



GOVERNMENT OF PUERTO RICO
Puerto Rico Public-Private Partnerships Authority

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

**GUIDELINES FOR THE
PREPARATION, EVALUATION, SELECTION, AND PROCUREMENT
OF PUBLIC-PRIVATE PARTNERSHIPS THROUGH UNSOLICITED
PROPOSALS**

Date of Approval: January 24, 2019



TABLE OF CONTENTS

SECTION 1 - DEFINITIONS	5
SECTION 2 - INTRODUCTION	8
2.1 Legal and Regulation Bases	8
2.2 Purpose of Guidelines	8
2.3 Intended Audience.....	8
2.4 Definition of Unsolicited Proposal.....	9
2.4.1 Project Proposals that Do Not Constitute Unsolicited Proposals.....	9
2.5 Unsolicited Proposal Process Overview	10
2.5.1 Stage 1: Screening.....	10
2.5.2 Stage 2: Project Development and Structuring	11
2.5.3 Stage 3: Procurement	12
2.6 Management of Unsolicited Proposals.....	13
2.6.1 Unsolicited Proposal Review Committee	13
2.6.2 Conflicting Unsolicited Proposals.....	14
2.6.3 Changes to Unsolicited Proposals	15
2.6.4 Disclosure and Proprietary Information	16
2.6.5 Authority's Rejection, Withdrawal or Cancellation of the Unsolicited Proposal	17
2.6.6 Role of Advisors.....	17
3.1 Submission of Unsolicited Proposals	18
3.1.1 Submission Timeline.....	19
3.1.2 Submission Requirements	19
3.1.3 Evaluation Fee.....	20
3.1.4 Submission Procedures	20
3.1.5 Communications with Participating Government Entities.....	21
3.2 Evaluation Process	21
3.2.1 Initial Compliance Review.....	21
3.2.2 Content Review	22
3.2.3 Communication between the Authority and other Participating Governmental Entities.....	24
3.3 Evaluation Timeline	25
3.4 Stage 1- Eligibility Criteria	25
4.1 Roles and Responsibilities in the Development of the Study of Desirability and Convenience (Business Case)	27
4.1.1 Non-Disclosure Agreement.....	28
4.1.2 Project Formulation Agreement	28
4.2 Due Diligence and Development of the Study of Desirability and Convenience (Business Case).....	29
4.3 Stage 2- Study of Desirability and Convenience (Business Case).....	29
SECTION 5 – STAGE 3- PROCUREMENT STAGE.....	31
5.1 Basis for Procurement Decision	32
5.2 Competitive Procurement.....	34
5.2.1 Preparation of Competitive Procurement	37
5.3 Direct Negotiation	37
5.4 Stage 3- Approval and Execution of the Partnership Contract (commercial close).....	39

SECTION 6 – MISCELLANEOUS40
6.1 Confidentiality.....40
6.2 Publication.....41
6.3 Approval.....41
6.4 Effective Date.....41
APPENDIX A – SUBMISSION PROCESS CHECKLIST42
APPENDIX B – UNSOLICITED PROPOSAL SUBMISSION DOCUMENT43
APPENDIX C – EXAMPLES OF SUPPORTING DATA SOURCES (ELIGIBILITY CRITERIA)
.....52



Page intentionally left in blank

SECTION 1 - DEFINITIONS

The majority of the capitalized terms in these Guidelines take their meaning from the Regulation and the Act. Below is the definition of capitalized terms unique to these Guidelines.

Act or the “Public-Private Partnership Authority Act”: means the Act No. 29-2009 of June 8, 2009, as amended by: Act No. 297-2012 of October 18, 2012, Act No. 27-2013 of June 17, 2013, Act No. 173-2013 of December 27, 2013, Act No. 237-2014 of December 19, 2014 and Act No. 1-2017 of January 11, 2017 and Act No. 95-2017 of August 8, 2017.

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

Direct Negotiation: means a procurement method by which the Authority negotiates a Partnership Contract directly on a one-on-one basis with an Unsolicited Proposal Proponent pursuant to the Act.

Direct Negotiation Protocol: refers to the document that governs the interaction between the Authority and the Proponent of an Unsolicited Proposal during a process of Direct Negotiation. This document may also be referred to as Exclusive Negotiation Agreement (ENA).

Eligibility Criteria: refers to the criterion defined in the Act, Regulation, and Section 3 and 4 of Appendix B and Appendix C of these Guidelines that the Unsolicited Proposal Review Committee may apply to assess whether the proposed project is potentially beneficial to the public interest and has merits to be considered and evaluated.

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 a Request for Proposal (RFP) or these Guidelines.

Evaluation Fee: means the nonrefundable, nonnegotiable fee of five thousand dollars (\$5,000) for the review of each Unsolicited Proposal as specified in Section 7.4 of the Regulation and Section 3.1.3 of these Guidelines.

Evaluation Process: refers to all the procedures and steps contained in Section 4 of these Guidelines.

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

Government: means the Government of Puerto Rico.

Guidelines: means these Guidelines for the Preparation, Evaluation, Selection, and Procurement of Public-Private Partnerships through Unsolicited Proposals approved by the



Board of Directors and adopted by the Authority on January 24, 2019. These Guidelines do not apply to Projects covered by the definition of a PREPA Transaction as set forth in Act 120-2018, as amended.

Partnership Committee: means a committee designated by the Authority to evaluate and select qualified persons and proponents of a Partnership, and to establish and negotiate the terms and conditions it deems appropriate for the corresponding Partnership Contract.

Preliminary Feasibility Studies: means a combination of studies of different nature (e.g., technical, environmental, market, financial, etc.) for a project conducted at an early stage, prior to including that project into the Priority Projects list and prior to developing a Study of Desirability and Convenience.

Priority Projects: An initiative developed by the Government that holds primacy, whose purpose is the performance and execution of a work vested in high public interest in accordance with Section 3 of the Act.

Project Formulation Agreement (PFA): means an agreement between the Authority and a Proponent of an Unsolicited Proposal that delineates the roles and responsibilities between the Authority and the Proponent during the project development stage and Desirability and Convenience Study of the Unsolicited Proposal process.

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 with a Governmental Entity; provided, however, that for purposes of the 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 [– Unsolicited Proposals] of the Regulation.

Public-Private Partnership or Partnership: means any agreement between a Government Entity and one (1) or more persons (other than a Government Entity), subject to the public policy set forth in the Act and the Regulation, the terms of which are provided under a Partnership Contract, to delegate operations, functions, services, or responsibilities of any Government Entity, as well as to design, develop, finance, maintain, or operate one or more facilities, or any combination thereof.

Regulation: means the “Regulation for the Procurement, Evaluation, Selection, Negotiation and award of participatory Public-Private Partnership Contracts”, under Act No. 29-2009, as approved on May 4, 2017. For the avoidance of doubt, the “Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Participatory Public Private Contracts”, under Act No. 29-2009 do not apply to PREPA Transactions, as defined in Act No. 120-2018, as amended.

Submission Process: means all the procedures and steps contained in Section 3 of these Guidelines.

Submission Procedures: means the specific course to effectuate and complete a submission of an Unsolicited Proposal as specified in Section 3.1.4 of these Guidelines.

Submission Requirements: means the set of document and information requirements specified in the Act, Regulation, and Section 3.1.2 of these Guidelines.

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 Puerto Rico Fiscal Agency and Financial Advisory Authority (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. This document may also be referred to as Business Case.

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, subject to the limitations set forth in Act 120-2018, as amended, and the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System under Act No. 120-128, as amended.

SECTION 2 - INTRODUCTION

2.1 Legal and Regulation Bases

The Puerto Rico Public-Private Partnerships Authority (the Authority) was created by the Public-Private Partnerships Act for the purpose of implementing the public policy of the Government of Puerto Rico concerning Public-Private Partnerships, as contemplated under the Act. The Regulation establishes a procurement, evaluation, selection, negotiation and award process for Partnerships in Puerto Rico. These Guidelines are promulgated by virtue of the power vested in the Authority by the Act and in accordance with Section 9(b)(ii) of the Act and the process set forth in Section 7 and Section 9 of the Regulation.

2.2 Purpose of Guidelines

The purpose of these Guidelines is to define the procedures for the preparation, evaluation, selection, and procurement of Public-Private Partnerships initiated as Unsolicited Proposals. For the avoidance of doubt, these Guidelines and the Regulation for the Procurement, Evaluation, Selection, Negotiation and award of participatory Public-Private Partnership Contracts, under Act No. 29-2009 do not apply to PREPA Transactions, as defined in Act No. 120-2018.

- a) These Guidelines aim to encourage private-sector innovation and investment in the delivery and management of infrastructure projects in compliance with Section 3 of the Act while protecting the public interest, ensuring transparency, competition, fair market pricing, accountability, value for money, and an effective governance and decision-making process.
- b) The Authority encourages Proponents to submit Unsolicited Proposals that either:
 - Identify infrastructure needs that the Government has neither identified nor adopted, but which are consistent with the Government’s stated infrastructure policy, plans or aspirations,
 - Propose innovative solutions to an infrastructure need that has been previously identified by the Government but not tendered, or
 - Adopt innovation from potential partners through acceleration of project development and procurement towards successful implementation.

2.3 Intended Audience

These Guidelines are intended to be used by:

- Private sponsors and developers interested in submitting Unsolicited Proposals.
- Financing providers, such as lenders (banks), institutional investors, capital market players, government financing agencies or infrastructure funds, among others.



- The Authority and other government agencies in Puerto Rico to understand the responsibilities, timing of events, and expectations for each stage of the process.

2.4 Definition of Unsolicited Proposal

An Unsolicited Proposal is a written proposal prepared by a Proponent for a project that is not currently under evaluation by the Authority through the preparation of a Desirability and Convenience Study and 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 Section 7 [-Unsolicited Proposals] of the Regulation, and is subject to these Guidelines.

Unsolicited Proposals may not be submitted in response to either Priority Projects¹ or early stage capital infrastructure projects that the Authority or other Government Entity could be studying. Unsolicited Proposals are not developed in response to a formal request for proposals by the Authority or other Government Entity.

Unsolicited Proposals shall be aligned with Puerto Rico’s Economic and Fiscal Plan, certified by the Financial Oversight and Management Board for Puerto Rico or any other compelling authority.

Under an Unsolicited Proposal, the private sector independently initiates and designs the project, and then submits it to the Authority for review. If the project is considered as potentially beneficial to the public interest, a contract with a Partnering Government Entity for the Unsolicited Proposal may be directly awarded to the Proponent or may be tendered with a competitive procurement, in compliance with the terms set forth in Article 9b(ii) of the Act.

