

**COMMONWEALTH OF PUERTO RICO  
PORT OF THE AMERICAS AUTHORITY  
PROCUREMENT REGULATION FOR THE DEVELOPMENT  
AND OPERATION OF THE PORT OF THE AMERICAS**

**AS  
AMENDED AND RESTATED**

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## **ARTICLE 1. INTRODUCTION; LEGAL BASIS; PURPOSE OF REGULATIONS**

1.1 **Introduction.** The Port of the Americas Authority (the “Authority”) was created for the purpose of promoting, developing, constructing, financing, possessing, operating, and administering all the facilities of the Port of the Americas (the “Port”), and regulating the Port’s activities.

In order to carry out the design, development, construction, financing, operation, and maintenance of the Port (the “Project”) by private parties as contemplated by the Authority’s enabling Law, Law No. 171 enacted on August 11, 2002 (“Law No. 171”), as amended, the Authority intends to: (i) request proposals from private parties for part of the design, development, construction, financing, operation, and maintenance of the Port, and (ii) enter into an agreement with a private party whereby the private party will provide part of the design, construction, operation and maintenance services, or any one or more of such services to the Authority and the Authority will provide, in the case of the operation and maintenance services, a concession, surface right, lease or other real property interest to such private party. Accordingly, it is necessary that the Authority adopt procurement procedures for (i) soliciting, obtaining and evaluating such proposals, (ii) selecting the entities that will enter into such agreements with the Authority, and (iii) determining the type of agreement that is most suitable and in the best interests of the Authority for the type of work or services to be contracted and the concession or other rights to be granted.

1.2 **Legal Basis.** This regulation is promulgated by virtue of the power vested in the Authority by Section 11(e) of Law No. 171.

1.3 **Purpose of Regulation.** The purpose of this regulation is to establish the procurement procedures for the Project.

1.4 **Intent.** This regulation is intended to provide flexible procedures and, accordingly, it shall be interpreted liberally so as to effectuate that intent. As contemplated in Section 28(c) of Law No. 171, this regulation is intended to establish the procedures under which the Authority will continue the procurement process.

## **ARTICLE 2. DEFINITIONS**

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

2.1 **Addendum** - means a supplement issued after the publication of the Request for Proposal, which includes changes or additions to the plans and specifications, contract terms or conditions or any other document related to the Project.

2.2 **Affiliate** - means, in the case of an entity, any other entity which controls or is controlled by such entity and any other entity which, directly or indirectly, is controlled by the same person which controls or has the power to control such entity.

2.3 **Authority** - means the Port of the Americas Authority.

2.4 **Award of Contract** – means the final selection by the Authority of a Proposal for the design, development, construction, financing, operation, and maintenance of the Port, or any one or more of such activities, submitted by a Proponent in response to the Request for Proposals.

2.5 **BAFO** - has the meaning given to it in Section 5.4.2(g).

2.6 **Board** - means the Board of Directors of the Authority.

2.7 **Commonwealth** – means the Commonwealth of Puerto Rico.

2.8 **Competitive Range** – means those Proposals received by the Authority in response to the Request for Proposal which the Board, with the assistance of the Evaluation

Committee, determines, in its discretion, to have a reasonable possibility of being recommended for award.

2.9 **Contract(s)** - means the document(s) evidencing the agreement(s) between the Authority and the selected Proponent(s).

2.10 **Due Date** – means the last date for submission of a Proposal as stated in the Request for Proposals.

2.11 **Executive Director** - means the Executive Director of the Authority or, for the purposes of the completion of the Request for Proposal process, and in the absence of the Executive Director, the person designated by the Board as the Project Manager of the RFP.

2.12 **Evaluation Committee** - means the Evaluation Committee created in accordance with Section 3.1 of this regulation.

