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"Public-Private Partnership Authority Act"

Act No. 29 of June 8, 2009, as amended

(Contains amendments incorporated by:
Act No. 297 of October 18, 2012
Act No. 27 of June 17, 2013
Act No. 173 of December 27, 2013
Act No. 237 of December 19, 2014
Act No. 1 of January 11, 2017)

(Unincorporated amendments:
Act No. 95 of August 8, 2017
Act No. 223 of September, 2018
Act No. 3 of May 24, 2021)

To establish the public policy of the Commonwealth of Puerto Rico on Public-Private Partnerships; authorize all departments, agencies, public corporations, and instrumentalities, and the Legislative and Judicial Branches of the Government of Puerto Rico to establish Public-Private Partnerships through contracts; to create the Public-Private Partnership Authority as an affiliate of the Government Development Bank for Puerto Rico and to establish the composition of its Board of Directors and its powers; to authorize it to identify, evaluate, and select the projects that shall be established as Public-Private Partnerships; establish the Partnership Committees and define their role within the Authority; establish the criteria to be considered in the establishment of Public-Private Partnerships and the provisions that could or should be included in Public-Private Partnership Contracts, as well as the maximum terms thereof; establish the requirements and conditions applicable to partners, the evaluation criteria and the procedures to be carried out to qualify potential proponents, select proponents and negotiate contracts through which the Public-Private Partnerships shall be established; provide on the approvals that are needed, including that of the Governor or of the executive officer on whom he/she delegates, for the granting of the Public-Private Partnership Contracts, and the requirements for the report to be submitted as part of the approval process; establish that in certain precarious fiscal circumstances, any labor contractual clause that prohibits the transfer of Functions, Services, Facilities or employees to a Public-Private Partnership shall be neither valid nor effective; establish the confidentiality parameters of certain privileged or protected information that is produced or compiled as part of the processes to establish Public-Private Partnerships; provide for the acceptance and use of federal and local funds to further the purposes of this Act; authorize the granting of certain tax exemptions and benefits to the partners in Public-Private Partnerships; establish the agreement of the Commonwealth of Puerto Rico that it shall not limit the powers or rights granted to the Authority and partnering government entities under this Act until the obligations under the Public-Private Partnerships contracts are satisfied; authorize the Government Development Bank for Puerto Rico to issue sureties or other mechanisms to

ensure compliance by Partnering Government Entities with their obligations under the Public Private Partnership contracts; authorize lawsuits against the Commonwealth of Puerto Rico based on the Public-Private Partnership Contract; provide for compensation to public officers; authorize the transfer of rights and the constitution of liens under the Public-Private Partnership contracts; exempt the Public-Private Partnership contracts from the provisions of Act No. 230 of July 23, 1974, as amended, known as the "Puerto Rico Government Accounting Act," from the provisions of Act No. 77 of June 25, 1964, as amended, known as the "Antitrust Act," from some of the provisions of Act No. 237 of August 31, 2004, and from government contracting requirements; exempt the procedures authorized by this Act from the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico," and to establish the procedures that shall apply to the judicial review of the procedures used to establish Public-Private Partnerships; grant tax exemptions to the Authority; extend the application of Act No. 12 of July 24, 1985, as amended, the "Ethics in Government Act," to all employees, officers and public officials of the Authority, the Board of Directors and the Partnership Committees; and for other purposes.

STATEMENT OF MOTIVES

The Commonwealth has the public function of servicing the needs of citizens. Citizens are, in fact, the ones who delegate onto the Commonwealth the duty to provide certain services that, seeing as they are public goods which are not subject to profit-making demands, can be offered more efficiently by the Commonwealth under normal circumstances. These services include, for instance, public safety, health, education, infrastructure, as well as other like goods and services. It is therefore an inherent function of the Commonwealth to provide such services and to protect the public interest, in order for these services to be efficiently provided at the lowest cost possible and to be made affordable for all citizens, and most of all, to protect the public welfare.

The state of fiscal emergency of the Commonwealth of Puerto Rico is not limited to the Central Government. The main public corporations of the Island, such as the Electric Power Authority, the Aqueduct and Sewer Authority, the Highway and Transportation Authority, the Port Authority and the Public Building Authority are also undergoing precarious fiscal situations. At present, each one of the main eight public corporations of Puerto Rico faces an operational deficit that ranges from $20 million to $180 million each. These operational deficits are the result of weak spending controls, excess of employees, and the ineffective use of their resources. The fiscal problems of the Central Government have also contributed to the cash flow problem of public corporations, since the General Fund is not in a position to pay for the services rendered by these public corporations. Due to the fact that the Central Government is the largest client of many of them, this pattern has created a vicious circle that adds to the fiscal problem of the government in general.

In order to address the need to provide public goods and services, the Commonwealth avails itself of the power to tax and to issue debt; however, such power is constrained by the economic activity in the Island. If the Government's capacity to collect taxes and issue debt were to be lost or diminished, the Government has a fiscal crisis in its hands. At present, this situation is affecting the Government of Puerto Rico by limiting its capacity to finance urgent projects directed to

addressing the needs for public goods and services. The economy of Puerto Rico is undergoing the deepest recession for which there is empirical evidence, ever since the growth of the gross product is measured. Our economy has shown a cumulative drop of -7.8% during fiscal years 2007 to 2009; it is estimated that by the year 2010, such cumulative drop shall be -9.8%.

Among the most prominent factors that have led to this crisis is the practice of overestimating the revenues of the General Fund so as not to cut back on spending, which has caused a continuous deficit in recent years. In 2009, the Government is facing a deficit in the sum of $3.2 billion. Consequently, the credit of Puerto Rico is at its lowest rating ever in history. This drop has taken place over the past five (5) years. This has affected both the Central Government and the public corporations.

As the result of their serious fiscal situation, several of these public corporations do not have sufficient resources to operate or the credit capacity to issue bonds or obtain any other type of financing to finance their improvements program, nor do they have the capacity to repay or refinance their debt. This situation worsens if we take into account that some of these public corporations have debts that mature in 2009, and whose principal amounts to approximately hundreds upon millions of dollars. In brief, the fiscal situation of the public corporations of Puerto Rico is alarming, since there is a need for approximately $582 million to cover operating expenses, $757 million to continue the capital improvements program, and the outstanding debt is of approximately $21 billion.

In the past, public corporations dealt with these fiscal problems by implementing certain financial transactions in order to obtain additional resources. Given the nonrecurring nature of many of these transactions, said public corporations never addressed the fundamental causes of their fiscal problems. This indebtedness, deficits and the use of extraordinary transactions to deal with these problems in the short term has rendered the main public corporations of the Island unable to adequately address their operating and financial commitments.

One of the main items most affected by this crisis is the decrease in investments for the development of the infrastructure. In these past few years, neither the Government of Puerto Rico nor the public corporations have been able to raise the resources needed to develop new infrastructure and to provide adequate maintenance to the existing infrastructure. The development and maintenance of an efficient infrastructure system is essential for our social and economic development and to be able to compete at world level.

The Government of Puerto Rico recognizes that, in view of the precarious fiscal situation of the Central Government and public corporations, traditional alternatives for infrastructure development, construction and maintenance are not practicable. It is therefore necessary to identify innovative measures and nontraditional vehicles that promote and render economic development feasible, provide the People with the required public services, and allow the Government to stabilize its finances. The Government is in dire need of seeking alternative and creative mechanisms to strengthen its credit, disencumber its financing capacity, and ensure continuity in the development of new projects vested in public interest. These include, among others, building new facilities, maintaining existing facilities, and rendering essential services.

An efficient mechanism to reinforce and to contribute with our economy is the establishment of partnerships by and between the Commonwealth and the private sector, cooperative unions, employee-owned corporations, and nonprofit organizations. These Public-Private Partnerships have prospered in many countries, while relieving the public sector from part of the investment

required for providing goods and services. A Public-Private Partnership is an entity that couples the resources and efforts of the public sector with resources of the private sector by means of a joint investment that results in the benefit of both parties. Such Partnerships are sought with the purpose of providing a service for citizens, as well as building or operating a facility or project that is held in high priority by the Government, be it due to the urgency, the need or convenience for the citizens. These Partnerships shall be vested in high public interest, that is, the Commonwealth is neither relinquishing its responsibility of protecting such interest, nor waiving its rights to receive an efficient service, nor renouncing to the ownership of the public assets included into the Partnership Contract.

The establishment of Public-Private Partnerships calls for a legal and administrative framework that incorporates processes to foster purity and transparency in the development of projects. This process should elicit transparency from the Commonwealth in the negotiation and agreements for executing contracts, while still protecting the confidentiality of the so-called "trade secrets" of private business from possible harm from competitors. In turn, such process should promote competition in the request for proposals and afford access to available information in order to attract the best proponents, so as to ensure the primacy of the free market and of free competition.

