



# Request for Qualifications and Proposals for the Puerto Rico Maritime Transportation Services Project

[WWW.APP.GOBIERNO.PR](http://WWW.APP.GOBIERNO.PR)

February 2016



# TABLE OF CONTENTS

---

SECTION 1 – INTRODUCTION ..... 1  
SECTION 2 – MARITIME TRANSPORTATION PROJECT OBJECTIVES ..... 8  
SECTION 3 – METRO AND ISLAND SERVICE DESCRIPTION..... 13  
SECTION 4 – SCOPE OF SERVICES REQUESTED..... 19  
SECTION 5 – SOQ AND PROPOSAL REQUIREMENTS FOR ALL RESPONDENTS..... 24  
SECTION 6 – EVALUATION CRITERIA ..... 32

- APPENDIX A – ALTERNATIVE TECHNICAL CONCEPTS SUBMISSION
- APPENDIX B – PROPOSAL FORMAT
- APPENDIX C – NET PUBLIC SUBSIDY SUBMISSION
- APPENDIX D – REQUIRED FORMS
- APPENDIX E – NET PUBLIC SUBSIDY UPSET LIMIT
- APPENDIX F – FTA REQUIRED CLAUSES
- APPENDIX G – DRAFT OPERATIONS AND MAINTENANCE CONTRACT

# SECTION 1 – INTRODUCTION



## 1.1 INTRODUCTION

The Puerto Rico and the Island Municipalities Maritime Transport Authority (“MTA”) was created by Act No.1 of January 1, 2000, as amended, otherwise known as the Puerto Rico and the Island Municipalities Maritime Transport Authority Act (the “MTA Act”). The MTA Act established the MTA as a public corporation which owns all ferry assets used to provide maritime services to Fajardo, Vieques, Culebra, San Juan, and Cataño. MTA’s purpose is to control, administer, operate and maintain the maritime transportation service and related assets in Puerto Rico. When the MTA Act was enacted, the MTA was attached to the Department of Transportation and Public Works’ (“DTOPW”) umbrella, which oversees all transportation agencies in the island. As part of its operation, MTA has received and is currently eligible for federal assistance, primarily, from the U.S. Department of Transportation’s Federal Transit Administration (“FTA”). Therefore, at present, the FTA has federal interest over some or all of the MTA’s assets, including its ferries.

On August 3, 2014, the Governor of the Commonwealth of Puerto Rico signed into law Act No. 123-2014, which created the Puerto Rico Integrated Transit Authority (“PRITA” or “ATI” by its Spanish acronym), also attached to the DTOPW, in order to serve as the central agency responsible for managing and developing commonwealth-wide mass transportation programs. MTA, along with the Urban Train (“Tren Urbano” by its Spanish acronym) and the Metropolitan Bus Authority (“AMA” by its Spanish acronym), are managed under PRITA. PRITA was created in order to further advance public policy for integrated mass transportation by consolidating the current administrative structure into a single entity geared towards the cohesive implementation of such policies. These policies include:

- The integration of routes, schedules, and rates between services (ferry, rail, and bus);
- The formalization and quality control of services offered to users; and
- The promotion and development of mass transportation services.

The Puerto Rico Public Private Partnerships Authority (the “Authority”) is the sole entity responsible for the implementation of public-private partnerships (“PPP” or “P3s”) in Puerto Rico. MTA and PRITA are the public corporations responsible for overseeing and implementing mass transit infrastructure plans, programs and projects in order to facilitate the movement of people and goods while protecting the natural resources of Puerto Rico.

In order to improve the service of MTA’s ferry system, the Authority, acting in collaboration and as an agent of MTA and PRITA, is contemplating the establishment of a P3 for the operation and maintenance (“O&M”) of the Metro Service, the Island Service and the maintenance base located in Isla Grande, San Juan (collectively referred as the “Project”).

Prospective Respondents are encouraged to review the following documents, which are available for download on the Authority’s website at <http://www.app.gobierno.pr>:

- the Project’s Desirability and Convenience Study;
- the Commonwealth of Puerto Rico’s (the “Commonwealth of Puerto Rico” or “Commonwealth”) Financial Information and Operating Data Report, dated November 6, 2015, as supplemented. This report presents detailed information regarding the Commonwealth’s economy and finances; and
- “A Guide to Doing Business in Puerto Rico,” which provides general information relating to Puerto Rico’s social, legal and macroeconomic conditions including workforce and labor laws, tax system and incentives and construction permits, together with other relevant information.

## 1.2 BACKGROUND TO PUERTO RICO’S PPP PROGRAM

The *Public-Private Partnership Act* (the “Act”) was approved on June 8, 2009. The Act states that the public policy of the Commonwealth is to favor and promote the establishment of PPPs for the creation of certain “Priority Projects” (as

such term is defined in the Act) and, among other things, to further the development and maintenance of infrastructure facilities, share with the private sector the risks involved in the development, operation or maintenance of such projects, improve the services rendered, encourage job creation and promote Puerto Rico's socio-economic development and competitiveness.

The Act provides that the new public policy must maintain such controls as are necessary to protect the public interest. The contractual relationship achieved through a P3 must be mutually beneficial, while ensuring the efficient, effective and affordable provision of public goods and services to all citizens.

The Act was amended in December 2014 to incorporate a new and expedited process to procure small scale P3 projects ("Small Scale P3s"). This amendment allows for projects with capital expenditures valued up to US\$55 million to be evaluated on an expedited basis. The Authority's Board of Directors may also provide this expedited review process for certain new projects with a capital expenditure valued up to US\$100 million. The Act, as amended, creates a Permanent Committee (the "Committee") to oversee these projects, which includes Commonwealth and municipal representatives. The Project is being procured as a Small Scale P3.

The Committee is responsible for: (1) the qualification, evaluation and selection processes of the proposed PPP; (2) establishing the terms and conditions of the PPP contract (the "Operation and Maintenance Contract" or "O&M contract"); which will include the clauses required by the Federal Transit Administration ("FTA") as set forth in Appendix F; and (3) reporting on the procedures followed.

**Respondents should note that the Committee has been vested with the authority to negotiate the terms of the O&M contract. The Authority's Board of Directors has been vested with the authority to approve the O&M contract agreed by the Committee with a Proponent, subject to final approval by PRITA's and/or MTA's Board of Directors.**

### 1.3 FUNCTION AND OVERVIEW OF THIS REQUEST FOR QUALIFICATIONS AND PROPOSALS

This document is a Request for Qualifications and Proposals (together named "RFQP") issued under Sections 4.4 and 4.5 of the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Public-Private Partnership Contracts under Act No. 29 of June 8, 2009, approved by the Authority on December 19, 2009 (the "Regulation"). Prospective Respondents should review carefully the Act and the Regulation (each of which is available for download on the Authority's website: <http://www.app.gobierno.pr>) and should ensure that they comply with all applicable provisions set out therein.

This RFQP provides each prospective Respondent with sufficient information to enable it to prepare and submit a Statement of Qualifications ("SOQ") and Project Proposal ("Proposal") for consideration and evaluation by the Authority. The SOQ and the Proposal shall be submitted simultaneously and will be evaluated as described in Section 6 of this RFQP.

The Authority is issuing this RFQP because it has determined that:

- the Project meets the requirements of Article 3 of the Act; and
- it is advisable to pursue the establishment of a PPP in connection with the Project.

### 1.4 PROCUREMENT PROCESS AND SCHEDULE

The procurement of the Project is expected to take place in the following stages:

#### 1.4(a) Stage 1 – Qualifications Process

The qualifications process, as described in this RFQP, precedes the proposal evaluation process described in Section 1.4(b) below and is intended to identify the Respondents who are qualified and eligible to participate in the proposal

evaluation process (the “Shortlisted Respondents”). Respondents are to submit an SOQ for the qualifications process simultaneously with the submission of the Proposals as part of the proposal evaluation process.

The qualifications process is a standalone and independent stage that is complete once the Shortlisted Respondents are identified by the Authority. Only Shortlisted Respondents will move onto Stage 2, the proposal evaluation process.

#### 1.4(b) Stage 2 – Proposal Evaluation Process

The proposal evaluation process commences after all SOQs have been evaluated. Only Respondents deemed qualified will have their technical and financial submissions evaluated. The competitive procurement process immediately follows the qualifications process and is intended to result in the identification of a Preferred Proponent.

#### 1.4(c) Stage 3 – Implementation of the Project Contract

Once the Preferred Proponent and MTA have executed the O&M contract, the Project will proceed in accordance with the terms and conditions of the O&M contract.

### 1.5 PROCUREMENT SCHEDULE

A summary schedule of the major activities associated with the procurement process is presented in Table 1.1. The dates and activities are subject to change and may be revised through the issuance of addendums to this RFQP.

**Table 1-1: RFQP Schedule<sup>1</sup>**

The Authority anticipates the qualifications and proposal evaluation process will be conducted according to the following schedule:

<b>February 25, 2016</b>	RFQP issued by the Authority
<b>February 25, 2016</b>	Opening of data room
<b>March 29- 31, 2016</b>	First site visit for interested Proponents
<b>Early April</b>	First round of questions and Request for Clarifications (“RFCs”) due
<b>Mid April</b>	First round of clarification meetings
<b>Late April</b>	Deadline for Alternative Technical Concepts (“ATC”) submittals
<b>TBD</b>	Second site visit (if necessary)
<b>Early May</b>	Second round of questions and Request for Clarifications (“RFCs”) due
<b>Mid May</b>	Second round of clarification meetings
<b>Mid May</b>	Additional site visits (by request only)
<b>June 27, 2016</b>	Due date for submission of SOQs and Proposals with the Authority no later than 5:00 p.m. (AST) (“Submission Deadline”)
<b>Mid July</b>	Notification of Preferred Proponent

Respondents who decide to participate and respond to this RFQP will have the opportunity to conduct thorough due diligence on the Project.

Respondents will have the opportunity to conduct due diligence of the Project through:

<sup>1</sup> Table 1.1 (RFQP Schedule) sets forth the anticipated schedule of the entire procurement subject to the right of the Authority to revise the schedule, in addition to the schedule for the shortlisting of Respondents and selection of the Preferred Proponent.

- receipt and review of the RFQP for the Project, which will include confidential information about the Project and a draft form of the O&M contract. The O&M contract will address, among other matters:
  - all of the rights and obligations of the parties during the term of the O&M contract; and
  - detailed and comprehensive operations and maintenance standards.
- access to a virtual data room that will provide detailed information on the Project, including:
  - schematic designs for existing facilities;
  - operational and maintenance plans;
  - maintenance records;
  - site analysis;
  - historical ridership and revenue data; and
  - other relevant information and requirements.
- site visits;
- clarification meetings; and
- a review and discussion of clarification questions relating to, the proposed O&M contract and related documents.

The intention of the Committee is to select a Preferred Proponent by **Mid July**.

## 1.6 CONSORTIA, JOINT VENTURE OR PARTNERSHIP

To the extent that any Respondent has formed or proposes to form a consortium, joint venture, or partnership to participate in the RFQP and/or become the contracting counterparty for this Project, such Respondent should respond to this RFQP setting out the identity, role and capabilities of each Team Member. The submittal requirements will need to be satisfied for each member (i.e., financial capacity information and organization information).

## 1.7 ADDITIONAL RULES WITH RESPECT TO ALL RESPONDENTS

For purposes of this RFQP, the following terms will have the meaning ascribed to them below, unless the context clearly indicates otherwise:

- **“Key Individual”** means an individual who will play an important role in the Project on behalf of a Team Member.
- **“Key Subcontractor”** means each person or legal entity which will be principally or partially responsible for providing legal or technical services or support in connection with the operation and maintenance of the Project.
- **“Local Parties”** means local general contractors, subcontractors, suppliers, manufacturers, professionals (including architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence within the Commonwealth.
- **“Operator”** means the party that executes the O&M contract with MTA.
- **“Proponent”** means a Shortlisted Respondent selected through the qualification process.
- **“Preferred Proponent”** means the Proponent selected by the Authority to undertake the Project and enter into the O&M contract.

- **“Respondent”** means a (i) natural person, (ii) legal person, (iii) joint venture, (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a SOQ and Proposal in response to this RFQP.
- **“SOQ”** means a statement of qualifications to be submitted by Respondents pursuant to this RFQP. All references in this RFQP to “SOQ submissions,” “SOQ submittals,” “SOQ responses,” and expressions of a like nature are deemed to refer to the SOQ.
- **“Proposal”** means a response submitted by Respondents pursuant to the RFQP. All references in this RFQP to “Proposal submissions,” “Proposal submittals,” “Proposal response” and expressions of a like nature are deemed to refer to the Proposal.
- **“Team Member”** means a member of a Respondent. Team Members must be identified in Respondents’ RFQP submissions and cannot be changed without the prior written consent of the Committee.

Please note the following with respect to Respondents:

- Except as specifically provided to the contrary in this RFQP, no Team Member may join or participate, directly or indirectly, as a Team Member in more than one Respondent for this Project. Each person or legal entity who participates as a Team Member is responsible for ensuring that no other person or legal entity which is “Related” to it joins or participates, directly or indirectly, as a Team Member in any other Respondent. Unless otherwise provided herein, any violation of this provision shall disqualify the Respondent and its Team Members.
- A person or company is “Related” to another person or legal entity if:
  - one may exercise Control over the other; or
  - each is under the direct or indirect Control of the same ultimate person or legal entity.

For purposes of this RFQP, a person or legal entity exercises “Control” of another if it is the owner of any legal, beneficial or equitable interest in 50% or more of the voting securities in a corporation, partnership, joint venture or other person or entity, or if it has the capacity to control the composition of the majority of the board of directors of any such person or entity, or to control the decisions made by or on behalf of any such person or entity, or otherwise has the ability to direct or cause the direction of the management, actions or policies of any such person or entity (whether formally or informally); and the terms “Controlling” and “Controlled” have corresponding meanings.

- If for any reason, after the Submission Deadline and prior to the selection of a Preferred Proponent, a Respondent wishes or requires to: (i) change any Team Members listed in the Respondent’s SOQ (either by adding new members, removing listed members or substituting new members for listed members), or (ii) materially change the ownership or Control of a Respondent or a Team Member, then, in each case, the Respondent must submit a written application (with such information as the Committee may require) to the Committee seeking its consent to the proposed change, which consent may be withheld or delayed in the absolute discretion of the Committee. Without limiting the foregoing, the Committee may refuse to consent to a change to a Respondent or its Team Members and/or may disqualify the Respondent from further participation in the procurement process if:
  - the change would, in the sole discretion of the Committee, result in a weaker Respondent than that which is listed in the Respondent’s SOQ or Proposal or result in the Respondent being materially different from the Respondent that was originally shortlisted; or
  - the evaluation of the new Respondent team, using the evaluation criteria described in Section 6 of this RFQP, would rank the Respondent, taking into account the proposed change or changes, lower than a Respondent that has not been shortlisted.

For the avoidance of doubt, the Committee's discretion to consent to changes to a Respondent's team membership includes discretion to approve changes to the legal relationship between the Respondent and/or its Team Members, such as the creation of a new joint venture, partnership or legal entity that will take the place of the Respondent.

The Committee's consent may include such terms and conditions as the Committee may consider appropriate.

## 1.8 RESTRICTED PARTIES

Restricted Parties (as defined below), their respective directors, officers, partners, employees and persons or legal entities Related to them (as defined in Section 1.7 above) are not eligible to participate as Team Members, or advise any Team Member, directly or indirectly, or participate in any way as an employee, advisor, or consultant or otherwise in connection with any Respondents in matters related to the Project. Each Respondent will ensure that each Team Member does not use, consult, include or seek advice from any Restricted Party in matters related to the Project. However, Restricted Parties are allowed to advise any Respondent on matters unrelated to the Project. The following Restricted Parties have been identified:

- KPMG LLP;
- Steer Davie Gleave;
- Pietrantoni Mendez and Alvarez LLC;
- KPFF Consulting Engineers;
- Alvarez & Marsal Public Sector Services, LLC ; and
- any subsidiary or affiliate of the above-mentioned persons or entities.

Moreover, Respondents must comply at all times during the procurement process with the Authority's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts (the "Ethics Guidelines"). Prospective Respondents should review the Ethics Guidelines, which are available for download on the Authority's website: <http://www.app.gobierno.pr>.

