

### **Disclaimer, waiver and limitation of liability**

The purpose of the documents (preliminary rules, PPP contract and their exhibits) that the Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes – SCT*) publishes hereby, is to make the process that is being performed thereby more transparent in order to define the terms, modalities and requirements of the competitive bidding whereby the telecommunications *Red Compartida* project referred to in article sixteenth transitory of the Executive Order that amends and supplements several provisions of articles 6<sup>th</sup>, 7<sup>th</sup>, 27, 28, 73, 78, 94 and 105 of the Political Constitution of the United Mexican States, in telecommunication matters, published in the Federal Gazette on June 11, 2013, which includes the use of the radioelectric spectrum frequency band, which includes the segments of 703 to 748 MHz and of 758 to 803 MHz, with a total of 90 MHz nationwide, as well as a pair of dark fiber optic strands of the Backbone Network contemplated in article fifteenth transitory of the aforesaid Executive Order, shall be awarded. The preliminary rules, the PPP Contract and the exhibits that are hereby published, are preliminary documents and are the result of the analysis performed by the SCT and by the IFT, within their scope of their respective duties, therefore anyone who wishes to participate in the aforesaid competitive bidding, if the case may be, whether as a participant, bidder or with any other capacity, interest or desire, must not take such documents and information therein provided as final, whether in whole or in part, as specifications, definitions, terms, conditions or features applicable to the competitive bidding or to the *Red Compartida* project, since they may be amended in whole or in part, and therefore do not mean any commitment whatsoever for the SCT or for the IFT or have any binding content whatsoever. In such regard, neither the Federal Government, including the SCT and its other agencies or entities, nor whoever acts as the inviting entity to the *Red Compartida* project, nor the IFT, undertake any responsibility whatsoever regarding the accuracy of the information or the preliminary documentation that is being published; nor any liability of any kind regarding its interpretation, understanding, analysis or comment, or regarding the decision making of any person, with any capacity, based on such information or documentation. The information and values that are being published do not represent or constitute any offer, promise or commitment whatsoever of the Federal Government, including the SCT and its other agencies or entities, or of whoever acts as inviting entity of the competitive bidding of the *Red Compartida* project, if the case may be, nor of the IFT, and therefore rejects any obligation or indemnification that is claimed, imposed or derived from the information that is being published. No obligation, commitment, damage, lost profit or right to any indemnification shall be acknowledged, derived from the information referenced herein. The information contained in the documents that are being published is preliminary and for consultation and feedback purposes, and it is just a sample of some of the specifications of the *Red Compartida*. Likewise, the information contained in the documents that are being published does not imply any commitment by the Federal Government, including the SCT and its other agencies and entities, to carry out any proceeding under any modality, whether as a public tender, competitive bidding or any other that is determined. The people who wish to participate in the *Red Compartida* project competitive bidding, if the case may be, or who have an interest therein, shall be responsible for making their own analysis and calculations, based on the final information published for such purpose, and shall be fully responsible for the results, conclusion and information obtained therefrom and mainly the actions and decision making based thereon. This act of publication does not constitute the commencement of any stage of the public tender or competitive bidding of the *Red Compartida* project, or any invitation or request of expressions of interest or of requested or unrequested proposals. The delivery to the SCT or to any other agency or entity of the Federal Government, or to the IFT, of comments, opinions, proposals, requests or expressions of any kind, by any individual or entity, derived from the information provided in these documents, does not imply any commitment whatsoever nor in any way binds the SCT or any other agency or entity of the Federal Government or the IFT to respond to them affirmatively or to take them into consideration, adopt them or abide by them, in whole or in part; nor grants whoever delivers them any right, present or future, in the proceeding that is carried out for the award of the project.

This courtesy English translation is provided only for reference. It has no validity and in the event of any discrepancy, the Spanish version shall prevail and be considered as the correct version for all intents and purposes.

