

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

NEPR Received: Dec 8, 2023 4:13 PM

IN RE:

GENERA PR LLC PROCUREMENT

CASE NO.: NEPR-MI-2023-0008

SUBJECT: Motion Submitting Response to Requirement of Information in Compliance with Resolution and Order Dated November 29, 2023

MOTION SUBMITTING RESPONSE TO REQUIREMENT OF INFORMATION IN COMPLIANCE WITH RESOLUTION AND ORDER DATED NOVEMBER 29, 2023

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),¹ through its counsels of record, and respectfully submits and prays as follows:

1. On July 1, 2023, Genera assumed the operation of PREPA’s Legacy Generation Assets and commenced providing the O&M Services, as defined in Article 5, Section 5.1 of the LGA OMA.

2. Pursuant to Article 4, Section 4.2(p) of the LGA OMA, Genera is required to:

(i) Promptly (and in any event within ninety (90) days) following the Effective Date, [Genera] shall prepare and submit to [P3A] and COR3 for review and approval (with copy to the Federal Emergency Management Agency, the Department of Homeland Security Office of the Inspector General and [the Energy Bureau]) a manual that (A) includes the agreed **Organizational Conflict of Interest Policy**, which shall require the use of a third-party procurement office to be retained by the [P3A] through an independent procurement process, whom shall be tasked with conducting

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, the Puerto Rico Public-Private Partnerships Authority (“P3A”) and Genera, Genera is the sole operator and administrator of the Legacy Generation Assets (defined in the LGA OMA), and the sole entity authorized to represent PREPA before the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

all procurement processes where there is a possible organizational conflict of interest and of administering any and all contracts where there is an organizational conflict of interest (for the avoidance of doubt, [Genera] shall not participate in the procurement of the third-party procurement office) and (B) describes (i) the procurement guidelines to be applied to the procurement of any new or replacement, or modifications, amendments, renewals and extensions of any Subcontract or Facility Contract [...], which guidelines shall aim to ensure that such procurement processes remain competitive, fair and transparent,[...](such manual, the “**Procurement Manual**”)...

(ii) Upon receipt of the Procurement Manual prepared in accordance with clause (i), [P3A], acting reasonably and in consultation with COR3 and [the Energy Bureau] (each of which shall provide comments no later than thirty (30) days following receipt of a copy of the Procurement Manual), shall provide [Genera] comments on the proposed Procurement Manual including any changes or modifications it believes are necessary or appropriate.

(iii) Within thirty (30) days following receipt of [P3A’s] consolidated comments, if any, [Genera] shall submit to [P3A] and COR3 (with copy to [the Energy Bureau]) the revised Procurement Manual, incorporating the feedback from [P3A], COR3 and [the Energy Bureau]. If [Genera] disagrees with any comment from either [P3A], COR3 or [the Energy Bureau], [Genera] will deliver with the revised Procurement Manual a written statement describing such disagreement, and the parties will meet within five (5) Business Days to seek to resolve any such disagreement and obtain [P3A] and COR3’s approval of a Procurement Manual that is acceptable to [Genera]; provided that [Genera] must accept any comments from [P3A] or COR3 that require measures to comply with applicable federal grant regulations.

*See Section 4.2(p) of the LGA OMA. (Emphasis added.)*²

² On January 15, 2023, the Energy Bureau issued a resolution noting the inclusion of a draft Organizational Conflict of Interest Policy, identified as “Annex VI OCIP” in the Preliminary Contract presented by P3A to the Energy Bureau on January 14, 2023. *See Resolution and Order, In Re: Certificate of Energy Compliance*, Case No. NEPR-AP-2022-0001, issued on January 15, 2023 (“January 15th Resolution”), on pages 18-19. In the January 15th Resolution, the Energy Bureau recognized the potential conflicts of interest in fuel supply and the significant impact of these costs on electricity rates, the Energy Bureau committed to a meticulous review and approval process for the Organizational Conflict of Interest Policy associated with the Preliminary Contract. The primary objective was to ensure that future fuel supply procurements would be conducted impartially, without favoritism towards affiliates, and would result in fair and just electricity rates. Furthermore, the draft Organizational Conflict of Interest Policy and the stipulations outlined in Section 4.2(p) of the Preliminary Contract were designated as guiding principles in the approval process for the final version of the Organizational Conflict of Interest Policy applicable to the Preliminary Contract. Per the Energy Bureau, this final policy would undergo thorough review and approval in accordance with pertinent laws and regulations.

