



Trieste Port Authority

Tender for the sale of shares of the registered capital of Trieste Terminal Passeggeri S.p.A.

Tendering Rules

The Trieste Port Authority (hereinafter also “the Port Authority” or “the Authority” or “the Administration”), with head office in Trieste, via Karl Ludwig von Bruck, 3:

Whereas

- A. The Port Authority is the only shareholder of “Trieste Terminal Passeggeri S.p.A.” (hereinafter also “TTP S.p.A”, “TTP” or the “Company”) with head office in Trieste, via Karl Ludwig von Bruck n° 3, Trieste, with share capital of Euro 750,000.00.
- B. “Trieste Terminal Passeggeri S.p.A.” (Tax Code and VAT n° 01125570323) was set up on 11th April 2007 by a public deed before Notary Mr. Camillo Giordano of Trieste, Rep. n° 98342, Folder 13145 and registered at the Register of Companies of the Chamber of Commerce (C.C.I.A.A.) of Trieste under n° 01125570323 REA TS-126538.

The duration of the Company has been established to last until 31st December 2080 and can be extended by decision of the Shareholders’ Extraordinary Meeting. The scope of the Company (art. 3 of the Articles of Association) includes the following activities:

- Management of the embarking and disembarking activities for cruise ships, ferry boats, hydrofoils and, in general, fast vessels, pleasure boats and crafts for the transport of passengers in the port of Trieste as well as any other related activity, including the supply of all the reception, welcome and transfer services for passengers, also in collaboration with other logistic or tourist facilities operating in the area, and the management of leisure boat moorings; the management of parking areas as well as fixed and mobile equipment. All the above-mentioned tasks are either carried out directly or through third companies;
- planning, construction, extension, restructuring of maritime stations, quays, berths, buildings and facilities in general, also for yachting, as well as any other infrastructure, even of multipurpose nature, relating to its activity.

Such activities can also be carried out through concessions and/or authorisations (in areas devoted to business activities) and also within the framework of the planning by the Trieste Port Authority for the embarkation/disembarkation services for cruise ships and ferryboats.



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Among the above-mentioned activities, the Company will be able to carry out the following additional activities. This list is given as a way of example and is not exhaustive:

- any necessary and suitable activity for the enhancement and improved management of buildings and areas either given in concession by the Trieste Port Authority or leased to other public or private entities, also entrusting parts of the same to third parties;
- any service generally relating, accessory and/or complementary to the above-mentioned activities, including the supply of surveillance and security services, communication services, travel agencies and tour operators, commercial establishments, such as bars, restaurants and leisure establishments such as the ones normally present inside maritime stations, fuel stations, promotion, coordination and organisation of congresses, trade fairs and cultural events, mediation activities concerning the above-mentioned activities and their coordination.

Furthermore, the Company will be able to, - not as its primary activity, but in a way that is expedient and instrumental to the corporate purpose – carry out any commercial, industrial, financial operation not intended for the public, as well as any operation on movable and immovable assets that may be regarded as necessary and advisable for the achievement of the corporate purpose; it will also be able to have direct or indirect stakes in, and share the profits of, companies having an analogous or similar corporate purpose. On no circumstances shall such activities involve the public or be carried out for placing purposes. Activities shall be conducted within the limits established by art. 2361 of the Civil Code and any other applicable law provision.

Furthermore, in pursuit of its corporate purpose, the Company will be able to provide collateral to third parties, give guarantees and/or suretyship in its own interest or that of its investees, if any.

The Company holds a 60% stake in Trieste Yacht Service s.r.l. (hereinafter, also TYS), with head office in Trieste, Via Karl Ludwig von Bruck, 3, registered in the Register of Companies of the Chamber of Commerce (C.C.I.A.A.) of Trieste under n° 01135220323, Tax Code 01135220323 with a totally paid-up share capital amounting to € 100,000.00 and the following corporate purpose:

- construction, management, leasing of docks, marinas, tourist ports, water spaces, mooring services in general and other incidental or related activities;
- promotion, implementation and coordination of initiatives and projects in the port sector for the handling and reception of yachts and mega-yachts and related services;



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- with regard to the yacht and mega-yacht sector, the wholesale trade of naval and industrial provisions and ship's stores, as well as food supplies, technical items and the like; naval and industrial maintenance and repair work;
- hiring of yachts and mega-yachts, pleasure boats, crafts and other means of transport.