In jurisdictions where Public-Private Partnerships have been implemented, mechanisms have been developed to lay the groundwork from which to build these partnerships, without prejudice to the public interest, while ensuring reasonable prices or costs for the services to be rendered. In the United Kingdom, for example, between 10 and 15% of the total public investment in infrastructure is assumed through the Public-Private Partnership modality.

The experience with Public-Private Partnerships throughout the world has also proven that their application can result in significant advantages, including acceleration in the implementation of the public work and services, reductions in aggregated project costs, a better distribution of risks, improvement in the quality of services rendered, creation of additional revenues, and improvement in public administration. Furthermore, Public-Private Partnerships provide a mechanism to maximize the benefit of the investment; thus obtaining the best result possible for the lowest cost possible for the Government. For example, jurisdictions such as Spain, the United Kingdom, Australia, Ireland, and the Netherlands have successfully used Public-Private Partnerships for the development of all sorts of projects, including projects for transportation, water supply, health, and education.

The European Community has established procedures that comprise the initial establishment of guidelines for priority projects; guidelines for regional, state and community financing sources; the adoption of specific plans for the development of projects in particular; plan approval by the authorities; and the adoption of guidelines to audit the same. As part of the procedures leading to establishing a Public-Private Partnership, an analysis is conducted as to the strong and weak points of priority projects and procedures for consultation and audits are developed, as well as for proposal evaluation, monitoring and final assessment, with the purpose of determining the achievements obtained upon completing the development of a project.

In Puerto Rico, the Public-Private Partnership mechanism, coupled with adequate controls, constitutes a promising alternative to improve the services rendered by the Government, to facilitate the development, construction, operation and maintenance of infrastructure, and to disencumber Commonwealth financial resources vis-à-vis the present fiscal crisis. Predicating on

these premises, Public-Private Partnerships allow for the development of projects and the rendering of some services more efficiently and in a less costly manner by delegating the risks inherent to such development or service onto the party that is best capable of assessing and managing such risks. Likewise, these Partnerships enable the Government to make infrastructure projects feasible when the funds needed to set a project are not available in the public treasury.

Now, beyond the purposes for which this Act is approved, Public-Private Partnerships lend major support to the economic development of the Island and to the growth of local businesses in new spheres of activity. For this reason, it is anticipated that the opportunities presented by Public-Private Partnerships shall stimulate the business sector, cooperative unions and other entities from the nongovernmental sector to establish initiatives that facilitate their participation into that process by building the necessary skills, establishing consortia between themselves and taking all such measures that will render them more competitive.

The purpose of this Act is to establish a new public policy and to provide the legal framework in order to promote the use of Public-Private Partnerships as a development strategy, while maintaining such controls as necessary to protect the public interest and tempering this need with the profit-making purpose of any private operation. The contractual relationship shall thus be mutually beneficial, while ensuring the efficient, effective and affordable provision of public goods and services to all citizens.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — Short Title. — (27 L.P.R.A. § 2601 note)

This Act shall be known and may be cited as the "Public-Private Partnership Act."

Section 2. — Definitions. — (27 L.P.R.A. § 2601)

The following words or terms shall have the meanings stated hereinbelow, except when the context clearly indicates otherwise, and the words used in the singular shall include the plural form and vice versa:

(a) Pre-Development Agreements. — A mechanism whereby a private entity agrees to assess the viability and pre-development of a specific or priority project. The result thereof is a Pre-Development Report that shall allow the Government to gain a detailed understanding of the technical and financial viability of a specific project without having to employ major resources.

(b) Federal Agency. — Any of the departments of the Executive Branch of the Government of the United States of America, or any department, corporation, agency or instrumentality created or which may be created, designated or established by the United States of America.

(c) Public-Private Partnership or Partnership. — Any agreement, including an agreement to carry out a Small Scale Project, between a Government Entity and one (1) or more persons, subject to the public policy set forth in this Act, the terms of which are provided under a Partnership Contract, to delegate operations, functions, services, or responsibilities of any Government Entity,

as well as to design, develop, finance, maintain, or operate one or more facilities, or any combination thereof.

(d) Authority.—The Public-Private Partnership Authority created by this Act.

(e) GDB or Bank. — The Government Development Bank for Puerto Rico.

(f) Partnership Committee. — A Committee designated by the Authority to evaluate and select qualified persons and the proponents of a Partnership and to establish and negotiate the terms and conditions it deems appropriate for the corresponding Partnership Contract.

(g) Standing Committee on Small Scale Partnerships. – A committee established under this Act to evaluate Small Scale Projects, qualify persons that may participate in the process, select the Proponents of a Partnership, and establish the terms and conditions it may deem appropriate for the corresponding Partnership Contract.

(h) Conflict of Interests. — Means any situation in which the personal or financial interest of the public official or persons related to such public official is or could reasonably be in contravention of the public interest.

(i) Partnership Contract. — The Contract executed by the selected Proponent and the Partnering Government Entity to establish a Partnership, which may include, but shall not be limited to, a contract to delegate a Function, administer or render one or more Services, or conduct the design, building, financing, maintenance, or operation of one or more Facilities that are in themselves or are closely related to Priority Projects as established in Section 3 of this Act. A Partnership Contract may be, without it being understood as a limitation, any modality of the following kinds of contract: design / build, design / build / operate, design / build / finance / operate, design / build / transfer / operate, design / build / operate / transfer, turnkey contract, long-term lease contract, surface right contract, administrative grant contract, joint venture contract, long-term administration and operation contract, and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of the priority projects, as established in Section 3 of this Act. The obligations arising from these contracts shall be binding insofar as these do not disrupt the law, morality, or public order.

(j) Contractor. — The Person who executes a Partnership Contract with a Partnering Government Entity or the successor thereof.

(k) Government Entity. — Any department, agency, board, commission, body, bureau, office, Municipal Entity, public corporation or instrumentality of the Executive Branch, as well as of the Judicial Branch and the Legislative Branch of the Commonwealth of Puerto Rico, whether existing or to be created in the future.

(l) Partnering Government Entity. — The Government Entity with direct inherence on the kind(s) of Function(s), Service(s) or Facility(ies) that shall be under the Partnership Contract, which is or shall be a party in the Partnership Contract.

(m) Municipal Entity. — Any municipality of the Commonwealth of Puerto Rico, as well as any municipal corporation or municipal consortium.

(n) Function(s). — Any present or future responsibility or operation of a Government Entity, expressly delegated to the same by means of either its Organic Act or the pertinent special laws, that is closely related to Priority Projects, as established in Section 3 of this Act.

(o) Facility(ies). — Any property, capital work or facility of public use, whether real or personal, whether existing or to be developed in the future, including, but not limited to, aqueduct and sewer systems, including all plants, reservoirs, and systems to store, supply, treat, and distribute water,

systems to treat, collect, and eliminate rainwater and sewer water, improvements financed under the provisions of the Federal Clean Water Act and the Federal Potable Water Act, or any other similar or related Federal legislation or regulation; systems to collect, transport, manage, and eliminate non-hazardous and hazardous solid waste; systems to recover resources; systems to produce, transmit or distribute electric power; freeways, highways, pedestrian walkways, parking facilities; airports, convention centers, bridges, sea or air ports, tunnels; transportation systems, including mass transportation systems; communications systems, including telephones, information and technology systems; industrial facilities; public housing; correctional institutions; and any kind of facilities used as tourist, healthcare or agricultural-industrial infrastructure or any other similar facilities.

(p) Public Interest. — Any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.

(q) Board. — The Board of Directors of the Authority.

(r) Person. — Any natural or juridical person organized under the laws of the Commonwealth of Puerto Rico, the United States of America, any of its states or territories, or of any foreign country, any Federal Agency, or any combination of the above. The term shall include any department, agency, municipal entity, government instrumentality, individual, firm, partnership, stock company, association, public or private corporation, or cooperative union or nonprofit entity duly constituted and authorized under the laws of the Commonwealth of Puerto Rico or the United States of America or any of its states or territories.

(s) Property. — Any property, whether real or personal, whether tangible or intangible, existing at present or to exist in the future.

(t) Proponent. — Any person or its affiliated or related entities who has submitted a proposal to enter into a Partnership with a Government Entity.

(u) Unsolicited Proposal. — A written proposal prepared by a Proponent for projects that have not been selected for a request for proposals, but that meet the applicable legal requirements.

(v) Small Scale Project. – A project submitted by a Government Entity or a Proponent for the development of a Facility, or to provide a Service or Function, whose estimated cost, at the time the proposal is submitted to the Authority, including a reasonable item for possible change orders in the execution of the project, does not exceed fifty-five million dollars ($55,000,000).

