

## **DRAFT**

The texts are purely indicative. Only the Italian texts have legal value

### **Notice of Auction for the sale of Shares held by COMUNE DI BOLOGNA (Municipality of Bologna) and PROVINCIA DI BOLOGNA (Province of Bologna) in the company "INTERPORTO BOLOGNA S.p.A."**

#### **THE MUNICIPALITY OF BOLOGNA**

#### **announces that**

The Municipality of Bologna and the Province of Bologna pursuant to the deliberation of the City Council P.G. N. 144652/2013 dated 24h June 2013, in force since 24h June 2013 and the Provincial Council n. 39 dated 1st of July 2013 in force since 1st July 2013, intends to sell its own stock of shareholdings composed respectively of n. 15.234 (fifteen thousand two hundred thirty four) shares, equal to the nominal value of Euros 7.875.978,00 and n. 7.619 (seven thousand six hundred nineteen) shares, equal to the nominal value of Euros 3.939.023,00 corresponding to a total of 52,66% share capital currently set at Euros 22.436.766,00 held in the company INTERPORTO BOLOGNA S.p.A., with registered office in Bologna, Via Altabella n. 15, enrolled in the Business Register of Bologna with No. 00372790378, Number REA BO – 21041.

The Province of Bologna has given a mandate to carry out the procedure for the joint sale of shares and any other act necessary and consequent to the partner Municipality of Bologna in the person of the Director of the Directorate-Controlled and Participated Companies' Division of the Municipality of Bologna.

**CIG CODE 52285174B8**

#### **SUBJECT**

The auction starting price is set at **31.437.987,90** (thirty-one million four hundred thirty-seven thousand nine hundred eighty-seven point ninety) Euros, as corresponding to **22.853 shares**, equal to the 52,66% of the company stock; the auction starting unit price of the shares is set at **1.375,64 (one thousand three hundred seventy-five point sixty-four)** Euros. Under penalty of exclusion, offers are exclusively accepted when equal to or higher than the auction starting price.

The sale concerns the entire block of shares held by the Municipality of Bologna and the Province of Bologna.

No partial offer is accepted, not even in case of a joint offer submitted by different subjects, nor is a conditional offer.

#### **AWARD CRITERIA**

The current procedure is carried out by means of a public sale **in one single lot, with the method of secret bids, equal to or higher than the auction starting price, namely 31.437.987,90 (thirty-one million four hundred thirty-seven thousand nine hundred eighty-seven point ninety) Euros, automatically excluding any bid**

**lower than the starting price**, as provided for in article 73 letter c) and articles 76 and 77 of the R.D. (Royal Decree) dated 23 May 1924, no. 827 as amended and supplemented.

**The sale will be awarded even in case of one single valid offer received.**

In case of identical bids, the article 77 of the R.D. no. 827/1924 will be applied, as per complete text here below:

"In auctions with secret bids, when one or more competitors make the same bid and it is acceptable, the assembly will proceed to an auction among these same bidders only, either based on secret bids or on the traditional method of the so-called "virgin candle", depending on what the appointed officer decides. The winner is the bidder who turns out to have made the best offer.

In case no one of the competitors who had previously made the same offer is present, or no one of the present competitors wants to increase the offer, i.e. in case the bids must be kept under the limit as per parag. 2 of art. 75 and last paragraph. of art. 76, chance will decide to whom the sale contract will be awarded".

**The award will occur in favour of the subject that will have made the highest bid as compared to the auction starting price.**

The final award is subject to the legal suspensive condition of the missed exercise of the right to preference by those entitled in the terms and modes as per art. 9 "Transfers and preference" of the enforcing company's Articles of association.

The municipality of Bologna, before proceeding to the final award, shall wait until the expiry date for the exercise of the shareholders' right to the mentioned preference clause. In relation to the preference clause itself, the temporary winning bidder shall not be entitled to claim, towards the Municipality of Bologna and the Province of Bologna, any right or title to the final award and/or to the signing of the sale contract, in case the other company's shareholders have taken advantage of the preference clause.