Furthermore, TYS will be able to, - not as its primary activity, but in a way that is expedient and instrumental to the corporate purpose – carry out any commercial, industrial, financial operation not intended for the public, as well as any operation on movable and immovable assets that may be regarded as necessary and advisable for the achievement of the corporate purpose; it will also be able to have direct or indirect stakes in, and share the profits of, companies having an analogous or similar corporate purpose. Under no circumstances shall such activities involve the public or be carried out for placing purposes.

Furthermore, in pursuit of its corporate purpose, TYS will be able to provide collateral to third parties, give guarantees and/or suretyship in its own interest or that of its investees, if any.

- C. The Port Authority intends to transfer a stake of TTP's share capital to a private partner capable of supporting the Company's growth and development.
- D. The Port Authority has decided to sell, through a tender procedure, n° 45 TTP's shares, with a nominal value of Euro 10,000 each, amounting to 60% of TTP's current share capital.
- E. The minimum offer for the purchase of n° 45 TTP's shares from the Trieste Port Authority shall amount to Euro **3,900,000.00** (three million nine hundred thousand/00).
- F. The successful tenderer shall purchase the TTP's shares and stipulate shareholders' agreements with the Trieste Port Authority, the texts of which shall be sent together with the Invitation letter as per item 4.2 below,

launches

a procedure for competitive tendering for the sale of n° 45 TTP's shares, equivalent to 60% of the Company's current share capital, to a private partner.

As from **23rd July 2010**, after registering into the relevant section of the www.porto.trieste.it webpage and accepting the confidentiality agreement, interested



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entities will be able to download the Information Memorandum according to the procedure described in the same web page.

For the tendering procedure, the Trieste Port Authority shall be supported by Banca IMI S.p.A. – Milan (Advisor).

1. PARTICIPATION REQUIREMENTS

1.1. The entities listed in art. 34, par. 1 of Leg. Decree 163/2006 and later amendments, from letter a) to letter f-bis), are entitled to participate. These include commercial companies, individual undertakings, cooperatives, consortia, R.T.I. (Temporary Groups of Companies), E.E.I.G. (European Economic Interest Groups) as well as businesses based in other countries, even non-EU companies, constituted according to their respective national laws, provided they have chosen an address for correspondence in Italy or at least in a EU member Country, in compliance with item 3.2.3 below.

Companies taking part in a Temporary Group (R.T.I.) shall confer a collective mandate to one company among them, chosen as their agent, before deciding their offer, which shall be submitted by the agent company on behalf and for the account of the principal companies. Temporary Groups of Companies (R.T.I.) or consortia not yet formed are entitled to participate. In this case, the offer shall be signed by all the businesses making up the R.T.I. or consortia which shall commit themselves, in the event they are awarded the contract, to conferring a special collective mandate of representation to one of them, to be specified upon submitting the bid and qualified as an agent company, also in compliance with item 2.1.

1.2 Participants shall provide proof that they meet the following requirements:

- a) net assets, - even consolidated, resulting from the approved balance sheet of the last fiscal year or any other official document providing evidence of their financial position in the absence of approved balance sheets – of at least Euro 1,000,000.00 (one million/00);
- b) they are in the position of entering into a contract with the Public Administration if they are not, or have not been in the past five years, bankrupt or wound up, under receivership, with suspended business activities or in an arrangement with creditors or any other analogous situation according to the legislation of the State where they are based;



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- c) they have fulfilled the obligations relating to the payment of social security contributions for their employees, in accordance with the regulations of Italy or with those of the country where they are based;
 - d) they have fulfilled their obligations relating to the payment of taxes in accordance with the regulations of Italy or with those of the country where they are based;
 - e) they are compliant with the laws regulating the disabled persons' right to work (Law n°68/99);
 - f) they are compliant with all the other provisions as per art. 38, Leg. Decree 163/2006 and later amendments, according to a statement to be attached to the request to participate, as per item 3.2.2.2 below.
- 1.3 In the case of a Temporary Group of Companies (R.T.I.), the agent company shall meet at least 60% of the requirement specified in item 1.2 lett. a), whereas each of the principal companies participating in the R.T.I. shall meet at least a 20%, without prejudice to the fact that the summation of the requirements met by the R.T.I. members together must at least equal those required in total.
- 1.4 In the case of R.T.I., all the R.T.I. members shall meet the requirements of letters b), c), d), e) and f) of item 1.2.
- 1.5 It is forbidden for the same tenderer to take part in the procedure, even through controlled or associated companies, as a member of more than one R.T.I., or to participate individually if already a member of an R.T.I., on pain of **exclusion** for both participants.
- 1.6 In the event of R.T.I.s, up to the date of bid submission as per paragraph 5 below, changes in the composition of the participating R.T.I., with new members joining, will be accepted, provided Paragraphs 1, 2, 3 e 4 of these Tendering Rules are complied with.
- The faculty to submit an offer as an R.T.I. is also granted to entities which have applied for participation on an individual basis and have been admitted to submitting an offer, provided Paragraphs 1, 2, 3 e 4 of these Tendering Rules are complied with.
- In such cases, on pain of being **excluded**, the Bid Documentation as per item 5.2 shall include all the documents requested by Paragraph 3 of these Tendering Rules, duly signed by the legal representatives of the new entities joining the R.T.I..