Finally, Respondents should be aware that the list of Restricted Parties is not exhaustive and that a person that is not included as a Restricted Party may still be prohibited from participating in the Project pursuant to the provisions of the Ethics Guidelines. However, the fact that a person provides or has provided services to the Authority, MTA, or PRITA may not automatically prohibit such person from participating in the Project. Each Respondent is responsible for ensuring that all persons engaged to provide any type of assistance in connection with the Project are in compliance with the provisions of the Ethics Guidelines and, to the extent any question exists as to compliance with the Ethics Guidelines, the Respondent should consult with the Authority.

## Communications Protocol

The Authority, MTA, and PRITA are committed to a fair, open and transparent selection process.

Respondents and their Team Members and their respective directors, officers, employees, consultants, agents, advisors and representatives, will not, except as expressly contemplated by this RFQP or as expressly directed or permitted by the Authority, attempt to communicate directly or indirectly with any representative of the Authority, the Committee, Government Development Bank for Puerto Rico ("GDB") or the Commonwealth in relation to the Project during the Qualification and Proposal Evaluation processes. The Authority reserves the right to disqualify a Respondent that violates this provision.



---

## No Collusion

Respondents will not discuss or communicate, directly or indirectly, with any other Respondent(s) or any director, officer, employee, consultant, advisor, agent, representative or Team Member of any other Respondent regarding the preparation, content or representation of their SOQs and Proposals. SOQs and Proposals will be submitted without any connection (i.e., arising through an equity interest - other than an equity interest that does not represent a Controlling interest in an entity, as determined by the Authority from time to time in or of a Respondent or Respondent Team Member), knowledge, comparison of information, or arrangement, with any other prospective Respondent or any director, officer, employee, consultant, advisor, agent, representative or Team Member of any other prospective Respondent.

By submitting a response to this RFQP, a Respondent, on its own behalf and as authorized agent of each firm, corporation or individual Team Member of the Respondent, represents and confirms to the Authority, with the knowledge and intention that the Authority may rely on such representation and confirmation, that its response has been prepared without collusion or fraud, and in fair competition with responses from other Respondents.

## 1.9 DEADLINE AND CLARIFICATIONS

Those interested in becoming Respondents must submit their responses to this RFQP no later than the Submission Deadline. RFQP submissions must be received by the Authority no later than the Submission Deadline at the address and in the manner set out in Section 5 and Appendix B.

Respondents may make inquiries only by submitting questions and RFCs to the Committee Representative referred to in Section 5.1 of this RFQP (the “Committee Representative”) by e-mail, no later than the relevant dates outlined in Table 1-1. Questions submitted to anyone other than the Committee Representative or by any means other than e-mail will not be answered and may be grounds for disqualification according to the Communications Protocol provisions of this RFQP.

- Any respondent that has questions as to the meaning of any part of this RFQP or the Project, or who believes that the RFQP contains any error, inconsistency or omission, must submit its concern, in writing, to the Committee Representative in accordance with this Section 1.9. The Authority will provide all submitted questions or RFCs, along with the Authority’ answers thereto, to all Respondents. The Authority will not respond to Respondents’ questions or RFCs that are not submitted in accordance with this Section 1.9.
- Any oral or written response provided by the Authority in connection with this RFQP will not be binding on the Authority nor will it change, modify, amend or waive the requirements of this RFQP in any way. Respondents shall not rely on any response provided other than an Addendum issued in accordance with this RFQP.

## Confirmation of Intention

Respondents that anticipate responding to this RFQP shall so indicate as soon as possible by providing contact information to the Committee via e-mail at [RFQP-Department@p3.gov.pr](mailto:RFQP-Department@p3.gov.pr). Also, all questions and/or RFCs regarding this RFQP should be directed to the Committee Representative via e-mail: [RFQP-Department@p3.gov.pr](mailto:RFQP-Department@p3.gov.pr).

KPMG is serving as Financial and Procurement Advisor (the “Advisor”) to the Authority for this Project and will provide assistance in the RFQP and procurement process in accordance with Section 4.17 of the Regulation. Please do not contact any officials or related parties of the Authority, PRITA, MTA, and/or DTOPW (other than the Committee Representative) via telephone or otherwise. Such contact may serve as grounds for disqualification.

# SECTION 2 – MARITIME TRANSPORTATION PROJECT OBJECTIVES



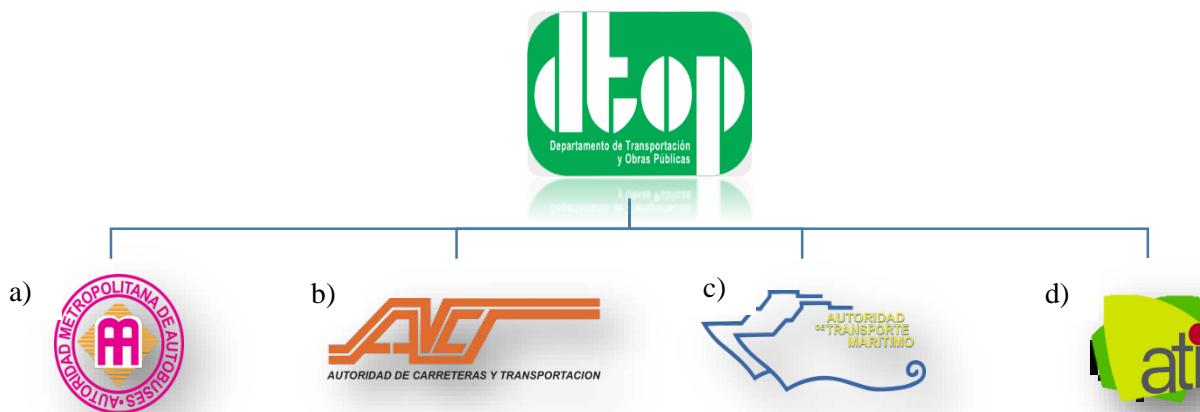
## 2.1 PROJECT AUTHORITY

The Commonwealth of Puerto Rico, its public corporations and municipalities are responsible for providing essential services at the lowest possible cost for the welfare of Puerto Rico’s citizens. These services include public health and safety, education and transportation. Due to the financial constraints of the Commonwealth and its municipalities, innovative partnerships with the private sector have often been adopted to help deliver infrastructure projects or provide essential services to its people.

On June 8, 2009, the Legislative Assembly of Puerto Rico approved the Act to promote and provide for the establishment of PPPs in Puerto Rico for the purposes set forth therein. The Authority was created as a public corporation, affiliated to GDB with the purpose of implementing the Commonwealth’s public policy regarding P3s.

The Project is an essential component of the Commonwealth’s long-term transportation initiatives, which are overseen by DOTPW and implemented, in this case, by PRITA and MTA. Below is an organizational chart showing the distribution of roles and responsibilities per entity under DOTPW.

**Figure 2-1: DOTPW Organizational Chart**



DOTPW has responsibility for the following transportation agencies:

- a) Metropolitan Bus Authority
- b) Puerto Rico Highways and Transportation Authority (“PRHTA”)
- c) Maritime Transportation Authority
- d) Puerto Rico Integrated Transit Authority

## 2.2 PROPOSED PROJECT STRUCTURE

It is anticipated that the O&M contract would have a term of 10 years (“Project Term”) and is expected that the Project would be supported by regular subsidy payments made by MTA to the Operator over a 10-year period.

It is anticipated that the Operator shall take responsibility for the collection of all farebox and ancillary revenues (assuming current fares and fare policy.) The amount of subsidy payment to the Operator set out in the Proposal and agreed in the O&M contract shall take into account these sources of income. The Authority therefore anticipates that MTA will make subsidy payments net of the farebox and ancillary income to the Operator.

Net subsidy payments will compensate the Operator for delivery of the Project in accordance with certain performance standards, which will be ultimately agreed upon in the O&M contract. Table 2-2 summarizes the responsibilities and risks to be transferred to the Operator. The Commonwealth, through the MTA and/or PRITA, will retain ownership of the Project at all times, with all management responsibility of the Project reverting to the MTA at the end of the Project Term.

## 2.3 BUDGETARY PROCESS AND PAYMENT PRIORITIES

*Budgetary Process.* The Commonwealth’s fiscal year begins on July 1 and ends on June 30. The Governor is constitutionally required to submit to the Legislative Assembly an annual budget of capital improvements and operating expenses of the Commonwealth for the ensuing fiscal year. The annual budget is prepared by the Office of Management and Budget (“OMB”), working with the Puerto Rico Planning Board (“Planning Board”), the Department of the Treasury of the Commonwealth, GDB and other government offices and agencies. Section 7 of Article VI of the Commonwealth’s Constitution provides: “the appropriations made for any fiscal year will not exceed the total revenues, including available surplus, estimated for said fiscal year unless the imposition of taxes sufficient to cover said appropriations is provided by law.”

The annual budget, which is developed utilizing elements of program budgeting and zero-base budgeting, includes an estimate of revenues and other resources for the ensuing fiscal year under (i) laws existing at the time the budget is submitted and (ii) legislative

**Table 2-2: Project Requirements Matrix**

Requirements Items	Public Sector	Private Sector	Shared
<b>Labor</b>			
Crew Management		X	
Crew Members		X	
<b>Performance Reporting</b>			
Monitor and Audit	X		
FTA Required Reporting	X		
Performance Reporting		X	
Database Management		X	
<b>Routes and Schedules</b>			
Ferry Route	X		
Ferry Schedule	X		
<b>Consumables</b>			
Fuel (volume)		X	
Fuel (price)	X		
Spare Parts/Other Parts		X	
<b>Fare box and Ticketing</b>			
Fare Setting	X		
Integrated Ticketing System (including ticket collection)		X	
<b>Routine Maintenance/Repair</b>			
Manufacturer Recommendations		X	
Repairs		X	
Mandatory/Regulatory Inspections		X	
Federal Compliance		X	
<b>Major Maintenance</b>			
Capital Improvement Projects	X		
Service Life Extension	X		
<b>Other</b>			
Strategic Oversight	X		
Security and Surveillance		X	
Insurance		X	
Force Majeure			X
Federal Approvals	X		

measures proposed by the Governor and submitted with the proposed budget, as well as the Governor's recommendations as to appropriations that in his or her judgment are necessary, convenient, and in conformity with the four-year investment plan prepared by the Planning Board.

The Legislative Assembly may amend the budget submitted by the Governor, but may not increase any items so as to cause a deficit without imposing taxes to cover such deficit. Upon passage by the Legislative Assembly, the budget is referred to the Governor, who may decrease or eliminate any item, but may not increase or insert any new item in the budget. The Governor may also veto the budget in its entirety and return it to the Legislative Assembly with objections. The Legislative Assembly, by a two-thirds majority in each house, may override the Governor's veto. If a budget is not adopted prior to the end of the fiscal year, the annual budget for the preceding fiscal year, as originally approved by the Legislative Assembly and the Governor is automatically renewed for the ensuing fiscal year until a new budget is approved by the Legislative Assembly and the Governor. This permits the Commonwealth to continue to make payments of its operating and other expenses until a new budget is approved.

During any fiscal year in which the resources available to the Commonwealth are insufficient to cover the appropriations approved for such year, the Governor may take administrative measures necessary to balance the budget, or make recommendations to the Legislative Assembly for new taxes, or take any other necessary action to meet the estimated deficiency, or authorize borrowings under provisions of existing legislation, or take action which involves a combination of such steps. Any such proposed adjustments will give effect to the "priority norms" established by law for the disbursement of public funds in the following order of priority:

- first, the payment of the interest on, and amortization requirements for, public debt (Commonwealth general obligation and guaranteed debt);
- second, the fulfillment of obligations arising out of legally binding contracts, court decisions on eminent domain and certain commitments to protect the name, credit and good faith of the Commonwealth government;
- third, current expenditures in the areas of health, protection of persons and property, education, welfare and retirement systems; and
- fourth, all other purposes.

The Commonwealth's Constitution provides that the public debt of the Commonwealth will constitute a first claim on available Commonwealth revenues. Public debt of the Commonwealth includes general obligation bonds and notes of the Commonwealth to which the full faith, credit and taxing power of the Commonwealth are pledged and, according to opinions rendered by the Attorney General of the Commonwealth, also any payments required to be made by the Commonwealth under its guarantees of bonds and notes issued by its public instrumentalities.

*Payments for P3 Contracts.* The funds to be provided by the Commonwealth to make the payments required under a P3 contract are subject to and conditioned upon the appropriation of such funds by the Legislative Assembly in the annual budget of the Commonwealth. The payments the department or agencies of the Commonwealth would be required to make under a P3 contract do not constitute public debt of the Commonwealth for purposes of the constitutional provision described above. If all annual budgetary appropriations required by a P3 contract are made in full, presumably such amounts will be sufficient to make the payments due under such P3 contract.

The Legislative Assembly is not legally bound to appropriate sufficient amounts to allow the Commonwealth to make payments under a P3 contract. Moreover, the private entity under a P3 contract has no legal recourse to require the Legislative Assembly to appropriate the funds necessary to make any payment due under such P3 contract. The failure to make annual budgetary appropriations in the amounts required would cause a shortfall in the moneys available to the Commonwealth for the payments of amounts due under a P3 contract. In the event any P3 contract is terminated and the Commonwealth or the corresponding governmental entity is required to make a substantial termination payment to the private party, it is likely that such amounts will not be available in the currently approved budget, as amounts appropriated therein would have only taken into account ongoing payments under the corresponding P3 contract. As a

result, the private entity would have to wait at least until the approval of the next budget in order to determine whether sufficient amounts to satisfy the Commonwealth's payment obligation will be appropriated.

Finally, if a budget is not adopted prior to the end of the fiscal year, the annual budget for the preceding fiscal year as originally approved by the Legislative Assembly and the Governor is automatically renewed for the ensuing fiscal year until a new budget is approved. Once a new budget is approved, any possible future shortfall situations may not have been addressed.

### 2.4 PROJECT DESCRIPTION AND NEED

MTA aims to maintain a reliable and efficient ferry system that connects the islands of Vieques and Culebra (the "Municipal Islands") to the main island of Puerto Rico and services the San Juan Metropolitan Region.

The current ferry service can be characterized as:

- A service which requires a public subsidy or economic assistance;
- A strategic transportation link, that is essential; and
- A catalyst for tourism and economic development.

#### Metro Service

The Metropolitan Region of San Juan (comprised by the municipalities of Bayamón, Cataño, Guaynabo, San Juan, and Carolina) has seen vast change in the demands of its riders for mass transit since the establishment of the Tren Urbano, a rapid transit train built in the mid 2000's. Tren Urbano has changed the dynamics of mass transportation in the Metropolitan Region. One of PRITA's main goals is to effectively integrate all forms of mass transit in the Metropolitan Region with Tren Urbano as the anchor. The Project contemplates including the Metro Service in this objective by synchronizing its routes with the Tren Urbano and AMA bus services. The objective is to increase the Metro Service reliability, quality, and increase rider mobility.

#### Island Service

The residents in the Municipal Islands have no other mass transit options provided by the Commonwealth to reach the main island. Income levels of Municipal Island residents are consistent with those of the Puerto Rican population as a whole, where 17% of households have income levels over US\$50,000.

In order to effectively develop both islands to their social and economic potential, a reliable ferry service must be established to link residents, businesses, and tourists to the offshore islands, and most importantly connect island residents to the essential services (i.e., health, education, and commercial services) that are provided in the main island as well as to safely transport island residents in the event of a storm or emergency event.

### 2.5 PROJECT GOALS AND OBJECTIVES

- Maintain customer and crew safety;
- Improve the quality of customer service;
- Increase ridership of the Metro and Island Services;
- Identify and introduce efficiencies in MTA's operations by leveraging the private sector's ferry operations expertise;
- Increase resources for vessel maintenance to provide the potential for improving service levels and reliability for users; and

- Increase revenues through improved ancillary services (i.e., food and beverages) not related to ticket fare to reduce net public subsidies.

