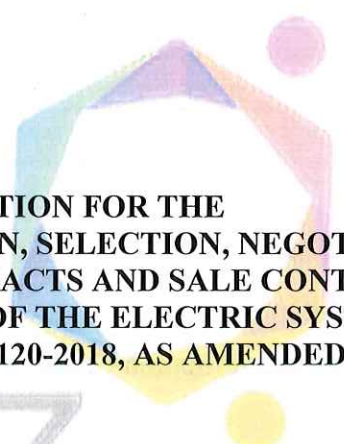


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Assistant Secretary  
Department of State

**GOVERNMENT OF PUERTO RICO  
PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY**



**REGULATION FOR THE  
PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND  
AWARD OF PARTNERSHIP CONTRACTS AND SALE CONTRACTS FOR THE  
TRANSFORMATION OF THE ELECTRIC SYSTEM  
UNDER ACT NO. 120-2018, AS AMENDED**

P3

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## **SECTION 1 LEGAL BASIS; PURPOSE OF REGULATION; SCOPE**

**1.1. Legal Basis.** This Regulation is promulgated by virtue of the power vested in the Authority by Article 5(d) of Act 120-2018. Act 120-2018 authorizes the Authority to create and approve, pursuant to Act 29-2009, regulations specific to any PREPA Transaction.

**1.2. Purpose of Regulation.** The purpose of this Regulation is to establish a procurement, evaluation, selection, negotiation and award process for Partnerships with respect to any Function, Service or Facility of PREPA and Sale Contracts of PREPA Assets related to energy generation that is fair, consistent, transparent, and encourages and supports a climate of private sector innovation and investment in Puerto Rico. In order to carry out the purposes of Act 120-2018 and Act 29-2009, this Regulation provides guidelines and procedures for, among others: (a) identifying the Functions, Services or Facilities for which Partnerships will be established; (b) identifying which PREPA Assets related to energy generation will be sold or transferred through one (1) or more Sale Contracts; (c) soliciting, obtaining and evaluating Proposals for PREPA Transactions; (d) selecting the entities or individuals that will enter into Transformation Contracts with PREPA; and (e) negotiating and awarding Transformation Contracts.

**1.3. Scope of Regulation.** The scope of this Regulation is limited to those Projects covered by the definition of a PREPA Transaction set forth in Act 120-2018 and this Regulation. The Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public Private Contracts Under Act No. 29-2009 does not apply to PREPA Transactions. For the avoidance of doubt, the procurement, evaluation, selection, negotiation, and award processes established in this Regulation are not applicable to the procurement of goods or services by a Contractor, and such procurement by a Contractor shall be subject to the applicable law.

### **1.4. Scope of Act 120-2018.**

(a) The Authority is designated as the only Government Entity authorized to, and responsible for (i) implementing the public policy of Act 120-2018, (ii) determining the Functions, Services or Facilities for which Partnerships will be established and (iii) determining which PREPA Assets related to energy generation will be sold or transferred through one (1) or more Sale Contracts.

(b) From time to time, the Authority may review a Project and determine, in its sole and absolute discretion, under Article 5(b) of Act 120-2018 not to develop a Partnership for a Function, Service, Facility or PREPA Asset that would otherwise be a PREPA Transaction. Such determination will be made without prejudice to future determinations concerning other similar Projects. In such cases, such Function, Service, Facility or PREPA Asset may be developed by PREPA pursuant to Act 83-1941 or any other applicable law, including procurement and other regulations, and will not be considered a PREPA Transaction.

(c) Notwithstanding the foregoing, in no case will PREPA initiate a Project that entails a Function, Service or Facility without presenting it to the Authority, requesting the Authority to release the Project for PREPA's direct procurement and obtaining the Authority's release of the Project. The Authority and PREPA will also separately (i) identify the day-to-day operational Functions and Services that entail purchases or service contracts and should be excluded from the PREPA Transaction process under Act 120-2018 and this Regulation and (ii) agree in writing to exclude these Functions and Services from the PREPA Transaction process upfront. Any violation of this Section 1.4 will render such procurement process by PREPA invalid as contrary to this Regulation and Act 120-2018.

(d) In addition to what is provided in Section 1.4(a), (b) and (c) above, the Authority may review any procurement process initiated by PREPA prior to the approval of this Regulation for the award of a contract related to a Project within the definition of a PREPA Transaction under Act 120-2018. After such review, the Authority may elect to (i) notify PREPA to continue the procurement process, (ii) instruct PREPA to cancel the procurement process and choose not to pursue procurement under Act 120-2018 and this Regulation or (iii) instruct PREPA to cancel the procurement process and commence a new process pursuant to Act 120-2018 and this Regulation.

(e) PREPA is only authorized to sell or dispose of PREPA Assets related to energy generation through the process established in Act 120-2018 and this Regulation. A lease, operation and management agreement or similar arrangement with respect to a PREPA Asset is not a sale, transfer or disposition of such PREPA Asset.

## SECTION 2 DEFINITIONS

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

**2.1. Act 29-2009:** means the Public-Private Partnerships Act, Act No. 29, approved on June 8, 2009, as may be amended from time to time.

**2.2. Act 120-2018:** means the Puerto Rico Electric System Transformation Act, Act No. 120, approved on March 6, 2018, as may be amended from time to time.

**2.3. Addenda or Addendum:** means a written supplement to an RFQ or RFP issued by the Authority after the publication of such RFQ or RFP, which includes clarifications, changes or additions in response to an RFC or *motu proprio* to (a) the terms and conditions of the RFQ or RFP; (b) the conceptual design or the plans and specifications of a Project; (c) the terms or conditions of the related Transformation Contract; or (d) any other document related to the RFQ or RFP.

**2.4. Affiliate:** means, in the case of a legal entity, any other entity that Controls or is Controlled by such entity and any other entity that, directly or indirectly, is Controlled by the same Person that Controls or has the power to Control such entity.



**2.5. AFC:** means an alternative financial concept to the baseline concepts or components that may be requested by the Authority in an RFP. The Authority may request or allow Proponents to incorporate such financial innovation and creativity into their Proposals.

**2.6. ATC:** means an alternative technical concept to the baseline concepts or components that may be requested by the Authority in an RFP, including those concepts that do not require a modification of the technical provisions, but that, if implemented, would require further environmental evaluation of the Project or a material portion of the Project. The Authority may request or allow Proponents to incorporate such technical innovation and creativity into their Proposals.

**2.7. Authority:** means the Public-Private Partnerships Authority created by Act 29-2009.

**2.8. Authority Board:** means the board of directors of the Authority.

**2.9. Authorized Representative:** means the individuals designated pursuant to Section 5.1 of this Regulation to negotiate with Proponents on behalf of the Authority.

**2.10. Award of a Transformation Contract:** means the approval by the Governor, and, if applicable, the Legislative Assembly, of a Preliminary Contract that has previously been issued an Energy Compliance Certificate and been approved and recommended by the Authority and PREPA, pursuant to the provisions of Articles 5(g) and 10(a)-(c) of Act 120-2018 and Article 9(g) of Act 29-2009.

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

**2.12. Committee Report:** means the report prepared by each Partnership Committee as required by Article 5 and Article 10 of Act 120-2018 and by Article 9(g)(i) of Act 29-2009. The Committee Report must include the rationale for entering into a Transformation Contract, the reasons for selecting the Proponent, a description of the procedure followed, including comparisons between the Proponent and the Transformation Contract recommended and other proposals presented, as well as other information pertinent to the procedure followed and the evaluation conducted.

**2.13. Competitive Range:** means those Proposals received by the Authority in response to an RFP that the Partnership Committee determines, in its sole and absolute discretion, have a reasonable probability of being recommended for an Award of a Transformation Contract.

**2.14. Concurrent Resolution:** means a resolution approved by the Puerto Rico Senate and House of Representatives, expressing the intention of these bodies, not

requiring the approval of the Governor and not constituting a law of general applicability in Puerto Rico.

**2.15. Contractor(s):** means the Person(s) who executes a Transformation Contract with PREPA or its successor(s).

**2.16. Control:** means if another person or legal entity (a) is the owner of any legal, beneficial or equitable interest in 50% or more of the voting securities in a corporation, partnership, joint venture, other person or entity or (b) has the capacity to (i) control the composition of the majority of the board of directors of any such person or entity, (ii) control the decisions made by or on behalf of any such person or entity or (iii) otherwise direct or cause the direction of the management, actions or policies of any such person or entity (whether formally or informally). The terms “Controlling” and “Controlled” have corresponding meanings.

**2.17. Energy Bureau:** means the Energy Bureau created pursuant to the Energy Transformation and RELIEF Act, Act No. 57-2014, as may be amended from time to time.

**2.18. Energy Compliance Certificate:** means a certificate issued by the Energy Bureau in all PREPA Transactions through which the Energy Bureau certifies that the Preliminary Contract complies with the regulatory framework, the energy public policy and applicable law.

**2.19. Executive Director:** means the Executive Director of the Authority or, in the absence of the appointment of an Executive Director, the person acting for the Authority as the project manager during the Authority’s PREPA Transactions process.

**2.20. Evaluation Criteria:** means the criteria adopted by the Partnership Committee, in its sole and absolute discretion, which will be used to evaluate, rank, select and recommend Proposals for rejection or award. To the extent applicable, the Evaluation Criteria will include (i) the criteria listed in Article 5(e) of Act 120-2018 and Article 9(c) of Act 29-2009, (ii) consistency with PREPA’s Fiscal Plan and Budget (as defined in PROMESA), (iii) potential impact on any Partnership Contract previously executed by PREPA, and (vi) such other criteria included in an RFQ or RFP or this Regulation.

**2.21. FAFAA:** means the Puerto Rico Fiscal Agency and Financial Advisory Authority.

**2.22. Facility(ies):** means any property, asset, capital work or facility owned or used by PREPA, whether real or personal, whether existing or to be developed in the future, including, but not limited to, systems to produce, transmit or distribute electric power; fuel-related facilities, thermal power plants, renewable energy generation plants (including hydroelectric power plants), peaking power plants, energy storage systems, smart meters, service and control centers, transmission lines, substations, and microgrids.

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

**2.24. Federal Government:** means the Government of the United States of America and includes any and all Federal Agencies.

**2.25. FOMB:** means the Financial Oversight and Management Board for Puerto Rico established pursuant to PROMESA.

**2.26. Function(s):** means any present or future responsibility or operation of PREPA, expressly delegated to the same by means of either its enabling act or any pertinent special laws. The term Function(s) includes, without limitation, the coordination of emergency planning and storm restoration and recovery (including the procurement, administration and deployment of disaster recovery funding or other grants from the Federal Government), interfacing with regulators and general system planning (including sourcing, designing and implementing system growth and improvement), and all activities and operations currently conducted by PREPA.

**2.27. Government:** means the Government of Puerto Rico.

**2.28. Government Entity:** means any department, agency, board, commission, body, bureau, office, Municipal Entity, public corporation or instrumentality of the Executive Branch, as well as of the Judicial Branch and the Legislative Branch, of the Government, whether existing or to be created in the future.

