



July 20, 2016

RESPONSES TO SECOND ROUND OF REQUESTS FOR CLARIFICATIONS

The Puerto Rico Public-Private Partnerships Authority (the "Authority") hereby addresses the following Request for Clarifications ("RFCs") that were received regarding the Request for Qualifications and Proposals ("RFQP") for the Puerto Rico Maritime and Transportation Services Project issued on February 25, 2016 and the Draft Operation and Maintenance Contract of May 18, 2016:

- 1. "Government Authority refers to ATM or the Puerto Rico Integrated Transport Authority (PRITA).**

With regard to the Debt Moratorium Act and corresponding Executive order, please answer the following:

- a. Have ATM's services and the services to be performed by the O&M Operator been determined to be "essential services" pursuant to the Executive Order;**
- b. Are any funds of the ATM currently restricted and embargoed from release by GDB as a result of the Executive Order;**
- c. If the answer to subsection b. of this RFC is yes, what is the dollar amount of those funds;**
- d. What is the dollar amount and date of any and all disbursements made to ATM by the Disbursement Committee pursuant to the Executive Order since it was issued;**
- e. What is the dollar amount of the current arrearage of funds due to contractors and suppliers of ATM? Please include in your answer the age of those debts by category from 30 days to 180+ days.**
- f. Please answer sections b-e of this RFC with regard to funds of PRITA also."**

Response to 1(a): The Puerto Rico and Municipal Island Maritime Transport Authority's (ATM) services have not been determined to be "essential services" pursuant to any of the Executive Orders issued to date as per the provisions of Act 21-2016, as amended, known as the Puerto Rico Emergency Moratorium and Rehabilitation Act. We are unable to determine, at this time, how the provisions of Act 21-2016, as amended, and the Executive Orders issued thereunder will affect the Puerto Rico Integrated Transport Authority's (PRITA) or ATM's funding. Notwithstanding the

foregoing, Art. 13 of ATM's enabling act (Act No. 1-2000) states that the agency and the act were created for the purpose of performing an essential government function. Further, the recently approved Puerto Rico Oversight, Management and Economic Stability Act, a federal statute commonly known as the "PROMESA" Act, includes language toward establishing transit operations as essential services for the consideration of the Fiscal Control Board.

Response to 1(b)-(c): At this time, the combined balance of bank accounts for which ATM has funds deposited at the GDB is \$2,283.14. In addition, from the funding that PRITA has, pursuant to the consolidated budget approved for Fiscal Year 2015-2016, there is \$1,082,284.14, assigned to ATM, but remaining at PRITA's account at the GDB. Response to 1(d): On or around June 29, 2016, and based on the information provided by PRITA of funding available in its account at GDB, ATM requested, via PRITA, authorization from the Disbursement Committee for the disbursement of \$1,258,634.18. A determination from the Disbursement Committee has not been received to date.

Response to 1(e): ATM's unaudited debt, as of June 30, 2016, with private contractors or suppliers is as follows: less than 30-days, \$1.375M; over 30-days, \$290,877.36; over 60-days, \$20,786.37; and over 90-days, \$6.111M.

- 2. "State in detail and with particularity, using dollar amounts, how the potential O&M Contract has been accounted for in the Governor's Budget for fiscal year 2016-2017, beginning on July 1, 2016. Please include in your answer whether and how ATM's Budget for 2016-2017 has decreased year-over-year from that approved for 2015-2016."**

Payment for the O&M Contract will be made from the monies assigned to ATM from PRITA's approved budget. A copy of PRITA's approved budget has been uploaded in the Financials folder in the data room. Please refer to the "maritime transportation program" subtitle of PRITA's approved budget. Note, however, that the amounts indicated therein do not include any reserve, deduction or any further application of Executive Order 2016-31, amongst other reductions, that may be approved in the future.

- 3. "During the site inspection of the ATM repair base an ATM official informed the participants that the Syncrolift motors had been repaired and "certified" by the equipment manufacturer. Please summarize in narrative form the nature and extent of those motor repairs, including when they were made. Please state the current condition of the other components of the Syncrolift and please summarize in narrative form the nature and extent of any repairs to them, including when they were made. Please summarize in narrative form the nature and extent of any additional repairs that will be made to the Syncrolift motors and other components prior to execution of the O&M Agreement. Please provide any and all documents regarding evaluations, surveys, assessments, repairs or certifications regarding the Syncrolift."**

Please see the Syncrolift Inspection Report from Rolls Royce (located in the Project's data room under the Maintenance Folder). Furthermore, please be advised that a Request for Proposal will soon be awarded for the project management of the rehabilitation of the Syncrolift.

