



MINISTERIO
DE TRANSPORTE
Y OBRAS PÚBLICAS



ADMINISTRATIVE BIDDING TERMS AND CONDITIONS

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Content

I. GENERAL PROVISIONS	4
1. CONTRACTING PUBLIC ADMINISTRATION	4
2. PURPOSE OF THE TENDER	4
3. APPLICABLE LEGAL FRAMEWORK	4
4. TAX REGIME	5
5. ELIGIBLE BIDDERS	5
6. ONE BID PER BIDDER	5
7. COST OF BIDDING	6
8. VISIT TO THE AREA OF THE WORKS.....	6
9. NOTIFICATIONS.....	6
10. TERMS.....	6
II. BIDDING DOCUMENTS.....	7
11. BIDDING DOCUMENTS.....	7
12. ACQUISITION OF THE BIDDING DOCUMENTS	7
13. DOCUMENTS ENQUIRIES, CLARIFICATIONS AND MODIFICATIONS	7
III. PREPARATION OF BIDS	8
14. LANGUAGE OF THE BID	8
15. CONSTITUTION OF THE BID MAINTENANCE GUARANTEE.....	8
16. ECONOMIC VALUE OF THE BID	10
17. CONTENT OF "ENVELOPE NUMBER 1 - BACKGROUND"	10
17.1. PURCHASE OF BIDDING TERMS AND BID MAINTENANCE GUARANTEE	10
17.2. BIDDER IDENTIFICATION	10
17.3. APPOINTMENT OF A LEGAL REPRESENTATIVE	11
17.4. AFFIDAVIT	11
18. CONTENT OF "ENVELOPE NUMBER 2 - TECHNICAL ASPECTS"	12
18.1. ADMINISTRATIVE DOCUMENTATION	12
18.2. BIDDER'S FINANCIAL ANTECEDENTS	12
18.2.1. FINANCIAL CAPACITY	12
18.2.2. EXPERIENCE IN FINANCING INFRASTRUCTURE	15
18.3. EXPERIENCE OF THE BIDDER	16
18.4. STUDIES AND PROJECT PHASE	17
18.5. WORK PHASE	18
18.6. MAINTENANCE PHASE	19
19. CONTENT OF "ENVELOPE NUMBER 3 - ECONOMIC PROPOSAL"	19
19.1. ECONOMIC PROPOSAL	19
19.2. DETAIL OF THE INVESTMENT	19
19.3. AP ADVANCE ON ACCOUNT	20
19.4. FINANCIAL REPORT	20
IV. SUBMISSION, OPENING AND EVALUATION OF BIDS	23
20. SUBMISSION OF BIDS	23
21. OPENING ACT	24
22. REVIEW OF BIDS BY THE TECHNICAL COMMITTEE	24
22.1. BIDS ANALYSIS OVERVIEW	24
22.2. STUDY OF "ENVELOPE NUMBER 1 - ANTECEDENTS" AND "ENVELOPE NUMBER 2 - TECHNICAL ASPECTS"	25
22.3. OPENING AND STUDY OF "ENVELOPE NUMBER 3 - ECONOMIC PROPOSAL"	26
23. AWARD CRITERIA	27
24. AWARD OF THE CONTRACT	28
24.1. PROVISIONAL AWARD	28
24.2. DOCUMENTATION TO BE SUBMITTED.....	28
24.2.1. FORMAL ADMINISTRATIVE DOCUMENTATION	28
24.2.2. FINANCIAL CLOSING	29
24.3. FINAL AWARD	29
V. COMPANIES.....	30
25. COMPANIES	30
25.1. SPECIAL PURPOSE COMPANY.....	30

25.2. CONSORTIUM OR BRANCH	30
26. CAPITAL STOCK AND SUPPLEMENTARY FUNDING	31
27. ALTERATION OF THE COMPOSITION OF THE SHAREHOLDER GROUP OF THE SPECIAL PURPOSE COMPANY	31
28. CONTRACTS PERFORMANCE	31
29. CONTRACTUAL DOCUMENTATION	32
ANNEX I. IDENTIFICATION OF THE BIDDER	33
ANNEX 2. BIDDER'S WEIGHTED ASSETS	34
ANNEX 3. ECONOMIC PROPOSAL	35
ANNEX 4. ECONOMIC-FINANCIAL PLAN (EFP) SUMMARY	36
ANNEX 6. THE TECHNICAL PROPOSAL EVALUATION CRITERIA	37
ANNEX 7. MODEL OF BANK GUARANTEE AS BID MAINTENANCE GUARANTEE	39

I. GENERAL PROVISIONS

1. CONTRACTING PUBLIC ADMINISTRATION

The Contracting Public Administration is the Ministry of Transport and Public Works (hereinafter "the Contracting Authority" or "MTOPT").

2. PURPOSE OF THE TENDER

This Tender reflects the administrative conditions that shall govern the procurement for the "Puerto de Montevideo–Paso de los Toros" railway section, whose purpose is:

- a) Financing, design, construction, rehabilitation, and maintenance of the infrastructure included in the Public-Private Partnership Draft Contract, whose description is established in its respective Technical Terms and Conditions and annexes.
- b) Design, construction, and rehabilitation of the infrastructure included in the Additional Works Draft Contract, whose description is established in its respective Technical Terms and Conditions and annexes.

3. APPLICABLE LEGAL FRAMEWORK

This administrative procurement procedure consists of an *International Public Tender*, with the purpose of entering into a public-private partnership contract regulated by Law No. 18,786 dated July 19, 2011 and its regulations and amendments (hereinafter "contract" or "private-public participation contract"), as well as entering into a public works contract regulated by Decree No. 8/990 dated January 24, 1990 with its related and amending sections.

According to the above, this procurement procedure is governed by the provisions of:

- Applicable Regulations of Public-Private Partnerships:
 - Law No. 18,786 dated July 19, 2011.
 - Decree No. 17/012 dated January 26, 2012.
 - Decree No. 280/012 dated August 24, 2012.
 - Decree No. 251/015 dated September 14, 2015.
 - Decree No. 045/013 dated February 6, 2013.
 - Decree No. 181/015 dated July 6, 2015.
 - Decree No. 257/015 dated September 23, 2015.
 - Decree No. 313/017 dated November 6, 2017.
- Applicable Regulations of Public Work:
 - DNV (National Highway Authority) Bidding Terms and Conditions for the Construction of Roads and Bridges, hereinafter BT (approved by Decree No. 9/990 dated January 25, 1990).
 - DNV Bidding Terms and Conditions for the Construction of Roads and Bridges (1971 Edition), Section V (1980) and Section VI (1976) provided that it does not contradict the document mentioned above. The set of documents referred to in clause 2.2 and in this item are referred to in these Specifications as Bidding Terms or BT. The set of documents referred to in paragraphs 2 and 3 are referred to in these Specifications as Highway Bidding Terms or BT.

- Additional Technical and/or Amending Specifications of the DNV Bidding Terms and Conditions for the Construction of Roads and Bridges (August 2003 Edition), hereinafter ATAS of the BT.
- Civil Code, section 1844 (Ten-Year Liability).
- Decree No. 150/012 dated May 11, 2012.
- Ordered Text of Accounting and Financial Administration (OTAFAs).
- Decree No. 155/013 dated May 21, 2013.
- Decree No. 118/984 dated March 23, 1984 (Road Traffic Regulation).
- Law No. 16,060 (Commercial Companies), Law No. 17,904, section 13.
- Law No. 16,074 of October 10, 1989 (Worker's Compensation Insurance)
- Law No. 17,060 (abuse of public power, corruption)
- Law No. 17,904, section 13.
- Law No. 17,957, Law No. 18,244 dated December 27, 2007.
- Law No. 18,098 dated January 12, 2007.
- Law No. 18,191 dated October 30, 2007.
- Decree No. 208/009 dated May 4, 2009.

The Laws, Decrees, Executive Power Resolutions, and municipal ordinances and regulations in force on the date of the tender opening are part of these bidding documents.

The Administration is released from all liability arising in the event of a breach by the Contractor and its staff of all the rules applicable to this contract.

4. TAX REGIME

The Executive Power may grant tax exemptions and other tax benefits. The foreseen exemptions refer to:

- A) Import surcharges.
- B) Exemption from the VAT on imports.
- C) Credit for the VAT included in the procurement of machinery and equipment (fixed assets) and materials and services necessary for the planned investment.
- D) Estate Tax Exemption for intangible assets and fixed assets intended for the investment project throughout the term of the contract period.

Pursuant to the terms of Decree No. 181/015 dated July 6, 2015, the Contractors of Public-Private Partnership Contracts shall be able to amortize the right to which they are entitled within a period of ten years.

5. ELIGIBLE BIDDERS

National or foreign natural persons or legal entities with the capacity to enter into contracts may be offerers or bidders in this tender, unless included in any of the prohibitions laid down in section 33 of Law No. 18,786 dated July 19, 2011, and if they prove their economic, financial and technical solvency in compliance with the provisions set forth in these Administrative Bidding Terms and Conditions (ABT) and its annexes, the technical Bidding Terms and its annexes; and other documents that govern this procurement procedure.

6. ONE BID PER BIDDER

Each bidder in this tender may submit only one bid, either alone or as part of a company partnership. If a bidder submits more than one bid or participates in more than one of them, all the bids which include the participation of such bidder shall be disqualified. Two or more bids may have the same subcontractor or supplier of materials when they are not part of any of the bidders.

7. COST OF BIDDING

The bidder shall bear all costs associated with the preparation and submission of its bid and, in no event, shall the contracting authority be liable, without prejudice to the provisions set out in clause 12 of these Administrative Terms and Conditions.

8. VISIT TO THE AREA OF THE WORKS

Bidders, prior coordination and authorization by the contracting authority, under their own responsibility, shall be able to visit and inspect the area for the purpose of knowing the terrain and obtaining more information for the project. The costs associated with such visit shall be borne by such bidders.

