



GOVERNMENT OF PUERTO RICO
PORTS AUTHORITY

PUERTO RICO PORTS AUTHORITY

REQUEST FOR PROPOSALS

**Design-Build Services for
Runway 8-26 Reconstruction at
Rafael Hernández Airport, Aguadilla, Puerto Rico**

ADDENDUM NO. 6

(Limitation as to Contracting Method)

TO ALL OFFERORS:

This Addendum forms part of the reference Request for Proposals.

A. BACKGROUND

The Puerto Rico Ports Authority (PRPA) is a beneficiary of a Grant from the Federal Aviation Administration (FAA) thru its Airport Improvement Program to help fund Runway 8-26 Reconstruction at Rafael Hernández Airport, Aguadilla, Puerto Rico (the Project). As such, the procurement process has to comply with both PRPA Regulation 8981 and Federal regulations on competitive proposal procedures for procurements.

The Procurement Process for the Project consists of two steps: a) a Request for Qualifications (RFQ) that was advertised on June 4, 2021; and b) a Request for Proposals issued on July 18, 2022, only to those Respondents to the RFQ that were shortlisted.

The PRPA objective in both steps has been to seek a project team approach to design and construct under a Design/Build concept to reap its benefits, such as a single point of responsibility for quality and schedule, cost savings and budget adherence, and time savings.

The RFQ specified in Section 1.1.1 a) that "This RFP invites firms interested in forming a Joint Venture to submit SOQ'S ...". Respondents were required to submit a draft of a Joint Venture Agreement that complied with Law 173-1988, as amended. All respondents did so.

The College of Engineers and Surveyors of Puerto Rico (CIAPR) issued on July 11, 2015, a Policy on the use of the Design/Build contract using the Joint Venture as a contractual vehicle. It concluded that such a contract was in violation of Law 173-1988, as amended. Wrongly as that conclusion was, the CIAPR not only reaffirmed but tightened their interpretation of the requirements of Law 173-1988 in their Policy adopted on April 9, 2022, made public to their membership on May 18, 2022. As a result, and in consideration of the chilling effect that the Policy might have on the participation of licensed Engineers in the Project, the PRPA when issuing the RFP, allowed the participation of Proponents not only as a Joint Venture but also as separate parties to execute a three-way contract. Shortly thereafter, the FAA communicated to

the PRPA that as Grantors, that alternative was unacceptable due to the fact that it could, theoretically, be unfair to potential Respondents that may have refrained from participating in the RFQ on account of the Joint Venture requirement. The FAA also insisted that a Design/Build contract, as defined in 49 USC Section 47142 was to be executed. The PRPA was advised that Federal Funds would be at risk if the Joint Venture requirement to form a Design/Build contract were not required as a condition to propose in response to the RFP.

It has been determined by the PRPA to be in its best interests to abide by the Joint Venture Design/Build model spelled out in the RFQ. In Section 4.4 (h) of the RFQ, the PRPA reserved the right to take any action affecting the RFQ process, the RFP process, or the Project. In making that determination, the PRPA considered the provisions of Law 218-2010, which provided for the adoption by the Secretary of Transportation and Public Works of a set of rules and/or conditions that would be controlling on all public work projects executed by the Government of Puerto Rico, including its agencies and public corporations such as the PRPA. Law 128-2010 gave, what became known as the Uniform General Conditions for Public Works (UGCPW) in Puerto Rico, the force of a Law and declared that it would prevail over any and all laws that were incompatible with the UGCPW. That set of Rules are known as Regulation 7998 of March 3, 2011. The UGCPW specifically allows for the formation of a Design/Build Contract consistent in all respects with 49 USC Section 47142; furthermore, the UGCPW in its section 17.2 states that:

“17.2.1. When the United States Government or any of its agencies finances or pays for all or any portion of the cost of the Work, federal laws and the applicable rules and regulations must be observed by the Contractor. The Owner will identify in the bid documents the program providing such funds.

17.2.2. If the Contract Documents include a specific provisions issued by such federal funding agency in case of conflict with other provisions of the Contract Documents, said federally issued provisions shall govern.”

In conclusion, as Regulation 7998 is obligatory in all public work contracts (excluding municipal public works) as per Law 128-2010, it is the determination of the PRPA to delete from the RFP any and all mention of a three-way contract and to require Proposers to propose in the form of a Joint Venture between a contractor and a duly licensed professional engineer to execute a Design/Build Contract for the Project. The PRPA shall include a revised draft Sample Contract in the next Addendum. All references to a Teaming Agreement (TA) are also deleted, including the draft provided.

B. REMEDY

Any Proposer adversely affected by this Addendum must request the PRPA for reconsideration within a term of twenty (20) calendar days from the day of notification of the Addendum to any of the means prescribed by the RFP for contacting the PRPA copying each of the other Proposers shortlisted to participate in this phase of the procurement process. The PRPA must respond to the reconsideration within 15 calendar days of its submittal. If no response is notified by the PRPA, it shall be deemed denied, and the affected party must wait until the award of the contract is made to accumulate any and all claims in a judicial review of administrative action as prescribed by Law 38-2017 (Section 4.2).

C. ADDENDA

1. The PRPA will include a revised Draft Sample Contract and answers to questions submitted in the next Addendum.

END OF ADDENDUM NO. 6



Romel Pedraza Claudio
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Planning, Engineering, and Construction

November 11, 2022
San Juan, Puerto Rico