**2.29. Governor:** means the Governor of Puerto Rico or the executive official designated and authorized by the Governor to act as his or her delegate for purposes of any decisions required to be made by the Governor under Act 120-2018 and Act 29-2009, but subject to the limitations set forth in Article 9(g) of Act 29-2009.

**2.30. Legislative Assembly:** means the legislative body comprised of a Senate and House of Representatives constituting the legislative power under Article III of the Constitution of the Commonwealth of Puerto Rico.

**2.31. Municipal Entity:** means any municipality of Puerto Rico, as well as any municipal corporation or municipal consortium.

**2.32. Partnership:** means any agreement between PREPA and one (1) or more Persons (other than a Government Entity), subject to the public policy set forth in Act 120-2018 and Act 29-2009, the terms of which are provided under a Partnership Contract, to delegate operations, Functions, Services, or responsibilities of PREPA, or covering the design, development, financing, maintenance or operation of one (1) or more Facilities, or any combination thereof.

**2.33. Partnership Committee:** means a committee designated by the Authority to evaluate and select qualified Persons and Proponents of a PREPA Transaction, and to establish and negotiate the terms and conditions it deems appropriate for the corresponding Transformation Contract.

**2.34. Partnership Contract:** means a contract related to a PREPA Transaction executed by the Selected Proponent and PREPA to establish a Partnership, which may include, but will not be limited to, a contract to delegate a Function, administer or render one (1) or more Services, or conduct the design, building, financing, maintenance, or operation of one (1) or more Facilities, for which an Energy Compliance Certificate has been issued. A Partnership Contract may be, without it being understood as a limitation, any modality of the following kinds of contract: design / build, design / build / operate, design / build / finance / operate, design / build / transfer / operate, design / build / operate / transfer, turnkey contract, long-term lease contract, surface right contract, joint venture contract, long-term administration and operation contract, and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases. The obligations arising from these contracts will be binding insofar as these do not disrupt the law, morality, or public order.

**2.35. Person:** means any natural person or legal entity organized under the laws of Puerto Rico, the United States of America, any of its states or territories, or of any foreign country, any Federal Agency, or any combination of the above. The term includes any department, agency, Municipal Entity, government instrumentality, individual, firm, partnership, stock company, association, public or private corporation, or cooperative union or non-for-profit entity duly constituted and authorized under the laws of Puerto Rico or the United States of America or any of its states or territories or any foreign county.

**2.36. Preliminary Contract:** means all the clauses and specific conditions of a Transformation Contract approved by the Authority and agreed to be entered into by PREPA and the Selected Proponent. The Preliminary Contract must have the Energy Compliance Certificate at the time it is submitted to the Authority Board and PREPA Board. It must be the same Transformation Contract, in form and content, that the parties intend to sign. With respect to a Sale Contract, and as provided in Section 10(c) of Act 120-2018, once the transaction has been ratified by the Legislative Assembly, its clauses and conditions may not be amended without the approval of the Legislative Assembly.

**2.37. Pre-Proposal Conference:** means a meeting or telephone conference held by the Authority, in its sole and absolute discretion, prior to the due date of an RFQ or RFP where all prospective Proponents who have registered with the Authority may participate, raise questions and seek any preliminary clarification related to the RFQ or RFP. The Authority may also hold Pre-Proposal Conferences with individual prospective Proponents when (a) the questions or clarifications sought by a Person relate to confidential or proprietary information to be submitted as an AFC or an ATC or as part of a similar process employed by the Authority or (b) the Authority determines that individual Pre-Proposal

Conferences will maintain the competitive tension in the process for the benefit of the people of Puerto Rico.

**2.38. PREPA:** means the Puerto Rico Electric Power Authority created by the Puerto Rico Electric Power Authority Act, Act No. 83-1941, its assigns or a successor Government Entity, and includes any of its subsidiaries and activities, commercial or otherwise.

**2.39. PREPA Asset:** means any and all of PREPA's real property (including any real property rights), personal property (whether tangible or intangible), Facilities, resources, ownership interests, rights of any nature and any other asset whose domain is possessed by PREPA, directly or indirectly, pursuant to a law, and any right of PREPA to receive Property at present or in the future, whether vested or inchoate.

**2.40. PREPA Transaction:** means any and all transactions determined by the Authority pursuant to which PREPA or the Government of Puerto Rico enters into one (1) or more Partnerships with respect to any Function, Service or Facility of PREPA or one (1) or more Sale Contracts involving PREPA Assets related to energy generation, and that is carried out pursuant to the provisions of Act 29-2009 and Act 120-2018. Pursuant to Article 5(a) of Act 120-2018, all PREPA Transactions are considered "Priority Projects", as defined in Act 29-2009.

**2.41. PREPA Board:** means the board of directors of PREPA.

**2.42. Project:** means any project related to a Function, Service or Facility of PREPA or to any PREPA Assets.

**2.43. PROMESA:** means the Puerto Rico Oversight, Management and Economic Stability Act, Public Act 114-87 of June 30, 2016, as the same may be amended from time to time.

**2.44. Proponent:** means any Person (other than a Government Entity), or its affiliated or related entities, that has presented a proposal to enter into a PREPA Transaction with PREPA; provided, however, that for purposes of this Regulation, the term "Proponent" will also include Persons (other than a Government Entity) who: (a) submit a Proposal jointly under a consortium that complies with the provisions of Article 9(d) of Act 29-2009 and the terms of an RFQ or RFP; and (b) are qualified by the Authority and negotiate a Transformation Contract with the Authority in the cases set forth in Article 9(b)(ii) of Act 29-2009.

**2.45. Proposal:** means a written proposal related to a PREPA Transaction made by a Proponent that is: (a) made in response to an RFP; or (b) made under Article 9(b)(ii) of Act 29-2009.

**2.46. Proposal Security:** means the bond(s), guaranty(ies) or other security(ies) posted in the form of legal currency of the United States of America, certified check or

money order payable to the Authority, or through a letter of credit, a financial guaranty bond or guarantee issued by a bank or financial institution acceptable to the Authority (which, in the case of a surety or insurance company, must be authorized to issue financial guaranty bonds in Puerto Rico), required to be submitted by the Proponent to secure compliance (a) by the Proponent with the requirements of Act 29-2009, this Regulation and the terms of the corresponding RFP and (b) secure the execution by the Proponent of the Transformation Contract if selected for the Award of a Transformation Contract. The amount, delivery date and conditions for return, if any, of the applicable Proposal Security will be determined by the Authority and specified in the related RFP for each Project.

**2.47. Regulation [●]<sup>1</sup>:** means this Regulation No. [●] promulgated by the Authority for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts or Sale Contracts Related to the Transformation of the Electric System under Act 120-2018 and Act 29-2009, as may be amended from time to time.

**2.48. Representative:** means any directors, officers, employees, agents, advisors, counsel, accountants and other consultants and representatives of any Proponent.

**2.49. Restricted Party(ies):** means those parties described in Section 11.3 of this Regulation that will be prohibited from participating in an RFQ or RFP process for a particular Project.

**2.50. RFC:** means a request submitted by a Proponent to the Authority asking for clarification, explanation or interpretation of any matter contained in an RFQ or RFP pursuant to Section 4.6 of this Regulation.

**2.51. RFI:** means a request for information, expression of interest or a market sounding process that may be used by the Authority to gauge interest in a PREPA Transaction according to the provisions of Section 4.2 of this Regulation.

**2.52. RFP:** means a request for proposals or the document, as amended and supplemented from time to time, that the Authority prepares, publishes and distributes, in accordance with Article 9(b)(i) of Act 29-2009 and Section 4 of this Regulation, requesting Proposals in connection with a potential PREPA Transaction or a portion thereof.

**2.53. RFQ:** means a request for qualifications or the document, as amended and supplemented from time to time, that the Authority prepares, publishes and distributes, requesting prospective Proponents to submit their qualifications to participate in an RFP procurement process.

**2.54. Sale Contract:** means any contract, document, deed, agreement or instrument related to a PREPA Transaction that includes an agreement of any type to sell,

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<sup>1</sup> *The Authority will include the number for this Regulation once made available by the Department of State.*

transfer or dispose of PREPA Assets related to energy generation to one (1) or several private sector Proponents. For the avoidance of doubt, a lease, operation and management agreement or similar arrangement with respect to a PREPA Asset are not deemed a sale, transfer or disposition of such PREPA Asset.

**2.55. Selected Proponent:** means the Person or consortium that is selected for Award of a Transformation Contract for a PREPA Transaction in accordance with the criteria specified in the RFP.

**2.56. Service:** means any service rendered or to be rendered by PREPA directed to safeguarding the interests or meeting the needs of citizens under the provisions of either its organic act or other special laws. The term Service includes, without limitation, operation and maintenance of energy transmission and distribution system assets, control center operations (including generation scheduling and system dispatch), integration of renewable generation and distributed energy resources, power procurement, end customer metering, service and support (including billing and collections), new service requests for secondary and primary connected customers and outage management and restoration.

**2.57. Team Member:** means each individual person, partnership, company or legal entity that is formally or informally reviewing a Project and intends to participate as an equity investor in the Proponent for a Project. Team Members will include, without limitation, the ultimate owner or holding company of any such investor or, in the case of a managed fund or pension plan, the manager of the fund or pension plan.

**2.58. Transformation Contract:** means any Partnership Contract or Sale Contract.

**2.59. Unsolicited Proposal:** means a written proposal prepared by a Proponent for a Project that has not been selected for an RFP, but that meets the applicable legal requirements, is submitted to the Authority in accordance with Section 9(b)(ii) of Act 29-2009 and is subject to this Regulation, as applicable.

**2.60. written or in writing:** means any expression consisting of words or figures that can be read, reproduced and subsequently communicated, and it may include information transmitted and stored by electronic means.

### **SECTION 3 PARTNERSHIP COMMITTEE**

**3.1. Designation of a Partnership Committee.** The Authority will designate each Partnership Committee pursuant to Act 29-2009 to evaluate and select the qualified Persons and the Proponents for each PREPA Transaction, and to establish and negotiate the terms and conditions that it deems appropriate for the corresponding Transformation Contract, in accordance with the provisions of Act 120-2018 and Act 29-2009.

**3.2. Membership and Responsibility of the Partnership Committee.**

Puerto Rico Public-Private Partnerships Authority  
Regulation for Procurement, Evaluation, Selection, Negotiation, and  
Award of Partnership Contracts and  
Sale Contracts for the Transformation of the Electric System  
under Act No. 120-2018, as amended

(a) The members of each Partnership Committee will be designated in accordance with Article 8(a) of Act 29-2009. The Authority will appoint a five (5) member Partnership Committee for each PREPA Transaction. The members of each Partnership Committee will be:

- (i) the executive director of FAFAA or his/her delegate;
- (ii) the officer of PREPA directly concerned with the Project or his/her delegate;
- (iii) one (1) member of PREPA Board; and
- (iv) two (2) officials from any Government Entity chosen by the Authority for their knowledge and experience in the kind of Project covered by the PREPA Transaction under consideration.

