

**ESTADO LIBRE ASOCIADO DE PUERTO RICO
COMISIÓN DE ENERGÍA DE PUERTO RICO**

SECRETARIA
COMISION DE ENERGIA DE
PUERTO RICO

'18 AGO 16 P1 50

IN RE: REQUERIMIENTO DE
PRPPUESTAS PARA LA CONVERSION A
GAS NATURAL DE LAS UNIDADES 5 Y 6
DE SAN JUAN

ORDEN NÚM.: CEPR-AI-2018-0001

ASUNTO: Requerimiento de Información

MOCIÓN EN CUMPLIMIENTO DE ORDEN

A LA HONORABLE COMISIÓN:

Comparece la Autoridad de Energía Eléctrica (Autoridad), ante esta honorable Comisión para atender su Orden de 14 de agosto de 2018, en caso de epígrafe.

La Autoridad acompaña con esta moción los documentos que tiene disponible luego de una coordinación y búsqueda rápida.

La Autoridad entiende que está presentando todos los documentos solicitados en la Orden de esta Comisión. No obstante, en el caso de que advenga en conocimiento de algún documento adicional a los presentados, lo notificará de inmediato a la Comisión de conformidad con lo dispuesto en su Orden.

EN ATENCION A LO ANTERIOR, solicitamos muy respetuosamente a esta Honorable Comisión que tome conocimiento de la presentación de los documentos o información indicados.

RESPETUOSAMENTE SOMETIDO en San Juan, Puerto Rico, hoy 16 de agosto de 2018.

Certifico haber presentado este escrito en el día de hoy ante la Secretaría de la Comisión de Energía de Puerto Rico y de haber enviado copia electrónica a: secretaria@energia.pr.gov; mcintron@energia.pr.gov; y a la Oficina del Asesor Legal a: legal@energia.pr.gov y sugarte@energia.pr.gov.



Lcda. Nitza D. Vázquez Rodríguez

TSPR 9311

Abogada Senior

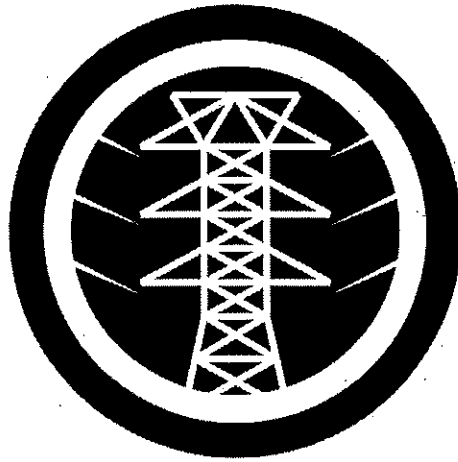
AUTORIDAD DE ENERGÍA ELÉCTRICA

Apartado 363928

San Juan, Puerto Rico 00936-3928

Teléfono 787-521-4499

E-mail: nitza.vazquez@prepa.com



RFP 81412

**REQUEST FOR PROPOSALS
FOR
Fuel Supply in the North and Conversion of San Juan Units 5 and 6**

Issued by the Puerto Rico Electric Power Authority

Date Initial RFP Issued: July 30, 2018

Proposals Due Date: September 11, 2018 at 11:59 p.m. AST

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1.0 Purpose and Intent

This Request for Proposals (RFP) is issued by the Puerto Rico Electric Power Authority (PREPA). The purpose of this RFP is to solicit proposals from interested qualified firms which can provide LNG fuel supply in the North and LNG fuel conversion of San Juan Units 5 and 6.

The intent of this RFP is to award one contract for LNG fuel supply, or any other proposed fuel, in the north and for fuel conversion of San Juan Units 5 and 6. Award of contract will be to those qualified firms whose proposal, conforming to this RFP, is most advantageous to PREPA, the price and other factors will also be considered therein. Qualified firms shall possess all required Federal and Government licensing. Section 2.0 of this RFP has a detailed description of the scope of services.

1.1 Puerto Rico Electric Power Authority

The Puerto Rico Electric Power Authority (PREPA), is a public corporation and governmental entity of the Commonwealth of Puerto Rico, created pursuant Law 83 of May 2, 1941, as amended, with the duty of providing electric power in a reliable manner, contributing to the general welfare and the sustainable future of Puerto Rico, PREPA is tasked with maximizing benefits while minimizing the social, environmental and economic impacts.

PREPA is a government-owned company, property of the Commonwealth of Puerto Rico, and is empowered to make contracts, sell / buy assets and real estate, borrow money and issue bonds. PREPA is also responsible for the establishment of an appropriate rate structure for its services.

PREPA's Objectives:

- Reduce energy cost
- Promote smart energy consumption
- Protect the environment

Strategies to Achieve these Objectives:

- Reduce operating expenses
- Increase efficiency
- Minimize Energy Theft
- Diversify Energy Sources
- Establish Smart Grid for energy control and consumption monitoring
- Maximize use of advanced technology
- Increase access to clean sources of energy

1.2 Contract Term

This contract will be for a base period of Five (5) years with three (3) separate options of five (5) year extensions at PREPA's sole discretion. The capacity payment for capital cost of conversion

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to LNG of the San Juan Units 5 and 6 will only apply to the Base period and will not apply to any extensions.

1.3 Proposal Submission

The Bidder shall submit its Proposal through the Submittals tab of the RFP 81412 event on the PowerAdvocate© Platform.

Questions or comments shall be submitted by 11:59 p.m. AST, August 21, 2018 via PowerAdvocate© through the Messaging Tab of the event 81412.

PREPA's designated Procurement Representatives for this RFP are:

Delis T. Zambrana
Natalia Martínez Lugo

Verbal questions will NOT be accepted. Requests for clarifications will be answered by posting answers via PowerAdvocate© through the Download Documents Tab or Messaging Tap; accordingly, questions should NOT contain proprietary information, as answers may be published in the public domain. Please note that PREPA does not guarantee answers for all questions or comments received.

It is the sole responsibility of the potential proponent to monitor this site for additional information, updates and addenda concerning the RFP.

All RFP submissions, inclusive of the pricing, discounts and other requested details are to be submitted via PowerAdvocate© on or before 11:59 pm AST, September 11, 2018.

All Proponents are expected to submit a redacted copy of their proposal in the *PREPA's Supplier Registry Office* as required in Section 5.0 Confidentiality of Responses and Proprietary Information to the following address:

Postal Address:
Puerto Rico Electric Power Authority
Supplier Registry Office
PO Box 3670151
San Juan, Puerto Rico 00936

or

Physical Address:
Supplier Registry Office
Ponce de Leon Avenue
Third Floor Office 301
Building NEOS #1110, Santurce, PR

The PowerAdvocate guide is included as part of this event. For technical assistance with the sourcing platform application please contact PowerAdvocate technical support: (857) 453-5800 or via email at: support@poweradvocate.com

1.4 Prohibited Communications, Expenses, and Rejections

Communications with other representatives of PREPA or relevant entities of the Federal Government regarding any matter related to the contents of this RFP are prohibited during the submission and selection processes. Failure to comply with these communications restrictions will result in rejection of the firm's proposal.

Neither PREPA, the Government of Puerto Rico nor any of its instrumentalities, will be responsible for any expenses in the preparation and/or presentation of the proposals, oral interviews or disclosure of any information or material received in connection with this RFP.

PREPA reserves the right to reject any and all proposals received in response to this RFP, when determined to be PREPA's best interest, and to waive minor noncompliance in a proposal. PREPA further reserves the right to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any and all firms submitting proposals in response to this RFP. The mere appearance of a conflict of interest shall constitute sufficient cause for the outright rejection of a proposal(s). In the event that any or all proposals are rejected, PREPA reserve the right to re-solicit proposals.

1.5 Local Participation

PREPA encourages Proponents to engage local subcontractors, professionals and relevant service providers headquartered in Puerto Rico ("Local Parties") as Team Members and Key Individuals to the greatest extent possible.

Proponents are strongly encouraged as part of this RFP to provide descriptions of their current and/or anticipated business arrangements with Local Parties and, in particular, Local Parties who are Team Members and Key Individuals for the Project, as applicable.

1.6 RFP Timeline

Key Review Process Events	Targeted Timeline
Request for Proposal Issued	July 30, 2018
RFP Kick-off Meeting	August 6, 2018
Visit to the Job Site	August 7, 2018
Supplier Questions Deadline	August 21, 2018
Questions Answered	August 30, 2018
RFP Proposal Submission Deadline	September 11, 2018
RFP Short List Announcement*	September 28, 2018

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Key Review Process Events	Targeted Timeline
RFP Short List Requests for Clarifications, Presentations, Updated Proposals and Negotiation Process Begins*	October 8-9, 2018
Evaluate Proposals and Conduct Supplier Final Negotiations*	October 10-29, 2018
Selection Notification*	November 5, 2018

*At PREPA's discretion

Please note that the RFP timeline includes target dates that may change. It is the responsibility of Proponents to periodically review the PowerAdvocate website for updates to the RFP timeline and other important information. Any changes or modifications to the RFP terms, conditions or specification will be made through addenda posted on PowerAdvocate.

1.7 Definitions/Acronyms

“Battery Limits” for this RFP means a flange in PREPA's San Juan Power Plant facilities' limits.

“Contractor” or **“Selected Proponent”** means a bidder or proponent awarded a contract resulting from this RFP.

“DOJ” means the United States Department of Justice.

“Chief Executive Officer” refers to the CEO of the Puerto Rico Electric Power Authority.

“Evaluation Committee” refers to a committee designated by PREPA's Chief Executive Officer, which will evaluate all complete proposals pursuant to the criteria listed in Section 3.0 of this RFP.

“Federal Agency” means any of the departments of the Executive Branch of the Government of the United States of America, or any department, corporation, agency or instrumentality created or which may be created, designated or established by the United States of America.

“Final Acceptance” means – the written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.

“Government Entity”, refers to any department, agency, board, commission, body, bureau, office, public corporation or instrumentality of the Executive Branch of the Government Entity, whether existing or to be created in the future.

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“Key Individuals” means an individual who will play an important role in the engagement or contract on behalf of a Team Member resulting from this RFP.

“LNG” means Liquefied Natural Gas

“Local Parties” means local subcontractors or professionals (which may include architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence in Puerto Rico.

“PREPA” means the Puerto Rico Electric Power Authority.

“Proponent” means a(n) (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this RFP that is not currently debarred.

“Public Interest” means any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.

“RFP” means this Request for Proposals and addenda issued by PREPA.

“Team Member” means a member of a Proponent. Team Members should be identified in Proponent’ submissions and not be changed without the consent of PREPA.

“Units 5 and 6” means the combined cycle generating units located at the San Juan Power Plant. Units 5 and 6 have a rated capacity of approximately 400 MW in total.

2.0 Scope of Services

The Puerto Rico Electric Power Authority (PREPA) electric generating fleet is old and in various states of disrepair. Because the majority of the power generation in Puerto Rico is on the South side of the Island and a majority of the load is on the North Side of the Island in the San Juan area, reliable and economic generation is needed in the north. This became especially critical following the 2017 hurricanes when much of the transmission capability from south to north was destroyed.

PREPA is interested in reducing the cost of generation and improving the compliance with environmental requirements for units required to reliably operate at base load in the San Juan area. One alternative being considered by PREPA is to seek suppliers for an alternate fuel supply to the newer, existing and more efficient combined cycle units at the San Juan generating station (San Juan Units 5 and 6). While the Units 5 and 6 are currently only capable of burning #2 Fuel Oil, PREPA will consider converting these units to an alternative fuel if the cost savings associated with the lower cost fuel supply justifies the power plant conversion modification expenditures.

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Depending on the exact heat rate of modified units and assuming an 85% capacity factor, it is estimated that the total annual fuel requirements for the converted San Juan Units 5 and 6 would be approximately 25,000,000 MMBTU/year, or 25 TBTU/year.

PREPA is requesting all-inclusive, turnkey proposals to furnish, install, connect, deliver and operate a safe, stable, and reliable fuel supply system to the San Juan Units 5 and 6 combustion turbine combined cycle power generating plant; to supply the fuel gas for five years to the power generating plant; and to perform all work, including but not limited to: engineering/design, environmental permit support, equipment/materials supply, construction and commissioning, as required for the conversion of San Juan Units 5 and 6 to firing fuel gas. The fuel gas supply shall be liquefied natural gas (LNG) with an annual available quantity of at least 25 TBTU/year (alternative fuels can be proposed provided the original combustion turbine equipment manufacturer Mitsubishi can confirm the units can safely and reliably upon being converted to the proposed alternate fuel and that can be cleared by PREPA on a risk assessment).

I. Introduction

The LNG fuel gas supply facility shall be designed to bring natural gas quickly and safely to the combustor inlets of the San Juan 5 and 6 combustion turbines. It is expected that the proposed fuel gas supply and conversion project will be accomplished expeditiously by installing new, readily available, modular-construction harbor terminal fuel gas supply infrastructure which will support full load operation of the San Juan 5 and 6 Plant preferably by the first quarter of 2019.

Contractor shall supply the following:

- Land property necessary for fuel unloading, storage and handling facility
- All necessary permits and licenses to operate including but not limited to U.S. Coast Guard authorization, as required. As part of its proposal, Bidder must be able to demonstrate a clear path for achieving approval all necessary permits required for the construction and operation of the project, including appropriate harbor access and approvals. PREPA will provide assistance to the Contractor in obtaining environmental permits related to the conversion of San Juan Units 5 and 6. Bidder shall provide evidence of compliance with requirements of the Jones Act including U.S. Customs and Border protection waivers, as applicable
- Supply, construction, and commissioning of all equipment and interconnections necessary for a complete unloading, storage and fuel handling terminal facility as necessary to receive, unload, and store Liquefied Natural Gas (LNG) and to vaporize and deliver natural gas from the terminal facility to the turbine combustor inlets of the existing San Juan Units 5 and 6 Power Generating Plant. If an alternative fuel is proposed, Contractor shall be responsible for the installation of all necessary facilities to deliver the fuel to Units 5 and 6.
- Supply and delivery of LNG on regular intervals as necessary to support San Juan Units 5 and 6 consumption of approximately 25 TBTU/yr, including logistics necessary to achieve reliability of LNG supply for a term of at least five (5) years with three separate

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five-year options to extend exercisable at PREPA's sole discretion.

- Operation and maintenance for duration of contract of all LNG, or an alternative fuel, terminal and interconnection facilities required to provide reliable and safe delivery of natural gas at the quantities described above to the battery limits of the San Juan Units 5 and 6 power generating plant.

II. Gas Supply Infrastructure

The project will include EPC project (engineer/design, procure/supply, and construction) and operation/maintenance for the fuel gas supply infrastructure required to supply and burn natural gas at manufacturer's specifications of two 501F Mitsubishi combustion turbines (Units 5 and 6), keeping the existing distillate #2 oil infrastructure as a secondary backup fuel. The Contractor shall be responsible in supplying all materials, equipment, and personnel to fulfill the project within the scope of supply, starting from the LNG unloading terminal and ending at the combustion turbine nozzle inlet. The engineering shall consider transient loads management solution due to potential load fluctuations of the units.

III. Gas Supply Operation

The shipping, supply, and operation associated with LNG delivered to the terminal and for natural gas supply from the terminal to San Juan 5 and 6 shall be part of Contractor's responsibility.

IV. Conversion of San Juan Units 5 and 6

The Contractor shall be responsible for the scope of work and associated capital cost required for LNG gas conversion of PREPA's San Juan Units 5 and 6, as well as modifications to associated turbine controls. The Contractor shall include the cost of the scope for PREPA's Unit 5 and 6 conversion as part of its proposal in the form of a capacity payment over the initial Base five (5) year term of the Agreement. The Contractor shall oversee and manage the conversion work with appropriate subcontracts to the combustion turbine original equipment supplier company, Mitsubishi, who will be responsible for defining the scope for the turbine's gas conversion and turbine controls modifications including engineering/design, equipment supply and technical advisors for construction and startup. The Contractor shall be responsible for coordinating outage planning with PREPA to implement the necessary modifications. The Contractor will optimize the conversion of Units 5 and 6 to achieve commercially reasonable improvements in output and heat rate in conjunction with the conversion.

Mitsubishi shall be a sole source subcontractor to the Contractor, and Mitsubishi shall be responsible for engineering, supply, technical advising/installation oversight and commissioning associated with the conversion of San Juan 5 and 6, including but not limited to:

- Combustion system conversion from standard diffusion liquid fuel to Dual Fuel DF 42 (LNG or alternative fuel and Diesel)
- Parts and components for dual fuel conversion
- Fuel Gas Regulation Equipment

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- Fuel Gas Manifold Piping and Supports
- All electrical and controls wiring on the combustion turbine skids
- Combustion parts including modifications of fuel oil nozzles
- Sweep air connection piping between combustor shell and fuel gas valve skid
- Steam injection piping or repair between manifold and fuel nozzles
- CTG control system modifications

Additionally, Contractor will be responsible for separately subcontracting to a qualified Engineer to perform all Balance of Plant design engineering beyond the scope of Mitsubishi but as necessary to accomplish the conversion of San Juan Units 5 and 6, including but not limited to:

- Any required Heat Recovery Steam Generator (HRSG) and Steam Turbine modifications
- Interconnecting piping/ off-skid electrical and controls wiring from regasification system to combustion turbine enclosure
- Civil work
- Miscellaneous BOP including controls system

V. Ownership of Equipment

All equipment and materials installed by contractor from the regasification point to the units shall become PREPA's property from the Final Acceptance date.

VI. Studies and permits

The Contractor shall be responsible for studies, permits and endorsements from the United States Coast Guard, Puerto Rico Ports Authority, Public Service Commission, Department of Natural Resources, NOAA and PR Environmental Quality Board, Federal Energy Regulatory Commission, US National Fish and Wildlife, and other applicable agencies for LNG shipping terminal and storage works outside San Juan Power Plant perimeter and for assisting PREPA with such studies and permits as necessary to convert San Juan Units 5 and 6.

The Contractor shall be responsible for all interfaces with the Puerto Rico Ports Authority (PRPA) and its proposal shall include a letter of support from the PRPA. In case the proponent does not obtain a letter of support from the PRPA, a detailed description of the means he foresees utilizing to accomplish the letter requirement and evidence that the intention of the project has been communicated to the PRPA shall be included with the proposal.

VII. Scope of Work, not limited to:

- a. Gas Piping: For information purpose of this project, PREPA will supply to the Contractor the SOCOIN Final Drawings for Construction of San Juan Natural Gas Conversion Project. The use of the SOCOIN natural gas piping and route designed for the SJ Combined Cycle shall be considered, but the final design will be determined by the Contractor in accordance with applicable standards.
- b. Dedicated Auxiliary Equipment's: Control Valves, Gas Evaporator, Heater or Heat Tracer and Compressor to comply with combustion turbine's manufacturer

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recommendations, Relief Valves, Stop Valves, Safety Vent Valves, Safety Shut Down Valve at fuel gas turbine manifold, Overspeed Trip Valve, Fuel Gas Meter, Metering Station for Financial Custody, Coalescent Filters, etc.

- c. The Contractor is responsible of any improvements required to the dock per NFPA, Ports Authority and USCG compliance and for the recertification due to the change of use. Contractor shall not interfere with current operations for unloading and storing Bunker C fuel oil or diesels fuel at any the existing PREPA San Juan Steam Plant generating facilities.
- d. Electronics and Communications: for all operation, control and supervisory signals from auxiliary equipment, gas conveyance, metering station and LNG storage and vaporizer system shall be integrated to the San Juan Units 5and6 DCS by means of dedicated fiber optic conduits and cables.
- e. Coating: All steel surfaces shall be painted with a three coating system for corrosive environment and UV protected.
- f. Fuel Gas Meters: The Two separate flow meters shall be installed including a main meter and a backup meter. The metering equipment will be installed in a location to be mutually agreed to by the Contractor and PREPA. The metering equipment shall be designed and installed in accordance with the current recommendations of the American Gas Association.
- g. NDT to all welds; 100% x-Rays, hydrostatic test
- h. Cathodic Protection
- i. Fire protection system modification as required by codes and local and federal regulatory agencies.
- j. Gas leak Sensors w/heat and temperature sensors
- k. Mechanical, Electrical, Structural and Civil Works
- l. Construction Drawings
- m. As Built Drawings
- n. Construction shall consider hurricane winds of 145 MPH and comply with Seismic User Group 3.

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- VIII. Combustion turbine manufacturer's Recommendations of Natural Gas Parameter at Combustion Turbine's Gas Control Skid
- a. Pressure (min): 350 psi
min - 350 psia
max - 650 pisa
 - b. Temperature (min): 60 °F
min fuel supply temp - 30F as per B&V (MHPS requires 50 degrees superheat)
 - c. Flow: 27.43 MMBtu/min per unit
Flow varies with ambient and load.
 - d. Gas Classification: ____
- IX. Volume
- Each calendar year, PREPA will provide an annual quantity nomination to be supplied to the San Juan Units 5 and 6. Contractor will commit to providing this total quantity in accordance with the schedule to be provided by PREPA. This quantity may vary from year-to-year depending of outage schedules but the annual nominal quantity is expected to be approximately 25,000,000 MMBTU/yr.
- X. Minimum terminal LNG storage to be maintained at all times: 7 days of storage for San Juan Units 5 and 6 at full load.
- XI. Guaranteed delivery – Contractor is responsible for providing 100% of the San Juan Units 5 and 6 natural gas supply in accordance with the annual quantity nomination. If natural gas is not available as specified by PREPA, Contractor may be required to supply diesel fuel to operate the units or alternatively to reimburse PREPA for the difference between their cost of diesel fuel consumed minus the contract price of natural gas and any other costs associated to this change. If the natural gas available does not conform to the quality specifications described in the combustion turbine manufacturer's specifications, the natural gas supply shall be deemed unavailable and the abovementioned Contractor's responsibility will apply.
- XII. Security –Bidder shall propose a security acceptable to PREPA to guarantee its performance under the contract and provide terms which would allow step-in rights in the event of non-performance

2.1 Deliverables

Proponents shall outline the types of deliverables and timelines they produce, in performing the services being procured through this RFP.

The Proposals will provide the following as part of its proposal:

- Scope of work for the total project
- Schedule

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- Operating plan
- Location (s)
- Permitting plans (if applicable)
- Plans for financing, schedule, requirements and demonstration of commitments to financing. Note: Proponent proposal will not be accepted if conditioned on approval of financing. Proponent must be able to demonstrate existing unconditional commitments of financing for the project
- Supply contract terms (if applicable)

The Bidder will provide the following as part of its proposal:

- Scope of work for the total project including permitting
- Schedule for scope of work to support delivery of natural gas
- Schedule for scope of work to accomplish conversion of San Juan Units 5 and 6
- Long term operating plan for gas unloading and supply facility
- Location of facility
- Permitting plans
- Source of LNG supply and delivery logistics, including reliability contingency, as needed to support full load continuous reliable operation of San Juan Units 5 and 6
- Storage and redundancy in equipment systems as necessary to assure reliable fuel supply to the power generating units
- Ownership structure
- Order of magnitude estimated capital cost required for total investment
- Plans for financing, schedule, requirements and demonstration of commitments to financing. Note: Bidders proposal will not be accepted if conditioned on approval of financing. Bidder must be able to demonstrate existing unconditional commitments of financing for the project.
- Pricing and applicable indices
- Plans for control/ownership of proposed location for fuel unloading facility
- Evidence that Contractor currently owns/controls any ships, vessels or major equipment necessary to execute the project as scheduled including initial fuel delivery
- Recommendation of current or recent customer for similar services as proposed
- Letter of Support from Puerto Rico Port Authority or as established on Part VI. Studies and Permits
- Demonstration of Jones Act compliance
- Permitting path and permit request/approval matrix
- Scope split document for all work (including San Juan 5 and 6 conversion) demonstrating scope by all major subcontractors to Bidder including Mitsubishi, Bidder's Engineer, and Bidders Construction Contractor(s)
- Subcontractor Commitment letter from Mitsubishi to perform scope for conversion of San Juan 5 and 6
- Proposed Engineer for BOP scope
- Proposed Construction Contractor(s) and respective scope

3.0 Evaluation and Selection

PREPA will examine all proposals in a proper and timely manner to determine if they meet the proposal submission requirements. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of PREPA, may be rejected. All proposals meeting the proposal submission requirements will be evaluated.

Each proposal meeting all submission requirements will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criterion listed below in this section up to the maximum points.

The criteria shall be graded using a score of 1 to 5:

- 1 = Inadequate, does not meet RFP expectations.
- 2 = Adequate, criteria is met, below the standards set by the RFP.
- 3 = Good, meets the minimum standards set by the RFP.
- 4 = Very good, meets the standards set by the RFP.
- 5 = Excellent, presents the best proposal that meets the standards set by the RFP.

Complete proposals will be preliminarily scored based upon the criteria listed below.

Experience and Capacity (10 percent)

Respondents must demonstrate experience and success in developing LNG fuel developments of similar scope as the duties described herein. Proponents shall provide the names and titles of the key members of the Project team (including the Design Entity selected by the Proposer) with a brief description of the qualifications and experience of:

- 1. Project Manager
- 2. Engineering and Design Manager
- 3. Lead Engineers
- 4. Inspector Manager.
- 5. Safety Officers, QA/QC Managers, Environmental specialists.
- 6. Other key personnel required, including subcontractors.

Proponents shall include a clear assignment of responsibility for various project tasks to specific individuals. Proposals shall include resumes identifying the qualifications and experience of all personnel listed above.

Note: PREPA reserves the right to reject or accept proposed Project personnel.

Submit a complete list showing all key firms in the Proposer's team. If a partnership and/or joint venture is proposed, clearly explain which parties in the partnership or joint venture will interface with PREPA on design and technical issues, which parties will interface with PREPA

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on financial or contractual matters, and which member or partner will be responsible to resolve disputes between the Proposer and PREPA.

Identify and describe potential subcontractors with demonstrated proof of the technical capabilities necessary to perform their proposed scope of work and or services.

Submit evidence that the Proposer is duly and properly organized and is qualified to conduct business in Puerto Rico or will be prior to contract award.

Note: To execute a possible resulting contract, the company must be registered in PREPA's Supplier Registry.

Respondents that demonstrate they have the staff available to begin immediately will be scored higher than those who need more time, or whose responses are vague.

Approach and Methodology (30 percent)

Explain your approach to completing the Project within the given construction dates and site constraints. Include a summary-level CPM schedule detailing all aspects of the Project. Include a detailed assessment and response to the site condition restraints.

Respondents shall outline a clear and straightforward approach and demonstrated commitment to accomplishing the schedule goal of providing fuel gas for San Juan 5 and 6 no later than March, 2019. Respondents shall identify key goals and objectives, and methods for achieving high standards for the delivery of services, in expectation of meeting or exceeding these goals.

Describe in detail the methods you foresee utilizing to accomplish the duties at the site. Provide sketches or illustrations to explain your approaches if necessary. This approach will include:

1. Demonstrating a clear and thorough interpretation and acknowledged assimilation of the project work scope as described herein and that are part of this RFP.
2. Satisfactorily demonstrating how the duties will be staged to minimize impacts to PREPA operations.
3. Presenting a clear and logical approach for the efficient performance of all work tasks across the Proposer's entire Project Team.
4. Describing how the Proposer's submitted milestone schedule demonstrates a clear understanding and integration of all the interrelated duties.
5. Describing how the Proposer intends to address and mitigate adverse environmental materials.

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6. Providing a specific and project-proven approach and plan for effective Quality Assurance/Quality Control across the Proposer's Project Team
7. The Proposer's outline plan and commitment to safety.

Respondents shall explain how they will be organized to effectively deploy support for PREPA and clearly identify engagement manager and different work stream leaders.

Price Proposal (60 percent)

Proposals will be scored based on price proposal format provided. Respondents shall clearly identify proposed capacity payment to cover costs for conversion of San Juan 5 and 6, proposed delivered fuel payment price, and proposed fuel price indices for inflation and changing market conditions. Terms and conditions of priced proposal will also be a consideration.

Provide evidence of the Proposer's financial ability and resources to adequately perform and manage the Contract, manage risk or ability to obtain such resources as are required during the performance of the Project. If Proposer is a joint venture or a newly-formed entity, identify appropriate guarantor(s) and provide evidence of the financial resources of such guarantor(s). Submit audited financial statements for the Proposer for the most recent three (3) fiscal years, certified by certified public accountant in accordance with generally accepted accounting principles. If the Proposer is a partnership or joint venture, then audited financial statements for each corporation, partnership, Limited Liability Company, sole proprietorship, member or partner holding an interest in the Proposer must be submitted for the same three (3) year period. If applicable, provide all such information with respect to any guarantor(s).

Provide a letter from a bonding company satisfactory to PREPA that commits the bonding company to provide the required bonding on behalf of the Proposer if the Proposer is awarded the contract for the Project.

Provide a letter from an insurance company, satisfactory to PREPA that commits the insurance company to provide the required insurance on behalf of the Proposer if the Proposer is awarded the contract for the Project. Insurance requirements can be found in Attachments to this RFP. PREPA may request further clarification to assist the Evaluation Committee in gaining additional understanding of proposal. A response to a clarification request must be to clarify or explain portions of the already submitted proposal and may not contain new information not included in the original proposal.

3.1 Finalist Interview

PREPA reserves the right, at its sole discretion, to invite qualified Proponents to a finalist interview with the Evaluation Committee. If PREPA elects to conduct finalist interviews, each qualified Proponents will be required to give a strictly timed 20-minute presentation. This presentation shall highlight expertise and prior energy mission optimization and program management services provided for similar organizations. The presentation shall also clearly

explain the Proponent's approach and team composition. The Evaluation Committee may alter the scoring of a qualified proponent's proposal based upon the presentation. Proponents are responsible for all costs or expenses incurred to attend such interview.

3.2 Selection

Following completion of the evaluation process the Evaluation Committee will meet to choose the Selected Proponent.

4 Proponents Requirements

4.1 Requirement of Legal Entities

Proponents that are corporations, partnerships, or any other legal entity, U.S. or Puerto Rico based, shall be properly registered or capable to be registered or capable and willing to registered to do business in Puerto Rico and the U.S. at the time of the submission of their proposals, and comply with all applicable Puerto Rico or U.S. laws and/or requirements. A selected proponent must be part of PREPA's supplier registry in order to execute a contract.

4.2 Required Qualifications of Proponents

Proponents to this RFP shall provide information in their proposals that demonstrates the following qualifications:

- Proponent has adequate financial resources to perform the contract, or the ability to obtain them; financial statements for the past 2 years will be required or equivalent financial records must be included in the proposal.
- Proponent is able to comply with an accelerated delivery or performance schedule.
- Proponent has experience with similar projects and a satisfactory performance record.
- Proponent has a satisfactory record of integrity and business ethics.
- Proponent has the necessary organization, experience, accounting and operational controls, and technical skills.
- Neither Proponent nor any person or entity associated who is partnering with Proponents has been the subject of any adverse findings that would prevent PREPA or Authority from selecting Proponent. Such adverse findings include, but are not limited to, the following:
 - Negative findings from a Federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state.
 - Pending or unresolved legal action from the U.S. Attorney General or from the U.S. an attorney general in Puerto Rico or another state.
 - Pending litigation with the Government of Puerto Rico, or any other state.
 - Arson conviction or pending case
 - Harassment conviction or pending case.

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- Puerto Rico and Federal or private mortgage arrears, default, or foreclosure proceedings
- In rem foreclosure.
- Sale tax lien or substantial tax arrears.
- Fair Housing violations or current litigation.
- Defaults under any Federal and Puerto Rico-sponsored program.
- A record of substantial building code violations or litigation against properties owned and/or managed by Proponents or by any entity or individual that comprises Proponents.
- Past or pending voluntary or involuntary bankruptcy proceeding.
- Conviction for fraud, bribery, or grand larceny.

4.3 Proposal Format

The Proponent's proposal shall be formatted as follows:

4.3.1 Cover Letter and Table of Contents

Provide a cover letter that includes a certification that the information submitted and the Proposal is true and accurate, and that the person signing the cover letter is authorized to submit the Proposal on behalf of the Proponents. Clearly identify the designated contact person for the engagement.

Provide a table of contents that clearly identifies the location of all material within the Proposal by section and page number.

4.3.2 Experience and Capacity

Provide a summary of the types of services the Proponent offers that relates to this RFP. Identify engagement and or staff experience with entities comparable to PREPA for which the Proponents provides or has provided, similar services within the last (10) years. Proponents must indicate the dollar value of the similar services to the ones contemplated in their RFP. Detail at least one to three (1-3) similar engagements and/or experience with private and public-sector clients that would demonstrate that the Proponent can provide the requested services. Each example should include:

- a) Name of client organization.
- b) Description of engagement or experience and objectives of the project including beginning and ending dates.
- c) Examples of recommendations offered to the client and the results of the implementation of those recommendations.

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- d) Information regarding the project that would demonstrate successfully experiences by the client, as a result of the recommendations. This may include performance metrics and improvements.
- e) If the example involves a private sector client, describe how the experience could be applied to the public sector.
- f) Description of key infrastructure programs or projects advanced as part of the engagement, if any.
- g) Letters of recommendation from previous or current client(s)

PREPA may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP and the responsiveness of the Proponent to the client during the engagement. Please provide at least three (3) references for the prime Proponent and two (2) for any partners or sub-contractors. Each reference should include the name, title, company, address, phone number and email address of the reference. Inability to contact a reference will not be looked upon favorably. References will count towards experience and capacity points.

Provide a summary of the Proponent's technical expertise that describes the Proponent's unique capabilities. This narrative should highlight the Proponent's ability to provide Fuel Gas shipping and delivery and Program Management services. Provide biographical summaries for Key Individuals and their proposed roles. Resumes can be attached as an appendix.

In addition, identify any sub-consultants and Local Parties incorporated into the team and clearly explain their expertise, expected role and value to the engagement.

Specify the primary contact person for the Proponent (name, title, location, telephone number, and e-mail address).

4.3.3 Approach and Methodology

Explain how the Proponent will achieve the goals, objectives, tasks, and deliverables outlined in the Scope of Services for this RFP. Specifically address how the Proponent proposes to effectively accomplish the scope of services.

Proposals must provide examples of how the proposed approach has achieved success in specific, relevant projects for public or private sector organizations similar in size and complexity to PREPA. The examples should contain enough information for the evaluators to ascertain the success of the projects accomplished by the Proponent.

This section must include an acknowledgement that, if selected, the Proponent has the ability to respond with sufficient key and line staff and the proposed Key Individuals.

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Identify existing staff that will be involved in the services describe herein, including each staff member's proposed role in the organization, their relevant qualifications, and the allocation of their time to this engagement. Clearly identify the members of the team that are expected to be residing in Puerto Rico and will serve as local contacts for the engagement purposes.

4.3.4 Price Proposal

Proponents are required to submit their price proposal in accordance to the Price Proposal Form (Attachment 1). PREPA is interested in obtaining four components of the Proponents' pricing:

- Component 1: Annual Capacity payment for initial 5 year Base to account for cost of conversion of San Juan 5 and 6
- Component 2: Unit Cost(\$/MMBTU) of delivered fuel gas based on total annual quantity of consumption at San Juan 5 and 6(note: there will be no take or pay provisions allowed by the contract)
- Component 3: Indices to be applied to the delivered unit cost to account for variation in rate of inflation, fuel price fluctuations, etc.
- Terms and conditions of delivery contract.

4.3.5 Commitment to Complying with all Applicable Federal and Puerto Rico Local Permits and Regulations

Proponents shall explain their adherence to complying with all applicable Federal and Puerto Rico permits and regulations. Indicate what characteristics of the team set them apart in terms of commitment to comply with all applicable laws and requirements. Indicate what specific trainings and expertise reside within the team that reinforces the commitment to compliance.

4.3.6 Local Parties

PREPA have the objective of fostering the participation of Local Parties in the provision of professional services and local expertise. Explain how the Local Party(ies) will add value to the team and their expected role. Identify the Key Personnel from the Local Party(ies) and provide an indication of the expected level of involvement on the day-to-day activities and interaction with PREPA.

5.0 Confidentiality of Responses and Proprietary Information

Upon completion of the RFP process, PREPA will make public its report regarding the procurement and selection process, which shall contain certain information related to this RFP process, except trade secrets, pricing and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data may be classified as

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proprietary by the Proponents. All Proponents are required to submit a redacted copy of their proposal. PREPA reserves the right to make public the redacted copies of the proposals at the conclusion of the RFP process. If a redacted copy is not submitted by a Proponent, PREPA will assume that the original copy of the proposal can be made public. Proposals containing substantial contents marked as confidential or proprietary may be rejected by PREPA. Provision of any information marked as confidential or proprietary shall not prevent PREPA from disclosing such information if required by law. The ultimately awarded contract(s) and all prices set forth therein shall not be considered confidential or proprietary and such information may be made publicly available.

6.0 Conflicts of Interest

Any contract awarded under this RFP will preclude the selected Proponents from representing before PREPA any Proponent other than those Proponents who may be assigned under this contract during the period the contract is in effect.

Proponents are required to provide a list of any other current or former advisory contracts the firm has/had with any Government Entity in Puerto Rico, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico. Further, please provide a description of any recent historical or ongoing legal proceedings, interviews or investigations being conducted by any U.S. law enforcement agencies involving your firm or team that are related to transactions executed in or on behalf of the Government of Puerto and/or its public corporations. In addition, please provide a brief description of any work you have performed for any creditors or guarantors of the Government of Puerto Rico or any public corporation debt about their positions in Puerto Rico debt obligations. Indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the selection process, PREPA may request information on any perceived conflict of interests. Also, PREPA may in the future request a list of direct or indirect relationships the firm or its professionals have to members of the PPPA or Board Members or executives of other Public Corporations.

In the event of real or apparent conflicts of interest, PREPA reserves the right, in its best interest and at its sole discretion, to reject a proposal(s) outright or to impose additional conditions upon Proponents. PREPA reserves the right to cancel any contract awarded pursuant to this RFP with 30 days' notice in the event that an actual conflict of interest, or the appearance of such conflict, is not cured to PREPA's satisfaction.

7. Proposal Additional Information

7.1 Rejection of Proposals; Cancellation of RFP; Waiver Informalities and Withdrawal Proposal

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Issuance of this RFP does not constitute a commitment by PREPA to award a contract. PREPA reserves the right to accept or reject, in whole or part, and without further explanation, any or all proposals submitted and/or cancel this solicitation and reissue this RFP or another version of it, if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

PREPA reserves the right to waive any informalities and/or irregularities in a proposal if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

A Proponent may withdraw a proposal at any time up to the date and time the contract is awarded. The withdrawal must be submitted in writing and directed to PREPA's Chief Executive Officer.

7.2 Ownership of Proposal

All materials submitted in response to this RFP shall become the property of PREPA. Selection or rejection of a proposal does not affect this provision.

7.3 Cost of Preparing Proposals

All costs associated with the response to this proposal are the sole responsibility of the Proponent.

7.4 Errors and Omissions in Proposal

PREPA reserves the right to reject a proposal that contains an error or omission. PREPA also reserves the right to request correction of any errors or omissions and/or to request any clarification or additional information from any Proponent, without opening up clarifications for all Proponents.

8.0 Payment Terms and Method of Payments

The Selected Proponent will be paid by services provided previously approved by PREPA. It is the Selected Proponent's responsibility to include all services required to meet the engagement's objective as established in this RFP.

8.1 Payment Terms

Payment will be made upon presentation of invoice evidenced by the services provided and duly authorized by PREPA. If PREPA finds the submitted invoice as acceptable, then the invoice will be approved and processed for payment within sixty (60) days after submission of the invoice, with all the required documents. PREPA reserves the right to review the correctness of invoices and perform the audits as it deems fit.

8.2 Method of Payment

The Selected Proponent shall submit monthly invoices for the agreed fees. Invoices must be detailed, specific and itemized accompanied by a description of the services provided as previously approved by PREPA. In addition, it shall be noted that no public servant of the contracting entity is a party or has interest on the profits or benefits product from the contract, regarding the invoice and if it does have interest in some part on the profits or benefits of the contract it must specify that a waiver has been mediated. PREPA shall request from the Selected Proponent all the necessary information, related to verifying the invoiced expenses, prior to the release of payment.

