



GOVERNMENT OF PUERTO RICO

Puerto Rico Public-Private Partnerships Authority

# RESPONSES TO REQUESTS FOR CLARIFICATIONS

Puerto Rico Electric Power  
Thermal Generation Facilities

RFQ 2020-1

**Date Issued: September 8, 2020**

*The following are responses to certain Requests for Clarification (“RFC”) received in connection with the Request for Qualifications (“RFQ”) for the Puerto Rico Electric Power Thermal Generation Facilities issued by the Puerto Rico Public-Private Partnerships Authority (the “Authority”) on August 10, 2020. The Authority has summarized below selected questions based on the RFCs that it received and provided its responses in bold and blue. These responses are subject to the terms and conditions of the RFQ in all respects. Capitalized terms used but not otherwise defined herein have the meanings set forth in the RFQ.*

---

1. Within evaluation criteria 1.2 on page 22 of the RFQ, and the certification on page 37 of the RFQ, there is a requirement for a broad certification that the bidder and affiliate companies have never been indicted, convicted, pled guilty or have been found to have probable cause for arrest under a listing of local Puerto Rico anti-corruption acts, as well as the United States Foreign Corrupt Practices Act. As a holding of one of the top 200 companies in the Forbes 500, with a worldwide portfolio of businesses, the company cannot certify to the statement as written. We would request either that the certification be limited to either: (a) the Respondent and its subsidiaries, or (b) a five (5) year period. Alternatively, we would like to know whether we would be able to modify the certification to include an addendum, listing the details of any incidents met by the above description. I.e., “Except as provided on addendum 1 to this certification, ...”

**RESPONSE: A Respondent that is a corporation has to provide the certification with respect to its directors, officers, controlling shareholders, subsidiaries, its parent company and any person or entity that may be considered an alter ego or the passive economic agent of the Respondent. A partnership has to provide the same certification, but also include its partners. As the current form of the certification does not capture affiliates, Respondent should be in a position to provide the certification as requested.**

2. Source of Funds Federal Govt. or Funding from P3? If P3, Is it possible to obtain a copy of the Puerto Rico Public-Private Partnerships Authority credit rating(s) most recent report? If available?

**RESPONSE: The Authority (P3) will not be a source of funding. The funds to pay the generation related costs come from customer bills, which are subject to PREB’s oversight. Further clarifications as to funding will be made at the RFP stage.**

3. What impact if any, does an existing long-term contract with an OEM on a given site will have on the award of the O&M at the same site?

**RESPONSE: As part of the SOQ response, please disclose any existing long-term contracts and a high-level summary of the same. Further clarifications on the interaction between existing long-term contracts, if any, will be made at the RFP stage.**

4. Is having Puerto Rico presence via Alliance with local Mechanical, Service Center and machining shops be a particular benefit for participants evaluation within the maintenance and managing areas of the various plant operational assets favorable in the SOP and eventual RFQ selection? We will invest in further building our local service resources and presence in your region if considered as a proponent.

**RESPONSE: The evaluation criteria for acceptance in the RFP stage is included in Section 3 of the RFQ, which does not consider a Respondent's presence in Puerto Rico. However, the Authority's public policy is to foster local participation in PREPA transactions. Further, when evaluating proposals, the Partnership Committee has discretion to consider the presence in, commitment to, and impact on Puerto Rico, among other factors. Section 7.4 of the Act 120 Regulation states a public policy of fostering the participation of local suppliers, contractors, designers, architects, engineers, advisors and investors.**

5. We do not plan to enter into a consortium or a Special Purpose Vehicle. Regarding one-page resumes; will excluding the participant names at this time be acceptable as part of the SOQ selection process?

**RESPONSE: As required by Section 3.2.3 of the RFQ, resumes for the Key Individuals (“up to five (5) individuals who will play an important role in the Project on behalf of Respondent and Team Member(s)”) must be included in the SOQ, regardless of whether Respondents plan to enter into a consortium or Special Purpose Vehicle. Respondents have the flexibility to change the positions of or replace Key Individuals through the procurement process. However, Respondents should note that pursuant to Section 1.7 of the RFQ, if they wish to make such a change after the submission of the SOQ and before the issuance of the RFP, they must submit an application to the Partnership Committee seeking consent to the change.**

6. Has an independent company conducted regulated materials surveys; subsurface investigations; developing a scope of work for asbestos abatement, review of existing demolition and remediation reports; etc...?