9. NOTIFICATIONS

The communications and resolutions by the Contracting Authority handed down during the processing of the procurement procedure shall be posted on the state purchases website (<http://www.comprasestatales.gub.uy/>). In the event that personal notice to the interested party is necessary, it shall be made at the email address set up for this purpose, and it shall be deemed made when it becomes available in the e-mail address of the recipient.

The notifications that need to be accompanied by documents shall be made via email address by providing proof in the notification act and granting a period of three working days, starting on the following day, to withdraw these documents.

The notification shall be deemed made at the time when the interested party withdraws the corresponding copies, minutes or records in each case, registering this on the record of the date of such withdrawal.

If the withdrawal takes three working days from the day following the date on which documents were reported as available, the notification shall be deemed made upon the expiration of such term.

10. TERMS

The terms referred to in the procurement procedure are counted in calendar days, unless it is expressly mentioned that they shall be counted as working days. To this end, working days are understood as those days in which the Offices of the Contracting Authority operate.

The terms shall begin on the day following the date of the personal notification or publication of the act concerned and shall expire on the last moment of the business hours of the corresponding day. In the event that the expiration of the term occurred on a holiday or a non-business day, it shall be extended until the next business day.

II. BIDDING DOCUMENTS

11. BIDDING DOCUMENTS

The Contracting Authority shall place at the disposal of the bidders the following documentation relating to this invitation to bid:

- a) Procurement terms:
 - Administrative Terms and Conditions and its annexes
 - Public-Private Partnership Draft Contract
 - Additional Works Draft Contract
 - Technical Terms and Conditions and its annexes

- b) Data relating to the project which **are not binding** for the Contracting Authority, and shall be provided for information purposes only.

In any case, the contracting authority is not responsible for errors, defects or inconsistencies arising from these documents, and the bidder shall perform their own studies or assume as those delivered as their own without any claim for the reasons mentioned above.

12. ACQUISITION OF THE BIDDING DOCUMENTS

The documents in this bidding procedure shall be available for the purposes of inquiry on the following websites: www.comprasestatales.gub.uy, www.mtop.gub.uy y www.ferrocarrilcentral.mtop.gub.uy.

The documents may be purchased at the Department of Material Resources and Services of the Ministry of Transport and Public Works, located at Rincón 561, piso 6, Montevideo; from the date established in the publications performed, at the price of **US\$ 10,000 (ten thousand United States dollars)**.

A bank wire transfer shall be the only means admissible for payment to the Checking Account in the name of Ministerio de Transporte y Obras Públicas, **No. 152-0031360**, in United States dollars, SWIFT CODE **BROU UY MM**, based on the Banco de la República Oriental del Uruguay bank. Once the transfer has been made, the bidder shall submit a scanned proof of deposit to the email address: **ferrocarrilcentral@mtop.gub.uy** detailing clearly on behalf of which bidder the payment is performed. The Contracting Authority shall reply via email to the original sender by sending a receipt of the transaction, which shall be necessary to withdraw the documents of this bidding procedure.

13. DOCUMENTS ENQUIRIES, CLARIFICATIONS AND MODIFICATIONS

Any inquiry made by the interested parties or bidders on the interpretation of the documents governing this procurement procedure shall be made in writing, and submitted before the Department of Material Resources and Services of the Ministry of Transport and Public Works, located at Rincón 561, piso 6, Montevideo, **Fax No. (+598) 2916 84 08** or by email at **ferrocarrilcentral@mtop.gub.uy** up to thirty (30) days before the fixed date for the reception of bids.

For the implementation of the previously mentioned inquiries, the parties concerned shall acquire the bidding documents as set out in clause 12 of this document.

The answers to such queries, without identifying their source, shall be communicated to all the purchasers of the Bidding Terms at their duly constituted e-mail address, and published on the websites of the call, up to twenty (20) days prior to the expiration of the deadline for the submission of bids.

Clarification may be requested for these responses within the next three days in which they were communicated; and they shall be provided within the following five (5) days, by the same means.

Any modification to the terms and conditions governing this procedure shall be notified to all purchasers of the Bidding Documents, up to ten (10) days prior to the date of submission of bids.

The Contracting Authority shall contract no obligations nor assume any liability of any kind by this call, being able to leave without effect this procurement procedure, at any stage, prior to the act of award, and this shall not determine any claim or compensation whatsoever by the interested parties or bidders.

III. PREPARATION OF BIDS

14. LANGUAGE OF THE BID

All documents related to the bid shall be written in Spanish, except for the documents issued abroad in another language which shall be duly translated into Spanish by a public translator, with the corresponding apostille or legalization in Uruguay, as appropriate.

The catalogs or similar documents of the companies' commercial or technical information and their products and services shall be exempt from the need for translation and apostille or legalization, and they may appear in Spanish, English, Portuguese or French.

15. CONSTITUTION OF THE BID MAINTENANCE GUARANTEE

- 1) In the bid maintenance guarantee, members shall be defined as "Bidder", and they shall appear individually.

By way of example, they shall be appointed in the following manner: Bidder composed by "xxx", "yyy" and "zzz".

- 2) The bidder shall constitute a bid maintenance guarantee in favor of the Contracting Party prior to the opening of bids, through:
 - a) Surety or guarantee by a bank established in the Eastern Republic of Uruguay. (Bank guarantee model in Annex 7)
 - b) Surety or guarantee by a foreign bank qualified as a first line bank by internationally recognized risk assessment companies, with a branch or correspondent bank in Uruguay and acceptable to the Contracting Party.
 - c) Surety insurance policy issued by an insurance institution authorized by the Superintendency of Financial Services of the Central Bank of Uruguay.
 - d) Proof of bank deposit in cash, in US dollars, in the Bank Account of the Eastern Republic of Uruguay **No. 152-0031360**, in the name of the Ministerio de Transporte y Obras Públicas (MTO). In case of transfers from abroad, the SWIFT code to be used is "**BROU UY MM**".
 - e) Allocation of public debt securities in the BROU, in United States dollars, which shall be deposited in the custody of the Bank of the Eastern Republic of Uruguay.

In the event of proof of a bank deposit, the Contracting Public Administration shall issue an official receipt on behalf of the depositors in the banking operation.

Documentary guarantees shall not contain clauses conditioning them as regards their amount, the purpose for which the guarantees are established, or in relation to the term, and they shall expressly establish the contract or agreement that guarantees them.

- 3) The guarantee may be integrated into more than one of the mentioned modalities, provided that all of them are constituted in the name of the Bidder and accepted by the Contracting Party.
- 4) The bid maintenance guarantee may be submitted up to the time or at the same opening act of the envelope No. 1 - "Background", the bidder assuming the responsibility for complying with the conditions set forth in these bidding terms.

However, if the bidder deems it appropriate, it may be submitted up to 2 (two) days prior to the opening date, at the Notary Public Department of the Ministry of Transport and Public Works, located at Rincón 561, piso 7, ciudad de Montevideo, between the hours of 9:30 am to 4 pm, for its approval and remaining in that Department, while providing the supplier with a deposit receipt.

5) The bid maintenance guarantee shall be made for a minimum period of **two hundred and twenty-five (225) days from the submission of the bid**, and shall remain in force until the constitution of the compliance assurance contract or until the Administration issues a decision with regard to the award, or rejection of all bids, in the case of declaring the call null.

6) The bid maintenance guarantee shall be equal to the sum of **US\$ 20,000,000 (twenty million United States dollars)** and shall be retained until the contract performance guarantee is purchased or under the terms described in paragraph "7".

7) The guarantees which are not required shall be returned by officials authorized to do so upon their own decision, or at the request of the interested party, subject to a report carried out by the duly authorized person for that purpose. The conditions for the return of the bid maintenance guarantee shall be returned within 20 business days from the request for its return by the bidder.

8) The bid maintenance guarantee may be executed:

- i) If the bidder unjustifiably withdraws its proposal prior to the award, the withdrawal is not justifiable when it is made in installments, and/or circumstances not provided for in these terms and conditions.
- ii) If the bidder fails to comply in due time and form with the presentation of the company's by-laws and articles of incorporation, the contracts performance guarantees for the construction phase, insurance, or otherwise, not signing the contracts for reasons attributable to the Successful Bidder.
- iii) Upon any other breach by the bidder derived from its quality as provisional Successful Bidder.
- iv) If the economic proposal exceeds the maximum value established in clause 19.1.
- v) If the Successful Bidder fails to comply in due time and form with the provisions of section 24.2.2 of these Terms and Conditions.

16. ECONOMIC VALUE OF THE BID

The bidder shall obtain two payments according to the following scheme:

A) Payment for the Public-Private Partnership Contract. To such end, the Bidder shall indicate the maximum daily amount, expressed in American dollars without decimals, not including VAT, to be received from the Contracting Authority as compensation for the work and services covered by this contract, under the modality of Availability Payment (AP). This consideration is payable in accordance with the documentation of a contractual nature. Bidders have the option of requesting that the AP is named both in dollars and in indexed units, in the portion deemed to be more convenient. The portion requested shall be indicated in the model summary of the economic proposal (Annex 3), and justified in the financial report, having no effect on the process of assessment of the economic proposal.

B) Payment for the Additional Works Contract. With regard to these additional works, which shall be implemented under the Public Work Contract, the payment shall be carried out in accordance with the measurements executed and shall be paid in Uruguayan pesos. The Contracting Authority shall establish the price of each work (see annex 9), and the bidder shall establish the specific compensation corresponding to each one of them, and it may not, in any case, be greater than the compensation established by the contracting party. It shall include all jobs, expenditures involved in and derived from the contract. For the purposes of remuneration, the monthly certificate of the work shall be taken into account, exclusively, and the increases or decreases similarly ordered by the Administration.