PREPA reserves the right to perform audits it deems appropriate. In the case of finding unpaid invoices, they shall approve and process its payments.

The Selected Proponent will deliver the original invoice to PREPA's authorized representative; and such invoice must be properly completed and certified by the Selected Proponent. PREPA's designated representative will process the invoice to be duly certified by PREPA or its authorized representative, in accordance with the Accounting Act law following the standards established by enforcement agencies of the Government of Puerto Rico.

9.0 Process Rules and PREPAs General Instruction RFP Guide

This process will be regulated and executed according to the "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016 (Request for Proposals)". Please, see the Download Documents tab.

Proponents shall certify compliance with Section 4.17 of the "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016 (Request for Proposals)

10.0 Puerto Rico General Provisions

The Contractor will comply will all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico.

A. **Executive Order Num. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico:** Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, the Contractor will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Contractor, further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Contractor shall provide, to the satisfaction of PREPA, and whenever requested by PREPA during the term of this Contract, the necessary documentation to support its compliance with this clause. The Contractor will be given a

specific amount of time to produce said documents. During the term of this Contract, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico.

B. **Executive Order Num. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico.** Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Contractor will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Contractor accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Sub Contractor whose service the Contractor has secured in connection with the services to be rendered under this Contract and shall forward evidence to PREPA as to its compliance with this requirement.

C. **Government of Puerto Rico Municipal Tax Collection Center:** The Contractor will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as *Centro de Recaudación de Ingresos Municipales* ("CRIM")). The Contractor further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Contractor shall provide, to the satisfaction of PREPA and whenever requested by PREPA during the term of this Contract, Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Contractor does not owe any tax accruing to such governmental agency. To request such Certification, Contractor will use the form issued by the MRCC (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" in the website). The Contractor will deliver upon request any documentation requested by PREPA. During the Term of this Contract, the Contractor agrees to pay and/or to remain current with any repayment plan agreed to by the Contractor with the Government of Puerto Rico with regards to its property taxes.

The Contractor shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Contractor has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by Contractor indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

D. The Contractor shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Contractor does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.

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- E. The Contractor shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Contractor has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.
- F. The Contractor shall provide a copy of Contractor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- G. **Puerto Rico Child Support Administration (ASUME)**: The Contractor shall present, to the satisfaction of PREPA, the necessary documentation certifying that the Contractor nor any of its owners, affiliates of subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the *Administración Para El Sustento de Menores (ASUME)*). The Contractor will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.
- H. The Contractor shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.
- I. The Contractor shall provide a Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.
- J. **Special Contribution for Professional and Consulting Services**: As required by Act No. 48-2013, as amended, PREPA will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.
- K. **Social Security and Income Tax Retentions**: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., the Contractor will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.
- L. **Income Tax Retention Law**: PREPA shall deduct and withhold seven percent (7%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non US citizens, which are nonresidents of the Commonwealth of Puerto Rico the Contractor will be retained twenty percent (20%) and twenty-nine percent (29%) respectively. PREPA will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda de Puerto Rico*). The Contractor will request PREPA not to make such withholdings if, to the satisfaction of PREPA, the Contractor timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011.
- M. **Compliance with Act No. 1 of Governmental Ethics**: The Contractor will certify compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of PREPA nor any member of his/her immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall

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have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.:

N. **Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People:** The Contractor will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "*Law for the Strengthening of the Family Support and Livelihood of Elderly People*" in Spanish: "*Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada*", 3 L.P.R.A. §8611 et seq.

O. **Law Num. 127, May 31, 2004: Contract Registration in the Comptroller's Office of Puerto Rico Act:** Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

P. **Dispensation:** Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.

Q. **Rules of Professional Ethics:** The Contractor acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.

R. Both parties acknowledge and agree that the contracted services herein may be provided to another entity of the Executive Branch which enters into an interagency Contract with PREPA or by direct disposition of the Chief of Staff. These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Contract. For the purpose of this clause, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as public instrumentalities, public corporations and the Office of the Governor.

S. The office of the Chief of Staff shall have the authority to terminate this Contract at any time.

T. The Contractor shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. The Contractor shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.

U. Invoices must include a written and signed certification stating that no officer or employee of PREPA, and their respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Contract, with the acknowledgment that invoices that do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of PREPA will derive or obtain any

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benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the Services provided is the agreed-upon price that has been negotiated with an authorized representative of the PREPA. The total amount shown on this invoice is true and correct. The Services have been rendered, and no payment has been received”.

V. PREPA shall have the right to terminate this Agreement with thirty (30) days prior written notice to Contractor. Moreover, PREPA shall have the right to terminate this agreement immediately in the event of negligence, dereliction of duties or noncompliance by Contractor.

W. Anti-Corruption Code for a New Puerto Rico. Contractor agrees to comply with the provisions of Act No. 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. The Contractor hereby certifies that it does not represent particular interests in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.

Contractor shall furnish a sworn statement to the effect that neither Contractor nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Contractor has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.

Contractor hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

PREPA shall have the right to terminate the agreement in the event Contractor is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

If any of the previously required Certifications shows a debt, and Contractor has requested a review or adjustment of this debt, Contractor will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such

determination is final, Contractor will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Contractor accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments.

X. **Consequences of Non-Compliance:** The Contractor expressly agrees that the conditions outlined throughout this Section are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to render this Contract null and void, and the Contractor shall reimburse the PREPA all moneys received under this Contract.

11.0 Performance and Payment Bond:

As a Contract security, the Contractor shall furnish at the time of the execution of the Contract:

1. A Performance Bond in the amount of 100% of the Phase 1 cost (conversions and pipeline installation), with good and sufficient surety satisfactory to PREPA guaranteeing that the Contractor will well and faithfully perform the contract work.
2. A Payment Bond in the amount of 100% of the Phase 1 cost (conversions and pipeline installation), with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.
3. All bonds shall be issued in the official form of PREPA.

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Attachments and Appendices

1. Attachment I – Price Proposal Form

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Attachment I
Price Proposal Form Rates

Proponents Name: _____

Price Proposal Component #1:

Fixed Annual Capacity Payment
\$/_____/yr

Price Proposal Component #2:

Unit Fuel Cost

Annual Consumption Rate (MMBTU/yr)

Unit Cost (\$/MMBTU)

Price Proposal Component #3:

Proponents should provide Applicable Indice(s) for changes in Unit Cost

Price Proposal Component #4:

Proponents should provide key terms and conditions for priced proposal

AS SELLER

AND

(2) PUERTO RICO ELECTRIC POWER AUTHORITY

AS BUYER

FUEL SALE AND PURCHASE AGREEMENT

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ANNEXES

Annex A – Terms and Conditions for Units Conversions and Pipeline Installation Works

THIS AGREEMENT is made this [•] of _____, 2018 (the "Effective Date").

BETWEEN:

- (1) _____ a _____ company (hereinafter called the "Seller"),
and
- (2) **PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA)**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 2 May 1941, No. 83, as amended, with its principal place of business at P.O. Box 363928, San Juan, Puerto Rico 00936-3928 (hereinafter called the "Buyer").

The Seller and the Buyer shall each be a "Party" and, together, the "Parties".

WITNESSETH

WHEREAS, PREPA, by virtue of its enabling act (Act 83), has the authority to engage those professional, technical and consulting services necessary and convenient to the activities, programs, and operations of PREPA;

WHEREAS, Pursuant Section 205 (2) (f) of Act No. 83 a competitive bidding shall not be necessary when in the judgment of the Governing Board, a competitive request for proposal (RFP) process for the acquisition of goods, equipment, materials or services must be carried out to encourage greater competition, reduce the risk of collusion and promote the best possible terms and conditions in benefit of greater savings and reduction of costs and operational expenses of PREPA.

WHEREAS:

- (A) Seller will build a micro fuel handling facility ("MFH Facility") to provide fuel service;
- (B) Buyer desires to convert San Juan Units # 5 and # 6 ("San Juan Power Plant") to use Natural Gas (or the proposed fuel) as its primary fuel;
- (C) Seller has agreed to supply Natural Gas (or the proposed fuel) to the San Juan Power Plant through its MFH Facility on the terms herein set forth; and

NOW, THEREFORE, THE SELLER AND THE BUYER HEREBY AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, except where the context otherwise requires, each of the following expressions have the following meaning:

"Affiliate" means, in relation to a Party, any company, corporation, partnership or other legal entity (in this definition referred to as a **"Company"**): (a) that is directly or indirectly controlled by such Party; (b) that directly or indirectly controls such Party; or (c) that is directly or indirectly controlled by a Company that also, directly or indirectly, controls such Party. For the purpose of this definition, **"Control"** means the beneficial ownership, either directly or indirectly, of fifty percent (50%) or more of the voting rights in a Company, or (whether alone or acting in concert with others, and whether by the ownership of share capital, the possession of voting power, contract or otherwise) the right to appoint fifty percent (50%) or more of the board of directors or equivalent management body of such Company.

"Agreement" means this Agreement and its Annexes, as may be amended, modified, varied or supplemented from time to time.

"Annual Contract Quantity" or **"ACQ"** shall have the meaning given to it in Clause 7.4(a)(i).

"Annual Delivery Programme" or **"ADP"** shall have the meaning given to it in Clause 7.4(a).

"Applicable Law" means, in relation to any legal person, property, transaction or event, all applicable provisions of laws, treaties, conventions, statutes, rules, regulations, permits, official directives and orders of, and the terms of all judgments, orders, awards, and decrees issued by, any Competent Authority by which such legal Person is bound or having application to the property, transaction or event in question.

"Binding Monthly Schedule" shall have the meaning given to it in Clause 7.4(a)(iii).

"Btu" means a British thermal unit, being that amount of heat that is equal to 1,055.056 Joules or 0.000293071 kWh.

"Business Day" means a Day, other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico) or New York (United States).

"Buyer" shall have the meaning given to it in the preamble to this Agreement.

"Buyer Check Meter" shall have the meaning given to it in Clause 10.2(b).

"Change Order" - A written agreement between the parties that sets out changes (in price, time, or scope of work) to the Contract.

"Claims" shall have the meaning given to it in Clause 11.

"Commissioning Start Date" means the later of the first day Buyer requires Natural Gas to test or commission the San Juan Power Plant and the first Day that the MFH Facility is able to make Natural Gas available at the Delivery Point.

"Competent Authority" means any local, federal, state, regional, provincial, municipal, national or supra-national governmental agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the performance of this Agreement by either Party including, for the avoidance of doubt, any licensing authority and any port authority, in each case acting within its legal authority, but excluding, for the avoidance of doubt, any Party.

"Confidential information" shall have the meaning given to it in Clause 22.1.

"Contract Price" shall mean the sum of the Fuel Contract Price and the Units Conversions and Pipeline Installation Works Cost.

"Contract Quarter" means each calendar quarter (beginning each of January, April, July and October) during the Contract Year, provided that the first Contract Quarter shall begin as of the first Day of the Firm Supply Period and end on the last Day of such calendar quarter and the last Contract Quarter shall end on the last Day of the Firm Supply Period.

"Contract Term" shall have the meaning given to it in Clause 3.1(a).

"Contract Year" means any calendar year during the Firm Supply Period, except for the first Contract Year, which shall commence on the first Day of the Firm Supply Period, and the last Contract Year, which shall end on the last Day of the Firm Supply Period.

"Contracting Officer" - shall mean the Chief Executive Officer of PREPA, acting directly or through his properly authorized representatives as notified in writing to the Seller.

"Corporate Tax" means any and all Taxes based on income, revenues, profits, or net worth and all state and local franchise, license, occupation and similar Taxes required for the maintenance of corporate existence or to maintain good standing that are assessed against a Party.

"Daily Contract Quantity" or **"DCQ"** shall have the meaning given to it in Clause 6.6.

"Day" means a period of twenty four (24) consecutive hours beginning at 00:00 hours local time in Puerto Rico.

"Defaulting Party" shall have the meaning given to it in Clause 18.1(b).

"Delivery Point" means the point of interconnection between San Juan Power Plant and the MFH Facility as identified on the schematic attached as Annex _____. For this Contract the delivery point shall be a flange in the San Juan Power Plant limits.

"Disclosing Party" shall have the meaning given to it in Clause 22.1.

"Dispute" shall have the meaning given to it in Clause 20.1(a).

"Effective Date" shall have the meaning given to it in the preamble to this Agreement.

"Environmental Compliance Officer" - PREPA's personnel in charge of project inspections and environmental regulations compliance.

"Expert" means a Person of appropriate industry expertise and experience to whom a Dispute, disagreement or another matter of interpretation is or is to be referred to pursuant to Clause 20.2.

"Firm Supply Conditions" shall have the meaning given to it in Clause 3.2.

"Firm Supply Conditions Date" shall have the meaning given to it in Clause 3.4.

"Firm Supply Period" shall have the meaning given to it in Clause 5.3.

"Force Majeure" shall have the meaning given to it in Clause 15.1.

"Fuel Contract Price" shall have the meaning given to it in Clause 12.1.

"Governmental Authority" means the government of the United States of America, any state thereof, the Commonwealth of Puerto Rico, or any local jurisdiction, or any political subdivision of any of the foregoing including, but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities or other instrumentalities.

"Heating Value" (also known as High Heating Value (HHV)) means the gross heating value on a dry basis, which is the number of Btu's produced by the complete combustion at constant pressure of the amount of dry gas that would occupy a volume of one Standard Cubic Foot at a constant pressure of 14.73 psia and a temperature of 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air and the water formed by combustion condensed to the liquid state.

"Units Conversions and Pipeline Installation Works" means the design, engineering, construction, and installation works performed by the Seller or its affiliates or subcontractors to deliver fuel to San Juan Power Plant Units 5 and 6 from the Delivery Point and their conversions.

"Units Conversions and Pipeline Installation Works Cost" shall mean the cost of the design, engineering, construction, and installation of LNG pipeline from the delivery point to Units 5 and 6 and the units' conversions.

"Joule" means a unit of energy defined in the International System of Units.

"kWh" shall mean kilowatt per hour.

"LIBOR" means the rate per annum which the British Bankers' Association was offering to prime banks in the London interbank market for deposits in US\$ for a one (1) year period, determined at 11:00 am London Time, as quoted on the date when payment was due. Interest should be calculated on the basis of a 360 Day year, shall accrue daily and be compounded at 3-monthly rests.

"LNG" means Natural Gas in a liquid state at or below its boiling point and at or near atmospheric pressure.

"LNG Delivery Plan" shall have the meaning given to it in Clause 15.1(a).

"Long-Stop Date" shall have the meaning given to it in Clause 3.1(a).

"Maximum Annual Contract Quantity" shall have the meaning given to it in Clause 6.1.

"Maximum DCQ" shall have the meaning given to it in Clause 6.6.

"Maximum Hourly Rate" shall have the meaning given to it in Clause 6.7(a).

"Metering Equipment" shall have the meaning given to it in Clause 10.2(a).

"MFH Facility" shall have the meaning given to it in the Recitals.

"MMBtu" means 1,000,000 Btu.

"Mmscf" means one million Standard Cubic Feet.

"Monthly Invoice" shall have the meaning given to it in Clause 13.2.

"Natural Gas" or **"NG"** means any saturated hydrocarbon or mixture of saturated hydrocarbons consisting essentially of methane and other combustible and non-combustible gases in a gaseous state.

"Ninety Day Schedule" or **"NDS"** shall have the meaning given to it in Clause 7.4(a)(iii).

"Off-Spec Natural Gas" is any Natural Gas that does not conform to the Specifications set forth in Clause 4.1

"Party" and **"Parties"** shall have the meaning given to them in the preamble to this Agreement.

"Person" shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization, or any Governmental Authority.

"Reasonable and Prudent Operator" means a Person seeking in good faith to perform its contractual obligations and comply with Applicable Law, and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced international operator engaged in the same type of undertaking under the same or similar circumstances and conditions.

"Receiving Party" shall have the meaning given to it in Clause 22.1.

"Resident Engineer" - shall mean the manager of the field office responsible for, but not limited to, the administrative issues, quality control, and technical aspects of the project. This person shall be a professional engineer register in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors. The Resident Engineer shall be present at all times on site in order to the Seller be able to perform any task of the project.

"Responsible Party" shall have the meaning given to it in Clause 3.5.

"Safety Officer" – shall be the person designated by the Seller whose only duty shall be the prevention of accidents and implement, both, the Safety and Health Program and the Site-specific Work Plan. The Safety Officer shall be present at all times on site in order to the Seller be able to perform any task of the project.

"San Juan Power Plant" shall have the meaning given to it in the Recitals.

"Scheduled Maintenance" shall mean the maintenance period scheduled to be performed on the San Juan Power Plant to occur for the durations specified on Annex C during the Firm Supply Period.

"Seller" shall have the meaning given to it in the preamble to this Agreement.

"Seller Shortfall Quantity" shall have the meaning given to it in Clause 9.1.

"Shortfall Payment" shall have the meaning given to it in Clause 9.2.

"Specifications" shall have the meaning given to it in Clause 4.1.

"Standard Cubic Foot" or "scf" means Natural Gas at a base temperature of 60° F and at a pressure of 14.73 psia with correction for deviation from Boyle's Law.

"Supply Period" shall have the meaning given to it in Clause 5.1.

"Taxes" shall have the meaning given to it in Clause 14.1.

"TBtu" means 1,000,000,000,000 Btu.

"Termination Event" shall have the meaning given to it in Clause 18.1(b).

"Terms and Conditions of Units Conversions and Pipeline Installation Works" means the requirements, clauses, and processes for the Units Conversions and Pipeline Installation Works included as Annex A.

"Third Party" means any legal Person not a Party to this Agreement.

"Transitional Supply Period" shall have the meaning given to it in Clause 5.2.

"US" means the United States of America.

"US Dollars" or **"US\$"** means the lawful currency of the United States of America.

"Weekly Programme" shall have the meaning given to it in Clause 7.4(a)(iv).

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) References to Clauses and Annexes are to Clauses and Annexes of this Agreement. The Annexes hereto are incorporated herein as an integral part of this Agreement.
- (b) References to a Person include that Person's successors and permitted assigns.
- (c) Headings of Clauses and Annexes are for convenience only and shall not affect the construction or interpretation of this Agreement.
- (d) Where the context requires, words denoting the singular or masculine or neuter only shall include the plural, feminine, body politic or corporate and vice versa.
- (e) References to "include" and "including" shall be construed as "including without limitation."
- (f) The words "agree," "agrees," and "agreed" refer to a written agreement, executed and delivered by the Parties.
- (g) Wherever either Party's consent or agreement is expressed to "not be unreasonably withheld," it is acknowledged that such obligation shall include, but not be limited to, the obligation of the Party not unreasonably to delay giving the relevant consent or agreement, and in the foregoing case as well as wherever either Party

undertakes "efforts" or "endeavours" to do something, or refrain from doing something, it is acknowledged that such Party shall not be in breach of its obligations to the other Party to the extent that such Party's actions are limited by such Party's need to comply with its contractual obligations to any Person, provided that such Party has used its reasonable efforts to obtain any necessary waiver(s) of such relevant obligations and that such Party has not assumed such obligations subsequent to entering into this Agreement.

- (h) Any law, statute or statutory provision shall be construed as a reference to the same as it may be amended, modified or re-enacted, from time to time, and shall include any subordinate legislation made from time to time under that provision.
- (i) If at any time during the Supply Period, LIBOR becomes unavailable or inappropriate then the Parties shall meet as soon as possible thereafter and in good faith discuss and attempt to agree in writing upon a suitable alternative replacement. If the Parties are unable to so agree upon a suitable alternative replacement, then either Party may refer the matter to an Expert for determination in accordance with Clause 20.2.

2. SALE AND PURCHASE

Seller agrees to sell and make available to Buyer, and Buyer agrees to purchase from Seller, Natural Gas at the Delivery Point in compliance with Clause 4 "Quality" for the San Juan Power Plant. The quantity of Natural Gas to be made available by Seller at the Delivery Point shall be the amount scheduled in accordance with Clause 7. The price for such quantities shall be determined in accordance with Clause 12.

3. DURATION AND CONDITIONS

3.1 Contract Term

- (a) This Agreement shall enter into full force and effect on the Effective Date and shall, subject to the terms hereof, continue in force and effect until and including the later of (i) the fifth (5th) anniversary of the first Day of the Supply Period, and (ii) any extension agreed to pursuant to Clause 3.1(b) (the initial Contract Term and the extension above shall hereinafter referred to as the "**Contract Term**").
- (b) The Parties may extend the Contract Term on such terms and conditions as they may agree to in writing. This contract will be for a base period of Five (5) years with three (3) separate options of five (5) year extensions at Buyer's sole discretion. The Seller shall be responsible for the scope of work and associated capital cost

required for LNG gas conversion of PREPA's San Juan Units 5 and 6, as well as modifications to associated turbine controls.

3.2 Each of the following will be "**Firm Supply Conditions**":

- (a) the Buyer shall have obtained the necessary permits from the relevant Competent Authorities, including the Environmental Air Quality Permit required by the Puerto Rico Environmental Quality Board due to the Natural Gas Specifications; and
- (b) the Seller shall have performed, or caused to be performed, the technical modifications required to enable the Seller to deliver Natural Gas on a fully operational basis to the San Juan Power Plant at the Delivery Point, including the obtaining of the necessary permits for the construction works from the relevant Competent Authorities, with such technical modifications and permits necessary to satisfy its Firm Supply Conditions set out in detail in Annex ____ to this Agreement.

3.3 The Parties shall keep each other duly informed of the fulfillment of each of the Firm Supply Conditions. Each Party shall notify the other Party in writing of the date on which it anticipates that the respective Firm Supply Condition for which it is responsible will be satisfied no less than thirty (30) Days prior to such anticipated date. As soon as each Firm Supply Condition is satisfied, each Party shall confirm in writing the Firm Supply Conditions fulfillment.

3.4 The Firm Supply Period will commence as provided in Clause 5.3. The "**Firm Supply Conditions Date**" shall be the date on which the Firm Supply Conditions have been satisfied or expressly waived in accordance with Clause 3.8, provided that the Firm Supply Conditions Date will not occur until the latest date specified in a notice properly delivered under Clause 3.3.

3.5 Each Party shall endeavour in good faith to satisfy or procure the satisfaction of each Firm Supply Condition for which it is responsible (each such Party for the purposes of this Clause 3 being the "**Responsible Party**"). Buyer shall be the Responsible Party for the Firm Supply Condition described in Clause 3.2(a) and Seller shall be the Responsible Party for the Firm Supply Condition described in Clause 3.2(b).

3.6 Each Party shall furnish the other Party upon request by such other Party with any reasonable assistance in fulfilling each Firm Supply Condition for which that other Party is the Responsible Party.

3.7 Upon the satisfaction of any Firm Supply Condition, the Responsible Party shall give prompt written notice thereof to the other Party.

3.8 The requirement for the satisfaction of any Firm Supply Condition can only be waived by the written agreement of both Parties.

4. QUALITY

4.1 The Natural Gas delivered by the Seller to or for the account of the Buyer at the Delivery Point:

- (a) shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the Natural Gas;
- (b) shall not contain more than three-tenths grains of hydrogen sulfide per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (c) shall not contain more than two grains of total sulfur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (d) shall not contain more than 0.25 grains of mercaptan sulfur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (e) shall not contain more than two percent (2%) by volume of carbon dioxide, as measured by methods in accordance with acceptable industry practice;
- (f) shall not have a water vapour content in excess of seven pounds per million standard cubic feet of Natural Gas volume, such vapour content to be measured by methods in accordance with accepted industry practice;
- (g) shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than zero point four (0.4%) by volume of oxygen, as measured by methods in accordance with acceptable industry practice;
- (h) shall have a Heating Value of not less than 950 Btu per Standard Cubic Foot and not more than 1165 Btu per Standard Cubic Foot. The Heating Value shall be measured by methods in accordance with accepted industry practice, such as, but not limited to, recording calorimeter(s) or Natural Gas chromatograph(s) located at appropriate points; and
- (i) shall be delivered to the Delivery Point at a temperature of more than 40° F and less than 100° F, and at the maximum pressure available when operating the LNG Facilities' vaporizers at a pressure of 650 pounds per square inch gauge.

The quality specifications set out in paragraphs (a) to (i) above shall be deemed to be the "**Specifications.**" The standard test methods as described in the Seller's operating procedures applicable at the MFH Facility shall be used to determine compliance with the Specifications.

4.2 Failure of Natural Gas to Conform to Specifications

- (a) Seller shall notify Buyer as soon as reasonably practicable after becoming aware of any existing or anticipated failure of the NG available for delivery to the Delivery Point to conform to the Specifications, giving details of the nature and expected magnitude of the variance, the cause of the non-compliance and the probable duration, including the delivery time of such Off-Spec Natural Gas.
- (b) If at any time, the NG offered for delivery by the Seller is or is expected to be Off-Spec Natural Gas, the Buyer may reject in whole or in part the delivery of such gas as well as any further deliveries of such Off-Spec Natural Gas.
- (c) If at any time, the Seller is unable to deliver NG conforming to the Specifications but is able to deliver Off-Spec Natural Gas, the Seller may withhold deliveries until such time as it is able to deliver NG conforming to the Specifications; provided however, that in such event the Buyer shall be entitled to request delivery of such Off-Spec Natural Gas, unless such delivery, in the Seller's opinion acting as a Reasonable and Prudent Operator, would have a detrimental effect on the MFH Facility or related facilities upstream of the Delivery Point.
- (d) Unless both (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer waives in writing its right to reject such Off-Spec Natural Gas, the Seller shall be liable for all damages incurred by the Buyer as a result of the acceptance of such Off-Spec Natural Gas, including all the reasonable costs and expenses incurred (over and above those normally incurred in accepting conforming Natural Gas) in receiving and treating such Off-Spec Natural Gas by such means as are appropriate; provided, that the Buyer shall exercise commercially reasonable practices to minimize the costs and expenses which may occur.
- (e) If both (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer waives in writing its right to reject such Off-Spec Natural Gas, such Off-Spec Natural Gas shall be deemed to have been delivered in accordance with this Agreement and the Seller shall not be liable for any damages to the Buyer for the acceptance of such Off-Spec

Natural Gas; provided, however, that said NG shall be paid for at eighty-five percent (85%) of the Fuel Contract Price.

(f) When NG is not taken by the Buyer due to it being Off-Spec Natural Gas or when Seller withholds NG pursuant to Clause 4.2(c), the Buyer shall not be obliged to pay for such NG not taken, and such NG not taken shall be deemed not to have been made available and shall be considered a "**Seller's Shortfall Quantity**."

(g) The Buyer shall have no right or remedy with respect to the Off-Spec Natural Gas other than those stated or referred to in this Clause 4.2.

4.3 Any Dispute between the Parties concerning the measurement and/or testing of NG for the purposes of determining the quality thereof at the Delivery Point, shall be settled in accordance with the provisions of Clause 20.2 of this Agreement.

5. SUPPLY PERIOD

5.1 The supply period for NG shall begin on the Commissioning Start Date and shall continue in force until and including the last Day of the Contract Term (the "**Supply Period**").

5.2 The phase of the Supply Period from, and including, the Commissioning Start Date to, and including, the Firm Supply Conditions Date shall be considered to be a transitional supply period (the "**Transitional Supply Period**").

5.3 The phase of the Supply Period from and including the first Day of the first calendar month that commences after the Firm Supply Conditions Date to and including the last Day of the Contract Term shall be the "**Firm Supply Period**."

6. NG QUANTITIES

6.1 The "**Maximum Annual Contract Quantity**" for each Contract Year shall be [twenty five (25)] TBTU unless otherwise agreed in writing by the parties.

The Maximum Annual Contract Quantity shall be prorated downward rateably for each Contract Year of less than three hundred and sixty five (365) Days.

6.2 Without prejudice to the provisions of Clause 6.5 and taking into account the Seller's commercial and technical restrictions and subject to the Parties and Seller obtaining any relevant permits, the Parties may agree, each in its sole and absolute discretion, that prior to the Firm Supply Conditions Date (a) the Seller shall sell and deliver NG to the Buyer at the Delivery Point and (b) the Buyer shall purchase and take delivery of NG from the Seller at the Delivery Point during the Transitional Supply Period.

- 6.3 If such agreement is so reached, in each Party's sole discretion, pursuant to Clause 6.2 all the terms and conditions of this Agreement shall apply *mutatis mutandis* during the Transitional Supply Period and in particular:
- (a) The Seller shall make available the quantities of NG thus agreed in accordance with Clause 7.1 and Buyer shall pay for such quantities of NG, in each case in accordance with this Agreement, provided that the quantities of NG to be delivered shall be agreed by the Parties and shall not exceed:
 - (i) the maximum amount of NG that the Seller can supply technically, legally and commercially; and
 - (ii) The maximum amount of NG that the Buyer can consume at the San Juan Power Plant.
 - (b) The price applicable to the NG quantities consumed during the Transitional Supply Period shall be the Fuel Contract Price calculated in accordance with Clause 12.1 for the relevant month of consumption.
- 6.4 The Parties shall be in contact on a regular basis to define the quantities to deliver and start the supply as soon as practicable during the Transitional Supply Period.
- 6.5 Unless the Parties reach an agreement in accordance with Clause 6.2, neither Party shall:
- (a) be obliged to sell, make available, deliver, purchase or take delivery of NG, as appropriate, during the Transitional Supply Period; nor
 - (b) be liable to the other during the Transitional Supply Period for any failure to so sell deliver, purchase or take delivery of NG.
- 6.6 In respect of each Day of every Contract Year, the Daily Contract Quantity ("DCQ") shall be the daily nomination for each Day of the Binding Monthly Schedule. The "**Maximum DCQ**" that Buyer may nominate for any Day shall be [93 MMscf] per Day, provided, however, that Seller shall use reasonable efforts to comply with Buyer's request to deliver a quantity on a Day in excess of the applicable Maximum DCQ.
- 6.7 **Maximum Hourly Rate**
- (a) The Seller shall not be obliged, notwithstanding any other provision of this Agreement, to deliver the DCQ at an hourly rate over [3.875 MMscf] per hour ("**Maximum Hourly Rate**"); provided, however, that Seller shall use reasonable efforts to comply with the Buyer's requests to exceed such Maximum Hourly Rate to the extent

necessary for Buyer's demand, subject to the operation of San Juan Power Plant.

- (b) The Buyer shall not be obliged, notwithstanding any other provision of this Agreement, to receive the DCQ at an hourly rate over the Maximum Hourly Rate; provided, however, that the Buyer shall use reasonable efforts to comply with the Seller's exceptional requests to exceed such Maximum Hourly Rate to the extent necessary for the performance of this Agreement.

7. SCHEDULING

7.1 Transitional Supply Period

According to Clause 6.2, the Parties may agree to a binding delivery programme for the Transitional Supply Period.

During the Transitional Supply Period, Clauses 7.4(a)(iii), 7.4(a)(iv) and 7.5 shall apply *mutatis mutandis* to the binding NG quantities agreed between the Parties in accordance with Clause 6.3.

7.2 Firm Supply Period - first Contract Year

The first Contract Year shall begin on the first day of the Firm Supply Period and end on December 31, ____.

7.3 Firm Supply Period — except for first Contract Year:

Each Contract Year shall begin on January 1st, of the Contract Year at 00:00 local time and end on December 31st, of the Contract Year at 24:00 local time.

7.4 With respect to each Contract Year during the Firm Supply Period, the following provisions shall apply:

- (a) The Annual Delivery Programme ("ADP"), Ninety-Day Schedule ("NDS") and Weekly Programme for such Contract Years shall be established according to the following conditions:
 - (i) Except for the first Contract Year, on or before 1st June, the Buyer shall nominate the "Annual Contract Quantity" or "ACQ" for the upcoming Contract Year, which ACQ must be between zero (0) MMscf and the Maximum Annual Contract Quantity for such Contract Year. The ACQ shall be final and binding.

In addition to the ACQ, the Buyer shall provide:

1. an estimate of its consumption on a quarterly basis; and
2. its non-binding estimate of the dates of any Scheduled Maintenance expected to occur during such Contract Year.

Regarding the first Contract Year, an estimation of the ACQ and the information required in this Clause 7.4(a)(i) are attached hereto as Annex C. Once the Firm Supply Condition Date occurs, the Buyer shall confirm no later than ten (10) Days after such event, the final and binding ACQ for the first Contract Year.

- (ii) Except for the first Contract Year, on or before 1st October of each year thereafter, the Buyer shall provide to the Seller an ADP for the ACQ informed by the Buyer in accordance with Clause 7.4(a)(i), for the following Contract Year on a monthly basis, the sum of the quantities of the months of each calendar quarter ("**Quarterly Binding Quantity**") being binding. This ADP shall include the final dates of any Scheduled Maintenance to occur during such Contract Year.

Regarding the first Contract Year, the Buyer shall provide the Seller an estimated ADP no later than thirty (30) Days after the Effective Date. Once the Firm Supply Condition Date occurs, the Buyer shall confirm no later than ten (10) Day after such event, the final and binding ADP for the first Contract Year.

- (iii) On or before the fifth (5th) Day of month M-1 the Buyer shall provide to the Seller its NG requirements for the next three (3) months (the "**NDS**"). On or before the fifteenth (15th) Day of month M-1 and in accordance with Clause 7.4(b), the Seller shall confirm the NDS. The NDS shall be binding for month M (the "**Binding Monthly Schedule**") and non-binding for month M+1 and M+2. Such NDS shall include the monthly quantities to be delivered in each of the next three months, as well as the daily requirements for month M. Buyer may request additional Natural Gas from Seller for month M after the deadline for submission of the NDS. Upon receipt of such a request, Seller shall inform Buyer within three (3) Days whether Seller can deliver all or a portion of such quantities and the applicable price, and Buyer shall have two (2) Days to accept or decline Seller's offer. If Buyer accepts Seller's offer, such quantities shall become firm. Further, Buyer shall use commercially

reasonable efforts to include in each NDS estimated, non-binding daily requirements for months M+1 and M+2; and

- (iv) On or before 00.00 hours Puerto Rico Time of each Wednesday of each week, or, if such Day is not a Business Day, on the Business Day immediately preceding such Day, the Buyer shall provide to the Seller a daily estimate of its NG requirements for the coming week, to be provided on a daily basis with hourly detail. This weekly programme ("**Weekly Programme**") shall be reasonably adjusted to the original NDS for the applicable month.

For the purpose of this Clause each Weekly Programme shall contain consumption details beginning 00:00 hours Sunday until 23:59 hours the following Saturday.

- (b) The Parties shall cooperate in the scheduling to ensure that the supply of Natural Gas to the San Juan Power Plant is as regular and as even as practicable (subject to the Buyer's Scheduled Maintenances) in a manner that is consistent with the Seller's projected deliveries and use of LNG, as such projected deliveries or requirements may be adjusted or exist from time to time.
- (c) The Buyer designates the Operational Manager as specified in Clause 24 to make all the notifications required under this Clause 7.4.

- 7.5 If Buyer determines that it no longer requires the quantity of Natural Gas set forth in the Binding Monthly Schedule, Buyer shall promptly provide notice to Seller of the quantities not needed (such notified amount, the "**Excess Nomination**"). Seller shall use commercially reasonable efforts to sell the Excess Nomination, whether as Natural Gas or as LNG, at a reasonable price. If Seller is able to sell all or a portion of such Excess Nomination, Seller shall credit to Buyer the proceeds of such sale, less Seller's costs to make and perform such sale. If Seller is unable to sell all or a portion of such Excess Nomination, Seller shall retain such quantities and credit Buyer with an amount equal to fifteen (15) percent of the Fuel Contract Price multiplied by the quantity not sold by the Day it would have otherwise been made available.

8. [RESERVED]

9. SELLER'S SHORTFALL

- 9.1 If, for any reason other than the occurrence of (a) an event of Force Majeure or (b) reasons attributable to the Buyer, the Seller fails to deliver the scheduled quantity for delivery to the Buyer in the Binding Monthly Schedule for the applicable months of any Contract Quarter (the "**Seller Shortfall**")

Quantity") the Seller shall be liable to the Buyer in accordance with this Clause 9.

- 9.2 If a Seller Shortfall Quantity occurs, Seller shall pay liquidated damages to the Buyer in the form of an amount (a "**Shortfall Payment**") equal to (a) the Seller's Shortfall Quantity multiplied by (b) fifteen percent (15%) of the of the applicable Fuel Contract Price.
- 9.3 Any Shortfall Payment shall be due and payable by the Seller to the Buyer in accordance with Clause 13.
- 9.4 Seller agrees that Buyer's damages associated with Seller's failure to deliver NG hereunder would be difficult to estimate, and that Clause 9.2 represents a reasonable estimate of such damages.

10. MEASUREMENT AND TESTING

10.1 Unit of Measurement

The following guidelines shall be followed with regard to the units of measurement to be used by either Party to comply, as appropriate, with the provisions of this Agreement:

- (a) The unit for the purpose of measuring volume shall be one cubic foot of Natural Gas at a base temperature of sixty degrees (60°) F and at a pressure of 14.73 psia with correction for deviation from Boyle's Law. Computation of volumes, including any deviation from Boyle's Law, shall comply with applicable rules, regulations, and orders promulgated by the appropriate regulatory authorities having jurisdiction. For payment purposes, the volume of Natural Gas delivered hereunder will be determined at the pressure reported by the Metering Equipment or based on fifteen (15) Day average flowing pressure corrected, if necessary, in the event that the Metering Equipment is inoperable or not measuring accurately, as applicable, and will be multiplied by the Btu content per cubic foot to obtain the total Btu contained within such volume of Natural Gas.
- (b) For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be 14.73 psia, irrespective of actual elevation or location of the Delivery Point above sea level, or variations in such atmospheric pressure from time to time.
- (c) The static pressure of the Natural Gas passing through the Metering Equipment shall be determined by the use of electronic measurement equipment or by the use of another pressure recording device reasonably acceptable to both Parties. The instantaneous static pressure measurements from the electronic

measurement equipment or the arithmetic average of the temperature recorded each Day shall be used in computing Natural Gas volumes.

- (d) If Metering Equipment requiring the use of specific gravity is used, then the specific gravity of the Natural Gas delivered hereunder shall be determined by a method according to accepted industry practice. If a recording gravitometer is used, then the arithmetic average of the specific gravity of the Natural Gas flowing through the meters shall be used in computing Natural Gas volumes. If a spot test method is used, then the specific gravity of the Natural Gas delivered hereunder shall be determined as often as found necessary in practice. Any such test shall determine the specific gravity to be used in computation of volumes values effective the first Day of the following month and shall continue to be used until changed in a like manner by a subsequent test.
- (e) The temperature of the Natural Gas shall be determined by a recording thermometer installed so that it will record the temperature of the Natural Gas flowing through the meters, and such flowing temperature shall be corrected to Fahrenheit.
- (f) Heating Value and energy content will be measured by the Seller as described in "Appendix F – Heating Value Calculation of API MPMS, Chapter 14.3." The determination of Natural Gas composition shall be in accordance with the GPA Standard 226 "Analysis for Natural Gas Chromatography" and GPA Standard 2172 "Calculation of Gross Heating Value relative density and compressibility factor for Natural Gas Mixtures from compositional analysis". The composition of the NG shall be continuously measured by on-line chromatographs installed and maintained (or caused to be installed and maintained) by Seller at Seller's sole expense. The Heating Value of the NG shall be calculated using results from the on-line chromatograph. In the event of failure of the on-line NG chromatograph, chromatograph analysis of samples collected proportional to the flow through the meters shall be Used. All electronic metering shall comply with the API Manual of Petroleum Standards, Chapter 21, Flow Measurement Using Electronic Metering Systems, First Edition, dated September 1993, and any subsequent modification and amendment thereof.
- (g) The energy content of all NG delivered hereunder shall be in Btu and shall equal the Standard Cubic Feet of such NG multiplied by the Heating Value of such NG.