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Under no circumstances can an R.T.I. be created or changed after the offer has been submitted.

- 1.7 By signing the Offer, businesses that are members of an R.T.I. shall, jointly and severally, take up obligations vis-à-vis the Trieste Port Authority, without prejudice to the provision of item 2.1.

2. SUCCESSFUL TENDERER'S OBLIGATIONS

- 2.1 Should the successful tenderer not be a company with share capital, it shall have to set up a company, according to the Italian law, with a minimum share capital of Euro 1,000,000.00 (one million/00), which shall purchase the shares of TTP S.p.A.. If the successful tenderer is an R.T.I., a consortium or E.E.I.G., the company shall be set up by the participants in the R.T.I., consortium or E.E.I.G.
- 2.2 It is compulsory for the successful Tenderer, or company to be formed, not to transfer the shares of TTP S.p.A. for 5 years after the purchase, except for transfers of a stake of up to 3% of the share capital to regional and local bodies, should these express an interest in this regard within six months from the date of the share purchase contract.
- 2.3 If the successful Tenderer is an R.T.I., the companies participating in the R.T.I. shall remain shareholders for 5 years after purchasing the shares of TTP S.p.A., without prejudice to the possibility of transferring to another company participating in the R.T.I. a part of their shares and without prejudice to the obligation laid down in item 2.4.
- 2.4 The agent company of the R.T.I. that has been awarded the contract shall have and shall maintain, for the first 5 years after purchasing the Company's shares, the control over the share capital of the entity to be formed as per item 2.1, through the possession of the absolute majority of the company's capital, or by other ways ensuring the *de-facto* control of the company by the above-mentioned entity, without prejudice to the obligation for the latter to possess the relative majority of shares.
- 2.5 The above commitments shall be outlined in detail in the draft contract for the sale of shares, to be attached to the Invitation letter.

3. PRE-SELECTION



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3.1 Entities intending to participate in the tender and meeting the requirements of Paragraph 1 above shall submit the following documentation according to the terms and procedures specified in item 3.6, **on pain of being excluded:**

3.1.1 A request to participate in the tender procedure, on paper, specifying the corporate name, registered office and details of the entity exercising the legal representation. The application shall also include the manifestation of interest in purchasing shares from the Trieste Port Authority

N° 45 shares of TTP S.p.A., representing 60% of the current Company's share capital for a total amount of at least Euro **3,900,000.00** (three million nine hundred thousand /00).

Each page of the request to participate shall be signed by the legal representative of the participating entity. In the case of an R.T.I., the request to participate shall be signed by the legal representatives of all the participating entities.

3.1.2 A copy of this document, entitled "Tendering Rules", shall be signed for acceptance on each page by the legal representative of the participating entity. In the case of an R.T.I., the Tendering Rules shall be signed for acceptance by the legal representatives of all participating entities.

3.1.3 The request to participate and the copy of the Tendering Rules may be signed, instead of by the legal representative of the participating entity, by a proxy provided with the relevant power of attorney or equivalent deed to be exhibited in certified copy.

3.2 The request to participate shall be accompanied by the following documentation concerning the participating entity, **on pain of being excluded:**

3.2.1 A statement, signed by the legal representative of the participating entity, declaring that the requirement of letter a) of item 1.2 has been met. In the case of an R.T.I., the statement shall be submitted on an individual basis by each of the participating entities meeting the above-mentioned requirement and signed by their legal representatives.