17. CONTENT OF " ENVELOPE NUMBER 1 - BACKGROUND"

17.1 PURCHASE OF BIDDING TERMS AND BID MAINTENANCE GUARANTEE

Simple photocopy attesting to the purchase of the tender documents carried out by any of the members of the bidder.

Original or copy certified by a Notary Public of the document stating the purchase of the bid maintenance guarantee in accordance with the provisions of clause 15 of these Terms and Conditions. Any proposal without this guarantee attached shall be rejected.

17.2 IDENTIFICATION OF THE BIDDER

A. Identification and contact details

The first sheet of this document shall be the identification of the bidder with the data requested in Annex 1 of this document.

The integration of the bidder, as well as the percentages of participation of each of its members, shall remain unchanged when the sole purpose company is incorporated. The breach of this obligation entitles the Contracting Authority to execute the bid maintenance guarantee and to render the provisional award null.

B. Bidders: Legal Entities

Each of the legal entities that make up the bidder shall submit a notarial certificate or testimony by the display of the by-laws or articles of incorporation stating the legal nature of the company and, in particular, setting:

- a) Date of incorporation, modifications, object, capital, and management, showing that it is legally incorporated and in force, as well as the date of publication in the Official Gazette or another newspaper, as appropriate. Providing registered office or legal address.
- b) In the case of foreign legal entities with representation in the country, they shall submit: 1) the documents attesting to its incorporation in Uruguay in accordance with the provisions of Law No. 16,060 of commercial companies, its related, complementary and modifying sections; and 2) authorization by the parent company.
- c) In the case of foreign legal entities without representation in the country, they shall submit: 1) authorization by the relevant authorities of the parent company to participate in the tender; and 2) the documents attesting to its incorporation in accordance with the laws of its country of origin, all of which shall be duly apostilled or legalized in Uruguay, as appropriate, and translated into the Spanish language, if necessary; and complying with the provisions of law No. 16,497 dated June 15, 1994, and Decree No. 369/994 dated August 22, 1994.
- d) Legal entities or foreign companies interested in bidding shall comply with the provisions laid down in section 28, paragraph a) or b), of Decree No. 208/009 dated May 4, 2009.
- e) It shall be credited, in addition, if the company is an affiliate or subsidiary company of any other.
- f) The identity of the Directors, Administrators or Owners of the firm.

C. Bidders: Natural Persons

Each of the natural persons that constitute the bidder shall present a notarial certificate stating their identity document, address, email, telephone and/or cell phone and fax. In the case of foreign natural persons, the contact data indicated shall be constituted to operate in Uruguay.

17.3 APPOINTMENT OF A LEGAL REPRESENTATIVE

For the purposes of this Tender, the bidder shall appoint a legal representative, duly accredited by the special power of attorney to such effects. Such representative shall be appointed within 30 days prior to the closing date for submission of bids.

The powers of attorney granted abroad shall be, as the case may be, translated, and apostilled or legalized in Uruguay, as appropriate.

17.4 AFFIDAVIT

The Bidder shall submit an Affidavit, with signatures certified by a Notary Public, declaring that:

- a) In the event that the bidder is integrated by more than one natural person or legal entity, these are not part of any other bidder who submits another bid in this tender.
- b) That they accept the contents of the bidding documents and documentation which integrates them. In addition, that they are aware of the obligations imposed by Law No. 18,786 dated July 19, 2011, and its regulations, as well as any other complementary or related regulations.

- c) That they release the Contracting Authority from all liability for any errors or omissions that may be present in previous studies, background information, and other documents issued on the occasion of the call.
- d) Declaration of compliance with each and every one of the conditions required to enter into a contract with the Contracting Authority.
- e) A statement that it is not on the list of sanctioned firms of the World Bank, available on the www.worldbank.org/debarr website.
- f) Commitment letter stating that in the event of an award, a special purpose company shall be constituted, in the term given by the regulations in force.
- g) Commitment letter stating that in the event of an award, it shall comply fully with the statements in its bid, especially with regard to the fulfillment of the works schedule and the financial capacity to execute them.

18. CONTENT OF "ENVELOPE NUMBER 2 - TECHNICAL ASPECTS"

18.1 ADMINISTRATIVE DOCUMENTATION

The member or members of the bidder shall submit the following administrative documentation:

National or foreign natural persons or legal entities shall comply with the provisions of Decree No. 155/013: Single Register of State Suppliers. It shall be necessary to have complied with such registration at the time of bidding and the bidder shall submit the proof attesting to the entry of such registration request, in "entry" status.

Foreign natural persons or legal entities shall be able to visit the www.comprasestatales/inicio/proveedor/ site, guide for the registration in RUPE in which there is a video for the registration of a foreign supplier.

The construction companies that participate as part of a bidder or as a subcontractor shall be registered in the National Register of Public Works Companies. Foreign construction companies shall comply with the provisions laid down in section 28 paragraph a) or b) of Decree No. 208/2009. For the purposes of the bid, it shall be sufficient to submit evidence that they have applied for registration under the conditions given by such section. The companies awarded shall also be governed by the provisions of the Ministerial Resolution dated October 23, 2017, in order to comply with the provisions of section 23 of Decree No. 17/012 dated January 23, 2012.

18.2 BIDDER'S FINANCIAL ANTECEDENTS

18.2.1. FINANCIAL CAPACITY

To demonstrate their financial capacity, the Bidders shall submit the following documents:

- An affidavit that indicates the net worth amount. Bidders shall have a net worth of at least US\$120,000,000 (one hundred and twenty million United States dollars). This amount shall be measured with the audited financial statements for the last fiscal year.
- The ratio of financial debt with recourse, divided between the operating profits. This ratio shall be less than or equal to 5. This ratio shall be measured with audited financial statements for the last fiscal year.

In the event that the financial statements do not provide sufficient information with respect to the classification of the recourse or non-recourse debt, the company or legal entity shall submit a clarification in this regard, duly signed by its auditor. If the bidder was not legally obliged to submit their accounts to an audit report, it shall submit such clarification through an auditor, certified public accountant or statutory auditor authorized in their country of origin.

For the purpose of calculating this ratio, financial recourse debt is understood as owed to banks, financial institutions or through debt issued in the capital market, in which the bidder provides some kind of guarantee of repayment. The accounts payable to suppliers, accounts payable to shareholders (unless the shareholder is a bank or financial institution and the debt corresponds to a market contract with interest), or the debt contracted through specific purpose companies and non-recourse debts to the shareholder shall not be considered financial recourse debts, even if they are disclosed in the financial statements. The debts in financing projects (Project Finance) are considered to be non-recourse debts and, therefore, shall not be taken into account for the purposes of calculating this ratio. In addition, the estimate of the financial debt shall be considered to be the net debt of bank accounts and temporary financial investments of the interested party.

The financial capacity in the event that the Bidder is a consortium may be credited jointly by all entities that integrate it, which shall provide proof of financial capacity directly or through its subsidiaries, branches or parent company. In that case, the net worth indicator shall be estimated by way of a weighting calculation according to the participation of each partner in the consortium. The ratio of financial recourse debt, divided between the operating profits, shall be fulfilled individually by each of the partners within the consortium.

In the event that the consortium is composed of a Private Equity Fund, the following shall be considered:

The Investment Funds may participate in the International Public Tender by means of an irrevocable commitment to investment (signed by the respective Administrative Society of Investment Fund or by its professional fund manager if foreign) to provide support to the bidder and the Special Purpose Company to be formed as a result of the eventual presentation and award of the respective bid.

The participation of Investment Funds shall be made by an irrevocable commitment to investment, which shall be evidenced by a certificate issued by the administrator of the investment fund or by its professional fund manager if foreign, stating under penalty of not having such a bid considered:

- i. That there is an irrevocable and firm commitment to the investment of liquid resources of the Investment Fund in favor of the bidder and the SPC to be formed for the development of the project.
- ii. The amount of contribution of the resources committed by the Investment Fund.
- iii. That the investment is eligible for the investment fund according to its regulations.
- iv. The accreditation of the legal capacity through a testimony of the minutes of the committee of investments of the investment fund in which it is authorized to participate in the international public tender supporting third parties.
- v. The only condition of disbursement of this amount is the award of the tender to the bidder.
- vi. The Investment Fund was set up before the date for the submission of bids and has in its objectives, the investment in infrastructure projects.
- vii. The investment fund has a remaining term of at least 6 years from the date of submission of bids. This same minimum term of duration is required from the approved companies responsible for the administration of the respective Investment Fund.

For the purposes of enforcing the requirement of the first paragraph of this clause, 100% of the irrevocable commitment of investment backed by investment funds shall be added to the net assets resulting from the Financial Statements of the bidder.

The participation of Investment Funds given through the intention of supporting a bidder or member of a consortium implies the impossibility of the same Investment Fund participating in more than one bid.

Definition of Investment Fund:

- i) It is a patrimony of independent allocation, integrated by contributions made by natural persons or legal entities for their investment in securities and other assets constituted in Uruguay that comply with the requirements set forth by the Superintendency of Financial Services of the Central Bank of Uruguay (BCU) in the terms and conditions set out in:
 - a) http://www.bcu.gub.uy/Servicios-Financieros-SSF/Paginas/Adm_Fondos_Inversion.aspx
 - b) In turn, they shall comply with the requirements established by the Information and Financial Analysis Unit of the BCU (UIAF) as shown in the following link:
<http://ppp.mef.gub.uy/innovaportal/file/10000/9/2016-07-19-requerimientos-informacion--uiaf---ppp.pdf>
- ii) Those funds constituted in different jurisdictions to the Uruguayan which meet the requirements established by the UIAF defined in paragraph b), item e.

Legal entities which are part of a bidder shall submit the financial statements for the past three years. At least one of the members of the bidder shall have three fiscal years. In the event that one or more legal entities that are members of the bidder did not have financial statements for the period required, the legal situation corresponding to that period shall be reflected in the Notarial Certificate (paragraph B of clause 17.2).

