



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

**REGULATION FOR THE  
PROCUREMENT, EVALUATION, SELECTION, NEGOTIATION AND  
AWARD OF PARTICIPATORY  
PUBLIC-PRIVATE PARTNERSHIP CONTRACTS  
UNDER ACT NO. 29-2009, AS AMENDED**

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## TABLE OF CONTENTS

	Page
SECTION 1 - LEGAL BASIS; PURPOSE OF REGULATION; SCOPE.....	1
1.1    Legal Basis .....	1
1.2    Purpose of Regulation .....	1
1.3    Scope of Regulation .....	1
SECTION 2 - DEFINITIONS .....	1
2.1    Act .....	1
2.2    Addenda or Addendum .....	1
2.3    Affiliate .....	1
2.4    Alternative Financial Concept (or AFC).....	1
2.5    Alternative Technical Concept (or ATC).....	2
2.6    Authority .....	2
2.7    Authorized Representative .....	2
2.8    Award of a Partnership Contract .....	2
2.9    business day.....	2
2.10   Competitive Range .....	2
2.11   Contractor(s).....	2
2.12   Executive Director.....	2
2.13   Evaluation Criteria .....	2
2.14   FAFAA.....	2
2.15   Facility(ies).....	2
2.16   Federal Agency .....	3
2.17   Function(s) .....	3
2.18   Government .....	3
2.19   Government Entity .....	3
2.20   Governor.....	3
2.21   Municipal Entity.....	3
2.22   Participatory Public-Private Partnership or Partnership.....	3
2.23   Partnering Government Entity.....	4
2.24   Partnership Committee .....	4
2.25   Partnership Contract .....	4
2.26   Person .....	4
2.27   Permanent Committee .....	4
2.28   Pre-Development Agreement .....	4
2.29   Pre-Development Report.....	4
2.30   Pre-Proposal Conference .....	5
2.31   Priority Project .....	5
2.32   Project.....	5
2.33   Proponent .....	5
2.34   Proposal .....	5
2.35   Proposal Security.....	5
2.36   Proposed Project.....	5

2.37	Regulation 7853 .....	6
2.38	Request for Clarification (or RFC).....	6
2.39	Request for Expression of Interest (or RFEOI).....	6
2.40	Request for Information (or RFI) .....	6
2.41	Request for Proposals (or RFP).....	6
2.42	Request for Qualifications (or RFQ).....	6
2.43	Restricted Party(ies) .....	6
2.44	Selected Proponent .....	6
2.45	Service .....	6
2.46	Small Scale Participatory Public-Private Partnership or Small Scale Partnership.....	6
2.47	Small Scale Project.....	7
2.48	Study of Desirability and Convenience.....	7
2.49	Unsolicited Proposal .....	7
2.50	written or in writing.....	7
<b>SECTION 3 - PARTNERSHIP COMMITTEE.....</b>		<b>8</b>
3.1	Membership and Responsibility of Partnership Committee .....	8
3.2	Meetings of the PPP Committee .....	9
3.3	Actions of the Partnership Committee .....	9
3.4	Subcommittees of the Partnership Committee .....	10
3.5	Advisors to the Authority and Partnership Committee .....	10
3.6	Oversight Responsibilities.....	10
<b>SECTION 4 - PERMANENT COMMITTEE FOR SMALL SCALE PROJECTS .....</b>		<b>11</b>
4.1	Membership and Responsibilities of the Permanent Committee for Small Scale Projects .....	11
4.2	Meetings of the Permanent Committee.....	12
4.3	Actions of the Permanent Committee .....	13
4.4	Advisors to the Authority and Partnership Committee .....	13
4.5	References to the Partnership Committee .....	13
<b>SECTION 5 – PARTICIPATORY PUBLIC-PRIVATE PARTNERSHIP PROPOSALS .....</b>		<b>14</b>
5.1	Identification of Projects for Participatory Public-Private Partnerships .....	14
5.2	Study of Desirability and Convenience.....	14
5.3	Market Sounding Process.....	15
5.4	Qualification of Proponents (RFQ).....	15
5.5	Public Notice of Request for Proposals (RFP).....	17
5.6	Content of the RFP .....	17
5.7	Request for Clarification (RFC).....	19
5.8	Response to an RFP.....	20
5.9	Proposal Review Fee; Proposal Security .....	23
5.10	Modification of Proposals .....	23
5.11	Cancellation of an RFP .....	24
5.12	Pre-Development Agreements .....	24
5.13	Alternative Technical and Financial Concepts.....	25
5.14	Partnership Contracts without RFP .....	26
5.15	Communication with Partnering Government Entity.....	26

5.16	No Lobbying, No Collusion, No Prohibited Acts .....	27
<b>SECTION 6 - EVALUATION AND SELECTION PROCESS .....</b>		<b>27</b>
6.1	Evaluation Process .....	27
6.2	Amendment to Procurement Process .....	33
<b>SECTION 7 - UNSOLICITED PROPOSALS .....</b>		<b>33</b>
7.1	Unsolicited Proposals .....	33
7.2	Content of Unsolicited Proposals .....	35
7.3	Preparation and Submission of Unsolicited Proposals .....	36
7.4	Evaluation Fee for Unsolicited Proposals .....	40
7.5	Cancellation of Evaluation Process for Unsolicited Proposals .....	40
7.6	Communications with Participating Government Entities .....	40
<b>SECTION 8 - SELECTION OF PROPONENTS .....</b>		<b>40</b>
8.1	Disqualifying Events .....	40
8.2	Other Grounds for Disqualification .....	41
8.3	Information as to Financial Condition .....	41
8.4	Advancement of Local Industry .....	42
8.5	Partnering Against Corruption Initiative .....	43
8.6	Conflicts of Interest Guidelines .....	43
<b>SECTION 9 - CONTRACT AWARD .....</b>		<b>43</b>
9.1	Partnership Committee or Permanent Committee .....	43
9.2	Award of Partnership Contract .....	44
9.3	Notice of Award of a Partnership Contract .....	44
9.4	Execution of the Partnership Contract .....	45
9.5	Partnership Contract Documents .....	46
9.6	Stipend for Unsuccessful Proponents and Intellectual Property Transfer .....	46
<b>SECTION 10 RECONSIDERATION AND REVIEW .....</b>		<b>46</b>
10.1	No Reconsideration by the Authority .....	46
10.2	Judicial Review .....	46
<b>SECTION 11 - SUPERVISION .....</b>		<b>46</b>
11.1	Designation of Liaison .....	46
11.2	Quarterly Reports .....	46
11.3	Annual Reports .....	47
11.4	Additional Information .....	47
<b>SECTION 12 - MISCELLANEOUS .....</b>		<b>47</b>
12.1	Scope of the Act .....	47
12.2	Computation of Periods .....	47
12.3	Confidentiality .....	47
12.4	Restricted Parties .....	48
12.5	Dispensations .....	49
12.6	Distribution, Notification or Publication .....	49

12.7	Intent.....	50
12.8	Negotiations and Discussions.....	50
12.9	Severability.....	50
12.10	Repeal Clause.....	50
12.11	English Language Version of Regulation Prevails.....	50
12.12	Approval.....	50
12.13	Effective Date.....	50

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

**1.1 Legal Basis.** The Puerto Rico Public-Private Partnerships Authority was created by the Public-Private Partnerships Act, Act No. 29-2009, as amended, for the purpose of implementing the public policy of the Government of Puerto Rico concerning Public-Private Partnerships as contemplated under the Act. This regulation is promulgated by virtue of the power vested in the Authority by Article 6(b)(ii) [– Specific Powers] of the Act.

**1.2 Purpose of Regulation.** The purpose of this regulation is to establish a procurement, evaluation, selection, negotiation and award process for Partnerships 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 the Act, this regulation provides guidelines and procedures for, among others: (i) identifying the Functions, Services or Facilities that qualify for establishment or development as Partnerships; (ii) soliciting, obtaining and evaluating Partnership proposals; (iii) selecting the entities or individuals that will enter into Partnership Contracts with a Partnering Government Entity; and (iv) negotiating and awarding Partnership Contracts.

**1.3 Scope of Regulation.** The scope of this regulation is limited to those projects covered by the definitions of a Partnership set forth in the Act and this regulation.

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

**2.2 Addenda or Addendum:** means a written supplement to an RFP issued by the Authority after the publication of such RFP, which includes changes or additions to (i) the terms and conditions of the RFP; (ii) the conceptual design or the plans and specifications of a Project; (iii) the terms or conditions of the related Partnership Contract; or (iv) any other document related to the RFP.

**2.3 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. For purposes of this definition, “control” over a Person means the power to, directly or indirectly, (a) vote 10% or more of the voting securities for the election of the directors of said Person or (b) direct or have the power to affect the management and policies of said Person, through contract or otherwise.

**2.4 Alternative Financial Concept (or AFC):** means, a request by the Authority during the Requests for Proposals process that allows Proponents to incorporate financial innovation and creativity into their Proposals.

**2.5 Alternative Technical Concept (or ATC):** means, a request by the Authority during the Request for Proposals process that allows Proponents to incorporate technical innovation and creativity into their Proposals.

**2.6 Authority:** means the Public-Private Partnerships Authority created by the Act.

**2.7 Authorized Representative:** means the individuals designated pursuant to Sections 6.1(c) and 6.1(e) of this regulation to negotiate with Proponents on behalf of the Authority.

**2.8 Award of a Partnership Contract:** means the approval by the Governor of a Partnership Contract previously approved and recommended by the Authority and the corresponding Partnering Government Entity pursuant to the provisions of Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act.

**2.9 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.

**2.10 Competitive Range:** means those Proposals received by the Authority in response to an RFP that the Partnership Committee or the Permanent Committee, as applicable, determines, in its discretion, have a reasonable probability of being recommended for an Award of a Partnership Contract.

**2.11 Contractor(s):** means the Person(s) who execute a Partnership Contract with a Partnering Government Entity, or its (their) successor(s).

**2.12 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 Partnership process.

**2.13 Evaluation Criteria:** means the criteria adopted by the Partnership Committee, in its discretion, which will be used to evaluate, rank, select and recommend Proposals for rejection or award. The Evaluation Criteria will include the criteria listed in Article 9(c) [– Evaluation Criteria] of the Act, without it being construed as a limitation or that their order defines their importance, to the extent applicable to a prospective Proponent or a Proposal, and such other criteria included in an RFP or this regulation.

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

**2.15 Facility(ies):** means any property, capital project or facility of public use, whether real or personal, whether existing or to be developed in the future, including, but not limited to, aqueduct and sewer systems, including all plants, reservoirs, and systems to store, supply, treat, and distribute water, systems to treat, collect, and eliminate rainwater and sewer

water, improvements financed under the provisions of the Federal Clean Water Act and the Federal Potable Water Act, or any other similar or related Federal legislation or regulation; systems to collect, transport, manage, and eliminate non-hazardous and hazardous solid waste; systems to recover resources; systems to produce, transmit or distribute electric power; freeways, highways, pedestrian walkways, parking facilities; airports, convention centers, bridges, sea or air ports, tunnels; transportation systems, including mass transportation systems; communications systems, including telephones, information and technology systems; industrial facilities; public housing; correctional institutions; and any kind of facilities used as tourist, healthcare or agricultural-industrial infrastructure or any other similar facilities.