10.2 Metering Equipment

- (a) Prior to the start of the Supply Period, the Seller will install or cause to be installed, at Seller's expense, a main and a back-up meter and other equipment as necessary to measure the volume of Natural Gas delivered hereunder (the "**Metering Equipment**"). The Metering Equipment will be installed at the point identified as "Seller Metering Station" on the schematic attached as Annex A. The Metering Equipment shall be designed and installed in accordance with the current recommendations of the American Gas Association. If the Metering Equipment (or component(s) thereof) is out of service or registering inaccurately, the volumes of Natural Gas delivered hereunder shall be estimated as follows, in descending order of priority:
- (i) by using the registration of the Buyer Check Meter;
 - (ii) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or
 - (iii) by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.
- (b) Buyer has a meter equipment necessary to measure the volume of Natural Gas delivered hereunder (the "**Buyer Check Meter**"). The Buyer Check Meter is installed at the point identified as "Buyer Metering Station" on the schematic attached as Annex A. The Buyer Check Meter is designed and installed in accordance with the current recommendations of the American Gas Association. In the event that Buyer notifies Seller of a material discrepancy between the quantity of Natural Gas delivered at the Delivery Point by Seller according to the Buyer Check Meter, and the quantity of Natural Gas measured by the Metering Equipment, the Parties will resolve and correct such discrepancy (including with respect to adjustments for prior Natural Gas deliveries).
- (c) For the avoidance of doubt, it is the intent of the Parties that Natural Gas will only be considered delivered when it reaches the Delivery Point, and that any Natural Gas measured at the Metering Equipment that is not actually delivered to the Delivery Point will not be considered delivered and will not be charged to Buyer. In this regard, Buyer will not be charged for line fill or any losses or fuel used on the pipeline between the Metering Equipment and the Delivery Point. Also, if Seller informs Seller about its intention to consume, due to any operational event, any quantity of Natural Gas stored in the pipeline that was not delivered to Buyer at the Delivery Point and, consequently, that was already measured by the

Metering Equipment at the Seller Metering Station, Seller shall notify in writing Buyer of such circumstance. The Parties will resolve any material discrepancies resulting from Seller's consumption of Natural Gas under this clause in accordance with Clause 10.2(b).

10.3 Verification

The following guidelines shall be followed with regard to the verification of the Metering Equipment to be used in accordance with this Agreement:

- (a) At least once each month, and from time to time upon at least two weeks prior written notice by either Party to the other, the Seller shall verify or cause to be verified the accuracy of the Metering Equipment. When as a result of such test the Metering Equipment is found to be out of calibration by no more than one percent (1%) when compared to the manufacturer's specifications for such equipment, no Adjustment shall be made in the amount paid by the Buyer to the Seller.
- (b) If the testing of the Metering Equipment demonstrates that a meter is out of calibration by more than one percent (1%) when compared to the manufacturer's specifications for such equipment, the applicable Metering Equipment reading for the actual period during which out of calibration measurements were made shall be adjusted based on the methods stated in Clause 10.2 above.
- (c) If the actual period that such equipment has been out of calibration cannot be determined to the mutual satisfaction of the Seller and the Buyer, the adjustment shall be for a period equal to one-half of the time elapsed since the most recent test. The previous payments made by the Buyer to the Seller for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference in US Dollars (which may be a positive or negative amount) shall be added to the next Monthly Invoice pursuant to Clause 13.
- (d) The cost of the monthly testing and calibration of the Metering Equipment described in this Clause 10.3 shall be the responsibility of the Seller. The cost of any testing and calibration of the Metering Equipment beyond the monthly test permitted in this Clause 10.3 shall also be the responsibility of the Seller, unless the request to test any of the Metering Equipment is made by the Buyer and the results of such test requested by the Buyer demonstrate that the Metering Equipment is less than one percent (1%) out of calibration, in which case the cost of such testing and calibration shall be for the Buyer's account.

- (e) Each Party shall comply with any reasonable request of the other concerning the sealing of the Metering Equipment, the presence of a representative of the Buyer when the seals are broken and tests are conducted, and other matters affecting the accuracy, testing and calibration of the Metering Equipment.
- (f) If either the Seller or the Buyer believes that there has been a failure or stoppage of any of the Metering Equipment, it shall immediately notify the other Party.

10.4 Availability of readings

At the end of each Month, the Seller shall make available to the Buyer all readings of the metering equipment as referenced in Clause 10.2(a)

10.5 Preservation of Records

The Seller shall preserve or cause to be preserved for a period of at least three (3) years following the expiration of this Agreement all test data, charts, and other similar records regarding the measurement of Natural Gas delivered in accordance with this Agreement.

11. TRANSFER OF TITLE AND RISK; INDEMNITY

The NG to be sold by the Seller and purchased by the Buyer in accordance with this Agreement shall be delivered to the Buyer at the Delivery Point. Title and risk in NG, including the risk of loss or (without prejudice to Clause 4 above) contamination, shall pass from the Seller to the Buyer at the Delivery Point (irrespective of the location of the Metering Equipment). Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorney' fees and costs of court ("**Claims**"), from any and all Persons, arising from or out of claims of title, personal injury (including death) or property damage from said Natural Gas or other charges thereon which attach before title passes to the Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all Persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Natural Gas or other charges thereon which attach after title passes to the Buyer.

12. FUEL CONTRACT PRICE

- 12.1 The Fuel Contract Price applicable to the quantities of NG to be sold, purchased and delivered in any month shall be \$__ per MMBtu ("**Fuel Contract Price**"). The capacity payment for capital cost of conversion to LNG of the San Juan Units 5 and 6 will only apply to the Base period and will not apply to any extensions.

13. INVOICING AND PAYMENT

- 13.1 Every month the Seller shall invoice Buyer for the quantities in the Binding Monthly Schedule for the previous calendar month plus any additional quantities Seller agreed to deliver pursuant to Clause 7.4(a)(iii), and whatsoever other amounts that are owed for those items regulated in accordance with this Agreement and current regulations governing the provision of the services at any given time. PREPA certifies that the funds for the payments of Services rendered under this Agreement come from budgetary allocations. All payments performed under this Agreement will be charged to PREPA's budget account number 1-2321-23215-000-000.
- 13.2 The Seller shall prepare and shall give to the Buyer by not later than the tenth (10th) Day after the end of each calendar month an invoice (the "**Monthly Invoice**") which shall show in respect of the preceding calendar month the following information:
- (a) The Fuel Contract Price multiplied by the quantities in the Binding Monthly Schedule for such month;
 - (b) Any additional quantities Seller agreed to deliver pursuant to Clause 7.4(a)(iii) multiplied by the price applicable to such quantities;
 - (c) Any applicable Taxes due for payment by the Buyer;
 - (d) The proceeds from the sale of (or credit due, as the case may be, from) any Excess Nomination; and
 - (e) The net amount payable by the Buyer to the Seller, which shall be (a) plus (b) plus (c) minus (d).
- 13.3 The Buyer shall pay the net amount to the Seller as due in accordance with such Monthly Invoice.
- 13.4 If Seller incurs a liability to the Buyer for failing to deliver NG pursuant to Clause 9, then the Buyer shall send to the Seller (following the end of the applicable month) an invoice and reasonable supporting documentation showing the amount payable by the Seller in accordance with Clause 9.
- 13.5 If any sums are due from one Party to the other Party, except for reasons addressed in Clauses 13.2 and 13.4, then the Party to whom such sums are owed shall furnish to the other an invoice describing in reasonable detail the basis for the invoice and providing relevant supporting documentation.
- 13.6 In respect of any invoice issued pursuant to this Clause 13, the Buyer or the Seller as the case might be shall pay the amount due within thirty (30) Days after receipt of such invoice.

- 13.7 Payment of amounts due to one Party from the other Party shall be made by wire transfer in immediately available funds into the bank account nominated from time to time by the Party to which the funds are owed. Each payment of any amount owing hereunder shall be for the full amount due, without reduction, withholding or offset for any reason (including any exchange charges, bank transfer charges or other fees or Taxes). Until further notice, the bank account for each Party is as follows:

Seller: Bank Name: [ENTITY]

Bank Amount #

Buyer: Bank Name: [ENTITY]

Bank Account #

Notwithstanding the foregoing, Seller shall request from Buyer wire instructions prior to transferring any funds to Buyer and shall provide Buyer bank confirmation upon completion of each such transfer.

- 13.8 If any Party fails to pay the other Party the full amount of any invoice due by the due date, such Party shall also pay interest thereon to the other Party for the period commencing from and including the due date until and including the Day when payment is made. Interest shall be calculated at the rate of four hundred (400) basis points above the LIBOR percentage rate per annum but no greater than the maximum amount allowable by law.
- 13.9 If a Party disagrees in good faith with any invoice, such Party shall pay the full amount invoiced or so stated by the due date thereof and shall immediately notify the other Party of the reasons for its disagreement. An invoice may be contested by the Party that received it, or modified by the Party that sent it, by written notice delivered to the other Party within a period of one hundred and eighty (180) Days after such receipt or sending, as the case may be. If no such notice is served within such period of one hundred and eighty (180) Days, such invoice shall be deemed correct and accepted by both Parties. Promptly after resolution of any Dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the Seller or the Buyer, as the case may be, to the other Party, together with interest thereon at the rate provided in Clause 13.9 from the date payment was due to the date of payment.

14. DUTIES, TAXES AND CHARGES

- 14.1 Each of the Seller and the Buyer shall be responsible for the payment of all taxes, fees, levies, royalties, duties, penalties, licenses, and other charges imposed by any Governmental Authority ("**Taxes**") which it incurs and for which it is legally responsible for as a result of complying with this Agreement and which correspond to such Party under all applicable tax regulations and

laws in force at the Effective Date and throughout the Contract Term in each of the jurisdictions relevant to this Agreement connected to the Parties. If a Party it's required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

14.2 For the avoidance of doubt and notwithstanding the above:

- (a) Seller represents and warrants that it is the importer of record for all Natural Gas delivered hereunder, and shall be responsible for entry and entry summary filings as well as the payment of associated duties, Taxes and fees, if any, and all applicable record keeping requirements.
- (b) Buyer shall pay or cause to be paid all Taxes imposed by any Governmental Authority after the Delivery Point on the sale, use, or purchase of Natural Gas delivered to the Buyer under this Agreement (and on any LNG from which such Natural Gas is derived) and its transportation within the territory of Puerto Rico after the Delivery Point; provided that at all times the Seller shall be responsible for the payment of all and any Corporate Tax payable in Puerto Rico in connection with this Agreement; and
- (c) Seller shall pay or cause to be paid all Taxes imposed by any Government Authority on or with respect to Natural Gas delivered to the Buyer under this Agreement (and on any LNG from which such Natural Gas is derived) prior to the Delivery Point and all Taxes at the Delivery Point.

15. FORCE MAJEURE

- 15.1 Neither the Seller nor the Buyer shall be liable for any failure to perform or for omission or delay in the performance of any of its obligations under this Agreement, other than the obligation to make payments of money when due, if and to the extent that the affected Party's performance is prevented, delayed or interfered with by an act, event or circumstance, or combinations of events or circumstances, whether of the kind described herein or otherwise, that is not reasonably within its control, such Party having acted as a Reasonable and Prudent Operator and which effects could not be prevented or overcome by the exercise of due diligence ("**Force Majeure**").

For the avoidance of doubt, provided that the requirements set out in the preceding paragraph are met, events of Force Majeure shall include but not be limited to the following:

- (a) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the relevant loading terminal or upstream facilities affecting an LNG cargo and source indicated in the LNG Delivery Plan. The "**LNG Delivery Plan**" shall mean the indicative LNG cargo scheduling program submitted by the Seller to the Buyer, solely for the purposes of this Clause, not later than 30 Days prior to the commencement of each Contract Year and which shall include for each LNG cargo the expected source. The Seller shall inform Buyer of any modifications to the sources indicated in the LNG Delivery Plan, provided that Seller shall not, at any time nominate any source that is affected by Force Majeure or that is affected by any event that could reasonably lead to a claim of Force Majeure relief under this Agreement.
- (b) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of an LNG Ship requiring her removal from service;
- (c) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the MFH Facility;
- (d) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the San Juan Power Plant; provided that if an event of Force Majeure affects just one unit at the San Juan Power Plant, but not both, the affected Party shall only be released from its obligations under this Agreement with regard to the unit affected by the event of Force Majeure; and
- (e) Acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunamis, earthquake, landslide, soil erosion, subsidence, washout, epidemic, shipwreck, navigational and maritime perils, acts of any Competent Authority or compliance with such acts; explosions, acts of the public enemy, wars (whether declared or undeclared), terrorism or threat thereof, civil war, piracy, civil and military disturbances, strikes, blockades, insurrections, riots, epidemics and quarantine restrictions; strike, lockout or other industrial disturbances involving an enterprise other than a Party, its transporter or its agents or sub-contractors in connection with the Agreement; radioactive contamination or ionising radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots).

15.2 Notwithstanding the foregoing provisions of Clause 15.1, the following shall not be events of Force Majeure:

- (a) events arising out of market decline, market failure, industry economic conditions, or general economic conditions;

- (b) any delay in achieving the Firm Supply Conditions, unless such delay is caused by an event of Force Majeure;
- (c) the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Competent Authority, of which the Party claiming Force Majeure was aware, or should have been aware, acting as a Reasonable and Prudent Operator, to the extent such Party could have applied for, obtained, maintained, or attended any such authorization, approval, permit, or permission;

provided, however, that the failure to obtain any authorization, approval, permit or permission of any Competent Authority that is required in order to satisfy the Firm Supply Conditions shall under no circumstances be considered Force Majeure.

15.3 In the event of any failure or delay of a Party's performance due to the occurrence of a Force Majeure event, the affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume as soon as possible full performance of its obligations under this Agreement, provided that the settlement of strikes or boycotts, lockouts or other industrial disputes, or obstructive action by organizations or local inhabitants, shall be entirely within the discretion of the Party concerned.

15.4 A Party intending to seek relief under this Clause 15 shall as soon as reasonably practicable after it becomes aware of the occurrence of a Force Majeure event:

- (a) notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim Force Majeure relief under this Agreement, describing such event, in as much detail as is then reasonably available, and the obligations, the performance of which has been or could be delayed, hindered or prevented thereby, and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance; the obligations which could or have been actually delayed or prevented in performance and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance;
- (b) give a bona-fide good faith estimate of when it shall be able to resume full performance of its obligations; and
- (c) give the particulars of the programme to be implemented, if any, to resume full performance hereunder subject to any Third Party confidentiality obligations.

Such notices shall thereafter be supplemented and updated at reasonable intervals during the period of such Force Majeure, specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure is expected to terminate.

- 15.5 If any Party claims relief under this Clause 15, it shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of such event or circumstance which gave rise to the Force Majeure claim, provided that the Party not claiming relief under this Clause 15 shall bear the cost, expense and risk of examining such site.
- 15.6 Where an act, event or circumstance prevents, impedes or delays a Party's performance hereunder, even if such act, event or circumstance primarily affects a Third Party or Third Parties, it shall constitute Force Majeure hereunder as to the Seller or the Buyer, as appropriate, if and to the extent that it is of a kind or character that, if it had happened to a Party, would have come within the definition of Force Majeure under this Clause 15.
- 15.7 Force Majeure takes effect at the moment a Force Majeure event occurs, not upon giving notice. A Party whose performance is excused by Force Majeure shall not be required, during the period in which the circumstances of the Force Majeure event are continuing, to incur uneconomic cost, make additional investments in new facilities, or bring into production existing or potential reserves not already flowing in support of this Agreement.
- 15.8 If Seller is rendered wholly or partially unable to deliver NG under this Agreement as a result of a Force Majeure event claimed only by the Buyer, Seller shall have the right to enter into binding contracts with Third Parties to sell and deliver LNG that is not reasonably expected to be needed by the Seller to meet its obligations to the Buyer hereunder based on the expected extent and duration of such Force Majeure as notified by the Buyer.
- 15.9 If the Force Majeure event lasts for a period such that the affected Party shall be prevented from or delayed in performing its obligations hereunder for a period of one hundred eighty (180) consecutive Days or more from the date on which the Force Majeure event first occurred, the Party not claiming Force Majeure shall have the right to terminate this Agreement without liability to either Party by giving written notice to the either Party.

16. REPRESENTATIONS, WARRANTIES, LIABILITIES AND INDEMNITIES

- 16.1 Each Party hereby represents and warrants to the other Party that, as of the Effective Date, to the actual knowledge of its officers and directors:
 - (a) With regard to the Seller it is a corporation or limited liability company duly formed, validly existing and in good standing under the laws of the state and/or country of its incorporation or organization, and is duly qualified to do business in, and is in good

standing in, all other jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.

- (b) With regard to the Buyer it is a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.
- (c) Each Party has all requisite power and authority to conduct its business, to own or lease and operate its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (d) The execution, delivery and performance by such Party of this Agreement has been duly authorized by all necessary corporate action on the part of such Party and do not (i) require any consent or approval of any Competent Authority, such Party's governing body or any other Person, other than those that have been obtained, or the failure to obtain, of which would not have, or could not reasonably be expected to have, a material adverse effect on each Party's ability to perform its obligations hereunder, (ii) violate any provision of such Party's articles of incorporation or by-laws, or other organizational documents, or any Applicable Law in effect, or (iii) result in a breach of or constitute a default under such Party's organizational documents or other material indentures, contracts or agreements to which it is a part or by which it or its properties may be bound.
- (e) This Agreement is a legal, valid, and binding obligation of the Seller and the Buyer enforceable against the Seller and the Buyer, as appropriate, in accordance with its terms.

16.2 The Seller warrants that it has good title to or good right to, all NG delivered hereunder and that all NG delivered to the Buyer at the Delivery Point shall be free and clear of all liens, security interests, charges, assessments encumbrances and adverse claims whatsoever. The Seller representation or warranty, written or oral, express or implied that the NG will be fit for a particular purpose, or will be of merchantable quality, and all such representations and warranties are expressly excluded to the fullest extent permitted by law, but nothing in this Clause 16.2 affects the requirement that all NG delivered to the Buyer under this Agreement will meet the Specifications of Clause 4.

- 16.3 The Seller represents and warrants that it will take or cause to be taken all necessary actions to start NG deliveries from the first Day of the Firm Supply Period including the design and construction of any facility or its elements situated upstream of the Delivery Point and that to that end it will obtain or cause to be obtained all required approvals, consents or authorization from the relevant Competent Authority.
- 16.4 The Buyer represents and warrants that it will take or cause to be taken all necessary actions to commence taking delivery of NG from the first Day of the Firm Supply Period including the design and construction of any facility or its elements situated downstream of the Delivery Point and that to that end it will obtain or cause to be obtained all required approvals, consents or authorizations from the relevant Competent Authority.
- 16.5 Except as provided elsewhere in this Agreement, a Party shall not be liable to the other Party under this Agreement, or in tort or otherwise howsoever as a result of any act or omission in the course of or in connection with the carrying out of this Agreement, for or in respect of:
- (a) any consequential, special or punitive loss or damage suffered or incurred by the other Party or its Affiliates;
 - (b) any loss of income, profits, production or revenue suffered or incurred by the other Party or its Affiliates;
 - (c) any business interruption suffered or incurred, by the other Party or its Affiliates; or
 - (d) any claim, demand or action made or brought against that other Party by a Third Party.
- 16.6 The Seller's liability for failure to deliver will be limited to the payment of the amounts detailed in Clause 9 (Seller's Shortfall), which shall be the Buyer's sole and exclusive remedies in such event.
- 16.7 The Seller agrees to make, use, provide, and take all proper, reasonably necessary and sufficient precautions, safeguards, and protection against the occurrence or happenings of injuries, death and/or damages to any person or property during the progress of the work.
- 16.8 The Seller agrees to save and hold harmless and to indemnify BUYER for all expenses and costs of any nature (including attorneys' fees) incurred by BUYER arising out of any claim made by any person for personal injuries, including death or for property damage, caused by the Seller or any of its subcontractors, by act or omission, in the performance or nonperformance of its obligations under the Contract.

- 16.9 The operation of BUYER's equipment by BUYER at its plant site is within the exclusive control of BUYER and BUYER shall indemnify and save harmless the Seller from loss, expense or liability imposed upon the Seller for any injury to a person, including death resulting therefrom or damage to any property resulting from the operation of such equipment by BUYER.
- 16.10 If the Seller is allowed to operate BUYER's equipment at the plant site, the Seller shall indemnify and save harmless BUYER from loss, expense or liability imposed upon BUYER for any injury to a person, including death or damage to any property resulting from the operation of such equipment by the Seller.

17. ASSIGNMENT

- 17.1 Except as provided in Clauses 17.2 and 17.3, neither Party may assign any of its rights or delegate any of its obligations under this Agreement to a Third Party without the prior written consent of the other Party. Any purported assignment of a Party's rights or obligations hereunder in contravention of this Clause 17 shall be null and void and shall have no force or effect.
- 17.2 Notwithstanding the foregoing, either Party shall be entitled to assign, or as appropriate, delegate, all, but not part, of its rights and obligations under this Agreement to an Affiliate by providing notice to the other Party, provided that subsequent to any assignment or delegation made pursuant to this Clause 17.2, the original Party and each subsequent assignee or delegate, having itself assigned or delegated to an Affiliate, shall be fully liable under this Agreement in the event of non-fulfilment of its obligations under this Agreement by an assignee or delegate.
- 17.3 Notwithstanding the foregoing provisions of this Clause 17, and without the prior written consent of the Buyer but subject to the Seller's written notification to the Buyer, the Seller may assign (a) its rights to payment under this Agreement to a trust, trustee, bank, paying agent, financial entity or other Person or company for the purposes of any bona fide financing or in order to facilitate the making of any such payment, and (b) any of the Seller's rights under this Agreement to any lender or lender's agent as security for its obligations to any such lender under any such financing.

18. SUBCONTRACTORS

The Seller shall not assign nor subcontract its rights and obligations under this Contract, except in the event BUYER gives written authorization for such actions. Provided that no subcontract shall be considered for BUYER's approval, except when the following requirements are met: (1) the Seller delivers BUYER a copy of the subcontract, not less than thirty (30) days prior to the effective date of the proposed subcontract; (2) the subcontract includes, as a condition for its legal validity and enforceability, a provision whereby BUYER has the right to substitute,

subrogate or assume Sellers' rights under the subcontract, in the event that BUYER declares the Seller in breach or default of any of the Contract terms and conditions; and (3) the subcontract includes, as a condition for its validity and enforceability, a provision establishing for the subcontractor the obligation to comply unconditionally and entirely with all Sellers' obligations under the Contract (*mirror image rule*), except for such obligations, terms and conditions which exclusively related with works or services not included under the subcontract.

19. TERMINATION

19.1 This Agreement may be terminated if any of the following circumstances occur:

- (a) the mutual agreement of the Parties;
- (b) in the event that a Termination Event on the part of either Party (the "**Defaulting Party**") has occurred, the other Party may at any time after which such Termination Event has occurred or during which such Termination Event is otherwise continuing, terminate this Agreement by giving written notice of termination to the Defaulting Party in accordance with this Clause 18, with such termination to take effect as from and including the date of such notice. In relation to either Party each of the following shall constitute a termination event (a "**Termination Event**"):
 - (i) if any amount payable by that Party under this Agreement has not been paid in full by the due date for the payment of the relevant invoice and the other Party has (after such due date) given notice to the Party requiring payment of such amount and the amount has not been paid in full within ten (10) Business Days after the date of such notice;
 - (ii) if that Party is unable to pay, suspends payment of, or agrees to a moratorium (or threatens any of the foregoing with respect to all or a substantial part of its debts, makes a general assignment or any composition or compromise with or for the benefit of its creditors except to the extent otherwise permitted by this Agreement, takes any proceedings with view to a readjustment, rescheduling or deferral of all or a substantial part of its indebtedness (other than in the case of a refinancing); or
 - (iii) if any order is made, or a petition is presented and not withdrawn within a period of twenty-one (21) Days, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of that Party.

- 19.2 On and at any time after the occurrence of a Termination Event, any Party not subject to such Termination Event may, while such Termination Event subsists, by giving five (5) Days written notice of its intentions to the Defaulting Party, suspend performance of its obligations under this Agreement. Where the Defaulting Party is the Buyer, any such suspension by the Seller shall not constitute a failure by the Seller to make such quantities of NG available for sale and delivery pursuant to the terms of this Agreement during such period of suspension, and the Buyer shall have no rights in respect of such suspended deliveries during such period of suspension. Where the Defaulting Party is the Seller, any such suspension by the Buyer shall not constitute a failure by the Buyer to take delivery of such quantities of NG pursuant to the terms of this Agreement during such period of suspension, and the Seller shall have no rights in respect of such suspended deliveries during such period of suspension. If such Termination Event is remedied thereafter (including, with respect to any late payments, payment in full of any such outstanding invoice together with interest thereon), prior to the exercise of rights under Clause 18.3, the notice of suspension served under this Clause 18.2 shall be deemed to be revoked automatically.
- 19.3 The termination of this Agreement under this Clause 18 for any reason shall be without prejudice to the rights and remedies of the terminating Party accrued prior to such termination under this Agreement, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. For the avoidance of doubt, neither Party will be liable to pay any termination payment upon termination of this Agreement other than in respect of liabilities accrued prior to the date of termination.
- 19.4 Buyer shall have the right to terminate this Agreement with thirty (30) days prior written notice to the Seller. Buyer shall have the right to terminate this Agreement immediately in the event of negligence, dereliction of duties or noncompliance by the Seller.

20. NOVATION

BUYER and the Seller expressly agree that no amendment or change order which could be made to this Contract, during its term, shall be understood as a contractual novation, unless both parties agree to the contrary, specifically and in writing. The previous provision shall be equally applicable in such other cases where BUYER gives the Seller a time extension for the compliance of any of its obligations under the Contract or where BUYER dispenses the claim or demand of any of its credits or rights under the Contract.

21. LAWS TO BE OBSERVED

The Seller shall observe and comply with any and all Federal, State and Municipal Laws, by-laws, ordinances, and regulations in any manner affecting the work, the equipment or the materials used in the proposed rehabilitation and/or

installation or construction, and those employed on the work or the conduct of the work, and with all such orders and decrees as exist at present or may be enacted prior to the completion of the work by bodies or courts having any jurisdiction or authority over the work. The Seller shall save and hold harmless and to indemnify BUYER and its representative's officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, by-law, ordinance, regulation, order or decree, whether by himself or his employees.

22. CHANGE IN LAW

During the term of this Contract, any change in law, including, but not limited to changes in applicable tax law, which causes an increase in Seller's costs when supplying the products or services to be acquired by BUYER, shall be of Seller's responsibility and BUYER shall not be obliged to make additional payments nor to pay additional sums to the price or canon originally agreed for those products or services.

23. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America, excluding any choice-of-law provisions that would require application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention 1980) and the Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement or to the performance thereof or to any aspect of any Dispute arising therefrom.

24. SEPARABILITY

If a court of competent jurisdiction declares any of the Contract provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of the Contract and the parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.

25. SETTLEMENT OF DISPUTES

25.1 Exclusive Jurisdiction

- (a) Any claim, dispute, disagreement or controversy (each, a "**Dispute**") that arises between the Parties under this Agreement or that is otherwise related to the subject matter of this Agreement, except for those Disputes to be resolved through Expert determination pursuant to Clause 20.2 below, shall be resolved exclusively in the Federal District Court for the District of Puerto Rico.

- (b) In the event of such Dispute, each Party shall continue performing its obligations hereunder except to the extent such obligations have been properly suspended pursuant to the terms hereof. For the avoidance of doubt, the Buyer shall continue paying amounts due under Clause 13.

25.2 Expert Determination

Any Dispute that arises between the Parties with respect to (i) the determination of quality under Clause 4, or (ii) Clause 10 may be referred by either Party to an Expert for such Expert's determination of such Dispute, disagreement or other matter of interpretation in accordance with the following guidelines:

- (a) The Parties hereby agree that such determination shall be conducted expeditiously by an Expert selected unanimously by the Parties.
- (b) The Expert shall not be deemed to be acting in an arbitral capacity.
- (c) The Party requesting that any matter arising under Clauses 4 or 10 of this Agreement is referred to an Expert shall give the other Party notice of such request. If the Parties are unable to agree on the identity of an Expert within ten (10) Days after receipt of the notice of request for an Expert determination, then, upon the request of any of the Parties, the International Centre for Expertise of the International Chamber of Commerce shall appoint such Expert and shall administer such Expert determination through the ICC's Rules for Expertise.
- (d) The Expert shall be and remain at all times wholly impartial as between the Parties, and, once appointed, the Expert shall have no ex parte communications with either of the Parties concerning the Expert determination or the underlying Dispute.
- (e) The Expert procedure shall take place in San Juan, Puerto Rico in English.
- (f) Both Parties agree to cooperate fully in the expeditious conduct of such Expert determination and to provide the Expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner.
- (g) Before issuing a final decision, the Expert shall issue a draft report and allow the Parties to comment on it.
- (h) The Expert shall endeavour to resolve the Dispute within thirty (30) Days (but no later than sixty (60) Days) after his appointment,

taking into account the circumstances requiring an expeditious resolution of the Dispute.

- (i) The Expert's decision shall be final and binding on the Parties.

25.3 Qualification of Experts

- (a) No Person, without the prior written agreement of the Parties, shall be appointed as an Expert pursuant to Clause 20.2, if such Person:
 - (i) is (or has been at any time within ten years preceding notice of the Dispute) an employee of a Party or of an Affiliate of a Party;
 - (ii) is (or has been at any time within five years preceding notice of the Dispute) a consultant or contractor of a Party or of an Affiliate of a Party;
 - (iii) holds any significant financial interest in a Party; or
 - (iv) does not have at least ten years' experience advising or working in the North American NG industry with respect to the subject matters subject to the Expert's determination under Clause 20.2.
- (b) The Parties shall, within two months after the Effective Date, agree on a list of possible Experts for purposes of Clause 20.2; provided, however, that in the event that the Parties are unable to agree on a list of acceptable Experts, then in the event of a Dispute subject to Expert determination pursuant to Clause 20.2, the Expert shall be appointed by the International Centre for Expertise of the International Chamber of Commerce in accordance with Clause 20.2.

26. NON-WAIVER

Delay or failure to exercise any right, power or remedy accruing to any Party as the result of any breach or default hereunder shall not impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or Default.

27. CONFIDENTIALITY

- 27.1 The existence and terms of this Agreement and any information directly or indirectly disclosed or furnished, whether orally, in writing or in electronic, digital or any other form, by either Party (or its representatives, employees, directors, officers, agents or Affiliates) (the "**Disclosing Party**") to the other Party (or its representatives, employees, directors, officers, agents or

Affiliates) (the "**Receiving Party**") in connection with this Agreement (or in connection with the terms and conditions or the negotiation of any other agreement or document related to this Agreement or to its subject matter either between the Parties or otherwise) which is not:

- (a) already known to the Receiving Party; or
- (b) already in the public domain (other than as a the terms of this Clause 22.1),

such information being "**Confidential Information**," shall, unless otherwise agreed in writing by the Parties, be kept confidential and shall not be sold, traded, published or otherwise disclosed to any Third Party in any manner whatsoever (except as provided in Clause 22.2) by the Receiving Party.

27.2 The Receiving Party may disclose Confidential Information to the following Persons without the consent of the Disclosing Party:

- (a) To the Receiving Party's and its Affiliates' directors, agents and employees;
- (b) to the Receiving Party's lenders and prospective lenders for the sole purpose of obtaining finance based on this Agreement;
- (c) to the Receiving Party's advisors and consultants; including legal counsel, accountants and other agents of the Receiving Party for purposes connected with this Agreement;
- (d) to Third Parties on an aggregated basis to the extent such information is delivered to such Third Party for the sole purpose of calculating a published index;
- (e) to Experts and any court in connection with the resolution of a Dispute; and
- (f) to co-shareholders and partners in upstream and downstream projects, any operator of the Seller's facilities and any other relevant Third Parties, in all cases limited (i) only to operational information; and (ii) to the extent strictly necessary to implement this Agreement.

27.3 The Receiving Party disclosing Confidential Information pursuant to Clause 22.2 to a Person identified in Clause 22.2(b) to 22.2(f) shall ensure that such Person undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to those set out in Clause 22.1 (excluding legal counsel). Each Party understands that the Receiving Party, and Persons, listed in Clause 22.2(a), (b) or (c) may now or in the future work on similar projects, and the Parties agree that, without prejudice to the other

provisions in this Clause 22, such Persons shall not be precluded from working on such other projects because they have reviewed any Confidential Information.

- 27.4 In the event that disclosure is required by any Competent Authority or Applicable Law, the Receiving Party subject to such requirement may disclose the Confidential Information to the extent so required, but shall promptly notify the Disclosing Party of such disclosure prior to so doing, and shall cooperate (consistent with the Receiving Party's legal obligations) with the Disclosing Party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the Disclosing Party. Notwithstanding the foregoing, Seller acknowledges that the foregoing shall not apply to any requirements applicable to the Buyer to disclose any Confidential information that Buyer is required to disclose as a public entity under Applicable Law.
- 27.5 No press release or public statement concerning the existence, execution of, or other matters directly related to, this Agreement, or the transactions contemplated hereby, shall be issued by the representatives, directors, officers, agents or employees of either Party or its Affiliates unless otherwise agreed by the Parties in writing. In the case of any such press release or public statement, the Parties shall first consult and agree to the specific contents and the manner or timing of presentation or publication thereof. The foregoing shall not apply to any announcement by a Party required in order to comply with any Applicable Law, provided that in this case the relevant Party making such announcement notifies the other Party of the details of such announcement, the relevant Applicable Law to be complied with and, where applicable, the addressee of such announcement.
- 27.6 The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with the breach of the confidentiality obligation set out in this Clause 22.

28. PATENTS AND COPYRIGHTS

The Seller, at its own expense, shall defend any suit or action brought against Buyer based on a claim that any equipment or part thereof, copyright or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance manufactured or used in the performance of this Contract, including their use by Buyer, constitutes an infringement of any patents or copyrights of the United States, if notified promptly in writing by Buyer, and given the authority, information, and assistance for the defense of the same, and the Seller shall pay all damages and costs awarded therein against Buyer. If, in such suit, the equipment or any part thereof, or the composition, secret process, invention, article or appliance is held to constitute infringement and its use is enjoined, the Seller, at its option and expense, shall either procure for BUYER the right to continue using the same. Also, can replace it with non-fringing equipment, composition, secret process, invention,

article or appliance, modify it so it becomes non-infringing or remove it and refund the purchase price.

29. NOTICES

All notices, to be given under this Agreement by one Party to the other shall be in writing, sent to the address and marked to the attention of the Person specified in Clause 24 and, unless otherwise agreed, in English or Spanish.

30. CONTINGENT FEES

The Seller guarantees that he has not employed any person to solicit or secure this Contract upon any agreement for a commission percentage, brokerage or contingent fee. Breach of this guarantee shall give Buyer the right to annul the Contract or, at its discretion to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by Contractors upon Contract or sales secured or made through bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business.

31. ADDRESSES

SELLER:

Attention:
Telephone:
Email:

With Copy to:

Telephone:
Email:

BUYER:¹ Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928

Attention:

Telephone:
Facsimile:
E-mail:

With Copies to:

Telephone:

¹ PREPA to confirm.

Facsimile:

E-mail:

and

Attention:

Telephone:

Facsimile:

E-mail:

Either Party may change its address details by giving not less than five (5) Days written notice to the other Party.

32. BUSINESS PRACTICES AND FOREIGN CORRUPT PRACTICES ACT

- 32.1 Each Party agrees that in connection with its activities conducted pursuant to this Agreement, neither it nor any of its directors, officers, employees, agents, contractors, or Affiliates shall (a) take any action, or omit to take any action that would violate any Applicable Law applicable to that Party, (b) make, promise to make, or authorize, the making of any payment, gift or transfer of anything of value, directly or indirectly, to any official or employee of any government or instrumentality of any government or to any political party or official thereof or any candidate of any political party for the purpose of influencing the action or inaction of such official, employee, political party or candidate, or (c) otherwise take any action, or omit to take any action that would cause the other Party to be in violation of any Applicable Law related to the business practices of such other Party, including the United States Foreign Corrupt Practices Act, the laws of the European Union and the Spanish anti-bribery and corruption laws.
- 32.2 Each Party agrees and undertakes, on behalf of itself, its directors, officers, employees, agents, contractors or Affiliates, not to pay any fees, commissions or rebates to any employee, officer or agent of the other Party, or its Affiliates or shareholders nor provide or cause to be provided to any of them any gifts or entertainment of significant cost or value in connection with their activities conducted pursuant to this Agreement or in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties under this Agreement.
- 32.3 Without prejudice to Clause 31.5, neither Party shall use any broker, agent, or other intermediary in connection with soliciting, obtaining, negotiating, structuring or performing this Agreement or in connection with the subject matter to which it applies.
- 32.4 Each Party shall indemnify and hold the other Party harmless from and against any and all losses, damages, liabilities, costs, expenses and claims

which arise out of, are incident to, or result from any breach by such Party of this Clause 25.

33. TRANSFER OF FUNDS

If Seller decides to assign or transfer an amount, due or payable, to which he is entitled for services rendered or goods provided during the term of this Contract, Seller shall notify Buyer of such transfer of funds, in accordance to the provisions of Act 21-2012. Said notice shall clearly indicate the rights granted, including a copy of the contract under which the assignment or transfer of funds is made, the exact amount of funds to be assigned or transferred, and specific identification information regarding the assignee (full name of the person or company), address and any other contact information.

Seller acknowledges and agrees that Buyer may deduct any amount, due or payable under this Contract, that Seller owes; Buyer may retain any said amount if Seller fails to fulfill its obligations and responsibilities under this Contract, or a claim arises for warranty or defects regarding the services rendered or goods provided under this Contract. Seller also acknowledges and agrees that Buyer's payment obligation under any assignment of funds will cease upon payment of the outstanding amounts under this Contract. Buyer shall not be required to make payments or transfer any funds for an amount that exceeds the payment to which Seller is entitled to under this Contract

34. CONFLICT OF INTEREST

The Seller certifies that none of its representatives under this Contract receive payment or compensation of any nature, for services rendered regularly through an appointment to a governmental agency, body, public corporation or municipality of Puerto Rico. The Seller also certifies that he may have consulting services contracts with other governmental agencies or bodies, but such condition does not constitute a conflict of interest for the Seller.

The Seller acknowledges that in executing the services pursuant to Contract it has a duty of complete loyalty towards Buyer which includes not having adverse interests to those of Buyer related to the services. Those adverse interests include representation of clients which have or may have opposed interests to those of Buyer in relation to the services. Also, the Seller shall have the continuous obligation to disclose to Buyer all information and circumstances of its relations with clients and third persons and any interest which could reasonably influence Buyer when executing this Agreement or during its term.

The Parties certifies no officer, employee or agent of Buyer, or of the Government of the Commonwealth of Puerto Rico or Municipal Governments, shall be admitted to any share or part of this Contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

In addition to the restrictions and limitations established under the provisions of Act 1-2012, as amended, retired or former officers or employees of Buyer, whose work was in any way related to the award or management of contracts, shall in no way benefit from any contract with Buyer for a period of two (2) years after leaving employment with or ceasing services to Buyer.

- 1) The Seller represents conflicting interests when on behalf of a client he must contend for that which it is his duty to oppose to comply with its obligations with another previous, present or potential client. Also, the Seller represents conflicting interests when his conduct is described as such in the canons of ethic applicable to the Seller and his personnel or in the laws or regulations of the Commonwealth of Puerto Rico.
- 2) In the event that any of the partners, directors or employees of the Seller should incur in the conduct described herein, said conduct shall constitute a violation to the prohibitions provided herein. The Seller shall avoid even the appearance of the existence of conflicting interests.
- 3) The Seller acknowledges that Buyer's Contracting Officer shall have the power to intervene the acts of the Seller and/or its agents, employees, and subcontractors regarding the enforcement of the prohibitions contained herein. In the event that Buyer should discover the existence of adverse interests with the Seller, the Contracting Officer shall inform the Seller, in writing, of Buyer's intention to terminate this Contract within a thirty (30) day period. During said period, the Seller may request a meeting with the Contracting Officer to present his arguments regarding the alleged conflict of interests, which meeting shall be granted by Buyer in every case of alleged conflict of interests. In the event that the Seller does not request such a meeting during the specified thirty (30) day period or the controversy is not satisfactorily settled during the meeting, this Contract shall be cancelled.
- 4) The Seller certifies that, at the time of award of this Contract, it does not have any other contractual relation that can enter in a conflict of interest with this Contract. The Seller also certifies that no public employee has any personal or economical interest in this Contract.

