

AGÊNCIA NACIONAL DE TELECOMUNICAÇÕES**AVISO DE LICITAÇÃO****EDITAL Nº 002/2015-SOR/SPR/CD-ANATEL**

A COMISSÃO ESPECIAL DE LICITAÇÃO - CEL, no uso de suas atribuições conferidas pela Portaria nº 939, de 12 de novembro de 2015, para conduzir os procedimentos relativos à Licitação nº 002/2015-SOR/SPR/CD-ANATEL, torna pública a decisão tomada na sua 26ª Reunião, referente à reavaliação de decisão anterior, tomada na 16ª Reunião da CEL, relativamente aos lotes em que todas as proponentes foram inabilitadas ou em que todas as propostas foram desclassificadas, constante do item "6" da Ata (SEI nº 0823429) produzida naquela oportunidade. A deliberação da CEL deu-se nos seguintes termos, conforme consta da Ata da 26ª Reunião: "No intuito de tratar o item "i" da pauta, foi lido o item "6" da Ata da 16ª Reunião da CEL (SEI nº 0823429), no qual consta a deliberação da Comissão, que se deu nos seguintes termos: '*Com relação aos lotes em que todas as proponentes foram inabilitadas ou em que todas as propostas foram desclassificadas, deliberou-se no sentido de se aplicar, por analogia, a Lei nº 8.666/1993, que no seu artigo 48, § 3º, faculta o estabelecimento do prazo de 8 (oito) dias úteis para apresentação de nova documentação, no intuito de se comprovar o atendimento aos requisitos editalícios. Foi observado que o Tribunal de Contas da União já confirmou a regularidade do procedimento previsto na Lei de Licitações em diversas ocasiões, a exemplo das decisões contidas nos processos AC-5468-43/08-2, AC-4039-36/08-2 e AC-0863-16/09-P, em que se ratificou a viabilidade jurídica da concessão de prazo para apresentação de nova documentação no caso de inexistência de proponente habilitada no lote. Destacou-se, ainda, que a aplicação, por analogia, do referido dispositivo legal permitirá ocupação mais eficiente do espectro por preço igual ou superior ao valor mínimo fixado no Edital. Assim, a CEL decidiu determinar a publicação de lista, na página da Anatel na internet, dos lotes do certame que se encontram nessa situação. Ficou definido que a notificação das interessadas que apresentaram ofertas em tais lotes deverá se dar por meio de publicação de Edital no Diário Oficial da União, o qual deverá estabelecer a forma e o prazo para apresentação da documentação.*'. Foi observado que tal decisão foi publicizada na ocasião da Etapa de Continuação da Sessão pública de Abertura, Análise e Julgamento das Propostas de Preço, realizada em 20 de setembro de 2016, conforme consta do item "2" da Ata respectiva (SEI nº 0840007). Ponderou-se que tal decisão foi tomada, ainda no ano de 2016, segundo critérios de oportunidade e conveniência, no intuito de se buscar promover ocupação eficiente do espectro. Foi relatado que, no transcurso de tempo entre a decisão tomada na 16ª Reunião da Comissão e os dias atuais, já foram apreciados 110 recursos interpostos contra decisões da CEL, os quais foram processados na forma estabelecida pelo Edital, com a notificação para apresentação de contrarrazões por todos os proponentes do lote em relação ao qual o recurso foi interposto. Tal procedimento levou a CEL, por meio de sua Comissão de Assessoramento Técnico - CAT, a analisar centenas de peças, o que culminou na decisão do Conselho Diretor da ANATEL de homologar lotes envolvidos em recursos adjudicados pela CEL somente em outubro de 2018, conforme consta do Acórdão nº 552/2018 (SEI nº 3291577). Dessa forma, foi alertado que a convocação para apresentação de nova documentação pelas proponentes no certame inaugurado ainda no ano de 2015 pode levar a novas falhas na entrega da documentação pelas proponentes, o que poderia levar ao novo estabelecimento de prazo para correção de vícios formais, além de inúmeros novos recursos em face de decisões da CEL. Tal forma de condução do processo provavelmente estenderá a licitação em questão, no mínimo, para o próximo ano, o que acabará por impedir, ou prejudicar, o processamento de novos certames previstos pela ANATEL em sua Agenda Regulatória, relativos a faixas de radiofrequência de relevante interesse público. Dessa forma, uma nova rodada de chamada para apresentação de documentação nos lotes em que todas as proponentes foram inabilitadas ou em que todas as propostas foram desclassificadas não se mostra compatível com a conveniência e a oportunidade, sobretudo porque tais lotes virão a ser