**2.16 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.

**2.17 Function(s):** means any present or future responsibility or operation of a Government Entity, expressly delegated to the same by means of either its organic act or pertinent special laws, which is closely related to Priority Projects, as established in Article 3 [– Public Policy] of the Act.

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

**2.19 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.

**2.20 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 the Act, but subject to the limitations set forth in Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act.

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

**2.22 Participatory Public-Private Partnership or Partnership:** means any agreement between a Partnering Government Entity and one or more Persons (other than a Governmental Entity), subject to the public policy set forth in the Act, the terms of which are provided under a Partnership Contract, to delegate operations, Functions, Services, or responsibilities of any Government Entity, or covering the design, construction, development, financing, maintenance or operation of one or more Facilities, and/or any combination thereof.



**2.23 Partnering Government Entity:** means the Government Entity with direct inherence on the Function(s), Service(s) or Facility(ies) covered by the Partnership Contract that is or will be a party to the Partnership Contract.

**2.24 Partnership Committee:** means a committee designated by the Authority to evaluate and select qualified Persons and Proponents of a Partnership (other than a Small Scale Partnership), and to establish and negotiate the terms and conditions it deems appropriate for the corresponding Partnership Contract.

**2.25 Partnership Contract:** means a contract executed by the Selected Proponent and the Partnering Government Entity to establish a Partnership, which may include, but shall not be limited to, a contract to delegate a Function, administer or render one or more Services, or conduct the design, building, financing, maintenance, or operation of one or more Facilities that are in themselves or are closely related to Priority Projects as established in Article 3 [– Public Policy] of the Act. A Partnership Contract may be, without it being understood as a limitation, any modality of the following kinds of contract: design / build (DB), design / build / operate (DBO), design / build / finance / operate (DBFO), design / build / transfer / operate (DBTO), design / build / operate / transfer (DBOT), turnkey contract, long-term lease contract, surface right contract, administrative grant contract, joint venture contract, long-term administration and operation contract, a concession agreement, a pre-development agreement (PDA) and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of the Priority Projects.

**2.26 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 shall include 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.

**2.27 Permanent Committee:** means the Permanent Committee for Small Scale Partnerships established pursuant to the Act to evaluate Small Scale Projects, qualify the Persons and Proponents that may participate in the process, select the Proponents for a Small Scale Partnership and establish and negotiate the terms and conditions considered appropriate for the corresponding Partnership Contract.

**2.28 Pre-Development Agreement:** means the mechanism by which a private entity agrees to evaluate the feasibility and pre-development of a specific Project. The result is a Pre-Development Report.

**2.29 Pre-Development Report:** means a report prepared by a private entity pursuant to a Pre-Development Agreement to allow the Government to obtain a detailed understanding of the technical and financial feasibility of a specific project, without having to employ major resources.

**2.30 Pre-Proposal Conference:** means a meeting or telephone conference prior to the due date of an RFQ or RFP where all Persons who have registered with the Authority as prospective Proponents are invited to participate, raise questions and seek any clarification related to the RFQ or RFP; provided, that the Authority may hold individual meetings when (i) the questions or clarifications sought by a Person relate to confidential or proprietary information to be submitted as an AFC or ATC or similar process employed by the Authority; or (ii) the Authority determines that such individual meetings will maintain the competition among Proponents, for the benefit of the contracting Government Entity.

**2.31 Priority Project:** means an initiative developed by the Government of Puerto Rico that holds primacy, whose purpose is the performance and execution of a work vested with high public interest. Article 3 [– Public Policy] of the Act contains a list of Priority Projects.

**2.32 Project:** means any Priority Project or a project related to a Function, Facility or Service suitable for a Partnership based on a determination by the Authority, after consideration of the related Study of Desirability and Convenience.

**2.33 Proponent:** means any Person (other than a Governmental Entity), or its affiliated or related entities, that has presented a proposal to enter into a Partnership or a Small Scale Partnership with a Governmental Entity; provided, however, that for purposes of this regulation, the term “Proponent” will also include Persons (other than a Governmental Entity) who: (i) submit a Proposal jointly under a consortium that complies with the provisions of Article 9(d) [– Consortia] of the Act and the terms of an RFQ or RFP; (ii) are qualified by the Authority and negotiate a Partnership Contract with the Authority in the cases set forth in Article 9(b)(ii) [– Procedure for Selection and Award] of the Act; or (iii) who submit an Unsolicited Proposal pursuant to Section 7 of this regulation.

**2.34 Proposal:** means a written proposal related to a Partnership made by a Proponent that is: (i) made in response to an RFP; (ii) made under Article 9(b)(ii) [– Procedure for Selection and Award] of the Act; or (iii) an Unsolicited Proposal submitted by a Person to the Authority pursuant to Section 7 of this regulation.

**2.35 Proposal Security:** means a bond, guaranty, or other security 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 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 by the Proponent with the requirements of the Act, this regulation and the terms of the corresponding RFP and secure the execution by the Proponent of the Partnership Contract if selected for the Award of a Partnership Contract. The amount, delivery date, and conditions for return, if any, of the Proposal Security applicable to each Project will be determined by the Authority and specified in the related RFP.

**2.36 Proposed Project:** means any project related to a Function, Facility or Service that is submitted by a Proponent or a Governmental Entity pursuant to an Unsolicited Proposal.

**2.37 Regulation 7853:** means Regulation No. 7853 promulgated by the Authority for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public-Private Partnership Contracts under Act No. 29-2009, as amended.

**2.38 Request for Clarification (or RFC):** means a request submitted by a Proponent to the Authority asking for clarification, explanation or interpretation of any matter contained in an RFP pursuant to Section 5.7 of this regulation.

**2.39 Request for Expression of Interest (or RFEOI):** means a market sounding process that may be used by the Authority to gauge interest in a Partnership according to the provisions of Section 5.3 of this regulation.

**2.40 Request for Information (or RFI):** means a market sounding process that may be used by the Authority to gauge interest in a Partnership according to the provisions of Section 5.3 of this regulation.

**2.41 Request for Proposals (or RFP):** means the document that the Authority prepares, publishes and distributes, in accordance with Article 9(b)(i) [– Procedure for Selection and Award] of the Act and Section 5 of this regulation, requesting Proposals in connection with a potential Partnership or a portion thereof as amended and supplemented from time to time.

**2.42 Request for Qualifications (or RFQ):** means the document that the Authority prepares, publishes and distributes, requesting prospective Proponents to submit their qualifications to participate in an RFP procurement process.

**2.43 Restricted Party(ies):** means those parties described in Section 12.4 of this regulation, which will be prohibited from participating in an RFP process for a particular Project.

**2.44 Selected Proponent:** means the Person, or consortium that is selected for Award of a Partnership Contract for a Partnership with a Partnering Government Entity in accordance with the criteria specified in the RFP.

**2.45 Service:** means any service rendered or to be rendered by a Government Entity directed to safeguarding the interests or meeting the needs of citizens under the provisions of either its organic act or other special laws, that are in themselves or are closely related with Priority Projects, as established in Article 3 [– Public Policy] of the Act.

**2.46 Small Scale Participatory Public-Private Partnership or Small Scale Partnership:** means any Partnership between a Government Entity and one or more Persons (other than a Government Entity) related to a Small Scale Project, subject to the public policy established in the Act, the terms of which shall be provided in a Partnership Contract for the delegation of the operations, Functions, Services or responsibilities of any Government Entity, as well as for the design, construction, development, financing, maintenance or operation of one or more Facilities, and/or any combination of the above.

**2.47 Small Scale Project:** means any Project proposed by a Government Entity or a Proponent for the development of a Facility, or to provide a Service or Function, where the estimated costs at the time of the submission of the proposal to the Authority, including reasonable amounts for any change orders in the execution of the Project, does not exceed fifty-five million dollars (\$55,000,000). The cost of the Small Scale Project shall be determined as follows:

- (a) ***Existing Project where an Initial and/or Periodic Payment is received:*** the cost shall be the total amount of the initial payment and periodic payment, if any, to be received by the Partnering Government Entity.
- (b) ***Existing Project where the Operation is Delegated to a Person or Private Entity:*** the cost shall be the total amount of the payments to be made or received, as the case may be, by the person or private entity for the service under the Partnership Contract.
- (c) ***New Construction Project:*** the cost shall be the total cost of the construction plus reasonable amounts for any change orders. In the Authority's sole discretion, the cost limit for new construction projects may be increased to one hundred million dollars (\$100,000,000), as established in Article 8(c) of the Act.
- (d) ***New Construction Project with the Delegation of the Operation:*** the cost shall be the total cost of the construction plus reasonable amounts for any change orders and payments made or received for the operation of the project. In the Authority's sole discretion, the cost limit for new construction projects that also contemplate delegation of the operation may be increased to one hundred million dollars (\$100,000,000), as established in Article 8(c) of the Act.

**2.48 Study of Desirability and Convenience:** means a study of the desirability and convenience of a Project performed or commissioned by the Authority, with the assistance of the FAFAA, pursuant to Article 7(b) [- Study on Desirability and Convenience] of the Act, which includes the matters set forth in said Article 7(b) [- Study on Desirability and Convenience] of the Act, and such other items requested by the Authority to be addressed in such study, in each case as applicable to the Project.

**2.49 Unsolicited Proposal:** means a written proposal prepared by a Proponent for a project that has not been selected for a RFP, but that meets the applicable legal requirements and is submitted to the Authority in accordance with Section 9(b)(ii) [-Procedure for the Selection and Award] of the Act and is subject to this regulation.

**2.50 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 Membership and Responsibility of the Partnership Committee.** The Authority shall appoint a five (5) member Partnership Committee for each Partnership (other than a Small Scale Partnership) to assist in the selection of Proponents and the negotiation of the terms of the related Partnership Contract. The members of each Partnership Committee shall be designated in accordance with Article 8(a) [– Creation of Partnerships] of the Act.

The members of the Partnership Committee shall be:

- (a) the Executive Director of the FAFAA or his/her delegate;
- (b) the officer of the Partnering Government Entity with direct inherence in the project or his/her delegate;
- (c) one (1) member of the Board of Directors of the Partnering Government Entity or, in the case of Government Entities with no Board of Directors, the Secretary of the Department to which such Partnering Government Entity is attached, or his/her delegate, or an official thereof with specialized knowledge in the kind of project covered by the Partnership chosen by the Authority; and
- (d) two (2) officials from any Government Entity chosen by the Authority for their knowledge and experience in the kind of project covered by the Partnership under consideration.

The Partnership Committee will perform the functions set forth in Article 8(b) [– Partnership Committee Functions] of the Act and this regulation. The Partnership Committee, however, will not be deemed a committee of the Board of Directors of the Authority. The Authority may, in its discretion, terminate a Partnership Committee that has been duly created under the Act or replace a Partnership Committee with another such committee. The Authority may also, in its discretion, remove any member of a Partnership Committee and make new appointments to a Partnership Committee, to the extent that such removal and/or appointment is not inconsistent with the provisions of Article 8 [–Partnership Committee] of the Act.

