



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. 38

TO ALL OFFERORS:

This Addendum forms part of the reference Request for Proposals.

A. REQUEST FOR PROPOSALS (RFP)

The Response Date to submit your Proposal has been changed to no later than 3:00 PM (AST) on July 29, 2024.

B. FAA RESPONSE REGARDING MINIMUM PROPOSERS RULE

The FAA has provided concurrence that the project can move forward with only two proposers. See FAA response attached.

C. FILES ADDED TO THE SUPPORTING DOCUMENTATION ON THE SHARE FOLDER

1. The revised EXHIBIT N – RFP COST PROPOSAL FORM, is hereby included on this Addendum and replace the previous version. Changes are marked in payment item no.2 with a yellow color.

D. ANSWERS TO QUESTIONS

No.	Proponent	Questions	Answers
1	Ferrovial	<p>1. Guarantee and Warranty periods:</p> <p>Due to the sequential nature of the works, particularly, the need for the Base Bid scope to be completed before other construction works can proceed (e.g.: Alternate Bid 5 and Alternate Bid 6, should any of them be awarded), it is clear that the new runway entry into operation is a predecessor to the commencement of the construction works corresponding to the above-mentioned alternate bids.</p>	<p>The provisions of Article 1.9 establishes the beginning, final completion and delivery of the Work to the owner (PRPA), of both the guarantee (correction of any and all defective and nonconforming Work) and warranty period provided for in Article 1375 (i) of the PR Civil</p>

No.	Proponent	Questions	Answers
		<p>Based on that, we request that the provisions within the Sample Contract relating to the duration of the guarantee and warranty period (including, without limitation, clauses 1.9, 12.5, and 18.4) are revised so that:</p> <p>a. any (partial) Substantial Completion triggers the guarantee and warranty period of reference, as provided by section "b" of FAA paragraph 90-10 Construction warranty; and</p> <p>b. the duration of said guarantee and warranty period, once triggered, extends for 12 months, also according to the one-year duration set out in section "b" of FAA paragraph 90-10 Construction warranty.</p>	<p>Code. Articles 1.9, 18.4 and 18.5 are all consistent in addressing this issue. Therefore, the requested revisions are not warranted.</p>
2	Ferrovial	<p>2. Follow up on Contractor Limitation of Liability RFI#34 add 34:</p> <p>In this very same addendum 34, PRPA has advised a limitation of liability of 75% of contract price and has also retracted from it. Please clarify which one is it?</p> <p>Airports construction agreements are considered very high risk. Without a limitation of liability to the contractor, it might be an impossible agreement to undertake. Please reconsider.</p> <p>Would you consider the limitation of 75% if we exclude third party claims, for which we already have public liability and property damage insurance?</p>	<p>Addendum 34 RFI 34 corrected and substituted the answer provided for in Addendum 32 RFI 4, establishing that in accordance with section 70-11 of the FAA General Provisions contractor's responsibility cannot be limited. Therefore, any such limitation would be null and void.</p> <p>The PRPA, as stated above, is no position to consider such limitation.</p>
3	Ferrovial	<p>3. Since the Opinion of Secretary of Justice of January 26th, 2024 ("Opinion") has been adopted to this RFP and incorporated into this Sample Contract, we assume that all the alternatives contemplated in the Opinion, to execute a Design-Build agreement with the Government of Puerto Rico, are available for the execution of this Project's Design-Build Agreement, including:</p> <p>a. Unregistered Joint Venture between construction contractors and designer;</p> <p>b. Registered Joint Venture between construction contractors and designer.</p> <p>c. Construction Contractor signing the agreement as Design-Builder and subcontracting design services to a professional Engineer or to a Professional Service Corporation that complies with Law 173 from August 12, 1988 (see page 15 of the Opinion where it states:</p> <p>"Lo esencial es que quien ejerza las funciones profesionales esté debidamente autorizado en ley para ello. Por tanto, una corporación general licitadora podría subcontratar a una corporación profesional compuesta por profesionales debidamente licenciados o a un profesional debidamente licenciado, para que preste servicios de ingeniería en un proyecto particular. Específicamente, entendemos que la práctica permitida es la contratación de otra corporación profesional, lo cual evitaría que una corporación regular retenga las funciones que son propias de ser ejercidas por una corporación profesional." [English translation : "The essential thing is that whoever exercises professional functions is duly authorized by law to do so. Therefore, a bidding general corporation could subcontract to a professional corporation composed of duly licensed professionals, or to a duly licensed professional, to provide engineering services on a particular project. Specifically, we understand that the</p>	<p>Confirmed.</p>