(b) Each Partnership Committee will perform the functions set forth in Articles 5 and 18 of Act 120-2018, Article 8(b) of Act 29-2009 and this Regulation. The Partnership Committee, however, will not be deemed a committee of the Authority Board. The Authority may, in its sole and absolute discretion, terminate each Partnership Committee that has been duly created under Act 29-2009 or replace each Partnership Committee with another such committee. The Authority may also, in its sole and absolute discretion, remove any member of any Partnership Committee and make new appointments to any Partnership Committee, to the extent that such removal and/or appointment is not inconsistent with the provisions of Article 8 of Act 29-2009.

(c) Each Partnership Committee will have the following duties and responsibilities:

- (i) to approve documents as required by the RFQ, the RFP, and by the evaluation and selection of the winning Proponent for the relevant PREPA Transaction;
- (ii) to evaluate the potential Contractors and pre-qualify those that are qualified to participate as Proponents;
- (iii) to evaluate the Proposals submitted by each Proponent and select one (1) or more winning Proponents, as applicable, pursuant to the procedures provided in this Regulation;
- (iv) to engage in or supervise the negotiation of the terms and conditions of the Transformation Contract;
- (v) to contract, on behalf of the Authority, advisors, experts or consultants with the knowledge necessary to assist the Partnership Committee and the Authority in the adequate discharge of its functions;



- (vi) to keep a book of minutes;
- (vii) to prepare a Committee Report on the entire procedure leading to the establishment of a PREPA Transaction as required by Act 29-2009;
- (viii) to oversee proper compliance with the regulations and procedures established for negotiation and award of Transformation Contracts;
- (ix) to order any agency, commission, board, or corporation of the Government of Puerto Rico, including any employee or officer, to expeditiously submit data, plans and any type of document or information, certified or not, as necessary to assist a Partnership Committee and the Authority in the adequate discharge of its functions, including the presence or temporary transfer of personnel and resources to comply with the purposes of Act 120-2018 in the most expeditious and efficient manner;
- (x) to coordinate and execute any visits and inspections of all public facilities and properties that may be necessary in the PREPA Transaction process;
- (xi) to carry out any additional task related to the selection, negotiation and award procedure contained in this Regulation, as requested by the Authority; and
- (xii) whenever deemed convenient, each Partnership Committee may establish one (1) or more technical evaluation sub-committees to provide technical or specialized assistance and advice to such Partnership Committee as provided in Section 3.5 of this Regulation.

**3.3. Meetings of a Partnership Committee.** Each Partnership Committee for each PREPA Transaction will meet as often as is necessary to perform its duties and responsibilities as described in Articles 5 and 18 of Act 120-2018, Article 8(b) of Act 29-2009 and this Regulation. Unless otherwise provided by the Authority, the executive director of FAFAA or his or her authorized delegate in a Partnership Committee will act as Chairperson of that committee. The Chairperson of a committee will designate a secretary of the Partnership Committee, who need not be a member of that Partnership Committee, and may designate any other member of that Partnership Committee to serve as Chairperson in his or her absence. The Chairperson of each Partnership Committee, or the member designated by the Chairperson in his or her absence, will summon all members to and preside over all meetings of that Partnership Committee, and will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting. The Chairperson will ensure that the agenda for each meeting and, to the extent available, all key documents to be considered in the meeting, are circulated in advance of the meeting to all the other members. A quorum, as defined by Section 3.4(a) of this Regulation, will be required at all Partnership Committee meetings in which decisions are made with respect

to the selection of Proponents and the Award of a Transformation Contract, as well as approval of any other official action of the Partnership Committee. Members may attend meetings by teleconference or video conference.

#### **3.4. Actions of a Partnership Committee.**

(a) A quorum will exist at any meeting of each Partnership Committee only if all its members are present. Once a member is present for any purpose, a member will be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

(b) The Partnership Committee meetings will be documented in minutes that will be reviewed and approved by its members and signed by the secretary of the Partnership Committee after such approval is received. The secretary of each Partnership Committee will keep a record of each meeting, keep custody of the Partnership Committee calendar, and carry out any other task related to his or her office, as required by the Chairperson of the Partnership Committee.

(c) Recommendations of, and approvals by, each Partnership Committee of any matter required by Act 120-2018 or Act 29-2009 will require the affirmative vote of four (4) members present at a duly constituted meeting at which a quorum is present. Each Partnership Committee may also act without holding a meeting to the extent such action has been approved in writing by all the members of the Partnership Committee. A Partnership Committee will provide non-binding recommendations to the Authority regarding the selection of any Proponent, the evaluation of any Proposal and the consummation of a PREPA Transaction. Each Partnership Committee will keep a written record of the decisions and recommendations made and other actions taken by the Partnership Committee.

(d) A Partnership Committee and/or the executive director of FAFAA or his/her delegate will provide the Authority Board with periodic reports of all significant developments in the procurement and negotiation of a PREPA Transaction.

**3.5. Subcommittees of a Partnership Committee.** Each Partnership Committee, in its sole and absolute discretion, may appoint one (1) or more subcommittees of the Partnership Committee to provide technical or specialized assistance and advice to the Partnership Committee and the Authority in the process of evaluating prospective Proponents and Proposals and negotiating the terms of Transformation Contracts. Each subcommittee will have such responsibility and will carry out its proceedings as directed by the Partnership Committee that appointed it; provided that, if a Partnership Committee designates the executive director of FAFAA or his/her delegate or any subcommittee to engage in the negotiation of a Transformation Contract with a Proponent, the Partnership Committee will supervise such negotiations on behalf of the Authority and PREPA.

**3.6. Advisors to the Authority and Partnership Committee.** The Executive Director may appoint employees of the Authority and contract with consultants, advisors or agents to (a) assist the Authority and a Partnership Committee in the review of the Proposals, the selection of a winning Proponent, and negotiation of terms and conditions of a Transformation Contract for a PREPA Transaction, and (b) provide any other assistance that is deemed necessary or appropriate in connection with an Award of a Transformation Contract, including participating as nonvoting members of the subcommittees of each Partnership Committee. The individuals or entities providing such assistance must satisfy the conflicts of interest or ethics guidelines adopted by the Authority from time to time and may participate in any evaluation and negotiation process conducted by the Partnership Committee they are assisting as that Partnership Committee may deem necessary.

**3.7. Oversight Responsibilities.** The oversight responsibilities of each Partnership Committee will be limited to the following matters which must be described in the Committee Report: the entire procedure leading to the establishment of a PREPA Transaction (details of the RFQ and RFP processes and of the selection of the Proposal and the chosen Proponent); the reasons for which a particular Proponent was chosen; a summary of the most important aspects of the Transformation Contract; and a description of the government objectives and social welfare goals of the PREPA Transaction. Each Partnership Committee will provide the Authority the Committee Report issued by that Partnership Committee pursuant to Article 8(b)(viii) of Act 29-2009.

## **SECTION 4 PREPA TRANSACTION PROPOSALS**

**4.1. Identification of PREPA Transactions.** The Authority will select, evaluate and prioritize the PREPA Transactions pursuant to Article 5(b) of Act 120-2018 and in accordance with the public policy and the goals identified in Article 3 of Act 120-2018.

### **4.2. Market Sounding Process.**

(a) In connection with the identification of PREPA Transactions and prior to the commencement of any RFQ or RFP process, the Authority may seek feedback and input from market participants to determine the best approach for selecting viable and marketable PREPA Transactions by:

- (i) conducting an RFI; or
- (ii) using other appropriate methods for gathering information from market participants.

(b) The Authority may publish general guidelines regarding how an RFI would be conducted and how the Authority would use any information obtained during such process. Any information obtained by the Authority during an RFI would be subject to the confidentiality provisions contained in Section 11.2 of this Regulation, to the extent applicable.

#### **4.3. Qualification of Proponents (RFQ).**

(a) The Authority may issue an RFQ for a PREPA Transaction only after it has determined that the PREPA Transaction meets the requirements of Article 3 of Act 120-2018.

(b) In anticipation of an RFP or as otherwise required by Act 120-2018, Act 29-2009 or the Authority, a Partnership Committee may conduct an RFQ procurement process to identify the prospective Proponents that satisfy minimum standards of (i) financial condition and/or (ii) technical or professional ability and experience. Any such minimum standards will be specified in the RFQ and will be related and proportionate to the subject matter of the proposed Transformation Contract. A Partnership Committee may, in addition to such minimum standards, include other qualification requirements related to financial resources, reputation, experience, and compliance with anti-corruption laws in the RFQ and request information about a prospective Proponent, including prior defaults, bankruptcies or material lawsuits. All prospective Proponents also must comply with the requirements set forth in Article 9(a)(ii) to (iv) of Act 29-2009 to be eligible to participate in the RFQ process.

(c) The RFQ will be announced by means of a public notice in accordance with the procedures and standards for an RFP set forth in Sections 4.4 and 4.5 of this Regulation, to the extent applicable.

(d) Consortia and other Proponents who intend to submit Proposals jointly must comply with the requirements of Article 9(d) of Act 29-2009, this Regulation and any other requirement specified by the Authority in the RFQ.

(e) A Proponent may request from the Authority clarification, explanation or interpretation of any matter contained in the RFQ up to fifteen (15) days (or such greater or lesser period as is in the manner and within the timeframe specified in the RFQ) prior to the related due date for the information specified in the RFQ. Unless otherwise specified in the RFQ, any such request from Proponents must be made in writing. Except if otherwise provided for in the RFQ, if the Authority provides any clarification as a result of an RFC, it will provide such clarification by means of a written document delivered to all prospective Proponents at least seven (7) days prior to the due date of the information required in the RFQ, provided, however, that the Authority may clarify or correct minor or administrative aspects within such seven (7) days.

(f) The goal of the RFQ stage is to help a Partnership Committee shortlist the best qualified Proponents. Thus, a Partnership Committee, in making its evaluation of the qualifications of a prospective Proponent, may disqualify a prospective Proponent, thereby excluding such prospective Proponent from the RFP process, if the prospective Proponent (i) is ineligible to submit a Proposal on one (1) or more grounds specified in Section 7 of this Regulation; (ii) fails to satisfy minimum standards of financial condition, or technical or professional ability and experience, set by the Authority in the RFQ; or (iii) fails to comply with the requirements related to Proponents and consortia of Articles 9(a) and 9(d) of Act 29-2009, as applicable. If the right to shortlist is included in the RFP or RFQ, a Partnership Committee reserves the right to select a limited number of prospective Proponents in order to arrive at a shortlist for a particular Project.

(g) If the Authority elects not to issue an RFQ before publishing an RFP for any PREPA Transaction, a Partnership Committee will make the evaluation of the qualifications of the Proponents as part of the RFP process in accordance with the qualifications requirements contained in the RFP and Sections 5 and 7 of this Regulation. If an RFQ process that meets the requirements of Sections 4.4 and 4.5 of this Regulation has been carried out for a particular PREPA Transaction, the RFP process can be modified, accordingly.