2.13 **Evaluation Criteria** - means the criteria adopted by the Board, in its discretion, which the Board and the Evaluation Committee shall use to evaluate, rank and recommend Proposals for rejection or award. In accordance with Law No. 171, the evaluation criteria shall include, without it being construed as a limitation or that their order defines their importance, the following, to the extent applicable to the Proposal submitted by the Proponent:

.1 the commercial and financial reputation of the Proponent and its financial, technical, and professional capacity, as well as the experience of the Proponent in designing, developing, operating, or maintaining port facilities. All Proponents must certify that neither they nor their officials or agents have been subject to formal accusation or conviction for acts of corruption in Puerto Rico, the United States or any foreign country;

.2 the quality of the Proposal submitted by the Proponent with respect to, among other factors, the design, engineering, and estimated construction time;

.3 the capital that the Proponent is willing to invest and the recovery time for said capital;

.4 the financing plans and the financial capacity of the Proponent to carry them out;

.5 the fees the Proponent intends to charge, the internal rate of return used by the Proponent, and the net cash flow projected; and

.6 the terms of the Contract with the Authority that the Proponent is willing to accept.

2.14 **Individual Meeting** - means a meeting or telephone conference held by the representatives of the Authority with an individual potential Proponent or an individual Proponent, at which the potential Proponent or the Proponent will have an opportunity to raise questions and seek clarification related to the Port or the RFP.

2.15 **Law No. 171** - means the law establishing the Port of the Americas Authority, Law Number 171 of August 11, 2002, as amended.

2.16 **Performance Bond** - means the bond, in an amount determined by the Board required under Article 11(f)(iv) of Law No. 171 from the selected Proponent and its surety as a guarantee that the Contract will be fully performed in accordance with its terms.

2.17 **Person** – means any natural person, business, partnership, corporation, association or other organization, entity or group of individuals including Commonwealth agencies, instrumentalities, departments or public corporations.

2.18 **Personal Property** – means materials, tools and equipment, supplies, goods and other items of personal property.

2.19 **Port of the Americas or Port** - means the maritime-terrestrial zone and its adjacent lands in Ponce where the activities of the transshipment port to be known as *Port of*

*the Americas Rafael Cordero Santiago* are to be located, including the ports, docks, harbor, canals, dike, embankment, levee, railroad connections, and other buildings, structures, facilities or improvements necessary or convenient to accommodate ships and their cargo.

**2.20 Pre-Bid Conference** - A meeting or telephone conference prior to the Due Date where all persons who have registered with the Authority as potential Proponents are invited to participate, raise questions and seek clarification related to the Port or the RFP.

**2.21 Project** - has the meaning set forth in Section 1.1 of this Regulation.

**2.22 Proposal** - means the written offer made by the Proponent in response to the Request for Proposal, duly signed and guaranteed.

**2.23 Proposal Security**- means the bond or other security required to be submitted by the Proponent with its Proposal, as applicable, as a guarantee that it will sign the Contract if the Proponent is selected for the Award of Contract.

**2.24 Proposer or Proponent** - means the individual, partnership, corporation or any other legal entity which formally submits a Proposal to the Authority in connection with the Project.

**2.25 Quorum** - means the number of members of the Board or Evaluation Committee who must be present for the Board or Evaluation Committee, respectively, to take action. For the purposes of this regulation, a quorum of the Evaluation Committee shall be a majority of its members.

**2.26 Request for Proposal or RFP**- means the document that the Authority prepares, publishes and distributes, in accordance with Article 5 of this regulation, requesting that persons submit Proposals in connection with the Project, as amended from time to time.

**2.27 Selected Proposer or Selected Proponent** - means the individual, partnership, corporation or other legal entity selected for the design, development, construction,

financing, operation, and maintenance of the Port, or any one or more of such activities, in accordance with this regulation for Award of Contract.

### **ARTICLE 3. EVALUATION COMMITTEE**

3.1 **Evaluation Committee.** The Board shall appoint an Evaluation Committee to assist in the selection of Proponents in accordance with this regulation.

.1 The Evaluation Committee shall be composed of an odd number of members, who need not be officers or employees of the Authority or other agencies of the Commonwealth.