3.2.2 A statement signed by the legal representative of the participating entity, specifying:

3.2.2.1 Registration with the Chamber of Commerce (C.C.I.A.A) or analogous Register in the countries of origin, specifying the registration number, the activity carried out, the chosen legal form, the duration (in the case of a



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company) as well as the names of owners, partners, technical managers, administrators endowed with powers of representation, general partners, proxies with special representation powers of attorney, agents and any past directors or individuals that had legal representation in the three years before the date when the Invitation for tender was published, also specifying their qualifications, date of birth and permanent address;

3.2.2.2 That there are no legal grounds preventing the tenderer from concluding a contract with the Public Administration or from participating in public tender procedures, which are the obstacles listed in art. 38, par. 1 of Leg. Decree 163/2006 and later amendments and, among these, in particular:

- a) that the participating company is not, and has not been in the past five years, bankrupt or wound up, under receivership, with suspended business activities or in an arrangement with creditors or any other analogous situation according to the legislation of the State where it is based.
- b) that there is no proceeding pending against it for the implementation of one of the prevention measures specified in art. 3 of Law 27.12.1956, n° 1423 or one of the obstacles specified in art. 10, Law n° 575/1965 and later amendments. Exclusion and banning are applied if the pending proceeding concerns the owner or technical director in the case of an individual undertaking; the partner or the technical director, if it is a general partnership; the general partners or the technical director, in the case of a limited partnership; the administrators endowed with powers of representation or the technical director, in the case of another type of company or consortium;
- c) that it has not been the subject of a judgment which has the force of *res judicata* or of an irrevocable penal order, or a final criminal conviction in compliance with article 444 of the code of criminal procedure, for serious offences against the State or the Community in the field of professional conduct; under all circumstances, the company shall be **excluded** if it has been subject of a judgment which has the force of *res judicata* for one or more offences, such as involvement in a criminal organisation, corruption, fraud, money laundering, as defined by the EU legislation mentioned in article 45, paragraph 1, of Directive EC 2004/18; **exclusion** and **banning** can be applied if the judgment or the penal order concern: the owner or the technical director in the case of an individual undertaking; the partner or the technical director, in the case of a general partnership; the general partners or the technical director, in the case of a limited partnership; the administrators endowed with powers of representation and the technical director in the case of any other type of company or consortium. Under all circumstances, the **exclusion** also applies to individuals whose mandate ended in the three years prior to the publication



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- of the tender notice, if the company fails to prove that it has taken steps or measures to dissociate itself completely from their penally sanctioned conduct;
- d) that it is not in violation of the ban on fiduciary registration as per art. 17 of Law 55/1990;
 - e) that it has not committed serious infringements, duly ascertained, to the regulations on security and to any other obligation arising from employment relations;
 - f) that it has not committed any serious negligence or bad faith in the execution of contracts entrusted to it by the Trieste Port Authority and that, on those occasions, no serious misconducts had characterized the performance of its professional activity;
 - g) that it has fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of Italy and with those of the country where the company is based;
 - h) that in the year prior to the publication of this invitation for tender the company did not make false declarations regarding the requirements and relevant conditions for participation in the procedure for competitive tendering and for the awarding of the sub-contract;
 - i) that it has regularly fulfilled the obligations relating to the payment of social security contributions for its employees, in accordance with the legal provisions of Italy and with those of the country where the company is based;
 - j) that it has complied with the provisions of law n° 68/1999 **or** that it is not subject to them;
 - k) that it has not been banned under art. 9, par. 2, lett. c) of Leg. Decree 231/2001 and that it is not subject to any other ban on concluding a contract with a public administration, including the ban provided for in art. 36-*bis*, par. 1 of Law n° 248/2006;
 - l) that it does not fall within the grounds for exclusion from the tender procedure as per art. 38, par. 1, letter *m-ter*) of Legislative Decree 163/06 and later amendments, which lays down: « ... as per letter b) above, which, even if they are not subject to the application of a prevention measure or a ban, as provided for herein, although being victims of offenses envisaged and punished as per articles 317 and 629 of the criminal code, aggravated as per article 7 of Law Decree n° 152 of 13 May 1991, later amended by Law n° 203 of 12 July 1991, they may result not to have reported the facts to the judicial authority, barring the cases provided for in article 4, par. 1, of Law n° 689 of 24 November 1981. The circumstance specified in the first paragraph has to arise from the clues leading to the formal accusation of the person being prosecuted in the three years prior to the publication of the invitation for tender and shall be communicated, together with the details of the person who



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failed to report the facts, by the relevant Attorney of the Republic to the Authority as per article 6, which shall be responsible for publishing the communication in the “Observatory of Public Contracts” website.»

- m) that it is not in any of the circumstances described in item 1.5 of these Tendering Rules;
- n) that it is not in a situation of control, as provided for by article 2359 of the civil code or in any relation, even de facto, with any other participant in the same tender procedure **or**, if it is in such situation, it should specify with which tenderer and declare that its offer is autonomous.

In the case of a Temporary Group of Companies (R.T.I.), the above-mentioned declaration shall be submitted individually by each of the participating entities. In the case of a consortium, the declaration shall specify on behalf of which consortium members the consortium is tendering.

