

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

IN RE: ELECTRIC SYSTEM PRIORITY STABILIZATION
PLAN

CASE NO.: NEPR-MI-2024-0005

SUBJECT: Reporting Directives and
Information Requirement regarding
PREPA’s Proposed Contract Resulting
from Temporary Emergency Power
Generation.

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MOTION TO VACATE RESOLUTION OF JULY 4, 2025

TO THE PUBLIC SERVICE REGULATORY BOARD, PUERTO RICO ENERGY BUREAU

COMES NOW Javelin Global Commodities US Holdings Inc. (“Javelin”), through undersigned counsel, and respectfully moves this Honorable Board to vacate its Resolution and Order of July 4, 2025 (“July 4th Resolution”), which conditionally approved Puerto Rico Power Authority’s (“PREPA”) proposed contract to procure up to 800 MW of temporary emergency generation, for the reasons set forth below:

I. INTRODUCTION

This matter arises from the fact that the award made under PREPA’s procurement process for up to 800 MW of temporary emergency generation is null and void because it was granted to a proponent that failed to meet the mandatory requirements set forth in the Request for Proposal (“RFP”) and applicable law. By awarding the contract to a non-qualifying bidder, PREPA and its designated procurement agent violated binding legal safeguards designed to ensure fair competition, equal treatment, and protection of the public interest.

Despite clear obligations under the applicable regulation and well-settled Puerto Rico administrative law, PREPA advanced an award that is substantively defective and legally unenforceable because the selected proponent does not satisfy the financial, technical, and operational criteria required for such critical emergency generation capacity. This violation is not a mere technicality — it strikes at the core principles of public procurement integrity and undermines the Energy Bureau’s role in ensuring informed oversight and compliance.

As this motion will show, the record demonstrates material noncompliance with the RFP’s qualifying conditions, including the advancement of a proposal that lacks the capacity to deliver the project as required. Under Puerto Rico law, any agency action taken in violation of its own regulations is *ultra vires* and therefore null and void. Com. Vec. Pro–Mel, Inc. v. J.P., 147 D.P.R. 750, 764 (1999); T–JAC, Inc. v. Caguas Centrum Limited, 148 D.P.R. 70, 81 (1999); García Troncoso v. Adm. del Derecho al Trabajo, 108 D.P.R. 53 (1978). Once declared null, the award has no legal effect and cannot produce enforceable rights or obligations. Brown III v. J.D. Cond.

Playa Grande, 154 D.P.R. 225, 239 (2021); Ortiz Cruz v. Junta Hípica de Puerto Rico, 101 D.P.R. 791, 796 (1973).

Accordingly, Javelin respectfully requests that this Honorable Bureau recognize that the award to Power Expectations is legally null because it fails to comply with the RFP's qualifying requirements, vacate the July 4th Resolution, and remand the matter so that PREPA may proceed in accordance with Regulation 8815 and the governing statutory framework.

Lastly, please note that, in accordance with Section 6.15 of Act No. 57-2014 and the Honorable Bureau's Policy on Management of Confidential Information (CEPR-MI-2016-009), Javelin will submit, under separate cover, a Memorandum of Law requesting that confidential treatment be afforded to Exhibits 3 through 7 of this *Motion To Vacate Resolution Of July 4, 2025*. Javelin is diligently preparing the Memorandum of Law but requires additional time to adequately address the legal and factual grounds for confidential treatment. Therefore, Javelin hereby respectfully requests that the Honorable Bureau grant a brief five-day term to submit its Memorandum of Law.

II. BACKGROUND

A. Background and Purpose of the RFP

On March 19, 2025, the Energy Bureau ordered PREPA to procure up to 800 MW of temporary emergency generation to address critical capacity shortfalls highlighted by recurring blackouts and the catastrophic failure of Aguirre Unit #1. On March 25, 2025, 3PPO, acting on behalf of PREPA, issued the RFP. See Exhibit 1.

B. General Requirements of the RFP

Section 4 of the RFP requires that all proposals include: (i) a clear interconnection plan adapted to the current grid capabilities, including a detailed list of equipment and associated costs; (ii) a pricing proposal based on a per-kWh rate, with a separate breakdown of mobilization, demobilization, and interconnection costs; (iii) a comprehensive work schedule ensuring commercial operation no later than June 1, 2025; (iv) documentation regarding climate resilience and the viability of the proposed site, including environmental considerations and proximity to existing infrastructure; (v) a main step-up transformer and necessary protection systems to safeguard both the generation equipment and the integrity of the grid; and (vi) a fuel supply and cost structure consistent with a turnkey pricing model.

Pursuant to Section 5 of the RFP, all proposals were required to include a detailed mobilization and generation supply schedule, describing all activities necessary to guarantee operational readiness no later than June 1, 2025. This includes logistics planning, equipment transportation and delivery, on-site installation, testing, and commissioning.

Section 6 of the RFP provides that funding for the resulting contract would be sourced primarily from PREPA's self-generated revenues as a public corporation and may be supplemented by available or future federal emergency funds designated for energy infrastructure resilience and recovery. Disbursement of funds is subject to applicable local and federal laws and regulations, as well as to the conditions set forth in the RFP.

Section 7 of the RFP establishes that all proposals and related communications were to be submitted exclusively through the PowerAdvocate® platform used by PREPA. Proposals submitted after the deadline, through unauthorized means, or deemed incomplete, would be automatically disqualified. The RFP states that no extensions would be granted, although the submission deadline could be extended uniformly for all proponents if necessary. Proposals were required to conform to the formatting and content standards described in Appendix K of the RFP, and all mandatory documents listed in Appendix A – Mandatory Requirements Checklist – were to be fully uploaded prior to the deadline. In particular, Exhibit K of the RFP specifies the documentation required regarding proponents' experience, financial health, third-party references, as well as the overall service delivery, safety, and quality programs. Proposals were to remain valid for 180 days from the date of submission.

Section 8 outlines the RFP timeline, beginning with its issuance on March 25, 2025, and concluding with the anticipated contract execution on May 2, 2025. Key events include the mandatory initial meeting on April 1, 2025; mandatory site visits during the week of April 7–11, 2025; and the final proposal submission deadline of April 25, 2025. Proposals not fully uploaded to PowerAdvocate® by the deadline would not be considered.

Proposals meeting the requirements would be evaluated by a multidisciplinary Evaluation Panel composed of subject matter experts. Each evaluator would independently score the proposals according to predefined criteria. Final scores would be calculated by multiplying each evaluator's score by the weight assigned to each criterion.

The evaluation criteria and their respective relative importance were as follows:

Experience and Capability – 20%

Approach to Service Execution – 15%

Approach to Generation Solutions – 5%

Price – 30%

Schedule – 30%

C. Communication Restriction Period (Blackout Period)

Section 10 of the RFP establishes strict communication restrictions applicable to both proponents and public officials during the competitive procurement process. All communications

were required to be conducted exclusively through PowerAdvocate®. Any direct or indirect contact between proponents (or their representatives) and any personnel of 3PPO, PREPA, GENERA, or P3A—other than the designated 3PPO Project Manager—was expressly prohibited during the “blackout period,” which commenced upon issuance of the RFP and concludes upon the expiration of the protest period. This restriction applies equally to government officials, employees, and contractors involved in the process.

D. Public Documents

Section 15 of the RFP provides that the resulting contracts shall be public records and that the documents shall be made available to the public or to relevant state or federal agencies. To protect confidential or sensitive commercial information, each proposer was required to submit a redacted version of its proposal, accompanied by an explanation of why specific information should not be disclosed. Failure to submit a redacted version would be deemed an acknowledgment that the entire proposal may be made public. Notwithstanding any confidentiality markings, information may still be disclosed if required by law or by conditions tied to the availability of federal funding. Moreover, the contract and its pricing terms are deemed public in nature. Internal information related to the evaluation of proposals may also be disclosed to any party demonstrating a legitimate need to know.

E. Negotiation and Award Process

Pursuant to Section 14 of the RFP, 3PPO was authorized to select one or more proponents to enter into negotiations. This selection could occur in stages, allowing for the possibility of inviting additional proponents at a later time.

Once selected, the proponents would participate in concurrent negotiations, during which they could be required to provide additional information or improvements to their proposals. Following negotiations, proponents could be required to submit their Best and Final Offer (“BAFO”), which would be evaluated using the same criteria as the original proposal.

On May 10, 2025, 3PPO notified both Javelin and Power Expectations LLC (“Power Expectations”) that they had been selected to enter into negotiations pursuant to Section 14 of the RFP.

As per the RFP’s instructions, Javelin submitted a markup of the Performance Service Agreement (“PSA”) with its April 25, 2025 proposal and an updated markup on May 25, 2025. Despite these efforts, Javelin never received a revised version or any response from 3PPO. During video conference meetings held on May 12 and May 16, 2025, 3PPO indicated that a revised version of Javelin’s PSA would be shared with Javelin; however, the document was never provided.

F. Public Declarations

On June 9, 2025, before negotiations with the selected proponents had concluded and prior to any formal announcement of the RFP award, the newspaper *El Nuevo Día* published statements by Puerto Rico's Energy Policy Advisor and Executive Director of P3A, Engineer Josué Colón ("Eng. Colón"). According to these statements, only Power Expectations had been selected to provide 800 megawatts of temporary generation capacity to cover peak demand during the summer. This marked a departure from earlier statements suggesting that contracts would be awarded to both selected proponents.

El Nuevo Día quoted Eng. Colón as follows: "Javelin complied with everything else. That is the information I have, but not with respect to cost. It appears they were above—around 30 or 35 cents—and not within the cost expectation set forth in the RFP." See *El Nuevo Día*, June 9, 2025, *Government Contracts Power Expectations and Expects to Have 800 Megawatts of Temporary Power by August or September*. See Exhibit 2.

The article further noted that the previous week, during a press conference at La Fortaleza, Eng. Colón had stated that contracts with both proponents were under consideration: "At that time, our expectation was always that the award could be granted to more than one company. That is what we understood could happen. It seemed the most logical outcome. But when a reasonable cost—which had to be under 25 cents—was not reached, the bidder simply fell out." *Id.*

The RFP established a comprehensive, multi-factor evaluation framework intended to ensure a fair and balanced assessment of all proposals. Awards were to be determined based on a combination of criteria including technical merit, readiness for implementation, financial feasibility, and each proponent's demonstrated ability to deliver reliable emergency generation in a timely manner. This methodology aligns with industry's best practices, particularly in emergency procurement scenarios where speed, reliability, and regulatory compliance are all critical considerations.

However, public statements made by Engineer Josué Colón, as reported by *El Nuevo Día* on June 9, 2025, indicate that the final award decision was driven primarily—if not exclusively—by cost considerations. Such an approach runs counter to the evaluation framework explicitly set forth in the RFP and risks undermining the integrity and transparency of the procurement process.

It bears noting that these statements were made public while negotiations were still ongoing, without prior notice to Javelin, and before the formal notice of award had been issued, and they do not accurately reflect the reality of the ongoing negotiations.

G. Award Notification

On June 13, 2025, Javelin received from 3PPO, via PowerAdvocate®, a letter titled *Notification of Award – Temporary Emergency Generation RFP* (the “June 13th Notice”). See Exhibit 3. The letter, addressed to all proponents, appeared intended to communicate the conclusion of the RFP award process. In it, 3PPO stated that following an evaluation—including compliance review, technical and financial analyses, and negotiations with the two recommended proponents—the award process had concluded. The letter identifies the proponents whose submissions were disqualified or not recommended and implies that only Javelin and Power Expectations were considered for award. Despite its title (“Notification of Award”), the letter does not identify the selected proponent, nor does it set forth the basis for the decision.

The June 13 Notice further stated that, contrary to the original plan to issue the formal notice of award upon execution of the contract, the reconsideration period would commence upon issuance of the June 13th Notice. Accordingly, any proponent adversely affected had five calendar days from the date of the notice to submit a request for reconsideration, pursuant to Section 22 of the RFP.

On June 14, 2025, Javelin responded to the June 13th Notice with a request for clarification and, in the alternative, for reconsideration (the “Clarification/Reconsideration Letter”). Javelin asserted that, based on the language of the June 13th Notice, the referenced reconsideration process did not appear to apply to its proposal. However, to the extent the notice imposed any obligation or triggered any applicable deadline with respect to Javelin, Javelin respectfully requested that 3PPO either reconsider or clarify the notice. This request was particularly urgent given that the June 13th Notice referenced “Section 22” of the RFP, a provision which does not exist, thereby creating uncertainty regarding the applicable procedure. In light of the five-day response period, Javelin requested clarification by June 16, 2025, and expressly reserved all rights under the RFP and applicable law.

The Clarification/Reconsideration Letter highlighted the strengths of Javelin’s proposal, including its readiness to execute the project as early as May, a fully developed plan coordinated with LUMA Energy, executed contracts with key suppliers, no need for external financing, a proven track record in similar projects, and the strong professional credentials and integrity of its leadership team. Javelin also sought to correct misleading public perceptions, clarifying that—assuming cooperation from PREPA—its proposed Costa Sur project could deliver electricity at 25 cents per kWh when operating near full capacity, without relying on ports, trucks, or unproven suppliers. The letter further noted that Javelin had submitted a revised business plan increasing the project’s generation capacity to 250 MW. Finally, Javelin reiterated its willingness to engage

in good-faith discussions with 3PPO and PREPA regarding pricing and the potential issuance of a letter of credit by the Commonwealth or PREPA.

On June 16, 2025, 3PPO issued another letter to all proponents. See Exhibit 4. Although the letter was untitled, its content appeared to serve as the formal notice of award under the RFP (the “Award Notice”). The letter confirmed the conclusion of the evaluation process and formally announced the award of the RFP to Power Expectations for the provision of up to 800 MW of temporary emergency generation. Notably, this notice deviated from the original plan to issue a formal award letter only upon execution of the contract. The letter was issued early, at the request of PREPA, for presentation to its Governing Board. The Award Notice also triggered the reconsideration period referenced in “Section 22” of the RFP, allowing adversely affected proponents to submit a request for reconsideration within five calendar days of the notice.

That same day, 3PPO issued a clarification acknowledging a typographical error in the Award Notice, specifying that the applicable reconsideration provision was Section 20 of the RFP, not Section 22 as twice previously referenced.

The Award Notice does not provide any explanation or justification for the selection of Power Expectations or the rejection of Javelin’s proposal.

H. Request for Access to the Administrative Record

On June 16, 2025, Javelin submitted a formal request through PowerAdvocate® for access to the administrative record. In its request, Javelin invoked the public’s right to inspect records related to the procurement process and emphasized the need to review the administrative record in order to file a motion for reconsideration. The request cited both the legal framework guaranteeing transparency in public procurement and specific provisions of the RFP that confirm the public nature of the process and the use of public and federal emergency funds. See Exhibit 5.

I. Motion for Reconsideration and Second Request for Access to the Administrative Record

On June 18, 2025, Javelin filed a timely Motion for Reconsideration regarding the Notice of Award, in accordance with the procedures set forth in the RFP. In its motion, Javelin stated that the motion was submitted without having access to the administrative record—to which it was entitled—and reserved the right to supplement the motion upon receipt of the administrative record. Javelin also reiterated its request for a complete copy of the RFP administrative record and expressly reserved all rights under the RFP and applicable law. See Exhibit 6.

In sum, Javelin asserted:

(1) Power Expectations lacks capacity to meet RFP requirements:

Power Expectations did not submit a complete or operationally viable proposal by the required

deadline. Unlike Javelin—which presented fully developed agreements, secured financing, and detailed, pre-negotiated interconnection plans with LUMA—Power Expectations lacked binding vendor commitments, a feasible fuel supply plan, and the necessary financial guarantees. It continued to negotiate with vendors after the deadline and attempted to recruit suppliers already under contract with Javelin. Its liquefied natural gas (“LNG”) delivery model depends on a fragile just-in-time trucking system with no on-site storage, posing serious risks of supply disruption, public safety hazards, and traffic impacts that jeopardize reliable emergency generation.

(2) Non-compliance with RFP rules and legal disclosure obligations:

There is strong evidence that Power Expectations modified or submitted key technical documents after the official submission deadline—directly violating the RFP’s clear prohibition on post-deadline changes. This undermines the fundamental principles of fair competition and equal treatment of bidders. Additionally, credible public information indicates that its controlling shareholder may have a disqualifying criminal record that should have been disclosed under Puerto Rico’s Ethics Code for government contractors. Failure to disclose such material facts violates the law and further calls into question Power Expectations’ eligibility to hold a public contract.

(3) Process irregularities, unfair advantage, and lack of access to the record:

Serious procedural flaws compromised the integrity of the procurement. The 3PPO did not retain qualified independent technical and financial experts to rigorously vet complex proposals—despite the significant technical, logistical, and financial risks involved. Moreover, statements by senior officials during the blackout period improperly revealed evaluation details and signaled outcomes before a formal award was completed, violating the RFP’s strict confidentiality rules and potentially prejudicing the process.

The final award also deviated arbitrarily from the RFP’s stated evaluation framework. Although the RFP required a balanced review of technical merit, readiness, feasibility, and cost, the decision appears to have been based mainly on an unofficial cost ceiling not disclosed in the RFP, ignoring critical readiness and feasibility factors.

Finally, Javelin has been denied timely and complete access to the administrative record, including Power Expectations’ full proposal and contract. This lack of transparency makes it impossible to confirm whether the award complies with the RFP and Puerto Rico procurement law—undermining trust and preventing meaningful oversight by both the Energy Bureau and the public.

J. PREPA’S Motion Submitting Proposed Contract

On June 20, 2025, PREPA filed a document titled *Motion Submitting Proposed Contract Resulting from Temporary Emergency Power Generation RFP* for the Energy Bureau's Review and Approval, including as Exhibit "A" a proposed contract resulting from the competitive procurement process for temporary emergency power generation, and as Exhibit "B" a 3PPO report summarizing the procurement process and providing the rationale for the selection of the preferred proponent¹. See July 4th Resolution at page 2.

When PREPA sought approval of its contract with Power Expectations, it does not appear to have informed the Energy Bureau that Javelin had already filed a Motion for Reconsideration challenging the validity of the award. This omission undermines the Energy Bureau's ability to exercise its oversight role fully and transparently.

K. Third Request for access to administrative file

On June 28, 2025, Javelin reiterated for a third time its request for access to the administrative record related to the RFP. In this latest filing, Javelin emphasized its right to examine the complete and updated documentation, underscoring the necessity of such access to fully exercise its right to seek reconsideration. See Exhibit 7.

L. *Special Petition for Access to Public Information*

On July 3, 2025, Javelin filed a *Special Petition for Access to Public Information* with the Puerto Rico Court of First Instance after PREPA refused to grant access to the complete RFP record, despite the fact that the award had already been made—directly contradicting the principle established in Trans Ad de P.R. v. Junta de Subastas, 174 D.P.R. 56 (2008). See Exhibit 8. Javelin argues that the entire record is public by nature and indispensable to ensure a meaningful reconsideration process. Had PREPA disclosed this to the Energy Bureau, the Bureau would have been aware that Javelin's reconsideration was pending and that PREPA had withheld the RFP record, preventing Javelin from effectively exercising its right to seek reconsideration. This Petition is currently pending.

M. July 4th Resolution

Through the July 4th Resolution, the Energy Bureau conditionally approved PREPA's proposed contract with Power Expectations. The Bureau found the contract consistent with the approved IRP and Puerto Rico's updated energy policy given the emergency need but requires

¹ This was done despite clear provisions contained on Section 15 of the RFP establishing that the resulting contracts and related evaluation materials are public records, PREPA submitted both the proposed contract and the 3PPO report under seal, without providing Javelin access to these critical documents — even though Javelin specifically requested access in order to substantiate its Motion for Reconsideration. By withholding these documents, PREPA further impaired Javelin's ability to fully present its challenge to the award and deprived the Energy Bureau of the benefit of a complete record.

PREPA to renegotiate the contract's term and price to secure a longer ten-year term² at lower fixed rates (\$0.189–\$0.203 per kWh) instead of the higher short-term rate initially proposed. It also clarifies that PREPA must bear no costs beyond paying for delivered energy and must correct vague contract terms to ensure clear, enforceable obligations. PREPA must report back by July 9, 2025, confirming whether the better terms were secured or explaining why not, under penalty of significant daily fines for noncompliance.

III. APPLICABLE LAW

A. Shared Statutory Responsibilities of PREPA and the Energy Bureau under Regulation 8815.

Regulation 8815 was enacted under the authority jointly granted to PREPA and the Energy Bureau pursuant to Sections 6B(a)(ii) and 6B(a)(iii) of Act No. 83 of 1941 and Article 6.3 of Act No. 57-2014, as provided in Article 1.1 of the Regulation. Its stated purpose, described in Article 1.2, is to establish a clear, transparent, and uniform process for PREPA to plan, solicit, negotiate, award, and manage energy contracts. This framework is designed to guarantee that the procurement of energy resources and related infrastructure is conducted competitively, fairly, and in a manner that supports modernizing Puerto Rico's generation fleet while addressing the island's urgent energy needs in alignment with the IRP.

To achieve these goals, Regulation 8815 imposes detailed, binding requirements for both the preparation and execution of every RFP. Under Article 4.2, before issuing any RFP, the Executive Director must notify the Energy Bureau of the Project Committee's recommendation, supported by comprehensive documentation. The Energy Bureau then has a statutory 45-day period to review, request additional information, and either approve, reject, or require modifications to the proposed procurement. If the Bureau does not respond within that period, the proposal is deemed approved by default — but only if PREPA has fully complied with its submission obligations.

Equally critical, Article 4.3 requires that all prospective proponents meet strict minimum standards for technical qualifications, financial capacity, legal standing, and ethical compliance. To participate, proponents must be legally authorized to operate in Puerto Rico, demonstrate adequate financial strength and liquidity to complete the project, and — importantly — certify that they and their key officers have no prior criminal convictions for corruption, fraud, or related offenses, and that they are in full compliance with all applicable anti-corruption laws. These qualifications are normally verified through a Request for Qualifications (RFQ) that must be

² This arrangement would be far from the one-year term initially presented in the RFP; it represents an entirely different agreement.

publicly advertised. If an RFQ is not issued, the same vetting must be conducted directly through the RFP process. Article 6 reinforces this safeguard by listing specific disqualifying events — including the discovery of criminal convictions after qualification, bankruptcy or insolvency, unresolved tax debts, collusion, misrepresentation, or material changes in a company’s financial or legal status — which require the Project Committee to declare a proponent ineligible, regardless of prior approval. To verify these minimum standards, the Committee may request certified statements from principal banks, audited financial statements for the last three fiscal years, official background certifications, and any other evidence necessary to confirm financial and legal integrity (Article 6.3).

Every RFP must also meet detailed content requirements under Article 4.5. At minimum, an RFP must include a clear and detailed description of the project that aligns with the IRP; a complete procurement timeline, including pre-proposal meetings and submission deadlines; precise instructions for submission methods and formats; eligibility conditions and the full scoring criteria; any permitted technical alternatives; requirements for proposal securities or bid bonds; funding contingency terms; a draft contract or outline of the principal contractual terms; and contact information for the designated Authorized Representative who will manage all official communications, among others. Any material changes to a project’s core scope, pricing, or key terms must be resubmitted for prior Energy Bureau approval before implementation.

