



# PREFEITURA DE ITANHAÉM

ESTÂNCIA BALNEÁRIA | ESTADO DE SÃO PAULO

## ANNEX A – DEFINITIONS OF THE NOTICE AND ANNEXES



## **ANNEX A – DEFINITIONS OF THE NOTICE AND ANNEXES**

1. For the purposes of this NOTICE and its ANNEXEs, and without prejudice to other definitions set forth herein, the following definitions shall apply to the respective expressions:

(i) **WINNING BIDDER: BIDDER** to which the **OBJECT** of the **BIDDING** shall be awarded;

(ii) **AFFILIATE**: relationship of a particular person or investment fund with any other person or investment fund that is characterized as its **PARENT COMPANY, CONTROLLED** or under common control, directly or indirectly, any person or fund subject to the significant influence of another person or fund. There is significant influence when the power to participate in the decisions of the investee's financial or operating policies is held or exercised, without controlling it. Significant influence is presumed when there is ownership of 20% (twenty percent) or more of the investee's voting capital, without controlling it;

(iii) **ANNEX OF THE CONTRACT DRAFT**: each of the documents attached to the draft contract;

(iv) **ANNEX** or **ANNEX OF THE NOTICE**: each of the documents attached to the **NOTICE**;

(v) **CONCESSION AREA**: area corresponding to the entire territory of the **MUNICIPALITY**, encompassing all **PUBLIC LIGHTING POINTS** and the entire infrastructure of the **MUNICIPAL NETWORK OF PUBLIC LIGHTING** contained within this territorial limit;

(vi) **HIGHER AUTHORITY**: authority in charge of developing a validity judgment on the acts carried out in the bidding procedures, with regard to compliance with constitutional, legal and edictal rules, being responsible for the possible review of administrative appeals, as well as for the approval of



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the event and award of the object of the BIDDING;

(vii) B3: B3 S.A - Brazil, Stock, Counter, located at Rua XV de Novembro, no. 275 – Centro, São Paulo/SP, CEP 01010-901, responsible for providing specialized technical advisory services and operational support related to the procedures necessary to carry out the event;

(viii) SPECIAL BIDDING COMMITTEE: commission designated by the GRANTOR, which shall be responsible for receiving, examining and judging all documents and conducting bidding procedures;

(ix) CONCESSION: Administrative CONCESSION for the provision of the SERVICES, in the terms, deadlines and conditions set forth in the draft contract and its ANNEXES;

(x) CONCESSIONAIRE: SPECIFIC PURPOSE COMPANY, as defined in the NOTICE, to be constituted in accordance with the laws of the federative Republic of Brazil, for the exclusive purpose of operating the CONCESSION;

(xi) COMPETITION: bidding procedure established by the NOTICE;

(xii) CONDITIONS OF QUALIFICATION: conditions that must be observed and fulfilled by the participants of this COMPETITION related to LEGAL QUALIFICATION, FISCAL AND LABOR REGULARITY, TECHNICAL QUALIFICATION and ECONOMIC-FINANCIAL QUALIFICATION;

(xiii) CONSORTIUM: group of legal entities that unite to add technical, economic and financial training to participate in bidding, which are jointly and severally responsible for the fulfillment of the obligations arising from the BIDDING;

(xiv) LINKED ACCOUNT: current account held by the GRANTOR, opened with the DEPOSITORY FINANCIAL INSTITUTION, with exclusive movement by the DEPOSITORY FINANCIAL INSTITUTION, in accordance with the terms provided for in the CONTRACT, destined to receive the revenue from the COSIP collection passed on by the DISTRIBUTOR COMPANY, make



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payments and remake THE MINIMUM BALANCE OF THE RESERVE ACCOUNT, according to THE CONTRACT WITH THE DEPOSITORY FINANCIAL INSTITUTION;