.2 The Board shall designate a chairman from the members of the Evaluation Committee and a secretary who need not be a member of the Evaluation Committee. The chairman may designate any other member of the Evaluation Committee to serve as chairman in his or her absence.

.3 The Executive Director may appoint employees of the Authority or contract with consultants, advisors or agents of the Authority to assist in the review of the Proposals and selection process, or provide any other assistance that is deemed necessary or appropriate to protect the interests of the Authority, including participating as non-voting members of the subcommittees of the Evaluation Committee contemplated in Section 3.5 below. The persons providing such assistance (technical, administrative or of any other type) will participate in the evaluation processes the Evaluation Committee may deem necessary.

3.2 **Duties of Evaluation Committee.** The Evaluation Committee will have the following duties:

.1 Evaluate the Proposals submitted and make recommendations to the Board in relation to such Proposals.

.2 Keep a minute book and other records, including documentation concerning the decisions and recommendations made and other actions taken by the Evaluation Committee. Disposal of any public documents produced or retained by the Board shall be governed by Law No. 5 of December 8, 1955, as amended, and Regulation No. 4284 concerning the administration of public documents in the Executive Branch.

.3 Carry out any additional task related to the selection and award procedure contained in this regulation, as requested by the Board.

3.3 **Meetings of the Evaluation Committee.** The Evaluation Committee will meet as often as is necessary to perform its duties as described in Section 3.2 above. The chairman of the Evaluation Committee, or the member designated by the chairman in his or her absence, shall summon all members to and preside over all meetings of the Evaluation Committee. A quorum shall be required at all Evaluation Committee meetings in which recommendation decisions are made with respect to the selection process, as well as for any other official action of the Committee. The secretary of the Evaluation Committee will keep a record of each meeting, keep custody of the Committee calendar, and carry out any other task related to his or her office, as required by the chairman of the Evaluation Committee.

3.4 **Actions of the Evaluation Committee.** Recommendations and all other decisions made by the Evaluation Committee will be by majority vote of the members present in a duly constituted meeting at which a Quorum is present. The Evaluation Committee shall provide non-binding recommendations to the Board regarding the evaluation of any Proposal, and the BAFO (if any).

3.5 **Technical and Financial/Legal Subcommittees of the Evaluation Committee.** The Evaluation Committee shall appoint two subcommittees to assist in the process of evaluating Proposals. One subcommittee shall be responsible for evaluating the technical

aspects (development and operational) of each Proposal. The other subcommittee shall be responsible for evaluating the financial and legal aspects of each Proposal. Each subcommittee shall submit its findings and recommendations to the Evaluation Committee. Each subcommittee shall conduct its review process separate and independent of the other and the information considered by a subcommittee should not be disclosed to the other without approval of the Evaluation Committee.

#### **ARTICLE 4. GENERAL PROVISIONS**

4.1 **Board of Directors**. Any decision of the Authority concerning the procurement process covered by this regulation, including without limitation, the RFP, the selection process and the Award of a Contract, must be made by the Board unless this regulation expressly authorizes the Executive Director, the Evaluation Committee or any other person to make such decisions. All such decision shall be made in the Board's discretion, except where otherwise required by law.

4.2 **Executive Director**. The Executive Director will receive and review recommendations from the Evaluation Committee, undertake any additional investigations or inquiries he or she deems necessary, and make such decisions and take such actions as he or she may deem appropriate. The Executive Director can not Award any Contract related to the selection of the developer and/or operator of the Port of the Americas without the approval of the Board. The Executive Director may delegate any of his powers or responsibilities under this regulation to another officer of the Authority. The Executive Director, in consultation with the Board, will manage and supervise compliance with the procedures for the Requests for Proposals.

4.3 **No Improper Interests**. No Commonwealth officer or employee who participates

in the process of selection or negotiation established in this regulation shall have an economic interest in any Proponent. No Commonwealth officer or employee shall directly or indirectly participate with the Proponents in the preparation of their Proposals.