Proposals must then follow a three-phase process as set out in Articles 5 and 6: an initial quality-control review to ensure all mandatory conditions are satisfied; a substantive evaluation phase in which proposals are ranked based on a defined scoring system that considers price, technical feasibility, risk mitigation, experience, and conformity with standard contract terms; and a negotiation phase with one or more proponents shortlisted within the “Competitive Range” to refine technical details and financial terms in order to secure the best result for PREPA and Puerto Rico’s energy consumers. Throughout this process, all communications must remain strictly limited to the designated Authorized Representatives, and proponents are bound by non-collusion requirements to safeguard the integrity of the competitive process (Articles 4.13 and 4.14).

Once negotiations are completed, Article 7 requires the Project Committee to prepare a final report detailing the rationale for the award decision, comparing the selected proposal with other bids, and certifying that each step of the process met the standards of fairness and transparency required under Regulation 8815. This final report and the negotiated contract must be presented to the Board of Directors for approval. If the Board gives its approval, the contract is then subject to Energy Bureau review to confirm compliance with the IRP and the original procurement terms.

Under Article 7.4, the final contract must contain all critical terms, including a clear project definition; financing, design, construction, and operational requirements; the contract's term; pricing formulas and adjustment mechanisms within Commission-approved parameters; PREPA's rights to monitor performance and enforce quality standards; insurance, bonding, and audit requirements; dispute resolution procedures; strict conditions for amendments, scope changes, or contract assignments; and any other terms needed to protect PREPA, the public interest, and energy consumers.

B. Mandatory Criminal Background Requirements and Disqualification under Puerto Rico Law

To participate in the RFP, proponents must certify that they and their key officers have no prior criminal convictions for corruption, fraud, or related offenses, and that they are in full compliance with all applicable anti-corruption laws.

In this context Law Number 2 of January 4, 2018, known as the *Anti-Corruption Code for the New Puerto Rico*, establishes clear and binding grounds for disqualification from contracting with the Government of Puerto Rico. Article 3.4 of that statute provides that any natural or legal person who has been convicted of certain specified offenses — including crimes under Articles 4.2, 4.3, or 5.7 of Act 1–2012 (the Office of Government Ethics enabling Act); felonies involving misuse of public office or public funds as defined in Articles 250 to 266 of the Puerto Rico Penal Code; or any other felony involving the misuse or illegal appropriation of public property or funds, such as those listed in Section 6.8 of Act 8–2017 — is automatically disqualified from bidding for or entering into contracts with any executive branch agency for a period that generally extends ten (10) years from the completion of the sentence, unless the law provides otherwise.

In addition, Section 6.8 of Act 8–2017 further expands the list of disqualifying offenses to include, among others, aggravated illegal appropriation, extortion, sabotage of essential public services, forgery of documents, various forms of fraud (including computer and construction fraud), illicit enrichment, bribery, undue influence, embezzlement of public funds, and money laundering. Depending on the specific crime, the disqualification term can extend to twenty (20) years from the date of conviction, as is the case for aggravated damage, forgery of seals or licenses, falsification of accounting records, or the illegal possession of tax-related documents. For certain lesser offenses — such as omission in the performance of duty, breach of duty, usurpation of public office, or obstruction of official inspections — the period of ineligibility is generally eight (8) years from the date of conviction.

Pursuant to Section 3.5 of the Anti-Corruption Code, 3 L.P.R.A. § 1883d, “[e]very executive agency of the Government of Puerto Rico shall ensure compliance with the provisions of the Code of Ethics established herein.” Accordingly, executive agencies are expressly

empowered to conduct investigations to determine whether any contractor, provider, or applicant for economic incentives has acted in violation of the Code of Ethics. This investigative authority is an essential safeguard to ensure that public contracts are awarded only to qualified and ethical parties, consistent with the public interest and the integrity of the procurement process.

Taken together, these statutory provisions make clear that the applicable disqualification rules under Puerto Rico law address criminal fraud and a wide range of serious corruption offenses.

If a proponent participating in the RFP fails to disclose the commission of crimes that may fall within the list of disqualifying offenses — and the agency later becomes aware of such offenses through any other means — this alone should constitute an independent ground for disqualification. The obligation to certify compliance and disclose any relevant criminal history is fundamental to the integrity of the procurement process, and any omission or misrepresentation undermines the very purpose of the Anti-Corruption Code and related statutes. Allowing a proponent to conceal disqualifying conduct and still benefit from a government contract would directly contravene Puerto Rico's clear public policy against corruption and fraud in public contracting.

C. The Right of Access RFP Record after the Award

In this jurisdiction, the right of access to public information has been recognized as an indispensable complement to the rights of freedom of expression, press, and association, as guaranteed by Section 4 of Article II of the Constitution of the Commonwealth of Puerto Rico, L.P.R.A., Volume I, as well as by the First Amendment to the United States Constitution. See Trans Ad de P.R. v. Junta de Subastas, 174 D.P.R.; Colón Cabrera v. Caribbean Petroleum, 170 D.P.R. 582 (2007); Nieves v. Junta, 160 D.P.R. 97 (2003). The Supreme Court has stated that this right constitutes a fundamental pillar of any democratic society, as it enables citizens to adequately evaluate and oversee government performance while facilitating effective participation in public affairs. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 80-81 (2017).

Similarly, Article 409 of the Puerto Rico Code of Civil Procedure provides that every citizen has the right to inspect and obtain copies of public documents in Puerto Rico, except where otherwise provided by law. 32 L.P.R.A. § 1781. To exercise this right, the initial requirement is that the information in question must be of a public nature. Trans Ad de P.R. v. Junta de Subastas, *supra*. For this purpose, Section 3(b) of the Public Documents Administration Act, Act No. 5 of December 8, 1955, as amended, defines a public document as any document created, maintained, or received by a government agency in the course of public business that, according

to law, must be preserved as evidence of the transactions conducted or for its legal value. 3 L.P.R.A. § 1001.

Once classified as public, the document may be requested for inspection. Nieves v. Junta, *supra*. Nevertheless, access is not absolute, as there are circumstances of compelling public interest that justify limiting disclosure. Trans Ad de P.R. v. Junta de Subastas, *supra*; Colón Cabrera v. Caribbean Petroleum, *supra*.

The Supreme Court has delineated the situations in which the State may validly invoke confidentiality: (1) when mandated by law; (2) when the communication is protected by evidentiary privilege; (3) when disclosure affects fundamental rights of third parties; (4) when protecting the identity of a confidential informant; and (5) when information is classified as official under Evidence Rule 514, *supra*. Colón Cabrera v. Caribbean Petroleum, *supra*, at 591; Angueira v. JLBP, 150 D.P.R. 10 (2000). The burden rests on the State to prove that its claim falls within one of these exceptions. *Id.*

When the State denies access to information based on a law or regulation, such norm will be subject to the highest level of judicial scrutiny. Ortiz v. Dir. Adm. de los Tribunales, 152 D.P.R. 161, 178 (2000). Under this standard, the law or regulation must: (i) be within the constitutional powers of the government; (ii) pursue a compelling interest; (iii) not be aimed at suppressing freedom of expression; and (iv) be the least restrictive means available. *Id.*

Finally, the analysis to determine whether the State's interest justifies denial of access must be strictly construed in favor of the requesting citizen and against the governmental privilege. Nieves v. Junta, *supra*, at 104. The State has the obligation to present concrete evidence demonstrating the existence of compelling interests that outweigh the citizen's right to information. López Vives v. Policía de P.R., 118 D.P.R. 219 (1987).

In Trans Ad de P.R., the Supreme Court held that "the administrative record containing documentation related to the processing of a bidding procedure is necessarily a public document." Trans Ad de P.R. v. Junta de Subastas, *supra*, at 70. The Court further stated that, "once the award of a bidding process has been made, the record containing the documents compiled during the process is subject to inspection by any citizen under Article 409 of the Code of Civil Procedure." *Id.*

D. Recognition of Proponents as Parties under Puerto Rico Law

Section 1.3(k) of the Uniform Administrative Procedure Act, 3 L.P.R.A. § 9603 ("APA"), provides that the term "party" means "any person or agency authorized by law against which an agency action is directed specifically, or that is a party to an action, or is permitted to intervene or participate therein, or has filed a petition for review or enforcement of an order, or is named as a

party in said proceeding.” This statutory definition confirms that any person who has a direct stake in an agency’s action, or who participates formally in the proceeding, qualifies as a “party” for purposes of Puerto Rico administrative law.

In Constructora I. Meléndez, S.E. v. Junta de Subastas, 146 D.P.R. 743, 749–750 (1998), the Puerto Rico Supreme Court made this principle clear in the specific context of competitive bidding processes. The Court explained that “in a bid proceeding, the determination of who must be considered a party is relatively simple compared to other administrative proceedings that may pose greater difficulty in classifying whether someone has party status before an administrative agency.” (Our translation) The Court further emphasized that every bidder appears at the bid opening under equal conditions and with the same expectation of being awarded the contract, which makes their standing as a “party” in the administrative proceeding unquestionable.

This precedent demonstrates that the administrative framework governing public procurement in Puerto Rico consistently recognizes bidders — both successful and unsuccessful — as parties with vested rights and procedural standing to question, challenge, or seek review of an agency’s procurement decisions.

In the context of this matter, the same principle applies: all proponents who submit a timely, responsive proposal in accordance with an RFP governed by Puerto Rico law must be recognized as “parties” within the meaning of 3 L.P.R.A. § 9603. They retain the right to participate fully in any relevant proceedings, to challenge irregularities, and to seek judicial review if necessary — rights which cannot be curtailed by the agency’s unilateral classification or a restrictive interpretation of “party” status.

IV. ARGUMENT

A. Regulatory Violations Render Award in favor of Power Expectations Unenforceable

PREPA’s procurement process in this RFP violated multiple binding safeguards imposed by Regulation 8815, severely undermining the validity of the award and the enforceability of the resulting contract. In this case, PREPA failed on several fronts.

First, despite Article 8 of Regulation 8815 guaranteeing any affected proponent the right to seek reconsideration, PREPA and its agent (3PPO) failed to disclose Javelin’s timely motion for reconsideration filed on June 18, 2025, to the Energy Bureau. Instead, they advanced the award and sought contract approval without informing the regulator of a challenge that could directly affect compliance with Puerto Rico’s energy policy.

Second, PREPA did not maintain or provide a complete administrative record as required by Article 7.1 and Trans Ad de P.R. v. Junta de Subastas, disregarding repeated requests by

Javelin for full access to essential documents—thus impeding both Javelin’s ability to substantiate its objections and the Energy Bureau’s capacity for informed oversight.

Third, this lack of procedural rigor was compounded by a clear breach of confidentiality: the Executive Director of the P3 Authority publicly disclosed the selection of Power Expectations before negotiations were finalized, despite the blackout period mandated by Section 10 of the RFP and Article 4.2 of Regulation 8815, granting Power Expectations an improper advantage over other proponents.

Compounding these procedural flaws are critical facts about Power Expectations itself that further invalidate the award. Unlike Javelin—which submitted a complete and operationally feasible proposal backed by secured financing, binding vendor agreements, and detailed, pre-negotiated interconnection plans with LUMA—Power Expectations failed to submit a fully developed bid by the required deadline. It lacked binding vendor commitments (including securing the transformers and core generation units required under this RFP), a viable and verifiable fuel supply plan, detailed or pre-negotiated interconnection plans, site control documentation, an executable schedule and the necessary financial resources or financing to deliver reliable emergency generation. Its LNG supply depends on a precarious just-in-time trucking model with no on-site storage capacity, posing clear risks of supply disruption, public safety hazards, and traffic congestion—all of which jeopardize PREPA’s urgent capacity needs. Worse still, credible information indicates that Power Expectations continued to negotiate with vendors well past the submission deadline and attempted to poach suppliers already under contract with Javelin, violating the RFP’s explicit prohibition on post-deadline modifications and directly undermining the principles of fair competition and equal treatment of bidders.

Public records further suggest that Power Expectations’ controlling shareholder may have a disqualifying criminal record that should have been disclosed under Puerto Rico’s Anti-Corruption Code for government contractors—yet no such disclosure was made, violating statutory ethics rules and calling into question the company’s legal eligibility to receive any government award. Moreover, both 3PPO and PREPA failed to fulfill their duty under Section 3.5 of the Anti-Corruption Code to investigate and verify whether this undisclosed information rendered Power Expectations ineligible, thereby undermining the integrity of the procurement process and the mandatory safeguards intended to protect the public interest.

Finally, the 3PPO failed to retain qualified independent experts to rigorously vet highly technical proposals involving substantial operational and financial risks, while senior officials’ public statements during the blackout period improperly revealed details about the evaluation

process and signaled outcomes in advance, further compromising the integrity and neutrality of the procurement process.

It is a well-established doctrine that administrative agencies are strictly bound to comply with the rules they themselves have promulgated, as a means of limiting their discretion. The granting of rights recognized therein is not left to their arbitrary discretion. Com. Vec. Pro-Mel, Inc. v. J.P., 147 D.P.R. 750. Agencies are further obligated to ensure that their officials adhere to the requirements set forth in their own regulations. T-JAC, Inc. v. Caguas Centrum Limited, 148 D.P.R. 70; García Troncoso v. Adm. del Derecho al Trabajo, 108 D.P.R. 53. When an agency acts in violation of its own regulations, such action is *ultra vires* and therefore null and void.

Moreover, the declaration of nullity invalidates any action taken under the authority of the annulled act. Brown III v. J.D. Cond. Playa Grande, 154 D.P.R. 225. That is, “a void act is legally non-existent and therefore produces no legal consequences.” *Id.* See also Ortiz Cruz v. Junta Hípica de Puerto Rico, 101 D.P.R. 791, 796 (1973).

In sum, where an agency so fundamentally disregards the binding safeguards that ensure transparency, equal treatment, and lawful competition, the resulting award is not merely defective — it is void as a matter of law. Under well-settled Puerto Rico jurisprudence, the Energy Bureau must therefore vacate the Resolution and Order approving this flawed procurement and remand the matter for a process that fully complies with Regulation 8815 and the basic principles of fair and lawful government contracting.

Taken together, these multiple breaches of Regulation 8815—lack of timely notice to the regulator, an incomplete record, irregular disclosures during the blackout period, and clear failures to enforce minimum qualification and integrity standards—render the award to Power Expectations fundamentally flawed. These defects demand full review and corrective action to protect the integrity of the process, ensure compliance with the IRP, and safeguard the public interest.

Accordingly, Javelin respectfully urges the Energy Bureau to apply its expertise, as well as the powers granted under the Puerto Rico Energy Transformation and RELIEF Act and Regulation 8815, to thoroughly evaluate the proposed contract. Javelin specifically calls the Energy Bureau’s attention to its statutory mandate not to “approve any contract when there is technical evidence demonstrating that the project in question or the contractual conditions of a project would jeopardize the reliability and security of Puerto Rico’s electrical grid.” Act 57-2014, Art. 6.32(f), 22 L.P.R.A § 1054ff(f). To facilitate this review, the Bureau should consider, among others, the following essential questions:

1. Has a comprehensive “Know Your Client” due diligence been conducted on Power Expectations’ ultimate beneficial owners, including financial capability and criminal background checks?
2. Has the Energy Bureau reviewed and thoroughly analyzed Power Expectations’ audited financial statements to confirm that it has the financial worthiness, capacity, stability, and resources necessary to successfully support and complete the project?
3. Has the Energy Bureau reviewed the information included by Power Expectations in Exhibit K of its proposal, which details the proponent’s experience, financial health, third-party references, overall service delivery program, safety program, and quality program?
4. What due diligence has been conducted on Power Expectations’ design and construction contracts and contractors, including performance guarantees, timelines, collateral, and remediation measures?
5. What technical reviews have been performed concerning Power Expectations’ plans for resiliency, quality, and safety, and what documents or plans were actually submitted in compliance with the RFP?
6. What diligence has been undertaken regarding the Performance Bond proposed by Power Expectations³?
7. Did Power Expectations provide a markup of the PSA at the time of its submission, as required by the RFP? Given the RFP’s stipulation that failure to comment on the Power Purchase Agreement (PPA) constitutes acceptance and precludes post-submission negotiation, how does the final contract differ from the form and the bid submission?
8. Has the Energy Bureau reviewed the technical feasibility and engineering plans for generator and equipment installation at Costa Sur and Aguirre?
9. Has the opinion of LUMA and Genera regarding project development and grid interconnection been fully considered?
10. Has it been confirmed that Power Expectations secured all necessary generators, transformers, and balance of plant equipment?
11. Has the feasibility of fuel delivery logistics—especially during hurricanes and blackouts—been fully evaluated, including on-site fuel inventory and just-in-time supply risks?
12. Has the impact of LNG trucking on traffic, environment, and infrastructure, including effects on road infrastructure, congestion, level of service (LOS), and greenhouse gas or other pollutant emissions, been rigorously assessed, including contingency plans for emergency scenarios?

³ How does the value of the bond change with a 10-year contract?

13. Has the availability of sufficient trucks and supply chain reliability been independently verified especially during hurricanes and other emergency events?
14. Have the feasibility and permitting status of related infrastructure, such as a potential LNG import terminal at Ponce and offshore LNG handling facilities, been reviewed?
15. Given this is an emergency generation contract without firm dispatch commitments, has the ability to secure LNG shipments on a just-in-time basis during emergencies been critically examined?
16. Has the feasibility of maintaining LNG ships and barges offshore Ponce during hurricanes been reviewed for safety, reliability and performance to supply LNG during Hurricanes?
17. Has the Energy Bureau reviewed a detailed plan on how Power Expectations is going to manage emergency generation on a just-in-time basis without onsite inventory and especially during Hurricanes?
18. Has the project's total capital cost, timeline feasibility, financing commitments, and investor support been scrutinized?
19. Does the project have firm financing commitments from banks and investors alike to support the mobilization, construction and implementation of the project?
20. Has PREPA or 3PPO engaged qualified external technical, financial, logistical, and commercial experts to provide independent assessments of the above issues?

These questions reflect the comprehensive and rigorous review the Energy Bureau is mandated to conduct under the enabling legislation and Regulation 8815. Javelin respectfully urges the Bureau to exercise its full regulatory authority and expertise to ensure that the procurement and award process meets the highest standards of transparency, fairness, technical feasibility, and public interest protection.

V. CONCLUSION

In view of the multiple and compounding violations detailed above, this procurement process falls far short of the minimum legal and regulatory standards required to protect the public interest, ensure true competition, and deliver reliable emergency generation for Puerto Rico. By ignoring fundamental procedural safeguards, failing to disclose material objections, withholding key records, breaching confidentiality obligations, and advancing an incomplete and non-qualifying proposal, PREPA and its procurement agent have undermined the integrity of this critical procurement from the outset.

Given these fatal defects, the Energy Bureau must not allow an award so compromised to stand. Javelin respectfully urges this Honorable Bureau to grant this motion, vacate the conditional approval of the contract, and direct PREPA to resume the procurement with

proponents who are in full compliance with RFP requirements and applicable law, and specifically Javelin with respect to the Costa Sur facility, all in accordance with Regulation 8815 and the basic principles of fair, lawful, and transparent public contracting.

VI. PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Javelin respectfully requests that this Honorable Bureau: (i) GRANT this Motion to Vacate Resolution of July 4, 2025; (ii) vacate the conditional approval of the contract, (iii) direct PREPA to resume the procurement with proponents who are in full compliance with the RFP requirements and applicable law, and specifically Javelin with respect to the Costa Sur facility, all in accordance with Regulation 8815 and the basic principles of fair, lawful, and transparent public contracting; and (iv) grant Javelin a brief five day term to file its Memorandum of Law in Support of Confidential Treatment for Exhibits 3 through 7 of this *Motion To Vacate Resolution Of July 4, 2025*.

RESPECTFULLY SUBMITTED.

CERTIFICATION: On this date Javelin has notified a copy of this motion to the following parties:

(1) **Public-Private Partnership Authority**, PO Box 42001, San Juan, Puerto

Rico 00940-2001, josue.colon@p3.pr.gov, Administrador@p3.pr.gov;

(2) **Puerto Rico Power Authority**, PO Box 364267, San Juan, Puerto Rico

00936-4267, mary.zapata@prepa.pr.gov;

(3)) **Genera PR, LLC (Genera)**, PO Box 363068, San Juan, PR 00936-3068;

(4) **Public-Private Projects Procurement Office** PO Box 363068,

San Juan, PR 00936-3068;

(5) **Regulatory Compliance Services, Corp.**, 1509 López Landrón, Penthouse, San Juan,

Puerto Rico 00911;

(6)) **Power Expectations LLC**, PO Box 4983, Carolina, Puerto Rico 00984-4986,

powerexpectations@gmail.com;

(7) **New Fortress Energy, Inc**, 111 W 19th Street, 8th Floor, New York, NY 10011,

wedens@fortress.com;

(8) **E2 Companies LLC, AKA E2COMPANIES PR LLC**, 1250 Ave. Ponce de León,

Suite 600, SAN JUAN, PR, 00907;

(9) **Distributed Power Solutions**, PO BOX 13669, Santurce Station, San Juan, PR, 00908

(10) **Impulsora de Proyectos México**, Bosques de Duraznos N° 61 int 12-A, Bosques de

Las Lomas, Del Miguel Hidalgo, Ciudad de México, CP 11700, contacto@gemex.mx.

(11) **Gotham Energy LLC** 48 Wall St Fl 5 New York, NY 10005.

San Juan, Puerto Rico, July 9th, 2025.

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EXHIBIT 1



REQUEST FOR PROPOSAL
3PPO-0314-20-TPG
Emergency Temporary Power Generation

Issued by the Third-Party Procurement Office (3PPO)

Date Initial RFP Issued: March 25, 2025

Proposal Submissions Due: April 25, 2025

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Attachments

The RFP consists of the following attachments to be used for reference purposes or as part of the pre-bidding process.

- 1 Attachment A.1 – Scope of Supply
- 2 Attachment A – PowerAdvocate® Guide
- 3 Attachment B – Non-Disclosure Agreement
- 4 Attachment C – Notice of Intent to Bid
- 5 Attachment D – Question and Answer Form
- 6 Attachment E – Vendor Registry Requirements
- 7 Attachment F – Purchase Agreement
- 8 Attachment G - General Procurement Manual
- 9 Attachment H – Restricted Parties List
- 10 Attachment I.1 – Specifications Aguirre Power Plant 230kV Switchyard
- 11 Attachment I.2 – Specifications Costa Sur Power Plant 230kV Switchyard
- 12 Attachment J - Health, Safety and Environmental Certifications

Exhibits

The RFP consists of the following exhibits that are to be completed by the Proponent and submitted as part of the proposal.