## 2.6 PROJECT EXPECTED BENEFITS

The expected benefits resulting from the implementation of the Project include:

- Improved, user-friendly experience for residents, tourists, and visitors, including on-line reservation system, reduced wait-times and additional services and amenities;
- Improved on time performance and reliability
- Increased productivity due to increased availability of larger vessels;
- Increased economic activity in adjacent areas;
- Increased tourist visits to the offshore islands;
- Increased business for local firms involved in the Project's operations and maintenance;
- Increased operational and maintenance cost certainty;
- Reduced Commonwealth subsidy; and
- Increased job creation and socioeconomic benefits for Puerto Rico.

# SECTION 3 – METRO AND ISLAND SERVICE DESCRIPTION



## 3.1 METRO AND ISLAND SERVICE ROUTES

The MTA operates three scheduled ferry services with sixteen vessels in 5 terminals, running 7 days per week. The services are split into two main categories: Metro Services and Island Services. Figures 3-1 and 3-2 show the current Metro and Island routes, respectively. The Metro Service operates between Old San Juan and Cataño in the San Juan Bay. The Island Service connects the islands of Vieques and Culebra to Fajardo on the main island. In addition to passenger services, the MTA also provides cargo and fuel transportation to the islands of Vieques and Culebra, as well as transportation for special events.

**Figure 3-1: Metro Service Routes**



**Figure 3-2: Island Service Routes**



### 3.2 METRO AND ISLAND SERVICE TIMETABLES

The Operator will provide the following ferry service for the Island and Metro Service Routes:

#### Island Service

The Fajardo-Vieques and Fajardo-Culebra Service has the following scheduled trips:

Seven days of operation each week, 365 days per year. Holiday schedule includes Puerto Rican Holidays (list provided in the Data room)

**Table 3-3: Island Service Route Schedule**

Route	Departure Times	
	Weekdays	Weekends and Holidays
Fajardo to Culebra	4:00 AM *	9:00 AM
	9:00 AM	3:00 PM
	1:30 PM* only Wednesday and Friday	7:00 PM
	3:00 PM	
	5:00 PM *	
	7:00 PM	
Fajardo to Vieques	4:00 AM *	9:00 AM *
	9:00 AM *	1:00 PM *
	1:00 PM *	4:45 PM *
	4:45 PM *	8:15 PM *
	8:15 PM *	
Culebra to Fajardo	6:00 AM	6:30 AM *
	6:30 AM *	1:00 PM
	1:00 PM	5:00 PM
	1:30 PM * only Wednesday and Friday	
	5:00 PM	
	7:30 PM *	
Vieques to Fajardo	6:00 AM *	6:30 AM *
	6:30 AM *	11:00 AM *
	11:00 AM *	3:00 PM *
	3:00 PM *	6:30 PM *
	6:30 PM *	

\* indicates trips for passengers and cargo

In addition to passenger and cargo trips, Island Service includes fuel trips where there is flexibility in timing within the given day of the week. The timing of fuel trips outlined in Figure 3-4 are for guidance and dependent on demand and availability of fuel storage space ashore.



**Figure 3-4: Island Service Estimated Fuel Schedule**

Fuel Trips	
Fajardo to Vieques	Monday and Thursday - 10:00 AM (return trip at 1:00 PM)
Fajardo to Culebra	Wednesday and Friday - 9:30 AM (return trip at 1:30 PM)

### Metro Service

The Cataño-San Juan Service has the following hours of operation:

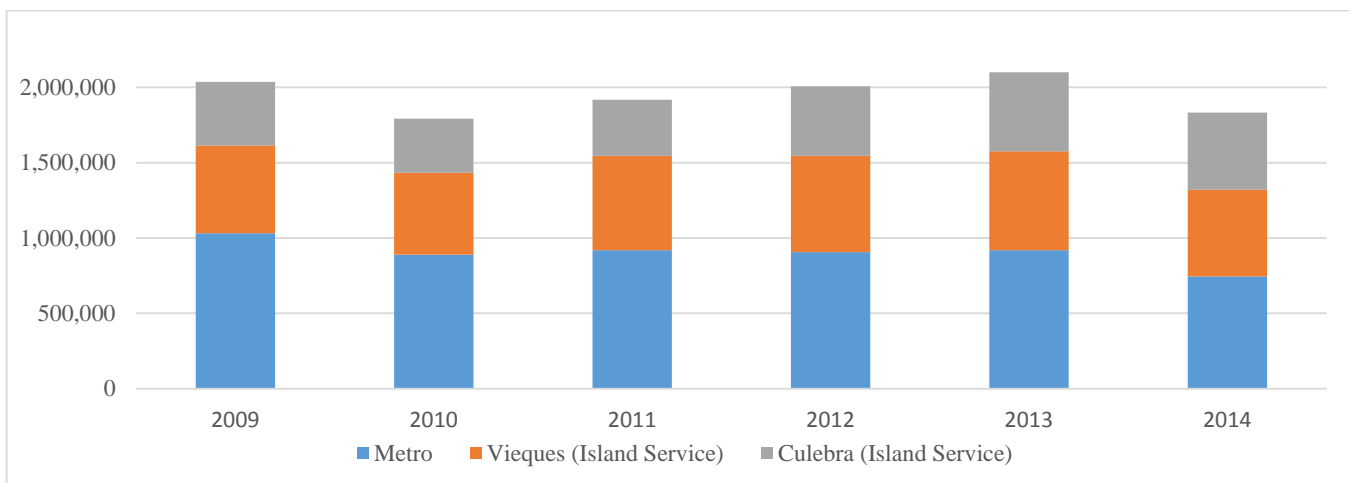
- Continuous operation Monday through Friday from 6:00 AM to 6:30 PM, with service headways of 30 minutes.
- Continuous operation Saturday, Sunday, and Holidays from 8:00 AM to 7:30 PM, with service headways of 30 minutes.

The Hato Rey-San Juan Service is currently not operating. Service was discontinued in 2014.

### 3.3 METRO AND ISLAND SERVICE RIDERSHIP

In 2014, annual ridership for the services was 513,403 (Fajardo to Culebra), 576,235 (Fajardo to Vieques) and 744,219 (Metro Service). From 2009 to 2015, the services have shown fairly robust ridership, particularly the Island Service. All services experienced ridership decreases in 2010 tied to a slowdown in the Puerto Rican economy. The Metro Service also experienced a ridership decrease in 2014 directly tied to a reduction of service in early 2014.

**Figure 3-5: MTA Annual Historical Ridership<sup>2</sup>**



<sup>2</sup> Please note that in 2014 service frequency in the peak periods was reduced, with headways increasing from 15 minutes to 30 minutes. Also, service from Old San Juan to Hato Rey (San Juan’s financial district) was terminated, which has reduced ridership for the Metro Service.

All services have distinct advantages relative to competing services. The Metro Service provides considerable time savings over the existing bus service for trips across the San Juan Bay Harbor. For the Island Service, the competitive advantage is more pronounced still. The residents in the Municipal Islands of Vieques and Culebra have no other mass transit option provided by the Commonwealth to reach the main island.

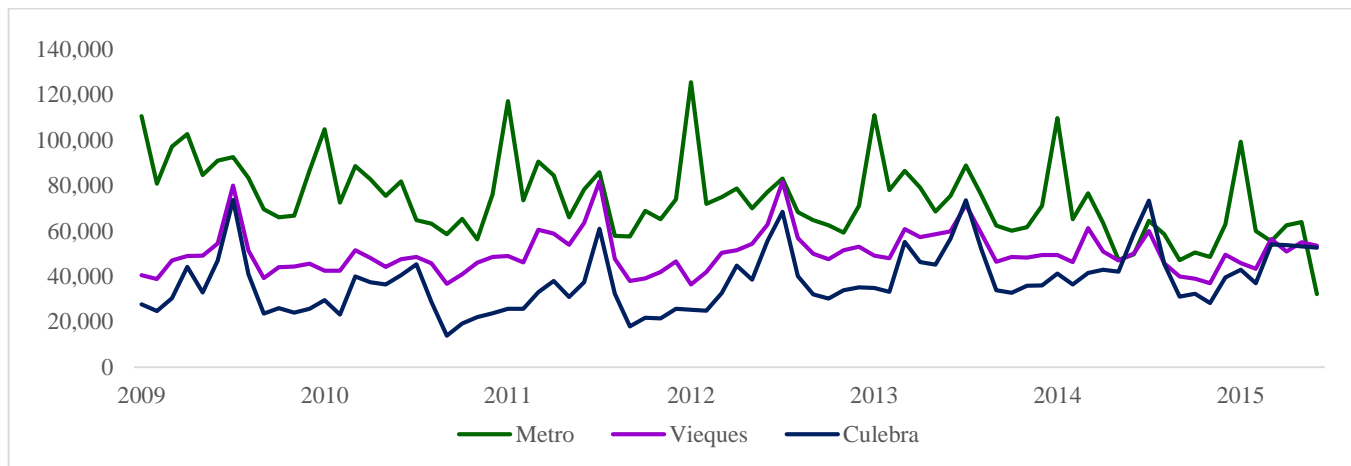
The Metro Service is primarily used by commuters to Old San Juan and by visitors to Old San Juan for leisure purposes. The Island Service serves two distinct markets: the first is island residents, for whom the ferries provide the only affordable travel option to the Puerto Rican mainland. The other market served is visitors, primarily but not exclusively, from the Puerto Rican mainland.

Ridership analysis developed for this Project reveals that each service displays differences in the type of market served (urban versus island/leisure) as well as differential growth trends. All services are tied closely to the Puerto Rican economy.

For the Metro Service, every 1.0% increase in Puerto Rican employment is associated with a 1.2% increase in ridership. Ridership growth for the Island Service is faster, reflecting the fact that these routes serve a market that to a large degree is from the United States (“US”) mainland, where growth has been faster than in Puerto Rico. For Fajardo to Culebra, a 1.0% increase in Puerto Rican employment results in a nearly 1.5% increase in ridership, while for Fajardo to Vieques a 1.0% increase in employment results in a nearly 3.5% increase in ridership.

There is significant evidence that ridership on the Culebra and Vieques services have been constrained by available vessel capacity, especially during the summer months. This is particularly pronounced in the case of the Culebra service, where any increase in available seats is associated with a close to proportional increase in ridership.

**Figure 3-6: MTA Historical Ridership**



Monthly ridership on the Island Service and Metro Service displays a strong seasonal pattern. For Fajardo-Vieques-Culebra Service, ridership peaks in July, when many Puerto Rican residents and Puerto Ricans living in the US take vacations. Metro Service ridership is at its highest in January, reflecting another peak in tourism from outside Puerto Rico.

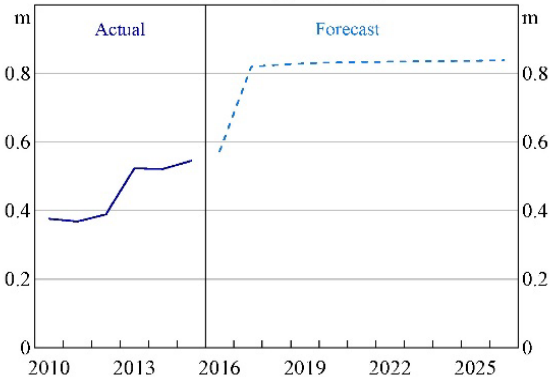
### 3.4 FORECAST ANALYSIS

The Desirability and Convenience study published for this Project includes ridership forecasts for the Metro Service and Island Service utilizing Puerto Rican economic growth as the main driver. The forecasts also assume an important change in vessel capacity, namely that the larger vessels in the fleet would sail more frequently, thereby increasing available seats.

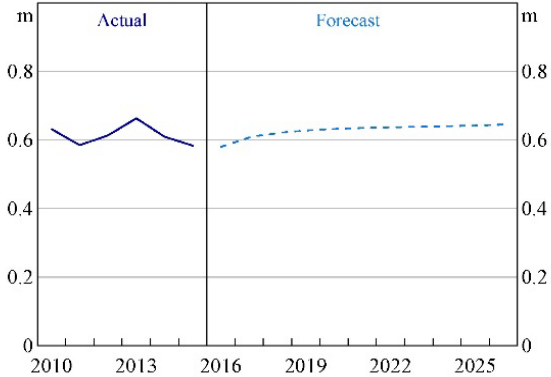
**Island Service Ridership Forecast**

The projected increase in ridership for Fajardo to Culebra is evident in Figure 3-6, illustrating the impact of improved capacity in increasing ridership.

**Figure 3-7: Fajardo to Culebra Projected Ridership**



**Figure 3-8: Fajardo to Vieques Projected Ridership**



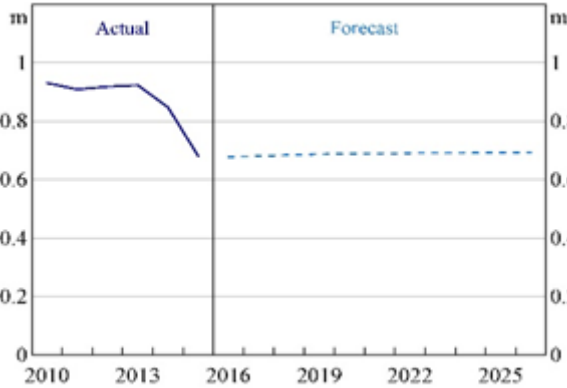
The average annual growth in ridership for the Fajardo to Vieques route between the years 2016 and 2026 is above 3.0%, mainly reflecting the release of available seat constraints due to the increased use of larger vessels, which in turn reflects an increase in ridership at a higher pace than the historical average. The average annual growth in ridership for the Fajardo to Vieques route between the years 2016 and 2026 is above 1.0% a year.

The increase ridership growth forecasts for Culebra reflects the faster historical growth experienced by the route, as well as the fact that capacity constraints in terms of available vessel capacity are expected to be reduced in the future, resulting in a considerable increase in ridership at the outset of the forecast period.

**Metro Service Ridership Forecast**

Forecasts for the Metro Service are for growth following a ridership decrease closely tied to a reduction in service levels. Metro Service ridership has been closely tied to employment growth, and this relationship is very likely to continue in the future.

**Figure 3-9: Metro Service Routes Projected Ridership**



### 3.6 OPPORTUNITY TO OPTIMIZE OPERATIONS

The central goals and opportunities for the Project include improving customer service, implementing operational efficiencies, increasing revenue and ultimately reducing public subsidy of maritime transportation. Escrow account(s) will be established to properly audit and account for all revenues. Additions to revenue and cost savings can be achieved under the P3 model through, but not limited to, the measures listed below:

- Additional revenues from ridership
- Additional revenues from advertising
- Additional revenues from concessions
- Cost savings from fringe benefits
- Cost savings from the elimination of unscheduled trips
- Cost savings from natural attrition

# SECTION 4 – SCOPE OF SERVICES REQUESTED



## 4.1 VESSEL O&M REQUIREMENTS

### Vessel Services Key Responsibilities

The Operator shall ensure vessels and crews are ready for service for every departure on the schedule. The vessels will be clean and well maintained, the crew will be adequately trained and carry the requisite US Coast Guard (USCG) credentials and qualifications. Operations will be conducted in accordance with all applicable USCG and other agency rules and regulations. Specific responsibilities include the following:

- **Vessel Operations:** The Operator shall ensure that a clean vessel of the appropriate type and capacity with a qualified crew and in good operating condition makes each sailing on the contract-specified schedule. The Operator is responsible for maintaining a fully compliant vessel, meeting all local, Commonwealth, USCG, FTA, US federal safety, health, security, and environmental regulations.
- **Crew Training:** The Operator shall provide all crew training related to vessel operations, including but not limited to watch standing, passenger management, life safety, firefighting, environmental protection, and security. The Operator is responsible for ensuring that the vessel crew on each sailing has the credentials specified on each vessel's USCG-issued Certificate of Inspection (COI) and meets all other USCG regulations. The Operator shall provide all crew training necessary to comply with USCG regulations. The Operator shall compensate crew members for the cost of obtaining and maintaining merchant mariner credentials and Transportation Worker Identification Credentials ("TWIC").
- **Vessel Cleaning:** The Operator shall be responsible for maintaining a clean and uncluttered vessel, including cleaning the interior and exterior of all vessels both during and after daily operations and removal of all trash and waste products. The Operator will be required to maintain cleaning records and make them available for auditing by MTA on a monthly and spot-check (24 hour notice) basis.
- **Vessel Maintenance:** The Operator shall perform all preventative and scheduled maintenance for all vessel systems in accordance with the equipment manufacturer's recommendations. This includes, but is not limited to propulsion, electrical, communications, navigation, piping, and ventilation systems as well as interior and exterior furnishings, hardware and finishes. The operator shall be responsible for cylinder rebuilds and engine overhauls per the manufacturers recommendations as well as the periodic replacement of filters, seals, gaskets, impellers, and other system components subject to normal wear. The Operator shall be responsible for periodic dry docking activities such as, but not limited to, application of bottom coatings, shaft and bearing maintenance, and propeller maintenance. The Operator will be required to maintain vessel maintenance records and make them available for auditing by MTA on a monthly and spot-check (24-hour notice) basis.