The Authority’s goal in endorsing an Unsolicited Proposal procurement mechanism is to encourage active private sector participation to accelerate project development and delivery, improve service to the public, and develop high-quality and innovative solutions that address infrastructure and real estate challenges.

Emergency or urgent projects, in response to a critical situation caused by a crisis, a natural event or an extraordinary circumstance, should be identified by the appropriate agency. The project preparation and subsequent procurement of these kind of projects shall be regulated under specific norms.

2.4.1 Project Proposals that Do Not Constitute Unsolicited Proposals

For purposes of these Guidelines, the Authority has the discretion of excluding certain types of project proposals from the definition of Unsolicited Proposal, including:

¹ Please refer to the list of Priority Projects published by the Authority and available on <http://www.p3.pr.gov/>.

- (a) proposals seeking to directly purchase or acquire land owned by the Government. Standard land sale/purchase proposals will be referred to the appropriate agency of the Government of Puerto Rico;
- (b) proposals seeking to develop land that is not owned by the Government or the Proponent;
- (c) private parties seeking to bypass a future tendering process, with an existing license to provide goods or services to the Government or its agencies;
- (d) proposals for projects where the tender process has formally commenced, whether published or not;
- (e) proposals for retendering and/or extending existing contracts, or the next stage of a staged project;
- (f) proposals to provide widely available goods or services to the Government or its agencies, including consulting services; or
- (g) proposals seeking grants.

2.5 Unsolicited Proposal Process Overview

The Unsolicited Proposal development process is divided into three stages, which are summarized below and explained in detail in subsequent sections.

Figure 1 below illustrates the Unsolicited Proposal process framework.

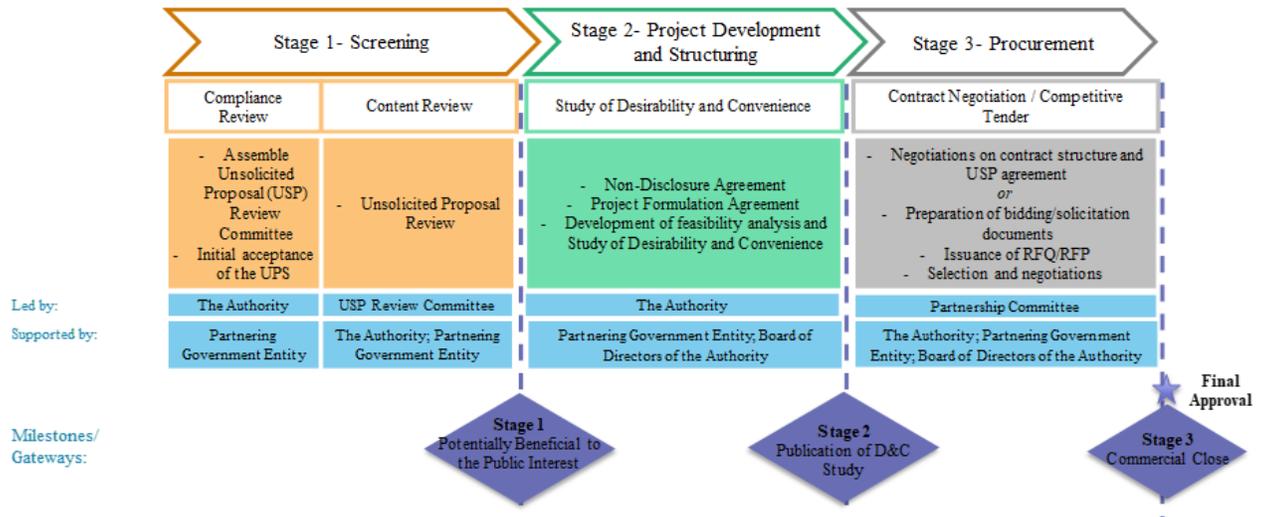


Figure 1. Unsolicited Proposal Process

2.5.1 Stage 1: Screening

- a) The Authority shall establish and announce a dedicated time window during any



calendar year for acceptance of Unsolicited Proposals. Such a time window shall last at least thirty (30) days. The dedicated time window shall occur no more than four (4) times in any calendar year. The Authority will provide sufficient notice of the time window by publishing an official announcement on its website.

- b) Upon reception of an Unsolicited Proposal, the Authority will assemble an Unsolicited Proposal Review Committee, in coordination with the Partnering Government Entity(ies) and other agencies as necessary.
- c) The Unsolicited Proposal Review Committee will undertake an Initial Compliance Review to determine whether the Unsolicited Proposal contains all the necessary documents included in the Submission Requirements.
- d) Then, the Unsolicited Proposal Review Committee will undertake the Content Review of the Unsolicited Proposal applying the Eligibility Criteria and will make a recommendation to the Executive Director of the Authority. The Unsolicited Proposal Review Committee may ask the Proponent for clarifications and additional information to complete the review. The Authority is responsible for notifying the Proponent of the acceptance or rejection of the Unsolicited Proposal.
- e) If the Unsolicited Proposal is determined to be potentially beneficial to the public interest, then it passes through Stage 1. Then, the Authority will initiate the activities related to defining the project's scope through the development and structuring of the Study of Desirability and Convenience (Business Case) and any other necessary studies as it may determine.

2.5.2 Stage 2: Project Development and Structuring

- a) The Authority will have no more than one-hundred and eighty (180) calendar days to develop the Study of Desirability and Convenience (Business Case); however, the Authority may grant additional time considering the complexity of the proposed project and the need to liaise with the Proponent when developing the feasibility studies that will support the Study of Desirability and Convenience (Business Case).
- b) The Authority will draw support resources from external advisors as well as relevant agencies and government departments and may request clarifications and further information on the Unsolicited Proposal from the Proponent.
- c) Upon completion of the Study of Desirability and Convenience (Business Case), including its supporting studies, and prior to entering into Stage 3 (Procurement), the Authority may seek feedback and input from market participants, as set forth in Section 5.3 [-Market Sounding Process] of the Regulation.
- d) The Authority will prepare the final version of the Study of Desirability and Convenience (Business Case) and supporting documents to memorialize the project development and structuring stage.

- e) This information will be submitted to the Board of Directors of the Authority, per the current regulatory framework in Article 7(b)(xiii) [-Study of Desirability and Convenience] of the Act and Section 5.2 of the Regulation, for approval in order to proceed with its publication. The Board of Directors of the Authority shall also appoint the Partnership Committee that will lead the procurement of the project proposed through the Unsolicited Proposal in Stage 3, once Stage 2 is complete.

2.5.3 Stage 3: Procurement

- a) During the Procurement Stage, the Authority will either (i) prepare and undertake a competitive procurement, or (ii) enter into direct negotiations with the Proponent. The Partnership Committee will be responsible for defining the procurement path, which will be consistent with the criteria for assessing whether to enter into direct negotiations, and for implementing the procurement through execution of a Partnership Contract, as provided in the Act and Regulation.
- b) Regardless the procurement path that will be implemented, the Partnership Committee will take the necessary steps to establish a fair market Partnership Contract that protects the public interest and results in value for money.
- c) If the Unsolicited Proposal is procured in a competitive process, the Proponent shall be granted a benefit, as established in the Act, Regulation, and Section 5.2 of these Guidelines. The rest of the steps in the competitive process for the proposed project shall be consistent with Section 9(b)(ii) [-Procedure for the Selection and Award] of the Act, Section 7 [-Unsolicited Proposals] of the Regulation, and could include, among others, a market sounding (or request for information), a request for qualifications, a request for proposals, and a proposal evaluation.
- d) When the Unsolicited Proposal moves towards an exclusive Direct Negotiation with the Proponent, the Partnership Committee will follow the procedures set forth in the Act, Regulation and Direct Negotiation Protocol that will be executed between the corresponding public agency (Authority, Participating Government Entity or other) and the Proponent prior to initiating the negotiations or in another guideline document to manage negotiations that may be approved by the Authority.
- e) The Partnership Committee will recommend a selected proponent when the proposal evaluation of a competitive procurement is completed. Alternatively, if a Direct Negotiation is pursued, the Partnership Committee will recommend to move forward with a Partnership Contract negotiated with the Proponent.
- f) A value for money analysis to confirm that the project provides better value for money than the public sector comparator, will be required with the Partnership Committee recommendation and conducted by the Authority. This analysis may be prepared by the Proponent but will be audited, with support resources from external advisors, by the Authority, and/or any public agency designated by the Authority, such as the FAFAA,

for example.

- g) For each project, prior to Partnership Contract execution, the Partnership Committee shall provide, first for approval of the Board of Directors of the Authority and the Board of Directors of the Partnering Government Entity and, then for approval of the Governor or the executive official that she/he will delegate, a summary of the evaluation and information pertinent to the process followed.
- h) Once commercial close occurs and Stage 3 has been completed, the private partner will assume responsibility for executing the financing (financial close in most instances). Subsequent actions after the commercial arrangement with the private partner is executed, e.g., delivery or implementation of the project, are not addressed in these Guidelines but must follow the obligations and duties contained in the Partnership Contract.

2.6 Management of Unsolicited Proposals

2.6.1 Unsolicited Proposal Review Committee

- a) The Authority shall appoint a three (3)-member Unsolicited Proposal Review Committee for each Unsolicited Proposal received to evaluate the Unsolicited Proposal and assess if the proposed project is potentially beneficial to the public interest. The Authority shall not have the obligation to appoint a new Unsolicited Proposal Review Committee with a different composition of members for each single Unsolicited Proposal, thus, the members of one Unsolicited Proposal Review Committee may be managing more than one Unsolicited Proposal.
- b) Once an Unsolicited Proposal completes Stage 1, the Unsolicited Proposal Review Committee may cease its functions in regards to such project.
- c) The members of each Unsolicited Proposal Review Committee shall be senior representatives of the following agencies:
 - (a) one (1) representative from the Authority;
 - (b) one (1) representative from the Government Entity with direct inherence in the project (expected to be the grantor or the Partnering Government Entity); and
 - (c) one (1) representative chosen by the Authority for their knowledge and experience in the kind of project covered by the Unsolicited Proposal under consideration. For example, this representative could be a member of another public agency, a member of the business community, a member of the academia or a consultant, amongst many others, subject to the absence of conflict of interest.
- d) The Unsolicited Proposal Review Committee shall have the following duties and

responsibilities:

- (a) to evaluate the Unsolicited Proposal submitted;
- (b) to assist the Authority with the decision to move the Unsolicited Proposal forward to project development/structuring;
- (c) to assess whether a public private partnership mechanism for the Unsolicited Proposal would be acceptable for the Government, considering its goals and objectives for the project and, when applicable, the Eligibility Criteria; if a public private partnership mechanism is not acceptable for the Government the Unsolicited Proposal ceases to be eligible under these guidelines.
- (d) to request the Authority to contract advisors, experts or consultants with the knowledge necessary to assist the Unsolicited Proposal Review Committee in the adequate discharge of its functions;
- (e) to keep a book of minutes;
- (f) to prepare a report -or a number of reports- on the procedure leading to the recommendation of a procurement option for the Unsolicited Proposal;
- (g) to oversee compliance with these Guidelines, the Regulation, and the Act, including absence of conflicts of interest, non-disclosure of confidential information, etc.;
- (h) whenever deemed convenient, to establish one or more technical evaluation committees to provide technical or specialized assistance and advice to the Unsolicited Proposal Review Committee; and
- (i) to carry out any additional task related to the selection, negotiation and award procedure contained in the Regulation, as requested by the Authority.