3. On November 29, 2023, the Energy Bureau issued a Resolution and Order titled *Resolution and Order Commencing the evaluation process of Genera PR LLC Procurement Plan* (“November 29th Order”), initiating the captioned case “to evaluate Genera’s **Procurement Manual** and the **Organizational Conflict of Interest Policy** required by the [LGA OMA].” *See* November 29th Order, p. 4. (Emphasis added). Accordingly, the Energy Bureau ordered Genera to (i) submit both a letter previously sent by Genera to the Energy Bureau on June 30, 2023 (“June 30th Letter”) and the approved Procurement Manual within five (5) days, and pertinent to this motion, (ii) respond, on or before December 8, 2023, to the Requirement of Information (“ROI”) set forth in **Attachment A** to the November 29th Order.

4. On December 4, 2023, Genera submitted a document titled *Motion to Submit Genera’s Procurement Plan in Compliance with Resolution and Order Dated November 29, 2023*. In this submission, Genera presented the June 30th Letter and the approved Procurement Manual.

5. Genera respectfully submits that the Procurement Manual approval process has been completed in accordance with the provisions of Section 4.2(p) of the OMA. Notwithstanding, in its continued effort to be transparent about its procurement processes and compliant with its regulators, Genera submits its responses to the Honorable Energy Bureau's requests for information. See Exhibit A.

WHEREFORE, Genera respectfully requests that this Energy Bureau **take notice** of the above for all purposes and **deem** Genera in **compliance** with the November 29th Order as it pertains to the response to the ROI.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of December 2023.

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CERTIFICATE OF SERVICE

We hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System

In San Juan, Puerto Rico, this 8th day of December 2023

/s/ Alejandro López-Rodríguez
Alejandro López-Rodríguez

Exhibit A

Response to the ROI

Docket Number: NEPR-MI-2023-0008

In Re: Genera PR LLC Procurement Plan

Re: Resolution and Order commencing the evaluation process of Genera PR LLC Procurement Plan

Order:

GPR – PREB ORDER – 11.29.2023 #1

Requests of information (ROIs) to Genera PR LLC ("Genera") regarding its Proposed Procurement Manual ("Manual") and Conflict of Interest Policy Formal Procurement Methods above the Simplified Acquisition Threshold

1. In sections III.C.1.a and b of the Manual (pages 11 and 12), it states that bids, offers, and proposals may be solicited directly from potential vendors. However, it is not clear how Genera would solicit directly and to which potential vendors.
 - a. How would Genera directly solicit a bid, offer, or proposal of a competitive formal procurement to a potential vendor?
 - b. What is the process that Genera would use to identify which potential vendors to solicit directly?
 - c. Will Genera directly solicit any Affiliates or Parent Company in a future formal procurement?

Response:

Subsections (a) (Competitive Sealed Bidding) and (b) (Competitive Proposals) of the referenced section describe two formal, public procurement methods used for contract values above \$250,000 (the "Simplified Acquisition Threshold"). The two methods differ primarily in when price proposals can be expected due to differences in when information necessary for pricing may become available. The two methods are the same in requiring (1) publication

on Genera's website, and optionally on other media, and (2) at least three proposals / bids from qualified Vendors. In practice, Genera has published its procurements under this section on its website and PowerAdvocate.

Subsections (a) and (b) do not, to be clear, permit procurement by direct solicitation of an award to a single vendor, and only permit reaching out directly to a qualified vendor in the context of an already public procurement. As described in these subsections, the evaluation of proposals received must then proceed in accordance with the published criteria, with award to the selected proponent being documented in a written contract to be filed publicly with the Controller's office.

The provision identified in the question above allows Genera to supplement the market response to publicized processes with direct solicitations, essentially making the process more open and competitive. This might occur if, for example, fewer or less qualified vendors responded than expected or required, and the procurement faced a risk of failing. While this does not usually occur, practically speaking and to respond to sub-parts (a) and (b) of this question, Genera's procurement officer would likely reach out to a vendor directly through contacts available through existing contracts, participation in past procurements, or experience of Genera's end user team. Genera typically researches a market in advance of launching a procurement under these paragraphs, including to develop the independent cost analysis required as part of the process, and thus has an informed idea of the relevant and expected vendors.