**4.4 Amendment to Procurement Process.** Nothing in this regulation shall limit the Board's power to amend the procurement process set forth herein pursuant to an amendment to this regulation.

## **ARTICLE 5. THE REQUEST FOR PROPOSAL; THE EVALUATION PROCESS**

**5.1 Public Advertisement of the Request for Proposal.** The Authority shall publicly advertise a Notice of Request for Proposal in one or more newspapers of general circulation in Puerto Rico, in a leading international financial journal and shall post such Notice in the Internet at the website chosen for the Project. A Notice of Request for Proposal shall be sent also by certified mail to all persons who participated in the qualification process conducted by the Authority and to any persons who the Authority believes may have an interest in the Project.

**5.2 Content of the Request for Proposal.** The RFP shall include the following, without it being construed as a limitation or that their order defines their importance, unless otherwise approved by the Board, in its discretion:

- .1 a description of the work or service required, the delivery or performance schedule, and the proposed contract terms and conditions;
- .2 a description and proposed time schedule of the selection process;
- .3 instructions and forms to be used to prepare and submit the Proposal;
- .4 options or alternatives required or allowed;
- .5 Evaluation Criteria;
- .6 instructions as to how economic elements of the Proposal should be

submitted;

.7 a Proposal Security to be determined by the Board;

.8 if applicable, a statement as to any funding contingencies or other conditions, contingencies, approvals, authorizations, or certifications which are required for award or execution of a Contract;

.9 a due date for Proposals providing Proposers a reasonable time after the RFP is issued for preparation of Proposals, as determined by the Board, and the place where Proposals shall be submitted;

.10 any other information, as determined by the Board, which may be useful to or should be required from Proposers.

**5.3 Requests for Information or Clarification; Modification of Proposals.** The Proponents may amend their Proposals or seek clarification, explanation or interpretation of the RFP only as provided in this section.

The Proponent may request from the Authority a clarification, explanation or interpretation of any matter contained in the RFP up to fifteen (15) days prior to the Due Date for Proposals specified in the RFP. Such request may be made in writing, or, at the discretion of the Executive Director, may be made orally.

After issuance of the RFP the Authority may participate in one or more Individual Meetings. Any oral response provided at an Individual Meeting or any Pre-Bid Conference will be considered unofficial. The Authority will prepare for its records a written summary of the topics discussed and questions raised at each Individual Meeting or Pre-Bid Conference. Questions pertinent to the RFP that are presented at an Individual Meeting or Pre-Bid Conference that the Authority considers may be of general interest to all potential Proponents, and the Authority's response thereto, will be compiled in one or more addendum

and circulated to all potential Proponents which have registered with the Authority. Any oral response during any Individual Meeting or any Pre-Bid Conference which is not confirmed in writing by the Authority in any subsequent addendum to the RFP, will not be considered an official response of the Authority.

Any responses to written requests will be provided by the Authority in the form of an addendum, and will be posted in the Internet at the designated website. Access to such responses will be provided to all persons who have registered with the Authority as potential Proponents. Only written responses provided by the Authority, including those published on the Authority's website, will be official; any other type of communication with any officer, employee or agent of the Authority will not be considered an official response of the Authority.

The Authority will only accept a modification to a previously submitted Proposal if the modification is received before the Due Date for such Proposal.

All modifications shall be in writing and shall be executed and submitted in the same form and manner as the original Proposal.

#### **5.4 Receipt of Proposals and Evaluation Process.**

.1 Proposals shall be delivered to the Authority on or before the Due Date in accordance with the instructions in the RFP and the following: Proposals shall be received in sealed envelopes or packages; unsealed envelopes or packages will not be accepted. Any Proposal submitted by mail or personally delivered by the Proponent or its representative which is received after 3:00 p.m. Atlantic Standard Time on the Due Date will be rejected and returned to the Proponent unopened. Proposals shall be signed in ink by the Proponent or its authorized officer, and the Proponent or such authorized officer shall sign his or her initials, in ink, to confirm any alteration or correction to the Proposal. If the Proponent is a

corporation, the Proponent's corporate seal shall be affixed to the Proposal, and it shall be signed by an authorized corporate officer.