(w) Priority Projects. — An initiative developed by the Government that holds primacy, whose purpose is the performance and execution of a work vested in high public interest.

(x) Service(s). — Any service rendered or to be rendered by a Government Entity directed to safeguarding the interests or meeting the needs of citizens under the provisions of either its organic act or other special laws, that are in themselves or are closely related with Priority Projects, as established in Section 3 of this Act.

(y) Family Unit. — Includes the spouse of the public official or employee, as well as his/her dependent children, or those persons who dwell in such public official's legal residence, or whose financial affairs are under the control, whether de jure or de facto, of the public official or employee.

(z) Small Scale Project Subdivision. – A division of the Authority responsible for coordinating the process of receiving, processing, and evaluating Proposals for Small Scale Projects.

Section 3. — Public Policy. — (27 L.P.R.A. § 2602)

It is hereby stated that the public policy of the Government of Puerto Rico is to favor and promote the establishment of Public-Private Partnerships for the creation of Priority Projects and, among other things, to further the development and maintenance of infrastructure facilities, to apportion between the Commonwealth and the Contractor the risk entailed by the development, operation, or maintenance of such projects, to improve the services rendered and the functions of the Government, to foster the creation of jobs, and to promote the socio-economic development and the competitiveness of Puerto Rico. It is further stated that the establishment of Public-Private Partnerships shall foster greater citizen and local business participation in project investment, as well as in the acquisition of goods and services from businesses located in Puerto Rico. Furthermore, Public-Private Partnerships shall promote the transfer of knowledge to our workforce and shall collaborate with local higher education institutions in the evaluation, oversight, and execution of projects

Pursuant to the public policy set forth above, the Board and the Committees hereby created shall consider the following projects as the only existing or new Functions, Facilities or Services to be subject to a Partnership Contract:

(1) The development, construction or operation of sanitary landfill systems, including methane recovery operations, as well as facilities for the management and disposal of non-hazardous and hazardous solid waste, such as: plants for recycling, composting, and converting waste into energy;

(2) The construction, operation or maintenance of reservoirs and dams, including any infrastructure necessary for their operation to produce, treat, and distribute water and any infrastructure for the production of hydroelectric energy and for sewage and potable water treatment plants;

(3) The construction, operation or maintenance of existing or new plants for the production of energy that use alternate fuels other than oil or that use renewable energy sources, such as wind, solar and oceanic-thermal energy, among others, as well as the transmission of energy of any kind;

(4) The construction, operation or maintenance of transportation systems of any kind, thoroughfare system or related infrastructure, including maritime or air transportation;

(5) The construction, operation or maintenance of educational, health, security, correctional and rehabilitation facilities. When operating educational facilities, a Public-Private Partnership may be established if such Contract is executed exclusively with Worker-Owned Cooperative, a Special Employee-Owned Corporation, or a Nonprofit Entity;

(6) The construction, operation or maintenance of affordable housing projects;

(7) The construction, operation or maintenance of sports, recreational, tourist and cultural entertainment facilities;

(8) The construction, operation or maintenance of wired or wireless communication networks for communications infrastructure of any kind;

(9) The design, construction, operation or maintenance of high-technology, informatics and automation systems;

(10) The construction, operation or maintenance of any kind of activity or facility or service as may be identified from time to time as a priority project through legislation.

Section 4. — Authority to Enter into a Partnership. — (27 L.P.R.A. § 2603)

All Government Entities are hereby authorized, pursuant to the public policy set forth in this Act, to establish Partnerships and to execute Partnership Contracts in connection with any Function, Service or Facility for which they are responsible under the provisions of their organic acts or the applicable special laws, pursuant to the provisions of this Act. All Municipal Entities, as well as the Legislative Branch and the Judicial Branch, are hereby authorized to partner voluntarily as a Government Entity into a Public-Private Partnership under the terms and conditions provided for in this Act. If any Municipal Entity, the Legislative Branch or the Judicial Branch chooses to voluntarily partner into a Partnership under the provisions of this Act, shall be subject to the provisions thereof. In order to set up the most convenient structure and with the sole purpose of establishing a Partnership Contract, any Government Entity that is a public corporation may establish subsidiary or affiliate corporations through a resolution by its Board of Directors or by virtue of the provisions of Act No. 144 of August 10, 1995, as amended, known as the "General Corporate Act of 1995" *[Note: Repealed and replaced by the Act No.164-2009, as amended "General Corporations Act"].*

Section 5. — Creation of the Authority. — (27 L.P.R.A. § 2604)

(a) *Creation.* — The Public-Private Partnership Authority is hereby created as a public corporation of the Commonwealth of Puerto Rico, attached to the Bank.
(b) *Board of Directors.* — The duties and powers of the Authority shall be discharged by a Board of Directors, which shall establish the public policy of the Authority, in order to fulfill the objectives of this Act. The Board shall be constituted by five members, to wit: the President of the Bank; the Secretary of the Treasury; the President of the Planning Board; and two (2) persons in representation of the public interest. To select public interest representatives, each Presiding Officer of the Legislative Bodies shall submit a short list of three candidates to the Governor. The Governor, in his/her sole discretion, shall evaluate the recommendation made by the aforesaid and shall choose one (1) person from each short list. If the Governor were to reject the persons recommended to represent the public interest, the Presiding Officers of the Legislative Bodies shall then submit another short list of three candidates. However, as long as all members that compose the Board are not chosen, it shall be deemed that the Board has not been constituted and the same shall be unable to make any agreements. None of the members of the Board may be public or elected officials. Public interest representatives may be removed from the Board by the Governor. If any vacancy were to be created in the Board by a public interest representative, such vacancy shall be filled by using the same appointment procedure established in this Section. Public interest representatives shall hold office for a four (4)-year term. The President of the Bank, the Secretary of the Department of the Treasury and the President of the Planning Board shall hold office for the duration of their term of appointment.

The Chair of the Board shall be the President of the Bank. The Board shall select from among its members a Vice Chair, who shall substitute the Chair in his/her absence. The Board shall likewise select a Secretary.

The members of the Board that represent the public interest shall receive a nominal stipend for each day they attend Board meetings. The stipend granted as per diem shall be established by Regulations as the Board may adopt to that effect. Public interest representatives shall be entitled

to be reimbursed for traveling expenses necessarily incurred to discharge their official functions, pursuant to applicable regulations.

The members of the Board of Directors may not be affiliated or have any direct or indirect financial interest with any Contractor. This prohibition shall be extended to all members of the Board of the Authority for a period of five (5) years after having lapsed in office.

No person who has him/herself or who has a member within his/her family unit who has any personal or financial interest, whether direct or indirect, with any Proponent or Contractor or in any entity that has the control over or is under the control of an enterprise that is a Proponent or Contractor, may participate in any stage conducive to the award of a Partnership Contract. In the event that such conflicts should arise, the member of the Board of the Authority thus affected shall strictly abide by the provisions of Section 3.6 of the Ethics in Government Act *[Note: Repealed and replaced by the Art. 4.5 of Act 1-2012, "Puerto Rico Government Ethics Act of 2011"]*, entitled "Duty to Report Situations Involving Possibly Unethical Actions or Conflict of Interests." If the Office of Government Ethics were to determine that the self-disqualification procedure is proper for the situation under consultation, the member thus affected shall be substituted while such conflict persists. The President of the Government Development Bank would be substituted by the Vice President of the Bank in the area of financing. The Secretary of the Treasury and the President of the Planning Board would be substituted by his/her Undersecretary or by his/her Vice President, respectively. For public interest representatives, the procedure set forth in this Act shall be observed. Furthermore, the Governor shall designate from each three-candidate short list two (2) alternate public interest representatives, who shall act only on occasion of the absence, disability or resignation of the official public interest representatives.

The directors, officials, and employees of the Authority shall be subject to the provisions of Act No. 12 of July 24, 1985, as amended, the "Ethics in Government Act" *[Note: Repealed and replaced by the Act 1-2012, "Puerto Rico Government Ethics Act of 2011"].* The members of the Board of Directors and the Partnership Committees shall render financial reports pursuant to the provisions of the aforesaid Act.

