

APPENDIX 11
PERFORMANCE BOND GENERAL CONDITIONS

ANEXO 11

PREÂMBULO

A versão em língua inglesa deste Anexo é meramente referencial, não vinculante. A única versão oficial do documento está redigida em língua portuguesa, cujo conteúdo é vinculante para todos os interessados. Em caso de dúvidas de interpretação entre a versão traduzida do Anexo 11, em inglês, e a versão oficial, redigida em língua portuguesa, prevalecerá a versão em língua portuguesa, documento oficial da licitação.

APPENDIX 11

PREAMBLE

The English version of this Appendix is not binding to the parties. The Portuguese version of the document is the only official version of the auction and it is binding to all stakeholders. Should any interpretation doubt arise between this English version and the Portuguese version of this Appendix 11, the Portuguese version shall prevail, as the only official document for the auction.

The PERFORMANCE BOND offered by the CONCESSIONAIRE, in addition to the provisions of Clause 37 of the CONTRACT, must contain, at least, the following terms:

1. GENERAL CONDITIONS APPLICABLE TO BANK SURETY BOND AND INSURANCE GUARANTEE

Both PERFORMANCE BONDS modalities must contain the following provisions:

1. Obligation of the Surety Bank or Insurer to pay for the losses caused by the CONCESSIONAIRE to the GRANTING AUTHORITY, within the limits established in Clause 37, such as fines applied by the GRANTING AUTHORITY related to the CONTRACT, within a maximum period of 30 (thirty) days, counted from the receipt of the written notification sent by the MUNICIPALITY to the Surety Bank or Insurer.
2. Impossibility of Surety Bank or Insurer to avoid the compliance with the obligations assumed towards the GRANTING AUTHORITY, even if there is an objection or opposition by the CONCESSIONAIRE.
3. Election of the District Court of the Municipality of Aracaju, State of Sergipe, to settle disputes.

2. SPECIFIC CONDITIONS FOR SURETY BOND

If the CONCESSIONAIRE offers the PERFORMANCE BOND in the form of a bank surety, in addition to the provisions of Clause 37 of the CONTRACT and item 1 of this APPENDIX, the following must be observed:

1. Obligation of the Surety Bank to pay judicial or extrajudicial expenses in case the GRANTING AUTHORITY goes to court to demand compliance with the obligation referred to in the Letter of Guarantee.
2. The duty of Surety Bank to ensure that:
 - 2.1. The Letter of Guarantee is duly accounted for and in accordance with the regulations of the Central Bank of Brazil in force, as well as complying with the precepts of the applicable Banking Law;

2.2. The signatories of the instrument are authorized to provide the Surety on behalf of the Surety Bank and under its responsibility; and

2.3. The Surety Bank is authorized by the Central Bank of Brazil to issue Letters of Guarantee, and that the value of the Letter of Guarantee is within the limits authorized by the Central Bank of Brazil.

3. SPECIFIC CONDITIONS FOR INSURANCE GUARANTEE

If the CONCESSIONAIRE offers the PERFORMANCE BOND in the form of insurance guarantee, in addition to the provisions of Clause 37 of the CONTRACT and item 1 of this APPENDIX, the following must be observed:

1. Obligation that the Insurer is properly constituted and authorized to operate by the Superintendence of Private Insurance (“*Superintendência de Seguros Privados – SUSEP*”), observing the terms of the SUSEP normative acts applicable to guarantee insurance.

2. The insurance guarantee policy must contain the following additional provisions:

2.1. Declaration by the Insurer that it acknowledges and accepts the terms and conditions of the CONTRACT;

2.2. Prohibition to the cancelation of the insurance guarantee policy for failure to pay all or part of the award.

4. CONDITIONS FOR OTHER MODALITIES OF GUARANTEE

If the CONCESSIONAIRE chooses for other types of guarantee provided for in the CONTRACT, it must comply with the applicable legislation and regulations, in addition to the specific contractual provisions.