*The Operator is not responsible for replacement of major machinery such as main engines or generators nor is the Operator responsible for major vessel overhauls or service life extensions. However, exceptions to these situations will occur if the cause is attributed to the Operator's failure to perform required preventive maintenance.*

- **Vessel Repairs:** The Operator shall be responsible for ensuring all necessary hull and vessel system repairs are made in a timely manner, using sound marine practices and including any requisite notifications of and/or inspections by regulatory agencies. If repairs are expected to keep a vessel out of service for more than one day, the Operator will be required to notify MTA and provide a repair plan and schedule for returning the vessel to service.
- **Vessel Inspections and Regulatory Compliance:** The Operator shall be responsible for all inspections required by regulation, including USCG required vessel dry dockings. The Operator will be required to make vessels available for all required USCG inspections, drills, and training. The Operator will be required to maintain vessel inspection, drill, and training records and make them available for auditing by MTA on a monthly and spot-check (24 hour notice) basis.

The Operator shall resolve all CG-835 reports issued by the USCG within the time limit stated in the report. The Operator shall notify the MTA whenever a CG-835 is issued and provide a plan for resolving any CG-835 reports that require a vessel to be out of service for more than one day.

## 4.2 TERMINAL O&M REQUIREMENTS

### Terminal Services Key Responsibilities

The Operator shall ensure all shore side facilities are staffed and maintained as required to support vessel operations per the specified schedule. Specific responsibilities include the following:

- **Terminal Operations:** the Operator shall ensure terminal operations are conducted as required to provide safe and efficient loading and unloading of passengers, vehicles, and cargo. Terminal operations include, but are not limited to, vessel fueling, ticket sales, security, and passenger, vehicle, and cargo loading.
- **Terminal Staff Training:** All terminal staff shall receive the training necessary to perform their assigned duties and comply with all applicable federal, state, and local regulations. The Operator shall compensate employees requiring TWIC or other licenses or credentials for the cost of obtaining and maintaining their licenses and credentials.
- **Facility Cleaning:** The Operator is required to maintain all of the existing terminal facilities in a state of good repair. The Operator shall be required to maintain terminal cleaning and maintenance records and make them available for auditing by MTA on a monthly and spot-check (24 hour notice) basis.
- **Facility Maintenance & Repair:** The Operator is responsible for the maintenance and repair of all fenders, dolphins, ramps, gangways, and other terminal components that are used during passenger and cargo loading and unloading. All terminal systems, furnishings, and finishes shall be maintained in good condition and in accordance with equipment manufacturer's or vendor's recommended maintenance schedules and warranty requirements. *MTA will be responsible for inspection and maintenance, of the terminal piers, wharves, and bulkheads.*
- **Utilities:** The Operator shall pay for all utility services at all terminal locations including but not limited to trash and recycling collection, electrical power, water, sewage, telephonic connections, and internet connections (is applicable).

## 4.3 SYSTEM SUPPORT SERVICES

### Transition Requirements

The Operator is responsible for the transfer of all operations from MTA. This will include transfer of all current personnel to the Operator's staff, documenting existing conditions of all vessel and terminal equipment, and negotiating any outstanding contracts with vendors. As part of the transition process, the Operator shall survey all vessels and identify any deferred maintenance to be performed upon receipt of notice to Proceed. A detailed transition plan which identifies the current state of the system, including the anticipated timing of proposed changes shall be submitted after the selection of the Preferred Proponent and prior to the execution of the O&M contract.

### Health & Safety, Security, Emergency Response, and Environmental Protection Requirements

The Operator is required to operate the system (terminals, vessels, and maintenance facilities) in compliance with all applicable local, Commonwealth, and federal laws and regulations. This includes but is not limited to the following:

- Health & Safety: OSHA & USCG regulations
- Security: Maritime Transportation and Security Act of 2002 ("MTSA") & USCG regulations

- Environmental Protection: EPA & USCG regulations

Operators are to avoid to the extent possible accidents/incidents and/or breaches of security pursuant to Maritime Transportation Security Act of 2002 (MTSA). Any accidents/incidents or breaches in security shall be reported immediately.

## Fares and Ticketing Requirements

### Fare Policy

Metro and Island service fares and fare policy are set by MTA and are subject to change at the discretion of MTA with approval by the FTA. The Operator may be consulted regarding fares with consideration to the Operator’s ticketing systems to accommodate any proposed change.

**Table 4-1: Island Service Fares**

Vieques	\$2.00
Culebra	\$2.25
Under 11 years	\$1.00
Seniors 60 to 74 years	\$1.00
Seniors 75 and older	free of charge
<b>Prices by loose articles</b>	
Cooler	\$2.00
Bicycle	\$2.00
Backpacks	\$1.00
Tent	\$2.00
Umbrellas	\$1.00
Chairs	\$1.00
Surf board	\$6.00
Morey Boogey	\$3.00
Boxes	\$1.00
Hand Truck (big)	\$5.00
Hand Truck (small)	\$3.00
Caged animals	\$2.00
Kayak	\$10.00
Cow/Horse	\$4.00
Tires	\$1.00
<b>Freight</b>	
Motorbike/four track	\$7.00
Auto	\$15.00 to \$19.00
SUVs, Pickup, Van-	\$32.00 to \$39.50
Trailers- Linear ft.	\$1.50 to \$2.50 Linear ft.
<b>Trucks by measure</b>	
Up to 30 ft.	\$19.50 to \$47.00
Over 30 ft.	\$1.50 to \$5.00 Linear ft.
<b>Trucks by weight</b>	
Up to 30 tons	\$34.50 to \$84.50
Over 30 tons	\$84.51 to \$259.50

**Table 4-2: Metro Service Fares**

Regular Tariff	\$0.50
Seniors 60 to 74 years	\$0.25
Seniors 75 and older	free of charge
Seniors (65 to 75 years)	\$0.25
Disabled	\$0.25
Children (under 3 years)	free of charge

### *Fare Revenue*

All fare revenue from the Island and Metro Service will be assigned to the Operator.

- **Island Service Fare Revenue:** Fare revenue for the Island Ferry Service will be assigned to the Operator at the current fare schedule presented in Table 4-1 as it is collected.
- **Metro Service Fare Revenue:** The Metro Ferry ticketing system will eventually be a part of PRITA's integrated transit fare system. Once the new integrated ticketing system is implemented, fare revenue collected from the Metro Ferry service are to be apportioned monthly based on the recorded number of passengers multiplied by the current fares outline in Table 4-2.

### *Ticketing*

The Operator shall be responsible for the publication and enforcement of ticketing for the Metro and Island Service. In addition, the Operator shall provide the following ticketing systems which will be able to provide refunds and determine ticket expiration:

- **Island Service Ticketing:** The Operator may choose to retain and maintain ATM's current ticketing system or may utilize their own. The Operator shall be responsible for the development, installation, operation and maintenance of an electronic ticketing and reservation system which will be compatible with the fare structure outlined in Table 4-1 shall they choose to utilize their own system. . The system is to include online ticket sales, attendant ticket sales, and consider opportunities for ticket vending machines and mobile applications. The system must accept coins, notes, debit and credit cards, and consider alternative payment mediums. The fare ticketing system must provide proof of payment, a retained receipt, and an ability to validate fares for all forms of payment.
- **Metro Service Ticketing:** A new integrated ticketing system is being developed and implemented by PRHTA, PRITA, AMA and MTA to provide integration of fares between the organizations (details supplied in Data Room.) The Operator will be responsible for the operation and maintenance of MTA's current Metro Service ticketing system prior to the implementation of the new integrated system. The Operator shall assist in the coordination with PRHTA, PRITA, AMA, and MTA to support the implementation of the new integrated ticketing system once it is rolled out. The Operator will also be responsible for monitoring the performance of the ticketing equipment, reporting faults, and issues of the new integrated ticketing system.

The Operator will be responsible for the financial reconciliation of all forms of payment once the new integrated system is installed. Coordination with PRHTA, PRITA, AMA, and MTA will be required to set up a third party reconciliation of the ticketing machines.

### **Marketing/Customer Service**

The Operator shall develop and execute marketing for the Metro and Island Service. The Operator shall create a website and targeted advertising, which may include, print advertising, collateral materials, and digital campaigns. The website must provide at a minimum, information about schedules, fares, directions to terminals, user guides, and details of MTA policies. All Metro and Island service marketing is to maintain a consistent brand to be developed by the Operator and subject to MTA's approval. The consistent brand is to be applied on all marketing materials including, websites, signage, and other mediums.

The Operator shall also be responsible for providing a call center which may be integrated with Puerto Rico's 311 service to receive customer issues and shall provide and maintain a log of customer service issues.



## 4.4 BUSINESS ARRANGEMENTS

### Management and Shore Based Service Requirements

#### *Management Plan*

The Operator shall develop an organizational structure which efficiently identifies key positions, their duties and responsibilities and how the proposed structure will deliver the required quality of service. The plan must provide details of the proposed staff and their qualifications for the position.

#### *Fuel*

*Fuel will be provided to the Operator by the Commonwealth.* The Operator should provide all operating cost assumptions net of fuel costs. The Operator shall propose a plan to reduce fuel usage without compromising the operating schedule.

#### *Unscheduled Trips*

The Island Service at times is required to perform a series of unscheduled trips outside the regular operating schedule, whether to meet particularly high demand or to accommodate transportation for special events. These unscheduled trips have averaged around 35 round trips per month. The Operator shall factor in their proposals a specific number unscheduled round-trips a month into their Operating Cost Plan for the service to Vieques and Culebra. The exact number of unscheduled trips to be included in the net public subsidy bid will be determined during the procurement process.

In addition, the Operator should include the cost for additional unscheduled trips on a round-trip basis per vessel type (cargo vs passenger only). The proposed cost should detail the underlying assumptions for each cost component consistent with the Operating Cost Plan.

# SECTION 5 – SOQ AND PROPOSAL REQUIREMENTS FOR ALL RESPONDENTS



## 5.1 RFQP REQUIREMENTS

### Overview of Submission Requirements

Prospective Respondents that anticipate responding to this RFQP shall so indicate as soon as possible by providing contact information via e-mail to the Committee Representative’s e-mail address listed below. The SOQ and Proposal should comply with the format provided in Appendix B. Additional information not specifically related to the Project or this RFQP should not be included. All questions, RFCs, or requests for information regarding this RFQP should be directed to the Committee Representative via e-mail. Please do not contact any officials or related parties of the Authority in any other manner. Such contact may serve as grounds for disqualification.

Address questions, comments, and RFCs to:

---

Maritime Transportation Authority Committee Representative  
Request for Qualifications and Proposals –Maritime Transportation Authority Project  
E-mail:RFQP-Department@p3.gov.pr

---

### Authorization for Further Investigation

By submitting a response to this RFQP, each Respondent specifically authorizes the Authority, PRITA, MTA, the Committee and their officers, employees and consultants to make any inquiry or investigation to verify the statements, documents, and information submitted in connection with this RFQP, and to seek clarification from the Respondent’s officers, employees, advisors, accountants and clients regarding the same

## 5.2 PROPOSAL SECURITY

Bid security is required to secure the commitment of a Proponent.

The bid security must be one or more letters of credit with a term effective for at least 75 days from and after the Submission Deadline, in an aggregate amount equal to US\$5 million (Five Million US Dollars) issued by an issuer reasonably acceptable to the Authority prior to submission of such letter(s) of credit, to be held by the Authority for the sole purpose described below (“Bid LOC”).

If, after receipt of a Proposal from a Proponent, the Authority accepts that Proposal and gives written notice to the Preferred Proponent to execute the O&M contract, and the Preferred Proponent does not, within 10 business days, execute the O&M contract, the Authority shall be entitled to draw immediately, without notice to the Preferred Proponent, the full amount of the Bid LOC upon presentation of a sight draft confirming that the Authority has the right to draw under the Bid LOC in the amount of such sight draft, and the Authority shall be entitled to retain all of the proceeds of the Bid LOC, in either case, as the sole remedy or right of the Authority against the Preferred Proponent.

The right of the Authority to draw the Bid LOC is intended to be, and shall constitute, liquidated damages to compensate the Authority for the cost of foregoing alternative opportunities and for other costs incurred by the Authority in reliance on the Proponent’s Proposal to enter into the transaction contemplated hereunder, and payment of the entire draw on the Bid LOC to the Authority shall terminate all other rights and remedies of the Authority with respect to the Preferred Proponent.

Respondents shall acknowledge that the damages suffered by the Authority as a result of such termination would be impossible to ascertain and that the Bid LOC is a reasonable estimate thereof and is not intended as a penalty.

**Upon receipt by the Authority of the O&M contract duly executed by the Preferred Proponent, the Authority will promptly return the Bid LOC to the Applicant.**

### 5.3 REPORTING OF MATERIAL ADVERSE CHANGE

At any time prior to the selection of a Preferred Proponent, a Shortlisted Respondent shall submit immediately to the Authority information pursuant to the submission requirements set out in Section 5 of this RFQP either (i) upon the occurrence of a material adverse change to the information previously submitted by the Respondent in response to such submission requirements, or (ii) from time to time upon the Authority' request. The Authority will evaluate the information submitted by the Respondent in accordance with the evaluation criteria set out in Section 6, and may revise the Respondent's score and ranking to reflect the results of the evaluation. If a Shortlisted Respondent's revised score results in a change in its ranking, the Committee may, in its discretion, invite other Respondents based on their ranking in this RFQP process (provided such Respondents have achieved the minimum score required by Section 4.2(4)) to be added to the list of Shortlisted Respondents and replace the Respondent whose score was re-evaluated under Section 6, even if those replacement Respondents were not Shortlisted Respondents in the first instance.

### 5.4 RFQP SUBMISSION INSTRUCTIONS AND NEXT STEPS

The Respondent shall submit one (1) originally executed SOQ and Proposal, with signatures in blue ink, and five (5) copies along with one copy in portable document format (PDF) on a DVD. The SOQ and Proposal shall be contained in separately bounded and sealed envelopes. The SOQ and Proposals containing original signatures shall be marked as "Originals". The SOQ and Proposal shall be delivered no later than the Submission Deadline. The Authority will not accept RFQP submissions sent by facsimile, electronic mail, telex or other telegraphic means. The determination of whether an RFQP submission is submitted before the Submission Deadline will be based on the time and date stamp each Respondent must ensure it receives from the Authority/Committee at the Submission Address. It is the sole responsibility of each Respondent to ensure that its RFQP submission is delivered to the Submission Address no later than the Submission Deadline. RFQP submissions received after the Submission Deadline will be rejected and returned to Respondents unopened. Respondents should not submit promotional materials as part of their RFQP submissions and are strongly encouraged not to submit information that is not required by this RFQP. Respondents are strongly encouraged to be succinct in their prequalification submissions. The Respondent shall limit its prequalification submission, or each component of the RFQP submission, to the maximum number of pages indicated in Appendix B. Respondents are cautioned that, if there are page limits set out in Appendix B, the Authority will not review or score pages submitted in excess of the maximum number of pages indicated for such item. For the avoidance of doubt, any page limits set out in the RFQP shall apply to all materials submitted by the Respondent in response to the item that is the subject of a page limit, whether submitted in the text of the prequalification submission or included as an appendix, schedule or other attachment to the RFQP submission.