The public auction will occur on 16th September 2013, at 12,00 a.m. in the Meeting Room of the Directorate-Controlled and Participated Companies' Division of the Municipality of Bologna, Piazza Liber Paradisus 6 – Tower C – Bologna, on a public session, for the sale of the above mentioned shares.

The present Notice is an invitation to offer and not a public offer, according to art. 1336 Civil Code, nor a solicitation to public saving, pursuant to Legislative Decree No. 58 dated 24 February 1998, as amended and supplemented.

The responsible person for this Procedure is the Director of the Directorate-Controlled and Participated Companies' Division of the Municipality of Bologna, Mrs. Sonia Bellini, Piazza Liber Paradisus 6 – Tower C – 40129 Bologna tel. 051/2194582 – 4415 - fax 051/2194462 – e-mail [sonia.bellini@comune.bologna.it](mailto:sonia.bellini@comune.bologna.it)

## **COMPANY'S FEATURES**

The joint stock company "INTERPORTO BOLOGNA S.p.A." is enrolled in the Business Register of Bologna with No. 00372790378, Number REA BO – 21041.

The Company's registered office is located in Bologna, Via Altabella n. 15. The duration of the company is set as until December 2050.

The company's subject is the planning and the development, through all the subsequently necessary actions (purchase, building, sale, exchange, lease, rent, and so on), of Bologna's Interporto, that is an organic centre of integrated logistic structures for the transfer of goods among different modes of transport, as well as for the activities as indicated in article 4 of the company's Articles of association, enclosed to present notice.

## **SUBJECTS ENTITLED TO SUBMIT AN OFFER**

Offers can be submitted by physical and/or juridical persons.

- In case of juridical person, the satisfaction of the requirements as per article 38, paragraph. 1, Legislative Decree No. 163/2006, as amended and supplemented, must be stated and subsequently proved by all the directors with power of representation, as well as by the sole shareholder as a physical person, or by the majority shareholder in case of company with many shareholders;
- They may also submit a joint tender subjects temporarily "allied" (referred to as "Alliance") as long as the individual components of each grouping are meeting the requirements of Article 38, paragraph 1 of Legislative Decree no. N. 163/2006 as amended and supplemented.

## **EXCLUSION CRITERIA**

Exclusion criteria are:

- The presence of one of the exclusion clauses as per article 38, paragraph. 1, Legislative Decree No. 163/2006, as amended and supplemented.
- The fact of having, according to article 37 paragraph. 1 of Law decree 78/2010, as amended by the Conversion Law No. 122/2010, registered office, residence or domicile in one of the so called "black list countries", as listed in the Decree of the Ministry of Finance dated 4 May 1999 and in the Decree of the Ministry of Economy dated 21 November 2001, or having registered office residence or domicile in a so called "black list" country and missing the ministry authorisation as required by the above mentioned article No. 37.

## **DOCUMENTATION OF THE PROCEDURE**

The following documents attached are part of the documentation of the Procedure:

- Company's Articles of association of the company INTERPORTO BOLOGNA S.p.A. and its subsidiaries;
- List of stock holders of the company INTERPORTO BOLOGNA S.p.A.;
- Historical Chamber of Commerce registration of the company and its subsidiaries;
- Financial statements of the company INTERPORTO BOLOGNA S.p.A. and its subsidiaries, approved and registered with related attachments, for the accounting years 2010-2011-2012, as well as consolidated statements of the company INTERPORTO BOLOGNA S.p.A. for the accounting years 2010-2011-2012.

The said documentation can be downloaded from the website [www.comune.bologna.it/concorsigare/](http://www.comune.bologna.it/concorsigare/) and on the website [www.provincia.bologna.it](http://www.provincia.bologna.it) – section Bandi di gara.