35. UNFAIR LABOR PRACTICE

In the event that the Seller or any of his subcontractors or agents do not comply with an order issued by the Puerto Rico Labor Relations Board and/or the National Labor Relations Board upon their finding that the Seller or any of his subcontractors or agents have committed an unfair labor practice, no further payments shall be made by Buyer to the Seller after the date of the said order. In addition, the Contract may be terminated by Buyer, in which case Buyer may take possession of the materials, tools, and appliances on the job site and finish the work by whatever method it may deem expedient. Any declaration by the Puerto Rico Labor Relations Board and/or by the National Labor Relation Board that the

contractors or agents have not complied with an order issued by the Board relating to any unfair labor practice, shall be binding, final, and conclusive unless such order is reversed or set aside by a Court of competent jurisdiction.

36. DISCRIMINATION

The Seller certifies that he is an employer with equal opportunity employment, and does not discriminate by race reason, color, religion, political ideas, sex, nationality, age or mental or physical condition.

37. SAFETY PROVISIONS

- A. The Seller shall comply with all applicable laws, ordinances, rules, regulations and OSHA standards for the safety of personnel, equipment, property and to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Compliance with all safety provisions by subcontractors shall be the responsibility of the Seller.
- B. The Seller shall submit a Site-specific Work Plan including: the scope of work, description of the activities to be done, special safety and health considerations to be addressed before commencement of the project, safety procedures to be applied and used during the project including but not limited to excavations, work zone protection, scaffolding, crane operations and emergency procedures for fire and chemical spill among others.
- C. Before commencement of work, the Seller shall take part in a coordination meeting with Buyer's Safety Officer and Project Manager. During this meeting the areas to be worked on will be toured, the site-specific work plan will be reviewed and the protocols for Safety inspections and work permit system shall be discussed.
- D. The Seller shall designate an employee as their safety officer for the project. The duties of the safety officer could be in addition to his/her normal duties. The safety officer shall be in charge of the prevention of accidents and the implementation of the Site-specific Plan in coordination with Buyer's Safety Officer, Project Manager and Resident Engineer. The Seller safety officer shall have a basic training of 30 hours in Occupational Safety and Health Standards for Construction Industry from an approved OSHA Training Center. Evidence of the training shall be submitted if requested by Buyer.
- E. Welding operations shall comply with the requirements of OSHA, ANSI and NFPA.
- F. All chemical products to be used shall be classified as Approved or Conditionally Approved by Buyer's Hazard Communication Section

- G. The Seller shall be responsible for maintaining good housekeeping and sanitary conditions in the work, rest, lunch and toilet areas. If the project involves the handling of non-asbestos insulation or other dust generating materials, like gypsum board, steps shall be taken to prevent the release of dust to adjacent areas.
- H. Seller shall have an incident investigation procedure and shall notify to Buyer in writing any incident or accident on Buyer's facility.
- I. Seller shall have available and up to date all licenses, trainings, medical surveillance and related certificates for specialized personnel required by OSHA, EQB and DOT according to the scope of work to be performed.
- J. Each Contractor/Subcontractor shall adhere to a 100% drug /alcohol free work zone. At minimum, pre-project and post-accident testing is required. A positive post-accident test or positive pre-project test will result in worker dismissal from the project. Testing will be performed following closely the NIDA standards.
- K. Services including activities inside buildings occupied by working personnel, that could create a hazard to their safety or health, will be offered after Buyer's working hours. The exception will be if the Seller could take all the necessary precautions to protect Buyer's employees and the public from any possible hazard caused by the work. The Seller will take all steps necessary to assure the area will be free of nuisance odors or vapors before Buyer's personnel is to reoccupy. All these will be done in coordination with the local supervisor of Buyer.
- L. The Seller shall assure that all wastes generated by Seller as a part of the Work are removed and properly disposed of, in accordance with all applicable laws and regulations, at the end of every work shift and after the completion of the project.
- M. Seller will obtain and maintain, during the duration of the project, the proper permits from all federal, state and local regulatory authorities with respect to discharge, disposal, use, storage, handling and transportation of hazardous chemicals and substances. For projects including the handling of asbestos, lead, or spilled hazardous substances, the notification to EPA or the EQB will be done by the Seller, but in coordination with the Safety Officer and the Environmental Advisor.
- N. Seller will defend, indemnify and hold harmless, Buyer, its employees, agents or assignees for any and all direct liabilities and expenses arising out of Seller noncompliance with these clauses, if applicable to Seller and Seller's Work, irrespective of any other terms of this agreement.
- O. Buyer may unilaterally terminate this contract upon Seller's failure to reasonably comply with the applicable safety provisions on this Contract upon thirty (30) days of a written notice to Seller.

38. ENVIRONMENTAL LIABILITIES

The Seller agrees to indemnify BUYER from all expenses and costs of any nature arising out of any claim due to an environmental violation, caused by his agents, employees, subcontractors or any personal assigned during the performance or non-performance of its obligations under this Contract.

The Seller shall have available, and near to the working area, the necessary equipment to control and recover any spills that may occur during the performance of the work required by the Contract. This equipment should include all the necessary materials for waste disposal.

All equipment to be used in the work area should be free of oil, transmission fluid or hydraulic fluid leakages. If the equipment develops a leakage during the work process, it should be repaired or replaced immediately. While the leaking equipment is removed or repaired, it is the contractor's responsibility to use and replace the absorbent materials and drip pans.

The Seller shall inform and coordinate with the Environmental Compliance Officer of BUYER's Environmental Protection and Quality Assurance Division (EPQAD) of any work to be done to avoid any environmental violation. In case of any incident, the Seller shall, immediately, notify BUYER's on site Supervisor, who will notify the EPQAD.

Before starting the work, the Seller shall submit the work plan to Buyer's EPQAD for evaluation.

All chemical analysis shall be performed by a Buyer's approved laboratory that is included in Buyer's Material Management Division Supplier Registry as a company that is qualified and evaluated to perform this type of work.

Buyer's personnel will audit the sampling and the disposal of waste material.

The disposal of non-hazardous and hazardous waste material shall be done in a Puerto Rico Environmental Quality Board (PREQB) approved landfill.

The Seller shall comply with 49 CFR 72 Sub. Part H (DOT requirements).

All remedial actions and environmental work will be performed by a company previously approved by Buyer.

All work shall follow the Control Erosion and Sedimentation Plan (CES Plan). The temporary measures needed to control erosion and water pollution shall include, but not be limited to, berms, dikes, dams, sediment basins, fiber mats, netting, gravel, mulches, grasses, slope drains, and other erosion control devices or methods. These temporary measures shall be installed at the locations where there is a need to control erosion and water pollution during the construction of the project, and as directed by the engineer, and as shown on the drawings. The CES Plan presented in the drawings serves as a minimum for the requirements of erosion control during construction. The Seller has the

ultimate responsibility for providing adequate erosion control and water quality throughout the duration of the project. Therefore, if the provided plan is not working sufficiently to protect the project areas, then the Seller shall provide additional measures as required to obtain the required protection.

Chemical products cannot reach any internal or external sewer at the construction site in order to prevent contamination and comply with all federal and local regulations related with the Clean Water Act.

The Seller must obtain and submit to Buyer's EPQAD any other type of permit required for their operation but no limited, such as: fuel or wastewater storage tanks, storage of remain material of excavations or any landfill required for the project, use and storage of chemicals. Furthermore, will take immediate response or mitigate any environmental concern and deficiencies found by Buyer personnel or regulatory agencies. The Seller will be responsible to notify immediately to Buyer for any findings or environmental violations due to inspections by regulatory agencies.

The Seller must provide and maintain environmental protection measures during the commencement, construction and completion of the project, as defined under this contract. Environmental protection measures must be provided by the Seller to correct conditions that may emerge or develop during the construction, as well as, the recondition of all environmental measures or controls employed at the project which does not fulfill their purpose.

The construction process should be performed in such a manner that any adverse environmental impacts, where applicable, are reduced to a minimum and acceptable level in the fulfillment to Buyer's Environmental Compliance Officers.

It is intended that the natural resources within the project boundaries and outside the limits of the permanent work performed, be preserved in their existing condition or be restored to an equivalent or improved condition, upon completion of the work. The Seller shall confine his construction activities to areas defined by the work schedule, plans and specifications.

The Seller along with the engineer will establish, at least on a monthly basis, an orientation program for the residents and business people to clarify details and working schedule of the project, also to attend their needs or complaints.

All equipment to be used in the work area should be in perfect condition and have a good maintenance program. A monthly record of maintenance should be filed by the contractors and submitted to Buyer's EPQAD. If required, the Seller must perform and submit a monitoring study of gas emission or noise reduction on determined areas to comply with regulations. Also, will be responsible to maintain their operation center and project area clean and organized.

The use of liners to cover up carrying trucks is compulsory.

The Seller shall dispose of all waste generated in the project. The waste shall be

picked up and placed in containers which area must be emptied on a regular schedule. The construction areas shall be clean and must appear natural upon completion. The use of Buyer's waste disposal equipment by the Seller is not permitted.

All areas must be clean and organized to prevent accidents or violations to regulations.

Safety barriers must be installed at the edges of the project to avoid access from non-authorized individuals at the project site.

The Seller shall coordinate with Buyer for the disposal of all waste generated in connection with the operation and maintenance of the Purchased Equipment according to the all applicable state and federal environmental laws.

Before starting additional work, the Seller shall submit the work plan to Buyer's Environmental Protection Division for evaluation.

Buyer's personnel will audit the sampling and the disposal of waste material.

A company previously approved by Buyer will perform all remedial actions and environmental work (if it is necessary)

All work shall be performed according to the Storm Water Pollution Prevention Plan (SWPPP), which is part of the Special Conditions of the NPDES Permit.

All work performed at the Dock A, B and C should be performed according with best management practices to avoid any impact to NPDES Outfalls 002 and 003 and Intake 001 of the San Juan Power Plant.

All work will be performed in compliance with Consent Decree stipulations Civil Action No. 93-2527 CCC.

39. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

The Seller will comply with all applicable State Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico.

- A. Executive Order Num. OE-1991-24 of June 18, 1991 to require certification of compliance with the Internal Revenue Services of the Commonwealth of Puerto Rico: Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, the Seller will certify and guarantee that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Seller further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The Seller shall provide, to the

satisfaction of Buyer, and whenever requested by Buyer during the term of this Contract, the necessary documentation to support its compliance with this clause. The Seller will be given a specific amount of time to produce said documents. During the term of this Contract, the Seller agrees to pay and/or to remain current with any repayment plan agreed to by the Seller with the Government of Puerto Rico.

- B. Executive Order Num. OE-1992-52 of August 28, 1992 to require certification of compliance with the Department of Labor of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, the Seller will certify and warrant that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every Contractor and Sub Contractor whose service the Con Seller tractor has secured in connection with the services to be rendered under this Contract and shall forward evidence to BUYER as to its compliance with this requirement.
- C. Government of Puerto Rico Municipal Tax Collection Center: The Seller will certify and guarantee that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as Centro de Recaudación de Ingresos Municipales ("CRIM")). The Seller further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The Seller shall provide, to the satisfaction of Buyer and whenever requested by Buyer during the term of this Contract, Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Seller does not owe any tax accruing to such governmental agency. To request such Certification, Seller will use the form issued by the MRCC (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" in the website). The Seller will deliver upon request any documentation requested by Buyer. During the Term of this Contract, the Seller agrees to pay and/or to remain current with any repayment plan agreed to by the Seller with the Government of Puerto Rico with regards to its property taxes.
- The Seller shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Seller has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt certification issued by the MRCC with respect to real and property taxes and a sworn statement executed by Seller indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last five (5) years (or the time in which it has been providing professional services) it has had no

taxable business or personal property on the 1st of January of each year,
(iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and
(iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.

- D. The Seller shall furnish a Certification issued by the Treasury Department of Puerto Rico which indicates that Seller does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.
- E. The Seller shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed his Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods.
- F. The Seller shall provide a copy of Contractor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- G. Puerto Rico Child Support Administration (ASUME): The Seller shall present, to the satisfaction of Buyer, the necessary documentation certifying that the Seller nor any of its owners, affiliates or subsidiaries, if applicable, have any debt, outstanding debt, or legal procedures to collect child support payments that may be registered with the Puerto Rico Child Support Administration (known in Spanish as the Administración Para El Sustento de Menores (ASUME). The Seller will be given a specific amount of time to deliver said documents. 3 L.P.R.A. § 8611 et seq.;
- H. The Seller shall provide a Good Standing Certificate issued by the Department of State of Puerto Rico.
- I. The Seller shall provide a Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.
- J. Special Contribution for Professional and Consulting Services: As required by Act No. 48-2013, as amended, Buyer will withhold a special contribution of one point five percent (1.5%) of the gross amounts paid under this Contract.
- K. Social Security and Income Tax Retentions: In compliance with Executive Order 1991 OE- 24; and C.F.R. Part 404 et. Seq., the Seller will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income, from this Contract.

- L. Income Tax Retention Law: Buyer shall deduct and withhold seven percent (7%) of any and all payments to residents of the Commonwealth of Puerto Rico as required by the Internal Revenue Code of Puerto Rico. In case of US citizens and Non US citizens, which are nonresidents of the Commonwealth of Puerto Rico the Seller will be retained twenty percent (20%) and twenty-nine percent (29%) respectively. Buyer will remit such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as Departamento de Hacienda de Puerto Rico). The Seller will request Buyer not to make such withholdings if, to the satisfaction of Buyer, the Seller timely provides a release from such obligation by the Government of Puerto Rico's Treasury Department. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011.
- M. Compliance with Act No. 1 of Governmental Ethics: The Seller will certify compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, which stipulates that no employee or executive of Buyer nor any member of his/her immediate family (spouse, dependent children or other members of his/her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Contract, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.;
- N. Law 168-2000: Law for the Strengthening of the Family Support and Livelihood of Elderly People: The Seller will certify that if there is any Judicial or Administrative Order demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "Law for the Strengthening of the Family Support and Livelihood of Elderly People" in Spanish: "Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada", 3 L.P.R.A. §8611 et seq.
- O. Law Num. 127, May 31, 2004: Contract Registration in the Comptroller's Office of Puerto Rico Act: Payment for services object of this Contract will not be made until this Contract is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.
- P. Dispensation: Any and all necessary dispensations have been obtained from any government entity and that said dispensations shall become part of the contracting record.
- Q. Articles extracted, produced, assembled, packaged or distributed in Puerto Rico by enterprises with operations in Puerto Rico, or distributed by agents

established in Puerto Rico shall be used when the service is rendered, provided that they are available.

R. Rules of Professional Ethics: The Seller acknowledges and accepts that it is knowledgeable of the rules of ethics of his/her profession and assumes responsibility for his/her own actions.

S. Prohibition with respect to execution by public officers:
(3 L.P.R.A. 8615(c))

No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

T. Prohibition with respect to contracting with officers or employees:
(3 L.P.R.A. 8615(d))

No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.

U. Prohibition with respect to contracts with officers and employees of other Government entities: (3 L.P.R.A. 8615(e))

No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.

V. Prohibition with respect to evaluation and approval by public officers:
(3 L.P.R.A. 8615(f))

No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

W. Prohibition with respect to execution by public officers contracts with former public officers: (3 L.P.R.A. 8615(h))

No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.

- X. Both parties acknowledge and agree that the contracted services herein may be provided to another entity of the Executive Branch which enters into an interagency Contract with Buyer or by direct disposition of the Chief of Staff. These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Contract. For the purpose of this clause, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as all instrumentalities and public corporations.
- Y. The office of the Chief of Staff shall have the authority to terminate this Contract at any time.
- Z. The Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. The Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.
- AA. Invoices must include a written and signed certification stating that no officer or employee of Buyer, and their respective subsidiaries or affiliates, will personally derive or obtain any benefit or profit of any kind from this Contract, with the acknowledgment that invoices that do not include this certification will not be paid. This certification must read as follows:

"We certify under penalty of nullity that no public servant of Buyer will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the Services provided is the agreed-upon price that has been negotiated with an authorized representative of the Buyer. The total amount shown on this invoice is true and correct. The Services have been rendered, and no payment has been received".
- BB. Anti-Corruption Code for a New Puerto Rico. Seller agrees to comply with the provisions of Act No. 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. The Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

Seller shall furnish a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.

Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

Buyer shall have the right to terminate the agreement in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.

If any of the previously required Certifications shows a debt, and Seller has requested a review or adjustment of this debt, Seller will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to Buyer a proof of payment of this debt; otherwise, Seller accepts that the owed amount be offset by Buyer and retained at the origin, deducted from the corresponding payments.

- CC. Consequences of Non-Compliance: The Seller expressly agrees that the conditions outlined throughout this Section are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the Buyer to render this

Contract null and void, and the Seller shall reimburse the Buyer all moneys received under this Contract.

40. INSURANCE

INSURANCE AND BONDS:

The Seller shall secure and maintain in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Contract as follows:

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

The Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.

The Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

2. Employer's Liability Insurance:

The Seller shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon the Seller as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

3. Commercial General Liability Insurance:

The Seller shall provide a Commercial General Liability Insurance with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate.

The Commercial General Liability Insurance or its equivalent must include coverage for bodily injuries and property damages caused during the operation of a watercraft.

4. Excess Liability Insurance:

The Seller shall provide an Excess Liability Insurance in excess of the Commercial General Liability Insurance limits. This Excess Liability Insurance will have limits of \$10,000,000 per occurrence and \$10,000,000 aggregate.

5. Commercial Automobile Liability Insurance:

The Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.

6. Pollution Liability Insurance:

The Seller shall provide a Pollution Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

Requirements Under the Policies:

The Commercial General Liability or its equivalent and the Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:

a. As Additional Insured:

Puerto Rico Electric Power Authority (Buyer)

Risk Management Office

PO Box 364267

San Juan, PR 00936-4267

- b. A 30-day cancellation or nonrenewable notice to be sent to the above address.
- c. An endorsement including this Contract under contractual liability coverage and identifying it by number, date and parties to the contract.
- d. Waiver of Subrogation in favor of Puerto Rico Electric Power Authority (Buyer).
- e. Breach of Warranties or Conditions:

"The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice Buyer's rights under this policy."

Bonds:

As a Contract security, the Seller shall furnish at the time of the execution of the Contract:

1. A Performance Bond in the amount of 25% of the estimated annual Agreement price, with good and sufficient surety satisfactory to Buyer guaranteeing that the Seller will well and faithfully perform the contract work.
2. A Payment Bond in the amount of 25% of the estimated annual Agreement price, with good and sufficient surety satisfactory to Buyer to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.
3. All bonds shall be issued in the official form of Buyer.

Furnishing of Policies:

All required policies of insurance shall be in a form acceptable to Buyer and shall be issued only by insurance companies authorized to do business in Puerto Rico.

The Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded."

41. [RESERVED]

42. GENERAL

- 42.1 If any inconsistency appears between the provisions contained in the body this Agreement and any Annex to this Agreement, then the provisions of the body of this Agreement shall prevail.
- 42.2 If any one or more of the provisions, obligations, or terms herein or part thereof shall be determined by a court of competent jurisdiction to be wholly or partially invalid, void, illegal or unenforceable in any respect by operation of Applicable Law or otherwise, the validity, legality, or enforceability of the remaining provisions, obligations, or terms or part thereof in any other jurisdiction shall not in any way whatsoever be affected or impaired thereby and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the validity and enforceability hereof to the extent that the essential purposes of this Agreement can be determined and effectuated.
- 42.3 The Parties do not intend any term of this Agreement to be enforceable by any Third Party. The Parties may rescind or vary this Agreement, in whole or in part, without the consent of any Third Party.
- 42.4 Nothing in this Agreement shall be deemed to create a partnership, joint venture or association, establish a principal and agent relationship or any

other relationship of a similar nature, including employment, between the Parties or create any joint and several liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

- 42.5 The Parties acknowledge that this Agreement may have been negotiated and prepared by the Parties with the advice of legal counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.
- 42.6 This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations and communications relative hereto, oral or written, and there are no other understandings or representations between the Parties hereto. This Agreement may not be amended except by an instrument in writing signed by a duly authorized representative of each Party.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their respective duly authorized representative as of the day and year first above written.

For and on behalf of

SELLER:

Name:

Title:

For and on behalf of

BUYER:

**PUERTO RICO ELECTRIC POWER
AUTHORITY**

Name:

Title:

PUERTO RICO ELECTRIC POWER AUTHORITY
GENERATION DIRECTORATE

ANNEX A
TERMS AND CONDITIONS FOR UNITS CONVERSIONS
AND PIPELINE INSTALLATION

IN CONSIDERATION of the mutual covenants hereinafter stated, as first party, the Puerto Rico Electric Power Authority, hereinafter referred to as "PREPA", as second party, (Name of Company), the parties agree themselves, their personal representatives, successors, and assignees, as follows:

ARTICLE 1. Scope of Work

The Seller shall furnish all labor, materials, design, supervision, equipment, tools, services, engineering, fabrication, procurement, construction, operator training, tests, taxes, startup, and other necessary services for the conversion of San Juan Units 5 and 6 in strict accordance with the provisions of this Contract, including the RFP documents, Proposal, and reference drawings, all of which are hereby made a part hereof provided that, on or before 60 days after the Commissioning Start Date (as per Fuel Sale and Purchase Agreement), as part of its obligations herein stated, the Seller shall deliver to PREPA a true and exact copy of all diagrams, plans, sketches, maps, and other documents used in the performance of contracted works and for which a third party copyright or patent right would not be an impediment for such delivery. The Seller shall be responsible for the scope of work and associated capital cost required for LNG gas conversion of PREPA's San Juan Units 5 and 6, as well as modifications to associated turbine controls. The Seller shall include the cost of the scope for PREPA's Units 5 and 6 conversions in the form of a capacity payment over the initial Base five (5) year term of the Agreement.

The terms and conditions included on this Annex A will apply only to the units' conversions and pipeline installation works. If there is any discrepancy between this document and the Fuel Sale and Purchase Agreement (the Agreement), the latter will prevail. Articles on the Agreement shall also apply to the unit's conversions and pipeline installation works.

ARTICLE 2. Definitions

Whenever the words defined in this article or pronouns used instead are mentioned in this document (Annex A), they shall have the meanings here given. If not defined on this document, then the definition on the Fuel Sale and Purchase Agreement will apply.

- 2.1 **"Act of God"** – an Act of God is construed herein to mean an earthquake, hurricane or other cataclysmic phenomenon of nature not ordinarily occurring. Rains, windstorms, floods or other natural phenomenon of normal intensity for the particular locality as determined by the preceding five (5) year monthly average from records of the nearest National Oceanic and Atmospheric Administration recording station shall not be construed as an Act of God.
- 2.2 **"Buyer"** – shall have the meaning given in the Fuel Sale and Purchase Agreement.
- 2.3 **"Calendar Day"** – shall mean each and every 24 hour day shown on the calendar, beginning and ending at midnight.
- 2.4 **"CES Inspector Plan"** - Monitoring engineer hired to perform monthly inspections and assure compliance with the Approved Erosion and Sedimentation Control Plan for the Project with regulatory agencies.

- 2.5 **"Contracting Officer"** - shall mean the Chief Executive Officer of PREPA, acting directly or through his properly authorized representatives as notified in writing to the Seller.
- 2.6 **"Completion Date"** - date in which units conversions and pipeline installation works has been completed.
- 2.7 **"Contract"** - shall mean the Fuel Sale and Purchase Agreement.
- 2.8 **"Construction Manager"** - shall mean the professional assigned by the Seller to provide the construction management services on the project. This professional shall be a professional engineer registered in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors.
- 2.9 **"Change Order"** - A written agreement between the parties that sets out changes (in price, time, or scope of work) to the Contract.
- 2.10 **"Critical Path Method (CPM)"** - A scheduling technique used to plan and control a project which combines all relevant information into a single plan defining the sequence and duration of operations and depict the interrelationship of the work elements to complete the project. The critical path is defined as the longest sequence of activities in a network which establishes the minimum length of the time for accomplishment the last event of the project.
- 2.11 **"Delay"** - Event that extends (affect) the completion date of the project, by affecting tasks on the critical path. The project schedule shall clearly display that the Seller has used, in full, all the float time available for the work involve with this request.
- 2.12 **"Engineer"** - shall mean PREPA's Director of Generation, acting directly or through his properly authorized representatives.
- 2.13 **"Final Acceptance"** - shall mean the written approval by PREPA that the entire Phase I (units conversions and pipeline installation) works have been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.
- 2.14 **"Letter of Award" (LOA)** - Letter signed by the Chief Executive Officer to notify the offeror that the proposal is being awarded to him and to require documents prior to contract signing, such as but not limited to; Corporate Resolution, evidence of payment and certificate of the Puerto Rico State Insurance Fund, municipal license taxes, Construction excise taxes, certificate of insurances and endorsements, documents of the Owner Controlled Insurance Program, payment and performance bonds.
- 2.15 **"Letter of Release"** - Letter signed by the Seller's contracting officer and notarized stating that the Seller has no debt with, but no limited to, subcontractors, consultants, material and services supplier, Federal and State Agencies, Municipality, manufacturer or Insurance Agency.
- 2.16 **"Notice to Proceed"** - a written order sent to the Seller by the Contracting Officer, or his designated representative, notifying the Seller of the date upon which the Seller is given authority to begin the work.
- 2.17 **"Owner"** - designates the Puerto Rico Electric Power Authority (PREPA).
- 2.18 **"Phase I" (Units Conversions and Pipeline Installation)** - shall mean the supply, installation, commissioning, and tests for pipeline and LNG gas conversion of PREPA's San Juan Units 5 and 6, as well as modifications to associated turbine controls.
- 2.19 **"Phase II" (Fuel Supply)** - shall mean the shipping, supply, and operation associated with LNG delivered to the terminal and for natural gas supply from the terminal to San Juan 5 and 6 shall be part of Seller's responsibility. Begins with Commissioning Start Date.

- 2.20 **"Punch List"** - shall mean the list of non-conforming or incomplete work items that are identified by PREPA as been required for the Final Acceptance of the work.
- 2.21 **"Resident Engineer"** - shall mean the manager of the field office responsible for, but not limited to, the administrative issues, quality control, and technical aspects of the project. This person shall be a professional engineer register in Puerto Rico and an active member of the Puerto Rico College of Engineers and Land Surveyors. The Resident Engineer shall be present at all times on site in order to the Seller be able to perform any task of the project.
- 2.22 **"Safety Officer"** - shall be the person designated by the Seller whose only duty shall be the prevention of accidents and implement, both, the Safety and Health Program and the Site-specific Work Plan. The Safety Officer shall be present at all times on site in order to the Seller be able to perform any task of the project.
- 2.23 **"Seller"** - shall have the meaning given in the Fuel Sale and Purchase Agreement.
- 2.24 **"Special Conditions"** - are all special requirements, regulations and/or directions covering conditions peculiar to a particular project.
- 2.25 **"Substantial Completion of Phase I"** - shall mean the date, certified by PREPA, when the conversions and modifications to the units have been completed, all tests to the units and pipeline have been performed and reports have been delivered to PREPA, and after each unit have burned LNG for seven (7) consecutive days. However, the Seller shall finish the items included in the punch list and all other pending task or requirement of the contract documents, as required in the Substantial Completion certificate.
- 2.26 **"Subcontractor"** - shall mean any subcontractor, supplier, or vendor of the Seller engaged for the purposes of progressing the work under a subcontract with the Seller and in which the Seller has no equity interest or profit sharing affiliation. Any such entity in which the Seller owns equity or has a profit sharing affiliation shall be considered to be the Seller. Seller shall comply with requirements set forth on Article 18. Subcontractors of the Contract.
- 2.27 **"Working Day"** - shall mean each day Monday thru Friday and hours from 7:00 AM to 11:30 AM and from 12:30 PM to 4:00 PM.

ARTICLE 3. Commencement and Completion of Work

3.1 General

The Seller shall receive a written order, stating the date on which the Seller shall commence to execute the contracted work. Thus, Notice to Proceed date marks the beginning of commencement of work. Mobilization shall be completed within ten (10) days after the Notice to Proceed. Both Parties agree that time is the essence of the Contract.

The demand of the obligations of either party under this Contract will be subject to the filing of the Contract at the Office of the Comptroller of the Commonwealth of Puerto Rico, in compliance with Act of October 30, 1975, No. 18, as amended.

3.2 Schedule of Proposed Progress

The Seller shall, not later than ten (10) working days, after receipt of the Letter of Award (LOA) signed by the Engineer, furnish all documents required therein. The Seller, within ten (10) days after receipt of the Notice to Proceed shall file with the Engineer a schedule of proposed progress of the work and the proposed detailed method of carrying on the work including a full statement of

equipment and equipment layout for the job. This progress chart and statement of operations shall show the dates of commencement and completion of each item of the work. This schedule shall also include the milestones for the submittals and material ordering, the critical path of the project, and the man-hours per item if said progress chart and/or statement of operations are not satisfactory to the Engineer, they shall be revised by the Seller to provide for the use of adequate and sufficient equipment and force and a method of operations, which will assure the completion of the work within allotted time. This information shall become a part of this Contract after the Engineer has approved it in writing. The schedule shall be actualized monthly by the Seller and submitted to PREPA for approval.

ARTICLE 4. Suspension of Work

The Contracting Officer or the Engineer may, at any time, suspend the whole or any portion of the work under this Contract, for the period of time that the Contracting Officer or the Engineer determines appropriate to PREPA, but this right to suspend the work shall not be construed as denying the Seller actual reasonable, and necessary expenses due to delays, caused by such suspension, it being understood that expenses will not be allowed for such suspension when ordered by the Contracting Officer or the Engineer on account of a Force Majeure event, as defined in Article 14. Force Majeure, herein. The cause of such suspension shall be put in writing by the Contracting Officer, the Engineer or the designate representative within two (2) working days after the suspension or as soon as practicable.

ARTICLE 5. Other Work at the Site

PREPA reserves the right to perform other work by force account and/or enter into other contracts in connection with this project. The Seller shall afford PREPA and other contractor reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs. If any part of the Seller's work depends for proper execution or results upon the work of PREPA or of any other contractor, the Seller shall inspect and promptly report to PREPA any defects in such work or any conflicts between such work and that of the Seller, PREPA to decide, if necessary, the course to be followed by each party.

Wherever work being done by PREPA's own forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by PREPA to secure the completion of the various portions of the work in general harmony. Whenever, in the opinion of PREPA, the orderly progress of the entire project requires the use by PREPA's own forces or by other contractors, of construction equipment installed and operated by the Seller for his own use, PREPA will arrange with the Seller for such use, at times, and in locations which will not interfere with the work being done under this Contract.

ARTICLE 6. Submittals

The Engineer shall be allowed at least ten (10) working days to evaluate and to review of submittals and mark them as disapproved, approved as corrected or approved it becomes necessary. The Seller is responsible to submit digital submittals. All not approved submittals shall be corrected as required and resubmitted for PREPA's evaluation.

Before commencement of any work or task required in this Contract, the Seller shall submit for PREPA's approval, required in Article 37. Safety Provisions of the Contract, the Occupational Safety and Health Program.

ARTICLE 7. Specifications and Drawings

PREPA reserves the right to review and approve all drawings, specifications, methods, and data which the Seller generates, from its responsibilities, obligations or liabilities under this Contract. The Seller shall obtain such reviews or approval in writing from PREPA. The Seller shall keep at the working area a copy of the Contract, its supplementary documents, specifications and drawings, and shall, at all times, give the Engineer access thereto. Anything called for in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as if called for or shown on both. In case of discrepancy in the specifications and drawings, the matter shall be immediately submitted to the Engineer, without whose decision said discrepancy shall not be adjusted by the Seller, and the Seller shall not proceed with the work so affected until it has received written order from the Engineer.

ARTICLE 8. Strict Accordance with Technical Requirements

All construction work called for in the Specifications and/or shown on the drawings to be performed by the Seller shall be performed in strict accordance with the technical requirements of the contract documents.

ARTICLE 9. Changes and/or Extra Work

PREPA may, at any time, make changes or order extra work within the Scope of Work contracted, subject to previous written approval of PREPA's Contracting Officer. Changes made by PREPA may include, but not limited to, changes:

1. In the specifications including drawings and design.
2. In the method or manner of performance of the work.
3. In PREPA's furnished facilities, equipment, materials, services, or site; and/or,
4. Acceleration in the performance of the work.

Within ten (10) working days after receipt of PREPA's written order of a change in the work (or such shorter or longer period of time as may be reasonably required as agreed by PREPA and the Seller), Seller shall promptly notify PREPA of the cost, schedule and other impact(s) Seller anticipates as a result of the change. If PREPA agrees with the Seller's statement as to the impact of the change, the parties shall proceed promptly to enter into a written change order in connection with such change to equitably adjust Seller's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under Contract in connection with such change. If PREPA disagrees with the Seller's statement as to the final impact of the change, PREPA shall promptly advise Seller in writing of the basis for the disagreement and PREPA and Seller shall negotiate in good faith to resolve any issues in order to, when applicable, enter into a written change order to equitably adjust Seller's cost (increase or decrease), schedule (lengthen or shorten), or other obligations under the Contract in connection with such change. Acceptance of the change order and an adjustment in the Contract price and/or Contract time shall not be unreasonable withheld. Once a written consent has been executed by PREPA's Contracting Officer, Seller shall proceed with the change. Except as herein provided, and with the time frames stated, no order, statement, or conduct of PREPA shall be treated as a change under this section or entitle the Seller to an equitable adjustment hereunder.

If agreement on the prices for the extra work cannot be reached between PREPA and the Seller, PREPA may order in writing the Seller to perform the required work on a

force account basis and the Seller shall then execute the order. PREPA may also elect to have such work performed by its own forces or by separate contract.

In order to facilitate review of quotations for extras or credits, all proposals submitted by Seller in connection with a change in the work by PREPA, except those so minor that their propriety can be seen by inspections, shall be accomplished by a complete itemization of the costs including labor, materials, equipment, and subcontracts. When subcontractors perform major cost items, they shall also be itemized.

ARTICLE 10. Inspection

10.1 Periodic Inspection

All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by PREPA's inspectors, at all reasonable times, during manufacture and/or construction. PREPA shall have the right to reject defective material, equipment or workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material and equipment furnished by the Seller shall be satisfactorily replaced with proper material and equipment, without charge to PREPA. The Seller shall promptly remove rejected material from the premises. The Seller shall furnish promptly all reasonable facilities, labor, materials, and equipment necessary for the safe and convenient inspection and tests that may be performed in such manners as not to unnecessarily delay the work.

10.2 Final Inspection of Phase I

Whenever all the materials have been furnished and all work has been performed, including final cleaning up as contemplated in Article 22. Cleaning Up, all in accordance with the drawings and specifications, the Seller shall notify in writing the Engineer that said work is completed and ready for final inspection. Final inspection shall occur within a ten (10) working days period after the Engineer has received notice from the Seller of the satisfactory completion of the installation of the equipment. After receipt of notice PREPA will notify Seller of the exact date and time of the final inspection and Seller shall accommodate PREPA's specific time. If all installation work provided for and contemplated by the Contract is found completed in accordance with the specifications, this inspection shall constitute the final inspection and the Completion Date shall be established as the date of receipt of the notice of the Seller that the work was completed and ready for final inspection. If, however, upon inspection by the Engineer it is found that any work, in whole or in part, is unsatisfactory, the Engineer shall give the Seller the necessary instructions as to replacement of material and performance of work necessary to final completion and acceptance and the Seller shall immediately comply with and execute such instructions. Upon satisfactory replacement and performance of such work, the Seller shall notify the Engineer, and another inspection shall be made which will constitute the final inspection if the said material is found to have been acceptably replaced and the work completed satisfactorily. In such event, the date of receipt of this last notice of the Seller will be established as the Completion Date of the work or any separable part thereof under the Contract. The Completion Date, thus established, shall be used in calculating the actual time of performance of the work.

The determination of whether a project is substantially completed is at the discretion of PREPA. A project will normally be considered substantially completed as established in the Article 2.25, Substantial Completion of Phase I, when all the contract work, except for a few very minor details, has been completed, the required final cleaning up has been performed and the project can be fully, legally and safely opened to traffic or used for the intended purpose.

ARTICLE 11. Superintendence by the Seller

Before commencement of the work, the Seller shall designate a competent Construction Manager, satisfactory to the Engineer, with the expertise and resources necessary to provide construction management services. The Seller shall also have a competent Resident Engineer, satisfactory to the Engineer, on the work site, at all times, during progress of the work, with authority to act for him. The Resident Engineer shall only be assigned to this project. The Construction Manager and Resident Engineer shall represent the Seller on his absence and all directions given to him by the Engineer shall be as binding as if given to the Seller. The Seller shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unsuitable or unskilled person in the work assigned to him. In addition, the Seller shall be fully responsible for the negligent or wrongful acts or omissions of subcontractors or of persons both directly or indirectly employed by the Seller and shall be liable to PREPA and/or any affected third parties for such acts or omissions.

ARTICLE 12. Sanitary Facilities

The Seller shall furnish and maintain satisfactory, sanitary facilities for the use of the workmen engaged in the construction, as required by law or regulations.

ARTICLE 13. Access to Work

The Seller shall permit all persons appointed or authorized by PREPA to visit and inspect the work, or any part thereof at all times, and places during the progress of it.

ARTICLE 14. Force Majeure

The parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise, if and only to the extent that they shall be unable to perform, or are prevented from performing by a Force Majeure event. For purposes of Phase I, Force Majeure means any cause without the fault or negligence, and beyond the reasonable control of, the party claiming the occurrence of a Force Majeure event. Force Majeure may include, but not be limited to, the following: Acts of God, industrial disturbances, acts of the public enemy, war, blockages, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority, provided that these events, or any other claimed as a Force Majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the party claiming the Force Majeure, and that such party, within ten (10) days after the occurrence of the alleged Force Majeure, gives the other party written notice describing the particulars of the occurrence and its estimated duration. The burden of proof as to whether a Force Majeure has occurred shall be on the party claiming the Force Majeure.

ARTICLE 15. Independent Contractor

The Seller shall be considered as an independent contractor, for all material purposes under this Contract, and all persons engaged or contracted by the Seller for the performance of its obligations herein, shall be considered as its employees or agents or those of its subcontractors, and not as employees or agents of PREPA. In consequence, the Seller is not entitled to any fringe benefits, such as, but not limited to vacations, sick leave, and other.

ARTICLE 16. Insurance, Bonds, and Indemnities

The Seller shall secure and maintain in full force and effect during the life of this Contract as provided herein, policies of insurance covering all operations engaged in by the Contract as follows:

1. Commonwealth of Puerto Rico Workmen's Compensation Insurance:

The Seller shall provide Workmen's Compensation Insurance as required by the Workmen's Compensation Act 45-1935 of the Commonwealth of Puerto Rico. Seller shall also be responsible for compliance with said Workmen's Compensation Act by all its subcontractors, agents, and invitees, if any.

The Seller shall furnish a certificate from the Puerto Rico's State Insurance Fund showing that all personnel employed in the work are covered by the Workmen's Compensation Insurance, in accordance with this Contract.

2. Employer's Liability Insurance:

The Seller shall provide Employer's Liability Insurance with minimum bodily injury limits of \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by Law upon the Seller as result of bodily injury, by accident or disease, including death arising out of and in the course of employment, and outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico.

3. Commercial General Liability Insurance:

The Seller shall provide a Commercial General Liability Insurance or its equivalent with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate.

4. Excess Liability Insurance:

The Seller shall provide an Excess Liability Insurance in excess of the Commercial General Liability Insurance limits. This Excess Liability Insurance will have limits of \$10,000,000 per occurrence and \$10,000,000 aggregate.

5. Commercial Automobile Liability Insurance:

The Seller shall provide a Commercial Automobile Liability Insurance with limits of \$1,000,000 combined single limit covering all owned, non-owned, and hired automobiles.

6. Pollution Liability Insurance:

The Seller shall provide a Pollution Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

7. Professional Liability Insurance:

The Seller shall provide a Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 per aggregate.