- 1 Exhibit A – Proposal Mandatory Requirements Checklist
- 2 Exhibit B – Statement of Qualifications
- 3 Exhibit C – Authorization for Background and/or Financial Information
- 4 Exhibit D – Certifications Affidavit Non-Conflict of Interest
- 5 Exhibit E – Price Proposal
- 6 Exhibit F – Comparable Projects
- 7 Exhibit G – References
- 8 Exhibit H - Bid Guarantee
- 9 Exhibit I – S/M/WB/LS Forms
- 10 Exhibit J – Supplier General Information
- 11 Exhibit K – Proposal Submission Instructions

1. INTRODUCTION

1.1. Designation of Genera as PREPA's Agent

On January 24, 2023, the Puerto Rico Public-Private Partnerships Authority, a public corporation of the Commonwealth of Puerto Rico, created by Act of June 8, 2009, No. 29 ("P3A"), Genera PR LLC, a limited liability company organized under the laws of Puerto Rico ("Genera") and the Puerto Rico Electric Power Authority, created by Act of May 2, 1941, No. 83 ("PREPA") entered into the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (the "Generation O&M Agreement"), whereby P3A, Genera and PREPA agreed that as of the Service Commencement Date (as defined therein), which occurred on or about July 1, 2023, Genera would become the operator of the Legacy Generation Assets (as defined therein), as an agent of PREPA.

Pursuant to section 5.2(b) (Agent Designation) of the Generation O&M Agreement, PREPA designated and appointed Genera as its agent, and Genera accepted such designation and appointment, for the purpose of entering into Facility Contracts (as defined therein) on behalf of and for the account of PREPA, as may be necessary or appropriate to operate and maintain the Legacy Generation Assets.

In accordance with the Generation O&M Agreement and Genera's Procurement Manual, Genera PR LLC ("Genera"), acting as the agent of PREPA, is soliciting proposals from qualified entities to design, deploy, operate, and maintain temporary emergency power generation units in Puerto Rico.

1.2. Designation of the THIRD -PARTY PROCUREMENT OFFICE ("3PPO")

To avoid or mitigate against the risk of organizational conflicts of interest in PREPA procurements, P3A established the 3PPO to perform and oversee certain PREPA procurement activities, which include the drafting and posting of this RFP and the collection and review of Proponent responses. Regulatory Compliance Services, Corp. ("Recoms"), contracted by P3A, operates the 3PPO.

Pursuant to the requirements of the Generation O&M Agreement and the Procurement Manual, Genera shall employ multiple means to avoid, mitigate and neutralize any actual or apparent Organizational Conflict of Interest. Therefore, to ensure a fair, just and competitive process, with complete independence and autonomy from Genera's judgment or decision making, including parameters for evaluation, selection and contract administration of the Selected Proponent(s), the Third-Party Procurement Office ("3PPO") will manage this RFP. All procurement activities, including contract administration, related to this RFP will be conducted, monitored, and executed by the 3PPO; the third party who was independently selected by P3A through a formal procurement process.

1.3 AUTHORITY AND RESPONSIBILITIES

With respect to this RFP, in accordance with Act 120 and Act 29, the 3PPO will independently and ethically manage PREPA procurement activities consistent with the GENERA Procurement Manual and all relevant federal and state laws and regulations. A contract resulting from this RFP will be a contract with PREPA executed by its agent, GENERA. The 3PPO is acting as servicing agent. As an independent third party, the 3PPO drafted and published this RFP, will evaluate responses, will submit its selection recommendation to P3A,

and will negotiate and draft resulting contracts, and share post-award contract administration responsibilities with GENERA, when applicable.

1.4 PROPONENT'S ACKNOWLEDGEMENT

By submitting a proposal in response to this RFP, the Proponent acknowledges the authority and role of the 3PPO as outlined herein and agrees to cooperate fully with the 3PPO in all matters related to the procurement process.

To avoid or mitigate an organizational conflict of interest or apparent organizational conflict of interest in this procurement action, Genera has opted to invoke the 3PPO process. In the event that no entity with an organizational conflict of interest submits a proposal in response to this RFP, the 3PPO may revert the procurement action to Genera to independently manage and administer the procurement process, including evaluation of proposals, contract award, and post-award contract administration.

To facilitate the identification of organizational conflicts of interest, Proponents must identify if they, or a member of their bid team (as contractor, partner, or otherwise) have an organizational conflict of interest with Genera, PREPA, P3A, or Recoms. Restricted Parties The following entities will be deemed "Restricted Parties" and neither they nor their respective directors, officers, partners, employees and persons or legal entities Related to them are eligible to participate as Team Members or to otherwise assist any Respondent or Team Member, directly or indirectly, or participate in any way as a director, officer, employee, advisor, counsel, accountant or other consultant or otherwise in connection with any Respondent. Each Respondent will ensure that each Team Member does not use, consult, include or seek advice from any Restricted Party. **(See Attachment H for details)**

This approach is intended to safeguard against organizational conflict of interest impacts, and grants GENERA the flexibility to resume control if no organizational conflicts arise during the competitive procurement process.

1.5 GENERA Procurement Manual

This RFP process will be governed by and subject to the provisions of Genera's Procurement Manual (the "**Procurement Manual**"), which is attached hereto as **Attachment G (Procurement Manual)**. The selected solution must comply with all regulatory requirements, including those set by the EPA, PREB, the Puerto Rico Environmental Quality Board, the Clean Water Act, the Clean Air Act, and all applicable federal and local environmental laws. Additionally, proposals must comply with the competitive procurement conditions established by the Puerto Rico Energy Bureau (PREB) Resolution and Order (Case No.: NEPR-MI-2024-0004), which mandates that all energy solutions ensure competitive pricing and approval by PREB. The proponent must submit transparent and cost-effective pricing structures that align with market competitiveness and regulatory standards. The units must connect to existing transmission infrastructure with the necessary grid stabilization equipment.

2 STATEMENT OF CONFIDENTIALITY

The Parties acknowledge that the existence and the terms of this Agreement and any oral or written information exchanged between the Parties in connection with the preparation and performance of this Agreement are regarded as confidential information. Each Party shall maintain confidentiality of all such confidential information, and without obtaining the written

consent of the other Party, it shall not disclose any relevant confidential information to any third parties, except for the information that is under the obligation to be disclosed pursuant to the applicable laws or regulations, or orders of the court or other government authorities.

This document can only be used to prepare the Proposal for this RFP.

This RFP contains PREPA/GENERA's confidential and proprietary information, which is provided solely to allow the Proponent to respond to this RFP. The Proponent agreed to maintain the confidentiality of the information and to not disclose this information to any person outside the Proponent's team directly responsible for preparing the Proposal for this RFP by signing the Non-Disclosure Agreement ("NDA"). This document can only be used to prepare the Proposal for this RFP.

Proponents must submit a signed Non-Disclosure Agreement ("NDA") on or before the due date, as stated in RFP Timeline. The NDA is included as **Attachment B – (Non-Disclosure Agreement)**. Proponents will submit the signed NDA via PowerAdvocate® through the Messaging tab of the RFP event. The NDA will not be accepted if sent via any other method not specified herein.

3. RFP BACKGROUND

In the last decade, Puerto Rico has suffered from massive infrastructure damage, private property damage and loss of life due to natural disasters, including hurricanes Irma, María and Fiona, as well as the 2020 earthquakes. Hurricane María made landfall in Puerto Rico on September 20, 2017, as a Category 4 hurricane, shortly after Category 5 Hurricane Irma impacted the island. María's sustained winds of up to 155 mph destroyed the island's power grid and left 3.4 million residents without electricity. 5.8 and 6.4 magnitude earthquakes and related aftershocks in January 2020 caused island-wide blackouts and damaged critical power plants and electrical infrastructure on the island. Hurricane Fiona then made landfall on September 18, 2022, with winds of 103 mph and 30 inches of rain, exceeding the 2017 hurricanes. The heavy rainfall caused flash flooding, mudslides and left the island without electricity once again.

In response to the severity of the hurricanes and earthquakes' impacts, the federal government issued several major disaster declarations for Puerto Rico, mandating federal assistance to supplement local recovery efforts in the affected areas, pursuant to Federal Emergency Management Agency ("FEMA") Disaster Declarations DR-4339-PR and FEMA-DR-4473-PR. Other federal agencies, including the U.S. Department of Housing and Urban Development ("HUD"), have also allocated funds for disaster recovery efforts. These efforts have included support for temporary generation units around the island, which have been transferred to PREPA and have been approved to be used until December 2027.

As the Puerto Rico Government continues the implementation of the recovery response, PREPA and Genera, as PREPA's agent, continue working with the Central Office for Recovery, Reconstruction and Resiliency ("COR3") to support the disaster recovery efforts with efficiency and transparency to develop a more efficient and reliable generation system, and in turn, facilitate the economic development of Puerto Rico. Fuel supply diversity (i.e., in type of fuel and delivery mode) is one of the initiatives that Genera is pursuing to create a more efficient and reliable generation system.

Genera currently maintains a series of generation units that are out of service due to repairs and breakdowns, which limit the available system capacity. The deadline for commissioning the emergency generation units is **June 1, 2025**, a critical period as Puerto Rico enters its peak demand season in summer due to rising temperatures. Additionally, the Atlantic hurricane season begins in June and extends until November, with peak energy demand typically occurring in August and September. Several base units are undergoing repairs including San Juan #6 (220 MW), San Juan #7 (100 MW), Palo Seco #4 (216 MW), Costa Sur #5 (410 MW), Aguirre #1 (450 MW), and Aguirre #2 (450 MW). The total generation deficit currently stands at 1,846 MW. However, preliminary inspections indicate that Aguirre #1 will not be available for the remainder of 2025. Aguirre #2's availability by mid-2025 is uncertain, pending an inspection by the manufacturer at their facility outside Puerto Rico. This situation leaves the system with an estimated available capacity of 2,800 MW, while summer peak demand is projected to reach or exceed 3,200 MW. If the base units are not restored in time, Puerto Rico's energy grid will lack the necessary capacity and reserves to meet peak demand.

The 3PPO is committed to ensuring that all Work performed pursuant to this RFP is eligible for FEMA PA grant funding and conducted in full compliance with all applicable Federal and Government of Puerto Rico (GPR) regulations, policies, and guidance. Qualified firms must possess all required Federal and Government licensing necessary for the execution of this project. This includes, but is not limited to, programs such as the FEMA Public Assistance (PA) Program, Hazard Mitigation Grant Program (HMGP), and Private Property Debris Removal (PPDR). Additionally, compliance with the HUD Community Development Block Grant (CDBG) and CDBG-Disaster Recovery (CDBG-DR) Programs, U.S. Department of Energy (DOE) Grid Resilience and Weatherization Assistance Programs, and the U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA) Emergency Relief and Federal Transit Administration (FTA) Emergency Response Grants is required. Other applicable federal programs include the FAA Airport Improvement Program (AIP), DOI National Park Service Disaster Recovery Grants, USDA Emergency Watershed Protection and Rural Utilities Service Programs, and HHS Social Services Block Grant (SSBG) for Disaster Relief. Furthermore, firms must adhere to OSHA worker safety regulations for electric power infrastructure, EPA Diesel Emissions Reduction Act (DERA) standards, Jones Act (46 U.S.C. § 55102) and all other relevant federal, state, and local guidelines to ensure compliance and eligibility for federal reimbursement.

The RFP must be construed and interpreted in accordance with the laws in force in the Commonwealth of Puerto Rico and the federal laws of the United States of America, applicable therein.

Because the contract may be funded in whole or in part with federal funds, it must comply with applicable federal terms and conditions governing the use of such funds. This includes adherence to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as set forth in 2 C.F.R. Part 200, as well as any other applicable federal regulations and guidelines.

4. PURPOSE OF THE RFP

The purpose of this RFP is to identify one or more eligible proponents capable of delivering a turnkey emergency power generation solution through a temporary interconnection. The proposed solution must be resilient to adverse weather conditions and extreme climate events. Therefore, proponents must present in their proposal a clear demonstration of the expected

downtime, if any, in the event of a hurricane or other critical incident. This will allow us to assess how quickly power generation can be restored.

The solution may include floating power generation units (barges) or any other land-based solution with individual capacities of up to 400 MW, ensuring a total combined capacity of up to 800 MW. The required total generation capacity is up to 800 MW, with Aguirre supporting up to 400 MW at 230 kV at 60 Hz and Costa Sur supporting up to 400 MW at 230 kV or/and 115kV at 60 Hz.

Alternatively, proponents may propose mobile gas turbine solutions, provided that they specify the exact location for installation and conduct site visits to verify available space.

Proponents must also present a complete interconnection plan, detailing solutions for integrating the power generation system into the existing transmission infrastructure. **(Refer to Attachment I.1 & I.2)**

Proponents should submit pricing based on a price per kWh. However, all associated costs related to interconnection, mobilization, and demobilization must be clearly itemized. Interconnection costs, mobilization costs, and demobilization costs should be presented separately and not included in the per kilowatts-hours, as these costs will be negotiated separately. The interconnection process will be executed in coordination with Luma and Genera.

As part of the interconnection plan, proponents must submit a detailed list of equipment and materials to be used for interconnection with their cost. This list should specify the components required to ensure proper integration with the existing transmission system.

For evaluation and negotiation purposes, proponents must prepare their price proposal by separately itemizing costs for Costa Sur and Aguirre following Exhibit E-Price Proposal.

A detailed schedule must be provided, ensuring that the project achieves full commercial operation no later than June 1, 2025.

Proposal must include the following:

a. Temporary Grid Integration:

- Project must ensure that interconnection solutions are tailored to existing grid capabilities.
- Coordination with system operators is crucial to facilitate a seamless connection.

b. Weather Resilience:

- Land-based power solutions must be designed to withstand hurricane-force winds, storm surges, and severe weather conditions. The proposal must clearly specify the engineered resilience of the proposed solution.

Location Feasibility:

- Proposed land-based power generation solutions, including those that may incorporate battery energy storage systems, must undergo a site assessment.
- The assessment should evaluate the physical space required for all equipment, including generators, transformers, batteries (if applicable), fuel storage, and access roads.
- Proponents must also consider the proximity to existing electrical infrastructure for interconnection purposes.
- In addition, the assessment must include an initial review of potential environmental impacts, such as emissions, noise, land use restrictions, and risks to nearby water sources or protected areas.
- The findings of the site assessment must be included in the proposal to demonstrate the suitability and readiness of the proposed location for temporary power deployment.

c. Fuel Supply and Cost Structuring:

The cost must be presented as a turnkey solution, with all costs related to power generation, including fuel, established on a price-per-kWh basis. However, mobilization and interconnection costs must be presented separately and independently. A clear separation of these costs (interconnection, mobilization, etc.) ensures transparent financial planning and prevents the misallocation of expenses within the hourly rate.

Electrical Infrastructure – Step-Up Transformer and Protection Systems:

- The proposal must include a main step-up power transformer to match generation output with the interconnection voltage level.
- Appropriate protection and control systems must be provided to safeguard both generating equipment and the utility grid, including relays, breakers, and surge arrestors.
- Design must comply with relevant utility standards and accommodate temporary grid configurations.

d. Schedule:

- Time is a critical factor in the successful execution of this project. The proposal must include a detailed and realistic project schedule that demonstrates the proponent's ability to complete the scope of work within the timeline established in this RFP.

5. The proposal must include a detailed mobilization and power generation supply schedule. This schedule should detail all activities leading to full operational readiness by **June 1, 2025**, as required by this RFP. This includes, but is not limited to, logistics planning, transportation and delivery timelines, on-site setup, equipment testing, and commissioning.

CONTRACT TERM

The Purchaser intends to award one or more Contract(s) as a result of this RFP. PREPA/GENERA has anticipated the award of the resulting contract for an initial period of **One (1) year** from the effective date of the contract, with **two (2) extension option** terms of **one (1) year each** if mutually agreed upon in writing by both parties, prior to the conclusion of each fiscal year, subject to Proponent's satisfactory performance, availability of funds, and required authorizations according to GENERA's policies and regulations; and the approval of the FOMB.

A model of the contract, excluding service descriptions and associated pricing details that will be determined during the contracting phase, will be included with this RFP as **Attachment F- Purchase Agreement**, which provides details on submission requirements related to the Model Contract. The Proponent must comply with the Terms & Conditions of GENERA's Contract. PREPA/GENERA reserves the right to replace or modify the Model Contract included with this RFP at any time.

6. FUNDING SOURCE

Funding for this contract shall be sourced from the Puerto Rico Electric Power Authority (PREPA)'s self-generated revenues as a public corporation and may be supplemented by available or future Federal emergency funds designated for energy infrastructure resilience and recovery. The disbursement of funds is subject to applicable local and federal laws, regulations, and RFP conditions.

7. PROPOSAL SUBMISSION INSTRUCTIONS

Proponents must submit their proposals through the PowerAdvocate® platform. Proposals submitted after the deadline, via the Messaging tab, or that are incomplete will be disqualified. No extensions will be given to individual Proponents, although time extensions may be granted to all if necessary. All document submissions must follow the guidelines detailed in **Exhibit K- PROPOSAL SUBMISSION INSTRUCTIONS**, and Proponents are responsible for ensuring that documents are fully uploaded before the closing date and make sure all the Mandatory Required Documents have been uploaded as per **Exhibit A – Proposal Mandatory Requirements Checklist**. The RFP process does not create any legal relationship until a final agreement is negotiated and signed, and proposals must remain valid for 180 days from the submission date. All costs related to the RFP are the Proponent's responsibility. Technical support is available through PowerAdvocate®.

The **PowerAdvocate® guide** is included as **Attachment A** of this RFP. For technical assistance with the sourcing platform application please contact PowerAdvocate®'s technical support at (857) 453-5800, or by email at: support@poweradvocate.com.

8. RFP TIMELINE

The following schedule provides the key dates of the RFP process. **Please note that the RFP Timeline includes target dates that are subject to change.** It is the sole responsibility of Proponent to monitor PowerAdvocate® for updates to the RFP Timeline.

No.	Milestone	Targeted Date
1	RFP Released to Public	Tuesday, March 25, 2025
2	Initial Mandatory Meeting*	Tuesday, April 1, 2025
3	Mandatory Site Visits (two for each site) *	Week of April 7-11, 2025
4	Q&A Period Deadline, & Signed Confidentiality Submission Due Date	Thursday, April 14, 2025
5	Q&A Answers Period Deadline to question(s) submitted	Monday, April 18, 2025
6	Notice of Intent to Bid	Wednesday April 23, 2025
7	Proposal Submission Due Date	Friday, April 25, 2025
8	Genera and/or 3PPO to issue Notice of Intent of Award to Selected Proponent	Wednesday, April 30, 2025
9	Genera and/or 3PPO to sign contract with Selected Proponent	Friday, May 2, 2025

* Attendance at the mandatory site visit and Initial meeting is required. Proponents who fail to attend will be automatically disqualified from the RFP process. Site visits will be coordinated in an initial Mandatory meeting.

3PPO and Genera will not consider Proposal submissions that Proponents fail to completely upload by the time and date corresponding to the “**Proposal Submission Due Date**” in the column captioned “Targeted Date” of the table above, as applicable. Proponents are encouraged to allow enough time to upload their documents and to confirm that the files are available for Genera’s review.

****This date is an estimate, and the 3PPO will communicate the award decision at its earliest convenience.***

Proposal submissions that have not been completely uploaded by the Proposal Submission Date, will not be considered. Proponents are encouraged to allow enough time to upload their Proposals and to confirm that the files are available for the 3PPO and/or GENERA’s review.

- **Question & Answer Period**

Note that a Proponent may submit question(s) to the 3PPO for explanation or interpretation of any matter contained in this RFP through the **Question and Answer (“Q&A”)** period. Proponents should submit each question in the Q&A form included in **Attachment D** via PowerAdvocate® through the Messaging tab.

Proponents must submit their questions in the Q&A form included in **Attachment D – (Questions and Answers Form)**. This document must be submitted in Microsoft Excel format and each question must reference the RFP page number, section of the RFP document, RFP

Attachment, or section of the model contract. No questions will be accepted after the deadline provided in the above schedule or in any form not specified herein.

The responses to the questions will be provided to all potential proponents through PowerAdvocate® on the timeline specified in the RFP Timeline. Questions from Proponents must not contain proprietary information because the questions and answers may be published in the public domain. Please note that the 3PPO and GENERA do not guarantee answers to all questions or comments received. Be advised that improperly submitted questions may be rejected.

If responses to the questions require a modification or additions to the original RFP, the 3PPO will issue an Addendum posted on PowerAdvocate®. If Proponent has already submitted its Proposal, or any part thereof, to the 3PPO before the issuance of an Addendum, Proponent may submit a revised Proposal by the Proposal Submission Date and Time, and in appropriate cases the 3PPO may extend the Proposal Submission Date and Time.

9. EVALUATION METHODOLOGY AND SELECTION PROCESS

The Committee members will independently evaluate each response and assign a score for each criterion. The scores and criteria weight will be used to calculate Quality Points for each Proponent. The Quality Points will be calculated for each proposer by multiplying the Evaluator's rating for each evaluation criterion times the weight for the corresponding criteria.

Each Proposal that meets all submission criteria requirements will be independently reviewed and evaluated by an Evaluation Panel formed of a cross-functional team of Subject Matter Experts. The Evaluation Panel will consider the evaluation criteria specified under the table below to perform their evaluations.

Proponent must comply with all in Exhibit K – PROPOSAL SUBMISSION INSTRUCTIONS- WRITTEN CONTENT REQUIRMENTS.

Criteria Category	Overall Weighting %
Experience and Capacity	20%
Approach to Services Fulfillment	15%
Approach to Power Generation Solutions	5%
Pricing	30%
Schedule	30%

10. COMMUNICATIONS

All communications regarding this RFP must be made through the Messaging tab of PowerAdvocate®.

Neither Proponent nor any Proponent team members, nor any of their respective advisors, employees, or representatives may contact or attempt to contact, either directly or indirectly,

at any time during the RFP process, any of the following persons on matters related to this RFP process, the RFP documents, or the Proposals: (a) the 3PPO, or its employees, representatives, or advisors (other than the 3PPO Project Manager); and (b) GENERA, PREPA or P3A employees, representatives, or advisors.

- **Prohibited Communications During the Blackout Period**

The blackout period is a specified period during a competitive procurement process in which any Proponent, bidder, or its agent or representative, is prohibited from communicating with 3PPO, GENERA or P3A employee or GENERA contractor involved in any step of the procurement process about the solicitation. The blackout period applies not only to the P3A, 3PPO or GENERA employees but also to any current contractor of GENERA. "Involvement" in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, and evaluation of proposals for a particular period.

All communications to and from potential Contractors and/or their representatives during the blackout period must be in accordance with the RFP's defined method of communication with the Designated Procurement Representative. The blackout period begins on the date that the 3PPO first publishes this RFP and will end after the dispute period has passed.

In the event a Proponent may also be a current 3PPO or GENERA Contractor, GENERA employees and said Proponent may contact each other with respect to their existing contract and duties only. Under no circumstances may any individual involved in the evaluation or review of proposals, other than the 3PPO's designated Procurement Representatives discuss this RFP, the corresponding procurement process, or its status with potential Proponents.