(c) *Quorum.* — Four members of the Board shall constitute a quorum for all purposes and for all agreements reached. All decisions or agreements shall be effected by an extraordinary majority, that is, with the minimal vote of four (4) out of the five (5) members of the Board. However, all majority decisions or agreements must have the vote of the public interest representatives. Any action necessary or allowed in any meeting of the Board or any Board committee shall be authorized with no need for a meeting, insofar as all Board or Board committee members, as the case may be, give their written consent concerning such action. In such case, the written document shall remain in the minutes of the Board or the Board committee, as the case may be. The members of the Board or of any Board committee may participate in any meeting of the Board or of any Board committee, respectively, by conference telephone call or any other communication medium whereby all persons participating in the meeting are able to communicate simultaneously. The participation of any member of the Board or of any Board committee in the manner described above shall constitute attendance to such meeting. Each member who is unable to attend a meeting convened by the Chair of the Board for the consideration of a transaction, shall be under the obligation to cast his/her vote through the alternate mechanisms established by the Board within the time lapse provided by the Chair.

(d) *Executive Director of the Authority.* – The Executive Director shall be the chief executive officer of the Authority who shall, in addition to directing the operational and administrative aspects of the Authority, manage the budget of the Authority and supervise all assets and employees, including the Small Scale Project Subdivision; implement the public policy set forth in this Act; and carry out all those duties, functions, obligations, and powers delegated to him by the Board. The Executive Director shall be appointed by the Board exclusively based on merit, to be determined taking into account the education, experience, and other qualities that specifically qualify him for achieving the purposes of the Authority. The Board shall establish the compensation of the Executive Director, which compensation shall facilitate the recruitment and retention of highly-qualified professionals.

(e) *Other Officers.* – The Board may create and establish other executive officer positions according to the needs of the Authority. Once a position is created, the Executive Director shall evaluate candidates to hold the same and make recommendations to the Board. The Board shall appoint an officer from among the candidates recommended by the Executive Director. Every officer created and appointed as provided in this subsection (e) shall report to the Executive Director and shall carry out the duties and obligations of his office, as well as any other duties established by the Board.

Section 6. — Authorities and Powers of the Authority. — (27 L.P.R.A. § 2605)

(a) *General Powers*. — The Authority is hereby conferred, and shall hold and may exercise, all rights and powers as necessary or convenient to meet its purposes, including but not limited to the following:

(i) To have perpetual succession as a corporation;

(ii) To adopt, alter, and use a corporate seal of which judicial notice shall be taken;

(iii) To formulate, adopt, amend and repeal bylaws for the management of its corporate affairs, as well as standards, rules, and regulations as necessary or pertinent to carry out and discharge its functions, powers, and duties;

(iv) To be the owner in fee simple of all its properties;

(v) To assess the nature and need of all its expenses and the manner in which these are to be incurred, authorized and paid for, taking into consideration any provision of law that regulates public fund spending and adopt rules on the use and disbursement of its funds and be subject to the intervention of the Office of the Comptroller of Puerto Rico;

(vi) To collect fees for the services it shall render as part of the process of establishing Partnerships, including fees charged to Partnering Government Entities or Voluntary Proponents, as provided in Section 9 of this Act, to defray the development of the project, and to prospective Proponents for their participation in any qualification or award process, or in both; provided, that, at the discretion of the Board, service fees shall be established: (a) on a percentage basis, which may range from point five percent (0.5%) to three percent (3%) of the total estimated cost of the project, in the aggregate; or (b) on a reimbursement basis of the costs incurred by the Authority in relation to the project, including costs incurred in project consultants and direct administrative costs related to the project, plus, a fixed charge ranging from five percent (5%) to fifteen percent (15%) on the costs incurred in project consultants, to be established depending on the complexity of the project. These service fees shall be payable

to the Authority whether or not the project is completed; provided, that, should the project process be canceled before the completion thereof, the service fee collected based on the total estimated cost of the project in the aggregate shall be adjusted according to the percentage of project completion as of the cancellation date;

(vii) To sue and be sued under its own name, to file complaints and defend itself before all courts of justice and administrative bodies, and to participate in commercial arbitration proceedings;

(viii) To negotiate and execute with any person, including any federal or Commonwealth government agency, any kind of contract, including, without it being understood as a limitation, administrative grant contracts and any kind of Partnership Contract pursuant to the provisions of this Act, as well as all instruments and agreements as are necessary and convenient to exercise the powers and discharge the functions conferred onto the Authority under this Act, and agreements with the Bank and other Government Entities in connection with Authority expenses, fees for services rendered, and refunds as pertinent, to be entered into by and between the former and the latter in connection with the procedures to establish Partnerships. Likewise, the Authority may take money on loan from the Bank to cover its operating expenses and to accomplish the purposes of this Act. To those ends, the Bank is hereby authorized to grant a revolving credit line of up to a maximum of twenty million dollars ($20,000,000), for which the source of repayment shall be the funds received on account of services rendered and fees imposed by the Authority. Furthermore, it is hereby provided a Special Appropriation from the General Expense Budget for Fiscal Year 2014-2015 in the amount of one million dollars ($1,000,000), and a Special Appropriation from the General Expense Budget for Fiscal Year 2015-2016 in the amount of two million dollars ($2,000,000) to enable the Authority to establish a special and separate fund to defray costs related to the evaluation and establishment of Partnerships through Small Scale Projects. Future service fees collected by the Authority from Small Scale Projects shall be deposited exclusively in said special fund to be available for such purposes; thus, the appropriation of additional funds from the Central Government shall not be necessary.

(ix) To execute contracts for professional, expert or consulting services to assist the Authority in the discharge of its responsibilities, including but not limited to the evaluation of materials to qualify prospective Proponents, the evaluation of Proposals, and the reviews of Partnership Contract;

(x) To acquire any property by any legal means, including but not limited to purchase agreements, inheritance, bequeathal or donation, and to hold, conserve, use, and exploit any property as deemed necessary or convenient to carry out the purposes of the Authority;

(xi) To assign usufruct, lease, encumber and otherwise dispose of, except through sale, exchange or assignment, any property of the Authority when deemed appropriate, necessary, incidental or convenient in connection with its activities;

(xii) To appoint, transfer, and remove such officials, agents or employees, including executive employees, and confer such authorities, impose such duties and fix, change and pay such compensation as the Authority shall determine; provided, that the Authority shall strive to hire personnel mostly from Partnering Government Entities, the Bank or the Infrastructure Financing Authority, whether the personnel is detailed or permanently transferred;

(xiii) To obtain insurance against losses in such amounts and with properly licensed insurers as it may deem desirable, which insurance could include, without it being construed as a limitation, insurance against civil liability for directors, officers, agents, and employees;

(xiv) The Board shall be entitled to examine any information an documents presented in the course of the desirability and convenience study preparation process and the procedures governing Proponent qualification and requests for and evaluation of proposals. In turn, the Board may require additional information concerning the persons requesting to be qualified, Proponents, requests and proposals, insofar as the information thus required is not covered under any privilege granted by the Laws of the Commonwealth of Puerto Rico;

(xv) To exercise such other corporate powers as these are not incompatible with those set forth herein conferred to corporations by the laws of Puerto Rico, and exercise all such powers inside and outside of Puerto Rico; and

(xvi) To take all actions or measures as necessary or convenient to discharge the powers conferred under this Act or any other act of the Legislature of Puerto Rico or the United States Congress.

(b) *Specific Powers.* — The Authority is hereby designated as the sole Government Entity authorized and responsible for implementing the public policy on Partnerships as set forth in this Act and for determining the Functions, Services or Facilities for which such Partnerships are to be established. In recognizing the limitation as to investment resources, the Authority shall establish priorities in the development of projects, in order for Partnership Contracts to address infrastructure needs or services that hold priority for the Commonwealth, according to the public policy set forth in this Act and not necessarily as dictated by investment profitability criteria. Once the Authority decides to establish a Partnership, the Partnering Government Entity and the Bank shall be bound to provide such technical, expert, financial, and human resource assistance as the Authority may need and as these entities are able to provide to ensure the successful establishment of such Partnership. In addition to the general powers conferred under subsection (a) of this Section 6, the Authority is hereby authorized to:

(i) Evaluate and select the Government Entities, Functions, Services, and Facilities for Partnerships, conduct analysis as well as studies on the feasibility, desirability and convenience of the project as necessary to determine whether it is advisable to carry out the project and establish such Partnership.

