Procurement Manual



Version 1

June 30, 2023

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I. Introduction

A. Purpose and Applicability

The purpose of this Manual is to document the procurement policies and procedures that Genera PR LLC ("Genera") will use when procuring goods and services as agent for the Puerto Rico Electric Power Authority ("PREPA") under the authority of the Puerto Rico Thermal Generation Facilities Operations and Maintenance Agreement ("O&M Agreement") dated as of January 24, 2023, among PREPA, as owner of the Legacy Generation Assets ("LGA"), the Puerto Rico Public Private Partnerships Authority ("P3A"), as Administrator, and Genera PR as Operator of PREPA's LGA. Any summary or description in this Manual regarding Genera's responsibilities under the O&M Agreement is only intended to provide clarity on the way that Genera employees will conduct their responsibilities under that agreement. This Manual does not apply to contracts not involving an exchange of money, or donations.

This Procurement Manual was prepared, approved and adopted in accordance with the substantive and procedural requirements of (i) the Public-Private Partnership Authority Act, Act No. 29-2009 of the Legislative Assembly of Puerto Rico, as amended ("Act 29") which provides the legal framework for the creation and development of public-private partnerships agreements, (ii) the Puerto Rico Electric System Transformation Act, Act No. 120-2018, of the Legislative Assembly of Puerto Rico, as amended ("Act 120") which authorizes PREPA to conduct any PREPA Transaction (as defined thereunder) and to enter into Partnerships or Sales Contracts (as defined thereunder) in relation thereto and also designates P3A as the sole government entity authorized to and responsible for implementing the public policy on PREPA Transactions (as defined thereunder) conducted in accordance with Act 120; determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives and principles established in the energy policy and the regulatory framework to be developed pursuant to Section 9 thereunder; and determining which PREPA Assets (as defined thereunder) related to electric power generation shall be sold or transferred through Sales Contracts and also provides that contracts executed in connection with any PREPA Transaction may include exceptions or alternative procedures to statutory provisions, including those in the Puerto Rico Electric Power Authority Act, Act 83 of May 2, 1941, as amended ("Act 83"), deemed reasonable by P3A's Partnership Committee under the circumstances, to ensure the feasibility of the PREPA Transaction; and (iii) Section 4.2 (p) of the O&M Agreement.

This Manual governs all purchases by Genera under the authority of the O&M Agreement without regard to whether federal funds are used for the purchase and is compliant with applicable Commonwealth of Puerto Rico and federal statutory and regulatory requirements for purchases funded by federal grants.

This Manual is to be applied in concert with any other applicable policy established by Genera *for its operations as agent for PREPA*. In the event of a conflict between the terms of this Manual and the Genera's other policies, the more restrictive requirement applies. To the extent that the requirements of Commonwealth law applicable to PREPA are more restrictive than the requirements in this policy, the more restrictive requirement applies. For the avoidance of doubt, consistent with the O&M Agreement, to the extent that this document differs from the PREPA Procurement Manual or the procurement manual issued by any other PREPA agent in the fulfillment of the other agent's responsibilities, the other procurement manual(s) do not apply to Genera. Similarly, this Procurement Manual does not apply to PREPA's own procurements or the procurements by any other PREPA agents.

B. Contracting Principles

1. Competitive, Transparent and Fair Procurement

Genera is committed to integrity and accountability in the procurement processes. We prioritize competitiveness, transparency, and fairness. Our transparent procedures, along with clear evaluation criteria and impartial decision-making, foster healthy competition and trust among stakeholders. By adhering to these principles, we aim to maximize value for our organization and the communities where Genera operates

2. Acquisition of Unnecessary or Duplicative Items

Genera will avoid the acquisition of unnecessary or duplicative items. In furtherance of that goal, contracting actions should:

a. Expend funds for current and reasonably expected needs and avoid acquisition of unnecessary or duplicative items.

b. Include written justification for the purchase of goods or services in the Procurement File before the initiation of any procurement process.

c. Consider consolidating or breaking out procurements to obtain a more economical purchase. However, “project splitting”—breaking up a larger procurement merely to bring it under the micro purchase ($10,000) or Simplified Acquisition Threshold ($250,000) —is not permitted.

d. Consider, where appropriate in Genera’s judgement, lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

3. Economy of Scale

To encourage favorable pricing, Genera should seek to purchase the full quantity of goods or services necessary to fulfill the approved scope of the subgrant at the time of the procurement. Where the acquisition of goods or services is divided into multiple procurements from the same vendor, the total anticipated cost must be used to determine the method for each procurement.

II. Definitions

A. "*Best Value*" Best Value shall be understood as the most advantageous combination of the total cost and quality needed to meet Genera's requirements. Best Value may not necessarily mean the lowest cost, but provides the greatest overall benefit in response to the requirements.

B. *"Cardinal Change"* is a significant change to an existing contract that is beyond the scope of the original contract; causes a major deviation from the original purpose of the work or the intended method of achievement; or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

C. *"Competitive Proposals"* is a method of vendor selection that provides Full and Open Competition and includes the issuance of a Request for Proposals ("RFP") and the negotiation of contract terms.

D. *"Competitive Sealed Bidding"* is a method of vendor selection that provides Full and Open Competition without negotiation and is initiated by the issuance of a written Invitation for Bids ("IFB").

E. *"Conflict of Interest"* means a real or apparent personal or organizational conflict of interest. A personal conflict of interest may arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these persons (other than a public agency/organization in which he or she is serving as an officer, director, trustee, partner, or employee), has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An organizational conflict of interest may arise where, because of its relationship with a related entity such as a parent, affiliate, or subsidiary, an entity submitting a bid or proposal is or appears to be unable to be impartial with regard to decisions that might affect the related organization. (See Section X for more information on Conflict of Interest.)

F. *"Emergency"* means a threat to life, public health, or safety, or improved property or some other form of dangerous situation that requires immediate action to alleviate the threat and the use of competitive procurement proposals would prevent the timely acquisition of goods or services needed to respond to or lessen the harm from the threat or dangerous situation. Emergencies do not require a declaration of emergency by the Governor or President, and such a declaration by the Governor or President does not automatically create an emergency for the purposes of triggering Emergency procurement procedures in this Procurement Manual.

G. *"Exigency"* means a situation that demands immediate aid or action, where there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and use of competitive procurement proposals would prevent the urgent action required to address the situation.

H. *"Full and Open Competition"* means allowing bidders and offerors to compete for contracts on an equal footing, ensuring that no restrictions are placed on procurements of goods or services that may unduly limit competition. Examples of prohibited or undue restrictions that prevent Full and Open Competition include but are not limited to:

1. Allowing prohibited conflicts of interest, including allowing companies that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals to compete for such procurements. These companies must be excluded from bidding.

2. Imposing prohibited geographical preferences. Genera will not impose state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where Puerto Rico law or applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this Section preempts applicable federal or state law, including but not limited to Puerto Rico licensing laws. When contracting for architectural and engineering ("A/E") services, Genera may use geographic location as a selection criterion provided the limitation leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. Placing unreasonable requirements that either favor or disqualify certain prospective offerors.
4. Requiring unnecessary experience.
5. Requiring excessive bonding.
6. Supporting non-competitive pricing practices between firms or between affiliated companies.
7. Issuing non-competitive solicitations or contracts to persons or firms on retainer contracts (or currently under another contract) that was not procured in compliance with this policy or where the award is not for property or services specified for delivery under the scope of the retainer contract.
8. Specifying only a "brand name" product instead of allowing for "an equal" product to be proposed and describing the performance of relevant requirements of the procurement. Similarly, specifying a preferred item is a form of a brand name only specification. It is not permissible unless there is an appropriate justification as to the need of the specific item.
9. Any arbitrary action in the procurement process, e.g., unfairly restrictive time limits for a potential vendor to respond to a request.

I. "Infrastructure": Solely for the purposes of determining applicability of the Build America, Buy America Act (Public Law 117-58 §§ 70901-52) ("BABAA"), the term "*Infrastructure*" is defined at § 70912(5) of BABAA.

J. "*Micro Purchase Threshold*" is defined at 2 C.F.R. § 200.1 is $10,000 as of April 1, 2023 if a higher amount is approved by federal agency in accordance with 2 C.F.R. § 200.1, the amount in this Manual will automatically increase to mirror any increases at 48 C.F.R. § 2.101.

K. *"Minor Discrepancies"* are defects or errors which do not materially affect the deadlines or process for submitting bids or proposals, or the price, quality, quantity or delivery schedule of the goods or services being procured.

L. *"Procurement File"* means all procurement documents, such as solicitations, proposals, evaluations, approvals, executed agreements, and contract deliverables. (See Section VI for Documentation maintained in the Procurement File.)

M. *"Project Officer"* means the person authorized to conduct a procurement for Genera PR.

N. *"Purchase Requisition"* means the form used to document micro purchase procurements and the required approvals and vendor information. The Purchase Requisition shall be attached to the invoice and made a part of the Procurement File. (See **Attachment 1** *Purchase Requisition Form*).

O. *"Responsible* means a person or entity that is a bidder, offeor, or vendor that has the capability, in all material respects, to perform fully the contract requirements, and the business

integrity and reliability that will assure good faith performance. A documented determination of responsibility with a basis for that determination will be saved in the Procurement File. (See **Attachment 5** *Contractor Responsibility Worksheet*.)

P. *"Simplified Acquisition Threshold"* is $250,000 as of April 1, 2023, but the amount in this Manual will increase automatically to mirror any increases made by the Federal Government consistent with the definition of this term in the Uniform Grant Administration regulations at 2 C.F.R. § 200.1.

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III. Methods of Procurement

A. General Rule

Transactions shall be conducted through Competitive Sealed Bidding or Competitive Proposals unless otherwise provided by this Manual. Goods and services shall be procured by Competitive Sealed Bidding where price is the sole determinative factor and through Competitive Proposals for Best Value based purchases. Competitive negotiation, where price is not an evaluation factor, but is instead reserved for negotiation with the selected vendor, is allowed only for Architecture and Engineering ("A&E") contracts. (See section VII(E).)

B. Informal Procurement Methods: Micro and Small Purchases

Though competition is encouraged in all purchases, the cost of a formal procurement in small purchases can outweigh its benefits. Accordingly, for purchases of goods and services below the Simplified Acquisition Threshold,[1] Genera will follow less formal procurement procedures.

1. **Micro Purchasespurchases less than or equals $10,000**
   a. Purchases of goods and services not exceeding the Micro Purchase Threshold may be made without Competitive Sealed Bidding or Competitive Proposals if the Project Officer considers the price to be fair and reasonable based on research, experience, purchase history or other information and documents the decision. A *Contract Cost or Price Analysis Worksheet* is available at **Attachment 4** to assist with the determination that Micro Purchase procedures apply, however, this Worksheet is not required for Micro Purchases.
   b. To the maximum extent practicable, the Project Officer should distribute micro purchases equitably among qualified suppliers. Only one quotation may be solicited if the price is considered reasonable and documented in the Procurement File.
   c. The basis for vendor selection must be documented in the Procurement File. In addition, the Project Officer will also document the determination regarding price, their determination that the contractor is Responsible and reason for selection if more than one vendor was considered. If applicable, the Project Officer will also document any determination that the otherwise lowest-priced vendor is not Responsible. For a complete list of the documentation requirements, see Section VI.
   d. Genera may authorize Micro Purchases through the vendor's invoice and the Purchase Requisition form (See **Attachment 1**).
   e. The Project Officer may, but is not required to, use the Small Purchase or Formal Procurement Methods.
2. **Small Purchases: Purchases in excess of $10,000, but no more than the Simplified Acquisition Threshold (currently $250,000)**
   a. Securing services, supplies, or other property which do not cost more than the Simplified Acquisition Threshold in the aggregate may be conducted without Competitive Sealed Bidding or Competitive Proposals. However, the Project Officer must obtain written price

[1] For purposes of this Procurement Manual, the dollar values relate to the aggregate amount of the specific or consolidated procurement for goods and/or services issued under a particular agreement, purchase order, work order, or scope of work under a defined period of time.

or rate quotations from at least three qualified sources. The Project Officer will determine whether the number of price or rate quotations received is adequate under the circumstances. The contracts should be fixed price or not to exceed T&M contracts with assurances that the scope of work can be completed for less than the Simplified Acquisition Threshold.

b. The Procurement File must include an independent estimate that the procurement is within the threshold to qualify for this type of procurement. The purchase amount, including any cumulative purchase order changes, may never result in an amount over the Simplified Acquisition Threshold.

c. The Project Officer must also document their determination that the contractor is Responsible and, if applicable, their determination that the otherwise lowest-priced vendor is not Responsible. For a complete list of the documentation requirements, see Section VI.

d. Purchases exceeding the Micro Purchase Threshold (currently $10,000) require a written contract.

e. The Project Officer may, but is not required to, use Formal Procurement Methods.

C. Formal Procurement Methods: Purchases above the Simplified Acquisition Threshold (currently $250,000)

1. The purchase of services, supplies, or other property in an amount expected to exceed the Simplified Acquisition Threshold must be documented in a written contract. Such contracts must be made through Competitive Sealed Bidding or Competitive Proposals. Genera must obtain bids or proposals from at least three qualified Vendors. See Section III(C)(2) below in the event at least three bids or proposals are not received.

   a. **Competitive Sealed Bidding** begins with the issuance of an Invitation for Bids (IFB) containing the solicitation requirements set out in Section IV below. When it is impractical to initially prepare a purchase description to support an award based on price, the IFB may request the submission of unpriced offers to be followed by an IFB that contains a complete, adequate, and realistic specification or purchase description. Public notice of the IFB is given at least ten business days before the date set for receipt of bids by posting on Genera's website, and optionally by publication in other media. In addition, bids and offers may be solicited directly from potential vendors, and the Project Officer must take the affirmative steps in Section VIII(A) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.
   Genera may permit a shorter posting period where appropriate in Genera's judgement. Evaluation of bids will be based on the requirements set forth in the IFB, which may include special qualifications of potential vendors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose which may be helpful in determining acceptability.
   After evaluating all bids, Genera may award to the lowest responsive and responsible bidder who is fully qualified and best suited among those submitting proposals, based on the evaluation factors included in the IFB.
   If procuring goods or services that will be funded in whole or in part by a HUD Community Disaster Block Grant, see the latest *Procurement Manual for the CDBG-*

DR Program issued by the Puerto Rico Department of Housing for further instructions regarding the bid process.

b. **Competitive Proposals** begins with the issuance of a Request for Proposals (RFP) containing the solicitation requirements set out in Section IV below. An RFP is typically designed to solicit a proposal to solve a stated problem or meet a stated need, versus purchasing a specific item. The proposal received is the product of the offeror's creative thoughts and provides the detailed approach and description of what is to be accomplished or produced, as well as a price for the services or goods to be provided.Public notice of the RFP is given at least ten business days before the date set for receipt of proposals by posting on Genera's website, and optionally by publication in other media. In addition, proposals may be solicited directly from potential vendors and the Project Officer must take the affirmative steps in Section VIII(A) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.

   Genera may permit a shorter posting period where appropriate in Genera's judgement.

   Genera will consider all evaluation factors specified in the solicitation documents and evaluate offers only on those factors. (*See* Section V on Evaluation.) Evaluation factors may not be modified after proposals have been submitted without re-opening the solicitation. If a contract will include options, Genera will evaluate proposals for any optional quantities or periods contained in the solicitation if Genera intends to exercise those options after the contract is awarded.

   Selection shall be made of one or more offerors that are deemed to be responsive, Responsible, and are fully qualified and best suited among those submitting proposals based on the evaluation factors included in the RFP. The initial selection process may but is not required to include informal interviews with offerors.

   After evaluating all evaluation factors in the RFP (including price) Genera may, but is not required to, establish a competitive range of offerors whose proposals have a reasonable chance of being selected for award and invite the offerors within the competitive range to submit "best and final" cost proposals. Genera shall select the offeror which, in its opinion, has made the best proposal and/or offers the Best Value (consistent with the RFP) and shall award the contract to that offeror, documenting the basis for selecting that offeror.

   Notice of Intent to Award (See **Attachment 10** *Notice of Intent to Award*) will then be sent to all offerors.

   Negotiation of contract terms may be conducted with the selected offeror(s). However, if Genera and the most qualified offeror fail to agree on contract terms, Genera may conduct negotiations with the next most qualified offeror. If necessary, Genera will conduct negotiations with successive offerors in descending order until a contract award can be made or Genera decides to cancel or reissue the solicitation.