Proposals must be submitted with no connection to, knowledge of, information comparison, or arrangement with other Proponents, including their directors, officials, employees, consultants, advisers, agents, or representatives.

Any Proponent who violates the blackout period may be excluded from the awarding contract and/or may be liable to the 3PPO or GENERA in damages and/or subject to any other remedy allowed under the law.

All communications must be in the English language.

- **Notice of Intent to Bid**

Proponents must confirm their intent to submit a proposal in response to this RFP by submitting to the PPO a completed version of the form set forth in **Attachment C – (Notice of Intent to Bid)**. The completed form must be submitted through the Messaging tab in PowerAdvocate® on or before the deadline for submission set forth in RFP Timeline Proponent will not be considered after the submission date. Proposals from Proponents who fail to timely submit a Notice of Intent to Bid will be disqualified from evaluation. Please note that any notice to intend to bid not submitted via **Attachment C** will not be considered as such.

- **Proposal Errors, Omissions, and Modifications**

A Proponent may modify or withdraw its Proposal at any time before the due date (closing date in PowerAdvocate®) as established in the RFP Timeline. All modifications must be made in writing and will be submitted in the same manner as the original Proposal per the terms of this RFP. The Proponent must submit its modified Proposal along with a cover letter with the modified RFP and must include Proponent's name, contact information, mailing address, submission date, modification number, and the Project Title. Timely withdrawal of a Proposal does not preclude Proponent's right to submit another Proposal provided the new Proposal is submitted by the due date. Notice of withdrawal may be provided before the due date of RFP proposal submissions, in writing, through the Messaging tab, or by deleting the uploaded Proposal documents from the event before the closing date of the RFP.

3PPO and GENERA reserves the right to waive minor discrepancies in proposals. A "minor discrepancy" is a defect or error which does not materially affect the deadlines or process for submitting proposals, or the price, quality, quantity or delivery schedule of the goods or services being procured. Purchaser will not allow any one Proponent to clarify or submit additional information after the Submission Due Date of this RFP without providing equal opportunity to all Proponents to clarify or submit additional information.

- **Ownership of Proposals**

All materials submitted in response to this RFP must become the property of GENERA. Selection or rejection of a submittal does not affect this provision.

- **Non-Binding Nature and Validity of Proposal**

The procurement process is not intended to create and must not create a formal legally binding bidding process and must instead be governed by the laws applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFP must not give rise to any legal obligations; and (b) neither the Proponent nor the 3PPO and GENERA must have the right to make any breach of contract, tort, or other claims against the other concerning the award of a contract, failure to award a contract or failure to honor a response to the RFP.

The RFP process is intended to identify prospective proponents to negotiate potential agreements. No legal relationship or obligation regarding the procurement of any good or service must be created between the Proponent and the 3PPO or GENERA by the RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

Proponent must submit a proposal that is valid for no less than one hundred and eighty (180) days.

11. RESERVATION OF RIGHTS

The 3PPO and GENERA reserves the right to withdraw or modify this RFP at any time. The decision to select a Proponent for further negotiation and discussion by the 3PPO and/or GENERA is contingent upon GENERA's sole determination, acting in its discretion, that it is in the best interests of GENERA to select such Proponent, in whole or in part, based upon any factors the 3PPO and/or GENERA determines are relevant, which include price and may

include but are not limited to compliance with specifications; ability to carry out the work; quality and adaptability of the materials, goods, equipment, or services offered; financial responsibility; expertise; experience; reputation of business integrity; safety; and the dates for the delivery or performance offered, etc. The 3PPO and/or GENERA will use all reasonable efforts to indicate to a Proponent in writing that it has been selected to enter into negotiations. If 3PPO and/or GENERA and the selected proponent(s) fail to agree on contract terms, the 3PPO and/or GENERA may conduct negotiations with the next most qualified proponent. The 3PPO and/or GENERA will use all reasonable efforts to communicate its award determination in writing to all Proponents that submitted Proposals.

GENERA reserve the right to award the contract to other than the lowest-priced Proposal. The 3PPO and/or GENERA reserves the right, in its discretion, to disqualify any Proposal that does not comply with or meet the requirements set out in the RFP. Additionally, GENERA reserves the right to grant more than one Contract and/or select more than one qualified Proponent, to award all or any of the services required in the RFP.

The 3PPO and GENERA also reserve the right, without limitation to:

- Transfer responsibility for completing the procurement process begun by this RFP from the 3PPO to GENERA if no Covered Party submits a proposal.
- Waive minor discrepancies in a Proposal that do not materially affect the deadlines or process for submitting proposals, or the price, quality, quantity or delivery schedule of the goods or services being procured.
- Reject any proposal that does not meet the mandatory requirements of this RFP as per **Exhibit A- Proposal Mandatory Requirement Checklist**, including but not limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- Cancel this solicitation and reissue the RFP or another version of it if it is considered that doing so is in the public's best interest.
- To reduce, adjust or increase contracted power generation and service without prejudice or liability, if:
 - Funding is not available.
 - Legal restrictions are placed upon the expenditure of monies for this category.
 - GENERA's requirements in good faith change after the award of the contract.
- Issue an award to more than one Proponent based on ratings.
- To require additional information from all Proponents to determine responsibility levels.
- To contact any individuals, entities, or organizations that have had a business relationship with the Proponent.
- To contract with one or more qualified Proponents as a result of the selection of qualified Proponents or the cancellation of this RFP.
- This RFP process does not constitute a commitment by the 3PPO nor GENERA to award

the RFP and execute a contract.

12. PROPOSAL CLARIFICATION REQUESTS

The 3PPO and GENERA reserves the right, at any time, whether prior to or after the preparation of the list of short-listed Proponents (if applicable), to request that any one or more Proponents clarify their Proposal in accordance with these RFP instructions. Without limiting the generality of the foregoing, the 3PPO or GENERA may request clarification where any one or more Proponent's intent is unclear (including where there is an irregularity or omission in the information or documents provided by Proponents in their Proposals). The 3PPO or GENERA may, at its discretion, choose to meet with one, some, or all Proponents to clarify any aspects of their Proposals. The 3PPO or GENERA may require Proponents to submit supplementary documents clarifying any matters contained in their Proposals, or the 3PPO or GENERA may prepare a written interpretation of any aspect of a Proposal (including meeting minutes) and seek the respective Proponent's acknowledgment of that interpretation.

13. RIGHT TO REJECT PROPOSAL

If a Covered Party is identified as a proponent, the 3PPO will retain responsibility for overseeing the procurement process to prevent the risk of unfair competition. If no such conflict is identified, the 3PPO may transfer the procurement process to GENERA, and GENERA may assume responsibility for managing and administering the procurement process, to include evaluation, contract award and post-award contract administration.

The entity with responsibility for overseeing the procurement process reserves the right, at its discretion, to reject and not review any Proposal which does not comply with or meet the requirements set out in the RFP.

The entity with responsibility for overseeing the procurement process will evaluate proposals consistent with the criteria and procedures established in this RFP and reserves the following rights, at its discretion to:

- reject or select a Proponent for negotiations or submission of a BAFO.
- request clarifications or enter into discussions or negotiations in respect of the services with one or more Proponents or their respective partners, consortium members, or joint venturers.
- enter into one or more agreements for the supply or performance of all or any part of the services with one or more Proponents or their respective partners, consortium members, or joint venturers, , for the purpose of obtaining the best agreement possible for all or any part of the services that The entity with responsibility for overseeing the procurement process, in its discretion, deems to be in PREPA's best interests;
- discuss the terms of a Proposal submitted by a Proponent for the purposes of clarification and negotiation, consistent with the terms and conditions of this RFP and any amendments thereto.
- cancel all or any portion of this Proposal process at any time, without prior notice to Proponent, and procure the services, or any portion of the services, by some other means;

and

- enter into a contract (including a contract that is substantially the same as the contract model) in respect of the services, or a portion or portions thereof, with any other third parties.

14. SELECTION OF PROPONENTS FOR NEGOTIATIONS

12.1 Selection Process for Negotiations:

14.1.1. The entity with responsibility for overseeing the procurement process 3PPO or GENERA will, acting at its discretion and following the submission deadline, select one or more Proponents to enter negotiations with the 3PPO or GENERA. The entity with responsibility for overseeing the procurement process 3PPO or GENERA will use all reasonable efforts to indicate to a Proponent in writing that it has been selected to enter into negotiations.

14.1.2. At the discretion of the entity with responsibility for overseeing the procurement process, the selection process may occur in multiple stages, and Proponents not initially selected may be invited to enter negotiations with the entity with responsibility for overseeing the procurement process following the commencement of negotiations with other Proponents.

14.1.3. The entity with responsibility for overseeing the procurement process may elect to award no contracts in response to this RFP, to award a single contract, or award multiple contracts for the same or similar supplies or services under this solicitation.

14.2. Negotiation of a Final Agreement

14.2.1. The entity with responsibility for overseeing the procurement process will enter into negotiations with one or more selected Proponents. In the event negotiations commence with more than one selected Proponent, such negotiations will be concurrent. The 3PPO or GENERA will provide each of the selected Proponents with any additional information and may seek further information and Proposal improvements from each of the selected Proponents.

14.2.2. Following the negotiations, each of the selected Proponents may be invited to revise its initial Proposal and submit its best and final offer ("BAFO") to the entity with responsibility for overseeing the procurement process.

14.2.3. The BAFO of each of the selected Proponents will be evaluated against the same criteria as the initial Proposals submitted by the selected Proponents. The top-ranked Proponent may then be selected to enter into a final round of non-binding discussions and negotiations to determine the possibility of GENERA and such Proponent entering into a final written agreement for the provision of all, or part of, the services. Any such final agreement will be based on the contract model **Attachment F- Purchase Agreement**. The terms of the contract model may be materially altered as a result of the above discussions,

negotiations, changes, amendments, or modifications with the successful Proponent.

14.2.4. The entity with responsibility for overseeing the procurement process reserves the right, at its discretion, to identify one or more successful Proponents who will enter into a final round of non-binding discussions and negotiations to determine the possibility of GENERA and such Proponent entering into a final written agreement for the provision of all, or part of, the services as a result of those negotiations.

14.2.5. GENERA, the 3PPO and P3A will incur no liabilities to any Proponent as a result of, or arising from, a failure to enter into a final written agreement in relation to the services.

14.2.6. The entity with responsibility for overseeing the procurement process reserves the right, in its discretion, to choose not to engage in the BAFO process and to proceed to enter into direct negotiations with the top Proponent.

14.3. Non-Selection of a Proponent

The entity with responsibility for overseeing the procurement process will use reasonable efforts to notify an unsuccessful Proponent if it has yet to be initially selected for negotiations. If Proponent is unsuccessful, it agrees that by submitting a Proposal, it will not have a claim for, and hereby irrevocably, absolutely and finally releases GENERA, P3A, and the 3PPO from any breach of procedural fairness, including where the terms of any final agreement differ from those in the contract model (whether materially or otherwise) that will be included in the RFP.

14.4. GENERA's Discretion to Select Proponents

The decision to select a Proponent for further negotiation and discussion is contingent upon the determination, acting in its discretion, by the entity with responsibility for overseeing the procurement process that it is in the best interests of PREPA to select such Proponent, in whole or in part, based upon the evaluation criteria in this RFP.

15. CONFIDENTIALITY OF RESPONSES & PROPRIETARY INFORMATION

Any contract(s) resulting from this RFP will be entered into between the Proponent(s) and GENERA as agent for PREPA – an instrumentality of the Commonwealth of Puerto Rico. As such, they are public contracts. Further, the costs incurred under any contract(s) resulting from this RFP are expected to be submitted to the Federal Government for reimbursement. Accordingly, upon completion of the RFP process, all documents regarding the procurement and selection process may be released publicly or to Commonwealth or Federal grant awarding agencies.

To facilitate compliance with information laws and federal oversight requirements, if a Proponent submits trade secrets or other confidential commercial information in its Proposal, Proponent must also submit a redacted copy of their Proposal. The redacted copy must include a written explanation of why any redacted information is confidential or proprietary, including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such

information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by GENERA.

GENERA 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, GENERA will assume that the original copy of the Proposal can be made public. Proposals containing substantial content marked as confidential or proprietary may be rejected. Provision of any information marked as confidential or proprietary must not prevent GENERA from disclosing such information if required by law or the requirements of any Federal grant agreement applicable. **The executed contract(s), if any, and all prices set forth therein must not be considered confidential or proprietary, and such information may be made publicly available.**

- i. Proposals submitted in response to this RFP may contain proprietary information, and employees must maintain the confidentiality of such information, sharing it only on a need-to-know basis.
- ii. Employees with information about the weighting of evaluation criteria, the evaluation of Proponent proposals, and the selection of Proponents must maintain that information in confidence. That information may not be shared with anyone outside of the 3PPO or P3A, or if no Covered Party responds to the RFP and responsibility transfers to GENERA. That information may not be shared with other employees who do not have a bona fide need to know. Nothing in this RFP, including this section regarding confidentiality, is intended to restrict cooperation with audits or internal reviews by the Puerto Rico Comptroller's Office, P3A, or in the case of federal grants, the federal awarding agency, the Puerto Rico entity serving as a pass-through entity, or the Comptroller General of the United States.

16. CONFLICT(S) OF INTEREST

To avoid or mitigate the risk of a real or apparent Organizational Conflict of Interest, the 3PPO has issued this RFP. If a Covered Party is identified as a proponent, the 3PPO will retain responsibility for overseeing the procurement process to prevent the risk of unfair competition. If no such conflict is identified, the 3PPO may transfer the procurement process to GENERA, and GENERA may assume responsibility for managing and administering the procurement process, to include evaluation, contract award and post-award contract administration.

The selected Proponents, upon receiving a contract through this RFP, will be prohibited from representing any other Proponent before GENERA, except for those specifically assigned under the terms of this contract while it is in effect.

An apparent conflict of interest is an existing situation or relationship that would cause a reasonable person to think that a Covered Party's judgment is likely to be compromised because the Covered Party, their agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or would derive a tangible benefit from a decision or action to be taken by GENERA or PREPA, including but not limited to contract awards. A Covered Party is a parent company, affiliate, or subsidiary organization of PREPA or GENERA.

Proponent certifies that:

- none of its representatives are employed by and receive payment or compensation for such employment from any governmental agency, body, public corporation, or municipality of Puerto Rico.
- no Puerto Rico government employee has any personal or economic interest in this Proposal.
- it may have service contracts with other governmental agencies, bodies, public corporations, or municipalities of Puerto Rico, but such contracts do not constitute a conflict of interest for Proponent; and
- to the best of its knowledge, at the time of this RFP publishing date, it does not have any other contractual relationship that could be deemed to constitute a conflict of interest with GENERA or with public policy.

Proponents acknowledge that it has a duty of ethical behavior towards PREPA. Such duty includes that Proponent must not have interests that conflict with PREPA's interest in this Proposal or the services performed pursuant to this Proposal. Those conflicting interests include:

- the representation of clients who have, or may have, interests opposed to those of PREPA in relation to the services (if applicable, based on the type of services to be performed by the Proponent).
- when Proponent's conduct is described as such in the canons of ethics that may be applicable to the Proponent and its personnel or in the laws or regulations applicable to the Proponent and its personnel assigned to the services; or
- when the Proponent, persons that control the Proponent, or Proponent's employees, directors, or officers directly or indirectly, for themselves or any other third party, obtain, request or give to the 3PPO or GENERA or an employee, officer, director or agent of the 3PPO or GENERA, any profit, utility, advantage or gain by way of improper acts or exercise of undue influence.

Proponents agree to avoid even the appearance of a conflict of interest. The mere appearance of a conflict of interest must constitute sufficient cause for the rejection of a Proposal(s). GENERA will cancel any contract executed pursuant to this RFP in the event of a conflict of interest or if the appearance of a conflict of interest is not cured immediately to GENERA's satisfaction.

The Proponent must have the continuous obligation to disclose to the 3PPO and GENERA if any relationship with third parties could represent a conflict of interest with GENERA in connection with this RFP or the services.

Organizational Conflict of Interest

Proponents, including Covered Affiliates, as defined in this RFP, are responsible for disclosing any actual or apparent Organizational Conflict of Interest ("OCI") at the earliest reasonable time before, during, and after the procurement process. In addition, contractors must notify the 3PPO and GENERA promptly if an actual or apparent OCI arises, including an interest in subcontracting with any Covered Affiliate. Not complying with any of the requirements could

result in penalties that may include disqualification, cancellation of an award, or termination of the contract.

GENERA prepared an OCI Avoidance and Mitigation Plan (“OCIAMP” or “Plan”) included on their Procurement Manual on APPENDIX D Genera OCI Mitigation Plan adopting best practices in order to identify, avoid, mitigate, report, neutralize and manage an actual or apparent OCI ensuring a fair and transparent procurement process to any proponent that may compete for a contract entered into with GENERA as PREPA’s agent. The objective of GENERA’s OCIAMP is to ensure that there is no preferential treatment for any Covered Affiliate, that contracts are awarded and administered using arms-length procedures as appropriate, and that the goods and services purchased from a Covered Affiliate provide the best value to PREPA at fair and reasonable prices.

17. NO LOBBYING, NO COLLUSION, & NO PROHIBITED ACTS

Neither the Proponent nor any member of their team, including their respective directors, officers, employees, consultants, agents, advisers, or representatives (as it relates to the project or RFP), is allowed to participate in any way or in any type of political or other lobbying; nor can they communicate in any way with any representative of the Evaluation Committee or any 3PPO or GENERA employee, including any Restricted Party such as any director, officer, employee, agent, advisor, staff member, consultant, or representative of any of the aforementioned parties, as applicable, for any purposes, including, but not limited to:

- to comment or try to influence the opinion on the merits of a Proposal or in relation to the Proposal of another Proponent.
- to influence, or to try to influence, the result of the RFP phase or the competitive selection process, including the review, evaluation, and classification of the Proposals, the selection of the selected Proponent, or any negotiation with the selected Proponent.
- to promote their interests or those of the Proponent in the project, including the interests of another Proponent.
- to criticize or comment on aspects of the RFP, the competitive selection process, or the project, in any way that can give a competitive advantage or any other advantage to the Proponent over other Proponent; and,
- to criticize the Proposal of another Proponent.

The Proponent or members of its team must not discuss or communicate, directly or indirectly, with any other Proponent, or any director, officer, employee, consultant, adviser, agent, or representative of any other Proponent, including any member of the team of any other Proponent, regarding the preparation, content, or representation of their Proposals. Proposals will be submitted without any connection (for example, arising from an interest in or from a Proponent or member of a Proponent’s team), knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent, or representative of any other Proponent, including any member of the team of any other Proponent. To ensure this, all potential Proponents must sign and accept a Confidentiality Agreement prior to having access to any of the documents that have been selected to be protected through the Confidentiality Agreement. The violation of the

agreements and instructions included in this section will be enough cause for the rejection of the Proponent's participation in this RFP. The 3PPO and GENERA also reserve the right to separate and eliminate definitively the Proponent from GENERA's Registry of Suppliers; this, in addition to the legal and financial sanctions which may be imposed as a result of one or several of the violations previously mentioned.

18. HEALTH, SAFETY & ENVIRONMENTAL REGULATIONS

Proponent must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 USC 7401, and the Federal Water Pollution Control Act, 33 USC 1251, and other appropriate requirements of Environmental Protection Agency Regional Office. Also, the contractor must comply with the Safety and Health Regulations 29 CFR 1926 and 29 CFR 1910, and other appropriate requirements of the Occupational Safety and Health Regional Office (PROSHA) and Federal Office (OSHA). Refer to **Attachment J - Health, Safety, Environmental and Historical Requirements**

19. SUSPENSION, DEBARMENT, & INELIGIBILITY

Federal regulations restrict GENERA from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Proponents must submit a certification of Suspension or Debarment Status to this RFP by submitting to the 3PPO or GENERA a completed version of the form set forth in **Exhibit D – (Certifications Affidavit.)**

Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Proponents can verify their status and the status of their principals, affiliates, and subcontractors at www.SAM.gov. A copy of their current status should be submitted with their Proposal.

20. RIGHT TO REQUEST REVIEW

If a Covered Party is identified as a proponent, the 3PPO will retain responsibility for overseeing the procurement process to prevent the risk of unfair competition. If no such conflict is identified, the 3PPO may transfer the procurement process to GENERA, and GENERA may assume responsibility for managing and administering the procurement process, to include evaluation, contract award and post-award contract administration.

Disputes prior to Contract Award

- i. Disputes regarding restrictive specifications or alleged improprieties in the competitive process must be submitted in writing five (5) business days prior to the closing date for receipt of Proposals. If the written dispute is not received by the time specified, the award may be made in the normal manner unless the 3PPO or GENERA, upon investigation at its discretion, finds that remedial action is required, in which event such action should be taken. Oral protests not followed by a written dispute will be disregarded.

- ii. The 3PPO shall consider the request for reconsideration within thirty (30) business days from filing, unless the 3PPO notifies the disputing party that additional time is needed to prepare a final decision.
- iii. All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:
 - 1. The title and number of the solicitation under which the request reconsideration is made;
 - 2. Full name, electronic address and phone number of the disputing party, including contact information for a representative of the disputing party with whom the 3PPO/ GENERA may correspond regarding the dispute;
 - 3. A detailed description of the specific grounds for the request and all supporting documentation; and,
 - 4. The specific ruling or relief requested.
- iv. All requests for reconsideration shall be submitted electronically to:

3PPO Legal Department at: procurement@recomspr.net
- v. Notice of a dispute and the basis therefore, will be given to all Proponents who have a reasonable prospect of receiving an award. In addition, when a dispute against the making of an award is received, and the 3PPO or GENERA determines to withhold the award pending disposition of the dispute, the Proponents who are eligible for the award may be requested (prior to the expiration of the time for acceptance of their Proposals) to extend the time for acceptance (with the consent of sureties, if any) to avoid the need for re-advertising. The 3PPO or GENERA will provide a written response to each material issue raised in the written dispute.
- vi. Where a written dispute against the making of an award is received in the time specified, the award will be held until the resolution of the dispute. However, the 3PPO and GENERA reserve the right to proceed with appropriate action in the procurement process when:
 - The subject goods or services are urgently required;
 - The 3PPO or GENERA determines the dispute was vexatious or frivolous; or
 - Where the performance of the work will be unduly delayed, or other undue harm will occur by failure to make a prompt award.

When the award is made pursuant to Section 3 of the GENERA Consolidated Procurement Manual, the 3PPO or GENERA will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the disputing party and, as appropriate, to others concerned.