Requirements Under the Policies:

The Commercial General Liability or its equivalent and the Commercial Automobile Liability Insurance required under this Contract shall be endorsed to include:

a. As Additional Insured:

Puerto Rico Electric Power Authority (PREPA)
Risk Management Office
PO Box 364267
San Juan, PR 00936-4267

- b. A 30-day cancellation or nonrenewable notice to be sent to the above address.
- c. An endorsement including this Contract under contractual liability coverage and identifying it by number, date and parties to the contract.
- d. Waiver of Subrogation in favor of Puerto Rico Electric Power Authority (PREPA).
- e. Breach of Warranties or Conditions:
"The Breach of any of the Warranties or Conditions in this policy by the Insured shall not prejudice PREPA's rights under this policy."

Bonds:

As a Contract security, the Seller shall furnish at the time of the execution of the Contract:

- 1. A Performance Bond in the amount of 100% of the Phase 1 cost (conversions and pipeline installation), with good and sufficient surety satisfactory to PREPA guaranteeing that the Seller will well and faithfully perform the contract work.
- 2. A Payment Bond in the amount of 100% of the Phase 1 cost (conversions and pipeline installation), with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.
- 3. All bonds shall be issued in the official form of PREPA.

Furnishing of Policies:

All required policies of insurance shall be in a form acceptable to PREPA and shall be issued only by insurance companies authorized to do business in Puerto Rico.

The Seller shall furnish a certificate of insurance in original signed by an authorized representative of the insurer in Puerto Rico, describing the coverage afforded.

ARTICLE 17. Other Contracts

PREPA may award other contracts for additional work, and the Seller shall fully cooperate with such other contractors, in accordance with Article 5. Other Work at the Site, of this Contract, and carefully fit his own work to that provided under other

contracts as may be directed by the Contracting Officer. The Seller shall not commit or permit any acts, which interfere with the performance of work by any other contractor.

ARTICLE 18. Correction of Work After Final-Acceptance

Neither the final certificate for payment nor any provision in the Contract documents shall relieve the Seller of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefore, which shall appear within a period of two (2) years after final acceptance. PREPA shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided by the Engineer, subject to appeal by the Seller, as provided in Article 25. Settlement of Disputes, of the Contract.

ARTICLE 19. Warranty

The Seller warrants that all materials, parts, equipment used, and work performed for the units conversions and pipeline installation comply in all respect with its terms and conditions; that they are free from any and all latent and patent defects in design, materials, and workmanship; that they are suitable and adequate for the purposes for which they were designed and for such other purposes, if any, as are specified in the Contract, and that the services provided under this Contract will conform with the highest standards of care and practice appropriate to their nature. The warranty period will begin the date on which PREPA finally accepts the service and/or installation of the contracted product and will continue for a period of two (2) years. The Seller will, upon written notice by PREPA, fully remedy, free of expense to PREPA, such defects as may develop on said services, materials, parts or equipment, provided that they have been properly stored, installed, maintained, and operated within the specified parameters. The Performance Bond shall cover and serve as guarantee for this warranty.

For those materials, parts, equipment, which proves defective or deficient during the warranty period, the Seller shall, at his own expense, repair or replace, transport-in, from Seller's facilities to PREPA's site, and transport-out, from PREPA's site to Seller's facilities, such materials, parts, and/or equipment. The Performance Bond shall cover and serve as guarantee for the Seller's failure, in whole or in part, to properly perform his obligations under this Contract.

For parts and equipment to be procured by Seller from other suppliers, and which will be furnished by Seller to PREPA under this Contract, a written warranty shall be obtained by the Seller from each supplier and legally tendered to PREPA prior to the commencement of work.

ARTICLE 20. Correlation of Documents

The contract documents are complementary and what is required by one shall be as binding as if required by all. The Seller shall keep in the work site a copy of the Contract documents relating to the work and any supplementary documents, specifications and drawings relating thereto and shall give PREPA access thereto during all normal working hours.

In case of discrepancy or in the event of conflict among the different Contract documents such as: Fuel Sale and Purchase Agreement, Units Conversions and Pipeline Installation Terms and Conditions (Annex A), Technical Specifications, Drawings, and the Offeror's Proposal, these shall take precedence in the order given.

The terms and conditions contained in the Contract shall prevail over any conflictive terms and conditions contained in the Seller's Bidding Proposal.

ARTICLE 21. Notice

Any required notice to be given hereunder, related to the Units Conversions and Pipeline Installation Works, shall be in writing and will be sufficiently served when delivered in person or properly mailed to the following addresses:

To PREPA: Puerto Rico Electric Power Authority
PO Box 364267
San Juan, Puerto Rico 00936-4267

Attention: Eng. Daniel Hernández Morales
Acting Generation Director

To Seller: (Name of Company)
(Mail Address)

Attention: (Name of Person of Contact)
(Title)

ARTICLE 22. Cleaning Up

The Seller shall, from time to time, as directed by the Engineer, remove from PREPA's property and from all public and private property all temporary structures no longer required, rubbish, and waste materials resulting from his operations.

Upon completion of the work, the Seller shall remove from the vicinity of the work all remaining rubbish, unused materials, and other like material, belonging to him or used under his direction during the installation of the equipment, and in the event of his failure to do so the same may be removed by PREPA at the Contract's expense, and his surety or sureties shall be liable therefore.

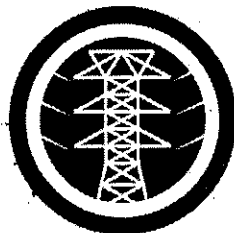
ARTICLE 23. Use of Completed Portions

PREPA shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the fact that the time for completion of the entire work may not have expired, but such taking possession and use shall not be deemed an acceptance of the work so taken or used or any part thereof. PREPA may require the Seller to expedite the completion of any part of the work for provisional use by PREPA and the Seller shall comply with such request. If such order of completion or prior use increases the cost of the work or delays the work, the Seller shall be entitled to such extra compensation or extension of time as agreed by the Parties.

ARTICLE 24. Quality Assurance

The Seller shall submit for evaluation and approval by PREPA a quality control program and establish a quality assurance program, also evaluated and approved by PREPA, to satisfy all applicable regulation and requirements specified in the procurement documents and satisfactory to PREPA. The program shall contain all those measures necessary to assure that all basic technical requisites ask for in the drawings, codes, tests, and inspections for design, fabrication, cleaning, installation, packing, handling, shipping, long term storage, when necessary, and test equipment are fulfilled. PREPA reserves the right to conduct audits and inspections to the facilities, activities, and/or documents when estimated and without previous notification necessary in order to assure that the quality control program is adequate and is being properly implemented.

The Seller shall allow PREPA access to its facilities and documents, so that PREPA, through audits and inspections can verify the quality of the labor, equipment, products, services, and any other related items provided by the Seller. In every case in which the materials or services to be furnished to PREPA are subcontracted partially or totally by the Seller, the Seller shall request the subcontractor to accept and comply with all the requirements of this Quality Assurance Article.



**ESTADO LIBRE ASOCIADO DE PUERTO RICO
AUTORIDAD DE ENERGÍA ELÉCTRICA**

**GUÍA PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A
TRAVÉS DE SOLICITUD DE PROPUESTAS
(*Request For Proposals*)
2016**

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SECCIÓN 1- BASE LEGAL, PROPÓSITO DE LA GUÍA Y ALCANCE

1.1 Base Legal

1. El estatuto orgánico de la Autoridad en su Sección 15 (22 LPRA 205) establece lo siguiente:

"Todas las compras y contratos de suministros o servicios, excepto servicios personales, que se hagan por la Autoridad, incluye contratos para la construcción de obras de la misma, se harán mediante anuncio de subasta hecho con suficiente antelación a la fecha de apertura de la subasta de pliegos de proposiciones, para que la Autoridad asegure el adecuado conocimiento y oportunidad de concurrencia de licitadores.

2. No será necesario el requisito de subasta:
 - a. Cuando la cantidad estimada para la adquisición u obra no exceda de docientos mil dólares (\$200,000).
 - b. Cuando debido a una emergencia se requiera la inmediata entrega de materiales, efectos y equipo, o ejecución de servicios.
 - c. **Cuando se necesiten piezas de repuesto, accesorios, equipo o servicios suplementarios para efectos o servicios previamente suministrados o contratados.**
 - d. **Cuando se requieran servicios o trabajos profesionales o de expertos y la Autoridad estime que, en interés de una buena administración, tales servicios o trabajos deban contratarse sin mediar tales anuncios.**
 - e. Cuando los precios no estén sujetos a competencia porque no haya más que una sola fuente de suministro o porque estén regulados por la ley.
3. La Sección 6 (22 LPRA 196) de ese estatuto orgánico establece, además, que:

"La Autoridad se crea con el fin de conservar, desarrollar y utilizar, así como para ayudar en la conservación, desarrollo y aprovechamiento de las fuentes fluviales y de energía de Puerto Rico, para hacer asequible a los habitantes del Estado Libre Asociado, en la forma económica más amplia, los beneficios de aquellos, e impulsar por este medio el bienestar general y aumentar el comercio y la prosperidad y a la Autoridad se le confieren, y

ésta tendrá y podrá ejercer, los derechos y poderes que sean necesarios o

convenientes para llevar a efecto los propósitos mencionados, incluye (más sin limitar la órbita de dichos proyectos) los siguientes:

- a. Tener sucesión perpetua como corporación.
 - b. Adoptar, alterar y usar un sello corporativo del cual se tomará conocimiento judicial.
 - c. Formular, adoptar, enmendar, y derogar estatutos y reglamentos para regir las normas de sus negocios en general y ejercitar y desempeñar los poderes y deberes que, por ley, se le conceden e imponen; así como, con miras a garantizar la seguridad de las personas o la propiedad, reglamentar el uso y disfrute de sus propiedades y de aquellas otras bajo su administración; el uso y consumo de la energía eléctrica; la intervención con y manipulación de equipos, empresas, instalaciones, aparatos, instrumentos, alambres, contadores, transformadores y objetos de cualesquiera naturaleza análoga propiedad de la Autoridad de Energía Eléctrica que se utilicen en relación con la producción, transmisión, distribución y uso y consumo de energía eléctrica producida por dicha Autoridad. Los reglamentos, así adoptados, tendrán fuerza de ley, una vez se cumpla con las disposiciones de las Secs. 1041 a 1059 del Título 3. Toda persona, natural o jurídica, que viole o induzca a que se viole cualquier disposición de un reglamento promulgado conforme aquí se provee, incurrirá en delito menos grave, y convicta que fuere, se le impondrá multa no menor de veinticinco (25) dólares ni mayor de cien (100) dólares o cárcel por un término no menor de un (1) mes ni mayor de tres (3) meses o ambas penas, a discreción del tribunal; ..." "Vender o de otro modo disponer de cualquiera propiedad real, personal o mixta o de cualquier interés sobre las mismas, que a juicio de la Junta no sea ya necesaria para el negocio de la Autoridad o para efectuar los propósitos de las secs. de esta Ley".
4. Se promulga, además, de conformidad con los poderes que le confieren al Jefe de la División de Suministros las siguientes Resoluciones de la Junta de Gobierno: Núms. 27 de 1941, 46 de 1942, 334 de 1948, 1599 de 1978, 1896, 1903 y 1912 de 1984, 2055, 2075 y 2082 de 1986, 2145 de 1987, 2268 de 1989, 2340 de 1991, la Ley Núm. 170 del 12 de agosto de 1988, según enmendada, y las Órdenes Ejecutivas Núms. 1991-24 del 18 de junio de 1991 y 1992-52 del 28 de agosto de 1992.

5. La Ley 12 del 10 de diciembre de 1975, según enmendada, establece disposiciones relacionadas con la venta de propiedad inmueble. *El Reglamento para la Disposición de Propiedad Inmueble Excedente* contiene información relacionada aplicable a la Autoridad de Energía Eléctrica.

1.2 Propósito de esta Guía

El propósito de esta guía es establecer un marco regulatorio para la licitación, evaluación, selección, negociación y adjudicación a través del proceso definido local e internacionalmente como *Solicitud de Propuestas* y mejor conocido por sus siglas en inglés RFP. Este proceso asegura para la Autoridad de Energía Eléctrica uno justo, uniforme, transparente, vanguardista, flexible y que fomente y apoye un ambiente de innovación, e inversión por parte del sector privado a través de un proceso competitivo y justo. Para llevar a cabo los propósitos de la Ley, estas guías proveen para, entre otros: (i) identificar las Funciones, Requisitos, Experiencias, Tecnologías y Servicios entre otros, donde sea necesario el desarrollo de modelos de adquisiciones estratégicas; (ii) solicitar, obtener y evaluar propuestas; (iii) seleccionar las entidades o individuos que firmarán contratos o acuerdos de compras estratégicos con la Autoridad; y (iv) negociar y adjudicar Contratos y Acuerdos de Compras estratégicos del tipo *Sourcing* o cualquier otro que requiera el uso de la herramienta de Solicitudes de Propuesta o RFP, en especial para adquisiciones y compras tácticas y estratégicas.

La Solicitud de Propuesta (SP) conocida por sus siglas en inglés como (RFP) se define en esta guía como un método o herramienta de compras para solicitar información y precios a proponentes. Esta solo se utiliza cuando se tiene una idea general con algunas especificaciones, se solicitan soluciones, servicios o modelos operacionales de negocio los cuales incluyan más de un 50% de elementos subjetivos que solo pueden calcularse o valorarse a través de la otorgación de tarjetas de puntuación o *scorecard* por parte de los miembros que componen el comité evaluador o es un proyecto mayor y complejo, el cual cuenta con la posibilidad de ofrecer múltiples soluciones, técnicas, tecnológicas y de negocio.

1.3 Alcance de esta Guía

Las disposiciones de esta guía son aplicables a todo empleado de la Autoridad y a toda persona particular o entidad jurídica que intervenga directa o indirectamente en procesos de Solicitud de Propuestas o RFP en la Autoridad.

SECCIÓN 2- DEFINICIONES

Los siguientes términos utilizados en esta guía tienen los significados establecidos a continuación, excepto cuando el contexto claramente indique un significado diferente.

Adenda: significa un suplemento escrito a una Solicitud de Propuestas promulgado por la Autoridad después de la publicación de dicha Solicitud de Propuestas, que incluye cambios o adiciones a (i) los términos y condiciones de la Solicitud de Propuestas; (ii) el diseño conceptual o los planos y especificaciones de un bien o servicio; (iii) los términos o condiciones del Contrato o Acuerdo de Compras correspondiente; ó (iv) cualquier otro documento relacionado a la Solicitud de Propuestas.

Adjudicación del Contrato o Acuerdo Agreement de Compras: significa la aprobación del Jefe de División de Suministros de un Contrato o Acuerdo conocido en inglés como *Agreement*; de Compras previamente evaluado y recomendado por un Comité o Equipo Evaluador designado al proceso y en conformidad con las disposiciones establecidas en las leyes locales y federales que regulan estos procesos, políticas corporativas, resoluciones emitidas por la Junta de Gobierno y órdenes ejecutivas emitidas por el Gobernador de Puerto Rico (cuando así apliquen y sean adoptadas mediante resolución conjunta de la Junta de Gobierno).

AEE: Acrónimo de Autoridad de Energía Eléctrica

Afiliada/ filial o subsidiaria: significa, en el caso de una entidad jurídica, cualquier otra entidad jurídica que controla o es controlada por dicha entidad y cualquier otra entidad que, directa o indirectamente, es controlada por la misma Persona que controla o tiene el poder de controlar dicha entidad.

Agencia Federal: significa cualquiera de los departamentos de la Rama Ejecutiva del Gobierno de Estados Unidos de América, o cualquier departamento, corporación, agencia o instrumentalidad creada o que pueda crearse, designarse o establecerse por los Estados Unidos de América.

Agente Contratante: se refiere al Jefe de División de Suministros o a su delegado.

Análisis de Costo del Ciclo de Vida (LCC): significa la investigación y valoración de los impactos ambientales de un producto o servicio causados durante el ciclo de vida de su existencia. En el cálculo de costo de ciclo de vida se incluye el 15% los costos de construcción, costos de operación y mantenimiento, impuestos, financiamiento, sustitución y renovación de los equipos o materiales.

Análisis de la Competencia: Evaluación integral y análisis de las propuestas provistas por los proveedores para un conjunto definido de criterios, requisitos y especificaciones de producto o servicio. Entre los aspectos a considerarse en forma integral se encuentran: especificaciones por artículo, servicios, requisitos

financieros, requisitos de tecnología, servicio al cliente, entregas, manejo, logística, administración, certificaciones, soluciones de negocio, etc... La evaluación final se analiza como un "todo" y la misma se clasifica por tipo, categoría, servicio o cualquier otra segmentación definida para el o los procesos particulares.

AUC: siglas en inglés para *Average Unit Cost* o Costo Unitario Promedio

Autoridad: significa la Autoridad de Energía Eléctrica de Puerto Rico

Banco o BGF: significa el Banco Gubernamental de Fomento para Puerto Rico.

Buy-back: Acuerdo negociado con un proveedor para que este compre los artículos existentes en inventario específico para facilitar una reducción o eliminación del inventario de una o múltiples categorías.

Clasificación Competitiva: significa aquellas Propuestas recibidas por la Autoridad en respuesta a una Solicitud de Propuestas que la Autoridad determine, a su discreción, que tienen una probabilidad razonable de ser recomendadas para la Adjudicación del Contrato o Acuerdo de Compras.

Canasta de Bienes o Servicios, conocida en inglés como Market Basket (MB): Lista que incluye conjunto de artículos que puedan ser comprados o adquiridos a través de un único o un reducido grupo de proveedores capaces de suplir la mayor cantidad o grupos dentro de esta lista. También es conocido como *Sourcing Group*.

Comité o Equipo Evaluador: significa el comité designado por el Jefe de la División de Suministros para evaluar y seleccionar las Personas, Organizaciones y Proponentes cualificados y a su vez establecer y negociar los términos y condiciones que considere apropiados para el Contrato o Acuerdo de Compras correspondiente. Este comité será presidido por el Jefe de Sub-división de Compras, Gerente del Departamento de Compras, Logística y Administración o alguno de los Supervisores de Compras Principal a quien se le delegue el proceso. La constitución de este varía con respecto al tipo, naturaleza o complejidad del bien o servicio adquirido. La Autoridad se reserva el derecho de asignar y contratar consultores externos para reforzar, asesorar y dirigir este comité.

Concepto Financiero Alternativo (CFA): significa una petición de la Autoridad para permitir que los Proponentes incorporen creatividad e innovaciones financieras en sus Propuestas.

Concepto Técnico Alternativo (CTA): significa una petición de la Autoridad para permitir que los Proponentes incorporen creatividad e innovaciones técnicas en

sus Propuestas.

Conferencia con Antelación a la Propuesta: significa una reunión, conferencia telefónica o conferencia vía web, previa a la fecha límite de entrega de una Solicitud de Cualificaciones y/o Solicitud de Propuestas, donde se invitan a todas las Personas que se hayan registrado con la Autoridad como Proponentes potenciales a participar, hacer preguntas y pedir aclaraciones relacionadas a la Solicitud de Cualificaciones y/o Solicitud de Propuestas, disponiéndose, que la Autoridad podrá llevar a cabo reuniones individuales cuando las preguntas o aclaraciones solicitadas por una Persona u ente jurídico, que se relacionen a información propietaria o confidencial a ser presentada como CFA o CTA o un proceso similar llevado a cabo por la Autoridad.

Consolidación: La reducción o eliminación de códigos o segregación de artículos en existencias e inventario asociado. Este enfoque será utilizado en un esfuerzo para reducir artículos duplicados o en conjunción con *el programa de estandarización de productos y preparación de kits*.

Contrato o Acuerdo de Compras: significa un contrato o acuerdo el cual es otorgado entre el Proponente Seleccionado y la Autoridad para establecer una relación comercial de "socio de negocio", el cual puede incluir, pero no se limitará a, la delegación de una función, la administración o prestación de uno o más servicios, o el diseño, construcción, financiamiento, mantenimiento u operación de una o más instalaciones u operaciones, que sean o estén estrechamente relacionados, con las operaciones o Proyectos Prioritarios, según establecidos en el Plan Estratégico Corporativo o cualquier otro plan operacional adoptado por la Autoridad de energía eléctrica. Un Contrato o Acuerdo de Compras por alianza o socio de negocios *partnership* puede ser, sin que se entienda como una limitación, cualquier modalidad de los siguientes tipos de contratos: "integración de cadenas de suministros", "contratos de suplidos del tipo *Sourcing*", "administración y operación de cadenas de suministros", "diseño / construcción (*design / build*)", "diseño / construcción / operación (*design / build / operate*)", "diseño / construcción / financiamiento / operación (*design / build / finance / operate*)", "diseño / construcción / transferencia / operación (*design / build / transfer / operate*)", "diseño / construcción / operación / transferencia (*design / build / operate / transfer*)", contrato de llave en mano (*turnkey*), contrato de arrendamiento a largo plazo, contrato de derecho de superficie, contrato de concesión administrativa, contrato de empresa común (*joint venture*), contrato de administración y operación a largo plazo, acuerdo de concesión, contrato de pre-desarrollo y cualquier otro tipo de contrato que separe o combine las fases de diseño, construcción, financiamiento, operación o mantenimiento de los Proyectos Prioritarios y las operaciones generales de la empresa.

Contratista: Proponente seleccionado a partir del proceso de solicitud de

propuesta o convocatoria.

Criterios de Evaluación: criterios adoptados por el Comité o Equipo Evaluador, a su discreción, que se utilizarán para evaluar, clasificar, seleccionar y recomendar Propuestas para el rechazo o adjudicación de las mismas. Los Criterios de Evaluación incluirán los criterios enumerados para cada Solicitud de Propuesta o RFP específico, sin que ello se interprete como una limitación o se presuma que su orden define su importancia, en la medida en que sean aplicables a un Proponente potencial o a una Propuesta, y aquellos criterios adicionales incluidos en una Solicitud de Propuestas o en esta guía.

Daños consecuentes: Lesión o daño que no se produce directa e inmediatamente como resultado de un acto de una de las partes en el contrato o acuerdo, sino sólo de algunos de los resultados de dicho acto, y que es compensable por una cantidad económica/monetaria después de una sentencia dictada a partir de un juicio emitido por un foro o judicatura con competencia en el campo. Surge en perjuicio de la interposición de circunstancias especiales e impredecibles. Es el daño a una persona o propiedad como resultado directo de cualquier incumplimiento de garantía o de una declaración falsa de hechos, relativa a la calidad o naturaleza de los bienes vendidos y hecha por el vendedor para inducir la venta e invocada por el comprador.

Día laborable: significa un día que no sea sábado, domingo o un día en que las instituciones bancarias en Puerto Rico estén autorizadas o permitidas bajo la ley aplicable a cerrar al público.

Jefe de la División de Suministros: significa el Jefe de la División de Suministros de la Autoridad o, en ausencia del nombramiento de éste, la persona que actúe como Agente Contratante o Jefe de División de Suministros de la Autoridad; esto para los propósitos de formalizar y firmar contratos.

ELA: significa el Estado Libre Asociado de Puerto Rico.

Entidad Gubernamental: significa cualquier departamento, agencia, junta, comisión, cuerpo, negociado, oficina, Entidad Municipal, corporación pública o instrumentalidad de la Rama Ejecutiva del ELA, así como de su Rama Judicial y de su Rama Legislativa, actualmente existente o que en el futuro se creare.

Escrito o por escrito: significa cualquier expresión que consista de palabras o cifras que se pueda leer, reproducir y que se pueda comunicar posteriormente, y puede incluir información transmitida y almacenada por medios electrónicos.

Estudio de Deseabilidad y Conveniencia: significa un estudio de la deseabilidad y conveniencia de un Proyecto, realizado o comisionado por la Autoridad, con o sin la asistencia del Banco.

Fianza de Propuesta: significa una fianza, garantía u otro tipo de garantía financiera presentada en moneda legal de los Estados Unidos de América, cheque certificado o giro postal pagadero a la Autoridad, o mediante carta de crédito, fianza o garantía emitida por un banco o institución financiera aceptable para la Autoridad (que en el caso de una compañía de fianzas o seguros, tiene que estar autorizada a emitir fianzas en el ELA), que se requiera que el Proponente entregue junto a su Propuesta, para asegurar el cumplimiento del Proponente con los requisitos de la Ley, esta guía y los términos de la Solicitud de Propuestas correspondiente y asegurar la firma del Contrato o Acuerdo de Compras por parte del Proponente de ser seleccionado para la Adjudicación del Contrato o Acuerdo de Compras. El monto, día de entrega y las condiciones para la devolución, si alguna, de la Fianza de Propuesta (cuando aplique) a cada Proyecto se determinará por la Autoridad y se especificará en la Solicitud de Propuestas correspondiente.

Función(es): significa cualquier responsabilidad u operación actual o futura de un oficial de la Autoridad, expresamente delegado a él o ella, ya sea mediante designación, asignación o instrucción, que esté estrechamente relacionada a las operaciones de la empresa y a los Proyectos Prioritarios, según establecidos en el Plan Estratégico de la AEE.

Inventario a Consignación: Inventario propiedad del proveedor o proveedores, el cual es adquirido y mantenido a costo exclusivo del proveedor para uso de la Autoridad. El inventario no será pagado por adelantado por parte de la Autoridad y el mismo no entrará en los libros financieros hasta que sea recibido y aceptado en las instalaciones de la Autoridad por un funcionario o personal autorizado.

Instalación(es): significa cualquier propiedad, obra capital o instalación de uso público, ya sea mueble o inmueble, existente en la actualidad o a ser desarrollada en el futuro, incluyendo, sin que se entienda como una limitación, los sistemas de acueductos y alcantarillados, incluyendo todas las plantas, represas y sistemas para almacenar, suplir, tratar y distribuir agua, sistemas de tratamiento, recolección y eliminación de aguas pluviales y de albañal, mejoras que sean financiadas bajo las disposiciones de la Ley Federal de Agua Limpia y de la Ley Federal de Agua Potable o cualquier otra legislación o reglamento federal similar o relacionado, sistemas de recogido, transportación, manejo y eliminación de desperdicios sólidos no peligrosos y peligrosos, sistemas de recuperación de recursos, sistemas de producción, transmisión o distribución de energía eléctrica, autopistas, carreteras, paseos peatonales, estacionamientos, aeropuertos, centros de convenciones, puentes, puertos marítimos o aéreos, túneles, sistemas de transportación, incluyendo los de transportación colectiva, sistemas de comunicación, incluyendo teléfonos, sistemas de informática y tecnología, instalaciones industriales, vivienda pública,

instituciones correccionales y toda clase de instalaciones de infraestructura turística, de salud y de agroindustria u otros bienes similares.

Ley: significa la Ley de la Autoridad de Energía Eléctrica, Ley Núm. 83, aprobada el 2 de mayo de 1941, según sea enmendada de tiempo en tiempo.

Parte Restringida: significa aquellas partes descritas en la Sección 4.18 de esta guía a las cuales se les ha prohibido participar en un proceso de Solicitud de Propuestas para un Proyecto en particular.

Persona: significa cualquier persona natural o jurídica organizada bajo las leyes del ELA, de Estados Unidos de América; de cualquiera de sus estados o territorios, o de cualquier país extranjero, cualquier agencia federal o cualquier combinación de las anteriores. El término incluirá cualquier departamento, agencia, Entidad Municipal, instrumentalidad gubernamental, cualquier individuo, firma, sociedad, compañía por acciones, asociación, corporación pública o privada, cooperativa o entidad sin fines de lucro que esté debidamente constituida y autorizada bajo las leyes del ELA, o de Estados Unidos de América, o cualquiera de sus estados o territorios.

Proponente: significa cualquier persona (que no sea una Entidad Gubernamental), o sus entidades afiliadas o relacionadas, que haya presentado una propuesta para entrar en el proceso de RFP, con la salvedad de que para propósitos de esta guía, el término "Proponente" también incluirá a Personas (que no sean una Entidad Gubernamental) que: (i) cumplan con los términos de la Solicitud de Cualificaciones o de la Solicitud de Propuestas; (ii) estén calificadas por la Autoridad y negocien un Contrato o Acuerdo de Compras. Con la Autoridad en los casos enunciados en el Reglamento de Selección y Adjudicación; ó (iii) sometan una Propuesta de conformidad con la Sección 4.12 de esta guía.

Proponente Seleccionado: significa la Persona o consorcio seleccionado para la Adjudicación de un Contrato o Acuerdo de Precios con la Autoridad de acuerdo a los criterios especificados en la Solicitud de Propuestas.

Propuesta: significa una documento escrito con relación a un proceso específico y único, hecha por un Proponente: (i) como respuesta a una Solicitud de Propuestas; (ii) conforme al Reglamento de Selección y Adjudicación; ó (iii) una propuesta escrita no solicitada, sometida por una Persona a la Autoridad sujeta a la Sección 4.12 de esta guía.

Proyecto: significa cualquier proceso de Solicitud de Propuesta o RFP para ofrecer bienes y servicios para la operación de la Autoridad o para el desarrollo de algún Proyecto Prioritario o un proyecto relacionado a una Función, Instalación o Servicio que, basado en una determinación por la Autoridad

a través de la División de Suministros, determine que es adecuado para un proceso de RFP, después de haberse considerado el Estudio de Deseabilidad y Conveniencia correspondiente o que fuera producto de la recomendación y análisis de informes o estudios realizados por compañías consultoras contratadas por la Autoridad de Energía Eléctrica.

Proyecto Prioritario: significa una iniciativa elaborada por la Autoridad, revestida de preeminencia, que tiene como fin la realización y ejecución de una obra de alto interés para la empresa, así como para el desarrollo táctico y estratégico de la economía de Puerto Rico.

Representante Autorizado: significa el Jefe de División de Suministros o el o los individuos designados bajo las Secciones 5.1(c) y 5.1(e) de esta guía y delegados por el Agente Contratante para negociar con los Proponentes a nombre de la Autoridad.

Servicio: significa cualquier servicio prestado o a ser prestado por la Autoridad destinado a velar por los intereses o satisfacer las necesidades de los clientes, ya sea bajo las disposiciones de su ley orgánica u otras leyes especiales, que sean o estén estrechamente relacionados con las operaciones o los Proyectos Prioritarios, según establecidos en la Ley.

Solicitud de Aclaración: significa una solicitud presentada por un Proponente a la Autoridad pidiendo la aclaración, explicación o interpretación de cualquier materia contenida en una Solicitud de Propuestas, según descrito en la Sección 4.7 de esta guía (conocida en inglés como *Request for Clarification*).

Solicitud de Cualificaciones: significa el documento que la Autoridad prepara, publica y distribuye en forma electrónica o física, mediante el cual le solicita a Proponentes potenciales que sometan sus cualificaciones para participar en un proceso de licitación mediante Solicitud de Propuestas (conocida en inglés como *Request for Qualifications* o *Survey*).

Solicitud de Expresión de Interés: significa un proceso de estudio de mercado que podría ser utilizado por la Autoridad para medir el interés sobre un proyecto o solución, según las disposiciones de la Sección 4.3 de esta guía (conocida en inglés como *Request for Expression of Interest*).

Solicitud de Información: significa un proceso de estudio de mercado que podría ser utilizado por la Autoridad para medir el interés sobre un proyecto, modelo de negocio o una solución, según las disposiciones de la Sección 4.3 de esta guía (conocida en inglés como *Request for Information*).

Solicitud de Propuestas: significa el documento que la Autoridad prepara, publica y distribuye, conforme a la Sección 4 de esta guía, para solicitar

Propuestas vinculadas a un posible contrato o acuerdo de compras o a una parte de la misma, según se enmiende o suplemente de tiempo en tiempo (conocida en inglés como *Request for Proposals*).

SECCIÓN 3- COMITÉ O EQUIPO EVALUADOR

- 3.1 Composición y Responsabilidades del Comité o Equipo Evaluador.** El Director Ejecutivo (cuando así se requiera por Resolución de la Junta de Gobierno) o Jefe de la División de Suministros para los procesos regulares que no requieren la aprobación de la Junta de Gobierno, nombrará un Comité o Equipo Evaluador constituido por un mínimo de tres (3) miembros para cada RFP para asistir con la selección de Proponentes y con la negociación de los términos del Contrato o Acuerdo de Compras correspondiente. Los miembros de cada Comité o Equipo Evaluador se designarán conforme a la complejidad y nivel técnico del proceso. La Autoridad se reserva el derecho de contratar consultores y asesores que asistan y complementen los miembros de este comité. Aunque el mínimo de miembros será de 3, la Autoridad se reserva el derecho de añadir miembros a su composición de manera que se satisfagan las necesidades y se asegure la equidad y transparencia en la evaluación de procesos sin incrementar los costos o complejidad de estos. La composición de este comité nunca podrá ser menor de 3 miembros.

El Comité o Equipo Evaluador estará integrado como mínimo por:

- (a) el Jefe de División de Suministros y/o su delegado o delegada;
- (b) el funcionario designado por el Directorado o la División con inherencia directa en el proyecto o su delegado o delegada; (En el caso de contratos del tipo *Sourcing*, el Jefe de División de Suministros se reserva el derecho de asignar un Supervisor de Compras Principal en adición al delegado que estará presidiendo el Comité);
- (c) uno o más especialistas en cualquiera de las áreas técnicas de mayor competencia y relevancia para el proyecto. Estos tienen que tener vasta experiencia en el campo o *expertise* que representan, así como el apoderamiento o la delegación de autoridad para la toma de decisiones finales, firmes y responsables.

El Comité o Equipo Evaluador realizará las funciones en forma autónoma, independiente, sin intervención externa de índole alguna, democrática y en estricta confidencialidad. Aun así, el Jefe de la División de Suministros tiene la autoridad, responsabilidad y discreción para remover a cualquier miembro de un Comité o Equipo Evaluador y realizar nombramientos nuevos a un Comité o Equipo Evaluador, en la medida en que dicha remoción y/o nombramiento se realice salvaguardando los mejores intereses de la Autoridad, confidencialidad,

transparencia, calidad y cumplimiento con los itinerarios establecidos para el proceso.

El Comité o Equipo Evaluador tendrá las siguientes funciones y responsabilidades:

- (a) aprobar los documentos que requiera el proceso de Solicitud de Cualificaciones, Solicitud de Propuestas, evaluación y selección;
- (b) evaluar los Contratantes potenciales y pre-cualificar los que sean aptos para participar como Proponentes;
- (c) evaluar las Propuestas sometidas y seleccionar la mejor o las mejores, en cada caso, de conformidad con los requisitos que dispone esta guía;
- (d) llevar a cabo o supervisar la negociación de los términos y condiciones del Contrato o Acuerdo de Compras;
- (e) contratar, a nombre de la Autoridad, asesores, peritos o consultores con los conocimientos y pericia necesarios para asistir al Comité o Equipo Evaluador y a la Autoridad en el descargo adecuado de sus funciones;
- (f) mantener un registro electrónico de actas y reuniones en la plataforma electrónica de publicaciones;
- (g) preparar un informe final de cierre sobre todo el proceso conducente a la otorgación y establecimiento del o los contratos o acuerdos de compras;
- (h) velar por el cumplimiento adecuado con las leyes, reglamentos, políticas y reglamentos establecidos para la negociación y adjudicación de los Contratos o Acuerdos de Compras;
- (i) en aquellos casos que se entienda conveniente, el Comité o Equipo Evaluador podrá establecer uno o varios sub comités técnicos de evaluación para proveer asesoría y ayuda técnica o especializada al Comité o Equipo Evaluador; y
- (j) realizar cualquier tarea adicional relacionada al proceso de selección, negociación y adjudicación que dispone esta guía, según le requiera la Autoridad.

3.2 Reuniones del Comité o Equipo Evaluador - El Comité o Equipo Evaluador se reunirá con la frecuencia y en la cantidad que sea necesario y según se establezca por el Jefe de la División de Suministros. Esto para el descargue de sus funciones y responsabilidades según establecidas en esta guía y los *By Laws* de la Autoridad. Salvo se disponga lo contrario por la Autoridad, el Jefe de División

de Suministros o su delegado autorizado en el Comité o Equipo Evaluador dirigirá el comité evaluador. El líder del Comité Evaluador podrá designar a un Secretario, el cual no tiene que ser miembro del Comité o Equipo Evaluador, y puede designar a cualquier otro miembro del Comité o Equipo Evaluador para que en su ausencia dirigirá el comité. El líder del Comité o Equipo Evaluador, o en su ausencia, el miembro designado por el Líder, convocará a los miembros y dirigirá todas las reuniones del Comité o Equipo Evaluador, establecerá la frecuencia y duración de las reuniones y la agenda de los asuntos a tratarse en cada reunión. El líder se asegurará de que la agenda para cada reunión y, en la medida que sea posible, todos los documentos clave a considerarse en la reunión sean circulados entre todos los otros miembros del comité previo a la reunión. Se requerirá que haya quórum de al menos dos terceras partes de los miembros del Comité Evaluador o Sub-comités de Negociación, en todas las reuniones en que se vayan a tomar decisiones finales con respecto a la selección de Proponentes y la Adjudicación de Contratos o Acuerdos de Compras, así como la aprobación de cualquier otra acción oficial del Comité o Equipo Evaluador. Los miembros podrán participar en cualquier reunión mediante conferencia telefónica, conferencia web o vídeo conferencia. No será requisito realizar reuniones presenciales. En aquellos casos donde uno o varios miembros se abstengan en las votaciones o la firma de documentos o informes finales, estos tienen que establecer y estipular por escrito en el documento o informe las razones para su abstención.

- 3.3 Acciones del Comité o Equipo Evaluador** - Habrá quórum en una reunión del Comité o Equipo Evaluador únicamente si dos terceras partes de sus miembros están presentes. Una vez un integrante esté presente en una reunión, para cualquier propósito que no sea únicamente objetar que se realice la reunión o que se tomen decisiones en la reunión, durante el resto de la reunión el miembro se considerará presente para propósitos de quórum y de clausura de esa reunión. Las recomendaciones y aprobaciones del Comité o Equipo Evaluador requerirán el voto afirmativo de un mínimo de dos terceras partes de los miembros presentes en una reunión debidamente constituida en la cual haya quórum. El Comité o Equipo Evaluador podrá actuar sin realizar una reunión siempre y cuando dicha actuación haya sido aprobada por escrito por todos los miembros del Comité o Equipo Evaluador. El Comité o Equipo Evaluador proveerá al Jefe de División de Suministros recomendaciones no vinculantes con respecto a la selección de cualquier Proponente, la evaluación de cualquier Propuesta, y el establecimiento de una solución.

El Comité o Equipo Evaluador mantendrá un récord por escrito de sus decisiones y recomendaciones, al igual que de otras actuaciones del Comité o Equipo Evaluador. Todas las minutas, agendas, comunicaciones o documentos generados durante los eventos de publicaciones y su posterior adjudicación tienen que formar parte del expediente electrónico del caso en el portal

electrónico de publicaciones y posteriormente en la orden o contrato electrónico en el sistema de ERP de la Autoridad.

El Secretario del Comité o Equipo Evaluador mantendrá un récord de cada reunión, custodiará el calendario del Comité o Equipo Evaluador y realizará cualquier otra tarea relacionada a su puesto, según lo requiera el presidente de dicho comité.

Todos los miembros del Comité o Equipo Evaluador tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.

