



May 26, 2016

RESPONSES TO FIRST ROUND OF REQUESTS FOR CLARIFICATIONS

The Puerto Rico Public-Private Partnerships Authority (the “Authority”) hereby addresses the following Request for Clarifications (“RFCs”) received regarding the Request for Qualifications and Proposals (“RFQP”) for the Puerto Rico Maritime and Transportation Services Project issued on February 25, 2016:

1. **“Will the ATM post a Payment Bond, Letter of Credit, or other form of surety to secure payments due to the Operator pursuant to the O&M Contract; and if so,
 - (a) Will such security be for the full amount of the Contract payments, or some lesser amount;
 - (b) If it is for some lesser amount, how will that amount be calculated; and,
 - (c) Will such security be exempt from the provisions of the Debt Moratorium Act?”**

The partnering government entity (the Puerto Rico and the Island Municipalities Maritime Transport Authority (“MTA”) or the Puerto Rico Integrated Transit Authority (“PRITA”)) does not intend to post any Payment Bond, Letter of Credit or other form of surety to secure payments to the Operator. For information on payments and the budgetary process, please refer to Section 2.3 of the RFQP.

2. **“What guaranty will the ATM or other government agency or authority provide the Operator pursuant to the O&M Contract that ATM will make payments to fuel suppliers, private sector dry dock facilities and other service providers to insure against interruptions of service due to non-delivery by such vendors? Is the ATM willing and able to indemnify the O&M Operator for such eventualities?”**

Please refer to Articles 5 and 28 of the draft Operations and Maintenance Agreement (“O&M Agreement”).

3. **“With a net subsidy model that is fare-box dependent, interruptions of service may increase the amount of the required subsidy, will the ATM agree to Change Orders caused by factors not within the control of the O&M Operator?”**

Please refer to Articles 16 and 43.1 of the draft of the O&M Agreement.

4. **“Will payments to the Operator be subject to the ATM, ATI, DTOP, PRHTA, or other agencies’ receipt of Federal funds or grants? Will the FTA be funding the O&M Operator directly?”**

Payments to the Operator are not contingent upon the receipt of federal funds. However, decreased funding from the Federal Transit Authority (“FTA”) may impact total available funds for agencies. Federal funds are paid, among other allowable means, as provided in 49 C.F.R. §18.21 and the applicable federal agencies’ circular letters.

5. **“Regarding the right of a Cancellation of Partnership Contracts for convenience, Section 10 (a) (viii) (B) of the Public Private Partnerships Act provides that:**

(B) the unilateral authority to terminate a contract for reason of convenience (or for any other reason) shall not apply to Partnership Contracts simply by providing notice thirty (30) days in advance, but rather, such terms and conditions as the parties may have agreed and entered into the Partnership Contract shall apply to the termination for reason of convenience or for any other reason;

**Whereas, the RFQP, Appendix F – FTA Required Clauses provides in Section 6 that:
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F**

(1) Termination for Convenience (General Provision): The Authority may terminate this contract, in whole or in part, at any time by written notice to the Operator when it is in the Authority’ best interest. [The Operator shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Operator shall promptly submit its termination claim to the Authority to be paid the Operator. If the Operator has any property in its possession belonging to the Authority, the Operator will account for the same, and dispose of it in the manner the Authority directs.]

49 U.S.C. Part 18 FTA Circular 4220.1F provides in pertinent part that:

WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.

With regard to these provisions of the RFQP and the cited FTA Circular, the following clarification is requested:

- (a) If the Proponent will not agree to a Contract term that allows the Contract to be terminated by the Partnering Government Entity for reason of convenience, will the FTA waive that condition of the RFQP;**
- (b) If the FTA will not waive that condition, does the term “costs” include the cost of capital improvements made by the Operator to assets of the partnering Government Entity or to any other assets of an agency or instrumentality of the government of the Commonwealth of Puerto Rico, including but not limited to piers, parking lots, buildings, vessels and related equipment;**

- (c) Does the phrase “contract closeout costs” include the cost of demobilizing vessels, equipment and personnel, including vessels, equipment and personnel transported by the Operator to Puerto Rico from other jurisdictions for purposes of performing the Contract;**
- (d) How and under what mathematical formula will the Operator’s profit be determined if the Contract is terminated for convenience?”**

Please refer to Article 43 of the draft O&M Agreement.