Disputes after Contract Award

- i. Any Proponent adversely affected by a contract award may submit a written request for reconsideration to the 3PPO no later than five (5) business days from the Notice of Award Date. Any dispute received after the applicable deadline will not be considered.
- ii. The mere submission of a request for reconsideration will not paralyze the adjudication of the contested contract award.
- iii. The 3PPO, shall consider the request for reconsideration within thirty (30) business days from filing, unless the 3PPO notifies the disputing party that additional time is needed to prepare a final decision.
- iv. All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:
 - 1. The title and number of the solicitation under which the request reconsideration is made;
 - 2. Full name, electronic address and phone number of the disputing party, including contact information for a representative of the disputing party with whom the 3PPO may correspond regarding the dispute;
 - 3. A detailed description of the specific grounds for the request and all supporting documentation; and,
 - 4. The specific ruling or relief requested.
- v. All requests for reconsideration shall be submitted electronically to:

3PPO Legal Department at: procurement@recomspr.net

EXHIBIT 2



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1 de julio de 2025

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NOTICIA

Gobierno contrata a Power Expectations y espera contar con los 800 megavatios de energía temporal en agosto o septiembre

El precio fijo, de menos de 25 centavos el kilovatio, no puede variar, de acuerdo a lo que dispondrá el acuerdo, según Josué Colón

9 de junio de 2025 - 7:28 PM

COMPARTIR



Se adhiere a los criterios de The Trust Project



El zar de energía, Josué Colón, dijo que ahora corresponde que la Junta de Gobierno de la Autoridad de Energía Eléctrica evalúe la propuesta de la empresa. (Ramon "Tonito" Zayas)



Por Gloria Ruiz Kuilan

Periodista investigadora
gloria.ruiz@gfrmedia.com

Pese a que previamente había manifestado su interés en contratar a las dos compañías proponentes, el zar de Energía, **Josué Colón**, afirmó este lunes que solo se seleccionó a la empresa **Power Expectations LLC** para la generación de 800 megavatios (MW) temporales de electricidad y así reforzar la producción ante la elevada demanda de los meses de verano.

RELACIONADAS

NOTICIAS

+ ¿Quiénes son las empresas que proveerían generación temporal al sistema eléctrico este verano? Este es su perfil

Por Manuel Guillama Capella

Aclaró que, aunque inicialmente se consideró contratar también a Javelin Global Commodities, se desistió de formalizar el acuerdo porque no cumplió con el requerimiento del gobierno de mantener el

NOTICIAS

+ ¿Conviene adquirir generación temporal para reforzar la red eléctrica este verano? Múltiples factores juegan en contra

Por Manuel Guillama Capella

NOTICIAS

Gobierno podría contratar más de un proponente para añadir generación temporal

Por Gloria Ruiz Kuilan

costo por kilovatio hora por debajo de 25 centavos.

“Javelin cumplió con todo lo demás. Esa es la información que tengo, pero no con el de costo. **Parece que estaban por encima, por allá, 30, 35 centavos, y no en lo que era la expectativa de costo del RFP (requerimiento de propuestas, en**

inglés)”, explicó Colón, en entrevista telefónica con El Nuevo Día.

“Pero ese RFP, la razón por la que es multianual es porque nosotros necesitamos, cuando dis...

por debajo de los 25 centavos, como licitador, pues simplemente quedó fuera”, argumentó.



Jennifer González sobre cancelación de contrato a LUMA Energy: "Estamos viendo todas las opciones de generación"

Sin nombrar potenciales proveedores del servicio de energía eléctrica, la primera mandataria aseguró que el gobierno estudia varias opciones para sustituir a la compañía actual.

Precisó que Power Expectations suplirá 600 MW para la central Aguirre y 200 MW para Costa Sur.

Tras la selección de la empresa, ahora corresponde que la Junta de Gobierno de la **Autoridad de Energía Eléctrica** evalúe la propuesta de Power Expectations y, luego, tanto el **Negociado de Energía** como la **Junta de Supervisión Fiscal** hagan lo propio.

“Esperamos, y así se lo hemos dicho, que cuando se remitan los documentos para la evaluación y aprobación de ellos, que se van a someter simultáneamente, que no se tarden más de una semana, semana y pico. **No es un proceso para que estén allí dos meses y que se les pierda entre los papeles que tienen. O sea, es un asunto de extrema importancia**, así que esa es la expectativa que tenemos”, indicó el zar de Energía.

Loading
.....

Por lo tanto, aún no se ha firmado el contrato, cuyo costo no se puede anticipar porque se le pagará por “energía entregada”.

Colón espera que, para principios de agosto o septiembre, estén en operaciones las unidades temporales de Power Expectations. Preciso que será un contrato de dos años y, al finalizar, puede extenderse un año adicional.

PUBLICIDAD

En cuanto al proceso, dijo que regasificar Costa Sur es más fácil, puesto que funciona con gas.

“En el caso de Aguirre, lo que ellos han dicho es que su logística va a ser la misma que está usando Palo Seco. Se va a hacer con camión. ¿Cuál es el proveedor?, pues yo no tengo el dato. En algún momento lo sabremos”, sostuvo.



Gobernadora reafirma cancelación de contrato a Luma Energy, "pero no tenemos cómo sustituir 400 megavatios de energía de hoy para mañana"

La mandataria explicó el curso que sigue su principal promesa de campaña.

El costo fijo de 24 centavos, ¿es independiente del proveedor que se use o eso puede variar?, cuestionó este medio.

“No. De la manera que está contratado es el costo de la energía que se va a entregar”, respondió el ingeniero, recalcando que se fijaría en el contrato que el monto no puede variar.

Agregó que la expectativa es que esta generación temporal abone a la cantidad de reserva energética para evitar apagones y suplir la demanda en el verano, cuando el consumo de luz aumenta a niveles pico.



Sin fecha de caducidad para el contrato de LUMA Energy, pero gobernadora asegura que "eso va a ocurrir"

"El sistema está tan frágil que dos ramitas tocan y se cae todo el sistema, lo hemos visto", sostuvo Jeniffer González.

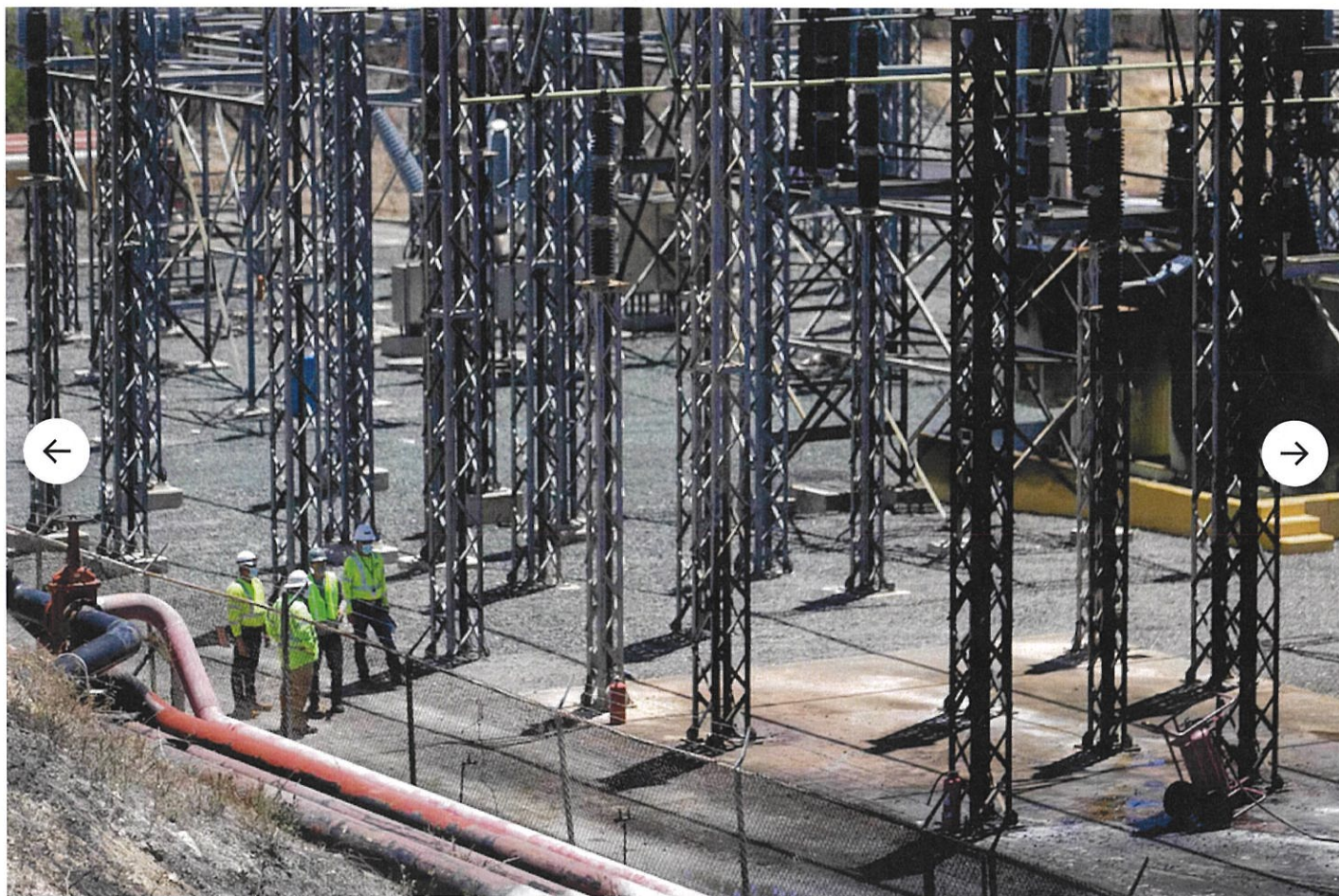
Actualmente, dijo Colón, "hay entre 3,200 a 3,300 megavatios de capacidad disponible". En julio, deben entrar entre 500 a 600 megavatios adicionales al integrar la Unidad 2 de Aguirre y la Unidad 4 de Palo Seco, agregó Colón.

"Si le añadimos los 600 megavatios, estos adicionales, pues subirá la capacidad a 3,700, 3,800 megavatios. Los 800 megavatios (de energía temporera), esa es la capacidad adicional que vamos a tener, que nos va a permitir poder seguir con los mantenimientos, además de tener una reserva adecuada. Eso no significa que es imposible que haya alguna interrupción de servicio por alguna falla. Es que va a ser menos probable", explicó.

PUBLICIDAD

Una vez concluya el contrato, existe la posibilidad de que las unidades de generación queden en manos del gobierno.

“Luego de que se cumpla el término del contrato, esas unidades que pudieran pasar por un dólar, si no me equivoco, al gobierno de Puerto Rico”, sostuvo el ingeniero.



1 / 16 | Así quedó la zona de interruptores en la central Costa Sur tras el incendio que provocó el apagón general . Las imágenes muestran el estado en el que quedó la zona de interruptores de la central Costa Sur tras el incendio que provocó el apagón general cerca de las 8:30 p.m. del 6 de abril de 2022. - *Jorge A. Ramírez Portela*

TAGS

JENNIFFER GONZÁLEZ # JOSUÉ COLÓN # GENERACIÓN DE ENERGÍA # ENERGÍA ELÉCTRICA
ENERGÍA PUERTO RICO

ACERCA DEL AUTOR

**GLORIA RUIZ KUILAN** →gloria.ruiz@gfrmedia.com

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El diario de hoy
martes, 1 de julio de 2025



PUBLICIDAD

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VER MÁS ->

GOBIERNO

“Sabemos que hay personas interesadas”: encaminan salida de Physician Correctional con búsqueda de sustitutos

Actualizado hace 21 minutos



GOBIERNO**Jennifer González declara estado de emergencia ante exceso de sargazo en la región****Actualizado hace 23 minutos****ESTADOS UNIDOS****Jueza federal asegura que despidos en agencia de salud de Estados Unidos pudieron haber sido ilegales y deben detenerse****Actualizado hace 27 minutos****ESTADOS UNIDOS****Jurado recesa luego de llegar a un veredicto sobre cuatro de cinco cargos en el juicio de Sean "Diddy" Combs****Actualizado hace 33 minutos****SEGURIDAD****Reabren carriles cerrados en la PR-52 tras incendiarse un camión****Actualizado hace 37 minutos**DISPONIBLE EN
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EXHIBIT 3

Confidential treatment requested



6/13/25

Subject: Notification of Award – Temporary Emergency Generation RFP

To all Proponents:

We extend our appreciation to all participants in the competitive procurement process for the Temporary Emergency Generation Request for Proposals (RFP 3PPO-0314-20-TPG). A total of seven (7) proposals were received from the following entities:

- Power Expectations, LLC
- Javelin Infrastructure Partners
- Gotham Power (*not recommended*)
- E2 Companies LLC (*disqualified*)
- New Fortress Energy, LLC (*disqualified*)
- Distributed Power Solutions (*disqualified*)
- Gothams LLC (*disqualified*)
- Impulsadora de Proyectos Energéticos (*disqualified*)

Please note that although the original Notice to Recommended Proponents indicated that the formal Award Letter would be issued only upon execution of the contract—at which point the reconsideration period would commence—this notification is now being issued prior to contract signature.

Following a thorough evaluation process, including compliance review, technical and financial assessment, and subsequent negotiations with the two recommended proponents, the Puerto Rico Public-Private Partnerships Office (3PPO), on behalf of PREPA, has concluded the award process.

This adjustment has been made to ensure alignment with procedural needs and to facilitate the timely advancement of the procurement process. Accordingly, the reconsideration period will run from the date of this notification.

As stated in Section 22 of the RFP, any proponent adversely affected by a decision made under the selection process in connection with the award procedures provided in the RFP may submit a request for reconsideration following the instructions outlined in the aforementioned section. The protest shall be submitted within five (5) calendar days from the date of this notification. Any dispute received after this deadline will not be considered.

We appreciate your understanding and remain available to address any questions regarding this process.

Sincerely,

3PPO

EXHIBIT 4

Confidential treatment requested



6/16/25

To all Proponents:

We extend our appreciation to all participants in the competitive procurement process for the Temporary Emergency Generation Request for Proposals (RFP 3PPO-0314-20-TPG). A total of seven (7) proposals were received from the following entities named in alphabetical order:

1. Distributed Power Solutions
2. E2 Companies LLC
3. Gotham Power
4. Impulsadora de Proyectos Energéticos
5. Javelin Infrastructure Partners
6. New Fortress Energy, LLC
7. Power Expectations, LLC

Please note that although the original Notice to Recommended Proponents indicated that the formal Award Letter would be issued only upon execution of the contract—at which point the reconsideration period would commence—this notification is now being issued prior to contract signature, in response to PREPA's request to facilitate submission to the Board of Directors.

Following the evaluation process—including a review of mandatory compliance requirements, technical and financial criteria, and subsequent negotiations—the Third-Party Procurement Office (3PPO), on behalf of PREPA, has completed the award determination.

Accordingly, the award for RFP 3PPO-0314-20-TPG is granted exclusively to Power Expectations, LLC for the provision of up to 800 MW of temporary emergency generation capacity.

As outlined in Section 22 of the RFP, and in order to ensure continued progress in the procurement process, any proponent adversely affected by a decision made during the

selection process may submit a request for reconsideration in accordance with the instructions provided in that section. The reconsideration period begins on the date of this notification. All requests must be submitted within five (5) calendar days from the date of this notification. Late submissions will not be considered.

We appreciate your participation and remain available to address any questions regarding this process.

Sincerely,

3PPO

EXHIBIT 5

Confidential treatment requested



STRICTLY PRIVATE & CONFIDENTIAL

VIA Power Advocate Submission

June 16, 2025

To: Third-Party Procurement Office ("3PPO"), as a representative of the Puerto Rico Electric Power Authority ("PREPA").

Re: 3PPO-0314-20-TPG – Emergency Temporary Power Generation – Request for Administrative File

Dear 3PPO,

On June 16, 2025, the Third-Party Procurement Office ("3PPO") issued a notification of award regarding RFP 20-TPG – *Emergency Temporary Power Generation*, awarding the contract to Power Expectations, LLC (the "Award Notification"). The Award Notification states that any party adversely affected by the adjudication may file a Motion for Reconsideration within five (5) days.

Please be advised that Javelin Global Commodities intends to exercise its right to seek reconsideration within the applicable term set forth in the Award Notification. In furtherance of that right, and to ensure adequate review of the administrative process, we hereby respectfully request access to the complete administrative record, including but not limited to:

1. The proposal submitted by Power Expectations LLC;
2. The evaluation score sheets and criteria used by the evaluation committee;
3. Minutes of meetings or deliberations held by the committee or any procurement body;
4. Technical or legal reports prepared in connection with the evaluation; and,
5. Any documents or communications that formed the basis of or supported the award determination.

This request is made pursuant to Article 409 of the Puerto Rico Code of Civil Procedure, 32 L.P.R.A. § 1781, which guarantees the public's right to inspect and obtain copies of public documents. The Puerto Rico Supreme Court has emphasized that this right is of particular importance in public procurement processes, where transparency is essential to ensure legality, the proper administration of public funds, and public confidence in government institutions. *Trans Ad de P.R. v. Junta de Subastas*, 174 D.P.R. 56, 67 (2008).

Additional factors further reinforce the public nature of the requested documentation. Section 3 of the RFP explicitly mandates that the resulting contract must be interpreted in accordance with the laws of the Commonwealth of Puerto Rico and the United States, and must conform to all



applicable provisions of 2 C.F.R. Part 200 and related federal guidelines governing the use of public funds. Likewise, Section 6 of the RFP states that funding for the contract will primarily derive from the Puerto Rico Electric Power Authority (PREPA)'s self-generated revenues as a public corporation, and may be supplemented by current or future federal emergency funds designated for energy infrastructure resilience and recovery. The disbursement of such funds is expressly subject to applicable local and federal laws, regulations, and the conditions set forth in the RFP.

These provisions underscore that the procurement process is governed by public norms and involves the use of public resources, which reinforces the public's and interested parties' right to access and review the underlying administrative record.

Given the short deadline to seek reconsideration of the Award Notification, we respectfully request that the full administrative file be provided no later than the close of business on Tuesday, June 17, 2025. We also request that the documents be transmitted electronically (e.g., via email or secure file transfer) in order to expedite delivery.

Timely delivery of the requested documents is essential to preserving our right to seek reconsideration within the applicable legal terms.

Cordially,

JAVELIN GLOBAL COMMODITIES
US HOLDINGS INC.,
a Delaware Corporation

By: 
Name: Jonathan Sacks
Title: Authorized Person

EXHIBIT 6

Confidential treatment requested



18 June, 2025

To:

Third-Party Procurement Office, as an agent of the Puerto Rico Electric Power Authority
Puerto Rico Public-Private Partnerships Authority
3PPO Legal Department at: procurement@recomspr.net
San Juan, Puerto Rico
Attn: Executive Director

RE: FORMAL CHALLENGE AND REQUEST FOR RECONSIDERATION OF RFP 3PPO-0314-20-TPG AWARD NOTIFICATION

I. Introduction

This Formal Challenge and Request for Reconsideration seeks reconsideration of the award of RFP 3PPO-0314-20-TPG (“RFP”), issued by the Third-Party Procurement Office (3PPO) on behalf of the Puerto Rico Electric Power Authority (“PREPA”) and its agent GENERA. The procurement aimed to secure up to 800 MW of temporary emergency generation capacity to address a critical shortfall in the electric grid ahead of the 2025 summer peak demand.

Despite having submitted a fully compliant, technically sound, financially funded and operationally feasible proposal, Javelin Global Commodities (“Javelin”) was unjustly excluded from the award process under circumstances that raise significant concerns regarding the legality, transparency, and integrity of the proceedings. The final award in favor of Power Expectations LLC (“Power Expectations”) was made without clear justification and followed premature public disclosures that violated express confidentiality rules and deviated from the evaluation framework set forth in the RFP documents.

This submission details: (i) the relevant facts and chronological development of the procurement process; (ii) the legal and technical grounds demonstrating Power Expectations’ failure to meet essential requirements; (iii) procedural deficiencies and material deviations that undermine the validity of the evaluation and award; and (iv) Javelin’s specific requests for relief, including immediate suspension of the award, full disclosure of the administrative record, annulment of the award, and contract award of the Costa Sur Project to the sole fully compliant and qualified proponent, Javelin¹.

Given the urgency presented by the energy crisis and the public interest in ensuring transparent, fair, and technically responsible public procurement processes, Javelin respectfully urges the 3PPO, the Puerto Rico Electric Power Authority and the Public-Private Partnerships Authority (P3A) to act promptly to remedy the identified irregularities and restore confidence in the process. Javelin reserves all rights to pursue any and all legal remedies available under applicable Puerto Rico laws and regulations.

Javelin has not yet received a copy of the administrative record, which is essential to fully assess and address the deficiencies that affected the outcome of the procurement process. Without access to this record, Javelin has been deprived of a meaningful opportunity to exercise its right to seek reconsideration under applicable laws and procedures. Javelin therefore reiterates its request for immediate disclosure of the administrative record and reserves all rights to pursue any and all legal remedies available under Puerto Rico law.

¹ This submission is based on the limited information currently available. We have requested access to the full RFP record but have not yet received a response. Consequently, Javelin reserves the right to supplement or revise our arguments once we obtain and review the requested information.

II. Relevant Facts

A. Background and Purpose of the RFP

On March 25, 2025, 3PPO, an independent procurement office created by P3A to handle complex or sensitive purchases— especially in the energy sector—for public agencies, issued the RFP.

According to the RFP, the procurement process for up to 800 MW of temporary emergency generation was launched by the 3PPO on behalf of PREPA and its agent, Genera, in response to ongoing grid instability caused by repeated natural disasters and the current generation shortfall. The RFP outlines the urgency of restoring reliable electric service before the 2025 summer peak demand season, given that several base generation units remain offline and total available capacity is insufficient to meet projected needs. It further acknowledges that temporary generation units previously deployed as part of federal disaster recovery efforts are authorized for use through December 2027.

B. Compliance with Federal and State Laws and Regulations

The RFP establishes that any work or contract awarded must be fully compliant with applicable federal and Puerto Rico regulations to qualify for federal funding and reimbursement. This includes adherence to FEMA Public Assistance requirements, HUD CDBG-DR standards, and other federal programs, as well as compliance with OSHA safety regulations, EPA environmental standards, and the Jones Act. Moreover, the RFP mandates that the contract be interpreted in accordance with Puerto Rico and U.S. federal law and conform to all applicable provisions in 2 C.F.R. Part 200 and related federal guidelines governing the use of public funds. *See* Section 3.

C. Proposal Requirements and Evaluation Criteria

Section 4 of RFP sets forth the purpose and minimum requirements that all proposals were required to meet to be considered eligible. According to this section, the RFP seeks to identify one or more qualified proponents capable of delivering up to 800 MW of turnkey emergency generation capacity, through a temporary interconnection to the grid. The proposed solution must be resilient to hurricanes and other extreme weather events, and each proposal must include a demonstration of expected downtime, if any, in such events.