Further documentation about INTERPORTO BOLOGNA S.p.a. can be seen by the interested subject in the Virtual Data Room after signing the corresponding request for access and the undertaking as to confidentiality, attached to the present notice, according to modalities indicated in the Virtual Data Room guidelines.

The present notice, the Virtual Data Room guidelines, the Request for access and the Undertaking as to confidentiality, as mentioned above, can be found and downloaded on the website [www.comune.bologna.it/concorsigare/](http://www.comune.bologna.it/concorsigare/) and on the website

[www.provincia.bologna.it](http://www.provincia.bologna.it) – section Bandi di gara.

Any further question about the auction procedure and the documents available in the Virtual Data Room can be asked, in Italian language, and until 6th September 2013, by sending an email to the email address: [SegreteriaPartecipazioniSocietarie@comune.bologna.it](mailto:SegreteriaPartecipazioniSocietarie@comune.bologna.it).

### **DEADLINE FOR SUBMISSION OF OFFERS**

To take part in the auction, applicants must send the envelope with the requested documents and the offer to the present body, **prior to, and no later than, 12 a.m. of 13<sup>th</sup> September 2013**, under penalty of exclusion, at the following addresses:

– **personal delivery:**

Sportello Protocollo generale presso l'URP del Comune di Bologna – Piazza Maggiore 6 – Bologna in the following opening hours:

from Monday 5 August to Friday 23 August, 8.30 a.m. - 1 p.m.; closed on Saturdays beginning from Saturday 27 July to Saturday 24 August included;

in every other day from Monday to Friday 8.30 a.m. - 1.00 p.m.; Tuesday and Thursday from 15.00 p.m. to 17.00 p.m.; Saturday from 8.30 a.m. to 12.30 p.m..

– **by means of courier:**

Comune di Bologna – Ufficio Spedizioni – Piazza Liber Paradisus n. 10 – 40129 Bologna – Torre B, Piano -1, Ufficio B in the following hours:

from Monday to Friday from 8.15 a.m. to 14.30 pm., closed on Saturdays (also in August).

The delivery of the envelope, sealed and signed all across the sealing flaps, including the offer and the documents required as annexes to it, must occur, no later than the above deadline, either personally, or by post, or by means of an authorised courier, according to applicable regulations.

**The delivery of the envelope within the mentioned deadline, no matter what the means of sending is, is solely at the applicant's risk. To the respect of the mentioned deadline, only the date and the time of receipt of the envelope by the Municipal Protocol office will be considered.**

No offer received later than the mentioned deadline will be valid, even in case of replacing or supplementary offer.

Moreover, the envelope must be marked, **under penalty of exclusion from the auction procedure**, with the WORDING: Offerta per la gara relativa alla vendita delle azioni di INTERPORTO BOLOGNA S.p.A. di proprietà del Comune di Bologna e della Provincia di Bologna. - *SCADENZA 13<sup>th</sup> September 2013.*

It must also indicate the sender's name / company name and complete address, therefore the envelopes received later than the deadline, or at different addresses than the requested one, shall not be taken into consideration.

Should an envelope be received in a different form than what requested and arrive later than the deadline, even if due to force majeure reasons, it shall not be considered as well.

### **REQUESTED DOCUMENTS**

All the documents must be presented in writing, only in the Italian language, to the

address mentioned above.

The envelope must be closed, sealed and signed by the bidder (physical person) or by the legal representative (juridical person) across every sealing flap, so as to prevent tampering.

The said envelope must indicate, externally:

- **Indication of the sender:** name or company name, registered office, telephone number, fax number and e-mail address.
- **WORDING: Offerta per la gara relativa alla vendita delle azioni di INTERPORTO BOLOGNA S.p.A. di proprietà del Comune di Bologna e della Provincia di Bologna".** *SCADENZA 13<sup>th</sup> September 2013.*

The envelope must contain, under penalty of exclusion, other separate envelopes, also sealed and signed by the bidder (physical person) or by the legal representative (juridical person) across every sealing flap, so as to prevent tampering, each one indicating the documents included accordingly:

- ENVELOPE A: administrative documents
- ENVELOPE B: financial bid

➤ **ENVELOPE A – Administrative documents** – must include the following, under penalty of exclusion:

**1) Request for Application, (stamp duty 16,00 Euros)** undersigned with readable signature by the bidder (physical person) or by the legal representative (juridical person), accompanied by a photocopy of a valid identity document of the subscriber;

**2) Substitute declaration, as complying to D.P.R. (Decree of the President of the Italian Republic) 445/2000,** on unstamped paper undersigned by the bidder (physical person) or by the legal representative (juridical person), stating:

- that he has taken note of all the terms indicated in the notice of auction;
- that he has read the Articles of association of the company INTERPORTO BOLOGNA S.p.A.;
- that he commits to transfer the offered purchase price no later than the finalising date of the shares' transfer operations;
- that the submitted bid is binding and irrevocable until 180 days after the closing date for submission of bids;

And further more,

**for physical persons:**

- bidder's personal data (name, surname, date and place of birth, residence, tax code, marital status and property division/community, telephone number, possible fax number and e-mail address and/or certified email address);
- that he benefits from the civil and political rights of the State of origin; that he is not subject to one of the impediment clause as indicated in article 67 of Legislative Decree 159/2011, as amended and supplemented (**regulations against the mafia and relative prevention measures**);
- that he is not interdict, incapacitated or bankrupt and he has no procedure under way for any of the mentioned statuses;
- that to his charge no adverse decision become res iudicata has been pronounced, neither for a crime related to professional conduct nor for financial crimes, nor anyway for a crime that compromise his ability to sign contracts with Public Authorities;
- that there are no penal convictions to his charge that ban him on signing contracts with Public Authorities, according to enforcing regulations;

- the he has read and accepts in total and without reserves and conditions, all the rules and regulations included in the present Notice and its Annexes, as well as in the Articles of association of the company INTERPORTO BOLOGNA S.p.A.;
- that he meets all the necessary requirements to be admitted to the procedure and that he's not subject to any exclusion clauses as mentioned in the present Notice.

**for juridical persons:**

- to be a legal entity, according to the laws of its belonging Country, and that its registered office/residence is located in Italy or in a foreign country, not included in the list of countries with privileged tax system, as in compliance with article 37 article 37 parag. 1 of Law decree 78/2010, as amended by the Conversion Law No. 122/2010, registered office, residence or domicile in one of the so called "black list countries", as listed in the Decree of the Ministry of Finance dated 4 May 1999 and in the Decree of the Ministry of Economy dated 21 November 2001, or having registered office residence or domicile in a so called "black list" country and missing the ministry authorisation as required by the above mentioned article No. 37.
- Its name or company name, Chamber of Commerce registration number, registered office, tax code and VAT number, personal data of the subject having power of representation (and also of the shareholders, if it's a company of persons) and also his powers, telephone number, fax number, certified email address;
- that the company, its legal representatives (and also the shareholders, if it's a company of persons, or the owner if it's an individual firm), are not subject to any impediment clause as indicated in article 67 of Legislative Decree 159/2011, as amended and supplemented **(the mafia and relative prevention measures)**;
- date and registration number in the Business Register or equivalent in other countries;
- that the undersigned is the owner of the business or the legal representative of the juridical person and is entitled to commit it;
- declaration by the subscriber that they are not (and also, where the companies are members of people who do not may be) in some of the circorstanze provided by art. 38, paragraph 1, of Legislative Decree no. 163/2006 subsequent amendments (possession of general order requirements)
- that no impediment penalty, as per article 9, paragraph 2, point c) of the Legislative Decree 231 dated 8 June 2001, has been applied onto him, or any other penalty that ban him from signing contracts with Public Authorities, including the impediment penalty as per article 36, paragraph. 1, of the Law Decree 223 date 4 July 2006, n. 223, as amended by the Conversion Law 248 dated 4 August 2006, as amended and supplemented;
- that to his charge no adverse decision become res iudicata has been pronounced, nor any penal sentence become irrevocable had been issued, nor a sentence for application of the penalty under request, according to article 444 of the Penal Code, for serious crimes against the State or the Community that influence the professional morality; it is anyway cause of exclusion a sentence, become res iudicata, for one or more crimes related to participation in a criminal organisation, corruption, laundering, fraud, as defined in article 45, par. 1, EC Regulation 2004/18.
- Exclusion and ban to participate in the present procedure are valid in case the sentence or the penalty had been issued at the charge of: the partners, in case of general partnerships or limited partnerships; the directors with power of representation, or the sole partner as a physical person, of the majority shareholder for companies with less than 4 shareholders, in case of other types of company or consortium. For public subjects, these requirements are necessary for the legal representative of the Authority. In any case, the exclusion and the ban are applied also to individuals that may have left their