## INVITATION

The Agency for the Development of Investments in Telecommunications (*Organismo Promotor de Inversiones en Telecomunicaciones* – OPRITEL), pursuant to articles 6, 28 and 134 of the Political Constitution of the United Mexican States; sixteenth transitory of the Executive Order that amends and supplements several provisions of articles 6<sup>th</sup>, 7<sup>th</sup>, 27, 28, 73, 78, 94 and 105 of the Political Constitution of the United Mexican States, in telecommunication matters, published in the Federal Official Gazette on June 11, 2013; 1, 2, 4, 5, 9, section XVI, 140 to 144 of the Federal Telecommunications and Broadcasting Act (*Ley Federal de Telecomunicaciones y Radiodifusión*); thirteenth transitory of the Executive Order that enacted the Federal Telecommunications and Broadcasting Act, and the Broadcasting System Act of the Mexican State (*Ley del Sistema de Radiodifusión del Estado Mexicano*), and which amends, supplements and repeals several provisions in telecommunications and broadcasting matters, published in the Federal Official Gazette on July 14, 2014; 1, 2, 4, section I, 38, 45 of the Public-Private Partnership Act; and 67 to 69 of the Regulations of the Public-Private Partnership Act; and \_\_\_\_ of the “Executive Order that creates the decentralized entity, with its own legal capacity and estate, known as the Agency for the Development of Investments in Telecommunications, OPRITEL, published in the Federal Official Gazette on \_\_\_\_\_, 2015 and other legal regulatory and administrative applicable provisions, issues an **INVITATION**:

TO ALL INDIVIDUALS OR ENTITIES, BOTH MEXICAN AND FOREIGN, TO PARTICIPATE IN THE INTERNATIONAL COMPETITIVE TENDER NO. \_\_\_\_\_ FOR THE AWARD OF A PUBLIC-PRIVATE PARTNERSHIP PROJECT PURSUANT TO THE PUBLIC-PRIVATE PARTNERSHIP ACT (*LEY DE ASOCIACIONES PÚBLICO PRIVADAS*), FOR THE FOR THE INSTALLATION AND OPERATION OF THE PUBLIC TELECOMMUNICATIONS SHARED NETWORK REFERRED TO IN ARTICLE SIXTEENTH TRANSITORY OF THE EXECUTIVE ORDER THAT AMENDS AND SUPPLEMENTS SEVERAL PROVISIONS OF ARTICLES 6<sup>TH</sup>, 7<sup>TH</sup>, 27, 28, 73, 78, 94 AND 105 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES, IN TELECOMMUNICATION MATTERS, PUBLISHED IN THE FEDERAL OFFICIAL GAZETTE (*DIARIO OFICIAL DE LA FEDERACIÓN*) ON JUNE 11, 2013, CONTEMPLATING THE USE OF THE SPECTRUM BROADBAND THAT INCLUDES SEGMENTS OF 703 TO 748 MHZ AND OF 758 TO 803 MHZ, WITH A TOTAL OF 90 MHZ NATIONWIDE UNDER A LEASE STRUCTURE AND A PAIR OF FIBER OPTIC STRANDS OF THE BACKBONE NETWORK REFERRED TO IN ARTICLE FIFTEENTH TRANSITORY OF THE SAME EXECUTIVE ORDER, IN ACCORDANCE WITH THE FOLLOWING:

1. General Description of the Project: The Project consists of the design, installation, deployment, operation, maintenance and upgrade of the *Red Compartida*, and the marketing of the Wholesale Telecommunication Service therefrom, in accordance with the specifications, periods, requirements, obligations and modalities provided in the Rules, in the Spectrum Concession, in the Wholesale Concession and in the PPP Contract.

The Agency for the Development of Investments in Telecommunications, OPRITEL (the Inviting Entity) and Telecom shall execute with the Developer the PPP Contract, contributing the former agency the rights of use, profit and exploitation, under a lease structure, of the segments from 703 to 748 MHz and of 758 to 803 MHz, with a total of ninety (90) MHz nationwide, and contributing the latter entity the right of use, profit and exploitation of one (1) pair of dark fiber optic strands of the Backbone Network, in order to be used by the Developer for the installation and operation of the *Red Compartida*, without the foregoing being construed as conferring or transferring title to the Concession of Spectrum, or title to the fiber optic.

The Developer, as lessee, shall be subject to the ongoing compliance with the terms and conditions set forth in the PPP Contract, in the Spectrum Concession title, in the Wholesale Concession, with the provisions in the LFTR and any other provisions established by the IFT.