In the event that, in the required period of 3 years, some of the legal entities that are members of the bidder, had changed their integration by transformation, merger, transfer or any other form, such situation shall be credited in the Notarial Certificate (paragraph B of clause 17.2).

They may be made in the currency of origin or in US dollars and they shall be signed by the legal representative of the company.

These Financial Statements shall be included, at least, by a balance sheet, statement of results, explanatory notes, and annexes of goods for use and development of the equity and the state of origin and application of funds, according to the following criteria:

- a. For companies incorporated in the Eastern Republic of Uruguay, it shall be made in accordance with the provisions of Law No. [16,060](#) (Commercial Companies) and its amending sections. For companies issuing securities of public bid, they shall be made in accordance with the provisions of Decree No. [124/11](#) and Decree No. [292/14](#); for corporations that apply the general regime, it shall be made in accordance with the provisions of Decree No. [291/14](#), Decree No. [408/016](#), Decree No. [37/10](#), and Decree No. [538/09](#).
- b. For companies established abroad, they shall be formulated in accordance with the legal or professional standards, as appropriate, in force in the country where they are domiciled; however, for the determination of the economic-financial indexes and operating income, the exposure criteria provided for in Decree No. [408/016](#) shall be followed.

The validity of the financial statements shall not be greater than the term of the firms in their respective domiciles to comply with the tax obligations that arise from the last fiscal year.

The financial statements shall come accompanied by a Limited Review Report, except that the regulations require an external audit report. In such a case, the opinions of the External Audit shall be carried out according to generally accepted auditing standards issued by the International Federation of Accountants (IFAC).

18.2.2. EXPERIENCE IN FINANCING INFRASTRUCTURE

The bidder shall have experience in financing infrastructure developed in long-term contracts, which consists in the construction of infrastructure, its funding and the provision of additional services, such as the exploitation, operation, conservation and/or maintenance.

The bidder shall have experience in the funding of at least five (5) public infrastructures, in the last 10 years, with the financed amount of at least one of them of US\$ 300,000,000 (three hundred million United States dollars).

The bidder shall prove that their participation in the entity owner of the contracts was at least 20% at the time of the signing of the financing contract. The financed amount is understood as the senior long-term debt resources not subordinated to other financing instruments, materialized through the signature of one or several credit contracts. They shall not be considered as amounts financed or capital contributions, or subordinated debt of any kind, nor bridge loans. The experience in the event that the bidder is a legal entity shall be credited directly or through its subsidiaries, branches or its parent company.

In the event of a consortium, the experience in financing infrastructure may be credited jointly by all the member companies, to sum up the experiences of all of them, provided that they meet the requirements defined above and hold a share equal to or greater than 20% in the bidding consortium, who shall certify the experience either directly or through its subsidiaries, branches or its parent company.

For the purposes mentioned above, the concession contracts for Infrastructure Projects shall be admissible, provided that they meet the following requirements:

- i. That whoever credits the experience in financial closure has obtained the financing of the contract in the last ten (10) years.
- ii. It shall not be required that the contract has finished its execution or is completed and/or liquidated for the purposes of admissibility as long as they comply with the requirements listed in the previous paragraph.
- iii. That the respective concession contracts which are submitted for the accreditation of financial closure have not been terminated due to failure attributable to the contractor, a circumstance that shall be indicated in the documents submitted for the respective accreditation.

The experience of the bidder, who has obtained financing from the financial sector and from banks or the (national or international) capital market, or a combination of the previous two alternatives, shall be valid.

For the purposes of this section, a Project of infrastructure is understood as the construction, operation and/or maintenance of works in the activities defined in section 3 of Law 18,786 dated July 19, 2011.

In order to demonstrate the experience in financial closing, Bidders shall attach:

A.

- i. Certification issued by the creditor or his representative (for the case of the financing on the capital market), signed by the legal representative or by a person authorized to sign such a document, stating the following information: (1) the amount of the financial closure of indebtedness issued, (2) the values and the dates of disbursements, and (3) the authorized use of the resources of the indebtedness; or
- ii. A copy of the credit contract along with a record of the disbursements; or
- iii. A copy of the prospect along with a copy of the bid notice or equivalent.

In the case of accreditation of syndicated loans, the certification of the creditor entity(ies) may be issued by the authorized representative of the leading bank of such credit, administrative agent or its equivalent responsible for the management of credit and/or the representation of the other banks.

- B. Certification of the debtor, indicating at least the amount of the financial closure of indebtedness issued or the value that is placed, the values and the dates of disbursements or the placement, and

that the loan or the value placed corresponds exclusively to the concession contract of infrastructure projects being credited; and

- C. Certification issued by the contracting authority stating the date of the contract signature; contract value; main obligations of the private party, and that the contract has not been subject to expiration or termination for breach by the contractor.

In the event of having obtained the experience through the participation of corporate figures, a statement signed by the person who seeks to enforce such experience shall be attached by indicating the percentage of participation in the respective corporate figure.

For the conversion of the amounts of those contracts expressed in a currency other than the US dollar, the arbitration posted on the website of the Central Bank of Uruguay shall be used as a reference, on the date of signing the contract.

18.3 EXPERIENCE OF THE BIDDER

The companies that are part of the bidder and accompanying the bid as subcontractors shall detail their experience in each type of major works of rehabilitation and/or maintenance of civil and railway infrastructures, as well as in the administration and implementation of large-scale projects; through contracts or subcontracts of works, with their characteristics, implementation deadlines and the amounts to be assessed by the Contracting Authority.

The bidder shall certify, by itself or by any of its members, that they have executed and managed in the last ten (10) years, at least, three (3) contracts for construction and maintenance with a budget larger than US\$ 200,000,000 (two hundred million United States dollars) and all of them shall reach a total of above US\$ 800,000,000 (eight hundred million United States dollars). At least one of the years of validity of these contracts shall have been executed in the last five (5) years. In addition, there is a requirement for a work that has reached an average rate of execution per month of US\$ 20,000,000 (twenty million United States dollars).

The bid shall certify:

- a) Experience in the design of civil and railway infrastructures. They shall have made the executive design in the last ten (10) years of, at least, 300 kilometers of railways, regardless of whether they are single or multiple tracks and a minimum of 10 rail bridges that total a minimum length of 700 linear meters.
- b) Experience and technical solvency in construction in accordance with the following:
 - i. Having carried out by itself, or by means of another company in which it is a shareholder with 50% or more, in the last ten (10) years, at least, three (3) works of construction and/or rehabilitation through public and/or private works contracts, public works concession contracts, rehabilitation and maintenance contracts, or otherwise. The total length of the combined contracts performed in that period shall be larger than 300 kilometers of single track. The multi-track length executed shall be multiplied by 2 for the purposes of accumulating the experience required by this paragraph.
 - ii. Having executed in the past 10 years, the construction of, at least, 1000 meters of tunnel or railway trench, 2000 meters of rail bridges and 1000 meters of road bridges.
 - iii. Having executed, at least, 6 (six) roadworks in public works or concession contracts, made in the last ten (10) years, with an individual budget execution of more than US\$ 5,000,000 (five million United States dollars), in any of the following modalities: construction or initial works in maintenance or rehabilitation contracts.

The detailed experience in a) and b) may be proven by a member of the bidder or as a subcontractor to declare in writing that they agree to participate in the bid. To such effects, the same subcontractor may participate simultaneously in more than one bid.

For the accreditation of experience in design and construction contracts that have been implemented, at least, in a fifty percent (50%) by the date of submission of tenders shall be accepted.

The proposal shall include, a member of the bidder or a subcontractor declaring in writing that they agree to participate in the bid, a company that proves their technical solvency in maintenance in accordance with the following:

- Being a contractor or having, at least, 25% of the capital stock of a company that is a contractor with at least one contract that had among its objectives the maintenance of railway infrastructure, more than 200 km of single track, and with such contract being for at least five (5) years. One of the years of validity of this contract shall have been executed in the last five (5) years.

In the case of a bidder integrated by more than one company or legal entity, it may prove its experience by adding the projects of each one.

The bid, in turn, shall include as a member of the bidder or a subcontractor declaring in writing that they agree to participate in the bid, a company that proves their technical capacity in manufacturing and experience in the provision of concrete ties for at least 200,000 units in a single contract.

In all cases, the documentation proving the experience and the volume and amounts of the works executed by each one shall be submitted. It can be a simple copy of the contracts or a certified copy of a letter signed by the owner.

For the conversion of the amounts of those contracts expressed in a currency other than the US dollar, the arbitration posted on the website of the Central Bank of Uruguay shall be used as a reference, on the date of signing the contract.

In addition, the company or companies who attest to the experience in construction shall submit proof of certification in the Quality Management System ISO 9001:2015 in addition to other certificates of quality they may have.

The bids that do not comply with the requirements in clauses 18.1, 18.2 and 18.3 shall be disqualified.

18.4 STUDIES AND PROJECT PHASE

This document shall contain:

- A. Functional organization chart proposed for the phase of studies and projects, indicating functions and dedication for this contract. Including professional profiles (Curriculum Vitae) of the main people involved. The people who would serve as Design Project Manager and Design Engineer shall submit a letter expressing their acceptance to participate in this bid.

The Design Project Manager shall be Railroad or Civil Engineer with experience in the management of, at least, 5 rail projects of more than 12 months duration each.

The Design Engineer shall be Railroad or Civil Engineer with at least five years of experience as a designer of railway works.

- B. Relationship of material means to link during the studies and projects phase.
- C. Description of the works to be undertaken at this stage and the way of carrying out its important activities with the means proposed.