The Partnership Committee shall have the following duties and responsibilities:

- (a) to approve documents as required by the RFQ, the RFP, the evaluation and selection for the Partnership;
- (b) to evaluate the potential Contractors and pre-qualify those that are qualified to participate as Proponents;
- (c) to evaluate the Proposals submitted and select that which is or those which are best in each case, pursuant to the procedures provided in this regulation;

- (d) to engage in or supervise the negotiation of the terms and conditions of the Partnership Contract;
- (e) 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;
- (f) to keep a book of minutes;
- (g) to prepare a report on the entire procedure leading to the establishment of a Partnership as required by the Act;
- (h) to oversee proper compliance with the regulations and procedures established for negotiation and award of Partnership Contracts;
- (i) whenever deemed convenient, the Partnership Committee may establish one or more technical evaluation committees to provide technical or specialized assistance and advice to the Partnership Committee; and
- (j) to carry out any additional task related to the selection, negotiation and award procedure contained in this regulation, as requested by the Authority.

**3.2 Meetings of the Partnership Committee.** The Partnership Committee will meet as often as is necessary to perform its duties and responsibilities as described in Article 8(b) [– Partnership Committee Functions] of the Act and this regulation. Unless otherwise provided by the Authority, the Executive Director of FAFAA or his or her authorized delegate in the Partnership Committee will act as chairperson of the committee. The Chairperson of the committee will designate a Secretary, who need not be a member of the Partnership Committee, and may designate any other member of the Partnership Committee to serve as Chairperson in his or her absence. The Chairperson of the 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 the Partnership Committee, 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 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 Partnership Contract, as well as approval of any other official action of the Partnership Committee. Members may attend meetings by teleconference or video conference.

**3.3 Actions of the Partnership Committee.** A quorum will exist at any meeting of the Partnership Committee only if all its members are present. Once a member is present for any purpose at a meeting will be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting. Recommendations of, and approvals by, the

Partnership Committee required by the Act will require the affirmative vote of four (4) members present in a duly constituted meeting at which a quorum is present. The 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. The Partnership Committee will provide nonbinding recommendations to the Authority regarding the selection of any Proponent, the evaluation of any Proposal, and the establishment of a Partnership.

The Partnership Committee will keep a written record of the decisions and recommendations made and other actions taken by the Partnership Committee. Said record shall be part of the Partnership Committee's minutes.

The Secretary of the 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.

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 Partnership Committee and/or the Executive Director will provide the Authority's Board of Directors with periodic reports of all significant developments in the procurement and negotiation of a Partnership.

**3.4 Subcommittees of the Partnership Committee.** The Partnership Committee, in its discretion, may appoint one 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 Partnership Contracts. Each subcommittee will have such responsibility and shall carry out its proceedings as directed by the Partnership Committee; provided, that if the Partnership Committee designates the Executive Director or any subcommittee to engage in negotiations of a Partnership Contract with a Proponent, the Partnership Committee will supervise such negotiations on behalf of the Authority and the Partnering Government Entity.

**3.5 Advisors to the Authority and Partnership Committee.** The Executive Director may appoint employees of the Authority and contract with consultants, advisors or agents to assist the Authority and the Partnership Committee in the review of the Proposals and the selection and negotiation process for a Partnership, and provide any other assistance that is deemed necessary or appropriate in connection with an Award of a Partnership Contract, including participating as nonvoting members of the subcommittees of the 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 as the Partnership Committee may deem necessary.

**3.6 Oversight Responsibilities.** The Partnership Committee shall certify to the Authority that the procurement procedures followed for any Partnership have complied with the

procurement process described in the final report issued by the Partnership Committee pursuant to Article 8(b)(viii) [–Partnership Committee Functions] of the Act. The oversight responsibilities of the Partnership Committee shall be limited to the following matters which shall be described in the report: the entire procedure leading to the establishment of a Partnership (details of the process of pre-qualification of suitable Proponents, of the RFP, 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 Partnership Contract; a copy of the Study of Desirability and Convenience; and a description of the government objectives and social welfare goals of the Partnerships.

#### **SECTION 4 - PERMANENT COMMITTEE FOR SMALL SCALE PROJECTS**

**4.1 Membership and Responsibilities of the Permanent Committee for Small Scale Projects.** The Permanent Committee for Small Scale Projects shall have five (5) members and will assist with the selection of Small Scale Projects and the negotiation of the terms of the related Partnership Contract. The members of the Permanent Committee shall be designated pursuant to Article 8(b)[- Permanent Committee for Small Scale Projects] of the Act.

The members of the Permanent Committee shall be:

- (a) the Secretary of the Department of Economic Development or his/her delegate;
- (b) the Secretary of the Department of Transportation and Public Works or his/her delegate;
- (c) the Executive Director of the Puerto Rico Infrastructure Financing Authority or his/her delegate;
- (d) the Commissioner of Municipal Affairs or his/her delegate;
- (e) the chief executive of the Partnering Government Entity with direct inherence in the project or his/her delegate.

The Permanent Committee will perform the functions set forth in Article 8(b) [–Partnership Committee Functions] of the Act and in this regulation, as applicable, for Small Scale Projects. The Permanent Committee, however, will not be deemed a committee of the Board of Directors of the Authority. The Partnership Committee shall have the following duties and responsibilities:

- (f) approve documents required by the RFQ, the RFP, the evaluation and selection for a Small Scale Project;
- (g) evaluate the potential Contractors and pre-qualify those that are qualified to participate as Proponents of a Small Scale Project;



- (h) evaluate the Proposals for Small Scale Projects submitted and select the best Proposal(s) in each case, in accordance with the procedures provided in this regulation;
- (i) engage in or supervise the negotiation of the terms and conditions of the Partnership Contract for a Small Scale Project;
- (j) on behalf of the Authority, contract advisors, experts or consultants with the knowledge required to assist the Permanent Committee and the Authority in the adequate discharge of their functions;
- (k) keep a book of minutes;
- (l) prepare a report on the entire procedure leading to the establishment of a Small Scale Partnership as required by the Act;
- (m) oversee proper compliance with the regulations and procedures established for the negotiation and award of Partnership Contracts for Small Scale Projects;
- (n) whenever deemed convenient, the Permanent Committee may establish one or more technical evaluation committees to provide technical or specialized assistance and advice to the Permanent Committee; and
- (o) carry out any additional duty related to the selection, negotiation and award procedure provided in this regulation, as requested by the Authority.

**4.2 Meetings of the Permanent Committee.** The Permanent Committee will meet as often as necessary to carry out its duties and responsibilities as described in Article 8(b) [– Partnership Committee Functions] of the Act and in this regulation, as applicable with respect to Small Scale Projects. Unless otherwise provided by the Authority, the Secretary of the Department of Economic Development or his or her authorized delegate in the Permanent Committee will act as Chairperson of the committee. The Chairperson of the committee will designate a Secretary, who need not be a member of the Permanent Committee, and may designate any other member of the Permanent Committee to serve as Chairperson in his or her absence. The Chairperson of the Permanent Committee, or the member designated by the Chairperson in his or her absence, will summon all members to, and preside over, all meetings of the Permanent Committee, and will set the frequency and duration 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 distributed in advance of the meeting to all the other members. A quorum will be required at all Permanent Committee meetings in which decisions are made with respect to the selection of Proponents and the Award of Partnership Contracts for Small Scale Projects, as well as the approval of any other official action of the Permanent Committee. Members may participate in meetings by teleconference or video conference.

**4.3 Actions of the Permanent Committee.** There shall be quorum at any meeting of the Permanent Committee if a simple majority of its members are present. Once a member is present at a meeting, for any purpose that is not solely to object to the meeting being held or that decisions be taken at the meeting, the member will be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting. Recommendations of, and approvals by, the Permanent Committee required by the Act will require the affirmative vote of three (3) members present in a duly constituted meeting at which a quorum is present. The 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. The Permanent Committee will provide nonbinding recommendations to the Authority regarding the selection of any Small Scale Project and the establishment of a Small Scale Partnership.

The Permanent Committee will keep a written record of the decisions and recommendations made and other actions taken by the Permanent Committee. Said record shall be part of the Partnership Committee's minutes.

The Secretary of the Permanent Committee will keep a record of each meeting, keep the Permanent Committee's calendar, and carry out any other task related to his or her role, as required by the Chairperson of the Partnership Committee.

Permanent Committee meetings will be documented in minutes that will be reviewed and approved by its members and signed by the Secretary of the Permanent Committee after such approval is received.

The Permanent Committee and/or the Executive Director will provide the Authority's Board of Directors with periodic reports of all significant developments in the procurement and negotiation of a Small Scale Partnership.

**4.4 Advisors to the Authority and Partnership Committee.** The Executive Director may appoint employees of the Authority and contract with consultants, advisors or agents to assist the Authority and the Permanent Committee in the selection and negotiation process for a Small Scale Partnership, and to provide any other assistance that is deemed necessary or appropriate in connection with the Award of a Partnership Contract, including participating as nonvoting members of the subcommittees of the Permanent 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 Permanent Committee, as the Permanent Committee may deem necessary.

**4.5 References to the Partnership Committee.** Except as otherwise established in the Act and this regulation, all other provisions of the Act with respect to the Partnership Committee shall be applicable to the Permanent Committee and the references to the Partnership Committee in the Act, unless explicitly stated otherwise, shall also be understood to be references to the Permanent Committee.

## **SECTION 5 - PARTICIPATORY PUBLIC-PRIVATE PARTNERSHIP PROPOSALS**

**5.1 Identification of Projects for Participatory Public-Private Partnerships.** The Authority shall select, evaluate and prioritize the Projects to be established under the Partnership model pursuant to Article 6(b) [– Specific Powers] and Article 7(a) [– Project Inventory] of the Act, in accordance with the public policy and the goals identified in Article 3 [– Public Policy] of the Act.

**5.2 Study of Desirability and Convenience.** To assure that a particular Project meets the public policy and goals established by the Act, the Authority will conduct or commission a Study of Desirability and Convenience for each Project selected by the Authority as a potential Project for a Partnership. The scope of each such study will be decided by the Authority, on the basis of the particular facts and circumstances of each Project being considered by the Authority for a Partnership, and will include, as deemed applicable by the Authority, the matters listed in Article 7(b) [– Study on Desirability and Convenience] of the Act. The Authority may expand the scope of a Study of Desirability and Convenience as it relates to any proposed Partnership to include other matters not specifically listed in Article 7(b) [– Study on Desirability and Convenience] of the Act, as appropriate.

Pursuant to Article 7(b)(xiii) [– Study on Desirability and Convenience] of the Act, during the process of preparing a Study of Desirability and Convenience, the Authority shall publish a notice, in English and Spanish, in at least one general circulation newspaper in Puerto Rico and on the Authority's website, that includes the following information:

- (a) a summary or brief explanation of the proposed Project;
- (b) a reference to the legal provisions that authorize the preparation of the Study of Desirability and Convenience;
- (c) the time, days and place where written comments regarding the Project may be submitted and the physical address and/or electronic mail address where said comments shall be sent, provided that the period to submit comments shall never be less than thirty (30) days following the date on which the notice was published; and
- (d) the physical address and website where the public shall have access to all other documents that the Authority deems necessary, based on the particularities of each Project, for the public to evaluate and provide comments regarding the proposed Project.