- 3.4 Subcomités del Comité o Equipo Evaluador.** El Comité o Equipo Evaluador, a su discreción, puede nombrar uno o más subcomités del Comité o Equipo Evaluador para proveer asistencia técnica o especializada y asesorar al Comité o Equipo Evaluador en el proceso de evaluar Proponentes potenciales y Propuestas, y negociar los términos de los Contratos o Acuerdos de Compras. Cada subcomité tendrá las responsabilidades y realizará los trabajos según sea instruido por el Comité o Equipo Evaluador. Todos los miembros de subcomités tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.
- 3.5 Asesores de la Autoridad y del Comité o Equipo Evaluador.** El Jefe de División de Suministros podrá nombrar empleados de la Autoridad o contratar consultores, asesores o agentes para asistir a la Autoridad y al Comité o Equipo Evaluador en la evaluación de las Propuestas, al igual que en el proceso de selección y negociación de los RFP, o proveer cualquier otra asistencia que se estime necesaria o apropiada en relación con la Adjudicación del Contrato o Acuerdo de Compras, incluyendo participar como miembro sin voto de los subcomités del Comité o Equipo Evaluador. Los individuos o entidades que provean dicha asistencia deberán satisfacer las guías de ética y conflictos de intereses adoptados de tiempo en tiempo por la Autoridad y podrán participar en el proceso de evaluación y negociación llevado a cabo por el Comité o Equipo Evaluador, según el Comité o Equipo Evaluador lo estime necesario. Todos los asesores tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.
- 3.6 Responsabilidades de Supervisión.** El Comité o Equipo Evaluador garantizará al Jefe de División de Suministros y a la Autoridad que los procesos de licitación seguidos para cualquier RFP han cumplido con los procesos de licitación que se describen en el informe final emitido por el Comité o Equipo Evaluador. Las responsabilidades de supervisión del Comité o Equipo Evaluador estarán limitadas a los siguientes asuntos que se describirán en el informe: la totalidad del

proceso que lleve al establecimiento de un contrato o acuerdo de compras (detalles del proceso de pre-cualificación de Proponentes adecuados, del proceso de Solicitud de Propuestas, y de la selección de la Propuesta y el Proponente seleccionado); las razones por las cuales un Proponente en particular fue seleccionado; un resumen de los aspectos más importantes del Contrato o Acuerdo de Compras; una copia del Estudio de Deseabilidad y Conveniencia (cuando aplique); y una descripción de los objetivos empresariales y las metas económicas de los Contratos o Acuerdos de Compras.

SECCIÓN-4 PROPUESTAS

4.1 Identificación de Proyectos, Modelos de Negocio o Soluciones - La Autoridad seleccionará, evaluará y establecerá la prioridad de los Proyectos, Modelos de Negocio o Soluciones a ser establecidos bajo el modelo de contratos del tipo estratégico *Sourcing*, Acuerdos de Compras o cualquier otro tipo de servicio o integración de cadenas de suministros.

4.2 Estudio de Deseabilidad y Conveniencia - Para establecer que un Proyecto, Solución o Modelo de Negocio en particular satisfaga la política pública y cumpla con las metas económicas establecidas, el Jefe de División de Suministros podrá realizar o comisionar un Estudio de Deseabilidad y Conveniencia para cada Proyecto seleccionado por la Autoridad para ser procesado como una Solicitud de Propuesta- RFP. El Jefe de División de Suministros determinará el alcance y necesidad de cada estudio de este tipo de acuerdo a los hechos y circunstancias particulares de cada Proyecto, Modelo de Negocio o Solución bajo consideración para un proceso de RFP.

Luego de haberse completado un análisis ponderado del caso o el Estudio de Deseabilidad y Conveniencia y donde el Jefe de División de Suministros haya determinado que es conveniente y pertinente promover el uso de un RFP para un Proyecto, éste asignará un Comité o Equipo Evaluador, según dispuesto en la Sección 3.1 de esta guía. El Comité o Equipo Evaluador tendrá los poderes conferidos por esta guía.

4.3 Proceso de Estudios de Mercado - En relación con la identificación de Proyectos, Modelos de Negocios y Soluciones y previo al comienzo del proceso de Selección de Propuestas, la Autoridad podrá solicitar sugerencias y comentarios de participantes en el mercado para determinar la mejor manera de seleccionar Proyectos viables y comercializables mediante:

- (i) la realización de una Solicitud de Información (RFI);
- (ii) la emisión de una Solicitud de Expresión de Interés (RFEI); o

- (iii) la utilización de cualquier otro método apropiado para recopilar información de los participantes en el mercado; en forma electrónica.

La Autoridad podrá publicar guías generales con respecto a cómo se llevará a cabo una Solicitud de Información o una Solicitud de Expresión de Interés y cómo la Autoridad utilizará cualquier información obtenida durante dicho proceso. Cualquier información obtenida por la Autoridad mediante una Solicitud de Información o Solicitud de Expresión de Interés estará sujeta a las disposiciones de **confidencialidad** contenidas en la Sección 9.3 de esta guía, en la medida que sea aplicable.

4.4 Cualificación de Proponentes - La Autoridad podrá emitir una Solicitud de Cualificaciones para un RFP únicamente luego de haber determinado que: (i) el Proyecto, Modelo de Negocio o Solución cumple con los requisitos establecidos por la Autoridad y es recomendable el uso de un proceso de RFP con respecto a un Proyecto, Modelo de Negocio o Solución.

Previo a la publicación de una Solicitud de Propuestas o según lo requiera la Autoridad, el Comité o Equipo Evaluador podrá llevar a cabo un proceso de Solicitud de Cualificaciones para identificar los Proponentes potenciales que satisfagan unos parámetros mínimos de: (i) condición financiera; y/o (ii) capacidad y experiencia técnica o profesional. Cualquier parámetro mínimo se especificará en la Solicitud de Cualificaciones y guardará relación y proporción a la materia del Contrato de o Acuerdo de Compras propuesto. El Comité o Equipo Evaluador puede, además de dichos parámetros mínimos, incluir otros requisitos de cualificación en la Solicitud de Cualificaciones y solicitar información sobre un Proponente potencial, incluyendo incumplimientos anteriores, quiebras o litigios pertinentes.

La Solicitud de Cualificaciones será publicada por medio de un anuncio electrónico en la página WEB de la Autoridad (www.aeepr.com) y a través de comunicación directa a los suplidores segmentados en la o las categorías a ser trabajadas. Esto, según los estándares para la Solicitud de Propuestas expuestos en las secciones 4.5 y 4.6 de esta guía, en la medida que sean aplicables. La Autoridad se reserva el derecho de utilizar su experiencia de negocio y de mercado para el envío de invitaciones a potenciales participantes, así como la divulgación a través de medios de comunicación masiva o a segmentos industriales específicos a través del internet.

Los consorcios y otros Proponentes que tengan la intención de someter Propuestas en conjunto tendrán que cumplir con los requisitos establecidos por la Autoridad para el Registro y Certificación de Compañía, de esta guía y cualquier otro requisito especificado por la Autoridad en la Solicitud de Cualificaciones.

Un Proponente podrá solicitar a la Autoridad la aclaración, explicación o interpretación de cualquier asunto dentro de la Solicitud de Cualificaciones hasta un máximo de quince (15) días calendario (o cualquier período mayor o menor, según se especifique en la Solicitud de Cualificaciones) antes de la fecha de vencimiento para la información especificada en la Solicitud de Cualificaciones. Cualquier solicitud de los Proponentes deberá ser por escrito. Si la Autoridad proveyera cualquier aclaración como resultado de una Solicitud de Cualificaciones, dicha aclaración será por medio de mensajería electrónica disponible a través del portal electrónico y enviado a todos los Proponentes potenciales con por lo menos tres (3) días calendario de anterioridad a la fecha de vencimiento de la información requerida por la Solicitud de Cualificaciones. Estos tiempos podrán ser menores a tres (3) días calendario cuando los mismos así sean notificados al inicio del proceso. Esto podrá ocurrir en aquellos proyectos que por lo crítico, impactante o complejo del mismo, necesita manejarse en itinerarios de tiempo agresivos, para así salvaguardar los mejores intereses de la Autoridad.

La meta de la etapa de Solicitud de Cualificaciones es ayudar al Comité o Equipo Evaluador a crear una lista corta *short list* de los Proponentes mejor cualificados. Por lo tanto, el Comité o Equipo Evaluador, al evaluar las cualificaciones de un Proponente potencial, puede descalificar a un Proponente potencial, con lo cual excluiría a dicho Proponente potencial del proceso de Solicitud de Propuestas, sólo si el Proponente potencial (i) puede ser tratado como inelegible para someter una Propuesta por una o más de las razones especificadas en la Sección 6 de esta guía; (ii) no cumple con los parámetros mínimos de **condición o riesgo financiero**, o capacidad y experiencia técnica o profesional establecidos por la Autoridad en la Solicitud de Cualificaciones.

El Comité o Equipo Evaluador se reserva el derecho de cualificar a un número limitado de Proponentes potenciales con el propósito de formular una lista corta para un Proyecto en particular si dicho derecho a realizar una lista corta se incluye en la Solicitud de Cualificaciones o en la Solicitud de Propuestas.

Si el Comité o Equipo Evaluador decide no emitir una Solicitud de Cualificaciones antes de publicar una Solicitud de Propuestas para cualquier Proyecto, el Comité o Equipo Evaluador realizará la evaluación de las cualificaciones de los Proponentes como parte del proceso de Solicitud de Propuestas, de conformidad con los requisitos de cualificaciones contenidos en la Solicitud de Propuestas y las secciones 5 y 6 de esta guía. Si se ha realizado un proceso de Solicitud de Cualificaciones para un Proyecto en particular que cumple con los requisitos de las secciones 4.5 y 4.6 de esta guía, el proceso de Solicitud de Propuestas se podrá modificar, según corresponda.

Un Proponente que ha sido cualificado de acuerdo a una Solicitud de

Cualificaciones no tendrá derecho a indemnización (incluyendo, pero sin limitarse a, reembolso de gastos) por parte de la Autoridad si la Autoridad decide, a su discreción, terminar el proceso de licitación de un RFP en cualquier momento o etapa.

- 4.5 Aviso Solicitud de Propuestas** - La Autoridad solo podrá emitir una Solicitud de Propuestas para un RFP luego de haber evaluado y determinado que es recomendable el desarrollo de un RFP con respecto a un Proyecto. Excepto en los casos descritos en la Sección 4.12 de esta guía o cuando una Solicitud de Cualificaciones anterior, relacionada al Proyecto, se haya efectuado por medio de avisos electrónicos a las compañías ya registradas, activas y clasificadas bajo los grupos o categorías de compras y servicios que se estarán solicitando. La Autoridad se reserva el derecho de realizar anuncios públicos a través de periódicos o revistas locales, así como en publicaciones, revistas y portales cibernéticos dedicados a la venta y promoción de artículos, servicios o soluciones iguales o similares a las solicitadas en el RFP. La Autoridad también puede utilizar aquellos otros métodos y procesos, incluyendo otros medios de comunicación electrónica, que estime aconsejables para divulgar la Solicitud de Propuestas.

El Comité o Equipo Evaluador también puede solicitar Propuestas directamente de Proponentes potenciales a través de un aviso de Solicitud de Propuestas si entiende que tales entidades pueden estar calificadas de una manera única para participar en un RFP en específico siempre que la Autoridad haya primero o en forma simultánea publicado tal aviso o notificación de Solicitud de Propuestas, según lo descrito en esta Sección 4.5.

Esta Sección 4.5 no aplicará a ningún Proyecto, Modelo de Negocio o Solución para el cual se haya comenzado una Solicitud de Cualificaciones. En el caso de que se haya comenzado una Solicitud de Cualificaciones, la Autoridad podrá, a su discreción, distribuir una Solicitud de Propuestas y adenda relacionada a aquellos Proponentes cualificados mediante el proceso de Solicitud de Cualificaciones.

- 4.6 Contenido de la Solicitud de Propuestas** - La Solicitud de Propuestas incluirá los siguientes elementos, sin que se interprete como una limitación o se asuma que el orden define su importancia, a menos que la Autoridad o el Comité o Equipo Evaluador, a su discreción, aprueben lo contrario:
- (a) una descripción del Proyecto, Modelo de Negocio, Solución o adquisición estratégica que se desarrollará.
 - (b) una descripción y el itinerario *timeline* propuesto para el proceso de selección; lo cual pudiera incluir una evaluación inicial de los aspectos técnicos de la Propuesta;
 - (c) instrucciones respecto al formato, plataforma electrónica utilizada por la

Autoridad para la Solicitud de Propuesta o cualquier otra especificación técnica en que se deben someter las Propuestas, en la medida en que éstas difieran de las instrucciones provistas en la Sección 4.8 de esta guía, y la información y materiales mínimos que se deben someter para que la Propuesta se considere completa. Mientras sea posible, la publicación de Solicitudes de Precio o RFP se realizarán a través del portal especializado de la Autoridad para procesos de adquisiciones o mejor conocidos en inglés como *PowerAdvocate® Sourcing Portal*;

- (d) si aplica, un bosquejo del proceso independiente de evaluación y cumplimiento ambiental, el cual puede incluir requisitos de que (i) cualquier mejora tenga que cumplir con los términos y condiciones de la evaluación ambiental, y (ii) el reembolso por cualquier trabajo preliminar, realizado por y a costo del Proponente, sea contingente a que se complete el proceso de evaluación ambiental y cualquier disposición específica incluida en el Contrato o Acuerdo de Compras que se otorgue;
- (e) una petición de la Autoridad para permitir que los Proponentes puedan someter, antes de la Propuesta, un Concepto Técnico Alternativo (CTA) y/o Concepto Financiero Alternativo (CFA) para que los Proponentes puedan incorporar innovaciones técnicas y financieras, y creatividad, en sus Propuestas. **El CTA y/o CFA será confidencial y no podrá ser compartido con otros Proponentes.** Este método permitirá al Comité o Equipo Evaluador analizar y considerar los CTAs y/o CFAs de los Proponentes que hayan sido sometidos con tiempo al tomar la decisión de selección, para evitar demoras y potenciales conflictos en el plan que puedan estar relacionados con la posposición del análisis de los CTAs y/o CFAs al período posterior a la adjudicación, y en última instancia, para obtener el mejor y más alto valor para la Autoridad y sus clientes;
- (f) una declaración sobre el tipo de proceso de selección a ser utilizado por la Autoridad en relación con el RFP propuesto;
- (g) los Criterios de Evaluación mínimos aplicables, incluyendo los criterios de selección y/o ponderación para adjudicar un Contrato o Acuerdo de Compras, que serán utilizados al evaluar a los Proponentes, si no se ha emitido anteriormente una Solicitud de Cualificaciones relacionada, incluyendo cualquier capacidad o Propuestas;
- (h) cualquier Fianza de Propuesta aplicable establecida por la Autoridad;
- (i) si aplica, una declaración respecto a cualquier contingencia de financiamiento u otras condiciones, contingencias, aprobaciones, autorizaciones o certificaciones que se requieran para adjudicar o firmar un Contrato o Acuerdo de Compras;

- (j) fecha y hora de vencimiento para someter Propuestas y el lugar al que las mismas deberán ser sometidas;
- (k) el punto de contacto (POC) designado en la Autoridad o su delegado o delegada;
- (l) cualquier otro término y condición aplicable que le puedan ser útiles a, o que deban ser exigidos de, los Proponentes, según lo determine la Autoridad o el Comité o Equipo Evaluador;
- (m) una cláusula mencionando que ninguno de los Proponentes ni miembros de su equipo, discutirán o se comunicarán, directa o indirectamente, con cualquier otro Proponente, o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier miembro del equipo de cualquier otro Proponente, en cuanto a la preparación, contenido o representación de sus Propuestas. Las Propuestas serán sometidas sin ninguna conexión (por ejemplo, que surja de un interés en o de un Proponente o miembro del equipo de un Proponente), conocimiento, comparación de información, o arreglo, con cualquier otro Proponente o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier miembro del equipo de cualquier otro Proponente. Para asegurar esto, todos los proponentes potenciales tienen que firmar y aceptar un Acuerdo de Confidencialidad, previo a tener acceso a cualesquiera de los documentos que han sido seleccionados para ser protegidos a través del acuerdo de confidencialidad. La violación de los acuerdos e instrucciones incluidas en este inciso, serán causa suficiente para la expulsión definitiva del proceso. La AEE también se reserva el derecho separar y eliminar a la compañía en forma definitiva del Registro de Suplidores; esto en adición a las sanciones legales y financieras a las cuales se puede exponer como resultado de una o varias de las violaciones aquí contenidas;
- (o) una cláusula indicando expresamente que la Solicitud de Propuestas podrá ser enmendada mediante la publicación de adenda; y
- (p) un requisito de que cada Proponente o miembro de un consorcio certifique que se ha cumplido con los requisitos de la Sección 4.17 de esta guía en la forma proscrita por la Autoridad.

4.7 Solicitud de Aclaración - Los Proponentes pueden solicitar cualquier aclaración, explicación o interpretación de una Solicitud de Propuestas sólo según se dispone en esta sección.

Después de emitirse una Solicitud de Propuestas, un Proponente podrá solicitar una o más Solicitudes de Aclaración hasta un máximo de quince (15) días

calendario (o la cantidad, ya sea menor o mayor, de días, según se especifique en la Solicitud de Propuestas); antes de la fecha límite para someter Propuestas especificadas en la Solicitud de Propuestas. Cualquier Solicitud de Aclaración por parte de un Proponente solo podrá hacerla por escrito y utilizando el medio de mensajería electrónica que se estipule en las instrucciones del RFP. La Autoridad ha determinado utilizar un portal electrónico especializado para la publicación de procesos de adquisiciones *PowerAdvocate© Sourcing Portal*, por lo que ninguno de los Proponentes estará autorizado a utilizar ningún otro método alternativo al aquí designado.

Los representantes de la Autoridad y/o del Comité o Equipo Evaluador también podrán participar en una o más Conferencias con Antelación a la Propuesta. En tales reuniones o conferencias, los Proponentes también pueden solicitar a la Autoridad una aclaración, explicación o interpretación de cualquier material contenido en la Solicitud de Propuestas. La Solicitud de Aclaración de los Proponentes en una Conferencia con Antelación a la Propuesta no tendrá que ser por escrito. Las conferencias se realizarán a través de medios electrónicos de video conferencias, conferencias vía web o teléfonos. La Autoridad se reserva el derecho de grabar estas conferencias para asegurar la transparencia, certeza y calidad de los procesos. En el caso que la Autoridad opte por esta opción, la misma será anunciada previo al inicio de la conferencia.

Cualquier respuesta de la Autoridad a peticiones escritas u orales de parte de Proponentes potenciales, podrá compilarse en una o más adendas que se divulgarán o circularán a todos los Proponentes potenciales que se hayan registrado con la Autoridad al menos tres (3) días calendario, antes de la fecha de vencimiento de la Propuesta establecida en la Solicitud de Propuestas. Si una o más adendas se circulan a menos de tres (3) días de la fecha de vencimiento establecida en la Solicitud de Propuestas, entonces la fecha de vencimiento de la Propuesta se entenderá cambiada a la fecha que sea tres (3) días después de la fecha en que dicha adenda se haya circularado. Sin embargo, si la Autoridad, a su discreción, identifica que una Solicitud de Aclaración o la correspondiente Respuesta a los Proponentes es de naturaleza menor o administrativa, la Autoridad podrá emitir una Respuesta a los Proponentes a menos de tres (3) días de la fecha de vencimiento de la Propuesta. No obstante lo anterior, una Solicitud de Aclaración con respecto a un CTA o CFA se tratará como confidencial y se emitirá una aclaración sólo al Proponente que la solicite.

Se advierte que la Autoridad ha establecido que las contestaciones mediante adendas serán distribuidas a través de las herramientas de mensajería electrónica disponible en el portal electrónico especializado. Esto permitirá mayor agilidad, flexibilidad y permitirá que todos los participantes tengan la misma contestación al mismo tiempo, garantizando el envío y recibo de las mismas. A través de este medio se mantendrá un historial de fechas, tiempos, preguntas y personas que formulan las mismas, garantizando así el fiel

cumplimiento con los parámetros de tiempo aquí establecidos.

Sólo las respuestas escritas provistas por la Autoridad, a través de la plataforma de publicaciones electrónicas de la Autoridad, serán oficiales. Cualquier otro tipo de comunicación con cualquier funcionario, empleado o agente de la Autoridad, el Comité o Equipo Evaluador o la Unidad de Negocio o Directorado, División, Departamento, Oficina o persona, incluyendo cualquier respuesta oral durante cualquier Conferencia con Antelación a la Propuesta, no se considerará una respuesta oficial de la Autoridad o de dicho comité.

En aquellos casos en los cuales una Solicitud de Propuestas incluya un borrador del Contrato o Acuerdo de Compras, la Solicitud de Propuestas especificará la forma en que (i) los Proponentes podrán someter comentarios o sugerencias al borrador de Contrato o Acuerdo de Compras, y la forma en que (ii) el borrador revisado del Contrato o Acuerdo de Compras, si alguno, se distribuirá a los Proponentes.

4.8 Respuesta a una Solicitud de Propuestas

- (a) Fase Uno (1) – Preparación de Respuesta a una Solicitud de Propuestas.
Las Propuestas tienen que proveer una descripción precisa y concisa de la capacidad del Proponente para completar o realizar el Contrato, Acuerdo de Compras, Servicio, Modelo de Negocio y Solución. Se le dará énfasis a la claridad del contenido de la Propuesta y que la misma esté completa. Los Proponentes serán responsables por todos los gastos directos e indirectos incurridos relacionados con el proceso de preparación de una Propuesta. Aunque la Autoridad podrá, a su discreción, aceptar Propuestas que no cumplan con todos los requisitos, a menos que la Solicitud de Propuestas estipule otra cosa, las Propuestas sometidas para ser consideradas tienen que cumplir con los siguientes requisitos:
 - (i) las Propuestas estarán firmadas en tinta por un representante autorizado del Proponente cuando se solicita la entrega de los documentos en formato de papel, y el Proponente o dicho representante autorizado firmará con sus iniciales, en tinta, para confirmar cualquier alteración o corrección a la Propuesta. La Autoridad solo aceptará propuestas electrónicas las cuales solo pueden ser cargadas a través del portal electrónico de adquisiciones de la Autoridad y el cual es operado por la compañía *PowerAdvocate*®. De esta forma se mantendrá un registro fiel y exacto con la fecha, hora, minutos, usuario y documento electrónico que ha sido cargado. La disponibilidad para ver y analizar estas Propuestas estará protegida a través de controles electrónicos que no permitirán el acceso a ningún

oficial de la Autoridad o miembro del Comité o Equipo Evaluador hasta luego de pasada la fecha, hora y minutos estipulados para el cierre de recibo de Propuestas. Tampoco tendrá acceso ningún empleado externo al Comité Evaluador ya que la seguridad de acceso es por usuario. Con este método se mantendrá un historial de acceso y actividades relacionadas al uso y manejo de la información contenida en el portal;

- (ii) se someterá toda la información solicitada bajo la Solicitud de Propuestas y los formularios electrónicos incluidos en la plataforma electrónica para licitaciones. A los Proponentes que no sometan toda la información requerida por la Solicitud de Propuestas y formularios electrónicos, se les podrá brindar una oportunidad *Post Bid* de presentar rápidamente la información que falte o se les podrá dar una puntuación menor en la evaluación de su Propuesta. Aquellas Propuestas que carezcan de información esencial que sea requerida por la Solicitud de Propuestas y formularios electrónicos podrán rechazarse de plano;
- (iii) cada Propuesta tiene que incluir una tabla de contenido, que haga referencia a los requisitos por categoría y estará organizada, según requerido en la Solicitud de Propuestas correspondiente. La información que el Proponente desee presentar que no corresponda a ninguno de los requisitos de la Solicitud de Propuestas debe insertarse en un lugar apropiado o anejarse al final de la Propuesta e identificarse como material adicional. Las Propuestas que no estén organizadas de esta manera podrán ser devueltas para su revisión, a discreción de la Autoridad;
- (iv) cada Propuesta tiene que proveer una descripción completa del trabajo y suficiente información sobre el Proyecto, Modelo de Negocio o Solución para determinar si la misma satisface los Criterios de Evaluación y objetivos establecidos para el evento de RFP;
- (v) las Propuestas cargadas electrónicamente en la plataforma electrónica podrán ser cargadas en archivos separados. Estos tienen que estar claramente titulados y no se aceptarán títulos en siglas o nombres no relacionados al contenido del documento; y
- (vi) el plan financiero del Proyecto, Modelo de Negocio o Solución incluirá suficientes detalles para permitir un análisis minucioso que revele si el modelo de financiamiento propuesto es viable. El

plan financiero divulgará el nivel de financiamiento.

La Autoridad también promueve que todos los Proponentes, al preparar sus Propuestas, sigan las guías establecidas a continuación. Aunque no es requerido cumplir con estas guías, las mismas ayudarán a la Autoridad a acelerar el proceso de revisión:

- (i) Todas las páginas de la Propuesta tienen que estar enumeradas. La evaluación de las Propuestas se facilitará si las contestaciones de los Proponentes citan el número de Sección y Sub-sección correspondiente, y repiten el texto del requisito y no el texto de la Propuesta. Si una respuesta toma más de una página, el número de la pestaña y la letra correspondiente se deben repetir en la parte superior de la próxima página. Si un Proponente somete información confidencial o propietaria a la Autoridad, la información confidencial o propietaria será provista en archivos electrónicos separados para así facilitar la revisión de la información confidencial o propietaria por parte de la Autoridad o del Comité o Equipo Evaluador, según se dispone en la Sección 9.3 de esta guía; y
 - (ii) las Propuestas incluirán un resumen ejecutivo y harán referencia al número de Sección y Sub-sección correspondientes, al abordar los puntos en la Solicitud de Propuestas en lugar de repetirlos.
- (b) Fase Dos (2) – Presentación de Propuestas. Se exhorta a los Proponentes que propongan soluciones innovadoras a las necesidades de la Autoridad y sus clientes. Las Propuestas se cargarán en el portal electrónico de adquisiciones *PowerAdvocate(c) Sourcing Portal* en o antes de la fecha y hora límite para recibir Propuestas establecida en la Solicitud de Propuestas, de acuerdo con las instrucciones incluidas en la misma y, a menos que se estipule algo distinto en la Solicitud de Propuestas, cumpliendo con los siguientes requisitos:
- (i) Se requiere que los Proponentes sometan una (1) copia electrónica en formato de documento portátil (*pdf*), a menos que la Autoridad indique algo distinto en la Solicitud de Propuestas. Para propósitos de esta guía, una Propuesta se considerará sometida a la Autoridad en la fecha y hora de la carga de archivos electrónicos en la plataforma electrónica de licitaciones establecido para estos propósitos.
 - (ii) los Proponentes entregarán sus Propuestas a través de cargas electrónicas en la plataforma electrónica destinada para estos propósitos. Una vez la carga se complete en forma exitosa, el

sistema proveerá evidencia electrónica de la fecha, hora y minuto que la carga se completó en forma exitosa. Este medio brinda la flexibilidad a los proponentes de realizar la carga en cualquier momento antes del período de cierre establecido para el recibo de Propuestas;

- (iii) cualquier Propuesta sometida por correo o entregada personalmente por el Proponente o su representante autorizado será rechazada y devuelta al Proponente sin abrir;
- (iv) las Propuestas cargadas electrónicamente en o antes de la fecha de vencimiento establecida en la Solicitud de Propuestas no estarán accesibles *Sealed Bid* para evaluación hasta el momento posterior la fecha y hora establecida en la Solicitud de Propuestas, según se indique en la adenda correspondiente. Este control es uno automático y autónomo el cual no puede ser modificado o alterado en forma alguna;
- (v) las Propuestas no serán leídas en público. La Autoridad no generará copias de las Propuestas. Sólo los integrantes de la Autoridad y los integrantes del Comité o Equipo Evaluador u otras personas designadas por el Jefe de División de Suministros tendrán acceso electrónico a las Propuestas y a los resultados de la evaluación durante el período de selección y evaluación. Todas las Propuestas sometidas a la Autoridad se convertirán en propiedad de la Autoridad, salvo los documentos o información sometida por los Proponentes que constituya secretos de negocios, información propietaria o privilegiada o confidencial del Proponente. Un Proponente que tenga una preocupación especial por alguna información propietaria o confidencial que desea hacer disponible a la Autoridad, deberá leer con detenimiento la Sección 9.3 de esta guía antes de someter su Propuesta;
- (vi) el que un Proponente potencial dejare de entregar, dentro del período establecido en la Solicitud de Propuestas, una Propuesta que cumpla con los requisitos allí establecidos, impedirá que dicha Propuesta sea considerada por la Autoridad y por el Comité o Equipo Evaluador; y
- (vii) a los Proponentes que sometan una Propuesta se les podrá requerir que hagan una o más presentaciones orales de su Propuesta al Comité o Equipo Evaluador.

4.9 Cargo por Revisión de Propuesta; Fianza de Propuesta

- (a) Para cubrir los costos de procesar, revisar y evaluar Propuestas incurridos por la Autoridad, esta podrá requerir un pago, que no es reembolsable ni negociable, por la revisión de la Propuesta. El monto del cargo por revisión de Propuesta será determinado por la Autoridad, caso a caso, y se incluirá en la Solicitud de Propuesta. El incumplir con el pago de cualquier cargo suspenderá la consideración de una Propuesta. Todos los cargos se pagarán de la manera que establezca la Autoridad en la Solicitud de Cualificaciones o en la Solicitud de Propuestas. Los Proponentes que sometan múltiples propuestas para RFPs que no están relacionados, tendrán que someter un pago de cargo por revisión de Propuesta para cada Propuesta sometida en el caso de así requerirse.
- (b) La Solicitud de Propuestas podrá requerir que el Proponente someta una Fianza de Propuesta. Una Fianza de Propuesta *Bid Bond* podría consistir de un primer plazo de menor cantidad, el cual se sometería junto con la Solicitud de Propuestas como condición para competir en el proceso de cualificación, y un segundo plazo de mayor cantidad, el cual se sometería al notificarle al Proponente que es el Proponente Seleccionado. La cantidad, fecha de entrega y condiciones de devolución, si alguna, de cualquier Fianza de Propuesta requerida se determinará por la Autoridad y se especificará en la Solicitud de Propuestas correspondiente.

4.10 Modificación de Propuesta - El Comité o Equipo Evaluador sólo aceptará una modificación a una Propuesta previamente sometida si la modificación se recibe antes de la fecha de vencimiento que especifique la Solicitud de Propuestas para esa Propuesta. Todas las modificaciones se harán por escrito y se ejecutarán y someterán en la misma forma y manera de la Propuesta original, de conformidad con los términos de la Solicitud de Propuestas.

4.11 Cancelación de una Solicitud de Propuestas - La Autoridad, a su discreción, o por recomendación del Comité o Equipo Evaluador, podrá cancelar un proceso de Solicitud de Propuestas en cualquier momento. Si el Comité o Equipo Evaluador recomienda que se cancele una Solicitud de Propuestas, el Comité indicará la razón o las razones para su recomendación. El Jefe de División de Suministros podrá realizar una de las siguientes alternativas:

- (a) realizar una nueva Solicitud de Propuestas;
- (b) negociar directamente con un Proponente, luego de haber cancelado la Solicitud de Propuestas, sólo si dicho Proponente obtuvo la clasificación más alta previo a la cancelación de la Solicitud de Propuestas, las razones para cancelar la Solicitud de Propuestas ya no aplican o no existen, la negociación es para el mismo RFP para el cual originalmente se licitó y dicha negociación esté en los mejores intereses de la Autoridad; o

- (c) tomar cualquier otra acción que la Autoridad considere apropiada.

La Autoridad podrá, a su discreción y caso a caso, pagar un estipendio u honorario por terminación a todos los Proponentes en la eventualidad de cancelación. Sin embargo, la Autoridad no tendrá que indemnizar (incluyendo, pero sin limitarse a, reembolso de gastos) a cualquier Proponente si decide, a su entera discreción, cancelar un proceso de Selección de Propuestas.

4.12 Propuestas No Solicitadas - Generalmente, la Autoridad le dará prioridad a la evaluación de Propuestas solicitadas a través del proceso de Solicitud de Propuestas. La Autoridad, sin embargo, podrá recibir y evaluar Propuestas no solicitadas de un Proponente relacionadas a Proyectos que no se hayan seleccionado para una Solicitud de Propuestas, pero que cumplan con los requisitos de la Ley y de esta guía, dentro de quince (15) días después de haber recibido la Propuesta no solicitada.

Los pasos principales del proceso de Propuestas no solicitadas, el cual la Autoridad ha determinado cumple con los requerimientos del proceso de Solicitud de Propuestas a utilizarse, según la Ley, se describe a continuación:

- (i) Antes de radicar una Propuesta no solicitada, un Proponente potencial podrá presentarle su interés en una Solución, Contrato del tipo *Sourcing* o Modelo de Negocio a la Autoridad mediante el envío de una carta al Jefe de la División de Suministros;
- (ii) Si la Autoridad no tiene objeción o no está en el proceso de preparar un proceso de licitación para la misma, el Proponente potencial radicará una Propuesta no solicitada a la atención del Jefe de División de Suministros. La Propuesta no solicitada estará acompañada de un cargo por solicitud no negociable en la cantidad que determine el Jefe de la División de Suministros, de hasta \$50,000. El Jefe de la División de Suministros revisará, evaluará y hará recomendaciones iniciales a la Autoridad con respecto a cualquier Propuesta no solicitada recibida por la Autoridad. El Jefe de la División de Suministros, sin embargo, podrá rechazar cualquier Propuesta no solicitada por cualquier razón y devolverle al Proponente el(los) cargo(s) por concepto de solicitud;
- (iii) La Autoridad comentará y revisará la Propuesta no solicitada dentro de quince (15) días calendario, y determinará si la Propuesta cumple todos los requisitos legales y de política pública para continuar con su evaluación. La Autoridad podrá, sin embargo, rechazar cualquier Propuesta no solicitada por cualquier razón y devolverle al Proponente el(los) cargo(s) por concepto de solicitud;

- (iv) tras recibir una Propuesta no solicitada y llegar a la determinación posterior de que la Propuesta no solicitada, según sometida o enmendada, reúne los requisitos de esta guía, la Autoridad llevará a cabo un Estudio de Deseabilidad y Conveniencia, según dispone la Sección 4.2 de esta guía;
- (v) si dicho estudio es favorable, el Jefe de División de Suministros podrá comunicar los resultados del estudio al Director Ejecutivo y la Junta de Gobierno para que sea incluido en el inventario de Proyectos, con excepción de soluciones, modelos de negocios o contratos del tipo *Sourcing* y relacionados a las cadenas de suministros los cuales son de su absoluta responsabilidad y pertinencia;
- (vi) una vez incluido en el inventario de Proyectos, Modelos de Negocios o Soluciones de la Autoridad, el Jefe de la División de Suministros podrá establecer o asignar un Comité Evaluador, publicar el Estudio de Deseabilidad y Conveniencia, y determinar el alcance final del Proyecto, Modelo de Negocio, Contrato *Sourcing* o Solución;
- (vii) el Comité o Equipo Evaluador entonces podrá colocar un aviso en el portal electrónico de la Autoridad (www.aeepr.com), publicaciones especializadas de circulación general u otros portales electrónicos, relacionados, según sea apropiado para notificarle a Proponentes potenciales que pudieran estar interesados. La Autoridad también podrá determinar utilizar solo aquellas compañías bonafides, registradas para la(s) categorías solicitadas y que estén activas en el Registro de Suplidores de la Autoridad. La Autoridad, además, podrá utilizar su conocimiento y experiencia de negocio de más de 70 años, para determinar las compañías aptas y capaces de cumplir con los requisitos establecidos para el proceso de RFP. La notificación dispondrá que la Autoridad ha recibido y aceptado una Propuesta no solicitada, que tiene la intención de evaluar la Propuesta, que podrá negociar un Contrato o Acuerdo de Compras interino o abarcador basado en la Propuesta y que aceptará para consideración simultánea cualquier Propuesta que compita con la Propuesta no solicitada y cumpla con las normas aplicables que la Autoridad reciba de conformidad con esta guía en o antes de la fecha de límite de treinta (30) días calendario que se incluya en la notificación para recibir Propuestas que compitan con la Propuesta no solicitada y que cumplan con esta guía. La fecha límite para el recibo de cualquier Propuesta que compita con la Propuesta no solicitada será a las 11:59pm (UTC -4), hora de San Juan, Puerto Rico, en el último día del periodo de competencia después de la publicación inicial por la

Autoridad de la notificación. La notificación proveerá un resumen del Proyecto propuesto y sus elementos principales. El Comité o Equipo Evaluador tendrá disponible la Propuesta completa, excepto por aquellas porciones que claramente y adversamente afectarían la posición financiera, competitiva o de negociación de la Autoridad, del Comité o Equipo Evaluador y/o del Proponente, según determine la Autoridad, a su discreción, o según se identifique por el Proponente. En la eventualidad que un Proponente no esté seguro de que su Propuesta sea suficientemente similar a la Propuesta que fue objeto de la notificación para que la misma se considere como una Propuesta competitiva, dicho Proponente podrá radicar ante la Autoridad una solicitud por escrito para una determinación preliminar de si su Propuesta sería considerada una Propuesta que compite en parte o en su totalidad. La Autoridad responderá no más tarde de diez (10) días calendario después del periodo de competencia con una contestación preliminar en cuanto a si la Propuesta se considerará como que compite o que no ha recibido suficiente información para tomar dicha determinación;

- (viii) el Comité o Equipo Evaluador también podrá determinar que una Propuesta no solicitada deberá modificarse o enmendarse para cumplir con los objetivos de la Autoridad. La Autoridad publicará una notificación aceptando dicha Propuesta para evaluación, según enmendada o modificada e invitando a otros a radicar una Propuesta competitiva. Si la Propuesta es modificada o enmendada, también se le dará la oportunidad al Proponente original a incluir información adicional durante el periodo de competencia;
- (ix) el fracaso de un Proponente potencial en presentar una Propuesta competitiva que cumpla con todos los requisitos dentro del periodo de competencia publicado evitará que dicha Propuesta sea considerada a menos y hasta que la Autoridad termine de considerar, o de negociar, la Propuesta no solicitada original y cualquier Propuesta competitiva recibida dentro del periodo de competencia. La Autoridad se reserva el derecho de extender el periodo de competencia. El recibo de una o más Propuestas competitivas durante dicho periodo no será causa para la publicación de una nueva notificación o del comienzo de cualquier nuevo periodo de competencia; y
- (x) tras la expiración de dicho periodo de competencia, la Autoridad y el Comité o Equipo Evaluador someterán la Propuesta no solicitada original, junto con cualquier otra Propuesta competitiva y que cumpla con los requisitos de esta guía que se haya recibido apropiadamente, al proceso de evaluación y selección que se detalla

en la Sección 5 que aparece a continuación.

Para acelerar el proceso de revisión y evaluación de Propuestas no solicitadas, la Autoridad recomienda que los Proponentes incluyan los siguientes documentos con sus Propuestas no solicitadas, según sea aplicable:

- (a) un mapa topográfico que indique la ubicación del Proyecto propuesto o localizaciones o actividades impactadas a través de su solución o modelo de negocio y (si aplica);
- (b) una descripción del Proyecto y un diseño conceptual que indique la interacción del Proyecto con la infraestructura existente y las operaciones actuales;
- (c) una declaración respecto al itinerario de desarrollo y el ciclo de vida de la instalación, activo, equipo, componente, sub-componentes u otros;
- (d) información con respecto a los pasos requeridos para desarrollar el Proyecto, Modelo de Negocio o Solución, incluyendo, pero sin limitarse a, permisos y necesidades de adquisición de terrenos, permisos de construcción, permisos de operación, permisos ambientales, permisos estatales y federales relacionado a las operaciones, etc...;
- (e) el esquema operacional propuesto y el estudio de viabilidad del Proyecto, Modelo de Negocio o Solución; y
- (f) una descripción detallada de cualquier asistencia gubernamental o por parte de la Autoridad que se requiera.

La Autoridad reconoce que podría recibir Propuestas con ciertas características en común, pero con diferencias significativas. En estos casos, la Autoridad se reserva el derecho, a su sola discreción, a tratar dichas Propuestas o cualquier porción de dichas Propuesta recibidas después de la Propuesta no solicitada original, como una Propuesta competitiva o como una Propuesta no solicitada no competitiva. Dada las consecuencias a un Proponente si fracasa en radicar dentro del periodo de competencia una Propuesta que la Autoridad después pudiera determinar es una Propuesta competitiva, la Autoridad insiste en que los Proponentes potenciales deberán estar atentos al portal de Internet de la Autoridad para cualquier notificación de una Propuesta no solicitada recibida y estar preparados para radicar dentro del periodo de competencia si entienden que una Propuesta que están considerando o preparando tiene cierta similitudes a, o características en común con, una Propuesta no solicitada que sea objeto de

una notificación.

