

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY
PUERTO RICO ENERGY COMMISSION

JOINT REGULATION FOR THE
PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND AWARD OF
CONTRACTS FOR THE PURCHASE OF ENERGY AND
FOR THE PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND
AWARD PROCESS FOR THE MODERNIZATION OF THE GENERATION FLEET
Pursuant to Act No. 83 of May 2, 1941, as amended, and Act No. 57-2014, as amended

Date of Approval by the Energy Commission: September 1, 2016

Date of Approval by the Puerto Rico Electric Power Authority: August 12, 2016

TABLE OF CONTENTS

	Page
ARTICLE 1 LEGAL BASIS; PURPOSE OF REGULATION	1
1.1 Legal Basis.....	1
1.2 Purpose of Regulation.....	1
ARTICLE 2 DEFINITIONS.....	1
ARTICLE 3 PROJECT COMMITTEE.....	6
3.1 Composition and Responsibility of Project Committee.....	6
3.2 Meetings of the Project Committee	7
3.3 Actions of the Project Committee.....	8
3.4 Subcommittees of the Project Committee.....	8
3.5 Advisors to the Authority and Project Committee.....	9
ARTICLE 4 PROCESS TO ISSUE RFQs/RFPs, RECEIVE AND EVALUATE PROPOSALS	9
4.1 Creation of Project Committee	9
4.2 Notification and Approval of RFP content by the Energy Commission	9
4.3 Qualification of Proponents	10
4.4 Issuance of Request for Proposals	13
4.5 Content of the Request for Proposals.....	13
4.6 Requests for Information or Clarification of an RFP.....	16
4.7 Preparation of Proposals	17
4.8 Submission of Proposals	18
4.9 Submission of Alternative Proposals	20
4.10 Bidding Fee.....	21
4.11 Modification of Proposals.....	22
4.12 Cancellation of RFP	22
4.13 Communications with the Authority.....	22
4.14 Non-Collusion Obligation.....	23
ARTICLE 5 EVALUATION AND SELECTION PROCESS.....	23
5.1 Evaluation Process	23
5.2 Amendment to Procurement Process	31
ARTICLE 6 SELECTION OF PROPONENTS.....	32
6.1 Disqualifying Events.....	32
6.2 Other Grounds for Disqualification	32
6.3 Information as to Financial Condition	33
ARTICLE 7 CONTRACT AWARD	34
7.1 Approval of the Contract; Preparation of Report.....	34
7.2 Award of Contract; Cancellation	36
7.3 Execution of the Contract	37
7.4 Contract Content	38

TABLE OF CONTENTS
(continued)

	Page
ARTICLE 8 RECONSIDERATION AND REVIEW	42
8.1 Reconsideration by the Authority; Judicial Review	42
ARTICLE 9 APPROVAL BY THE ENERGY COMMISSION OF CONTRACT APPROVED BY THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY UNDER ACT 29-2009 AND SECTION 6C OF ACT 83 OF MAY 2, 1941, AS AMENDED	43
ARTICLE 10 MISCELLANEOUS	44
10.1 Computation of Periods	44
10.2 Confidentiality	44
10.3 Intent	46
10.4 Severability	46
10.5 Tax Advantaged Bonds.....	46
10.6 Effective Date	47

ARTICLE 1 LEGAL BASIS; PURPOSE OF REGULATION

1.1 Legal Basis. This JOINT REGULATION FOR THE PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND AWARD OF CONTRACTS FOR THE PURCHASE OF ENERGY AND FOR THE PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND AWARD PROCESS FOR THE MODERNIZATION OF THE GENERATION FLEET AND OTHER RESOURCES (this “Regulation”) is promulgated by virtue of the power vested in the Puerto Rico Energy Commission and the Puerto Rico Electric Power Authority by Sections 6B(a)(ii), 6B(a)(iii) of Act No. 83 of May 2, 1941, as amended, and Article 6.3 of Act No. 57-2014, as amended.

1.2 Purpose of Regulation. The purpose of this Regulation is to establish a procurement, evaluation, selection, negotiation and award process for contracting with third parties for the purchase of energy and for the procurement, evaluation, selection, negotiation and award process for the modernization and upgrade of the generation fleet and other resources of the Authority, that is consistent and transparent, and that encourages and supports a climate of private sector innovation and investment in the Commonwealth to address the specific power generation needs of the Authority. In order to carry out the purposes of the Acts, this Regulation provides guidelines and procedures for, among others: (i) soliciting, obtaining and evaluating proposals by third parties; (ii) selecting the entities or individuals that will enter into agreements with the Authority; (iii) negotiating and awarding agreements; and (iv) defining the process for the approval by the Energy Commission of the final agreements to be executed.

ARTICLE 2 DEFINITIONS

Capitalized terms used in this Regulation but not defined herein will have the meaning given to such terms in the Act.

The following terms used in this Regulation have the meanings set forth below, except where the context clearly indicates a different meaning.

2.1 Acts: means Act No. 83 of May 2, 1941, as may be amended from time to time, including as amended by Act No. 57-2014; and Act 57-2014, as may be amended from time to time, including as amended by Act No. 4-2016.

2.2 Addendum: means a written supplement issued by the Authority after the issuance of a Request for Proposals, which includes changes or additions to (i) the terms and conditions of a Request for Proposal; (ii) the conceptual design or the plans and specifications of a Project, (iii) the terms or conditions of the related Contract, or (iv) any other document related to a Request for Proposals.

2.3 Affiliate: means, with respect to any Person, any other Person (i) that directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common control with, such Person.

2.4 Authority or PREPA: means the Puerto Rico Electric Power Authority.

2.5 Authorized Representative: means the member or members of the Project Committee and any other advisors designated by the Executive Director to support the Project Committee, including to negotiate with Proponents on behalf of the Authority, identified in the RFP as the single point of contact with Proponents during the RFP.

2.6 Award of Contract: means the approval of a Contract by the Board and the Energy Commission.

2.7 Board: means the board of directors of the Authority.

2.8 Business day: means a day other than a Saturday, Sunday or a day on which banking institutions in the Commonwealth are authorized or permitted under applicable law to be closed to the public.

2.9 Commonwealth: means the Commonwealth of Puerto Rico.

2.10 Competitive Range: means those Proposals received by the Authority in response to a Request for Proposals that the Project Committee determines, in its discretion, have a reasonable probability of being recommended for an Award of Contract.

2.11 Contract: means the agreement proposed, negotiated and executed between the Authority and the selected Proponent, which Contract shall be approved by the Board and the Energy Commission as provided in this Regulation.

2.12 Control: means possessing the power to direct or cause the direction of management and policies of a Person, whether through direct or indirect ownership of voting interests, by irrevocable contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

2.13 Energy Commission: mean the Puerto Rico Energy Commission, created under Act 57-2014, as amended.

2.14 Executive Director: means the Executive Director of the Authority.

2.15 Evaluation Criteria: means the criteria adopted by the Project Committee, in accordance with the nature of the RFQ or RFP to be issued, which will be used to evaluate, rank, select and recommend Proposals for rejection or award.

2.16 Individual Meeting: means a meeting or telephone conference held by representatives of the Project Committee with an individual prospective Proponents or a

Proponent, at which the prospective Proponent or Proponents will have an opportunity to raise questions and seek clarification related to the RFP, subject to Section 4.6 of this Regulation.

2.17 IRP: means the Integrated Resources Plan required under Act 57-2014, as may be amended from time to time and approved by the Energy Commission.

2.18 Person: means any natural person or legal entity organized under the laws of the Commonwealth of Puerto Rico, the United States of America, any of its states or territories, or of any foreign country, any federal agency, or any combination of the above. The term shall include any department, agency, municipal entity, government instrumentality, individual, firm, partnership, stock company, association, public or private corporation, or cooperative union or nonprofit entity duly constituted and authorized under the laws of the Commonwealth of Puerto Rico, the United States of America, any of its states or territories, or foreign country.

2.19 Pre-Proposal Conference: means a meeting or telephone conference prior to the due date of an RFP where all Persons who have registered their interest in participating per the instructions included in the RFQ or RFP, are invited to participate, raise questions and seek any clarification related to the RFP in accordance with Section 4.6 of this Regulation.

