



**July 19, 2010**

To All Prospective Proponents

**Request for Qualifications to acquire a Concession to Finance, Operate and Maintain Toll Roads in Puerto Rico**  
**DUE DATE: July 29, 2010**

### **Request for Clarification # 004**

This Request for Clarification (“RFC”) seeks to provide additional information on specific questions or matters related to the Request for Qualifications to acquire a Concession to Finance, Operate and Maintain Toll Roads in Puerto Rico. Capitalized terms not defined in this response take the meaning in the Request for Qualifications of June 2010. This RFC # 004 responds to the following matters:

- 1. Under the section 5.3 RFQ Submission Instructions and Next Steps (page 23), the RFQ reads, “Please deliver 6 hard copies of the RFQ submission along with one copy in portable document format (PDF) on a CD to each of.” Below this is listed what appears to be a single address for the “Authority.” Please clarify the number of total hard copies (our interpretation is 6 total) and CDs (our interpretation is 1 total) to be delivered. If this is incorrect, can you please specify the number of total hard copies and/or CDs, and the distinct parties to whom they should be delivered?**

Please ignore the words “each of.” A Prospective Proponent’s full package should include just 6 hard copies and one single CD, and it should be delivered to the address stated.

- 2. In the Financial Capability section the RFQ directs each team member to provide copies of audited financial statements for the past two years but does not specify regarding number of copies. Are the team members to also provide one hard copy of their audited financial statements (for past 2 years)**

**for each hard copy of the RFQ submission and one copy on CD for each copy of RFQ submission on CD?**

Yes, the Authority would like one copy of the audited financial statements for each hard copy of the RFQ submission.

*Note, the audited financial statements can be attached to the RFQ submission and need not be counted in the page limit on responses.*

- 3. RFQ submission instructions (Section 1.7) require Prospective Proponents not to contact nor hire the services of Restricted Parties (as defined in the RFQ). Can Prospective Proponents hire the services of other advisors different from those listed as Restricted Parties in the RFQ but who render services to the PRHTA or the Authority (as defined in the RFQ) for other projects other than PR-22 and PR-5?**

The fact that a third party renders services to the PRHTA or the Authority does not make it ineligible from being retained by a Prospective Proponent, provided they are not a Restricted Party and are in full compliance with the Ethics Guidelines.

- 4. Will the PRHTA or the Authority make public the list of short-listed Prospective Proponents once the RFQ phase finishes?**

At this stage, the Authority intends to do so (but reserves all rights to manage the procurement process as it sees fit (see Section 5.5 of the RFQ)).

- 5. RFQ submission instructions in the Evaluation Criteria Section require Prospective Proponents to certify: (i) that they have not been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico or in any jurisdiction of the USA or in any foreign country and (ii) that they comply and shall continue to comply at all times with laws which prohibit corruption or regulate crimes against public functions or funds, as may apply to the Prospective Proponent, whether Federal or State statutes, including the Foreign Corrupt Practices Act. Besides, Prospective Proponents are also required to submit the Appendix of Supplementary Legal Materials which content is identical to the above referred of the Evaluation Criteria Section. Therefore, are the team members to provide the aforesaid Appendix and also to provide a separate certificate stating the same?**

Each Team Member needs to provide the Proponent Certification (the form of which is set out in Appendix A). In responding to the section entitled "Compliance with the Act's Requirements," Prospective Proponents may simply refer to their completed Proponent Certifications to satisfy that section.

6. **According to Act number 29 of June 8, 2009 as well as its Regulation, “the Authority’s policy is to foster the participation of local suppliers, contractors, designers, architects, engineers, advisors and investors as participants in potential PPPs in order to promote local economy activities [...] and that the PPP Committee will take into account such prospective Proponents’ presence and commitment to the Commonwealth in terms of dedicated resources, community investment and involvement of local entities.”. The aforesaid regulation also states that the Authority will provide further guidance in the RFP regarding the specific scope of local participation that will be taken into consideration and how such participation will be weighed or scored, if at all.**

**Our questions are: (i) how the Authority will take this into consideration; (ii) how is this weighed or scored; (iii) if this refers to team members or to advisors and (iv) if this refers to the advisors or personnel to be hired before the submission of the binding bid or if this refers to the personnel which will be hired by the Bidco (the Concessionaire) once the Concession is awarded?**

The RFP will set out further details on these matters. For the RFQ submission, the evaluation criteria are set out in Section 4 of the RFQ and are focused on ensuring that Prospective Proponents are the best qualified entities to be shortlisted (and hence receive the RFP). The RFP will then address the matter of local participation in more detail with these qualified Proponents.

7. **RFQ submission instructions require Prospective Proponents to briefly outline to the Authority as Proponent Information the Roles of Team Members and Key Personnel (see Section 5.2.). We would like to know whether such Key Personnel refers to the people involved in preparing the RFQ, RFP, etc, within the bidding process or if such Key Personnel refers to the people who will work for the Bidco (Concessionaire) provided the Concession is awarded to our Consortium.**

This section – paragraph (ii) of “Proponent Information” – refers more to the roles of each “Team Member” (e.g., Operator, Equity Investor, Sponsor, etc), and the key personnel of each Team Member who the Authority may be dealing with during the bid process. The RFQ is not interested in potential day-to-day asset managers.

8. **RFQ submission instructions require Prospective Proponents to identify as “Confidential” the information which such Prospective Proponents do not desire to be disclosed by the PRHTA. Our question is if it is sufficient to stamp such information/documents as “Confidential” or if we must also submit a request in writing to the PRHTA?**

As required by Section 9(i) of the Act, Prospective Proponents must stamp or use any other means to identify the information that is “Confidential” and submit a written request to the Authority asking for a determination of confidentiality. The Authority also recommends that Prospective Proponents submit confidential information under a separate tab or in a separate folder, as described in Section 9.3 of the Regulation. Please note that, as required by the Act, Prospective Proponents may only request confidential treatment for trade secrets or proprietary or privileged information.

- 9. RFQ submission instructions state that certain materials submitted by Prospective Proponents will be disclosed by the PRHTA when the transaction closes. We would like to know which materials are those to be disclosed / published by the PRHTA upon completing the transaction.**

Please refer to the Act for greater detail on which materials may be disclosed (see, for instance, Sections 9(i) and 9(j) of the Act and Section 9.3 of the Regulation). In terms of RFQ submissions, it is not the intention of the Authority to disclose RFQ submissions unless it is necessary to do so for the purposes of compiling the Report contemplated in Section 9(g) of the Act. See Section 5.4 of the RFQ for further details.