

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

~~NEPR~~

Received:

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IN RE: IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE
PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Letter from the Financial
Oversight and Management Board for Puerto
Rico

**MOTION SUBMITTING LETTER FROM THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO REGARDING PROCUREMENT
PLAN AND RENEWABLES RFP RECOMMENDATIONS**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (“PREPA”) through the undersigned legal representation and respectfully submits and requests as follows:

1. On January 26, 2021 the Puerto Rico Energy Bureau for the Public Service Regulatory Board (“Energy Bureau”) entered Resolution and Order (“Order”) regarding the *“Issuance of RFP and Timeline for Filing of Responses to Questions Received from Stakeholders”*.
2. The Order was the result of PREPA’s development of a competitive solicitation process for the procurement of renewable and battery storage resources pursuant to the tranche schedule established in the IRP Final Resolution and Order entered into on August 24, 2020 and implemented through the Modified Action Plan adopted by the Energy Bureau.
3. Among other rulings, the Energy Bureau ordered PREPA to “issue the RFP for Tranche 1, for 1,000 MW of solar PV (or energy-equivalent renewable resource) and 500 MW (2,000 MWh or equivalent) of battery energy storage, as soon as possible...[containing] the modifications that the Energy Bureau approved as part of the January 5 Resolution.”

4. PREPA is keenly aware of the importance of transitioning to renewable energy sources in compliance with applicable law in a timely manner and is thus in the process of finalizing the draft of Renewables RFP Tranche 1 for the purpose of issuing the same as soon as possible and with all probability by February 5, 2021.
5. Notwithstanding, on January 27, 2021, the Financial Oversight & Management Board for Puerto Rico (“Oversight Board”) sent letter to PREPA related to the Renewable Resources and Battery Energy Storage Resource Procurement Plan (“Procurement Plan”) as well as the draft RFP for Tranche 1. *See, Attachment 1.*
6. In the letter, the Oversight Board pointed to the following comments and recommendations:
 1. Prior to procuring renewable generation capacity, PREPA should ensure that the additional capacity can be integrated into the grid. To be able to adhere to the procurement schedule detailed in its Integrated Resource Plan (“IRP”) and to enable Puerto Rico to meet its renewable energy goals, it is crucial that PREPA addresses the longer-term integration limitations of its grid. Therefore, in its Procurement Plan, PREPA should include the implementation plan, including timeline, and milestones for grid modifications that are required to enable the future integration of renewables into the grid.
 2. PREPA should aim to de-risk the procurement process and make it as competitive as possible by, among other things, providing RFP materials (subject to non-disclosure agreements (“NDA”) containing relevant information on interconnection options and cost, siting options, and other technical requirements. In line with mitigating risks associated with land-speculation activities and other uncompetitive practices, PREPA should limit access to this information to those proponents that have been qualified through a Request for Qualification process.
 3. PREPA should modify the RFP to allow PREPA to receive bids with varying characteristics, with the aim of establishing an evaluation of the overall cost curve and specifications which allows PREPA to procure the best procurement package possible. Modifications include:
 - a. an option to submit custom bids (e.g., allow for contracts of varying length).

b. a requirement to submit 10-year cost breakdowns, which would allow PREPA to gain a better understanding of the underlying cost curves.

4. PREPA should include a clause in the RFP granting PREPA the option to publish median prices per technology category, as received in the proposals. At a minimum, PREPA should be able to share median prices per technology with qualified proponents to support PREPA's pricing negotiations.

5. The RFP should require proponents to provide business continuity plans ("BCPs"), detailed by scenario, with the aim of ensuring service continuity in all identified potential disruption threats. Examples of scenarios are bomb threats, war, hurricanes, tornadoes (including waterspouts), earthquakes, tsunamis, active shooters, health threats such as pandemics, plane crashes, etc.