2.20 Project: means any project suitable for a procurement process under this Regulation based on a determination made by the Authority and in accordance with the IRP.

2.21 Project Committee: means the committee designated in accordance with Section 3.1 of this Regulation that shall receive and evaluate qualifications and/or Proposals received in an RFQ and/or RFP process, negotiate with the highest ranking Proponent or Proponents, as determined by the Project Committee in accordance with this Regulation, and make recommendation for the selection, negotiation, approval and signing of a Contract.

2.22 Proponent: mean a Person or its affiliated or related entities who has submitted a Proposal to the Authority pursuant to this Regulation, including those who submit a Proposal jointly under a consortium that complies with the provisions of the RFQ or RFP. Consortia that intend to submit proposals must comply jointly with the requirements of this Regulation and any other requirements that apply to consortia in the RFQ and/or RFP. Unless otherwise specified, any provision applicable to Proponents in this Regulation shall equally apply to the members of a consortium.

2.23 Proposal: means a written proposal made by a Proponent related to a Project in response to a Request for Proposals issued by the Authority.

2.24 Proposal Security: means a bond, guaranty, or other security posted in the form of legal currency of the United States of America, certified check or money order payable to the Authority, or through a letter of credit, a financial guaranty bond or guarantee issued by a bank or financial institution acceptable to the Authority (which in case of a surety or insurance company, must be authorized to issue financial guaranty bonds in the Commonwealth), required to be submitted by the Proponent with its Proposal under an RFP, to secure compliance by a Proponent with the requirements of this Regulation and the terms of the corresponding RFP, as applicable, and secure the execution by the Proponent of the Contract if selected for the Award of Contract. The Proposal Security will cover any expense, including but not limited to fees and expenses of advisors and consultants, and any damages that may be incurred or suffered by the Authority as a consequence of the failure by the Proponent to meet its obligations under the RFP. The amount of the Proposal Security applicable to each Project will be determined by the Project Committee and specified in the related RFP.

2.25 Request for Proposals or RFP: means the document that the Authority prepares, publishes and distributes, in accordance with Article 4 of this Regulation, requesting Proposals in connection with a potential Project or a portion thereof, as amended and supplemented from time to time.

2.26 Request for Qualifications or RFQ: means the document that the Authority prepares, publishes and distributes, requesting prospective Proponents to submit their qualifications to participate in an RFP process.

2.27 Selected Proponent: means the Person, or consortium, selected for Award of Contract for a Project with the Authority.

ARTICLE 3 PROJECT COMMITTEE

3.1 Composition and Responsibility of Project Committee. The Executive Director shall recommend candidates and the Board shall appoint the members of the Project Committee, which Committee shall be comprised of no less than five (5) members for each Project. The Project Committee shall assist in the preparation of the RFQs and RFPs, in the evaluation and selection of Proponents and in the negotiation of the terms of the Contract. The members of each Project Committee shall be designated in accordance with the nature of the Project and the specialized background necessary to understand the scope of the Project and the needs of the Authority. The Project Committee will not be deemed a committee of the Board. The Board may, in its discretion as recommended by the Executed Director, terminate a Project Committee or replace a Project Committee with another such committee. The Board may also, in its discretion as recommended by the Executed Director, remove any member of a Project Committee and make new appointments to a Project Committee, to the extent that such removal

and/or appointment is in the best interests of the Authority and goals pursued with the Project. The following requirements will apply to each Project Committee:

(a) The Board, at the recommendation of the Executive Director, shall designate the person who shall act as chairperson of the Project Committee. The chairperson of the Project Committee will designate a secretary and, at his or her option, an assistant secretary, who need not be a member of the Project Committee, and may designate any other member of the Project Committee to serve as chairperson in his or her absence.

(b) The Project Committee may designate any subcommittee according to Section 3.4 of this Regulation, and may request the Executive Director to assign advisors to support the Project Committee according to Section 3.5 of this Regulation.

(c) The Project Committee will carry out any additional task related to the selection, negotiation and award procedure contained in this Regulation, as requested by the Board.

3.2 Meetings of the Project Committee. The Project Committee will meet as often as is necessary to perform its duties and responsibilities as described in this Regulation. The chairperson of the Project Committee, or the member designated by the chairperson in his or her absence, will summon all members to and preside over all meetings of the Project Committee, will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting. The chairperson will ensure that the agenda for each meeting, and to the extent available, all key documents to be considered in the meeting, are circulated in advance of the meeting to all the other members. A quorum will be required at all Project Committee meetings. A quorum will exist at any meeting of the Project Committee if a majority of its members are present. Once a member is present for any purpose at a meeting other than solely to object to

holding the meeting or transacting business at the meeting, the member will be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

3.3 Actions of the Project Committee. Recommendations of, and approvals by, the Project Committee, including the determination of the Competitive Range and the recommendation to be presented to the Board for the Award of Contract, will require the affirmative vote of a majority of the members. The Project Committee jointly with the Executive Director will provide non-binding recommendations to the Board regarding the selection of any Proponent and the evaluation of any Proposal.

The Project Committee will keep a written record of the decisions and recommendations made and other actions taken by the Project Committee.

The secretary or assistant secretary of the Project Committee will keep a record of each meeting, keep custody of the Project Committee calendar, and carry out any other task related to his or her office, as required by the chairperson of the Project Committee.

The Project Committee meetings will be documented in a minute that will be reviewed and approved by its members and signed by the secretary or assistant secretary of the Project Committee after such approval is received.

3.4 Subcommittees of the Project Committee. The Project Committee, in its discretion, may appoint one or more subcommittees of the Project Committee which may include participants who are not members of the Project Committee, to provide technical or specialized assistance and advice to the Project Committee and the Authority in the process of evaluating prospective Proponents and Proposals, and negotiating the terms of a Contract. Each subcommittee will have such responsibility and shall carry out its proceedings as directed by the Project Committee. Notwithstanding the above, the ultimate determinations and

recommendations to the Executive Director and the Board shall be made by the Project Committee.

3.5 Advisors to the Authority and Project Committee. The Executive Director may appoint employees of the Authority or external consultants, advisors or agents to assist the Project Committee in the review of the Proposals and the selection and negotiation process for a Project, or provide any other assistance that is deemed necessary or appropriate in connection with an Award of Contract, including participating in the subcommittees of the Project Committee. The individuals or entities providing such assistance will participate in any evaluation and negotiation process conducted by the Project Committee as the Project Committee or subcommittee, as applicable, may deem necessary, but shall have no vote on any final determinations and recommendations of the Project Committee to the Board, which shall reside solely in the Project Committee.

ARTICLE 4 PROCESS TO ISSUE RFQS/RFPS, RECEIVE AND EVALUATE PROPOSALS

4.1 Creation of Project Committee. Once the Authority intends to pursue a Project, which Project shall be consistent with the IRP as approved by the Energy Commission, and its goals and objectives, the Authority will create a Project Committee. The Project Committee may also be constituted in advance to determine whether or not to pursue a Project.

4.2 Notification and Approval of RFP content by the Energy Commission. Prior to launching any public procurement process, and after receiving the approval of the Board to proceed with the proposed Project and procurement process, the Executive Director will notify in writing to the Energy Commission the recommendation of the Project Committee with respect to (i) the proposed Project, including all associated documents that explain the Project, (ii) the

proposed parameters to determine such profit margin and price escalators, (iii) consistency with the IRP approved by the Energy Commission, and (iv) compliance with this Regulation, the Acts and other laws and regulations related to procurement processes by the Authority and the powers of the Energy Commission. The parameters related to the profit margin and price escalators shall be based on industry costs and profitability benchmarks in accordance with the anticipated nature of the Project. The recommendation to the Energy Commission will also provide a detailed narrative, with specific examples, regarding how the proposed project and the terms of the Contract, as described in the proposed RFP and approved by the Board, complies with the IRP. The Energy Commission shall, within ten (10) days from receipt of the notification from the Executive Director, identify any additional information it deems necessary to conduct its evaluation. Upon receipt of such information, the Energy Commission will review and approve, reject or propose modifications to the Project or the parameters within forty-five (45) days from receipt of the notice of the recommendation from the Executive Director or the date in which all additional information, if any, requested by the Energy Commission is provided, whichever occurs later. If the Energy Commission does not respond within the specified forty-five (45) day period, the proposed Project and parameters shall be deemed approved by it. When the Energy Commission proposes modifications to the proposed Project, the above-mentioned forty-five (45) day period for approval or rejection of the proposed Project will commence from the date the modified proposal is notified to the Energy Commission. These communications shall be maintained confidential while the administrative competitive procurement process is ongoing.