2. Awards may be made to more than one offeror only if the RFP notified all potential offerors that Genera may make multiple awards.

3. Pre-qualification:

In addition to the Formal Procurement Methods, Genera may require vendors to prequalify before submitting bids or proposals in individual procurements or categories of procurements. Pre-qualified lists are not contracts, they simply aid in the procurement of future contracts by documenting the qualification of prospective contractors in advance of procurements and contract awards.

Prequalification shall be based on criteria related to that which is to be procured and are designed to solicit vendors fully capable of performing the anticipated contract. The Project Officer will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure Full and Open Competition. Genera will not preclude potential bidders from qualifying during the solicitation period.

D. Non-competitive Procurements

1. When a contract will be funded in whole or in part with Federal funds, non-competitive procurement may only be used when one or more of the following circumstances apply:

a. The aggregate dollar amount of the property or services does not exceed the Micro Purchase Threshold.

b. The product or service is only available from a sole source based on a good faith review of available sources. Examples of situations where goods and/or services may only be available from a sole source include:

i. The offeror demonstrates a unique or innovative concept or capability not available from another source.

ii. No other product provides equivalent or similar benefits.

iii. There is no possibility of competition from other dealers or distributors (e.g., there are patent or data rights restrictions that would preclude competition).

iv. The contractor is already performing work for Genera and transitioning to a new vendor would create a substantial duplication of costs that is unlikely to be recovered through competition.

v. Equipment compatibility.

c. An Exigency or Emergency need for the requirement does not permit sufficient time for a formal competitive procurement.

i. A Presidential emergency or major disaster declaration under the Stafford Act is not alone sufficient.

ii. The procurement shall be conducted with such competition as is practical under the circumstances.

iii. Use of this exception is only permissible for goods or services specifically related to the Emergency or Exigency circumstance.

iv. Use of this exception is only permissible during an actual Emergency or Exigency circumstances. Upon awarding a non-competitive contract, Genera will begin the process of competitively procuring similar goods and services to transition to the competitively procured contracts as soon as the actual emergency or exigent circumstances cease to exist. Typically, Exigency or Emergency conditions exist

when there is a widespread lack of power, transportation, and/or communications. Such conditions usually last up to 30 days, but may extend longer after catastrophic events. For example, once power and communications are restored such that normal business operations resume, Genera will transition from sole source to competitive procurement, and compete any needs that persist including those that were initially awarded under sole source conditions. For the avoidance of doubt, once Genera can perform competitive procurement it will initiate competitive procurement.

v. To limit the need for non-competitive procurements during a public Exigency or Emergency, Genera will identify the types of work that will be needed in the most common events anticipated for PREPA's generation system in such circumstances. These pre-disaster procurements and the resulting prepositioned contract will meet the requirements in this Procurement Manual for competitive procurement including those governing organizational conflicts of interest.

vi. In the event of a public Exigency or Emergency requiring resources not available through prepositioned contracts, the OCI process identified in Section --- does not apply during the time that Emergency or Exigency conditions prohibit competitive procurement. The exemption from the OCI process shall not exceed 30 days absent a written request with justification to P3A and COR3 and express written authorization from P3A and COR3.

vii. Contracts awarded during the public Exigency or Emergency period will have a contract term of 30 days or less, unless a longer period is approved by P3A and COR3, following receipt of a written justification from Genera explaining: (i) why the good or service will be required for a longer term; (ii) why the Exigency or Emergency is prohibiting competitive procurement; and, (iii) an estimate of time as to when Genera will be capable of resuming the competitive procurement process and replacing the contract awarded using this exception with a competitive award.

d. The federal awarding agency approved the non-competitive procurement in writing.

e. When Genera solicits responses from an adequate number of qualified offerors (which may be satisfied by posting on Genera's website and complying with the affirmative steps in Section I(B)) and fewer than three qualified and responsible offerors respond, Genera may proceed to award as a Non-competitive Procurement if competition is determined to be inadequate. Before using this exception:

i. Genera's solicitation efforts must be well-documented in the Procurement File.

ii. The Project Officer should review the solicitation and its publication to ensure that it did not unduly restrict or eliminate competition. In undertaking this review, the Project Officer may ask those firms solicited why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the Project Officer should evaluate whether to cancel the solicitation, change that specification toallow for more bids or offers, and re-solicit bids or offers.

iii. If using this exception, the Project Officer must also perform a cost or price analysis to demonstrate the reasonable cost of the goods or services.

2. Use of Noncompetitive Procurement procedures for federally funded procurements does NOT relieve the Project Officer's responsibility to:
    a. Include the required clauses in **Attachment 9** *Federal Contracting Clauses*.
    b. Include the Federal bonding requirements at 2 C.F.R. § 200.326 if the contract is for construction or facility improvement.
    c. Award only to a responsive and Responsible Offeror.
    d. Complete a written cost or price analysis to determine if the cost or price is fair and reasonable.[2] The written analysis must be provided to the MD Supply Chain, Supply Chain Director, Category Managers, and Planner Buyers as applicable for approval.
    e. Never award cost plus percentage of cost contracts.
    f. Use a Time and Material contract (see Section VII(B)(4) below) only if no other contract method is suitable, and if so, document that determination, include a ceiling price in the contract that the contractor may not exceed, and assert a high degree of oversight to ensure that the contractor is using efficient and effective methods of cost control. (See **Attachment 3** *Template Determination Regarding Suitability for Time and Materials Contracts*.)
    g. If less than three vendors respond to a Formal Procurement, ensure that the Procurement File contains information on the solicitation efforts undertaken and either cancel the solicitation and resolicit bids or proposals or document the reason for proceeding with a non-competitive award.

E. Limited Exceptions to Procurement Methods

1. When in the best interest of good administration, goods or services **that are not eligible for Federal Funding** may be procured through a non-competitive procurement when the total contract value does not exceed $2.5 million in the aggregate or if the total contract value exceeds $2.5 million but is less than or equal to $5 million in the aggregate and P3A provides its approval for any award in excess of $2.5 million. The request to P3A must be supported by written justification as to why it is in the best interest of good administration to use non-competitive procurement.
2. When the total contract value does not exceed $5 million, **the purchase is not eligible for federal funding**, and the purchase is for spare parts, accessories, equipment, or services required to support, maintain, repair, or provide for effective operation of previously supplied goods or contracted services, the Project Officer may use the Strategic Sourcing process in paragraph F below.

F. Strategic Sourcing.

1. Strategic sourcing is only available for procurements that meet the requirements of subparagraph E above, and procurements at or below the Micro Purchase Threshold.
2. Strategic Sourcing requires the issuance of an RFI, RFP, RFQ or Reverse Auction to selected suppliers to receive a preferred supplier contract. Preferred supplier contracts

[2] If the determination relies on comparison to a prior procurement, that procurement must have been a competitive one. The determination must also identify similarities in the goods, services, and costs in the prior procurement.

are awarded based upon the objective of securing the best balance of quality, price, service, and functional performance.

3. The strategic sourcing process includes the following steps:

   a. Pre-qualification. Prior to strategic sourcing, Genera may require suppliers to prequalify before submitting bids or proposals in individual procurements or categories of procurements. Pre-qualification will be performed by the Procurement Team through a formal or informal RFI. Prequalification shall be based on criteria related to that which is to be procured and are designed to solicit suppliers fully capable of fulfilling the anticipated contract.

   b. Solicitation Requirements. Bids will be solicited through the procurement platform. Where it is not possible to conduct the bidding through the platform, offline bids will be uploaded to the platform by the Procurement Team.

   c. Bid Evaluations. Bid evaluations will be conducted by the Procurement Team (commercial evaluation) in conjunction with the business (technical evaluation). Based on the evaluation, different offers shall be ranked in order of preference.

   d. Negotiations & Award. The Procurement Team may negotiate with one or more suppliers to obtain their best and final offers. The business in conjunction with the Procurement Team shall be responsible for making the award decision. The award will be communicated to the suppliers through the procurement platform.

   e. Documentation. Genera will maintain reasonable documentation as part of the procurement platform. This shall include (where applicable) –

      i. Purchase requisition
      ii. Scope of Work
      iii. RFP documents
      iv. Supplier bids
      v. RFP Evaluation Summary
      vi. Contract drafts and copy of the signed contracts.

   f. Contract Execution

      i. The Procurement team is responsible for reviewing supplier changes on commercial and business terms by coordinating with the respective Business as needed. They may further provide input/make updates to finalize terms and develop the contract document by coordinating across all teams involved and will also take the lead on facilitating all approvals.

      ii. Business Stakeholders will be responsible for reviewing the changes to business terms and ensuring compliance by providing a formal sign-off to the contract language as needed. They will provide support in completing any additional intakes required.

      iii. The Legal Team provides advice and counsel regarding the legal terms and the overall contract language. They will provide their final approval and sign-off to the contract draft.

      iv. No contract may be executed and no commitments to suppliers may be

made, formal or informal, until appropriate approvals are obtained, consistent with Generas internal delegations of authority.

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IV. Solicitation Requirements

A. Solicitation Documentation Requirements

All solicitation documents must meet the following requirements:

1. A clear and accurate description of the technical requirements for the good or service to be procured, including any unique capabilities or qualifications that will be required of the vendor. This description must not contain features which unduly restrict competition.
2. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if practical.
    a. Performance or functional specifications are preferred over detailed technical specifications except where appropriate in Genera's judgement to ensure functionality, such as for electronic equipment and systems that must meet certain performance criteria, including interoperability with other equipment or systems. A performance specification describes the outcome, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. When using performance specifications, the solicitation should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.
    b. Although a brand name may not be requested or required, when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which are required must be clearly stated.
3. All solicitations must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. If using an RFP to procure by Competitive Proposals, the solicitation should state whether Genera is reserving its right to award the contract to other than the lowest priced offerorand whether Genera intends to award one or more than one contract.
4. If applicable, solicitations must acknowledge Genera's use of grant funding for the contract in compliance with the terms of its financial assistance award and, when federal grant funding is involved, will notify prospective bidders/offerors that the applicable Federal grant contracting clauses will be required in the resulting contract. The solicitation may include the required Federal Contracting Clauses (**Attachment 9**).
5. Solicitations must also set forth the requirements related to contracting with small and minority businesses, women's business enterprises, and labor surplus area firms set forth in Section VIII (A), below.
6. Solicitations should state the type of contract that will be awarded. Cost plus percentage of cost contracts are prohibited. Fixed Price and Cost Reimbursement contracts are preferred. T&M contracts may only be used if justified. (See *Template Determination of Suitability for Time and Materials Contracts* at **Attachment 3**.)
7. If the Buy American Act (41 U.S.C. 8301-8305) applies to the purchase, Genera will comply.

8. When providing services onshore or offshore (including the "service" of delivery of Goods), the solicitation will require a vendor to make the following representations and warranties and deliver the following documents, as required by applicable law (terms capitalized, but not otherwise defined, shall have the meaning set forth in the O&M Agreement):

   a. Vendor represents and warrants that it does not have any outstanding debts for unemployment insurance, temporary disability or chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, workman's compensation with the State Insurance Fund, income taxes or sales and use taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center ("CRIM").

   b. Vendor shall deliver the certifications and sworn statement listed in Section IV(B) below.

   c. Vendor shall not violate, conspire to violate, or aid and abet the violation of any Anti-Corruption Laws. No funds transferred by PREPA to Vendor shall be transferred by Vendor, directly or indirectly, in violation of any Anti-Corruption Laws.

   d. Vendor is not a Sanctioned Person or is located, organized or resident in a Sanctioned Country.

   e. Vendor shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance with the Anti-Corruption Laws and Sanctions, promptly notify PREPA, via Genera, in writing if Vendor becomes subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws or Sanctions, at all times comply with all Applicable Law regarding non-discrimination.

   f. Vendor attests, subject to the penalties for perjury, that no Representative of Vendor, directly or indirectly, to the best of Vendor's knowledge, entered into or offered to enter into any combination, conspiracy, collusion, or agreement to receive or pay any sum of money or other consideration for the execution of the Agreement.

   g. Vendor shall inform PREPA, via Genera, at any time during the Term, if there are any material tax disputes with any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Vendor is not responsible under this Agreement, if any).

   h. Vendor shall inform PREPA, via Genera, at any time during the Term, it or its Representatives become aware that they are subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.

B. Required Certificates

The solicitation will require a vendor to provide the following certifications and any other as may be required under law from time to time. Please note, though this Procurement Manual is not subject to the Puerto Rico Office of Management and Budget requirements for membership in the Professional Services Providers Sole Registry ("RUP", by its Spanish acronym) or the Bidders Sole Registry ("RUL", by its Spanish acronym) vendors who provide evidence of current RUL or RUP registration are exempt from providing the documents listed in Section IV(B) below:

1. **Vendor Engaged in Business in Puerto Rico**
    a. Certificate of Incorporation, Certificate of Organization or Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State.
    b. Merchant Registration Certificate.
    c. Certificate of Good Standing issued by the Puerto Rico Department of State.
    d. Sales and Use Tax Debt Certificate.
    e. Income Tax Debt Certificate.
    f. Income Tax Return Filing Certificate
    g. Property Tax Debt Certificate from CRIM
    h. Child Support (ASUME) Debt Certificate
    i. Act 2-2018 Sworn Statement

2. **Vendor Not Engaged in Business in Puerto Rico**
    a. Certificate of Existence, issued by the relevant jurisdiction.
    b. Sworn Statement certifying no tax debts with Puerto Rico agencies.
    c. Sworn Statement certifying no ownership of property in Puerto Rico.
    d. Act 2-2018 Sworn Statement

C. Addenda

Genera may either remain silent or issue an amendment to address any Minor Discrepancies in the solicitation documents. The solicitation documents should provide that Genera may waive Minor Discrepancies in bids and proposals. Any amendments exceeding the level of a Minor Discrepancy (see “Cardinal Changes” below) prior to the receipt of offers shall be issued to all potential offerors. Any amendment exceeding the level of a Minor Discrepancy after the due date for offers will be issued to all offerors that have not been eliminated from competition.

D. Cardinal Changes

Drafting a new contract to include a Cardinal Change or revising an existing contract to include a Cardinal Change is equivalent to a non-competitive award. When determining whether a change is a Cardinal Change, the Project Officer should evaluate whether the change is within the general scope of the contract and within the scope of competition; if not, the contract should be canceled and re-solicited or the additional requirements should be met through a new procurement.

V. Evaluation of Submissions

A. Evaluation Panel

1. Genera will convene an evaluation panel for all competitive procurements, except for Emergency or Exigency procurements. The purpose of the evaluation panel is to verify that vendors and their offers satisfy the requirements of the solicitation documents and to evaluate offers according to the evaluation criteria predefined in the solicitation documents.
2. The evaluation panel should be a cross-functional team of subject matter experts that will consist of at least three individuals, preferably Genera employees. Evaluation panel members must evaluate all responsive proposals and if vendor interviews occur, must participate in all vendor interviews, or review taped interviews if they cannot attend. They may revise their scores as a result of the vendor interviews.
3. The evaluation panel will evaluate all offers consistent with the terms of the solicitation documents and prepare a written evaluation that addresses the technical aspects of each proposal. Either the Project Officer or the person designated by the Project Officer will conduct and document a cost or price analysis. The cost or price analysis will evaluate each offeror's cost or price proposal against the others, as well as the independent cost or price estimate that was developed before accepting bids or proposals.

VI. Documentation

A. All purchases must be documented in writing.

B. For all procurements, Project Officers shall document the procurement process that was followed and the basis for recommendations of particular vendors in the Procurement File.