(h) A Proponent that has been qualified pursuant to an RFQ will not be entitled to indemnity (including, but not limited to, reimbursement for costs and expenses) from the Authority if the Authority decides, in its sole and absolute discretion, to terminate the procurement of a PREPA Transaction. The Authority, in its sole and absolute discretion, may pay a stipend or fee to the prospective Proponent in the event the Authority decides to terminate the procurement of a PREPA Transaction.

#### **4.4. Public Notice of RFPs.**

(a) The Authority may issue an RFP for a PREPA Transaction only after it has determined that the PREPA Transaction meets the requirements of Article 3 of Act 120-2018, which relate to the relevant public policy.

(b) Pursuant to Article 5(e) of Act 120-2018, a separate RFP must be issued for the sale of each PREPA Asset related to energy generation.

(c) Except as otherwise provided in Article 9(b)(ii) of Act 29-2009 and Section 6 of this Regulation, and except to the extent a prior RFQ process for the related PREPA Transaction has been effected by means of public notices, a Partnership Committee will solicit Proposals from Proponents by means of a public notice of an RFP for each PREPA Transaction. The RFP will be published by the Authority at least once in one (1) or more newspapers of general circulation in Puerto Rico, on the websites of FAFAA, the Authority and PREPA and, at the discretion of the relevant Partnership Committee, in one (1) or more national or international journals. The Authority may also employ such other

methods and processes, including other means of electronic communication, as it deems advisable in order to disseminate the RFP.

(d) Provided that the Authority has first published such notice of an RFP publicly pursuant to this Section 4.4, a Partnership Committee may also solicit Proposals directly from prospective Proponents through a notice of an RFP if it believes that such entities may be uniquely qualified to participate in a specific PREPA Transaction.

(e) This Section 4.4 will not apply to any PREPA Transaction for which the Authority or PREPA has issued an RFQ. In the event that an RFQ has been issued, the Authority may, in its sole and absolute discretion, distribute an RFP and related Addenda only to those Proponents qualified through the RFQ process.

**4.5. Content of the RFP.** Unless otherwise approved by the Authority or a Partnership Committee, in their sole and absolute discretion, the RFP will include the following items, without implying any order of importance:

(a) a description of the PREPA Transaction that would be developed and/or operated under the proposed Transformation Contract in accordance with Act 120-2018;

(b) a description and proposed time schedule of the selection process, which may call for an initial evaluation of the technical aspects of a Proposal;

(c) instructions as to the format in which to submit Proposals, to the extent different than those set forth in Section 5 of this Regulation, and the minimum information and materials that must be submitted in order for the Proposals to be considered complete;

(d) if applicable, an outline of the independent process(es) for environmental review and compliance which may include requirements that (i) any improvements must comply with the terms and conditions of the environmental review(s), and (ii) reimbursement for any at-risk preliminary work performed by the Proponent is contingent upon completion of the environmental review process and any specific provisions within an executed Transformation Contract;

(e) a request by the Authority that allows Proponents to submit an AFC and/or an ATC;

(f) a statement regarding the type of selection process to be used by the Authority in connection with the proposed PREPA Transaction;

(g) applicable minimum Evaluation Criteria, including selection and/or weighing criteria for award of the Transformation Contract, that will be used in evaluating the Proponents, if a related RFQ has not been previously issued, including any unique capabilities or qualifications which will be required of Proponents, and the Proposals;

(h) any applicable Proposal Security required to be provided by the Proponent;

(i) if applicable, a statement as to any funding contingencies or other conditions, contingencies, conditions precedent, approvals, authorizations or certifications that are required for award or execution of a Transformation Contract, including any applicable conditions, experience, capabilities or qualifications, and other requirements in connection with the possible receipt by PREPA or the Government of Puerto Rico of U.S. federal funds in connection with the Project;

(j) a due date and time for submission of the Proposals and the place where Proposals must be submitted;

(k) a final or near-final draft of the proposed Transformation Contract;

(l) the designated single point of contact at the Authority or its designee;

(m) any other applicable terms and conditions which may be useful to, or should be required from, the Proponents, as determined by the Authority or a Partnership Committee;

(n) a statement that Proponents and any Team Members will not discuss or communicate, directly or indirectly, with any other Proponent or any Representative or Team Member of any other Proponent, regarding the preparation or content of their Proposals. Proposals will be submitted without any collusion (i.e., arising through an equity interest (other than an equity interest that does not represent a controlling interest in an entity, as determined by the Authority from time to time) in or of a Proponent or Team Member), knowledge, comparison of information or arrangement, with any other Proponent or any Representative or Team Member of any other Proponent;

(o) a clause expressly stating that the RFP may be amended through the publication of Addenda; and

(p) a requirement that each Proponent or member of a consortia certify that it has complied with the requirements of Section 4.14 of this Regulation in the form provided by the Authority.

#### **4.6. Requests for Clarification (RFCs).**

(a) Unless otherwise specified in the RFP, the Proponents may seek clarification, explanation or interpretation of an RFP only as provided in this Section 4.6. After the issuance of the RFP, a Proponent may submit one (1) or more RFCs up to fifteen (15) days (or such greater or lesser number of days as specified in the RFP) prior to the related due date for Proposals specified in the RFP. Unless otherwise specified in the RFP, any such RFC from Proponents must be made in writing.

(b) Unless otherwise specified in the RFP, representatives from the Authority and/or the relevant Partnership Committee may also participate in one (1) or more Pre-Proposal Conferences. At such Pre-Proposal Conferences, Proponents may also

request from the Authority a clarification, explanation or interpretation of any matter contained in the RFP. Unless otherwise specified in the RFP, any such RFC from Proponents at a Pre-Proposal Conference need not be made in writing.

(c) Unless otherwise specified in the RFP, any response by the Authority to written or oral requests from prospective Proponents may be compiled in one (1) or more Addendum and circulated to all prospective Proponents that have registered with the Authority at least ten (10) days prior to the Proposal due date set forth in the RFP. If one (1) or more Addenda are circulated less than ten (10) days prior to the Proposal due date set forth in the RFP, then the Authority may elect to change the Proposal due date to the date that is ten (10) days after the date on which such Addendum was circulated, unless the Authority, in its sole and absolute discretion, identifies an RFC or the corresponding response to Proponents to be of a minor or administrative nature. Notwithstanding the foregoing, an RFC with respect to an AFC or ATC will be treated as confidential and a clarification will only be issued to the Proponent requesting clarification.

(d) Only written responses provided by the Authority, including those published on the Authority's website, will be official. Any other type of communication with any director, officer, employee, agent, advisor, staff member, consultant or representative of the Authority, a Partnership Committee or PREPA, including any oral response during any Pre-Proposal Conference, will not be considered an official response of the Authority or of such committee.

(e) In those cases where an RFP includes a draft Transformation Contract, the RFP may specify the manner in which (i) Proponents will be allowed to submit comments or suggestions to the draft Transformation Contract, and the manner in which (ii) the revised draft of the Transformation Contract, if any, will be distributed to the Proponents.

#### **4.7. Response to an RFP.**

##### **(a) Phase One: Preparation of Response to an RFP.**

(i) Unless otherwise specified in the RFP, Proposals submitted for consideration should comply with the following requirements:

(1) Proposals must provide a straightforward and concise description of the Proponent's capabilities to complete or perform the proposed PREPA Transaction. Emphasis must be placed on completeness and clarity of content;

(2) Proposals must be signed in ink by an authorized Representative of the Proponent, and the Proponent or such authorized Representative must sign his or her initials, in ink, to confirm any alteration or correction to the Proposal;



- (3) all information requested under the RFP must be submitted. Proponents failing to submit all information requested by the RFP may, at the sole and absolute discretion of the Authority, be given an opportunity to promptly submit missing information or may be given a lowered evaluation of their Proposal. Proposals that lack essential information required by the RFP may be rejected;
  - (4) Proposals must contain a table of contents, which cross-references the requirements by category and should be organized as requested in the corresponding RFP. Information which the Proponent desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the Proposal and designated as additional material. Proposals that are not organized in this manner may be returned for revision, at the sole and absolute discretion of the Authority;
  - (5) unless otherwise set forth in the RFP, Proposals must include a comprehensive scope of work and provide enough information about the Proponent and the Project to determine whether it satisfies the Evaluation Criteria;
  - (6) each copy of the Proposal must be bound and contained in a single volume where practical. All documentation submitted with the Proposal should be contained in that single volume, if possible; and
  - (7) the financial plan for the Project must contain enough detail that an analysis would reveal whether the proposed financing is feasible. The financial plan must disclose the full extent of any expected public sector financing and/or concession commitments.
- (ii) In addition, unless otherwise specified in the RFP, the Authority also encourages all Proponents to follow the guidelines set forth below when preparing their Proposals. Although compliance with these guidelines is not required, it will help the Authority expedite the review process:
- (1) All pages of the Proposal should be numbered.
  - (2) Proposals should include an executive summary and use cross-references, citing the tab number and subletter, and repeating the text of the requirement, not the text of the Proposal, rather than repetition in addressing the items in the RFP.
  - (3) If a response covers more than one (1) page, the tab number and subletter should be repeated at the top of the next page.

- (4) If a Proponent submits confidential or proprietary information to the Authority, the confidential or proprietary information should be filed in a separate tab or folder when submitting the Proposal to facilitate the review of the confidential or proprietary information by the Authority or a Partnership Committee, as described under Section 11.2 of this Regulation; and
- (iii) Proponents will be responsible for any and all direct and indirect costs and expenses incurred in connection with the preparation of a Proposal as set forth in Article 9(b)(iii) of Act 29-2009.
- (iv) The Authority may, in its sole and absolute discretion, accept non-compliant Proposals.
- (b) Phase Two: Submission of Proposals.
- (i) Proponents are encouraged to propose innovative solutions to the needs of Puerto Rico and PREPA.
- (ii) Proposals should be delivered to the Authority on or before the due date set in the RFP for receipt of Proposals in accordance with the instructions contained in the RFP.
- (iii) Unless otherwise specified in the RFP, the following requirements apply:
- (1) Proponents will be required to deliver such number of hard copies as is specified in the RFP and one (1) electronic copy in portable document format (“pdf”) of their Proposal. The Authority will designate one (1) individual to receive all Proposals and to act as the point of contact in each RFP. In the absence of such a designation, Proposals will be delivered to the Executive Director. For the purpose of this Regulation, a Proposal will be considered filed at the Authority on the hour and date it is stamped as received by the Executive Director or such other designated individual;
- (2) Proponents will deliver their Proposals in sealed envelopes or packages (which may include boxes or any other container that may be sealed) bearing the Proponent’s name, address and the words “PREPA Transaction Proposal” clearly written on the outside and any other identifier, such as the name of the Project, that may be specified in the RFP. The Authority may provide a Proponent with a receipt confirming it has received the package containing the Proponent’s Proposal. The cover page must include the title of the Proposal, the name and address of the Proponent, the Person authorized to act on behalf of the Proponent and his or her email

address and telephone and fax numbers. Unsealed envelopes or packages will not be accepted;

(3) Proposals will not be read publicly. Copies of the Proposals will not be generated by the Authority. Only the members of the Authority and members of a Partnership Committee and other persons designated by the Authority or the Executive Director will have access to the Proposals and to the results of the evaluation during the selection and evaluation period. All Proposals submitted to the Authority will become the property of the Authority, except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent. A Proponent seeking to maintain confidential proprietary information must read Section 11.2 of this Regulation with care prior to submission of its Proposal; and

(4) Proponents who submit a Proposal may be required to give one (1) or more oral presentations of their Proposal to a Partnership Committee and/or the Authority.