- 3.2.3 The declaration shall also include **choosing a domicile** in Italy or at least in a EU member State, for all communications, including those concerning the rejected requests to participate, exclusions and awards with the expressed authorisation by the Port Authority to send the above-mentioned communications by **fax**, specifying the fax number.
- 3.2.4 A copy of the tenderer’s memorandum and articles of association in force or equivalent documentation in accordance with the legal provisions of the country where the tenderer is based. In the case of an R.T.I., the documentation shall be submitted individually by each of the participating companies.
- 3.2.5 A copy of the latest balance sheet approved, as well as a copy of the consolidated balance sheet, if any, as well as the balance sheet of the controlled companies, if any, meeting the requirement of item 1.2 lett. a), as well as, in the absence of approved balance sheets, any other official document attesting their financial position. In the case of an R.T.I., the above-mentioned documentation shall be submitted individually by each of the participating companies.
- 3.2.6 Statement of veracity and/or validity of the documents mentioned in items 3.2.4 and 3.2.5 above. In the case of an R.T.I. the above-mentioned statement shall be submitted and signed by the legal representative of each of the participating companies.



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3.3 The statements as per items 3.2.1, 3.2.2 and 3.2.6 shall be prepared as outlined in art. 46 and 47 of Presidential Decree (D.P.R.) 28.12.2000 n° 445, i.e. accompanied by an uncertified photocopy of a valid identity document of the signer, who shall be aware of the criminal sanctions laid down in art. 76 of the above-mentioned Presidential Decree (D.P.R.) 445/2000.

3.4 All the statements and commitments signed by a legal representative can be, alternatively, signed by a proxy provided with a power of attorney or an equivalent deed to be submitted in authenticated copy.

3.5 The request to participate and all the relevant documentation attached to it shall be drafted in Italian. Any documents written in a foreign language shall be accompanied by a sworn translation into Italian.

3.6 On pain of being **excluded** from the procedure, tenderers shall make sure that the envelopes with the request to participate and the relevant documentation shall arrive, by registered mail or authorized courier, **not later than the 23rd August 2010, 12:00 noon**, at the following address: Autorità Portuale di Trieste – Ufficio Protocollo, via Karl Ludwig von Bruck, n. 3 – 34143 TRIESTE; tenderers also have the faculty to deliver the envelopes by hand, Mondays to Fridays from 10:00 a.m. to 12 noon; on Tuesdays and Thursdays also from 3:00 p.m. to 4:30 p.m., in this case, too, by the same final deadline, at the Protocol Office of the Trieste Port Authority, at the above-mentioned address.

On pain of **exclusion** from the procedure, the envelopes shall be suitably sealed, countersigned on the edge of the flaps, intact, non-see-through, and in addition to the sender's name and address, they shall show these words, written visibly on the outside: **“Request to participate in the procedure for the sale of shares of TTP S.p.A.”**

The punctual delivery of the envelope shall be exclusively at the senders' risk. To this end, proof of delivery shall only be provided by either the postal date stamp or the note of receipt by the Protocol Office of the Port Authority.

3.7 A Tender Commission appointed by the Trieste Port Authority, at the Port Authority's head office itself, shall open the envelopes containing the requests to participate so as to check the documentation as well as the fulfilment of participation requirements.

3.8 If necessary, to supplement the submitted documentation, the Authority may request clarifications and additional information, which shall be provided by the deadline specified by the Authority itself.



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4. NEGOTIATION AND DUE DILIGENCE

4.1 By **9th September 2010**, an invitation letter shall be sent to successful applicants, so that they can:

- take part in the information procedure on the Company (Due diligence);
- take part in the negotiation procedure for the contract of sale of shares to be stipulated with the Port Authority (“Negotiation”);
- submit a technical and economic offer (the “Offer”) according to the procedure described by these Tendering Rules.

4.2 The following documents shall be attached to the Invitation letter:

- Outline of the contract for the sale of shares;
- Text of the shareholders’ agreements;
- Due diligence rules;
- Template of the economic offer;
- Template of the bank guarantee to be submitted with the offer;
- Information document on TTP S.p.A. and the shareholding in TYS s.r.l.;
- Text of the letter with the confidentiality agreement.

4.3 The negotiation procedure shall be conducted as described in the Invitation Letter and relevant annexes, according to the deadlines that the Port Authority shall specify. The Contract for the sale of shares shall be the subject-matter of the negotiation.

4.4 Following the negotiations with the participants, these shall receive the final text of the Contract for the sale of shares.

4.5 The due diligence procedure shall take place as per the Letter of Invitation and relevant annexes, according to the deadlines that the Port Authority shall specify, which can overlap with the deadlines of the negotiation procedure.