If the Authority deems it necessary, the Authority may hold one or more public hearings regarding the proposed Project for the purpose of getting to know the views of a particular industry, community or individual. If the Authority decides to hold a public hearing, the Authority shall also include in the notice described above the topics to be discussed at the public hearing or hearings and the date, place and time of each such hearing. The Authority may designate an independent official examiner to preside any public hearing and may request said

examiner to prepare a report detailing the objections, statements, opinions, documents, studies, recommendations and any other relevant facts presented at the public hearing or hearings, as well as the examiner's conclusions or recommendations. Pursuant to Article 7(b)(xiii) [– Study on Desirability and Convenience] of the Act, public participation in this process shall not confer standing nor the characterization of “party” with a right to challenge the proposed Partnership, either judicially or administratively.

The Authority shall acknowledge receipt of those comments submitted through electronic mail message within two (2) business days after receipt thereof. The Authority may, but shall not be obligated to, respond or ask follow-up questions regarding the comments received. The Authority shall prepare a summary of the written comments received, and in the cases where a public hearing was held, the comments received during the public hearing. Said summary shall be a part of the record of the proposed Project, together with a copy of all written comments submitted to the Authority.

After the Study of Desirability and Convenience has been completed and the Authority has determined that it is appropriate to pursue the establishment of a Partnership in connection with a Project (other than a Small Scale Partnership), the Authority will create a Partnership Committee as provided in Article 8(a) [– Creation of Partnerships] of the Act and Section 3.1 of this regulation. The Partnership Committee will have the powers conferred by Article 8(b) [– Partnership Committee Functions] of the Act and this regulation.

**5.3 Market Sounding Process.** In connection with the identification of Projects and prior to the commencement of the RFP process, the Authority may seek feedback and input from market participants to determine the best approach for selecting viable and marketable Projects by:

- (i) conducting a Request for Information (or RFI);
- (ii) issuing a Request for Expression of Interest (or RFEOI); or
- (iii) using other appropriate methods for gathering information from market participants.

The Authority may publish general guidelines regarding how an RFI or RFEOI would be conducted and how the Authority would use any information obtained during such process. Any information obtained by the Authority during an RFI or RFEOI would be subject to the confidentiality provisions contained in Section 12.3 of this regulation, to the extent applicable.

**5.4 Qualification of Proponents (RFQ).** The Authority may issue an RFQ for a Partnership only after it has determined that: (i) the Project meets the requirements of Article 3 [– Public Policy] of the Act; and (ii) it is advisable to pursue the establishment of a Partnership in connection with a Project.

In anticipation of an RFP or as otherwise required by the Act or the Authority, the 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 Partnership Contract. The Partnership Committee may, in addition to such minimum standards, include other qualification requirements 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) [– Applicable Requirements and Conditions for those who wish to be considered as Proponents] of the Act to be eligible to participate in the RFQ process.

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 5.5 and 5.6 of this regulation, to the extent applicable.

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

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 specified in the RFQ) prior to the related due date for the information specified in the RFQ. Any such request from Proponents must be made in writing. 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.

The aim of the RFQ stage is to help the Partnership Committee short list the best qualified Proponents. Thus, the 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) may be treated as ineligible to submit a Proposal on one or more grounds specified in Section 9 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 of Articles 9(a) [– Applicable Requirements and Conditions for those who wish to be considered as Proponents] and 9(d) [– Consortia] of the Act, as applicable. The Partnership Committee reserves the right to qualify a limited number of prospective Proponents in order to arrive at a short list for a particular Project if the right to short-list is included in the RFQ or RFP.

If the Authority elects not to issue an RFQ before publishing an RFP for any Project, the 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 6 and 8 of this regulation. If an RFQ process that meets the requirements of Sections

5.5 and 5.6 of this regulation has been carried out for a particular Project, the RFP process can be modified, accordingly.

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

**5.5 Public Notice of Request for Proposals (RFP).** The Authority may issue an RFP for a Partnership, only after it has determined that: (a)(i) the Project meets the requirements of Article 3 [– Public Policy] of the Act; and (ii) it is advisable to pursue the establishment of a Partnership in connection with a Project; and (b) the Study of Desirability and Convenience has been posted on the Authority’s website and a notice has been published in a newspaper of general circulation in Puerto Rico stating that such study has been posted on the Authority’s website, providing the Internet address of the Authority’s website and containing a summary of the key findings of such study, all as required by Article 7(c) [– Publication] of the Act.

Except as otherwise provided in Article 9(b)(ii) [– Procedure for Selection and Award] of the Act and Section 7 of this regulation, and except to the extent a prior RFQ process for the related Project has been effected by means of public notices, the Partnership Committee will solicit Proposals from Proponents by means of a public notice of an RFP for each Project. The RFP will be published by the Authority in one or more newspapers of general circulation in the Puerto Rico, in the Internet at the websites of FAFAA, the Authority and the Partnering Government Entity engaging in the Partnership and, in the discretion of the Partnership Committee, in one 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. To the extent a public notice is required, the Authority must publish the notice at least twice. The first notice must be published a reasonable amount of time prior to the Proposal due date. The publication and dissemination of an RFP in this fashion is intended to provide reasonable notice to the largest number of potential Proponents that can be reasonably anticipated to submit Proposals as set forth in Article 9(b)(ii) [– Procedure for Selection and Award] of the Act.

The Partnership Committee may also solicit Proposals directly from prospective Proponents through a notice of RFP if it believes that such entities may be uniquely qualified to participate in a specific Partnership; provided, that the Authority has first published such notice of RFP publicly pursuant to this Section 5.5.

This Section 5.5 shall not apply to any Project for which an RFQ has been undertaken. In the event that an RFQ has been undertaken, the Authority may, at its discretion, distribute an RFP and related Addenda to those Proponents qualified through the RFQ process.

**5.6 Content of the RFP.** The RFP will include the following items, without it being construed as a limitation or that their order defines their importance, unless otherwise approved by the Authority or the Partnership Committee, in their discretion:

- (a) a description of the Project that would be developed and/or operated under the proposed Partnership in accordance with the Act;
- (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 5.8 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 Partnership Contract;
- (e) a request by the Authority that allows Proponents to submit as part of the Request for Proposals process an Alternative Technical Concept (or ATC) and/or Alternative Financial Concept (or AFC) for Proponents to incorporate technical and financial innovation and creativity into the Proposals. The ATCs and/or AFCs will be confidential and not shared with other Proponents without the consent of the Proponent that submitted it. This approach will in turn allow the Partnership Committee to review and consider early Proponents' ATCs and/or AFCs in making the selection decision, to avoid delays and potential conflicts in the design associated with the deferring of ATCs and/or AFCs' reviews to the post-award period, and ultimately, to obtain the best value for the public;
- (f) a statement regarding the type of selection process to be used by the Authority in connection with the proposed Partnership;
- (g) applicable minimum Evaluation Criteria, including selection and/or weighing criteria for award of the Partnership 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 set by the Authority;
- (i) if applicable, a statement as to any funding contingencies or other conditions, contingencies, approvals, authorizations, or certifications which are required for award or execution of a Partnership Contract;

- (j) a due date and time for submission of the Proposals and the place where Proposals shall be submitted;
- (k) a final or near final draft of the proposed Partnership 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 the Partnership Committee;
- (n) a clause mentioning that Proponents and any Proponent team members will not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent team member of such other Proponent regarding the preparation, content or representation of their Proposals. Proposals will be submitted without any connection (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 Proponent team member), knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent team member of such 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 5.16 of this regulation in the form provided by the Authority.

**5.7 Request for Clarification (RFC).** The Proponents may seek clarification, explanation or interpretation of an RFP only as provided in this section.

After the issuance of the RFP, a Proponent may submit one 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. Any such RFC from Proponents must be made in writing.

Representatives from the Authority and/or the Partnership Committee may also participate in one or more Pre-Proposal Conferences. At such meetings or conferences, Proponents may also request from the Authority a clarification, explanation or interpretation of any matter contained in the RFP. Any such RFC from Proponents at a Pre-Proposal Conference need not be made in writing.



Any response by the Authority to written or oral requests from prospective Proponents may be compiled in one or more Addendum and circulated to all prospective Proponents which have registered with the Authority at least ten (10) days prior to the Proposal due date set forth in the RFP. If one or more Addenda are circulated less than ten (10) days prior to the Proposal due date set forth in the RFP, then the Proposal due date shall be deemed changed to the date that is ten (10) days after the date on which such Addendum was circulated. However, if the Authority, in its discretion, identifies a RFC or the corresponding Response to Proponents to be of a minor or administrative nature, the Authority may issue a Response to Proponents on less than ten (10) days notice. Notwithstanding the foregoing, an RFC with respect to an ATC or AFC will be treated as confidential and a clarification will only be issued to the Proponent requesting clarification.

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 officer, employee or agent of the Authority, the Partnership Committee or the Partnering Government Entity, including any oral response during any Pre-Proposal Conference, will not be considered an official response of the Authority or of such committee.

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

## **5.8 Response to an RFP.**

- (a) Phase One (1) – Preparation of Response to an RFP. Proposals should provide a straightforward and concise description of the Proponent's capabilities to complete or perform the proposed Partnership. Emphasis should be placed on completeness and clarity of content. 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) [– Procedure for Selection and Award] of the Act. While the Authority may, at its discretion, accept non-compliant Proposals, unless otherwise specified in the RFP, Proposals submitted for consideration must comply with the following requirements:
  - (i) Proposals must be signed in ink by an authorized representative of the Proponent, and the Proponent or such authorized representative will sign his or her initials, in ink, to confirm any alteration or correction to the Proposal;
  - (ii) all information requested under the RFP must be submitted. Proponents failing to submit all information requested by the RFP may, at the 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;

- (iii) Proposals should 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 discretion of the Authority;
- (iv) Proposals should include a comprehensive scope of work and provide enough information about the Project to determine whether it satisfies the Evaluation Criteria;
- (v) each copy of the Proposal should 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
- (vi) the financial plan for the Project must contain enough detail so 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.

In addition, 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:

- (i) All pages of the Proposal should be numbered. Evaluation of Proposals will be facilitated if Proponents cross-reference responses by citing the tab number, and subletter, and repeating the text of the requirement not the text of the Proposal. If a response covers more than one page, the tab number and subletter should be repeated at the top of the next page. If a Proponent submits confidential or proprietary information to the Authority, the confidential or proprietary information should be identified as such and 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 the Partnership Committee, as described under the Section 12.3 of this regulation; and
- (ii) Proposals should include an executive summary and use cross-references rather than repetition in addressing the items in the RFP.

- (b) Phase Two (2) – Submission of Proposals. Proponents are encouraged to propose innovative solutions to the needs of the Puerto Rico and the Government Entities participating in the Partnership process. Proposals will 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 and, unless otherwise specified in the RFP, the following requirements:
- (i) 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, unless otherwise noted by the Authority in the RFP. The Authority will designate one 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;
  - (ii) 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 “Public-Private Partnership 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;
  - (iii) any Proposal submitted by mail or personally delivered by the Proponent or its authorized representative which is received after 5:00 p.m. San Juan, Puerto Rico time on the due date for Proposals set forth in the RFP will be rejected and returned to the Proponent unopened;
  - (iv) Proposals received on or before the due date set in the RFP will be stamped (date and time of receipt) and will be kept in the custody of the Authority. Such Proposals will not be opened until the date and time established in the RFP for the opening of the Proposals or the amended date as indicated in the corresponding Addenda;
  - (v) 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 the 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 shall 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 with special concerns about confidential or proprietary information that it would desire to make available to the Authority, prior to submission of its Proposal, must read the Section 12.3 of this regulation with care;

- (vi) failure by a prospective Proponent to submit a compliant Proposal within the period specified in the RFP will preclude such Proposal from consideration by the Authority and the Partnership Committee; and
- (vii) Proponents who submit a Proposal may be required to give one or more oral presentations of their Proposal to the Partnership Committee and/or the Authority.