4. **“Please summarize in narrative form the nature and extent of repairs underway, pending or intended for each vessel the ATM will make available to the O&M Contractor at execution of the Agreement. Provide any and all documents regarding repairs underway, pending or intended for each vessel the ATM intends to make available to the O&M Contractor at execution of the Agreement.”**

Please refer to the Fleet folder in the Project’s data room for the Narrative explaining repairs underway on the fleet. New COIs for Isla Bonita, Isleño, Covadonga, and Cayo Norte have been uploaded to the data room; Santa Maria and Culebra II COIs will be uploaded soon. Please refer to the Fleet/COI folder in the data room. Conditions Surveys for Fajardo II and Vieques II have also been uploaded into the Fleet Folder in the data room.

5. **“The RFQP calls for a reduction in the number of extra trips. At recent testimony before a Committee of the Puerto Rico Senate this reduction of extra trips was brought into question by the Mayor of Vieques. Is it the intent of ATM to amend the RFQP to reflect the desire of or requests of the Mayors of either Vieques or Culebra that extra trips not be reduced? Are proponents expected to propose the number of compensated and uncompensated unscheduled extra trips per month pursuant to Section 6.2 of the O&M Agreement?”**

Any change to the RFQP will be notified as an amendment to the RFQP. Please refer to Exhibit C of the RFQP.

6. **“Is it the intent of ATM to modify the union contracts prior to transferring employees, or is it the intent that the collective bargaining will be the responsibility of the O&M operator prior to or immediately after the execution of the Agreement? Are the documents contained in the file name “Staff” in the Data Room all relevant collective bargaining agreements between ATM and its employee unions?”**

At this time, ATM does not contemplate any negotiation to changes to the collective bargaining agreement prior to the execution of the O&M Contract. Whether there is any need to negotiate any of the current collective bargaining agreement after the execution of the Agreement will be discussed during the contracting phase and the responsibility of the selected O&M Operator. The collective bargaining agreements in the data room are those that are currently in place between the respective union and ATM.

7. **“Are there any other contracts or agreements that the ATM expects the operator to assume responsibility for? If so, please provide copies of them.”**

Currently, the only contracts that the Operator might be required to assume are those with existing concessionaires. Please refer to the Concession/Concession Contracts folder in the data room.

8. **“The RFQP calls for a reduction in overtime benefits. The ATM has a history of active and passive labor actions affecting service. In the event of a work stoppage or other labor action affecting service as a result of the attempt to reduce benefits in the existing union agreements or compensation paid pursuant to them, will the Operator be compensated for any resulting**

costs, expenses or a reduction in revenues? If so, how? Will the subsidy be increased to cover such expenses, such as the cost of added security and any reduction of fare box income?"

No. The Operator will be the employer of all existing ATM employees and is expected to develop a cost proposal that will consider such contingencies.

9. "Will the draft O&M Agreement be subject to discussions, negotiation, or modifications prior to execution?"

Yes. Proponents have until July 22nd to submit their initial comments and suggested edits to the Draft O&M Contract.

10. "Will the Government Authority waive the requirement for a performance bond or reduce the required amount of that bond reference in Section 3.4 of the draft O&M Agreement?"

To be determined. Please submit your comments or edits to the specific section of the Draft O&M Contract.

11. "Please explain the apparent contradiction between these this provisions of Section 5.1(b) of the draft O&M Agreement: "Unless otherwise provided by the Authority, the Operator shall be entitled to reimbursement only for its fuel expense."; and this provision of Section 5.1 (e): "provided, that to the extent the Authority receives any reimbursements from the FTA for preventative maintenance, such amounts shall be used to cover amounts due to the Operator pursuant to this Agreement." Does this mean that the Operator will be reimbursed for preventative maintenance expenses if the Authority receives federal funds for such expenses?"

The Operator is expected to include in its cost proposal estimated costs for the preventive maintenance it identifies in its proposed plan. However, provided that ATM is eligible to seek reimbursement of costs incurred in preventive maintenance, the Operator may be asked to specify or issue a separate invoice identifying the specific amounts spent on eligible preventive maintenance activities. ATM is still in the process of determining with FTA the process in which the FTA will reimburse ATM for preventive maintenance costs. The Draft O&M Contract will be revised accordingly once this matter is settled with the FTA.

12. "Will the Operator have the discretion to determine who are and are not "properly qualified and trained personnel to operate and maintain the Vessels, Facilities and other equipment and to perform the Work required under" Section 7.5 of the O&M Agreement according to its own standards, policies and procedures, provided such personnel have the appropriate and necessary minimum licenses and credentials issued by relevant government authorities?"

The Operator will be required to hire all employees that meet the minimum standards set forth in the O&M Contract. Please refer to Art. 10 of the Draft O&M Contract.

13. **“No personnel have been identified in Exhibit “D” referred to in Section 10.1 (a) of the draft O&M Agreement. Please identify all such personnel. Also, please identify all current “operational union and non-union employees (such as reservations, ticketing, terminal, maintenance and repair, and crew) employed by” ATM or PRITA who it is anticipated ““the Operator shall be required to hire as of the Commencement Date”.”**

Refer to the lists of ATM’s employees that have been uploaded into the Staff folder in the data room.

