

TENDER SPECIFICATIONS

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

CHAPTER I

General Provisions

Clause 1 Tender Specifications

1 - The present Tender Specifications are an integral part of the public tender process which has as its object the installation, management, operation and maintenance of high-speed electronic communications networks

2- The present Tender Specifications comprise a set of terms of reference, which will be included in the contract to be concluded and its annexes, subject to the amendments and adaptations thereto which may be accepted by the public contractor in the course of negotiations.

Clause 2 ANNEXES

The following annexes constitute an integral part of the Tender Specifications:

Annex 1: Technical Plan;

Annex 2: Economics-Financial Plan;

Annex 3: Wholesale offer of access to the networks;

Clause 3 Headings and References

1-The headings used in these Tender Specifications and its annexes have been included for reasons of mere convenience, and are not part of the rules governing the contractual relations arising therefrom, nor do they constitute support for the interpretation or integration either of the present Tender Specifications or of said documents.

2 — References made, throughout the present Tender Specifications to clauses or points shall be made to the paragraphs or points of the wording of the same Tender Specifications, unless the context gives another meaning.

CHAPTER II
Provisions governing the contract

Clause 4
Contract

1 The contract for the installation, management, operation and maintenance of high-speed electronic communications networks shall be made in writing, pursuant to Article 33 of the Tender Schedule.

2 — The contract shall consist of the respective contractual text and its annexes.

3 — The contract to be concluded also includes the following elements:

a) The provision of errors and omissions in the Tender Specifications identified by the tenderers, provided that such errors and omissions have been expressly accepted by the body responsible for making the contracting decision;

b) The clarifications and corrections made regarding the Tender Specifications;

c) The present Tender Specifications;

d) The prevailing proposal;

e) The clarifications provided on the prevailing proposal by the prevailing tenderer.

4 — In the event of any conflict between the documents referred to above, their prevalence is determined by the order in which they are indicated herein.

5 — In case of conflict between the documents referred to in paragraph 3 and the terms of the contract and its annexes, the first shall prevail, except for the adjustments proposed in accordance with the provisions of article 99 of the Public Procurement Code and accepted by prevailing tenderer pursuant to article 101 of the same code.

CHAPTER III
The contract

Clause 5
OBJECT

1 — The contract to be concluded subsequent to the present procedure shall have as its object the performance of the activities of installation, management, operation and maintenance of high-speed electronic communications networks in the geographical area comprised by the municipalities identified in Annex I to the Tender Schedule.

2 — Notwithstanding that the prevailing tenderer shall give preference to the use of existing infrastructure for the housing of networks, the installation of high-speed electronic communications networks includes the construction of new ducts and infrastructure as necessary.

3 — The high-speed electronic communications networks require the provision, throughout the continuance of the contract, of a wholesale offer, in accordance with the terms of Annex 3 to the present Tender Specifications.

4 - The operation of the high-speed electronic communications networks may encompass the provision of a retail offer.

Clause 6
Periods and entry into force of the contract

1 - The duration of the contract shall be 20 years.

2 - The entry into force of the contract is subject to the public funding required by the prevailing tenderer being obtained, whereas the period of duration shall be counted from the date on which this condition is fulfilled.

Clause 7
Property and rights governed by the contract

1 — All movable and immovable property acquired, installed or constructed in execution of the contract which are essential to the appropriate performance of the activities comprising the object of the contract, as well as the rights and obligations which are constituted in pursuit of the Public interest underlying the conclusion of the contract, in particular all the works, installations, active and passive equipment, apparatus and accessories used for ensuring the operability, monitoring and maintenance of the electronic communications networks installed by the prevailing tenderer in the performance of the contract, shall be deemed as being governed by the contract.

2 — From the date on which the contract enters into force, the prevailing tenderer shall prepare and maintain an inventory of the property referred to above, which inventory shall be kept constantly updated and made available to the public contractor, or appointee thereof, and shall specify any encumbrance or charge applicable to said property.

3 - The inventory referred to in the preceding paragraph shall be submitted on paper and as a register in digital format, with the location of all infrastructure on a digital geo-referenced map.

4 - The prevailing tenderer may only dispose of or encumber the property governed by the contract where authorised by the public contractor, which is presumed to have been granted after a period of 20 days from the request to that effect, while, in any event, the existence of property which is functionally suitable for performing the activities comprising the object of the contract shall be safeguarded.

