

TENDER SCHEDULE

Public tender for the installation, management, operation and maintenance of high-speed electronic communications networks in the Autonomous Region of the Madeira

1. OBJECT

1.1. The object of the present public tender is to conclude a contract for the installation, management, operation and maintenance of high-speed electronic communications networks, in the geographic areas comprised by the municipalities identified in Annex I.

1.2. For the purposes of this Procedure the following terms shall be defined as follows: "High-speed electronic communications networks" means packet switched electronic communication networks which, regardless of their transmission technology and treating this technology and the functions related to services independently, support the provision of electronic communication services to network termination points located at the entrances of the buildings of end-users, with a reference theoretical minimum speed for the end-users, downstream, of 40Mbps.

1.3. Without prejudice to the provisions of the following paragraph, the installation of high-speed communications networks encompasses the construction of ducts and other infrastructure necessary to house these networks.

1.4. Nevertheless, when physical infrastructure is involved, high-speed electronic communications networks should preferably be installed using existing ducts and other infrastructure housing electronic communications networks, whether belonging to the contracted entity or to a third party, whereas new network housing infrastructure should only be constructed where the use of such existing infrastructure is found not to be viable.

1.5. The high-speed electronic communications networks which are the object of this procedure should ensure coverage of at least 50% of the population¹ of the geographical area of each of the municipalities identified in Annex I, within 24 months from the date on which the contract takes effect, in accordance with the provisions of the Tender Specifications.

1.6. The operation of high-speed electronic communications networks requires the provision of a wholesale offer in accordance with paragraph 3. *infra* and other conditions specified in the Tender Specifications, without prejudice to compliance with the provisions of applicable legislation, particularly Law No 5/2004 of 10 February and Decree Law No 123/2009 of 21 May, as well as the obligations of a regulatory nature which are imposed by law.

1.7. The operation of high-speed electronic communications networks may also comprise the provision of a retail offer.

¹ As a reference "resident population" per municipality should be used (most recent estimate by INE (Statistics Portugal) as at the time of submission of the proposal).

2. Public funding

2.1. The high-speed electronic communications networks referred to in the present procedure may receive public funding, but are also required to have funding from other sources, according to percentages indicated in the proposal, which sources shall include, from equity or from debt.

2.2. For the purpose of obtaining public funding, the prevailing tenderer undertakes to present an application for Community funding, in accordance with applicable rules and regulations.

2.3. Ownership of the high-speed electronic communications networks covered by the present procedure which benefit from public funding in excess of two-thirds of the overall investment value shall be transferred in favour of the State upon the expiry of the contract under the terms established therein.

3. Network operation model

3.1. The high-speed electronic communications networks covered by the present procedure should be operated as an open network, whereby the provision of a wholesale offer shall be ensured, throughout the continuance of the contract, which offer shall be drawn up so as to guarantee access to said networks by all operators and providers of electronic communications services interested in their use for the provision of services to end-users.

3.2. The technical and financial conditions of wholesale access to each of the high-speed electronic communications networks shall comply at all times with the principles of transparency and non-discrimination, ensuring full compliance with competition rules.

4. Provision of electronic communications

4.1. In addition to the provision of wholesale services referred to in paragraph 3. *supra*, the tenderers may undertake the operation of the high-speed electronic communications network covered by the present procedure by providing retail services to end-users, provided that they make an unequivocal commitment to provide such services to all users who require them and who are encompassed by the network coverage area.

4.2. The provision of retail electronic communications services according to the preceding paragraph may be made directly or through a third party provider of electronic communications services.

5. Geographic Area

The object of this procedure covers the geographical area consisting of the municipalities identified in Annex I to the present tender schedule.

6. Contracting Entity

The contracting authority is the Portuguese State, with responsibility for the tender falling to the Ministry of Public Works, Transport and Communications. The tender is conducted by ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), having its head office at Av. José Malhoa, 12, 1099-017 Lisbon, email; concursosrngacores@anacom.pt, telephone: 00351 217211000, fax: 00351 21 7211001.

7. Authority making contracting decision

7.1. The contracting decision was taken by the Minister for Public Works, Transport and Communications, by order dated 23 July 2009.

7.2. By the order referred to in the preceding paragraph, ICP-ANACOM was appointed as inquiring entity, whereby it is charged, in this respect, with carrying out all acts of inquiry in the context of the present tender.

8. Panel

8.1. The procedure Panel consists of three members, one of whom shall preside, and two alternates, appointed by the Management Board of ICP-ANACOM.

8.2. The Panel shall have the following remit:

- a) Providing clarifications requested by the parties involved;
- b) Making an assessment of the proposals;
- c) Preparing evaluation reports on the proposals.

9. Documents comprised by the Public Tender procedure

The items comprised by the present procedure are as follows:

- a) Tender Schedule;
- b) Tender Specifications.

10. Consultation and supply of procedure documents

10.1. The component documents of the procedure are available free of charge on the website of ANACOM, at www.anacom.pt.

10.2. The component documents of the procedure will also be available for consultation at the head office of ICP-ANACOM between 9am and 4pm, from the publication date of the notice until the closing date for the submission of proposals.

11. Clarifications and corrections of the component documents of the procedure

11.1. Within the first third of the period allowed for the submission of tenders, interested parties may request, in writing, the clarifications required for their good understanding and interpretation of the component documents of the procedure.

11.2. Requests for clarification should be addressed to the Chair of the Panel and sent to the e-mail address or fax number identified in 6. *supra*.

11.3. The Panel shall provide clarifications in writing, prior to the end of the second third of the period allowed for the submission of proposals.

11.4. The Minister for Public Works, Transport and Communications may undertake the correction of errors or omissions of the component documents of the procedure under the terms of and within the period provided for in the preceding paragraph.

11.5. The clarifications and corrections shall be made available in electronic form on the website of ICP-ANACOM, at www.anacom.pt, and attached to the component documents of the procedure which are available for consultation.

11.6. The lack of response to any request for clarification by the deadline referred to in 11.3. *supra*, provided that the respective request was submitted prior to the deadline specified in 11.1. *supra*, shall determine the extension of the deadline for the submission of proposals, for a period which is no less than the respective delay.

11.7. The provisions of the preceding paragraph shall apply in the event that corrections are made to the component documents of the procedure which do not involve a substantial change thereto.

