



GOVERNMENT OF PUERTO RICO
PORTS AUTHORITY

PUERTO RICO PORTS AUTHORITY

REQUEST FOR PROPOSALS

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

ADDENDUM NO. 18

TO ALL OFFERORS:

This Addendum forms part of the reference Request for Proposals.

A. ANSWERS TO QUESTIONS

No.	Questions	Answers
1	<p>1. Sample contract §10.17 states that “Design/builder and/or its contractor member will be responsible for hazardous environmental conditions created due to any materials brought to or disturbed on the site by design/builder subcontractors, suppliers, or anyone else for whom design/builder is responsible.</p> <p>The site has been an active air force base and airport for over eighty (80) years. Design/builder acknowledges that he took the appropriate mitigation of hazardous substances plans as part of his proposal and holds harmless PRPA and its representative, employees and contractors from any responsibility due to contamination of any kind”. This is inconsistent with Uniform General Condition Art. 4.7.4 that states “Contractor shall not be responsible for any hazardous environmental condition uncovered or revealed at the site that was not shown or indicated in drawings or specifications or identified in the contract documents to be within the scope of the work”.</p> <p>It’s not common that the contractor be liable for unknown hazardous environmental condition not shown on the contract documents. Even more so when this project site was an old military base. We suggest adopting the language of the UGC in the example contract and not impose liability on the contractor for unknown hazardous conditions not shown on contract documents.</p>	<p>The Sample Contract will be modified to incorporate the provisions of Section 4.7.4 of the Uniform General Conditions for Public Works In Puerto Rico.</p>
8	<p>Since the PRPA is seeking a single entity to enter into a contract with the PRPA as required by the FAA, we hereby request further enhancement to the proposed agreement and its legal structure to provide such services that will reduce the risk of a bid protest or legal challenges regarding legal compliance, please see points below:</p> <ul style="list-style-type: none">• In further conformance with the stated RFP as amended terms and subsequent Q&A responses, the Puerto Rico Ports Authority (PRPA) should consider clarifying the RFP objectives and services agreement to request from proponents, and proponents be allowed to present, the required services as a “turn-key project” for the reconstruction of	<p>A ‘joint venture development company’, as proposed, is not the actual contractual vehicle required by the RFP and neither has it been approved by the PRPA as proposed. Consequently, it is premature to address Proposer’s legal understanding of a non-existent legal entity’s responsibilities. Therefore, it should be understood that such understanding is not accepted as correct.</p>

No.	Questions	Answers
	<p>runway 8-26, to be performed by the selected single entity joint venture development company with the corresponding qualifications.</p> <ul style="list-style-type: none"> ○ WerequeststoreformulatetheRFPandproposedcorrespondingservices agreement as a turn-key project via Addendum, wherein the design and construction work specifications and services are included, allows the selected proponent to act as a developer of the turn-key project with the power to subcontract the design services to a qualified and licensed engineering firm, and the constructions works to a qualified construction company. ○ The proponent, acting as a developer company, may have among its members, the consortium formed by the design firm and construction company which will be engaged to perform the project services, as required by Article 4.1 of the RFP. ○ As the services contract will be entered into by the single entity joint venture development company, such legal entity shall be solely responsible to perform the work, including supervising and demanding performance from the subcontractors such as the designer and construction company. This is the case since, as a general and established rule, the shareholders, members, or owners of properly organized legal entities are not personally or individually liable for the obligations of the legal entities. Consequently, neither the designer nor the construction company shall be directly liable for the obligations assumed by the entity joint venture development company except for their respective willful acts or omissions. • We also request that the Designer be a documented witness to the contract and/or adopt as part of the contract an affidavit similar to the one being used by PRASA on its design build contracts (copy attached). • It should be in our mutual interest that the RFP and corresponding contract reflect the foregoing clarifications to minimize potential bid protests, third party challenges and the risk of being perceived or in violation of the practice of engineering law in Puerto Rico, Act 173-1988, as amended. • Lastly, we request a meeting between BQN Airport Partners legal counsel and the PRPA legal counsel to discuss this matter. We have been invested in this process for over 3 years and are still very much interested in joining the PRPA to deliver this most important project for Puerto Rico. Nonetheless, the resolution of this issue is critical on whether our team can proceed with an offer. 	<p>Only two parties will be signing the Contract. It does not need a documented witness in order to be valid and binding upon the parties.</p> <p>Addendum 6 established the legal basis the PRPA has to entered into a JVD/B Contract.</p> <p>At the appropriate time a meeting will be scheduled.</p>

END OF ADDENDUM NO. 18

June 2, 2023
San Juan, Puerto Rico

Romel Pedraza Claudio
Assistant Executive Director for
Planning, Engineering, and Construction