No.	Proponent	Questions	Answers
		<p>permitted practice is the hiring of another professional corporation, which would prevent a regular corporation from retaining the functions that are proper to be exercised by a professional corporation.”)]</p> <p>Please confirm that the three alternatives above are valid options.</p>	
4	Ferrovial	<p>4. Addendum 24 RFI#8:</p> <p>Changes to §1.6 of the Sample Contract in RFI#8 of addendum 24, were accepted but not included in the Sample Contract. Please revise.</p>	<p>It is the PRPA’s opinion that the changes introduced as part Article 1.6 of the Sample Contract duly cover the essence of the changes requested by Proposer in Addendum 24 (RFI 8). No other change is warranted.</p>
5	Ferrovial	<p>5. Follow up Sample Contract §17.3; addendum 32 RFI#11:</p> <p>A very broad release has been introduced here. We do understand that if the JVD/B submits a claim, then the individual members should not be allowed to submit another claim under the same facts and circumstances, but we understand that the implications of the current wording setting out “that a claim submitted by the JVD/B under this Article 17 precludes any individual partner or member of the JVD/B from filing a claim or any action whatsoever, against the PRPA, during or after the existence of the JVD/B for any cause arising out of the Contract” (emphasis added go beyond that since, for example, it does not set any correlation between the claims submitted by the JVD/B and the ones issued by the individual partner or member of the JVD/B.</p> <p>Therefore, we understand that the current wording needs revision and we propose the following language:</p> <p>“17.3 Notice Of Claim: All JVD/B claims, disputes and other matters in question against the Authority arising out of or related to the Contract Documents or the breach thereof, specifically including, without limitation, claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to the Authority. Such written notice of claim shall be delivered to, and received by, the Authority no later than thirty (30) days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim including the specific amount claimed. The JVD/B agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto. The JVD/B partners or members as the case may be, agree, irrevocably, that a claim submitted by the JVD/B under this Article 17 precludes any individual partner or member of the JVD/B from filing a claim over the same causes and events included in the claim presented by the JVD/B or any action whatsoever, against the PRPA, during or after the existence of the JVD/B for any cause arising out of the Contract.”</p>	<p>Article 17.3 of the Sample Contract states that “<u>All JVD/B claims, disputes and other matters in question against the Authority arising out or relating to the contract documents</u> ... shall be initiated by a written notice of claim submitted to the Authority. Such notice shall be delivered to, and received by the Authority no later than thirty (30) days after the event, or...” Therefore, any claim and/or causes of action (disputes) that a Contractor may have against the PRPA <u>must</u> be notified in the period of time there established. Anything not so notified is to be considered <u>waived</u> by the JVD/B. As such, if a cause of action and /or claim is waived by the JVD/B it cannot be brought up by any member of the JVD/B at any time. The PRPA does not accept the proposed language by which the waiver will be limited to “ the same causes or events included in the claim”. It will apply over anything that could and should have been brought in a timely fashion in accordance with Article 17.3 but wasn’t. Proposed change is not accepted.</p>
6	Ferrovial	<p>6. Stipend:</p> <p>On addendum 32 a stipend was approved for unsuccessful bidders “to account for the anticipated level of effort required to prepare the Proposal”. However, this stipend is subject to the project award and execution of a contract. The stipend of \$500,000.00 does not cover monies and resources invested studying this Project, but it is also not reasonable that this stipend would depend on the execution of the contract since this is out of bidder’s control. We suggest this stipend depend on the presentation of the offer by the bidder.</p>	<p>The stipend will be awarded to all unsuccessful Proposers that submit a proposal in accordance with the Request for Proposals. However, a stipend will not be awarded to the successful Proposer in the event the Proposer decides not to execute an agreement with PRPA for any reason and the Proposer will forfeit their Bid Bond.</p>