4.3 Qualification of Proponents. In anticipation of an RFP or as otherwise required by the Board, the Project Committee may, but shall not be obligated to, conduct an RFQ process (which, for all intents and purposes under this Regulation, may take the form of a request for

expressions of interest, provided it ascertains the necessary information regarding the qualifications of participants) to identify those prospective Proponents that satisfy minimum standards of: (a) financial and bonding condition; and/or (b) technical and professional capabilities. Any such minimum standards will be specified in the RFQ (or in the RFP if no previous RFQ is issued) and will be related and proportionate to the subject matter of the anticipated Project. At a minimum, however, participants interested in becoming Proponents must meet the following requirements and conditions, which may by no means impair fair competition and the public interest, to wit:

- (i) At the time of execution of the Contract, the Proponent shall be a Person authorized to do business in the Commonwealth of Puerto Rico;
- (ii) The Proponent shall have available such corporate or equity capital or securities or other financial resources (including the ability to draw upon committed lines of credit) that, in the judgment of the Authority are necessary for the proper execution of the Project;
- (iii) The Proponent shall have a good reputation and the managerial, organizational and technical capacities, as well as the experience, to develop and administer the Project; and
- (iv) The Proponent (or, in the case of a consortium, each consortium member on its own behalf) shall certify that neither he or she, and in the case of a legal entity, its directors or officers, and in the case of a private corporation, the shareholders (or their equivalent) with direct or substantial control over the corporate policy, and in the case of a partnership, its partners, and in the case of natural person or legal entity, any other natural person or legal entity that is the alter ego or the passive economic agent thereof,

have been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico or in any jurisdiction of the United States of America or in any foreign country. Likewise, the Proponent (or, in the case of a consortium, each consortium member on its own behalf) shall certify that the latter complies and shall continue to comply at all times with laws which prohibit corruption or regulate crimes against public functions or funds, as may apply to the Proponent, whether federal or State statutes, including the Foreign Corrupt Practices Act. For the avoidance of doubt, no member of a consortium shall be required to make certifications as to any other member of its consortium. The Project Committee may, in addition to such minimum standards, include other qualification requirements in the RFQ or RFP.

The RFQ will be announced by means of a public notice in accordance with the procedures and standards for RFP set forth in Section 4.4 of this Regulation, to the extent applicable.

The Project Committee, in making its evaluation of the qualifications of a prospective Proponent, may disqualify a prospective Proponent, thereby excluding such prospective Proponent from the RFP process, if the prospective Proponent fails to satisfy minimum standards of financial and bonding condition, or technical, professional ability, or such other criteria set forth in the RFQ or RFP.

If the Project Committee elects not to issue an RFQ before publishing an RFP for any Project, the Project Committee will make its evaluation of the qualifications of the prospective Proponents as part of the RFP process in accordance with the qualifications requirements contained in the RFP and this Section 4.3. If an RFQ process that meets the requirements of this

Sections 4.3 has been carried out for a particular Project, the Project Committee may rely on the results of such prior RFQ process in lieu of launching a new RFQ.

4.4 Issuance of Request for Proposals. Except to the extent a prior RFQ process for the related Project had been effected by means of public notices providing the same or similar information to be provided in the RFP, the Project Committee will solicit proposals from prospective Proponents by means of a public notice of a Request for Proposal for each Project. The RFP will be published by the Authority in one newspaper of general circulation in the Commonwealth, in the Internet at the website of the Authority and the Energy Commission, and, in the discretion of the Project Committee, in one or more national or international journals. The Authority may also employ such other methods and processes, including other means of electronic communication or roadshows, as it deems advisable in order to disseminate the RFP. The publication and dissemination of an RFP in the above referenced fashion shall be considered to provide reasonable notice to the largest number of potential qualified Proponents that can be reasonably anticipated to submit qualified Proposals.

The Project Committee may also solicit Proposals directly from prospective Proponents through a notice of Request for Proposal if it believes that such entities may be qualified to participate in a specific Project.

When a prior RFQ shall have been conducted and qualified prospective Proponents selected, the Authority may determine in its discretion to distribute the RFP only to such qualified proponents.

4.5 Content of the Request for Proposals. The RFP will include the following items, without it being construed as a limitation or that their order defines their importance, unless otherwise approved by the Board and the Energy Commission, in its discretion:

(a) a description of the Project that would be developed and/or operated and its importance based on the IRP;

(b) a description of the proposed schedule by which all steps of the procurement process, including an anticipated schedule for Individual Meetings and Pre-Proposal Conferences, are expected to be implemented and completed;

(c) a due date, time and method for submission of (i) requests for clarification or information and (ii) the Proposals and the place where Proposals shall be submitted;

(d) instructions as to the format in which to submit Proposals, to the extent different than those set forth in this Regulation, and the minimum information and materials that must be submitted in order for the Proposals to be considered complete;

(e) any options or alternative proposals allowed as further described in this Regulation;

(f) applicable minimum Proponent eligibility requirements, scoring criteria and minimum resource size solicited;

(g) applicable minimum Proposal Evaluation Criteria that will be used in evaluating the Proposals and the Proponents, including any unique capabilities or qualifications which will be required of Proponents if a related RFQ has not been previously issued (or no prior unrelated RFQ is being relied on);

(h) any applicable Proposal Security;

(i) if applicable, a statement as to any funding contingencies or other conditions, contingencies, approvals, authorizations, or certifications which are required for award or execution of a Contract;

(j) a draft of the proposed Contract or summaries of its key terms and conditions, specifying the manner in which Proponents will be allowed to submit comments or suggestions to the draft Contract, provided that any revised draft of a Contract proposed by the Authority will be distributed to all Proponents;

(k) the parameters approved by the Energy Commission before issuance of the RFP in connection with profit margins and pricing escalators that will be allowed under the Contract as provided in Section 4.2 of this Regulation. These pricing escalators and profit margins will be based on ranges of acceptable profitability for similar projects in the industry, taking into account approximate construction costs, required returns for third parties and PREPA, and factoring in potential risk premiums reflecting PREPA's unique credit situation. PREPA will make Proponent profitability estimates based on known contract terms, utilizing approximate project costs and escalations based on industry benchmarks and similar customary indicators. The parametric ranges for each specific RFP will be reviewed upfront by the Energy Commission and their approval is subject to the result of the evaluation conducted by the Energy Commission.

(l) the Authorized Representative who will serve as single point of contact for communications during the RFP;

(m) a policy statement encouraging the participation of local suppliers, contractors, advisors and investors as advisors or consortium members in potential Projects; and

(n) any other applicable terms and conditions which may be useful to, or should be required from, the Proponents, as determined by the Board.

Notwithstanding the foregoing, any requirements included in the RFP may be modified through the issuance of an Addendum by the Authority pursuant to Section 4.6 of this

Regulation, provided however that any Addendum that modifies the proposed Project or the parameters subject to the approval of the Energy Commission, specifically items (a) and (l), shall be subject to approval by the Energy Commission prior to the issuance of the Addendum.

4.6 Requests for Information or Clarification of an RFP. The prospective Proponents may seek clarification, explanation or interpretation of the RFP only as provided in this section.

A prospective Proponent may request from the Authority a clarification, explanation or interpretation of any matter contained in the RFP up to fifteen (15) days (or such greater or lesser number of days as specified in the RFP) prior to the related due date for Proposals specified in the RFP. Any such request from prospective Proponents must be made in writing and must be specific and reasonable as to the information requested. The Project Committee shall have the discretion to abstain from addressing Requests for Information or Clarification that do not reference specific pieces of information or that are determined by the Project Committee to be too broad, vague, burdensome or irrelevant, or if a Request for Information solicits information that is subject to confidentiality obligations by the Authority.