- 6. “Regarding the Emergency Moratorium and Financial Rehabilitation of Puerto Rico Act (the “Debt Moratorium Act”) signed into law on April 5, 2016, please clarify:**
 - (a) Whether the Debt Moratorium Act affects the allocation of risk between the ATM and the Operator referenced in the RFQP document; and if so, how;**
 - (b) Whether future debt of the ATM, such as payments due to the Operator pursuant to the O&M Contract, will be subject to suspension pursuant to the Debt Moratorium Act; and**
 - (c) Whether assets of the Operator, including vessels it owns or that it is the disponent owner of pursuant to a Charter Agreement, will be subject to seizure or expropriation by the Commonwealth without compensation if the Operator ceases to perform the O&M Contract after a suspension of Contract payments.”**

Please refer questions regarding Puerto Rico law matters to your local legal counsel.

- 7. “On April 9, 2016 Governor Alejandro Garcia Padilla issued an Executive Order pursuant to his powers under the Debt Moratorium Act, which restricts the cash outflows of the Government Development Bank to funding of the Commonwealth’s “essential services”, due to the Bank’s serious liquidity problems. The Executive Order also established a Disbursement Committee comprised of representatives from the Treasury Department, Office of Management & Budget and the GDB, which will determine if cash outflows at the GDB correspond to “essential services”. The Executive Order also authorized the Bank to impose a weekly limit on cash disbursements to control the outflow of funds and requests by government entities to withdraw their funds from the Bank. Additionally, it has been reported in the Press that the government is already \$2.089 billion in arrears in payments to its contractors and suppliers, a figure that could rise to \$ 2.200 billion by the end of the current fiscal year according to Chief of Staff Grace Santana, and that some of this debt is as much as 180 days in arrears. Please clarify:**
 - a) Whether this Executive Order affects the RFQP process; and if so, how;**
 - b) Whether the ATM’s funds will be affected by this Executive Order, and if so, how;**

- c) **Whether this Executive Order will affect payments due to the Operator pursuant to the O&M Contract; and if so, how;**
- d) **Whether payments to existing contractors and suppliers currently in arrears will take precedence over payments to the Operator under the O&M Contract following a first in-time, first-in-right payment method; or, if some other form of prioritization will take place, please describe that process.”**

Please refer questions regarding Puerto Rico law matters to your local legal counsel. For inquiries regarding payments and/or source of funding for payments, please refer to Section 2.3 of the RFQP.

8. **“Is it the government's intention that the O&M Operator will become the successor employer all ATM employees and assume all accumulated employment obligations under the existing union collective bargaining agreements and under the Puerto Rico labor laws?”**

Please refer to Article 10 of the draft O&M Agreement and consult your local legal counsel.

9. **“Will ATM warrant in the O&M Contract that it will not include its liabilities under the Contract in any federal or local bankruptcy filing if the Commonwealth is successful in its attempts to persuade Congress to give its public corporations access to Chapter 9 of the federal Bankruptcy Code; or, if it is successful in its appeal of the federal court decision holding the Puerto Rico Debt Enforcement and Recovery Act of June 28, 2014 unconstitutional; and will ATM indemnify the O&M Operator against any such eventuality in the Contract?”**

The policy of the Commonwealth and its instrumentalities is that no such warranties will be provided.

10. **“Please provide the current state of repair and operation of each of the sixteen vessels mentioned in the RFQP, identifying it by name; Official Number; location of vessel;; and provide copies of any outstanding or unresolved U.S. Coast Guard Form CG-835s.”**

An updated list of vessels is included in data room in the folder titled *Fleet*. Vessels currently in service do not have any unresolved CG-835 issues that restricts the vessel from carrying passengers.

11. **“Do the following vessels have current COIs:**
- a) **Culebra II;**
 - b) **Fajardo II;**
 - c) **Isla Bonita;**
 - d) **Isleño;**
 - e) **Vieques II;**
 - f) **La Princesa;**
 - g) **La Decima?”**

Please refer to the copies of the Certificates of Inspection (“COI”) uploaded to the data room in the folder titled *Fleet\COI*.

- 12. “Please provide copies of current COIs for all sixteen vessels mentioned in the RFQP not yet posted in the data room.”**

Please refer to the copies of the COI’s uploaded to the data room in the folder titled *Fleet\COI*.