No.	Proponent	Questions	Answers
		Please consider.	
7	Ferrovial	<p>7. We are very concerned with the delays in the bidding date for the BQN project ("Project"), which began on July 18, 2022 and has been postponed twelve times so far.</p> <p>As responsible bidders who have shown genuine interest in this Project, we understand that postponements are a natural part of the bidding process for a project of this magnitude, but the latest postponements have caught our attention, since they are not related to requests from bidders or to technical or contractual clarifications that have not been addressed during the process.</p> <p>In our opinion, the Project is ready to go and to be bid, but this has not been the case. We appreciate your effort to approve a stipend to compensate bidders for the time and resources spent studying the Project, but as you are aware, this is not enough. Each time the bid date approaches, bidders mobilize their resources, resources from subcontractors and suppliers, inside and outside Puerto Rico, to have the best proposal for the Project.</p> <p>We do not know the reasons for the recent postponements, but without a doubt, this situation has created uncertainty and concern in our companies as we do not know if the new proposed date is the final one.</p> <p>This communication serves to ask the Puerto Rico Ports Authority for a definitive position on this Project. Is there any impediment for the Project being bid on May 31, 2024?</p> <p>Should there be any issues that could jeopardize the bid date of May 31, 2024, please advise as soon as possible:</p> <p>a. The actual issues that keep on delaying the bidding process; b. A realistic bid calendar;</p> <p>so that the bidders can make the most efficient use of their resources and we avoid creating further unnecessary uncertainty among subcontractor and vendors.</p>	<p>The reason for the delay and a new proposal due date were established in Addendum 37.</p>
8	Ferrovial	<p>8. In response to question 8 (Addendum no. 33), PRPA acknowledges the need for greater certainty regarding price fluctuations for the project. However, PRPA states that it does not have the funds nor can compromise the airport's revenue assuming these costs beyond a certain percentage of the Total Contract Price (5% as per addendum 17). Similarly, a responsible Contractor should not reasonably jeopardize the project's viability by assuming this risk, transferring this risk to a higher price in the offer. We reiterate that this 5% is insufficient and we propose raising it to 30%, making the offer more in line with the reality of the moment. In any case, in light of this situation, we propose that if the increase in the Total Cost of the Project due to price fluctuations reaches this percentage, PRPA should either:</p> <p>a. instruct the Contractor to proceed with the work or;</p> <p>b. agree with the Contractor on alternative options or reductions in the scope of the Project.</p>	<p>No changes will be made regarding cost escalation.</p>

No.	Proponent	Questions	Answers					
		Accordingly, we suggest removing the monthly cap of 50% for fuel price variation and implementing solely the aforementioned mechanism to control the increase in the Total Cost of the Project.						
9	Ferrovial	<p>9. Further to Response #3 of Addendum 30 regarding Alternate Bid No. 6, we kindly request clarification of the rehabilitation works required in the PCC sections located at both ends of the existing runway. Specifically, from sta. 212+70 to sta. 225+75 (West of the beginning of Alt Bid 1) and from 291+00 to 315+50 (East of the connection with Taxiway D) of the future Taxiway I.</p> <p>We note the following:</p> <p>a. Exhibit N indicates that Alt Bid 6 will include mill & overlay of runway as described on the Design Criteria Package.</p> <p>b. Section 4.1 of the Design Criteria Package does not clearly delimit the extension of the mill & overlay works.</p> <p>c. The latest Reference Drawings, issued with Addendum No.9, show mill & overlay hatching from the West end of the existing runway to the East end of the existing runway, including also the PCC sections mentioned above.</p> <p>d. The Airfield Pavement Evaluation Report (2016) rates both PCC sections as “Good” (PCI rate: 86-100), where “the pavement has minor or no distresses and will require only routine maintenance”.</p> <p>Please confirm if the overlay should also be extended to the PCC sections.</p>	The concrete sections at both ends of the existing runway will not be milled and overlaid.					
10	DEL VALLE	<p>Addendum No. 34 question No. 24, the PRPA indicates that the payments for Design Services will be subject to 5% retainage. We request the PRPA to confirm that the 5% retainage to the Design will be released at the time of approval by PRPA to 100% Design Set/Construction Drawings Package for the Base Bid and included Alternative Phases of the Project. Please confirm that Design services are all services provided inclusive of engineering firms and the subconsultants retained by such firms.</p> <table border="1"> <tr> <td>24</td> <td>ADD20-C.4</td> <td>4. We request the PRPA to confirm that payment for Design Services is not subject to retainage.</td> <td>Confirmed.</td> <td>PRPA shall retain a 5% to JVD/B Applications for Payment. It shall be matter of the JVD/B agreement to deal with payments for Design Services in accordance with the Law.</td> </tr> </table>	24	ADD20-C.4	4. We request the PRPA to confirm that payment for Design Services is not subject to retainage.	Confirmed.	PRPA shall retain a 5% to JVD/B Applications for Payment. It shall be matter of the JVD/B agreement to deal with payments for Design Services in accordance with the Law.	That was confirmed in Addendum 24. We added that the PRPA will retain 5% on every Application for Payment, not for the design services but for the Application in general and that it was the JVD/B's responsibility to pay for the design services in accordance with the law.
24	ADD20-C.4	4. We request the PRPA to confirm that payment for Design Services is not subject to retainage.	Confirmed.	PRPA shall retain a 5% to JVD/B Applications for Payment. It shall be matter of the JVD/B agreement to deal with payments for Design Services in accordance with the Law.				
11	DEL VALLE	<p>“As a follow-up to Question 33 in Addendum No. 34, please provide a permitting responsibility matrix for all know permits that will be required for this project identifying the permit name, authority having jurisdiction, party responsible for obtaining the permit, documents to be provided by the Design-Builder, and the party responsible for payment of permitting fee.”</p>	The Proposer must verify the environmental requirements.					