**RESPONSE: Further clarifications will be made at the RFP stage.**

7. According to section 4.5 of the Request for Clarification “RFQ 2020-1”, Proponents should familiarize themselves with the Confidentiality and Publication provision contained in Articles 9 (f) and 9 (i) of Act 29-2009 and Section 11.2 of Act 120, to ensure that the documents identified by Proponents as “Confidential” or “Proprietary” will not be subject to disclosure under Act 29-2009. Taking into consideration that the authority and the partnership committee will determine if such material is considered exempt from disclosure, what is the confidentiality criteria the authority will use?

**RESPONSE: For the avoidance of doubt, note that the relevant provisions are 9(i) and 9(j) of Act 29-2009 and Section 11.2 of the Act 120 Regulation. The Authority will consider whether the material qualifies as trade secrets, proprietary information or privileged or confidential information of the Respondent.**

8. Submission: Page 7 of the subject RFQ states... “All SOQs must be submitted in the manner set forth in Section 4 of this RFQ”. Per Section 4.1: SOQ Requirements of the subject RFP ...” Both an electronic copy and a physical copy of the original SOQ must be delivered no later than the Submission Deadline”. Please advise if Respondent can submit electronic copy for receipt by September 15, 2020 at 5:00 p.m. AST, and if the hardcopy can follow-up (via federal express mail) date stamped on September 15th, for submittal, but not received, on this date.

**RESPONSE: The Authority still requires hardcopies wherever requested, other than public documents, for which electronic links or attachments will be accepted. Note that a Respondent shall send a follow-up physical copy of the SOQ as long as it is date stamped on September 15. Additional instructions for the submission of the electronic copy will be posted on the Authority’s webpage this week.**

9. Evaluation Criteria: Per page 22 of the subject RFO, Section 2.1 states... “Each Respondent and each Team Member must certify”... Please advise if only the Respondent is required to complete Appendix A: FORM OF RESPONDENT AND TEAM MEMBERS CERTIFICATION and Appendix B: FORM OF DOCUMENT ACKNOWLEDGEMENT & CONTACT INFORMATION, or does this mean any and all of Respondent’s advisors and/or subcontractors are required to complete the Certification/Acknowledge Forms (Appendix A and Appendix B).

**RESPONSE: Appendix A must only be completed and submitted, as part of the SOQ, by the Respondent and each Team Member, if any. Appendix B should be completed only by the Respondent, who makes the required acknowledgements on behalf of itself and each of its Team Members, if any.**

10. Question – Process – Section 1.6 – Page 7: What are the scheduled dates for the Stage 2 and Stage 3 of the RFP Process?

**RESPONSE: The RFP is currently expected to be issued to Qualified Respondents in November, with a final selection contemplated by mid-2021, although that timing is subject to change. Further details regarding dates in Stage 2 and Stage 3 will be outlined in the RFP.**

11. Question – Term: What is the expected contract Term?

**RESPONSE: As noted in Section 2.3 of the RFQ, the term of the PPP Contract is expected to be through shutdown and demolition of the legacy generation plants. For the applicable timeline, please refer to PREB's final order on the IRP. The Modified Action Plan anticipates retirement of certain of the generation units over the next five years, subject to certain contingencies. The referenced acts and regulations may be found at the following websites: <https://aafaf.pr.gov/p3/about-p3/> (under legislation) and <https://energia.pr.gov/en/laws/>.**

12. Clarification – Scope – Section 2.3 – Page 21: Coordinating emergency planning and storm restoration and recovery. Our understanding is this would be limited to the scope of emergency planning or storm restoration work with keeping the power plant in operation and related to the scope of just the plant equipment. This may include working with vendors and others to support any equipment that is damaged.