After issuance of the RFP, representatives from the Authority and the Project Committee may participate in one or more Individual Meetings and Pre-Proposal Conferences. Questions pertinent to the RFP that are presented at an Individual Meeting or Pre-Proposal Conference that the Project Committee consider may be of general interest to all prospective Proponents, the Authority's response thereto, and any other written response by the Project Committee to written requests from prospective Proponents will be compiled in one or more Addendum and circulated to all prospective Proponents that have registered for the process; provided that the Addendum shall not disclose the identity of the Proponents that have submitted Requests for Information or

Clarification. Only written responses provided by the Project Committee will be official. Any other type of communication with any officer, employee or agent of the Authority or the Project Committee, including any oral response during any Individual Meeting or any Pre-Proposal Conference, will not be considered an official response of the Authority or of such committee.

A Proponent may be permitted under the terms of the RFP to request the confidential treatment of all or a portion of a Request for Information or Clarification to the extent such Request for Information or Clarification contains information identified by such Proponent to the Authority as proprietary or as a trade secret, and the Project Committee shall have the right to accept or reject in its reasonable discretion such request for confidential treatment.

4.7 Preparation of Proposals. Proposals should provide a straightforward and concise description of the Proponent's capabilities to complete or perform the proposed Project. Emphasis should be placed on completeness and clarity of content. In addition, unless otherwise specified in the RFP, Proposals submitted for consideration must comply with the following requirements, in addition to any other requirements specified in the RFP:

(a) All information requested under the RFP must be submitted. Proponents failing to submit all information requested by the RFP may be given an opportunity to promptly submit missing information but shall be given a lowered evaluation of their Proposal. Proposals that lack critical required information may be rejected.

(b) Proposals should include a comprehensive scope of work, schedule for completion of the Project and provide enough information about the Project to determine whether it satisfies the Evaluation Criteria.

(c) All Proposals must be submitted in both electronic format and in the number of hardcopies requested in the RFP.

(d) Proposals must include an executive summary and use cross-references rather than repetition in addressing the items in the RFP.

(e) The financial plan for the Project must contain enough detail so that an analysis would reveal whether the proposed financing is feasible. The financial plan must disclose the full extent of any expected public sector financing and/or concession commitments, as well as sufficient information to verify compliance with, and compare with other Proposals, the profit margins and escalator parameters approved by the Energy Commission for the Project.

4.8 Submission of Proposals. Proposals, including any Alternative Proposals approved for submission, will be delivered to the Authority on or before the due date set in the RFP for receipt of Proposals in accordance with the instructions contained in the RFP and, unless otherwise specified in the RFP, must comply with the following requirements:

(a) Proponents will be required to deliver such number of hard copies as specified in the RFP and one (1) electronic copy in searchable portable document format (“pdf”) of their Proposal, unless otherwise noted by the Authority in the RFP.

(b) The Authority will designate one contact on behalf of the Authority (which may be an individual, department, or electronic or physical address) to receive all Proposals and to act as the point of contact for each RFP process. In the absence of such a designation, Proposals will be delivered to the attention of the General Counsel of the Authority.

(c) For purpose of this Regulation, a Proposal will be considered filed at the Authority on the hour and date it is stamped as received at the designated contact address.

(d) The Proposal cover page must include the title of the Proposal, the name and address of the Proponent, the Person authorized to act on behalf of the Proponent and his or her email address and telephone and fax numbers. Unsealed envelopes or packages will not be

accepted. Each RFP will include more specific instructions and details about segregating envelopes and other submittal instructions.

(e) Any Proposal submitted by mail or personally delivered by the Proponent or its representative which is received after the date specified in the RFP may be rejected and returned to the Proponent unopened. The Project Committee may, in its discretion, agree to grant an extension to the submission deadline if requested by a Proponent prior to the due date specified in the RFP. An extension of the submission deadline upon the request of a Proponent may only be granted for a reasonable excuse and must be offered to all Proponents without discrimination.

(f) Proposals received on or before the due date set in the RFP will be stamped (date and time of receipt) and will be kept in the custody of the Authority. Such Proposals will not be opened until the date and time established in the RFP for the opening of the Proposals.

(g) Proposals will not be read publicly. Copies of the Proposals will not be generated by the Authority. Only the members of the Project Committee, the Energy Commission and other persons designated by the Board or the Executive Director will have access to the Proposals during the selection and evaluation period, including profit margins and escalators included in the negotiated Contract. After the conclusion of an RFP process, the Authority will make Proposals and other elements of the administrative record available for review except for those portions that are confidential or have proprietary information or that would clearly and adversely affect the financial, competitive or bargaining position of the Authority and/or the Proponent as identified and requested by Proponents and determined by the Authority in accordance with applicable laws and regulation.

(h) Failure by a prospective Proponent to submit a compliant Proposal within the period specified in the RFP will preclude such Proposal from consideration by the Authority and the Project Committee.

(i) Proponents who submit a Proposal may be required to give one or more oral presentations of their Proposal to the Project Committee.

(j) As further provided under Section 4.14 of this Regulation, Proponents, other than members of a consortium, will not discuss or communicate, directly or indirectly, with any other Proponents(s) or any director, officer, employee, consultant, advisor, agent, representative or team member of any other Proponent regarding the preparation, content or representation of their statements of qualifications under an RFP or Proposals. Statements of qualifications and Proposals will be submitted without any connection, knowledge, comparison of information, or arrangement, with any other prospective Proponent or any director, officer, employee, consultant, advisor, agent, representative or team member of any other prospective Proponent. By submitting a response to an RFQ or RFP, a Proponent, on its own behalf and as authorized agent of each firm, corporation or individual member of a consortium or the Proponent, 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 Proponents. The Authority retains the absolute discretion of disqualifying any Proponent or Proposal in respect to which the Authority has reasons to believe that there has been any collusion or fraud involved.

4.9 Submission of Alternative Proposals. Prior to the deadline for submitting proposals under the RFP, Proponents may submit an alternative technical or design concept in response to the RFP (an "Alternative Proposal"), provided it clearly explains the justification

behind providing separate or Alternative Proposals. A Proponent submitting an Alternative Proposal must continue to comply with the RFP in all respects, including submitting a Proposal in accordance with the Project requirements specified therein. In order for an Alternative Proposal to be considered by the Authority, it must comply with the following eligibility requirements:

(a) Alternative Proposal must integrate with, and must not conflict or be inconsistent with, the Project requirements outlined in the RFP.

(b) Alternative Proposal must not change the nature or purpose of the Project and must achieve the goals desired from the RFP.

(c) Alternative Proposal may not result in delays in the proposed Project timeline under the RFP.

(d) Alternative Proposal must demonstrate, in quantifiable terms, the savings and gains to the Authority in terms of time, cost or the allocation of economic risks, rights and remedies that would result from adopting such Alternative Proposal.

(e) Alternative Proposal must not require burdensome additional permits or authorizations that would not otherwise be required under the RFP.

For the avoidance of doubt, the Authority retains the right to reject any Alternative Proposal and it may exclude such Alternative Proposal from being considered if it does not comply with the requirements of this Section 4.9 and any other specification provided in the RFP.

4.10 Bidding Fee. A bidding fee will be determined by the Authority on a case by case basis and will be included in the RFQ and/or RFP for the proposed Project. Failure to pay the bidding fee shall suspend consideration of a Proposal. All fees shall be paid in the form

established by the Authority in the RFP. Costs and expenses incurred by Proponents in connection with participating in any RFQ and RFP processes, including to prepare and present their Proposals, negotiate the Contract and execute it, shall be the sole responsibility of each Proponent. The Authority shall not be responsible to reimburse or in any way compensate Proponents for such costs and expenses.

4.11 Modification of Proposals. The Project Committee will only accept a modification to a previously submitted Proposal if the modification is received before the due date specified in the RFP for such Proposal. All modifications will be in writing and will be executed and submitted in the same form and manner as the original Proposal in accordance with the terms of the RFP.