4.6 The negotiation stage and the due diligence shall continue until the deadline specified by the Administration in the Invitation letter.

5. OFFER

5.1 By the final deadline specified in the Invitation letter, and within at least **40** days from the deadline referred to in item 4.6 above, the invited participants shall be able to submit their Offer.

5.2 Without prejudice to what is specified in item 6.3 below, the Offer shall include:



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- the final text of the sale contract signed for acceptance on each page (Envelope “A”);
- the shareholders’ agreements signed for acceptance on each page (Envelope “A”)
- the bank guarantee securing the offer (Envelope “A”);
- the letter with the confidentiality agreement based on the template attached to the Invitation letter, filled in, dated and signed by the legal representative of the tendering company (Envelope “A”);
- the business plan making up the technical offer (Envelope “B”);
- an irrevocable economic offer (Envelope “C”).

5.3 The economic offer shall be irrevocable. Offers making reference to a different number of shares from that established in these Tendering Rules shall not be accepted, nor shall be accepted offers that are based on deferred or partial payments, exchanges or other attribution of assets in kind or credits, nor conditional offers.

5.4 All the documents making up the Offer shall be drafted in the Italian language.

5.5 The Administration reserve the faculty to proceed with the tender procedure even if only one request to participate, or only one valid Offer, has been submitted.

6. TENDER EVALUATION, SHORT-LIST, SECOND OFFER AND AWARD

6.1 On evaluating and comparing the Offers, the Administration shall comply with the principle of the most economically advantageous offer.

6.2 In the evaluation of the most economically advantageous offer, account shall be taken of the “economic offer” aspect, to which a maximum of 50 points shall be assigned.

6.3 On pain of **exclusion** from the tender procedure, the envelopes containing the offers shall be delivered, by registered mail or authorized courier, by the **final deadline** referred to in **item 5.1 above** and specified in the Invitation letter, at the following address: Autorità Portuale di Trieste – Ufficio Protocollo, via Karl Ludwig von Bruck, n. 3 – 34143 TRIESTE; tenderers also have the faculty to deliver envelopes by hand, Mondays to Fridays from 10:00 a.m. to 12 noon. Tuesdays and Thursdays also from 3:00 p.m. to 4:30 p.m., in this case, too, by the final deadline, at the Port Authority’s Protocol Office, at the above-mentioned address.



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On pain of **exclusion** from the procedure, the envelopes shall be suitably sealed, countersigned on the edge of the flaps, intact, non-see-through, and in addition to the sender's name and address, they shall show these words, **written visibly** on the outside: **“Offer concerning the procedure for the sale of shares of TTP S.p.A.”**

The punctual delivery of the envelope shall be exclusively at the senders' risk. To this end, proof of delivery shall only be provided by either the postal date stamp or the note of receipt by the Port Authority's Protocol Office.

The outer envelope thus prepared shall contain three inner envelopes, which in turn shall be suitably sealed and countersigned on the edge of the flaps, and in addition to the sender's name and address, they shall respectively show the following words:

- Procedure for the sale of shares of TTP S.p.A. – Envelope “A” – *Documentation*;
- Procedure for the sale of shares of TTP S.p.A. – Envelope “B” – *Business plan/ Technical offer*;
- Procedure for the sale of shares of TTP S.p.A. – Envelope “C” – *Economic offer*.

Envelope “A” – *Documentation* shall include the following documents, **on pain of exclusion** from the tender procedure:

- a) the final text of the sale contract signed for acceptance on each page;
- b) the shareholders' agreements, signed for acceptance on each page;
- c) a bank guarantee amounting to 10% of the base tender amount, as a guarantee for the subscription of shares;
- d) the letter including the confidentiality agreement according to the template attached to the Invitation letter, filled in, dated and signed by the legal representative of the tendering company;
- e) only for entities that are in the circumstances described in item 1.6: all the documents requested in par. 3 of these Tendering Rules.

All the above-mentioned documents, excluding the bank guaranty, shall be signed by the legal representative (or the person endowed with the powers to do so) of the tendering company, or the agent company in the case of the RTIs already constituted, or by all the members of the RTIs to be formed.



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Envelope “B” – *Business plan/technical offer* shall include a business plan signed by the legal representative of the individual company or undertaking – or by the agent company in the case of formed RTIs or by all the members of the RTIs to be formed. The business plan shall define and accurately describe – by using the maximum number of pages allowed and as specified in the Invitation letter, the following elements:

- 1) Organisation model and employment development;
- 2) Investment plan;
- 3) Business Plan with the development of the activities specified in the scope of the company (see art. 3 of the Articles of Association, reported in full in the preamble to these Tendering Rules, under item B), notably by making a distinction between:
 - a) Development of passenger activities;
 - b) Development of other related activities;
 - c) Company appraisal by calculating the Company’s Net Current Asset Value.