**RESPONSE: The Legacy Generation Operator will be responsible for emergency planning, storm restoration work, outage management and restoring power for the power plants for which they are under contract. However, they will need to coordinate with the T&D Operator (LUMA) and other stakeholders as needed. Further clarifications on the scope of the Legacy Generation Operator's responsibilities will be made at the RFP stage.**

13. Clarification – Scope – Section 2.3 – Page 21: Managing outages and restoring power. Again, we understand this scope is related to usual outage management (scheduled or unscheduled) and restoring power within the capacity of the plant's ability. In other words, confirming the restoring power portion of this scope element is limited to just the power plant under operation.

**RESPONSE: The Legacy Generation Operator will be responsible for emergency planning, storm restoration work, outage management and restoring power for the power plants for which they are under contract. However, they will need to coordinate with the T&D Operator (LUMA) and other stakeholders as needed. Further clarifications on the scope of the Legacy Generation Operator's responsibilities will be made at the RFP stage.**

14. Clarification – Scope – Section 2.3 – Page 21: Procuring and managing water or power supply, if applicable. With regard to the procuring power supply, will the owner of the plant be responsible for such procurement. More detail on this aspect is kindly requested.

**RESPONSE: Procuring and managing water and power supply is included in the scope of the Legacy Generation Operator's responsibilities, as applicable, to the respective generation plant. Further clarifications will be made at the RFP stage.**

15. Clarification – Scope – Section 2.3 – Page 21: Procuring, managing the delivery and quality testing of fuel. While the quality testing of the fuel delivery is understood, will the selected contractor be seen more as an administrator of the fuel contract within an already established fuel contract? Or will the full scope of establishing the fuel contract and managing it thereof be a responsibility of the contractor?

**RESPONSE: The selected Legacy Generation Operator will be responsible for administering the existing and future fuel contracts. Further clarifications will be made at the RFP stage.**

16. Clarification – Scope – Section 2.3 – Page 21: Obtaining and maintaining licenses, permits and consents, as necessary. We assume all permits for operating the power plants will be held by PREPA and already in place when O&M contract begins. Given PREPA will retain ownership of and title to the respective legacy generation assets can PREPA give insight as to which licenses, permits and consents may still be required and will PREPA provide reasonable assistance to the successful contractor as needed to obtain such documents?

**RESPONSE: It is expected that PREPA and the Authority will provide reasonable assistance to the successful Legacy Generation Operator; however, further clarifications as to the licenses, permits and consents that may be required for a private operator will be made post award.**

17. Section 2.3, Pg. 21: Assisting with the transition of the plants to third parties to the extent certain of the plants are removed from the PPP Contract. Can P3 offer any more details regarding the timeline it may see if perhaps privatization of ownership of the plant is contemplated?

**RESPONSE: No, privatization of ownership of the plants is not contemplated at this time.**

18. Can the bidders choose to bid only some specific sites or does pricing have to be provided for all sites?

**RESPONSE: The Authority is looking for one or more operators for all of the plants. However, if a Respondent is only willing to operate certain plants, they should indicate which plants in their SOQ.**

19. Clause 2.2.2, Page No. 16: Kindly confirm whether cannibalization will be a part of the decommissioning process.

**RESPONSE: Further clarifications will be made at the RFP stage.**

20. Clause 3, Page No. 22: Kindly share the web links for accessing all the acts / regulations referred in the RFQ document.

**RESPONSE: The referenced acts and regulations may be found at the following websites: <https://aafaf.pr.gov/p3/about-p3/> (under legislation) and <https://energia.pr.gov/en/laws/>.**

21. Clause 4.4, Page No. 30: It is requested that due to the ongoing global situation due to covid-19 spread, the requirement of hardcopy submission of SOQ may please be waived off.