Regarding part (c) of this question, Genera cannot directly solicit (or otherwise allow to participate) any Affiliate or Parent Company in any formal procurement. To engage an Affiliate or Parent Company in a new procurement process, the Third-Party Procurement Office must be engaged to run the procurement process, and it will be up to them to determine if they want to directly solicit from an Affiliate or Parent Company.

GPR – PREB ORDER – 11.29.2023 #2

Procedures for identifying, avoiding, or mitigating actual or apparent conflicts of interest prior to the initiation of a procurement process

2. On pages 88 and 89 of the Manual, it states that organizational, physical, and/or geographic separation between Genera and an Affiliate or Parent Company will be established to reduce the risk of inadvertent disclosures and provides a list of considerations.

- a. Please describe the current degree of organizational, physical, or geographic overlap, if any, that already exists between Genera and Affiliates or Parent Company.
- b. Please describe the specific actions that Genera has taken and plans to take with respect to organization, physical, and/or geographic separation.

Response:

The referenced section comes from Attachment 13 of the Procurement Manual, which relates specifically to organizational conflicts of interest (“OCI”) where, because of the relationship with a parent company, affiliate, or subsidiary, Genera is unable or appears unable to be impartial in conducting a procurement action involving one of these related organizations. As stated in this attachment, “Genera will implement [the policies set out in the attachment] for Facility Contracts (1) when it is aware that an Affiliate is likely to participate as a competitor in a procurement, and (2) when it is required to administer (on behalf of PREPA) a Facility Contract in which an Affiliate is the contractor.” To date, Genera has not had any procurements in which it is aware that an Affiliate participated or was likely to participate. As such, the policies in this attachment in respect of procurements, including the text referenced on pages 88 and 89 of the manual, have not been triggered.

That said, Genera is already building the capabilities that will allow more and more separation between Genera PR LLC, the entity created to operate and

maintain the Legacy Generation Assets included in the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (“OMA”), and related parties over time. Organizationally, Genera PR LLC is already an independent company, managed by its own CEO with its own executive management committee, specifically dedicated to complying with the requirements and obligations of the OMA.

No New Fortress Energy (“NFE”) employees assist on the fuels team, and this team is physically located in a separate area from NFE employees. We continue in the process of hiring and building out staff.

Geographically, Genera PR LLC has its main office in San Juan, Puerto Rico, while NFE has its central offices located in New York, United States. Additionally, all electronic communications, servers, clouds, programs, among others, used by Genera, are completely separated and independent from NFE, and managed internally by Genera.

Genera will maintain and further implement this organizational, physical, and geographical separation to prevent confusion between the companies, information sharing or any other potential OCI, and also involve Puerto Rico Public-Private Administration (“P3A”) when any OCI is triggered.

GPR – PREB ORDER – 11.29.2023 #3

Procedures for reporting of all actual/apparent conflicts of interest

3. How will Genera ensure that Genera employees, Contractors, and Subcontractors report actual or apparent conflicts of interest to Genera's Chief Compliance Officer?

Response:

Genera has an open space and open-door policy. For this reason, Genera's Chief Compliance Officer is always engaged with the different units at Genera. Additionally, Genera has integrated the Procurement Department under the Legal Department umbrella; therefore, the Chief Compliance Officer has more visibility and oversight of all the requests, services, and contracts in the procurement pipeline, which allows for periodic compliance spot checks. Genera also empowers each of its employees to speak up and report any unethical conduct, including any conflict of interest, without fear of retaliation to the Chief Compliance Officer or anonymously through Genera's Hotline. During major procurements, all members of the evaluation panel are required to certify the absence and unawareness of conflicts of interest in the process. For Contractors and Subcontractors, Genera makes available the Procurement Manual, which outlines Genera's OCI Plan. Contracts executed by Genera also include conflicts of interest covenants obligating the Contractor or Subcontractor to immediately report any actual or apparent conflict of interest that may arise during the contract period. Additionally, Genera is working on developing and strengthening the Compliance Program, including trainings to personnel, periodic site visits, corporate messages, among others, to further a compliance culture.

GPR – PREB ORDER – 11.29.2023 #4

Informal Procurement Methods

4. On page 10 of the Manual, it states that purchases of goods and services not exceeding the Micro Purchase Threshold may be made without Competitive Sealed Bidding or Competitive Proposals if the Project Officer considers the price to be fair and reasonable based on research, experience, purchase history, or other information and documents the decision.