Any finding, recommendation, and/or written materials produced by the Unsolicited Proposal Review Committee shall not be binding to the Authority. Prior to assembling the Partnership Committee, the Authority reserves the right, in its sole discretion, to approve and/or take decisions as set forth in Article 6 [-Authorities and Powers of the Authority] of the Act.

2.6.2 **Conflicting Unsolicited Proposals**

- a) The Unsolicited Proposal Review Committee, as part of Stage 1 (Screening), will assess Unsolicited Proposals on a first come, first served basis, and will determine within its sole and absolute discretion if an Unsolicited Proposal conflicts with:
 - (i) an Unsolicited Proposal previously submitted;
 - (ii) a project that is considered a Priority Project by the Authority; and
 - (iii) a project that the Authority is conducting Preliminary Feasibility Studies.
- b) If the Unsolicited Proposal (i) conflicts with an Unsolicited Proposal previously



submitted, and/or (ii) is identified as a Priority Project already under consideration and/or development, and/or (iii) is pursuing to solve the same needs that an Unsolicited Proposal previously submitted, then the new Unsolicited Proposal will be rejected due to conflicting proposal. The Authority highly encourages the proponent which Unsolicited Proposal was rejected to participate in the Stage 3 process related to the proposed project.

- c) If the Unsolicited Proposal conflicts with a project that the Authority or other Government Entity are conducting Preliminary Feasibility Studies, the Authority nevertheless may accept it as an Unsolicited Proposal at its sole and absolute discretion. If a Partnership Contract is awarded as a result of this Unsolicited Proposal and the Partnership Committee approves the Authority may pursue to recover part of the cost of the Preliminary Feasibility Studies already conducted by the Authority for the project through the future concessionaire, if different from the party that filed the Unsolicited Proposal.

2.6.3 Changes to Unsolicited Proposals

- a) The Authority shall consider changes or amendments to an Unsolicited Proposal considering the best public interest of the population in Puerto Rico.
- b) During the first sixty (60) days after filing the Unsolicited Proposal, the Proponent may propose amendments to the Unsolicited Proposal, so it better aligns with Puerto Rico's public interests. The Proponent shall submit the amended Unsolicited Proposal within the timeline provided by the Authority. No new Evaluation Fee will be required.
- c) Once the amended Unsolicited Proposal is submitted, the Unsolicited Proposal Review Committee shall review it and apply the Eligibility Criteria. Then, the Authority will proceed to approve or reject the amended Unsolicited Proposal.
- d) The Proponent shall be responsible to provide supporting information so the Unsolicited Proposal Review Committee can review and assess it, and consider if the change or amendment is likely to increase the potential benefits to the public interest that the proposed project would bring.
- e) During Stage 2 (Project Development and Structuring), the Authority may propose amendments to the Unsolicited Proposal. The changes or amendments that could take place are:
 - (a) Changes to the scope of works (e.g., technical solution, alignment, easements and right of way requirements, type of technology), with a net cost increase no greater than 10% of the capital investment of the initial Unsolicited Proposal.
 - (b) Changes to the revenue model proposed as per Section 4 of Appendix B, considering the options identified in Appendix C of these Guidelines.

- (c) Changes to the Proponent’s project team (e.g., the firms that form the consortium), provided that the new team members have at least the same technical and financial qualifications than the previous team members.

During Stage 3 (Procurement), no changes to the proposed project will be allowed beyond the requirements set forth in Article 9 [- Procedure for the Selection of Proponents and Award of Partnerships] of the Act and Section 5 [-Participatory Public-Private Partnership Proposals] of the Regulation. However, it may be possible that some the commercial terms and conditions on how the proposed project may be developed and delivered may vary or change during the procurement process.

2.6.4 Disclosure and Proprietary Information

All Unsolicited Proposals received under these Guidelines will be treated as commercial in confidence. The Authority will observe the confidentiality of any intellectual property, trade secrets, and any exclusive rights, that arise out of, or are referred to, in the Unsolicited Proposal.

During the evaluation of an Unsolicited Proposal, the Authority shall make publicly available the following information:

- (a) For those Unsolicited Proposals that pass-through Stage 1 (Unsolicited Proposal Review or Eligibility Criteria) and proceed to Project Development and Structuring Stage (Detailed Proposal Review or Study of Desirability and Convenience), the Authority will publish on its website the following information with the objective of providing transparency:
 - i. Name of the Unsolicited Proposal
 - ii. Name of the Proponent, including partners/join-venture members in case of a consortia
 - iii. Submission date of the Unsolicited Proposal
 - iv. Summary of the Unsolicited Proposal

In addition to the disclosure requirements set forth in Article 9 (g)(vi) and Article 9 (j) of the Act and in Section 7.1 (viii) of the Regulation, the Authority shall make publicly available the following information:

- (b) For those Unsolicited Proposals that pass-through Stage 2 (Study of Desirability and Convenience) and proceed to Stage 3 (Procurement), the Authority will publish on its website the following information with the objective of providing transparency:
 - i. Study of Desirability and Convenience (Business Case)
- (c) For those Unsolicited Proposals that are directly negotiated with the Proponent, as per Section 7.1(vi) of the Regulation and Section 9(b) of the



Act, the Authority will publish on its website additional disclosures that may include:

- i. Preliminary Partnership Contract(s) or Term-Sheets and any government support that would be required
 - ii. Final Partnership Contract and government support that will be required
- (d) For those Unsolicited Proposals that are competitively procured, the Authority will provide the same level of disclosure than an unsolicited publicly-led process, per the Act and the Regulation, which may include but is not limited to:
- i. Request for Qualifications
 - ii. Procurement Process and Schedule
 - iii. Clarifications and Communications Protocol
 - iv. Request for Proposals, and
 - v. Other compelling documents applicable to the competitive process.

If a Proponent submits confidential or proprietary information or trade secrets to the Authority, such confidential or proprietary information shall be specifically identified as such so as to facilitate its review by the Authority. 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 disclosure is 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 the Regulation.

2.6.5 Authority's Rejection, Withdrawal or Cancellation of the Unsolicited Proposal

In case the Authority withdraws or cancels an Unsolicited Proposal that passed Stage 1 (Unsolicited Proposal Evaluation or Eligibility Criteria), the Proponent shall not have any right to challenge, claim or receive an indemnification payment.

2.6.6 Role of Advisors

The Authority, upon petition from the Unsolicited Proposal Review Committee, the Partnership Committee or on its own discretion may hire external advisors on a range of knowledge areas such as technical, financial, commercial, legal, economic, environmental or outreach and communications, to supplement existing capabilities and to assist in the



adequate discharge of its functions.

SECTION 3 –STAGE 1- SCREENING STAGE

This section provides guidelines for accepting and approving Unsolicited Proposals for further development. Figure 2 illustrates the process flow diagram for the screening stage, where the Proponent will submit an Unsolicited Proposal and the Authority will review it considering the Eligibility Criteria.

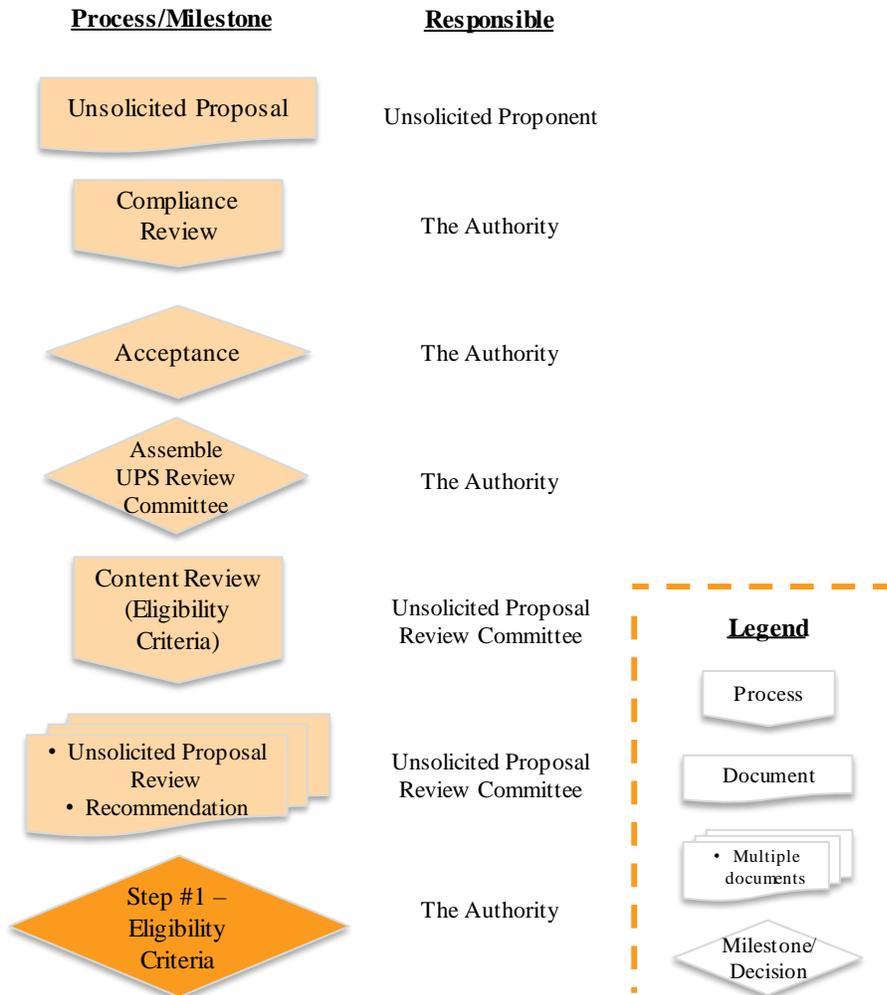


Figure 2. Process flow diagram for the screening stage

3.1 Submission of Unsolicited Proposals

- a) This section provides a clear framework that ultimately will help Proponents meet the Authority’s submission requirements and facilitate the evaluation of Unsolicited Proposals.
- b) The Authority encourages prospective Proponents to include precise and concise responses to the different Unsolicited Proposal content requirements. The Proponent

shall be responsible for all costs, direct and indirect, related to the preparation, evaluation and approval of an Unsolicited Proposal.