#### **4.8. Proposal Review Fee; Proposal Security.**

(a) A non-refundable, non-negotiable Proposal review fee payable to the Authority may be required to offset the costs incurred by the Authority of processing, reviewing and evaluating the Proposals or for any other reason, as may be deemed reasonable by the Authority. The amount of the Proposal review fee will be determined by the Authority on a case-by-case basis and will be included in the RFQ and/or RFP for the proposed PREPA Transaction. Failure to submit all fees may suspend consideration of a Proposal. All fees will be paid in the form established by the Authority in the RFQ and/or RFP. Unless otherwise specified in the RFQ and/or RFP, Proponents submitting multiple Proposals affecting unrelated PREPA Transactions will be required to submit a Proposal review fee for each Proposal submitted by them.

(b) The RFP may provide for the submission of a Proposal Security, which may consist of a first smaller Proposal Security installment submitted with the RFP bid and a second larger Proposal Security installment upon notification of the Selected Proponent. The amount, delivery date and conditions for return, if any, of any required Proposal Security will be determined by the Authority and specified in the related RFP.

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

#### **4.10. Cancellation of an RFP.**

(a) The Authority may, in its sole and absolute discretion, or upon recommendation of a Partnership Committee, cancel an RFP process at any time. If a Partnership Committee recommends that the RFP be cancelled, it must indicate to the Authority the reason or reasons for such recommendation. The Authority then may cancel the RFP as recommended by the Partnership Committee and undertake one (1) of the following alternatives:

- (i) conduct a new RFP;
- (ii) after having cancelled the RFP, directly negotiate with a Proponent only if such Proponent achieved the highest rank prior to the cancellation of the RFP, the negotiation is for the same PREPA Transaction that was originally procured and it is in the best interests of advancing the purpose and public policy of Act 120-2018 and Act 29-2009; or
- (iii) take any other action the Authority deems appropriate.

(b) The Authority may, in its sole and absolute discretion and on a case-by-case basis, pay a stipend or break fee to all Proponents in the event of cancellation. The Authority, however, will not be required to indemnify (including, but not limited to, reimbursement for costs and expenses) any Proponent under any circumstance.

#### **4.11. AFCs and ATCs.**

(a) The content of the RFP may include a request by the Authority that allows Proponents to submit AFCs and/or ATCs as part of their Proposals in order to obtain the best value for the people of Puerto Rico. AFCs and ATCs will be confidential and not shared with other Proponents without the consent of the Proponent that submitted it.

(b) Receiving AFCs and/or ATCs as part of a Proposal will allow a Partnership Committee to review and consider a Proponent's AFCs and/or ATCs, if any, early in the selection process and avoids delays and potential conflicts that could result from reviewing AFCs and ATCs in the post-award period.

(c) AFCs and ATCs eligible for consideration will be limited to those deviations from the requirements of the RFP, or those ATCs requiring further environmental evaluation, that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by the Authority in its sole and absolute discretion.

(d) A concept is not an AFC or ATC if, in the Authority's sole and absolute discretion, it merely results in reduced quantities, performance or reliability. A concept is not eligible for consideration as an AFC or ATC if it is premised upon or would require:

- (i) the addition of a separate Project or an expansion of the scope of the Project as described in the RFP;
  - (ii) an increase in the amount of time required for the start of the Project;  
or
  - (iii) substantial changes to the Project which, in the opinion of the Authority, merit that an independent RFP process be initiated in which the Project is structured as proposed by the AFC or ATC.
- (e) ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed pursuant to the terms and conditions imposed by the Authority. If the Proponent is not able to obtain the approvals necessary to implement the ATC, the Authority may require the Proponent to develop the Project in accordance with existing approvals without additional cost or extension of time.

**4.12. Communication with PREPA.** Once an RFP has been published, the Proponents or their Representatives may not contact or communicate with PREPA or any director, officer, employee, agent, advisor, staff member, consultant or representative of PREPA in connection with any PREPA Transaction or the RFP, other than those representatives of PREPA that have been designated in the RFP as Authorized Representatives, and only under the circumstances permitted in the RFP. This prohibition does not apply to Pre-Proposal Conferences as described in Section 4.6 of this Regulation.

**4.13. No Lobbying; No Collusion; No Prohibited Acts.**

(a) Proponents and Team Members, and their respective Representatives will not, in relation to the Project, an RFQ, an RFP or any other competitive selection process involving PREPA or the Authority, engage in any form of political or other lobbying whatsoever, and will not, except as expressly contemplated by the RFQ or RFP, or as expressly directed or permitted by the Authority, attempt to communicate in relation to any of these matters, directly or indirectly, with any representative of a Partnership Committee, the Authority, PREPA, FAFAA, the Energy Bureau, the Government of Puerto Rico, the FOMB or the Federal Government, including any Restricted Parties, or any director, officer, employee, agent, advisor, staff member, consultant or representative of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

- (i) commenting on or attempting to influence views on the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- (ii) influencing, or attempting to influence, the outcome of the RFQ or RFP processes, or of the competitive selection process, including the review, evaluation and ranking of Proposals, the selection of the Selected Proponent, or any negotiations with the Selected Proponent;

(iii) promoting the Proponent and Team Members or their interests in the Project, including in preference to that of other Proponents and their Team Members;

(iv) commenting on or criticizing aspects of the RFQ, the RFP, the competitive selection process or the Project, including in a manner which may give the Proponent or its Team Members a competitive or other advantage over other Proponents and their Team Members; and

(v) criticizing the Proposals of other Proponents.

(b) Proponents and Team Members will not discuss or communicate, directly or indirectly, with any other Proponent or any Representative or Team Member of any other Proponent, regarding the preparation, content, or representation of their Proposals. Proposals will be submitted without any collusion (i.e., arising through an equity interest (other than an equity interest that does not represent a controlling interest in an entity, as determined by the Authority from time to time) in or of a Proponent or Team Member), knowledge, comparison of information or arrangement, with any other Proponent or any Representative or Team Member of any other Proponent.

## **SECTION 5 EVALUATION AND SELECTION PROCESS**

### **5.1. Evaluation Process.**

(a) Unless otherwise specified in a particular RFP, a Partnership Committee may subject Proposals submitted under an RFP process, or otherwise as determined by the Authority, to the following three (3) phase evaluation, selection and negotiation process, as applicable:

(i) Phase One: Quality Control Review.

(1) Within ten (10) business days after the due date for the submission of Proposals under an RFP, a Partnership Committee may determine which Proposals passed the quality control review by satisfying the basic requirements outlined in the RFP and this Regulation. Failure to meet the Evaluation Criteria and other conditions specified in an RFP or this Regulation will constitute sufficient cause for failing the quality control review. A Partnership Committee may extend the duration of the Phase One quality control review, in its sole and absolute discretion, due to the volume of Proposals, the complexity of Proposals, the need for additional information, timely cooperation by the Proponents, unanticipated circumstances or for any other reason.

(2) Each Proponent may be notified in writing by the relevant Partnership Committee that its Proposal has either failed or passed

the quality control review and whether it will be advanced to Phase Two. A Partnership Committee may return Proposals that: (i) are incomplete; (ii) do not address the requirements of the RFP; or (iii) do not comply with the requirements of Act 120-2018, Act 29-2009 or this Section 5.

(3) A Partnership Committee may, in its sole and absolute discretion, disregard any informality or technicality in the documents of any Proposal, as long as such matters can be corrected or clarified without prejudice to the Authority or PREPA.

(ii) Phase Two: Partnership Committee Review and Recommendation.

(1) A Partnership Committee may review and evaluate all Proposals that passed the quality control review. A Partnership Committee may establish an anticipated schedule for the review of the Proposals and the negotiation of the Transformation Contract. At any time during Phase Two, a Partnership Committee may request additional information from a Proponent regarding its Proposal in order to assist the Partnership Committee in its review and evaluation of the Proposal. Based upon the review of the Proposals, a Partnership Committee may select one (1) Proposal or may not select any Proposal. In the event the RFP calls for competitive negotiations, a Partnership Committee may select one (1) or more Proposals. If none of the Proposals are selected by the Partnership Committee, the Partnership Committee will notify the Authority of its decision and each Proponent who had advanced to Phase Two will be notified in writing by the Partnership Committee, and the Proponent's Proposal Security will be returned;

(2) If an RFP calls for a competitive negotiation process, a Partnership Committee may review and consider the Proposals based on the Evaluation Criteria to determine the ranking of each Proposal. Based on such ranking, a Partnership Committee may determine which Proposals are within the Competitive Range. After discussion with the Authority, a Partnership Committee may elect to (i) carry out discussions and negotiations with those Proponents whose Proposals are within the Competitive Range as contemplated in Section 5.1 below; or (ii) negotiate with the Proponent achieving the highest rank and, if unsuccessful, continue negotiations in strict order of ranking given to each Proposal as contemplated in Section 5.1 below. A Partnership Committee may elect to carry out discussions and negotiations with a Proponent whose Proposal is within the Competitive Range, even if it is not the best-ranked Proposal;

(3) The Proponents whose Proposals do not fall within the Competitive Range may be notified in writing by the relevant Partnership Committee but will still be considered part of the procurement process until the signing of the Transformation Contract. The non-selected Proponents' Proposal Security will be returned once the Transformation Contract has been signed by all parties;

(4) The Authority reserves the right to reject any and all submitted Proposals, if deemed in the best interests of advancing the purpose and public policy of Act 120-2018 and Act 29-2009; and

(5) If only one (1) Proposal is received, such Proposal may be considered if the relevant Partnership Committee and the Authority determine that it is in the best interests of advancing the purpose and public policy of Act 120-2018 and Act 29-2009 to do so.

(6) All Proposals, evaluations, discussions and negotiations will be kept confidential throughout the evaluation, selection and negotiation process in accordance with Article 9(i) of Act 29-2009, Article 6(b) of Act 120-2018 and this Regulation. Upon the signing of the Transformation Contract, non-confidential portions of the Proposals, the Transformation Contract, the RFQ, RFP and the Committee Report will be made available as provided in Article 9(j) of Act 29-2009 and Section 11.2 of this Regulation.

(iii) Phase Three-A: Concurrent Negotiations with Multiple Proponents.

If a Partnership Committee has elected to carry out discussions and negotiations with more than one (1) Proponent whose Proposal falls within the Competitive Range, such Proponents may receive a written notification containing the names and positions of the Authorized Representatives and explaining that negotiations will be conducted according to the following rules:

(1) No statement made or action taken by the Authority, a Partnership Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority during the discussions and negotiations will bind the Authority or PREPA related to the particular RFP in any way. Only a Transformation Contract, when effective in accordance with its terms as provided in Article 5(g) of Act 120-2018, Articles 10(b) and 10(c) of Act 120-2018 and Article 9(g) of Act 29-2009, will be binding on PREPA.