#### **5.9 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. 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 Partnership. Failure to submit all fees shall suspend consideration of a Proposal. All fees shall be paid in the form established by the Authority in the RFQ and/or RFP. Proponents submitting multiple Proposals affecting unrelated Partnerships 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.

**5.10 Modification of Proposals.** The 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 will 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.

**5.11 Cancellation of an RFP.** The Authority, in its discretion, or upon recommendation of the Partnership Committee, may cancel an RFP process at any time. If the Partnership Committee recommends that the RFP be cancelled, it shall indicate the reason or reasons for such recommendation. The Authority then may undertake one of the following alternatives:

- (a) conduct a new RFP;
- (b) directly negotiate, after having cancelled the RFP, with a Proponent only if such Proponent achieved the highest rank prior the cancellation of the RFP, the reasons for canceling the RFP no longer exist or apply, the negotiation is for the same Partnership that was originally procured and it is in the best interests of the Partnering Government Entity and the Authority; or
- (c) take any other action the Authority deems appropriate.

The Authority may, at its 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, shall not be required to indemnify (including, but not limited to, reimbursement for costs and expenses) any Proponent in the event it decides, in its sole discretion, to cancel an RFP process.

**5.12 Pre-Development Agreements.**

- (a) The Authority may use a type of Partnership Agreement known as a Pre-Development Agreement to enable private development of and, in some cases, private investments in Puerto Rico consistent with the requirements of the Act. A Pre-Development Agreement may take the form of an agreement between the Authority, the Partnering Government Entity and the Proponent authorizing the Proponent to develop a Pre-Development Report. The evaluation, negotiation and execution of a Pre-Development Agreement with a Proponent must, to the extent applicable, comply with the requirements of the Act, including Article 7 [- Project Inventory; Desirability and Convenience of a Partnership].
- (b) A Pre-Development Agreement will provide when the Proponent will begin the master planning work (i.e., drafting management and quality plans, determining the Proponent's role and responsibilities relating to public information and data collection, and preliminary design) and when the Pre-Development Report shall be completed. A Pre-Development Agreement shall also describe any and all items that must be included within the Pre-Development Report.
- (c) A Pre-Development Agreement will also describe each milestone that must be met by the selected Proponent and provide that at the end of each

milestone both Parties shall have the opportunity to take an “off- ramp” to exit the contractual relationship without penalty. Should the contract between the Authority, the Partnering Government Entity and the Proponent end early, there will be specific caps placed on the amounts of expenses that can be reimbursed at a given milestone. Most importantly, the Authority or the Partnering Government Entity shall pay only for work determined to be valuable to advance each Project.

- (d) The Authority, in its sole discretion, may accept a Pre-Development Report as a Study of Desirability and Convenience, provided that the scope and depth of said Pre-Development Report meets the requirements of the Act and the report is adequate to allow the Authority to determine whether it is advisable to establish the project; provided that, prior to accepting a Pre-Development Report as a Study of Desirability and Convenience, the Authority shall create a Partnership Committee in accordance with Article 8 [- Partnership Committee] of the Act and Section 3 of this regulation. In addition, the Authority must satisfy the requirements for the approval of a Study of Desirability and Convenience established in Article 7(b) [- Study of Desirability and Convenience] of the Act and Section 5.2 of this regulation.
- (e) If the Authority initiates a RFP with respect to a Project for which a Pre-Development Report was prepared, the Person who prepared said report shall be invited to participate in the competitive selection process and shall be given an advantage or other benefit during the process. The advantage or benefit granted to the Proponent shall be determined by the Authority depending on the nature of the Project and may include an increase in the total ranking, the right to match the financial component of the most competitive Proposal and/or any additional consideration with respect to the financial component of the Proposal.

**5.13 Alternative Technical and Financial Concepts.** The content of the RFP may include a request by the Authority that allows Proponents to submit as part of the Request for Proposals process an Alternative Technical Concept and/or Alternative Financial Concept for Proponents to incorporate technical and financial innovation and creativity into the Proposals. ATCs also include 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 ATCs and/or AFCs will be confidential and not shared with other Proponents without the consent of the Proponent who submitted it. This approach will in turn allow the Partnership Committee to review and consider early Proponent’s ATCs and/or AFCs in making the selection decision, to avoid delays and potential conflicts in the design associated with the deferring of ATCs and/or AFCs’ reviews to the post-award period, and ultimately, to obtain the best value for the public.

ATCs and AFCs eligible for consideration shall be limited to those deviations from the requirements of RFP, or those ATCs concepts 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 or concept, as determined by the Authority in its sole discretion. A concept is not an ATC if, in the Authority's sole judgment, it merely results in reduced quantities, performance or reliability. A concept is not eligible for consideration as an ATC if it is premised upon or would require:

- (i) the addition of a separate Authority's Project (such as expansion of the scope of the Project);
- (ii) a change in the aesthetic or landscaping provisions;
- (iii) an increase in the amount of time required for the start of the Project; or
- (iv) 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 ATC or AFC.

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.

**5.14 Partnership Contracts without RFP.** The provisions of the Section 5 of this regulation concerning the use of the RFP process by the Authority shall not apply to the situations described in Article 9(b)(ii) [– Procedure for Selection and Award] of the Act. The Partnership Committee shall receive and evaluate Proposals that have not been the subject of an RFP and negotiate a Partnership Contract to develop and/or operate qualifying Functions, Facilities or Services with Proponents as permitted under said Article 9(b)(ii) [– Procedure for Selection and Award] in accordance with the particular circumstances of each case. The Partnership Committee, in such cases, may use, in its discretion, any one procedure or a combination of procedures to evaluate and select Proponents, and negotiate a Partnership Contract to maximize the benefits of the proposed Partnership to the Partnering Government Entity.

**5.15 Communication with Partnering Government Entity.** Once an RFP has been published, the Proponents or their representatives may not contact or communicate with the Partnering Government Entity or its representatives in connection with the Project or the RFP, other than those representatives of the Partnering Government Entity that have been designated as Authorized Representatives, and only under the circumstances permitted in the RFP. This prohibition does not apply to Pre-Proposal Conferences as described in the Section 5.7 of this regulation.

**5.16 No Lobbying; No Collusion; No Prohibited Acts.** Proponents and Proponent team members, and their respective directors, officers, employees, consultants, agents, advisors and representatives will not in relation to the Project, an RFQ, RFP, or a competitive selection process, engage in any form of political or other lobbying whatsoever, and will not, except as expressly contemplated by the RFQ or RFP, attempt to communicate in relation to any of these matters, directly or indirectly, with any representative of the Partnership Committee or the Authority, 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:

- (a) commenting on or attempting to influence views on the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- (b) influencing, or attempting to influence, the outcome of the RFQ or RFP stage, 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;
- (c) promoting the Proponent or its interests in the Project, including in preference to that of other Proponents;
- (d) 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 a competitive or other advantage over other Proponents; and
- (e) criticizing the Proposals of other Proponents.

Proponents and Proponent team members will not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent team member of such other Proponent regarding the preparation, content or representation of their Proposals. Proposals will be submitted without any connection (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 Proponent team member), knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any Proponent team member of such other Proponent.

A violation of the provisions of this Section 5.16 shall be considered a Disqualifying Event under Section 8.01 of this Regulation.

## **SECTION 6 - EVALUATION AND SELECTION PROCESS**

**6.1 Evaluation Process.** Unless otherwise specified in a particular RFP, the Partnership Committee will 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:

(a) Phase One: Quality Control Review.

- (i) Within ten (10) business days after the due date for the submission of Proposals under an RFP, the Partnership Committee will 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 shall constitute sufficient cause for failing the quality control review. The Partnership Committee may extend the duration of the Phase One quality control review, in its discretion, due to the volume of Proposals, the complexity of Proposals, the need for additional information, timely cooperation by the Proponents, or other unanticipated circumstances.
- (ii) Each Proponent will be notified in writing by the Partnership Committee that its Proposal has either failed or passed the quality control review and whether it will be advanced to Phase Two. The 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 the Act or Section 6 of this regulation.
- (iii) The Partnership Committee may, at its 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 the Partnering Government Entity.

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

- (i) The Partnership Committee will review and evaluate all Proposals that passed the quality control review. The Partnership Committee will establish an anticipated schedule for the review of the Proposals and the negotiation of the Partnership Contract, if required. At any time during Phase Two, the 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, the Partnership Committee will select one Proposal or may not select any Proposal. In the event the RFP calls for competitive negotiations, the Partnership Committee may select one or more Proposals. If none of the Proposals are selected by the Authority (the Partnership Committee will notify the Authority of

its decision), each Proponent who has advanced to Phase Two will be notified in writing by the Partnership Committee, and the Proponent's Proposal Security will be returned;

- (ii) If an RFP calls for a competitive negotiation process, the Partnership Committee will review and consider the Proposals based on the Evaluation Criteria to determine the ranking of each Proposal. Based on such ranking, the Partnership Committee will determine the Proposals that are within the Competitive Range. After discussion with the Authority, the 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 6.1(c) 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 6.1(d) below. The 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 Proposal;
- (iii) The Proponents whose Proposals do not fall within the Competitive Range will be notified in writing by the Partnership Committee, but will still be considered part of the procurement process until the signing of the Partnership Contract. The non-selected Proponents' Proposal Security will be returned once the Partnership Contract has been signed by all parties;
- (iv) The Authority reserves the right to reject any and all submitted Proposals, if deemed in the best interests of the Authority; and
- (v) If only one Proposal is received, such Proposal may be considered if the Partnership Committee and the Authority determine that it is in the best interests of the Authority and the Partnering Government Entity to do so.

All Proposals, evaluations, discussions and negotiations will be kept confidential throughout the evaluation, selection and negotiation process until the signing of the Partnership Contract, subject to the provisions of Article 9(i) [– Confidentiality] of the Act and this regulation.