11.8. In the event that the corrections, regardless of when notification is made thereof, involve amendments of key parts of the component documents of the procedure, the deadline specified for the submission of proposals should be extended for a period which is not less than the time elapsed since the beginning of the submission period until the notification of the corrections.

11.9. Decisions relating to extensions of the deadline under this paragraph shall be made by the Minister for Public Works, Transport and Communications, and shall be made available in electronic form on the website of ICP-ANACOM, at www.anacom.pt and attached to the component documents of the procedure.

12. Errors and omissions in the tender specifications

12.1. By the end of the fifth-sixth of the period allowed for the submission of proposals, interested parties shall submit a list identifying, in express and unequivocal terms, the errors and omissions detected in the tender specifications and relating to:

- a) Aspects or data which is found to be contrary to reality; or
- b) Type and quantity of provisions strictly necessary for the full execution of the object of the contract to be concluded; or

c) Technical conditions for the implementation of the contract to be concluded which are not deemed feasible.

12.2 The list referred to in the preceding paragraph must be submitted to ICP-ANACOM, using the e-mail address or fax number identified in 6 *above* and addressed to the Minister for Public Works, Transport and Communications.

12.3. The lists identifying the errors and omissions detected by stakeholders shall be made available in electronic form on the website of ICP-ANACOM, at www.anacom.pt, and attached to the component documents of the procedure which are available for consultation.

12.4. Prior to the termination of the period allowed for the submission of proposals, the Minister for Public Works, Transport and Communications shall comment on the errors and omissions identified by the participants, whereby all those not expressly accepted shall be considered rejected.

12.5. The presentation of the list referred to in 12.1. *supra*, by any participant, shall render the deadline for the submission of proposals suspended as of the end of the fifth sixth of the period allowed until the publication of the decision of acceptance described in the preceding paragraph or, if no explicit decision until the end of that period.

12.6. The decision provided for in 12.4. *supra*, shall be made available in electronic form on the website of ANACOM, at www.anacom.pt, and attached to the component documents of the procedure which are available for consultation.

13. Nature of the tenderers and contracting parties

13.1 Tenders may be entered by all natural or legal persons, who are constituted or yet to be constituted, including:

- a) Municipal Councils or associations of Municipal Councils
- b) Municipal and inter-municipal public companies;
- c) Regional and Local Development Agencies or Consortia;
- d) Any private undertaking.

13.2. Tenders may be presented by groups of physical or legal persons, including where there is no legal means of association at the time of the proposal submission.

13.3. The presentation of proposals by the undertakings specified in points a) b) c) of paragraph 13.1 shall only be permitted where such entities are, individually or jointly, eligible to undertake activities throughout the geographical area concerned, where applicable.

13.4. Members of the consortium are jointly and severally liable before the contracting authority for the timely fulfilment of all obligations arising from the proposal.

13.5. An undertaking may not be included in more than one bidding consortium and may not compete simultaneously individually and as part of a consortium.

13.6. Any alteration to the composition or leadership of the tendering consortium requires authorization by the contracting authority, under penalty of the exclusion of the proposal.

13.7. The undertakings comprising the consortium shall appoint a Common Representative for the performance of any acts relating to this procedure, including the signature of proposals, whereby, to this purpose, powers of attorney issued by each member of the consortium must be provided.

13.8. The contract for the installation, management, operation and maintenance of high-speed electronic communications networks will necessarily be concluded with a company which, in the provision of electronic communications networks and, where appropriate, services, meets the requirements of Law No 5/2004 of 10 February, whereby all tenderers are bound to ensure the fulfilment of these conditions prior to the conclusion of the contract.

13.9. In case of award, the members of the prevailing consortium, and only these members, are bound to constitute a company under the terms of the preceding paragraph.

13.10. Where award is made to a consortium of undertakings, any alteration in the shareholding composition of the contracted party requires the prior authorization of the contracting authority, which requirement shall apply throughout the continuance of the contract.

14. Impediments

14.1. Undertakings subject to any of the impediments set out in article 55 of the Public Procurement Code are prohibited from tendering or from forming part of any tendering consortium.

14.2. The occurrence of any of the impediments mentioned in the previous paragraph shall determine the immediate exclusion of the tenderer, irrespective of the current stage of the tender.

14.3. In the case of consortia, in the event that any of the comprising companies are subject to any of the impediments mentioned in 14.1., such occurrence shall prevent the admission of the tendering consortium to the tender or shall determine its immediate exclusion.

15. Inspection of locations of network installation

The tenderers may not plead ignorance of the conditions of the locations for the installation of the high-speed electronic communications networks covered by the present procedure and may not apportion any liability in this respect to the contracting authority.

16. Documents comprising the proposals

16.1. Proposals shall consist of the following documents:

- a)** Declaration of the tenderer accepting the contents of the Tender Specifications, in accordance with Annex II to the present tender schedule.
- b)** Document containing the details of the financing plan of the investment phase of the tenderer (investment in high-speed electronic communications networks), which identifies the sources of equity and debt financing and sets out the amount of public funding that the tenderer proposes to apply for, its percentage in terms of the total value of planned investment, as well as the guarantees offered and conditions of possible intervention by financing entities;
- c)** Economic-Financial Plan prepared in accordance with the structure of the Tender Specifications, including (i) the characterization of the geographical area covered; (ii) Descriptive submission of the business plan and critical factors for success; and (iii) an economic and financial feasibility study, with express indication of the investment value by Municipality (Concelho) and Parish (Freguesia) and the value of investment detailed for all components, network elements, passive and active equipment to be used in the construction of the networks;
- d)** Technical Plan, prepared in accordance with the structure of the Tender Specifications including (i) an indication of the programme of works and schedule for the design, project preparation, construction and operation of the networks, (ii) indication of the adopted network technology and topology, (iii) indication of the proposed degree of population coverage by municipality and the time it will take to achieve the minimum coverage requirements set out in paragraph 1.5. *supra*; (iv) indication of guaranteed speeds; (v) indication of the evolution in the levels of population coverage by municipality, in the 5 years subsequent to the initial period of 24 months; and (vi) indication of the way in which operational management and network maintenance will be organised;
- e)** Document containing the terms and conditions of the wholesale offer of access to the networks drawn up in accordance with the structure of the Tender Specifications;
- f)** Any other documents that the tenderer sees fit to submit by being deemed relevant to the assessment of their proposal.