C. For every procurement (including noncompetitive procurements below the Micro Purchase Threshold), the Project Officer must maintain the following documents in the Procurement File in sufficient detail to show the history of the procurement and the resulting contract (as applicable):

1. Initiating the Procurement:

a. Written justification for the purchase of the good or service.

b. Rationale for the method of procurement selected, i.e., micro purchases (not to exceed the Micro Purchase Threshold); small purchase procedures (not to exceed Simplified Acquisition Threshold); formal procurement (above Simplified Acquisition Threshold) using Competitive Sealed Biding or Competitive Proposals; or non-competitive proposals.

c. For purchass not exceeding the Micro Purchase Threshold, complete **Attachment 1** *Purchase Requisition.*

d. For non-competitive purchases, including all purchases made under III.E. **Attachment 2** *Non-competitive Procurement Justification Worksheet* must be completed with sufficient detail that a reasonable person unfamiliar with the circumstances can identify and understand the reasons for the non-competitive procurement.

e. Rationale for selection of contract type, i.e., fixed fee, cost reimbursement, time, and materials. If a time and materials contract is used, a completed *Determination of Suitability* must be included. (See **Attachment 3** for a *Template Determination of Suitability for Time and Materials Contract.*)

f. For formal procurements and awards above the Simplified Acquisition Threshold, conduct an independent cost estimate before receiving bids or proposals (See **Attachment 4**, *Contract Cost or Price Analysis Worksheet*.)

g. If applicable, documentation that an exception to the Buy American Act applies.

h. Approval to release the procurement by the MD Supply Chain, Supply Chain Director, Category Managers, and Planner Buyers as applicable.

2. Publicly Releasing the Procurement:

a. List of sources solicited.

b. Copies of published notices of proposed contract action.

c. Copy of the solicitation documents (IFB, RFP or other evidence of solicitation) including all addenda, amendments, requests for clarifications and all other documents issued in relation to the procurement.

d. Documentation describing the affirmative steps taken to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (See Section VIII(A) for the required affirmative steps.)

e. All bids/proposals received in response to the solicitation, including pricing.

3. Evaluating Bids/Proposals:

a. Documentation evidencing appointment of evaluation panel or description of how the contractor was selected.

b. The grading sheets and panel evaluations that apply the evaluation criteria in the solicitation documents, and reasons for rejection of any bid.

c. The cost or price analysis comparing the offerors' prices against the Independent Cost Estimate and any independent research on cost or price. (See **Attachment 4** for a *Contract Cost or Price Analysis Worksheet.)*

d. Determination that the contractor is Responsible. (See **Attachment 5** *Contractor Responsibility Worksheet.)*

e. Documentation confirming the good standing of the selected contractor (copy of search via www.sam.gov and applicable state and local lists). The Project Officer must verify a**ll prospective contractors through www.sam.gov.**

f. Completed Suspension & Debarment Certification (See **Attachment 6** *Certification Regarding Suspension and Debarment.*)

g. If the contract will exceed $100,000, a completed Byrd Anti-lobbying Certification (See **Attachment 7** *Byrd Anti-lobbying Certification and Disclosure Form.*)

h. If the contract is for Infrastructure and is funded in whole or part with federal financial assistance, a Completed Build America Buy America Self Certification (*See* **Attachment 8** *Build America Buy America Self Certification*). For more information on the Build America Buy America Act requirements, see Public Law 117-58 §§ 70901-52, Office of Management and Budget guidance as may be updated from time to time and FEMA's BABAA Guidance online.[1] Of note, BABAA requirements do not apply to FEMAs Public Assistance Program or Hazard Mitigation Grant Program, or HUD's Community disaster block Grant Program.

i. If applicable, documentation of compliance with the Buy American Act.

j. Documentation regarding any Conflict of Interest issues that arise and a description of how they were managed.

4. Award:

a. Notice of Intent to Award. (See **Attachment 10** *Notice of Intent to Award*.)

b. Bid, performance, payment, and other bond documents (if applicable).

c. Copy of contract.

d. Task Order(s) (if applicable). (See **Attachment 11** *Task Order*.)

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1 https://www/fema.gov/grants/policy-guidance/buy-america#:~:text=The%20Build%20America%2C%20Buy%20America%20Act%20(BABAA)%20requires%20all,project%20are%20produced%20in%20the.

D. The level of detail of the documentation included in the Procurement File should be commensurate with the size and complexity of the procurement.

E. Contract documents must be retained:

   a. For a period of three years from the date of contract termination for contracts that are not funded with grant funds; or

   a. The date that the pass through entity awarding the subgrant to PREPA submits its final expenditure report to the federal agency awarding the grant (see 2 C.F.R. § 200.334); or

   b. Five years after grant close-out with HUD for any procurement funded in whole or in part by a CDBG-DR grant or subgrant

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VII. Contracts

A. Cost or Price Analysis

1. The contract cost or price must be reasonable. The Project Officer must prepare an independent cost estimate *for all procurements.* The independent cost estimate must be completed before receiving bids or proposals. In addition, after receiving bids or proposals, the Project Officer will perform a cost or price analysis for every procurement action that is expected to exceed the Simplified Acquisition Threshold. A cost or price analysis is also required for contract modifications that exceed the Simplified Acquisition Threshold. The method and degree of the analysis depends on the facts surrounding the particular procurement. A *Contract Cost or Price Analysis Worksheet* is available at **Attachment 4.**
2. Because a cost estimate is required before pricing is negotiated, Project Officers should instruct contractors not to include pricing with change order proposals. Where a change order proposal includes pricing, the Project Officer will obtain a cost estimate from someone without knowledge of the contractor's price proposal.

B. Contract Types

1. Fixed Price

Provides a firm price that remains irrespective of the contractor's actual cost of performing the work, putting the risk on the contractor. It may include an economic price adjustment, incentives, or both.

2. Cost Reimbursement

Provides for payment of certain incurred costs and for the reimbursement of the contractor's reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. This type of contract must include a limit to the costs that a contractor may incur which cannot be exceeded without Genera's approval, except at the contractor's own risk. Examples include cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee contracts.

3. Contracts of Adhesion

Certain industry contracts or agreements may be subject to market research to determine cost reasonableness, but the provisions of the contract itself are not subject to negotiation. Examples include insurance policies and software as a service agreement. For non-federally-funded contracts, Genera should try to obtain, but may enter into such contracts of adhesion without, the representations set forth in section IV(A) and without all common provisions set forth in **Attachment 9**.

4. Time and Materials ("T&M") Contracts

Generally, use of T&M contracts will be limited to projects for which Genera cannot under the circumstances establish a clearly defined scope of work to be completed within a reasonable period of time.

a. Under T&M contracts (which term includes time and equipment contracts), the cost to PREPA is the sum of the actual cost of materials and direct labor hours charged at

fixed hourly rates that reflect wages, general and administrative expenses, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost.

b. T&M contracts are generally discouraged but may be unavoidable. Thus, *Genera will award and use such contracts only after a determination that no other contract is suitable and only if the contract includes a ceiling price to the purchaser that the contractor may not exceed*. The ceiling price must be reasonable and not so high as to render it meaningless as a cost control measure. (See **Attachment 3** *Template Determination of Suitability for Time and Materials Contract.*)

c. The Project Officer will exercise a high degree of oversight of T&M contracts in order to obtain reasonable assurance that the contractor is using efficient and effective cost control methods.

d. Genera will comply with the T&M Policy incorporated herein at **Attachment 12**.

5. Cost Plus a Percentage of Cost

The use of cost plus a percentage of cost and cost plus a percentage of construction cost contracts are ***prohibited***. Cost plus a percentage of cost contracts permit the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel) plus profit in the form of a percentage rate of actual costs.

C. Differentiating T&M and Cost Plus Percentage of Cost Contracts

T&M contracts require payment of labor costs at fixed hourly billing rates specified in the contract. These hourly rates include wages, indirect costs, general and administrative expenses, and profit. Materials must be billed at actual cost, and no additional fee for profit is allowed apart from what may be included in the fixed billing rate for hours of labor. In contrast, a cost plus percentage of cost contract applies a profit percentage to the total hourly labor and material charges.

D. Period of Performance

The Project Officer will use sound business judgment in establishing and extending a contract's period of performance which should not exceed the time necessary to accomplish the purpose of the contract.

E. Special Considerations for Architectural/Engineering Professional Services

1. Genera may use competitive negotiation procedures for qualifications-based procurement of architectural/engineering professional services whereby offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of architectural/engineering professional services. *This method cannot be used to purchase other types of services even though architectural/engineering firms may be potential sources to perform the proposed effort*.

2. If Genera and the most qualified offeror fail to agree on a fair and reasonable price, Genera may conduct negotiations with the next most qualified offeror. If necessary, Genera will

conduct negotiations with successive offerors in descending order until a contract award can be made to the offeror whose price Genera believes is fair and reasonable.

3. For contracts funded in whole or in part with funds from a subgrant from COR3, COR3 considers the following to fall within the scope of architectural / engineering services:

    a. Architectural or engineering services associated with design or construction of real property.

    b. Architectural or engineering services, as defined by Act 173 of August 12, 1988, and which Commonwealth law requires such services to be performed or approved by a registered architect or engineer.

    c. Other architectural or engineering services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

F. Contract Execution

1. No contract may be executed and no commitments to vendors may be made, formal or informal, until appropriate approvals are obtained, consistent with Genera's internal delegations of authority or other internal control mechanisms.

2. The Financial Oversight and Management Board for Puerto Rico ("FOMB") approval is required for contracts of more than $10,000,000.00.

3. P3A approval is required for contracts of more than $1,000,000.00 in any Contract Year or $3,000,000.00 in the aggregate.

4. PREB approval is required:

    a. Where Regulation 8815 (or other successor or similar regulation) applies;

    b. When the procurement impacts rate base or the funds to be expended are over and above the approved budget;

G. Post-Procurement Modification of Contracts

The amount payable to a vendor shall be as permitted by its contract and may not be increased without an amendment to the contract that justifies the increased payment. The Project Officer will be careful to avoid Cardinal Changes. Contract modifications above the Simplified Acquisition Threshold require an independent cost estimate and cost or price reasonableness determination.

H. Purchasing Agents

Genera may engage a purchasing agent to assist in the procurement of goods and services. The purchasing agent may assist Genera in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, negotiating contracts, and screening information about products. Purchasing agents may not legally bind PREPA and may not

issue contract awards or purchase orders. Use of a purchasing agent does not relieve Genera from complying with the requirements of this Manual.

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VIII. Other Topics

A. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Genera will ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided with every opportunity to compete for contracts.

1. Genera will perform and document compliance with the following affirmative steps:
    a. Place qualified small and minority businesses, women's business enterprises, and labor surplus area firms on solicitation lists and solicit these businesses whenever they are potential sources. The Project Officer shall research state and local lists of qualified small and minority businesses and women's business enterprises to update its solicitation list.
        i. A "small business" is independently owned and operated, not dominant in the field of operation in which it is bidding and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Chapter 21.
        ii. A "women's business enterprise" is (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.
        iii. A "minority business" is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
        iv. A "labor surplus area firm" is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the Department of Labor's Employment and Training Administration. The Department of Labor's list of labor surplus areas is available at https://www.doleta.gov/programs/lsa.cfm.
    b. When economically feasible, divide project requirements into smaller tasks or quantities to maximize participation opportunities for small and minority businesses and women's business enterprises.
    c. Establish delivery schedules, where practical, that encourage participation by small and minority businesses, and women's business enterprises.
    d. Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. This can be accomplished by searching the SBA's dynamic small business search site (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm) and contacting the local Minority Business Development Agency Business Center (See https://www.mbda.gov/mbda-programs/business-centers for location and contact information).

2. Genera will require that its contractors comply with the affirmative steps in paragraphs (a) through (d) above and will require subcontractors to do the same. To accomplish this, Genera will include the "Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms" clause in **Attachment 9** *Federal Contracting Clauses.*

B. HUD Section 3

When using HUD CDBG funds, Genera will also comply with the HUD "Section 3" requirements. See 24 CFR Part 135 and the HUD Section 3 clause in Attachment 9 for more information.

C. Construction and Facility Improvement Bonding

All procurements, contracts, and subcontracts for construction or facility improvements that exceed the Simplified Acquisition Threshold require, at a minimum, the following bonds:

1. A bid guarantee from each bidder is equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of their bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material for execution of the work provided for in the contract.

"Construction work" is the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

D. Contract Clauses for Contracts Funded in Whole or in Part with Federal Funds

Federally-funded contracts must contain the applicable provisions described in Appendix II to Title 2 of the Code of Federal Regulations (C.F.R.) Chapter 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. The required clauses as well as those recommended by the Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development with instructions for use, are contained in **Attachment 9** *Federal Contracting Clauses.*

IX. Proprietary and Confidential Information

A. Proposals submitted to Genera may contain proprietary information, and employees must maintain the confidentiality of such information, sharing it only on a need-to-know basis.

B. Employees with information about the weighting of evaluation criteria, the evaluation of vendor proposals and selection of vendors may not share such information with anyone outside of Genera, or with other employees who do not have a bona fide need to know. Nothing in this Manual is intended to restrict cooperation with audits or internal reviews by the Puerto Rico Comptroller's Office, P3A, or in the case of federal grants, the federal awarding agency, the Puerto Rico entity serving as pass-through entity, or the Comptroller General of the United States.

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X. Conflicts of Interest

A. No employee, officer, or agent of Genera may participate in the selection, award, or administration of a contract if he or she has a real or apparent Conflict of Interest.

B. Genera must exclude potential contractors that developed, drafted, advised, or supported Genera in developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements.

C. Genera's employees will act in accordance with any applicable rules regarding ethics or business conduct. Genera will conduct procurements free of conflicts of interest and in a manner designed to identify actual or potential personal and organizational conflicts of interest as early in the procurement process as possible. As soon as an actual or potential Conflict of Interest is discovered, Genera will consider action to avoid, neutralize, or mitigate such Conflict of Interest in compliance with **Attachment 13** - *Genera's OCI Avoidance and Mitigation Pla*n.

D. The Project Officer is responsible for identifying and reporting any apparent Conflicts of Interest. For formal procurements, the Project Officer is encouraged to address Conflicts of Interest by including the following provision in the solicitation documents:

> The proposal [or bid] must notify Genera if the vendor, or any of its principals, or any of its subcontractors or their principals, have an actual or potential personal or organizational conflict of interest. If an actual or potential conflict of interest exists, the proposal [or bid] must explain how it will be avoided or eliminated.

E. If a vendor notifies Genera of, or the Project Officer independently identifies, a mitigatable Conflict of Interest, Genera will consider action to avoid, neutralize, or mitigate such Conflict of Interest in compliance with **Attachment 13** - *Genera's OCI Avoidance and Mitigation Pla*n.

F. An unmitigated Conflict of Interest is prohibited.

XI. Dispute Resolution

A. Any vendor adversely affected by a contract award may submit a written request for reconsideration to Genera within five (5) business days from the Notice of Award Date.

B. The submission of a request for reconsideration does not require Genera to invalidate the award or stop performance under the award. Genera shall respond to the request for reconsideration within thirty (30) business days from filing, unless Genera notifies the disputing party that additional time is needed to respond. Genera's response does not need to explain all the considerations that led to the award or to the denial of a request for reconsideration.

C. All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:

1. The title and number of the solicitation under which the request reconsideration is made;
2. Full name, electronic address, and phone number of the alleged aggrieved party;
3. A detailed description of the specific grounds for the request and all supporting documentation; and,
4. The specific ruling or relief requested.

All requests for reconsideration shall be submitted electronically to the MD Supply Chain, Supply Chain Director, Category Managers, and Planner Buyers as applicable to the electronic mail address specified in the solicitation documents.

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XII. Recipient and Subrecipient Oversight

COR3 as the eligible FEMA-PA recipient, and P3A as Administrator of the O&M Agreement and PREPA as the eligible subrecipient have a responsibility to monitor Genera's performance as PREPA's agent. To ensure appropriate monitoring and oversight, Genera will provide quarterly briefings to P3A and/or PREPA on the following:

A. The number and nature of the entities in Genera's vendor registry;

B. New Federally Funded contract requirements that were identified since the last briefing;

C. The status of pre-award Federally Funded contracts;

D. The status of post-award Federally Funded contracts;

E. Any contracts awarded under Emergency/Exigent contracting procedures since the last briefing;

F. Problems or concerns with the implementation of this Policy.

ATTACHMENT 1

PURCHASE REQUISITION FOR PURCHASES Below Micro Purchase Threshold

Purchase Requisition for Purchases Below Micro Purchase Threshold	
Instructions: *This form is required for the purchase of goods and services below the Micro Purchase Threshold. Responses which require additional space should be attached and reference the specific paragraph.*	
Department:	**Date:**
1. Goods and/or Services Purchasing: *provide a complete description of the goods and/or services being purchased and the need for the purchase.*	
2. Vendor Name/Address:	**3. Vendor Bank Information:**
4. Total Cost: *must not exceed Micro Purchase Threshold in the aggregate.*	
5. Competition: *List vendors contacted, the prices provided and attach proposals received (if any).*	

6. Vendor Selection: *Describe the rationale for selecting the vendor.*

ACKNOWLEDGEMENT:

I am aware of the requirements to procure goods and services for PREPA and the criteria for justification and have gathered the required information and made a made a concerted effort to review comparable/equal goods and/or services, attaching the pertinent documentation hereto. This purchase complies with the Micro Purchase requirements of the Genera/PREPA Procurement Policy.