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

If the Partnership Committee has elected to carry out discussions and negotiations with all Proponents whose Proposals fall within the Competitive Range, such Proponents will 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:

- (i) 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 during the discussions and negotiations will bind the Authority or the Partnering Government Entity related to the particular RFP in any way. Only the Partnership Contract, when effective in accordance with its terms as provided in Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act, will be binding on the Partnering Government Entity;
- (ii) 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 the 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 clarify any doubts as to the requirements of the RFP and confirm that the terms of the Partnership Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements; discuss the basis of the proposed economic terms in an effort to improve the economic terms for the Partnering Government Entity; and discuss any other pertinent details of the Proposal so as to result in a better Proposal and Partnership Contract for the Partnering Government Entity;
- (iii) 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 the Section 6.1(c)(ii) above. The information discussed in such meetings may vary for each Proponent;
- (iv) The Authorized Representatives with the assistance of the Partnership Committee, the Authority, its advisors or others whom the Authority may designate, may, at their discretion:

- (1) Establish procedures and schedules to carry out the discussions and to control the meetings;
  - (2) Advise the Proponent as to deficiencies in its Proposal so that it is given the opportunity to meet the requirements of the Authority;
  - (3) Attempt to resolve any uncertainties concerning the Proposal, and otherwise clarify the terms and conditions of the Proposal;
  - (4) Address any suspected mistakes that may be found to exist;
  - (5) 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 Partnership and the Proponent's qualifications; and
  - (6) Keep a record of the date, time, place, and attendees of the meetings;
- (v) 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;
  - (vi) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Partnership Committee or the Authorized Representatives;
  - (vii) After such discussions and parallel negotiations, the Partnership Committee may, in its discretion, request "best and final offer" (or BAFO) from Proponents within the Competitive Range in response to the discussions and negotiations held. Only Proponents which submitted Proposals that are within the parameters described in the RFP will be considered in the BAFO process; or
  - (viii) If the Partnership Committee determines not to conduct a BAFO process, the Partnership Committee shall proceed to negotiations with the Proponent submitting the highest ranking Proposal which may culminate in an Award of a Partnership Contract.

(d) 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 Partnership Contract, when effective in accordance with its terms as provided in Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act, will be binding on the Partnering Government Entity.

(e) Phase Three-C: Standard (Non-Negotiated) Procurement Process.

If the Authority elects to conduct a standard procurement process, the Authority shall select the Proponent which 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 latter Proposal would have been sealed in an envelope before being submitted by the Proponent. Any unsealed financial Proposal shall automatically disqualify the Proponent. The Authority shall 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 shall not carry out any discussions and negotiations with any Proponents. The Authorized Representatives of the Authority will conduct the following procedures:

- (i) 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 sealed-bid process will bind the Authority, the Partnership Committee or the Participating Government Entity in any way. Only the Partnership Contract, when effective in accordance with its terms as provided in Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act, will be binding on the Partnering Government Entity;
- (ii) The Authorized Representatives will publicly open the sealed-envelope in 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;

- (iii) 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 Partnership Contract. If the highest ranking Proposal does not culminate in the Award of a Partnership Contract, the Authority may select the next highest ranking Proposal; and
- (iv) The Authorized Representatives shall keep a record of the date, time, place, and attendees of the opening of the sealed envelopes process.

**6.2 Amendment to Procurement Process.** Nothing in this regulation shall limit 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 the Act and other applicable laws.

## **SECTION 7 - UNSOLICITED PROPOSALS.**

**7.1 Unsolicited Proposals.** The Authority may receive and evaluate Unsolicited Proposals from a Proponent related to Projects that have not been selected for an RFP, but which meet the requirements of the Act and this regulation.

The main steps of the unsolicited Proposal process are as follows:

- (i) a prospective Proponent shall submit an unsolicited Proposal to the attention of the Executive Director;
- (ii) the Authority shall preliminarily review and evaluate the Unsolicited Proposal within sixty (60) days, and determine if the Proposal meets all legal requirements under the Act, the regulation and public policy for further evaluation. The initial sixty (60) day period may be extended for an additional sixty (60) days in the Authority's sole discretion;
- (iii) upon receipt of a Unsolicited Proposal and after completing the preliminary evaluation of the Unsolicited Proposal, as submitted, the Authority may, in its sole discretion and without it being a requirement, conduct or commission a Study of Desirability and Convenience as provided in Section 5.2 of this regulation. The Authority may also, in its sole discretion, accept any study conducted in relation to the Proposed Project, provided that the scope and depth of said study meets the requirements of the Act and are adequate to allow the Authority to determine whether it is advisable to establish the Proposed Project; provided that, prior to accepting any study as a Study of Desirability and Convenience, the Authority must satisfy the requirements related to public

participation included in Article 6(b)(xiii) [-Study of Desirability and Convenience] of the Act and Section 5.2 of this regulation. The Study of Desirability and Convenience for the Proposed Project shall be published on the Authority's website and its publication shall be notified in one newspaper of general circulation;

- (iv) within ten (10) business days of the completion of the evaluation period, the Authority will inform the voluntary Proponent in writing whether the Proposed Project is considered one that is potentially beneficial to the public interest;
- (v) if the Proposed Project is considered beneficial to the public interest, the Authority will request the Proponent to submit any necessary information not previously submitted to the Authority regarding the Proposed Project in order to allow the Authority to evaluate the Proponent's qualifications and the technical and economic feasibility of the Proposed Project, as well as to determine if the Proposed Project may be implemented successfully. The additional information shall include any technical and economic feasibility study, environmental studies, information regarding the concept or technology contemplated by the Proposed Project, among other information;
- (vi) the Authority may, in its sole discretion, initiate or not initiate a selection process pursuant to Article 9(b)(i) of the Act, with respect to a Proposed Project it has decided to promote and implement if one of the following criteria is met:
  - (1) the Authority determines that the Proposed Project may not be completed without the use of intellectual property, trade secrets or other exclusive rights or licenses of the Proponent;
  - (2) the concept or technology to be used in the Proposed Project is novel; or
  - (3) there are other compelling reasons evaluated by the Authority that justify it.
- (vii) if neither of the criteria set forth in the previous subsection is met, the Authority shall initiate a selection process and a RFP pursuant to Article 9(b)(i) of the Act and as established by this regulation. The Proponent of the Project subject to the selection process shall be invited to participate in the selection process and will be granted an advantage or other benefit in the selection process given its

development and submittal of the initial voluntary proposal. The advantage or benefit granted to the Proponent shall be determined by the Authority based on the nature of the Proposed Project and may include an increase in the overall ranking, the right to match the financial component of the most competitive Proposal and/or any additional consideration with respect to the financial component of the Proposal.

- (viii) If the selection process is not carried out as established pursuant to Article 9(b)(i) of the Act:
- (1) the Authority shall have the obligation to collect the necessary information to have the criteria to evaluate the voluntary proposal pursuant to Article 9(c) of the Act and informally verify if any other parties are interested in submitting a similar proposal;
  - (2) the Authority shall publish on its website a summary of the essential elements of the voluntary proposal for the Proposed Project, with a description of the essential elements of the Proposal and inviting interested parties to submit informal proposals within the timeframe included therein. This publication shall be notified to the public in a newspaper of general circulation;
  - (3) if the Authority receives responses to the invitation within the established timeframe, the Authority shall invite the voluntary Proponent and those who have submitted their responses and meet the criteria and standards specified in the publication, to submit proposal in accordance with Article 9(b)(1) of the Act; and
  - (4) if no response is received within the established timeframe, the Authority shall initiate negotiations with the voluntary Proponent directly in order to establish the Partnership.

**7.2 Content of Unsolicited Proposals.** Unsolicited Proposals shall include the following elements, without it being understood as a limitation or it being assumed that the order defines their importance unless the Authority, in its sole discretion, determines otherwise:

- (a) an outline or summary of the proposal;
- (b) a description of how the proposal satisfies a government need;
- (c) the specific aspects of the proposal that differentiate it from other proposals or from the traditional way of developing the Proposed Project;



- (d) the public sector support required by the proposal and the direct and indirect costs of the project, including the cost of capital;
- (e) the financial feasibility including, but not limited to, the financial capacity of the proponent, the identified or suggested financing mechanisms and the sources of repayment or income related to the Function, Service or Installation subject to the proposal;
- (f) the commercial aspects of the Proposed Project;
- (g) the expected benefits for the public sector, including how the proposal is in the public's best interests;
- (h) the proposed method for developing the Proposed Project;
- (i) the exclusive intellectual property, if any, to be used in the Proposed Project;
- (j) an evaluation fee pursuant to Section 7.4 of this regulation; and
- (k) any other document or information that may be useful to the Authority.

In order to expedite the review and evaluation of Unsolicited Proposals, the Authority encourages Proponents to include the following documents with their unsolicited Proposals, as applicable:

- (a) a topographical map indicating the Proposed Project's location;
- (b) a description of the Proposed Project and a conceptual design indicating the Project's interaction with existing infrastructure;
- (c) a statement as to the development schedule and facility life-cycle;
- (d) information regarding the steps required to develop the Proposed Project, including, but not limited to, permits and land acquisition needs;
- (e) the proposed operational scheme and financial feasibility analysis of the Proposed Project; and
- (f) a detailed description of any required government assistance.

**7.3 Preparation and Submission of Unsolicited Proposals.** Unsolicited Proposals should provide a precise and concise description of the capacity of the Proponent to carry out the proposed Partnership. Emphasis will be given to the clarity of the content of an Unsolicited Proposal and that the proposal is complete in conformity with Section 7.2 of this regulation. The

Proponents shall be responsible for all costs, direct and indirect, related to the process of preparing an Unsolicited Proposal.

- (a) Electronic Submission – Unsolicited Proposals may be submitted electronically through the Authority’s website. The Proponent shall follow the instructions established on the website and shall clearly identify the Proponent of the Unsolicited Proposal. Notwithstanding the foregoing, the Authority reserves the right to request hard copies of the Unsolicited Proposal, including any document submitted as part of the Unsolicited Proposal. For purposes of this regulation, an Unsolicited Proposal submitted electronically shall be considered submitted to the Authority at the time and on the date on which the Authority receives it, provided that any Unsolicited Proposal received after 5:00 p.m. San Juan, Puerto Rico time, shall be understood to have been received on the next business day.
- (b) Submitting at the Authority’s Offices or by Certified Mail – Without limiting Section 7.3(a) above, Unsolicited Proposals may also be submitted by hand delivery at the offices of the Authority to the person designated by the Authority or to the Executive Director or by certified mail return receipt requested directed to the Executive Director. The Unsolicited Proposal shall clearly identify the Proponent of the Unsolicited Proposal. For purposes of this regulation, an Unsolicited Proposals delivered at the offices of the Authority shall be considered submitted to the Authority at the time and on the date on which it is marked as received by the Executive Director or the designated person and all Unsolicited Proposal sent by certified mail, return receipt requested, shall be considered submitted to the Authority at the time and date in which it was delivered, as stated on the return receipt, it being established that any Unsolicited Proposal received after 5:00 P.M. San Juan, Puerto Rico time, shall be understood to have been submitted on the next business day. Proponents that submit an Unsolicited Proposal at the offices of the Authority or by certified mail shall submit three (3) hard copies and an electronic copy in portable document format (“pdf”) of the Unsolicited Proposal.
- (c) Requirements Applicable to all Unsolicited Proposals Submitted to the Authority – All Unsolicited Proposals, regardless of whether they are submitted electronically, by delivery to the Authority’s offices or by certified mail, shall meet the following requirements, provided that, the Authority may, in its sole discretion, accept Unsolicited Proposals that do not satisfy some of the following requirements:
  - (i) the Unsolicited Proposals must be signed by an authorized representative of the Proponent, provided that in the case of an Unsolicited Proposal submitted electronically, said signature must satisfy the requirements of, and shall be governed by, Act No. 148-

2006, as amended, known as the Electronic Transactions Act of Puerto Rico;