3.1.1 Submission Timeline

Unsolicited Proposals may be submitted to the Authority at any time during the appropriate window and timeframe as explain above. The Authority shall establish and announce a dedicated timeframe during any calendar year for the evaluation of Unsolicited Proposals. Such timeframe shall last at least thirty (30) days and may occur up to four (4) times in any calendar year. The Authority will provide sufficient notice of the timeframe by publishing an official announcement on its website.

3.1.2 Submission Requirements

- a) Submission Requirements specify the documentation and information that Proponents must provide as part of their Unsolicited Proposal as set forth Section 7.2 [-Content of Unsolicited Proposals] of the Regulation.
- b) An Unsolicited Proposal shall contain the elements listed in Section 7.2 [-Content of Unsolicited Proposals] of the Regulation.
- c) Proponents may decide to either fill out the form in Appendix B or use a similar template with their corporate letterhead. When using a different form, they should ensure that they provide the information sought below.
- d) As part of the Unsolicited Proposal submission, the Authority seeks to receive a standalone document with a length of no more than twenty-five (25) pages, where the Unsolicited Proposal is described in further detail. When developing this document, the Authority recommends to provide clear and succinct narrative that addresses the Eligibility Criteria as well as other items of the Unsolicited Proposal that may be unique in its nature or in the use of proprietary information/technology. This document, and any additional information that the Proponent may include, should be appended to the Unsolicited Proposal Submission Document.
- e) All Unsolicited Proposals shall be submitted to the attention of the Executive Director and must be signed by an authorized representative of the Proponent.
- f) If the Unsolicited Proposal is submitted electronically, it must satisfy the requirements set forth in the Electronic Transactions Act of Puerto Rico (Act No. 148-2006, as amended).

Except for those Unsolicited Proposals filed electronically, each copy of an Unsolicited Proposal shall be bound in one volume, to the extent practicable.



3.1.3 Evaluation Fee

The Authority requires an Evaluation Fee in exchange for the submission and review of an Unsolicited Proposal, as sets forth Section 7.4 [-Evaluation Fee for Unsolicited Proposals] of the Regulation. The Evaluation Fee seeks to discourage poor quality, incomplete or opportunistic Unsolicited Proposals and helps to cover the costs incurred by the Authority during the initial processing and review of the Unsolicited Proposal.

A nonrefundable, nonnegotiable payment shall be required for the review of each Unsolicited Proposal. The amount of the Evaluation Fee for each Unsolicited Proposal shall be five thousand dollars (\$5,000). The Evaluation Fee shall be payable upon the filing of the Unsolicited Proposal. The non-payment of the Evaluation Fee shall disqualify an Unsolicited Proposal for review. The payment of this fee shall be made by certified check payable to the Authority or by any other mechanism identified on the Authority's website. Proponents who submit multiple unrelated proposals, must submit payment for the Review Fee for each Unsolicited Proposal submitted.

3.1.4 Submission Procedures

Submission Procedures are the actions that a Proponent should take when presenting 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 (www.p3.gov.pr) 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. 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, which is equivalent to Atlantic Standard Time, shall be understood to have been received on the next business day.
- (b) Submitting at the Authority's Offices or by Certified Mail – 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 these Guidelines, 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, which is equivalent to Atlantic Standard 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.

3.1.5 Communications with Participating Government Entities

Once an Unsolicited Proposal has been submitted to the Authority, all the communications from the Proponent or their representatives shall be channeled through the Authority. Neither Proponents nor their representatives may contact or communicate with the Partnering Government Entity or its representatives, or with any other Government Entity with respect to the Unsolicited Proposal.

3.2 Evaluation Process

The evaluation process of Unsolicited Proposals consists of two major steps: a) Initial Compliance Review and b) Content Review. The evaluation process is designed to assist the Authority in determining whether or not to study Unsolicited Proposals in greater detail. The Authority, as well as the Government of Puerto Rico, are interested in evaluating full compliant Unsolicited Proposals that meet the Eligibility Criteria, are aligned with the Government’s goals, with Puerto Rico’s Economic and Fiscal Plan, as certified by the Financial Oversight and Management Board for Puerto Rico, as well as current reforms and applicable laws and regulations.

3.2.1 Initial Compliance Review

The Initial Compliance Review focuses on evaluating the level of compliance of the Unsolicited Proposal with the Submission Requirements and Submission Procedures as established in Section 9(b) of the Act 29, as amended and Section 7.2 of the Regulation. The Unsolicited Proposal shall include, at a minimum: (1) an outline or summary of the proposal, (2) a description of how the proposal satisfies a government need, (3) the particular aspects of the proposal that differentiate it from other proposals or the traditional forms of developing the proposed project, (4) the support required from the public sector and the direct and indirect costs of the project, including the cost of capital, (5) the financial viability, including but not limited to, the financial capacity of the Proponent, the identified or suggested financing mechanisms, the sources of repayment or income related to the proposed function, service or facility object of the proposal, (6) the commercial aspects of the project, (7) the anticipated benefits for the public sector, including why the proposal is in the public’s best interest, (8) the proposed method of developing the project, (9) the unique intellectual property, if any, (10) the evaluation fee pursuant to Section 7.4 of the Regulation; and (11) any document or information that may be useful to the Authority.

Therefore, the Initial Compliance Review focuses on the following elements:



- (a) whether or not the Unsolicited Proposal includes all the elements identified in the Submission Requirements;
- (b) whether or not the Proponent paid the Evaluation Fee;
- (c) whether or not the Unsolicited Proposal was submitted in compliance with the Submission Procedures;
- (d) a high-level assessment of the information included in each item of the Submission Requirements. Unsolicited Proposals that address each element but in a limited or unclear manner can be considered to be non-compliant to the extent such limited information inhibits the ability of the Authority to conduct its Initial Compliance Review. Unsolicited Proposals should contain sufficient amount of information for each required item to allow the Authority to fully understand the Project under each required item and to complete its Initial Compliance Review.

The Authority encourages prospective Proponents to use the Unsolicited Proposal Form in Appendix B, the list of example documents and sources information to assess the Eligibility Criteria in Appendix C of these Guidelines as a verification tool.

3.2.2 Content Review

- a) The Authority will also conduct a more detailed analysis and review of the content of the Unsolicited Proposal. When considering whether an Unsolicited Proposal may be potentially beneficial to the public interest, the Authority, by means of the Unsolicited Proposal Review Committee, will apply a qualitative methodology that involves screening the Unsolicited Proposal to assess its compliance with the Eligibility Criteria.
- b) An assessment for each criterion will be conducted and justified with supporting narrative. The purpose of screening the Unsolicited Proposal throughout the Eligibility Criteria is not developing ad hoc information but leveraging information readily available at the time of the Content Review.
- c) As the information contained in the Unsolicited Proposal package may not be sufficient for the Unsolicited Proposal Review Committee to perform the evaluation, the Authority may issue requests for clarification. Each request should identify the topics that require further information, be specific, clear, and concise, so the Proponent can address it within ten (10) business days.
- d) The Proponent may be required to give one (1) or more oral presentations to the Authority regarding the Unsolicited Proposal.
- e) If an Unsolicited Proposal is determined to be beneficial to the public interest, the recommendation memorandum from the Unsolicited Proposal Review Committee shall highlight those items of particular interest that could be potentially beneficial to the public interest and are expected to drive value to the Partnering Government Entity and the society of Puerto Rico.

- f) An underlying general assumption for the Eligibility Criteria is that the project/asset will be owned by the Partnering Government Entity but managed by the Proponent during the term of the Partnership Contract and that it will be handed back by the Proponent to the Partnering Government Entity at the end of the Partnership Contract.
- g) In addition to the Evaluation Criteria laid out in Section 9(c) of the Act and considering the broader discretion of the Authority when evaluating Unsolicited Proposals as stated in Section 7.3 of the Regulation, the following Eligibility Criteria (questions) may be considered by the Unsolicited Proposal Review Committee when conducting the evaluation:
 - 1. **Alignment with existing Public Sector priorities.** The Unsolicited Proposal should include supporting evidence that it is consistent with Puerto Rico’s capital improvement plan and/or other public sector priority plans. This entails considering among other elements:
 - a. Is the Unsolicited Proposal compatible of the government goals, plans, and priorities?
 - b. Does the project address a demonstrated need or satisfies a service needed?
 - 2. **Proprietary information associated with innovation.** The Unsolicited Proposal should have intellectual property and/or moral rights that distinguish it from other business opportunities. This entails considering among other elements:
 - a. Is the Unsolicited Proposal based on genuinely innovative idea(s) or are there any market precedents?
 - b. Does the Proponent own proprietary software/technology/trade-secret/patent/license/property rights that offers a unique benefit?
 - 3. **Project size and complexity.** The Unsolicited Proposal should consider a project with an appropriate combination of size and complexity, so a private delivery is potentially feasible and beneficial. This entails considering among other elements:
 - a. Does the size of the project justify the development and transaction costs that will be incurred if pursuing a Partnership Contract?
 - b. Does the market (the private sector companies) have technical and financial capacities to deliver the project?
 - 4. **Economic benefit.** The Unsolicited Proposal should produce net economic benefits and positive impact on the community and the environment. This entails considering among others:



- a. Is there sufficient evidence to determine whether the Unsolicited Proposal could generate financial benefits for the government?
 - b. Do the communities within the area of influence of the project receive a better more effective solution for their needs?
5. **Risk allocation and funding mechanism.** The Unsolicited Proposal should propose a risk allocation that optimizes the total project cost and a funding mechanism consistent with such risk allocation, in order to achieve commercial and financial viability:
- a. The risk allocation between the public sector owner and the private proponent entails considering among other elements:
 - i. Are risks identified and have been reasonably allocated?
 - ii. Is the Unsolicited Proposal valuable to the Government in terms of risk transfer?
 - iii. Does the Proponent have adequate capacity to accept and manage the transferred risks?
 - b. The assessment of the funding mechanism vis-à-vis the risk allocation above entails considering among other elements:
 - i. Does the Unsolicited Proposal consider public sector affordability constraints consistent with Puerto Rico's fiscal discipline and appropriation process?
 - ii. Does the Proponent have adequate capacity to sustain financing requirements to deliver the project?