Upon receipt of Proposals, the Authority will follow the following procedure:

(a) Proposals received before the Due Date will be stamped (date and time of receipt) and will be kept in the custody of the Executive Director in a safe place. Such Proposals will not be opened until the date and time established for the opening of the Proposals.

(b) On the Due Date, at or after the time established for the opening of Proposals, the Executive Director will register the identity of each Proponent, which shall be notarized before a Notary Public in Puerto Rico, and will open all Proposals.

(c) Proposals will not be read publicly. Only the identity of the Proponents will be announced at the time of the opening of the Proposals. Only the members of the Board and of the Evaluation Committee and other persons designated by the Executive Director will have access to the Proposals and to the results of the evaluation during the evaluation period.

(d) The Evaluation Committee will evaluate the Proposals based on the Evaluation Criteria to determine, in its discretion, the ranking of each Proposal and which Proposals are within the Competitive Range and shall submit its recommendation to the Board. Based on the Evaluation Committee's recommendation, the Board may instruct the Executive Director to (i) carry out discussions and negotiations with those Proponents whose Proposals are within the Competitive Range as contemplated in Subsection 5.4.2 below; or (ii) negotiate with the Proponent achieving the highest rank and, if unsuccessful, continue negotiations

in strict order of ranking given to each Proposal, as contemplated in Subsection 5.4.3 below.

(e) The Proponents whose Proposals do not fall within the Competitive Range shall be notified in writing and their Proposal Security returned.

(f) The Authority reserves the right to reject any and all proposals submitted, if deemed in the best interests of the Authority, as determined by the Board.

(g) If only one Proposal is received, such Proposal may be considered if the Board determines that it is in the best interests of the Authority to do so.

(h) All Proposals, evaluations, discussions and negotiations will be kept confidential throughout the evaluation and negotiation process until the signing of the Contract.

.2 If the Board has elected to carry out discussions and negotiations with Proponents whose Proposals fall within the Competitive Range, such Proponents will receive a written notification explaining that negotiations will be conducted according to the following procedures:

(a) No statement made or action taken by the Evaluation Committee, any employee or officer of the Authority, or any consultant to or other agent or representative of the Authority during the discussions and negotiations shall bind the Authority in any way. Only the definitive written Contract, when effective in accordance with its terms, shall be binding on the Authority.

(b) Each Proponent who falls within the Competitive Range will be invited to one or more private meetings with the Executive Director assisted by the Evaluation Committee or other personnel designated by the Board to discuss any aspect of their Proposal and to answer questions. The content and scope of the meetings with each Proponent will be

determined by the Executive Director assisted by the Evaluation Committee based on the content of and circumstances relating to the Proponent's Proposal. The purpose of each meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements and/or improve the economic terms for the Authority; discuss the basis of the proposed economic terms; and discuss any other pertinent details of the Proposal so as to result in a better Proposal for the Authority.

(c) All Proponents who are within the Competitive Range will be given an opportunity to discuss and review their Proposals. However, the discussions will be based on the facts and circumstances relating to each Proposal, as described in paragraph (b) above; therefore, the information discussed in such meetings may vary for each Proponent.

(d) The Executive Director with the assistance of the Evaluation Committee shall:

(i) Establish procedures and schedules to carry out the discussions and to control the meetings;

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

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

(iv) Address any suspected mistakes that may be found to exist;

(v) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions; and

(vi) Keep a record of the date, time, place, attendees and general content of the meetings.

(e) After each interview or meeting with any Proponent, the Evaluation Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting.

(f) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Board or the Evaluation Committee.

(g) After such discussions and parallel negotiations, the Authority may, in the Board's discretion, request best and final offers ("BAFO") from Proponents within the Competitive Range in response to the discussions and negotiations held or proceed to negotiations with one of the Proponents within the Competitive Range which may culminate in an Award of Contract.