16.2. Competing consortia and undertakings which do not meet the conditions specified in 13.8. *supra*, shall further present:

- a)** Declaration of undertaking, in case of award, to form a company and to comply with the provisions of articles 19 and 21 of Law no 5/2004 of 10 February;
- b)** If applicable, draft articles of association of the public limited company to be constituted, to which content they shall be expressly bound.

16.3. In the event that the tenderer intends to be bound to the operation of electronic communications networks through the provision of retail services to end-users, under the terms of paragraph 4. *supra*, it should give consideration to this activity in its proposal,

particularly with respect to the Economic-Financial Plan referred to in point c) of paragraph 16.1 *supra*, and should further present:

a) Documentation containing the terms and conditions of the retail provision of electronic communications services, including the unequivocal undertaking that such services shall be provided to all users who request it, provided that such users are covered by the area of network coverage;

b) In the event that the retail services of electronic communications are provided by means of a third party:

i) A statement, containing a description of the contractual relations to be established and identification of the entities to be subcontracted;

ii) Declarations subscribed to by the entities to be subcontracted in which they are undertake, in the event of award, to conclude a contract with the tenderer for the execution of the subcontracted activities, in accordance with the conditions set out in the proposal.

16.4. The documents comprising the proposals shall be written in Portuguese, except for documentation of a highly technical nature, including catalogues, certificates, references, technical manuals and the other similar documentation, which may be submitted in English.

17. Deadline for submission of tenders

Proposals must be submitted no later than 4pm on the 47th day following the date on which notice of the present tender is submitted for publication in the Official Journal (Diário da República) and in the Official Journal of the European Union.

18. Procedures for presentation of proposals

18.1. Proposals must be submitted in paper form at head office of ICP - ANACOM, located at the address given in 6 *supra*. The documents comprising the proposals must be enclosed in a sealed opaque envelope, on the face of which must be written the word "Proposta" (proposal), with indication given of the name of the tendering consortium, where a name has been adopted, or otherwise its composition, or the company name of the tenderer, as well as the name of the contract to be concluded.

18.2. Inside the envelope containing the proposal, tenderers must submit:

a) two paper copies (one marked as the original, which shall prevail over the other paper copy and over the electronic copies, and another marked as a copy). The first page of each plain volume must indicate the total number of pages of this issue and all pages must be numbered.

b) two electronic copies (one of which must be an editable version and the other non-editable) which reproduce the documents submitted on paper.

18.3. Any false representation made in the documents or statements contained therein shall render the persons responsible liable to the penalties set out in law for crimes of false statements whereby the tenderer, in addition, and without prior criminal proceeding, shall be excluded from the tender, irrespective of its current stage, or shall forfeit the award in the event that the concession has already been awarded.

19. Procedures for delivery of proposals

19.1. The envelope containing the documents comprising the proposal or the application may be delivered directly or sent by registered mail.

19.2. If the proposal is sent by post, the tenderer has solely responsible for any delays which may occur, whereby proposals which are received after the established closing date and time shall not be considered as being submitted in a timely manner, even where such proposals have been posted at an earlier time.

19.3. The receipt of the envelopes is recorded, with note made of the date and time in which they are received and in the case of direct delivery, the identity of the persons making delivery will be recorded and a receipt of delivery provided.

20. Presentation of variant proposals

The presentation of variant proposals is not admitted.

21. Duration of the obligation to maintain proposals

The obligation to maintain proposals has a duration of 180 days.

22. Public Act

22.1. The public act of opening the proposals does not involve any qualitative assessment thereof, nor does it involve any decision on their admissibility, whereas the panel shall only verify their presentation by the tenderers pursuant to the conditions stipulated in the present procedure schedule.

22.2. The public act of opening the tenders shall take place at the head office of ICP - ANACOM, located at the address given in 6. *supra*, at 10am on the first working day following the deadline set for the submission of proposals.

22.3. If, with good grounds, it is not possible to hold the public act of opening the proposals on the date or at time referred to above, the Panel shall give notice on the website of ICP-ANACOM of the decision to reschedule the date of the public act, as well as the new date for its execution, which will take place within five (5) days following the deadline for the submission of proposals.

22.4. The public act may also be attended by anyone who wishes, but tenderers and their representatives may only act where they are properly accredited for this purpose, with a

limit of two persons per tenderer, the credentials for which purpose shall include the name, identity card or passport number, profession and quality in which they act.

22.5. The public act shall be opened by the Chair of the Panel and shall be performed according to the following procedure:

- a) Identification of the procedure by reference to the respective notice;
- b) Opening, in order of receipt, of the envelopes containing the proposals, reading the list of tenderers in the same order;
- c) Delivery of the credentials of the representatives of tenderers;
- d) Presentation by tenderers of any complaints due to their non-inclusion in the list of tenderers, for which purpose they shall present the receipt given upon delivery of the proposal or the postal document proving timely receipt of the outer envelope;
- e) Where a complaint is submitted in accordance with the previous point, the Panel shall interrupt the proceedings of the public act to ascertain the fate of the envelope;
- f) If the envelope is not found, the Panel shall set a new deadline by which the complaining tenderer may submit their proposal, informing those present of the date and time for the resumption of proceedings;
- g) If the envelope is found prior to the expiry of the deadline stated in the preceding point, the party concerned shall be informed immediately, whereby it shall be opened upon resumption of the proceedings of the public act;
- h) Verification of the readability of the electronic versions delivered by tenderers;
- i) Establishment, where applicable, by the Panel of a new deadline for the submission of electronic versions that are considered illegible, with notification given to those present of the date and time for the resumption of proceedings;

22.6. Having complied with the provisions of the preceding paragraphs, the chair of the Panel shall close the public act, for which minutes shall be written, which minutes shall be signed by the Secretary and the Chair of the Panel.

22.7. At least two members of the Panel shall initial the proposals on the first page of each plain volume, as well as any documentation which may be unattached.

22.8. During the public act, the Panel may seek clarifications as it sees fit from any tenderer, which clarifications shall be provided immediately.

22.9 In the event that the public act cannot be concluded in a single session or if it is suspended for any reason, the documentation contained in envelopes already opened and the envelopes which have not yet been opened shall be grouped, identified and sealed.