On the basis of the railway route defined by the Administration, the following aspects shall be considered:

- A geotechnical study of the terrain in areas of foundations or stockpiles deployment. Areas envisaged for loans and landfills.
 - Study of the load-bearing capacity of the platform, the definition of transition areas or specific treatment. Bearing in mind the provisions in paragraph 8 "Track Superstructure" of Annex B - Technical Specifications.
 - Logistical support for the commissioning of materials, needs of mounting bases, areas of information collection, analysis of the means of transport to be used for the commissioning of each material, need of auxiliary facilities.
- D. Construction Project and Work Plan, with the most important milestones; especially those anticipating the strict compliance of the deadlines.
- E. Plan for the delivery of documentation.
- F. Quality control systems to be used in this phase.

All the information contained in this document shall comply with the provisions of the Technical Terms and Conditions and annexes of this project.

18.5 WORK PHASE

The following documentation relating to the works required by the contract shall be delivered:

- A. Functional organization chart proposed for the work execution phase, indicating functions and dedication for this contract. Including professional profiles (Curriculum Vitae) of the main people involved.
- B. A preliminary draft of the works which shall contain, at least, the following content:
- a) Descriptive report of the technology and/or constructive systems to be used, justifying that they meet all the requirements of the Technical Terms and Conditions.
 - b) Plans needed to illustrate the description of the technology and/or constructive systems described in the report, which make it possible to verify compliance with the Technical Terms and Conditions and the required measurements.
 - c) Description of measurable and assessable units that make up the work.
- C. Relationship of materials means (machinery and equipment) to be used during the work execution phase.
- D. Plan foreseen to carry out the works. The ratio of estimated total and partial deadlines in the scheduling of the work: for the studies and the project, the start and completion of the works and facilities, for testing, and for the commissioning. **This plan shall not make reference to costs.**

At least, this plan shall indicate the progress estimated for the items listed for studies and project and construction, included with Annex 5 of the ABT. The rows of those sheets in that Annex may be used, but shall not the columns that refer to costs, either per unit or total.

- E. Quality Assurance Plan materials, supplies and spare parts for the construction phase. It shall include a quality assurance plan for the quality of these elements.
- F. Work safety plan, which shall be consistent with the schedule and the proposed execution of the works.

All the information contained in this document shall comply with the provisions of the Technical Terms and Conditions and annexes of this project.

18.6 MAINTENANCE PHASE

The following documentation relating to the maintenance phase of the infrastructure object of this project shall be delivered:

- A. List of equipment and machinery to be used during the implementation of the maintenance, in order to comply with the maintenance plan set out in Annex C1 "Maintenance Rules" of the Technical Terms and Conditions.
- B. Model of comprehensive management of the infrastructure
 - Procedure for the control of maintenance. This document shall also contain a reference to the obligations referred to in Annex C1 "Maintenance Rules" of the Technical Terms and Conditions.
 - Procedure for action and follow-up in case of incidents and events. This document shall provide the basis for the preparation, by the contractor, of the management protocol upon the incidents and events described in Annex C1 "Maintenance Rules" of the Technical Terms and Conditions; which shall include the safety plan.
 - A preliminary draft of assurance for the entire term of procurement: infrastructure elements life cycle and replacement plan.

All the information contained in this document shall comply with the provisions of the Technical Terms and Conditions and annexes of this project.

19. CONTENT OF "ENVELOPE NUMBER 3 - ECONOMIC PROPOSAL"

The economic proposal in its entirety constitutes the Economic-Financial Plan (EFP) of the project.

19.1. ECONOMIC PROPOSAL

The bidder shall quote in its economic proposal the maximum daily amount to be received from the Contracting Authority as contractual consideration, under the modality of availability payment, in accordance with the provisions in the contract documents. This shall be expressed in the form provided as Annex 3 of these Terms and Conditions. The maximum daily amount shall be expressed in US dollars, with no decimal point, without VAT.

The maximum value of the bid shall not exceed \$429,425 (Four hundred twenty-nine thousand four hundred and twenty-five), excluding VAT. **The bids that exceed this value shall be disqualified.**

The AP advance on account mentioned in clause 19.3 of these Administrative Terms and Conditions shall be subtracted linearly from the APs over the term of the Contract.

19.2. DETAIL OF THE INVESTMENT

With regard to the works included in the Public-Private Partnerships contract:

The total investment budget, expressed in indexed units without VAT shall be submitted, as well as the corresponding unit prices, in accordance with Annex 5 delivered as part of these bidding terms. The budget shall be submitted in hard copy and electronic file in an editable format. In addition, the financial schedule of the entirety of activities leading to the commissioning of the infrastructure shall be delivered. This schedule shall correspond with the plan of activities submitted as part of "Envelope No. 2 - Technical Aspects" and the totals shall match the amounts submitted in the detail of investment. The financial schedule shall be submitted in

hard copy and electronic file in an editable format. In addition, the plans for the replenishments or reinvestments during the term of the contract shall be indicated.

With regard to the work included in the Additional Works Contract:

The bidder shall establish the specific compensation corresponding to each one of them, and it may not, in any case, be greater than the compensation established by the contracting party. It shall include all jobs, expenditures involved in and derived from the contract.

19.3. AP ADVANCE ON ACCOUNT

Bidders shall consider, for developing their proposal, that the Contracting Authority shall carry out an AP advance on account that shall be determined in the following way:

- US\$ 30,000,000 (thirty million United States dollars) in the 12-month schedule of work agreed upon.
- US\$ 30,000,000 (thirty million United States dollars) in the 18-month schedule of work agreed upon.

The effective implementation of this AP advance on account by the Contracting Authority is conditioned by the fulfillment of the above mentioned agreed schedule of the work and by obtaining the final financial closure.

In the event that compliance is not verified in accordance with the provisions above, the AP advance on account shall be suspended until both compliances are verified.

The above mentioned AP advance on account shall be subtracted linearly from the APs over the term of the contract.

19.4. FINANCIAL REPORT

The financial bid shall be completed with the contribution of a financial report that proves the consistency and feasibility of the economic proposal.

The financial report shall include the documents listed below:

1. Model of the economic-financial plan (EFP) of the bidder.

This envelope shall include the financial model used by the bidder to calculate its bid, which shall be delivered in a book of electronic calculation, expressed in United States dollars. The model shall clearly identify the input variables, the output variables and the cells that allow making changes to the relevant variables. The model shall include the balance sheets, income and cash flow statements for each year of the contract.

All the investment concepts of this model shall be included with the detail mentioned in clause 19.2 of this document. The origin of the resources shall be specified (capital, debt by type and financial advances granted by the Administration) for the investment stage.

The model shall include the planned expenditure on maintenance and reinvestment referred to in the investment detail.

The model shall have a summary sheet where the most important results can be seen and where the most relevant variables to perform sensitivities can be changed. The summary shall present at least the following main results:

- a) Internal Rate of Return (IRR) of the project before tax, expressed as a yearly rate in current US dollars.
- b) Internal Rate of Return intended by the bidder regarding their own funds (IRR of the shareholder), expressed as a yearly rate in current US dollars.

- c) The planned relation between own resources/total investment by the end of the construction.
- d) The foreseen ratio of debt service coverage (the minimum and average ratio for the entire life of the loan).

The previous data shall be submitted in the form of Annex 4, as a summary of the main scenario in the model.

This model shall be accompanied by an explanatory document detailing all the aspects that help understanding it. This document shall contain, at least:

- a. Description of the capital volume that the bidder commits and the schedule of contributions provided for in the financial model.
- b. A detailed description of the financial structure that has been contemplated in the financial model (including funding strategy and progress in its negotiation, dates of financial closing, long-term debt, structure of repayment, interest rates, etc.).
- c. Description of tax and accounting assumptions, especially those that relate to the amortization tables.
- d. Guarantees considered in favor of the creditors, in particular, those set out by Law No. 18,786 and its regulations.
- e. The way of modeling the income and deductions to the AP.
- f. Sensitivity Analysis in function of the main parameters, taken one by one and in groups to verify the strength of the project. The cases of reduction of income and increased costs shall be considered, verifying the results in more and less favorable situations. Three scenarios shall be considered: pessimistic, average, and optimistic for two types of sensitivities, before and after the financial closure:
 - Variation in the cost of the rehabilitation of $\pm 10\%$
 - Variation in the costs of the maintenance of $\pm 15\%$
 - A revenue reduction of 5% as a result of a deduction in the Availability Payment.
 - Variation of the financing interest rate at ± 150 basis points.

The Technical Commission may ask questions or requests for clarification about the configuration and operation of the model. In addition, it may require its extensions. The bidder shall answer them in a clear and diligent manner.

2. Anticipated sources of funding.

Bidders shall specify the sources of funding provided to deal with the performance of the contract, of both their own and third-party funds. For this purpose, bidders shall inform:

- i. Amount of financial resources and, if appropriate, considerable investments in other instruments as own resources, which would be contributed as capital and/or subordinated debt by each one of the members of the bidder, as well as the schedule for such contribution. This shall be supported by elements of the financial statements submitted as Financial Background (Clause 18.2). In the event that the projected capital contribution is not reflected in the Financial Background, the origin of resources shall be explained and their availability documented, including commitment letters and the legal relationship that exists between the source of these resources and the bidder. The above shall cover 100% of the amount of the resources above mentioned.

Characteristics of the various sources of funding: currency, interest rate, amortization and grace period, expiration, fees and other expenses, adding any data that is relevant according to the bidder. This shall be supported with letters from financial institutions and/or institutional investors expressing interest in financing the project in the event of being awarded to the bidder, expressing the amount and term of the credit that they would be willing to grant and/or the issuance of debt in the capital market. These letters shall cover 100% of the number of resources mentioned and shall include the contact details of the persons responsible for the financial institutions so that, if necessary, their verification is carried out.

- ii. Credit references: Letters from financial institutions with which each one of the members of the bidder has contracted credits in the past 5 years, expressing the fulfillment of obligations. Where appropriate, letters from institutional investors which are or have been holders of debt issued by the bidder, expressing the fulfillment of obligations.