charge the year before the publication date of the present notice, in case the business company cannot prove that the conduct subject to penalty had been effectively and completely dissociated; exclusion and ban does not apply in case the crime penalty has been reduced or when rehabilitation has occurred, or when the crime has been declared extinguished after the sentence, or in case of revocation of the sentence itself.

- That there is no process pending on him for the application of one of the prevention measures as per article 3 of Law 1423 dated 27 December 1956, or of one of the impediment clauses as in article 67 of Legislative Decree 159/2011 ( **the mafia and relative prevention measures**); exclusion and ban to participate in the present procedure are valid if the process pending is related to: the partners, in case of general partnerships or limited partnerships; the directors with power of representation, or the sole partner as a physical person, of the majority shareholder for companies with less than 4 shareholders, in case of other types of company or consortium.

- that the subject has not undergone, in the last five years, any bankruptcy declaration, or forced sale, admission to composition or to any other equivalent proceeding, and he's not currently undergoing procedures for any declaration of such statuses;

- that he has not committed any serious and definitely acknowledged violation of the regulations in the field of security and of any other duty derived from job relationships;

- that he has not committed any serious and duly acknowledged violation of duties as to tax and levy payments, as complying to Italian law or to the law in force in the country of origin;

- that he has not committed any serious and definitely acknowledged violation of regulations in the field of national insurance and social security contributions, in compliance to Italian law or to the legislation in force in the settling country;

- that the person who undersigns the bid and the application request has the faculty to oblige the company, specifying the formal act by which this faculty is given (e.g. a Board's deliberation, the Articles of association, etc.)

### **for Foundations:**

- that it has been regularly established, giving the details of the establishment act and indicating the personal data and residence of the legal representative;

- that it has not been subject to any supplementary or impediment penalty according to enforcing regulations, as to the ability to sign contracts with Public Authorities;

- that the person who undersigns the bid and the application request has the faculty to oblige the Foundations, specifying the formal act by which this faculty is given (e.g. a Board's deliberation, the Articles of association, etc.)

Foreign applicants shall provide similar statements according to the laws of their belonging country.

### **3)Bank reference requirements**

Two declarations by at least two bank institutes and/or authorised intermediaries according to Legislative Decree 385/1993 that state the proper financial power, to the bid purpose, of the competitor, as a physical person or juridical person.

In case of Alliance, such a declaration must be issued for each of the physical and juridical persons that are part of it, with reference to the share that each physical and/or juridical person intends to purchase.

### **4)Security deposit**

The bidders must provide, under penalty of exclusion, a guarantee equal to 2% of the value of the starting price, that is 628.749,76 (six hundred twenty eight thousand seven

hundred forty-nine point seventy six) Euros, as 2 deposits or 2 guarantees one assign to the Municipality of Bologna for 419.129,82 (four hundred nineteen thousand one hundred twenty nine point eighty two) Euros and another one assign to the Province of Bologna for 209.619,94 (two hundred nine thousand six hundred nineteen point ninety-four) Euros. The guarantees may be, at the bidder's choice, a bank or an insurance guarantee, or also issued by financial intermediaries registers in the special list as to article 107 of Legislative Decree 385/1993, covering the risk of failed signing of the contract for reasons not due to the Municipality of Bologna or of the Province of Bologna. The guarantees must be irrevocable and unconditioned and must expressly mention of the previous payment by the main debtor, the renounce to the exception as to Article 1957, paragraph. 2 of the Civil Code, and its validity for at least 180 days from the date of submission of the bid.