(2) Each Proponent who falls within the Competitive Range may be invited to one or more private meetings with the Authorized Representatives to discuss, and answer questions with respect to, any aspect of its Proposal. Designated advisors of a Partnership Committee and the Authority may participate in such meetings at the request of the Authorized Representatives. The content and scope of each private meeting with each Proponent will be determined by the Authorized Representatives based on the content of and circumstances relating to the Proponent's Proposal. The purpose of each meeting will be to: (i) clarify any doubts as to the requirements of the RFP and confirm that the terms of the Transformation Contract are understood; (ii) improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; (iii) discuss the basis of the proposed economic terms in an effort to improve the economic terms for PREPA; and (iv) discuss any other pertinent details of the Proposal so as to result in a better Proposal and Transformation Contract for PREPA.

(3) If any private meetings are held with a Proponent who falls in the Competitive Range, then all Proponents who are within the Competitive Range will be given an opportunity to discuss and review their Proposals with the Authorized Representatives. The discussions, however, will be based on the facts and circumstances relating to each Proposal, as described in Section 5.1(a)(ii) above. The information discussed in such meetings may vary for each Proponent.

(4) The Authorized Representatives, with the assistance of the relevant Partnership Committee, the Authority, its advisors or others whom the Authority may designate, may, in their sole and absolute discretion:

(A) Establish procedures and schedules to carry out the discussions and to organize the meetings;

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

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

- (D) Address any suspected mistakes that may be found to exist;
  - (E) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions, or the opportunity to provide additional documentation or analysis to assist the Partnership Committee in assessing the feasibility of the PREPA Transaction and the Proponent's qualifications; and
  - (F) Keep a record of the date, time, place and attendees of the meetings.
- (5) After each interview or meeting with any Proponent, the Authorized Representatives and/or the Partnership Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting.
- (6) Discussions and negotiations may be carried out in person, by phone, or in writing, at the discretion of the Partnership Committee or the Authorized Representatives.
- (7) After such discussions and parallel negotiations, the Partnership Committee may, in its sole and absolute discretion, request "best and final offer" (or BAFO) from Proponents within the Competitive Range in response to the discussions and negotiations held. Only Proponents who submitted Proposals that are within the Competitive Range described in the RFP will be considered in the BAFO process.
- (8) If the Partnership Committee determines not to conduct a BAFO process, the Partnership Committee will proceed to negotiations with the Proponent submitting the highest ranking Proposal which may culminate in an Award of a Transformation Contract.
- (iv) Phase Three-B: Negotiation with Proponent of Ranked Proposal. If the Partnership Committee has elected to carry out discussions and negotiations only with the highest ranked Proposal within the Competitive Range, such Proponent will receive a written notification containing the names and positions of the Authorized Representatives. The Authorized Representatives and the Proponent will agree on a schedule for conducting negotiations. At any point in time, the Partnership Committee may terminate negotiations with the Proponent and commence negotiations with

the next highest ranked Proposal. Only the Transformation Contract, when effective in accordance with its terms as provided in Article 5(g) of Act 120-2018, Articles 10(b) and 10(c) of Act 120-2018, and Article 9(g) of Act 29-2009, will be binding on PREPA.

(v) Phase Three-C: (Non-Negotiated) Procurement Process. If the Authority elects to conduct a standard procurement process, the Authority will select the Proponent that submitted the highest ranking Proposal, based upon the criteria listed in the RFP. In the standard procurement process, Proponents will submit both a technical Proposal and a financial Proposal. The financial Proposal should be sealed in an envelope before being submitted by the Proponent. Any unsealed financial Proposal will automatically disqualify the Proponent. The Authority will not open the sealed envelopes before Phase Three-C or before the Proposals of the Proponents passed the technical Evaluation Criteria of Phase Two. The Authority will not carry out any discussions and negotiations with any Proponents. The Authorized Representatives of the Authority will conduct the following procedures:

(1) No statement made or action taken by the Authority, the Partnership Committee, any employee or officer of the Authority, or any advisor or consultant to or other agent or representative of the Authority or of the Partnership Committee during the sealed-bid process will bind the Authority, the Partnership Committee or the PREPA in any way. Only the Transformation Contract, when effective in accordance with its terms as provided in Article 5(g) of Act 120-2018, Articles 10(b) and 10(c) of Act 120-2018 and Article 9(g) of Act 29-2009, will be binding on PREPA;

(2) The Authorized Representatives will open the sealed envelope in the presence of members of the Partnership Committee, the designated advisors of the Partnership Committee and officers of the Authority and will clearly announce the financial Proposal of each Proponent that passed Phase Two; and

(3) Subject to the Authority's right to reject any or all Proposals, it will select the highest ranking Proposal, which may culminate in an Award of a Transformation Contract. If the highest ranking Proposal does not culminate in the Award of a Transformation Contract, the Authority may select the next highest ranking Proposal.

(b) The Authorized Representatives will keep a record of the date, time, place, and attendees of the opening of the sealed envelopes process.

**5.2. Amendment to Procurement Process.** Nothing in this Regulation limits the Authority's power to amend the procurement process set forth herein pursuant to an amendment to this Regulation or to modify it in connection with a particular RFP, as set forth in such RFP, to the extent not in conflict with Act 120-2018 or Act 29-2009.

## **SECTION 6 UNSOLICITED PROPOSALS**

**6.1. Unsolicited Proposals Generally.** The Authority will not accept Unsolicited Proposals for PREPA Transactions received after the enactment of Act 120-2018. Any Unsolicited Proposal for a PREPA Transaction received thirty (30) days prior to the enactment of Act 120-2018 or anytime thereafter will be returned to the Proponent. Where an Unsolicited Proposal is returned to the Proponent pursuant to this Section 6, the Proponent of such Unsolicited Proposal will not be prohibited from participating in future RFQs or RFPs under this Regulation.

**6.2. Reservation of Rights.** Notwithstanding anything herein to the contrary, the Authority is not obligated to accept, issue comments or make recommendations with respect to any Unsolicited Proposal, and the Authority, in its sole and absolute discretion, may at any time terminate any processes related to an Unsolicited Proposal. The evaluation of an Unsolicited Proposal by the Authority will not give any right to a Proponent, including, but not limited to, the right to reimbursement for expenses incurred by the Proponent in the preparation of the Unsolicited Proposal.

## **SECTION 7 SELECTION OF PROPONENTS**

**7.1. Disqualifying Events.** A Partnership Committee will treat as ineligible and will not select a Proponent in accordance with this Regulation if a Partnership Committee has actual knowledge that the Proponent or any Person covered by the prohibition set forth in Article 3.4 of Act No. 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico has been convicted of (a) any of the offenses set forth in Articles 250-266 of Act No. 146-2012, known as the Puerto Rico Penal Code, (b) the crimes listed in Act No. 2-2018 or (c) any other felony that involves the misuse of public funds or property, whether in any jurisdiction of the United States of America, including Puerto Rico, or in any foreign country, including, but not limited to, the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico, or under the Foreign Corrupt Practices Act. Any Person by virtue of its participation in an RFQ or RFP process authorizes the Authority to apply to the relevant competent governmental authority to obtain further information regarding the prospective Proponent or Proponent and in particular, details of convictions of the offenses listed above if a Partnership Committee considers it necessary for its selection or evaluation process.

**7.2. Other Grounds for Disqualification.** The Partnership Committee may also treat a Proponent as ineligible or decide not to select such Proponent or approve an Award of a Transformation Contract to such Proponent for any of the reasons described as

disqualifying in the RFQ or RFP and on one (1) or more of the following grounds, namely that such Proponent:

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

(b) has been convicted of a criminal offense relating to the conduct of his or its business or profession, other than those set forth in Section 7.1 of this Regulation pursuant to Article 9(c)(ii) of Act 29-2009;

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

(d) is guilty of serious misrepresentation of any information provided to the Authority, the Partnership Committee or otherwise provided to comply with this Regulation;

(e) has failed to comply with the requirements of Article 5 of Act 120-2018, Article 9(a) of Act 29-2009, Article 9(d) of Act 29-2009, or any guidelines referred to in Section 7.6 below, as applicable;

(f) is ineligible to submit a Proposal on one (1) or more grounds specified in Act 120-2018, Act 29-2009 or this Regulation, as applicable; or

(g) has failed to satisfy the standards established by a Partnership Committee with respect to the Proponent's required financial condition, or technical or professional ability and experience as set forth in the RFQ or RFP.

### **7.3. Information as to Financial Condition.**

(a) In assessing whether a prospective Proponent or Proponent meets any minimum standards of financial condition required by the Partnership Committee for the purpose of Section 4.3 of this Regulation and in selecting the Proponents under an RFQ or an RFP, the Authority may take into account any of the following information:

- (i) appropriate statements from the principal bank(s) of the Proponent;
- (ii) financial statements for the previous three (3) fiscal years;
- (iii) any other information acceptable to the Authority that would allow the Proponent to demonstrate its financial condition; and

(iv) any additional reference checking information that the Authority could seek from external sources (e.g., Dun and Bradstreet).

(b) The Partnership Committee will specify in the RFQ, the RFP or any other notice or invitation for a Proposal, the financial information which the Proponent must provide to comply with the applicable minimum standards of financial condition.

#### **7.4. Advancement of Local Industry.**

(a) Public Policy. The Authority's public policy is to foster the participation of local suppliers, contractors, designers, architects, engineers, advisors and investors as participants in potential PREPA Transactions.

(b) Objectives. The aforementioned public policy has the following objectives:

- (i) support the growth of the local economy;
- (ii) foster the development and strengthening of Puerto Rico's industries;
- (iii) maximize employment creation in Puerto Rico;
- (iv) develop local expertise;
- (v) support the formation and expansion of local capital; and
- (vi) promote the highest possible participation of Puerto Rican goods and services providers in government purchases.

(c) Selection of Proponents. Consistent with the Authority's public policy, when evaluating prospective Proponents of potential PREPA Transactions, the Partnership Committee may take into account the following:

- (i) such Proponents' presence in Puerto Rico;
- (ii) such Proponents' commitment to Puerto Rico;
- (iii) the possibility of creating or retaining jobs in Puerto Rico;
- (iv) the potential for economic development of Puerto Rico;
- (v) the Proponent's collaboration with local entities; and
- (vi) the possibility that the financing for the Project be provided by local financial institutions.