- (ii) all information required by this regulation shall be submitted. Proponents who do not submit all information required by this regulation, in the Authority's sole discretion, may be granted an opportunity to file, on an expedited basis, the remaining information. Proposals that lack essential information required by the Act and this regulation shall be rejected;
  - (iii) each Unsolicited Proposal must provide a complete description of the works and sufficient information regarding the Proposed Project to determine if such Proposed Project meets the Evaluation Criteria;
  - (iv) except for Unsolicited Proposals filed electronically, each copy of an Unsolicited Proposal shall be bound and shall be contained in one volume, to the extent practicable. If possible, all documentation submitted with the Proposal shall be contained in that one volume;
  - (v) the financial plan of the Proposed Project shall include sufficient details as to allow an analysis to determine whether the proposed financing is viable. The financial plan shall disclose the amount of financing and/or the concession commitment expected from the public sector; and
  - (vi) if a Proponent submits confidential or proprietary information to the Authority, such confidential or proprietary information shall be specifically identified so as to facilitate its review by the Authority, as established in Section 12.3 of this regulation. In accordance with such section, the Authority shall use its best efforts to maintain the confidentiality of any information a Proponent identifies as confidential or proprietary, or that by any other reason, pursuant to law, should be protected from publication, except if required by law or judicial order. If a Proponent submits confidential information without properly identifying it as such, such submitted information shall not be understood to be confidential and shall not be treated as such. If a Proponent has any specific concerns regarding confidential or proprietary information that it wishes to submit to the Authority, said Proponent shall have available the alternatives provided in Section 12.3 of this regulation.
- (d) The Authority shall have broad discretion in the evaluation of Unsolicited Proposals. To those effects, the Authority may return Unsolicited Proposals that: (i) are incomplete; (ii) do not meet the Evaluation Criteria;

or (iii) do not meet any other requirement of the Act or this regulation. However, the Authority may also, in its sole discretion, disregard any informality or technical issue in the documents of any Unsolicited Proposal, as long as said issues may be corrected or clarified without detriment to the Authority or the applicable Government Entity.

- (e) At any time during the evaluation of a Unsolicited Proposal, the Authority may request additional information from a Proponent regarding its Unsolicited Proposal in order to assist the Authority in its review and evaluation of said Unsolicited Proposal.
- (f) Unsolicited Proposals shall not be read in public. The Authority shall not produce copies of Unsolicited Proposals. Only members of the Authority or other persons designated by the Authority or the Executive Director shall have access to Unsolicited Proposals and to the results of the evaluation during the evaluation and selection period.
- (g) Proponents that submit Unsolicited Proposals may be required to give one or more oral presentations to the Authority regarding their Unsolicited Proposal.
- (h) The Authority recognizes that it may receive Unsolicited Proposals that have certain characteristics in common, yet differ in meaningful ways. In such cases, the Authority reserves the right, in its sole discretion, to initiate a RFP process as established in the Act. The Authority strongly urges prospective Proponents to monitor the Authority's website and evaluate notices for Unsolicited Proposals received by the Authority, so that they may file within the corresponding period any Proposal that they are considering or are preparing that is similar to, or has characteristics in common with, an Unsolicited Proposal being evaluated by the Authority.
- (i) 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, at its sole discretion, may at any time after having preliminary evaluated the Unsolicited Proposal pursuant to Article 9(b)(ii) [– Procedure for Selection and Award] of the Act and Section 7.1(ii) of this regulation, terminate any processes related to an Unsolicited Proposal. The evaluation of an Unsolicited Proposal by the Authority shall 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. If the Authority rejects an Unsolicited Proposal, the Proponent shall be notified by the Authority in writing.

#### **7.4 Evaluation Fee for Unsolicited Proposals.**

- (a) In order to cover the costs incurred by the Authority during the processing, evaluation and review of Unsolicited Proposals, a nonrefundable, nonnegotiable payment shall be required for the review of each Proposal. The amount of the evaluation fee for each Proposal shall be five thousand dollars (\$5,000). The non-payment of the evaluation fee shall suspend the consideration of an Unsolicited Proposal and, notwithstanding anything provided in Section 7.3 of this regulation, an Unsolicited Proposal shall not be deemed to have been submitted to the Authority until the Authority has received the total amount of the evaluation fee. The payment of this fee shall be made by certified check payable to the Authority for Public-Private Partnerships or by any other mechanism identified on the Authority's website. Proponents who submit multiple unrelated proposals, must submit payment for the evaluation fee for each Unsolicited Proposal submitted.
- (b) If the Proposal results in the establishment of a Partnership, the Authority's Board of Directors, in its sole discretion, may (i) if the Proponent is selected to develop the Project, credit such amount to any payment required to be made by the Proponent or (ii) if the Proponent is not selected for the development of the Project, return fifty percent (50%) of said amount.

**7.5 Cancellation of Evaluation Process for Unsolicited Proposals.** The Authority may, in its sole discretion, cancel an evaluation process of an Unsolicited Proposal at any time after having completed a preliminary evaluation pursuant to Article 9(b)(ii) [– Procedure for Selection and Award] of the Act. If the Authority recommends that the evaluation process for an Unsolicited Proposal be cancelled, the Authority shall indicate the reason or reasons for its recommendation. The Authority shall not be required to indemnify (including, but not limited to, reimbursement of expenses) any Proponent if it decides, in its sole discretion, to cancel an evaluation process of an Unsolicited Proposal.

**7.6 Communications with Participating Government Entities.** Once an Unsolicited Proposal has been submitted to the Authority, neither Proponents nor their representatives may contact or communicate with the Partnering Government Entity or its representatives with respect to the Unsolicited Proposal, except with those representatives of the Partnering Government Entity that have been designated as authorized representatives and only under the circumstances permitted by the Authority.

### **SECTION 8 - SELECTION OF PROPONENTS**

**8.1 Disqualifying Events.** The Partnership Committee or the Permanent Committee, as applicable shall treat as ineligible and shall not select a Proponent in accordance with this regulation if the Partnership Committee or the Permanent Committee, as applicable, has actual knowledge that (i) the Proponent or any affiliated Person has been convicted of any of the

offenses set forth in Article 9(c)(ii) [– Evaluation Criteria] of the Act (i.e., if the Proponent or its authorized representative has been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico, in any jurisdiction of the United States of America or in any foreign country and under the Foreign Corrupt Practices Act) or (ii) the prohibition set forth in Section 5.16 of this Regulation has been violated. 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 in Article 9(c)(ii) [– Evaluation Criteria] of the Act if the Partnership Committee considers it necessary for its selection or evaluation process.

**8.2 Other Grounds for Disqualification.** The Partnership Committee or the Permanent Committee, as applicable, may treat a Proponent as ineligible, or decide not to select such Proponent or approve an Award of a Partnership Contract to such Proponent on one or more of the following grounds, namely that such Proponent:

- (a) is or has been bankrupt or insolvent, or shall have made a general assignment for the benefit of its creditors, or any proceeding shall 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 Article 9(c)(ii) [– Evaluation Criteria] of the Act;
- (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 in any information provided to the Authority, the Partnership Committee or the Permanent Committee or otherwise provided to comply with this regulation; or
- (e) has failed to comply with the requirements of Article 9(a) [– Applicable Requirements and Conditions for those who wish to be considered as Proponents] of the Act, 9(d) [– Consortia] of the Act, or any guidelines referred to in Section 6.6 below, as applicable.

**8.3 Information as to Financial Condition.** In assessing whether a prospective Proponent or Proponent meets any minimum standards of financial condition required by the Partnership Committee or the Permanent Committee, as applicable, for the purpose of Section 5.4 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:

- (a) appropriate statements from the principal bank(s) of the Proponent;
- (b) audited financial statements for the previous three (3) fiscal years, if available;
- (c) any other information acceptable to the Authority that would allow the Proponent to demonstrate its financial condition; and
- (d) any additional reference checking information that the Authority could seek from external sources (e.g., Dun and Bradstreet).

The Partnership Committee shall 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.

#### **8.4 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 Partnerships.
- (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;
  - (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 in potential Partnerships, the Partnership Committee or Permanent Committee, as applicable, will 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;
- (d) Compliance with Applicable Laws. The analysis made by the Partnership Committee or Permanent Committee, as applicable, shall also be consistent with, to the extent applicable, the following laws:
- (i) Act No. 14-2004, as amended, known as the "Investment in Puerto Rican Industry Act;"
  - (ii) Act No. 109 of July 12, 1985, as amended; and
  - (iii) Act No. 62-2014, as amended, known as the "Act to Support Microbusinesses and Small and Medium-Size Businesses."

**8.5 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.

**8.6 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 9 - CONTRACT AWARD**

**9.1 Partnership Committee or Permanent Committee.** Once the Partnership Committee or Permanent Committee, as applicable, has recommended a Proposal or Unsolicited Proposal, and the Partnership Committee or Permanent Committee, as applicable, and the Proponent have finalized the negotiation of the Partnership Contract which complies with the requirements of Article 10 [– Partnership Contract] of the Act, the Partnership Committee shall prepare and deliver the report required by Articles 9(g)(i) and (ii) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. The report shall include the reasons for entering into a Partnership, the reasons for selecting the Proponent, a description of the procedure followed, including comparisons between the Proponent and the Partnership Contract recommended and other proposals presented, as well as other information pertinent to the procedure followed and the evaluation conducted. The report shall be circulated to and presented for the approval of the Board of Directors of the Authority and the Partnering Government Entity, or the Secretary of the Department in the event there is no Board of Directors, not later



than thirty (30) days after the completion of the negotiation of the Partnership Contract. The Board of Directors of the Authority and the Partnering Government Entity, or the Secretary of the Department in the event there is no Board of Directors, must approve the report through a resolution if there is a Board of Directors, or through an administrative order in the case of the Secretary of the Department. Such resolutions or administrative orders shall contain their agreement to or rejection of that which the Partnership Committee has presented and recommended, together with the grounds for such determination. The mere approval of the report by the Partnering Government Entity and the Authority does not confer the right to claim indemnity, refund, or any payment whatsoever on account of expectations arisen in any of its stages, or for expenses incurred during the qualification or Proposal presentation procedures.

**9.2 Award of a Partnership Contract.** Once the report and the draft Partnership Contract have been approved by the Authority and the Directors of the Partnering Government Entity, the report and the draft Partnership Contract will be delivered to the Governor pursuant to Article 9(g)(iv) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. Unless otherwise specified in the particular RFP, if a Partnership Contract is not awarded within ninety (90) days after the due date for the Proposal corresponding to such Partnership Contract, any Proponent may withdraw its Proposal without penalty. The Authority may cancel the Award of a Partnership Contract at any time before the Partnership Contract is signed by the Partnering Government Entity and the Proponent, without recourse or liability to the Authority, the Partnering Government Entity, the Partnership Committee, any Authorized Representative, or any of their agents and advisors. In the event the Authority cancels the Award of the Partnership Contract before its execution by the Partnering Government Entity and the Proponent, it may return the Proposal Security to all Proponents.

Notwithstanding anything established in this Section 9.2 regarding Partnership Contracts for Small Scale Projects, once the report and the draft Partnership Contract have been approved by the Authority and the Directors of the Partnering Government Entity, the Partnership Contract shall be considered ready for execution by the parties, unless the contract is constitutionally required to be approved by the Governor. In such cases in which the Governor's approval is required, the report and draft of the Partnership Agreement shall be presented to the Governor as set forth in Article 9(g)(vi) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. The Authority may cancel the Award of a Partnership Contract at any time prior to the execution of the Partnership Contract by the Partnering Government Entity 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, the Partnering Government Entity, the Permanent Committee, any authorized representative or any agent or advisor.