- a. How does Genera define "fair and reasonable"?
- b. What is Genera's plan for conducting micro-purchases with Affiliates or Parent Companies? For example, will Genera handle contracting and payment, or will this be handled by the Third-Party Procurement Office ("3PPO")?
- c. How will Genera prevent potential misuse or favoritism in micro-purchase contracts?

Response:

The Micro Purchase Threshold in Genera's Procurement Manual means the dollar amount (currently \$10,000) at or below which Genera may purchase goods or services using micro-purchase procedures. Those procedures allow purchases without soliciting competitive price or rate quotations. In practice, the Procurement Officer will receive a purchase request from an end user and search the market to acquire the goods or services at the best market price possible. Many of these items are off-the-shelf goods or simple services procured on short lead times and with frequency, where overly complex rules can work against the public interest. The Procurement Officer will use his/her experience, prior knowledge of buying similar goods or services, purchase history/records of past purchases, and research of publicly available data and other available market information related to the goods or services to make an informed business judgment before executing the purchase request.

Genera has no plan to make micro-purchases from an Affiliate or Parent Company. The OMA and the Procurement Manual have strict rules about

engaging in any kind of business with an Affiliate or Parent Company, making it cumbersome to execute the types of services and goods that would fall within this category. Further, Genera's affiliates are engaged primarily in the sale of natural gas / LNG, where the idea of micro-purchases has little relevance. If, however, Genera were to consider this, then the procurement process would be handled by the Third-Party Procurement Office, and Genera would need P3A's prior approval to manage, change or perform requests under current contracts with the Affiliate.

It must be noted that, for every purchase made, Genera must follow the requirements of the Procurement Manual and prudent utility practices, and we have put certain structures and practices in place to prevent and mitigate the potential misuse or favoritism in micro-purchases. First, Procurement is a separate unit from the business, with close ties to compliance, which limits external influence and undue burden and creates a culture of competitive, fair, and efficient execution. Second, before purchasing any goods or services, the end user or requestor must submit a request with proof of funds, forcing them to check budgets and resolve internal financial controls. Third, the Procurement team (rather than the operations and project teams, who regularly interact and naturally through the course of business have relationships with vendors) search the market and choose the correct supplier after performing market research. Fourth, Genera is in the process of implementing more automated and detailed data tracking on purchases to help ensure effective procurement execution and downward price pressure.

GPR – PREB ORDER – 11.29.2023 #5

Pre-qualification

5. On page 13 of the Manual, it states that pre-qualification shall be based on criteria related to that which is to be procured and are designed to solicit vendors fully capable of performing the anticipated contract. However, it's not clear what specific criteria are used for pre-qualification.

- a. What specific criteria are used for pre-qualification?
- b. Are these criteria standardized across all procurements or do they vary depending on the nature of the procurement?

Response:

The Procurement Manual allows Genera to pre-qualify vendors before and after a procurement process. The ability to pre-qualify a vendor provides Genera the opportunity to understand the type of business, goods and services provided by the vendor. Pre-qualification allows Genera to organize vendors by type of service, type of goods and type business and ensure the vendors understand and have satisfied the requirements of contracting in Puerto Rico, making it easier for Genera to engage vendors, increase participation (and therefore competition) by having vendors familiar with our processes in advance, and complete procurement processes in a timely manner, among others. Genera has not run a pre-qualification process to date but may do so in the future.

The type of goods or services being provided would determine the key criteria to be used for pre-qualification. The key criteria will usually be the same or similar to what would have been written up for experience and company requirements in an RFP process (e.g., years of experience in a specific task, number of similar projects and so on). The key pre-qualification requirements for fuel supply would differ from the requirements for construction, as one would expect. The requirements for pre-qualifications would, however, be standardized on the requirements around contracting under Puerto Rico law, for Facility Contracts under the OMA, or for federally-funded contracts, in each

case where certain certifications, evidence of incorporation or other administrative / regulatory requirements need to be filed and on record.

GPR – PREB ORDER – 11.29.2023 #6

6. On page 13 of the Manual, it states that pre-qualified lists are not contracts, they simply aid in the procurement of future contracts by documenting the qualification of prospective contractors in advance of procurements. However, it's not clear how often these lists are updated and what measures are in place to ensure they remain current.
 - a. How often are pre-qualified lists updated?
 - b. What measures are in place to ensure these lists remain current?

Response:

Please refer to GPR-PREB ORDER- 11.29.23 #5.