Preparer's Signature (may be electronic): _____

Printed Name and Title: _____

Date: _____

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ATTACHMENT 2

NON-COMPETITIVE PROCUREMENT JUSTIFICATION WORKSHEET

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. This method may be used only under the circumstances noted below pursuant to 2 C.F.R. § 200.320(c). If a non-competitive procurement method was used, indicate the applicable circumstance below. Attach additional documentation in support, if necessary.

Contractor Name (if known): _____

Contract Title/No.: _____

Brief description of the product or service to be procured:

_____

_____

_____

_____

_____

Expected dollar value: $ _____

Check all that apply:

_____ The aggregate cost of the goods or services sought is less than or equal to the Micro Purchase Threshold (Complete Purchase Requisition.)

_____ The item is available only from a sole source.

_____ The exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. A Presidential emergency or major disaster declaration under the Stafford Act alone is not sufficient.

_____ *In the attached document*, the federal awarding agency expressly authorized non-competitive procurement, the scope of which includes non-competitive procurement for this purchase.

_____ After solicitation of a number of sources, competition was determined to be inadequate.

_____ The goods or services are not eligible for Federal Funding and the total contract value does not exceed $2.5 million in the aggregate or if the total contract value exceeds $2.5 million but is less than or equal to $5 million in the aggregate and P3A provides its approval to any award in excess of $2.5 million, pursuant to III.E.

_____ The goods or services are not eligible for Federal Funding and the total contract value does not exceed $5 million, and the purchase is for spare parts, accessories, equipment, or services required to support, maintain, repair, or provide for effective operation of previously supplied goods or contracted services, pursuant to III.E.

Provide a detailed explanation as to why it is necessary to contract non-competitively.

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Describe the specific steps taken to determine whether competition is feasible. For example, if the item is available only from a sole source, attach market research or results from a solicitation which garnered only a single response.

Describe the results of any Conflict of Interest review conducted (or, if you did not complete a conflicts review, explain why not). If a Conflict of Interest is unavoidable, such as due to exigency or emergency circumstances, explain how it is was unavoidable and the steps taken to mitigate the impact of that Conflict of Interest.

Include any other pertinent information for the justification.

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Preparer's signature:[3] _____

Print Name and Title: _____

Date: _____

[3] Signature may be electronic.

ATTACHMENT 3

TEMPLATE DETERMINATION OF SUITABILITY FOR TIME AND MATERIALS CONTRACTS

All PREPA contracts must comply with the procurement standards of the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. §§ 200.318 through 200.327. Pursuant to 2 C.F.R. § 200.318(j), time and material or time and equipment contracts (collectively referred to as T&M) are to be used only under limited circumstances. As such, the Project Officer will complete this Determination Regarding Suitability for each T&M contract.

When serving as agent for PREPA, T&M Contracts are to be used only under limited circumstances. As such, this form is required for each T&M Contract entered into by Genera as agent for PREPA.

Contractor Name: _____

Contract Title and or Number: _____

Summary of anticipated Scope of Work: _____

_____

_____

_____

_____

_____

_____

It is determined that a T&M contract is warranted, and no other type of contract is suitable. The following existing facts and circumstances support this determination:

Confirm the Contract will comply with the following requirements:[4]

_____ The Contract will be a written agreement for the scope of work described above and contain the rates to be charged.

_____ The Contract will include a “ceiling price” or “not-to-exceed” clause that Contractor exceeds at its own risk.

_____ Contract will allow Genera to terminate for convenience if circumstances later allow a fixed-price, unit rate, or cost reimbursement type contract.

_____ Genera has performed and documented a cost or price analysis to demonstrate that the rates proposed by Contractor are reasonable and justifiable.

Contract Oversight Plan:

Genera will exercise a high degree of oversight of T&M contracts to ensure that the Contractor is using efficient and effective cost control methods, by (check all that apply):

[4] Preparer must initial all items.

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_____ The contract will include a “ceiling price” or “not-to-exceed” clause and hourly rates for anticipated staff.

_____ Work will be completed under a “task order” and must describe the specific services, the deliverables for such services, and the timeframe for which deliverables should be completed. Genera and the Contractor must sign each task order for it to be effective and the task orders will be incorporated into the contract.

_____ Obtain detailed invoices based on a predetermined schedule for services rendered. The invoices will include the individual’s name, title, hourly rate, total hour works, dates worked, and work performed.

_____ Limit travel expenses to those pre-approved by Genera with a “ceiling” or “not-to-exceed” amount and require Contractor to submit monthly expenses with supporting documentation.

_____ Hold regular status meetings at regular intervals: (daily/weekly/monthly/quarterly), which may be revised as needed.

_____ Additional oversight activities as described below:

_____

_____

_____

_____

Preparer’s signature:[5] _____

Print Name and Title: _____

Date: _____

_____

[5] Signature may be electronic.

ATTACHMENT 4

CONTRACT COST OR PRICE ANALYSIS WORKSHEET

BEFORE AND AFTER RECEIPT OF BIDS

Step 1: Develop Independent Cost or Price Estimate BEFORE Receiving Bids or Proposals

REQUIRED for all procurement actions that exceed the Micro Purchase Threshold.[2] An independent price or cost estimate can be established through reliance on a wide variety of research and/or data points. Check all that were used to formulate this estimate:

_____ Market research that identifies the median rate or price for a particular type of supply or service.

_____ Review of historical pricing including old proposals, bid tabulations, and invoices.[6]

_____ Interviews/discussions with experienced personnel, e.g., accounting, engineers, procurement staff, etc.

_____ Consideration of prior personal experience.

_____ Pricing paid by similar entities for similar work.

Due to emergency or exigent circumstances, a formal independent estimate could not be performed; however, an estimate was contemplated or discussed, based on the data points indicated above.

Other: _____

_____

_____

[2] An independent estimate must be prepared for procurements at or below the Micro Purchase Threshold, but use of this form for those contracts is voluntary.

[6] If the determination relies on a comparison to a prior procurement, that procurement must have been a competitive one. The determination must also identify similarities in the goods, services, and costs in the prior procurement.

Anticipated Scope of Work: _____

_____

_____

Attach the methodology used to develop the estimate and all supporting information.

Date: _____ Estimate: _____

Any Unique Considerations:

_____

_____

_____

_____

Preparer's signature:[7] _____

Print Name and Title: _____

Date: _____

[7] Signature may be electronic.

<u>Step 2</u>: Cost or Price Analysis Required After Receiving Bids or Proposals Exceeding the Simplified Acquisition Threshold[8]

After receipt of bids or proposals, either a cost or price analysis must be completed to confirm the pricing presented is reasonable. The method and degree of analysis is dictated by the facts, circumstances, and complexity of the procurement. At a minimum, each bid/proposal should be compared to each other and to the Independent Cost Estimate developed in Step 1 above.

Number of bids/proposals received _____

Scope of Work if different from that anticipated in the Independent Cost Estimate:

_____

_____

__

_____

_

A Price or Cost Analysis is Required

1. **Price Analysis**

   Less complex; involves the review of a proposed price without evaluating its separate cost elements and proposed profit. Used most commonly for commercial items or for Competitive Sealed Bidding procurements.

   Resources used; check all that apply:

   _____ Compared proposed prices received in response to the solicitation; Competitive Sealed Bidding requires at least three Responsible offerors/bidders and assumes no unusual actions that negatively impacted competition.

[8] The simplified acquisition threshold is set by the Federal Acquisition Regulation at 2 C.F.R. Subpart 2.1 and is $250,000 as of January 1, 2023.

_____ Compared historical proposed prices and contract prices with current proposed prices for the same or similar goods or services; can consider changes in quantity, delivery schedules, economy.

_____ Compared offer with competitively published catalog prices, published market prices, or similar indices.

_____ Compared proposed prices with independently developed price estimates and/or market research.

_____ Compared to prices set by law, regulation, FEMA's Equipment Rate Schedule, or Federal Supply Schedules.

OR

2. Cost Analysis

Includes evaluation of the separate cost elements (i.e., labor hours, overhead, materials, etc.) and proposed profit or fee in an offeror's proposal. Used most commonly when procurement is through Competitive Proposals, or Competitive Sealed Bidding with insufficient price competition. Also used to evaluate professional services procurements, including architectural and engineering services, and for contract modifications/change orders.

Necessary steps:

_____ Verified the individual cost elements add up to the total proposed price.

_____ Verified each cost item is necessary and reasonable for the required scope of work.

_____ Compared the costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates.

_____ Considered input from experienced personnel to assist in the analysis of hours, materials, and equipment proposed, quantities, tooling, testing, head counts, productivity, and similar factors.

_____ Consulted the resources referenced above for price analysis to the extent available to aid in confirming proposed pricing.

In any case where a cost analysis is performed, profit must be negotiated as a separate element of the contract price. For this, include documentation of any discussions with the contractor and confirm the anticipated profit allocation is reasonable. The complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates for similar work may be considered. **Hourly rates for T&M contracts should incorporate profit and overhead within the rate.** Cost-plus-percentage-of-cost contracts are prohibited.

<u>Step 3</u>: Assemble Documentation and Confirm Pricing is Reasonable

Attach documentation of the analysis performed and the resulting determination. All costs should be determined reasonable prior to proceeding. Proceeding without a determination that costs are reasonable may jeopardize federal reimbursement.

Reasonable Price Proposed: $_____

Contractor Name: _____

Preparer's signature (may be electronic): _____

Date: _____

Print Name and Title: _____

ATTACHMENT 5

CONTRACTOR RESPONSIBILITY WORKSHEET

Contracts may only be awarded to Responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. As demonstrated below, it is determined that _____ ("Contractor"):

_____ qualifies as responsible; or

_____ does not qualify as responsible.

1. **Contractor Integrity.** Considering available information attached to or contained within this justification, Genera is [check one]:

   _____ unaware of information that calls into question the contractor's integrity; or

   _____ is aware that the contractor has (check all that apply and attach supporting documentation):

	Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract;
	Violated federal or state antitrust statutes;
	Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion;
	Made false statements;
	Violated federal criminal tax laws or has delinquent federal or state taxes;
	Received stolen property;
	Committed any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;

	Been indicted for any of the offenses described above; or
	Has delinquent federal or state taxes.
	Other information that calls into question the contractor's integrity.

2. **Public Policy.** Genera has considered available information regarding the contractor's past and current compliance with:

   Equal opportunity and nondiscrimination laws prohibiting discrimination on the basis of race, color, creed, national origin, sex, disability, handicap, age, or limited English proficiency;

   The affirmative steps required for Federal contracts for ensuring that small and minority businesses, women's business enterprises, and labor surplus area firms are considered for all subcontracting; and

   Applicable prevailing wage laws, regulations, and executive orders.

   Genera is [check one]:

   _____ unaware of information that calls into question the contractor's compliance with public policy; or

   _____ aware of the following issues of concern:

   _____

   _____

   _____

   __

3. **Record of Past Performance.** (If requested in the RFP/IFB) Genera considered a contractor's past performance record, which can include consideration of whether the contractor has:

   Sufficient Resources - key personnel with adequate experience and subcontractors with adequate experience that will be performing work under the prospective contract.

   Adequate Past Experience - successful past experience in conducting similar work, including a record of:

- having the necessary organization, accounting, and operational controls;
- conforming to requirements and standards of good workmanship;
- forecasting and controlling costs and showing appropriate budgetary controls;
- adherence to schedules, including the administrative aspects of performance;
- reasonable and cooperative behavior and commitment to customer satisfaction;
- business-like concern for the interest of the customer; and
- meeting quality requirements.

Genera [check one]:

_____ has no concerns with the contractor's record of past performance; or

_____ is aware of the following concerns:

_____

_____

4. **Financial Resources.** Genera [check one]:

_____ has no concerns with the contractor's exiting cash flow, account receivables or other financial data or existing business prospects; or

_____ has the following concerns:

_____

_____

5. **Technical Resources**. Genera [check one]:

_____ has no concerns with the contractor's possession or ability to acquire the required construction, production, and/or technical facilities, equipment, employees, and other resources to perform the work under the contract; or

_____ has the following concerns:

_____
_

_

6. **Debarment and Suspension.** A debarred or suspended contractor is not a responsible contractor and is therefore ineligible to receive a contract award. Genera confirmed that:

   _____ the contractor is in good standing with the applicable state Secretary of State; and

   _____ has been vetted through centralized government debarment and suspension lists **including www.sam.gov** to ensure the contractor is not debarred or suspended from local, State, or federal programs.

7. **Conflicts of Interest**. A contract award may not be made to a contractor with an unmitigated Conflict of Interest. Genera confirmed that:

   _____ there are no actual or potential personal or organizational conflicts of interest; *or*

   _____ Genera identified the presence of an actual or potential Conflict of Interest and developed a tailored avoidance and mitigation plan as appropriate to the circumstances. A copy of the avoidance and mitigation plan is included in the Procurement File.

ATTACHMENT 6

CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

1. By signing below and submitting this proposal, Contractor certifies that:

    a. neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Puerto Rico or federal department or agency; and

    b. If selected, Contractor will not make any subaward or enter into any contract greater than $25,000, with parties that are debarred, suspended, or otherwise excluded or ineligible for participation in federal programs or activities.

2. If Contractor is unable to certify to any of the statements in this certification, it shall attach an explanation.

Signature: _____

Contractor Name: _____

Representative's Name: _____

Title: _____

RFP/IFB/Contract Number: _____

Date: _____

ATTACHMENT 7

BYRD- ANTI-LOBBYING CERTIFICATION AND DISCLOSURE FORM

(APPLICABLE FOR FEDERALLY FUNDED PROJECTS, ONLY)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction as required by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature: _____

Contractor Name: _____

Representative's Name: _____

Title: _____

RFP/IFB/Contract No.: _____ Date:_____

ATTACHMENT 8

BUILD AMERICA BUY AMERICA SELF CERTIFICATION

(APPLICABLE FOR CERTAIN FEDERALLY FUNDED PROJECTS, ONLY)

For FEMA financial assistance programs subject to the Build America, Buy America Act ("BABAA"), contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non- federal entity) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:

The undersigned certifies, to the best of their knowledge and belief, that:

The BABAA requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the _____ **[Project Name and Location]** ____ that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of [**Contractor's or Subcontractor's**] Authorized Official

_____

Name and Title of [**Contractor's or Subcontractor's**] Authorized Official

_____

Date

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ATTACHMENT 9

FEDERAL CONTRACTING CLAUSES

(APPLICABLE FOR FEDERALLY FUNDED CONTRACTS, ONLY)

Unless otherwise noted, the following contract provisions are required by the regulations at 2 C.F.R. Part 200 or by FEMA or HUD procurement guidance. ***Blue text is explanatory and not for inclusion in contracts.*** *Text highlighted in yellow indicates a word or phrase that may require revision to conform to the specific language of the contract. All provisions should be carefully reviewed and revised as appropriate for the contract at issue.*

1. REMEDIES

Required for all contracts in excess of the $Simplified Acquisition Threshold. It must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. There is no federally required language for this provision. The following is an example and may be negotiated:

If any work performed by the Contractor fails to meet the requirements of the Contract, any other applicable standards, codes, or laws, or otherwise breaches the Contract, PREPA via its agent, may in its sole discretion:

a. elect to have the Contractor re-perform or cause to be re-performed at Contractor's sole expense, any of the work which failed to meet the requirements of the Contract;

b. hire another contractor to perform the work and deduct any additional costs incurred by PREPA as a result of substituting contractors from any amounts due to Contractor; or

c. pursue and obtain any and all legal or equitable remedies.

This Section shall in no way be interpreted to limit PREPA's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

2. TERMINATION FOR CONVENIENCE

A Termination for Convenience clause is required for all contracts in excess of the Micro Purchase Threshold. It must address the manner by which termination will occur and the basis for settlement. The following is an example and may be negotiated but must conform to the specific circumstances of the Contract.

This Contract may be terminated at any time by mutual written consent of Genera and Contractor. Genera may terminate this Contract for its convenience immediately upon delivery of written notice to Contractor. Upon such termination, Contractor waives any claims for damages from the termination without cause including, without limitation, any and all consequential claims. The contractor's sole right and remedy shall be to recover payment for any authorized work satisfactorily completed through the termination date.