5 - The encumbrance of property governed by the contract in favour of Financing Entities, under the terms of the respective financing contracts, shall be exempt from the provisions of the preceding paragraph, as well as the disposal of property in execution of the guarantees constituted on such property which are established in favour of the same financing entities.

Clause 8
Risk

The prevailing tenderer expressly assumes full and sole responsibility for the risks inherent in the execution of the activities comprising the object of the contract during its continuance, except where otherwise stated in the present tender specifications or in the contract.

Clause 9
General Obligations of the Parties

1 - The Parties undertake to cooperate reciprocally and to diligently provide all the assistance and aid which may be reasonably required with a view to the proper performance of the activities for the contract.

2 - The prevailing tenderer shall undertake in particular to the perform the activities comprising the object of the contract, according to criteria of efficiency and high standards of quality, ensuring compliance with building/construction codes and practices and with all applicable legal and regulatory provisions.

Clause 10
Obtaining licenses and permits

1 — It shall be incumbent on the prevailing tenderer to apply for, pay for, obtain and maintain as current all licenses and permits required in the exercise of the activities which comprise or are in any way connected to the contract, observing all such requirements which are necessary.

2— The prevailing tenderer shall notify the public contractor without delay in the event that any of the licenses referred to in the preceding paragraph are withdrawn, lapse, are revoked or, for any reason, cease to produce effect, indicating, immediately, which measures it has taken or will take to restore the validity of such licenses.

Clause 11
Obligation of information of the prevailing tenderer

Throughout the continuance of the contract, the contractor shall be bound to:

a) Inform the public contractor immediately of any event that might influence the performance of the activities comprising the object of the contract and / or impair, impede or make more burdensome the precise and timely fulfilment of any obligation which it has assumed;

b) Provide any information or draw up reports on specific aspects related to the execution of the contract, upon written request.

c) Remit to the awarding entity, on a six monthly basis during the first two years of the execution of the contract and on an annual basis thereafter, reports on the development of the works for installing the electronic communications networks which are covered by the object of the contract.

CHAPTER IV Financing

Clause 12 Liability of the prevailing tenderer

1 — Without prejudice to clause 14 *infra* and the financing obligations which may be assumed by the public contractor in the contract, the prevailing tenderer is responsible for obtaining the financing necessary for the performance of all the activities comprising the object of the contract, to ensure the precise and timely fulfilment of the obligations thereunder.

2 - For the purposes of the preceding paragraph, the Contractor shall adopt and execute, both with regard to the installation of high-speed electronic communications networks and to their operation, the financial framework set out in the Economic-Financial Plan in accordance with the provisions of Annex 2 of the present Tender Specifications.

Clause 13 Contract financing

1 — With a view to obtaining the financing necessary for the development of the contracted activities, the prevailing tenderer may take out loans, provide guarantees and agree other acts and contracts with financing entities which comprise the legal relations of funding.

2 — Any exceptions or defences arising from the contractual relationship established by the prevailing tenderer under the preceding paragraph may not be relied on as against the public contractor.

Clause 14 Public funding

1 - The amount of public funding allocated to the prevailing tenderer will be paid as set forth in the decision approving the presented application and in the rules and regulations governing Community funds.

2 - The prevailing tenderer shall be liable for any loss of Community funds and delays in payments which result from errors in the applications for payment and/or the respective supporting documents submitted by them or from any failure to comply with the applicable conditions, rules and regulations.

3 - The occurrence of the situations described in the preceding paragraph shall not release the prevailing tenderer from precise and timely compliance with their obligations under the contract.

Chapter V

Planning and installation of the networks

Clause 15

Design, planning and installation of networks

The prevailing tenderer is responsible for the design, planning and installation of the high-speed electronic communications networks, under the terms of the Technical Plan drawn up in accordance with the specifications contained in Annex 1 to the present Tender Specifications.

Clause 16

Commencement of installation

The installation of high-speed electronic communications networks shall commence no later than 3 (*three*) months following the date on which the contract enters into force.

Clause 17

Work programme

The contract shall include a work programme setting out the dates on which the prevailing tenderer undertakes to commence and complete the installation of high-speed electronic communications networks and the timetable for such installation.