(xv) RESERVE ACCOUNT: current account held by the GRANTOR, opened with the DEPOSITORY FINANCIAL INSTITUTION, with exclusive movement by the DEPOSITORY FINANCIAL INSTITUTION, whose composition and recomposition of the minimum balance must be equivalent to the provisions of ANNEX 13 of the CONTRACT;

(xvi) EFFECTIVE MONTHLY PAYBACK: amount due monthly to the CONCESSIONAIRE for the execution of the CONTRACT, to be paid by the GRANTOR and calculated after the calculation of the GENERAL PERFORMANCE INDEX and CONCESSION MILESTONES, in the form of ANNEXES 5 and 7 of the contract draft;

(xvii) MAXIMUM MONTHLY COUNTER-INSTALLMENT: MONTHLY COUNTER-INSTALLMENT that the BIDDER expects to receive for the provision of concession services, after the implementation of all CONCESSION MILESTONES provided for in the draft contract, and considering the full service of the GENERAL PERFORMANCE INDEX of ANNEX 7 and PAYMENT MECHANISM OF ANNEX 8, of the draft contract;

(xviii) CONTRACT: is the ADMINISTRATIVE CONCESSION CONTRACT, corresponding to ANNEX G of the NOTICE;

(xix) CONTROLLED: any person or investment fund whose CONTROL is exercised by another person or other investment fund;

(xx) PARENT: any person, investment fund or supplementary pension entity that exercises CONTROL over another person or other investment fund;

(xxi) CONTROL: the power, held by a person or group of persons bound by voting agreement or under common control, of, directly or indirectly, alone or jointly: (i) to exercise, on a permanent basis, rights that guarantee them the



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majority of the votes in the social deliberations and elect the majority of the directors or managers of another person, another investment fund or other supplementary pension entities, as the case may be; and/or (ii) effectively direct the social activities and guide the functioning of another person's organs, another investment fund or supplementary pension entity;

(xxii) COSIP: Contribution to the Cost of Municipal Public Lighting, established by Municipal Complementary Law No. 139, of December 26, 2012, and its amendments;

(xxiii) EFFECTIVE DATE: date on which the CONTRACT shall become fully effective in the form of Clause 6 of the CONTRACT;

(xxiv) ENVELOPES DELIVERY DATE: December 12, 2022, between 9:00 am and 12:00 pm, date and period in which ENVELOPES 1, 2 and 3 must be delivered to B3's headquarters by the BIDDERS;

(xxv) SESSION DIRECTOR: Representative of B3 who shall conduct the PUBLIC BIDDING SESSION, on behalf of the SPECIAL BIDDING COMMITTEE, in accordance with the terms of the NOTICE;

(xxvi) QUALIFICATION DOCUMENTS: set of documents listed in the NOTICE, to be mandatorily submitted by THE BIDDERS, intended to prove their LEGAL QUALIFICATION, FISCAL AND LABOR REGULARITY, ECONOMIC-FINANCIAL QUALIFICATION and TECHNICAL QUALIFICATION, according to EDITAL;

(xxvii) DOM: Official Gazette of the MUNICIPALITY;

(xxviii) NOTICE: this Concession Notice No. 07/2022 and all its ANNEXES;

(xxix) PRECESSOR COMPANY: it is the one that was the object of corporate reorganization with corporate succession in relation to THE PROPONENT, or that has proven to have transferred its technical collection to PROPONENTE, characterized by access to databases, systems and



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information about activities and projects previously carried out;

(xxx) ENVELOPE: wrapper containing the documents for participation in the BIDDING (called PROPOSAL GUARANTEE, REPRESENTATION AND DECLARATION DOCUMENTS, COMMERCIAL PROPOSAL AND QUALIFICATION DOCUMENTS);

(xxxii) PERFORMANCE FACTOR: factor of adjustment of the compensation due to the performance of the services provided by the CONCESSIONAIRE, calculated by means of general performance index calculated in the quarter prior to payment, according to rules and guidelines presented by ANNEX 7 and ANNEX 8 of the draft CONTRACT;

