place], [•] [•], 2017

**Port Authority**

**Bidder**

Representative

Representative



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E AVIAÇÃO CIVIL



### Model 17

### Declaration of Full Knowledge

**OBJETO:** [depending upon the Lease]

**REFERENCE:** Auction Notice n. 01/2017

We hereby declare that we have full knowledge of the areas, infrastructure and public facilities **in which activities relating to the Lease will be performed, and of the conditions that may affect performance thereof, of accesses to the areas, of the materials and equipment to be used, and other information necessary for achieving the purposes of the Lease.**

Company:

Name of the representative:

Position/Function:

Identity Document:

[place], [•] [•], 2017

**Bidder**

Representative



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**Model 18**

**Declaration of Equivalence**

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017**

Dear Sirs,

In compliance with the Bidding Notice, the [Proponent], by its undersigned representative (s), declares, under the terms of the applicable legislation, that the following documents of the country of origin of the company [name], [Qualification] are equivalent to the documents required in Bid Notice No. 01/2017:

Description of the document from the country of origin	Document required in the Auction Notice	Item of the Auction Notice in which the document is required

**[Bidder]**

[Accredited Representative]



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TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



**Model 19**

**Statement of Non-existence of Equivalent Document**

[place], [•] [•], 2017

To: the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017**

Dear Sirs,

In compliance with provisions of the Auction Notice in reference, the [Bidder], through his undersigned representative(s), declares, under penalty of applicable law, that the documents indicated below required in the Auction Notice n. 01/2017 have no equivalent in the country of origin of the company [name], [qualification].

Document required in the Auction Notice for which there is no equivalent document in the country of origin.	Item of the Auction Notice in which the document is required

[Bidder]

[Accredited Representative]



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TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Model 20

### Commitment of pre-qualification as Port Operator or for contracting of a pre-qualified Port Operator

[place], [•] [•], 2017

To the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017**

Dear Sirs,

In compliance with provisions of the Auction Notice in reference, the [Bidder], through his undersigned accredited representative(s) assumes a commitment, under the penalties of Law, obtain the pre-qualification of the Specific Purpose Company to be constituted as a port operator, or to contract a pre-qualified Port Operator, in the event that he is declared winner of the event.

**[Bidder]**

**[Accredited representative]**

[Signatures]



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TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



## Appendix 2 - Lease Proposal Presentation Form

[place], XX of XX of 2017

To the National Waterway Transportation Agency - ANTAQ

Ref.: Auction Notice n . 01/2017- Proposal by the Leasing

Dear Sirs,

1. In view of the announcement of [date], in an Auction conducted by ANTAQ, we present our Proposal for the Lease for the Lease [insert the code of the Lease requested].
2. We propose, on an irrevocable and irreversible basis, the Granting Amount of R\$ [-] ([-] reais), based on the Date for Receipt of the Envelopes, for the lease object of the Proposal], according to the terms and conditions contemplated in the Invitation to Bid and in the Draft Lease Agreement.
3. We expressly declare that:
  - 3.1 This Lease Proposal was made taking into account all the payment conditions applicable to the Granting Amount and to the Lease Value (fixed and variable), in the exact terms of the Notice and in the Draft of the Lease Agreement;
  - 3.2 This Lease Proposal is valid for 1 (one) year, counted from the Date for Receipt of the Envelopes, and may be extended for the same period, as specified in the Notice;
  - 3.3 We fully and unrestrictedly agree to the Minimum Required Movement requirement set forth in Sub-Clause 7.1.2.1 of the Draft of the Lease Agreement and other contractual conditions established in the Notice and in the Draft of the Lease Contract;
  - 3.4 We acknowledge that any extension of the term of validity of the Contract is a decision whose power rests exclusively with the Granting Authority and that there is no subjective right to such extension;
  - 3.5 We confirm that we are fully aware of the object of the Lease, the Activities to be provided, the conditions for submitting this Proposal and the execution of the work;
  - 3.6 we assume, from now on, the full responsibility for carrying out the Activities in accordance with the provisions of the Contract and its Annexes, ANTAQ and Public Port Regulations, and other applicable legal provisions; and



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TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



3.7 We fully meet all the obligations and requirements contained in the Notice and in the Draft of the Lease Agreement.

4. The Terms initialed in capital letters contained in this Proposal by the Lease and not otherwise defined shall have the meanings attributed to them in the Invitation to Bid.

Regards,

[Proponent]

/

[Legal

Representative]



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TRANSPORTES, PORTOS  
E AVIAÇÃO CIVIL



### Appendix 3 - Model Ratification of the Lease Proposal

[place], XX of XX of 2017

To the National Waterway Transportation Agency - ANTAQ

**Ref.: Auction Notice n. 01/2017 - Area: [LEASE REFERENCE] - Letter of Ratification of the Proposal.**

Dear Sirs,

1. A (Name and qualification of the Bidder), for the purposes of Notice No. 01/2017, hereby ratifies its Bid for the Lease made in the Auction, proposing, irrevocably and irreversibly, the Granting Amount of R\$ [-] ([-] reais), which will be paid to UNION, under the conditions set forth in the Notice and in the Draft of the Lease Agreement.

Regards,

**[Proponent] / [Accredited Representative]**