Some of these Eligibility Criteria (questions) may be weighted when conducting the evaluation in response to the specific type of project, existing market conditions, and the complexity of the potential procurement.

3.2.3 **Communication between the Authority and other Participating Governmental Entities**

As part of the Evaluation Process, the Authority, at its sole discretion, can opt to request information or consult with Participating Governmental Entities critical information to (i) gain additional and more detailed understanding about the potential impacts or benefits of the Unsolicited Proposal on a specific Participating Governmental Entity; (ii) assess the extent to which the proposed project meets the needs of the Participating Governmental Entity, among others.

In that case, the Authority must protect any confidential information and shall require the Participating Governmental Entity to execute appropriate legally binding non-disclosure agreement or confidentiality agreement.

3.3 Evaluation Timeline

The Authority will seek to complete the Evaluation Process within the established timeframe outlined below:

- (a) the Authority shall conduct the Initial Compliance Review within thirty (30) business days after the submission of the Unsolicited Proposal;
- (b) the Authority shall conduct the Content Review within ninety (90) business days after the Initial Compliance Review is finished; or one hundred and twenty (120) days, if the Unsolicited Proposal is amended in accordance with Section 2.6.3 of the Guidelines.
- (c) within ten (10) business days of the completion of the review, the Authority will inform the Proponent in writing whether the Unsolicited Proposal is considered one that is potentially beneficial to the public interest.

If the Authority receives more than seven (7) Unsolicited Proposals in these time windows within a calendar year, response time may increase.

3.4 Stage 1- Eligibility Criteria

After completing the Evaluation Process, the Authority will solely determine to either accept or reject the Unsolicited Proposal as after concluding whether it is determined to be potentially beneficial to the public interest considering the recommendation of the Unsolicited Proposal Review Committee.

The Authority will notify the Proponent within ten (10) business days of the decision of acceptance or rejection of the Unsolicited Proposal:

- a) If the Unsolicited Proposal is accepted, then it has successfully completed Stage 1 and the Authority will initiate the activities related to project development and structuring, including all the preparation of the Study of Desirability and Convenience (Business Case) and any other necessary feasibility studies.
- b) If the Unsolicited Proposal is rejected, the Authority will conclude the consideration of the proposed project and will notify the Proponent.

SECTION 4 –STAGE 2- PROJECT DEVELOPMENT AND STRUCTURING STAGE

During the Project Development and Structuring Stage, the Authority will seek to assess if the Proposed Project is feasible as a Public-Private Partnership. During this stage the Authority will assess if the Project is technically and financially feasible, provided that it can be potentially beneficial to the public interest through a Public-Private Partnership delivery, considering risk allocation as well as Government’s affordability and fiscal discipline.

Figure 3 illustrates the process flow for the project development and structuring stage.

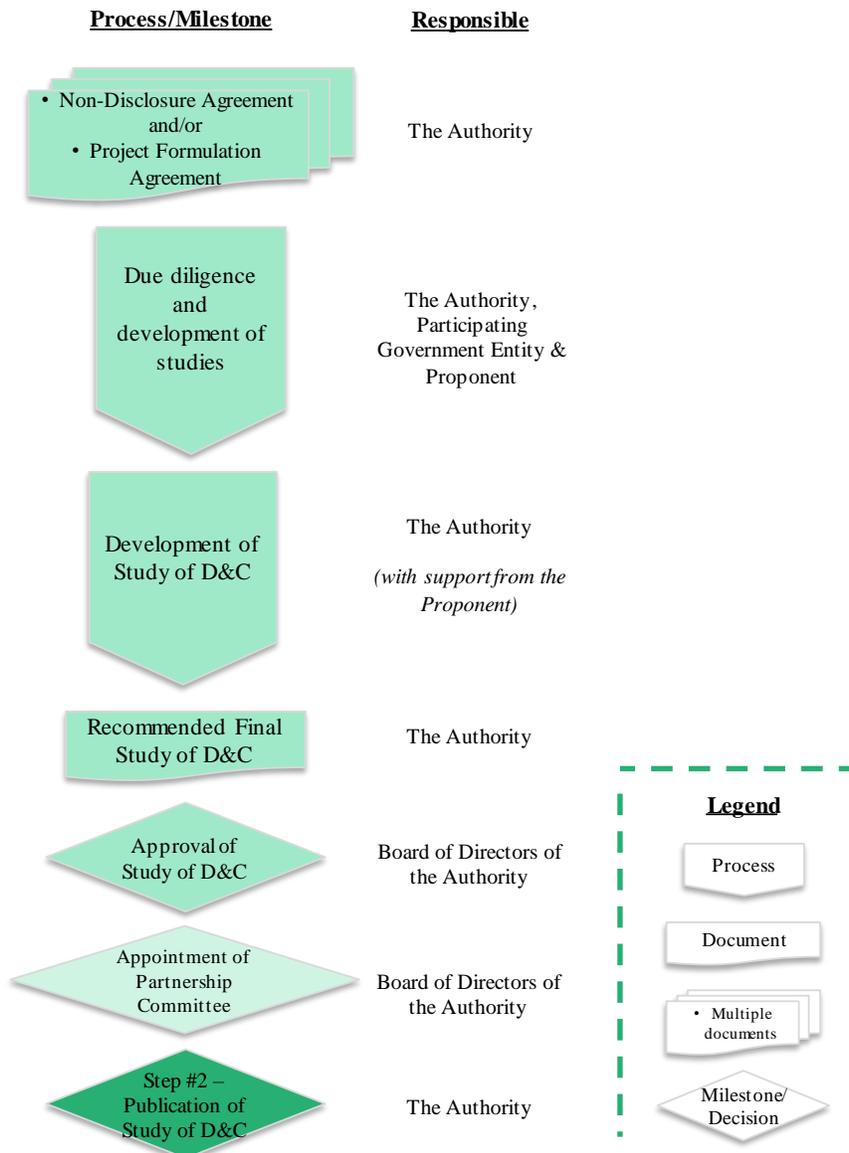


Figure 3. Process flow diagram for the project development and structuring stage

4.1 Roles and Responsibilities in the Development of the Study of Desirability and Convenience (Business Case)

- a) In the context of these Guidelines and in accordance with Section 7.1 (iii) [-Unsolicited Proposals] of the Regulation, the Authority may, in its sole discretion, conduct itself or commission to an advisor or set of advisors the Study of Desirability and Convenience (Business Case) for the proposed project as provided in Section 5.2 [-Study of Desirability and Convenience] of the Regulation.
- b) Alternatively, the Authority may also, in its sole discretion, accept any study conducted in relation to the proposed project. The Authority's acceptance will be based on an appropriate due diligence and review in order to confirm that the scope and depth of that study meets the requirements of the Act and that the findings are sufficient to allow the Authority to make a recommendation whether to proceed or not with the proposed project as a Partnership; provided that, the Authority satisfies the requirements related to public participation included in Article 6(b)(xiii) [-Study of Desirability and Convenience] of the Act and Section 5.2 [-Study of Desirability and Convenience] of the Regulation and it discloses the parts of the study conducted by the Proponent and validated by the Authority.
- c) As a result, when exercising its discretion on whether to conduct, commission or accept the Study of Desirability and Convenience (Business Case) for the proposed project, the Authority will consider one of the following approaches:
 - i. Sole development by the Authority: the Authority may opt to be fully responsible for the development of the Study of Desirability and Convenience (Business Case) and would limit the role of the Proponent to provide all and any additional information and/or clarifications. Under this approach the Authority must ensure availability of internal and external resources to assist with the completion of the Study of Desirability and Convenience (Business Case) in an efficient manner. This approach may also take the form of the Authority commissioning the Study of Desirability and Convenience to external advisors directly hired by the Authority.
 - ii. Development by the Authority with information and/or collaboration of the Proponent: the Authority may elect to request the Proponent to develop or complete certain sections of the Study of Desirability and Convenience (Business Case) as it cost. The Authority will limit the participation of the Proponent to complete those sections that such Proponent can develop more efficiently or to a higher level of quality. Meanwhile, the Authority will be responsible for carrying out the sections of the Desirability and Convenience Study that are more sensitive to the public interest and fiscal impacts. In general terms, under this approach the Unsolicited Proposal proponent can complete sections related to project scope, project description, benefit-cost analysis, technical/engineering

feasibility, and financial feasibility; while the Authority can be responsible for sections associated to value for money estimates, project fiscal affordability, and analysis of alternative procurement methods (including risk allocation). However, depending on the project, the Authority may elect to distribute sections of the Desirability and Convenience Study (Business Case) in a different manner. Under this approach, the Authority -with internal resources and/or supported by external advisors directly hired by the Authority- will take a strong role of oversight to ensure protection of the public interest and public information. The sections of the Study that are developed or completed by the Proponent, as validated by the Authority, must be disclosed in the Desirability and Convenience Study (Business Case).

The final version of the Study of Desirability and Convenience (Business Case) will be published in the Authority’s website for public review and comments, once it has been approved by the Board of Directors of the Authority.

4.1.1 Non-Disclosure Agreement

At the outset of the Project Development and Structuring Stage, the Proponent will formally notify the Authority on the elements of its Unsolicited Proposal that entail a proprietary and/or confidential nature and the Authority will draft a Non-Disclosure Agreement to be entered with the Proponent and the Participating Government Entity where only and exclusively those specific elements will be defined, agreed, and therefore protected from public information disclosure.

4.1.2 Project Formulation Agreement

The Project Formulation Agreement will delineate the roles and responsibilities between the Authority, the Participating Government Entity and the Proponent during the Project Development and Structuring Stage and is expected to be required when the Authority elects to request the Proponent to develop or complete certain sections of the Study of Desirability and Convenience (Business Case), as described in Section 4.1.1 of these Guidelines.

The Project Formulation Agreement shall, at a minimum, contain the following information:

- (a) Objectives of the project and of the Project Formulation Agreement;
- (b) Responsibilities of the Authority, the Participating Government Entity, and the Proponent, including those related to the development of the Study of Desirability and Convenience (Business Case);
- (c) Coordination and communication protocols between the Authority and the Proponent;
- (d) Due-diligence gathering;



- (e) Timeline for the Project Formulation Agreement and schedule of milestones, if any;
- (f) Mechanism(s), such as non-disclosure agreements, to request and manage additional information requests during the development of the studies to complete the Study of Desirability and Convenience (Business Case) and its evaluation and/or validation, if applicable;
- (g) Provisions of termination of Project Formulation Agreement;
- (h) Any legal and regulatory obligations; and
- (i) Policies associates to transparency, accountability, confidentiality -including what kind of information will be made publicly available with regards to the Study of Desirability and Convenience (Business Case)- and conflict of interests.