The guarantees must also be provided with the commitment by the warrantor to extend the guarantee up to the expiry term of the procedure, in case **prior to the term of 180 days** the Municipality of Bologna communicates its need to have more time available to complete the procedure.

The deposit can be transferred also by means of a non transferable bank draft (headed to Tesoreria Comunale, c/o UNICREDIT bank, IBAN code IT 18 S 02008 02450 000020067156 and Tesoreria Provinciale c/o Carisbo Spa IBAN code IT 60 D 06385 02437 06700 5000 07A) or in one of the forms provided by article 75, paragraphs 3, 5 and 6 of the Legislative Decree 163/2006.

The envelope must contain the original of the receipts for deposit transferred (in case of bank transfer through bank draft by the Tesoreria Comunale and Provinciale), or the original of the banks guarantee or insurance guarantees (in case of policy), respectively assigned to the Municipality of Bologna and Province of Bologna as mentioned before.

It is pointed out that no other form of deposit will be accepted, i.e. deposits or guarantees/policy issued by subjects other than the ones mentioned above, under penalty of exclusion from the auction.

In case of Alliance, there has to be two security deposits, one for the Municipality of Bologna and one to the Province of Bologna but the guarantees/policy must indicate every single component of the Alliance as the warranty debtor.

The security deposits will be returned to the applicants not winner after the final award to the winning bidder is occurred. The release of the guarantee will take place after the signing of the final contract with the winning bidder is occurred, even in the case of the exercise of the right to preference by the other shareholders of INTERPORTO Bologna SpA

## **5) Possible special proxy**

Should the bid be submitted by a proxy, the special proxy authorization must be provided, in a form duly edited for public acts, in original or copy authenticated by a notary.

Should the bid be submitted by joint subjects, **the special proxy authorization** must be provided, as well as in a form duly edited for public acts, in original or copy authenticated by a notary.

## **6) Confidentiality**

The confidentiality undertaking must also be enclosed to the application request. This shall be undersigned by the bidder, in case of a physical person, or by the legal representative of the bidder, in case of juridical person, and shall agree not to disclose information or news related to the documents of the procedure, including the ones available in the Virtual data room, and the one related to sale procedure and to the subjects connected to it, according to the model enclosed to the present Notice.

In case of Alliance, the confidentiality undertaking must be undersigned by each of the

physical and/or juridical persons that are part of the Alliance itself.

In no case shall this commitment be considered valid if it is sent by only one component of the Alliance itself.

The Municipality of Bologna reserves the right to request any possible supplementary document / or clarification concerning the declarations provided or the documents presented.

The non-truthfulness of the self-certifications provided shall result in the forfeiture of the award and in the failure of transferring the shares, for reasons due to the winner, provided that the enforcing regulations are complied with. In this case, the Municipality of Bologna and the Province of Bologna will have the right to withhold the security deposit provided, without prejudice to compensation for greater damages.

➤ **ENVELOPE B – financial bid -**

The offer, written in Italian language, **must be unconditional**, and must include the indication of the unit purchase price of the shares and the total price of the shares of the company INTERPORTO BOLOGNA put up for sale that the bidder wishes to acquire, expressed respectively in figures and in letters, in the case of discordance between the price given in figures and in letters will be considered valid for the most convenient for the Authority. The bid will be binding for 180 days from the date of submission.

