



GOVERNMENT OF PUERTO RICO
PORTS AUTHORITY

PUERTO RICO PORTS AUTHORITY

REQUEST FOR QUALIFICATIONS

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

ADDENDUM NO. 5

TO ALL OFFERORS:

This addendum forms part of the reference Request for Qualifications.

A. STATEMENT OF QUALIFICATIONS (SOQ)

1. The date to submit the State of Qualifications (SOQ), has been changed to no later than **3:00 PM (AST) on August 23, 2021.**

B. ANSWERS TO QUESTIONS

1. **Question:** The RFP Sections 4.1 & 4.2.5.c require the Respondent to be a Joint Venture conformed between a Prime Contractor and a Prime Designer. Its objective is to comply with Law 173. However, the formation of a Joint Venture between a Contractor and a Designer cannot be accomplished. Joint Ventures are agreements between two companies and the newly formed entity is Joint and Several for the business endeavor. Under the PRPA requirements, the PRPA is asking that each member of the JV to be Joint and Several to the owner under the Prime Contract. A Prime Engineer cannot be joint and several to the Owner for construction services and a Prime Contractor cannot be joint and several to the Owner for engineering services. A simple test of this requirement is that a Prime Engineer cannot provide the Owner with a Payment and Performance Bonds for a Construction Project and a Prime Contractor cannot provide Professional Liability Insurance to the Owner. In other words, each entity must be solely responsible for its services. Furthermore, a legal entity, even as a JV, cannot provide Engineering Services unless the JV is between engineering firms providing for such services (in order to comply with Law 173). Since the JV is not a professional services corporation it cannot provide engineering services (as it would be a joint venture with a Contractor- non engineering firm). Therefore, we hereby request that the requirement to form a JV between a Prime Contractor and Prime Engineer be modified to allow for a Teaming Agreement between the Contractor as Respondent and the Designer as a professional services corporation providing professional services complying with Law 173.

Answer: PRPA does not enter into what legal organizational form the Joint Venture (JV) entity must use. The JV parties can choose the JV structure appropriate for them which must comply with the requirements of Law 173-1988 and other applicable laws. The JV draft agreement must show a community of interest in the performance of the project, the right of the parties to the JV to direct and govern the policy of the JV in order to attain the objective of completing the project in time and in budget, and the duty of the parties to share both in profits and losses, in the way they may see fit to agree to.

The JV will be the single point of contact between the design professional, the contractor and the PRPA; this in order to streamline the project administration, in order to save time, avoid delays and maximize the cost-effectiveness of PRPA's Investment.

If the Potential Bidder proposes a different structure to achieve these goals, PRPA will examine and consider it, provided it fully complies with Law 173-1988. The proposed structure must achieve the previously stated goals and comply with all applicable laws, including but not limited to Law 173-1988.

PRPA's sole legal obligation in this matter is to award the design part of the design and build contract to duly licensed in PR individuals, professional services corporations or Limited Liability Corporations (LLC) that are in compliance with Law 173-1988. You may want to see *CIAPR v. AAA 131 D.P.R. 735 (1992)*. While the LLC, as created by Law, does not require that its shareholders be duly licensed professionals in PR, Law 173 does not discuss this form of organization nor sanction it. So, to avoid any ambiguity, PRPA will not only require strict compliance with Law 173-1988 in the way design services are provided, as explained in more detail in Addendum # 4, but it will closely look at how the parties to the J V propose to tackle the issue. It is advised that Respondents consult with local counsel to come up with a Law 173 compliance formula, including applicable jurisprudence.

As such, the Design Build Contract will specifically state the specific responsibilities and liabilities of the JV, the design professionals (Prime Designer) and the Prime Contractor. It will establish how all parties will be paid to avoid a conflict of interest according to Article 4-C of the CIAPR code of ethics and how conflicts between the designer and the contractor will be resolved.

The Puerto Rico Civil Code in its Article 14, 31 L.P.R.A. sec. 5333, provides for the parties to a contract to renounce any rights given by law, such as the joint and several liability. The Contract will contain a section stating the liability of the JV, the Design Professionals and the Builder. Such clauses must be clear and free of ambiguities and as such they have been validated by both State and Federal courts. See *Getty Refining & Marketing v. Puerto Rico Ports Authority*, 531 F. Supp. 396, 400 (1982); *Chico v. Editorial Ponce. Inc.*, 101 D.P.R. 759, 778 (1973); *Cabrera v. Doval*, 76 D.P.R. 777, 781 (1954). *Torres Solís v. Autoridad Energía Eléctrica*, 136 D.P.R. 302 (1994)

- 2. Question:** Can the PRPA entertain a three-way agreement (PRPA-Prime Contractor-Prime Engineer) instead of a JV? This would comply with Act 173 (and CIAPR's policy on Design-Build) and the agreement could entertain different

responsibilities and levels of liabilities for each party, while still maintaining the Design-Build concept.