No obstante cualquier otra cosa dispuesta en esta guía, la Autoridad no está obligada a revisar, evaluar, procesar y hacer recomendaciones con respecto a Propuestas no solicitadas, y la Autoridad, a su entera discreción, podrá terminar en cualquier momento cualquier proceso relacionado con una Propuesta no solicitada. La evaluación de una Propuesta no solicitada por la Autoridad no otorgará derecho alguno a un Proponente, incluyendo, pero sin limitarse a, el derecho de reembolso por gastos incurridos por el Proponente en la preparación de la Propuesta no solicitada.

4.13 Conceptos Técnicos y Financieros Alternos - Según dispone la Sección 6.4(e) de esta guía, el contenido de una Solicitud de Propuestas incluirá una solicitud por la Autoridad que le permitirá a los Proponentes someter Conceptos Técnicos Alternos y/o Conceptos Financieros Alternos antes de una Propuesta para que los Proponentes incorporen innovación y creatividad técnica y financiera en las Propuestas. Los CTAs también incluyen conceptos que no requieren una modificación de las disposiciones técnicas, pero que, si se implantan, requerirían evaluación ambiental, de seguridad o cumplimiento con algún otro requisito estatal o federal adicional para un Proyecto, Modelo de Negocio o Solución o una porción material de un Proyecto, Modelo de Negocio o Solución.

Los CTAs y/o CFAs serán confidenciales y no se compartirán con otros Proponentes. Esta guía, a su vez, permitirá que el Comité o Equipo Evaluador revise y considere temprano en el proceso los CTAs y/o CFAs de un Proponente al momento de tomar la decisión de selección, para evitar potenciales demoras y conflictos en el diseño asociadas con la posposición de la revisión de CTAs y/o CFAs al periodo posterior a la adjudicación, y en última instancia, obtener el mejor valor para los clientes.

Los CTAs y CFAs elegibles a ser considerados se limitarán a aquellos cuyas desviaciones de la Solicitud de Propuestas, o aquellos CTAs que requieran evaluación ambiental adicional, que resulten en una calidad y desempeño del producto final igual o mejor que la calidad y el desempeño del producto sin considerar la desviación o concepto, según determine la Autoridad, a su entera discreción. Un concepto no se considerará un CTA, si a juicio de la Autoridad, sólo produce una reducción de cantidad, desempeño o confiabilidad. Un concepto no es elegible para consideración como un CTA si está basado o requiere:

- (i) la inclusión de un Proyecto adicional de la Autoridad (tales como la expansión del alcance del Proyecto, Modelo de Negocio o Solución);
- (ii) un cambio en las disposiciones estéticas o de paisaje, operacionales y administrativas del negocio; o

- (iii) un incremento en la cantidad de tiempo para comenzar el Proyecto, Modelo de Negocio o Solución.

Los CTAs que, de implantarse, requerirían evaluación ambiental adicional para el Proyecto, Modelo de Negocio o Solución, podrían permitirse, según los términos y condiciones impuestos por la Autoridad. Si el Proponente no puede obtener las aprobaciones necesarias para implantar el CTA, el Proponente estará obligado a desarrollar el Proyecto, Modelo de Negocio o Solución de conformidad con las aprobaciones existentes sin costos adicionales o extensiones de tiempo.

- 4.14 Contrato o Acuerdo de Compras sin Solicitud de Propuestas** - Las disposiciones de la Sección 4 de esta guía respecto al uso de la Autoridad del proceso de Solicitud de Propuestas no aplicarán a las situaciones descritas en la Sección 15 (22 LPRA 205) de la Ley. El Comité o Equipo Evaluador recibirá y evaluará las Propuestas que no hayan sido objeto de una Solicitud de Propuestas y negociará un Contrato o Acuerdo de Compras para operar y/o desarrollar Funciones, Instalaciones o Servicios que cualifiquen con Proponentes según permitido bajo dicha Sección 15 (22 LPRA 205) y conforme a las circunstancias particulares de cada caso. El Comité o Equipo Evaluador, en dichos casos, podrá utilizar, a su discreción, cualquier ley, reglamento, guía, normativa o combinación de estos para evaluar y seleccionar Proponentes y negociar un Contrato o Acuerdo de Compras, con el objetivo de maximizar los beneficios económicos y operacionales de la Autoridad con el objetivo principal de reducir los costos de producción eléctrica e incrementar los niveles de operación y servicio.
- 4.15 Comunicaciones con Oficiales de la Autoridad** - Una vez se comience un evento de Solicitud de Propuestas RFP, ni los Proponentes ni sus representantes podrán contactar o comunicarse en forma alguna con ningún oficial o representante de la Autoridad con relación al Proyecto, Modelo de Negocios, Solución o la Solicitud de Propuestas, excepto con los representantes oficiales de la Autoridad que hayan sido designados por el Jefe de División de Suministros como los Representantes Autorizados y sólo bajo las circunstancias permitidas en la Solicitud de Propuestas. El no cumplimiento con esta restricción será causa suficiente para la descualificación automática de la compañía en el proceso. La Autoridad, además, podrá aplicar sanciones administrativas y económicas a las compañías que incumplan con este requisito. Las sanciones pueden incluir una prohibición permanente de la empresa, individuos y compañía para participar en procesos o relaciones de comercio futuras. Esta prohibición no aplicará a las Conferencias Pre-Propuesta, según se describen en la Sección 4.7 de esta guía.
- 4.16 No Cabildeo, No Colusión, No Actos Prohibidos** - Ninguno de los Proponentes e integrantes del equipo de un Proponente, ni sus respectivos directores, oficiales, empleados, consultores, agentes, asesores y representantes podrán con relación a un Proyecto, una Solicitud de Cualificaciones, una Solicitud de

Propuestas, o un proceso competitivo de selección, participar de forma alguna en cualquier tipo de cabildeo político o de otra índole, ni podrán, a menos que se contemple expresamente en una Solicitud de Cualificaciones o Solicitud de Propuestas, tratar de comunicarse de forma alguna en relación a estos asuntos, directa o indirectamente, con cualquier representante del Comité o Equipo Evaluador o de la Autoridad, incluyendo cualquier Parte Restringida, o cualquier director, oficial, empleado, agente, asesor, miembro de personal, consultor o representante de cualquiera de las antes mencionadas personas, según aplique, para ningún propósito, incluyendo para propósitos de:

- (a) comentar o tratar de influenciar la opinión sobre los méritos de su Propuesta, o con relación a la Propuesta de otros Proponentes;
- (b) influenciar, o tratar de influenciar, el resultado de la fase de Solicitud de Cualificaciones o Solicitud de Propuestas, o del proceso competitivo de selección, incluyendo la revisión, evaluación, y la clasificación de las Propuestas, la selección del Proponente Seleccionado, o cualquier negociación con el Proponente Seleccionado;
- (c) promover sus intereses o los del Proponente en el Proyecto, incluyendo sobre las preferencias de otros Proponentes;
- (d) criticar o comentar sobre aspectos de la Solicitud de Cualificaciones, Solicitud de Propuestas, el proceso competitivo de selección, o el Proyecto, incluyendo de una manera que pueda darle una ventaja competitiva o cualquier otra ventaja al Proponente sobre otros Proponentes; y
- (d) criticar la Propuesta de otro Proponente.

Ni los Proponentes ni los integrantes del equipo del Proponente discutirán o se comunicarán, directa o indirectamente, con cualquier otro Proponente o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier integrante del equipo del otro Proponente con relación a la preparación, contenido o representación de sus Propuestas. Las Propuestas se someterán sin conexión alguna (por ejemplo, a través de la tenencia de acciones en o de un Proponente o integrante del equipo de un Proponente), conocimiento, comparación de información, o arreglo, con cualquier otro Proponente o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier integrante del equipo de dicho otro Proponente. **El incumplimiento con una o más de las restricciones aquí establecidas será causa suficiente para la separación indefinida y permanente de la compañía a participar o formalizar relaciones comerciales futuras. La Autoridad podrá, además, aplicar sanciones económicas y referir el o los casos a la División de Anti-**

Trust del Departamento de Justicia Federal para la formulación de cargos criminales, según apliquen. Estas sanciones aplicarán además a cualquier empleado, oficial o miembro de la Autoridad que contribuya en uno o más de los esquemas aquí presentados.

- 4.17 Partes Restringidas** - Las Partes Restringidas, sus respectivos directores, oficiales, socios, empleados, y Afiliadas no serán elegibles para participar como Proponentes o como integrante de un equipo de un Proponente, o asesorar cualquier Proponente o integrante del equipo de un Proponente, directa o indirectamente, o participar en cualquier forma como empleado, asesor, consultor o de otra forma relacionada a cualquier Proponente. Cada Proponente se asegurará que ni el Proponente ni los integrantes de su equipo utilice, consulte, incluya, o solicite asesoramiento de cualquier Parte Restringida. Cualquier director, oficial, socio, empleado, o Afiliada de una de las compañías aquí descrita podrán exponerse a la aplicación de leyes estatales y federales las cuales incluyen delitos criminales y sanciones económicas.

Cualquiera de las siguientes Personas contratadas por la Autoridad o el Comité o Equipo Evaluador o involucrada en la preparación del Estudio de Deseabilidad y Conveniencia, la Solicitud de Cualificaciones y/o la Solicitud de Propuestas, será una Parte Restringida:

- (i) Asesores Técnicos (tales como firmas de ingeniería y consultoría);
- (ii) Asesores Financieros (tales como bancos de inversión, firmas de contabilidad);
- (iii) Asesores Legales;
- (iv) Asesores Ambientales; y
- (v) Asesores Sociales o Laborales.

Cualquier Persona trabajando como consultor de una Parte Restringida y que desee participar en una Solicitud de Cualificaciones y/o una Solicitud de Propuestas deberá describir la naturaleza y alcance de su trabajo para la Parte Restringida, así como para el equipo del posible Proponente que someterá una Propuesta.

Esta lista de Partes Restringidas no es exhaustiva. Podrán identificarse Personas adicionales Partes Restringidas, incluyendo mediante inclusión en la lista durante el proceso competitivo de selección.

Para evitar dudas, una Parte Restringida con relación a un Proyecto se considerará como tal sólo con respecto al Proyecto en particular y, por tanto, no

estará de otra forma restringida de las actividades descritas en el primer párrafo de esta Sección 4.17. Además, ninguna Persona se convertirá en Parte Restringida como resultado de haber sido nombrada como miembro del grupo de consultores y sólo se convertirá en Parte Restringida una vez sea formalmente involucrada por la Autoridad o un Comité o Equipo Evaluador con respecto a una Instalación, Proyecto, Modelo de Negocios o Solución en específico.

SECCIÓN 5- PROCESO DE EVALUACIÓN Y SELECCIÓN

5.1 Proceso de Evaluación - Salvo que una Solicitud de Propuestas particular indicara otro proceso, el Comité o Equipo Evaluador someterá las Propuestas recibidas a través de un proceso de Solicitud de Propuestas o a través de la forma que haya determinado la Autoridad, por el siguiente proceso de evaluación, selección y negociación de tres (3) fases, según apliquen:

(a) Fase Uno: Revisión de Control de Calidad.

- (i) Dentro de los cinco (5) días laborables después de la fecha límite para someter Propuestas bajo una Solicitud de Propuestas, el Comité o Equipo Evaluador determinará qué Propuestas aprobaron la revisión de control de calidad al satisfacer los requisitos básicos delineados en la Solicitud de Propuestas y en esta guía. El no cumplir con los Criterios de Evaluación y otras condiciones especificadas en una Solicitud de Propuestas o en esta guía constituirá suficiente causa para no aprobar la revisión de control de calidad. El Comité o Equipo Evaluador, a su discreción, podrá extender la duración de la revisión de control de calidad de la Fase Uno debido al volumen de Propuestas, la complejidad de las Propuestas, la necesidad de información adicional, la cooperación oportuna de los Proponentes, u otras circunstancias no previstas.
- (ii) Cada Proponente será notificado por escrito por el Comité o Equipo Evaluador de que su Propuesta ha aprobado o no la revisión de control de calidad y si avanzará a la Fase Dos. El Comité o Equipo Evaluador podrá devolver Propuestas que: (i) estén incompletas; (ii) no cumplan con los requisitos de la Solicitud de Propuestas; o (iii) no cumplan con los requisitos de la Ley o la Sección 4 de esta guía.
- (iii) El Comité o Equipo Evaluador, a su discreción, podrá hacer caso omiso de cualquier informalidad o asunto técnico en los documentos de cualquier Propuesta, siempre y cuando dichos asuntos se puedan corregir o aclarar sin perjuicio a la Autoridad.

(b) Fase Dos: Revisión y Recomendación del Comité o Equipo Evaluador.

- (i) El Comité o Equipo Evaluador revisará y evaluará todas las Propuestas que pasen la revisión de control de calidad. El Comité o Equipo Evaluador establecerá un itinerario preliminar para la revisión de Propuestas y la negociación del Contrato o Acuerdo de Compras, si se requiere. En cualquier momento de la Fase Dos, el Comité o Equipo Evaluador podrá solicitarle información adicional a un Proponente sobre su Propuesta para asistir al Comité o Equipo Evaluador con la revisión y evaluación de la misma. Basándose en la revisión de las Propuestas, el Comité o Equipo Evaluador seleccionará una Propuesta o podrá no seleccionar ninguna. Si la Solicitud de Propuestas exige negociaciones competitivas, el Comité o Equipo Evaluador podrá seleccionar una o más Propuestas o ninguna. Si la Autoridad no selecciona ninguna de las Propuestas (el Comité o Equipo Evaluador notificará al Jefe de División de Suministros de su decisión), cada Proponente que ha avanzado a la Fase Dos será notificado por escrito por el Comité o Equipo Evaluador, y su Fianza de Propuesta será devuelta;
- (ii) Si una Solicitud de Propuestas exige un proceso competitivo de negociación, el Comité o Equipo Evaluador revisará y considerará las Propuestas en base a los Criterios de Evaluación para determinar la clasificación de cada Propuesta. Basándose en dicha clasificación, el Comité o Equipo Evaluador determinará las Propuestas que están dentro de la Clasificación Competitiva. Tras discutirlo con el Jefe de División de Suministros, el Comité o Equipo Evaluador podrá elegir: (i) llevar a cabo discusiones y negociaciones con aquellos Proponentes cuyas Propuestas estén dentro de la Clasificación Competitiva, según se contempla más adelante en la Sección 5.1(c); ó (ii) negociar con el Proponente que obtuvo la clasificación más alta y, si las negociaciones no son fructíferas, continuar las negociaciones estrictamente en el orden de clasificación de cada Propuesta, según se contempla más adelante en la Sección 5.1(d). El Comité o Equipo Evaluador podrá elegir llevar a cabo negociaciones y discusiones con un Proponente cuya Propuesta se encuentra dentro de la Clasificación Competitiva, aun cuando no se trate de la mejor Propuesta;
- (iii) Los Proponentes cuyas Propuestas no caigan dentro de la Clasificación Competitiva serán notificados por escrito por el Comité o Equipo Evaluador, pero aún serán considerados parte del proceso de licitación hasta que se firme el Contrato o Acuerdo de Compras. La Fianza de Propuesta de cualquier Proponente no

seleccionado será devuelta (si aplica) una vez el Contrato o Acuerdo de Compras se haya firmado por todas las partes;

- (iv) La Autoridad se reserva el derecho de rechazar cualquier y todas las Propuestas sometidas si considera que tal acción está en los mejores intereses de la Autoridad;
- (v) Si se recibe sólo una Propuesta, dicha Propuesta se podrá considerar si el Comité o Equipo Evaluador y la Autoridad determinan que hacerlo está en los mejores intereses de la Autoridad.

Durante el proceso de evaluación, selección y negociación, todas las Propuestas, evaluaciones, discusiones y negociaciones se mantendrán confidenciales hasta que se firme el Contrato o Acuerdo de Compras, sujeto a las disposiciones del reglamento para el Programa de Administración de Documentos de la AEE y esta guía.

(c) Fase Tres-A: Negociaciones Simultáneas con Proponentes Múltiples

Si el Comité o Equipo Evaluador decide llevar a cabo discusiones y negociaciones con todos los Proponentes cuyas Propuestas caen dentro de la Clasificación Competitiva, tales Proponentes recibirán una notificación por escrito con los nombres y títulos de los Representantes Autorizados y explicando que las negociaciones se llevarán a cabo de acuerdo a las siguientes reglas:

- (i) Ninguna declaración hecha o acción tomada por la Autoridad, el Comité o Equipo Evaluador, cualquier empleado u oficial de la Autoridad, o cualquier asesor o consultor, u otro agente o representante de la Autoridad durante las discusiones y negociaciones vinculará en forma alguna a la Autoridad relacionada con alguna Solicitud de Propuestas en particular. Sólo el Contrato o Acuerdo de Compras, cuando sea efectivo conforme a sus términos será vinculante sobre la Autoridad;
- (ii) Se podrá invitar a cada Proponente que caiga dentro de la Clasificación Competitiva a una o más reuniones privadas con los Representantes Autorizados para discutir y contestar preguntas respecto a cualquier aspecto de su Propuesta. Los asesores designados del Comité o Equipo Evaluador y el Jefe de División de Suministros podrán participar en tales reuniones a petición de los Representantes Autorizados. El contenido y alcance de cada reunión privada con cada Proponente se determinará por los Representantes Autorizados, según el

contenido y las circunstancias relacionadas a la Propuesta del Proponente. El propósito de cada reunión será aclarar dudas sobre los requisitos de la Solicitud de Propuestas y confirmar que los términos del Contrato o Acuerdo de Compras son comprendidos; mejorar aspectos técnicos o de otra índole de la Propuesta en un esfuerzo por garantizar el cumplimiento de las especificaciones y requisitos de desempeño; discutir la base de los términos económicos propuestos, en un esfuerzo por mejorar los términos económicos para la Autoridad; y discutir cualquier otro detalle pertinente de la Propuesta, de manera que resulte en una mejor Propuesta y un mejor Contrato o Acuerdo de Compras para la Autoridad;

- (iii) Si se sostiene una reunión privada con algún Proponente que caiga dentro de la Clasificación Competitiva, se le dará la oportunidad a todos los Proponentes que estén dentro de la Clasificación Competitiva de discutir y repasar sus Propuestas con los Representantes Autorizados. Las discusiones, sin embargo, se basarán en los hechos y las circunstancias relativas a cada Propuesta, según descrito en la Sección 5.1(c)(ii). La información discutida en tales reuniones podrá variar de un Proponente a otro;
- (iv) Los Representantes Autorizados, con la asistencia del Comité o Equipo Evaluador, la Autoridad, sus asesores u otras personas que el Jefe de División de Suministros pueda designar, pueden, a su discreción:
 - (1) Establecer las guías, pautas e itinerarios para llevar a cabo las discusiones y para controlar las reuniones;
 - (2) Asesorar al Proponente sobre las deficiencias de su Propuesta, de manera que tenga la oportunidad de cumplir con los requisitos de la Autoridad;
 - (3) Intentar resolver cualquier incertidumbre respecto a la Propuesta, y en general aclarar los términos y condiciones de la Propuesta;
 - (4) Atender cualquier sospecha de error que pueda existir;
 - (5) Proveerle al Proponente la oportunidad de someter cualquier modificación a los términos económicos, aspectos técnicos o cualquier otro aspecto de su Propuesta que pueda resultar de las discusiones, o la oportunidad de proveer documentación o análisis

adicional que asista al Comité o Equipo Evaluador en su evaluación de la viabilidad del Proyecto, Modelo de Negocio o Solución y las cualificaciones del Proponente; y

- (6) Mantener un acta de las reuniones con la fecha, hora, lugar, y personas que asistieron;
 - (v) Tras cada entrevista o reunión con un Proponente, los Representantes Autorizados y/o el Comité o Equipo Evaluador podrán requerirle al Proponente que someta una confirmación por escrito de cualquier aclaración de su Propuesta discutida en la reunión;
 - (vi) A discreción del Comité o Equipo Evaluador o de su Representante Autorizado, las discusiones y negociaciones podrán llevarse a cabo totalmente o en parte mediante comunicaciones escritas o por teléfono, sin reuniones o entrevistas en persona;
 - (vii) Después de tales discusiones y negociaciones paralelas, el Comité o Equipo Evaluador podrá, a su discreción, solicitarle a los Proponentes que caigan dentro de la Clasificación Competitiva, que sometan su "mejor y última oferta" (o *BAFO* por sus siglas en inglés) en respuesta a las discusiones y negociaciones celebradas. Únicamente los Proponentes que sometieron Propuestas que caigan dentro de los parámetros establecidos en la Solicitud de Propuestas serán considerados en el proceso de BAFO;
 - (viii) Si el Comité o Equipo Evaluador determina no llevar a cabo un proceso de BAFO, el Comité o Equipo Evaluador deberá comenzar negociaciones con el Proponente sometiendo la Propuesta con la más alta clasificación, lo cual podrá culminar en la Adjudicación de un Contrato o Acuerdo de Compras.
- (d) Fase Tres-B: Negociaciones con los Proponentes Clasificados Si el Comité o Equipo Evaluador ha elegido llevar a cabo discusiones y negociaciones únicamente con el Proponente con la clasificación más alta dentro de la Clasificación Competitiva, a dicho Proponente se le enviará una notificación escrita que contenga los nombres y posiciones de los Representantes Autorizados. Los Representantes Autorizados y el Proponente acordarán un horario para llevar a cabo las negociaciones. En cualquier momento, el Comité o Equipo Evaluador puede terminar las negociaciones con el Proponente y comenzar negociaciones con el próximo Proponente con la clasificación más alta. *El Contrato o Acuerdo*

de Compras será vinculante sobre la Autoridad sólo cuando sean efectivos sus términos.

- (e) Fase Tres-C: Proceso Regular de Licitación (No-negociado) Si la Autoridad opta por llevar a cabo un proceso regular de licitación, la Autoridad deberá elegir al Proponente que haya sometido la Propuesta con la clasificación más alta, basado en los criterios indicados en la Solicitud de Propuestas. En el proceso de licitación regular, los Proponentes someterán una Propuesta técnica y una Propuesta financiera, debiendo estar la última Propuesta incluida en la plataforma electrónica provista para estos propósitos, antes de ser sometida por el Proponente. Cualquier Propuesta financiera que no haya sido cargada en la plataforma electrónica provista para estos procesos, habrá de descalificar automáticamente al Proponente. La Autoridad no accederá a las propuestas financieras cargadas en la plataforma electrónica, antes de la Fase Tres-C o antes de que las Propuestas de los Proponentes pasen la parte técnica de Evaluación de Criterios de la Fase Dos. La Autoridad no llevará a cabo discusión o negociación alguna con ningún Proponente. Los Representantes Autorizados de la Autoridad llevarán a cabo los siguientes pasos:
- (i) Ninguna declaración hecha o acción tomada por la Autoridad, el Comité o Equipo Evaluador, cualquier empleado o funcionario de la Autoridad, o cualquier asesor o consultor, u otro agente o representante de la Autoridad o del Comité o Equipo Evaluador durante el proceso de evaluación vinculará en forma alguna a la Autoridad o al Comité o Equipo Evaluador. El Contrato o Acuerdo de Compras sólo vinculará a la Autoridad cuando el mismo sea efectivo conforme a sus términos.
 - (ii) Los Representantes Autorizados y delegados por el Jefe de la División de Suministros accederán a los archivos de propuestas cargados en el portal electrónico ante los miembros del Comité o Equipo Evaluador, los asesores designados del Comité o Equipo Evaluador y los oficiales de la Autoridad claramente anunciarán la Propuesta financiera de cada Proponente que pasó a la Fase Dos;
 - (iii) Sujeto al derecho de la Autoridad de rechazar todas o cualquiera de las Propuestas, ésta seleccionará la Propuesta que obtenga la clasificación más alta, la cual podría culminar en la Adjudicación de un Contrato o Acuerdo de Compras. Si la Propuesta con la clasificación más alta no culmina en la Adjudicación de un Contrato o Acuerdo de Compras, la Autoridad podrá seleccionar la Propuesta que le sigue en la clasificación; y

- (iv) Los Representantes Autorizados llevarán un registro de la fecha, hora, lugar y los presentes al momento de abrir los sobres sellados.

5.2 Enmienda al Proceso de Licitación - Nada en esta Guía limitará el poder de la Autoridad para enmendar el proceso de licitación aquí dispuesto mediante una enmienda a esta Guía o para modificarlo en relación con una Solicitud de Propuestas particular, según se disponga en dicha Solicitud de Propuestas o para integrar nuevos medios de comunicación, tecnología o requisitos y en la medida en que no entre en conflicto con la ley, la ética o la moral.

SECCIÓN 6- SELECCIÓN DE PROPONENTES

6.1 Eventos Descalificadores - El Comité o Equipo Evaluador tratará como inelegible y no seleccionará a un Proponente de acuerdo con esta guía si el Comité o Equipo Evaluador tiene conocimiento real de que el Proponente o una Persona afiliada ha sido convicto o convicta de algún delito establecido en la Ley 458 del 29 de diciembre de 2000, (por ejemplo, si el Proponente o su representante autorizado ha sido formalmente convicto por actos de corrupción, incluyendo cualquiera de los crímenes que aparecen en esta ley, según enmendada, ya sea en Puerto Rico, o en cualquier jurisdicción de los Estados Unidos o en cualquier país y bajo la Ley de Prácticas Corruptas del Extranjero). Toda persona que participe en los procesos de Solicitud de Cualificaciones o Solicitud de Propuestas, por virtud de su participación en éstos, autoriza a la Autoridad a solicitar de la autoridad gubernamental pertinente información adicional respecto al Proponente potencial o Proponente, y en particular, detalles sobre convicciones por los delitos enumerados en esta Ley si el Comité o Equipo Evaluador lo considera necesario para su proceso de selección o evaluación.

6.2 Otras Bases para Descalificación - El Comité o Equipo Evaluador podrá tratar como inelegible, o decidir no seleccionar a un Proponente o no aprobar la Adjudicación de un Contrato o Acuerdo de Compras a dicho Proponente por una o más de las siguientes razones, es decir, que dicho Proponente:

- (a) esté en bancarrota, insolvencia o los índices de riesgos financieros sean considerados muy altos para el tipo de proyecto, modelo de negocio o solución propuesta durante la existencia del contrato o acuerdo de compras, o haya hecho una cesión de bienes a beneficio de sus acreedores, o se haya iniciado un reglamento por éste o en su contra para adjudicarle en quiebra o insolvente, o solicitando una liquidación de sus activos o disolución, protección de sus acreedores, composición de sus deudas o cualquier alivio similar bajo cualquier ley relacionada a quiebra, insolvencia o reorganización o protección de sus acreedores;

- (b) haya sido convicto de un delito relacionado a la manera en que lleva a cabo su negocio o profesión, aparte de los enunciados en la Ley 458 del 29 de diciembre de 2000;
- (b) no haya cumplido sus obligaciones respecto al pago de impuestos bajo las leyes del ELA o la jurisdicción relevante en que mantiene sus operaciones principales;
- (d) sea culpable de haber hecho una falsa representación con relación a cualquier información provista a la Autoridad o al Comité o Equipo Evaluador o provista de otra manera para cumplir con esta Guía o con una Solicitud de Propuesta; o
- (e) haya incumplido con los requisitos éticos establecidos en la Ley 84 del 18 de junio de 2002.

6.3 Información Respecto a la Situación Financiera - Al evaluar si un Proponente potencial o Proponente reúne cualquiera de los parámetros mínimos de condición financiera requeridos por el Comité o Equipo Evaluador para propósitos de la Sección 4.4 de esta guía y al seleccionar a los Proponentes bajo una Solicitud de Cualificaciones o una Solicitud de Propuestas, la Autoridad puede tomar en cuenta cualquiera de la siguiente información:

- (a) declaraciones pertinentes del banco(s) principal del proponente;
- (b) estados financieros de los tres (2) años fiscales anteriores;
- (c) cualquier otra información aceptable para la Autoridad que permita al Proponente demostrar su condición financiera; y
- (d) cualquier otra referencia de corroboración adicional que la Autoridad pueda conseguir de fuentes externas (por ejemplo, *Dun y Bradstreet-D&B*).

El Comité o Equipo Evaluador especificará en la Solicitud de Cualificaciones, la Solicitud de Propuestas y la información financiera que el Proponente tiene que proveer para cumplir con los parámetros mínimos aplicables de condición financiera.

6.4 Mejoramiento de Industria Local - La política de la Autoridad es fomentar la participación de suplidores, contratistas e inversionistas locales como participantes en Contratos, Modelos de Negocio o Soluciones potenciales para promover la actividad económica local y desarrollar pericia local. Al evaluar los Proponentes para proyectos, modelos de negocio o soluciones potenciales, el

Comité o Equipo Evaluador tomará en consideración, consistente con la ley aplicable, la presencia de dicho Proponente en y su compromiso con Puerto Rico, en términos de recursos dedicados, inversión en la comunidad, creación de empleos directos e indirectos, movimiento económico local y la participación de entidades locales. Aun así se aclara que en ningún sentido la Autoridad limitará la capacidad de desarrollo y competitividad anteponiendo cualquier otro criterio. La mayor contribución de la Autoridad de Energía Eléctrica de Puerto Rico a la economía local es reducir los costos de energía, elevar los niveles de servicio a los clientes en general, reducir el impacto de sus operaciones al ambiente y el desarrollo de estrategias innovadoras que propicien el servicio y calidad que ofrecemos a los clientes en general. Pero en especial a clientes industriales y comerciales; responsables directos del desarrollo y crecimiento económico fomentando la creación de empleos, la inversión de capital extranjero y el avance en la competitividad global.

6.5 Iniciativa contra la Corrupción - La Autoridad apoya a la *World Economic Forum's Partnering Against Corruption Initiative (PACI)* y fomenta que los Proponentes potenciales mencionen en sus Propuestas si participan en el *PACI*.

6.6 Guías sobre Conflictos de Interés - Periódicamente, la Autoridad podrá adoptar guías para la resolución de conflictos o asuntos sobre ventajas competitivas que puedan surgir dentro de la licitación de un Proyecto. La Autoridad publicará las guías que adopte, si alguna, en su portal de Internet.

SECCIÓN 7- ADJUDICACIÓN DEL CONTRATO

7.1 Comité o Equipo Evaluador - Una vez el Comité o Equipo Evaluador haya recomendado una Propuesta, y el Comité o Equipo Evaluador y el Proponente hayan finalizado la negociación de un Contrato o Acuerdo de Compras que cumpla con los requisitos, el Comité o Equipo Evaluador preparará y presentará un informe al Jefe de la División de Suministros. El informe deberá incluir las razones para llevar a cabo el Contrato, Modelo de Negocio o Solución, las razones para la selección del Proponente(s) escogido(s), una descripción del proceso efectuado, incluyendo comparaciones del o los Proponentes y el Contrato o Acuerdo de Compras recomendado frente a otras propuestas presentadas y toda aquella otra información pertinente al proceso y a la evaluación llevada a cabo. El informe se le presentará al Jefe de División de Suministros de la Autoridad para su aprobación no más tarde de treinta (30) días calendario después de terminada la negociación del Contrato o Acuerdo de Compras. La mera aprobación del informe y el Contrato o Acuerdo de Compras por la Autoridad no concede el derecho a reclamar indemnización, reembolso, ni pago alguno por concepto de expectativas surgidas en cualquiera de las etapas, ni por los gastos incurridos durante el proceso de cualificación o presentación de propuesta.

- 7.2 Adjudicación del Contrato o Acuerdo de Compras** - Una vez el informe y el borrador del Contrato o Acuerdo de Compras sean aprobados, se presentará al Jefe de la División de Suministros para la aprobación final de este. A menos que se especifique lo contrario en la Solicitud de Propuestas en particular, si un Contrato o Acuerdo de Compras no es otorgado dentro de los noventa (90) días calendario posteriores a la fecha de vencimiento para la radicación de la Propuesta correspondiente a dicho Contrato o Acuerdo de Compras, cualquier Proponente podrá retirar su Propuesta sin penalidad. La Autoridad podrá cancelar la Adjudicación del Contrato o Acuerdo de Compras en cualquier momento antes de que el Contrato o Acuerdo de Compras sea firmado por la Autoridad y por el Proponente, sin que esto le cree una obligación o responsabilidad legal alguna a la Autoridad, al Comité o Equipo Evaluador, a cualquier Representante Autorizado, o a cualquier agente o asesor. En caso de que la Autoridad cancele la Adjudicación del Contrato o Acuerdo de Compras antes de su otorgamiento por la Autoridad y por el Proponente, podrá devolver la Fianza de Propuesta a todos los Proponentes.
- 7.3 Aviso de la Adjudicación del Contrato o Acuerdo de Compras** - Una vez el Jefe de la División de Suministros apruebe el Contrato o Acuerdo de Compras y el otorgamiento por parte de la Autoridad, ésta hará pública la Adjudicación del Contrato o Acuerdo de Compras y la identidad del Proponente ganador. La Autoridad enviará una notificación escrita al resto de los Proponentes. El Jefe de la División de Suministros o su delegado notificará por escrito la decisión de la Autoridad de Adjudicar un Contrato o Acuerdo de Compras a todos los Proponentes participantes de la Fase 2 en adelante. La Autoridad enviará, a través del medio de mensajería electrónica de la plataforma electrónica de publicaciones, el aviso de adjudicación al o los Proponente(s) Seleccionado(s) no más tarde de cinco (5) días calendario después de que el Jefe de la División de Suministros haya notificado su aprobación al Comité o Equipo Evaluador. Ningún otro acto de la Autoridad se considerará como una aceptación de una Propuesta. La carta de notificación de la adjudicación de la subasta deberá indicar, además, que un proponente no seleccionado puede presentar una Moción de Reconsideración al amparo de la Ley Núm. 170 del 12 de agosto de 1988, según enmendada, y las disposiciones de esta guía. Indicará, además, que en caso de presentarse la Moción de Reconsideración, el proponente deberá enviar copia de la misma a todos los proponentes que participaron de la Solicitud de Propuesta o RFP, certificando en la propia Moción dicho envío.
- 7.4 Firma del Contrato o Acuerdo de Compras** - Una vez se adjudique el Contrato o Acuerdo de Compras, el Proponente tiene que firmar el Contrato o Acuerdo de Compras, someter la Fianza de Propuesta que se haya especificado en la Solicitud de Propuestas para garantizar el cumplimiento por el Proponente con sus obligaciones bajo el Contrato o Acuerdo de Compras y cualquier evidencia de seguro solicitada, y realizará todos los otros actos requeridos para la firma del Contrato o Acuerdo de Compras dentro del período de tiempo establecido por

la Autoridad (cuando aplique). El Contrato o Acuerdo de Compras no se podrá hacer cumplir ni tendrá efecto legal alguno hasta que haya sido completado y aprobado, y firmado por todas las partes. Si el Proponente Seleccionado no firma el Contrato o Acuerdo de Compras o no cumple con algún requisito para dicha firma dentro del límite de tiempo especificado por la Autoridad, la Autoridad podrá, a su discreción, extender la fecha de vencimiento para la firma del Contrato o Acuerdo de Compras o adjudicar el Contrato o Acuerdo de Compras al Proponente de la próxima Propuesta con la calificación más alta si la Autoridad y el Comité o Equipo Evaluador determinan que tal adjudicación será en los mejores intereses de la Autoridad y sus clientes. La aprobación de tal contrato con el Proponente de la próxima Propuesta con la calificación más alta cumplirá con los leyes y requisitos establecidos. Una vez dicho contrato sea final, una copia del informe del Comité o Equipo Evaluador deberá enviarse al Jefe de División de Suministros. De igual manera, este informe será publicado en el portal de Internet de la Autoridad y radicado en la Oficina del Contralor de Puerto Rico, según dispuesto por ley.

7.5 Documentos del Contrato o Acuerdo de Compras - La Autoridad determinará el tipo de Contrato o Acuerdo de Compras que mejor convenga para un Proyecto, Modelo de Negocio o Solución en particular y los términos y condiciones que incluirá cada Contrato o Acuerdo de Compras otorgado. Todos los acuerdos ancilares relacionados o necesarios para el desempeño de un Contrato o Acuerdo de Compras o la implementación de una Solución o Modelo de Negocio tienen que ser aprobados por la Autoridad y serán parte del récord público de la empresa.

7.6 Estipendio para la Transferencia de Propiedad Intelectual - La Autoridad podrá, a su entera discreción, proveer un estipendio o compensación parcial a los Proponentes no seleccionados que sometan una Propuesta que cumpla con las normas aplicables. La Autoridad indicará en la Solicitud de Propuestas si el estipendio se pagará para un Proyecto en específico. Además, si un Contrato o Acuerdo de Compras se adjudica a base de un CTA y/o un CFA que haya sido sometido por un Proponente no seleccionado, la Autoridad podrá, caso a caso, y a su entera discreción, pagar el estipendio a los Proponentes no seleccionados a cambio de la transferencia de la propiedad intelectual.

SECCIÓN 8- RECONSIDERACIÓN Y REVISIÓN

8.1 No Reconsideración por Parte de la Autoridad - La Autoridad no aceptará ninguna solicitud de reconsideración de cualquier decisión que tome la Autoridad, el Comité o Equipo Evaluador, el Jefe de la División de Suministros o cualquier Representante Autorizado relacionada al proceso de licitación establecido en la Ley o en esta guía, incluyendo, pero sin limitarse a, las decisiones relacionadas a las cualificaciones de Proponentes potenciales bajo una Solicitud de Cualificaciones o la Adjudicación de un Contrato o Acuerdo de

Compras.

- 8.2 Revisión Judicial** – Las evaluaciones y determinaciones que tome el Comité o Equipo Evaluador, la Autoridad y/o el Jefe de División de Suministros solamente podrán ser resueltas a través de un recurso de revisión judicial.

SECCIÓN 9- MISCELÁNEAS

- 9.1 Alcance de la Ley** - Periódicamente, la Autoridad podrá revisar un proyecto, modelo de negocio o solución, y determinar, por medio del Jefe de la División de Suministros, que una clase de proyecto, modelo de negocio o solución; o que un proyecto, modelo de negocio o solución en específico no cualifica para un RFP según se define en esta guía, y que no está cobijado por las disposiciones de la Ley. Además, la Autoridad podrá revisar el proceso de licitación. Luego de dicha revisión, la Autoridad podrá elegir continuar con el proceso de licitación con aquellas modificaciones, si alguna, que adopte o podrá comenzar un nuevo proceso de licitación.
- 9.2 Cálculo de Períodos** - Donde esta guía o la Ley requieran que se tome una acción: (i) dentro de un período determinado de tiempo después de que una acción es tomada, el día en que se tome la acción no se tomará en cuenta en el cálculo de ese período; (ii) dentro de un período determinado, ese período tiene que incluir por lo menos dos (2) días laborables; y (iii) dentro de un período determinado, cuando el último día de ese período no sea un día laborable, el período se extenderá para incluir el próximo día laborable, siempre que no se establezca lo contrario..
- 9.3 Confidencialidad** - Todas las Propuestas sometidas a la Autoridad o al Comité o Equipo Evaluador se convertirán en propiedad de la Autoridad o del Comité o Equipo Evaluador, excepto aquellos documentos o información sometida por los Proponentes que constituyan secretos de negocio, o información propietaria, privilegiada o confidencial del Proponente. Se aconseja a los Proponentes que se familiaricen con las disposiciones de confidencialidad y publicación contenidas en el Reglamento para la Administración de Documentos de la AEE, para asegurarse de que los documentos identificados por los Proponentes como “confidencial” o “propietario” no estén sujetos a divulgación bajo la Ley.

Si un Proponente tiene inquietudes particulares sobre información confidencial o propietaria que quisiera poner a la disposición de la Autoridad o el Comité o Equipo Evaluador, previo a someter su Propuesta, dicho Proponente podrá: (i) hacer una petición por escrito a la Autoridad para solicitar una reunión para especificar y justificar los documentos confidenciales o propietarios; (ii) hacer una presentación oral al personal y al asesor legal del Comité o Equipo Evaluador; y (iii) recibir notificación por escrito del Comité o Equipo Evaluador aceptando o rechazando las peticiones de confidencialidad. Dejar de tomar

dichas precauciones previo a someter una Propuesta podrá dejar información confidencial o propietaria sujeta a divulgación por mandato del Reglamento para la Administración de Documentos de la AEE. La Autoridad recomienda que los Proponentes sometan la información confidencial o propietaria en archivos electrónicos separados y claramente identificados y los cuales son cargados a la aplicación electrónica *PowerAdvocate® Sourcing Portal*; para facilitar la revisión de la información confidencial o propietaria por parte de la Autoridad o del Comité o Equipo Evaluador.