Clause 18

Responsibility of prevailing tenderer for the quality of the installation

The prevailing tenderer shall give guarantee to the public contractor as to the quality of the design of the project and of the execution of the installation of high-speed electronic communications networks, taking responsibility for their operability, in permanent and full working order during the continuance of the contract.

Clause 19

Entry into service

1 — The prevailing tenderer shall, following the completion of the installation of the high-speed electronic communications networks, seek, giving notice of 10 days prior to the intended date, their survey which shall be carried out jointly by representatives of the public contractor and representatives of the prevailing tenderer.

2 — An official report shall be drawn up as a result of the survey described in the previous paragraph, which report shall be signed by representatives of the public contractor and representatives of the prevailing tenderer.

3 — The commencement of operations of the networks by the prevailing tenderer may only take place in the event that the report mentioned in the previous paragraph is favourable and once fulfilment of the remaining contract conditions has been assured.

Clause 20

Expropriations

1 — Taking into account the public interest in the installation of high-speed electronic communications networks, in the adjudicative decree of public utility, compulsory purchasing required for the works to be executed will be given a character of urgency.

2 — The conduct and completion of the administrative procedures required for the execution of any compulsory purchase referred to in the preceding paragraph shall comply with the provisions of the Compulsory Purchases Code.

3 — Specifically, the prevailing tenderer undertakes:

- a) To perform the acts which individualise, characterise and identify the property to be compulsorily purchased;
- b) To assume all costs arising from said compulsory purchase procedures;
- c) To settle the compensation and other payments arising from the compulsory purchases or the imposition of easements or other encumbrances or charges that are the consequence thereof.

Chapter VI

Operation and maintenance of networks

Clause 21

Commencement of operation

1 - Operation of the high-speed electronic communications networks resulting from the final proposal shall commence no later than the date given in the final proposal of the prevailing tenderer and may not, in any case, commence later than 24 months from the date on which the contract takes effect.

2 - The commencement of the operation of any retail services by the prevailing tenderer may not occur until the wholesale services have commenced operation.

Clause 22
Obligation of maintaining the networks

1 — The prevailing tenderer undertakes, during the continuance of the contract and at their own expense, to maintain the installed high-speed electronic communications networks in a state of good working order, repair and safety, taking such steps as may be required to ensure full and constant provision of their purpose.

2 — The prevailing tenderer shall comply with the minimum standards of quality and safety as set out in their final proposal.

Clause 23
Operation regime

1 — The high-speed electronic communications networks shall be operated as open networks, whereby a wholesale offer is required which guarantees access thereto for all operators and providers of electronic communications services interested in their use for the provision of services to end-users.

2 - The terms and conditions of the wholesale offer of access to each of the high-speed electronic communications networks shall comply with the provisions established in the final proposal of the prevailing tenderer and with the levels of quality set out therein and, furthermore, shall be in full conformance with the provisions of Annex 3 to the present Tender Specifications, ensuring at all times, full respect for the principles of transparency, non-discrimination and for competition rules.

3 - The operation of the high-speed electronic communications networks may involve the provision of retail services to end-users in accordance with the terms and conditions of the final proposal of the prevailing tenderer.

4 - Where a retail offer is provided under the terms of the previous paragraph, the prevailing tenderer is bound to ensure the provision of electronic communications services to all users who require it.

Chapter VII
Contract Modifications

Clause 24
Assignment, encumbrance and transfer

1 - Without prejudice to clause 7 and 13, the prevailing tenderer is prohibited from assigning, encumbering or transferring, in whole or in part, the set of rights granted

to it through the contract or engage in any legal transaction which seeks to achieve or has by effect, even indirectly, the same results.

2 - The legal transactions referred to above are unenforceable with respect to the public contractor.

Clause 25

Assignment of the contractual position by the prevailing tenderer

1 — The assignment of the contractual position by the prevailing tenderer shall remain subject to the prior authorization of the public contractor.

2 - For purposes of seeking the authorisation of the public contractor, the prevailing tenderer is required to make a reasoned and informed proposal with all the authorising documents in respect of the potential assignee as required under the Tender Schedule.

3 — The public contractor shall state its position on the proposal of the co-contractor within 30 days of its submission, provided that is properly instructed.