**7.5. Compliance with Applicable Laws.** The analysis made by the Partnership Committee will also be consistent with the following laws, to the extent applicable, and such other laws as may be required based on the nature and scope of the PREPA Transaction at hand:

(a) Act No. 83-1941, as amended, known as the “Puerto Rico Electric Power Authority Act”;

(b) Act No. 114-2007, as amended, known as the “Net Metering Program in the Electric Power Authority”;

(c) Act No. 82-2010, as amended, known as the “Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act”;

(d) Act No. 57-2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act”;

(e) Act No. 76-1994, as amended, known as the “Act to Regulate Personal Property Lease Contracts”;

(f) Act No. 4-2016, as amended, known as the “PREPA Revitalization Act”;

(g) Act No. 14-2004, as amended, known as the “Puerto Rican Industry Investment Act”;

(h) Act No. 109-1985, as amended, known as the “Construction Materials Manufactured in Puerto Rico Act”;

(i) Act No. 62-2014, as amended, known as the “Act to Support Microbusinesses and Small and Medium-Size Businesses”;

(j) Act No. 42-2018, as amended, known as the “Local Construction Contractors and Suppliers Preference Act”; and

(k) Act No. 173-1988, as amended, known as the “Board of Examiners of Engineers, Architects, Surveyors and Landscape Architects Act of Puerto Rico.”

**7.6. Partnering Against Corruption Initiative.** The Authority supports the World Economic Forum’s Partnering Against Corruption Initiative (or PACI) and encourages prospective Proponents to mention in their Proposals whether they are participating in PACI.

**7.7. Conflicts of Interest Guidelines.** From time to time, the Authority may adopt guidelines to resolve conflicts of interest or competitive advantage matters that may

arise within the procurement of a Project. The Authority will publish those guidelines it adopts, if any, on its website.

## **SECTION 8 CONTRACT AWARD**

**8.1. Approval by Partnership Committee.** Once a Partnership Committee has recommended a Proposal, and a Partnership Committee and the Proponent have finalized the negotiation of the Preliminary Contract which complies with the requirements of Article 5(g) of Act 120-2008 and Article 10 of Act 29-2009, a Partnership Committee will prepare and deliver the Committee Report.

### **8.2. Approval by Energy Bureau.**

(a) The Committee Report and the proposed Preliminary Contract will be circulated to and presented for the approval of the Energy Bureau prior to submitting the same to the Authority Board and PREPA Board for approval. The Energy Bureau will evaluate the Committee Report and the Preliminary Contract and, provided that such documents comply with the energy public policy and the regulatory framework, will issue an Energy Compliance Certificate. If an Energy Compliance Certificate or a negative decision is not issued within the period provided in Section 5(g) of Act 120-2018, the PREPA Transaction will be deemed approved by the Energy Bureau and it will be understood that the PREPA Transaction has received an Energy Compliance Certificate. In such case, the Authority will certify that the Energy Bureau did not issue an Energy Compliance Certificate or a negative decision and include this certification when presenting the Preliminary Contract for subsequent authorizations to the PREPA Board of Directors and the Authority Board.

(b) Once the Energy Compliance Certificate has been issued, any amendment to the Preliminary Contract will require the issuance of a new Energy Compliance Certificate. The mere issuance of an Energy Compliance Certificate does not grant the right to claim compensation, reimbursement, or any payment with respect to expectations from the Proponents arising in any of the procurement process stages, nor for the expenses incurred during the qualification or proposal submission process. Revisions to the Energy Compliance Certificate issued by the Energy Bureau must be filed by the Authority with the Court of Appeals, within fifteen (15) days from its notification.

### **8.3. Approval by the Authority Board and PREPA Board.**

(a) The Committee Report and the Preliminary Contract will be circulated to and presented for the approval of the Authority Board and PREPA Board upon receipt of the Energy Compliance Certificate. The Authority Board and PREPA Board must approve the Committee Report and the Preliminary Contract through a resolution. Such resolutions will contain their agreement to or rejection of that which the Partnership Committee has presented and recommended, together with the grounds for such determination. Notwithstanding the provisions of Article 5(c) of Act 29-2009, the approval by the



Authority Board under Article 9(g)(iii) of Act 29-2009 will require the affirmative vote of both representatives of the public interest in the case of any PREPA Transaction that does not involve the sale of PREPA Assets. If the affirmative vote of one (1) or both representatives of the public interest is not obtained for any PREPA Transaction that does not entail the sale of PREPA Assets, such transaction will be deemed to have been rejected. The abstention of one (1) or both representatives of the public interest will be interpreted as a vote against the processes established in Article 10(a) of Act 120-2018.

(b) The mere approval of the Committee Report and the Preliminary Contract by PREPA and the Authority does not confer the right to claim indemnity, refund, or any payment whatsoever on account of expectations of the Proponent arisen in any of the procurement process stages, or for expenses incurred during the qualification or Proposal presentation procedures.

**8.4. Approval by the FOMB.** Once the Preliminary Contract has been approved by the Partnership Committee, the Energy Bureau, the Authority Board, and PREPA Board, the Preliminary Contract will be submitted to the FOMB for its review and approval, to the extent such review and approval is required pursuant to PROMESA and the FOMB's policies then in effect.<sup>2</sup>

**8.5. Approval by Governor.** Once the Committee Report and the Preliminary Contract has been approved by the Partnership Committee, the Energy Bureau, the Authority Board, PREPA Board, and the FOMB (to the extent applicable), the Committee Report and the Preliminary Contract will be delivered to the Governor, or to the executive official delegated by the Governor, for approval pursuant to Article 9(g)(iv) of Act 29-2009. All Committee Reports and Preliminary Contracts must be approved by the Governor in writing within thirty (30) days of their receipt. Where no such approval is issued within this term, the Committee Report and Preliminary Contract will be deemed rejected by the Governor. The Authority may cancel the Award of a Transformation Contract at any time before the Transformation Contract is signed by PREPA and the Proponent, without recourse or liability to the Authority, PREPA, the Partnership Committee, any Authorized Representative, or any of their agents and advisors. In the event the Authority cancels the Award of the Transformation Contract before its execution by PREPA and the Proponent, it will return the Proposal Security to all Proponents.

**8.6. Approval by Legislature for PREPA Assets Related to Energy Generation.**

(a) Any PREPA Transaction that involves the sale of PREPA Assets related to energy generation must comply with the provisions of Act 120-2018 and must be approved by the Legislative Assembly as provided in Article 10(c) of Act 120-2018. For the avoidance of doubt, a lease, operation and management agreement or similar arrangement

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<sup>2</sup> For the avoidance of doubt, PREPA is required to comply with any and all requirements under PROMESA that may be applicable or required as part of, or for the approval of, a PREPA Transaction.

with respect to a PREPA Asset will not be deemed a sale, transfer or disposition of such PREPA Asset. After the Governor, or the executive officer designated by the Governor, approves a PREPA Transaction involving the sale of PREPA Assets related to energy generation pursuant to the provisions of Article 9(g) of Act 29-2009 and Article 10(c) of Act 120-2018, the Governor will submit to the Legislative Assembly, within the next thirty (30) days, the corresponding Preliminary Contract, the Committee Report prepared by the Partnership Committee and a report regarding the use of funds.

(b) The Legislative Assembly will have the ability to approve or reject each PREPA Transaction that involves the sale of PREPA Assets related to energy generation under the same terms and conditions approved by the Governor, or the executive officer in whom he delegated such approval, without any modifications. Each PREPA Transaction that involves the sale of PREPA Assets related to energy generation will be evaluated and either approved or rejected by each Legislative Body. The Legislative Assembly will have a term of no more than forty-five (45) days to approve a Concurrent Resolution expressing the approval or rejection of the PREPA Transaction. If a Concurrent Resolution approving or rejecting the corresponding PREPA Transaction is not enacted within said term, the PREPA Transaction will be deemed approved.

(c) Each PREPA Transaction that involves the sale of PREPA Assets related to energy generation will be presented to the Legislative Assembly at least forty-five (45) days prior to the last day for the approval of measures in order to be considered at the session in which it was submitted. If presented less than forty-five (45) days prior to the last day for the approval of measures or while the Legislative Assembly is in recess, the forty-five (45) day term will begin to elapse from the first day of the next session. Notwithstanding the provisions of Article 9(g) of Act 29-2009, no Sale Contract corresponding to a PREPA Transaction involving the sale of PREPA Assets related to energy generation will be perfected until the approval of the Legislative Assembly is obtained as established in Article 10(c) of Act 120-2018 and this Section 8.6. If approval of a PREPA Transaction involving the sale of PREPA Assets related to energy generation is denied by the Legislative Assembly, the Governor may re-submit such PREPA Transaction to the Legislative Assembly for re-consideration. In re-submitting to the Legislative Assembly for re-consideration a PREPA Transaction involving the sale of PREPA Assets related to energy generation, the Governor may make the changes to such PREPA Transaction that the Governor deems pertinent prior to such re-submission, so long as all such changes have been approved by the Partnership Committee, the Energy Bureau, the Authority Board, the PREPA Board and the FOMB (to the extent applicable) in accordance with the procedures established in Article 10 of Act 120-2018 and this Section 8.

**8.7. Notice of Award of a Transformation Contract.** Upon the approval by the Governor and the Legislative Assembly, if applicable, and the execution by PREPA of a Transformation Contract, the Authority will make public the Award of the Transformation Contract and the identity of the winning Proponent. The Authority will send a written notification to the rest of the Proponents as set forth in Article 9(g)(vi) of

Act 29-2009. The Executive Director will notify in writing all participating Proponents of the decision made by the Authority to award a Transformation Contract. The Executive Director will send an award notice no later than five (5) days after the Governor or Legislative Assembly, as applicable, has notified the Authority of its approval, to the Selected Proponent by certified mail. No other action by the Authority will be considered as acceptance of a Proposal.

**8.8. Execution of the Partnership Contract.** Upon the Award of a Transformation Contract, the Proponent will have to execute the Transformation Contract, submit the Proposal Security specified in the RFP to guarantee the Proponent's performance of the Transformation Contract and any evidence of insurance requested, and carry out all other actions established as requirements of the Transformation Contract's execution within the time period established by the Authority. The Authority may cancel the Award of a Transformation Contract at any time prior to the execution of the Transformation Contract by PREPA and the Proponent, or by the Governor, in such cases where said signature is required, without this creating any legal obligation or responsibility whatsoever for the Authority, PREPA, any Authorized Representative or any agent or advisor. The Transformation Contract will not be enforceable or effective until it has been completed and approved, and signed by all parties. If the Selected Proponent does not execute the Transformation Contract or does not comply with any requirement for such execution within the time limit specified by the Authority, the Authority may, in its sole and absolute discretion, extend the deadline for execution of the Transformation Contract or award the Transformation Contract to the next highest ranking Proposal if the Authority and the Partnership Committee determine that such award is in the best interests of advancing the purpose and public policy of Act 120-2018 and Act 29-2009. Any such failure by a Selected Proponent will also allow the Authority to exercise any rights, powers, privileges and remedies available, including drawing on any relevant Proposal Security. The approval of such contract with the Proponent of the next highest ranking Proposal will comply with the procedures set forth in Article 8 of Act 120-2018 and Article 9(g) of Act 29-2009. Once such contract is final, a copy of the Committee Report will be filed with the Secretary of the Senate and the Clerk of the House of Representatives. Likewise, the Committee Report will be published on the Authority's and PREPA's websites.

**8.9. Transformation Contract Documents.** The Authority will determine the type of Transformation Contract that best suits a particular Project and the terms and conditions that each awarded Transformation Contract will contain. All contracts related to a PREPA Transaction will contain a clause of total compliance with the energy public policy and the regulatory framework; except for those excluded by Act 120-2018 or expressly approved by the Legislative Assembly. All agreements related to or necessary for the performance of a Transformation Contract or the implementation of a PREPA Transaction must be approved by the Authority and will be part of the public record.