(h) If the Authority determines to conduct a BAFO process, additional discussions or negotiations may be conducted after the Authority receives the BAFO, if the Executive Director determines, in its discretion, that such additional discussions or negotiations are in the Authority's best interest, and in such case the Authority may request a further resubmission of Proposals or proceed to negotiate with the Proponent submitting the highest ranking Proposal as described in section 5.4.3.

.3 If the Board elects to carry out discussions and negotiations with the Proponent whose Proposal received the highest rank, Proponents of the Proposals which fall within the Competitive Range will receive a written notification explaining that negotiations will be conducted according to the following procedures:

(a) No statement made or action taken by the Board, the Evaluation Committee, any employee or officer of the Authority, or any consultant to or other agent or representative of the Authority during the discussions and negotiations shall bind the Authority in any way. Only the definitive written Contract, when effective in accordance with its terms, shall be binding on the Authority.

(b) The Proponent with the highest ranking which falls within the Competitive Range will be invited to one or more private meetings with the Executive Director assisted by the Evaluation Committee or other personnel designated by the Executive Director to discuss any aspect of its Proposal and to answer questions. The content and scope of the meetings with the Proponent will be determined by the Executive Director, in its discretion, assisted by the Evaluation Committee based on the content of and circumstances relating to the Proponent's Proposal. The purpose of the meeting will be to clarify any doubts as to the requirements of the RFP and confirm that the terms of the Contract are understood; improve technical or other aspects of the Proposal in an effort to assure compliance with the specifications and performance requirements and/or improve the economic terms for the Authority; discuss the basis of the proposed economic terms; and discuss any other pertinent details of the Proposal so as to result in a better Proposal for the Authority.

(c) The Executive Director with the assistance of the Evaluation Committee shall:

(i) Establish procedures and schedules to carry out the discussions and to control the meetings;

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

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

(iv) Address any suspected mistakes that may be found to exist;

(v) Provide the Proponent with an opportunity to submit any modification to the economic terms, technical aspects or any other aspects of its Proposal which may result from the discussions; and

(vi) Keep a record of the date, time, place, attendees and general content of the meetings.

(d) After each interview or meeting with the Proponent, the Evaluation Committee may require the Proponent to submit in writing confirmation of any clarification of a Proposal discussed in the meeting.

(e) Discussions and negotiations may be carried out in whole or in part through written or telephone communications without in-person meetings or interviews, at the discretion of the Executive Director or the Evaluation Committee.

(f) Additional discussions or negotiations may be conducted after the Authority receives a revised Proposal. If the Executive Director determines, in its discretion, that additional negotiations are not in the Authority's best interest, the Executive Director shall suspend the negotiation with the Proponent and commence negotiations with the next highest ranking Proponent as described in this Section 5.4.3.

.4 Subject to the Authority's right to reject any or all Proposals, it shall select the Proposal considered most advantageous to the Authority, considering technical and economic terms and other Evaluation Criteria.

.5 Prior to the Award of a Contract, information related to the related Proposal or its evaluation will not be discussed with anyone other than the Proponent who submitted it and personnel involved in the evaluation and selection process.

.6 The Board may, at its discretion, disregard any informality or technicality in the documents of any Proposal, as long as such matters can be corrected or clarified without prejudice to the Authority.

#### **5.5 Cancellation of RFP.**

.1 If the Board recommends that the RFP be canceled, it shall indicate the reason or reasons for such recommendation and will instruct the Executive Director to undertake one of the following alternatives:

- (a) conduct a new RFP;
- (b) directly negotiate with the Proponent achieving the highest rank, after having cancelled the RFP, when it is deemed in the best interests of the Authority; or
- (c) take any other action the Board deems appropriate.

.2 The cancellation of the RFP will be made by the Board. It shall have the right to cancel the Award of Contract at any time before such Contract is signed without penalty or recourse to the Authority.