GPR – PREB ORDER – 11.29.2023 #7

Definition of 'Best Interest of Good Administration

7. In section III.E of the Manual (Limited Exceptions to Procurement Methods, page 15) the Manual establishes dispositions to bypass the standard competitive bidding process. The term 'best interest of good administration' is a broad and subjective term. It would be preferable to establish clearer and more objective criteria that can justify a non-competitive procurement.

- a. What specific criteria or conditions qualify as the 'best interest of good administration'?
- b. Who determines what is in the 'best interest of good administration' and how is this decision-making process recorded and validated?

Response:

Genera is committed to following the Procurement Manual and the obligations set forth in the OMA. To properly operate and maintain the Legacy Generation Assets, Genera must acquire goods or services from third parties to repair, replace, fix, among others, the deteriorated generation units. Genera is committed to obtaining savings, which is one of the key metrics established in the OMA and believes that competitive processes will generally result in the best outcome for PREPA, Genera and ratepayers.

However, there are instances where a competitive process is not feasible. Genera is working with a deteriorated fleet of generation assets that need constant repair. If a generation unit breaks down, not repairing the unit while conducting a multi-month RFP process could place the system at risk of power outages or load shedding. Reliability and keeping the lights on is paramount, and Genera will use Limited Exceptions to Procurement Methods established in Section III (E) in these instances. The Limited Exception has also been used in cases where a contractor is already engaged in a work, the budget cap has been reached or the scope expands, and it would increase delay / cost to demobilize the contractor, conduct a procurement process and re-engage another contractor.

Criteria Genera is assessing in these instances include (i) whether opening a formal competition to obtain the goods or services will cause a disruption that would affect the power grid or the customers, (ii) if the delay would increase the costs and damages, (iii) availability of federal funds to acquire the goods or services, (iv) if we incur in fines or penalties for delays in providing the goods or services, or (v) if it is an off the shelf good or the goods or services are at a standard price in the market that would not generate savings after conducting a formal procurement process, among others, which are in the best interest ratepayers following best industry practices. Attachment 2 of the Procurement Manual documents this process and is part of the procurement file. Decisions on these processes involve the end user (e.g., operations or projects), compliance and procurement.

GPR – PREB ORDER – 11.29.2023 #8

Potential for Lack of Transparency and Fairness

8. The exceptions described in the Manual (such as in section III.E on page 15) allow for a significant amount of non-competitive procurement, which might lead to potential misuse. Non-competitive procurement can also inhibit market competition, potentially leading to higher prices and lower quality.

- a. What are the controls and accountability mechanisms to prevent potential misuse or favoritism in non-competitive procurement?
- b. How does the entity ensure that the non-competitive procurement process is fair and equitable?

Response:

Genera respectfully differs from the interpretation of PREB. Genera's Procurement Manual sets forth the controls and procurement methods to follow, depending on certain criteria, to obtain goods and services: Micro-Purchase, Small Purchase, Formal Procurement Methods, Non-competitive Procurements, Limited Exceptions to Procurement Methods, and Strategic Sourcing. As the name suggests, the Limited Exceptions to Procurement Methods can be used when goods and services are not eligible for Federal Funding and the value does not exceed \$2.5 million in the aggregate. However, there is an additional control, if the aggregate contract value does exceed \$2.5 million but is not more than \$5 million in the aggregate, then approval from the P3A is required.

When using this exception, Genera must review all current contracts with the vendor it intends to choose, then Genera must determine if the price is reasonable within the market value and if the vendor has enough proven experience to perform the task or provide goods of the required quality. These contracts are reviewed by Legal, Compliance, and depending on the amount, by P3A and by the Fiscal Oversight and Management Board for Puerto Rico. By being an independent department, Procurement can monitor, track and review

purchase patterns, and vendors' performance. This helps Procurement run the Limited Exception process with enough information to raise a flag in case a potential conflict is identified. Additional control layers are that Finance must approve the expense from the end user, Legal has to approve the terms and conditions of the contract and Compliance must review adherence to the Procurement Manual.

GPR – PREB ORDER – 11.29.2023 #9

Inadequate Competition

9. The Manual (page 14) mentions that Genera may proceed to award as a Noncompetitive Procurement if competition is determined to be inadequate. However, it's not clear what criteria are used to determine whether competition is inadequate. What criteria are used to determine whether competition is inadequate, allowing for Non-competitive Procurement?