22.10. The determinations of the Panel shall be taken by majority vote.

22.11 The Panel may, where deemed necessary, meet in private session, to discuss any complaint lodged, for which purpose the public act may be interrupted.

22.12. Within 8 (eight) days following the closure of the public act, a copy of the respective minutes shall be sent to all admitted tenderers, as well as the non-editable versions of the other proposals in electronic form.

23. Analysis of proposals

The proposals will be analysed by the Panel, which may be assisted by technicians as seen fit, which technicians, however, shall not have the right to vote.

24. AWARD CRITERIA

24.1 The award will be made according to the criterion of the proposal that is the most economically advantageous, pursuant to the assessment model set out in Annex III to the present Tender Schedule, wherein the following factors are taken into account:

- a) Amount of public funding required and percentage of investment made by the tenderer through equity or debt, which is given a weighting coefficient of 60%;
- b) Technical quality of the proposal, which is given a weighting coefficient of 15%;
- c) Quality of Economic-Financial Plan, which is given a weighting coefficient of 15%;
- d) Quality of the wholesale offer of access to networks, which is given a weighting coefficient of 10%

24.2. Pursuant to the Public Procurement Code, any failure to present the items stipulated in the annexes to the Tender Specifications or their failure to comply with the provisions thereof shall constitute grounds for immediate exclusion.

25. Preliminary first report, prior hearing and final first report

25.1. Having analysed the proposals, the Jury shall draw up a reasoned preliminary report, pursuant to article 146 of the PPC, proposing the ranking of presented proposals and indicating the two tenderers whose proposals, having the best ranking, are to be selected for a negotiations stage in which one will be selected for award.

25.2. The panel shall also propose, in the preliminary report referred to the previous point and on a reasoned basis, the exclusion of proposals whose analysis reveals the existence of

the circumstances referred to in paragraph 2 of article 70 and in paragraph 2 of article 146 of the PPC.

25.3. The preliminary report shall be sent to all bidders, who may comment within 10 days under the right to prior hearing.

25.4. Upon conclusion of the prior hearing, the Panel shall submit the final report, prepared in accordance with article 148 of the PPC, to the Minister for Public Works, Transport and Communications, for the purpose of selecting proposals for the negotiation stage.

25.5. The decision on the selection of the proposals for the negotiations stage shall be set out in an order of the Minister for Public Works, Transport and Communications, and shall be notified in writing to all tenderers.

26. Purpose of the negotiation stage

26.1. The negotiations stage has the aim of achieving improvements to the selected proposals and shall have as its final outcome the draft contract, and its annexes, for the installation, management, operation and maintenance of high-speed electronic communications networks.

26.2. The negotiations shall centre on the aspects of the proposals regarding the execution of the contract to be concluded.

26.3. The outcome of the negotiations may not result in conditions which are less favourable to the public contractor than those which were initially proposed.

26.4. For the purposes of the preceding paragraph, a proposal shall be deemed as having conditions which are less advantageous for the public contractor where, upon conclusion of the negotiation stage, an overall score is obtained which is lower than that obtained for the purpose of selection for this phase.

26.5. Negotiations will not be conducted electronically.

27. Procedures for the negotiation stage

27.1. The tenderers selected for the negotiation stage shall be invited to the first session of negotiations, with notice of at least 3 (three) days, by fax sent by the Panel, which invitation shall comprise the place, date, time and agenda of the session.

27.2. Notification of the remaining sessions may be given orally, in which case it shall be recorded in the minutes of the meeting at which this occurs.

27.3. The negotiations shall be held separately with the selected tenderers.

27.4. The negotiations shall take place between the Panel and the delegations representing the tenderers, whereas the Panel may determine, within the bounds of reason, the maximum number of people who may participate in each session.

27.5. With respect to each negotiating session, minutes shall be taken, which minutes shall be signed by the Chair or acting Chair of the Panel and by the head of the tenderer's delegation.

27.6. The minutes shall contain, as a minimum, reference to the place, date and time of commencement and closure of the meeting, as well as the names of those present and a summary of the views expressed and conclusions reached.

27.7. Once signed, a copy of each set of minutes shall be delivered to the head of the delegation of the respective tenderer.

27.8. The minutes and documents exchanged between the Panel and the tenderers shall be considered restricted during the continuance of the negotiations.

27.9. In the first session of negotiations, the Panel shall provide the tenderers with a schedule of the meetings it intends to hold with the tenderers, setting their number and content, as well as the dates on which the parties shall exchange the preparatory documents for such meetings.

27.10. The Panel may terminate negotiations with any tenderer, where the results of negotiations with the tenderer are not deemed satisfactory or if the responses given to the Panel are inadequate, evasive or not submitted according to the established deadlines.

27.11. Termination of the negotiations pursuant to the preceding paragraph shall not give the competitor the right to any compensation.

28. Final versions of the proposals

Upon conclusion of the negotiations, the Panel shall notify the tenderers that, within the deadline established therefor, they shall submit the final and full versions of their proposals.

29. Preliminary second report, prior hearing and final second report

29.1. After evaluating the final versions of proposals, the Panel shall draw up a reasoned preliminary second report, which shall propose the ranking of such proposals, as well as the exclusion of any proposal which are in violation of the provisions of 26.3 and 26.4..

29.2. The second preliminary report shall be sent to all tenderers, who may comment within 10 days under the right to prior hearing.

29.3. During the prior hearing stage, each tenderer shall have access to the minutes of the negotiating sessions held with the other tenderer and to the information and communications of any kind which the other tenderer provided to the Panel and the final version of the proposal presented.

29.4. Upon conclusion of the prior hearing, the Panel shall submit the final second report to the Minister for Public Works, Transport and Communications, for the purposes of making the award.

29.5. The decision to award shall be made by order of the Minister for Public Works, Transport and Communications, and shall be notified to all bidders in writing.

29.6. Jointly with the notification of the award of the contract, the prevailing tenderer shall be notified that it shall:

- a) Present the authorising documents required under paragraph 30.;
- b) Provide the deposit guarantee;
- c) Confirm within the period established for this purpose, where applicable, the undertakings made by third parties concerning the attributes or terms or conditions of the prevailing proposal.