(ii) Create and approve a regulation or regulations to regulate procedures leading to the establishment of Partnerships, which shall include the criteria to be used and the procedures to be followed in order to (A) identify the Functions, Services or Facilities for which a Partnership is to be established, (B) call candidates to participate in procedures to establish Partnerships and to publish a notice in connection with the commencement of such procedures in a newspaper of general circulation or over the Internet, (C) evaluate proposals and proponents and select the best proposal and the best proponent, (D) negotiate Partnership Contracts, (E) grant Proponents who so request, after a determination by the Authority subject to judicial review under Section 20, access to the official records of the Authority in connection with such determination during the period in which Proponents may request a judicial review of the decision issued by the Authority, and (F) supervise, together with Partnering Government Entities, the Partnerships after the Partnership Contracts have been approved and signed. Such regulation or regulations shall be open to comments from the general public. The Authority

shall notify the place and time or the webpage on which the draft for the regulation shall be available through a notice published for three (3) days in two (2) newspapers of general circulation. The public shall have ten (10) days from the last day of publication to submit their written comments to the Authority. After such comments have been received and having had the benefit of evaluating the same and determine which comments are pertinent to incorporate or review the draft for the regulation according to the comments received, the final regulation shall be approved by the Board of Directors of the Authority and take effect immediately after such approval or on the date determined by the Board. The final regulation shall be filed with the Department of State and the Legislative Library within thirty (30) days following its approval.

(iii) Evaluate the terms and conditions of each Partnership Contract and make recommendations in connection therewith to the Board of Directors of the Partnering Government Entity, or, in the event that the Partnering Government Entity does not have a Board of Directors, to the head of the entity or to the Secretary of the Department to which such Partnering Government Entity is attached.

(iv) Contract with any Person, including experts, technical experts, advisors and consultants, in order to prepare a study on desirability and convenience, and provide any other kind of goods or services as necessary to advise the Authority regarding all aspects or elements of each Partnership.

(v) Enter into direct contracts with third parties, pro se or on behalf of Partnering Government Entities, in connection with transitional or provisional services, including but not limited to services provided upon completion of the term of the Partnership Contract, whose temporary, provisional or transitional services may include but are not limited to (A) providing provisional or transitional Services or Functions until the time a Partnership Contract is executed, (B) take over operations after a breach by the Contractor or (C) providing services relative to environmental remediation or to the seizure or removal of Facilities. The Authority or the Partnering Government Entity shall, without limiting the foregoing, also be entitled to render the contract ineffective, to take over from the Contractor and to carry out directly or contract a third party on an provisional or temporary basis to develop, operate, maintain, and administer a Facility or to provide a Service or discharge a Function if the Authority determines in its reasonable discretion that the Contractor's ongoing performance of such tasks poses a risk to the public health and safety or to the environment.

(vi) Evaluate, analyze, and contract, by itself or on behalf of Partnering Government Entities, projects presented through Unsolicited Proposals and Pre-Development Agreements, as provided in this Act. The Authority shall prescribe by regulations the process for the evaluation, analysis, and contracting of said projects, taking into account the public policy of the Government of Puerto Rico.

(c) *Ownership and Tenure*. — The Authority shall not have the power to transfer ownership of public goods to private entities or persons. Any facility developed by a Contractor, whose ownership or tenure remains under its control for the duration of the Partnership Contract, shall be transferred to the Government Entity not later than at the end of the term of such contract or upon its termination or rescindment.

(d) *Location Consultations, Permits, and Endorsements*. — A Partnership established pursuant to the provisions of this Act shall meet all applicable requirements as to location consultations,

permits, and endorsements, as established under the laws of the Commonwealth of Puerto Rico. In order to ensure the expeditious and prompt observance of these requirements, for each Partnership, the Governor or the person on whom he/she delegates shall establish an interagency committee composed of all Government Entities with jurisdiction to evaluate location consultations and to issue permits and endorsements in connection with a Partnership. This Committee shall cease functions once all the location consultations, permits and endorsements necessary to carry out a Partnership Contract have been addressed.

Selected Proponents shall be responsible for procuring and obtaining the location consultation and the permits and endorsements necessary to carry out a Partnership, while assuming any risk in case they fail to obtain the authorized location consultation or the permits or endorsements required.

Section 7. — Project Inventory; Desirability and Convenience of a Partnership. — (27 L.P.R.A. § 2606)

(a) *Project Inventory*. **—** All Government Entities are hereby directed to submit to the Authority within a term not to exceed ninety (90) days as of the beginning of each calendar year, any proposal for partnership projects in connection with any Function, Service or Facility for which the same is responsible under the provisions of its Enabling Act or any applicable special laws. Whenever possible, the Authority shall publish these proposals for Partnership projects, including those chosen for said Small Scale Projects, on its webpage and in a newspaper of general circulation. The list of proposals for Partnership projects submitted by the Government Entity shall be part of an inventory of proposals for Partnership projects that may be used by the Authority to prepare studies on desirability and convenience. Except as provided below, the Authority shall be required to conduct studies on desirability or convenience in order to commence procedures for the establishment of Partnerships in connection with any one or all proposals received through this mechanism. The Authority may conduct studies on desirability and convenience regarding other Functions, Services or Facilities not submitted as part of the inventory process established herein, which studies shall be considered by the corresponding Government Entity. The Authority may commence procedures to establish a Partnership under such study, once the Government Entity includes such partnership in its project inventory.

Notwithstanding the foregoing, a Government Entity may submit proposals for Partnerships or Small Scale Projects, from time to time, for the Authority's evaluation, even if such proposals have not been included as part of the annual project inventory provided for in the preceding paragraph.

(b) *Study on Desirability and Convenience*. **—** Before commencing the procedures to enter into a Partnership, the Authority, with the assistance of the Bank, shall conduct a study on desirability and convenience to determine whether establishing such Partnership is advisable. The scope of such study shall depend on the kind of project or Function, Service or Facility under consideration for a Partnership. The Authority shall consider, and insofar as applicable, shall include, as part of the study on desirability and convenience, the following points:

(i) A definition of the essential characteristics of the Function, Facility or Service;

(ii) A history, projections or both on the demand on use, the economic and social impact of the Function, Facility or Service in its area of influence, and the profitability of the Partnership;

(iii) As to new projects, their technical and functional feasibility and an assessment of the existing data and reports referring to territorial or urban planning;
(iv) Social feasibility, including an analysis on the cost/benefit to the Commonwealth and the social impact of the proposed project;
(v) A justification of the Partnership modality expected to be used for carrying out priority projects, as established in Section 3 of this Act, indicating the main benefits of the selected modality;
(vi) Operational and technological risks involved in rendering the Service or discharging the Function or building and using the Facility;
(vii) The cost of the investment to be made and the economic and financial feasibility of the project or operation;
(viii) An evaluation of the cost/benefit and the convenience of using public or private financing to render the Service, discharge the Function or develop or build the Facility with a justification of the origin of such investment or financing, taking into account the possible loss of eligibility to receive Federal funding for the project;
(ix) The preliminary preparation of an analysis or identification of the environmental effects of the project or operation that Proponents shall consider when analyzing risks in presenting their Proposals and participating in a Partnership. This study is not equal to an environmental impact statement, nor is it required at this stage to prepare any particular document required under the Puerto Rico Environmental Public Policy Act, Act No. 416 of September 22, 2004, as amended. However, if the Authority should so deem pertinent, it may conduct such additional studies as it deems convenient and feasible to complete at this initial stage of the study on the desirability of establishing a Partnership; and
(x) A comparative analysis of the cost/benefit represented in allowing the Government Entity assume the responsibility for carrying out or continuing operations or for carrying out the building, repair or improvement, as opposed to channeling the operation, building, repair or improvement through a Partnership, including its effect on public finances.
(xi) Feasibility for businesses with local capital, nonprofit entities and cooperative unions to be able to participate in the procedures to establish a public-private partnership intended for building, operating or maintaining a Facility or Service under the Partnership. Such study shall identify areas with the greatest potential for local entities, the measures that Government entities shall take, the function to be discharged by nongovernmental organizations in fostering the competitiveness of the entities comprising this sector, and any other actions that may further promote this participation without impairing the laws or the rules that regulate and guarantee the open market.

In the case of Small Scale Projects, at the discretion of the Standing Committee on Small Scale Projects and without the need for the Board's approval at this stage, the Authority may accept the study or studies conducted by a Government Entity or Proponent in connection with said project; provided, that the scope and depth of said studies meet the requirements of this Act and are adequate to allow the Standing Committee on Small Scale Projects[sic] to determine whether or not it is advisable to establish such project as a Partnership.
(xii) Feasibility for local pension plans and other local funds to be able to participate as investors in Public-Private Partnership infrastructure projects based on their investment policies and risk profile. In addition, the Proponent shall show the actions taken to obtain

investments from said pension plans and local funds as capital investors in the Public-Private Partnership.