3. TERMINATION FOR CAUSE

A Termination for Cause clause is required for all contracts in excess of the Micro Purchase Threshold. It must address the manner by which termination for cause will occur and the basis for settlement. The following is an example that may be negotiated but must be modified if needed to conform to the specific circumstances of the Contract.

Genera reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:

a. The Contractor's improper, or inept performance of services under this Contract;

b. The Contractor's failure to comply with the terms and provisions of this Contract;

c. The Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete, and/or false in any way;

d. In Genera's sole discretion, if termination is necessary to protect the health and safety of its customers or clients;

e. If the Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or has a receiver or similar officer appointed for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or

f. The Contractor's inability to perform under this Contract due to judicial order, injunction, or any other court proceeding.

In the event of termination, Contractor shall release all work produced under this Agreement to PREPA, including but not limited to all licensed material under the Copyright and Data Rights Section below. PREPA may finish the work by whatever method it or its agent may deem expedient. In such cases, the Contractor shall only be entitled to receive payment for work satisfactorily completed prior to the termination date, subject to any setoffs due PREPA for its cost of completing the work and for reimbursement of damages incurred. If the expense incurred by PREPA to finish the work exceeds the unpaid balance on this Contract, the Contractor shall pay the difference to PREPA. If Genera makes a determination to hold the Contractor in default and terminate the Contract for cause and it is subsequently determined that Genera's default determination was improper, unwarranted, or wrongful, then any such termination shall be deemed for all purposes to be a termination for convenience with the same rights and obligations as provided in Section 2 of this Attachment. The Contractor agrees that it shall be entitled to no damages, allowances, or expenses of any kind other than as provided in this Contract in connection with such termination and does expressly waive any and all claims for consequential damages, loss of bonding capacity, destruction of business, unabsorbed home office overhead, lost profit and other such losses or damages.

4. EQUAL EMPLOYMENT OPPORTUNITY

This provision will not be required for every PREPA contract. ***It is only required for contracts or agreements and subcontracts for construction work that is paid for in whole or in part with federal funds.*** *As defined in 41 C.F.R. § 60-1.3, "construction work" is defined as follows:*

> *Construction work means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.*

If applicable, insert the following language required by 41 C.F.R. § 60-1.4(b):

During the performance of this contract, the contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

   Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to such labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor shall include, and require compliance by each of its subcontractors and vendors with, the provisions of these paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965. The Contractor will take such action with respect to any subcontract or purchase order as the Federal Emergency Management Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

PREPA further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

PREPA agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

PREPA further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the

Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, PREPA agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to PREPA under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from PREPA; and refer the case to the Department of Justice for appropriate legal proceedings.

5. **Compliance with HUD CDBG Labor Standards Requirements**

*This clause is applicable for all contracts **and subcontracts** funded with HUD CDBG funds, but not FEMA Public Assistance or Hazard Mitigation Grant funds.*

The terms of HUD form 4010 "Federal Labor Standards Provisions" apply and shall be deemed included as if restated in full herein. The terms in HUD Form 4010 include but are not limited to provisions requiring compliance with the following:

a. **The Davis-Bacon Act** (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. **The Copeland "Anti-Kickback" Act** (18 U.S.C. § 874, 40 U.S.C. § 3145) and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

   i. Subcontracts. Contractor shall insert in any subcontracts the clauses contained in subparagraphs (1) through (11) of paragraph (a) of HUD form 4010 and such other clauses as HUD may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

   ii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

HUD Section 3. If work to be performed under this contract will be funded in whole or in part with a HUD CDBG funds (including, but not limited to CDBG-MIT), the work is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing. If Section 3 applies, the Parties agree to comply with HUD's regulations in 24 C.F.R. part 75 that implement Section 3, including but not limited to inclusion of a HUD Section 3 clause in every subcontract subject to compliance with n 24 C.F.R. part 75, and taking appropriate action upon finding that a subcontractor is in violation of the requirements in 24 C.F.R. part 75.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

*This clause is required for all contracts **and subcontracts** of more than $100,000 that involve the employment of mechanics or laborers, and construction work. These requirements do not apply to the purchase of supplies, materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Section.

c. Withholding for unpaid wages and liquidated damages. PREPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, FEMA suggests including the following language:

e. Further Compliance with the Contract Work Hours and Safety Standards Act:

f. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

g. Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

This clause is only required if the grant will be used to contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work. This circumstance is not expected to occur in PREPA contracts. If this circumstance exists, Genera must insert the applicable clause at 2 CFR Part 200 and comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by the awarding agency.

8. COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

*Required for all contracts **and subcontracts** in excess of $150,000. The following is an example and may be negotiated.*

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

b. The Contractor agrees to report each violation to Genera and understands and agrees that Genera will, in turn, report each violation as required to assure notification to the Recipient, the Federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

c. The Contractor agrees to include these requirements in each subcontract exceeding $150,000.

9. SUSPENSION AND DEBARMENT

*This clause is required for all contracts **and subcontracts** for $25,000 or more; however, even lesser contracts may be awarded only to "responsible" vendors. The following is an example and may be negotiated.*

Federal regulations restrict PREPA from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration and contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared

ineligible under certain statutory or regulatory authority. Contractors can verify its status and the status of their principals, affiliates, and subcontractors at www.SAM.gov.

a. The Parties recognize that this Agreement is a covered transaction for the purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor has verified via the *Certification Regarding suspension and Debarment* form attached hereto at **Attachment 6**, that neither the Contractor nor its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Contractor shall promptly notify Genera of any changes to this certification during the term of this Agreement.

b. The Contractor shall comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction.

c. This certification is a material representation of fact relied upon by PREPA and its agent Genera. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

10. BYRD ANTI-LOBBYING AMENDMENT

*Required for all contracts **and subcontracts** more than $100,000. Contractors that apply for or bid on a contract award of $100,000 or more must file the required certification (see **Attachment 5** to the Procurement Manual). The following is an example and may be negotiated.*

Contractors and subcontractors who apply for or bid on a federally funded contract of $100,000 or more must file the required certification found at APPENDIX A, 44 C.F.R. PART 18. As such Contractor has verified via the *Byrd Anti-lobbying Certification and Disclosure* form attached hereto at **Attachment 7**, that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. If Contractor awards any subcontract of $100,000 or more under this Agreement, Contractor will collect a *Byrd Anti-lobbying Certification and Disclosure* form from each subcontractor and submit it to Genera. Contractor and its subcontractors subject to this requirement shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Disclosures will be forwarded to FEMA.

11. PROCUREMENT OF RECOVERED MATERIALS

*Required for all contracts **and subcontracts** more than $10,000.*

In the performance of this Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Contract performance schedule; meeting Contract performance requirements; or at a reasonable price. Contractor shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designated items is available at http://www.epa.gov/cpg/products.htm.

12. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

*This clause is required for all contracts **and subcontracts**. The following is an example and may be negotiated.*

a. Contractor *and its subcontractors* are prohibited from spending the proceeds of this Agreement on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons as set forth in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 ("McCain Act"), and 2 C.F.R. Section 200.216. Contractor and its subcontractors shall not use funds paid under this Agreement to fund the purchase, installation, or services of the telecommunications and video surveillance products or to contract with the entities prohibited by Section 889 of the McCain Act or 2 C.F.R. Section 200.216.

b. The Contractor shall insert the substance of this Section in all subcontracts and other contractual instruments resulting from this Agreement.

13. DOMESTIC PREFERENCES FOR PROCUREMENTS

*A domestic preference clause is required for all contracts **and subcontracts**. The following is an example and may be negotiated.*

a. As appropriate, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

b. The Contractor shall insert the substance of this Section in all subcontracts and other contractual instruments resulting from this Agreement.

14. BUILD AMERICA BUY AMERICA ACT

*This clause is required for Infrastructure contracts **and subcontracts** funded by **non**-disaster grants. It does not apply to contracts funded by disaster grants including FEMA's Public Assistance Program or the HUD CDBG-DR program. The following is an example and may be negotiated.*

a. This Agreement is funded in whole or in part with federal assistance, and is subject to the Build America, Buy America Act, 41 U.S.C. 8301 note ("BABAA"). The BABAA requires that all of the iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects be produced in the United States.

b. All iron and steel consumed in, incorporated into, or affixed to infrastructure in the performance of this Agreement must be produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

c. All manufactured products used in the infrastructure project must be produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

d. All construction materials used in the performance of this Agreement must be manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

e. Contractor has filed the Build America Buy America certification in the form at **Attachment 8** *and hereby acknowledges that it will collect this certification* with each bid or offer from subcontractors to this federally funded infrastructure project, unless Contractor is notified in writing that the domestic preference requirement is waived by [the applicable federal award agency]. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not comply with the BABAA domestic preference requirement. Such disclosures shall be sent to Genera who, in turn, will forward the disclosures to [the applicable Puerto Rico Recipient], who will forward the disclosures to [the applicable federal award agency].

15. ACCESS TO RECORDS

This provision is recommended by FEMA for all contracts. The following is an example and may be negotiated.

a. The Contractor agrees to provide PREPA, P3A, the Puerto Rico pass-through agency, the Federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The Contractor agrees to provide PREPA, the Puerto Rico pass-though agency, the Federal awarding agency, or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

d. PREPA and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal awarding agency or the Comptroller General of the United States.

16. CHANGES

FEMA recommends the inclusion of a changes clause that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The following is an example and may be negotiated.

No changes to this Agreement, including but not limited to the scope of work, Task Orders, or Ceiling price, shall be effective unless made in writing and signed by an authorized representative of each Party.

17. DHS SEAL, LOGO, AND FLAGS

Recommended for all contracts. FEMA's suggested language, with modifications is below:

The Contractor shall not use the Federal awarding agency's seal(s), logos, crests, or reproductions of flags or likenesses of the Federal awarding agency officials without specific pre-approval from the Federal awarding agency. The Contractor shall include this provision in any subcontracts.

18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

Recommended for all contracts. FEMA's suggested language, with modifications, is below:

This is an acknowledgement that Federal financial assistance will be used to fund all or a portion of this Agreement. The Contractor will comply with all applicable Federal law, regulations, executive orders, Federal awarding agency policies, procedures, and directives.

19. NO OBLIGATION BY FEDERAL GOVERNMENT

Recommended for all contracts. FEMA's suggested language, with modifications, is below:

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Genera, the Puerto Rico pass-through entity, the Contractor, or any other party pertaining to any matter resulting from the Contract.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Recommended for all contracts. FEMA's suggested language is below:

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

21. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Required for all contracts ***and subcontracts****.* ***This requirement should appear in the solicitation and the contract****.*

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

22. COPYRIGHT AND DATA RIGHTS

*If the contract will require a contractor **or subcontractor** to produce copyrightable material and/or data, include appropriate copyright and data licenses to meet obligations under 2 C.F.R. § 200.315(b) and (d). Work that is subject to copyright, or copyrightable subject matter, includes software and/or source code, pictures or images, graphics, videos, and architectural works.*

If the contract will not involve the creation of such material, this clause is not required. The following is an example and may be negotiated.

The Contractor grants to the Government of Puerto Rico, including PREPA, and the federal grant awarding agency

(the "Licensees") a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data, materials and other results and proceeds first produced in the performance of this contract ("Work Product") the right to reproduce, publish, or otherwise use Work Product, including the preparation of derivative works, to distribute copies to the public, and to publicly perform and display the Work Product. For data and materials required by the contract but not first produced in the performance of this contract ("Acquired Work Product"), the Contractor will identify and grant to the Licensees or acquire on their behalf a license in Acquired Work Product that meets requirements, as determined solely by PREPA or its agent, for the Licensees to use and to license others to use the Work Product and Acquired Work Product for all PREPA activities and for ongoing use, training, maintenance, and improvement of the resulting technology improvements. Work Product and Acquired Work Product shall include, but not be limited to, data, research, written reports or literary works, software and/or source code, pictures or images, graphics, audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to PREPA, in formats acceptable to PREPA, copies of the Work Product and Acquired Work Product.

ATTACHMENT 10

NOTICE OF INTENT TO AWARD

[DATE]

NOTICE OF INTENT TO AWARD

RFP No. ------

[Contract Title]

Genera announces its intent to award the contract for [Contract Title] to:

[NAME OF CONTRACTOR]

This Notice of Intent to Award is subject to execution of a written contract and, as a result does not constitute the formation of a contract between PREPA and the apparent successful respondent. The apparently successful respondent shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to PREPA, via its agent is executed. If the apparently successful respondent and PREPA are unable to negotiate and execute a contract, PREPA may revoke the award and award the contract to the next highest ranked respondent or withdraw the RFP. PREPA reserves the right to cancel this Notice of Intent to Award at any time prior to the execution of a written contract.

As stated in the RFP, all decisions of PREPA, including those made by its agent with respect to the RFP and resulting contract award are subject to the following dispute resolution procedures:

1. Any vendor adversely affected by a contract award may submit a written request for reconsideration to Genera within five business days from the Notice of Award Date.
2. The mere submission of a request for reconsideration will not paralyze the adjudication of the contested contract award.
3. Genera shall consider the request for reconsideration within 30 business days from filing, unless Genera notifies the disputing party that additional time is needed to prepare a final decision.
4. All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:
   a. The title and number of the solicitation under which the request reconsideration is made;
   b. Full name, electronic address and phone number of the alleged aggrieved party;

c. A detailed description of the specific grounds for the request and all supporting documentation; and,
d. The specific ruling or relief requested.

All requests for reconsideration shall be submitted electronically to Genera to the electronic mail address specified in the solicitation documents.

Thank you for participating in the competitive selection process. For information about this Notice, please contact [Name] at [email].

[DATE]

NOTICE OF INTENT TO AWARD

IFB No. ------

[Contract Title]

Genera announces its intent to award the contract for [Contract Title] to:

[NAME OF CONTRACTOR]

This Notice of Intent to Award is subject to execution of a written contract and, as a result does not constitute the formation of a contract between PREPA and the apparent successful respondent. The apparently successful respondent shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to PREPA, via its agent is executed. PREPA reserves the right to cancel this Notice of Intent to Award at any time prior to the execution of a written contract.

All decisions of PREPA with respect to the IFB and resulting contract award are subject to the following dispute resolution procedures:

1. Any vendor adversely affected by a contract award may submit a written request for reconsideration to Genera within five business days from the Notice of Award Date.
2. The mere submission of a request for reconsideration will not paralyze the adjudication of the contested contract award.
3. Genera shall consider the request for reconsideration within 30 business days from filing, unless Genera notifies the disputing party that additional time is needed to prepare a final decision.

All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:

a. The title and number of the solicitation under which the request reconsideration is made;
b. Full name, electronic address and phone number of the alleged aggrieved party;
c. A detailed description of the specific grounds for the request and all supporting documentation; and,
d. The specific ruling or relief requested.

All requests for reconsideration shall be submitted electronically to Genera to the electronic mail address specified in the solicitation documents.

Thank you for participating in the competitive selection process. For information about this Notice, please contact [Name] at [email].

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Osana Suarez Martinez
Camara

ATTACHMENT 11

TASK ORDER

WHEREAS, PREPA and [Contractor] (the "Contractor") are Parties to the [Contract title and number] dated as of [Effective Date] ("Agreement"), including all Exhibits and amendments to the Agreement; and

WHEREAS, PREPA has a need for Contractor to perform the Services described below ("Services");

NOW, THEREFORE, PREPA hereby authorizes the Contractor to provide the Services under the terms and conditions set forth herein and, in the Agreement, of which this Task Order becomes a part upon execution.

Task Order Number:	
Services Requested:	
Deliverables (e.g., reports, plans, estimates):	
Compensation / Rates:	PREPA shall pay Contractor for work performed in accordance with the rates and other compensation set forth in **Exhibit [#]** of the Agreement.
Not-to-Exceed Ceiling **(Required for hourly work):**	In no event shall Contractor's compensation under this Task Order exceed _____ Dollars ($_____.___) for services and _____ Dollars ($_____.___) for approved travel and related expenses. Contractor is at risk and must bear all costs and expenses that exceed this amount for work performed under this Task Order, without compensation or reimbursement by PREPA, unless PREPA and Contractor agree in writing to an adjustment prior to Contractor performing Services that would cause the price ceiling to be exceeded.