Clause 26

Subcontracting

1 — The prevailing tenderer may make use of third party subcontractors, including for the execution of the following activities covered by the contract:

a) Construction of ducts and other infrastructure for the housing of high-speed electronic communications networks;

b) Provision of retail electronic communications services to end-users.

2 — Any subcontracting to third parties for the purpose of the execution of activities which are the object of the contract is subject to the presentation, to public contractor, of the authorising documents relating to the potential subcontractor which are required for the purposes of the execution of the activities to be subcontracted.

3 — The use of subcontractors pursuant to this clause does not waive the prevailing tenderer of any responsibility for the precise and timely performance of its obligations to the public contractor, except in the case of a duly authorised, partial assignment of its contractual position.

4 — Where contracts are concluded with third parties, no claims, exceptions or defences arising from the contractual relationship established by the prevailing tenderer with third parties may be relied on as against the public contractor.

5 — The contracts concluded with third parties may not have a duration or have effects beyond the continuance of the contract for the installation, management, operation and maintenance of high-speed electronic communications networks.

Clause 27
Revaluation of minimum speeds

In order to reflect the evolution of the reference minimum theoretical speeds of high-speed networks, according to best practices available in the market, the parties may, at 5 year intervals, reassess, and where fit, update the wholesale offer.

Chapter VIII
Supervision of the contract

Clause 28
Supervision by the public contractor

1 - The public contractor is empowered to supervise compliance by the prevailing tenderer with its obligations under the contract and may, in particular, order the performance of tests, analyses or examinations, in the presence of representatives of the prevailing tenderer to evaluate the operating conditions and characteristics of the equipment, systems and facilities engaged in the performance of the activities comprising the object of the contract, whereby the prevailing tenderer shall be liable for the respective costs, notwithstanding later appeal to arbitration.

2 - The prevailing tenderer shall provide the public contractor, or to whomsoever indicated by the public contractor, free access to all infrastructure, equipment and facilities, as well as all books, records and documents concerning the activities comprising the object of the contract, and is bound to provide all clarification and information requested of it.

3 — The determinations of the public contractor which are expressly issued pursuant to its supervisory powers are immediately applicable and binding upon the prevailing tenderer.

4 - In the event that prevailing tenderer fails to comply with the determinations issued by the public contractor pursuant to its supervisory powers, within the reasonable specified period, the public contractor shall be free to rectify the situation, either directly or through third parties, whereby the prevailing tenderer shall be liable for all corresponding costs.

Chapter IX
Guarantees of compliance with the obligations of the prevailing tenderer

Clause 29
Guarantees to be provided pursuant to the contract

1 — To ensure precise and timely fulfilment of its obligations including obligations in respect of the payment of contractual penalties, the prevailing tenderer shall provide a guarantee deposit equivalent to 0.5% of the investment.

2 - The guarantee deposit shall be valid for a period of 5 years, following the date on which the contract enters into force, and will be progressively released as follows:

- 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 therein.

3 - The prevailing tenderer may not be required to provide a guarantee deposit where it presents insurance for the execution of the contract to be concluded, issued by an insurance company, which covers the contract price, or an undertaking of joint and several liability with the prevailing tenderer for the same amount issued by a banking institution, provided that said institution or company provides documentary evidence that it has its registered office or a branch office in a Member State of the European Union, issued by the authority which exercises banking or insurance supervision, as applicable, in that State.

4 — If the prevailing tenderer fails to fulfil its legal or contractual obligations, the public contractor may consider the guarantee deposit referenced in paragraph 1 as forfeited in its favour, regardless of any court or arbitrator decision, in accordance with article 296 of the Public Procurement Code.

Chapter X

Extra-contractual liability to third parties

Clause 30

Liability based on fault or on risk

The prevailing tenderer shall be liable, in accordance with general law, for any damage caused to third parties in carrying out the activities which comprise the object of the contract, based on fault or on risk.

Clause 31

Liability for damage caused by contracted parties

1 — The prevailing tenderer shall also be held liable, under the general terms of the relationship between principal/agent for damage caused by parties which it contracts for the execution of activities comprising the object of the contract.

2 — It is constituted as a particular obligation of the prevailing tenderer to guarantee and demand that any party that it contracts enacts the measures necessary to safeguard the integrity of users and staff involved in the performance of the contract, and shall further comply with and ensure compliance with current regulations of health and safety.