The offer must be undersigned by the bidder (physical person) or by the legal representative (if juridical person) and must be accompanied by the photocopy of the identity document of the subscribers of the bid. In case of Alliance, the subscription by each of the physical persons and/or by the legal representative of each juridical person forming the Alliance is required, under penalty of exclusion, accompanied by the photocopy of the identity document of the subscribers of the bid.

The bid and the identity documents of the subscribing subjects must be inserted in an envelope sealed and signed all across the sealing flaps (**ENVELOPE B**), bearing the writing **Offerta per la gara relativa alla vendita delle azioni di INTERPORTO BOLOGNA S.p.A. di proprietà del Comune di Bologna e della Provincia di Bologna – Scadenza 13 settembre 2013.**

The **ENVELOPE B** must be inserted in an envelope, sealed and signed all across the sealing flaps, to be in turn inserted into the packet, together with but separated from ENVELOPE A, including the documents listed above.

### **GENERAL CONDITIONS**

Offers by special proxy are accepted, the proxy authorisation to be duly edited for public acts and enclosed to the offer, either in original or in authenticated copy, under penalty of exclusion from the auction.

Joint offers by two or more subjects are accepted, provided that one of them is given the special proxy authorisation, to be duly edited for public acts and enclosed to the offer, either in original or in authenticated copy.

In any case, the statement proving the participation requirements must be provided and undersigned by each of the subjects interested in the purchase, be him the principal or the envoy, whereas the offer must be undersigned by the envoy only.

The submission of more offers, directly and/or indirectly, by the same subject, both individually and jointly with other subjects, is not accepted.

The Municipality of Bologna reserves the faculty to carry out checks and verifications about

the truthfulness of the statements and the self-certifications provided by the bidder. It is understood that the non-truthfulness of the statements and the self-certifications provided by the bidder will result in the forfeiture of the award and in the failure to stipulate the contract for reasons due to the awarded, at any rate unless penal responsibilities are proved.

The Municipality of Bologna and Province of Bologna, in this case, will have the right to withhold the security deposit, without prejudice to compensation for greater damages. The minute of the auction do not take the place of the contracts. The winner is to be considered bound just from the moment of the public closure of the auction, whereas such a bid will be effective for the Municipality of Bologna and Province of Bologna only after the awarding act is made executive.

The Municipality of Bologna reserves the right to proceed to the award also in the presence of one valid bid only.

The final award is subject to legal suspensive condition of the missed exercise of the right to preference by those entitled as pursuant to art. 9 "transfers and preference" of the company's article of association.

In case of preference right is exercised and subsequently the final award is not given in favour of the best offer's bidder the final award shall not occur. In this case, the best offer bidder cannot waive any claim for liability, not even pre-contractual, against the awarding Administrations (Municipality of Bologna and Province of Bologna).

In any case no reimbursement shall be provided to the subjects admitted and participating in the current auction.

The final award is subject to the real suitability of the documents presented to the auction and to the truthfulness of the statements provided by the winning bidder, as well as – for the signing of the contract - to the successful result of the checks effected according to Legislative Decree 159/2011 as amended and supplemented (**regulations against the mafia and relative prevention measures**).

No partial offer is accepted, not even in case of a joint offer submitted by different subjects, nor is a conditional offer, nor is an offer expressed in an undetermined or incomplete form.

No offer for persons to appoint is accepted, nor is any transfer of award, except for legal representations and special proxies.

The present Notice is an invitation to offer and not a public offer, according to art. 1336 Civil Code, nor a solicitation to public saving, pursuant to Legislative Decree No. 58 dated 24 February 1998, as amended and supplemented.

## **STIPULATION OF CONTRACT AND PAYMENT TERMS**

Following the provisional award, the Municipality of Bologna also on behalf of Province of Bologna shall provide, according to article 9 of the Articles of association of INTERPORTO BOLOGNA S.p.A., to activate the procedure for the offer as a preference to its partners, communicating to them the sales terms determined according to the auction occurred.