Invoicing:	Contractor must submit regular invoices to PREPA, via its agent Genera, consistent with the terms of the Agreement.
Start Date:	Contractor will commence work as soon as possible within 24 hours of signing this Task Order, unless otherwise indicated here:
Estimated End Date:	The estimated duration of work or end date is as follows: Contractor may request and PREPA may grant, at its discretion, an extension of the time to perform. Any request for an extension and denial or grant thereof must be in writing.

Designated Representatives. The Parties designated their representatives for day-to-day communications and other issues in the Agreement. Those individuals will remain the Parties' Designated Representatives for this Task Order unless alternate representatives are designated below:

PREPA Designated Representative:	**Contractor Designated Representative**:
Name:	Name:
E-mail:	E-mail:
Phone:	Phone:
Address:	Address:
_____	_____
_____	_____

Additional Requirements:	

Executed on the dates set forth below by the undersigned authorized representative of PREPA and Contractor to be effective upon signature by Contractor.

PREPA, via its agent Genera	[CONTRACTOR]
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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ATTACHMENT 12

Guidelines for Time & Material Contracts

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SECTION I INTRODUCTION

1.0 Applicability:

These Guidelines for T&M Contracts (“T&M Guidelines”) are to be used by Genera PR LLC (“Genera”), while acting as agent for the Puerto Rico Electric Power Authority ("PREPA"), when utilizing time and materials (“T&M”) or time and equipment contracts (“T&E”) (collectively referred to herein as "T&M") contracts to purchase or procure either or both third-party goods and services ("T&M Contracts") in connection with Genera’s operation and maintenance services (“O&M Services”) for PREPA’s Legacy Generation Assets (“LGA”), in accordance with the January 24, 2023 *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (the "O&M Agreement") among PREPA as Owner, the Puerto Rico Public Private Partnerships Authority (“P3A”) as Administrator, Genera as Operator of the LGA, and the *Genera Procurement Manual (the "PM"), as amended from time to time*. The T&M Guidelines are in complement to and provide additional information for how Genera will implement the T&M procedures contained in the *PM, as same may be amended from time to time*. Unless otherwise specified herein, all references to Genera herein, means Genera acting as agent for PREPA.

1.1 Policy:

Genera, while acting as agent for PREPA, a subrecipient of federal funding, must comply with certainFederal award requirements in 2 C.F.R. Part 200, and those referenced in Section 1.2 below, including that all costs incurred by it as agent are reasonable and well documented, that it must comply with the same policies and procedures for Federally reimbursable work as it uses for procurement of non-Federally reimbursable work, and that it must comply with the Federal requirements regarding T&M Contracts.

Although often needed following a disaster, in order to respond to major events, including all storm response, when activities are continually evolving, or in other situations where one is unable to anticipate costs with a reasonable degree of confidence, T&M Contracts are typically viewed by Federal agencies as failing to provide incentives to the contractor for cost control or labor efficiency. Accordingly, the use of T&M Contracts is permitted when:

A. No other form of contract is suitable, as determined by Genera exercising prudent industry practice;

B. The T&M Contract includes a ceiling price that the contractor exceeds at its own risk; **and**

C. Genera asserts a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

1.2 References:

2 C.F.R. Part 200, specifically §§ 200.317, .318, and .403

COR3 Disaster Recovery Federal Funds Management GuidePRDOH Procurement Manual for the CDBG-DR Program

SECTION II T&M CONTRACTS

A T&M Contract is a contract under which the cost to Genera is the sum of the actual costs of materials, equipment and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. All T&M Contracts shall include the provisions contemplated by these T&M Guidelines.

2.1 Procedures for Determination of T&M Suitability

For any T&M Contract, the Procurement File must, in addition to the requirements of such section, include a completed *Template Determination of Suitability for Time and Materials Contracts* at Attachment 3

For every T&M contract, Genera must document the following:

A. Its determination and explanation as to why no other contract type (lump sum, unit price, cost reimbursement) is suitable. This should include the reason(s) for Genera's inability to create a clearscope of work or determine the exact amount of time or effort required to complete the scope of work;

B. Contract ceiling price including support for calculation;

C. Brief description of the price analysis (which shall include an independent estimate and rate comparison) that was completed to support the determination that the ceiling price and hourly ratesare reasonable and justifiable under the conditions;

D. Confirmation that the T&M Contract allows Genera to terminate for convenience if circumstances later allow a fixed-price, unit rate, or cost reimbursement type contract; and

E. A description of the T&M Contract oversight plan ("Contract Oversight Plan") outlining how Genera intends to maintain oversight of contractor's performance to review whether the contractor is performing in accordance with the terms, conditions, and specifications of the T&M Contract, and to allow Genera to address issues that arise where contractor is not doing so.

Generally, T&M Contracts will be limited to a reasonable time based on the circumstances during which Genera cannot define a clear scope of work. For example, for work necessary immediately after a disaster or during an Emergency or Exigency when a clear scope of work cannot be developed (i.e., debris removal). Most commonly, this type of T&M Contract is only used when it is not possible, at the time of placing the contract, to determine the extent and duration of the work or to anticipate the overall costs with any reasonable degree of confidence. Accordingly, Genera shall ensure in these T&M Contracts that it has the unilateral right to terminate the T&M Contract for convenience so that Genera can award a follow-on fixed price or cost reimbursement type contract after the exigency period has passed.

If Genera determines that a T&M Contract is necessary for a particular scope of work, regardless of Emergency and/or Exigent circumstances, Genera must conduct a cost or price analysis to document the cost reasonableness of such a contract and document why the T&M Contract is suitable.

SECTION III CONTRACTOR OVERSIGHT FOR T&M CONTRACTS

Genera will maintain oversight of its T&M Contracts to review whether the contractor is performing in accordance with the terms, conditions, and specifications of the T&M Contract and any related purchase orders, and to allow Genera to address issues that arise where contractor is not doing so. As such, whenever Genera uses a T&M Contract, Genera will develop and implement a Contract Oversight Plan to address the above. While the amount of oversight by Genera over its T&M Contracts will always be high, the level of detail in the plan and degree of oversight will increase commensurate with the size and complexity of the T&M Contract.

A. At a minimum, the Contract Oversight Plan for every T&M Contract will include the following:

1. Before work begins, Genera will require a signed T&M Contract (or purchase order), detailing the project's price, time, and scope of work, thereby establishing a timeline and ceiling for work

   completion.

2. If a change is needed to a T&M Contract's price, time, or scope of work, an amendment to the T&M Contract or a Change Order will be signed by Genera and the contractor before the changes take place or cost ceiling is exceeded.

3. If an increase to the estimated costs of a T&M Contract is needed to allow for power restoration work in response to an Emergency or Exigency, Genera may exceed the estimated costs of the T&M Contract if an amendment to the T&M Contract or a Change Order is issued within 14 days of the date that the estimated amount is exceeded.

4. To the greatest extent practical, invoicing will occur at regular intervals. Each T&M Contract should require: (1) the contractor to provide periodic progress on milestone achievements and inform on invoicing levels thresholds, in order to provide enough visibility to Genera on how the invoicing is being performed; and (2) contractor to inform Genera when invoicing reaches 50%, 75%, 90%, and 100% of the contract price specified. This will enable enough visibility to Genera to control costs and avoid over invoicing.

B. The following are illustrative of the type of additional oversight tasks that may be used:

1. As a term of the T&M Contract, require contractor to:

   a. provide detailed invoices with receipts for expenses, and permission for Genera to review same;

   b. cite on invoices the T&M Contract provision authorizing the charge;

   c. provide additional documentation, such as photographs or videos (before and after) of contractor's billed work, upon request from Genera;

2. Genera will review invoices to confirm compliance with the T&M Contract and review the receipts and other back-up information to confirm same substantiates the costs;

3. review contractor time stamped labor logs containing employee name, title/classification, hourly rate (regular and overtime if applicable), total hours worked, dates worked, and work performed

4. review supporting documentation for invoiced costs (receipts, leases, contracts, etc.) Genera may require invoiced costs to cite the contract or purchase order provision authorizing the charge.

5. Site visits.
6. Status meetings.
7. Status reports.
8. Genera on-site supervision or coordination of activities or logistics (e.g., establishment of a Genera Command Center directing contractors to known areas of damage.)
9. If a Change Order is requested, require the following requirements/documents:
    a. Reason for Change Order request;
    b. Description of remaining scope, schedule, and forecasted cost;
    c. Funding source, if applicable; and
    d. Impact of not performing the suggested change order.

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ATTACHMENT 13

OCIAMP

Version 1

January [xx], 2023.

SECTION I Introduction

It is the policy of Genera PR LLC ("Genera") to comply fully with all laws and regulations governing its operations and to conduct its business affairs in a highly ethical manner. Further, it is the policy of Genera to avoid organizational conflicts of interest ("OCIs") in the conduct of its business and to mitigate any such conflicts that might arise to the satisfaction of the Puerto Rico Public- Private Partnerships Authority ("P3A") and the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3"). Given this commitment, Genera is sensitive to the possibility that an actual, potential, or apparent OCI could arise, either in connection with, or as a result of, its performance of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (the "O&M Agreement"), specifically in connection with procurement and contract administration activities for Facility Contracts where Genera is acting as the agent of PREPA. Consistent with our corporate policies and our commitment to ethical business conduct, Genera has developed the following plan to avoid, mitigate, and/or neutralize apparent, potential, or actual OCIs for Facility Contracts during its performance of the O&M Agreement.

1.0 Purpose & Scope

The purpose of this OCI Policy ("Policy" or "Plan") is to set forth the policies and procedures by which Genera will identify and mitigate potential, apparent and actual OCIs that arise in connection with Genera's performance of the O&M Agreement related to Facility Contracts. In this Policy, Genera will describe how it will endeavor to: (a) identify and evaluate potential OCIs as early in the procurement process as possible; (b) prevent the existence or appearance of conflicting roles that might bias Genera's judgment; (c) avoid, neutralize, or mitigate significant potential conflicts before contract award; (d) provide unbiased, impartial and objective advice and assistance; (e) prevent the existence of conflicting roles that could result in impaired objectivity; and (f) prevent unfair competition and advantage.

Genera's Policy is intended to ensure compliance with all applicable laws and regulations, including but not limited to Act No. 2 of the Legislative Assembly of Puerto Rico (enacted January 4, 2018) and the applicable provisions of the U.S. Office of Management and Budget Uniform Guidance at 2 C.F.R. Part 200 (the "Uniform Guidance"). It is also intended to ensure compliance with P3A's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts, dated December 19, 2009. Finally, this Policy is guided by the standards and concepts set forth at Subpart 9.5 of the Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1.

This Policy shall be incorporated by reference into the Procurement Manual, described at Section 4.2(p) "*Procurement Manual"* of the O&M Agreement. In addition, capitalized terms in this Policy shall have the meaning set forth in the O&M Agreement, unless otherwise indicated.

1.2 Roles and Responsibilities

As stated in the Uniform Guidance, "organizational conflict of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, [an] entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization." As such, this Policy describes the policies and procedures that Genera will implement for Facility Contracts (1) when it is aware that an Affiliate is likely to participate as a competitor in a procurement, and (2) when it is required to administer (on behalf of PREPA) a Facility Contract in which an Affiliate is the contractor. Genera is

committed to conducting procurements and administering contracts in a manner designed to identify actual, potential, or apparent conflicts as early as possible. When an actual, potential, or apparent OCI is identified, Genera will act to diligently protect the transparency and fairness of the procurement and contract administration processes. As set forth below, this will most often be accomplished through the retention of an independent third party.

NFEnergia LLC, an Affiliate of Genera, currently owns and operates a micro fuel handling facility in San Juan that provides natural gas to PREPA pursuant to a Fuel Sale and Purchase Agreement. Moreover, there are other potential procurements for the sale and delivery of Liquified Natural Gas ("LNG") that Affiliates of Genera may decide to pursue. Therefore, on and after the Service Commencement Date, a 3PPO, as designated by P3A, will be responsible for conducting procurement activities and contract administration activities as described in the Procurement Manual in accordance with the procedures detailed in Appendix D.

The 3PPO will also be required to store such information in physical and electronic locations that are inaccessible to Genera employees and the employees of Genera's Affiliates. These physical and electronic files will be made available for inspection at any time by P3A and COR3 upon their request.

Genera's Chief Compliance Officer will be responsible for administering, monitoring, reporting and ensuring compliance with this Policy, among other responsibilities. The Chief Compliance Officer will not directly participate in procurement or contract administration functions but will be aware of all relevant procurement and contract administration plans and actions. The Chief Compliance Officer will provide a quarterly update to P3A and COR3 regarding Genera's compliance with the Policy, to include identifying any violations (with corrective actions taken) and areas for improvement.

1.3 Applicability

This OCI Policy shall apply to all Genera employees, officers, agents, and consultants assigned to work under the O&M Agreement, with particular application to the employees within the Procurement & Contracting Group ("P&C Group"). The Policy will become effective on the Service Commencement Date and shall continue to apply for the entire duration of the O&M Agreement as may be updated from time to time in accordance with the Procurement Manual.

SECTION II OCI AVOIDANCE PLAN AND PROCEDURES

2.0 Procedures for reporting of all actual/apparent OCI

All Genera employees, Contractors, and Subcontractors are responsible for reporting actual or apparent OCIs to Genera's Chief Complaince Officer.

The report should include the following information:

A. Identification number or name of the procurement or contract;
B. A description of the apparent or actual OCI identified;
C. Names of Contractors, Subcontractors and employees involved;
D. Any other relevant information related to the OCI;
E. Mitigation measures taken prior to notification; and
F. Date filed and name(s) of the reporting entity.

See Appendix A for the prescribed format for such reports.

Once reported, the information will be reviewed by the Chief Compliance Officer or designee, logged into the OCI open log form, and referred to the P&C Group for investigation or other action, as appropriate. If an investigation is performed, the P&C Group will determine if there is an apparent or actual OCI. If such an OCI is identified, then Genera will proceed with mitigation steps as appropriate. The P3A will be notified of the outcome of all investigations.

2.1 Monitoring and Compliance

The P&C Group will be responsible for monitoring compliance with this Plan. The Chief Complaince Officer will be responsible for overseeing and providing advice related to compliance with this Plan and engaging Legal and other groups as required.

A log of all reported OCI's will be maintained by the P&C Group.

The OCI log format is attached as Appendix B.

2.2 Plan Records

The vendor file or bid process documentation, including any required by this Plan, is maintained by the P&C Group whether the procurement is performed by Genera independently or with the assistance of the 3PPO. If an investigation is conducted, documentation of the investigation will be maintained by the Chief Complaince Officer, with a copy of the investigation report and the final determination provided to the P&C Group.

SECTION III OCI IDENTIFICATION AND AVOIDANCE/MITIGATION

3.1 Identification of OCI

Organizational Conflicts of Interest may arise when, because of other activities or relationships, a person is unable or potentially unable to render impartial assistance or advice under the contract, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has unequal access to information that could result in an unfair competitive advantage.

Types of OCIs that may arise when Genera conducts procurements on behalf of PREPA include the following:

A. Impaired objectivity

Impaired objectivity arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice due to other relationships, contacts, or circumstances. This would include circumstances where a contractor's work under one contract could entail it evaluating itself through an assessment of performance under another contract or through an evaluation of proposals. For example, impaired objectivity might become an issue if Genera was evaluating proposals, and one of those proposals was from Parent Company, and appropriate mitigation techniques were not implemented.

B. Unequal access to information

Unequal access to information occurs when a contractor has access to nonpublic information as part of its performance under another contract and where that information may provide the contractor (or its affiliates) with a competitive advantage in a later competition. For example, if Company A is selected to perform work for Genera and proprietary information from other companies will be provided to Company A in the performance of the Scope of Work for Genera that will provide Company A competitive advantage over its competitors, then an OCI exists, and mitigation actions are required.

C. Biased ground rules

Biased ground rules can arise where a contractor, as part of its performance of work under a contract, has in some sense set the ground rules for another contract. This OCI rule intends to prevent a contractor from influencing requirements or review criteria that provide an unfair advantage to the contractor over potential competitors.

Given Genera's operational requirements related to the development of the statements of work and specifications as PREPA's agent, there is risk of biased ground rules where Parent Company or an Affiliate intends to or competes for a PREPA contract. Accordingly, mitigation actions discussed below in paragraph 3.2 and throughout this Plan are appropriate to identify, avoid, and/or neutralize any such unfair advantage to Affiliates in the procurement of goods and services for PREPA.