Section 4 requires that all proposals include: (i) a clear interconnection plan tailored to existing grid capabilities, including a detailed list of equipment and associated costs; (ii) a pricing proposal based on a per-kWh rate, with separate itemizations of mobilization, demobilization, and interconnection costs (Exhibit E – Price Proposal); (iii) a complete schedule of work, ensuring commercial operation no later than June 1, 2025; (iv) documentation of weather resilience and feasibility of the proposed location, including environmental considerations and proximity to existing infrastructure; (v) a main step-up transformer and necessary protection systems to safeguard generation equipment and grid integrity; and (vi) fuel supply and cost structuring consistent with the turnkey pricing model. These technical and commercial elements are mandatory and were expressly required to ensure compliance with the RFP's objective of securing emergency power generation capacity prior to the 2025 hurricane season.

Pursuant to Section 5 of the RFP, all proposals were required to include a detailed mobilization and power generation supply schedule. This schedule had to outline all necessary activities to ensure full operational readiness no later than June 1, 2025. Required components include logistics planning, equipment transportation and delivery, on-site installation, testing, and commissioning.

Section 6 of the RFP establishes that funding for the resulting contract will primarily come from PREPA's self-generated revenues as a public corporation. This funding may be supplemented by available or future federal emergency funds designated for energy infrastructure resilience and recovery.

The disbursement of funds is subject to applicable local and federal laws, regulations, and the conditions set forth in the RFP.

As outlined in Section 7, all proposals must be submitted exclusively through the PowerAdvocate® platform. Proposals submitted after the deadline, through unauthorized means (e.g., the Messaging tab), or that are incomplete will be automatically disqualified. The RFP further states that no individual extensions will be granted, although the deadline may be extended for all proponents if necessary. Proposal submissions must comply with the document formatting and content requirements detailed in *Exhibit K – Proposal Submission Instructions*, and all mandatory documents listed in *Exhibit A – Proposal Mandatory Requirements Checklist* must be uploaded in full before the deadline. Proposals must remain valid for 180 days from the submission date.

Section 8 provides the RFP timeline, beginning with the public release on March 25, 2025, and concluding with the anticipated contract signing on May 2, 2025. Key milestones include the mandatory initial meeting on April 1, 2025, mandatory site visits during the week of April 7–11, 2025, and the final proposal submission deadline on April 25, 2025. Proposals not fully uploaded to PowerAdvocate® by the deadline would not be considered. Proponents were encouraged to allow sufficient time for uploading and to verify that all files were accessible for review.

Proposals that meet the submission requirements would be evaluated by a multidisciplinary Evaluation Panel composed of subject matter experts. Each evaluator will independently score proposals based on defined criteria. Quality Points are calculated by multiplying each evaluator’s rating by the assigned weight for each criterion.

The evaluation criteria and their respective weights were:

- **Experience and Capacity** – 20%
- **Approach to Services Fulfillment** – 15%
- **Approach to Power Generation Solutions** – 5%
- **Pricing** – 30%
- **Schedule** – 30%

Proponents must comply with all content requirements detailed in **Exhibit K – Proposal Submission Instructions**.

D. Blackout Period

Section 10 of the RFP outlines strict communication restrictions applicable to both Proponents and public officials during the competitive procurement process. All communications must take place exclusively through the Messaging tab of PowerAdvocate®. Direct or indirect contact between Proponents (or their representatives) and any personnel from 3PPO, PREPA, GENERA, or the P3 Authority—other than the designated 3PPO Project Manager—is strictly prohibited. This restriction is enforced during the “blackout period,” which begins with the publication of the RFP and ends once the dispute period concludes. The blackout applies equally to government officials, employees, and contractors involved in the process. Even if a Proponent is a current contractor of GENERA or 3PPO, any interaction must be limited to their existing contractual duties and may not involve the RFP. Proposals must be developed independently, without coordination or communication with competing Proponents. Any violation of these provisions may result in disqualification, damages, or other legal remedies.

E. Negotiations and Award Process

Pursuant to Section 14, 3PPO or GENERA, as the entity overseeing the procurement process, may select one or more Proponents for negotiations after the submission deadline. This selection may occur in stages, allowing for the possibility of later invitations to negotiations.

Once selected, Proponents may enter concurrent negotiations, during which additional information or proposal improvements may be requested. After negotiations, Proponents may be asked to submit a Best and Final Offer (BAFO), which will be evaluated using the same criteria as the initial proposals.

A top-ranked Proponent may be invited to participate in non-binding final discussions aimed at reaching a definitive agreement, based on the model contract in Attachment F. However, the contract terms may be materially revised through negotiations.

On May 10, 2025, 3PPO notified both Javelin and Power Expectations that they had been selected to enter into negotiations pursuant to Section 14 of the RFP.

On May 25, 2025, Javelin submitted a marked-up version of the Performance Service Agreement (“PSA”) along with its original proposal submission and subsequently shared the document directly with 3PPO. Despite these efforts, Javelin never received a revised markup or response from 3PPO.

During Zoom meetings held on May 12 and 16, 2025, 3PPO indicated that a revised version of the Javelin PSA was ready to be shared with Javelin. However, such document was never delivered to Javelin.

F. Public Statements

On June 9, 2025, prior to the conclusion of negotiations with the selected proponents and before the official award of the RFP was announced, the newspaper *El Nuevo Día* published public statements made by Puerto Rico's Energy Policy Advisor and Executive Director of the P3 Authority, Josué Colón. According to those statements, only Power Expectations had been selected to provide 800 megawatts of temporary power generation to meet summer demand. This represented a departure from earlier public indications suggesting that contracts would be awarded to both selected proponents.

Mr. Colón told *El Nuevo Día* that although Javelin had complied with all other requirements, the government ultimately decided not to finalize an agreement with the company because its proposed cost per kilowatt-hour allegedly exceeded the government’s ceiling of 25 cents. He claimed that Javelin’s cost was in the range of 30 to 35 cents per kilowatt-hour—figures he suggested were inconsistent with the expectations outlined in the RFP. See *El Nuevo Día*, June 9, 2025, *Gobierno contrata a Power Expectations y espera contar con los 800 megavatios de energía temporal en agosto o septiembre*.

Notably, these statements were made publicly while negotiations were still ongoing, without prior notice to Javelin, and before the formal issuance of the award notification.

G. Award Notification

On June 13, 2025, Javelin received a letter from the 3PPO via Power Advocate® titled *Notification of Award – Temporary Emergency Generation RFP*, (the “June 13th Notification”). The June 13th Notification, addressed to all proponents, appears intended to communicate the outcome of the procurement process under the RFP. In it, the 3PPO states that, following an evaluation—including a compliance review, technical and financial assessments, and negotiations with the two recommended proponents—the award process has concluded. The letter identifies the proponents whose proposals were either disqualified or not recommended and appears to indicate that only Javelin and Power

Expectations were considered for award. Despite its title (“Notification of Award”), this letter did not indicate to which proponent the RFP was awarded.

The June 13th Notification states that, contrary to the original plan to issue the formal award letter only upon contract execution, the reconsideration period is now triggered by this notification. As such, any adversely affected proponent has five calendar days from the date of the notification to submit a request for reconsideration in accordance with Section 22 of the RFP. The June 13th Notification also indicates that the 3PPO remains available to address any questions regarding the process.

On June 14, 2025, Javelin responded to the June 13th Notification seeking clarification and, in the alternative, reconsideration (“Clarification/Reconsideration Letter”). Javelin asserted that based on the language of the notification, the reconsideration process referenced does apply to its proposal. However, in the alternative—and to the extent the June 13th Notification is interpreted as imposing any obligation or deadline on Javelin—Javelin respectfully requested that 3PPO either reconsider or clarify the notice. This request was particularly urgent because the June 13th Notification referenced “Section 22” of the RFP, which does not exist, making the applicable procedures unclear. Given the five-day timeline for reconsideration established in the notification, Javelin requested clarification by June 16, 2025, and expressly reserved all rights under the RFP and applicable law.

The Clarification/Reconsideration Letter highlighted the strengths of Javelin’s proposal, including its readiness to execute the project since early May, a fully developed plan in coordination with LUMA Energy, comprehensive contracts with key vendors, lack of need for external financing, a proven track record in similar deployments, and the strong professional backgrounds and integrity of its principals. Javelin also addressed public misconceptions, clarifying that—if PREPA cooperates—its proposed Costa Sur project could generate electricity at 25 cents per kWh when operating near capacity, without reliance on docks, trucking, or unproven suppliers. The letter further noted that Javelin submitted a revised business plan increasing the project’s capacity to 250 MW. It concluded by reaffirming Javelin’s willingness to engage in constructive discussions with the 3PPO and PREPA regarding the terms of its proposal, including pricing and the request for a Commonwealth or PREPA-issued letter of credit.

On June 16, 2025, the 3PPO issued another letter to all proponents. Although the communication is untitled, its content appears intended to serve as the formal Award Notification for the RFP (“Award Notification”). The letter confirmed the conclusion of the evaluation process and officially notified the award of the contract to Power Expectations for the provision of up to 800 MW of temporary emergency generation capacity. Notably, the notification deviated from the original plan—which contemplated issuing a formal award letter only upon execution of the contract—and was instead released earlier at PREPA’s request to facilitate submission to its Board of Directors. The letter also triggered the reconsideration period referenced in “Section 22” of the RFP, allowing any adversely affected proponent to submit a request for reconsideration within five calendar days of the notification date. On that same date, the 3PPO issued a clarification noting a typographical error in the Award Notification, specifying that the applicable provision regarding reconsideration is Section 20 of the RFP, not Section 22 as originally stated.

The Award Notification does not provide any explanation or support for the selection of Power Expectations or the reasons for the rejection of Javelin’s proposal.

Request for Access to Administrative Record

On June 16, 2025, Javelin submitted a formal request for access to the administrative record pursuant to Article 409 of the Puerto Rico Code of Civil Procedure, 32 L.P.R.A. § 1781. In its request, Javelin invoked the public’s right to inspect documents related to the procurement process and emphasized the need to access the record in order to be able to file a motion for reconsideration. The request cited both the legal framework ensuring transparency in public procurement and specific provisions of the RFP that confirm the public nature of the process and the use of public and federal emergency funds.

III. Grounds for Reconsideration

A. Power Expectations' Lack of Capacity to Meet RFP Requirements

A thorough comparison of the proposals submitted under the RFP will reveal a stark contrast between Javelin and Power Expectations in terms of technical readiness, logistical feasibility, and compliance with the RFP's core requirements.

While Javelin submitted a fully developed, operationally viable proposal backed by comprehensive agreements, financial guarantees, and coordinated interconnection plans with LUMA, Power Expectations appears to have failed to meet several key requirements by the submission deadline.

We are aware that Power Expectations has been in discussions with key vendors within Puerto Rico after the submission deadline and its ad hoc efforts to secure experienced personnel and suppliers have included speculative approaches to vendors already committed to Javelin. Upon information and belief, Power Expectations does not have committed financing for its proposal, but is seeking external financing on the basis of term sheets. By contrast, Javelin's is fully funded and is not dependent on any external finance..

Power Expectations' apparent inability to secure timely vendor commitments, provide essential technical documentation, present a feasible fuel supply plan or obtain the necessary financing raises serious concerns regarding both the substance of its proposal and the integrity of the evaluation process. These deficiencies, combined with indications of post-deadline modifications and possible preferential treatment, call into question the propriety and legality of any award made to Power Expectations.

1. Technical Readiness and Coordination with LUMA

Javelin demonstrated a high level of technical readiness and proactive coordination with LUMA Energy, the island's transmission and distribution operator. From the early stages of the procurement process, Javelin and its network of vendors engaged closely with LUMA to review and validate detailed grid interconnection plans. These collaborative efforts led to securing necessary agreements that ensure a timely, feasible, and compliant connection of the proposed generation assets to the Puerto Rico grid. This thorough technical preparation reflects Javelin's commitment to meeting the RFP's stringent requirements and the June 1, 2025, operational deadline, thereby minimizing risks related to delays or technical incompatibilities.

In stark contrast, Power Expectations' engagement with LUMA appears to have been significantly delayed. Reports from the sites indicate that its discussions with LUMA only commenced weeks after media outlets published information about the alleged RFP award in their favor. Such timing raises serious concerns regarding the technical feasibility and maturity of Power Expectations' proposal at the time of submission and evaluation. Critical elements necessary for proper grid interconnection—such as the availability and specifications of main step-up transformers for key generation sites like Costa Sur and Aguirre—were notably absent from their submission (according to reports from potential vendors). Moreover, the technical diagrams and interconnection plans associated with Power Expectations seem to have been created or submitted after the official proposal deadline, suggesting a lack of preparedness or an attempt to cure deficiencies post-submission.

These facts call into question whether the 3PPO's technical due diligence process was sufficiently rigorous, especially given the importance of ensuring that awarded proponents possess not only viable proposals on paper but also demonstrable technical capability and coordination with essential grid operators. In complex procurements such as this, early and documented coordination with LUMA is indispensable to guarantee that the proposed generation capacity can be integrated smoothly and

reliably into the grid before the impending summer peak demand period. The discrepancy between Javelin's and Power Expectations' approaches demonstrates that Javelin was better positioned to meet the technical and operational expectations laid out in the RFP.

2. Logistical and Operational Risks in Power Expectations' Proposal

Power Expectations' alleged plan (according to press reports and commentary from Mr. Josué Colón) for delivering liquefied natural gas ("LNG") depends heavily on complex logistics involving barge shipments to remote terminals followed by extensive trucking operations. Specifically, based on Javelin's calculations, their proposal would need approximately 400 truck deliveries per day to transport LNG from off-site terminals directly to the generation sites. Notably, their operational model relies on a just-in-time delivery system², without any significant on-site LNG storage capacity to buffer supply interruptions.

This logistical framework presents multiple critical risks that could jeopardize the reliability and continuity of power generation, including:

- **Traffic Congestion:** The high volume of daily truck traffic required to meet fuel demand substantially increases the risk of delays caused by road congestion. Puerto Rico's road infrastructure, especially around port and terminal areas, often experiences heavy traffic that could disrupt the steady flow of LNG deliveries, leading to potential fuel shortages and unplanned generation downtime.
- **Road Infrastructure Damage:** The repeated passage of large numbers of heavy trucks poses a considerable risk to local roadways, which may not be designed to sustain such continuous heavy loads. This could result in accelerated deterioration of pavement and bridges, increasing maintenance costs and causing further delays or detours that impact delivery schedules.
- **Public Safety Hazards:** Transporting LNG involves inherent safety risks, including the possibility of spills, accidents, or exposure to hazardous materials. The frequency and scale of trucking operations increase the likelihood of incidents that could endanger public safety, particularly in densely populated or environmentally sensitive areas along transport routes.

The absence of on-site LNG storage eliminates the possibility of maintaining reserve fuel supplies, exacerbating these risks by leaving the system vulnerable to any interruptions in the supply chain. Such a fragile logistical setup contrasts with the operational reliability standards expected for emergency power generation, where consistent fuel availability is paramount to maintaining grid stability during critical periods.

Given these substantial risks, Power Expectations' LNG delivery model raises concerns about the overall feasibility and resilience of its proposed solution, especially in light of the RFP's clear emphasis on reliability and readiness ahead of the summer peak demand season.

3. Failure to Comply with RFP Requirements

A review of the administrative record is expected to show that Power Expectations failed to comply with several essential requirements mandated by the RFP by the established submission deadline. These deficiencies may include:

- **Lack of timely submission of supplier agreements** necessary to demonstrate the availability and commitment of critical resources.

² Assuming 800 MW x 10,500 MMBtu/kWh heat rate divided by 480 MMBtu per ISO container x 95% capacity factor x 24 hours per day = 400 trucks per day

- **Failure to provide evidence of financial strength, letters of credit or equivalent financial guarantees**, which are essential to ensure the proponent's financial responsibility and ability to fulfill contractual obligations.
- **Omission of key interconnection equipment**, such as the required transformers for the Costa Sur and Aguirre sites, which are fundamental to the feasibility of the proposed power generation and grid connection.
- **Submission or creation of technical documentation and interconnection diagrams after the deadline**, strongly suggesting that material changes or corrections were made post-submission.

These post-deadline amendments are not merely procedural missteps but represent a fundamental breach of core principles underpinning public procurement: fairness, transparency, and equal treatment of all proponents. The integrity of the procurement process depends on all bidders adhering strictly to submission deadlines and content requirements. Permitting one bidder to cure or supplement their proposal after the deadline would unfairly disadvantage compliant proponents who adhered to the rules and submitted complete and timely proposals.

Furthermore, the RFP's own terms explicitly prohibit such post-deadline modifications. Consequently, any binding agreement executed following the award must be based on the standard contract, incorporating only those exceptions that were timely disclosed and included by the proponent. Allowing any later contract modifications would constitute a further post-deadline alteration, which not only violates the RFP's express terms but also renders the contract unlawful and unenforceable.

The RFP reinforces this position in Section 7, which states explicitly:

"Proponents must submit their proposals through the PowerAdvocate® platform. Proposals submitted after the deadline, via the Messaging tab, or that are incomplete will be disqualified.."

This strict deadline enforcement is not an arbitrary procedural barrier but a fundamental safeguard to preserve free and fair competition in government procurement. This principle was affirmed by the Supreme Court of Puerto Rico in *Autoridad de Carreteras v. CD Builders, Inc.*, 177 D.P.R. 398, 413 (2009), where the Court held that allowing a proponent to cure omissions after submission undermines the principles of free competition and fairness critical to government contracting.

In light of these facts and legal authorities, it is clear that Power Expectations' failure to fully comply with the RFP requirements by the submission deadline invalidates any claim to the award, and any post-deadline curing of deficiencies is both procedurally improper and legally indefensible.

4. Possible Non-Disclosure of Criminal Background

Based on publicly available information and reasonable belief, there are indications that Mr. Eddie David Echerraría, the controlling shareholder of Power Expectations, may have a prior criminal record. If such a record exists and involves offenses that are material under Puerto Rico law or relevant to public contracting integrity, it should have been affirmatively disclosed as part of the RFP submission process.

The RFP and applicable laws and regulations place a clear duty on proponents to disclose any information that could materially affect their qualifications, credibility, or fitness to contract with the Government of Puerto Rico. In this context, the criminal history of a company's controlling shareholder—particularly in cases involving financial misconduct or offenses against public trust—would be highly relevant to the evaluation of a proponent's reliability and the implications of any resulting contract.

Under Article 3.3 of the *Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico*, 3 L.P.R.A. § 1883b, any legal entity seeking to contract

with the Government must submit a sworn statement disclosing whether any of its key officers or principals has been convicted of a crime. This disclosure obligation extends beyond the entity itself to include individuals such as the president, vice president, directors, executive officers, board members, or any person exercising equivalent authority or control—therefore encompassing shareholders with substantial influence or control over the business, such as Mr. Echerraría.

Additionally, Article 3.4 of the same Code, 3 L.P.R.A. § 1883c, provides that any person—natural or juridical—convicted of certain serious offenses, including crimes against public funds or the performance of public duties, is ineligible to contract or bid with the Government of Puerto Rico for at least ten (10) years, unless a specific law provides otherwise. Non-disclosure of a disqualifying conviction could result in administrative or legal action, including disqualification or nullification of any resulting contract.

Moreover, Article 3.5, 3 L.P.R.A. § 1883d assigns to each executive agency of the Government of Puerto Rico, including public corporations such as PREPA and its agents (e.g., the 3PPO), an affirmative duty to monitor compliance with the Code of Ethics. This includes the authority—and indeed the responsibility—to investigate whether a contractor, supplier, or applicant has acted in violation of the Code, either through nondisclosure or other forms of misconduct.

In light of these provisions, and given the public interest in ensuring that all proponents are held to consistent and transparent standards of eligibility, the 3PPO, as agent of PREPA, should ensure that:

- Full and accurate disclosures were made regarding the backgrounds of Power Expectations' principal officers and controlling shareholders;
- Any known or potential criminal history involving the controlling shareholder was evaluated for materiality and compliance with the RFP and applicable legal standards; and
- Appropriate due diligence was conducted to assess any possible reputational, financial, or legal risks to PREPA, the public interest, or the integrity of the procurement process.

Failure to conduct such due diligence or to ensure disclosure compliance may raise concerns about the legality of the award and undermine public confidence in the procurement's outcome.

B. Process Irregularities

(1) Lack of economic and technical review

The scale, technical intricacies, and financial risks involved in emergency generation require robust, independent expert evaluation. 3PPO did not retain qualified external advisors or consultants commensurate with the technical and legal complexity of the procurement, despite the RFP's detailed evaluation methodology, in which various criteria would be evaluated by Subject Matter Experts and Quality Points calculated accordingly. These criteria included Experience and Capacity, Approach to Services Fulfilment and Approach to Power Generation Solutions, all of which are technical in nature.

Javelin engaged reputable engineering, legal, and fuel supply advisors to prepare a robust, feasible proposal. Javelin also submitted copies of fully negotiated contracts with key sub-contractors and vendors. By contrast, 3PPO's apparent failure to similarly invest in independent review creates a significant risk that the feasibility of Power Expectations' proposal and the credibility of its team have not received adequate technical scrutiny and demonstrates a serious flaw in the decision-making process.

No valid award can be made without a sound basis on which to evaluate proposals from an operational, technical and financial perspective, and any award made without such basis is clearly arbitrary and

capricious and should be set aside. *Fuertes y otros v. A.R.P.E.*, 134 D.P.R. 947, 953 (1993); *Murphy Bernabe v. Tribunal Superior*, 103 D.P.R. 692, 699 (1975).

(2) *Violations to Blackout Period*

The public statements made by Mr. Josué Colón, published by the newspaper *El Nuevo Día* on June 9, 2025, before the conclusion of negotiations and prior to the formal issuance of the award notification may be construed as a violation to the RFP Blackout period. These public disclosures violate the strict communication restrictions established in Section 10 of the RFP, which governs the blackout period.

The blackout period requires that all communications related to the RFP be conducted exclusively through the Messaging tab of PowerAdvocate®, prohibiting any direct or indirect contact between Proponents or their representatives and personnel from 3PPO, PREPA, GENERA, or the P3 Authority—except for the designated 3PPO Project Manager. By publicly disclosing sensitive information about the evaluation and selection process, including the rejection of Javelin’s proposal based on alleged cost concerns, without prior notice to Javelin or other proponents, these statements circumvented the official communication channels and compromised the confidentiality of the process. Such public announcements by senior political figures during the blackout period prejudice 3PPO’s decision making process and its ability to carry out its key function, namely to act as an independent procurement office in complex and sensitive areas.

These unauthorized disclosures undermine the principles of fairness, transparency, and equal treatment that are essential to competitive procurement processes. They create an uneven playing field by revealing internal deliberations prematurely and selectively, which may have influenced public perception and proponent behavior. Mr. Colón’s statements were premature and risked exerting undue influence over the procurement process by signaling a potential outcome before the evaluation had been properly completed. Such comments may have created improper pressure on decision-makers, thereby compromising the integrity and independence of the evaluation process.

According to the RFP’s own terms, violations of the blackout period constitute material breaches that, in effect, invalidate the entire procurement process. Therefore, the public statements made and published on June 9, 2025, by Mr. Colón compromised the integrity of the RFP and effectively nullify the process in its entirety.