Answer: This type of agreement is not acceptable.

3. **Question:** It is stated that "The Respondent must consist of a proposed Joint Venture that includes, at a minimum, a prime construction contractor and a prime engineering design firm". Based on our experience, it is not a common practice to come into this type of JV Agreements, and normally the Prime Engineer and/or other design Engineers participate in the Respondent as subcontractors in order to maximize their contribution towards the Project and allowing the Respondent to keep a balanced risk sharing between designers and contractors. We respectfully request that you allow designers to participate as nominated subcontractors.

Answer: Section 4.2.5 states the Respondent must consist of a proposed Joint Venture that includes, at a minimum, a prime construction contractor and a prime engineering design firm, which engineering firm must be represented by an engineer licensed and collegiate to practice engineering in the Commonwealth of Puerto Rico in accordance with Law No. 173 of 12 August 1988, as amended (20 LPR Sec. 711, *et seq*). Firms providing services related to professional engineering and land surveying to the Joint Venture, must comply with the requirements of Law No. 173, *supra*. This is a requirement to meet the law and cannot be waived.

4. **Question:** The description given to KEY TEAM MEMBERS includes that of an "Airfield Civil Engineer who will manage/implement design including airfield geometry, grading, storm drainage, pavement markings and utility layouts." Please clarify whether this KEY TEAM MEMBER is expected to be a member of the Design- or of the Construction Team.

Answer: This Key Team Member will need to be part of a firm duly licensed to practice engineering in Puerto Rico.

5. **Question:** The description given to KEY TEAM MEMBERS includes that of an "Airfield Pavement Engineer who will develop/implement pavement sections based on FAA requirements and aircraft operations and fleet mix forecasts." Please clarify whether this KEY TEAM MEMBER is expected to be a member of the Design- or of the Construction Team.

Answer: This Key Team Member will need to be part of a firm duly licensed to practice engineering in Puerto Rico.

6. **Question:** The description given to KEY TEAM MEMBERS includes that of a "Safety Manager, who will have the ultimate responsibility and decision power in regard to safety policies definition, implementation, execution, and corrective actions, among other safety related activities." Please expand on the role and responsibilities expected to this key team member (including whether this person's responsibilities are limited to the area of occupational health and safety during construction).

Answer: The responsibilities of this role extend to all aspects of safety for the project including but not limited to, occupational health and safety during construction as well as requirements for airport operational safety as outlined in FAA Advisory Circular 150/5370-2G, Operational Safety on Airports During Construction.

7. **Question:** Since the JV will not be created by the time of the RFQ submittal, please confirm that the required Statements of Respondent's Ability to, (i) provide the Bid-, Performance & Payment Bonds (per Sub Sec 4.2.1); (ii) meet PRPA's Insurance Requirements (per Sub Sec 4.2.2); and, (iii) demonstrate its Financial Capacity (per Sub Sec 4.2.3) can be met with statements issued in favor of the members of the JV.

Answer: Confirmed.

8. **Question:** The answer to RFI No. 3 included as part of Addendum No. 1 indicate that both the prime contractor and prime engineer firm should complete individually Attachment H regarding the Certification for the DBE Annual State Goal. Since this form is intended to represent the Joint Venture's commitment to meeting the project's DBE goal, we understand that only one Attachment H form needs to be submitted on behalf of the Joint Venture. Please confirm.

Answer: Yes, only one Attachment H Form is required to be submitted on behalf of the Joint Venture.

9. **Question:** Attachment M to the RFQ, under 1, notes "Does the Respondent has/had any other current or former advisory contracts with any entity of the Government of Puerto Rico, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico?" Would a Professional Design Services (i.e. engineering) for the Government of Puerto Rico be considered "advisory"?

Answer: Yes.

10. **Question:** We plan to submit the draft JV agreement with this SOQ. Will we have an opportunity to cure any defects identified by PRPA during this stage for resubmittal in the RFP or will this draft be cause for automatic disqualification if the PRPA rejects the proposed JV Agreement?

Answer: Provided the basic intent of the Joint Venture agreement is outlined in your SOQ, the final Joint Venture agreement can be modified by the successful Respondent, for final acceptance by PRPA, prior to signing the project contract.

11. **Question:** In reference to Question 19 of Addendum No. 4, the Owner states that Article 1374(i) [they meant to write Article 1375(i)] of the PR 2020 Civil Code establishes a 10-year warranty for construction work. Please confirm that routine maintenance that is needed from time to time (spall repairs, rubber removal, paint repair/repainting, bulb replacements, joint seal repair or resealing, etc.) are NOT considered defects due to improper design and/or construction.