- 13. “Please state in detail with regard to each of the 16 vessels mentioned in the RFQP what repairs, maintenance, improvements and inspections are currently being made or will be made by ATM to ready each such vessel for operation by the O&M Operator.”**

The following vessels are currently in dry-dock for repairs: Isla Bonita, Cayo Blanco, Culebra II, Isleño, Santa Maria, Convadonga and Princesa. It is also expected that this year the Cayo Largo, Caribeña and Amelia will be dry-docked during the second half of 2016. Other repairs, maintenance, improvements and inspections will be determined based on the surveys to be conducted as part of the transition period.

- 14. “Were the Cayo Blanco’s Hull Exams due by March 31, 2016 in fact conducted and, if so, what were the results of those Exams?”**

The vessel is currently undergoing hull inspection.

- 15. “Is it accurate to say that La Princesa and La Decima are the only San Juan Harbor vessels that will be operated by the O&M Operator and that it is anticipated that all other Harbor vessels will be disposed of by ATM, as indicated in a document in the data room?”**

The vessels under the MTA-Metro fleet that will be covered by the O&M Agreement are: La Princesa, La Decima, Amelia and Covadonga.

- 16. “Please provide a list of repair centers and dry dock locations commonly used by ATM for repair and maintenance of its larger vessels that exceed the weight capacity of the Syncrolift at the ATM Repair and Maintenance Base. Please state the current dollar amount of any outstanding debt owed to such service providers by ATM.”**

Since 2013, MTA has or is currently using the following external repair centers: Conrad Shipyard, LLC and Subbase Drydock, Inc. Payments to these repairs centers are current, based on the phase or stage of the work completed.

- 17. “Please provide all information regarding the present ticket systems, including hardware and software manufacturers, age, date of last upgrade, and what data (passenger, vehicle information, and accounting data) the present systems provide.”**

Hardware:

- Servers - Two (2) Dell PowerEdge R630 Server with Three (3) Years On Site Four (4) Hours Support Warranty.
- Workstations - Dell Optiplex 9010 Computers with Three (3) Years On Site Four (4) Hours Support Warranty.
- Doorway - The Phoenix Company.
- Age - Brand New Equipment with Three (3) Years On Site Four (4) Hours Support Warranty.

Software manufacturers:

- Age - Ten (10) Years.
- Date of last upgrade - New version installed in April, 2016.
- Provides data (passenger, vehicle information, and accounting data) in multiple formats such as adobe, pdf, excel, word, and xml.

- 18. “The RFQP calls for a 10 year Contract. At what intervals during the term of the contract will the ATM or other agencies perform or provide funding for capital improvements to facilities and ATM vessels, retire and replace ATM vessels, and upgrade the ticketing system?”**

Capital improvements to facilities and ticketing system will be based on Operator’s proposal, available funding and any required federal and/or local government authorization. Replacement of fleet will be based on the fleet management plan required from Operator.

- 19. “At the Briefing for interested Proponents held on March 29, 2016, Executive Director of the ATM, Jose Ruiz, Esq. stated that at present the inventory of vessels included eleven in the Metro service and eleven vessels in the Island service, and that this inventory is expected to be reduced to four in Metro and ten in Island. The only vessel identified at the Briefing to be disposed of was the Atlantis. Please provide the names and USCG Official Numbers for all vessels to be decommissioned or disposed of to reduce the fleet to fourteen vessels as indicated at the Briefing and the expected date of decommission or disposition.”**

Information for vessels have been updated in the data room.

- 20. “Please provide the latest depth soundings or surveys of all terminal depths, approaches to terminals, and berths. Damage to vessels has been, in part, caused by inappropriate depths at berths. Is it the government’s intention to dredge any shallow berths prior to or after the award of the O&M Contract. If so, please provide the details of any such intended operations. If not, will the ATM indemnify the O&M Operator from damages caused to ATM vessels or its own vessels by insufficient depths?”**

MTA has not recently conducted any known or documented sounding or depth survey or bathymetry.

Article 28 of the draft O&M Agreement outlines the indemnification provisions of the contract.

- 21. “The RFQP indicates that ATM will retain responsibility for major mechanical (engine, generator, etc.) repairs and replacements. Describe briefly the procurement process that will be followed by the ATM for such repairs and provide a sample timeline. Will ATM indemnify the O&M Operator from damages caused by service interruptions caused by failure to perform this responsibility in a timely manner?”**

The procurement process for such services must follow and be compliant with applicable local and federal regulations. With respect to events that will trigger indemnity, please refer to Article 28 of the draft O&M Agreement.

All the RFCs received and addressed in this document were posed by Puerto Rico Fast Ferries.