(xxxiii) MODERNIZATION AND ENHANCEMENT FACTOR: Adjustment factor for calculating the MAXIMUM EFFECTIVE CONSIDERATION. It has the effect of modulating the consideration according to the fulfillment of the CONCESSION MILESTONES, according to the schedule and conditions contained in ANNEX 5 of the CONTRACT draft;

(xxxiv) PROPOSAL GUARANTEE: the guarantee of compliance with the proposal to be presented by the BIDDERS to ensure the maintenance of the COMMERCIAL PROPOSAL, as well as the other obligations assumed by the BIDDER due to its participation in the BIDDING, pursuant to the NOTICE;

(xxxv) GUARANTEE OF CONTRACT EXECUTION: the guarantee of the faithful fulfillment of the obligations of the CONTRACT, to be maintained by the CONCESSIONAIRE in GRANTOR's favor, in the amounts and terms defined in the CONTRACT;

(xxxvi) ECONOMIC GROUP: for the purposes of the NOTICE, the economic group of THE PROPONENT, the companies RELATED, CONTROLLED, CONTROLLING, under common control or of simple participation, pursuant to arts. 1,097 and following, of federal Law No. 10,406, of January 2, 2002 (Brazilian Civil Code), and art. 278, of federal Law No.



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6,404, of December 15, 2002, and art. 278, of Federal Law No. 6,404, of December 15, 1976, and companies or investment funds that have directors, managers or shareholders (with more than 1% (one percent) participation) or common legal representatives, as well as those that are economically or financially dependent on another company or investment fund, in addition to companies or investment funds subject to the same global structure, including global knowledge sharing, governance and corporate policy;

(xxxvi) **ECONOMIC-FINANCIAL QUALIFICATION:** documentation necessary to prove economic and financial qualification for contracting with the Public Administration;

(xxxvii) **LEGAL QUALIFICATION:** documentation necessary to prove legal qualification for contracting with the Public Administration;

(xl) **TECHNICAL QUALIFICATION:** documentation necessary to prove technical qualification for contracting with the Public Administration;

(xli) **PUBLIC LIGHTING:** a service that has the sole objective of providing clarity to public places and public goods of common use of the people, in a periodic, continuous or eventual way, including **SPECIAL LIGHTING**, except those that have the purpose of any form of advertising or advertising, the performance of activities aimed at economic interests, and the attendance of traffic lights, speed cameras and traffic monitoring cameras;

(xlii) **GENERAL PERFORMANCE INDEX:** set of criteria and technical specifications contained in ANNEX 7 of the CONTRACT draft, referring to the quality goals of the provision of concession services, which shall be used to determine the **PERFORMANCE FACTOR**;

(xliii) **DEPOSITORY FINANCIAL INSTITUTION:** official financial institution in which the **LINKED ACCOUNT** and **THE RESERVE ACCOUNT** shall be opened, contracted by the **GRANTOR** and the **CONCESSIONAIRE**, as an intervener-consenting, for the provision of custody, management and



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administration services of the amounts used in the CONCESSION for the payment of the EFFECTIVE MONTHLY COUNTERPAYMENT in CONCESSIONAIRE's favor, in accordance with the CONTRACT;

(xliv) IPCA: Broad National Consumer Price Index - IPCA released by the Brazilian Institute of Geography and Statistics - IBGE;

(xlv) BIDDING: administrative procedure promoted by the MUNICIPALITY to select, among the COMMERCIAL PROPOSALS presented, the one that is most advantageous for the Municipal Public Administration, based on the criteria provided in this NOTICE;

(xlvi) LIGHT FIXTURE: equipment composed of light-emitting module and other components, responsible for directing, fixing and protecting the light source and its auxiliary devices for firing, operation and control;

(xlvii) B3 MANUAL OF PROCEDURES: document attached to the NOTICE, containing guidelines, rules and models of documents for the procedures for the provision of PROPOSAL GUARANTEE, operational procedures, as well as all other procedures relevant to the performance of the event held under the advice of B3;