3.2 Mitigation of OCIs

A. Impaired Objectivity

To reduce the risk of impaired objectivity in Genera procurement activities, the following mitigation measures may be implemented by Genera:

1. excluding any "impaired" Contractor or Subcontractor from the procurement;
2. changing the scope of the contract and re-bidding;
3. installing a firewall;
4. transitioning the procurement to the 3PPO;
5. using anonymized identifiers, the 3PPO, in its discretion, presents Genera with technical questions during the course of a procurement[9]; and
6. increasing involvement of the 3PPO in oversight.

B. Unequal access to information

To reduce the risk of unequal access to information in Genera procurement activities, the following mitigation measures will be implemented by Genera:(i) establishing a firewall, security measures, or procedures that effectively limit the flow of "Competitively Sensitive" labeled information between the personnel who have access to such nonpublic information, and the personnel that would benefit from the "Competitively Sensitive" labeled information; and (ii) sharing the information with all competing offerors to avoid or mitigate any potential competitive advantage.

C. Biased ground rules

To reduce the risk that any procurement could contain biased ground rules in Genera procurement activities, the following mitigation measures will be implemented:

1. Genera will recuse itself from procurements that involve Parent Company or an Affiliate, and instead use a 3PPO established by P3A. Genera will identify, avoid and/or mitigate actual or potential conflicts of interest concerns and issues as early in the procurement process as possible. If it is known that a Parent Company or an Affiliate, or subsidiary will participate in the competitive bid, Genera will refer the procurement to the 3PPO. Genera employees will not contact colleagues at affiliated entities to inquire if they would be interested in competing for future awards.
2. Genera will exclude any Affiliate or Parent Company from participating as a prime contractor or subcontractor in any procurement process in which the 3PPO was not engaged.
3. When the 3PPO is controlling a procurement, the 3PPO will set the evaluation criteria, and may pose questions to Genera, as appropriate, to inform the 3PPO's decision-making.
4. Any bid protests for PREPA procurements involving allegations of unmitigated biased ground rules will be reviewed by P3A, consistent with its oversight responsibilities under the O&M Agreement.

[9] All technical questions from the 3PPO and responses from Genera will be made in writing, and placed in the procurement file.

Further, all RFx's will be reviewed by the 3PPO before release to help ensure that there are no biased technical specifications, unless Genera provides a reasonable justification that such measure is inapplicable or inappropriate under the specific circumstances.

The P3A will periodically review open PREPA solicitations for biased ground rules, consistent with its oversight responsibilities under the O&M Agreement and the Procurement Manual and shall work with Genera to promptly address any issues with as little disruption to the procurement as possible.

D. In addition to the mitigation activities above, Genera will obtain an annual independent audit (by an auditor chosen by Genera and approved by P3A) of the following:

i. Compliance with this Policy and with the Procurement Manual requirements related to OCI mitigation (as changed from time to time) (e.g., market research, solicitation content, proposals received and evaluations thereof, etc.)

ii. Proper management of OCI process (e.g., errors, observations, limitations on competition)

iii. The auditor will propose corrective action and/or recommend revisions to processes to address any material issues identified that relate to the OCI Mitigation.

iv. A copy of the audit report will be provided to the Executive Director of P3A, or their designee.

3.3 Procedures for identifying, avoiding, or mitigating actual or apparent OCIs *prior to* the initiation of a procurement process

A. Impaired Objectivity & Biased Ground Rules

Under the O&M Agreement, Genera is responsible for undertaking procurement activities related to the operation of PREPA's Legacy Generation Assets.

To prevent the existence of conflicting roles that might bias Genera's judgment and to prevent any unfair competitive advantage, a 3PPO will be used for all procurements where a Parent Company or Affiliate has formally expressed interest in participating, for example, via responses to public notices, vendor qualifications, or requests for information. Genera may also use the 3PPO as a mitigation measure whenever deemed appropriate by the Chief Complaince Officer. In accordance with this Plan, the 3PPO will be inserted into the procurement process as early as practicable when needed to mitigate an actual or apparent OCI. In executing this role when needed, the 3PPO will assume control of the procurement and take the actions necessary to mitigate the OCI, as defined in the 3PPO Framework document (Exhibit D hereto). No Affiliate or Parent Company will be allowed to participate as a prime contractor or subcontractor in any procurement process in which the 3PPO was not engaged, if required, as set forth in the 3PPO Framework.

As further provided below and in the 3PPO Framework, the 3PPO will be responsible for, among other matters, independently reviewing and approving the contracting strategy established by Genera and any tender documents prepared

by Genera (and other parties as appropriate), including specifications, work statements, and scope, to avoid any unfair competitive advantage to an Affiliate or Parent Company or any bias in favor of an Affiliate or Parent Company. The 3PPO will also be responsible for evaluating bids and issuing an award determination to Genera using anonymous identifiers. For any actual disputes in which a Parent Company or Affiliate is involved as either a bidder or contractor, the 3PPO will fulfill all duties otherwise performed by Genera as set forth in the Procurement Manual.

Additional actions to mitigate the risk of biased ground rules are provided in section 3.2.C above.

B. Unequal access to information

To avoid or mitigate the risk of unfair advantage, any of the following mitigation strategies may be considered:

1. Firewalls

a. Genera employees are prohibited from sharing any non-public "Competitively Sensitive" labeled information related to PREPA's fuel and Legacy Generation Assets with employees who lack proper authorization, proponents, or Contractors, including those from a Parent Company or Affiliate. Provided, however, that nothing in this provision or Policy shall preclude executives of Parent Company and/or Affiliate who have managerial responsibility for Genera from accessing Confidential Information needed to perform their roles and legal responsibility except to the extent labeled as Competitively Sensitive and then only until the tender documents (RFx Package) becomes public and unless otherwise authorized;

b. Any employee or entity that may have an OCI based on unequal access to information (including employees from Affiliates) should be under a non-disclosure requirement, firewalled as appropriate, or excluded from the procurement process if the OCI cannot be adequately mitigated.

c. "Seconded Employees" from Affiliates or Parent Company must disclose any actual or apparent OCI and are required to sign Non-Disclosure Agreements, and abide by firewalling procedures, as appropriate.

2. Organizational/Physical/Geographic Separation

Organizational, physical, and/or geographic separation between Genera and an Affiliate or Parent Company will be established to reduce the risk of inadvertent disclosures. Such separation will include the following considerations:

a. The degree of the organizational, physical, or geographic separation, if any, that already exists between Genera and Affiliates or Parent Company (for example, work areas separate from other business segments and work in a controlled-access facility, precluding access by other contract or proposal teams).

b. The degree to which there is separate management responsibility for the two conflicted groups of employees.

c. The degree to which there are separate accounting/financial systems and controls for the two conflicted groups of employees: and

d. The degree to which there are separate IT systems or controls for document storage/access.

3. Non-Disclosure Agreements ("NDAs")

NDAs will be established in appropriate circumstances to ensure that affected employees understand their obligations with regard to proprietary and competitively sensitive information. In situations where NDAs may be utilized, Genera and, where appropriate in Genera's judgement, the 3PPO shall consider:

a. Who will be responsible for determining if NDAs are necessary (normally conducted by the Chief Complaince Officer and as appropriate, the 3PPO);

b. Who will be responsible for overseeing NDAs (normally conducted by the Chief Complaince Officer and, as appropriate, the 3PPO);

c. The actual or apparent OCI that requires the NDA, including the specific information that is covered by the terms of the NDA; and

d. Storage and management of executed NDAs (will be kept by Procurement and, as appropriate, the 3PPO as part of the bidding or vendor file).

The form of NDA is included as Appendix C hereto.

3.4 Procedures for identifying, avoiding, or mitigating actual or apparent OCIs *after* the initiation of a procurement process

In the event an actual or apparent OCI is identified after the procurement process has begun, and a 3PPO is conducting the procurement process, then the 3PPO will investigate and determine mitigation steps, as appropriate (See Appendix D).

If the procurement process is not being conducted by a 3PPO, then the Chief Complaince Officer is responsible for investigating and determining the appropriate mitigation steps, subject to P3A's review as set forth in the Procurement Manual. Chief Complaince Officer investigations will also be included in a quarterly report to P3A (see Attachment D, section B, paragraph 25), as part of Genera's reporting requirements under the Procurement Manual.

SECTION IV ADDITIONAL CONSIDERATIONS

4.0 Selection and Operation of the 3PPO

P3A will award and oversee the 3PPO contract. The 3PPO Framework attached as "Exhibit D" describes how the 3PPO will independently perform procurement activities, providing full transparency and objectivity to the process.

4.1 Increased Monitoring/Oversight of Conflicted Work by an Independent Party

If a Parent Company or Affiliate is awarded a contract after a 3PPO conducts the procurement process described above (and as further provided in Appendix D), Genera and the 3PPO will perform the management, direction, and monitoring of the contractor during performance of the awarded agreement as set forth in section B.19 of Appendix D. Contract administration duties performed by Genera will be supported by documentation and subject to audit. Genera will provide a quarterly report on significant contract administration issues to P3A as part of its reporting obligations under the Procurement Manual. (See Attachment D, section B, paragraph 19, subparagraph e.)

4.2 Discipline for Noncompliance

Violations of this Plan shall be reported to the individual's immediate manager and to the Chief Complaince Officer. Engaging Legal and other groups leaders may be required. Appropriate administrative and/or disciplinary action will be taken for violations, up to and including termination. Additionally, violations may subject an employee to criminal liability under applicable laws.

4.3 Emergency

In case of an emergency, the entirety of the Policy or some of its provision may be waived by P3A in accordance with the Emergency procedures set forth in the Procurement Manual.

4.4 Request and Approval for Conflict-of-Interest Exceptions

In cases where the OCI or apparent OCI cannot be sufficiently avoided, neutralized, or mitigated, Genera may submit a written request for an exception in accordance with the Procurement Manual.

APPENDIX A

Organizational Conflict of Interest Reporting Document

Name of person(s) reporting: _____

Date actual or apparent OCI identified: _____

Date Genera Notified: _____

Identification No. or name of RFP or Contract: _____

Mitigation measures taken prior to notification:

_____

_____

_____

Description of the Actual or Apparent Organizational Conflict of Interest (OCI):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Names of Contractors, Subcontractors and/or Genera employees involved:

_____

_____

_____

Any other relevant information related to the OCI or apparent OCI:

_____

_____

_____

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APPENDIX B

Open OCI Report Log

Date filed	Id # / Name of RFP/ Contract	Status Comments

Reported and Logged OCIs will remain in this list from the time they are identified until their resolution

APPENDIX C

CONFIDENTIALITY AGREEMENT

I, _____ **[insert name]**, acknowledge that Genera PR, LLC, a Puerto Rico Limited Liability Company, ("**DISCLOSER**"), acting on behalf of Puerto Rico Electrical Power Authority ("PREPA") has provided me with Confidential Information (as defined below) respecting its businesses, products and undertakings present and future, and hereby acknowledge and agree that:

A. I am completing this Confidentiality Agreement due to the following actual or apparent conflict of interest:

_____

_____;

and

B. My employment, consulting agreement, or position as an officer, director of, or ownership interest in or other affiliation with DISCLOSER creates a relationship of confidence and trust between myself and DISCLOSER with respect to all confidential information disclosed to me by, or on behalf of, DISCLOSER or otherwise acquired, created, discovered, developed, learned or made known by, or to, me during the course of my employment or consulting agreement with DISCLOSER; and

C. "**Confidential Information**" includes, without limitation, information related to the DISCLOSER's procurement of or contract for any good or service, the DISCLOSER's past, present or future need for or evaluation of any good or service, the DISCLOSER's funding, budgets, specifications, requirements, strategies, deliberations, evaluations, judgments, discussions, potential markets, suppliers, vendors or contractors, in each case as related to any past, present or future procurement or contract for any good or service, but does not include information which is: (i) now or in the future publicly available other than through my own actions, provided however that where any part of such information is publicly available but a compilation of information which includes such part is not publicly available then such compilation shall be treated as Confidential Information hereunder; (ii) made available to me from a source which is not prohibited from disclosing such information to me by a legal, contractual or fiduciary obligation; or (iii) as shown by documentary evidence, already in my possession at the time of disclosure to me.

In consideration of the payment of $_____ to me by DISCLOSER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I hereby acknowledge and agree by the execution of this Confidentiality Agreement (the "**Agreement**") as follows:

I. Confidentiality

Both during the term of my employment or consulting agreement with DISCLOSER and for a twelve-month period after its termination:

I will keep in strictest confidence and trust all Confidential Information known to me;

I will not use, divulge, disclose, or communicate, either directly or indirectly, in any manner whatsoever, any Confidential Information, or anything relating to it, to any party, including but without limitation to the DISCLOSER's affiliates, without the written consent of the DISCLOSER's Chief Compliance Office; and

I will use all reasonable and prudent efforts to keep the Confidential Information confidential and to protect and safeguard such information from misuse, loss, theft, publication, disclosure, destruction, or the like.

In the event that I am required to disclose Confidential Information, pursuant to any applicable law or regulation, or to any government or governmental department, ministry, board, commission, agency, court, securities commission, or stock exchange having jurisdiction, I shall disclose such information as I am legally required to disclose and shall use all reasonable efforts to obtain confidential treatment for any information so disclosed. In addition, I shall, to the extent permitted by law, promptly provide notice of the required disclosure to the management of DISCLOSER setting out the requirements and circumstances surrounding the required disclosure and any other relevant information.

Notwithstanding the other provisions of this Agreement, and in compliance with section 1225 of the Disaster Recovery Reform Act of 2018, I acknowledge and agree that no language in this Agreement is intended to prohibit compliance with authorized audits or internal reviews by the Government of Puerto Rico, Federal grant making agencies, or the Comptroller General of the United States. Consistent with the Procurement Manual, this provision does not restrict or change Genera's existing rights and/or obligations to provide certain governmental entities (i.e., COR3, PREPA, the Federal grant making agency, DHS Office of Inspector General, the Comptroller General of the United States, or their authorized representatives) the right of access to any documents, papers, or other records of Genera which are directly pertinent to a Federal award, in order to make audits, examinations, excerpts and transcripts.

Upon request by DISCLOSER, I will promptly deliver to DISCLOSER all documents, notes, drawings, specifications, programs, and data and other materials of any nature that contain Confidential Information and I will in no way retain or take with me any of the foregoing or any reproduction of any of the foregoing or any Confidential Information.

II. General

I understand and agree that in the event of a breach or a threatened breach by me of any of the provisions of this Agreement, DISCLOSER, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to an injunction and/or an

order of specific performance, in order to prevent or to restrain any such breach or threatened breach by me or any other persons directly or indirectly acting for or on behalf of myself.

This Agreement contains the entire agreement between me and DISCLOSER with respect to the issues addressed herein. Except in respect of any prior non-disclosure or confidentiality agreement, assignment, or confirmation of assignment of Inventions or Works entered into by me, it supersedes any and all other agreements, either oral or in writing, between me and DISCLOSER with respect to the issues addressed. DISCLOSER and I both acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied in this Agreement.

This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the Commonwealth of Puerto Rico.

This Agreement may not be modified by oral agreement, or course of conduct, but only by an agreement in writing signed by an authorized officer of DISCLOSER and me.

I FREELY AND VOLUNTARILY ACKNOWLEDGE AND AGREE THAT I HAVE HAD THE OPPORTUNITY TO OBTAIN LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT AND HAVE CAREFULLY READ AND CONSIDERED THE PROVISIONS OF THIS AGREEMENT AND HAVING DONE SO, AGREE THAT THE PROVISIONS OF THIS AGREEMENT ARE FAIR AND REASONABLE AND ARE REASONABLY REQUIRED FOR THE PROTECTION OF DISCLOSER.

_____ _____

Dated Signature

_____

Please Print Name

(In addition, initial each page on the bottom left corner)

ACCEPTED BY AND AGREED TO:

[***DISCLOSER***]

By_____

APPENDIX D

Genera OCI Mitigation Plan

As provided more fully below, Genera will employ multiple means to timely avoid, mitigate, and/or neutralize actual or apparent Organizational Conflicts of Interest ("OCIs"), including, in appropriate circumstances (as outlined below), the use of a Third-Party Procurement Office (the "3PPO") under the leadership of a third party that has appropriate expertise and independence from Genera.