30. Authorising documents

The prevailing tenderer shall deliver, within 20 days of notification of the award decision:

- a) The authorising documents referred to in paragraph 1 of article 81 of the Public Procurement Code;
- b) A declaration referred to in paragraph 5 of article 21 of Law No 5/2004 of 10 February.

31. Deposit

31.1. The prevailing tenderer shall provide a deposit amounting to 0.5% of the investment, the purpose of which is to guarantee the conclusion of the contract and precise and timely compliance with all legal and contractual obligations:

- a) By deposit in cash or in securities issued or guaranteed by the Portuguese State in favour of ICP-ANACOM;
- b) By bank guarantee or insurance bond.

31.2. The prevailing tenderer is bound to provide the deposit within 10 (ten) days of notification of the decision to award the contract, and shall provide proof of said provision to the contracting authority on the next day.

31.3. The bond shall be valid for a period of 5 years, counted from the date on which the contract enters into force, and will be progressively released under the following terms:

- a) 50%, after 24 months have elapsed from the date on which the contract enters into force, provided that the obligations relating to the installation of the contracted electronic communications networks are demonstrated as being fulfilled;
- b) 50%, 5 years following the date on which the contract enters into force, provided that there is verified compliance with the obligations thereunder.

32. Reasons for annulment of the procedure and non-award

32.1. The contracting authority may cancel the tender or refuse to make an award in the event that, without prejudice to other cases set out in law:

a) According to the assessment of the objectives to be pursued, the results of the analyses and evaluations performed thus far, or the results of negotiations conducted with tenderers selected for this stage do not correspond to a satisfactory degree with the underlying purpose of this tender, especially where the public funding requested is deemed unsustainable;

b) Due to unforeseen circumstances, there is a need to change fundamental aspects of the documents of the procedure subsequent to the expiry of the deadline for the submission of Proposals;

c) Changed circumstances following the closing date for the submission of proposals, with respect to the premises underlying the decision to contract, which justify such cancellation or refusal;

32.2. In the case of b) above, a new procedure shall be initiated within 6 (six) months from the date of notification of the decision not to award.

32.3. The decision to cancel the procedure or not to award and the reasons therefor, shall be notified to all tenderers and shall determine the reimbursement of all costs incurred by the tenderers, up to 100,000 euros, with the respective proposals prepared in accordance with the provisions of paragraph 4 of article 79 of the Public Procurement Code.

32.4. For the purpose of the provisions of point d) of paragraph 1 of article 79 of the Public Procurement Code, the possibility of financing through European Union funds is a premise underlying the decision to contract.

32.5. Pursuant to paragraph 1 of article 80 of the Public Procurement Code, the non-allocation of funding envisaged in the previous paragraph shall determine the revocation of the decision to contract.

33. Conclusion of the contract

33.1. The contract to be concluded as a result of the present procedure shall be set out in writing under the terms of article 94 of the Public Procurement Code, by drawing up a list of clauses on paper.

33.2. The prevailing tenderer shall be liable for all costs and expenses incurred in the conclusion of the contract, including stamp duty.

33.3. The contract shall be concluded subject to a condition having suspensory effect, whereas the commencement of its execution shall depend on the approval of the application for European Union funds submitted by the prevailing tenderer for the purpose of obtaining the required public funding.

33.4. The prevailing tenderer shall not be entitled to compensation as a result of the effects of the contract not being produced, under the terms of the preceding paragraph, without prejudice to paragraph 4 of article 79 of the Public Procurement Code.

34. Applicable Legislation

In all matters where there is no specific provision made in the present Schedule, the regime set forth by the Public Procurement Code, as approved by Decree-Law No 18/2008 of 29 January, shall apply.

ANNEX I

Identification of the municipalities which comprise the geographical area covered by the tender in the Autonomous Region of the Madeira

NUTS II	Municipality
Autonomous Region of the Madeira	Porto Moniz
Autonomous Region of the Madeira	Santana
Autonomous Region of the Madeira	São Vicente
Autonomous Region of the Madeira	Calheta
Autonomous Region of the Madeira	Porto Santo

Annex II
Declaration Template

(referred to in point *a*) of paragraph 1 of article 57 of the PPC)

- 1 - _____, acting as legal representative of _____ [*company, tax identification number and registered office, or, in the case of a tendering consortium, the companies, tax identification numbers and registered offices*], having full knowledge of the Tender Specifications regarding the execution of the contract to be concluded following the procedure of _____ [*name or reference to the procedure in question*], declares, by solemn affirmation, that his/her representee³ undertakes to execute the cited contract in accordance with the contents of above mentioned tender specifications, whereby he/she declares acceptance, without reservation, of all its clauses.
- 2 - Declares that it will execute the contract in accordance with the terms set out in the following documents, which in annex⁴:
- a)* [...];
 - b)* [...].
- 3 - Declares further that privileged jurisdiction is waived and that, in all that respects the execution of the said contract, submission shall be made to the provisions of applicable Portuguese legislation.
- 4 - Further declares, by solemn affirmation, that the tenderer:
- a)* is not bankrupt or being wound up, is having their affairs administered by the courts, has entered into an arrangement with creditors, suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a pending procedure;
 - b)* has not been convicted of any offence concerning their professional conduct by a judgment which has the force of *res judicata*,⁵ [the members of its boards of directors and management have not been convicted of any crime concerning their professional conduct^{6,7}];
 - c)* has not been the object of a grave professional disciplinary procedure⁸ [the members of its boards of directors or management have not been object of a grave professional disciplinary procedure^{9,10}];

² Applies only to tenderers who are legal persons.

³ Where the tenderer is a natural person, the expression "his/her representee" is struck.

⁴ List all the documents comprising the proposal, in addition to this declaration, pursuant to points *b*), *c*) and *d*) of paragraph 1 and paragraphs 2 and 3 of article 57.

⁵ Indicate whether he has been rehabilitated.

⁶ Indicate whether he has been rehabilitated.

⁷ Declare whether the tenderer is a physical or legal person

⁸ Indicate whether he has been rehabilitated.

⁹ Indicate whether he has been rehabilitated.