**RESPONSE: The Authority still requires hardcopies wherever requested, other than public documents, for which electronic links or attachments will be accepted. Note that a Respondent shall send a follow-up physical copy of the SOQ as long as it is date stamped on September 15. Additional instructions for the submission of the electronic copy will be posted on the Authority's webpage this week.**

22. Clause 1.6, Page No. 7: It is requested that the SOQ submission deadline may please be extended by at least 1 week.

**RESPONSE: The Authority currently does not expect to extend the SOQ submission deadline.**

23. Section 1.1 (Introduction) of the RFQ indicates in its first paragraph that: "... A full listing of the Legacy Generation Assets included in this solicitation is provided in Figure 1 of Section 2.2.2. ... The aforementioned services would be provided pursuant to one (1) or more public-private partnership ("PPP") contracts, in the form of one or more operation and maintenance agreements, relating to the Legacy Generation Assets and with terms tied to the remaining useful lives of the applicable Legacy Generation Assets (the "Project"). The Project will not involve the sale of any of the Legacy Generation Assets." Please clarify the following:

1) May Respondent select from Figure 1 which of the Legacy Generation Assets to bid for during the RFP process?

**RESPONSE: The Authority is looking for one or more operators for all of the plants. However, if a Respondent is only willing to operate certain plants, they should indicate which plants in their SOQ.**

2) Some of the Plants listed in Figure 1 for a particular Site include several Units. For example, one of the Plants under the San Juan Combined Cycle 5&6, lists Units 5&6 jointly. May Respondent bid for these Units separately or does Respondent have to bid for the Plant which shall include all Units?

**RESPONSE: The Authority is looking for one or more operators for all of the plants. As noted above, if a Respondent is only willing to operate certain plants, they should indicate which plants in their SOQ. However, a Respondent should bid all units at a particular site.**

3) Some of the Sites listed in Figure 1 are situated in the same location. For example, San Juan Combined Cycle 5&6 (including Gas Turbine Units 5-6 and Steam Turbines 5-6) and San Juan Steam (including Steam Units 7-10) are listed as separate Sites. May these Sites be operated by different Respondents even though these are found at the same location? Are these considered separate assets?

**RESPONSE: The Authority is looking for one or more operators for all of the plants. As noted above, if a Respondent is only willing to operate certain plants, they should indicate which plants in their SOQ. The San Juan complex should be considered as a single site with multiple units and the Respondent should bid all units at this location.**

24. Section 1.1 (Introduction), indicates some of the objectives entering into a PPP for the management, operation, maintenance and decommissioning of some or all of the Legacy Generation Assets, include: "implement operational excellence of electricity generation facilities consistent with prudent industry practices, including improved safety and compliance with environmental and other applicable regulatory requirements; ..." In terms of Safety and Environmental, the above seems to imply that even though the plants are "Legacy", they would need to improve upon safety and compliance with environmental and other applicable regulatory requirements. Can you please clarify if their legacy status would not apply to safety and environmental?

**RESPONSE: Further clarifications will be made at the RFP stage.**

25. Section 1.4 (Function of this RFQ) indicates in the fifth bullet that: “experience and demonstrated ability to manage a largely Spanish-speaking workforce”. Does this mean that the existing labor base needs to be absorbed along with their corresponding unions?

**RESPONSE: As stated in the Statement of Motives of Act 120: “the existing framework for the establishment of public-private partnerships requires that Contractors give priority to PREPA employees in their employee selection process. This Act provides that regular PREPA employees who are not selected to work for the Contractor shall retain their positions or be transferred to other positions within PREPA and other government entities. In addition, it provides that said employees shall keep all their vested rights in accordance with the laws, rules, collective bargaining agreements, and regulations applicable to them, thereby guaranteeing that no regular PREPA employee shall lose his job or his benefits as result of PREPA Transactions.” Further clarifications will be made at the RFP stage.**

26. Section 1.7 in its first paragraph requires certain information when a Respondent has formed or proposes to form a consortium. Such information includes identifying all team members in the consortium. It further defines in such paragraph the term “Team Member” which includes, without limitation, the ultimate owner(s) (who directly or indirectly owns 25% or more of the equity interests of the Respondent) or holding company of any such investor. In the second paragraph of this section it is required that the Respondent indicate whether it intends to form a special purpose vehicle or other legal entity for the Project. Moreover, each Team Member and its role must be identified in the Respondent’s SOQ and cannot be changed without the prior written consent of the Partnership Committee. Please clarify the following: Confirm that the obligation to disclose the “Team Member” (based on the definition provided in the first paragraph of this section) applies to all Respondents and not only to those Respondents that will form or have formed a consortium.