4.12 Cancellation of RFP. The Board upon recommendation of the Executive Director and the Project Committee, may cancel an RFP process at any time. If the Executive Director and the Project Committee recommend that the RFP be cancelled, they shall indicate the reason or reasons for such recommendation. The Authority then may conduct a new RFP or take any other action the Board deems appropriate upon recommendation of the Executive Director.

4.13 Communications with the Authority. The Proponents or their representatives shall not contact or communicate with the Authority or its representatives during any stage of an RFP process, including during the evaluation or the negotiation process, other than those representatives of the Authority that have been designated as Authorized Representatives pursuant to Section 5.1(c) of this Regulation, and only under the circumstances permitted in the RFP. Any Proponent (including any member of a consortium) that wishes to communicate with the Authority in connection with other matters unrelated to the RFP process must first receive the consent of the Project Committee. Communications by Proponents with the Authority that

compromise the integrity of the RFP process shall not be allowed and shall result in disqualification of such Proponents from the RFP process.

4.14 Non-Collusion Obligation. As required under Section 4.09(j) of this Regulation, Proponents in an RFP are prohibited from undertaking any activities of a collusive nature. Collusive activities include any consultations, communications or agreements among Proponents that aim to restrict competition or impact the Project price during the process. Proponents participating in the RFP will be required to execute non-disclosure agreements with the Authority and shall not be permitted to discuss among themselves the nature or contents of their Proposals or their communications and meetings with the Authority.

ARTICLE 5 EVALUATION AND SELECTION PROCESS

5.1 Evaluation Process. Unless otherwise specified in a particular RFP, the Project Committee will subject Proposals submitted under an RFP process to the following three-phase evaluation, selection and negotiation process, as applicable. All Proposals, evaluations, discussions and negotiations will be kept confidential throughout the evaluation, selection and negotiation process until the signing of the Contract, subject to the provisions of this Regulation:

(a) Phase One: Quality Control Review. The Project Committee will determine which Proposals passed the quality control review by satisfying the minimum requirements outlined in the RFP and this Regulation. Failure to meet the Evaluation Criteria and other conditions specified in an RFP or this Regulation shall constitute sufficient cause for failing the quality control review.

Each Proponent will be notified in writing by the Project Committee that its Proposal has either failed or passed the quality control review and whether it will be advanced to Phase Two. The Project Committee may extend the duration of the Phase One quality control

review, in its discretion, due to the volume of Proposals, the complexity of Proposals, the need for additional information, timely cooperation by the Proponents, or other reasonable circumstances. The Project Committee may reject Proposals that: (i) are incomplete; (ii) do not address the requirements of the RFP; or (iii) do not comply with the requirements of this Regulation. Proposal Security will be returned to those Proponents which Proposals are rejected in Phase One.

The Project Committee may, in its discretion, disregard any error or defect in the documents of any Proposal, as long as such matters can be corrected or clarified without prejudice to the Authority. The Project Committee may also reject any and all Proposals submitted in this Phase One, if deemed in the best interests of the Authority.

If only one Proposal is received, such Proposal may be considered and advanced to Phase Two if the Board, as recommended by the Project Committee and the Executive Director, determines that it is in the best interests of the Authority to do so.

(b) Phase Two: Project Committee Review and Recommendation.

The Project Committee will review and evaluate all Proposals that passed the quality control review. Consistent with the policy goals of transparency and accountability, the Project Committee will establish a publicly accessible anticipated schedule for the review of the Proposals and the negotiation of the Contract, if required. Moreover, at any time during Phase Two, the Project Committee may request additional information from a Proponent regarding its Proposal in order to assist the Project Committee in its review and evaluation of the Proposal. Based upon the review of the Proposals, the Project Committee will select one Proposal or may not select any Proposal. In the event the RFP calls for competitive negotiations, the Project Committee may select one or more Proposals. If none of the Proposals are selected

by the Project Committee, each Proponent who had advanced to Phase Two will be notified in writing and their Proposal Security returned.

If an RFP calls for a competitive negotiation process, the Project Committee will review and consider the Proposals based on the Evaluation Criteria to determine the ranking of each Proposal. Based on such ranking, the Project Committee will determine the Proposals that are within the Competitive Range. The Project Committee shall make recommendations to the Executive Director, and then, with his concurrence, jointly to the Board to, (A) carry out discussions and negotiations with more than one Proponent at the same time, whose Proposals are within the Competitive Range as contemplated in Section 5.1(c) below; or (B) negotiate with the one Proponent achieving the highest rank and, if unsuccessful, continue successive negotiations in strict order of ranking given to each Proposal, as contemplated in Section 5.1(d) of this Regulation. The Board, based on the Executive Director and Project Committee's joint recommendations, shall determine which approach the Project Committee will follow.

The Proponents whose Proposals do not fall within the Competitive Range, as defined in Section 2.9 of this Regulation, will be notified in writing and their Proposal Security returned.

(c) Phase Three (A): Negotiations with Multiple Proponents. If the Project Committee has elected to carry out discussions and negotiations with Proponents whose Proposals fall within the Competitive Range, such Proponents will receive a written notification containing the details and explaining that negotiations will be conducted according to the following procedures:

(i) No statement made or action taken by the Board, the Executive Director, the Project Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority during the discussions and negotiations will bind the Authority related to the particular RFP in any way. Only the Contract, when effective in accordance with its terms, will be binding on the Authority.

(ii) Each Proponent who falls within the Competitive Range may be invited to one or more meetings with the Authorized Representatives to discuss, and answer questions with respect to, any aspect of its Proposal.

(iii) The content and scope of each meeting with each Proponent will be determined by the Project Committee, based on the content of and circumstances relating to the Proponent's Proposal. The purpose of each meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; discuss the basis of the proposed economic terms in an effort to improve the economic terms for the Authority; and discuss any other pertinent details of the Proposal so as to result in a better Proposal and Contract for the Authority.

(iv) If any meetings are held with a Proponent who falls in the Competitive Range, then all Proponents who are within the Competitive Range will be given an opportunity to discuss and review their Proposals with the Authorized Representatives. The discussions, however, will be based on the facts and circumstances relating to each Proposal, as described in paragraph (ii) above. The information discussed in such meetings may vary for each Proponent.

(v) The Project Committee and the Executive Director, or others whom the Board may designate, will:

(1) Establish procedures and schedules to carry out the discussions and to control the meetings;

(2) Advise the Proponent as to deficiencies in its Proposal so that it is given the opportunity to meet the requirements of the Authority;

(3) Attempt to resolve any uncertainties concerning the Proposal, and otherwise clarify the terms and conditions of the Proposal;

(4) Address any suspected mistakes that may be found to exist;

(5) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions, or the opportunity to provide additional documentation or analysis to assist the Project Committee in assessing the feasibility of the Project and the Proponent's qualifications; and

(6) Keep a record of the date, time, place, and attendees of the meetings.

(vi) After each interview or meeting with any Proponent, the Project Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting within the timeframe discussed during the meeting.

(vii) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Project Committee.

(viii) After such discussions and parallel negotiations, the Project Committee may, in its discretion, request “best and final offers” from Proponents within the Competitive Range in response to the discussions and negotiations held or proceed to negotiations with one of the Proponents within the Competitive Range which may culminate in an Award of Contract.

(ix) If the Project Committee determines to conduct a “best and final offer” process, additional discussions or negotiations may be conducted after the Project Committee receives the “best and final offer,” if the Project Committee determines, in its discretion, that such additional discussions or negotiations are in the Authority’s best interest to improve any previous Proposal or Proposals. As part of such discussions, the Project Committee may request a further resubmission of Proposals or, if no improvement or more beneficial terms are obtained for the Authority, the Project Committee may proceed to negotiate with the Proponent who submitted the highest ranking Proposal pursuant to the process established in Section 5.1(d) below.