Chapter XI

Breach of contract

Clause 32

Contractual penalties

1 — Without prejudice to the right to terminate the contract under the terms of article 333 of the Public Procurement Code, the public contractor may, in compliance with the procedure set out in paragraphs 1 and 2 of article 325 and in article 329 of the Public Procurement Code, impose fines in case of failure by the prevailing tenderer with respect to its obligations, including obligations resulting from determinations issued by the public contractor under the terms of the law or of the contract.

2 — Such fines shall vary, depending on the seriousness of the breach and the degree of fault, from €5,000 and up to €100,000.

3 — If the prevailing tenderer does not enact the voluntary payment of the fines that are applied within a period of 20 (*twenty*) days, the public contractor may use the guarantee deposit to effect payment of said fines.

Clause 33

Force majeure

1 - Cases of force majeure are considered as the acts of a third party for which the prevailing tenderer is not responsible and to which it has not contributed, as well as any other natural occurrence or unforeseeable event whose effects are beyond the control or personal circumstances of the prevailing tenderer, namely acts of war or subversion, epidemics, cyclones, earthquakes, fire, lightning, flooding and general strikes.

2 - The occurrence of an event of force majeure has the effect of exonerating the prevailing tenderer from liability for delays, failures or non-compliant performance of obligations under the contract, to the exact extent that their precise and timely fulfilment was impeded due to said occurrence and may lead to termination of the contract in the event that such impossibility becomes final.

3 - The prevailing tenderer is bound to immediately notify the public contractor in the event of any occurrence which may qualify as force majeure under the provisions of the present clause and, as soon as possible, indicate the obligations under the contract whose fulfilment, in the view of the prevailing tenderer, is prevented or hindered by virtue of such an occurrence and, further, if applicable, indicate the measures which it intends to enact in order to mitigate the impact of that occurrence and the respective costs.

Chapter XII

Termination of the contract

Clause 34

Termination by the public contractor

1 — Notwithstanding the general grounds for termination of the contract and the right to compensation under general terms, the public contractor may terminate the contract in the event that:

- a) Delay in the fulfilment of the obligations to install the high-speed electronic communications networks or the installation of these networks in a manner that is not compliant with the stipulation set out in the proposal or in the Tender Specifications, where said delay or non-compliance is deemed to be serious;
- b) Termination or suspension, in whole or in part, by the prevailing tenderer of the operation of the high-speed electronic communications networks, where appropriate measures have not been taken to remove the respective cause;
- c) Occurrence of serious irregularity in the organization and development by the prevailing tenderer of the activities comprising the object of the contract, in terms which could jeopardise its continuity or regularity in accordance with the conditions stipulated by law and in the contract;
- d) Repeated opposition to the performance of supervision, repeated failure to comply with the legitimate determinations of the public contractor or systematic non-compliance with laws and regulations applicable to the operation;
- e) Refusal, without grounds, to conduct the proper maintenance and conservation of the infrastructure governed by the contract;
- f) Cessation of payments by the prevailing tenderer or the presentation of its insolvency.

2 - Verifying one of the situations which, pursuant to the previous paragraph, might lead to the termination of the contract, the public contractor shall notify the prevailing tenderer that, within a reasonable period of time, set in light of the nature of the situation, it fully comply with its obligations or that it correct or repair the consequences of its acts, except in the case of irredeemable breach.

3 - In the event that the prevailing tenderer fails to fulfil its obligations or fails to correct or repair the consequences of the breach in accordance with the determinations of the public contractor, the public contractor shall be free to terminate the contract, by written notification sent to the prevailing tenderer.

4 - The notification of the decision to terminate in the preceding paragraph shall take immediate effect, regardless of any other formality.

5 - Where the prevailing tenderer has received public financing which exceeds two thirds of the executed investment, termination of the contract shall determine, in addition to the effects specified in the contract, the transfer of ownership of the property and rights which, in accordance with clause 7 *supra* are governed by the contract.

Clause 35

Expiry

1 — The contract shall expire upon the termination of its duration, whereupon any contractual relationship between the parties shall be terminated, without prejudice to the provisions which by their nature or by their wording, have continuance beyond said date.