6. The RFP should require proponents to detail maintenance programs as part of their proposals.

7. PREPA's Draft Procurement Plan and RFP should include the following documentation and information to provide proponents the necessary information to submit accurate offers:

- a. Non-disclosure agreement ("NDA")
- b. Power Purchase and Operating Agreement ("PPOA") Term Sheet
- c. Credit application
- d. Minimum technical requirements ("MTRs").¹

7. The Oversight Board has requested PREPA to incorporate these comments and recommendations into the Procurement Plan and RFP, as well as in the future contract documents "with the intent [of addressing] factors that might negatively affect the approval and execution of the final contract award."²

8. Consequently, the Oversight Board anticipates that failure to address these issues and include these comments in the Procurement Plan and RFP may jeopardize the final approval of the renewable energy contracts.

9. Putting at risk the approval of energy contracts by the Oversight Board would be the antithesis of what both the Energy Bureau and PREPA strive to achieve.

¹ *Id.* at pág. 2.

² *Id.* at pag. 1.

10. As the Energy Bureau is aware, the Oversight Board has implemented the dispositions of Section 204(b)(2) of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”) in its Contract Review Policy which requires that all contracts with an aggregate value of \$10 million or more be submitted to the Oversight Board for its approval before execution, “to assure that they promote market competition *and are not inconsistent with the approved fiscal plan.*”³
11. The Oversight Board’s Contract Review Policy further states:

Notwithstanding, in order to ensure that certain contracts promote market competition, the FOMB may, at its sole discretion, require the Commonwealth or any covered *instrumentality to give it access to ongoing procurement processes which will result in the execution of a new contract.* The FOMB shall formally notify the contracting agency of its determination, after which the Commonwealth or covered instrumentality shall grant the FOMB access to the pertinent documentation. The FOMB shall issue its comments and recommendations on such processes within twelve business days, upon receipt of all requested information.⁴
12. As part of its Contract Review Policy, the Oversight Board requested PREPA access to the Renewables RFP and Procurement Plan documents for evaluation in anticipation to the execution of the resulting renewable energy contracts. The resulting evaluation by the Oversight Board specifically requires PREPA to include the stated recommendations to the Procurement Plan and RFP and squarely foresees that “inclusion of [the Oversight Board’s] recommendations is an important factor in [the Oversight Board’s] ultimate approval of these contracts.”
13. As the Energy Bureau knows, in the Non-Operational Amended & Restated PPOA’s submitted for approval by the Energy Bureau, Cases No. NEPR-AP-2020-003 to NEPR-

³ *FOMB Policy: Review of Contracts*, Dated November 2, 2017, as modified on October 30, 2020 (Emphasis provided). <https://drive.google.com/file/d/1k1Pe5n4oHvMnis-QlygdhE8VNHJNDCpj/view>

⁴ *Id.*

AP-2020-0018, PREPA found itself in the unfortunate predicament of seeking approval of the contracts from both the Oversight Board and the Energy Bureau only to have the contracts ultimately rejected by the Oversight Board for alleged non-compliance with the Certified Fiscal Plan.

14. In response to that precedent, the Energy Bureau ordered PREPA to, in the future, include evidence that the Oversight Board, when applicable, has favorably evaluated the draft Power Purchase Agreement as a condition precedent for the submission of a petition under Article 6.32 of Act 57-2014. *See, resolutions and orders in cases In Re: Enmiendas a Contratos de Compraventa de Energía Renovable: NEPR-AP-2020-0003 through NEPR-AP-2020-0018.*
15. As discussed above, the Oversight Board has stated that failing to incorporate the stated recommendations can negatively affect final approval of the renewable energy contracts putting at risk, at this early stage, the final execution of this very important milestone.
16. Consequently, and given PREPA's intent to publish the RFP as soon as possible without the risk of not being able to finally execute the resulting contracts, PREPA will proceed to integrate the Oversight Board's recommendation in the Procurement Plan and RFP.

WHEREFORE, PREPA SUBMITS the letter sent by the Oversight Board on January 27, 2021 and INFORMS the Energy Bureau that it will incorporate the recommendations of the Oversight Board to the Procurement Plan and RFP.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of January 2021.

/s Maralíz Vázquez-Marrero
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Attachment A

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



David A. Skeel, Jr.
Chair

Members

Andrew G. Biggs
Arthur J. González
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty E. Rosa

Natalie A. Jaresko
Executive Director

BY ELECTRONIC MAIL

January 27, 2021

Mr. Fernando M. Padilla Padilla
Deputy Executive Director of Operations
Puerto Rico Electric Power Authority

We write in response to the Puerto Rico Electric Power Authority's ("PREPA") submittal of its Renewable Resource and Battery Energy Storage Resource Procurement Plan ("Procurement Plan") as well as its related draft Request for Proposal ("RFP"), as submitted to the Oversight Board for review on November 30, 2020.