(xlviii) CONCESSION MILESTONES: Set of deliveries provided for in the draft CONTRACT and its Annexes;

(xlix) MUNICIPALITY: Municipality of Itanhaém/SP;

(I) ACCREDITED BROKERS: Brokerage or distributor companies authorized to operate in B3, contracted by BIDDERS, through an intermediation contract, to represent them in all acts related to bidding with B3;

(II) GRANTOR: Municipality of Itanhaém, whose competencies, during the BIDDING process and during the execution of the CONTRACT, shall be exercised by the Secretariat;

(iii) CONCESSION DEADLINE: the period of 13 (thirteen) years, counted





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from the DATE OF EFFECTIVENESS, allowed its eventual extension, in accordance with the legislation in force;

(liii) PROPONENT: any legal entity, including investment fund or supplementary pension entity, that participates in the COMPETITION, alone or in CONSORTIUM, in accordance with the provisions of the NOTICE;

(liv) COMMERCIAL PROPOSAL: the amount of maximum MONTHLY PAYBACK offered by the BIDDER, as recommended by the NOTICE;

(lv) MUNICIPAL NETWORK OF PUBLIC LIGHTING: set of equipment that make up the PUBLIC LIGHTING infrastructure of the MUNICIPALITY;

(lvi) FISCAL AND LABOR REGULARITY: attribute resulting from the presentation and acceptance of the documentation necessary to prove fiscal and labor qualification for contracting with the Public Administration;

(lvii) ACCREDITED REPRESENTATIVES: persons authorized to represent THE BIDDERS in all acts related to the COMPETITION;

(lviii) MINIMUM BALANCE OF THE RESERVE ACCOUNT: number of MAXIMUM MONTHLY PAYMENTS THAT MUST BE MAINTAINED IN THE RESERVE ACCOUNT throughout the CONCESSION, as ANNEX 13 OF THE CONTRACT DRAFT;

(lix) SERVICES: PUBLIC LIGHTING services in the MUNICIPALITY, including modernization, development, expansion, management, operation and maintenance of the MUNICIPAL NETWORK OF PUBLIC LIGHTING, as provided in the CONTRACT and its ANNEXES;

(lx) PUBLIC SESSION: public session, to be held at B3, convened by the SPECIAL BIDDING COMMITTEE for the opening of ENVELOPES 2 and 3 corresponding to the COMMERCIAL PROPOSAL and QUALIFICATION DOCUMENTS, respectively;

(lxi) SPECIAL PURPOSE ENTITY: company of specific purpose to be



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constituted by the winning BIDDER, in the form of a stock company, which shall enter into the CONTRACT with the MUNICIPALITY;

(lxii) CONTRACT VALUE: sum of all MAXIMUM MONTHLY PAYMENTS due by the GRANTOR TO THE CONCESSIONAIRE throughout the CONCESSION TERM; and

(lxiii) INDEPENDENT VERIFIER: legal entity to be hired by the CONCESSIONAIRE to provide support to the contractual monitoring process, in accordance with the NOTICE and the CONTRACT, mainly to assess the GENERAL PERFORMANCE INDEX and achievement of the CONCESSION MILESTONES.

2. Except where the context does not allow such interpretation:

(i) The definitions of the NOTICE shall also be applied in singular and plural forms;

(ii) The titles of the chapters and items of the NOTICE and annexes should not be used in their application or interpretation;

(iii) In the event of divergence between the NOTICE and the ANNEXES, the provisions of the NOTICE shall prevail;

(iv) In the event of divergence among the ANNEXEs, those issued by the GRANTOR shall prevail;

(v) In the event of divergence among the ANNEXEs issued by the GRANTOR, the most recent date shall prevail;

(vi) The references to the schedules refer to the official time of Brasilia;

(vii) In the event of divergence between:

(a) Printed documents and those recorded in electronic media shall prevail in printed texts; and

(b) Numbers and their expression in full, the form shall prevail in full.