2 — The public contractor shall not be held liable for the effects of the expiry of the contract on the contractual relations between the prevailing tenderer and third parties.

Clause 36

Transfer of property

In the event that the contractor has received public funding exceeding two thirds of the investment executed, upon the terms of the contract, the property and rights which, under the terms of clause 7 *supra* are governed by the contract, shall be transferred, free of any encumbrance or charge to the public contractor, under the conditions set out in the contract.

Chapter XIII

Settlement of disputes

Clause 37

Arbitration

1 - Any dispute relating, in particular, to the interpretation, performance, breach, invalidity or termination of the contract shall be settled by the Arbitration Tribunal, in which case, the parties shall be bound by the following rules:

a) Notwithstanding the provisions of points *b)* to *d)*, arbitration will be conducted in accordance with the procedural rules proposed by the arbitrators;

b) The Arbitration Tribunal shall be based in Lisbon and shall be composed of three arbitrators;

c) The public contractor shall appoint one arbitrator, the prevailing tenderer shall appoint another arbitrator and the third, who shall preside, shall be jointly chosen by the two designated arbitrators;

d) In the event that any of the parties fail to appoint an arbitrator or if the arbitrators appointed by the parties fail to agree on the choice of the presiding arbitrator, the appointment shall be made by the President of the Central Administrative Court having territorial jurisdiction.

2 - The submission of any matter to arbitration does not relieve the parties of precise and timely compliance with the provisions of the contract, nor does it release the prevailing tenderer from the obligation to comply with the determinations of the public contractor which, in its scope, are notified to it, nor does it permit any interruption to the normal performance of the activities comprising the object of the contract.

3 — The Arbitration Tribunal shall make its decision based on constitutional law and its decision may not be appealed.

Chapter XIV Final Provisions

Clause 38 Communications and notifications

1 — Without prejudice to any other rules on notifications and communications between the parties to the contract which may be agreed, these must be addressed, under the terms of the Public Procurement Code, to the residence or registered office of each party, as identified in the contract.

2 — Any changes to the contact information contained in the contract must be notified to the other party.

Clause 39 Calculation of time limits

The time limits stipulated in the contract are continuous, and are not suspended on Saturdays, Sundays and public holidays.

Clause 40 Applicable Legislation

The contract is governed by Portuguese law and, in particular, by the Public Procurement Code.

ANNEX 1

TECHNICAL PLAN

1. INTRODUCTION

In order to enable the technical evaluation of the project and so that the assessors have the same level of information with regard to all applications, the tenderers must present a set of reasoned and detailed information for each point of the technical plan.

The Technical Plan must follow the structure set out in these Tender Specifications, while additional information deemed necessary may also be submitted.

The statistical data to be used, including those relating to population, territory and housing, shall be the latest released by Instituto Nacional de Estatística (Statistics Portugal).

In any case, the sources used should be clearly indicated.

2. Project, Network Technology and Topology

The tenderers are required to specify and justify the technology and topology of the network which they intend to adopt and submit a detailed works programme and schedule with respect to the design, planning of the network project, construction and operation of the network.

3. Coverage requirements

According to paragraph 1.5 of the Tender Schedule, tenderers shall submit the degree of coverage they intend to provide in each municipality within the period of twenty-four months calculated from the date on which the contract takes effect, guaranteeing at a minimum and in all cases coverage of 50% of the population¹ of each municipality after this period of time. Tenderers are further required to submit a plan for the development of population coverage for each municipality and the respective six-monthly timetable for the first 24 months.

Tenderers must also clearly indicate and justify changes in levels of population coverage for each municipality during the five years subsequent to the first twenty-four months.

¹ As reference "resident population" by municipality must be used (most recent estimate from INE existing at the date of submission of the proposal).

4. Network

4.1. Performance and development of the Network

The tenderers are required to specify the maximum effective downstream speeds which will be provided for each municipality within 24 months of the date of contract taking effect, whereas reference theoretical minimum speed for the end-user, downstream, of 40 Mbps shall always be guaranteed.

The tenderer is required to give grounds for the indication of the maximum speeds taking into account an estimation of the use of the network in accordance with the coverage plan presented in the previous paragraph.