4.2 Due Diligence and Development of the Study of Desirability and Convenience (Business Case)

- a) Considering the responsibilities set forth in the Project Formulation Agreement, the Authority and the Proponent will undertake the tasks to further develop the project, including the studies required to complete the Study of Desirability and Convenience (Business Case).
- b) The Authority will have up to one-hundred and eighty (180) calendar days to complete the Study of Desirability and Convenience (Business Case). The Authority may extend the timeline considering the complexity of the project.
- c) During this stage, the Authority may hire independent advisors to support in the due diligence or the development of the Study of Desirability and Convenience (Business Case). The timeline mentioned above will reflect this and the complexity or magnitude of the proposed project.
- d) The Authority may request clarifications and further information from the Proponent, as may be needed. The Project Formulation Agreement will describe the due diligence and request for information efforts that will take place during the Project Development and Structuring Stage.
- e) The Authority and the Participating Government Entity will collaborate with the due diligence efforts with the responsibility of protecting the public interest and honoring the agreements to protect proprietary and confidential information provided by the Proponent. Any information to be requested or provided by the Proponent is expected to be reliable, updated, and faithful.

4.3 Stage 2- Study of Desirability and Convenience (Business Case)

At the end of the Project Development and Structuring Stage, the Authority should arrive with a completed Study of Desirability and Convenience (Business Case) that will be submitted for Board of Directors' approval and public release. If the Study of Desirability and Convenience (Business Case) concludes that the proposed project is advisable as a

Partnership project, then the Unsolicited Proposal can progress to the Procurement Stage.

As per Section 7(c) [-Publication] of the Act and Section 5.2 [-Study of Desirability and Convenience] of the Regulation, the Study of Desirability and Convenience will be published for thirty (30) days for public comments. The Authority will issue a public notice so everyone can comment in said period. The Authority may also, but will not be obligated to, accept, respond or inquire with follow-up questions regarding the comments received.

Once the Study of Desirability and Convenience (Business Case) is approved, the Board of Directors of the Authority will appoint the Partnership Committee, which will be responsible to lead the Procurement Stage as required under the Act and the Regulation.

SECTION 5 – STAGE 3- PROCUREMENT STAGE

During the Procurement Stage, the Authority will decide whether to enter into a direct negotiation with the Proponent or moving the project forward into a competitive procurement, if one of the following criteria in Section 7.1 (vi) [-Unsolicited Proposals] of the Regulation 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.

The Procurement Stage aims to result in a fair market Partnership Contract that protects the public interest.

The Partnership Committee will define the procurement path based on a set of criteria for assessing whether to enter into direct negotiations or move into a competitive process as discussed below.

If a competitive process is implemented, the Proponent shall be granted with a benefit or competitive advantage to be determine by the Partnership Committee. The rest of the steps in the competitive procurement shall be consistent with the requirements set forth in the Act and the Regulation. If the Unsolicited Proposal moves towards direct negotiations, the Partnership Committee and the Proponent will follow the procedures set forth in the Act, the Regulation and the Direct Negotiation Protocol that will guide and document the exclusive nature of this process or in another guideline document that may be developed by the Authority, the Participating Government Entity, and the Proponent to manage negotiations.

The Partnership Committee will recommend a Preferred Proponent when the proposal evaluation of a competitive procurement is completed. Alternatively, if a direct negotiation is pursued, the Partnership Committee will recommend moving forward with a Partnership Contract negotiated with the Proponent.

Figure 4 illustrates the process flow for the procurement stage.

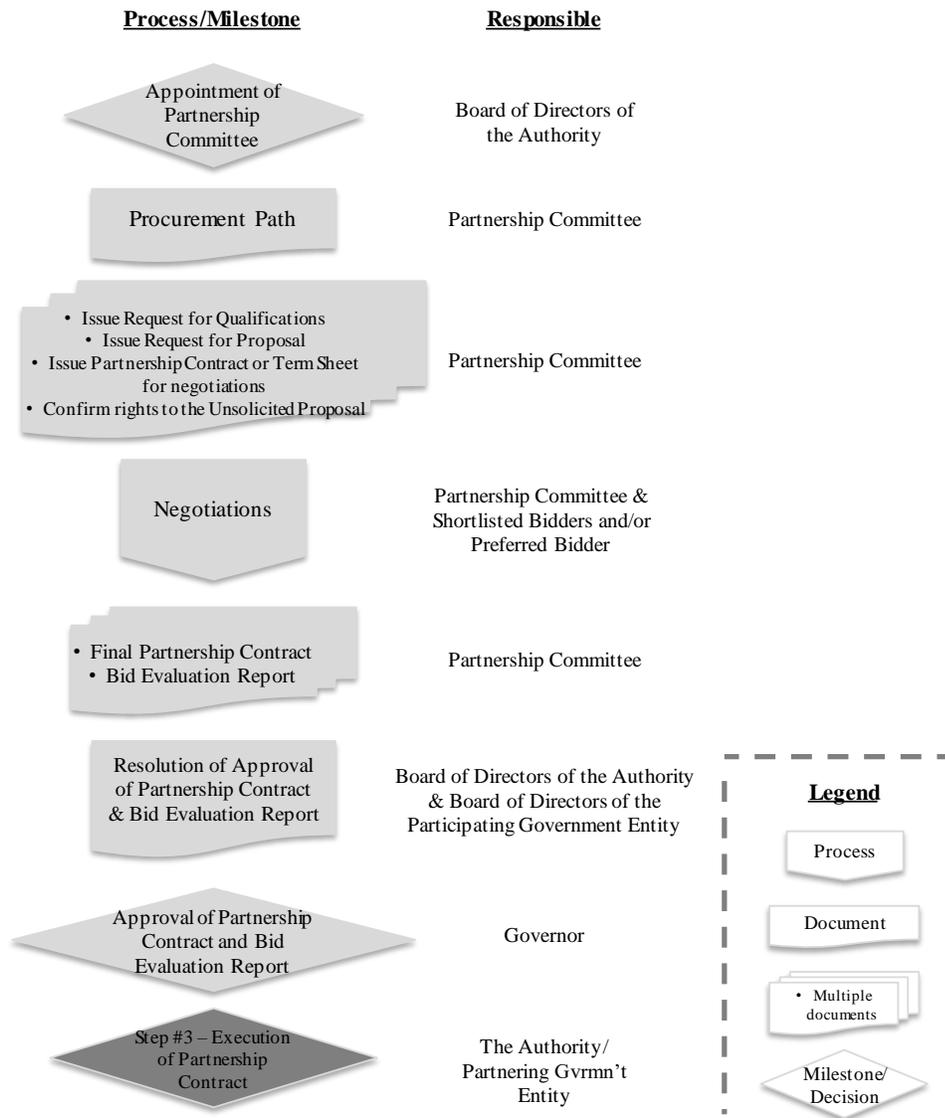


Figure 4. Process flow diagram for the procurement stage

5.1 Basis for Procurement Decision

Based on the Study of Desirability and Convenience, the Partnership Committee Meeting will identify a preliminary procurement path for the project (direct negotiation or competitive process) considering the overall interest of Puerto Rico. A competitive procurement will be the preferable option for the Authority. A direct-negotiation could be considered in those cases where the complexity of the project and/or the proprietary nature of the solution proposed by the Proponent and/or the lack of market interest/competition justify this approach.

7.1 (vi) [-Unsolicited Proposals] of the Regulation, the Partnership Committee will help the Authority to assess whether to enter into direct negotiations, or alternatively implement a competitive procurement.

In addition to the criteria identified in the Regulation and depending on the type of project and its complexity, the Authority may consider complementary standards such as:

1. The uniqueness of the Unsolicited Proposal and the associated intellectual and/or real property rights, not referring to innovation exclusively but also to the actual proprietary component of the project:
 - a. The project may not be implemented without the use of the Proponent's intellectual property.
 - b. The Proponent owns real property rights (could also include airspace, long-term leases, mining rights, easements, and other rights over land) on or near the site of the project and those property rights are unique, and cannot be expropriated while being necessary for the development of the project.
2. The lack of market competitiveness:
 - a. Based on appropriate market testing during the Project Development and Structuring stage, it is determined that a lack of private sector interest exists due to any reason (small project scale, fragmented or incomplete market of suitable partners, remote location, political risk, among others).
 - b. Is it beyond doubt that there is only one proponent that can meet an agency's well-defined needs due to the monopolizing nature of the project/sector.
3. The cost of procurement under a competitive process:
 - a. Based on the appropriate studies, reviews, and industry outreach, it is deemed that the estimated value or investment associated to the Partnership Contract may be very low relative to the cost of conducting a competitive procurement process.

When defining the procurement path for an Unsolicited Proposal, the Authority, by means of the Partnership Committee, shall justify its decision based upon the following guidelines in this order of prioritization:

- 1) Unsolicited Proposals that are deemed unique and innovative, and that build on intellectual and/or real property rights may be suitable for direct negotiation with the Proponent.
- 2) Unsolicited Proposals that are deemed to have lack of market competitiveness and a high cost of the procurement under a competitive process may be suitable for direct negotiation with the Proponent.
- 3) Unsolicited Proposals that do not show any of the characteristics/scenarios described above may not be suitable for direct negotiation with the Proponent and

should be procured competitively.

5.2 Competitive Procurement

In addition to the considerations on Section 5.4 of the Regulation, the Authority, at its own discretion, may follow this outline for the issuance of an RFQ, as an initial step in the procurement process:

1. Purpose of the RFQ: provide the final goal of the RFQ, including a description of the project, its background, the site and location, general technical outputs and specifications, among others.
2. Project Company Responsibilities: in addition to delivering the project, it should include a high-level description of the main terms and conditions of the Partnership Contract, as well as the general scope of responsibilities of the parties involved. Also, it may help to include some preliminary commercial and financial key terms and a general description of the procurement process.
3. Submission Requirements: documentation that the RFQ response should include, including exhibits and forms, date and place of submittal, submittal procedures, etc.
4. Clarifications and Communications Protocol: procedures or guidelines that will govern the interaction between prospective respondents and the Authority, including (i) the way to communicate (e.g., via email), (ii) the deadline to submit questions or request for clarifications, (iii) the deadline for the Authority to provide clarifications by means of a written document delivered to all respondents without expressly identifying the originator, (iv) the use of addenda that could change, modify, amend or waive the requirements of the RFQ, and/or (v) disclosure considerations about commercially sensitive or confidential inquiries, which at the Authority's absolute discretion, could be answered either to the prospective respondent that submitted the commercially confidential inquiry or -if of general application- to all the prospective respondents.
5. Process and Schedule: summary schedule of the major milestones associated with the procurement process, such as (i) date of issuance of the public notice of the RFQ, (ii) pre-proposal conference call, (iii) deadline for prospective respondents to submit clarifications to the RFQ, (iv) deadline for the Authority to release responses to the clarification requests, (v) deadline to submit RFQ responses, and/or (vi) estimated date for notification of shortlisted respondents. The dates and milestones will be subject to change and may be revised through the issuance of addenda to the RFQ.