The Developer shall pay to the Agency as from the execution of the PPP Contract, as consideration for the lease of the corresponding spectrum, an amount equivalent to the rights provided in the Federal Government Fees and Charges Act (*Ley Federal de Derechos*) as amended, for the use, profit and exploitation of the spectrum broadband including the segments from 703 to 748 MHz and from 758 to 803 MHz, with a total of 90 MHz nationwide, licensed to the Agency and which use, profit and exploitation shall be contributed through the PPP Contract, including its upgrades and the contributions generated under the applicable laws, adding to such amount any tax effect imposed to such Agency from the reception of said payment.

On the other hand, the Developer shall cover all costs and contribute all financial resources required for the design, installation, deployment, operation, maintenance and upgrading of the *Red Compartida* and to market the Wholesale Telecommunication Services thereby.

The Developer must obtain the Wholesale Concession from the IFT in order to render the Wholesale Telecommunication Service.

All real and personal property, rights, infrastructure, equipment, authorizations, licenses, permits, payments and other physical, human or any other kind of element required to install and operate the *Red Compartida* and to render the Wholesale Telecommunication Service, other than the right to use the spectrum and the fiber optic, which will be contributed by the Inviting Entity and Telecomm, must be contributed by the Developer.

The Developer shall also, among other things:

- Pay to the Inviting Entity the corresponding consideration for the lease of the spectrum that is formalized through the PPP Contract,
- Apply for and obtain any permit, authorization, right of way or use of passive infrastructure, environmental impact assessment, among others, required to design, deploy, maintain and upgrade the *Red Compartida*,
- Comply with each and all of the obligations derived from the assignment of rights of the corresponding pair of dark fiber optic strands executed between Telecomm and CFE, including the payment for the maintenance of the dark fiber optic strands,
- Comply with the other contributions and obligations set forth in these Rules and in the PPP Contract, and
- Share with the Inviting Entity a portion of the profits generated by the Project in accordance with the mechanisms detailed in the PPP Contract.

The Inviting Entity shall authorize the Developer, based on the provisions of the Spectrum Concession, to sublease the spectrum to third parties, provided:

- The Developer is up to date in the performance of its obligations under the PPP Contract,
- Such sublease contributes to the compliance, development and implementation of the Project,
- The income received by the Developer as a result of the spectrum sublease are destined by the Developer to the Project, and
- The Developer has obtained prior authorization from the IFT, in terms of article 140 of the LFTR, which provides, among other things:
  - That the lessee must have the Wholesale Concession of the same use or must have requested it to the IFT,
  - That the lessee agrees to act as joint obligor of the concessionaire, regarding the obligations derived from the leased frequency band concession,
  - That the continuity in the provision of services is not affected, and

- That it does not generate any concentration, hoarding or crossed ownership phenomena.

The Developer agrees to create an irrevocable investment, administration and source of payment trust, in terms of the PPP Contract, which purpose will include but not be limited to: (i) receive all income resulting from the operation of the Project, from the rendering of Wholesale Telecommunication Service, from activities or contracts derived from or connected with the Project; as well as those accrued or resulting from the sublease of the radioelectric spectrum, and deliver to the Developer the corresponding amounts in terms of the provisions in the Trust Agreement; (ii) establish and manage a Reserve Fund which purpose shall be to guarantee the availability of funds to cover capital expenditures required to meet the Offered Population Coverage from the Minimum Required Coverage, and (iii) implement the sharing mechanism of profits.

The Inviting Entity shall monitor compliance with the obligations undertaken by the Developer applying the applicable penalties under the PPP Contract. On the other hand, the IFT shall monitor and sanction compliance with the obligations derived from the concession titles and the applicable standards.

The commencement date for the provision of services and the deployment schedule are included in the Rules.

2. Publication of the Competitive Bidding Rules: They shall be published on \_\_\_\_\_ in the electronic broadcasting website – Internet – of such decentralized entity www.\_\_\_\_\_.gov.mx, in the Federal Official Gazette, in CompraNet, in the electronic website www.redcompartida.gov.mx and in the national newspaper “ \_\_\_\_\_”, pursuant to articles 44 of the Public-Private Partnership Act and 66 of its Regulations.