To ensure independence, P3A will select the 3PPO with reasonable input from Genera. This document provides the process by which the 3PPO will conduct procurements that involve a Parent Company or Affiliate. Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the O&M Agreement. This Mitigation Plan, as it may be modified or supplemented from time to time, is incorporated into the Procurement Manual as an integral part thereto, but does not change or supersede existing requirements under the Procurement Manual and remains subject thereto.

I. Procurement Process Framework

A. Tenders will be based on the projects required to be implemented as part of, among others:

1. Procurement of any new or replacement, or modifications, amendments, renewals, and extensions of any Facility Contract (including Capital Spare Parts and Spare Parts, but excluding Operator-funded capital improvements that do not involve the installation of equipment that becomes a part of the system at a Legacy Generation Asset;
2. procurement of any new or replacement, or modifications, amendments, renewals, and extensions of any Fuel Contracts;
3. projects that may be required by other plans, of, or applicable to, Genera, approved by PREB, as applicable.

B. Thus, Genera's role in developing the scope and requirements for tenders will be based on priorities as established by Genera to execute its obligations under the O&M Agreement, and in accordance with PREB approvals.

C. The process to prepare the tender, including without limitation, to determine the scope of work must follow the Procurement Manual, as updated from time to time.

D. Except to the extent addressed below, the steps set out in the Procurement Manual shall continue to apply to tenders, as applicable.

II. Process

A. Procurement Strategy

1. When Genera is required to procure services and/or materials on behalf of PREPA, a procurement process as defined in the Genera Procurement Manual will be followed. To initiate the process, Genera will review requirements and determine a procurement strategy including the definition of required timelines for the particular tender documents for review and acceptance by the 3PPO.

2. The procurement strategy will consider how work should be procured (i.e., scope of work, bundling of activities, etc.), type of contract (i.e., lump-sum or other) and what method of procurement should be used (i.e., RFP, etc.). During the development of this strategy, the potential for OCI will be evaluated, and mitigation measures taken if appropriate.

The nature of the work and potential OCI concerns (Parent Company or Affiliate is more or less likely to be a potential Proposer/Bidder), will help determine which work will require additional mitigation to avoid an OCI. This may include how the Tender Preparation (next step) is developed. For instance, if a Genera Affiliate will be a Proposer/Bidder on the work, the development of the Tender Preparation (Step 2 below) and Tender Documents (Step 3 below) will be developed by the 3PPO. If asked by the 3PPO, Genera may provide reasonable input to the 3PPO for the 3PPO's consideration as needed to support the development consistent with Genera's existing contractual obligations.

B. Tender Preparation

1. As described in Step 1 above, Genera or the 3PPO will prepare the tender documents that set forth the program and technical requirements for the project based on the planning documents above. Tender documents will include:
    a. Scope of Work
    b. Standards (which will be Genera Engineering and Construction standards or based on typical industry practices where no Genera standards are available)

The 3PPO will explore the value of creating a set of standard technical specifications for frequently procured goods and services.

C. Sourcing Strategy

1. Genera or the 3PPO will prepare the tender documents ("RFx Packages") that set forth the commercial and proposal-related requirements for the project based on the Scope of Work and Standards, including, without limitation:
    a. Commercial requirements (bonding, payment schedules based on milestones, etc.)
    b. Proposal/bid requirements, schedules, etc.
    c. Evaluation criteria
2. If the tender documents are prepared by the 3PPO, the 3PPO will set evaluation criteria, but may pose questions to Genera, as appropriate, to inform the 3PPO's decision-making.
3. After preparation, all RFx Packages will be reviewed and approved by the 3PPO, consistent with the planning documents described above.

D. Request for Interest ("RFI")/Request for Qualifications ("RFQ")

1. If the tender documents are prepared by the 3PPO,
    a. the 3PPO will issue a combined RFI/RFQ to Genera's pre-qualified Vendors and advertise publicly (i.e., published twice in a general circulation

newspaper and posted in Genera's website) to gather a list of companies that may participate in the resulting tender.

b. If, upon publication, Genera has any concern about the tender requirements, Genera and the 3PPO will follow the review process below (Section C), and the 3PPO may withdraw, revise, or supplement the RFI/RFQ.

2. If the tender documents are prepared by Genera,

a. Genera will issue a combined RFI/RFQ to Genera's pre-qualified Vendors (using Power Advocate or similar) and advertise publicly (i.e., published twice in a general circulation newspaper and posted in Genera's website) to gather a list of companies that may participate in the resulting tender.

3. The combined RFI/RFQ will:

a. request the submittal by Proponents/Bidders of specific qualifications in accordance with the nature of the prospective project; provide potential Proponents/Bidders an opportunity to identify ambiguous, unrealistic, and unduly restrictive requirements; and establish how potential Proponents/Bidders will be evaluated (e.g., competency, safety, prior work experience, financial health, capacity, independence, and other relevant factors for the scope of work);

b. disclose that, if an Affiliate or Parent Company formally responds to the RFI/RFQ, the procurement will be managed by the 3PPO.

c. The RFI/RFQ will also explain that if an Affiliate or Parent Company formally responds to the RFI/RFQ, but no Affiliate or Parent Company submits an offer, Genera will manage the evaluation, contract award, and post-award contract administration; and will not disclose proposal information to Affiliates or Parent Company;

d. require that Affiliate or Parent Company identify themselves as such on the cover page of their response and that the substantive content of the Affiliate or Parent Company's submittal be separated from the cover page and be secured (security mechanisms to be determined jointly with 3PPO) until further instructions are provided; and

e. require any Proponents/Bidders disclose if an Affiliate or Parent Company is part of its bid team (as subcontractor, partner or otherwise).

E. Proposer/Bidder Pre-Qualification

1. The RFI/RFQ responses will be reviewed and evaluated based on criteria established in the RFI/RFQ.

2. When an Affiliate or Parent Company responds to an RFI/RFQ, as identified in the cover page of its submittal, the 3PPO will assume control of the review and evaluation process and will be the exclusive party to access the submittals.

3. In such case, based on the results of its evaluation, the 3PPO will establish a list of pre-qualified Proposers/Bidders.

4. If no Affiliate or Parent Company responds to the RFI/RFQ, Genera will perform the review and evaluation process and establish a list of pre-qualified Proposers/Bidders.
5. Only pre-qualified Proponents/Bidders may participate in the resulting tender.

F. Single Source Situations

1. As part of the process for exceptions to competitive bidding, pursuant to the Procurement Manual, Genera will prepare a justification for single sourcing when required.
2. If the single sourcing involves an Affiliate or Parent Company, Genera will submit the request to the 3PPO for its review and approval. The 3PPO will provide its evaluation, findings, conclusions and recommendation for approval or rejection to P3A and Genera.
3. For all single sourcing, approval from P3A will be requested as defined in the Genera Procurement Manual.
4. If P3A approves the single-source recommendation to an Affiliate, 3PPO will implement the recommendation consistent with the Procurement Manual.

G. Tender Final Review

1. When the final pre-qualified Proponents/Bidders list includes an Affiliate or Parent Company, the RFx Package will be finalized and approved by the 3PPO (with further consultation with P3A as appropriate) prior to posting.
2. When the final pre-qualified Proponents/Bidders list does not include an Affiliate, the RFx Package will be finalized and approved by Genera.

H. Tender Posting

1. The 3PPO or Genera, as appropriate, will issue the RFx Package to pre-qualified Proponents/Bidders.
2. The tender will notify all eligible Proponents/Bidders when an Affiliate or Parent Company is among the list of pre-qualified bidders. In such circumstances, the tender will also state that where the OCI Policy is available and that any objection to the RFx Package's requirements will be waived unless timely raised in accordance with the RFx Package's requirements.

   The tender will also notify eligible Proponents/Bidders that, if no Affiliate or Parent Company submit an offer, Genera will manage the evaluation, contract award, and post-award contract administration; and will not disclose proposal information to Affiliates or Parent Company.
3. Genera will require confirmation from all bidders that they intend to propose/bid or not propose/bid on the tender at least 1 week before closure. A proponent/bidder will be ineligible to participate in the tender of it does not confirm its intention to bid at least 1 week before closure.

I. RFx Clarifications

If an Affiliate or Parent Company is among the list of pre-qualified bidders, the 3PPO will receive and respond to any questions and clarification requests from

Proponents/Bidders. The 3PPO will coordinate with P3A and Genera, as appropriate, to provide accurate and responsive answers to clarification requests. Any coordination with Genera regarding questions and clarification requests will be in writing, will use anonymized identifiers to avoid identifying the requesting competitor, and both the 3PPO inquiry and Genera's written response will be placed in the procurement file.

J. Process for Tender Evaluation, Award and Execution without Affiliate or Parent Company's Participation (without 3PPO engagement)

If no Affiliate or Parent Company confirms its intention to bid, then Genera will complete the procurement/bid evaluation and award process without 3PPO involvement and will manage the contracting process through execution and administer the contract as contemplated in the PM.

K. Process for Tender Evaluation and Award with Affiliate or Parent Company's Participation

Upon receipt of confirmation of intention to propose/bid by an Affiliate or Parent Company, Proponents/Bidders will be directed to deliver proposals directly to the 3PPO, and the 3PPO shall comply with the requirements of the Procurement Manual, as applicable, and as complemented by the following process which shall also apply thereto.

L. Review Process

1. The 3PPO will assign each Proposer/Bidder an anonymized identifier for use in any follow-up technical or commercial questions with Genera. If the 3PPO presents Genera with any technical or commercial questions, the question to Genera and the response from Genera will be documented in the procurement file.

2. If, upon review, the 3PPO finds that no Affiliate or Parent Company submitted a proposal/bid (despite confirming its intention to do so), then the 3PPO will transfer all bids back to Genera and Genera will complete the evaluation and award process and will manage the contracting process through execution and administer the contract as contemplated in the Procurement Manual, without further reference to this Policy.

M. Commercial Evaluation

Where the tender contemplated a trade-off of cost and non-cost evaluation factors, the 3PPO will conduct and document its commercial evaluation according to the tender rules specified in the RFx Package and the evaluation criteria specified therein (Step 3, Sourcing Strategy).

N. Technical Evaluation

1. The 3PPO will conduct the technical evaluation according to the tender rules specified in the RFx Package and the evaluation criteria specified in Step 3, Sourcing Strategy. In its review of technical proposals, the 3PPO may consult with Genera as appropriate (using the anonymized identifier if needed) to verify that proposals/bids meet the requirements set forth in the RFx Package and the Sourcing Strategy (e.g., specification interpretation, alternative features, new options, confirmation of capability, etc.). Genera shall have established a

Consultation Team to liaise with the 3PPO. The Consultation Team will be required to keep all aspects of said consultation in strict confidence.

2. If the 3PPO presents Genera with any technical or commercial questions, the question to Genera and the response from Genera will be documented in the procurement file.

O. Shortlist Presentations

The 3PPO will determine if any proposal/bid submittal is non-responsive, materially deviates from the scope of work or other technical requirements or is non-compliant with the RFx Package requirements and the Sourcing Strategy. The 3PPO may request, coordinate, and attend presentations by Proponents/Bidders and thereafter summarize the evaluation all in order to assist the 3PPO in making an award decision.

P. Select Awardee

The 3PPO will identify its recommended awardee, based on the criteria set forth in the Sourcing Strategy.

Q. Prepare Bid Award Document

The 3PPO will document its evaluation, findings, and conclusions (including the scoring given to each Proponent/bidder, the basis therefor, and any notes regarding variations and potential noncompliance). The 3PPO will transmit its recommendation to P3A along with a summary of the evaluation and the basis for award. P3A will notify Genera of the award along with a summary of the evaluation and the basis for award using the anonymized identifiers.

R. Approve Bid Evaluations and Award Authorization

1. If Genera believes the 3PPO's recommendation is inconsistent with applicable law, the O&M Agreement, the terms of the RFx, or the Sourcing Strategy, Genera will advise P3A, and the 3PPO of its concerns within 2 business days of receipt of the notice, which will trigger the Review Process set forth below (Section C).
2. After review, and the close of the 2-day objection period, Genera will provide notice of award.
3. Genera may shorten the award period by, any time within the 2-day objection period, notifying the 3PPO and P3A in writing that it has no concerns with the 3PPO's recommendation.

S. Review and Approve Contract

1. If award will be to an Affiliate or Parent Company, the 3PPO will prepare the contract using existing contract templates. If the award will not be to an Affiliate or Parent Company, Genera will prepare the contract using its existing contract templates.
2. If the 3PPO prepared the contract, after negotiation with the contractor, the final recommended contract will be transmitted to P3A by the 3PPO.
3. P3A will provide the final recommended contract to Genera for signature and award.

4. Where award is made to an Affiliate or Parent Company, the post-award contract management, direction, and monitoring of contractor activity, in keeping with the awarded agreement and Genera's obligations under the O&M Agreement, will occur as follows:
    a. Activities performed by Genera supported by documentation subject to audit:
        i. Progress reviews;
        ii. Commissioning acceptance;
        iii. Safety and environmental compliance oversight; and
        iv. Day-to-day management.
    b. Activities performed by Genera only after pre-approval by the 3PPO (all activities must be documented and are subject to audit):
        i. Contractor performance evaluations; and
        ii. Other contract administration responsibilities specifically identified in writing by 3PPO either prior to the signing of the contract, or afterwards. For the avoidance of doubt, it is understood that daily operational coordination on items such as maintenance, nominations, and other comparable items impacting the Legacy Generation Assets will be managed by Genera pursuant to their arrangements and procedures.
    c. Activities performed by the 3PPO:
        i. Any activities for which the 3PPO denies Genera's request for pre-approval;
        ii. Review, approve, and administer payments to Affiliates or Parent Company; and
        iii. Contract changes and circumstances that involve a relief event, supervening event, or change request (technical, schedule, or cost), or other objective determinations with respect to the Affiliate or Parent Company's performance of, or compliance with contract requirements. In the case of a relief event, supervening event, or change request, the procedures in section 21 below will apply. For the avoidance of doubt, it is understood that daily operational coordination on items such as maintenance, nominations, and other comparable items impacting the Legacy Generation Assets will be managed by Genera pursuant to their arrangements and procedures.
5. To mitigate against impaired objectivity by Genera in the performance of any contract awarded to an Affiliate or Parent Company, the 3PPO and Genera will collaborate without limitation in providing a quarterly report, as part of Genera's reporting requirements under the O&M Agreement and Procurement Manual, on the contracted work progress, issues, and risks of all contracts awarded to an Affiliate or Parent Company. The report will specifically identify procurements where OCI mitigation measures have been implemented. This report will also identify any subjective evaluations or oversight of the contractor that should be

managed by the 3PPO. The report will be provided to the Executive Director of P3A, or their designee.

T. Changes or Supervening Events

1. In the case of a relief event, supervening event, or change request (i.e., technical, schedule, or cost) where a 3PPO is being utilized to help mitigate real or apparent OCI's:
    a. The contractor will prepare the request for relief or change in accordance with the Procurement Manual and the contract, and provide to Genera and the 3PPO.
    b. Before any request (including Change Orders) is approved, the 3PPO will review the request and decide whether to accept the request, request further information, or to reject the request. The 3PPO may consult with Genera as the 3PPO deems necessary. The 3PPO will notify Genera of its decision concerning such a request.
    c. If Genera does not concur with the 3PPO's decision, then Genera and the 3PPO will follow the Review process below (Section C).
2. The contractor will only be entitled to relief or changes that were permitted by the contract and accepted by the 3PPO or determined through the Review Process set forth below.

III. Review Process

Management of the Review Process described below is a 3PPO responsibility, in all instances where the 3PPO assumes control of the procurement or contract administration activity.

A. Review Process:

1. If Genera does not concur with the 3PPO's findings and decisions, then Genera will notify the 3PPO in writing the reasons it does not concur.
2. The 3PPO and P3A will review the decision, considering Genera's concerns. The 3PPO and P3A may seek additional information from Genera in the course of their review.
3. Within 15 business days of receiving the notice of nonconcurrence from Genera, the 3PPO will issue the final decision, which will be documented and transmitted to P3A and Genera. Genera and the 3PPO will implement the decision with due regard for project objectives and schedule.

APPENDIX E

APPROVAL & REVISION HISTORY

OCI Policy **Revision History**

Revision No.	Nature of Revision	Genera Approval Date	P3A Approval Date

Approval & Revision History

Procurement Manual Revision History

Revision No.	Nature of Revision	Genera Approval Date	P3A Approval Date