ofertados futuramente em novo Edital, com regras, fluxos e procedimentos apropriados a editais com número elevado de lotes, em decorrência de áreas de prestação granularizadas. Foi salientado que a hipótese de nova rodada para apresentação de documentação nos lotes em que todas as proponentes foram inabilitadas ou em que todas as propostas foram desclassificadas não foi previsto no Edital respectivo, ou no Regulamento de Licitação para Concessão, Permissão e Autorização de Serviço de Telecomunicações e de Uso de Radiofrequência, aprovado pela Resolução nº 65, de 29 de outubro de 1998, aplicáveis aos processos licitatórios conduzidos pela Agência, de forma que tal decisão não se trata de ato vinculado, sendo ato meramente discricionário da Administração, realizado com base na aplicação análoga do artigo 48, § 3º, da Lei nº 8.666/1993, que previu que "*quando todos os licitantes forem inabilitados ou todas as propostas forem desclassificadas, a administração **poderá** fixar aos licitantes o prazo de oito dias úteis para a apresentação de nova documentação ou de outras propostas escoimadas das causas referidas neste artigo*" (grifou-se). Assim, tendo em vista que a decisão da CEL anteriormente tomada mostra-se incompatível com a realidade atual da Agência, que se prepara para o breve desafio de novos Editais de Licitação para Autorização de Uso de Radiofrequência, tornando a reapresentação de nova documentação no certame iniciado em 2015 inconveniente e inoportuna, deliberou-se por reavaliar a decisão realizada na sua 16ª Reunião, e publicizada na Etapa de Continuação da Sessão pública de Abertura, Análise e Julgamento das Propostas de Preço de 20 de setembro de 2016, constante do item "6" da Ata da CEL respectiva, declarando-se que, relativamente aos lotes listados a seguir, não houve apresentação de proposta por empresa que atendesse às condições de participação no certame, estabelecidas no Edital. O Presidente determinou a publicação de Aviso que contenha os números dos lotes que restaram desertos no certame até o presente momento, quais sejam: F-1100023, F-1100452, F-1101401, F-1505536, F-1720903, F-2100303, F-2103000, F-2103307, F-2111078, F-2301703, F-2302008, F-2307106, F-2307502, F-2402600, F-2403608, F-2405009, F-2408102, F-2412005, F-2501609, F-2505105, F-2505352, F-2507903, F-2510105, F-2511202, F-2511400, F-2600708, F-2602704, F-2603603, F-2604304, F-2605509, F-2605707, F-2607653, F-2609006, F-2609501, F-2614006, F-2615508, F-2616308, F-2900702, F-2903201, F-2905701, F-2907509, F-2908200, F-2908507, F-2908606, F-2910057, F-2916104, F-2919207, F-2919553, F-2919926, F-2920601, F-2921005, F-2925204, F-2927408, F-2928604, F-2929206, F-2929750, F-2930709, F-2933158, F-2933307, F-3104502, F-3106002, F-3106200, F-3106705, F-3107703, F-3108552, F-3109006, F-3110004, F-3114204, F-3117876, F-3118601, F-3122306, F-3127701, F-3129806, F-3131901, F-3133808, F-3136207, F-3136306, F-3137536, F-3137601, F-3138674, F-3144375, F-3144706, F-3144805, F-3145901, F-3146107, F-3148004, F-3152105, F-3153905, F-3154457, F-3154804, F-3157203, F-3157807, F-3164704, F-3169356, F-3170479, F-3170529, F-3170701, F-3300100, F-3300159, F-3300209, F-3300225, F-3300233, F-3300258, F-3300308, F-3300407, F-3300506, F-3300605, F-3300704, F-3300803, F-3300902, F-3301009, F-3301108, F-3301207, F-3301405, F-3301504, F-3301603, F-3301702, F-3301850, F-3301900, F-3302007, F-3302056, F-3302106, F-3302205, F-3302254, F-3302304, F-3302452, F-3302502, F-3302601, F-3302700, F-3303005, F-3303302, F-3303401, F-3303708, F-3303906, F-3304110, F-3304201, F-3304300, F-3304557, F-3304805, F-3304904, F-3305133, F-3305158, F-3305208, F-3305307, F-3305554, F-3305703, F-3305802, F-3305901, F-3306008, F-3306107, F-3306206, F-3306305, F-3500709, F-3501004, F-3501608, F-3501905, F-3502002, F-3502507, F-3502804, F-3503307, F-3503604, F-3503802, F-3504107, F-3504503, F-3505302, F-3505609, F-3505708, F-3506003, F-3506300, F-3507100, F-3507456, F-3507506, F-3507803, F-3508504, F-3509403, F-3510104, F-3510153, F-3510401, F-3511102, F-3512209, F-3512308, F-3512407, F-3512704, F-3512803, F-3513009, F-3513207, F-3513405, F-3514007, F-3514908, F-3515152, F-3515400, F-3515608, F-3516200, F-3518404, F-3518602, F-3518800, F-3518859, F-3519055, F-3519071, F-3519501, F-3520004, F-3520301, F-3520426, F-3520509, F-3520905, F-3521408, F-3521804, F-3523404, F-3524303, F-3524402, F-3524709, F-3525201, F-3525300, F-3525904, F-3526407, F-3526803, F-3526902, F-3527108, F-3527207, F-3527306, F-3528007, F-3528601, F-3529005, F-3529302, F-3530904, F-3531308, F-3531803, F-3532009, F-3532058, F-3532405, F-3533403, F-3533809, F-3534708, F-3535804, F-3536505, F-3536703, F-3537107, F-3537503, F-3538006, F-3538600, F-3538709, F-3538808, F-3539400, F-3539509, F-3540507, F-3540754, F-3540903, F-3542107, F-3542404, F-3542602, F-3543204, F-3543402, F-3543907, F-3544004, F-3544301, F-3545159, F-3545407, F-3545803, F-3546405, F-3546504, F-3546702, F-3548005, F-3549805, F-3550100, F-3550506, F-3551207, F-3551603, F-3551702, F-3552403, F-3553104, F-3553203, F-3553658, F-3553708, F-3553807, F-3554102, F-3554201, F-3554607, F-3554656, F-3554805, F-3554953, F-3556206, F-3556354, F-3556453, F-3556503, F-3556701, F-3557204, F-4100608, F-4101051, F-4101705, F-4103057, F-4103453, F-

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Documento assinado eletronicamente por **Vinicius Oliveira Caram Guimarães, Superintendente de Outorga e Recursos à Prestação**, em 31/07/2019, às 19:08, conforme horário oficial de Brasília, com fundamento no art. 23, inciso II, da [Portaria nº 912/2017](#) da Anatel.



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