(d) Phase Three (B): Negotiations with Highest Ranking Proponent. If the Project Committee elects to carry out discussions and negotiations with the Proponent whose Proposal received the highest rank, the Project Committee will notify in writing the Proponents of the Proposals which fall within the Competitive Range but were not the highest ranking Proponent or failed to provide a better Proposal after the Project Committee conducted negotiations with multiple Proponents under Section 5.1(c) above, that negotiations will be conducted with the highest ranking Proponent. The highest ranking Proponents will receive a written notification containing the details and explaining that negotiations will be conducted according to the following procedures:

(i) No statement made or action taken by the Board, the Project Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority or of the Project Committee during the discussions and negotiations will bind the Authority or the Project Committee in any way. Only the Contract, when effective in accordance with its terms, will be binding on the Authority. The Proponent may not contact or communicate with the Authority, its representatives or the Energy Commission, other than with Authorized Representatives during the negotiation process and only as provided in this Regulation and in any specific instructions provided by the Project Committee.

(ii) The Proponent with the highest ranking which falls within the Competitive Range will be invited to one or more meetings with the Authorized Representatives to discuss, and answer questions with respect to, any aspect of its Proposal.

(iii) The content and scope of the meetings with the Proponent will be determined by the Project Committee, based on the content of and circumstances relating to the Proponent's Proposal. The purpose of such meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; discuss the basis of the proposed economic terms in an effort to improve the economic terms for the Authority; and discuss any other pertinent details of the Proposal so as to result in a better Proposal and Contract for the Authority.

(iv) The Project Committee and the Executive Director, or others whom the Board may designate, will:

(1) Establish procedures and schedules to carry out the discussions and to control the meetings;

(2) Advise the Proponent as to deficiencies in its Proposal so that it is given an opportunity to meet the requirements of the Authority;

(3) Attempt to resolve any uncertainties concerning the Proposal, and otherwise clarify the terms and conditions of the Proposal;

(4) Address any suspected mistakes that may be found to exist;

(5) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions, or the opportunity to provide additional documentation or analysis to assist the Project Committee in assessing the feasibility of the Project and the Proponent's qualifications; and

(6) Keep a record of the date, time, place, and attendees of the meetings.

(v) After each interview or meeting with the Proponent, the Project Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting.

(vi) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Project Committee.

(vii) Additional discussions or negotiations may be conducted after the Authority receives a revised Proposal. If negotiations are not successful the Project Committee

may at any time discontinue further negotiations and discussions with any Proponent, and may commence negotiations with the next highest ranking Proponent as described in this section.

(e) Subject to the Authority's right to reject any or all Proposals and subject to the Energy Commission approval of the final Contract to be negotiated, the Authority will select the Proposal considered most advantageous to it, considering the Evaluation Criteria.

(f) Prior to the Award of a Contract, information related to Proposal or its evaluation will not be discussed with anyone other than the Proponent who submitted it and personnel involved in the evaluation and selection process.

(g) The RFP evaluation process will last no more than ninety (90) days, unless circumstances outside the control of the Project Committee require such process to be extended.

(h) Proposals will be evaluated on both price or cost criteria, such as price or service fee, and relevant system upgrade costs (when applicable), as well as non-price terms such as Proponent experience constructing and operating similar facilities, project risks and proposed risk mitigation measures, and other pertinent criteria. Proposals will also be evaluated by the degree to which they conform to the requirements established in the standard form of contracts included as part of the RFP.

(i) The respective scoring system of all Evaluation Criteria should be clearly defined in the RFP.

5.2 Amendment to Procurement Process. Nothing in this Regulation shall limit the Authority's power to amend the procurement process set forth herein pursuant to an amendment to this Regulation or to modify it in connection with a particular RFP in the manner set forth in such RFP to the extent not in conflict with the Acts and other applicable law.

ARTICLE 6 SELECTION OF PROPONENTS

6.1 Disqualifying Events. The Project Committee shall treat as ineligible and shall not select a Proponent in accordance with this Regulation if it comes to the attention and knowledge of the Project Committee, after a Proponent has been qualified, that the Proponent or any affiliated Person has been convicted of any of the offenses set forth in Act 458-2000, as amended. Any Person by virtue of its participation in an RFQ or RFP process, authorizes the Authority to apply to the relevant competent governmental authority to obtain further information regarding the prospective Proponent or Proponent and in particular, details of convictions of the offenses listed in Act 428-2004.

6.2 Other Grounds for Disqualification. The Project Committee may treat a Proponent as ineligible, or decide not to select such Proponent or approve an Award of Contract to such Proponent on one or more of the following grounds, namely that such Proponent (or any of its members in the case of a consortium):

(a) is bankrupt or insolvent, or shall have made a general assignment for the benefit of its creditors, or any proceeding shall have been instituted by or against it seeking to adjudicate it bankrupt or insolvent, or seeking liquidation or winding up, protection, composition of its debts or any similar relief under any law relating to bankruptcy, insolvency or reorganization or relief of debtors;

(b) makes a formal, public announcement that it is unable to or intends not to pay its debts and obligations as they become due;

(c) has been convicted or has pled guilty in Puerto Rico or in any jurisdiction within the United States or foreign jurisdictions, of any of the criminal offenses set forth in Act 428-2004, including not only the Proponent's but the Proponent's and the respective consortium

member's President(s), Vice-president(s), executive director(s) or chief executive officer(s), managing member(s), member(s) of the board(s) of directors, or persons occupying equivalent positions, as required under Act No. 56-2014.

(d) has not fulfilled its obligations relating to the payment of taxes under the laws of the Commonwealth or the relevant jurisdiction in which it maintains its principal operations; or

(e) has engaged in collusive acts or is guilty of serious misrepresentation in any information provided to the Authority or the Project Committee or otherwise provided to comply with this Regulation;

(f) has experienced a material change in the nature of its business or its financial condition since qualifying to participate in the RFP;

(g) fails to comply with any substantive requirement of the RFP; or

(h) is otherwise in material breach of this Regulation.

6.3 Information as to Financial Condition. In assessing whether a prospective Proponent or Proponent meets any minimum standards of financial condition required by the Project Committee for the purpose of Section 4.4 of this Regulation and in selecting the Proponents under an RFQ or an RFP, the Authority may take into account any of the following information:

(a) appropriate statements from the principal bank(s) of the Proponent;

(b) financial statements for the previous three fiscal years; and

(c) any other information acceptable to the Authority that would allow the Proponent to demonstrate its financial condition.

The Project Committee shall specify in the RFQ, the RFP or any other notice or invitation for a proposal, the financial information which the Proponent must provide to comply with the applicable minimum standards of financial condition.

ARTICLE 7 CONTRACT AWARD

7.1 Approval of the Contract; Preparation of Report

(a) Upon completion of the negotiation for the Contract, the Project Committee shall prepare a report, which shall include the reasons for entering into the Contract, the reasons for selecting the chosen Proponent, a description of the procedure followed, including comparisons between the favored Proponent and other proposals presented, an explanation of how the pricing terms included in the Contract comply with the parameters established in the RFP and previously approved by the Energy Commission, as well as all other information pertinent to the procedure followed and the evaluation conducted. The report should detail the evaluation by the Project Committee of each of the steps in the competitive procurement process, including Proponents qualifications, Proposals evaluations, and selection of a final shortlist, as well as, its assessment regarding whether the process was conducted fairly and transparently.

(b) The report and the proposed Contract as negotiated shall be presented for the approval of the Executive Director and the Board not later than thirty (30) days after completion of the negotiation of the Contract, or such longer period approved by the Board. The Board shall have the option to reject or accept the proposed Contract or require it to be further negotiated with the Proponent.

(c) Should the Board reject the Contract, the Authority may choose to continue negotiating with the favored Proponent if the Board reasonably determines that

continuing to negotiate with the Proponent may result in curing the grounds for rejecting the Contract. If an agreement cannot be reached within a reasonable period as determined by the Board, the Authority may begin negotiations with the second best and subsequent Proponent or Proponents from the list of evaluated Proposals, if the Project Committee, in its reasonable judgment, and as approved by the Board, determines that such second-best Proposal or Proposals, as they may be further improved through the negotiation process, present sufficient benefits to justify continuing with the negotiations under the RFP process at hand.