La Autoridad o el Comité o Equipo Evaluador se esforzarán por mantener la confidencialidad de cualquier información que un Proponente señale como propietaria o secreto de negocio, o que por otras razones, conforme al derecho, debe protegerse de publicación, excepto según requerido por ley u orden judicial. El Jefe de la División de Suministros o el Comité o Equipo Evaluador determinarán si los materiales requeridos están exentos de los requisitos de divulgación. En caso de que la Autoridad o el Comité o Equipo Evaluador elija divulgar los materiales requeridos, le notificará al Proponente sobre su intención de divulgar. En ningún caso, el Comité o Equipo Evaluador o la Autoridad serán responsables frente a un Proponente por una divulgación exigida por ley o una orden judicial de toda o una porción de una Propuesta sometida a la Autoridad o al Comité o Equipo Evaluador bajo estas guías.

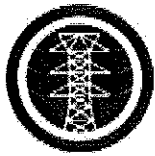
Una vez el Jefe de la División de Suministros haya aprobado y se haya firmado el Contrato o Acuerdo de Compras, la Autoridad hará público el informe del Comité o Equipo Evaluador que contendrá la información relacionada al proceso de licitación, selección y negociación, y la información contenida en la Propuesta, según lo requiere el Reglamento para la Administración de Documentos de la AEE, excepto por los secretos de negocio y la información confidencial, propietaria o privilegiada del Proponente claramente identificada como tal por el Proponente, o información que se tiene que proteger de publicación por otras razones según la ley, a menos que una orden judicial disponga algo distinto.

Cada miembro del Comité o Equipo Evaluador, el Jefe de División de Suministros y la Autoridad que participe en un proceso de RFP asociado con revisar o seleccionar las Propuestas sometidas podrá tener acceso a información privilegiada y confidencial. El mal uso de esta información confidencial sería una violación de la responsabilidad fiduciaria que tiene cada miembro del equipo hacia el Comité o Equipo Evaluador y la Autoridad. En un esfuerzo por mantener los más altos niveles de confianza y seguridad en el proceso de licitación, los participantes de los sectores público y privado tienen que ser conscientes de su responsabilidad hacia el público y estar alertas ante cualquier mal uso de información confidencial.

- 9.4 Dispensas** - Mediante el voto afirmativo de tres (3) miembros presentes en una reunión debidamente constituida en la que haya quórum, la Autoridad está

autorizada a otorgar dispensas a integrantes anteriores de un Comité o Equipo Evaluador respecto a las prohibiciones de interés económico y afiliación; siempre y cuando dicha dispensa haya sido previamente aprobada por la Oficina de Ética Gubernamental.

- 9.5 Distribución, Notificación o Publicación** - A menos que la Ley o esta guía dispongan otra cosa, en aquellas instancias donde la Ley o esta guía requieran la distribución, notificación o publicación de un documento o decisión de la Autoridad, podrá satisfacerse tal requisito con la publicación de dicho documento o decisión en el portal de Internet de la Autoridad.
- 9.6 Intención** - La intención de esta guía es proveer parámetros flexibles y, por consiguiente, se interpretará liberalmente a fin de efectuar esa intención y sus propósitos. Las desviaciones no materiales de los requisitos de esta guía no deberán, a la entera discreción de la Autoridad, ser causa para descalificación de cualquier proceso de Solicitud de Propuestas.
- 9.7 Negociaciones y Discusiones** - Cualquier negociación, conversación o discusión requerida por cualquier disposición de esta guía podrá llevarse a cabo en persona, por conferencia telefónica o conferencia de vídeo.
- 9.8 Separabilidad** - Si cualquier palabra, oración, sección, párrafo o Artículo de esta guía es declarada inconstitucional o nulo por cualquier tribunal de justicia, tal determinación no afectará, perjudicará o anulará ninguna de las disposiciones y partes restantes de esta guía, y su efecto se limitará a la palabra, oración, sección, párrafo o artículo específico declarado inconstitucional o nulo. La invalidez o nulidad de cualquier palabra, oración, sección, párrafo o Artículo en una instancia no se interpretará como que afecta o perjudica en modo alguno su aplicabilidad o validez en cualquier otra instancia.



PUERTO RICO ELECTRIC
POWER AUTHORITY

SUPPLIER REGISTRY OFFICE

MATERIALS MANAGEMENT DIVISION

The Puerto Rico Electric Power Authority (PREPA) maintains a Supplier's Registry of individuals or companies accredited to supply goods or services. The suppliers interested in doing business with PREPA may be required to be part of the Registry as a condition for participating in any procurement process.

To obtain additional information of the requirements based on your business structure, please contact the Supplier Registry Office at (787) 521-4808/4806 or via email at: registroproveedores@prepa.com

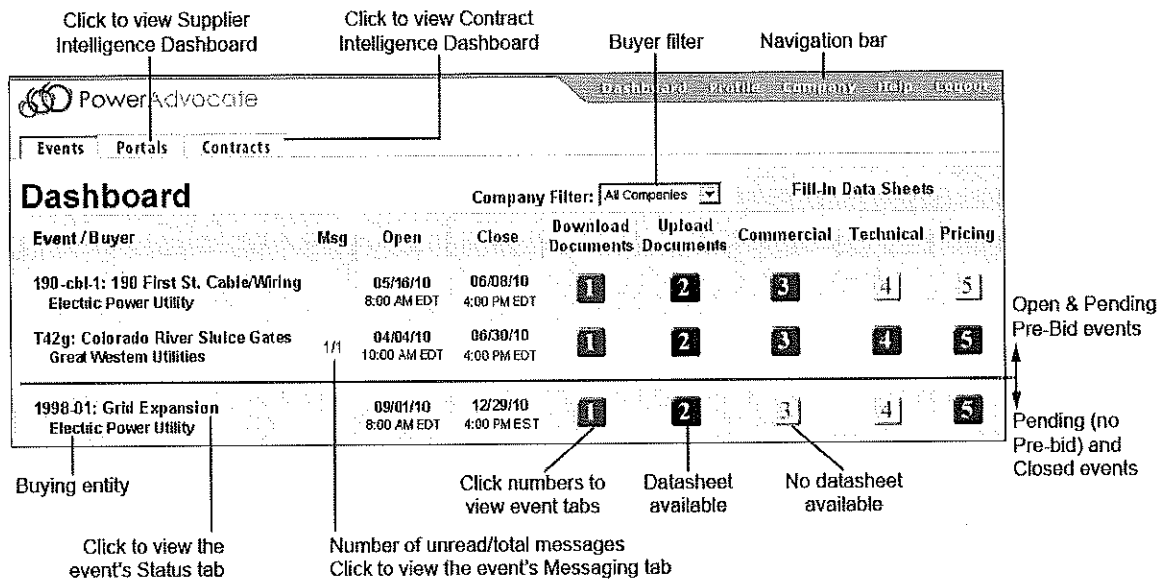
PowerAdvocate Sourcing Intelligence enables suppliers to access buyer documents and submit documents over a web-based sourcing platform.

Logging In

1. Launch Internet Explorer and go to www.poweradvocate.com.
2. Click the orange **Login** button.
3. Enter your account **User Name** and **Password** (both are case-sensitive).
4. Click **Login**.

Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.



The screenshot shows the PowerAdvocate Sourcing Intelligence Dashboard. At the top, there is a navigation bar with links: [dashboard](#), [profile](#), [company](#), [help](#), and [logout](#). Below the navigation bar, there are tabs for [Events](#), [Portals](#), and [Contracts](#). The main content area is titled "Dashboard" and features a table of events. The table has columns for "Event / Buyer", "Msg", "Open", "Close", "Download Documents", "Upload Documents", "Commercial", "Technical", and "Pricing". The events listed are:

Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	3	4	5

Annotations on the screenshot include:

- "Click to view Supplier Intelligence Dashboard" pointing to the "Events" tab.
- "Click to view Contract Intelligence Dashboard" pointing to the "Contracts" tab.
- "Buyer filter" pointing to the "Company Filter: All Companies" dropdown.
- "Navigation bar" pointing to the top navigation links.
- "Buying entity" pointing to the "Event / Buyer" column.
- "Click to view the event's Status tab" pointing to the "1" button in the "Msg" column.
- "Number of unread/total messages" pointing to the "1/1" value in the "Msg" column.
- "Click to view the event's Messaging tab" pointing to the "1" button in the "Msg" column.
- "Click numbers to view event tabs" pointing to the numbered buttons in the "Download Documents", "Upload Documents", "Commercial", "Technical", and "Pricing" columns.
- "Datasheet available" pointing to the "2" button in the "Upload Documents" column.
- "No datasheet available" pointing to the "3" button in the "Commercial" column.
- "Open & Pending Pre-Bid events" pointing to the first two rows of the table.
- "Pending (no Pre-bid) and Closed events" pointing to the third row of the table.

- To view details of a specific bid event, click the **1 2 3 4 5** buttons to view the corresponding tab within the event.
- To return to the Dashboard, click **Dashboard** in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until the Bid Event Coordinator has added you as a participant.
- You may see a **Contracts** tab if a buyer subscribes to PowerAdvocate Contract Intelligence.

Downloading Bid Packages

All of the buyer's bid package documents, including specifications and engineering drawings, are centrally stored on the PowerAdvocate platform. To view bid documents, click **1** on your Dashboard or on the **1. Download Documents** tab from within the event.

Document Description	Issue Date	Ref ID	Rev #	File Name	File Size	Download
Pier23 Pilings RFP	5/30/10	133-01	C	p23pile.pdf	742 KB	

- You can access the **Bid** sub-tab after the bid opens. You can access Buyer documents before the event from a **Pre-Bid** sub-tab if the buyer requires a Pre-Bid submittal; the buyer must approve your submittal before you can access the **Bid** sub-tab. Likewise, you will see a **Post Bid** sub-tab if the buyer invites you to participate in post-bid negotiations.
- To view or download a document, click the file name; you may be prompted to open or save the file.
- To download multiple documents:
 1. Select the checkbox in the **Download** column for each document you wish to download, or click **Select All**.
 2. Click **Download Selected Files**.
 3. Click **Start** to download a .zip file containing the selected documents.

Uploading Documents

To upload your documents, click **2** on your Dashboard, or on the **2. Upload Documents** tab from within the event.

Document Description	Issue Date	Ref ID	File Name	File Size	Upload Date	Actions
Pier 23 Architectural	6/01/10	133-22	p23abp.pdf	420 KB	6/01/10	

- As with the **1. Download Documents** tab, you may be able to access and upload documents to **Pre-Bid**, **Bid**, and **Post Bid** sub-tabs as appropriate.
- To upload a document:
 1. Specify a **Document Type**, and edit the Issue Date and Reference ID if necessary.
 2. Click **Browse**, navigate to and select the document, and then click **Open**; multiple files can also be compressed into one .zip file for upload.
 3. Click **Submit Document**.
- Late documents are accepted at the Buyer's option, but are flagged in red text.

Completing Datasheets

To view the event datasheets, click **3** **4** **5** on your Dashboard or on the **3. Commercial**, **4. Technical**, or **5. Pricing** tabs from within the event. Buttons/tabs are grayed out (e.g., **3**) if the buyer did not create a particular type of datasheet.

- Complete the datasheets over the course of the Bid Open period; datasheets may have multiple sub-tabs.
- Click **Save Data** often to avoid data loss. Once the bid closes, saved data is automatically submitted to the buyer.
- Once the bid closes, you are normally unable to modify datasheets. However, at the buyer's option, you may upload additional documents on the **2. Upload Documents** tab (which are flagged as being late).
- To view a printer-friendly version of a datasheet, click **Printable**.

Communicating with the Bid Event Coordinator

Buyer companies use one of two communication options within Sourcing Intelligence: Email or PowerAdvocate Messaging.

Email

Click the icon next to the Buyer Contact's name to contact them through your default email application (e.g., Outlook).

PowerAdvocate Messaging

To send a message to the Bid Event Coordinator (BEC), go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.

From	To	Subject	Status
Peter Holm	Elisbeth International	engineering specialist	New/Unread (1)
Cindy Walsh	Electric Power Utility	site visit rescheduled	New/Unread (1)
Cindy Walsh	Electric Power Utility	structural specialist	New/Unread (1)

- New messages are sent to the BEC and copied to the Buyer and Supplier Teams.
- BECs can reply to the message; replies are sent to the Buyer and Supplier Teams.
- You can receive external email notification of new PowerAdvocate messages.

Getting More Information

- Click **Help** on the navigation bar to display the online help.



- User Guides and FAQs can be downloaded from the online help system.
- Call PowerAdvocate support at 857-453-5800 or email support@poweradvocate.com
- PowerAdvocate support is available from Mon-Fri, 8 a.m. to 8 p.m. Eastern Time.

November 2011



ADDENDA NO. 001

RFP 81412 Fuel Supply in the North, Units Conversions and Pipeline Installation

This addenda notifies the following:

The Kick-Off meeting and the site visit dates stated in Section 1.6 of the RFP 81412 Timeline has been changed to the following:

- The kick off meeting will be at 9:00am on Thursday, August 9th, 2018, in Conference Room of the 7th floor, NEOS Building (1110 Ponce de León Avenue, Santurce).
- The meeting point for the site visit will be the main gate of the San Juan Power Plant. Vendors participating in this site visit will be allowed access to the site on Friday, August 10th, 2018 at 9:00am with the designated PREPA personnel. To be allowed access to the site, vendors shall have: safety footwear, safety glasses, hard hats, valid photo identification (preferably a TWIC card).

All other terms, conditions and specification of this RFP remain unchanged.



GOVERNMENT OF PUERTO RICO

Puerto Rico Electric Power Authority

Fuel Supply in the North, Units Conversions and Pipeline Installation RFP 81412

ADDENDUM 2

This addendum notifies the following:

I. MODIFICATIONS TO THE REQUEST FOR PROPOSALS DOCUMENT

a. Article 1.6 RFP Timeline is modified as follows:

Key Review Process Events	Targeted Timeline
Request for Proposal Issued	July 30, 2018
RFP Kick-off Meeting	August 9, 2018
Visit to the Job Site	August 10, 2018
Supplier Questions Deadline	August 28, 2018
Questions Answered	September 7, 2018
RFP Proposal Submission Deadline	September 25, 2018
RFP Short List Announcement*	October 16, 2018
RFP Short List Requests for Clarifications, Presentations, Updated Proposals and Negotiation Process Begins*	October 24-25, 2018
Evaluate Proposals and Conduct Supplier Final Negotiations*	October 26 to November 16, 2018
Selection Notification*	November 23, 2018

*At PREPA's discretion

II. SITE PICTURES

a. As part of this addendum site pictures are included as Attachments 1 to 5.

All other terms, conditions and specification of this RFP remain unchanged.

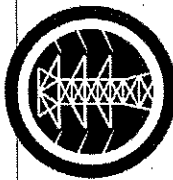












Puerto Rico
Electric Power
Authority

Puerto Rico Electric Power Authority

Air Permitting Discussions – Informational Meeting

Puerto Rico Environmental Quality Board

July 2018

Discussion Topics



San Juan Power Plant:

- Investigating sourcing clean burning fuel like liquefied natural gas (LNG)
- Issuing RFP for LNG^{MDV1} San Juan
- Discuss permitting requirements to reconfigure Units 5 & 6 to be dual fuel (LNG and No. 2 Fuel Oil)

Culebra Power Plant:

- 6 MW Back-up Power comprised of three 2MW diesel engine generators.
- Generators are covered by General Permits for Commercial/Industrial Emergency Generators
- General Permits limit operations to 500 hours per year per engine.
- Discuss permitting requirements to extend hours of operations

Slide 2

MDV1

The RFP is open for fuel solutions, not necessarily LNG
MIGUEL DEL VALLE, 7/7/2018

San Juan Units 5 & 6 Natural Gas Conversion

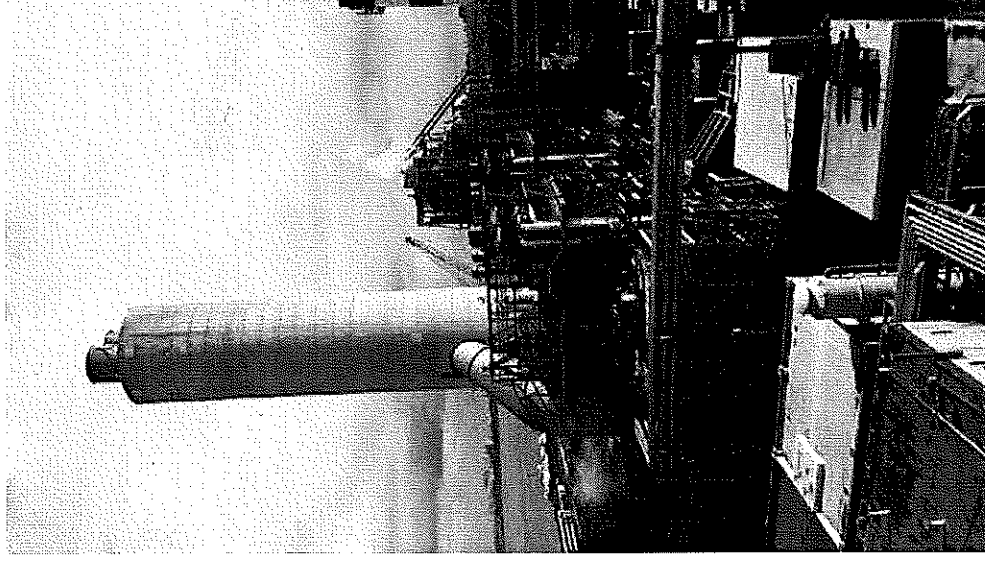
San Juan Power Plant - Summary



- Comprised of six generating units – Combined Cycle & Steam Units:
 - Unit 5 Combined Cycle, 220 MW, Commercial in 2008, No. 2 Fuel Oil
 - Unit 6 Combined Cycle, 220 MW, Commercial in 2008, No. 2 Fuel Oil
 - Unit 7 Steam Cycle, 100 MW, Commercial in 1964, Bunker C
 - Unit 8 Steam Cycle, 100 MW, Commercial in 1964, Bunker C
 - Unit 9 Steam Cycle, 100 MW, Commercial in 1966, Bunker C
 - Unit 10 Steam Cycle, 100 MW, Commercial in 1965, Bunker C

San Juan Power Plant – Units 5 & 6

- **Combined-Cycle Technology (238 MW ea):**
 - Westinghouse 501F Combustion Turbines (171 MW ea)
 - Heat Recovery Steam Generators
 - Steam Turbine Generators (67 MW)
- **Current Environmental Controls:**
 - Steam Injection for NOX
 - Low Sulfur Fuel (0.050% by wt)



Units 5 & 6 Conversion Opportunity

- **Westinghouse 501F Combustion Turbines Capable of Dual Fuel Operation:**
 - Replacement of combustion system components
 - New natural gas and fuel supply systems MDV2
 - Enhance balance of plant equipment and controls
- **Proposed development of LNG importation terminal MDV3 San Juan Harbor:**
 - 3rd-Party developer currently permitting LNG terminal to support local and regional demand MDV4 MDV5
 - Provides opportunity to source clean burning, economical source of natural gas.
 - Development of proposed LNG terminal has spurred interest by PREPA to investigate 3rd-party FOB-plant natural gas deliveries.
- **Subject to understanding EQB Permitting Requirements, PREPA to develop and issue a Request for Proposals for LNG Supply to San Juan Power Plant:**
 - RFP in development
 - Seeks supply options beginning as early as 1st quarter 2019.

Slide 6

- MDV2** The RFP is open for fuel solutions, not necessarily LNG
MIGUEL DEL VALLE, 7/7/2018
- MDV3** The RFP is open for fuel solutions, not necessarily LNG
MIGUEL DEL VALLE, 7/7/2018
- MDV4** The RFP is open for fuel solutions, not necessarily LNG
MIGUEL DEL VALLE, 7/7/2018
- MDV5** The RFP is open for fuel solutions, not necessarily LNG
MIGUEL DEL VALLE, 7/7/2018

LNG Conversion of Units 5 & 6 not expected to trigger PSD

- Units 5 & 6 have high utilization rates, and provide system stability to the San Juan metropolitan area.
- Natural gas has clean burning characteristics and lower sulfur content than No. 2 Fuel Oil.
- Natural gas combustion is estimated to reduce emissions of all criteria Air Pollutants

Preliminary PSD Netting Analysis for Units 5 & 6

- **PREPA performed the following steps to evaluate potential PSD applicability:**
 - Evaluated Baseline Actual Emissions (BAE), defined as actual emissions emitted during 24-consecutive months, over the previous 5 years.
 - Evaluated Projected Actual Emissions (PAE) defined as the rate of emissions forecast for the units after completion of the Project. For conservatism, PREPA assumed unlimited operation of the units on natural gas (8,760 hours per year).
 - Compared the PAE and BAE to PSD Significant Emission Rate (SER) thresholds to determine if PSD requirements are triggered.
- **With LNG, estimated PAE of all NSR pollutants are less than BAE. PSD is not triggered.**

PSD Netting Analysis – Summary Results

Projected Emissions Increase											
CAS Number	Pollutant	PR5					PR5				
		PAE	BAE	EE	PEI		PAE	BAE	EE	PEI	
		(tpy)	(tpy)	(tpy)	(tpy)		(tpy)	(tpy)	(tpy)	(tpy)	
Criteria Pollutants											
630-08-0	Carbon Monoxide (CO)	169.94	550.33	0	-380.39		169.94	588.86	0	-418.91	
--	Nitrogen Oxides (NO _x)	698.61	747.29	0	-48.68		698.61	799.60	0	-100.99	
--	Particulate Matter (PM)	50.53	204.09	0	-153.55		50.53	218.37	0	-167.84	
--	PM < 10 microns (PM ₁₀)	50.53	204.09	0	-153.55		50.53	218.37	0	-167.84	
--	PM < 2.5 microns (PM _{2.5})	50.53	204.09	0	-153.55		50.53	218.37	0	-167.84	
7446-09-5	Sulfur Dioxide (SO ₂)	10.41	132.41	0	-122.01		10.41	56.54	0	-46.14	
--	Volatile Organic Compounds (VOC)	16.08	52.53	0	-36.45		16.08	56.21	0	-40.13	
7439-92-1	Lead (Pb)	0	0.06	0	-0.06		0.00	0.07	0	-0.07	
7664-93-9	Sulfuric Acid Mist (H ₂ SO ₄)	1.59	20.27	0	-18.68		1.59	8.66	0	-7.06	
16984-48-8	Fluorides	--	--	--	--		--	--	--	--	
7783-06-4	Hydrogen Sulfide (H ₂ S)	--	--	--	--		--	--	--	--	
--	Reduced Sulfur Compounds	--	--	--	--		--	--	--	--	
--	Total Reduced Sulfur	--	--	--	--		--	--	--	--	
--	Greenhouse Gas (Mass Basis)	895,625	720,767	0	174,857		895,625	772,285	0	123,340	
--	Greenhouse Gas (CO ₂ e Basis)	896,531	723,206	0	173,325		896,531	774,898	0	121,633	

PSD Netting Analysis – SER Evaluation

PSD Applicability Determination						
CAS Number	Pollutant	PSD Step 1 Increases		Total Em. Increase (tpy)	PSD Threshold ^[2] (tpy)	Exceed PSD? (Yes/No)
		PR5 (tpy)	PR6 (tpy)			
		(tpy)	(tpy)			
Criteria Pollutants						
630-08-0	Carbon Monoxide (CO)	0	0	0	100	No
--	Nitrogen Oxides (NO _x)	0	0	0	40	No
--	Particulate Matter (PM)	0	0	0	25	No
--	PM < 10 microns (PM ₁₀)	0	0	0	15	No
--	PM < 2.5 microns (PM _{2.5})	0	0	0	10	No
7446-09-5	Sulfur Dioxide (SO ₂)	0	0	0	40	No
--	Volatile Organic Compounds (VOC)	0	0	0	40	No
7439-92-1	Lead (Pb)	0	0	0	0.6	No
7664-93-9	Sulfuric Acid Mist (H ₂ SO ₄)	0	0	0	7	No
16984-48-8	Fluorides	--	--	0	3	No
7783-06-4	Hydrogen Sulfide (H ₂ S)	--	--	0	10	No
--	Reduced Sulfur Compounds	--	--	0	10	No
--	Total Reduced Sulfur	--	--	0	10	No
--	Greenhouse Gas (Mass Basis)	174,857	123,340	298,197	--	--
--	Greenhouse Gas (CO ₂ e Basis)	173,325	121,633	294,959	75,000	No ^[3]

LNG Conversion – Permitting Discussion

- **Discuss EQB Permitting Requirements Given Netting Analysis Results**
- **Schedule and Known Constraints**
- **EQB and PREPA points of contact**

--

Thank You





GOVERNMENT OF PUERTO RICO

Puerto Rico Electric Power Authority
Governing Board

RESOLUTION 4620

Request for Proposal - Fuel for North and Conversion of Units 5 & 6 – San Juan

- WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by Act of May 2, 1941, No. 83 as amended (Act 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing the benefits and minimizing social, environmental and economic impacts. In addition, provides a service based on affordable, fair, reasonable and non-discriminatory cost that is consonant with environmental protection, non-profit, focused on citizen participation and its clients.
- WHEREAS: Act 83 authorizes PREPA, in the management of its purposes, to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.
- WHEREAS: Section 15 (1) (a) of Act 83 states that all purchases made and contracts for supplies and services, except professional services entered into by PREPA, including its capital construction contracts, shall be made by a bid process.
- WHEREAS: San Juan Power Plant Units 5 and 6 (SJ 5&6) are relatively modern combined cycle facilities that were originally designed to burn diesel fuel only. At the time of plant development and construction of the units, diesel fuel was the only fuel available to burn in the units thus no equipment was installed for burning any other type of fuel.
- WHEREAS: Diesel fuel no longer represents the most economic fuel source for SJ 5 & 6.
- WHEREAS: Advancements in fuel transportation, as well as advancement in upstream drilling technology, have made several fuels more cost competitive when compared to diesel fuel.

A handwritten signature in black ink, consisting of a series of loops and a long tail.



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WHEREAS: The current price of diesel fuel to Puerto Rico is approximately \$16 per MMBTU. Natural gas is currently being delivered to the Costa Sur plant on the south side of the island at rates of around \$10 per MMBTU.

WHEREAS: The expectation is that gaseous fuel can be obtained in the North side of the island at similar pricing. This represents a potential 39% savings in fuel. Based on a number of justifiable assumptions, the total fuel savings could reach \$150 million per year.

WHEREAS: Additional savings may be obtained through decreased maintenance cycles resulting from a switch to a gaseous fuel. This is expected to save an additional \$1 to \$5 million per year.

WHEREAS: When considering all of these costs along with the expectation that the overall average heat rates can also be improved when burning gaseous fuel, the expected annual savings are over \$150 million per year.

WHEREAS: The expected cost of this conversion is \$10 – \$30 millions. Following this conversion, the primary fuel for those units would be natural gas, while maintaining the ability to burn diesel fuel during emergency or other fuel curtailment scenarios.

WHEREAS: It is expected that the proponent awarded with this project will pay for the conversion of SJ 5&6 and recover that cost over the first 5-year period of the fuel contract. This is an advantageous and beneficial strategy as no capital is required upfront on PREPA's part.

WHEREAS: The use of gaseous fuels represents a significant improvement in terms of less environmental emissions from power generation. Ultimately, this project will save PREPA, and the people of Puerto Rico, approximately \$150 million annually while simultaneously resulting in cleaner, lower-priced electricity.

WHEREAS: Act 83 provides, in section 15, subsection (2) (e) and 2 (dd), that the requirement of formal bid process will not be necessary in those cases in which specialized services are involved, and when, in the judgment of the Governing Board, a competitive request for proposal (RFP) process for the acquisition of goods, equipment, materials or services must be carried out to encourage greater competition and promote the best possible terms and conditions for the benefit of greater savings and reduction of costs and operational expenses of PREPA.

WHEREAS: According to the information provided by the Chief Executive Officer and the Generation Director, the RFP process is the most advantageous process to procure a new fuel supply contract and potential conversion



of San Juan Plant Units 5 & 6 due to the atypical and unique concept of this project. This process will allow PREPA the flexibility to negotiate prices and options not only in the price of fuel but the additional facets of the potential contract to obtain the most advantageous solution for the people of Puerto Rico.

WHEREAS: In a memorandum of June 19, 2018, the Director of Legal Affairs, after the corresponding evaluation, recommends the use of the RFP process for the acquisition of services in this case.

THEREFORE: The Governing Board, after considering the recommendations of the Chief Executive Officer and the Generation Director, as well as the provisions of the organic statute of PREPA, decides to:

1. Approve a Request for Proposal process for the acquisition of a new fuel contract for San Juan Units 5 and 6.
2. The Chief Executive Officer will inform the Governing Board the result of the RFP process before executing any contract.

Approved in San Juan, Puerto Rico, on this, the thirteenth day of July, two thousand and eighteen.

A handwritten signature in black ink, appearing to read "Garcia", is located in the lower right quadrant of the page.



GOVERNMENT OF PUERTO RICO
Puerto Rico Electric Power Authority

June 20, 2018

Walter M. Higgins
Chief Executive Officer

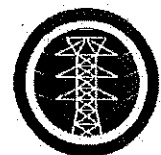
William Ríos Mera
William Ríos Mera
Generation Director

Fuel Supply in the North and Conversion of San Juan Units 5 and 6, RFP 81412

PREPA is seeking to reduce the cost of generation and improve compliance with environmental requirements for the generating units. Recent atmospheric events demonstrated the need to have reliable and economic generation in the north of the Island. PREPA is looking for alternatives to strengthen the load supply in the San Juan area.

The San Juan Combined Cycle Units 5 and 6 are the most efficient system of our generation fleet but the generation costs are high because of the use of distillate #2 (diesel). With a total capacity of 440 MW, these units have the capability to be converted to dual fuel, having LNG as the primary fuel and diesel secondary.

The purpose of this RFP is to make an agreement with a company that will be responsible for the engineering, design, procurement, and construction of the necessary infrastructure for the San Juan Combined Cycle dual fuel conversion. This project will not require initial capital expenditure from PREPA until the units have been commissioned and ready to generate with LNG or any other selected fuel. Conversion cost is going to be paid and blended through a five year fuel supply contract, also included in the RFP scope of supply. The fuel supply contract considers three extension options of five years each and has no take-or-pay clause or any type of penalty for fuel charges for PREPA. The Contractor shall be responsible for the lease of the spaces needed to provide the alternate fuel and to obtain all local and federal permits needed to fulfill the project within the contract scope of supply.



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Walter M. Higgins
Page 2
June 20, 2018

The use of liquefied natural gas (LNG) will lower generation and maintenance costs and reduces contaminants to the environment. All of the above mentioned benefits are expected to have an impact in the increase of usage over other generation units. The capacity factor historically has been in between 60% to 70%. With the LNG retrofit, the capacity factor may increase in between 80% to 85%, is about 25,000,000 MMBTU of natural gas per year. Based on that volume, diesel and LNG at \$16 and \$10 per MMBTU, respectively, the expected annual savings is estimated to be \$150 million.

The cost estimate for the dual fuel conversion and natural gas piping from the supply side is close to \$20 million. The Return of Investment (ROI) can be achieved in a year.

If you need additional information, please contact Eng. Jaime A. Umpierre Montalvo, Engineering and Technical Services Division Head, at 6541 or 5210.



Puerto Rico Electric Power Authority (PREPA)
San Juan Thermoelectric Power Plant
Gas Conversion of Units 5 & 6

PSD Applicability Determination

Methodology

A project at an existing major source will be subject to PSD review for each pollutant that results in a significant emissions increase and a net emissions increase.

The following five steps will help determine if the project is significant.

- Step i. Determine the *Baseline Actual Emissions (BAE)*.
- Step ii. Determine the *Projection Period*.
- Step iii. Determine the *Projected Actual Emissions (PAE) or Potential To Emit (PTE)*.
- Step iv. Determine the *Excludable Emissions (EE)*.
- Step v. Determine the *Projected Emissions Increase (PEI) and Compare to PSD Significant Emission Rate (SER)*.

Emissions Summary

Step i. Determine the *Baseline Actual Emissions (BAE)*.

The BAE is the average rate an emission unit actually emitted a given pollutant during any consecutive 24-month period within the last 5 years preceding the date the application is submitted. For this Project, the applicable emission units are Units 5 and 6.

Baseline Actual Emissions Summary				BAE ¹⁴		
CAS Number	Pollutant	Project	Existing PR5	Existing PR6		
		(tpy)	(tpy)	(tpy)		
Criteria Pollutants						
630-08-0	Carbon Monoxide (CO)	1,139.19	550.33	588.86		
--	Nitrogen Oxides (NO _x)	1,546.89	747.29	799.60		
--	Particulate Matter (PM)	422.46	204.09	218.37		
--	PM < 10 microns (PM ₁₀)	422.46	204.09	218.37		
--	PM < 2.5 microns (PM _{2.5})	422.46	204.09	218.37		
7446-09-5	Sulfur Dioxide (SO ₂)	188.96	132.41	56.54		
--	Volatile Organic Compounds (VOC)	108.74	52.53	56.21		
7439-92-1	Lead (pb)	0.13	0.06	0.07		
7664-93-9	Sulfuric Acid Mist (H ₂ SO ₄)	28.93	20.27	8.66		
16984-48-8	Fluorides	--	--	--		
7783-06-4	Hydrogen Sulfide (H ₂ S)	--	--	--		
--	Reduced Sulfur Compounds	--	--	--		
--	Total Reduced Sulfur	--	--	--		
--	Greenhouse Gas (Mass Basis)	1,493.053	720.767	772.285		
--	Greenhouse Gas (CO ₂ e Basis)	1,498,103	723,206	774,898		

Step ii. Determine the Projection Period.

The projection period begins on the date the affected facility resumes regular operation and typically encompasses the subsequent first 5 years of operation. Under certain circumstances (such as a design capacity or PTE increase), the projection period must be extended an additional 5 years, for a total of 10 years following the date the affected unit resumes normal operation. Since the proposed Project will not increase the unit's design capacity, a 5 year projection period is utilized.

Step iii. Determine the Projected Actual Emissions (PAE) or Potential To Emit (PTE).

The Projected Actual Emissions (PAE) is the maximum annual rate, in tpy, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 or 10 years following the date the unit resumes regular operation after the project, and shall exclude that NSR pollutant in any one of the 5 or 10 years following the date the unit resumes regular operation after the project, and shall exclude that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the BAE and that are also unrelated to the particular project, including any increased utilization due to product demand growth. The PTE is the maximum capacity of a source to emit a pollutant under its physical and operational design.

Since Units 5 and 6 are existing emission sources, the PAE is determined. The PAE is determined by using the projected emission rates for each pollutant while burning natural gas and assuming the maximum heat input for each unit. See Section "Projected Actual Emissions (PAE): Natural Gas-Fired CCCT" of this appendix for detailed emission calculations.

Step iv. Determine the Excludable Emissions (EE).

Excludable emissions are, as defined above, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole. For this project, it is assumed there will be no increased utilization; therefore, the excludable emissions are set to zero.

Step v. Determine the Projected Emissions Increase (PEI) and Compare to PSD Significant Emission Rate (SER).

The PEI is simply the difference of the PAE to the BAE/EE, or the difference of the PTE to the BAE, as shown by the following equation:

$$PEI = (PAE \text{ or } PTE) - (\text{greater of } BAE \text{ or } EE)$$

Projected Emissions Increase									
CAS Number	Pollutant	PRS				PRS			
		PAE (tpy)	BAE (tpy)	EE (tpy)	PEI (tpy)	PAE (tpy)	BAE (tpy)	EE (tpy)	PEI (tpy)
Criteria Pollutants									
630-08-0	Carbon Monoxide (CO)	169.94	550.33	0	-380.39	169.94	588.86	0	-418.91
--	Nitrogen Oxides (NO _x)	698.61	747.29	0	-48.68	698.61	799.60	0	-100.99
--	Particulate Matter (PM)	50.53	204.09	0	-153.55	50.53	218.37	0	-167.84
--	PM < 10 microns (PM ₁₀)	50.53	204.09	0	-153.55	50.53	218.37	0	-167.84
--	PM < 2.5 microns (PM _{2.5})	50.53	204.09	0	-153.55	50.53	218.37	0	-167.84
7446-09-5	Sulfur Dioxide (SO ₂)	10.41	132.41	0	-122.01	10.41	56.54	0	-46.14
--	Volatile Organic Compounds (VOC)	16.08	52.53	0	-36.45	16.08	56.21	0	-40.13
7439-92-1	Lead (Pb)	0	0.06	0	-0.06	0.00	0.07	0	-0.07
7664-93-9	Sulfuric Acid Mist (H ₂ SO ₄)	1.59	20.27	0	-18.68	1.59	8.66	0	-7.06
16984-48-8	Fluorides	--	--	--	--	--	--	--	--
7783-06-4	Hydrogen Sulfide (H ₂ S)	--	--	--	--	--	--	--	--
--	Reduced Sulfur Compounds	--	--	--	--	--	--	--	--
--	Total Reduced Sulfur	--	--	--	--	--	--	--	--
--	Greenhouse Gas (Mass Basis)	895.625	720.767	0	174.857	895.625	772.285	0	123.340
--	Greenhouse Gas (CO ₂ e Basis)	896,531	723,206	0	173,325	896,531	774,898	0	121,633

PSD Applicability Determination						
CAS Number	Pollutant	PSD Step 1 Increases		Total Em. Increase (tpy)	PSD Threshold (t)	Exceed PSD? (Yes/No)
		PM5 (tpy)	PM10 (tpy)			
Criteria Pollutants						
630-08-0	Carbon Monoxide (CO)	0	0	0	100	No
--	Nitrogen Oxides (NO _x)	0	0	0	40	No
--	Particulate Matter (PM)	0	0	0	25	No
--	PM < 10 microns (PM ₁₀)	0	0	0	15	No
--	PM < 2.5 microns (PM _{2.5})	0	0	0	10	No
7446-09-5	Sulfur Dioxide (SO ₂)	0	0	0	40	No
--	Volatile Organic Compounds (VOC)	0	0	0	40	No
7439-92-1	Lead (Pb)	0	0	0	0.6	No
7664-93-9	Sulfuric Acid Mist (H ₂ SO ₄)	0	0	0	7	No
16984-48-8	Fluorides	--	--	0	3	No
7783-06-4	Hydrogen Sulfide (H ₂ S)	--	--	0	10	No
--	Reduced Sulfur Compounds	--	--	0	10	No
--	Total Reduced Sulfur	--	--	0	10	No
--	Greenhouse Gas (Mass Basis)	174,857	123,340	298,197	--	--
--	Greenhouse Gas (CO ₂ e Basis)	173,325	121,633	294,959	75,000	No ^{1st}

Notes [1]:

1. See section "Baseline Actual Emissions (BAE): Project Total" of this appendix for detailed calculations.
2. PSD Significant Emission Rate (SEER) is defined in 40 CFR 51.166(b)(23) and 40 CFR 51.166(b)(48).
3. Since no other criteria pollutant is subject to NSR/PSD, the GHG emissions are also not subject to NSR/PSD.

San Juan Power Plant Units 5 & 6 Production

Capacity	440 MW
Operating Days	365 days
Operating Hours	24 hours
Annual Production	3,854,400 MWh
Capacity Factor	90%
Net Annual Production	3,468,960 MWh
Heat Rate	7,500 Btu/kWh
	7.5 MmBtu/MWh
Annual Fuel Consumption	26,017,200 Mmbtu

Annual Fuel Cost Comparison

	<u>Diesel</u>	<u>Gaseous Fuel</u>	<u>Savings</u>	
\$/mmbtu	16.00	10.00	6.00	38%
\$ million	416.3	260.2	156.1	38%
\$/KWh	0.12	0.08	0.05	38%

San Juan Plant Units 5 & 6 Gaseous Conversion

Conversion Cost (\$ millions)	30.0
5 Years Fuel Consumption (mmbtu)	130,086,000
Cost / Mmbtu	0.23