The SOQ and Proposal submission shall be labeled as follows:

---

Puerto Rico Public-Private Partnerships Authority  
Maritime Transportation Authority Committee Representative  
Operate and Maintain SOQ and Proposal  
Submitted by (Respondent's name and Address)

The SOQ and Proposal shall be delivered to:

Puerto Rico Public-Private Partnerships Authority  
cc: Grace Santana – Executive Director PPP Authority  
268 Muñoz Rivera Avenue, Suite 1102  
San Juan, PR 00918 USA

---

The O&M contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Proponent is required to verify that none of the Operator, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945

The Operator is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the Proponent certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined that the Proponent knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proponent agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Proponent further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Operator and subcontractors are also subject to a continuing duty of disclosure. The Operator and subcontractors must provide immediate written notice to the Authority if it learns that a person involved in a covered transaction has been excluded, the Authority must then provide written notice to the FTA.

## 5.5 CONFIDENTIALITY OF RFQP SUBMISSION

All SOQs and Proposals shall become the property of the Authority, except for documents or information submitted by Respondents which are trade secrets, proprietary information or privileged or confidential information of the Respondents. Respondents are advised to review the confidentiality and publication provisions contained in Articles 9(f) and 9(i) of the Act, regarding negotiation of the O&M contract, confidentiality, and Section 9.3 of the Regulation. In order to ensure that documents identified by Respondents as “confidential” or “proprietary” will not be subject to disclosure under the Act. Respondents must label such documents as “confidential” or “proprietary,” provide a written explanation of why such labeled documents are “confidential” or “proprietary,” and include statements as to why the disclosure of the information would be commercially harmful. Respondents should also include a reference to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest. Finally, Respondents should request that the documents so labeled be treated as confidential by the Committee according to the process described in the following paragraph.

If a Respondent has special concerns about confidential or proprietary information that it desires to make available to the Committee prior to its RFQP submission, such Respondent may wish to:

- Make a written request to the Committee for a meeting to specify and justify proposed confidential or proprietary documents.

- Make an oral presentation to the Committee staff and legal counsel.
- Receive written notification from the Committee accepting or rejecting confidentiality requests.

Failure to take such precautions prior to filing an RFQP submission may subject confidential or proprietary information to disclosure under Articles 9(f) and 9(i) of the Act, concerning the negotiation of the O&M contract, confidentiality, and Section 9.3 of the Regulation.

The Authority will endeavor to maintain the confidentiality of any information that a Respondent indicates to be proprietary or a trade secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order. The Committee will determine whether or not the requested materials are exempt from disclosure. In the event that the Committee elects to disclose the requested materials, it will provide the Respondent notice of its intent to disclose, in which case the Respondent may request the immediate return of such materials prior to disclosure by the Committee and they will thereafter form no part of the Respondent's submission. In no event will the Commonwealth, the Authority, the Committee, MTA or PRITA be liable to a Respondent for the disclosure required by law or a court order of all or a portion of an RFQP, MTA submission filed with the Authority.

Upon execution of the O&M contract, the Committee is required to make public its report regarding the procurement process, which will contain information related to the qualification, procurement, selection and negotiation process, and the information contained in the RFQP submission, except information that qualifies as trade secrets, proprietary or privileged information of the Respondent or its Team Members that was clearly identified as such by the Respondent, or information that must otherwise be protected from publication according to law, unless otherwise required by law or by a court order.

## 5.6 USE OF CONFIDENTIAL INFORMATION

Each Respondent must declare and continue to be under an obligation to declare that it does not have knowledge of or the ability to avail itself of Confidential Information of the Commonwealth or the Authority relevant to the Project, where the Commonwealth or the Authority have not specifically authorized such use.

Confidential Information,

- will remain the sole property of the Commonwealth or the Authority, as applicable, and the Respondent shall treat it as confidential;
- may not be used by the Respondent for any other purpose other than submitting an SOQ and Proposal submission or the performance of any subsequent agreement relating to the Project with the Commonwealth or the Authority, as applicable;
- may not be disclosed by the Respondent to any person who is not involved in the Respondent's preparation of its SOQ and Proposal submission or the performance of any subsequent agreement relating to the Project with the Commonwealth or the Authority, as applicable, without prior written authorization from the party in respect of whom the Confidential Information relates;
- if requested by the Commonwealth or the Authority, will be returned to same no later than ten (10) calendar days after such request; and
- may not be used in any way that is detrimental to the Commonwealth or the Authority.

Each Respondent shall be responsible for any breach of the provisions of this Section 5.5 by any Person to whom it discloses the Confidential Information. Each Respondent acknowledges and agrees that a breach of the provisions of this Section 5.5 would cause the Authority, the Commonwealth and/or their related entities to suffer losses which could not be adequately compensated by damages, and that the Authority, the Commonwealth and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this Section 5.5 upon submission of the

Respondent's SOQ and Proposal to a court of competent jurisdiction for injunctive relief without proof of actual damage to the Authority, the Commonwealth or any related entity.

The provisions in this Section 5.5 will survive any cancellation of this RFQP and the conclusion of the qualification and proposal evaluation processes.

## 5.7 CONFLICT OF INTEREST AND INELIGIBLE PERSONS

Each Respondent Representative, on behalf of the Team Members identified as meeting the experience requirements of Section 4 of this RFQP, must declare and continue to be under an obligation to declare all Conflicts of Interest or any situation that may be reasonably perceived as a Conflict of Interest that exists now or may exist in the future. In this Section 5.6, "Conflict of Interest" includes any situation or circumstance where in relation to the Project, the Respondent and the Team Members identified as meeting the experience requirements contemplated in Section 4 of this RFQP have other commitments, relationships or financial interests that:

- could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the both the Authority and Committee's independent judgment; or
- could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the O&M contract.

In connection with its SOQ and Proposal, each Respondent shall:

- avoid any Conflict of Interest in relation to the Project;
- disclose to the Authority without delay any actual or potential Conflict of Interest that arises during the RFQP process; and
- comply with any requirements prescribed by the Authority to resolve any Conflict of Interest.

In addition to all contractual or other rights available at law or in equity or legislation, the Committee may immediately exclude a Respondent from further consideration or remove the Respondent from the RFQP process if:

- the Respondent fails to disclose an actual or potential Conflict of Interest;
- the Respondent or a Team Member identified as meeting the experience requirements of Section 4 of this RFQP fails to comply with any requirements prescribed by the Authority to resolve a Conflict of Interest; or
- the Respondent's Conflict of Interest issue cannot be resolved.

## 5.8 RFQP MISCELLANEOUS INSTRUCTIONS

### Addenda to RFQP

The Authority reserves the right to amend this RFQP at any time. Any amendments to this RFQP will be described in written Addenda. Copies of each Addendum will be available at the Authority's website: <http://www.app.gobierno.pr> and Respondents will be notified. Respondents are encouraged to review the Authority's web page regularly. All Addenda will become part of this RFQP. In the event of any conflict in the wording or any issue of interpretation, Addenda, when issued, will take priority over the original wording in the RFQP and any wording in prior Addenda. Each Respondent shall, in its SOQ and Proposal, acknowledge receipt of each Addendum. Each Respondent is solely responsible to ensure that it has received all communications issued by the Authority. A failure to obtain any such communication is at the sole and absolute risk of the Respondent and the Authority accepts no responsibility for any Respondent that does not receive or obtain all RFQP information (including Addenda). Each response to this RFQP is deemed to be made on the basis of the complete RFQP issued prior to the Submission Deadline.

## Withdrawal of SOQs and Proposals

A Respondent may withdraw an SOQ or Proposal by delivering to the Authority a written request for withdrawal, prior to the date of the selection of the Preferred Proponent, at the address for delivery of SOQs and Proposals set forth in Section 5.3. Any such withdrawal does not prejudice the right of a Respondent to submit another SOQ or Proposal by the Submission Deadline.

## Protest; Request for Reconsideration

Review regarding the selection and award process for qualifications must be pursued in accordance with Section 20 of the Act - Judicial Review Procedures and FTA's protest procedures.

## 5.9 DISCLAIMER

The information provided in this RFQP, or any other written or oral information provided by the Authority, MTA, PRITA, the Committee, the Commonwealth or their respective officers, employees, advisors or consultants in connection with the Project or the selection process is provided for the convenience of the Respondents only. Respondents shall make their own conclusions as to such information. Oral explanations or instructions from officials, employees, advisors or consultants of the Authority, MTA, PRITA, the Committee, or the Commonwealth or any Puerto Rico public agency will not be considered binding on the Authority, MTA, PRITA, the Committee, the Commonwealth. The Authority, MTA, PRITA, the Committee, the Commonwealth and their respective officers, employees, advisors and consultants make no representation as to such information, the accuracy and completeness of such information is not warranted by any of them and none of them will have any liability in connection with such information or the selection process, all of which liability is expressly waived by the Respondents. This RFQP is not an offer to enter into any contract of any kind whatsoever.

## 5.10 RESERVATION OF RIGHTS

In connection with the proposed Project, the Authority, MTA, and PRITA reserve all rights (which rights will be exercisable by the Authority, MTA, and PRITA in their absolute discretion) available to them under applicable laws and regulations, including, without limitation, with or without cause and with or without notice, the right to:

- Modify the procurement process to address applicable law and/or the best interests of the Authority, MTA, PRITA, GDB and the Commonwealth.
- Develop the Project in any manner that they deem necessary and change the limits, scope and details of the Project.
- If the Committee, MTA, and PRITA are unable to negotiate a PPP contract to their satisfaction with a Respondent, they may negotiate with the next highest ranked Respondent, terminate the process and pursue other alternatives relating to the Project or exercise such other rights as they deem appropriate.
- Cancel the procurement process, as applicable, in whole or in part, at any time prior to the execution by PRITA or MTA of an agreement, without incurring any cost, obligations or liabilities whatsoever.
- Issue a new RFQP after withdrawal of this RFQP.
- Reject or disqualify any and all RFQP submissions and responses received at any time for any reason without any obligation, compensation or reimbursement to any Respondent or prospective Respondent or Team Member.
- Modify all dates, deadlines, process, schedule and other requirements set out, described or projected in this RFQP.

- Terminate evaluations of responses received at any time.
- Exclude any Respondent from submitting any response to the RFQP or bid, as the case may be, based on failure to comply with any requirements.
- Issue addenda, supplements and modifications to this RFQP.
- Require confirmation of information furnished by a Respondent, require additional information from a Respondent concerning its response and require additional evidence of qualifications to perform the work described in this RFQP.
- Consider, in the evaluation of any RFQP submission, any instances of poor performance by a Respondent, Team Member or key individual that any of the Authority, MTA, PRITA, GDB or the Commonwealth may have experienced.
- Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQP.
- Add or delete Respondent responsibilities from the information contained in this RFQP or any subsequent process instruments.
- Negotiate with any party without being bound by any provision in its response.
- Waive any deficiency, defect, irregularity, informality, non-conformity or non-compliance in a response to the RFQP or permit clarifications or supplements to a response to the RFQP, and accept such response even if such deficiency, defect, irregularity, non-conformity or non-compliance would otherwise render the response null and void or inadmissible.
- Add or eliminate facility expansion to or from the Project.
- Incorporate the RFQP or any Respondent's response to the RFQP as part of any formal agreement with a Shortlisted Respondent.
- Not issue a notice to proceed after execution of any contract.
- Postpone the date on which responses to this RFQP are due.
- Exercise any other right reserved or afforded to the Authority, the Committee, MTA and PRITA under the Act, the Regulation, this RFQP or applicable law.

This RFQP does not commit PRITA or the MTA to enter into a contract or proceed with the Project as described herein. The Authority, MTA, PRITA, GDB, and the Commonwealth assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQP, or in considering or making any submission. All of such costs shall be borne solely by each Respondent.

**In no event will the Authority, MTA or PRITA be bound by, or liable for, any obligations with respect to the O&M contract until such time (if at all) as a contract, in form and substance satisfactory to the Authority, MTA, and PRITA, has been executed and authorized by MTA or PRITA and, then, only to the extent set forth therein.**

## 5.11 LIMITATION OF DAMAGES

Each Respondent, by submitting a response to this RFQP, agrees that in no event will the Authority, PRITA, MTA, GDB, the Committee, the Commonwealth, or any of their respective employees, advisors or representatives, be liable, under any circumstances, for any Claim, or to reimburse or compensate the Respondent in any manner whatsoever,



including but not limited to costs of preparation of the response, loss of anticipated profits, loss of opportunity, or for any other matter. Without in any way limiting the above, each Respondent specifically agrees that it will have absolutely no Claim against the Authority, PRITA, MTA, GDB, the Committee or the Commonwealth or any of their respective employees, advisors or representatives if any such party for any reason whatsoever:

- Does not select a shortlist of prequalified Respondents;
- Suspends, cancels, or in any way modifies the Project or the solicitation process (including modification of the scope of the Project or modification of the RFQP or both);
- Accepts any compliant or non-compliant response or selects a shortlist of one or more prequalified Respondent(s); or
- Under the terms of the RFQP permits or does not permit a Restricted Party to advise, assist, or participate as part of a Respondent team,

or for any breach or fundamental breach of contract or legal duty of the Authority, PRITA, MTA, GDB, the Committee or the Commonwealth, whether express or implied, and each Respondent waives any and all Claims whatsoever, including Claims for loss of profits or loss of opportunity, if the Respondent is not shortlisted in the solicitation process for any other reason whatsoever.

For purposes of this Section 5.10, “Claim” means any claim, demand, liability, damage, loss, suit, action, or cause of action, whether arising in contract, tort or otherwise, and all costs and expenses relating thereto.

The Authority and their advisors are not responsible for costs incurred by Respondents, Team Members, subcontractors, or other interested parties in connection with the solicitation or procurement process, including but not limited to costs associated with preparing responses, qualifications, and proposals, and of participating in any conferences, oral presentations or negotiations, whether in connection with this RFQP or otherwise. A Shortlisted Respondent will not be entitled to indemnity (including, but not limited to, reimbursement for costs and expenses) from the Authority if the Authority decides, in its discretion, to terminate the procurement process for this Project.

# SECTION 6 – EVALUATION CRITERIA



## 6.1 PROPONENT QUALIFICATION AND PROPSAL REQUIREMENTS

This RFQP is available for prospective Proponents who desire to participate in the Project. All RFQP qualification submissions will be reviewed based on the requirements set forth in Appendix B of this RFQP which includes:

- Envelope 1 – SOQ; and
- Envelopes 2 and 3 – the Proposal

A proponent's Proposal will not be opened and evaluated unless they are deemed qualified. The process for evaluating the SOQ and the Proposal is outlined in this section.

The Regulation states that:

*The Committee reserves the right to qualify a limited number of prospective Proponents in order to arrive at a short list for a particular Project; provided, that such right is contemplated in the applicable RFQP.*

The Authority hereby notifies prospective Proponents of its right to limit the number of Proponents who will be qualified on a pass/fail basis during the qualifications process. The Authority will only do so if this would be in the interests of the Authority in achieving its objectives. Only the Proposals of the Shortlisted Proponents shall be evaluated as described more in Section 6.3.

## 6.2 STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

SOQs shall be prepared and submitted in the format set out in Appendix B, and shall completely and clearly address the scope of work outlined in Section 4 of this RFPQ. Each submission shall be clearly identified in four separate Envelopes where the Statement of Qualifications is enclosed in Envelope 1. Proponents shall refrain from including extraneous information, such as corporate brochures.

The Act requires the Committee to take into account certain factors in evaluating the submitted SOQs. The evaluation criteria for this SOQ submissions will consist of 4 Pass / Fail criteria.

**Pass/Fail Criteria:** Each SOQ must achieve a rating of "pass" on each of the pass/fail criteria 1 through 4 in this RFQP Section 6.2 in order to become a Shortlisted Respondent and move onto the proposal evaluation process.

Criterion 1 – Compliance with RFQP

Criterion 2 – Compliance with Requirements of the Act

Criterion 3 – Technical Experience

Criterion 4 – Financial Capability

### **Criterion 1- Compliance with RFPQ**

To pass this Criterion 1, the SOQ must comply with all requirements contained within this RFQP including but not limited to format requirements, terms, and conditions of this RFQP.