(d) If the Board approves the proposed Contract, a copy of the report, along with the proposed Contract, shall be submitted to the Energy Commission for their evaluation. The Commission shall have the authority to review the terms of the Contract to ensure compliance with the previously approved terms of the RFP and the form of Contract that was included in such RFP. The Energy Commission will also confirm that changes in the scope of the Project, if any, do not render it inconsistent with the IRP. In order to help in the analysis to be conducted by the Energy Commission of the terms of the Contract, the Project Committee will prepare an analysis of its estimate of the potential range of Project profit margins and price escalators on the Proponent's project and compare it to industry benchmarks. The report submitted by the Project Committee shall include a detailed financial analysis which shall demonstrate the profitability ranges based on actual contractual terms and capital cost, operating cost, fuel, and other industry benchmarks. The Energy Commission may ask for additional supporting information to make its evaluation, which requested information shall be submitted to the Authority within ten (10) days from receipt of the request for approval of the Contract. The Energy Commission shall complete its evaluation process of such Contract in a period of not more than thirty (30) days, from the date in which the report and proposed Contract formally

submitted, or, if additional information is requested, from the date in which such information is provided. Should the Commission fail to issue a written response prior to said thirty (30) days, the proposed Contract shall be deemed to have been approved by the Commission. If after its evaluation, the Energy Commission rejects the changes made to the model Contract during the negotiation with the selected Proponent, or if it determines that the changes, if any, in the scope of the Project have rendered it inconsistent with the IRP, the Energy Commission will state the grounds for the rejection of the Contract and will provide opportunity to the Project Committee for further negotiation of the terms of said Contract in order for it to address the issues noted by the Energy Commission. Should the Energy Commission require the selected Proponent to submit actual costs and profitability information, it shall directly require such information from such Proponent on a confidential basis in accordance with the Acts and confidentiality processes and procedures established by the Energy Commission. Once PREPA has reached a new agreement, the process of approval of such Contract will begin as provided in this Section 7.1.

(e) If each of the Board and the Energy Commission approve the Contract, the Authority shall give written notice of such approvals and a final award notification to the selected Proponent. The Authority shall also notify all other Proponents that their proposals have not been accepted, disclose the identity of the Proponent thus selected and indicate to the Proponents that they shall have access to the Authority record that pertains to the selection procedure and the Award of the Contract.

7.2 Award of Contract; Cancellation.

(a) Once the Project Committee has selected a Proposal, the Project Committee and the Proponent have finalized the negotiation of the Contract, the Contract has been approved by the Board and the Energy Commission as provided in Section 7.1 above, and

notifications to all Proponents have been issued, the Contract may be executed as provided in Section 7.3 below.

(b) After a Contract is approved by the Energy Commission, the Board may cancel the Award of the Contract at any time before the Contract is signed by the Authority and the Proponent, without recourse or liability to the Authority, the Board, the Project Committee, any Authorized Representative, or any of their agents and advisors, provided the Energy Commission approves such cancellation. The Authority shall provide the Energy Commission a detailed written explanation of the basis for the Board's decision to proceed with the cancellation of the Contract.

(c) Once approved by the Energy Commission, and before the Contract is executed, the terms of an approved Contract or the scope of the Project cannot be modified without prior approval by the Energy Commission.

7.3 Execution of the Contract. Upon the Award of Contract, the Proponent will execute the Contract, after submitting any required security specified in the RFP to guarantee the Proponent's performance of the Contract and any evidence of insurance requested, and carry out all other actions established as requirements of the Contract's execution within the time period established by the Authority. The Contract shall not be enforceable or effective until it has been completed and approved, and signed by all parties. If the Selected Proponent does not execute the Contract or does not comply with any requirement for such execution within the time limit specified by the Authority, the Authority may, in its discretion, extend the deadline for execution of the Contract, or renegotiate the Contract with the next highest ranking Proposal, on terms and conditions no less favorable as a whole to the Authority (after taking into account any change in

the general conditions at the time of renegotiation), if the Authority and the Project Committee determine that such award is in the best interests of the Authority.

7.4 Contract Content. In addition of the requirement that the Contract shall reflect acceptable profit margin and pricing escalator terms in accordance with the Energy Commission approved parameters, the Contract shall also comply with the following:

(a) Required Terms and Conditions. — A Contract executed under the provisions of this Regulation shall contain, insofar as applicable, provisions concerning:

(i) A definition and description of the Project to be developed by the selected Proponent;

(ii) in the case of new facilities or repairs, replacements or improvements to existing facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation or administration of the facility;

(iii) the term;

(iv) the contractual rights and the mechanisms available to the Authority to ensure compliance by the selected Proponent with the conditions of the Contract, including but not limited to compliance with the Project specifications, quality standards, adequate maintenance of the facility, if applicable, or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the Proponent with its obligations under the Contract;

(v) In the case of Contracts whereby the Proponent shall charge fees to the Authority for rendering a service or providing energy: (A) the right that the selected Proponent shall have, if any, to charge and adjust fees or pricing for rendering such goods or

services, (B) the contractual limitations and conditions with which the Proponent must comply in order to alter or modify such fees or charges, and (C) the mechanisms available to the Authority to ensure that the Proponent complies with such limitations and conditions. It may also be provided that the adjustments in prices or charges may be computed (1) on the basis of fixed adjustment amounts previously agreed in the Contract or (2) by price units as specified in the Contract or (3) on the basis of costs that are attributable to the circumstances which have led to the adjustment as provided for in the Contract or (4) in such other way as the Authority and the selected Proponent mutually agree, provided however that any pricing and adjustment mechanism agreed shall be within the boundaries of the pricing and escalator parameters approved by the Energy Commission.

(vi) The obligation to comply with applicable federal and local laws;

(vii) The causes for terminating the Contract, as well as the rights and remedies available in cases of the noncompliance or the delay in the compliance of obligations under the Contract by both the Authority and the selected Proponent; provided, that the Authority shall not be responsible for unforeseeable, special, indirect or punitive damages;

(viii) Non-binding informal proceedings to hear allegations by the parties as to breach or interpretation of contract, which proceeding may provide for the Executive Director or his or her delegates, and the equivalent officer(s) of the contractor, or the delegates thereof, to meet to discuss their discrepancies and try to settle these before resorting to such formal methods for the settlement of disputes as they may have agreed;

(ix) The procedures and rules for amending or assigning the Contract, providing that any amendment to the economic and technical terms of the Contract or the scope of the Project, must be approved by the Energy Commission;

(x) The rights concerning inspections by the Authority or any independent engineer of the parties or the creditors of the project for the building or repair of or improvements to the Project facility, as well as the operational compliance under the terms and conditions agreed to under the Contract;

(xi) The requirements for obtaining and maintaining all such insurance policies as required by law and such other additional policies as the Authority, in its judgment, deems to be necessary for the Contract;

(xii) The requirement for the selected Proponent to periodically file audited financial statements with the Authority or with such other entity as the parties may agree;

(xiii) The requirement for the selected Proponent to file such other report in connection with the Contract as may be requested by the Authority;

(xiv) The circumstances under which the Contract may be modified in order to maintain a financial balance between the parties, as well as the provisions on noncompliance and the remedies allowed in such cases, including the imposition of penalties, fines and such other circumstances as the parties may agree under the Contract. The Contract shall likewise contain a provision on sanctions for breach thereof and shall include the required statutory clauses, including that the contractor shall be subject to the provisions of Act No. 84 of June 18, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No. 458 of December 29, 2000, as amended, and that the provisions of the Contract cannot be demanded until the Contract has been recorded at the Commonwealth of Puerto Rico Comptroller's Office, as required by Public Law 18, October 30, 1975, as amended, and regulation thereunder;

(xv) The terms and conditions related to the transfer of the goods or services object of the Contract, and the transition duties related thereto, once said Contract has been terminated or expired;

(xvi) The kind of bond or security to ensure compliance with the Contract;

(xvii) A provision establishing that the Contract shall be governed by the laws of the Commonwealth of Puerto Rico;

(xviii) Any provision required by law or agreed by the parties to protect the best interests of Authority, the Commonwealth of Puerto Rico and the clients.