4.2. Operational management and maintenance of the Network

With respect to the resources allocated to the management, operation and maintenance of the network, tenderers must give an indication of how the operational management and maintenance of the network will be organised, describing in particular:

- The systems for the management and supervision of the systems and networks it intends to implement;
- The organization, qualification and location of the operations and maintenance teams of the systems and network;
- The action strategy in terms of operation and maintenance in light of the behaviour of the systems and network (description using schematic flowcharts);
- The technical and logistical resources supporting the operations and maintenance team;
- Indication of intervention times in case of malfunctions.

ANNEX 2

ECONOMIC-FINANCIAL PLAN

1. INTRODUCTION

With the intention that the assessors have the same level of information with respect to all applications, the tenderers are required to present reasoned and detailed information concerning the economic-financial plan of the project of installation, management, operation and maintenance of electronic communications networks in the Autonomous Region of the Azores, taking into account the period of 20 years corresponding to the duration of the contract.

The economic-financial plan must follow the structure set out in the present Tender Specifications, while any additional information deemed necessary by its promoters may also be submitted.

The statistical data to be used, including those relating to population, territory and housing, shall be the latest released by Instituto Nacional de Estatística (Statistics Portugal).

In any case, the sources used should be clearly indicated.

2. Business Plan

2.1 Characterization of the geographical area covered

Tenderers are required to present an analysis of the characteristics of the area covered by the tender, including from a geographic, demographic and economic perspective, taking into consideration the key general indicators per municipality/parish (freguesia), including those concerning the area, resident population, number of existing buildings, number of households of usual residence, population density, Purchasing power index, unemployment rate, number of corporate headquarters, the total turnover and number of establishments.

The tenderers are required to give a characterisation of the access by part of the populations to electronic communications services, considering, in particular, the operators/service providers active in the area and the services offered, as well as the available electronic communications networks and the existing ducts and other network housing infrastructure.

The analysis should also include forecasts of the development of the current situation, according to the scenarios deemed appropriate.

2.2 Descriptive submission of the business plan and critical factors for success

The tenderers are required to present a descriptive submission with definition of the base option regarding their commercial activity strategy and detailing the most relevant aspects associated with the activity it proposes to pursue with regard to the installation and operation of high-speed electronic communications networks, including in particular, characterization of potential customers, suppliers, partners and use of subcontracting.

Tenderers are further required to indicate the critical factors for the success of the business plan, whereby value will be given to the presentation of reasoned analysis of the potential impact of said factors, as well as the presentation of documents demonstrating the degree of business maturity, including any pre-agreements, forward commitments or agreements already concluded, in particular, for the procurement of services (retail offer or others) or in still other areas (such as technology transfer, construction and financing), and commitment to retail provision by the tenderers or by sub-contracted entities.

3. Economic and financial feasibility study

The economic and financial feasibility study, prepared in accordance with current legislation, shall be carried out for 20 years, considering the Euro (thousands) as the monetary unit.

The analysis should focus on the activity of the tendering company associated with the object of the present tender, demonstrating the viability of the business.

Notwithstanding, the activity associated with the object of this tender must be contextualized in the overall activity and strategy of the tenderer.

The tenderer shall explain the assumptions used in preparing the financial-economic project, attaching the detail necessary for the proper understanding of all information submitted.

Value will be given to the presentation of reasoned sensitivity analyses, combining the various critical parameters of the project.

The structure of the study must include the following points:

3.1 Investment Plan

The tenderers are required to quantify and detail the investment which they intend to make over the period of analysis, with respect to all the components, network elements, passive and active equipment to be used in the construction of the

networks, as well as with respect to the commercial activity, billing systems, and additionally, and where applicable, investment in training, research and development.

Reinvestment arising as a result of the end of the useful life of equipment during the period in question should be considered.

Where the tenderers plan to use a third party to ensure any of the functions inherent to the above resources, or parts thereof, they shall, as appropriate, in response to point 3.3 of this section specify the respective operational costs in place of investment costs.

Tenderers shall further present the investment values by Municipality and Parish and the value of investment with details for all the components, network elements, passive and active equipment to be used in the construction of the networks.

3.2 Revenue Plan

Tenderers must submit the evolution of annual revenues, arising from the operation of their high-speed electronic communications networks, duly detailed in their different components.

Tenderers are further required to submit estimates of the evolution of prices to be practised on which these are based and the respective premises, as well as the evolution of demand/use of the services (in units deemed appropriate).