(xiii) An evaluation of potential modifications to the proposed Partnership as a result of citizen and local business participation. Said participation may be achieved in an informal manner and solely by written comments. When the Authority is in the process of conducting the study required by this Section, the Authority shall publish a notice to such purposes, in English and in Spanish, in at least one newspaper of general circulation in Puerto Rico and, in English and in Spanish, on the Internet. Said notice shall contain a summary or brief explanation of the proposed Partnership, a reference to the legal provisions that authorize said action and the form, time, date, and place where the comments regarding the proposed Partnership may be submitted in writing or via electronic mail. Likewise, the Authority shall specify the physical facilities and the webpage where all documents that, by regulations, are deemed necessary for public comment regarding the proposed Partnership shall be made available to the public. When comments are received via electronic mail, the Authority shall acknowledge receipt of each electronic mail message within two (2) business days after the receipt thereof. The public comment period shall never be less than thirty (30) days. By public petition or motu proprio, the Authority may hold public hearings for the purpose of hearing the views of a particular industry, community or individual. The Authority shall prepare a summary of said comments as provided above. Both the comments submitted by the public or local industry and the summary prepared by the Authority shall be included in the record of the proposed Partnership. Citizen participation in this process shall not confer standing or allow an individual to become a party with the right to challenge a proposed Partnership, either judicially or administratively

(c) *Publication.* **—** Studies on desirability and convenience for a potential Partnership, including those chosen for said Small Scale Projects, shall be published on the webpage of the Authority and such publication shall be notified in a newspaper of general circulation, prior to commencing the request for proposals process.

Section 8. — Partnership Committee. — (27 L.P.R.A. § 2607)

(a) *Creation of Partnerships.* **—** The Authority shall create a Partnership Committee for each Partnership which the former has determined to be appropriate; however, in the case of Small Scale Projects, the provisions of subsection (b) of this Section shall apply. The Committee shall be constituted by (i) the President of the Bank or his delegate; (ii) the officer of the Partnering Government Entity directly concerned with the project or his delegate; (iii) one (1) member of the Board of Directors of the Partnering Government Entity or, in the case of Government Entities with no Board of Directors, the Secretary of the Department to which such Partnering Government Entity is attached, or his delegate or an official thereof with specialized knowledge in the kind of project object of the selected for Partnership by the Board of the Authority; and (iv) two (2) officials from any Government Entity chosen by the Board of Directors of the Authority for their knowledge and experience in the kind of project object of the Partnership under consideration. The total number of members of the Partnership Committee shall constitute a quorum for all purposes, and the decisions of the Committee shall be made by an extraordinary majority of its members. Partnership Committee members may not be affiliated with or have a direct or indirect financial interest in any Proponent or Contractor. Members of the Board of Directors may not be affiliated

to or have a direct or indirect financial interest with any Contractor. This prohibition shall be extended to all members of the Board of the Authority for a period of five (5) years after having ceased functions. This prohibition shall be extended to all employees of the Authority and apply to Partnership Committee members for a period of two (2) years. If within the term established above, any member of the Board of the Authority who has resigned from office wishes to obtain a dispensation from the restriction established herein, such member shall request such dispensation from the office-holding members of the Board of the Authority, who shall evaluate such request and may only grant it unanimously, upon evaluation and a positive recommendation from the Government Ethics Office of Puerto Rico. In the event of a conflict of interest, the Partnership Committee member thus affected shall strictly abide by the provisions of Section 4.5 of Act No. 1-2012, known as the "Puerto Rico Government Ethics Act of 2011," entitled "Duty to Report Situations Involving Potential Unethical Actions or Conflicts of Interest." If the Government Ethics Office were to conclude that the self-disqualification mechanism is available for the situation consulted, the member thus affected shall be substituted while such conflict persists by a member of the Board of Directors of the Authority or of the Partnering Government Entity or by another official of the Bank or of the Partnering Government Entity, as designated by the Board of Directors of the Authority.

(b) Standing Committee on Small Scale Projects. — A Standing Committee on Small Scale Projects shall be appointed to handle all Small Scale Projects, as well as to determine priority projects for which the establishment of a Partnership is advisable. Said Committee shall be composed of five (5) members, to wit, the Secretary of the Department of Economic Development and Commerce or his representative, the Secretary of the Department of Transportation and Public Works or his representative, the Executive Director of the Infrastructure Financing Authority or his representative; the Commissioner of Municipal Affairs or his representative, and the chief executive of the Partnering Government Entity directly concerned with said project or his representative. Members of the Standing Committee on Small Scale Partnerships shall constitute a quorum by a simple majority for all purposes, including decision making. As provided in Section 9(g) of this Act, Small Scale Projects shall not require the final approval of the Governor, except when the approval of the Governor is required by constitutional mandate, and once approved as priority projects shall only return to the Board for final approval. Except as provided in this Section, all other provisions of this Act or the applicable regulations regarding the Partnership Committee, its functions, and powers shall equally apply to the Standing Committee on Small Scale Projects, and any reference to the Partnership Committee in other sections of this Act or the applicable regulations, except as otherwise expressly provided, shall be deemed to be a reference to the Standing Committee on Small Scale Projects; provided; further, that the Authority may approve regulations in connection with the operation, administration, and functioning of the Standing Committee on Small Scale Projects.

(c) In the event a Project proposal, other than for the delegation of the existing operations, functions, services or responsibilities of any Government Entity, whose estimated cost, at the time the proposal is submitted to the Authority, including a reasonable item for potential change orders in the execution of a project, exceeds fifty-five million dollars ($55,000,000) but does not exceed one hundred million dollars ($100,000,000), the Board of Directors of the Authority may carry out a preliminary evaluation of the Project and determine whether a Partnership Committee would be created in accordance with subsection (a) of this Section, or the project shall be submitted to the

Standing Committee on Small Scale Projects in accordance with subsection (b) of this Section. The decision of the Board of Directors to such effect shall be duly grounded in writing.

(d) *Functions of the Partnership Committee*. — The Partnership Committee shall have the following functions:

(i) To approve documents as required by the procedures for qualification, the request for proposals, the evaluation and selection for the Partnership;

(ii) To evaluate potential contractors and pre-qualify those most suitable to participate as Proponents;

(iii) To evaluate the proposals submitted and select that which is or those which are best in each case, pursuant to the procedures provided in this Act;

(iv) To engage in or supervise the negotiation of the terms and conditions of the Partnership Contract;

(v) To contract on behalf of the Authority or request that the Bank contract advisors, experts or consultants with the knowledge necessary to assist the Partnership Committee and the Authority in the adequate discharge of its functions;

(vi) To keep a book of minutes;

(vii) To prepare a report on the entire procedure leading to the establishment of a Partnership, including a copy of the studies set forth in Section 7(b) of this Act; a description of the government objectives and social welfare goals of the Partnerships; details of the process of pre-qualification of suitable Proponents, of the requests for proposals, and of the selection of the proposal and the chosen proponent; the reasons for which a particular Proponent was chosen; and a summary of the most important aspects of the Partnership Contract. This report shall be submitted for the approval of the Board of Directors of the Partnering Government Entity. In the case of Partnering Government Entities with no Board of Directors, said report shall be submitted to the head of the entity or to the Secretary of the Department to which such Partnering Government Entity is attached, to the Board of Directors of the Authority, and to the Governor or the executive official onto whom he/she delegates. Furthermore, this report shall be filed with the Office of the Clerk of the House and the Secretary of the Senate, as provided for in this Act. Likewise, this report shall be published over the Internet;

(viii) To oversee proper compliance with the regulations and procedures established for the negotiation and award of Partnership Contracts; and

(ix) Whenever deemed convenient, the Partnership Committee may establish one or various technical evaluation committees to provide technical or specialized assistance and advice to the Partnership Committee.

Section 9. — Procedure for the Selection of Proponents and Award of Partnerships. — (27 L.P.R.A. § 2608)

(a) *Applicable Requirements and Conditions for Those who wish to be considered as Proponents*. —

Any Proponent who wishes to be contracted for a Partnership must meet the following requirements and conditions, in addition to such requirements as provided in the request for qualification or in the request for proposals designed for such Partnership, which may by no means impair fair competition and the public interest, to wit:

(i) When executing a Partnership Contract, the Proponent shall be a Person authorized to do business in the Commonwealth of Puerto Rico;
(ii) The Proponent shall have available such corporate or equity capital or securities or other financial resources that, in the judgment of the Authority and the Partnership Committee, are necessary for the proper operation of the Partnership;
(iii) The Proponent shall have a good reputation and the managerial, organizational and technical capacities, as well as the experience, to develop and administer the Partnership; and
(iv) The Proponent shall certify that neither he or she, and in the case of a juridical person, its directors or officers, and in the case of a private corporation, the bondholders with direct or substantial control over the corporate policy, and in the case of a partnership, its partners, and in the case of natural or juridical persons, any other natural or juridical person that is the alter ego or the passive economic agent thereof, have been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico or in any jurisdiction of the United States of America or in any foreign country. Likewise, the Proponent shall certify that the latter complies and shall continue to comply at all times with laws which prohibit corruption or regulate crimes against public functions or funds, as may apply to the Proponent, whether Federal or State statutes, including the Foreign Corrupt Practices Act.