**RESPONSE: Confirmed. The obligation to disclose all "Team Members" applies to all Respondents.**

27. Based on the referenced definition of “Team Member”, the ultimate owner(s) or holding company of any investor are also considered Team Members. However, the “ultimate ownership” of any such investor does not seem to be limited to ownership of at least 25% (as in the case of Respondent’s ownership). Please clarify if, in considering the ultimate owner(s) or holding company of any investor, the ownership percentage to be taken into account would also be limited to those who directly or indirectly own 25% or more of the equity interests of the investor.

**RESPONSE: Respondents should indicate any entity that directly or indirectly owns any percentage of the equity interests of the Respondents, provided that with respect to public companies, information should only be provided with respect to entities that directly or indirectly own 25% or more of the equity interests. Respondents should also provide an organizational chart.**

28. Section 2.57 of the Act 120 Regulation defines “Team Member” as “each individual person, partnership, company or legal entity that is formally or informally reviewing a Project and intends to participate as an equity investor in the Proponent for a Project.” The definition provided in the RFQ limits such definition with respect to legal entities to those “who directly or indirectly owns 25 percent (25%) or more of the equity interests of the Respondent) or holding company of any such investor...” To the extent the definition in the Act 120 Regulation does not include such limitation, it is broader and could contemplate the inclusion of additional parties as Team Members. Since, the RFQ provides in page 4 that prospective Respondents should carefully review the Act 120 Regulation (among other legislation) and ensure compliance with such legislation in addition to the terms and conditions of the RFQ, please confirm, that the definition of “Team Member” provided in the RFQ is the one that must be followed and used in the preparation of the SOQ.

**RESPONSE: Respondents should indicate any entity that directly or indirectly owns any percentage of the equity interests of the Respondents, provided that with respect to public companies, information should only be provided with respect to entities that directly or indirectly own 25% or more of the equity interests. Respondents should also provide an organizational chart.**

29. Section 1.8 of the RFQ requires that “each Respondent will ensure that each Team Member does not use, consult, include or seek advice from any Restricted Party.” Some of the restricted parties identified in the RFQ are global firms that presently provide services in matters unrelated to this proposal. Please clarify the following: Is the requirement that a Respondent or Team Member do not “use, consult, include or seek advice from” limited to matters related to the Project?

**RESPONSE: The requirement to not use, consult, include or seek advice from any Restricted Party relates to the Project, however Respondents should disclose any relationship with these Restricted Parties on other matters.**

30. If one of the Team Members has been audited by a Restricted Party, is that Team Member ineligible to participate in the RFQ process?

**RESPONSE: No.**

31. If a Respondent received services in the past by a Restricted Party, is the Respondent ineligible to participate in the RFQ process?

**RESPONSE: No.**

32. Section 1.10 of the RFQ requires that Respondents, their Team Members and their respective directors, officers, employees, advisors, counsel, accountants and other consultants and representatives must certify that they have complied with the requirements of Section 4.13 of the Act 120 Regulation by completing the Form of Respondent Certification included as Appendix A to this RFQ. Please clarify that the requirement to fill and submit the Appendix A form only applies to each Respondent and each Team Member

**RESPONSE: Confirmed. Appendix A must only be completed and submitted, as part of the SOQ, by the Respondent and each Team Member, if any.**

33. Section 2.1.2, first paragraph reads: "The Government and most of its public corporations are in the midst of a profound fiscal crisis." And section 2.2.1 in a bullet mentions: "significant balance sheet liabilities, including bond debt and pension obligations, which has led, among other things, to an inability to access credit markets for long term capital investment". Please clarify the following:

- 1) What kind of guarantee would the consortium have to be compensated in a timely fashion if it is assigned one or more of the Legacy Assets?

**RESPONSE: Further clarifications will be made at the RFP stage.**

- 2) How will the compensation structure be?