In addition to Unsolicited Proposals, the Authority, at its own discretion, may use these RFQ guidelines for Priority Projects, as well.

Similarly, for the issuance an RFP the Authority may consider, at its own discretion, the following outline:



1. Project and Procurement Background: project objectives and considerations with emphasis on the risk matrix and risk allocation, the Project Formulation Agreement draft, in case of a soft-bid process, and the Partnership Contract draft.
2. Procurement Schedule and Proposal Submission: clear explanation of the procurement method, communication protocols, access to project documentation and due diligence, Q&A timeline and procedures, amendment process, One-on-One meetings (if allowed), etc.
3. Proposal Content: Proponent’s administrative information, technical Proposal, financial Proposal, Governmental forms, confidential and proprietary information, validity period, submittal procedures, etc.
4. Evaluation Criteria and Process: description of the evaluation committee, evaluation guidelines, scoring process, RFC (Request for clarifications), revisions, among others.
5. Selection of Selected Proponent and Negotiations: no obligation to select, exclusive negotiation agreement, permits and approvals, environmental considerations, Agency approval, etc.
6. Protest Procedure and Puerto Rico P3 Authority disclaimers and rights.

The Authority in its sole discretion may decide to launch a Request for Qualifications/Proposals (“RFQ/P”), instead of launching a two-step process depending on the complexity and type of the project and the availability of information that the interested parties have provided the Authority to support a RFQ/P.

As per Article 9 (b)(ii) [-Procedure for the Selection and Award] of the Act and Section 7.1 (vii) [-Unsolicited Proposals] of the Regulation, the Proponent shall be invited to participate in the selection process and will be granted an advantage or other benefit in the selection process. 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.

In addition to the advantages or benefits currently identified in Section 7.1(vii) of the Regulation, the Authority at its own discretion and considering the nature of the proposed project could consider prioritizing other elements when a competitive procurement is pursued. To that extent, the Proponent could be granted with one of the following advantages or benefits. The table below defines these advantages and identifies the high-level criteria that the Authority may consider to determine which benefit should be granted. The Partnership Committee will determine in the (1) RFQ, (2) RFQ/P and/or (3) RFP the advantage or benefit to be granted to the Proponent, which may be one or more of the following:

Advantage	Definition	Applicability criteria
Bid bonus	The Proponent will receive a bonus or premium in the evaluation of its proposal in response to the RFP.	<ul style="list-style-type: none"> • Unsolicited Proposal is likely to be unique, but there is the potential for market alternatives. • Authority acknowledges first mover advantage of the Proponent.
Minority interest in the project	The Proponent will have the right to retain a minority ownership interest in the Partnership, if it is not successful in the competitive procurement.	<ul style="list-style-type: none"> • Unsolicited Proposal contains certain unique features (e.g., intellectual property rights or real property rights). • The Authority recognizes the innovation and initiative from the Proponent.
Unsolicited Proposal development fee	If the Proponent is not awarded, it will receive a fixed amount of pre-agreed proposal development cost to be paid out of the proceeds of the transaction by the winning bidder.	<ul style="list-style-type: none"> • Unsolicited Proposal is likely to be unique, but there is the potential for market alternatives. • Authority perceives potential for competition and market alternatives.

- (a) Bid bonus:
- i. The Proponent will receive a bonus or premium in the evaluation of its proposal.
 - ii. The Request for Proposals will determine the bid Evaluation Criteria, their weightings, and the Proponent’s bonus, which will not represent more than ten percent (10%) of the overall scoring.

and/or

- (b) Right to keep a minority interest in the Partnership project company:
- i. The Proponent will have the right to retain a minority ownership interest in the Partnership that will develop and manage the project, if it is not successful in the competitive procurement.
 - ii. The Request for Proposals will determine the percent stake that the unsuccessful Proponent could retain, which may not exceed ten percent (10%) of the equity of the Partnership responsible for developing and managing the project, as well as other requirements such as lock-in term for the Partnership’s equity structure.



and/or

- (c) Unsolicited Proposal development fee:
 - i. If the Proponent is not awarded with the Partnership Contract, it will receive a fixed amount of pre-agreed proposal development cost.
 - ii. When determining the amount of the proposal development cost, the Authority may take into account factors such as: the costs incurred by the Proponent, appropriately documented, and the value of the intellectual property contained in the Unsolicited Proposal and that would be transferred to the Government and, subsequently, to the successful alternative bidder to the extent the Proponent is willing to negotiate it, among other factors.
 - iii. The development cost will be paid out of the proceeds of the transaction by the winning bidder.

The rest of steps in the competitive procurement shall be consistent with the requirements set forth in the Regulation and the Act.

5.2.1 Preparation of Competitive Procurement

The Authority, by means of the Partnership Committee, will seek to complete a series of procurement preparation tasks prior to launching a competitive process. As part of these efforts, the following activities may be undertaken:

1. conduct market sounding, request for information or testing to confirm the findings and recommendations from the Study of Desirability and Convenience (Business Case);
2. develop a final risk allocation and commercial structure for the project;
3. develop a comprehensive term-sheet for the Partnership Contract;
4. develop procurement documentation, including a Request for Qualifications and a Request for Proposal, that should include the Evaluation Criteria; and
5. gather relevant due diligence information and organize the information in a data room that can be efficiently shared with potential bidders.

5.3 Direct Negotiation

- a) In certain instances, the Authority may choose to enter into a Direct Negotiation with the Proponent rather than moving the project forward into a competitive procurement.
- b) As set forth in Article 9 (b)(ii) [-Procedure for the Selection and Award] of the Act and Section 7.1 (vi) [-Unsolicited Proposals] of the Regulation, the Authority shall not be required to carry out a selection process under Section 9(b)(i) of the Act (competitive procurement) with respect to a proposed project 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 Board of Directors of the Authority that justify it.
- c) If the Authority decides to enter into a Direct Negotiation with the Proponent, per Section 7.1 (viii) [-Unsolicited Proposals] of the Regulation, the following steps are required prior to initiating the negotiation process:
- (1) collect the necessary information to have the criteria to evaluate the Unsolicited Proposal and verify if any other parties are interested in submitting a similar proposal; and
 - (2) publish on its website a summary of the essential elements of the Unsolicited Proposal, with a description of the essential elements of the Proposal, and invite interested parties to submit proposals within the timeframe included therein that shall not exceed one hundred twenty (120) days
- d) If the Authority receives responses to the invitation within the established timeframe, the Authority shall invite the 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)(i) of the Act (competitive procurement). If no response is received within the established timeframe, the Authority shall initiate Direct Negotiations with the Unsolicited Proponent.
- e) The Direct Negotiation will be exclusive in nature and documented throughout a Direct Negotiation Protocol that will be executed between the corresponding public agency (Authority, Participating Government Entity or other) and the Proponent.
- f) The Direct Negotiation Protocol will be executed prior to commencing the direct negotiation process between the Authority and the Unsolicited Proponent. The Direct Negotiation Protocol will guide and document the exclusive nature of this process and shall include the following elements:
1. criteria the Authority will use to evaluate and approve the final terms of the Partnership Contract;
 2. milestones and timeframe for completion of the Direct Negotiation, which should determine a tenor (i.e.: 12 months) flexibility to allow extensions (i.e.: up to 3 extensions of 6 months each);
 3. communication protocol between the Authority and the Proponent;
 4. rights and obligations of the Authority and the Proponent, including reimbursement of incurred costs (if applicable);
 5. management of potential conflicts of interest;

6. requirements associated to selecting and awarding the major subcontracts on a competitive basis, and requirements related to confidentiality, intellectual property, and/or disclosure (including of the Partnership Contract); and
 7. potential outcomes of the Direct Negotiation, including conditions that may lead to termination of Direct Negotiations.
- g) The Authority shall seek opportunities to enhance transparency and competition, if direct negotiations with the Proponent are pursued. For instance, although the Proponent may have exclusive rights to develop the project granted by means of a Direct Negotiation, the Authority may request to tender competitively specific elements of the project (e.g., equipment, systems, construction works, maintenance), depending on the sub-market(s) competitive availability.

5.4 Stage 3- Approval and Execution of the Partnership Contract (commercial close)

Per Section 9(g) [- Approval of the Partnership Contract] of the Act and Section 9 [- Contract Award] of the Regulation, the Partnership Committee will seek the appropriate approvals of the Partnership Contract from the Board of Directors of the Authority and the Board of Directors of the Partnering Partnership Entity, prior to submit it to the Governor or the executive officer to whom he delegates for approval.

If the Partnership Contract is approved, the Procurement stage will end when the Authority or the Partnering Government Entity executes a Partnership Contract with the successful selected proponent or the Proponent.

Once the Partnership Contract is executed (commercial close), the private partner assumes responsibility for executing the financing (financial close) as well as for delivering and implementing of the project.

SECTION 6 – MISCELLANEOUS

6.1 Confidentiality

- a) All Proposals submitted to the Authority and/or the Partnership Committee shall become the property of the Authority and the Partnership Committee except for documents or information submitted by Proponents which are trade secrets, proprietary information or privileged or confidential information of the Proponent 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.
- b) If a Proponent has special concerns about confidential or proprietary information that it would desire to make available to the Authority or the Partnership Committee prior to submission of its Proposal, such Proponent may wish to: (i) make a written request to the Authority for a meeting to specify and justify proposed confidential or proprietary documents; (ii) make oral presentation to the Partnership Committee’s staff and legal counsel, as applicable; and (iii) receive written notification from the Partnership Committee, accepting or rejecting confidentiality requests. Failure to take such precautions prior to submission of a Proposal may subject confidential or proprietary information to disclosure under Articles 9(f) [– 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 and/or the Partnership Committee.
- c) The Authority and the Partnership Committee will endeavor to maintain the confidentiality of any information that a Proponent indicates to be proprietary or a trade secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order. The Authority and/or the Partnership Committee shall determine whether or not the requested materials are exempt from disclosure. In the event the Authority and/or the Partnership 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 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 or the Partnership Committee under these Guidelines.
- d) Once the Governor or its designee 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.