Envelope “C” – *Economic offer* shall include the proposal for the acquisition – signed by the legal representative, the agent in the case of constituted RTIs and by each member in the case of RTIs to be formed – of the shares put up for sale, amounting to 45, with a nominal value of € 10,000.00 each. Under all circumstances, the offer shall be at least equal – on pain of **exclusion** – to the base tender price which has been fixed at Euro **3,900,000.00** (three million nine hundred thousand/00).

The offer is not divisible, which means it has to concern the entire stake for sale. The offer shall be binding for 180 days after the deadline referred to in item 5.1.

6.4 SELECTION PROCEDURE

The selection procedure shall be entrusted to an Awarding Commission, appointed by decision of the President of the Port Authority.

For consultative purposes, experts may also be involved in the selection procedure. The Awarding Commission (hereinafter also: “the Commission”) will comply with the following steps.

First stage – Public session: assessment of the integrity of offers

On the date and at the time specified in the Invitation letter, at the head office of the Trieste Port Authority, a public session shall take place in order to verify the number of envelopes, their state of integrity, as well as the completeness of the tender documentation received.



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Participants whose documentation, contained in Envelope “A”, results to be incomplete or not compliant with the requirements of these Tendering Rules, shall not be admitted to the evaluation of the technical and economic offer and, therefore, shall be **excluded** from the tender procedure. Excluded participants shall be returned the bank guarantee submitted with their offer.

Second Stage – Evaluation of the technical contents

Later, during a private session, the Commission shall open the envelopes “B” – *Business Plan* of the invited tenderers admitted to this stage. The Commission shall assess the contents of the envelope concerning the Business Plan according to the parameters specified in item 6.5 below.

The tenderers whose technical offers do not score at least 30 points in total, according to the criteria specified in item 6.5 below, shall not be admitted to the evaluation of their economic offers and shall, therefore, be **excluded** from the tender procedure. Excluded participants shall be returned the bank guaranty submitted with their offer.

Third stage: public session – assigning scores to the economic offer.

At the head office of the Port Authority, in a public meeting, the date of which shall be communicated to the participants with at least **5 days** in advance, the Commission shall communicate the results of the evaluation as per the previous item and shall open the envelopes “C”, containing the Economic Offers of tenderers scoring 30 points or more in their Technical Offer.

The Commission shall attribute the scores for the Economic Offers according to the parameters specified in item 6.5 below.

After evaluating the offers, the Commission shall define a short-list of merit according to the achieved scores.

Fourth stage: second tender.

As soon as the shortlist has been drafted, the top three tenderers shall have the faculty to submit a second economic tender, according to the procedure described below.

If a second tender is not submitted, the economic offer submitted in the previous stage shall be considered.

The tenderers’ second offer, which raises the previous bid, shall be submitted in a closed envelope within two hours after the closing of the third-stage public meeting.

In order to ensure privacy during the preparation of the second offer, tenderers shall be allotted a room each, made available by the Port Authority.



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At the end of the two hours allotted for preparing the offer, the Commission, in a public session, shall open the envelopes with the new tenders and will assign the final score. After assigning a score to the economic offers submitted at this stage according to the criterion as per item 6.5, the Commission shall re-define the shortlist of the top three tenderers.

6.5. CRITERIA FOR THE EVALUATION OF THE OFFER

Technical Contents of the Business Plan: Max points: 50

- Organisation and employment model: 10 points
- Investment plan: 5 points
- Business plan focused on the development of activities within the scope of the company: 35 points broken down as follows:
 - Development of passenger activities: 20 points
 - Development of other activities: 10 points
 - Company appraisal (Company's Net Current Asset Value) 5 points

For each of the above-mentioned criteria and sub-criteria, a coefficient shall be identified, equal to the average of the coefficients – comprised between 0 and 1 – discretionally assigned by the individual members of the Commission. The coefficient thus calculated shall be multiplied by the weight (maximum score) assigned to each of the criteria and sub-criteria.

The tenderers whose technical offer does not score at least 30 points in total shall not be admitted to the evaluation of their economic offers and shall be, therefore, **excluded** from the tender procedure.

Economic value of the purchase proposal: Max points: 50

The economic evaluation of the purchase proposal shall take place by assigning 0 points to the offer equivalent to the base tender price and 50 points to the highest offer.