(b) *Procedure for Selection and Award*. —
(i) To select Proponents to enter into a Partnership, the Authority must use, firstly, a procedure for requests for proposals based on qualifications or the best value in proposals or both, and shall be so recorded in the request for proposals. Once the Authority completes the Proponent qualification procedures, the Authority shall proceed with the proposal evaluation and selection procedures.
(ii) (ii) Without this being construed as a limitation to the provisions in subsection (b)(i) above, the Authority may negotiate Partnership Contracts without abiding by the procedures for requests for proposals in the following cases: (A) when there is only one source capable of providing the service required, such as services that require the use of intellectual property, trade secrets or other licenses or rights which only certain persons own or hold exclusively; and (B) when a call to any prequalification procedure or any request for proposals conducted pursuant to the provisions of Section 6(b)(i) has been issued and there has been no participation or response, or the proposals submitted have failed substantially to meet the evaluation requirements provided for in the request for proposals, and if, in the judgment of the Authority, issuing a new request for qualification and for proposals would cause such a delay that it would render the possibility of selecting a Proponent and executing a Partnership Contract within the timeframe required, highly unlikely. In the cases mentioned in subparagraphs (A) and (B) of this Section, before executing a Partnership Contract, notice must be given to the Joint Committee on Public Private Partnerships of the Legislative Assembly, created pursuant to this Act, for the appropriate action.

Without limiting the generality of the provisions of the preceding paragraph of this subsection (b)(ii), the Authority shall also be authorized to receive and consider Unsolicited or Voluntary Proposals. An Unsolicited or Voluntary Proposal shall include, at least: (1) an outline or summary of the proposal, (2) a description of how the proposal satisfies a government need, (3) the particular aspects of the proposal that differentiate it from other

proposals or the traditional way of developing the proposed project, (4) the support required from the public sector and the direct and indirect costs of the project, including the cost of capital, (5) the financial viability, including but not limited to, the financial capacity of the proponent, the identified or suggested financing mechanisms, the sources of repayment or income related to the proposed function, service or facility object of the proposal, (6) the commercial aspects of the project, (7) the anticipated benefits for the public sector, including why the proposal is in the public's best interest, (8) the proposed method for developing the project, and (9) the intellectual property, if any. An Unsolicited or Voluntary Proposal must be accompanied by a nonrefundable evaluation fee of five thousand dollars ($5,000) payable to the Authority; provided, that, to the extent said proposal results in the development of the proposed project, the Board may, in its sole discretion, credit said amounts to any payment required from the Proponent or may return to the Proponent fifty percent (50%) of said amounts if the Proponent is not selected to develop the project.

The Authority shall receive all Unsolicited or Voluntary Proposals and preliminarily evaluate them within a term of sixty (60) days, which term may be extended for an additional sixty (60) days.

Once the evaluation period has concluded, within a term not to exceed ten (10) business days, the Authority shall inform the voluntary Proponent whether the proposed project is considered as potentially beneficial to the public interest. If the project is considered as potentially beneficial to the public interest, the Authority shall instruct the voluntary Proponent to submit, to the extent not already submitted, as much information as may reasonably be obtained regarding the proposed project, to allow the Authority to fully evaluate the qualifications of the voluntary Proponent and the technical and economic feasibility of said project, as well as determining whether the project may be successfully implemented. Said additional information may include any technical and economic feasibility studies, environmental studies or information regarding the concept or technology contemplated in the proposal. In the process of considering a voluntary proposal, the Authority must observe the confidentiality of any intellectual property, trade secrets and any exclusive rights, that arise out of, or are referred to, in the voluntary proposal. The Authority shall not use the information submitted by or on behalf of the voluntary proponent relating to, or as a part of its voluntary proposal, for purposes other than the evaluation and study of said proposal, unless the Proponent consents to other uses. In addition, unless the parties agree otherwise, the Authority shall return to the voluntary proponent the original and the copies of any documents furnished as part of the submitted Proposal if said proposal is rejected by the Authority. If the Authority decides to promote and implement the project received by means of an unsolicited proposal, the Authority may initiate a selection process in accordance with Section 9(b)(i), referring the Project to the corresponding Committee, if: (1) it determines that the project may be completed without using intellectual property, trade secrets or proprietary or exclusive rights or licenses held by the voluntary Proponent, or (2) the proposed technology or concept are not innovative. The Voluntary Proponent shall be invited to participate in the competitive selection process initiated, and shall be given advantage or other benefit in the selection process, as stated by the Authority in the request for proposals, in consideration of his development and submittal of the initial voluntary proposal. If the Authority determines that the conditions specified in clauses (1) and (2) of the preceding sentence are not present and/or there are reasons that justify

such action, as determined by the Authority's Board, the Authority shall not be required to carry out a selection process under Section 9(b)(1), but must gather information to have all the elements necessary to evaluate the voluntary proposal in accordance with Section 9(c). In said cases, the Authority shall also informally verify whether other parties are interested in presenting similar or comparable proposals. To such effect, the Authority shall publish on its webpage a description of the essential elements of the voluntary proposal along with a request to other interested parties to submit informal proposals within the timeframe established therein by the Authority, and shall publish a notice in a newspaper of general circulation notifying said publication. If the Authority does not receive additional proposals within the timeframe established in the notice of request for proposals, it may initiate negotiations with the original voluntary proponent directly in accordance with the parameters previously established by the Authority. If the Authority receives proposals as a result of the notice of request for proposals referred to in this paragraph, the Authority shall request the voluntary proponent, as well as those parties that answered the notice and met the standards and criteria specified in said notice, to submit proposals pursuant to Section 9(b)(i), in which case they shall be referred to the corresponding Committee, subject to any incentive or benefit granted to the voluntary proponent for its development and submittal of the initial voluntary proposal, in accordance with the parameters established by the Authority.

(iii) The details of the procedures for calling, qualifying, evaluating, negotiating with, and selecting Proponents and granting Partnership Contracts shall be established through regulations approved to such effects or under the terms of the request for proposals. These methods and procedures shall be aimed at guaranteeing the participation of the greatest number of potential Proponents who comply with the appropriate qualifications as determined by the Authority, as well as at protecting and ensuring equal conditions of all participants in competition. The Authority shall impose requirements such as bonds, letters of credit or similar collateral as a previous requirement for participating in the procedures, with the purpose of ensuring compliance by the Proponent with procedural requirements, signing the Partnership Contract if such Proponent should be selected, and all other conditions as may be provided by the Authority by regulation or on the request for proposals. Furthermore, the regulation or the request for proposal shall fix the amount of the bond and the circumstances under which the Proponent shall lose such bond. The Authority may also provide on the request for proposals that, based on the proposals received, the Authority may decide to divide the Function, Service or Installation (be it the operation, building or improvement thereof) considered under the procedure to grant the same to two or more Proponents, if in its judgment, it should determine that doing so is the best option for the project or to serve the public interest.

Any Proponents who submit proposals for Partnership Contracts shall assume the risk of paying for all expenses relative to the Proponent pre-qualification procedure and the preparation and presentation of their proposals, as well as expenses incurred throughout the entire process of discussion and negotiation with the Partnership Committee, including the negotiation stage of any Partnership Contract, and the Authority shall not be responsible for any such expenses.

(c) *Evaluation Criteria*. —

Among the criteria to be included in the regulation or request for proposals adopted by the Authority to carry out the Proponent selection procedure and the negotiation with the best

Proponent(s), without it being construed as a limitation or that the order herein provided determines their importance, are the following:

(i) The reputation, the commercial or financial, technical and professional capacities and the experience of the Proponent;

(ii) An update of a certification attesting that neither the Proponent, and in the case of a juridical person, its directors or officials, and in the case of a private corporation, the bondholders with direct or substantial control over the corporate policy, and in the case of a partnership, its partners, and in the case of natural or juridical persons, any other natural or juridical person that is the alter ego or the passive economic agent thereof, have been formally convicted for acts of corruption, including any of the crimes listed in Act No. 458 of December 29, 2000, as amended, whether in Puerto Rico, in any jurisdiction of the United States of America or in any foreign country and under the Foreign Corrupt Practices Act;

(iii) In projects with building elements, whether newly built structures or improvements to existing infrastructure, the quality of the proposal submitted by the Proponent in connection with, among others, aspects such as design, engineering, and estimated or guaranteed building time and the previous experience of Proponents in building similar projects;

(iv) The capital which the Proponent has pledged for the project, the recovery time, and yield requirements for such capital;

(v) The financing plans of the Proponent and the financial capacity thereof to carry out such plans;

(vi) The economic and financial feasibility of the project, as well as the results of the environmental studies conducted to determine the feasibility and convenience of a Partnership, as established in Section 7(b)(ix) of this Act;

(vii) The fees that the Proponent intends to charge and the conditions under which such fees would be adjusted, as well as the projected net income flow, the cost of the capital used by the Proponent, the internal rate of return of the project and its net present value;

(viii) The income to be received by the Partnering Government Entity or the financial or other kinds of contributions to be made by the Partnering Government Entity under the Partnership Contract;

(ix) The terms of the contract with the Partnering Government Entity that the Proponent pledges to accept;

(x) The commitments or the priorities that the Contractor is willing to establish in order to hire employees from the Partnering Government Entity affected by the Partnership, as well as the risk to be assumed by the Contractor; and

(xi) Any other criterion that, in the judgment of the Authority or the Partnership Committee, is appropriate or necessary to award the Partnership Contract proposed.