(3) *Arbitrary Alteration of Evaluation Criteria*

The RFP outlined a multi-factor evaluation framework designed to ensure a fair assessment of all proposals. According to the RFP, awards were to be based on a balanced combination of criteria, including technical merit, implementation readiness, financial feasibility, and the Proponent’s ability to promptly deliver reliable emergency generation. This approach is consistent with best procurement practices, especially in emergency contexts where speed, reliability, and compliance are equally critical.

However, public statements made by Mr. Josué Colón, as reported by *El Nuevo Día* on June 9, 2025, suggest that the final award decision was based solely—or primarily—on cost. Specifically, Mr. Colón asserted that although Javelin had satisfied all other requirements, the government declined to finalize a contract with the company solely because its proposed cost per kilowatt-hour allegedly exceeded a 25-cent ceiling. The RFP does not contain any reference to a price ceiling, whether 25-cents or otherwise. No mention was made of other evaluation factors which are expressly stated in the RFP, such as project readiness, interconnection feasibility, or credit and equipment commitments.

This constitutes a material and arbitrary deviation from the scoring methodology that the 3PPO was obligated to apply under the RFP. Disregarding the established evaluation framework in favor of a single

criterion—particularly after proposals had already been submitted—not only undermines the integrity and legitimacy of the procurement process but also violates fundamental principles of administrative law, including transparency, fairness, and equal treatment. The Supreme Court of Puerto Rico has consistently held that a government entity’s failure to comply with its own rules—such as those set forth in an RFP—constitutes arbitrary and capricious conduct. See *Torres Acosta v. Junta Examinadora*, 161 D.P.R. 696 (2004); *Cotto Guadalupe v. Departamento de Educación*, 138 D.P.R. 658 (1995).

Moreover, awarding the contract to a proponent that, by its own admissions, lacked site control, had not secured fuel or equipment agreements, and had not completed interconnection plans, raises serious questions about whether the procurement fulfilled its stated objective: to rapidly secure reliable emergency generation. In contrast, as Javelin clarified in its June 14 Clarification and Request for Reconsideration Letter, its Costa Sur proposal—if facilitated by timely cooperation from PREPA—could produce power at approximately 25 cents per kWh when operating near capacity. This would be accomplished without reliance on unproven third-party suppliers, complex trucking logistics, or new maritime facilities, all of which introduce substantial risk.

In fact, Javelin explained to both 3PPO and PREPA that its proposal would result in a cost of approximately \$0.25/kWh, based on its ability to coordinate with and access excess natural gas already contracted by Genera. Javelin submitted supporting letters to this effect, detailing the cost structure and gas supply coordination. Additionally, Javelin submitted a separate letter affirming that it did not require external financing and that it was prepared to post the necessary performance bond, thereby demonstrating both financial capacity and readiness to proceed. In sum, the apparent elevation of cost above all other factors, particularly when applied retroactively and outside the scope of the RFP’s stated evaluation process, invalidates the procurement outcome and strongly suggests the need for independent review and corrective action.

Finally, during the negotiation process, Javelin was informed that Power Expectations had not requested commercial terms such as monthly capacity payments, minimum dispatch requirements, or credit enhancements like letters of credit or guarantees—terms that Javelin was told were restricted by the RFP. Upon information and belief, Power Expectations may, in fact, have been offered or negotiated some form of minimum dispatch or a similar mechanism designed to ensure minimum cash flows. If true, this may constitute a deviation from the RFP’s stated restrictions and may suggest that Power Expectations was afforded more favourable treatment than Javelin. Without access to the Power Expectations contract, it is not possible to determine whether the award was consistent with the RFP or whether Javelin was misled or prejudiced during the evaluation process. To the extent this procurement process results in the execution of a contract, the terms of that contract are public and must be disclosed, along with the other procurement records previously requested from 3PPO.

IV. Conclusion

This RFP process, intended to provide critical emergency power to Puerto Rico during a period of heightened need, has been irreparably tainted by procedural irregularities and fundamental flaws in procurement design.

Javelin has presented a credible, financially viable, and technically sound proposal in strict compliance with the RFP. It is ready to mobilize equipment immediately and fully implement emergency power generation within 60 to 90 days of award.

The award to Power Expectations, under the circumstances outlined herein, is unjust, unlawful, and contrary to the public interest. We urge the Third-Party Procurement Office, the Puerto Rico Electric Power Authority and the Puerto Rico Public-Private Partnerships Authority to take immediate corrective action, including reconsideration and annulment of the award, to restore integrity and public trust in the procurement process.

Should this matter not be resolved satisfactorily, Javelin reserves all legal remedies, including judicial proceedings.

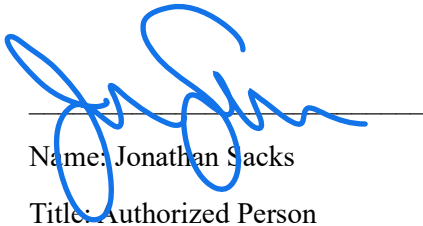
Relief Requested

In light of the foregoing, Javelin respectfully requests:

1. Immediate suspension of the award to Power Expectations pending full review.
2. Full disclosure of all evaluation documents, scoring sheets, correspondence, and records relating to bid submissions, modifications, and decision-making for both Javelin and Power Expectations.
3. That the award to Power Expectations be annulled on the grounds that its proposal was non-responsive at or even after original submission and failed to meet the mandatory requirements of the RFP; and
4. That the contract for the Costa Sur plant be awarded to Javelin, the only responsive Proponent that fully complied with the RFP's terms and demonstrated the technical and financial capacity to deliver.

For any further information regarding this Formal Challenge and Request for Reconsideration, please contact Jonathan Sacks (404-915-9693 or jon.sacks@jvln.com, with copy to michael.foster@jvln.com and Jam@mcvpr.com).

RESPECTFULLY SUBMITTED by Javelin Global Commodities US Holdings Inc., a Delaware Corporation



Name: Jonathan Sacks
Title: Authorized Person

EXHIBIT 7

Confidential treatment requested



STRICTLY PRIVATE & CONFIDENTIAL

VIA Power Advocate Submission

June 28, 2025

To: Third-Party Procurement Office, as an agent of the Puerto Rico Electric Power Authority
Puerto Rico Public-Private Partnerships Authority
3PPO Legal Department at: procurement@recomspr.net
San Juan, Puerto Rico
Attn: Executive Directors

**Re: Third Request – RFP 3PPO-0314-20-TPG – Emergency Temporary Power Generation
– Request for Administrative Record**

Javelin Global Commodities US Holdings Inc. (“Javelin”) respectfully submits this **third request** for access to the complete administrative record related to RFP 3PPO-0314-20-TPG – *Emergency Temporary Power Generation* (“RFP”), following its initial request dated June 16, 2025.

On June 18, 2025, Javelin submitted a timely Motion for Reconsideration of the RFP Award Notice, in accordance with the procedures outlined in the RFP. However, due to the agency’s failure to provide the requested documentation, Javelin was compelled to file that motion—without waiving any rights and without access to the administrative record. In its motion, Javelin reiterated its request for the complete file, which is essential to assess the procurement process and, if necessary, to supplement its request for reconsideration.

The requested materials include:

1. The proposal submitted by Power Expectations LLC;
2. The evaluation score sheets and the criteria used by the evaluation committee;
3. Minutes of meetings or deliberations held by the committee or any procurement-related body;
4. Technical reports prepared in connection with the evaluation; and
5. Any documents or communications that formed the basis of or supported the award determination.

Access to these materials is warranted under:

- Article 409 of the Puerto Rico Code of Civil Procedure, 32 L.P.R.A. § 1781;
- The precedent established by the Puerto Rico Supreme Court in *Trans Ad de P.R. v. Junta de Subastas*, 174 D.P.R. 56 (2008); and



- The Transparency and Expedited Procedure for Access to Public Information Act, Act No. 141-2019 (“Act 141-2019”).

Article 409 and *Trans Ad* require that access to public documents be granted with sufficient anticipation to enable the requesting party to exercise its rights—in this case, to adequately prepare and submit a Motion for Reconsideration. Separately, Act 141-2019 establishes a general response period of ten (10) business days for requests for public information.

We firmly believe that Article 409 and *Trans Ad* govern in this matter, as the documents were specifically requested in connection with Javelin’s right to seek reconsideration of a public RFP award.

The Puerto Rico Supreme Court has repeatedly emphasized the fundamental importance of transparency in government procurement. As the Court held in *Trans Ad*:

This right is of particular importance in public procurement processes, where transparency is essential to ensure legality, the proper administration of public funds, and public confidence in government institutions. (Our translation)

And further, on page 70 of the same decision:

Citizen participation—understood as a kind of co-governance with the State—is only possible when the individual has access to accurate and pertinent information about public affairs. Thus, for example, a party with an interest in challenging the award of a bid will be in a better position to exercise that right once it has reviewed the administrative record. Access to the record will allow the party to assess the details of the competing proposals and the factors that led the agency to award the contract to a specific proponent. The record will also reveal whether the agency followed its own procedural regulations. (Our translation).

Accordingly, Javelin was entitled to receive access to the administrative record in a timely manner, so that it could meaningfully and effectively exercise its statutory right to seek reconsideration.

Nevertheless, even if the ten-business-day period under Act 141-2019 were deemed applicable, that deadline will expire on July 1, 2025. Under either standard, the agency’s continued failure to produce the requested documents is unjustified, and we therefore reiterate our request for immediate disclosure.

In addition, Section 15 of the RFP affirms that procurement and selection documents may be released publicly, and that executed contracts and pricing are not considered confidential. The RFP also clarifies that redacted copies of proposals may be made public at the conclusion of the RFP.



To date, we have received no redacted proposal, no claim of confidentiality, and no legal justification for withholding any of the requested documents. All indications suggest that the information sought is public under both applicable law and the terms of the RFP itself.

For all the foregoing reasons, we respectfully demand the immediate delivery of the full administrative record. We are available to receive the documents electronically via secure file transfer to expedite delivery.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Sacks", is written over the word "Sincerely,".

Javelin Global Commodities US Holdings Inc.
Jonathan Sacks
Authorized Person

EXHIBIT 8

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE SAN JUAN

JAVELIN GLOBAL COMMODITIES US HOLDINGS INC.,

Recurrente,

v.

AUTORIDAD DE ENERGÍA ELÉCTRICA ; AUTORIDAD
PARA LAS ALIANZAS PÚBLICO PRIVADAS ; OFICINA
DE ADQUISICIONES DE PROYECTOS PÚBLICO-
PRIVADOS, COMO AGENTE DE LA AUTORIDAD DE
ENERGÍA ELÉCTRICA,

Recurridos,

v.

POWER EXPECTATIONS LLC
Parte con Interés

CASO NÚM. _____

SOBRE:

Recurso Especial de Revisión Judicial
para el Acceso a Información Pública
(Ley Núm. 141-2019)

**RECURSO ESPECIAL DE REVISIÓN JUDICIAL
PARA EL ACCESO A INFORMACIÓN PÚBLICA**

AL HONORABLE TRIBUNAL:

COMPARECE Javelin Global Commodities US Holdings Inc. (“Javelin”), por conducto de la representación legal que suscribe, y muy respetuosamente, por los fundamentos que se exponen a continuación, solicita la revisión de la negativa de la Autoridad de Energía Eléctrica, la Autoridad para las Alianzas Público-Privadas y la Oficina de Adquisiciones de Proyectos Público-Privados a entregar cierta información pública, luego de la adjudicación de un Requerimiento de Propuestas:

I. JURISDICCIÓN Y COMPETECIA

Se invoca la jurisdicción de este Honorable Tribunal al amparo de los Artículos 5.001, 5.003 y 5.005 de la Ley de la Judicatura del Estado Libre Asociado de Puerto Rico de 2003, 4 L.P.R.A. §§ 25(a), 25(c) y 25(e) (2017); el Artículo 9 de la Ley Núm. 141-2019, conocida como la *Ley de Transparencia y Procedimiento Expedito para el Acceso a la Información Pública* (“Ley Núm. 141-2019”), que dispone que “cualquier persona a la cual una entidad gubernamental le haya notificado su determinación de no entregar la información solicitada, o que no haya hecho entrega de la información dentro del término establecido o su prórroga, tendrá derecho a presentar ante la sala del Tribunal de Primera Instancia de la Región Judicial de San Juan un

Recurso Especial de Acceso a Información Pública”¹; y el Artículo 409 del Código de Enjuiciamiento Civil, 32 L.P.R.A. § 1781, que establece que “[t]odo ciudadano tiene derecho a inspeccionar y sacar copia de cualquier documento público de Puerto Rico, salvo lo expresamente dispuesto en contrario por la ley.”

I. LAS PARTES

1. La parte recurrente, Javelin, es una entidad corporativa que forma parte del grupo Javelin Global Commodities, una firma global dedicada al comercio, logística, financiación y asesoría en materias primas como energía, carbón, acero y productos renovables. Su dirección es 37th Floor, Suite 3703, 800 Third Avenue, New York 10022, USA.

2. La parte recurrida, la Autoridad de Energía Eléctrica (“AEE”) es una corporación pública creada en virtud de la Ley Núm. 83 de 1941, según enmendada. Su Dirección Postal es: PO Box 364267 Santurce 00936-4267. Su dirección física es: 1110 Ave. Ponce de León, Edificio Neos, piso 8 Oficina 801 Santurce

3. La parte recurrida, la Autoridad para las Alianzas Público-Privadas (“P3A” por sus siglas en Inglés) es una corporación pública del Gobierno de Puerto Rico adscrita a la Autoridad de Asesoría Financiera y Agencia Fiscal de Puerto Rico, creada en virtud de la Ley Núm. 29 de 8 de junio de 2009, según enmendada, conocida como la Ley de Alianzas Público-Privadas (“Ley 29-2009”). Su dirección postal es: P.O. Box 42001, San Juan, Puerto Rico 00940-2001. Su dirección física es: Banco Gubernamental de Fomento, Centro Gubernamental Minillas (Roberto Sánchez Vilella) Ave. De Diego, Pda 22 Santurce, PR 00907.

4. La parte recurrida, la Oficina de Adquisiciones de Proyectos Público-Privados (3PPO, por sus siglas en inglés), es un ente independiente, subcontratado por la AEE para evitar o mitigar el riesgo de conflictos de interés organizacionales en los procesos de adquisición bajo el “Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement” firmado por la AEE, P3A y GENERA PR LLC el 24 de enero de 2023. 3PPO actúa como un agente de la AEE en procesos de adquisición. Por información y creencia, en este caso, las funciones de 3PPO fueron desempeñadas por Regulatory Compliance Services, Corp., una corporación organizada bajo las leyes del Gobierno de Puerto Rico cuya dirección, de acuerdo con la página electrónica del Departamento de Estado, es 1509 Lopez Landrón PH, San Juan, PR, 00911. Se une a 3PPO como parte en el recurso como tercero custodio del expediente del RFP.

¹ El Artículo 9 de la Ley 141-2019 dispone, además, que “[l]a radicación del recurso no conllevará la cancelación de sellos ni aranceles.” Asimismo, establece que “[l]a notificación del recurso a la entidad gubernamental deberá ser realizada por el propio Tribunal sin costo alguno.” 3 L.P.R.A. § 9919.

5. La parte con interés, Power Expectations LLC es una compañía de responsabilidad limitada. Su dirección postal es: PO BOX 4983, Carolina, PR, 00984-4983. Su dirección física es: Marginal Villamar 9 Manzana CE, Local 1, Carolina, PR 00979

II. DETERMINACIÓN CUYA REVISIÓN SE SOLICITA

Se solicita la revisión judicial de la negativa de la AEE, P3A y 3PPO a divulgar el expediente administrativo del Requerimiento de Propuestas RFP 3PPO-0314-20-TPG (“RFP”), solicitado por Javelin tras la adjudicación.

Mediante este Recurso se impugna la decisión de las entidades mencionadas de denegar el acceso al expediente administrativo, lo cual resulta esencial para evaluar la legalidad y corrección del proceso de adjudicación —una adjudicación que implica la erogación de grandes sumas provenientes del erario—, salvaguardar los derechos de acceso a la información pública y ejercer plenamente los derechos que asisten a Javelin bajo el RFP y las leyes aplicables.

III. HECHOS RELEVANTES

A. Contexto y propósito del RFP

El 25 de marzo de 2025, 3PPO, en representación de la AEE, publicó el RFP para la adquisición de hasta 800 MW de generación temporal de emergencia, en respuesta a la inestabilidad persistente de la red eléctrica causada por desastres naturales recurrentes y la actual insuficiencia de generación. Véase Exhibit 1.

B. Requisitos Generales del RFP

La Sección 4 del RFP requiere que todas las propuestas incluyan: (i) un plan claro de interconexión adaptado a las capacidades actuales de la red, con una lista detallada de equipos y costos asociados; (ii) una propuesta de precios basada en tarifa por kWh, con desglose separado de costos de movilización, desmovilización e interconexión; (iii) un cronograma de trabajo completo que garantice la operación comercial a más tardar el 1 de junio de 2025; (iv) documentación sobre resiliencia climática y viabilidad de la ubicación propuesta, incluyendo consideraciones ambientales y proximidad a infraestructura existente; (v) un transformador principal de aumento de voltaje y los sistemas de protección necesarios para salvaguardar el equipo de generación y la integridad de la red; y (vi) provisión y estructura de costos de combustible consistente con el modelo de precio turnkey. Estos elementos técnicos y comerciales son obligatorios para garantizar el cumplimiento con el objetivo de la RFP de asegurar capacidad de generación de emergencia antes de la temporada de huracanes de 2025.

Según la Sección 5, todas las propuestas debían incluir un itinerario detallado de movilización y suministro de generación, describiendo todas las actividades necesarias para

garantizar la disponibilidad operativa a más tardar el 1 de junio de 2025. Esto incluye planificación logística, transporte y entrega de equipos, instalación en sitio, pruebas y puesta en marcha.

La Sección 6 del RFP dispone que la financiación del contrato resultante provendrá principalmente de los ingresos autogenerados de la AEE como corporación pública, pudiendo complementarse con fondos federales de emergencia disponibles o futuros, destinados a la resiliencia y recuperación de infraestructura energética. El desembolso de los fondos está sujeto a las leyes y regulaciones locales y federales aplicables y a las condiciones establecidas en el RFP.

Según la Sección 7, todas las propuestas, así como las comunicaciones debían presentarse exclusivamente mediante la plataforma PowerAdvocate® utilizada por la AEE. Las propuestas sometidas fuera de término, a través de medios no autorizados o incompletas serían automáticamente descalificadas. El RFP establece que no se concederán prórrogas, aunque podría ampliarse el plazo para todos los proponentes de ser necesario. Las propuestas debían cumplir con los requisitos de formato y contenido descritos en el Anejo K del RFP, y todos los documentos obligatorios listados en el Anejo A – Lista de Requisitos Obligatorios— debían cargarse en su totalidad antes del vencimiento del plazo. Las propuestas debían ser válidas por 180 días desde la fecha de presentación.

La Sección 8 establece el calendario del RFP, comenzando con la publicación el 25 de marzo de 2025 y concluyendo con la firma anticipada del contrato el 2 de mayo de 2025. Los eventos clave incluyen la reunión inicial obligatoria el 1 de abril de 2025, visitas de campo obligatorias durante la semana del 7 al 11 de abril de 2025, y la fecha límite para presentar propuestas finales el 25 de abril de 2025. Las propuestas no cargadas completamente en PowerAdvocate® para la fecha límite no serían consideradas.

Las propuestas que cumplieran con los requisitos serían evaluadas por un Panel de Evaluación multidisciplinario compuesto por expertos en la materia. Cada evaluador calificaría las propuestas de forma independiente conforme a los criterios definidos. Las puntuaciones se calcularían multiplicando la puntuación de cada evaluador por el peso asignado a cada criterio.

Los criterios de evaluación y sus respectivos pesos fueron:

- Experiencia y Capacidad – 20%
- Enfoque para la Ejecución de Servicios – 15%
- Enfoque para Soluciones de Generación – 5%
- Precio – 30%
- Cronograma – 30%

C. Período de restricción de comunicaciones (Blackout Period)

La Sección 10 del RFP establece restricciones estrictas de comunicación aplicables tanto a los proponentes como a los funcionarios públicos durante el proceso competitivo de adquisición. Todas las comunicaciones debían realizarse exclusivamente a través de PowerAdvocate®. Se prohibió todo contacto directo o indirecto entre los proponentes (o sus representantes) y cualquier personal de 3PPO, la AEE, GENERA o la P3A —excepto el Gerente de Proyecto designado de 3PPO— durante el “período de restricción”, que comienza con la publicación de la RFP y concluye una vez finaliza el período de impugnación. Esta restricción aplica por igual a funcionarios, empleados y contratistas gubernamentales involucrados en el proceso.

D. Documentos Públicos

La Sección 15 del RFP dispone que los contratos resultantes serían públicos y que los documentos se harían accesibles al público o a agencias estatales o federales. Para proteger información confidencial o comercial sensible, cada proponente debía presentar una versión redactada de su propuesta, explicando por qué cierta información no debía divulgarse. Si no se presentaba esa versión, se entendía que la propuesta completa podía hacerse pública. Aun así, marcar información como confidencial no impide su divulgación si la ley o la disponibilidad de fondos federales lo requerían. Asimismo, el contrato y sus precios son de naturaleza pública. Además, la información interna sobre la evaluación de propuestas se divulgaría a quienes demostraran una necesidad legítima de conocerla.

E. Negociación y proceso de adjudicación

Conforme a la Sección 14 del RFP, 3PPO podía seleccionar uno o más proponentes para entrar en negociaciones. Esta selección podía realizarse por etapas, permitiendo la posibilidad de invitar a otros proponentes posteriormente.

Una vez seleccionados, los proponentes participarían en negociaciones concurrentes, durante las cuales se les podría solicitar información adicional o mejoras a sus propuestas. Tras las negociaciones, a los proponentes se le podría requerir a presentar su Mejor y Última Oferta (“Best and Final Offer” o “BAFO”), la cual se evaluaría utilizando los mismos criterios que la propuesta original.

El 10 de mayo de 2025, 3PPO notificó tanto a Javelin como a Power Expectations que habían sido seleccionados para entrar en negociaciones conforme a la Sección 14 del RFP.

El 25 de mayo de 2025, Javelin presentó una versión comentada del “Performance Service Agreement” (“PSA”) junto con su propuesta original y posteriormente compartió el documento directamente con 3PPO. A pesar de estos esfuerzos, Javelin nunca recibió una

versión revisada ni respuesta alguna de 3PPO. Durante reuniones por Zoom celebradas el 12 y el 16 de mayo de 2025, 3PPO indicó que una versión revisada del PSA de Javelin estaba lista para ser compartida con Javelin; sin embargo, dicho documento nunca fue entregado a Javelin.