3. Financial closure.

A detailed description of the work that has been developed by the bidder shall be submitted to achieve the financing conditions. In particular, it shall include a description of the entities contacted, the degree of progress in the negotiations, the degree of progress in the financing contracts where appropriate, the degree of development of the due diligence and any other data considered relevant to the purpose of the evaluation.

4. Percentage of payment in dollars.

A detailed explanation of the required percentage in dollars and its relationship with the financing structure shall be submitted.

5. Contracts structure.

Organization chart for the contract to carry out the activities for the purpose of these bidding terms.

6. Risk treatment.

A detailed description of the treatment approach or risk management, including a description of mitigation mechanisms included in the bid.

7. Insurance Plan.

A detailed description of the insurance plan that shall be consistent with what is described in the technical proposal.

8. Quality Control.

A note from the financial advisor to certify that the common quality control procedures were applied in the preparation of the financial model shall be submitted.

9. Affidavit.

An affidavit signed by a representative of the bidder with sufficient power shall be filed or, if appropriate, by each of the companies which constitute the group of bidders, undertaking the following: (i) Commitment of availability and contribution of the committed capital according to the financial model; (ii) commitment to make every effort to reach financial closure on the date provided for in the contract; (iii) commitment to start the construction work on the scheduled date, regardless of whether funding was obtained or not, at the risk of breach with loss of the definitive guarantee.

All values shall be consistent with those submitted in the Financial Economic Model of this clause.

The Technical Commission may recommend the rejection of the bids that do not comply with the provisions of the preceding paragraphs, in accordance with clause 22.3 of these Terms and Conditions.

IV. SUBMISSION, OPENING, AND EVALUATION OF BIDS

20. SUBMISSION OF BIDS

- a) Bids shall be submitted personally by the duly authorized person for such purpose (power of attorney), at the place, day and time set on the press notice or in the electronic publication of the corresponding state portals (in particular, <https://ferrocarrilcentral.mtop.gub.uy> and www.comprasestatales.gub.uy).

Such bids shall be submitted within three (3) sealed ENVELOPES duly individualized and identified in the following way:

- "Envelope No. 1 - Background";
- "Envelope No. 2 - Technical Aspects"; and
- "Envelope No. 3 - Economic Proposal".

These envelopes shall contain the documentation required by these administrative bidding terms and conditions.

- b) All the documents required in these bidding terms be submitted as original or, where appropriate, as testimony by a notary public, and four (4) copies, with its pages automatically numbered by computer printing. No handwritten document or with omissions, errors or amendments shall be accepted if they do not allow knowing clearly the conditions to assess the bid.
- c) The original documentation shall be signed by the bidder or its accredited representative to such effect. It shall be submitted in Spanish language and, in the case of documentation issued abroad, it shall be duly apostilled or legalized in Uruguay, as appropriate. The need to apostille or legalize commercial brochures, that may be delivered in Spanish, English, Portuguese or French, is exempted.

In addition to presenting the information in the paper, it shall be submitted in electronic form. The used spreadsheets shall be delivered in an editable format compatible with MS Excel, and they shall not be blocked. In case of discrepancy between the data or information of both means, the information contained in the documentation submitted on paper shall prevail.

- d) According to the foregoing, the bid, as well as all communications, clarifications, amendments, and documents relating to it to be exchanged between the contracting authority and the bidder, shall be in the Spanish language. However, any submitted material may be in another language provided that it is accompanied by a translation into the Spanish language (by a public translator), signed by the bidder, which shall prevail for the purposes of the interpretation of the bid. If the translated document was issued abroad, it shall be duly apostilled or legalized in Uruguay, as appropriate.
- e) The submission of a bid presumes the unconditional acceptance by the bidder of the clauses of these Terms and the remaining documents that form part of the contract.
- f) Bids shall be valid for a period of one hundred and eighty (180) days, counted from the date of receipt of the bids.

If the contracting authority had not issued a decision within that period, the validity of the bid shall be automatically extended for forty-five (45) days, unless the bidder notifies about its willingness to withdraw its bid, by letter, fax or email within ten (10) business days prior to the expiration date. In that case, its bid shall remain valid until the end of the period indicated, at the end of which, the bid shall expire and the bid maintenance guarantee shall be returned without the right to compensation of any kind.

21. OPENING ACT

The opening of the bids shall take place in a public act, in the presence of the notary public and other officials appointed by the contracting authority, at the place, date and time fixed in a timely manner. Bidders or their accredited representatives may attend such act.

"Envelope No. 1 - Background" shall be opened at the act, and it shall be monitored that the content matches with the provisions of these Bidding terms, in paragraph 17. At the same time, "Envelope No. 2 - Technical Aspects" shall be opened to provide a record of the number of pages of each bid. Once the acting official finishes, the people present shall take a look at it, but they shall not be able to take pictures or record it by any means.

Having initiated the act, no changes may be made to the bids, but the attendants shall, however, be able to formulate the declarations, clarifications or reservations they wish. In such an act, the submission of no bid shall be able to be rejected without prejudice to their later invalidation. The initial admission of a proposal shall not be an obstacle to its rejection if defects that violate legal requirements or substantial requirements contained in these bidding terms were determined.

At the end of the act, a detailed record shall be drawn up and signed by the officials and the bidders who wish to do so, who shall be able to leave the statements they deem necessary on record.

In the content of the bids, the information regulated in section 10 of Law No. 18,381 dated October 17, 2008, shall be deemed confidential.

Envelopes "No.1 - Background", as well as Envelopes "No. 2 - Technical Aspects", shall be submitted to the Technical Committee appointed by the Contracting Authority. The unopened Envelopes "No. 3 - Economic Proposal", shall remain in the custody of the Notary Public.

22. REVIEW OF BIDS BY THE TECHNICAL COMMITTEE

22.1 BIDS ANALYSIS OVERVIEW

The submitted bids shall be considered by the Technical Committee, which shall assess compliance with the requirements set out in these Terms and Conditions, in the Technical Terms and Conditions and its annexes, and other documents which form this procurement procedure.

For the purpose of their evaluation, the Technical Commission may request from the bidder, in the manner set out in these bidding terms, the necessary clarifications it considers relevant but, in no case shall it ask for or allow the modification of the contents of the bid. In addition, the Technical Commission may request the advice it may consider appropriate.

Bids shall conform to the technical and financial requirements, and the purposes of the contracts referred to in clause 2 of these Administrative Terms and Conditions. Bids containing substantial deviations from the

requirements contained in the clauses of these Terms and its attachments, the Technical Terms and Conditions and its annexes and the draft contracts which constitute the basis of the procurement shall not be considered.

Optionally, Bidders shall be able to improve the design on the basis of recognized international technical standards, which shall be studied at the time of the evaluation of the bids. In this case, the Bidder shall necessarily include the following information:

- a) Detailed technical analysis and description of the improvement.
- b) Analysis of the compatibility with the general concept of the project design.

In the event that the improvements are not be accepted by the Administration, the bid shall comply with the provisions of the Technical Terms and Conditions and the annexes to this project.

In all cases, the Bidder assumes the risks for the technical solution submitted in their proposal.

A bid shall be deemed to conform to these terms substantially when it matches all terms, conditions, and specifications of the procurement terms without deviations, reservations or significant omissions. A diversion, reservation or significant omission is one that:

- a) Substantially affects, in the opinion of the contracting authority, the quality or amount of work specified in the procurement terms;
- b) Substantially limits, in disagreement with what is established on the procurement terms, the rights of the Contracting Authority or the bidder's obligations arising from the contract;
- c) If rectified, it would affect the principle of equality of the bidders.

22.2 STUDY OF "ENVELOPE NUMBER 1 - ANTECEDENTS" AND "ENVELOPE NUMBER 2 - TECHNICAL ASPECTS"

The Technical Commission appointed by the Contracting Authority shall examine the documentation contained in "Envelope No. 1 - Background" and "Envelope No. 2 - Technical Aspects".

The documents referred to in clauses 18.1, 18.2 and 18.3 of these terms and conditions shall be evaluated in a binary manner and the bids that do not comply with the provisions therein shall be rejected. The documents referred to in clauses 18.4, 18.5 and 18.6 shall be evaluated as indicated in Annex 6. Technical Proposal Evaluation Criteria.

The Technical Commission shall take particularly into account the proposed schedule of the work, particularly the bidder's commitment that the beginning of the work shall be effective within 30 days of signing the contract.

The Technical Committee shall draw up a report on the contents of the envelopes studied. The report shall recommend the admissible tenders for the continuation of the process and, if appropriate, the bids that should be dismissed by exposing the reasons that led to this recommendation. This report shall indicate, in addition, the order of priority of the technical proposals, in accordance with the criteria of Annex 6 of these Administrative Terms and Conditions.

The Technical Committee shall draw up its report, for the purposes set out, within a maximum period of thirty (30) days, but it may be extended when the complexity and/or volume of documentation requires it. This report

shall be raised to the authorities of the Contracting Party which, after analyzing it, shall formally issue a decision and report the scores to the bidders.

22.3 OPENING AND STUDY OF "ENVELOPE NUMBER 3 - ECONOMIC PROPOSAL"

It shall be held at the place, date and time communicated to the pre-qualified bidders, in the presence of the appointed officials, among which a Notary Public shall be present. Bidders or representatives who wish to attend may do so.

They shall proceed to the opening of "Envelope No. 3 - Economic Proposal", and documents shall be marked by a Notary Public, without them being studied at that time. After the stage referred to above, the Technical Committee shall proceed to study the documentation contained in the aforesaid "Envelope No. 3 - Economic Proposal".

The proposals with a requested maximum Availability Payment exceeding the value specified in **clause 19.1** of these terms and conditions shall be disqualified.