### **Criterion 2- Compliance with Requirements of the Act**

Each SOQ submitted pursuant to this RFQP will be reviewed to determine whether it satisfies the Act's requirements. To pass this Criterion 2, Proponents are to provide a statement which addresses the following:

- The Respondent shall demonstrate that it is a Person authorized to do business in Puerto Rico;
- The Respondent shall have available such corporate or equity capital or securities or other financial resources that, in the judgment of the Authority and the Committee, are necessary for the operation and maintenance of the Project;

- The Respondent shall have a good reputation and demonstrated managerial, organizational, professional and technical capacities, as well as directly relevant experience, to develop and administer the Project; and
- Each Team Member and each Respondent, if the Respondent has been formed as of the date of a submission of a response to this RFQP, shall certify that neither it nor any of its directors, officers, shareholders, or subsidiaries, nor its parent company, nor in the case of a partnership, any of its partners, nor any person or entity that may be considered an alter ego or the passive economic agent of the Respondent (each a “Covered Party”), has been convicted, has entered a guilty plea or has been indicted, nor has been found probable cause for their arrest, in any criminal proceeding in the courts of the Commonwealth, the Federal courts of the United States, or the courts of any jurisdiction of the United States or a foreign country, of criminal charges related to acts of corruption or to any of the following crimes: a crime against public integrity, as defined in the *Commonwealth of Puerto Rico Penal Code*, embezzlement of public funds, a crime against the public treasury, public trust, public function or involving the wrongful use of public funds or property, any of the crimes enumerated in Act No. 458 of December 29, 2000, as amended (“Act 458”), or under the *Foreign Corrupt Practices Act*; nor is any Covered Party under investigation in any legislative, judicial or administrative proceedings in the Commonwealth of Puerto Rico, the United States or any other country. The Respondent is in compliance and will continue to comply at all times with all federal, state, local and foreign laws applicable to the Respondent that prohibit corruption or regulate crimes against public functions or public funds, including the Foreign Corrupt Practices Act (this requirement may be satisfied by completing the Form of Sworn Statement and Form of Respondent Certification included in Appendix D to this RFQP).
- Proponents who apply or bid for an award of US\$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient (This requirement may be satisfied by completing the Certification Regarding Lobbying included in Appendix D to this RFQP).

### Criterion 3- Technical Experience

The review of technical capabilities will address whether the SOQ submission sufficiently demonstrates the prospective Proponent’s technical experience required to operate and maintain a maritime transportation service with respect to the following areas of expertise. To pass this Criterion 3, Proponents are to provide a statement addressing their previous experience with the following:

- Vessel Safety including list of accidents/incidents they have been involved in and USCG CG-835 reports received;
- FTA funded ferry projects (at least 1);
- Operation of vessels including history of past on time service performance;
- Maintenance of vessels including fleet sizes and type/size of vessels maintained, including history of missed trips,
- Customer service and ticketing system development and maintenance;
- Meeting local, Commonwealth, federal, and international labor standards and fair wage;

- Community relations; and
- Environmental responsibility and regulatory compliance.

Reference letters for current and/or past government entities regarding performance on operating ferry systems are encouraged.

#### **Criterion 4- Financial Capabilities**

To pass this Criterion 4, Proponents are to provide the following:

- Evidence of their current financial strength to undertake this Project and meet the obligations contained in the O&M contract;
- Evidence of no current or pending material claims, litigation or equivalent action that would materially adversely affect their ability to undertake this Project;
- Evidence of current technical and financial strength to undertake the obligations contained in the O&M contract;
- Copies of audited annual financial statements for the past three years, or unaudited statements if audited statements have not been prepared, and quarterly financial statements for every quarter since the latest annual financial statement, or equivalent financial information;
- Information on recent, current or pending civil or criminal litigation or proceedings in which more than \$5 million is claimed or in which more than US\$5 million may be imposed as a penalty, in which the Proponent or a Guarantor was a party either as plaintiff, defendant, or accused or a confirmation that no such litigation or proceeding exists. This confirmation can be provided by completing the Declaration of No Material Adverse Change form provided in Appendix D;
- Information on potential demands on financial resources from current and prospective projects, including project names, their capital values, and potential financial involvement; and
- any other relevant information.

## **6.2 PROPONENT PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA**

Proposals shall be prepared and submitted in the format set out in Appendix B, and shall completely and clearly address the scope of work outlined in Section 4 of this RFPQ. Each submission shall be clearly identified in four separate Envelopes where the Proposal is enclosed in Envelope 2 and 3. Proponents shall refrain from including extraneous information, such as corporate brochures.

The Act requires the Committee to take into account certain factors in evaluating the submitted Proposals. The evaluation criteria for Proposal submissions will consist of three graded criteria where the preferred Proposal will be selected on a best value basis.

**Graded Criteria:** Each Proposal will be then graded according to:

Criterion 1 – Quality of the Technical Proposal (30%)

Criterion 2 – Quality of the Financial Proposal (10%)

Criterion 3 – Amount of Net Public Subsidy (60%)

---

### Criterion 1 – Quality of the Technical Proposal

Technical proposals will be graded based on the information provided on Envelope 2 based on the following criteria:

- The management plan;
- the reporting plan;
- the ancillary revenue opportunities provided;
- the fuel plan;
- the vessel operation and maintenance plan;
- the terminal operation and maintenance plan; and
- the system support services plans

### Criterion 2 – Quality of the Financial Proposal

Proponents will be graded based on the following information provided in Envelope 3 based on the following criteria:

- The financial capacity of each Respondent
- the deliverability and reasonableness of operating cost projections;
- the deliverability and reasonableness of revenue projections;
- the quality and deliverability of financing plans for working capital required for operations and maintenance;
- the ability to provide insurance required under the O&M contract; and
- the ability to provide a highly confident letter from the surety or co-sureties of the Proponent.

### Criterion 3 – Net public subsidy amount

Proponents shall provide the amount of net public subsidy for scheduled services and additionally unscheduled trips by filling out the form in Appendix C. The Net Public Subsidy Amount submitted is a fixed price proposal and considered an offer to the Authority on the target date of O&M contract execution and should not exceed the Net Public Subsidy Upset Limit presented in Appendix E.

## 6.3 SELECTION OF PREFERRED PROPONENT

The Preferred Proponent will be the Respondent who passes each of the Pass/Fail Criteria and has the highest aggregate score from the graded criteria. The O&M contract will be awarded to the Proponent that proves the best value for the Commonwealth.

A “tie” occurs when a Proponent’s score from the graded criteria is within ten percent (10%) of the next Proponent’s graded criteria.

In the event of a tie, the tied Proponents will be notified and asked to provide a best-and-final Proposal. The tied Proponents’ best and final Proposal will then be re-evaluated and re-graded accordingly.

## 6.4 O&M CONTRACT EXECUTION

Proposals are to be submitted in full compliance with the final form of the O&M contract.

Without limiting any other provision contained in this RFQP, or rights reserved by the Authority herein, the Preferred Proponent must execute and deliver the O&M contract to the Authority within 15 business days of notification that it has been selected as the Preferred Proponent. If the O&M contract is not executed and delivered by the Preferred

---

Proponent by this deadline, then, unless the Authority in its sole discretion extends or waives the deadline, the Authority will have the right to terminate all discussions with the Preferred Proponent, draw on the Bid LOC, and select another Proponent to be the Preferred Proponent and the Preferred Proponent shall have no claim or recourse against the Authority in any manner whatsoever as a consequence thereof.

The Authority will not have any binding obligation, duties or commitments to the Preferred Proponent until and unless the O&M contract has been duly executed and delivered by MTA/PRITA after approval by the appropriate governmental authorities. Similarly, the Authority, MTA, and PRITA will not have any obligation to proceed to transfer operations to the Operator under the O&M contract unless and until all of the conditions precedent under that document have been satisfied or waived in accordance with that document.

## Other Matters

### *Obligation of Proponents to Deal in Good Faith*

If, in the reasonable opinion of the Authority, a Proponent fails to deal with the Authority in good faith, the Committee may disqualify that Proponent.

### *Rights of the Authority*

Notwithstanding any other provision of this RFQP, practices or customs to the contrary and throughout the RFQP process:

- The Committee reserve the right to reject any and all RFQP responses and are not bound to evaluate or accept any Proposal;
- The Committee are not obligated to accept a compliant or non-compliant Proposal;
- The Committee reserve the right to change the dates, schedule and deadlines in this RFQP through the publication of addenda;
- The Committee reserve the right to change the limits and scope of the Project;
- The Committee reserve the right to amend or clarify the terms or conditions of this RFQP;
- The Committee reserve the right not to respond to questions;
- The Committee are not obligated to return Proposals;
- If a Proposal contains an error or deficiency or fails in some way to comply with the requirements of the RFQP, the Committee may waive the deficiency and accept the Proposal;
- The Committee reserve the right to verify any and all information regarding a Proponent, whether or not it is contained in the Proposal, and to conduct any background investigations and due diligence that it considers necessary or desirable in the course of the evaluation of Proposals;
- The Committee reserve the right to disqualify any Proponent whose Proposal contains false or misleading information;
- The Committee reserve the right, but will not be obliged, to request clarification of Proposals or further information from any or all Proponents without offering the other Proponents a similar opportunity;
- The issuance of this RFQP does not obligate the Committee to enter into a contract with any party, nor does this RFQP constitute an offer to enter into a contract with any party;
- The Committee reserve the right to amend the schedule described in Section 2.2 or suspend, postpone or cancel any part or stage of the RFQP process at any time and for any reason; and

The Committee reserve the right to disqualify a Proponent or reject any Proposal where it is determined, in the sole and absolute discretion of the Committee that the Proponent has not complied with the terms of this RFQP.

# APPENDIX A – ALTERNATIVE TECHNICAL CONCEPTS SUBMISSION



## ALTERNATIVE TECHNICAL CONCEPTS

Each Proponent may, but is under no obligation to, submit an Alternative Technical Concepts proposal by the submission deadline outlined in Table 1-1, which must include a description of the Technical Concept and how it achieves cost savings or revenue enhancements if the Technical Concept was accepted. The Authority, MTA, and PRITA will review these submissions and may choose to accept or reject such concept(s) at their discretion. In the event an Alternative Technical Concept is accepted, the Authority will issue an addendum to the RFQP which will include the Proposed Alternative Technical Concept in the scope of required services and all Respondents will be required to address this addendum in their Proposals.

Potential concepts are not limited to but could fall in the following categories:

- Privately funded development of terminals and the operations and maintenance of additional routes between Roosevelt Roads in Ceiba to Vieques and/or Culebra.
- Use of alternative vessels
- Work force optimization
- Fleet optimization
- Long-term capital expenditures or major maintenance
- Ticketing policies
- Alternative fare structures
- Appropriations funding structure



# APPENDIX B – PROPOSAL FORMAT



## PROPOSAL FORMAT

Proposals must be prepared and submitted in the format set out in this Appendix and must comprehensively and completely address its requirements.

Proposals are to be provided in three separate envelopes as follows:

Envelope 1 – Statement of Qualifications Submission (SOQ);

Envelope 2 – Technical Submission (Proposal - Part 1); and

Envelope 3 – Financial Submission (Proposal - Part 2);

## ENVELOPE 1 – STATEMENT OF QUALIFICATIONS SUBMISSION

The SOQ must be prepared in English and follow the format outlined below. Responses should not exceed a total number of 35 pages (without exceeding the individual section limits below), not including the following:

- (a) any Respondent Certifications;
- (b) any Appendices (as specifically permitted below) or other information specifically exempted from the maximum page limits as stated in the Evaluation Criteria set out in Section 6.2.

Complete and submit the forms listed below:

Form 1: Form of Sworn Statement

Form 2: Form of Respondent Certification

Form 3: Certification Regarding Lobbying

Form 4: Proposal Security Form of Letter of Credit

Form 5: Envelope 1 Checklist

Responses should comply with the following format. Responses that do not comply with the following format will be considered non-responsive to the requirements of the SOQ:

### Checklist

Cover Page (to include identification of all Team Members)	
Cover Letter (2 pages maximum)	
Table of Contents	
Executive Summary (2 pages maximum)	
<b>Respondent Information (1 page maximum)</b> Respondent Representative: provide a single contact person (“Respondent Representative”) for all future communication between the Permanent Committee and the Respondent. Please identify the Respondent Representative’s name, title, organization, work address, email address, and work, cell and fax numbers.	

<p>Disclosure of Conflicts: list any dealings with the Commonwealth of Puerto Rico, the Authority, MTA or PRITA (including the employees and elected representatives of each), as well as any suppliers of goods or services to MTA or PRITA.</p>	
<p><b>Compliance with the Requirements of the Act</b>                  Respondents should address all areas referred to in the Evaluation Criteria set out in Section 6.2 of this RFQP under the heading “Compliance with Requirements of the Act”.</p>	
<p><b>Technical Experience</b>                  Respondents should address all areas referred to in the Evaluation Criteria set out in Section 6.2 of this RFQP, under the heading “Technical Experience” by providing examples of previous experience.</p> <p>Respondents shall submit copies of the following reports for the last three (3) years:                  Occupational Safety and Health Administration (OSHA) 300 forms. If not applicable, a Respondent shall present a document explaining the reasons for not submitting the form.                  USCG CG-835 and CG-2692 forms for current operations. If not applicable, a Respondent shall present a document explaining the reasons for not submitting the form.                  In addition, Respondents should provide a response which demonstrates:                  (a) their ability to address and resolve safety issues, and                  (b) Knowledge of ferry safety strategies and methodologies.</p>	
<p><b>Financial Capabilities</b>                  Respondents should address all areas referred to in the Evaluation Criteria set out in Section 6.2 of this RFQP, under the heading “Financial Capabilities” by providing examples of previous experience.</p>	

## ENVELOPE 2 – TECHNICAL SUBMISSION

Envelope 2- Technical Submission of the Proposal must be prepared in English and follow the format outlined below. Responses should not exceed the individual section limits below. Complete and submit the forms listed below:

Form 1: Envelope 2 Checklist

Responses should comply with the following format. Responses that do not comply with the following format will be considered non-responsive to the requirements of the Proposal:

### Checklist

Cover Page (to include identification of all Team Members)	
Cover Letter (2 pages maximum)	
Table of Contents	

**Management Plan (5 pages maximum)**

- a) The Proponent shall provide a description of the organizational structure and shall include a diagram of all key positions. The minimum positions required in the proposed Organizational Structure are:
  - i. Project Manager
  - ii. Ferry Operations Manager
  - iii. Ferry Maintenance Manager
  - iv. Quality/Safety Manager
  - v. Communications Manager
  - vi. Human Resources Manager
  - vii. Financial Manager
- b) The Proponent is required to include the name and qualifications of each individual they are proposing, a short descriptive paragraph highlighting the individual’s qualifications for the job as well as their complete Curriculum Vitae (please include as appendixes), commitment level (times per month) each of these individuals will have with PRITA and the MTA, and the amount of time each individual will spend in Puerto Rico.

