mczapata23@outlook.com

From: Mary C Zapata-Acosta
Sent: Wednesday, June 11, 2025 7:18 PM
To: Colón Ortiz, Josúe A. (AAPP)
Cc: Marilyn Roman-Morales
Subject: FW: Comments to Performance Service Agreement Contract - Emergency Temporary Power Generation
Attachments: Comments Performance ServiceAgreement ContractRFP3PPO-0314-20TPG.pdf; 6-11-25 Power Service Agreement Power Expectation.docx; Emergency Temporary Power Generation

Saludos, Josué

Para tu información, incluyo el email en el que le enviamos nuestros comentarios del Acuerdo de compra de energía a 3PPO. Estás copiado en dicho email. Además, incluyo email de solicitud de reunión a la Junta de Gobierno de la AEE, condicionada a que 3PPO conteste mañana antes de las 5:00 p.m. y podamos enviar los documentos a la Junta.

Nos dejas saber, si tienes alguna pregunta sobre este asunto.

Buenas tardes,

From: Magda Brito-Rivera <MAGDA.BRITO@prepa.pr.gov>
Sent: Wednesday, June 11, 2025 6:42 PM
To: mariela@recomspr.net
Cc: Mary C Zapata-Acosta <MARY.ZAPATA@prepa.pr.gov>; josue.colon@p3.pr.gov; ocarlo@carlolaw.com
Subject: Comments to Performance Service Agreement Contract - Emergency Temporary Power Generation

Good evening, Mrs. Quiñones:

Attached is a letter from Mary C. Zapata Acosta, Chief Executive Officer of the Puerto Rico Electric Power Authority, regarding Comments to Performance Service Agreement Contract - Emergency Temporary Power Generation-Reference RFP 3PPO-0314-20-TPG. Also, we include the Performance Service Agreement Contract.

We would appreciate your confirmation that you received this communication.

Cordially

Magda Brito-Rivera
Asesora Ejecutiva

ELECTRIC POW

PR

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PUERTO RICO
ELECTRIC POWER AUTHORITY
PREPA
GOVERNMENT OF PUERTO RICO

Mary C. Zapata Acosta
Executive Director

June 11, 2025

By Electronic Mail
Mariela@recomspr.net

Mariela Quiñones
Program Manager
Third-Party Procurement Office (3PPO)

Contract Evaluation-Power Expectation
Temporary Emergency Generation RFP

Re.: Comments to Performance Service Agreement Contract
Emergency Temporary Power Generation-Reference RFP 3PPO-0314-20-TPG

Dear Mrs. Quiñones:

PREPA has reviewed the above referenced contract and request the following comments be addressed for the contract to move forward and be presented before the PREPA Governing Board. Please see the revised version attached, Exhibit 1.

Currently, the Third-Party Procurement Office (3PPO) has recommended two suppliers. Given the expedited nature of this process, we request the formal adjudication letter to the sole participant that has met all the Puerto Rico Public-Private Partnerships Authority (P3) requirements and submitted the lowest cost proposal to the RFP be presented for our files.

First and foremost, it is essential to clarify that this Request for Proposal (RFP) is being conducted by your office at the explicit request of P3, as mandated by the Puerto Rico Energy Bureau. Accordingly, any mention of "non-negotiable terms" within your update must be accurately attributed to P3.

The following comments to the draft agreement sent on June 6, 2025, must be addressed:

1. Power Expectations Interconnection Plan with LUMA:

The plan must be formally approved by LUMA, with explicit authorization identifying the points of interconnection to the electrical grid and any other requirement.

2. Authorization of Genera PR as Administrative Entity:

Supporting documentation must confirm that Genera PR concurs with the viability of installation at the Aguirre and Costa Sur sites. It must also demonstrate that Genera PR has control or access to the necessary operational infrastructure, including storage tanks, pumps, physical space, containment systems, and truck access facilities.

3. Inconsistencies in the proposed Generation Capacity:

It is noted that the sum of the capacity of the proposed machines does not reach the total of 800 MW set out in the request for proposal. The total capacity reported also does not coincide with partial values of 600 MW for the Aguirre Plant or 200 MW for Costa Sur Plant. This discrepancy should be clarified with a detailed table that breaks down the capacity of each generating unit and how these add up to the proposed total.