#### **ARTICLE 6. CONTRACT AWARD**

6.1 **Award of Contract.** The Evaluation Committee shall make its recommendations for Award of Contract to the Board. The Board shall make the final decision with respect to the Award of Contract for construction and/or operation for the Port of the Americas; provided, however, that as required by Article 11(b) of Law No. 171, in the case of a Contract which constitutes an administrative concession, the decision by the Board with respect to the Award of Contract will not have any effect until the decision to award such concession has been

approved by the Governor of the Commonwealth of Puerto Rico. If the Governor does not approve the decision with respect to the administrative concession within thirty (30) days from the date the Board has submitted its recommendation selection of the related Proposal(s) or Proponents(s) to the Governor, the Proponent may retire its Proposal. If a Contract is not awarded within 180 days after the Due Date for the Proposal corresponding to such Contract, any Proponent may withdraw its Proposal without penalty. The Authority may cancel the Award of Contract at any time before the Contract is signed by the Authority and the Proposer, without recourse or liability to the Authority.

**6.2 Notice of Award of Contract** - The Executive Director shall notify in writing all participating Proponents of the decision to recommend an Award of Contract made by the Board. Such notification may be made by personal delivery, by certified mail, or by facsimile. In the case of a Contract involving an administrative concession which requires the Governor's approval, the Executive Director shall send an award notice no later than five (5) working days after the Governor has notified the Authority of its approval, to the selected Proposer(s) by certified mail, facsimile or personal delivery. No other action by the Authority will be considered as acceptance of a Proposal.

**6.3 Execution of the Contract** - Upon the Award of Contract, the Proponent shall execute the Contract as provided in this Section, after submitting the required Performance Bond, if any, and any other bonds and guarantees specified in the Request for Proposals and evidence of insurance requested, and carry out all other actions established as requirements of the Contract's execution within the time period established by the Authority. The Contract shall not be enforceable or effective until it has been completed and approved, and signed by all parties. If the selected Proposer does not execute the Contract or does not comply with the requirements in this section within the time limit specified, the Authority may, in its

discretion, extend the deadline for execution of the Contract, or award the Contract to the next highest ranking Proposal if the Authority determines that such award is in the best interests of the Authority.

**6.4 Contract Documents** - The Authority will determine the type of Contract and the terms and conditions that it will contain with respect to each awarded Contract made in accordance with this regulation.

## **ARTICLE 7. REVIEW AND RECONSIDERATION OF DECISIONS**

**7.1 Reconsideration by Authority.** The Authority may reconsider a rejection of a Proposal, a Contract award decision and any other decisions on its own initiative or in accordance with the provisions of this Article.

**7.2 Request for Reconsideration.** Any Proponent adversely affected by a decision made by the Authority in connection with the selection and award procedures provided in this regulation who wishes that the Authority reconsider such decision must submit a request for reconsideration by hand delivery to the Chairman of the Board of Directors of the Authority prior to 5:00 pm Atlantic Standard Time on any business day which is not later than ten (10) days after the notification of said decision. A request for reconsideration shall be in writing, shall state the name and address of the requesting party, shall contain a detailed and accurate statement of the legal and factual grounds for the request, including copies of relevant documents, and shall specify the relief requested. Evidentiary statements, if any, shall be submitted under penalty of perjury. For purpose of this regulation, a request for reconsideration shall be considered filed at the Authority on the hour and date it is stamped as received by the Chairman of the Board of Directors of the Authority. A request for reconsideration shall not stay the actions of the Authority relating to the procurement process. If a request for reconsideration is filed, the Authority may proceed with BAFOs or

negotiations, unless the Authority determines that it is in the public interest to defer the award of the related Contract until the request for reconsideration is resolved. If the Authority concludes that the Proposer filing the request for reconsideration has established a basis for reconsideration, the issue will be submitted to the Board to determine whether the related Contract should be awarded before the request for reconsideration is resolved.