F. Declaraciones públicas

El 9 de junio de 2025, antes de que concluyeran las negociaciones con los proponentes seleccionados y de que se anunciara formalmente la adjudicación del RFP, el periódico *El Nuevo Día* publicó declaraciones del Asesor de Política Energética de Puerto Rico y Director Ejecutivo de la P3A, el Ingeniero Josué Colón (“Ing. Colón”). Según dichas declaraciones, únicamente Power Expectations había sido seleccionado para proveer 800 megavatios de generación temporal para cubrir la demanda durante el verano. Esto representó un giro respecto a expresiones previas que sugerían que se adjudicarían contratos a ambos proponentes seleccionados.

El Nuevo Día cita las siguientes expresiones del Ing. Colón: “Javelin cumplió con todo lo demás. Esa es la información que tengo, pero no con el de costo. Parece que estaban por encima, por allá, 30, 35 centavos, y no en lo que era la expectativa de costo del RFP (requerimiento de propuestas, en inglés).” Véase *El Nuevo Día*, 9 de junio de 2025, *Gobierno contrata a Power Expectations y espera contar con los 800 megavatios de energía temporal en agosto o septiembre*, Exhibit 2.

El rotativo además señaló que la semana anterior, en una conferencia de prensa en La Fortaleza, el Ing. Colón había declarado que se contemplaba firmar contratos con ambos proponentes: “En ese momento, la expectativa de nosotros siempre era que se pudiera adjudicar la subasta a más de una compañía. Eso es lo que entendíamos que podía pasar. Era como que lo más lógico. Pero, al no alcanzarse un costo razonable —y razonable tenía que ser por debajo de los 25 centavos—, como licitador, pues simplemente quedó fuera”, argumentó. *Id.*

Cabe destacar que estas declaraciones se hicieron públicas mientras las negociaciones aún estaban en curso, sin aviso previo a Javelin y antes de emitirse la notificación formal de adjudicación y no representa la realidad de las negociaciones en curso.

G. Notificación de adjudicación

El 13 de junio de 2025, Javelin recibió de 3PPO, a través de PowerAdvocate®, una carta titulada *Notification of Award – Temporary Emergency Generation RFP* (la “Notificación del 13 de junio”). Véase *Exhibit 3*. Dicha notificación, dirigida a todos los proponentes, aparentaba tener como propósito comunicar la adjudicación del RFP. En ella, 3PPO indicó que, tras una evaluación —que incluyó revisión de cumplimiento, análisis técnicos y financieros, y negociaciones con los dos proponentes recomendados— se daba por concluido el proceso de adjudicación. La carta

identifica a los proponentes cuyas propuestas fueron descalificadas o no recomendadas y da a entender que solo Javelin y Power Expectations fueron considerados para la adjudicación. A pesar de su título (*Notification of Award*), esta carta no indica a cuál proponente se adjudicó el RFP ni expone los fundamentos de dicha decisión.

La Notificación del 13 de junio establece que, contrario al plan original de emitir la carta formal de adjudicación solo al momento de la firma del contrato, el período de reconsideración comenzaba con esta notificación. Por tanto, cualquier proponente adversamente afectado disponía de cinco días calendario desde la fecha de emisión para presentar una solicitud de reconsideración, conforme a la Sección 22 del RFP.

El 14 de junio de 2025, Javelin respondió a la Notificación del 13 de junio solicitando aclaración y, en la alternativa, reconsideración (la “Carta de Aclaración/Reconsideración”). Javelin sostuvo que, según el lenguaje de la notificación, el proceso de reconsideración referido no aplicaba a su propuesta. No obstante, de entenderse que la Notificación del 13 de junio imponía alguna obligación o plazo aplicable a Javelin, solicitó que 3PPO reconsiderara o aclarara el aviso. Esta solicitud era particularmente urgente, ya que la Notificación del 13 de junio hacía referencia a una “Sección 22” del RFP, la cual no existe en el RFP, generando incertidumbre sobre el procedimiento aplicable. Dado el plazo de cinco días establecido, Javelin solicitó la aclaración para el 16 de junio de 2025 y reservó expresamente todos sus derechos conforme al RFP y la ley aplicable.

La Carta de Aclaración/Reconsideración destacó las fortalezas de la propuesta de Javelin, incluyendo su disponibilidad para ejecutar el proyecto desde inicios de mayo, un plan completamente desarrollado en coordinación con LUMA Energy, contratos firmados con suplidores clave, ausencia de necesidad de financiamiento externo, experiencia comprobada en proyectos similares y la sólida trayectoria profesional e integridad de sus principales ejecutivos. Asimismo, Javelin refutó percepciones públicas erróneas, aclarando que —si PREPA cooperaba— su proyecto propuesto en Costa Sur podría generar electricidad a 25 centavos por kWh operando cerca de su capacidad, sin depender de muelles, camiones o suplidores no comprobados. La carta también señaló que Javelin presentó un plan de negocio revisado que aumentaba la capacidad del proyecto a 250 MW. Finalmente, reafirmó su disposición a sostener discusiones constructivas con 3PPO y PREPA sobre los términos de su propuesta, incluyendo precio y la solicitud de una carta de crédito emitida por el ELA o PREPA.

El 16 de junio de 2025, 3PPO notificó otra carta a todos los proponentes. Véase *Exhibit 4*. Aunque el comunicado no tiene título, su contenido aparenta servir como la notificación formal de adjudicación del RFP (“Notificación de Adjudicación”). Esta carta confirmó la conclusión del

proceso de evaluación y notificó oficialmente la adjudicación del RFP a Power Expectations para proveer hasta 800 MW de generación temporal de emergencia. Cabe destacar que la notificación se desvió del plan original —que contemplaba emitir la carta de adjudicación solo al momento de la firma del contrato— y se divulgó antes, a solicitud de la AEE, para su presentación ante su Junta de Gobierno. La carta también activó el período de reconsideración mencionado en la “Sección 22” del RFP, permitiendo a cualquier proponente afectado presentar una solicitud de reconsideración dentro de los cinco días naturales a partir de la notificación.

Ese mismo día, 3PPO emitió una aclaración señalando un error tipográfico en la Notificación de Adjudicación, especificando que la disposición aplicable sobre reconsideración es la Sección 20 del RFP, y no la Sección 22, como se indicó inicialmente.

La Notificación de Adjudicación no proporciona explicación ni justificación alguna para la selección de Power Expectations ni para el rechazo de la propuesta de Javelin.

H. Solicitud de acceso al expediente administrativo

El 16 de junio de 2025, Javelin presentó una solicitud formal de acceso al expediente administrativo a través de PowerAdvocate®. En su solicitud, Javelin invocó el derecho del público a inspeccionar documentos relacionados con el proceso de adquisición y enfatizó la necesidad de acceder al expediente para poder presentar una moción de reconsideración. La solicitud citó tanto el marco legal que garantiza la transparencia en las compras públicas como disposiciones específicas de la RFP que confirman el carácter público del proceso y el uso de fondos públicos y federales de emergencia. Véase Exhibit 5.

I. Moción de Reconsideración y Segunda Solicitud de acceso al expediente administrativo

El 18 de junio de 2025, Javelin presentó una Moción de Reconsideración respecto a la Notificación de Adjudicación, conforme a las instrucciones del RFP. En la moción, Javelin indicó que la misma se presentaba sin contar con el expediente administrativo —al cual tenía derecho de acceso— y que, por tal razón, se reservaba el derecho de complementarla una vez recibido dicho expediente. Asimismo, reiteró su solicitud para que se le suministrara copia completa del expediente del RFP y dejó constancia de que se reservaba todos sus derechos al amparo del RFP y de la legislación aplicable.

J. Tercera Solicitud de acceso al expediente administrativo

El 28 de junio de 2025, Javelin reiteró por tercera vez su solicitud de acceso al expediente administrativo relacionado con el RFP. En esta nueva gestión, Javelin insistió en su derecho a examinar la documentación completa y actualizada, subrayando la necesidad de contar con dicho expediente para poder ejercer adecuadamente su derecho a reconsideración. Véase Exhibit 6.

V. DERECHO APLICABLE

A. *El derecho al acceso a información pública*

En nuestra jurisdicción, el derecho de acceso a la información pública ha sido reconocido como un complemento indispensable de los derechos de libertad de expresión, de prensa y de asociación, garantizados en la Sección 4 del Artículo II de la Constitución del Estado Libre Asociado de Puerto Rico, L.P.R.A., Tomo I, así como en la Primera Enmienda de la Constitución de los Estados Unidos. Véanse Trans Ad de P.R. v. Junta de Subastas, 174 D.P.R.; Colón Cabrera v. Caribbean Petroleum, 170 D.P.R. 582 (2007); Nieves v. Junta, 160 D.P.R. 97 (2003). Sobre este particular, el Tribunal Supremo ha señalado que dicho derecho constituye un fundamento esencial de toda sociedad democrática, en tanto permite a la ciudadanía evaluar y supervisar adecuadamente el desempeño gubernamental, al tiempo que facilita una participación efectiva en los asuntos públicos. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 80-81 (2017).

En esa misma dirección, el Artículo 409 del Código de Enjuiciamiento Civil dispone que todo ciudadano tiene derecho a inspeccionar y obtener copia de documentos públicos en Puerto Rico, salvo que una ley disponga lo contrario. 32 L.P.R.A. sec. 1781. Para que este derecho sea ejercitable, es requisito inicial que la información en cuestión sea de naturaleza pública. Trans Ad de P.R. v. Junta de Subastas, *supra*. A tales efectos, el Artículo 3(b) de la *Ley de Administración de Documentos Públicos*, Ley Núm. 5 de 8 de diciembre de 1955, según enmendada, define como documento público todo aquel que se origine, conserve o reciba en una dependencia del Estado en el curso de la gestión pública, y que, conforme a la ley, deba preservarse como prueba de las transacciones realizadas o por su valor legal. 3 L.P.R.A. sec. 1001.

Una vez clasificado como público, el documento puede ser solicitado para inspección. Nieves v. Junta, *supra*. No obstante, el acceso no es absoluto, ya que existen circunstancias de alto interés público que justifican limitar su divulgación. Trans Ad de P.R. v. Junta de Subastas, *supra*; Colón Cabrera v. Caribbean Petroleum, *supra*.

El Tribunal Supremo ha delimitado las situaciones en las cuales el Estado puede válidamente invocar la confidencialidad: (1) cuando una ley así lo dispone; (2) cuando la comunicación esté protegida por un privilegio evidenciario; (3) cuando la divulgación afecte derechos fundamentales de terceros; (4) cuando se trate de proteger la identidad de un confidente; y (5) cuando la información sea clasificada como oficial conforme a la Regla 514 de Evidencia, *supra*. Colón Cabrera v. Caribbean Petroleum, *supra*, pág. 591; Angueira v. JLBP, 150 D.P.R. 10 (2000). Corresponde al Estado la carga de demostrar que su reclamo se ajusta a alguna de estas excepciones. *Id.*

Cuando el Estado deniega acceso a información basándose en una ley o reglamento, dicha norma será sometida al escrutinio judicial más estricto. Ortiz v. Dir. Adm. de los Tribunales, 152 D.P.R. 161, 178 (2000). Bajo este estándar, la ley o reglamento debe: (i) estar dentro de las competencias constitucionales del gobierno; (ii) perseguir un interés apremiante; (iii) no estar dirigida a suprimir la libertad de expresión; y (iv) ser lo menos restrictiva posible. *Id.*

Finalmente, el análisis para determinar si el interés del Estado justifica la denegación del acceso debe hacerse estrictamente a favor del ciudadano solicitante y en contra del privilegio gubernamental. Nieves v. Junta, *supra*, pág. 104. El Estado tiene la obligación de presentar evidencia concreta que demuestre la existencia de intereses apremiantes que prevalezcan sobre el derecho ciudadano a la información. López Vives v. Policía de P.R., 118 D.P.R. 219 (1987).

En Trans Ad de P.R., el Tribunal Supremo determinó que “el expediente administrativo que contiene la documentación relacionada con el trámite de un procedimiento de subasta es, necesariamente, un documento público”. Trans Ad de P.R. v. Junta de Subastas, *supra*, pág. 70. El Tribunal añadió que, “una vez se ha adjudicado la buena pro de una subasta, el expediente que contiene los documentos recopilados en el trámite de la misma está sujeto a la inspección de cualquier ciudadano en virtud del artículo 409 del Código de Enjuiciamiento Civil”. *Id.*

B. La Ley de Transparencia y Procedimiento Expedito para el Acceso a la Información Pública

La Ley Núm. 141-2019 reafirma como principio rector que toda información generada, recibida o custodiada por el Gobierno de Puerto Rico se presume pública y accesible a cualquier persona, salvo que una ley disponga expresamente su confidencialidad. Véase Artículo 3, 3 L.P.R.A. § 9913. Esta ley reconoce este acceso como un derecho constitucional y humano fundamental, inseparable de los derechos de libertad de expresión y de prensa, y piedra angular de la rendición de cuentas y la fiscalización ciudadana. *Id.*

La Exposición de Motivos enfatiza que la falta de acceso a la información fomenta la corrupción, debilita la confianza en las instituciones públicas y limita la participación ciudadana informada. Resalta que la transparencia es un pilar esencial de toda democracia moderna y que el Estado tiene el deber de divulgar proactivamente información clave, como contratos, presupuestos y auditorías, para que la ciudadanía pueda supervisar cómo se administran los fondos y recursos públicos.

La Ley dispone expresamente que cualquier persona puede presentar una solicitud de acceso a información sin necesidad de acreditar un interés particular ni de fundamentarla en una disposición legal específica, bastando con identificar la información requerida. Esta debe ser atendida por la agencia correspondiente en un plazo máximo de diez (10) días laborables, prorrogable por única vez por hasta diez (10) días adicionales si existen circunstancias

excepcionales debidamente justificadas. Asimismo, toda denegación debe fundamentarse por escrito, indicando la base legal específica que justifique la reserva y demostrando que existe causa válida para restringir la divulgación.

Si la agencia deniega la solicitud, la dilata sin justificación o guarda silencio, la persona solicitante no tiene que agotar remedios administrativos y puede acudir directamente al Tribunal de Primera Instancia mediante un recurso especial de revisión judicial, conforme dispone el Artículo 9. Este recurso se atiende de forma preferente y expedita, siguiendo el principio de acceso rápido, económico y sencillo que inspira la Ley. La carga de la prueba recae sobre la agencia, que debe demostrar la legalidad de la confidencialidad reclamada, y toda restricción debe interpretarse de forma restrictiva y estrictamente necesaria.

Las disposiciones de la Ley de Transparencia son aplicables al Gobierno de Puerto Rico, incluyendo la Rama Legislativa, la Rama Judicial y la Rama Ejecutiva, así como a todas las entidades gubernamentales, corporaciones públicas y municipios. Asimismo, la Ley se extiende a terceros custodios de información o documentos públicos. Véase Ley Núm. 141-2019, Artículo 2, Sección 2, 3 L.P.R.A. § 9912.

De este modo, la Ley Núm. 141-2019 convierte en norma clara y ejecutable el principio de apertura del Estado, obligando a la administración pública a actuar con total transparencia y a garantizar que toda persona pueda examinar la gestión gubernamental sin obstáculos innecesarios ni formalismos excesivos.

IV. ARGUMENTO

A. El expediente del RFP es, por su naturaleza, un documento público

Conforme con la jurisprudencia reiterada por el Tribunal Supremo en Trans Ad, el expediente administrativo relacionado con un procedimiento de subasta o solicitud de propuestas es, por definición, público una vez se adjudica el RFP. Dicho expediente contiene la documentación generada, conservada y recibida por 3PPO, como agente de la AEE durante la gestión de fondos públicos para contratar la generación temporal de emergencia. Según la Sección 15 del RFP, la información relacionada con los contratos resultantes, su proceso de evaluación y sus precios es pública y puede divulgarse a agencias estatales o federales, o al público en general.

B. El acceso al expediente es indispensable para garantizar el derecho de Javelin a reconsideración

La propia estructura del RFP contempla la posibilidad de presentar solicitudes de reconsideración. Sin embargo, cualquier reconsideración sería ilusoria si se priva al proponente de examinar el expediente que sustenta la adjudicación. El expediente es esencial para poder determinar si la evaluación y selección cumplió con los requisitos de ley, los criterios de

evaluación establecidos y los principios de igualdad de trato entre proponentes. De no entregarse, se estaría negando efectividad práctica al derecho de revisión establecido en la Sección 20 del RFP, afectando la garantía mínima de debido proceso administrativo.

C. La adjudicación involucra fondos públicos y federales

La adjudicación del RFP supone el compromiso de sumas millonarias provenientes del erario, incluyendo fondos federales de emergencia asignados para reforzar la resiliencia y recuperación de la infraestructura energética de Puerto Rico. Por tratarse de recursos públicos —estatales y federales— existe un interés público apremiante y legítimo en garantizar la máxima fiscalización y escrutinio de cómo se adjudican y se administran estos fondos.

La Ley 141-2019 y la jurisprudencia reiterada de nuestro Tribunal Supremo imponen un estándar de máxima apertura cuando se maneja dinero público. En este contexto, la reserva o confidencialidad de información debe ser interpretada de forma estricta y restrictiva, exigiendo al Estado demostrar de forma clara y específica la existencia de una justificación válida para denegar el acceso.

Como ha expresado el Tribunal Supremo de Puerto Rico, la buena administración de un gobierno es una virtud de la democracia, y parte de esa buena administración es ejecutar sus funciones como comprador de bienes y servicios con eficiencia, honestidad y corrección, para proteger los intereses y los dineros del pueblo que representa. Véase A.E.E. v. Maxon Engineering Services, 163 D.P.R. 434, 439 (2004).

Permitir que Javelin acceda al expediente administrativo no solo respeta su derecho procesal como proponente directamente afectado, sino que también materializa el deber constitucional de asegurar la transparencia en el manejo de fondos públicos. Más aún, cuando estos contratos impactan servicios esenciales para la población —como lo es la generación de energía de emergencia— y se sufragan con recursos destinados a atender situaciones críticas para la seguridad y la calidad de vida de todos los ciudadanos.

D. No existe excepción válida que justifique la denegatoria

De acuerdo con el marco legal y el criterio reiterado en Colón Cabrera v. Caribbean Petroleum, 170 D.P.R. 582 (2007) y Angueira v. JLBP, 150 D.P.R. 10 (2000), la única vía legítima para que el Estado pueda denegar el acceso a documentos públicos es demostrar, mediante evidencia concreta y específica, que la información solicitada está amparada por una ley de confidencialidad, por un privilegio evidenciario reconocido o por alguna limitación legítima que salvaguarde intereses apremiantes, como la protección de derechos fundamentales de terceros.

Ninguna de estas excepciones resulta aplicable al expediente administrativo de un RFP ya adjudicado. Por definición y conforme a Trans Ad, los documentos que integran el expediente

de una subasta —como los criterios de evaluación, las actas de reuniones, informes del comité evaluador, comunicaciones oficiales, resoluciones, puntuaciones y fundamentos de decisión— constituyen información pública sujeta a inspección.

Incluso si dentro del expediente existieran elementos que contuvieran datos técnicos o comerciales confidenciales de otros proponentes, el propio RFP disponía mecanismos claros para proteger esa información: exigía que cualquier proponente que incluyera secretos industriales, estrategias de negocio u otros detalles sensibles presentara una versión redactada de su propuesta, junto con una justificación detallada de por qué dicha información no debía divulgarse.

Por lo tanto, la existencia de información confidencial no justifica ocultar la totalidad del expediente. La obligación de presentar versiones editadas demuestra que el diseño mismo del proceso anticipa y viabiliza la divulgación pública de toda la documentación restante, sin menoscabar la protección de intereses legítimos.

E. Las declaraciones públicas descartan cualquier reclamo de confidencialidad

El Ing. Colón ofreció detalles a la prensa sobre supuestos costos de la propuesta de Javelin y adelantó conclusiones sobre la selección de Power Expectations, todo mientras las negociaciones seguían abiertas y sin que se hubiese emitido la notificación formal de adjudicación. Javelin sostiene que esta información es incorrecta y no refleja fielmente los términos finales de su propuesta.

Aun así, el propio Ing. Colón divulgó elementos que, de ser confidenciales, dejaron de serlo al ventilarse públicamente. Pretender ahora invocar reserva o secreto para negar acceso al expediente resultaría incompatible con esa divulgación voluntaria, máxime cuando se trata de información de alto interés público y que envuelve erogación de fondos públicos y federales.

En este contexto, cualquier intento de retener la información por supuesta confidencialidad debe evaluarse con el mayor escrutinio y rechazarse, pues la propia conducta de los funcionarios demuestra que no existe interés legítimo en mantener reservados los detalles esenciales del proceso.

Por información y creencia, el 20 de junio de 2025, la AEE le sometió al Negociado de Energía de Puerto Rico (“NEPR”), para su aprobación, copia del contrato propuesto resultante de la adjudicación del RFP. Al someter copia del contrato propuesto, la AEE le solicitó al NEPR que se mantuviera confidencial por contener información que es parte de un proceso deliberativo.

No obstante, el contrato propuesto, resultado de la adjudicación del RFP, es por definición un documento público. Surge de un proceso oficial de contratación con fondos públicos y federales, por lo que se encuentra dentro de la definición de “documento público” según la Ley

de Administración de Documentos Públicos y la Ley 141-2019, que presume pública toda información generada o custodiada por el Gobierno, salvo que una ley disponga expresamente lo contrario.

No existe disposición legal que declare confidenciales los contratos gubernamentales de esta naturaleza, y la jurisprudencia es clara en que una vez se adjudica una subasta o RFP, toda la documentación relacionada, incluyendo el contrato, debe estar disponible para inspección ciudadana. Invocar confidencialidad por tratarse de parte de un “proceso deliberativo” no aplica, pues el contrato refleja una determinación concreta y sujeta a fiscalización pública.

Además, la propia AEE divulgó públicamente detalles del contenido del contrato mediante expresiones del Ing. Colón a la prensa. Al ventilarse esa información, cualquier reclamo de confidencialidad quedó descartado. Pretender ahora retener el documento contradice el deber de transparencia, especialmente cuando se administran recursos públicos para servicios esenciales.

En síntesis, el expediente administrativo que documenta el proceso de evaluación y adjudicación de un contrato financiado con recursos públicos no está protegido por excepción válida alguna que permita negar su divulgación. A falta de una justificación específica, la negativa de la AEE, la P3A y 3PPO constituye una violación directa del derecho fundamental de acceso a la información pública.

En consecuencia, de divulgar el expediente carece de base legal, contradice el propio RFP, viola normas constitucionales y estatutarias de transparencia y restringe ilegítimamente derechos fundamentales de Javelin y del público.

V. SÚPLICA

EN MÉRITO DE LO EXPUESTO, Javelin solicita de este Honorable Tribunal que (i) que declare CON LUGAR el presente recurso; y (ii), por consiguiente, ordene a la AEE, la P3A y a 3PPO a proveerle a Javelin acceso inmediato al expediente administrativo del RFP, incluyendo información y documentos en posesión de contratistas, subcontratistas o de cualquier otro custodio.

RESPECTUOSAMENTE SOMETIDA.

En San Juan, Puerto Rico, hoy 3 de julio de 2025.

McCONNELL VALDÉS LLC

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