The Technical Commission shall analyze:

- a. The strength and justification of the planned investments, maintenance costs, and replenishments raised during the term of the contract,
- b. The risk mitigation strategies of the project, both exogenous and endogenous, that may prevent obtaining the financing, as well as the feasibility of closing, in time and under the foreseen conditions, the financing to be provided by third parties, in accordance with the market conditions prevailing at the time of the analysis,
- c. That the payment for daily maximum availability reflects the investment and maintenance costs of the infrastructure, as well as the financial costs considered in the model,
- d. The consistency between the projection of revenues and costs, the IRR of the project without taxes, the economic and financial assumptions and the IRR expected by the shareholders.

The Technical Committee may recommend the non-acceptance of any bid if the financial report mentioned in clause 19.4 is in any of the following situations:

- It includes costs that do not match those declared in other parts of the bid, in particular, the details requested in clause 19.2.
- It includes financing conditions different to those provided for under clause 19.3.
- It omits guarantees, reserve funds or funds of refitting referred to in the explanatory report.
- It includes financing conditions known to be far removed from those prevailing in the market at the time of the presentation of the bid without substantiation. As a market reference, the background of local or international operations shall be taken into account.
- It omits the letters of support by financial institutions in accordance with clause 19.3 or they do not reflect the amount and conditions considered in the financial model.
- It omits the insurance provisions referred to in the explanatory report.
- The maximum income used for the projection of income does not match the maximum payment requested in the bid.

- The results of the model do not match those submitted in the summary requested in the bidding terms.
- The ratio of debt service coverage is far from those prevailing in the market.

23. AWARD CRITERIA

Among those bids that have complied with all the administrative and technical requirements, and whose Economic-Financial Plan complies with the provisions of these bidding terms and other documents governing this tender, the Technical Committee shall proceed in the following way:

For each bid, $P_k = A_k * PM_k$ shall be calculated, where:

P_k is the score of the bid k .

PM_k is the payment requested by the bidder k , indicated in paragraph 19.1 of these terms and conditions.

A_k shall be equal to:

- 1** if the bid k poses the import of the concrete ties needed for the project at a percentage greater than or equal to 50%.
- 0.99** if the bid k poses the import of the concrete ties needed for the project at a percentage lesser than 50%.
- 0.97** if the bid k poses the manufacture in Uruguay of 100% of the concrete ties needed for the project.

The order of priority of the bids shall be given, from lowest to highest, by:

- The result of:

$$\left[1 - 0,08 \frac{NT_k - 50}{50} \right] P_k$$

For those bids whose P_k score is less than or equal to the product of 1.05 (one point zero five) for the lowest scores among all the bids, where NT_k is the score obtained by the supply of k in the evaluation of its technical proposal, corresponding to Annex 6.

- Its P_k score, for those bids whose score is greater than the product of 1.05 (one point zero five) for the lowest scores among all the bids.

The Technical Committee shall draw up its report after analyzing the documentation, within a maximum period of thirty (20) days, but it may be extended when the complexity and/or volume of the documentation requires it.

In this report, the Technical Committee shall recommend the award to that bid that obtains the lowest score as well as the order of priority between the bids, in accordance with the scores described above.

In any case, the Contracting Authority may reject all bids without any liability whatsoever, without recognizing any payments or reimbursements for expenses to the bidders.

The Contracting Authority shall act in accordance with the provisions of section 31 of Decree No. 17/012, in its current wording.

Once the Unit of Public-Private Partnership projects of the Ministry of Economy and Finance has issued a decision, the Contracting Authority shall grant the view to bidders for a period of 15 days.

According to the provisions of the respective laws and regulations, in the case that the unit of Public-Private Partnership projects made comments on the report of the Technical Committee, the view to the bidders shall be awarded once the Contracting Authority has ruled on them.

24. AWARD OF THE CONTRACT

24.1. PROVISIONAL AWARD

The Contracting Authority shall carry out the provisional award or, if applicable, the rejection of the submitted bids, which shall be notified to all bidders.

The provisional award shall be made to bid which is the most appropriate to the interests of the Contracting Authority in accordance with the provisions set out in clause 23 of these Terms and Conditions, and the needs of service according to the provisions of section 23 of Law No. 18,786 and section 32 of Decree No. 17/12, in its current wording.

The Administration reserves the right to accept the proposals that it considers more convenient or to reject all proposals, without giving rise to any claim by the proponents.

24.2. DOCUMENTATION TO BE SUBMITTED

24.2.1. FORMAL ADMINISTRATIVE DOCUMENTATION

The Successful Bidder shall provide under penalty of rendering the provisional award null:

- a) Presentation of the by-laws of the special purpose company for its approval by the Contracting Party, within a period of 30 days.
- b) Presentation of the articles of incorporation of the consortium and/or branch or permanent representation according to the provisions of Law No. 16,060, within a period of 30 days.
- c) Compliance assurance contract for the construction phase, and insurance against all risks. Both shall be credited before the Contracting Party and deposited within the period of 10 working days, 10 days counted from the date following the notification of the final award and prior to the signing of the contract provided for in Clause 28 of the Terms and Conditions.
- d) Proof of registration in the Single Register of State Suppliers (RUP) in the "active" status.
- e) Certificate issued by the State Insurance Bank, attesting that the bidder is up to date with the payment of the worker's accident compensation insurance. In the case of foreign legal entities, equivalent documentation shall be submitted. In the absence of the requested equivalent documentation, the bidder shall present sufficient documentation issued by a professional lawyer attesting such extent.
- f) Presentation of the certificate of annual procurement estimated value (valor estimado de contratación anual or VECA) by a sufficient amount according to the provisions of Decree No. 208/009.

- g) Proof of having paid the Contracting Authority, or the person appointed by such authority, for the costs of the outsourced services for the performance of the studies and technical structuring of the project. The amount of such payment shall in no case exceed the amount of US\$ 5,000,000 (five million United States dollars).
- h) Progress in the Executive Design of those items and/or sub-sections agreed with the Contracting Authority, that allow for the start of the implementation of the work within the established deadlines.

The documents referred to in paragraphs e), f) and g) shall be submitted within 10 (ten) working days, counted from the day following the approval of the corporate bylaws of the special purpose company by the Internal Audit of the Nation.

24.2.2. FINANCIAL CLOSURE

The Successful Bidder shall submit the content of the financing instruments, according to section 34 of Decree No. 17/012, within a period not exceeding 90 (ninety) days from the date of the provisional award.

In the same period from the notification of the provisional award, the source of the funds intended to be devoted to the implementation of the project shall be submitted in the framework of the regulations in force for the prevention of money laundering and the financing of terrorism, with the Contracting Party being able to request any clarifications and additions that it may deem appropriate. In this regard, a report by the Information and Financial Analysis Unit of the Central Bank of Uruguay shall be requested prior to the final award. According to the "Information Requirements for the Registration of Participating Entities, on the report of the Information and Financial Analysis Unit of the Central Bank" which can be accessed through the following link: <http://ppp.mef.gub.uy/10000/2/areas/guia-de-mejores-practicas-recomendadas.html>

The Contracting Authority shall assess the progress made by the Successful Bidder in the performance of the financing contracts.

In the event that the Successful Bidder has all the financing instruments, the Administration shall proceed to carry out the final award.

If the instruments submitted allow ensuring the closure of the financial structuring after the signing of the contract, the administration reserves the right to make the final award under the conditions laid down in section 34 of Decree No. 17/012. In this case, the contractor shall have a term of 10 months to obtain the final financial closure, counted from the signature of the contract.

In both cases, the works shall begin to be performed simultaneously upon the signing of the contract.

In the case of not finding the expected progress, the Administration may choose to provide an extension to the Successful Bidder or revoke the act of provisional award and perform a new provisional award according to the list of priority set out in clause 23 of these Administrative Terms and Conditions.

24.3. FINAL AWARD

The final award shall be notified to each one of the bidders.

In the case that the final award of the contract does not apply to the bidder that would have been selected according to the provisional award, for not complying with the conditions which had been requested, the Contracting Authority, upon prior report to the Unit of PPP projects of the MEF, it shall be able to carry out a new provisional award to the bidder, whenever possible, and if the new potential successful bidder gives its consent. The conformity of the new successful bidder referred to in section 23 of Law No. 18,786 dated July 19, 2011, shall be deemed to be granted by the bidders who have failed to provide the contracting authority with a

notice to withdraw the bid in the manner and within the terms referred to in clause 20 paragraph f) of these Terms and Conditions.

Such provisional award shall be notified to all bidders.

The new provisional successful bidder shall comply with the steps described in paragraph 24.2 of these Terms and Conditions.

V. COMPANIES

25. COMPANIES

For the purposes of this tender, two companies shall be incorporated.

On the one hand, a special purpose company according to the provisions of Law No. 18,786 and its regulatory decrees; and, on the other hand (and necessarily), a Consortium, as set out in sections 501 and following of Law No. 16,060 or a branch or any other type of permanent representation according to the provisions of sections 192 and following of Law No. 16,060.

In both cases, the percentages of participation of each member of the bidder shall be respected for the integration.

25.1. SPECIAL PURPOSE COMPANY

The special purpose company shall meet the following minimum requirements:

- a) The corporate purpose shall consist exclusively in the execution of the contract in accordance with the provisions of the contractual documentation.
- b) The Successful Bidder's equity interest in this company shall be in equal proportions of interest to those specified in their bid in relation to natural persons or legal entities who are members of the bidder.
- c) The company may not dissolve until the reversion of assets related to the subject matter of this contract is performed, under the terms of the contract documents.
- d) Their shares shall be non-transferable registered shares.
- e) Without prejudice to the legal regulatory regime of commercial companies, the special purpose company is governed by and shall adapt its operation to the provisions in the contract documents.
- f) It shall keep the books in accordance with the principles and generally accepted accounting standards and fiscal legislation in force.
- g) The registered office shall be set in the city of Montevideo.
- h) The purchase of a Corporation (Sociedad Anónima) already incorporated shall not be permitted.

25.2. CONSORTIUM OR BRANCH

The resulting successful bidder shall submit the consortium or branch contract, as set out in the regulations in force within a period of 30 (thirty) days from the notification of the award.