4. Evaluation of the Business Plan by 3PPO:

3PPO must validate the business plan presented by the proponent in order to determine that the proposed model is economically viable. This includes verifying that the proponent has the necessary financial capacity to meet the commitments established in the agreement with the PREPA and that the business structure is sustainable over time.

Also, 3PPO must ensure that there is no operational nor contractual risk for PREPA since, if the proposed business model is not economically viable, there is the possibility that the proponent during the term of the contract determines that it cannot continue with the execution of the project. This could result in a unilateral default or early termination of the contract, leaving the PREPA without access to the required generation resources. Therefore, the need for 3PPO to rigorously verify the financial viability of the proponent before proceeding with the final award or with the formalization of the agreement is reiterated.

5. Proponent Documentation Request:

In the text of the agreement, reference is made to notes to draft on several pages where the proponent indicates that they are unaware of uncertain documentation or content that is part of the proposed agreement. These observations must be addressed prior to the signing of the contract in order to ensure that the contracting party has the opportunity to review, evaluate, and, if necessary, request clarifications or amendments to said documentation. This process is essential to ensure transparency, mutual understanding, and informed consent between the parties.

6. Clarification on Classification of Expenses Under the Bankruptcy Settlement:

In section 12.1 of the agreement, entitled "Warranties and Representations," the second paragraph states that the expenses incurred under this agreement will be covered as "current expenses" under the bankruptcy agreement. This statement must be expressly validated by the legal and financial team handling bankruptcy matters in order to ensure that such classification is correct and applicable. This validation is essential to protect the legality of the agreement, avoid future challenges or disputes, and ensure that the financial commitment that is made is not subject to the bankruptcy process.

7. Request for Model Invoice Pursuant to Section 9.2:

The proponent is requested to submit a model invoice that clearly reflects the provisions of this section of the agreement. The model must detail the proposed billing structure, including the items to be invoiced, units of measure, frequency, payment terms, and any breakdowns required as stipulated in that section.

It is recommended that Power Expectations include a sample of the invoice they intend to submit under the agreement, so that PREPA may evaluate its adequacy and ensure that all necessary information required for payment processing is included. This review will help confirm that the format and content of the invoice meets PREPA's administrative and financial requirements, facilitating timely and accurate processing of payments.

8. Attachment 36 – Review of Insurance Language:

We suggest including the insurance language included in the draft that appears consistent with previous PREPA contracts. It is recommended that this be shared with the proponent for formal acceptance to ensure clarity and compliance. See draft agreement attached.

9. Confirmation of Attachments as an Integral Part of the Agreement:

It should be clearly stated that the attachments identified in the text of the agreement, particularly those listed at the end of the document, constitute an integral part of the contract. These attachments must be regarded as binding and complementary documents, and their content shall carry the same legal weight and effect as the main body of the agreement. It is recommended to include an explicit clause affirming this integration to prevent any ambiguity in contractual interpretation.

10. Incorporation of Government and Federal Clauses into the Agreement:

The Government Clauses set forth in Exhibit G and the Federal Clauses set forth in Exhibit H shall be incorporated into and made part of the main body of the Agreement. These clauses must not remain solely as referenced exhibits but should be fully integrated into the contractual text as Article 37 and Article 38, respectively.

As a result, the current General Article 37 in the document shall be renumbered as Article 39 to preserve the proper sequence and structure of the Agreement and to ensure all terms are enforceable within the operative sections of the contract.

PREPA formally requests that the Final Report—including 3PPO's conclusive recommendation on the Temporary Emergency Generation RFP, clarifications to all PREPA comments referenced above, and the Final Draft Agreement—be submitted by Thursday, June 12, 2025, at 5:00 PM. This is necessary to allow PREPA sufficient time to present the documents to the Governing Board for its review and to obtain authorization for contract execution.
We appreciate your prompt attention to this matter.

Cordially,

Mary C. Zapata Acosta, PE
Executive Director

c Josué Colón Ortiz, Executive Director, P3A; Josue.colon@p3.pr.gov
Osvaldo Carlo, Esq. President RECOM; ocarlo@carlolaw.com