**Vessel Operation and Maintenance Plan (20 pages maximum)**

- a) Vessel Operating Plan: The Proponent shall summarize the vessels and crew contemplated for each scheduled sailing including a few unscheduled sailings per month for each Island Service route, as well as backup vessels and crews. The plan should also describe crew start times, vessel preparation time, and vessel shut-down time, as well as all expected crew overtime. All of this based on existing system schedules and fleet.
- b) Crew Training Plan: The Proponent shall summarize the daily, weekly, monthly, and annual drills and training that will be provided for the crew. At a minimum, this training will ensure all crew members are equipped with the skills necessary to conduct their tasks. The Operator shall provide a crew for each sailing comprised of personnel who meet the requirements for each position listed on the COI.
- c) Vessel Cleaning Plan: The Proponent shall summarize the daily, weekly, and monthly cleaning schedules.
- d) Vessel Maintenance Plan: The Proponent shall summarize how they plan to approach the preparation of a detailed vessel preventive maintenance plan to ensure a reliable service is provided for all passengers, the Vessel Maintenance Plan will define the daily, weekly, monthly, and annual scheduled maintenance tasks for each ship’s system, particularly the propulsion and electrical systems. The vessel maintenance plan should also fully describe the use and operation of all vessel maintenance facilities. Specific examples of the Operator’s experience in preparing and complying with vessel maintenance plans will be required in this section.
- e) Vessel Repair Plan: The Proponent shall summarize the processes to ensure necessary hull and vessel system repairs are made in a timely manner. It should include any requisite notifications of and/or inspections by the regulatory agencies. The process upon notification of repairs over 1one day should be included in this plan as well as the formats of the repair plan and schedule that will require proper approval.
- f) Vessel Inspection and Regulatory Compliance Plan: The Proponent shall summarize experience and processes on how will they ensure compliance with required regulation and manufacturer’s recommendations, including USCG required vessel dry dockings, and major maintenance items on

<p>the propulsion, electrical and other shipboard systems. Also recording process and accessibility should be included.</p>	
<p><b>Terminal Operation and Maintenance Plan (10 pages maximum)</b></p> <ul style="list-style-type: none"> <li>a) Terminal Operations Plan: The Proponent shall summarize terminal hours of operations, staff positions and responsibilities, report times, and shift durations for each terminal.</li> <li>b) Terminal Staff Training Plan: The Proponent shall summarize the training requirements for all terminal staff positions and provide a schedule for providing that training.</li> <li>c) Terminal Cleaning Plan: The Proponent shall summarize the tasks and task schedules necessary for maintaining the terminal facilities in a safe, clean, and functional condition. The Plan should address both public and restricted access areas of the terminal facilities. It will also include any specific training requirements some key staff will required for terminal cleaning and maintenance staff.</li> <li>d) Terminal Maintenance and Repair Plan: The Proponent shall summarize the approach to the maintenance and repair of all fenders, dolphins, ramps, gangways, and other terminal components that are used during passenger and cargo loading and unloading. All building terminal systems, furnishings, and finishes shall have a preventive maintenance plan in accordance with equipment manufacturer’s or vendor’s recommended maintenance schedules and warranty requirements.</li> </ul>	
<p><b>System Transition Plan (10 pages maximum)</b></p> <p>The Proponent shall summarize the process by which the Operator will transition all operations from the MTA to the Operator’s responsibility. The Proponent shall summarize how they intend to conduct the following:</p> <ul style="list-style-type: none"> <li>a) Hiring and general training of all staff. The Operator will be required to hire all current staff members and provide all training required for the staff to comply with the Operator’s policies and procedures. An organizational chart should be provided that includes all vessel operations, terminal operations, support, and management positions. Responsibilities and qualifications for all support and management staff should also be provided.</li> <li>b) Documentation of the existing condition of all vessel and terminal machinery, equipment, outfit, furnishings, and finishes. This should include updating all maintenance records and preparing a prioritized repair and maintenance plan to address any deferred or urgent maintenance issues. All parts and supply inventories should also be updated.</li> <li>c) Negotiating of agreements with all vendors. This will include, but is not limited to, fuels &amp; lubricants, office supplies, utilities, consumables, paints and coatings, cleaning and maintenance supplies, standby repair services, and professional and trades services not performed by the Operator.</li> </ul>	
<p><b>Health, Safety, Security, and Environmental Management Plan (5 pages maximum)</b></p> <p>The Proponent shall summarize how they will ensure compliance with local, commonwealth, and federal regulations relating to health, safety, security, and environmental management. Any anticipated efforts in excess of mandated requirements shall also be detailed. This plan should address vessel, terminal, and maintenance facility operations. This plan will address compliance with, but not limited to, OSHA, MTSA, USCG, and EPA regulations.</p>	

<p><b>Fares and Ticketing Plan (5 pages maximum)</b></p> <p>Existing fares should be considered as prescriptive. Respondents may choose to submit an Alternative Technical Concept to suggest any changes in fares. Fare collection and internal reconciliation strategies should be described for both Metro and Island services.</p> <ul style="list-style-type: none"> <li>a) Proponents shall summarize the ticketing strategy for the Island Services including the different proposed ticketing purchase opportunities (including but not limited to online purchase and in-terminal ticketing facilities.) Accepted methods of payment should also be listed and the service hours of each ticketing sale forms. A description on how to manage resident service guarantees must be included.</li> <li>b) Proponents shall summarize the approach towards supporting the transition to an integrated Metropolitan transit ticketing system.</li> </ul> <p><b>Marketing and Customer Service (5 pages maximum)</b></p> <p>The Operator shall to provide a summary of their marketing plan for the Island and Metro service. The approach to customer service should be included in the response, including location of a call center, provision of customer service access at terminals and any other proposed approach to customer service.</p>	
<p><b>Reporting Plan (5 pages maximum)</b></p> <p>It will be required that the Operator meet 100% on time reporting to MTA and 100% response on status of compliance with monthly/quarterly/triennial action items for all relevant agencies. The Proponent is to describe their approach to maintaining these reports.</p>	
<p><b>Ancillary Revenue Opportunities (5 pages maximum)</b></p> <p>The Proponent is to submit an Ancillary Revenue Plan for the length of the project term. The Proponent shall feel free to include various opportunities not limited to food and beverage, concession revenues, marketing/advertisement, parking, maintenance base marketing, etc. The proposed plan should identify and include the following:</p> <ul style="list-style-type: none"> <li>a) Description of ancillary revenue opportunities and how they may be achieved</li> <li>b) Anticipated revenue from the ancillary revenue opportunities (detailed on an annual basis)</li> </ul>	
<p><b>Fuel Plan (5 pages maximum)</b></p> <p>The Proponent shall summarize a fuel usage plan describing monthly estimated fuel usage and a proposed fuel consumption reduction strategy.</p>	

## ENVELOPE 3 – FINANCIAL SUBMISSION

Envelope 3 - Financial Submission of the Proposal must be prepared in English and follow the format outlined below. Responses should not exceed the individual section limits below. This submission is to address all of the financial aspects of each Proponent’s Proposal including financing plans, insurance, bonding, and financial offers. The following forms should be completed and submitted:

Form 1: Envelope 3 Checklist

Form 2: Net Public Subsidy Schedule (Appendix C);

Form 3: Insurance provider Highly Confident Letter; and

Form 4: Sureties’ Highly Confident Letter – Operations Period

Responses should comply with the following format. Responses that do not comply with the following format will be considered non-responsive to the requirements of the Proposal:

### Checklist

Cover Page	
Cover Letter (2 pages maximum)	
Table of Contents	
Executive Summary (2 pages maximum)	
<p><b>Revenue and Cost Plan (10 pages maximum)</b></p> <p>For the purposes of determining the quality of the Proponent’s revenue and cost plan, the Proponent shall submit:</p> <ul style="list-style-type: none"> <li>• Annual revenue estimates for the Project term with a detailed explanation on how the Proponent plans to implement its revenue strategy. Revenue line items should address the following categories: <ul style="list-style-type: none"> <li>– Farebox <ul style="list-style-type: none"> <li>• Passenger</li> <li>• Cargo</li> </ul> </li> <li>– Ancillary: <ul style="list-style-type: none"> <li>• Maintenance base</li> <li>• Food and beverages</li> <li>• Marketing</li> <li>• Parking</li> <li>• Other</li> </ul> </li> </ul> </li> <li>• Annual cost estimates for the Project term with a detailed explanation on how the Proponent plans to reduce cost. Cost line items should be separated per the following categories: <ul style="list-style-type: none"> <li>– Fuel</li> <li>– Crew Wages</li> <li>– Commodities/Parts (excluding fuel)</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>– System Support Services (Ticket collections, Marketing, Customer Service, Public Relations)</li> <li>• If applicable, the Proponent must provide its annual management fee expenses for the term of the Project. The management fee expense shall be excluded from the previous line item that details cost estimates.</li> </ul>	
<p><b>Financing Plan for Operations (10 pages maximum)</b></p> <p>The Proponent shall provide a description of any anticipated financing during the term of the Project. The Proponent must detail if they plan to obtain the following:</p> <ul style="list-style-type: none"> <li>• long-term debt</li> <li>• bank debt</li> <li>• equity</li> </ul> <p>If the Proponent uses any type of debt instrument, it must disclose to the Authority the names of the creditors and a term sheet addressing all relevant features (including but not limited to the amount, spread, maturity, amortization schedule, terms and conditions including covenants, security, and insurance and bonding requirements). In the event the Proponent raises equity from any other investor not part of the Proponent Consortium, the consortium must provide to the Authority all relevant features of the security (including, but not limited to, amount, voting rights, etc.).</p>	
<p><b>Insurance</b></p> <p>The Proponents shall provide a highly confident letter from its insurance broker. The certificate of insurance must be dated no earlier than five days prior to the Submission Deadline and signed by an authorized representative of the insurer(s), evidencing the required insurance. The highly confident letter must be provided on the insurance broker’s letterhead, dated no earlier than five days prior to the Financial Submission date and signed by an authorized representative of the insurance broker confirming the Proponent’s ability to obtain the required insurance.</p> <p>more than one insurance broker has been appointed by the Proponent, with each broker responsible for a portion of the insurance program, each of the brokers shall provide a letter meeting the above requirements. Each of these letters shall clearly identify the elements of the insurance program that have been assigned to the respective broker. Each broker’s letter will deal solely with the elements of the insurance that has been assigned to it.</p>	
<p><b>Bonding</b></p> <p>The Proponent must provide a highly confident letter from the surety or co-sureties of the Proponent, duly dated and signed by authorized representatives of the surety or co-sureties not later than five days prior to the Submission Deadline, confirming the availability of surety bonds to guarantee the obligations of the Proponent under the O&amp;M agreement. The highly confident letter shall be in the form of either a bond in a Letter of Credit and issued by a surety company licensed to do business in Puerto Rico and/or in the United States.</p>	
<p><b>Net Public Subsidy Requirement</b></p> <p>The MTA and PRITA shall pay to the Proponent for services rendered in regards to the Metro Services, Island Services and the maintenance base located in Isla Grande which are subject to deductions or additions provided by the quality of Proponent’s services. The net public subsidy description will include the key drivers of subsidy payments to be made by PRITA and MTA to the Proponent over the</p>	

---

term of the Project. The Proponent must disclose in its Net Public Subsidy the items on annual basis for the term of the Project:

- Projected subsidy from PRITA or MTA;
- Projected revenue;
- Projected cost; and
- Projected management fee

Please use the form in Appendix C to complete this section.



# APPENDIX C – NET PUBLIC SUBSIDY SUBMISSION



## NET PUBLIC SUBSIDY SUBMISSION

### Year 1 Monthly Net Public Subsidy Submission for Scheduled Trips

	Mo. 1	Mo. 2	Mo.3	Mo. 4	Mo. 5	Mo. 6	Mo. 7	Mo. 8	Mo. 9	Mo. 10	Mo.11	Mo. 12
<b>Revenue</b>												
Farebox												
Ancillary												
<b>Total Revenue</b>												
<b>Expenses</b>												
Vessel Costs (excluding labor)												
Vessel Labor												
Non-Vessel Labor												
System Support Services												
Insurance												
Management Fee (if applicable)												
<b>Total Expenses</b>												
<b>NET PUBLIC SUBSIDY</b>												

### Year 1 to 10 Annual Net Public Subsidy Schedule for Scheduled Trips

	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	Yr. 6	Yr. 7	Yr. 8	Yr. 9	Yr. 10
<b>Revenue</b>										
Farebox										
Ancillary										
<b>Total Revenue</b>										
<b>Expenses</b>										
Vessel Costs (excluding labor)										
Vessel Labor										
Non-Vessel Labor										
System Support Services										
Insurance										
Management Fee (if applicable)										
<b>Total Expenses</b>										
<b>NET PUBLIC SUBSIDY</b>										

**Year 1 Net Public Subsidy Submission for Island Service Unscheduled Trips (Round-Trip)**

<b>Vessel</b>	<b>Farjardo- Vieques (\$)</b>	<b>Fajardo- Culebra (\$)</b>	<b>Ceiba- Vieques (\$)</b>	<b>Ceiba-Culebra (\$)</b>
Atlantis				
Caribeña				
Cayo Blanco				
Cayo Largo				
Cayo Norte				
Culebra II				
Fajardo II				

# APPENDIX D – REQUIRED FORMS



## FORM OF SWORN STATEMENT

*[Letterhead of each Respondent and Respondent Team Member]*

UNITED STATES OF AMERICA        )  
STATE OF                                )        SS  
CITY OF                                )

[Name of Representative], of legal age, married (or single), and a resident of \_\_\_\_\_, \_\_\_\_\_, in his (her) capacity as \_\_\_\_\_ of [Name of Respondent] (the “**Respondent**”), Employer Identification Number \_\_\_\_\_, being duly sworn, deposes and certifies that, as of the date of this Sworn Statement<sup>3</sup>:

- 1 The principal office of the Respondent is located at \_\_\_\_\_.
- 2 The Respondent [has filed all] [has not had to file any] income tax returns with the Department of the Treasury of the Commonwealth of Puerto Rico during the past five years.
- 3 The Respondent does not have any Tax Debts with the Commonwealth of Puerto Rico, nor any of its instrumentalities or political subdivisions. The term “Tax Debt” means any debt for (i) income taxes, (ii) sales and use taxes, (iii) excise taxes, (iv) real or personal property taxes, (v) municipal license taxes (“patente”), (vi) special taxes levied, (vii) license rights, (viii) tax withholdings for payment of salaries, professional service fees, interests, dividends, rents or profits, (ix) unemployment or disability insurance premiums, (x) workers compensation payments, or (xi) premiums for social security for chauffeurs.
- 4 Neither the Respondent nor any of its directors, officers, shareholders, members, or subsidiaries, nor its parent company, nor in the case of a partnership, any of its partners, nor any person or entity that may be considered an alter ego of the Respondent (each a “**Covered Party**”), has been convicted, has entered a guilty plea or has been indicted, nor has probable cause been found for their arrest, in any criminal proceeding in the courts of the Commonwealth of Puerto Rico, the Federal courts of the United States, or the courts of any jurisdiction of the United States or a foreign country, of criminal charges related to acts of corruption or to any of the following crimes: a crime against public integrity, as defined in the Commonwealth of Puerto Rico Penal Code, embezzlement of public funds, a crime against the public treasury, public trust, public function or involving the wrongful use of public funds or property, any of the crimes enumerated in Act No. 458 of December 29, 2000, as amended (“**Act 458**”), or under the Foreign Corrupt Practices Act; nor is any Covered Party under investigation in any legislative, judicial or administrative proceedings, in the Commonwealth of Puerto Rico, the United States or any other country.<sup>4</sup>

---

<sup>1</sup> All capitalized terms in this Sworn Statement that are not defined herein are used as defined in the Request for Proposals issued to Proponents on February 2016 in relation to the operation and maintenance of the public maritime transportation services within the San Juan Bay and the Municipalities of Vieques and Culebra and the operation of the maintenance base located in Isla Grande, San Juan.

<sup>2</sup> As required by Article 9 of the Public Private Partnership Act and the provisions of Act No. 237 of August 31, 2004, as amended, Act 84 and Act 458, and the Guidelines adopted by the Secretary of Justice of Puerto Rico in Circular Letter 2009-01.