The constitution of these corporations shall be carried out in accordance with Law No. 16,060 and Decree No. 208/009.

26. CAPITAL STOCK AND SUPPLEMENTARY FUNDING

The capital stock of the special purpose company shall be, at least, ten percent (10%) of the total initial investment referred to in the model of the bid. An initial investment is defined as the cost of the construction and initial rehabilitation, pre-construction costs, the financial costs until the end of the construction and rehabilitation and the taxes paid up until the end of the construction and rehabilitation.

For the minimum capital stock referred to in the previous paragraph, the following conditions shall govern:

- It shall be fully subscribed prior to the final award and shall be integrated prior to the signing of the contract by, at least, 25%.
- The rest shall be integrated in the manner agreed on in the content of the financing instruments of the EFP.
- It shall be maintained until it meets the following two conditions:
 - 1) Having obtained the commissioning of the infrastructure.
 - 2) Having elapsed, at least, 7 years since the signing of the contract.

When these two conditions are fulfilled, the capital stock may be reduced to 10% of the total investment. Higher reductions shall require the express permission by the Contracting Party.

The supplementary funding that is necessary to meet the contractual obligations shall be obtained by the special purpose company.

Debentures with a total or partial reimbursement term ending at a date later than the contract termination term shall not be issued.

For the transaction of debentures, stocks, bonds or other securities in the secondary market, it shall not be mandatory to obtain authorization from the Contracting Authority.

27. ALTERATION OF THE COMPOSITION OF THE SHAREHOLDER GROUP OF THE SPECIAL PURPOSE COMPANY

The alteration of the composition of the shareholder group of the special purpose company, transformation, merger, split and transmission of shares by any title shall require the authorization of the contracting authority and may not be requested prior to the completion of all the works for the commissioning of the infrastructure, unless explicitly authorized by the Contracting Authority.

The contracting authority shall determine in each case the solvency requirements to be required.

28. CONTRACTS PERFORMANCE

Contracts shall be made in writing, within a period of ten (10) working days from the date following the last notification of the final award act, provided that no appeal had been filed against such act.

In the event that administrative appeals had been filed against the final award act, the contracts shall be performed in writing within thirty days (30) working days from the date on which the Act is final, or from the lifting of the suspensive effect, where appropriate.

When, for reasons attributable to the Successful Bidder, the contracts had not been performed within the specified period, the Contracting Authority may revoke the award and, in this case, proceed to enforce the bid maintenance guarantee that had been established.

29. CONTRACTUAL DOCUMENTATION

Contractual documents are:

- a) The Public-Private Partnership contract
- b) The additional works contract for the Central Railway project
- c) The Technical Terms and Conditions and its annexes, with the respective explanatory documents and/or modifications made up to the date of the opening of the call
- d) The Administrative Bidding Terms and Conditions (ABT) and its annexes, with the respective explanatory documents and/or modifications made up to the date of the opening of the call.
- e) The bid submitted by the Successful Bidder

In the case of contradiction in its terms, the related documents shall be interpreted taking into consideration the order of priority in which they are listed in this clause.

ANNEX 1: BIDDER IDENTIFICATION

BIDDER NAME: _____

REPRESENTATIVE: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

FAX: _____

(A unique Name, Address, Telephone Number, E-Mail, and Fax shall be provided).

The Bidder is comprised of:

(Use a line for each person or company that is part of the bid.)

Name or legal name	RUT *	Ownership interest
Member 1		
Member 2		
.....		
Member n		

*: Foreign persons shall indicate the tax number that identifies them in their country of origin

We are committed to being incorporated as a special purpose company with the ownership interest indicated here, in the event of being successful bidders.

Signature of the representative

Name:

ANNEX 2: BIDDER'S WEIGHTED ASSETS

BIDDER NAME: _____

REPRESENTATIVE: _____

For the most recent fiscal year. Figures in US dollars:

Name or legal name	Equity
Member 1	
Member 2	
.....	
Member <i>n</i>	

For the fiscal year prior to the most recent one. Figures in US dollars:

Name or legal name	Equity
Member 1	
Member 2	
.....	
Member <i>n</i>	

For the previous fiscal year. Figures in US dollars:

Name or legal name	Equity
Member 1	
Member 2	
.....	
Member <i>n</i>	

ANNEX 3. ECONOMIC PROPOSAL

BIDDER: _____

The requested Maximum Payment (MP) for daily availability:

In US dollars without decimal places, no VAT: _____ (in letters).

_____ % to be paid according to the evolution of the US dollar.

Signature of the bidder's representative

Name:

ANNEX 4: ECONOMIC-FINANCIAL PLAN (EFP) SUMMARY

BIDDER: _____

Composition of the initial investment:

- Shareholders Risk Capital: _____%
- Subordinated debt (detail foreseen source): _____%
- Senior debt (detail foreseen source): _____%
- Other (detail) _____%

Cost of Funds

- Internal rate of return expected by shareholders: _____% Per annum, on IU (indexed units)
- Rate of interest of senior debt: _____% Per annum, indicate currency
- Rate of interest of subordinated debt: _____% Per annum, indicate currency
- Rate of interest from other sources (detail each source): _____% Per annum, indicate currency

Debt Service Coverage Ratio of the senior debt:

- Minimum: _____ For the year _____
- Average: _____

Portion of the payment requested to be adjusted according to the dollar price _____

ANNEX 6. TECHNICAL PROPOSAL EVALUATION CRITERIA

TECHNICAL PROPOSAL QUALITY (100 POINTS)

1. Coherence of the whole plan of interventions (65 points)

It refers to the set of documents of clauses 18.4 Studies and Projects Phase, 18.5 Work Phase, as well as paragraphs A. and B. of clause 18.6 Maintenance Phase, all of them from the Administrative Terms and Conditions.

The Advisory Commission shall award a score to each bid according to the coherence of the program of interventions, which shall be drawn up taking into account the following aspects:

- **Schedule and methodology of work. (Maximum 20 points)**
Work Tasks Plan. The detail achieved shall be assessed, in particular as regards the milestones linked to the works of trenches, bridges and related works, having to submit the number of expected resources, equipment, labor, and materials. It shall contain a schedule of the work and the methodology to be used.
- **Major construction equipment. (Maximum 15 points)**
Full details of the equipment and machinery provided for in the Work Plan. The technical detail of each one shall be included. It shall be evaluated if it is their own equipment, a rental or if there is a plan to purchase. Supporting documentation shall be submitted to prove ownership, rental or purchase.
- **Plan for mobilization of equipment, supplies, and removal of existing materials. (Maximum 10 points)**
The submitted detail shall be assessed and the burden of anticipated resources, equipment, labor and/or subcontracts shall be shown. This shall be in line with the submitted schedule of the work and be consistent with the proposed methodology. It shall contain a schedule of mobilization and a description of all the proceedings.
- **Organizational structure. (Maximum 5 points)**
It shall present the Organizational Structure of the Project for each phase (Design/Work/Maintenance). A functional flowchart and the resumes of key personnel shall be submitted. The minimum positions detailed below shall be indicated:
 - Project Manager
 - Technical Representative
 - Design/Work/Maintenance Manager
 - Head of Studies and Projects/Work/Maintenance
 - Responsible for Logistics
 - Responsible for the Maintenance of Equipment and Machinery
 - Responsible for Engineering
 - Legal Representative
- **Routine Maintenance Plan (Maximum 5 points)**
The proposed maintenance plan shall be assessed in connection with the plan proposed by the Administration, as well as the materials means indicated for the fulfillment of the plan.
- **Plan of major interventions for the long-term maintenance. (Maximum 4 points)**
The detail of the plan and the coherence of the proposed schedule shall be assessed.
- **Safety and Environmental Plan. (Maximum 3 points)**
The OHSAS 18001 in force shall be valued.

- Environmental and social management system. (Maximum 3 points).
The ISO 14001:2004 in force shall be valued.

2. Level of detail and quality of the model of comprehensive management of infrastructure (35 points)

It refers to the document of paragraph b. of clause 18.6 of the Administrative Terms and Conditions.

- a) Excellent: 35 points
- b) Very Good: 30 points
- c) Good: 20 points
- d) Poor: 0 points

SCORE VALIDATION CRITERIA:

Each one of the members of the Technical Commission shall evaluate the technical proposal and assign a score to it. The score of the bid for this part shall be obtained as the simple average of the individual scores.

The technical proposal shall be deemed to be unacceptable if the average score is **less than 50 points**.

The Technical Committee may recommend to the Contracting Party, the non-acceptance of the submitted professionals. This would not imply the rejection of the bid.

ANNEX 7. MODEL OF BANK GUARANTEE AS BID MAINTENANCE GUARANTEE

Place and date

Ms. Director General of the Secretariat of the Ministry of Transport and Public Works.

Ms. Alba Florio, Ph. D.

Dear Madam,

We hereby become joint guarantors waiving the benefit of excussion of the company.....
by the sum of to support the maintenance of the bid for the International Public Tender
No. whose purpose
is.....

This deposit shall be kept for a period of days or until the submission of the compliance assurance contract.

The Bank undertakes to deliver to the Ministry of Transport and Public Works the guaranteed amount without the need for any judicial proceedings with the notice of delivery being sufficient.

The payment shall be made at the office of the Ministry of Transport and Public Works located at Calle Rincón N° 561, Montevideo.

A special domicile is set for the purposes of this document in Montevideo, No. The intervention of the Notary Public is requested

The Bank Guarantee shall have its signatures certified by a Notary Public. Such certification shall be made in a notarial paper, with the corresponding official seals to the appropriate amount of the guarantee. In the case of Corporations, the Notary Public shall make a complete control of them (place and date of incorporation, number, Page, Book, and Registration in the National Registry of Trade, Publications, Representation of Signatories, validity of the charges, decree authorizing its operation). In the event that the company acts by power of attorney, reconcile with said power of attorney and its validity.