The assignment of scores to the other offers shall be carried out according to the following criteria:

A = base tender offer

B = best offer

C = offer to be evaluated

D = maximum score (50 points)

E = assigned score



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$$E = (C - A) / (B - A) * D$$

7. AWARD AND CONTRACT FINALISATION

- 7.1 On the basis of the short-list drafted at the end of the “fourth stage” as per item 6.4, the Port Authority shall check that the requirements of these Tendering Rules (paragraph 1 and paragraph 3) as well as the law provisions and regulations have been complied with by the tenderers ranking first and second in the shortlist.
- 7.2 Should this evaluation fail to reach a favourable outcome, the awarding commission shall proceed to the next temporary award, if any.
- 7.3 The final award shall be decided by the competent bodies of the Port Authority once the assessments made as per item 7.1 have concluded with favourable results.
- 7.4 Minutes shall be taken of all the tender operations.
- 7.5 The price for the acquisition of the shares from the Trieste Port Authority shall be paid before the final sale contract is concluded, otherwise the award shall be revoked.
- 7.6 Under all circumstances, the Trieste Port Authority reserves the right not to award the contract in the presence of sound reasons of public interest.
- 7.7 All costs, taxes, charges relating to the contract for the sale of shares and the relevant registration shall be at the successful Tenderer’s expense.
- 7.9 In addition to what shall be specified in the Invitation letter, the contract for the sale of shares cannot be finalised before 35 days from the date when the last communication on the final award decision is dispatched.

8. FURTHER PROVISIONS

- 8.1 The publication of the Invitation for tender – of which these Tendering Rules are an illustrative document – does not constitute an offer to the public as per art. 1336 of the civil code nor canvassing in compliance with Leg. Decree n° 58 of 24 February 1998.
- 8.2 Submitted data shall be processed in accordance with the provisions of Legislative Decree 196/2003. It should be noted that the processing of personal data shall be



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carried out in compliance with the relevant regulations so as to safeguard the tenderers' rights and their privacy; data processing aims at assessing the eligibility of tenderers participating in the tender procedure for the sale of TTP shares, as well as to allow that all of its stages can take place smoothly. The Trieste Port Authority shall be in charge of data processing.

9. QUERIES

- 9.1 Queries relating to this tender procedure should be directed to the person in charge of the procedure, specified in Paragraph 10 below, or alternatively to the “Servizio Legale Privacy e Contenzioso”, for the attention of Ms. Neva Abram, tel. 040.6732250; fax n. 040.6732280; e-mail: nabram@porto.trieste.it.
- 9.2 Queries concerning the pre-selection stage should be made not later than at **5:00 pm** on **16th August 2010**. The replies to the queries received in written form within the above-mentioned deadline shall be sent by fax or e-mail, as chosen by the tenderer.
- 9.3 In addition to what has been specified in item 3.2.3 of these Tendering Rules, each tenderer shall supply, together with the request to participate, the name/s and details (address, telephone, fax and e-mail) of one or more persons from whom to request clarifications and additional information as well as for the sending of communications.

10. PERSON IN CHARGE OF THE TENDER PROCEDURE

10.1 Dott. Fabio Crosilla is the person in charge of the tender procedure.
Fax +39 040 6732223; Tel. +39 040 6732259;
E- mail: fcrosilla@porto.trieste.it

11. TENDER PUBLICITY

- 11.1 The Invitation to tender, of which these Tendering Rules are the descriptive document, is published in the Official Gazette of the Italian Republic (*Gazzetta Ufficiale della Repubblica Italiana*). A summary of the Tender Notice is published in the European Union Official Journal as well as in n° 3 national newspapers and n° 2 local newspapers mainly circulating in the Friuli Venezia Giulia Region.
- 11.2 Copies of the Invitation to Tender and these Tendering Rules have been published in the Notice Board of the Trieste Port Authority and are also available



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at the Internet website www.porto.trieste.it in the “Notices and Calls for tender” section.

11.3 Until the **16th August 2010**, after booking an appointment on the telephone with the person in charge of the tender specified in item 10 above or, alternatively, with the Legal affairs, Privacy and Disputes Service (details as per item 9.1) it will be possible to receive, from the Trieste Port Authority head office, a printed copy of the Invitation to Tender published in the Official Gazette of the Italian Republic G.U.R.I. and of these Tendering Rules. From **23rd July 2010** to **16th August 2010**, it will also be possible to receive, according to the same procedure, a printed copy of the Information Memorandum, after declaring one’s personal details and those of the business operator on behalf of which the document has been requested, and after signing the confidentiality agreement.

Trieste, 7 July 2010.