¹⁰ Declare whether the tenderer is a physical or legal person

- d) has fulfilled obligations relating to the payment of social security contributions in Portugal (or in the State of which he is a national or in which his main establishment is located)¹¹;
- e) has fulfilled obligations relating to the payment of taxes in Portugal (or in the State of which he is a national or in which his main establishment is located)¹²;
- f) has not been the subject of the complementary sanction under point e) of paragraph 1 of Article 21 of Decree-Law 433/82 of 27 October, in Article 45 of Law No 18/2003 of 11 June, and in paragraph 1 of article 460. of the Public Procurement Code¹³;
- g) has not been the subject of the complementary sanction under point b) of paragraph 1 of article 627 of the Labour Code¹⁴;
- b) has not been the subject, in the past two years, of an administrative sanction or judiciary penalty for failing to declare the employment of persons who are legally subject to the payment of taxes and social security contributions under the terms of the regulations that so require this in Portugal (or in the State of which he is a national or in which his main establishment is located)¹⁵;
- i) has not been condemned by a judgment which has the force of res judicata for any of the following crimes¹⁶ [the members of its boards of directors and management have not been convicted for any of the following crimes¹⁷]¹⁸:
- i) Participation in activities of a criminal organisation, as defined in paragraph 1 of article 2 of Joint Action 98/733/JHA of the Council;
 - II) Corruption, within the meanings of article 3 of the Act of the Council of 26th May 1997 and of paragraph 1 of article 3 of Joint Action 98/742/JHA of the Council;
 - iii) Fraud, within the meaning of article 1 of the Convention on the protection of the financial interests of the European Communities;
 - iv) Money laundering, within the meanings of article 1 of Directive No 91/308/EEC of the Council of 10th June 1991, on the prevention of the use of the financial system for the purpose of money laundering.
- j) didn't give, in any way, directly or indirectly, technical support or advice in the preparation and drafting of the component documents of the procedure

¹¹ Declare according to the situation.

¹² Declare according to the situation.

¹³ In the event of this sanction, indicate whether the period of ineligibility has been completed

¹⁴ In the event of this sanction, indicate whether the period of ineligibility has been completed

¹⁵ Declare according to the situation.

¹⁶ Indicate whether he has been rehabilitated

¹⁷ Indicate whether he has been rehabilitated

¹⁸ Declare whether the bidder is a physical or legal person

- 5 - The declarant is fully aware that any false declaration shall determine, depending on the case, the exclusion of the presented proposal or the forfeiture of the award that may occur and that such false declaration constitutes a serious offence, under the terms of article 456 of the Public Procurement Code, which may determine the application of the sanction of privation of the right to participate, as a candidate, as tenderer or as a member of any group of tenderers in any procedures adopted to establish public contracts, without prejudice to a report being made to the competent authority for the purposes of criminal procedures.
- 6 - When the contracting authority so requests, the tenderer is bound, pursuant to Article 81 of the Public Procurement Code, to submit the statement set out in Annex II of said Code, as well as the documents evidencing compliance with the circumstances described in points *b), d), e)* and *i)* of paragraph 4 of this statement.
- 7 - Furthermore, the declarant states that he is fully aware that failure to submit the documents requested under the terms of the previous paragraph, due to reasons for which he can be held accountable, shall determine the cancellation of the award which may be made with respect to the presented proposal and constitutes a serious offence under the terms of article 456 of the Public Procurement Code, which may determine the application of supplementary penalty by his being barred from participating as a candidate, as tenderer or as a member of group of tenderers in any procedures adopted for the establishment of public contracts, without prejudice to a report being made to the competent authority for the purposes of criminal procedures.

[Local], [Date] [Signature¹⁹]

¹⁹ Under the provisions of paragraphs 4 and 5 of article 57.

Annex III

Model for evaluation of proposals

1. Evaluation criteria

The evaluation criterion is the most economically advantageous proposal taking into account the factors set out in paragraph 24. of the Tender Schedule and which are presented below.

2. General Formula:

$$PG = F1 * [60\%] + F2 * [15\%] + F3 * [15\%] + F4 * [10\%]$$

Components:

PG - Overall Score of the Tenderer

F1 - Amount of public funding required and percentage of investment supported by the tenderer through equity or debt;

F2 - Technical quality of the proposal;

F3 - Quality of the Economic-financial Plan;

F4 - Quality of wholesale offer of access to the networks.

3. Rules

3.1. The Tenderer Score (PC) and scores of each assessment factor shall be rounded to the third decimal place.

4. Scoring of each factor

The assessment of the proposals in terms of each of the assessment factors set out in paragraph 24. of the Tender Schedule, is incumbent upon the Panel, which shall use a scale of 0 to 100 to score the proposal in each of the factors, whereby scores of 50 and 70 correspond to Neutral and Good levels respectively, as defined in the following tables.

The scoring of the proposal in each factor or sub-factor will be obtained by application of the MACBETH method²⁰.

It is noted that no value function was defined which allows the direct determination of the partial score corresponding to the *performance* of the proposals in each factor/sub-factor. In particular, the relationship between the values of public funding required and the score for factor 1.1 is not therefore necessarily linear.

²⁰ see, for example, Bana e Costa, C.A., Ferreira, J.A.A., Corrêa, E.C. (2000), "Metodologia Multicritério de Apoio à Avaliação de Propostas em Concursos Públicos", in C.H. Antunes, L. Valadares Tavares (eds.), *Casos de Aplicação da Investigação Operacional*, McGraw-Hill, Lisboa (336-363); ou, Bana e Costa, C.A., Corrêa, E.C., De Corte, J.M., Vansnick, J.C. (2002), "Facilitating bid evaluation in public call for tenders: a socio-technical approach", *OMEGA: The International Journal of Management Science*, 30, 3 (227-242)

F1 - Amount of public funding required and percentage of investment made by the tenderer through equity or debt:

FACTORS	SUB-FACTORS	INDICATORS	NEUTRAL	GOOD
Factor 1.1. Percentage of public funding required for investment (95%)		outright grant to be requested for investment in high-speed electronic communications networks	5m euros	4 million
Factor 1.2 Percentage of investment financed without recourse to public funds (5%)			33%	67%

F2 - Technical quality of the proposal:

FACTORS	SUB-FACTORS	INDICATORS	NEUTRAL	GOOD
Factor 2.1 Project, Network Technology and Topology (9%)	Sub-Factor 2.1.1 Project (29%)	Programme of works and schedule for the design, project preparation, construction and operation of the network	The proposal presents the programme of works and schedule for the design, project preparation, construction and operation of the network, in conformance with the Technical Plan	The proposal presents the programme of works and schedule for the design, project preparation, construction and operation of the networks, in conformance with the Technical Plan and in a way that is consistent and reasoned.
	Sub-Factor 2.1.2 Network Technology and Topology (71%)	Description of: - The network technology - Network topology with simplified diagram	Presents a comprehensive description of the network technology and topology adopted	Presents a comprehensive description of the network technology and topology adopted in a way that is consistent and reasoned
Factor 2.2 Coverage Requirements (55%)	Sub-Factor 2.2.1 Coverage rate (60%)	Level of population coverage for each of the municipalities within 24 months from the beginning of the award of the project	The rate of population coverage in each municipality is equal to 50% of the population	The rate of population coverage in each municipality is equal to 80%
	Sub-Factor 2.2.2 Evolution of coverage in the first 24 months (35%)	A detailed plan of the evolution of population coverage for each municipality and respective six-monthly timetable in the first 24 months	Coverage reaches 50% of the population after 24 months	Coverage reaches 50% of the population after 12 months

	Sub-Factor 2.2.3 Evolution of coverage in the five years following the initial 24 months (5%)	Plan of the evolution of population coverage for each municipality and respective timetable in the five years following the first 24 months	Coverage reaches 65% of the population at the end of the five years following the initial 24 months	Coverage reaches 90% of the population at the end of the five years following the initial 24 months
Factor 2.3 Network (36%)	Sub-Factor 2.3.1 Network Performance (50%)	Effective maximum downstream speeds provided within 24 months	The end-user speeds in each municipality equal 40 Mbps	The end-user speeds in each municipality equal 100 Mbps
	Sub-Factor 2.3.2 Operational management and maintenance of the Network (50%)	Indicates: - The management and supervision systems of the systems and network to be implemented; - The organization, qualification and location of the operations and maintenance teams for the systems and network; - A strategy for action at an operational and maintenance level with respect to the behaviour of systems and network; - The technical and logistical resources supporting the operations and maintenance teams; - Indication of the response times in case of failures	Presents the organization of the operational management and maintenance of the network describing each item.	Presents the organization of the operational management and maintenance of the network describing each of the items in a reasoned and consistent manner.

F3 - Quality of the Economic-Financial Plan:

FACTORS	SUB-FACTORS	INDICATORS	NEUTRAL	GOOD
<p>Factor 3.1 Quality of the Business Plan (72%)</p>	<p>Sub-Factor 3.1.1 (10%) Characterization of the geographical area covered by the tender</p>		<p>Presents general characterization of the area covered by the tender, including from a geographic, demographic and economic perspective.</p> <p>Characterises population access to electronic communications services, the electronic communications networks available and the ducts and other existing infrastructure, identifying possible bottlenecks.</p> <p>Presents an evolutionary scenario of the situation of the area in question, over the short and medium term, duly incorporated with respect to exogenous variables.</p>	<p>Presents the elements listed in the neutral level in a detailed and reasoned manner, using studies or surveys which the tenderer carried out, placed in annex to the proposal.</p> <p>Presents more than one evolutionary scenario of the situation of the area in question, over the short and medium term, duly incorporated with respect to exogenous variables.</p>
	<p>Sub-Factor 3.1.2 (61%) Descriptive submission of the business plan and critical factors for success</p>		<p>Presents the base options defined in terms of its business strategy and the detail of the most relevant aspects associated with the activity which it proposes to conduct with respect to the operation of high-speed electronic communications networks, in particular characterizing potential customers, suppliers, partners, use of subcontracting.</p> <p>Indicates the critical factors for success of the business plan.</p>	<p>Presents the elements listed in the neutral level in a detailed and reasoned manner, with respect to its business strategy and activity to be conducted and other items demonstrating the degree of business maturity, including documentation giving evidence of any pre-agreements, forward commitments or agreements already concluded, in particular, for the procurement of services (retail offer of electronic communications and other services), or in still other areas (such as technology transfer, construction and financing).</p> <p>The critical success factors identified are consistent with the business plan and their potential impact is identified.</p>

	Sub-Factor 3.1.3. (29%) Availability of retail provision		No commitment to retail provision is presented	Commitment to the retail provision of electronic communications services by the tenderers or by sub-contracted entities, in accordance with provisions of the Tender Schedule,
Factor 3.2 Quality of analysis of project feasibility and risk (28%)			Presents, correctly and in a reasoned manner, in accordance with current legislation, investment plans (overall project investment), operating costs, revenues, as well as profit and loss and cash flow forecasts, forward estimates and the NPV, the IRR and the period for recovery of capital. Presents sensitivity analysis summary.	Presents the information listed in the neutral level and identifies, in a reasoned manner, the various critical parameters of the project presenting the sensitivity analysis combining the various critical parameters in extreme situations.

F4 - Quality of wholesale offer of access to the networks:

FACTORS	SUB-FACTORS	INDICATORS	NEUTRAL	GOOD
Factor 4.1 Overall quality of the wholesale offer (50%)	Sub-Factor 4.1.1 (52%) Diversity of wholesale offer modalities	Wholesale offer modalities provided	Bitstream access	Bitstream access, physical access to the various network elements and access to the ducts possessed by the tenderer
	Sub-Factor 4.1.2 (32%) Simultaneous support of multiple beneficiaries for selection by each end-user, throughout the network	Capacity for the simultaneous provision of services by more than one entity throughout the network	Two	Ten
	Sub-Factor 4.1.3 (16%) Diversity of network access points	Flexibility in creation of network access points	A single point to access the entire area covered by the tender	In addition to a single point, capacity to provide additional access points upon request
Factor 4.2 Information provided in the wholesale offer (10%)	Sub-Factor 4.2.1 (24%) Description of the technical characteristics of the network, including the description and location of the access points and, in the case of access to ducts, poles and associated infrastructure, their routes.	Technical characteristics of the network	Description of all aspects mentioned in the sub-factor	Description of all aspects mentioned in the sub-factor in a consistent and well reasoned manner
	Sub-Factor 4.2.2 (13%) Description of the different interfaces providing connection between the networks and their technical specifications, including APIs	Interfaces	Description of the interfaces and respective technical specifications	Description of the interfaces and respective technical specifications, with the adoption of standardised interfaces