**9.3 Notice of Award of a Partnership Contract.** Upon the approval by the Governor, and the execution by the Partnering Government Entity, of a Partnership Contract, the Authority will make public the Award of the Partnership 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) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. The Executive Director will notify in writing all participating Proponents of the decision made by the Authority to Award a Partnership Contract. The Executive Director shall send an

award notice, no later than five (5) days after the Governor 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.

Notwithstanding anything established in this Section 9.3 regarding Partnership Contracts for Small Scale Projects, once the report and the draft Partnership Contract have been approved by the Authority and the Directors of the Partnering Government Entity, and if necessary, the Governor, the Authority shall make public the Award of a Partnership Contract and the identity of the winning Proponent. The Authority shall provide written notice to the Proponent of its selection and shall notify all other Proponents, if any, as set forth in Article 9(g)(vi) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. The Executive Director shall notify, in writing, the decision of the Authority to Award a Partnership Contract to all participating proponents. The Executive Director shall send, by certified mail, notice of the award to the selected Proponent no more than five (5) days after the Board of Directors of the Authority and the Board Directors of the Partnering Government Entity approve the Partnership Contract, or when the Governor has notified his or her approval to the Authority in the cases where such approval is necessary. No other action by the Authority will be considered as an acceptance of an Unsolicited Proposal.

**9.4 Execution of the Partnership Contract.** Upon the Award of a Partnership Contract, the Proponent will have to execute the Partnership Contract, submit the Proposal Security specified in the RFP to guarantee the Proponent's performance of the Partnership Contract and any evidence of insurance requested, and carry out all other actions established as requirements of the Partnership Contract's execution within the time period established by the Authority. The Partnership Contract shall 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 Partnership Contract or does not comply with any requirement for such execution within the time limit specified by the Authority, the Authority may, in its discretion, extend the deadline for execution of the Partnership Contract or award the Partnership Contract to the next highest ranking Proposal if the Authority and the Partnership Committee determine that such award is in the best interests of the Authority and the Partnering Government Entity. The approval of such contract with the Proponent of the next highest ranking Proposal shall comply with the procedures set forth in Article 9(g) [– Approval of the Partnership Contract and Preparation of the Report] of the Act. Once such contract is final, a copy of the report shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives. Likewise, the report shall be published over the Authority and the Partnering Government Entity's websites.

Notwithstanding anything established in this Section 9.4 regarding Partnership Contracts for Small Scale Projects, once the Partnership Contract is awarded, the Proponent must execute the Partnership Contract, submit the Proposal Security to guarantee the performance by the Proponent of its obligations under the Partnership Contract and any insurance evidence requested by the Authority and shall complete all other requirements for the execution of the Partnership Contract within the timeframe established by the Authority. The Partnership Contract may not be enforced nor shall it have any legal effect whatsoever until it has been completed, approved and executed by all parties. If the selected Proponent does not execute the Partnership Contract or does not meet any of the requirements for such execution within the timeframe established by the

Authority, the Authority may, in its sole discretion, extend the deadline for the execution of the Partnership Contract or cancel the Award of a Partnership Contract. Once said contract is final, a copy of the report prepared by the Partnership Committee shall be filed with the Secretary of the Senate and the Secretary of the House of Representatives. The report shall also be published on the websites of the Authority and the Partnering Government Entity.

**9.5 Partnership Contract Documents.** The Authority will determine the type of Partnership Contract that best suits a particular Project and the terms and conditions that each awarded Partnership Contract will contain. All agreements related to or necessary for the performance of a Partnership Contract or the implementation of a Partnership must be approved by the Authority and shall be part of the public record.

**9.6 Stipend for Unsuccessful Proponents and Intellectual Property Transfer.** The Authority may, in its sole 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 and the amount of any such stipend. Moreover, if a Partnership Contract is awarded based on an ATC and/or an AFC which was submitted by a non-selected Proponent, the Authority may, on a case by case basis and in its sole discretion, pay a stipend to the non-selected Proponent in return for transfer of intellectual property. In such case, the Authority shall specify if a stipend will be paid when requesting an ATC and/or an AFC and the applicable disbursement rules.

## **SECTION 10 - RECONSIDERATION AND REVIEW**

**10.1 No Reconsideration by the Authority.** The Authority shall not entertain any request for reconsideration of any decision made by the Authority, the Partnership Committee, the Permanent Committee, the Executive Director or any Authorized Representative related to the procurement process set forth in the Act or this regulation, including, but not limited to decisions related to qualifications of prospective Proponents under an RFQ or the Award of a Partnership Contract.

**10.2 Judicial Review.** Judicial review of the determinations made by the Partnership Committee, the Permanent Committee, the Authority and/or any other Person under Article 9(g) [- Approval of the Partnership Contract and Preparation of the Report] of the Act will be governed by the provisions of Article 20 of the Act.

## **SECTION 11 - SUPERVISION**

**11.1 Designation of Liaison.** Each Partnering Government Entity shall designate an individual as the point person for the coordination of any information required by the Authority regarding Partnership Contracts granted by said Partnering Government Entity.

**11.2 Quarterly Reports.** Each Partnering Government Entity shall submit to the Authority a quarterly report of the progress of each Partnership to which said Partnering Government Entity is a party. Each report shall describe the performance and fulfillment of obligation of each Contractor under the Partnership Contracts then in force. The first quarterly

report shall be presented to the Authority no later than ninety (90) days after the effectiveness of the corresponding Partnership Contract.

**11.3 Annual Reports.** Commencing on November 30, 2015, and on each following November 30, each Partnering Government Entity shall 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 Partnership Contracts then in force.

**11.4 Additional Information.** The Authority may request additional information or a clarification of the information submitted by each Partnering Government Entity in their quarterly and annual reports. In addition, the Authority may, *motu proprio*, request from a Partnering Government Entity any information related to the progress of a Partnership. The Authority may also require the input of any Partnering Government Entity in order to complete an evaluation of the progress of a Partnership.

## SECTION 12 - MISCELLANEOUS

**12.1 Scope of the Act.** From time to time, the Authority may review a project and determine, by means of a resolution of the Board, that a type of project or a specific project is not a Partnership as defined in the Act and is not covered by the provisions of the Act and this regulation. Moreover, the Authority may review a procurement process commenced by a Government Entity prior to the enactment of the Act for the award of a contract in connection with a project covered under the definition of a Partnership contained in the Act. After such review, the Authority may elect to continue the procurement process with such modifications, if any, it adopts or commence a new procurement process.

**12.2 Computation of Periods.** Where an action is required to be taken under this regulation or the Act: (i) within a certain period after an action is taken, the day on which that action is taken shall not be counted in the calculation of that period; (ii) within a certain period, that period must include at least two (2) business days; and (iii) within a certain period and the last day of that period is not a business day, the period shall be extended to include the next business day.

**12.3 Confidentiality.** All Proposals submitted to the Authority, the Partnership Committee or the Permanent Committee shall become the property of the Authority, the Partnership Committee or the Permanent Committee, except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent that has been identified as such at the time of the submission of the Proposal. Proponents are advised to familiarize themselves with the confidentiality and publication provisions contained in Articles 9(f) [– Negotiation of the Partnership Contract] and 9(i) [– Confidentiality] of the Act to ensure that documents identified by Proponents as “confidential” or “proprietary” will not be subject to disclosure under the Act.

If a Proponent has special concerns about confidential or proprietary information that it would desire to make available to the Authority, the Partnership Committee or the Permanent 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 oral presentation to the Partnership or Permanent Committee's staff and legal counsel, as applicable; and (iii) receive written notification from the Partnership Committee or the Permanent Committee, as applicable, 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) [– Negotiation of the Partnership Contract] and 9(i) [– Confidentiality] of the Act. The Authority suggests Proponents to 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, the Partnership Committee or the Permanent Committee.

The Authority the Partnership Committee and the Permanent 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, the Partnership Committee or the Permanent Committee, as applicable shall determine whether or not the requested materials are exempt from disclosure. In the event the Authority, the Partnership Committee or the Permanent Committee elects to disclose the requested materials, it will provide the Proponent notice of its intent to disclose. In no event shall the Government of Puerto Rico, the Partnership Committee, the Permanent Committee or the Authority participating in a Partnership 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, the Partnership Committee or the Permanent Committee under these guidelines.

Once the Governor has executed the Partnership Contract, the Authority shall make public the report of the Partnership Committee which shall contain the information related to the procurement, selection and negotiation process, and the information contained in the Proposal as required by Article 9(i) [– Confidentiality] of the Act, except trade secrets, proprietary or privileged information of the Proponent clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order.

Each member of the Partnership Committee, the Permanent Committee, the Authority and the Partnering Government Entity engaging in a Partnership 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 team member has with the Partnership Committee, the Permanent Committee, the Authority and the Partnering Government Entity. 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.

**12.4 Restricted Parties.** Restricted Parties, their respective directors, officers, partners, employees, and Affiliates are not eligible to participate as a Proponent or as a Proponent team member, or advise any Proponent or Proponent team member, directly or indirectly, or participate in any way as an employee, advisor, consultant or otherwise in

connection with any Proponent. Each Proponent will ensure that neither the Proponent nor any Proponent team member uses, consults, includes, or seeks advice from any Restricted Party.

Any of the following Persons engaged by the Authority, the Partnership Committee or the Permanent Committee or involved in preparing the Study of Desirability and Convenience, the RFQ and/or the RFP 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;
- (v) Social and labor advisors; and
- (vi) Any other person that, in the Authority's discretion, has material non-public information that may negatively affect the competition among Proponents in a Request for Proposals process.

Any Person serving as a consultant to a Restricted Party and that wish 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.

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.

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 the activities outlined in the first paragraph of this Section 12.4. Additionally, no Person shall 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 or the Permanent Committee in respect of a specific Facility, Project or Partnership.

**12.5 Dispensations.** The Authority is authorized to provide dispensations to former members of a Partnership Committee from the prohibitions regarding economic interest and affiliation set forth in Article 8(a) [– Creation of Partnerships] of the Act by the affirmative vote of four (4) members present in a duly constituted meeting at which a quorum is present; provided, that such dispensation has been previously approved by the Government Ethics Office.

**12.6 Distribution, Notification or Publication.** Unless otherwise provided in the Act or this regulation, where the Act 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 shall be deemed to satisfy such requirement.

**12.7 Intent.** This regulation is intended to provide flexible procedures and, accordingly, it shall be interpreted liberally so as to effectuate that intent and its purposes. Non-material deviations from this regulation shall not, at the Authority's sole discretion, be cause for disqualification from any RFP process or the evaluation of Unsolicited Proposals.

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

**12.9 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.

**12.10 Repeal Clause.** Regulation No. 7853 is hereby repealed by this regulation.

**12.11 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 shall prevail.

**12.12 Approval.** The Board of Directors of the Authority approved this regulation on May 3, 2017.

**12.13 Effective Date.** This regulation shall become effective on May 4, 2017.