Response:

Genera respectfully asserts that it has a different view and interpretation from that of the PREB. Section III(D)(e) of the Procurement Manual states that "...[w]hen Genera solicits responses from an adequate number of qualified offerors (which may be satisfied by posting on Genera's website and complying with the affirmative steps in Section I(B)) and fewer than three qualified and responsible offerors respond, **Genera may proceed to award as a Non-competitive Procurement if competition is determined to be inadequate.** As per the Procurement Manual, obtaining less than three responses from qualified and responsible vendors provides the opportunity to render the solicitation inadequate. However, before using this exception, the Procurement Manual clearly establishes that: (1) Genera's solicitation efforts must be well-documented in the Procurement File; and (2) the Project Officer should review the solicitation and its publication to ensure that it did not unduly restrict or eliminate competition. In undertaking this review, the Project Officer may ask those firms solicited why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the Project Officer should evaluate whether to cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers. Additionally, if using this exception, the Project Officer must also perform a cost or price analysis to demonstrate the reasonable cost of the goods or services.

GPR – PREB ORDER – 11.29.2023 #10

Emergency and Exigency Circumstances

10. In Section III.D. (Non-competitive Procurements, page 13), the Manual provides guidelines for emergency and exigency circumstances (page 9). However, it's not clear how these guidelines are enforced.

a. How are emergency and exigency circumstances defined and who has the authority to declare them?

b. What measures are in place to ensure these guidelines are followed?

Response:

Genera respectfully differs from the interpretation of PREB. The procurement Manual defines Emergency as a threat to life, public health, or safety, or improved property or some other form of dangerous situation that require immediate action to alleviate the threat and the use of competitive procurement proposals would prevent the timely acquisition of goods or services needed to respond to or lessen the harm from the threat or dangerous situation. This is a common approach in contracting language. Emergencies do not require a declaration of emergency by the Governor or President, and such a declaration by the Governor or President does not automatically create an emergency for the purposes of triggering Emergency procurement procedures in this Procurement Manual. Furthermore, the Procurement Manual defines Exigency as a situation that demands immediate aid or action, where there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Therefore, Genera management has the ability to declare an exigency or emergency, following the definitions provided in the Procurement Manual. Sections III(D)(1)(c)(iii), (iv), (v), (vi) and (vii) establish the guidelines to be followed and controls implemented.

GPR – PREB ORDER – 11.29.2023 #11

11. The Manual (page 14) mentions that the Organizational Conflicts of Interest process does not apply during the time that Emergency or Exigency conditions prohibit competitive procurement. However, it's not clear what measures are in place to ensure that conflicts of interest are still managed effectively during these periods. What measures are in place to manage conflicts of interest during periods when the OCI process does not apply?

Response:

A waiver of the OCI procedure requires the triggering event to exceed 30 days. As mentioned above, the only apparent OCI in an emergency would be the purchase of liquid natural gas. There is a limited staff working with the purchase of fuel to operate the power plants. Staff has been trained in potential conflict of interest when engaging personnel from an affiliate for current contracts. Furthermore, the Compliance Program is being expanded in Genera to include additional training to employees related to conflicts of interest, corporate messages, spot testing, among others. Additionally, the Genera's hotline is available for employees to report anonymously any potential or actual conflict of interest.

GPR – PREB ORDER – 11.29.2023 #12

Affiliate or Parent Company Participation in Tenders

12. In Section III of Attachment 13 (OCIAMP), on page 85 of the Manual, entitled *OCI Identification and Avoidance/Mitigation*, the Manual contains various dispositions relating to Organizational Conflicts of Interest. It outlines that if an Affiliate or Parent Company responds to a Request for Information/Quotation (RFI/RFQ), the procurement process will be managed by the 3PPO (Third Party Procurement Officer). However, it's not clear what parameters are used to select the 3PPO and how their independence is ensured. What measures are in place to adequately select the 3PPO and ensure impartiality in the procurement process?

Response:

The 3PPO will be selected through a procurement process conducted by the P3A. Genera will not be conducting a procurement nor choosing the 3PPO, that responsibility has been reserved by P3A as representative of PREPA. Allowing P3A to run the procurement process and choose the 3PPO will provide more transparency to the process and prevent any influence from Genera, which will give them the independence and autonomy to perform the required oversight when a possible OCI is identified.

GPR – PREB ORDER – 11.29.2023 #13

13. The Puerto Rico Public-Private Partnerships Authority ("P3A") will select the 3PPO with reasonable input from Genera.
- a. If the 3PPO has been selected, what is the entity?
 - b. If the 3PPO has been selected, please provide the contract between the 3PPO and the P3A.
 - c. If the 3PPO has not been selected, when does Genera expect the 3PPO to be selected?