	Sub-Factor 4.2.3 (44%) Description of the procedures and conditions governing access to and use of infrastructure	Procedures	Description of the procedures and conditions governing access to and use of infrastructure	Description of the procedures and conditions governing access to and use of infrastructure, giving evidence of how access is efficient and non-discriminatory and competitive conditions are ensured for the beneficiaries
	Sub-Factor 4.2.4 (19%) Existence of complete georeferenced record of the coverage of the network	Record	Guaranteed provision of a complete georeferenced record of the coverage of the network prior to the provision of the wholesale offer	Guaranteed provision of a complete georeferenced record of the coverage of the network six months prior to the date of the provision of the wholesale offer
Factor 4.3 Quality of service (20%)	Sub-Factor 4.3.1 (36%) Suitability of the deadlines of supply	Deadlines for supply in 95% of cases	12 working days	5 working days
	Sub-Factor 4.3.2 (36%) Suitability of the deadlines for restoration of service/availability	Maximum restoration time for 95% of cases	28 working hours	12 working hours
	Sub-Factor 4.3.3 (28%) Suitability of compensation in cases of non-compliance with established service levels.	Compensation	Sets levels of compensation which encourage compliance with the established levels	Sets levels of compensation which encourage compliance with the established levels, without requiring the beneficiaries to submit forecasts, with automatic allocation
Factor 4.4 Prices (20%)	Sub-Factor 4.4.1 (69%) Suitability of access and interconnection prices	Prices	Presents the prices that it will practice	Displays wholesale prices which are compatible with current retail prices, presenting reasoning for the prices taking into account the costs
	Sub-Factor 4.4.2 (31%) Suitability of the prices for physical (and/or virtual) co-location	Prices	Presents the prices that it will practice	Presents prices and reasoning in view of the costs

Annex IV Bond Models

Deposit Note Template

Pursuant to article 31 of the Tender Schedule of the Public Tender for the installation, management, operation and maintenance of high-speed electronic communications networks in the Autonomous Region of the Madeira, [identification of prevailing tenderer] will deposit at [head office, branch, agency or delegation] of [institution] the amount of € [•] ([•]), [in cash or represented by] as a security bond to guarantee the conclusion of the Contract, as well as precise and timely compliance with all legal and contractual obligations assumed by [Prevailing tenderer] under the Contract to be concluded as a result the said Tender. This deposit is made in favour of ICP-ANACOM, to whom this fact must be communicated.

[Date and signature]

Bank Guarantee Template

TO: Portuguese State/Ministry of Public Works, Transport and Communications
Rua de São Mamede (ao Caldas), no 21
1149-050 Lisbon

Guarantee number [to be completed by the Bank]

On behalf and at the request of [identification of the prevailing tenderer], [identification of the bank] [hereinafter the "Bank"], in accordance with the terms of article 31 of the Tender Schedule of the Public Tender for the installation, management, operation and maintenance of high-speed electronic communications networks in [the Centre, North, Algarve and Alentejo, as applicable], provides by means of the present document, in favour of the Portuguese States, a bank guarantee which is irrevocable and deliverable upon first demand, to the amount of € [●] ([●]), corresponding to 0.5% of the value of the investment, in order to guarantee the conclusion of the Contract, as well as precise and timely compliance with all legal and contractual obligations assumed by [prevailing tenderer] under the terms of the Contract to be concluded subsequent to the said Public Tender, having liability to the maximum extent of the cited amount by making the delivery which is unconditional, irrevocable, upon first demand and without any reservation, including in the event of objection by [prevailing tenderer], of the sums which are necessary if [prevailing tenderer] fails to comply or fails to comply in a timely manner with the obligations which are the object of the present guarantee.

This guarantee is a direct obligation of the Bank before the Portuguese State, is autonomous, irrevocable, unconditional and payable on first demand.

The Bank undertakes, within 5 [five] days of receipt, at [address of Bank], of a written statement by the Minister for Public Works, Transport and Communications, to pay to the

Portuguese State, by crediting the bank account indicated in said declaration, the Guaranteed Amount or, if lower, the amount requested in this statement.

The declaration referred to in the preceding paragraph shall indicate the amount owed by [identification of the prevailing tenderer] and shall constitute sufficient and conclusive proof, without need for any other formality or the presentation of any other documentation, of the amount claimed and used under the terms of this guarantee.

In the event that the Bank is required to honour this guarantee, it may not take into account any exceptions invoked by [identification of the prevailing tenderer] and is prohibited from opposing the Portuguese State using any reservation or any defence that [identification of the prevailing tenderer] may assert.

This guarantee shall come into force on the date of its issue and remains valid until the Portuguese State, as represented by the Minister for Public Works, Transport and Communications, expressly authorises its release, and it may not be cancelled or amended without the consent of the Portuguese State.

[Date and signature]

Insurance bond template

[•] (*Insurance company*), having its registered office at [•] (*Address*), in accordance with the terms of article 31 of the Tender Schedule of the Public Tender for the installation, management, operation and maintenance of high-speed electronic communications networks in [the Centre, North, Algarve and Alentejo, as applicable], provides in favour of the Portuguese States and under the terms of the insurance bond contract concluded with [•] (*policyholder*), guarantee upon first request to the amount of € [•] ([•]), corresponding to 0.5% of the value of the investment, in order to guarantee the conclusion of the Contract as well as precise and timely compliance with all legal and contractual obligations which [•] (Prevailing tenderer) assumes pursuant to the Contract to be concluded subsequent to the said Public Tender, having liability to the maximum extent of the cited amount.

The insurance company undertakes to pay the above amount within five working days after the first request of the Portuguese State which shall not be required to give grounds for the request, while the first party may not invoke to their benefit any means of defence or the compliance of the obligations which [•] (Prevailing tenderer) assumes upon the conclusion of the Contract.

The insurance company may not oppose the Portuguese State using any exceptions relating to insurance bond contract made between it and the policyholder.

If any provision of this guarantee becomes or is deemed void, illegal or otherwise invalid, this shall not affect the validity and duration of the other provisions, with any adaptations deemed necessary.

This guarantee shall come into force on the date of its issue and remains valid until the Portuguese State, as represented by the Minister for Public Works, Transport and Communications, expressly authorises its release, and it may not be cancelled or amended without the consent of the Portuguese State, and irrespective of the payment of any premium due.

[*Date and signature*]