3.3 Operating Costs Plan

Tenderers must specify in detail the operating costs and their evolution, for the entire project, highlighting the main categories, including in particular:

- Provision of external services;
- Depreciation, which should reflect the average life of each piece of equipment, or set of equipment, buildings and rate of depreciation;
- Staff costs, indicating the average number of staff per year;
- Financial costs.

3.4 Forecast Financial Statements

3.5 Cash flow statement

Tenderers should detail the project Financing Plan, explaining, in particular, the loan regimes (amounts, dates, methods of interest).

3.6 Balance forecast

3.7 Evaluation of the project

Tenderers must demonstrate the viability of the project, detailing the following:

3.7.1 Net Present Value (NPV)

Indication should be made of discount rate used and the assumptions which determined it.

3.7.2 Internal Rate of Return (IRR)

3.7.3 Payback period

3.7.4 Sensitivity analysis

Tenderers are required to determine the various critical parameters of the project, including, and as applicable, prices, costs and level of demand and use of services by customers (in units deemed appropriate), taking into account the entire duration of the project.

ANNEX 3

QUALITY OF WHOLESALE OFFER OF ACCESS TO THE NETWORK

1. INTRODUCTION

In order to enable the evaluation of the quality of the wholesale offer and with the intention that the assessors have the same level of information with respect to all applications, tenderers are required to present the conditions that will govern the wholesale offer that they will provide, as detailed and reasoned as possible, whereby value will be given to the detail of the information and the reasoning given for the options.

2. Description of the wholesale offer of virtual access to the network (advanced *bitstream*)

The tenderers shall describe in detail the technical characteristics of the wholesale offer which they will make available, which should comprise, at a minimum, virtual access to the network (advanced bitstream) without prejudice to the provisions of paragraph 4 of the present Annex.

The description of the wholesale offer should include, at a minimum, the terms and conditions of access, in terms similar to the reference offer of the operator with SMP, specifically identifying:

- (a) The procedures and conditions governing access to and use of the infrastructure;
- (b) The various interfaces and their technical specifications;
- (c) The time taken for supply of services, including provision and restoration of service;
- (d) Description of the processes for the management of requests and operating, maintenance and management procedures;
- (e) The technical characteristics of the network, including the description and location of access points and, in the case of access to ducts, poles and associated infrastructure, their routes;
- (f) The prices applicable to access to and use of the infrastructure and all services included in the offer;
- (g) Compensation in case of failure to comply with the established levels of service.

3. Minimum conditions to be made available in the wholesale offer of virtual access to the network (advanced *bitstream*)

The wholesale offer is required to contain at least the following conditions:

- (a) The infrastructure to be built or developed should be designed so as to simultaneously support the access of multiple entities to the fullest extent of the network, in addition to the tenderer or companies which are controlled by the tenderer;
- (b) The wholesale offer should enable, in technical and economic terms, the beneficiary of the access to offer at retail level services which are similar to those offered by the tenderer (where the tenderer has retail offers) based on this infrastructure and with equivalent quality of service;
- (c) The access of beneficiaries to the wholesale offer should be possible from a single point of access, which enables, from that point, the provision of services to any user covered by the network which is the object of the contract, whereby value will also be given to the capacity to provide, upon request, additional points of access which permit the connection, in a flexible manner, of the entities that require access to the infrastructure;
- (d) In the event that ducts, poles and associated infrastructure will be constructed, the tenderer shall further guarantee wholesale access to such physical infrastructure and shall define the respective conditions of access.

4. Offers of physical access to various network elements

Value shall be given, in the context of the overall quality of the wholesale offer (sub-factor 4.1.1) to the provision of physical access to various network elements. For example, In the event that the tenderer chooses to install solutions, in whole or in part, based on optical fibre, value shall be given to offers:

- (a) of wholesale access to the local sub-loop, including space in street cabinets or similar infrastructure, where FTTC solutions are chosen;
- (b) of physical access to optical fibre (possibly with the use of the installation of multi-fibre solutions for each household) or wavelengths, respectively, where point-to-point or point-to-multipoint (both FTTH) solutions are chosen.

In either option, the tenderer is obliged to provide virtual access to the network (advanced bitstream), under the terms specified above.