Response:

The process to acquire or hire the services of a 3PPO is conducted by the P3A. We kindly defer to P3A to answer these questions.

GPR – PREB ORDER – 11.29.2023 #14

14. The Manual (page 98) requires that an Affiliate or Parent Company identify themselves as such in their submittal and that any Proponents/Bidders disclose if an Affiliate or Parent Company is part of its bid team. However, it is not clear what measures are in place to verify these disclosures. How does Genera verify the accuracy of these disclosures?

Response:

If an affiliate is participating and does not disclose it, Genera will find out in the onboarding process and when it requests the organizational documents of the company. This is one of the first steps in a procurement process. When running a procurement process, Genera requests that all proponents disclose, as part of their proposals, a list of subcontractors that will help them perform the work. Part of the evaluation process performed by the Procurement Department prior to technical evaluation conducted by the Evaluation Committee, includes reviewing proposals for completeness, the list of subcontractors to be used, among others. Therefore, it is at this instance that if an affiliate will be a subcontractor of a proponent, the Procurement Team can raise a flag for proper action. Furthermore, Genera includes conflicts of interest covenants in all contracts to compel contractors to notify Genera of any potential conflict of interest, including engaging with an affiliate to provide the goods or services. Not complying with any of the requirements is reason enough to disqualify the proponent.

GPR – PREB ORDER – 11.29.2023 #15**Contract Management**

15. The Manual outlines that if a contract is awarded to an Affiliate or Parent Company, certain activities will be performed by Genera, some by the 3PPO, and some by Genera only after pre-approval by the 3PPO. This could potentially lead to conflicts of interest if not properly managed. What measures are in place to ensure that Genera's involvement in contract management does not lead to conflicts of interest?

Response:

Genera respectfully differs from the interpretation of PREB. Section II(S)(4) and (5) of the Procurement Manual clearly outlines the contract administration steps to be followed by Genera when an affiliate is awarded a contract:

Where award is made to an Affiliate or Parent Company, the post-award contract management, direction, and monitoring of contractor activity, in keeping with the awarded agreement and Genera's obligations under the O&M Agreement, will occur as follows:

- a. Activities performed by Genera supported by documentation subject to audit:
 - i. Progress reviews;
 - ii. Commissioning acceptance;
 - iii. Safety and environmental compliance oversight; and
 - iv. Day-to-day management.

- b. Activities performed by Genera only after pre-approval by the 3PPO (all activities must be documented and are subject to audit):
 - i. Contractor performance evaluations; and
 - ii. Other contract administration responsibilities specifically identified in writing by 3PPO either prior to the signing of the contract, or afterwards. For the avoidance of doubt, it is understood that daily operational

coordination on items such as maintenance, nominations, and other comparable items impacting the Legacy Generation Assets will be managed by Genera pursuant to their arrangements and procedures.

c. Activities performed by the 3PPO:

- i. Any activities for which the 3PPO denies Genera's request for pre-approval;
- ii. Review, approve, and administer payments to Affiliates or Parent Company; and
- iii. Contract changes and circumstances that involve a relief event, supervening event, or change request (technical, schedule, or cost), or other objective determinations with respect to the Affiliate or Parent Company's performance of, or compliance with contract requirements. In the case of a relief event, supervening event, or change request, the procedures in section 21 below will apply. For the avoidance of doubt, it is understood that daily operational coordination on items such as maintenance, nominations, and other comparable items impacting the Legacy Generation Assets will be managed by Genera pursuant to their arrangements and procedures.

To mitigate against impaired objectivity by Genera in the performance of any contract awarded to an Affiliate or Parent Company, the 3PPO and Genera will collaborate without limitation in providing a quarterly report, as part of Genera's reporting requirements under the OMA and Procurement Manual, on the contracted work progress, issues, and risks of all contracts awarded to an Affiliate or Parent Company. The report will specifically identify procurements where OCI mitigation measures have been implemented. This report will also identify any subjective evaluations or oversight of the contractor that should be managed by the 3PPO. The report will be provided to the Executive Director of P3A, or its designee.

Genera thinks that the measures set forth in the OCI Plan address the PREB concerns. Furthermore, the contracts will be limited to the supply of LNG, which

can be measured, and the consumption is reported to PREB. However, Genera is open to discuss additional recommendations to provide more visibility in contract management matters.