- 5 The Respondent understands and accepts that any guilty plea or conviction for any of the crimes specified in Article 3 of Act 458, will also result in the immediate cancellation of any contracts in force at the time of conviction, between the undersigned, the corporation, or any special partnership that I may represent, and any government entity, public corporation or municipality.
- 6 The Respondent is in compliance with the provisions of the Authority's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts, a copy of which is available at the Authority's website: <http://www.app.gobierno.pr>.
- 7 The Respondent makes this sworn statement so that any government entity, public corporation or municipality may have knowledge of what is herewith declared and for any other administrative and/or legal purpose that may be required.
- 8 That neither the undersigned, nor the institution have been convicted, nor have pleaded guilty at a state or federal court in any jurisdiction of the United States of America, of crimes consisting of fraud, embezzlement or misappropriation of public funds, as stated in Article 3 of Act 458 of December 29, 2000, as amended, which prohibits the grant of bids or government contracts to those convicted of fraud, misapplication or misappropriation of public funds for the past 20 years. That I recognize that crimes in above mentioned law are: aggravated illegal appropriation, in all its forms; extortion; construction fraud; construction fraud in carrying out work; fraud in the delivery of goods; unlawful and unwarranted intervention in bid contracting processes or in the operations of the Government; bribery in all its forms; aggravated bribery; offering bribes; undue or unlawful influence; offences against public funds; preparation of false documents; submitting false documents; falsifying documents; possession and transfer of forged document.
- 9 The Respondent subscribes this sworn statement in conformity with what is established in Article 6 and 7 of Act 458 of December 29, 2000 (the "Act"), as amended
- 10 Should the Respondent have been convicted of any of the crimes described in the eight paragraph, The Respondent must disclose the crime of which I was convicted, or to the extent applicable, the crime for which the corporation, partnership, or cooperative the Respondent represent was convicted. In addition, information as to the jurisdiction were the crime(s) was committed, as well as the year and the number of the case should be provided.
- 11 The Respondent understands and accept that any guilty plea or conviction for any of the crimes specified in Article 3 of said Act will also result in the immediate cancellation of any contracts in force at the time of conviction, between the undersigned, the corporation, or any partnership that I may represent, and any government entity, public corporation or municipality. (If the information was affirmative, the crimes which the person was been found or pleaded guilty must be specified)
- 12 That neither the signer, nor the institution that the Respondent may represent has been convicted, nor has pleaded guilty of crimes in the federal jurisdiction, or in the jurisdiction of any state or territory of the United States of America or any other country, for crimes whose elements are equivalent to those enumerated in Article 3 of the aforementioned Law.
- 13 The undersigned, or the institution that the Respondent may represent, \_\_\_\_\_ is or \_\_\_\_\_ is not (mark one of the previous) under investigation in any legislative process, judicial or administrative proceeding, whether in Puerto Rico, the United States of America or any other country, to participate in the award or grant of any auction or contract, respectively.
- 14 That the undersigned, or the institution that the Respondent represents, are familiar with the provisions of Act 84 of June 18, 2002, as amended, and commit to comply with the provisions of Act 84 of June 18, 2002, as amended, also known as the "Code of Ethics for contractors Suppliers of goods and services and applicants for economics incentives of the executive agencies of the Commonwealth of Puerto Rico". A copy of Act 84 of June 18, 2002, as amended, is available at the Authority's website: <http://www.app.gobierno.pr>.

15 That the Respondent makes this sworn statement solely so that any government entity, public corporation or municipality may have knowledge of what is herewith as may be required by the Act or applicable law as of this date.

In \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[RESPONDENT]

By: \_\_\_\_\_

Sworn and subscribed to before me by \_\_\_\_\_, of the above stated personal circumstances, in his (her) capacity as \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me.

In \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**

---

## FORM OF RESPONDENT CERTIFICATION

*[Letterhead of each Respondent and Respondent Team Member]*

Puerto Rico and the Islands Municipalities Maritime Transport Authority  
Request for Qualifications –  
Operations and Maintenance of Certain Public Maritime Transportation Services (“Project”)

Dear Mr. Ruiz Garcia,

We have carefully reviewed, fully understand and have no reservation to the Request for Qualifications and Proposals for the Project, dated [ ], 2016 (“**RFQP**”) issued by the Puerto Rico Public-Private Partnerships Authority (the “**Authority**”) and the Puerto Rico and the Islands Municipalities Maritime Transport Authority (“**MTA**”) and any other documents accompanying or made a part of the RFQP. Capitalized terms used in this certificate have the meanings given to them in the RFQP.

We acknowledge and agree to comply with all terms and conditions of the RFQP, the attached Statement of Qualifications, Proposal and all enclosures thereto. Without limitation, we specifically acknowledge [REFERENCE TO SPECIFIC SECTIONS OF THE RFQP] of the RFQP.

We certify that the information contained in the attached Statement of Qualifications and the Proposal is truthful and that all accompanying documents are true copies of their respective originals. We further certify that the individual who has signed and delivered this certification is duly authorized to submit the attached Statement of Qualifications and the Proposal on behalf of the Respondent and that the Respondent is ready, willing and able to perform the Operations and Maintenance Contract if it is selected.

We further certify that no officer or employee of the Authority, MTA or any other public agency of the Commonwealth of Puerto Rico who participates in the selection process described in, or negotiations in connection with, the RFQP (nor any member of their families) has an economic interest in or is connected with the Respondent, and no officer or employees of the Authority, MTA or any other public agency of the Commonwealth of Puerto Rico (nor any member of their families) has directly or indirectly participated with the Respondent in the preparation of its RFQP submission.

We further certify that this proposal is made without prior understanding, agreement, connection, discussion or collusion with any other person, firm or corporation submitting a separate Statement of Qualifications and Proposal or any officer, employee or agent of the Authority, or MTA and that the undersigned executed this Respondent’s Certification with full knowledge and understanding of the matters herein contained and was duly authorized to do so.

The attached Statement of Qualifications and Proposal shall be governed by and construed in all respects according to the laws of the Commonwealth of Puerto Rico and the terms of the RFQP.

Yours faithfully,

*[Insert appropriate signature block for signature by a person  
duly authorized to bind the Respondent or Team Member]*

## CERTIFICATION REGARDING LOBBYING

[RESERVED]

# APPENDIX E – NET PUBLIC SUBSIDY UPSET LIMIT



## ANNUAL NET PUBLIC SUBSIDY UPSET LIMIT

	<b>Upset Limit (\$)</b>
<b>Year 1</b>	[TBD]
<b>Year 2</b>	[TBD]
<b>Year 3</b>	[TBD]
<b>Year 4</b>	[TBD]
<b>Year 5</b>	[TBD]
<b>Year 6</b>	[TBD]
<b>Year 7</b>	[TBD]
<b>Year 8</b>	[TBD]
<b>Year 9</b>	[TBD]
<b>Year 10</b>	[TBD]



# APPENDIX F – FTA REQUIRED CLAUSES



## FEDERAL TRANSIT ADMINISTRATION (FTA) CONTRACT CLAUSES

### 1. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241 46 CFR Part 381

**Use of United States-Flag Vessels.** The Operator agrees:

- (1) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- (2) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the Operator in the case of a subcontractor’s bill-of-lading.)
- (3) to include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

### 2. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.  
49 CFR Part 18

The Operator agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the [state energy conservation plan] issued in compliance with the Energy Policy and Conservation Act.

### 3. FEDERAL CHANGES

49 CFR Part 18

The Operator shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14)) between the [Puerto Rico Ports Authority or the HTA (as applicable)] and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Operators’ failure to so comply shall constitute a material breach of this contract.

### 4. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- (1) The Authority and Operator acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Project Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Operator, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Operator agrees to include the above clause in each subcontract financed in whole or in part with Federal

assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## 5. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31, 18 U.S.C. 1001

49 U.S.C. 5307

- (1) The Operator acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to the Project Contract. Upon execution of the Project Contract, the Operator certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Project Contract or the any FTA assistance provided thereunder. In addition to other penalties that may be applicable, the Operator further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Operator to the extent the Federal Government deems appropriate.
- (2) The Operator also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Operator, to the extent the Federal Government deems appropriate.
- (3) The Operator agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 6. 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.]
- (2) **Termination for Default Breach or Cause (General Provision):** If the Operator fails to perform its obligations in the manner called for in the Project Contract, or if the Operator fails to comply with any other provisions of the Project Contract, the Authority may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Operator setting forth the manner in which the Operator is in default. The Operator will only be paid the services performed in accordance with the manner of performance set forth in the Project Contract.

[If it is later determined by the Authority that the Operator had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Operator, the Authority,

after setting up a new delivery of performance schedule, may allow the Operator to continue work, or treat the termination as a termination for convenience.]

- (3) **Opportunity to Cure (General Provision):** The Authority in its sole discretion may, in the case of a termination for breach or default, allow the Operator [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Operator fails to remedy to the Authority's satisfaction the breach or default or any of the terms, covenants, or conditions of this Project Contract within [ten (10) days] after receipt by Operator of written notice from the Authority setting forth the nature of said breach or default, the Authority shall have the right to terminate the Operator without any further obligation to the Operator. Any such termination for default shall not in any way operate to preclude the Authority from also pursuing all available remedies against Operator and its sureties for said breach or default.

- (4) **Waiver of Remedies for any Breach:** In the event that the Authority elects to waive its remedies for any breach by Operator of any covenant, term or condition of this Project Contract, such waiver by the Authority shall not limit the Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Project Contract.]

## 7. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) 49 CFR Part 661

The Operator agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offer or must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**The certificate titled *Buy America Certification* must be completed and returned with your bid. This certificate is located behind the bid form.**

## 8. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000  
 42 U.S.C. § 6102, 42 U.S.C. § 12112  
 42 U.S.C. § 12132, 49 U.S.C. § 5332  
 29 CFR Part 1630, 41 CFR Parts 60 et seq.

- (1) Nondiscrimination  
 In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Operator agrees that it will not

discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Operator agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity

(a) Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Operator agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (US DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246 “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Operator agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Operator agrees to comply with any implementing requirements FTA may issue.

(b) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Operator agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Operator agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as 42 U.S.C. § 12112, the Operator agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Operator agrees to comply with any implementing requirements FTA may issue.

The Operator also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

49 CFR Part 26

- (1) The [Federal Fiscal Year Goal] has been set by the Authority in an attempt to match projected procurements with available qualified disadvantaged businesses. The Authority's goals for budgeted service contracts, parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the Authority as set forth by the Department of Transportation Regulations 49 CFR Part 26, and is considered pertinent to any contract resulting from this request for quotation/proposal.

---

If a specific DBE goal is assigned to this contract, it will be clearly stated in the bid documents, and if the Operator is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Authority may declare the Operator noncompliant and in breach of contract. If a goal is not stated in the bid documents, it will be understood that no specific goal is assigned to this contract.

(a) Policy :

It is the policy of the Department of Transportation and the Authority that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of contracts financed in whole or in part with federal funds under this Project Contract. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Project Contract. It is also the policy of the Authority to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; and
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.

The Operator agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in whole or in part with federal funds provided under this Agreement. In this regard, the Operator shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Operator shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

If further the policy of the Authority to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Authority procurement activities are encouraged.

(b) DBE obligation:

The Operator and its subcontractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Project Contract. In that regard, the Operator and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

- (c) Where the Operator is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, the Authority may declare the Operator noncompliant and in breach of Project Contract. Guidance concerning good faith efforts may be found in the bid documents and are also listed in the [Authority' Disadvantaged Business Enterprise Program document.]
- (d) The Operator will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Authority' DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted to the Authority upon request.
- (e) The Authority will provide affirmative assistance, as may be reasonable and necessary to assist the Operator in

implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBEs,
  - Available listing of Minority Assistance Agencies,
  - Holding bid conferences to emphasize requirements.
- (2) The Operator is encouraged to use the services of DBE banks.
- (3) DBE Program Definitions:
- a) Disadvantaged business enterprise or DBE means a for-profit small business concern:
- i. That is at least 51 percent owned by one or individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or such individuals; and
  - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (12 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
  - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - i. “Black Americans”, which includes persons having origins in any of the Black racial groups of Africa;
    - ii. “Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - iii. “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - iv. “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of Pacific Islands (Republic of Palua), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - v. “Subcontinent Asian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - vi. Women;
    - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

## 10. CLEAN WATER REQUIREMENTS

## 33 U.S.C. 1251

- (1) The Operator agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Operator agrees to report each violation to the Authority and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Operator also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**11. LOBBYING**

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 to be codified at 2 U.S.C. § 1601, et seq.** –The Operator shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**The certificate titled *Certification Regarding Lobbying* must be completed and returned with your bid. This certificate is located behind the bid form.**

**12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

49 CFR Part 29 Executive Order 12549

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Operator is required to verify that none of the Operator, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Operator is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined that the Operator knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Operator agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Operator further agrees to include a provision requiring such compliance in its lower tier covered transactions.

---

The Operator and subcontractors are also subject to a continuing duty of disclosure. The Operator and subcontractors must provide immediate written notice to the Authority if it learns that a person involved in a covered transaction has been excluded, the Authority must then provide written notice to the FTA.

### 13. CHARTER SERVICE OPERATIONS

The Operator agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### 14. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215

- (1) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are 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. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
  
- (2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
  
- (3) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.



---

§ 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

### **15. DRUG AND ALCOHOL TESTING**

49 U.S.C. §5331

49 CFR Parts 653 and 654

The Operator agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Puerto Rico or PRHTA to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Operator agrees further to certify annually its compliance with Parts 653 and 654 before [March 1] and to submit the Management Information System (MIS) reports before [March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **16. ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

- (1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Operator agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Operator which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Operator also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives access to Operator's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) The Operator agrees to maintain all books, records, accounts and reports required under the Project Contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this Project Contract, in which case the Operator agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (3) The Operator agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy

excerpts and transcriptions as reasonably needed.

- (4) FTA does not require the inclusion of these requirements in subcontracts.

**17. CLEAN AIR**

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

- (2) The Operator agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Operator agrees to report each violation to the Authority and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (3) The Operator also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**18. RECYCLED PRODUCTS**

42 U.S.C. 6962

40 CFR Part 247 Executive Order 12873

The Operator agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**19. BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18 FTA Circular 4220, 1 F

See the Authority' General Conditions which are made a part of this contract.

**20. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

FTA Circular 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Operator shall not perform any act, fail to perform any act, or refuse to comply with any the Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

**21. COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS**

The Operator (bidder) is responsible for ensuring its compliance with all applicable Federal Transit Administration (FTA) requirements. Additionally, the Operator is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable

---

FTA requirements.

Upon request of the Authority or FTA, the Operator shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

## **22. AMERICANS WITH DISABILITIES ACT (ADA)**

Americans with Disabilities Act (ADA). The Operator agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

## **23. PROMPT PAYMENT AND RETURN OF RETAINAGE**

The Operator agrees to pay each subcontractor under this Project Contract for satisfactory performance of its contract no later than 15 calendar days from the receipt of each payment the Operator receives from the Authority. The Operator agrees further to return retainage payments (if any) to each subcontractor within 30 calendar days after the subcontractor(s)' work is satisfactory completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors.

It is the responsibility of the subcontractors to notify the Authority' DBE Liaison Officer (Sammar Hamdan 787-729-8715 ext. 2131, of the Puerto Rico Ports Authority on behalf of the Authority) of Operator noncompliance with the above prompt payment provisions. Upon receipt of such notification, the Authority will investigate and take appropriate action.

## **24. GOVERNMENT FURNISHED CLAUSE**

(a) Definitions. As used in this clause—

Acquisition cost means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

Cannibalize means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Contractor-acquired property means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

Contractor inventory means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or

subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

Contractor's managerial personnel means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

Demilitarization means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

Discrepancies incident to shipment means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

Equipment means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

Nonseverable means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

Plant equipment as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Property means all tangible property, both real and personal.

Property Administrator means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

Provide means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) Property management.

(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property. The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) Government-furnished property.

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property

acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3) (i) The Contracting Officer may by written notice, at any time--

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) Title to Government property.

(1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Fixed-price contracts.

(i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon—

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government, whichever occurs first.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.

(f) Contractor plans and systems.

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

- (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
- (2) Quantity received (or fabricated), issued, and balance-on-hand.
- (3) Unit acquisition cost.
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
- (5) Unit of measure.
- (6) Accountable contract number or equivalent code designation.
- (7) Location.
- (8) Disposition.
- (9) Posting reference and date of transaction.
- (10) Date placed in service.

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of



appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control.

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(3) Quantity.

(4) Unique Item Identifier (if available).

(5) Accountable Contract number.

(6) A statement indicating current or future need.

(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(8) All known interests in commingled property of which the Government property is a part.

(9) Cause and corrective action taken or to be taken to prevent recurrence.

(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.

(11) Copies of all supporting documentation.

(12) Last known location.

(13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is--

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

---

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis.

(1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management, practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property.

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies--

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause.

(i) Contractor with an approved scrap procedure.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) Predisposal requirements.

(i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority--

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;

(B) May purchase the property at the acquisition cost; or

(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) Inventory disposal schedules.

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may--

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) Storage.

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not

increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) Disposition instructions.

(i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) Abandonment of Government property.

(1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under many circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished", respectively.

# APPENDIX G – DRAFT OPERATIONS AND MAINTENANCE CONTRACT



To be provided in data room