(b) Assignment of Contract. All clauses, conditions and laws that govern Contracts shall be binding and enforceable for all parties through the term of the Contract. Therefore, without prejudice to any transfer or change of control restrictions specified in the Contract, any change or transfer of the rights of a contractor to a third party with respect to the rights of the contractor shall make this third party a successor contractor that shall have the same responsibilities and benefits of the original contractor and that shall comply with the requirement of a qualified selected Proponent. Any permitted change in contractor shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Contract. If a successor contractor that is permitted under the terms of the Contract requests a change in the Contract, it shall be submitted to and approved by the Board and the Energy Commission to the extent that it impacts pricing or adjustments to the escalator or the scope of the Project.

(c) Additional Terms and Conditions. — A Contract executed under provisions of this Regulation shall also provide for the following:

(i) A clause through which each contracting party makes a commitment to defend and indemnify the other party for any claim caused by its own negligent acts or omission;

(ii) Subject to the limitations of Section 7.4(a)(viii) of this Regulation, damages as applicable under certain circumstances, such as payable specific or liquid damages in cases of termination without just cause or delays in completing the Project, as applicable;

(iii) Provisions on extensions to the Contract within the limits allowed under this Regulation;

(iv) Provisions on compliance with applicable laws, norms and regulations that are applicable to the contractor and to activities object of the Contract, including a requirement and conditions that contractor shall at all times comply with provisions applicable to it as an Electric Power Company or Electric Power Generation Company, as such terms are defined in Act 57-2014; and

(v) Any other term or condition as the Project Committee may deem appropriate.

(d) (d)Term of Contract.—The term of a Contract executed under this Act shall be that which the Authority deems shall serve the best interests of the People of Puerto Rico.

ARTICLE 8 RECONSIDERATION AND REVIEW

8.1 Reconsideration by the Authority; Judicial Review. Proponents shall be entitled to request the Authority, in writing, to reconsider its determination of the final awarding of a Contract in accordance with administrative law. The Authority shall notify of such reconsideration and subsequent judicial review rights in the notifications it sends to Proponents.

The reconsideration and judicial review shall follow applicable administrative legal provisions contemplated for such processes.

**ARTICLE 9 APPROVAL BY THE ENERGY COMMISSION OF CONTRACT
APPROVED BY THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY UNDER ACT
29-2009 AND SECTION 6C OF ACT 83 OF MAY 2, 1941, AS AMENDED**

9.1 If for the procurement of a project the Authority determines that the process and scope of this Regulation is not adequate, the Authority has the option of submitting to the Public Private Partnership Authority (“PPP Authority”) the contemplated project to be procured following the process of Act 29-2009 as modified by Section 6C of Act 83 of May 2, 1941, as amended (“Act 29”). Prior to submitting such contemplated project, the Authority shall obtain the approval of the Energy Commission with respect to the scope of the project and its consistency with the IRP, the Acts and other laws and regulations related to procurement processes by the PPP Authority and the powers of the Energy Commission. To the extent feasible and available at this stage, the Authority shall also propose to the Energy Commission for approval, a range of profit margin and price escalator parameters in connection with such project. The Energy Commission shall ensure that the Proposed project and contract terms, if available, are consistent with the IRP. If the proposed profit margins and pricing escalators parameters are available and presented to the Energy Commission, the Commission shall also ensure that they are acceptable to the Commission. The process for the evaluation and approval of the Commission shall follow the process set forth in Section 4.2 of this Regulation.

9.2 Once submitted to the PPP Authority, this Regulation shall not apply, but the final Contract negotiated and approved pursuant to such Act 29 process shall be submitted to the Energy Commission for verification and determination that its terms, and any change to the

scope of the Project, if any, do not render it inconsistent with the IRP and that the profit margin and price escalators in the Contract comply with the parameters previously approved by the Energy Commission or, if not previously presented to and approved by the Energy Commission, are otherwise acceptable to the Energy Commission.

ARTICLE 10 MISCELLANEOUS

10.1 Computation of Periods. Where an action is required to be taken under this Regulation or the Act: (a) within a certain period after an action is taken, the day on which that action is taken shall not be counted in the calculation of that period; (b) within a certain period, that period must include at least two business days; and (c) within a certain period and the last day of that period is not a business day, the period shall be extended to include the next business day.

10.2 Confidentiality. All Proposals submitted to the Authority shall become the property of the Authority, except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent. Proponents are advised to familiarize themselves with the confidentiality and publication provisions under Puerto Rico Law to ensure that documents identified by Proponents as “confidential” or “proprietary” will not be subject to disclosure. If a Proponent has special concerns about confidential or proprietary information that it would desire to make available to the Authority or the Project Committee, prior to submission of its Proposal, such Proponent may wish to: (i) make a written request to the Authority for a meeting to specify and justify proposed confidential or proprietary documents; (ii) make oral presentation to the Project Committee’s staff and legal counsel; and (iii) receive written notification from the Project Committee accepting or rejecting confidentiality requests. Failure to take such precautions prior to

submission of a Proposal may subject confidential or proprietary information to disclosure under the Acts.

The Authority will endeavor to maintain the confidentiality of any information that a Proponent indicates to be, and the Authority agrees is, 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 Authority shall determine whether or not information and materials provided by a Proponent are exempt from disclosure.

Once the Contract has been executed, the Authority shall make public the report of the Project Committee which shall contain the information related to the procurement, evaluation, scoring, selection and negotiation process, and the information contained in the Proposal as required by law, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order, in each case, if the Authority determines that the protection of such information is appropriate. In no event shall the Commonwealth or the Authority be liable to a Proponent for the disclosure required by law or a court order of all or a portion of a Proposal submitted to the Authority.

Each member of the Project Committee, the Board and the Energy Commission engaging in a Project procurement process that is associated with reviewing or selecting the submitted Proposals or final approval may have access to privileged and confidential information. Misuse of this confidential information would be a breach of the fiduciary responsibility that each team member has with the Project Committee and the Authority. In an effort to maintain the highest levels of confidence and trust in the procurement process, the participants from the public and

the private sectors must be aware of their responsibilities to the public and remain vigilant of any misuse of confidential, non-public information.

10.3 Intent. This regulation is intended to provide flexible procedures and, accordingly, it shall be interpreted liberally so as to effectuate that intent and its purposes.

10.4 Severability. If any word, sentence, section, paragraph or article of this Regulation is declared unconstitutional or void by a court of law, such declaration will not affect, impair or annul any of the remaining provisions and parts of this Regulation, and its effect will be limited to the specific word, sentence, section, paragraph or article declared unconstitutional or void. The invalidity or nullity of any word, sentence, section, paragraph or article in any instance will not be construed to affect or impair in any way its applicability or validity in any other instance.

10.5 Tax Advantaged Bonds. The generation fleet and other resources of the Authority includes assets that have been or will be financed or refinanced in whole or in part with the proceeds of bonds the interest on which is excluded from gross income for federal income tax purposes and bonds the interest on which is taxable but for which the Authority has and will receive a direct federal subsidy equal to a percentage of each interest payment on such bonds (the "Tax Advantaged Bonds"). The United States Internal Revenue Code and the regulations promulgated thereunder set forth requirements that must be satisfied when the Tax Advantaged Bonds are issued and as long as such bonds remain outstanding in order to retain its tax advantaged status. The Project Committee shall ascertain whether any Project, Proposal, or Alternative Proposals includes assets that have been or will be financed or refinanced with the proceeds of any Tax Advantaged Bonds and, as part of its RFP and evaluation process, consider what actions, if any, may be required to maintain the tax advantaged status of such bonds.

10.6 Effective Date. This regulation was approved by the Board of Directors of the Puerto Rico Electric Power Authority on August 12, 2016 and by the Puerto Rico Energy Commission on September 1, 2016.

**PUERTO RICO ELECTRIC POWER
AUTHORITY**



By: **Javier Quintana**
Executive Director

PUERTO RICO ENERGY COMMISSION



By: **Agustín F Carbó Lugo**
Chairman



By: **Ángel R. Rivera de la Cruz**
Associate Commissioner



By: **José H. Román Morales**
Associate Commissioner