On November 18, 2020, the Oversight Board officially requested to review PREPA's Draft Procurement Plan and RFP to ensure a procurement process which promotes ample participation and enables PREPA to obtain the best possible prices from the highest qualified developers.

After an initial review of the provided documentation, and as discussed in the meeting held with PREPA's staff on January 13, 2020, the Oversight Board has the following comments and observations regarding PREPA's Draft Procurement Plan and RFP. The recommendations discussed herein should be incorporated into the Procurement Plan and RFP, as well as in the future contract documents with the intent to address factors that might negatively affect the approval and execution of the final contract award.

As you are aware, the Oversight Board's Contract Review Policy, established pursuant to Section 204(b)(2) of PROMESA, requires that all contracts with an aggregate value of \$10 million or more be submitted to the Oversight Board for its approval before execution, to assure that they promote market competition and are not inconsistent with the approved fiscal plan. Further, the Oversight Board retains the authority to expand the scope of its review and may choose to review contracts below the \$10 million threshold.

As such, the terms of the Procurement Plan and RFP should be aligned with the Oversight Board's contract review policy and its objectives, particularly with respect to the promotion of market competition. After all, the contract resulting from the Procurement Plan and RFP will be evaluated by the Oversight Board for its approval based on these criteria. Therefore, the Oversight Board

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requires that you include the following recommendations to guarantee transparency, accountability, and integrity in the selection process:

1. Prior to procuring renewable generation capacity, PREPA should ensure that the additional capacity can be integrated into the grid. To be able to adhere to the procurement schedule detailed in its Integrated Resource Plan (“IRP”) and to enable Puerto Rico to meet its renewable energy goals, it is crucial that PREPA addresses the longer-term integration limitations of its grid. Therefore, in its Procurement Plan, PREPA should include the implementation plan, including timeline, and milestones for grid modifications that are required to enable the future integration of renewables into the grid.
2. PREPA should aim to de-risk the procurement process and make it as competitive as possible by, among other things, providing RFP materials (subject to non-disclosure agreements (“NDA”) containing relevant information on interconnection options and cost, siting options, and other technical requirements. In line with mitigating risks associated with land-speculation activities and other uncompetitive practices, PREPA should limit access to this information to those proponents that have been qualified through a Request for Qualification process.
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4. PREPA should include a clause in the RFP granting PREPA the option to publish median prices per technology category, as received in the proposals. At a minimum, PREPA should be able to share median prices per technology with qualified proponents to support PREPA’s pricing negotiations.
5. The RFP should require proponents to provide business continuity plans (“BCPs”), detailed by scenario, with the aim of ensuring service continuity in all identified potential disruption threats. Examples of scenarios are bomb threats, war, hurricanes, tornadoes (including waterspouts), earthquakes, tsunamis, active shooters, health threats such pandemics, plane crashes, etc.
6. The RFP should require proponents to detail maintenance programs as part of their proposals.
7. PREPA’s Draft Procurement Plan and RFP **should** include the following documentation and information to provide proponents the necessary information to submit accurate offers:
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 - b. Power Purchase and Operating Agreement (“PPOA”) Term Sheet

APPENDIX A

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- c. Credit application
- d. Minimum technical requirements (“MTRs”)

We respectfully request PREPA incorporate the recommendations outlined in this letter into the Procurement Plan and RFP. Inclusion of our recommendations is an important factor in our ultimate approval of these contracts.

The Oversight Board acknowledges and commends PREPA’s commitment to increase Puerto Rico’s share of renewable generation capacity while simultaneously achieving the lowest possible cost to ratepayers, in compliance with the Certified Fiscal Plan. We look forward to continuing working together for the benefit of the people of Puerto Rico.

Sincerely,



Jaime A. El Koury
General Counsel

CC: Mr. Omar Marrero Díaz
PREPA Governing Board