**7.3 Security for Reconsideration.** The Board shall require from any party requesting reconsideration of a decision of the Authority the posting of a bond, guaranty or other security in the amount of \$35,000,000 to cover any expense or damage that might be suffered by the Authority as a consequence of the request for reconsideration. Any intervening Proposer shall provide a separate security for an equal amount. Such bond, guaranty, or other security may be posted in the form of legal currency of the United States, certified check or money order payable to the Authority, or through a letter of credit, a financial guaranty bond or guarantee issued by a bank or financial institution (which in case of a surety or insurance company, must be authorized to issue financial guaranty bonds in Puerto Rico). The financial guaranty bond, guarantee or other security must be presented to the Board within five (5) business days from the date of submission of the request for reconsideration. Failure to deliver the required financial guaranty bond, guarantee or other security to the Board as provided in and within the time required under this section shall constitute sufficient cause for the dismissal of the request for reconsideration. Should it be determined by the Authority that the request for reconsideration was frivolously filed, or that the request was based on negligent or malicious allegations, the Authority may foreclose upon such security to recover the Authority's costs reasonably incurred, including legal and consultants' fees and any damages sustained by the Authority as a consequence of the request for reconsideration. The Authority shall not be liable for any damages to the Proposer filing the request for

reconsideration or to any participating party in the protest, on any basis, express or implied, whether or not the reconsideration is granted.

7.4 **Resolution of Request for Reconsideration.** The Board shall consider the request for reconsideration within ten (10) days from the date of the filing of the same. Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the Authority, a hearing or argument may be permitted if necessary for the protection of the public interest or an express, legally recognized interest of a Proposer. If the Board makes a determination, the term to petition for judicial review of such determination shall commence as of the date a copy of the notification of the decision of the Board is filed. If the Board takes no action with respect to the reconsideration within the aforementioned ten (10) day period, it shall be understood that the reconsideration was denied and the term for judicial review shall commence to run as of that date.

7.5 **Judicial Review.** A Proposer requesting reconsideration must exhaust the administrative remedies before submitting a request for judicial review. Judicial review of the determinations made by the Board will be governed by Subchapter 4 of Law 170 of August 12, 1988, as amended. If the request for reconsideration is denied and such denial is subsequently upheld upon judicial review, the Authority may foreclose upon the financial guaranty bond or other such security provided by the Proposer to recover the Authority's costs reasonably incurred in any action to defend against its denial of the request for reconsideration, including legal and consultants' fees and any damages sustained by the Authority as a consequence of the request for reconsideration.

7.6 **Compliance with Procedures.** A request for reconsideration that fails to comply with the time limits or procedures stated above or provided in applicable laws or regulations may be dismissed or denied without consideration. Failure to file a request for

reconsideration within the applicable ten-day period shall constitute a waiver of the right to seek reconsideration of the Authority's decision. The failure of a Proposer to raise a ground for a request for reconsideration with respect to a decision of the Authority within the time period set forth above shall preclude consideration of that ground in such request for reconsideration.

#### **ARTICLE 8. CONFIDENTIALITY OF INFORMATION**

The Authority will endeavor to maintain confidential all Proposals, evaluations, discussions and negotiations throughout the evaluation and negotiation process until the signing of the Contract. The Authority shall make public all the information contained in the Proposals after the signing of the Contract, except trade secrets, proprietary or privileged information clearly identified as such by the Proponent, or information that must otherwise be protected from publication according to law, unless otherwise ordered by a court order. The Authority shall endeavor to maintain the confidentiality of any information that a Proponent indicates to be proprietary or a trade secret, or that must otherwise be protected from publication according to law, except as required by law or by a court order.

#### **ARTICLE 9. CHANGES TO PROCUREMENT REGULATION**

The Board of Directors of the Authority, at its discretion, reserves the right to modify, update or amend this Procurement Regulation once the Request for Proposal process has commenced if it determines that it is in the best interest of the Authority.

#### **ARTICLE 10. SEVERABILITY**

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

The invalidity or nullity of any word, sentence, section, paragraph or article in any instance will not be construed to affect or impair in any way its applicability or validity in any other instance.

**ARTICLE 11. EFFECTIVE DATE**

This amended and restated regulation shall become effective on August 22, 2007.