In relation to the existence of the preference clause for the shares submitted to such a sale auction, the provisional winner bidder shall not claim any right or entitlement to the final award and/or the stipulation of the transfer contract with the Municipality of Bologna and the Province of Bologna, should any of the partners of INTERPORTO BOLOGNA SpA take advantage of such a right reserved to them.

After the term for the right to preference has expired, without any of the entitled partners exercising it, the final award shall be made by means of Executive Decision, after

acquisition, by the appointed office, of the documents proving the truthfulness of the statements provided by the provisional winning bidder.

The final awarder will be invited to indicate at the same time, within 10 days from the date of receipt of notice of final award respectively to the Municipality of Bologna and Province of Bologna, the name of the notary or financial institution or intermediary, which must be identified among those operating on the square of Bologna, at whom he intends to carry out the execution of the two deeds of sale of the shares, one with the Municipality of Bologna and the other with the Province of Bologna.

At the time of notification of the provisional award, the Municipality of Bologna will provide to:

- 1) inform the provisional awarder of the date within which the signing of the contracts will occur, conditioned by the final award;
- 2) activate the procedures for the exercise of the right to preference by the partners of Interporto Bologna spa, and giving notice of the deadline for the signing of the contracts. The final awarder is required to sign the deed of sale no later than this deadline communicated at the time of the provisional award.

The unjustified absence of the winning bidder at the signing of the contract, implies for the same the loss of the award, resulting in violation of the duties of pre-contractual liability of the buyer and the right for the Municipality of Bologna and the Province of Bologna to withhold their deposits provided, without prejudice to compensation for greater damages.

The payment shall be made as follows:

- The price offered at the time of submission of tenders relating to the sale of n. 15,234 shares, representing 35.10% of the shares capital held by the Municipality of Bologna must be paid prior to the signing of the contract with the Municipality of Bologna, at the Tesoreria del Comune di Bologna IBAN IT 18 S 02008 02450 000020067156 in one single amount with value within the day of signing of the contract, the bill of the bank must be presented to the Notary Officer before the signing of the contract;

- The price offered at the time of submission of tenders relating to the sale of n. 7,619 shares, representing 17.56% of the shares capital held by the Province of Bologna, must be paid prior to the signing of the contract with the Province of Bologna, at the Tesoreria of the Province of Bologna IBAN IT 60 D 06385 02437 06700500007A in a one single amount to be available within the day of signing of the contract; the bill of the bank must to be presented to the Notary Officer before the signing of the contract;

The economic value of the sale of the shares offered in the auction, must be reduced by the amount of any security deposit paid by the contractor at the time of submission of the tender if it has been paid by bank draft.

All contractual costs including legal fees, duties, fees, commissions, etc.. will be entirely borne by the awarder.

In addition, the awarder shall pay the cost of the publication as in the second sentence of paragraph 7 of Article 66 and the second sentence of paragraph 5 of Article 122 of Legislative Decree 12 April 2006, no. 163 (advertising in national and local newspapers), which must be refunded to the Province of Bologna by the contractor within a period of sixty days from the final award pursuant to art. 34, paragraph 35 of Law n. 221/2012 of conv. Decree-Law of 18 October 2012, n. 179.

Concerning the not winning bidders, following the final award, the bank guarantees or

insurance policies presented with the offer will be released and the security deposits paid will be given back

### **COMPETENT COURT**

For any dispute regarding the present Notice, the only and exclusive competence lies with the Court of Bologna, with the exception of the arbitration clause.

All personal data included in the present notice shall be treated by the Municipality of Bologna in conformity with the Legislative Decree 196/2003.

The present notice is published in the Official Journal of the European Union and in the Italian Gazzetta Ufficiale (Official Journal), special "public contracts" issue, in two foreign newspapers on national scale and two on local scale, and in the extended version on the website of the Municipality of Bologna, to the address [www.comune.bologna.it](http://www.comune.bologna.it) and Province of Bologna [www.provincia.bologna.it](http://www.provincia.bologna.it) – section Bandi di gara, as well as in the on-line Council Notice Board of both Administrations.