The domicile of the Inviting Entity is: \_\_\_\_\_  
Other data of the Competitive Bidding may be consulted at: \_\_\_\_\_

3. Acquisition of the Competitive Bidding Rules: To acquire the Competitive Bidding Rules, the applicant must: a) provide in writing its name and domicile within the Federal District to hear and receive notices, the people authorized for such purposes, phone number, email and, if applicable, name, phone numbers and emails of the legal representatives of the applicant, enclosing the public deeds that evidence the authority of such representatives; and b) pay the amount of [\$\_\_\_\_\_ (\_\_\_\_\_)] including the value added tax, through certified or cashier’s check issued by a banking institution in favor of the Federal Treasury.

Upon payment and submission of the above-mentioned private document, the Inviting Entity shall deliver a copy of the Competitive Bidding Rules, a copy of the acquisition receipt thereof and proof of registration of the Bidder in favor of the acquirer. This proof may be assigned to another person, together with a copy of the acquisition receipt of the Rules, which assignment must be evidenced through an assignment agreement executed between the parties.

#### 4. People who may participate and requirements:

Except those prevented in terms of article 42 of the LAPP and pursuant to the provisions in the Rules, all interested individuals or entities of Mexican or foreign nationality may participate in the Competitive Bidding, whether individually or in a Joint Venture (in the understanding that individuals may not participate separately but only in a Joint Venture), provided they:

- Acquire the Competitive Bidding Rules directly or through assignment and have proof of registration in their name or acquired by assignment, in accordance with these Rules. In the event of Joint Ventures, it will suffice for one of their members to have acquired the Bidding Rules and have the aforesaid proof, and
- Comply with the requirements and conditions set forth in these Rules. Among others, they must comply with the technical, economic, financial and legal requirements provided in the Rules.

#### 5. Criteria for the objective evaluation of Proposals and the award of the PPP Contract.

The evaluation of Bids shall be carried out pursuant to article 52 of the LAPP and the provisions in these Rules.

##### Technical Bid:

The Inviting Entity shall evaluate first of all the Technical Bids, which shall be deemed solvent as long as in accordance with the requirements provided in the Rules the Bidder:

- a) Evidences legal, management, administrative, economic, financial and technical capabilities in terms of these Rules.
- c) Has obtained a favorable Antitrust Opinion by the IFT or a favorable Antitrust Opinion subject to conditions, provided such conditions have been met.
- d) Has submitted a Technical Bid meeting the requirements established in the Rules.
- e) Does not fall into any of the disqualification causes established in the Public-Private Partnership Act, its regulations and in the Rules.

Proposals that are considered solvent pursuant to the above-mentioned criteria shall pass to the evaluation stage of the Economic Bid.

Proposals which Technical Bids are not deemed solvent shall be dismissed and shall not pass to the opening and evaluation stage of the Economic Bids.

Economic Bid:

The solvent Proposal which Economic Bid constitutes the highest Offered Population Coverage shall be deemed the winner.

In case of a tie between two or more participants in the Offered Population Coverage, the tiebreaker criteria shall be whoever constitutes the highest Extra Compensation (*Guante*).

6. Meeting for Clarifications, Submission and Opening of Proposals: The Meeting for Clarifications and the Submission and Opening of the Proposals, shall be carried out on the dates and places established in the Competitive Bidding Schedule included in the Rules.

7. Language: The entire Competitive Bidding and the Proposals shall be carried out in Spanish.

8. Currency: Any economic or monetary information submitted by the Bidders, including the Extra Compensation must be expressed in pesos, pursuant to article 1<sup>st</sup> of the Monetary Act (*Ley Monetaria*) of the United Mexican States.

9. Ruling: The ruling of the Competitive Bidding shall be rendered on the date and place established in the Competitive Bidding Schedule included in the Rules.

10. No Negotiation: None of the conditions provided in the Competitive Bidding Rules or in the Proposals submitted by the Bidders are subject to negotiation.

Mexico City, Federal District, on \_\_\_\_\_, 2015.

HEAD OF THE AGENCY FOR THE DEVELOPMENT OF INVESTMENTS IN  
TELECOMMUNICATIONS, OPRITEL

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C. \_\_\_\_\_