14. **“Section 10.2 (a) of the draft O&M Agreement provides in part that “the Authority shall be administratively and financially responsible for obligations arising under Section 5333(b) of title 49 U.S.C. (commonly known as “Section 13(c)”) and applicable to the Authority grants of federal financial assistance”. What do ATM and/or PRITA understand those specific obligations to be.”**

When federal funds are used to acquire, improve, or operate a mass transit system (public transportation), federal law requires arrangements to protect the interests of mass transit employees. 49 U.S.C. § 5333(b) (formerly Section 13(c) of the Urban Mass Transportation Act). Section 5333(b) specifies that these protective arrangements must provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs. 49 U.S.C. § 5333(b)(2). We suggest proponents consult with their counsel as to the implications that these requirements may have on their proposals.

15. **“Please provide copies of any and all documents reflecting the conditions of federal financial assistance under 49 U.S.C. sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) of assistance 5333(b) specifying the arrangements with ATM or PRITA relating to:**
- a. **the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;**
 - b. **the continuation of collective bargaining rights;**
 - c. **the protection of individual employees against a worsening of their positions related to employment;**
 - d. **assurances of employment to employees of acquired public transportation systems;**
 - e. **assurances of priority of reemployment of employees whose employment is ended or who are laid off; and**
 - f. **paid training or retraining programs.**

This requests includes but is not limited to the terms and conditions identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract[s]."

To date, no action has been taken in this regard with the USDOL or FTA.

- 16. "Do either ATM or PRITA understand or interpret the documents, arrangements and agreements referred to in RFC 13 above as absolutely requiring that the Operator hire all existing ATM employees at commencement of the O&M Agreement? What do ATM or PRITA understand or interpret the "paid training and retraining" obligations of those documents, arrangements and agreements to be?"**

Section 10.1(a) of the O&M Contract requires the Operator to hire all ATM employees that currently occupy positions set forth in the Staffing Plan required to be submitted with the proposal. The only ATM employees that the Operator may not hire are those that do not meet the requirements of Section 10.1(c) of the Draft O&M Contract.

- 17. "Will the Clarification Meetings referred to in Addendum 2 be conducted in a group setting with all interested parties present, or will they be one-on-one with each interested party?"**

Pursuant to FTA's guidance on this matter, the clarification meetings will be held in a group setting.

- 18. "If a Proponent decides to submit an Alternative Technical Concept, how detailed should such a submittal be? Will the Proponent of an ATC be expected to quantify in dollar terms how an ATC "achieves cost savings or revenue enhancements if the Technical Concept [is] accepted". How will the Authority handle requests for confidential treatment of ATC submissions or their component parts? Should requests for confidential treatment of ATC submissions or their component parts be submitted prior to the deadline for submission of the actual ATC; and, if so, by what date or how many days in advance? Will submission of requests for confidential treatment affect the deadline for submission of an ATC?"**

Please refer to the confidential treatment process provisions contained in the RFQP for more information regarding confidential treatment of documents submitted to the Authority.

- 19. "REQUESTED CLARIFICATION (response to RFC #5): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked, or the referenced draft O&M Agreement provision does not address the specific questions. Therefore, further clarification of the following 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) Does the term in Article 43 of the draft O&M Agreement “direct costs of mobilization” 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”? If “direct costs of mobilization” does not include such costs, will the Contractor be at risk that they will be excluded from reimbursement as “unabsorbed overhead”, or for any other reason, in the event of a Termination for Convenience?”**

Response to 19(a): Termination for Convenience is a standard term in any government contract. The FTA has not expressed any willingness to waive this condition. ATM may make such a request to the extent this is condition for bidding.

Response to 19(b): As defined in Section 43.4 of the O&M Contract, "direct costs of mobilization" does not include capital improvements made to assets of ATM. As provided in the Draft O&M Contract, capital improvements are the responsibility of ATM and, to the extent the Operator undertakes any capital improvements which have been pre-approved by ATM, unamortized capital costs will be reimbursed to the Operator. The Operator will run the risk of absorbing capital costs which have not been approved by ATM in the event of termination for convenience.

- 20. “REQUESTED CLARIFICATION (response RFC #6): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked. Therefore, further clarification of the following is requested:**

- (b) Will ATM represent and warrant in the O&M Agreement that future debt of the ATM, such as payments due to the Operator pursuant to the O&M Agreement, will not be subject to suspension pursuant to the Debt Moratorium Act;**
- (c) Will ATM represent and warrant in the O&M Agreement that assets of the Operator, including vessels it owns or that it is the disponent owner of pursuant to a Charter Agreement, will not 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 pursuant to the Debt Moratorium Act?”**

Response to 20(b) and 20(c): ATM will not include representations as to these matters. The Commonwealth's policy is not to restrict its right to act for the benefit of the people of Puerto Rico and the Commonwealth has always had the power of eminent domain and will not limit such power. Please refer to the representations and warranties set forth in the Draft O&M Contract.