END OF ADDENDUM NO. 38

RIP

July 11, 2024
San Juan, Puerto Rico

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



GOVERNMENT OF PUERTO RICO
PORTS AUTHORITY

May 8, 2024

Mr. Park Preston
FAA ARP ASO ATL ADO
1701 Columbia Avenue
Room 220
College Park, GA 30337

Subject: Re: Request for Exception to Minimum Proponent Rule for the Runway 8-26 Reconstruction at Rafael Hernandez International Airport, Aguadilla, Puerto Rico

Dear Mr. Preston:

This letter concerns the Puerto Rico Ports Authority's (PRPA) planned reconstruction of Runway 8-26 at the Rafael Hernandez International Airport (BQN) in Aguadilla, Puerto Rico. As you are aware, PRPA has been awarded approximately \$69.4 million through two separate AIP grants and has worked in close collaboration with the FAA throughout the ongoing procurement process. As was reflected in PRPA's grant applications, PRPA's intention is and always has been to procure a design-build contract for the construction of this project. The purpose of this letter is to clarify earlier communications and confirm that PRPA may proceed with awarding a design-build contract at the conclusion of the procurement process and utilize the awarded grant funds.

Under 49 USC § 47142, the FAA may approve an application for federal assistance under a design-build contracting model if the FAA is satisfied that the project and process will meet several requirements, including that "at least 3 or more bids will be submitted for each project under the selection process."

On December 13, 2023, PRPA sent a letter to Anthony Vasquez at the FAA, requesting an *exception* to this statutory requirement, pursuant to the procedures set forth at 2 CFR § 200.102, because PRPA was concerned that the requirement that it receive three (3) proposals for the procurement would not be satisfied. In a letter dated December 28, 2023, you indicated that the FAA was unable to grant this exception since the requirement is statutory.

I apologize that our letter was premature and unduly pessimistic. PRPA believes this request for an exception was unnecessary.

To be clear, given the ambiguity created by our earlier letter, PRPA requests confirmation of its position that the FAA is authorized to approve the use of the grant funds for this design-build procurement for the project in this particular circumstance. After PRPA issued a Request for Qualifications, we received seven (7) responses. PRPA reviewed and considered those initial responses, disqualified three as insufficient, and qualified four proposers for the second stage of the procurement - a short list of firms invited to submit more detailed proposals. Of course, we do not know for sure how many final proposals we will receive by the May 30, 2024, deadline for responses from the short listed firms, but it appears from what we have been told that only two firms (out of the seven original proposers) may submit final proposals. Since the statutory requirement is phrased in terms of proposals received, not the number that are shortlisted, or who ultimately complete the entire procurement process, we wanted to confirm our understanding that our process complies with the statutory requirements since PRPA received far in excess of three proposals in this procurement process.

PRPA respectfully requests the FAA's concurrence on this matter as soon as possible. As you know, this project is vitally important to the Airport given the state of the current runway. PRPA wishes to move forward with the project as soon as practicable but would prefer to do so with sufficient assurances that it can utilize the awarded grant funds.

Thank you very much for your time and attention to this matter. Please do not hesitate to contact me with any questions.

Sincerely,



Joel A. Piza Batiz, Esq.
Executive Director

FAA RESPONSE TO REQUEST FOR EXCEPTION TO MINIMUM PROPONENT RULE

From: DiGregory, Jessie (FAA) <Jessie.DiGregory@faa.gov>

Sent: Monday, July 15, 2024 3:20 PM

To: Hicks, Steven (FAA) <Steven.Hicks@faa.gov>; Preston, Parks (FAA) <Parks.Preston@faa.gov>; Vazquez, Anthony M (FAA) <Anthony.M.Vazquez@faa.gov>; Evains, Jasmine (FAA) <Jasmine.Evains@faa.gov>; Nelmes, Cathy (FAA) <cathy.nelmes@faa.gov>

Cc: Adolph, Courtney (FAA) <Courtney.Adolph@faa.gov>

Subject: BQN Design-Build

All –

We briefed the Chief Counsel and received the go ahead on our legal interpretation regarding the design-build project at BQN.

We believe the project can move forward under the design-build methodology because at the time of grant issuance the FAA was “satisfied” that three or more bidders would respond to a design-build solicitation.

Title 49 U.S.C. § 47142 states, in part, that the FAA “may approve an application of an airport sponsor” if the FAA “is satisfied that the selection process will be as open, fair, and objective as the competitive bid system and that at least 3 or more bids will be submitted for each project under the selection process.” 49 U.S.C. 47142(a)(6).

FAA approval, as required by 49 U.S.C. § 47142, occurs at grant issuance. FAA Order 5100.38D, Change 1, Para. 3-43 (Feb. 16, 2019). Both the Atlanta ADO and the PRPA believed that, at the time of grant issuance, PRPA would receive more than three bids for the BQN runway projects. This appears to satisfy the requirements of 49 U.S.C. § 47142(a)(6).

Please let us know if there is further assistance we can provide.