**RESPONSE: Further clarifications will be made at the RFP stage.**

34. Section 2.2.2 (Current Status of the Legacy Generation Assets). The second sentence of the second paragraph, which reads: "Costa Sur Unit 5 is expected to be online in August 2020 and Unit\_\_\_\_," seems to be incomplete. Please complete the sentence.

**RESPONSE: The sentence should read as follows: "Costa Sur Unit 5 is expected to be online in August 2020 and Costa Sur Unit 6 is expected to be online in October 2020." The Costa Sur 5 & 6 units were damaged during the recent 2020 earthquakes. Costa Sur Unit 5 is in service now.**

35. Section 3.1 of the Evaluation Criteria (Financial Capacity of Team, requires "[e]vidence of the financial capability to obtain operational security in the form of an unconditional and irrevocable direct pay letter(s) of credit." Can you please be more specific and/or clarify the kind of evidence to proof financial capability?

**RESPONSE: The Authority would deem the following evidence of a Respondent's ability to obtain letter(s) of credit as acceptable: documentation of previous letters of credit tied to similar activities, demonstration of sufficient balance sheet capacity for additional letters of credit (with calculations to support), bank commitment letters demonstrating willingness to provide letters of credit, and parent company guarantees, if applicable.**

36. Can you please expand on what type and value of *unconditional* and *irrevocable* direct pay letter(s) of credit will be required?

**RESPONSE: See above response.**

37. Reference Page 25 / Part 3 / 3.1 - copies of financial statements (audited preferred), Form 10-Ks, 20-Fs or similar types of annual reports for the past two (2) years, together with any other relevant financial information. Question – The 10-K is a very lengthy document totaling more than 150 pages, per year, so would it be okay to supply a link that will take you to the 10-K info or are the hard copies required?

**RESPONSE: Given that these documents are public documents, the Authority will accept links to those electronically.**

38. Does participating or being selected in this RFQ 2020-1 process preclude the participation in any of the existing concurring (RFQ-2019-4, RFQ-2019-3, etc.) or any future Power Generation RFQs?

**RESPONSE: As currently contemplated, it does not preclude them from participating in other RFQs, subject to Act 120.**

39. RFQ 2019-4 requests a new 300 MW power plant for the Palo Seco site while RFQ 2020-1 requests the management, operation, maintenance and decommissioning of legacy units at the Palo Seco site and the PREPA IRP identifies 2025 as the last year of operation for legacy units at Palo Seco;

1) How will these two RFPs be coordinated with regard to time, scope, responsibilities and site control?

**RESPONSE: PREB's final order on the IRP has pushed the timeline of the Palo Seco project. PREPA will be studying the need for a new 300 MW power plant at Palo Seco over the next few months. However, note that the Palo Seco site also has three (3) new PW FT8 Mobile Pac units. The full coordination of how and when exactly Palo Seco steam units get retired will be clarified during the RFP process.**

2) How will logistics for main and auxiliary equipment use and removal, site access, etc. be determined between the company contracted for RFQ 2019-4 and the company contracted for RFQ 2020-1? Both companies will coincide at Palo Seco.

**RESPONSE: See above response.**

40. Please provide an updated legacy unit retirement schedule per the latest IRP discussions.

**RESPONSE: Please refer to AP20180001 IRP Final Resolution and Order (8/24/2020) and the PREPA Response to the Energy Bureau - PREPA ROI.**

41. For a particular legacy generating station, can the awarded company propose a PPA for a new or upgraded generation facility under the Public Utility Regulatory Policies Act (PURPA) after decommissioning of the legacy generation at the same site?

**RESPONSE: Pursuant to Act 120, the described transaction must be conducted through the procurement process established by Act 120 and the Act 120 Regulation.**

42. Given the current logistical challenges stemming from the COVID-19 Pandemic, please confirm the submission requirements still include hardcopy. We would request an electronic submission if possible.

**RESPONSE: The Authority still requires hardcopies wherever requested, other than public documents, for which electronic links will be accepted. Note that a Respondent shall send a follow-up physical copy of the SOQ as long as it is date stamped on September 15. Additional instructions for the submission of the electronic copy will be posted on the Authority's webpage this week.**