- 21. “REQUESTED CLARIFICATION (response RFC #7): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked, or the referenced draft O&M Agreement provision does not address the specific questions. Additionally, the Executive Order under the Debt Moratorium Act was issued after the RFQP and is not addressed in Section 2.3 of that document. Therefore, further clarification of the following is requested:**

- (b) Will ATM represent and warrant in the O&M Agreement that ATM's funds will not be affected by this Executive Order:**
- (c) Will ATM represent and warrant in the O&M Agreement that this Executive Order will not affect payments due to the Operator pursuant to the O&M Contract;**
- (d) Will ATM represent and warrant in the O&M Agreement that payments to the Operator under the O&M Contract will take precedence over payments to existing contractors and suppliers of ATM currently in arrears?"**

Response to 21 (b) - 21(d): No, ATM will not include representations and warranties to this effect for the reasons mentioned in the prior response.

- 22. "REQUESTED CLARIFICATION (response RFC #8): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked, or the referenced draft O&M Agreement provision does not address the specific questions. Therefore, further clarification of the following is requested:**

Is it the government's intention that the O&M Operator will become the successor employer of all ATM employees and assume all accumulated employment obligations under the existing union collective bargaining agreements, except for those employees who will be named in Appendix D?"

No, the intent is not for the Operator to be the successor employer. The PPP Act provides that the Operator will not be a successor employer except for those liabilities specifically assumed in the O&M Contract.

- 23. "REQUESTED CLARIFICATION (response to RFC #10): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked, or the referenced information in the Data Room does not address the specific questions. Additionally, an article in the Press published on 6/2/16 regarding a Senate hearing into operational deficiencies in ATM reported that currently there are only 3 vessels in operation between Fajardo, Culebra and Vieques. Therefore, further clarification of the following is requested:**

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 and location of vessels."

Please refer to the Fleet folder in the data room for the Narrative. New COIs for Isla Bonita, Isleño, Covadonga, and Cayo Norte have been uploaded to the data room under the Fleet/COI folder; Santa Maria and Culebra II COIs will be uploaded soon. The updated fleet specs spreadsheet include location of the vessels (Refer to the Fleet folder in the data room).

- 24. "REQUESTED CLARIFICATION (response to RFC #13): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked. Therefore, further clarification of the following is requested:**

Please state in detail ... what repairs, maintenance, improvements and inspections are currently being made or will be made by ATM to” Isla Bonita, Cayo Blanco, Culebra II, Isleño, Santa Maria, Convadonga and Princesa.”

Please refer to the Fleet folder in the data room for the Narrative. New COIs for Isla Bonita, Covadonga, Isleño and Cayo Norte have been uploaded to the data room under Fleet/COI; Santa Maria and Culebra II COIs will be uploaded soon.

- 25. “REQUESTED CLARIFICATION (response RFC #17): Thank you for your response. Further clarification of the following is requested:**

Is the ticketing Software manufacturer “The Phoenix Company” and the Software package “Doorway”? Can it be assumed that this ticketing system does not allow for advanced sales or reservations for future travel?”

“The Phoenix Company” is ATM’s subcontractor for the maintenance of the ticketing system, known as the **Doorway Ticketing System**. This system currently works for the Island service only; nonetheless it may be extended to the Metro service. **Doorway Ticketing System** allows for sales and reservations for future trips and it has the capability to manage online ticket sales.

- 26. “REQUESTED CLARIFICATION (response RFC #19): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked, or the referenced information in the Data Room does not address the specific questions. Therefore, further clarification of the following is requested:**

Please provide the names and USCG Official Numbers for all vessels in the “Island Service”, so-called, to be covered by the O&M Agreement and which will be decommissioned or disposed of.”

Refer to the “ATM - fleet specifications (July 2016)” excel file under Fleet folder in the data room which include the official names and numbers of the vessels.

- 27. “REQUESTED CLARIFICATION (response to RFC #20): Thank you for your response. However, it is either not responsive or is not completely responsive to the specific questions asked. Therefore, further clarification of the following is requested:**

Please provide the latest [meaning any and all] 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.” Alternatively, should prospective proponents assume from the prior response to this RFC that the government has no intention of dredging any shallow berths prior to or after the award of the O&M Contract?”

ATM has not performed any of the requested studies or surveys. The Puerto Rico Ports Authority plans to dredge in Fajardo. Information on the dredging plans will be provided later.

All the RFCs received and addressed here were posed by Puerto Rico Fast Ferries.