**8.10. Stipend for Unsuccessful Proponents and Intellectual Property Transfer.** The Authority may, in its sole and absolute discretion, provide for a stipend or partial compensation to unsuccessful Proponents that submit compliant Proposals. The

Authority will indicate in the RFP if a stipend will be paid for a specific Project. Moreover, if a Transformation Contract is awarded based on an AFC and/or an ATC which was submitted by a non-selected Proponent, the Authority may, on a case-by-case basis and in its sole and absolute discretion, pay a stipend to the non-selected Proponent in return for transfer of intellectual property.

## **SECTION 9 RECONSIDERATION AND REVIEW**

**9.1. No Reconsideration by the Authority.** The Authority will not entertain any request for reconsideration of any decision made by the Authority, the Partnership Committee, the Executive Director or any Authorized Representative related to the procurement process set forth in Act 120-2018, Act 29-2009 or this Regulation, including, but not limited to, decisions related to qualifications of prospective Proponents under an RFQ or the Award of a Transformation Contract.

**9.2. Judicial Review.** Judicial review of the determinations made by the Partnership Committee, the Authority and/or any other Person under Article 9(g) of Act 29-2009 or under Article 10 of Act 120-2018, will be governed by the provisions of Article 20 of Act 29-2009.

## **SECTION 10 SUPERVISION**

**10.1. Work Plan.** After the consummation of any PREPA Transaction, the Energy Bureau will assist the Authority in supervising the performance and compliance of the Contractor and PREPA under each Transformation Contract, in accordance with Article 10(d) of Act 29-2009. The Energy Bureau will not have any authority to alter or amend the Transformation Contract and will not interfere with contractual matters, except as provided in Article 8(f) of Act 120-2018. In addition to the other requirements under this Regulation, the Authority, PREPA and the Energy Bureau will jointly prepare a work plan for the supervision of each Transformation Contract in order to comply with the provisions of Article 10(d) of Act 29-2009 and ensure the optimum use of the resources of each entity.

**10.2. Designation of Liaison.** PREPA will designate an individual as the point person for the coordination of any information required by the Authority regarding each Transformation Contract granted by PREPA.

**10.3. Quarterly Reports.** PREPA will submit to the Authority a quarterly report of the progress of each PREPA Transaction to which PREPA is a party. Each report will describe the performance and fulfillment of the obligations of each Contractor under the Transformation Contracts then in force. The first quarterly report will be presented to the Authority no later than ninety (90) days after the effectiveness of the corresponding Transformation Contract.

**10.4. Annual Reports.** Commencing on November 30, 2020, and on each following November 30, PREPA will submit to the Authority an annual report of the

progress of the Projects and the performance and fulfillment of the obligations of each Contractor under the Transformation Contracts then in force.

**10.5. Additional Reports and Information.** The Authority may request such reports as it deems necessary and appropriate and may request additional information or a clarification of the information submitted in any report, including reports submitted pursuant to the work plan described in Section 10.1 of this Regulation. In addition, the Authority may, *motu proprio*, request from PREPA any information related to the progress of a PREPA Transaction. The Authority may also require the input of PREPA in order to complete an evaluation of the progress of a PREPA Transaction.

## **SECTION 11 MISCELLANEOUS**

**11.1. Computation of Periods.** Where an action is required to be taken under this Regulation or Act 29-2009: (a) within a certain period after an action is taken, the day on which that action is taken will not be counted in the calculation of that period; (b) within a certain period, that period must include at least two (2) business days; and (c) within a certain period and the last day of that period is not a business day, the period will be extended to include the next business day.

### **11.2. Confidentiality.**

(a) All Proposals submitted to the Authority and a Partnership Committee will become the property of the Authority and the Partnership Committee, except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent. Proponents are advised to familiarize themselves with the confidentiality and publication provisions contained in Articles 9(f) and 9(i) of Act 29-2009 to ensure that documents identified by Proponents as “confidential” or “proprietary” will not be subject to disclosure under Act 29-2009.

(b) If a Proponent has special concerns about confidential or proprietary information that it would desire to make available to the Authority and a Partnership Committee, prior to submission of its Proposal, such Proponent may wish to: (i) make a written request to the Authority for a meeting to specify and justify proposed confidential or proprietary documents; (ii) make an oral presentation to a Partnership Committee’s staff and legal counsel, as applicable; and (iii) receive written notification from a Partnership Committee accepting or rejecting confidentiality requests. Failure to take such precautions prior to submission of a Proposal may subject confidential or proprietary information to disclosure under Articles 9(f) and 9(i) of Act 29-2009. The Authority suggests that Proponents file the confidential or proprietary information in a separate tab or folder when submitting their Proposals to facilitate the review of this sensitive information by the Authority and a Partnership Committee.

(c) The Authority and the Partnership Committee will endeavor to maintain the confidentiality of any information that a Proponent indicates to be proprietary or a trade

secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order. The Authority and the Partnership Committee will determine whether or not the requested materials are exempt from disclosure. In the event the Authority or a Partnership Committee elects to disclose the requested materials, it will provide the Proponent notice of its intent to disclose. In no event will the Government of Puerto Rico, a Partnership Committee, PREPA or the Authority participating in a PREPA Transaction be liable to a Proponent for the disclosure required by law or a court order of all or a portion of a Proposal submitted to the Authority or the Partnership Committee under these guidelines.

(d) Once the Governor and, if applicable, the Legislative Assembly, have approved the Transformation Contract, the Authority will make public the Committee Report of the relevant Partnership Committee which will contain the information related to the procurement, selection and negotiation process, and the information contained in the Proposal as required by Article 9(i) of Act 29-2009, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that will otherwise be protected from publication according to law, unless otherwise ordered by a court order.

(e) Each member of a Partnership Committee, the Authority and PREPA engaging in a PREPA Transaction process that is associated with reviewing or selecting the submitted Proposals may have access to privileged and confidential information. Misuse of this confidential information would be a breach of the fiduciary responsibility that each member has with respect to the Partnership Committee, the Authority and PREPA. In an effort to maintain the highest levels of confidence and trust in the procurement process, the participants from the public and the private sectors must be aware of their responsibilities to the public and remain vigilant of any misuse of confidential, non-public information.

(f) Notwithstanding anything to the contrary in this Regulation, the Authority and PREPA will not be prohibited from sharing with the FOMB, or making public, any information or document that should be made public in connection with any process authorized under PROMESA.

### **11.3. Restricted Parties.**

(a) Restricted Parties, their respective directors, officers, partners, employees, and Affiliates are not eligible to participate as a Proponent or as a Team Member, or to otherwise assist any Proponent 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 Proponent. Each Proponent will ensure that neither the Proponent nor any Team Member uses, consults, includes, or seeks advice from any Restricted Party.

(b) Any of the following Persons engaged by the Authority or the Partnership Committee, or involved in preparing the RFQ, the RFP, and/or the Transformation Contract for a particular Project, would be a Restricted Party in respect of such Project:

- (i) Technical advisors (e.g., engineering and consulting firms);
- (ii) Financial advisors (e.g., investment banks and accounting firms);
- (iii) Legal advisors;
- (iv) Environmental advisors; and
- (v) Social and labor advisors or any other advisor.

(c) Any Person serving as a consultant to a Restricted Party and that wishes to participate in an RFQ and/or RFP should describe the nature and extent of his or her scope of work for the Restricted Party, as well as under the proposed Proponent team which will submit a Proposal.

(d) This is not an exhaustive list of Restricted Parties. Additional Persons may be identified as Restricted Parties, including by being added to the list during the competitive selection process.

(e) For the avoidance of doubt, a Restricted Party in respect of a given Project will be deemed to be a Restricted Party only in respect of that Project and is otherwise unrestricted as to Act 29-2009 activities outlined in the first paragraph of this Section 11.3. Additionally, no Person will become a Restricted Party as a result of having been named a member of an advisory pool, and will only become a Restricted Party once formally engaged by the Authority, a Partnership Committee, FAFAA or PREPA in respect of a specific Facility, Project or PREPA Transaction.

#### **11.4. Federal Funds and Other Sources of Financing.**

(a) Any PREPA Transaction may be financed in whole or in part through funding or other contributions by PREPA or any Person that is a party to the PREPA Transaction. PREPA and the Authority may combine federal, local and private funds or other resources to finance a PREPA Transaction under Article 11 of Act 29-2009.

(b) PREPA and the Authority may take any of the following actions to finance a PREPA Transaction:

- (i) accept discretionary funds available in the Federal Government to further the purposes of Act 120-2018 and Act 29-2009, be it through loans, securities or any other kind of financial aid;

(ii) execute contracts and other agreements with the Federal Government as necessary to carry out the purposes of Act 120-2018 and Act 29-2009; and

(iii) accept any donation, gift or any other conveyance of land, money, other kinds of real or personal property or any other valuable provided to PREPA or the Authority to carry out the purposes of Act 120-2018 and Act 29-2009.

(c) To the extent that disaster recovery grant funding or other grants from the Federal Government become available for a Project, the Authority and PREPA may elect to make the availability of such funds subject to compliance with the terms of the applicable grant agreement. If any kind of disaster recovery grant funding or other grants from the Federal Government is incorporated into the financing of a Project, the Contractor must comply with the terms and conditions of the applicable grants and sub-grants and the conditions required by the Authority or PREPA in order not to jeopardize the availability of such funding.

**11.5. Waivers.** The Authority Board is authorized to provide waivers to former members of each Partnership Committee from the prohibitions regarding economic interest and affiliation set forth in Article 8(a) of Act 29-2009 by the affirmative vote of four (4) members present in a duly constituted meeting at which a quorum is present; provided that such waiver has been previously approved by the Government Ethics Office.

**11.6. Distribution, Notification or Publication.** Unless otherwise provided in Act 29-2009 or this Regulation, where Act 29-2009 or this Regulation requires the distribution, notification or publication of a document or a decision of the Authority, the posting of such document or decision on the website of the Authority will be deemed to satisfy such requirement.

**11.7. Intent.** This Regulation is intended to provide flexible procedures and, accordingly, it will be interpreted liberally so as to effectuate that intent and its purposes. Non-material deviations from this Regulation will not, at the Authority's sole and absolute discretion, be cause for disqualification from any RFP process.

**11.8. Negotiations and Discussions.** Any negotiations, conversations or discussions required by the provisions of this Regulation may be carried out in writing, in person, by teleconference or video conference.

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



or article in any instance will not be construed to affect or impair in any way its applicability or validity in any other instance.

**11.10. English Language Version of Regulation Prevails.** This Regulation is being adopted in both English and Spanish language versions. In case of any conflict between such versions, the English language version will prevail.

**11.11. Approval.** The Authority Board approved this Regulation on March 8, 2019.

**11.12. Effective Date.** This Regulation will become effective on March 8, 2019.



Omar J. Marrero, Esq.

**Executive Director**

**Public Private Partnership Authority**