GPR – PREB ORDER – 11.29.2023 #16**Biased Ground Rules**

16. Regarding the discussion of the potential for biased ground rules on pages 86 through 89 of the Manual:
- a. How will Genera know that a Parent Company or Affiliate, or subsidiary, will participate in a competitive bid? Will Genera utilize a 3PPO in the event that such participation is possible, but not known for sure?
 - b. How will Genera ensure that the 3PPO has sufficient expertise and knowledge to "ensure there are no biased technical specifications" (page 87)?

Response:

Genera uses all its efforts to identify any potential or actual conflict of interest that may arise due to participation of an affiliate as early in the procurement process as possible. For this, Genera request that:

- 1) All proponents identify themselves, and if an Affiliate, it must disclose it immediately.
- 2) All proponents must disclose the name and identity of the subcontractors it intends to use to perform the work.
- 3) If the acquisition is related to a good or serviced that can be provided by an affiliate, before issuing the procurement, Genera will issue an RFI/RFQ to know beforehand if an Affiliate is interested in participating, hence, Genera can summon the 3PPO to take over the process before any information is shared.

See also the response to question 14 above for related points.

As early as Genera identifies a possible conflict or participation of an affiliate in a procurement process, Genera will step down and engage the 3PPO to handle the procurement process. Genera understands that P3A will choose a 3PPO with sufficient knowledge and expertise to provide oversight of the procurement

process. While PREPA's past specifications for fuel and requirements for fuel procurement can be accessed on the Controller's website or through PREPA itself, Genera defers to P3A on how P3A will approach this issue.

GPR – PREB ORDER – 11.29.2023 #17

17. Clarify under what circumstances the protections detailed in Section B on page 88 of the Manual will be applied. The introductory text to this section says these actions "maybe considered." However, text in Section B on page 86 states that the "mitigation measures will be implemented."
- a. Will mitigation strategies be applied in all cases? If not, what is the process to determine when they are applied?
 - b. Would Genera consider amending this section to state that these mitigation strategies will be used in all cases? If not, why not?

Response:

The procedures listed in this section apply where actual or apparent OCIs have been identified prior to a procurement process. Nevertheless, Genera has executed mitigation actions to prevent dissemination of information or prevent any information that could provide a competitive advantage to an Affiliate. Genera has created firewalls between the operations of the Affiliate and Genera like, different servers, clouds, domains, archives, among others. Furthermore, no seconded or parent company employee is part of the Fuels or Legal teams (including Compliance). Non-disclosure agreements will be considered on a case-by-case basis, depending on the type of work and information being handled by the seconded or affiliate employee. Additionally, aside from establishing barriers and firewalls, we have organizational and geographical separation from the Affiliate or Parent Company. Genera is open to discuss additional measures and controls that can provide more transparency to the process.

GPR – PREB ORDER – 11.29.2023 #18

Managing Conflicts of Interest Outside of Procurement

18. The Manual addresses process-related conflicts of interest related to procurement but does not address conflicts of interest related to other Genera activities. For example, there is a risk that Genera could choose to inappropriately favor investment in, or maintenance of, facilities for which an Affiliate or Parent Company provides fuel or other services, over other facilities within its fleet. Does Genera have a written policy or other document that would address this type of organizational conflict of interest?

- a. If so, please provide the policy or other related document.
- b. If not, why not? Does Genera plan to develop such a policy or manual?

Response:

The Procurement Manual governs most of the aspects related to OCI. However, Genera is expanding its Compliance Program and developing a compliance culture within Genera. This includes conflicts of interest in general, reporting non-compliance events and unethical behavior, asset protection, among others. Genera has a Code of Conduct, Anti-Corruption Policy, Gifts and Entertainment Policy, Whistle Blower, among other policies being developed to enhance the compliance program, train Genera's personnel, and report any conflict of interest or unethical conduct. Genera is currently reviewing all policies to better address the necessity of the business and the challenges being faced.

With regard to specific investments, PREB has full visibility on budget and major investments and thus, Genera does not believe that additional restrictions are needed. Contracts for repairs are also publicly available. Genera does not see a policy regulating repairs to make sense, since the driver on maintenance and repair activity is condition of the equipment itself and other technically verifiable information like industry-known schedules. Genera takes seriously its responsibility of rendering quality O&M Services, including improving the reliability and availability of the Legacy Generation Assets.