- e) Each member of the Partnership 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 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.

6.2 **Publication**

Unless otherwise provided in the Act or the Regulation, or decided by the Authority, these Guidelines shall be made public and posted in the Authority's website.

6.3 **Approval**

The Board of Directors of the Authority approved these Guidelines on January 24, 2019.

6.4 **Effective Date**

These Guidelines shall become effective on February 8, 2019.

APPENDIX A – SUBMISSION PROCESS CHECKLIST

The checklist below provides a summarized guideline of all information necessary for the submission of Unsolicited Proposals.

SUBMISSION PROCESS CHECKLIST		
#	Required Element	Description
1	Unsolicited Proposal Document, or similar	See Appendix B
2	Examples of Supporting Data Sources (Eligibility Criteria)	See Appendix C
3	Review Fee	Nonrefundable, nonnegotiable five thousand dollars (\$5,000) payment for each Unsolicited Proposal.
4	Unsolicited Proposal narrative document	Standalone document with a length of no more than twenty-five (25) pages, where the Unsolicited Proposal is described in further detail. It should address the Eligibility Criteria as well as other items of the Unsolicited Proposal that may be unique or beneficial to the citizens of Puerto Rico. It should be appended to the Unsolicited Proposal Submission Document.
5	Recipient	The Unsolicited Proposal shall be directed to the attention of the Executive Director.
6	Proposal Signature	The Unsolicited Proposal must be signed by an authorized representative of the Proponent.
7	Electronic Submission	The Unsolicited Proposal it must satisfy the requirements set forth in the of Electronic Transactions Act of Puerto Rico (Act No. 148-2006, as amended).
8	Filing Format	Except for Unsolicited Proposals filed electronically, each copy shall be bound and shall be contained in one volume, to the extent practicable.

APPENDIX B – UNSOLICITED PROPOSAL SUBMISSION DOCUMENT

Private entities interested in submitting an Unsolicited Proposal must provide the information requested below. These entities may decide to either fill out this format or use a similar outline with their corporate letterhead and ensure that they provide the information sought below.

As part of the Unsolicited Proposal submission, the Authority seeks to receive a standalone document with a length of no more than twenty-five (25) pages, where the Unsolicited Proposal is described. When developing this document, the Authority recommends to provide clear and succinct narrative that addresses the Eligibility Criteria as well as other items of the Unsolicited Proposal that may be unique to it. This document, and any additional information that the Proponent may include, should be appended to the Unsolicited Proposal Submission Document.

Section 1- Proponent	
Name of Company/ Consortium:	
Type of Organisation/ Consortium:	
Address:	
Contact person(s) & details:	
Date of Submission:	



Section 3- Eligibility Criteria – Provide a description (up to 200 words per criterion) of how the project would meet each Eligibility Criteria

#1- Alignment with existing Public Sector priorities

The Unsolicited Proposal should include supporting evidence that it is consistent with Puerto Rico’s capital improvement plan and/or other public sector priority plans. This entails considering among other elements:

- a) Is the Unsolicited Proposal compatible of the governments goals, plans, and priorities?
- b) Does the project address a demonstrated need or satisfies a service needed?

#2- Proprietary information associated with innovation

The Unsolicited Proposal should have intellectual property and/or moral rights that distinguish it from other business opportunities. This entails considering among other elements:

- a) Is the Unsolicited Proposal based on genuinely innovative idea(s) or are there any market precedents?
- b) Does the Proponent own proprietary software/technology/trade-secret/patent/license/property rights that offers a unique benefit?



#3- Project size and complexity

The Unsolicited Proposal should consider a project with an appropriate combination of size and complexity, so a private delivery is potentially feasible and beneficial. This entails considering among other elements:

- a) Does the size of the project justify the development and transaction costs that will be incurred if pursuing a Partnership Contract?
- b) Does the market (the private sector companies) have technical and financial capacities to deliver the project?

#4- Economic benefit

The Unsolicited Proposal should produce net economic benefits and positive impact on the community and the environment. This entails considering among others:

- a) Is there sufficient evidence to determine whether the Unsolicited Proposal could generate financial benefits for the government?
- b) Do the communities within the area of influence of the project receive a better more effective solution for their needs?



#5- Risk allocation and funding mechanism

The Unsolicited Proposal should propose a risk allocation that optimizes the total project cost and a funding mechanism consistent with such risk allocation, in order to achieve commercial and financial viability:

- a) The risk allocation between the public sector owner and the private proponent entails considering among other elements:
 - i. Are risks identified and have been reasonably allocated?
 - ii. Is the Unsolicited Proposal valuable to the Government in terms of risk transfer?
 - iii. Does the Proponent have adequate capacity to accept and manage the transferred risks?
- b) The assessment of the funding mechanism vis-à-vis the risk allocation above entails considering among other elements:
 - i. Does the Unsolicited Proposal consider public sector affordability constraints consistent with Puerto Rico's fiscal discipline and appropriation process?
 - ii. Does the Proponent have adequate capacity to sustain financing requirements to deliver the project?

Section 4- Key Items – Provide additional information (up to 200 words per item) on the characteristics or the impact of the Unsolicited Proposal for the following items
Proponent’s financial strength and technical capacity to deliver the project, including experience and track record delivering similar projects
Commercial aspects of the project, including key preliminary project risks register and allocation
Proposed revenue model, estimated project costs, and financial plan of the Unsolicited Proposal, including potential revenue sources and, where available, estimates for those sources



Government support that may be required (i.e., funding support, legislative/regulatory amendments, permitting & approvals, other resources)

Preferred method for developing and procuring the project

Alignment with Puerto Rico’s capital improvement plan and/or other priority plans, and preliminary evidence that the Unsolicited Proposal does not duplicate publicly-led efforts

Documents marked as proprietary or confidential and areas considered to be intellectual property
Expected socio-economic benefits to the citizens of Puerto Rico, including supporting evidence how the proposal is in the public's best interests
Federal, state, local agencies, or other parties (stakeholders) that may be approached for the development and implementation of the Unsolicited Proposal and/or for potential funding of the project



Potential or actual conflict of interest, including all contact between the Proponent and Government Entity officials with regards to the Unsolicited Proposal

Section 5- Signature	
Name:	
Position:	
Authorized representative of:	
Signature:	
Date of Submission:	

APPENDIX C – EXAMPLES OF SUPPORTING DATA SOURCES (ELIGIBILITY CRITERIA)

When developing an Unsolicited Proposal, Proponents should be aware of the documents and sources information suggested by the Authority to assess and screen the Unsolicited Proposal against each Eligibility Criteria, as detailed below.

Alignment with existing Public Sector priorities

1. Alignment with Puerto Rico’s Economic and Fiscal Plan, as for example the plan approved by the Financial Oversight and Management Board for Puerto Rico.
2. Identification of how the proposal connects and supports sector strategy and any other linked projects.
3. Legal viability, based on expert judgement or preliminary legal analysis on the applicable regulatory framework.
4. Project stakeholder identification, including all public agencies, communities and groups of interest related to the proposed project.

Proprietary Information associated with Innovation

1. A general description of the software/technology/trade-secret/patent/license developed by the proponent and detailed explanation of its applicability in the proposed project.
2. All demonstrably unique elements to the proposal/proponent in term of financial arrangements, cost savings, location, productivity improvements and/or project outcome.

Project size and complexity

1. Technical feasibility study which should include an outline description, conceptual design and layout to clarify the purpose and intention of the unsolicited proposal, and how it will be developed and operated.
2. Description of the plan for construction and operation, including the possibility of securing quality in view of creativity, efficiency, and adequacy of costs.
3. Demonstration of the technical capability of the Proponent by providing examples of experience in developing, implementing and operating a similar project.

Economic Benefit

1. Social and economic impact assessment and public consultation to demonstrate the project is socially sustainable.
2. Environmental impact assessment, to show the proposal is in compliance with environmental laws and will not have negative externalities.
3. Comparison of economic costs and benefits, quantitative and qualitative, if possible, to show the proposed project would provide greater net economic



- benefit.
4. Implementation Plan - An indicative implementation plan, which is broken out by major milestones to explain how the unsolicited proposal will be delivered.

Risk allocation and Funding mechanism

1. Risks allocation:
 - a. Preliminary risk register in line with the proposed revenue model
 - b. All risks have been identified and preliminarily allocated between the owner and the proponent, while outlining and addressing all mitigation strategies.
2. Funding:
 - a. General outline of sources and uses for the proposed project.
 - b. Preliminary funding analysis identifying available sources aligned with the proposed project risk allocation.
 - c. Analysis of funding/financing benefit that the Public Private Partnership delivery will generate to be able to compensate the proponents' capital recovery and return on capital.

Revenue Models for Unsolicited Proposal

The Authority has identified the following revenue models for Unsolicited Proposals, which may apply to any Partnership Contract, but shall not be limited to:

1. Revenue Risk- The financial feasibility of the project fully relies on the commercial operation of the asset by means of tolls and/or tariffs that will be collected from users, therefore the project assumes demand risk as the mechanism to self-fund/finance the investment in upfront capital and/or operations and maintenance, including lifecycle.
2. Availability Payment- The financial feasibility of the project fully relies on periodic payments from the Partnering Government Entity that are based on a payment mechanism that considers the level and/or quality of service as well as the performance of the asset, per a set of measurable and observable contractual requirements. The payment received by the private partner is independent to the level of demand, thus depends on the compliance with those key performance indicators.
3. Hybrid Mechanisms- The financial feasibility of the project relies mostly on public/government resources, which fund upfront capital investments. Commercial revenue (e.g., tolls and/or tariffs) with demand risk embedded and/or performance-based availability payments cover cost components during the operating phase, such as operating cost, routine maintenance, and sometimes lifecycle/replacement investments.

Unsolicited Proposals with a need for support from public funding resources in excess of fifty percent (50%) of the total project cost or total project upfront capital investment, whichever is lower, will not be suitable to qualify as Unsolicited Proposals. Also, for the same project, a commercially viable proposal that does not rely on any public resources for funding will be prioritized over any other that require any public resources.

In addition to the information above, the Authority may request any additional existing information, such as recommendations and advice from experts, advisors, consultants and internal staff from the Government Entities or information from previous similar projects (benchmarks).