Answer: Routine maintenance will not be considered defects due to improper design and/or construction unless the maintenance is a direct result of conditions related to improper design and/or construction.

12. **Question:** In the “Doing Business In Puerto Rico” from the BQN Runway website, it references that the JV will need to be registered to do business in PR. Please confirm that the JV will not have to register to do business with PR until such time as we are the successful respondent.

Answer: The Joint Venture will not need to be properly licensed until after selection as the successful Respondent but prior to signing the contract with PRPA.

13. **Question:** Does PRPA anticipate submitting any Modifications of Standards (MOS) to the FAA for this project.

Answer: No Modifications of Standards are anticipated for this project.

14. **Question:** Please provide all PRPA submitted Modifications of Standards (MOS) approved or rejected by the sponsor in the last five (5) years.

Answer: The only MOS currently approved for the airport was approved in 2013. The MOS approved operations of B747-800 aircraft due to the lack of separation between the Runway and parallel taxiway A. The current separation is 405 feet. The required separation is 500.

15. **Question:** In addendum #4, the PRPA indicated reviewing specific requirements and responsibilities related to the Joint Venture partners and that those will be outlined in more detail in a subsequent addendum. We have not received such. Can you please inform if you sent it and if not when we should expect it. Indeed, we would like to review this before responding to the SOQ as well as the answers to the other questions sent like the ones below.

Answer: The Joint Venture as the entity, in whatever legal form it chooses to take, will be responsible for overall project execution. Its members, in full compliance with Law No. 173 of 1988, will segregate design responsibilities from construction responsibilities and both will be liable to the Owner as the JV, among other things, to guaranty a fluent and uncompromising dispute resolution process which will avoid bringing the disputed matter(s) to the Owner for resolution except in certain circumstances and during a certain time frame, violation of which will result in the imposition of economic damages to the JV. Also, see answer to Question No. 1 above.

16. **Question:** Can the PRPA confirm that the Joint Venture responsibilities and liabilities under the design/build contract can be several, and not joint and several?

Answer: There will be particular/specific responsibilities (several) of each of the members of the Joint Venture towards the Owner and there will be joint responsibilities of the JV towards the Owner as well. The contract with the Owner will define both, but Respondents should address in their draft of the JV their

proposal of joint/several responsibilities they propose to assume in compliance with PR Laws.

17. **Question:** Does the project falls into the Qualified Opportunity Zone in relation with fiscal aspects?

Answer: According to the Puerto Rico Department of Economic Development and Commerce, the project falls within a qualified opportunity zone. It is the responsibility of the Respondent to determine the impacts and requirements related to this status. Information can be found at the following website.

[Opportunity Zones Department of Economic Development and Commerce \(pr.gov\)](https://www.pr.gov/economic-development/qualified-opportunity-zones)

18. **Question:** Our JV recognizes that there is currently a shortage of skilled labor in PR to do projects such as the one proposed, particularly given the large amount of ongoing development on the island. While our JV has the ability to fully staff this job using our deep pool of labor both in PR and in the states, we also know that this is a rebidding of the contract for the purpose of reducing the contract cost. As such, in order to reduce costs, would the Government of Puerto Rico support the use of skilled international labor in the completion of this project, such as skilled workers from Mexico or Colombia?

Answer: It is the Respondent's responsibility to determine whether additional resources are required to meet the demands of the project and to comply with the requirements of the Department of State and the Department of labor.

C. Interviews for Short-Listed Respondents.

1. Interviews for short-listed Respondents are currently planned to be held during the weeks of August 30, 2021 – September 13, 2021. Interviews will be held virtually via Microsoft Teams and will be initiated by the PRPA. The following format will be used for the interviews. Information presented during the interviews will be used as supplemental information for purposes of scoring as outlined in the RFQ.

Introductions – 5 Minutes

Respondent Presentation – 30 Minutes

- a. Team Organization
- b. Team Experience on similar projects
- c. Project Approach
- d. Project Controls
- e. Anticipated Problems and Solutions to Problems
- f. Ability to meet schedules

PRPA Questions – 20 Minutes

Respondent Closing Remarks – 5 Minutes

The Respondent may change of the order of the presentation of the information above.

The following Key Team Members at a minimum must participate in the interview:


1. Project Manager
2. Project Superintendent / Engineer
3. Design Lead
4. Engineer of Record

Other Team members can participate as deemed appropriate by the Respondent.

The Respondent presentation should further explain the Respondent's information related to sections 4.2.4 – 4.2.9 of the Request for Qualifications.

END OF ADDENDUM NO. 5

August 9, 2021
San Juan, Puerto Rico



Joel A. Piza
Executive Director