

GAIAirport PPP RFQ Clarifications (March 31, 2020)

1. Demonstrating construction capabilities

Usually Airport Operators are structured in a way that they participate in their investments through SPVs (many times alongside other investors) and those SPVs may not be Affiliates. Even if an Airport Operator is the largest shareholder in a particular airport, such airport SPV has its own corporate bodies and governance and is responsible (among many other things) to sign the construction contracts to develop its capex plan.

The way the RFQ and its amendments establish the way to demonstrate construction capabilities may be desired in theory, but it may not be possible in practice for many bidders due to the following;

- a. Inconsistency between the airport operator qualification requirements and the construction capabilities requirements:
 - An Airport Operator Member complies with the requirements on airport experience as follows; largest shareholder, with at least a 20% of the equity and the right to be the shareholder proposing the CEO of an international airport of no less than 4 million passengers per year for the last 5 years continuously
 - On the other hand, that Airport Operator (who may be the Prospective Bidder for Barbados process), may not be the direct counterparty for the construction company working in a particular participated airport
 - The only way for that Airport Operator to comply with the construction capabilities requirement in the RFQ is to have control (as defined in the RFQ, at least a 50% + 1 of either the share participation or, through voting trusts or voting agreements, the voting rights or the ability to designate the majority of the Board) on the SPV for it to be considered as a Non-Sister Affiliate, which is, in fact, more restrictive and inconsistent with the requirements to be considered an Airport Operator
- b. Limitation for Non-Sister Affiliates to provide construction experience
 - Following the amendments to the RFQ, please note that the definition of “Non-Sister Affiliate” limits the companies which can be used to evidence construction experience to those companies controlling or being controlled by the Prospective Bidder. This excludes and may make unable to qualify infrastructure groups which have strong construction and operation activities with the same shareholding but with an entirely independent management.
 - The reason is that usually large infrastructure groups and operators have independent divisions to carry out different activities (engineering, environmental services, infrastructure operations, etc.).
 - Therefore, i) airport experience, and ii) design and construction experience, are carried out by separate divisions which are affiliates of the same Group but do not control each other.
 - Hence, by ceasing to allow to evidence experience through *Affiliates* (which are under an ultimate common control) and limiting this to “*Non Sister Affiliates*”, leading infrastructure groups which are highly sophisticated and experienced in providing engineering and construction solutions and

capabilities and airports operation through different divisions may not be able to provide its experience in both sectors in the terms drafted in the RFQ.

c. Adding construction division to a consortium

- Please note that it may not be possible to add a construction division as a member of the consortium, because a construction division would not invest in a 25% of the equity of an airport management project (essentially because it is not their business).

As a result, we understand that the definition of Non-Sister Affiliate may prevent some of the most experienced bidders from complying with the RFQ criterion.

In addition, it may not be entirely consistent to ask for full control of the Non-Sister Affiliate for construction experience while having a different and more flexible and standard criterion of control for airport operation experience in Schedule 3.

We would suggest that either:

- 1) an Affiliate could be used to evidence construction experience (even if it is not a member of the Consortium) or, as an alternative,
- 2) if the goal is to ensure that an airport operator can qualify to the extent it has adequate experience in airport construction projects, an Airport Operator Member which complies with the requirements on airport experience can also comply with the construction experience if the international airports described under airport experience have gone through projects which meet the construction experience requirements (projects during the past 10 years with an aggregate construction value of not less than USD 150M)

[Answer: Please refer to Addendum 9](#)

2. Qualification as an airport operator

- Addendum 7 states that, in order to be qualified as an Airport Operator *“The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Airport Operator Member or their Affiliates as the case may be, must further demonstrate that it possesses no less than twenty percent (20%) of the equity of the entity operating such international airport combined with the right to appoint either the CEO or at least two (2) of the following executive officers : CFO, COO or CMO.”*
- Please note that when not having a majority stake (50%+), the usual way the Shareholders Agreements establish the right for the largest shareholder in relation to the CEO is to “propose” the CEO (that has to be “blessed” at the board level by the rest of the shareholders). This is totally consistent with the exclusivity of that right in favor of the largest shareholder.

In order to be accurate with common practices in Shareholders Agreements we suggest;

- 1) to replace “appoint” by “propose”, or “the exclusive right to propose”.

[Answer: We confirm that “appoint” is deemed the same as the “exclusive right to propose” and thus would be considered acceptable for the purpose of satisfying Technical Criterion nr 1.](#)