(d) *Consortia*. —

The Authority may allow and indicate in the documents pertaining to requests for qualifications or for proposals that the prospective Proponents present their proposals jointly under consortia. The information required from the members of such consortia so as to prove their capabilities to be qualified as required under this Act or as provided for under the request for qualifications shall be submitted by such consortia describing the identity of the members of the Proposing consortia and their joint capabilities, as well as the individual capabilities of each of their members. Except if otherwise provided for in the request for qualifications, no member of a Proposing consortium

may participate, whether directly or indirectly, in more than one consortium for the same project. Unless otherwise provided, any violation of this provision shall disqualify the consortium and its members individually. When evaluating the qualifications of a consortium, the Authority shall take into account the capabilities of each of the members of such consortium and evaluate whether the combination of capabilities of such members is suitable to comply with all phases of the proposed project. The Authority shall be entitled to condition the selection of certain Proponents or consortia to the joining of such Proponents or consortia in presenting a joint proposal when, based on the qualifications of individual Proponents or consortia, the Authority determines that (i) such action better serves the public interest or (ii) the evaluation criteria set forth in Section 9(c) are better met if such action is taken.

(e) *Approval by the Partnership Committee*. — The Partnership Committee shall approve such proposal or proposals that, in its discretion, better meet(s) the criteria established by this Act and by the Authority, pursuant to the applicable regulations or request for proposals, and it shall also determine whether further negotiations are in order or not.

(f) *Negotiation of the Partnership Contract.* — After selecting a proposal for a Partnership, or as part of the procedures for such selection, the Partnership Committee or any delegate under its supervision shall negotiate the terms and conditions of the Partnership Committee with the Proponent or Proponents thus selected when in order, insofar as such terms and conditions have not been a part of the requirements specified in the request for proposals upon which such Proponents were to base their proposals for submittal. When the Partnership Committee so deems appropriate, more than one Proponent may be selected to negotiate the terms and conditions of the Partnership Contract and to conduct the negotiations concurrently. The delegate or delegates of the Partnership Committee with the authority to negotiate the Partnership Contract with the Proponent or Proponents shall be executives from the Authority, the Bank or the Partnering Government Entity appointed by the Partnership Committee for such purposes, provided that the responsibility of approving the terms and conditions of the Partnership Contract remains exclusively with the Partnership Committee. Likewise, the delegate or delegates may contract experts, advisors or consultants to provide assistance in the selection procedure.

(g) *Approval of the Partnership Contract; Preparation of the Report*. —

(i) Upon completion of the negotiation for the Partnership Contract, the Partnership Committee shall prepare a report, which shall include the reasons for entering into a Partnership, the reasons for selecting the chosen Proponent, a description of the procedure followed, including comparisons between the Proponent and the Partnership Contract recommended and other proposals presented, as well as all other information pertinent to the procedure followed and the evaluation conducted.

(ii) The report shall be presented for the approval of the Board of Directors of the Authority and the Board of Directors of the Partnering Government Entity or the head of the entity or the Secretary of the Department to which the same is attached, not later than thirty (30) days after completion of the negotiation of the Partnership Contract. Once such contract is final, a copy of the report shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives. Likewise, this report shall be published over the Internet.

(iii) The Board of Directors of the Authority and of the Partnering Government Entity, or in the event there is no Board of Directors, the head of the entity or the Secretary of the Department to which the same is attached, must approve the report and the Partnership

Contract through a resolution if there is a Board of Directors, or through an administrative order in the case of a Secretary or a head of agency. Such resolutions or administrative orders shall contain their agreement to or denial of that which the Partnership Committee has presented and recommended, together with the grounds for such determination. The mere approval of the report and the Partnership Contract by the Government Entity and the Board of Directors of the Authority does not confer the right to claim indemnity, refund, or any payment whatsoever on account of expectations arisen in any of its stages, or for expenses incurred during the qualification or proposal presentation procedures.

(iv) Upon approval of the report and the Partnership Contract by both Boards of Directors (or the Secretary or head of agency), the report and the Partnership Contract shall be submitted to the Governor or the executive officer to whom he delegates for approval. The report submitted for the approval of the Governor or the executive officer to whom he delegates shall include the recommendation of the Bank on the use of funds derived from the Partnership Contract pursuant to the provisions of Section 17 of this Act, if any. The Governor may delegate the power to approve the Partnership Contract to an executive officer by means of an Executive Order, but shall not delegate the power to approve the use of funds. The Governor or the person to whom he delegates and who shall never be a member of the Board of Directors of the Authority or of the Partnership Committee that intervened in the Contract, shall have full discretion to approve the report of the Partnership Committee and the Partnership Contract. In the case of Small Scale Projects, upon approval of the report and the Partnership Contract by both Boards of Directors (or the Secretary or head of agency), the contract shall be deemed to be ready to be executed by the parties thereto, unless said contract requires the approval of the Governor, by constitutional mandate, in which case, the process established above for all other Partnership Contracts shall be followed.

(v) Upon receiving the report from the Partnership Committee and the Partnership Contract, the Governor or the executive official onto whom he/she delegates shall have thirty (30) days to approve or deny the same in writing; provided, that if such report and Partnership Contract are not approved during said term, these shall be deemed to be denied. If the Governor were to approve the Partnership Contract, the same shall be deemed to have been perfected when the parties, that is, the selected Proponent and the Partnering Government Entity, sign such Contract.

(vi) After the Governor or the executive officer to whom he delegates has approved the Partnership Contract, or in the case of Small Scale Projects that do not require the approval of the Governor, once the report and the Partnership Contract are approved by both Boards of Directors (or the Secretary or head of agency), the Authority shall give written notice to all other Proponents of the fact that their proposals have not been accepted, shall disclose the identity of the Proponent thus selected and indicate to the Proponents that they shall have access to the Authority record that pertains to the selection procedure and the award of the Partnership Contract. The Authority shall make available to the Proponents who so request a copy of their official record to be examined at the facilities of the Authority. Proponents that were not selected may request judicial review of said determination, subject to the conditions and procedures provided in Section 20 of this Act.

(vii) In the event a Partnership Contract is approved, the same shall be signed at the risk of the Contractor by the person onto whom the Board of Directors of the Partnering Government

Entity delegates such task, if a public corporation, or the Secretary or head of the Partnering Government Entity on behalf of the Commonwealth, if an agency of instrumentality of the Central Government.

(viii) Upon issue of the approval by the Governor or the executive official onto whom he/she delegates, the report prepared by the Partnership Committee shall be filed with the Office of both the Secretary of the Senate and the Clerk of the House of Representatives.

(ix) As to the use of funds, if any should be derived from the Partnership Contract under consideration, the provisions of Section 17 shall be observed.

(h) *Judicial Review*. —

The elimination of a petitioner by the Partnership Committee during the procedures governing the requests for qualification and the award of the Partnership Contract to a Proponent shall be subject to the judicial review procedures provided for in Section 20 of this Act. The award of a Partnership Contract to a Proponent shall be subject to judicial review only when such Contract has been approved by the Governor or the official onto whom he/she delegates.

(i) *Confidentiality*. —

In the course of the procedures for the evaluation and selection of and negotiation with Proponents, the confidentiality of the information furnished and generated in connection with such procedures for the evaluation, selection, negotiation and grant of the proposals and the Partnership Contract shall be governed by the confidentiality criteria established by the Authority. The information regarding such procedures, as well as the information submitted by the Proponents, shall be disclosed upon approval of the Partnership Contract by the Governor or the executive official onto whom he/she delegates, except for such information which constitutes (1) a trade secret, (2) proprietary information or (3) privileged or confidential information of either the Proponents who participated or the Authority. In cases in which there is the intent to have any information considered as a trade secret or as privileged information, Proponents must identify and mark such information in their proposals as "confidential," and shall present a request together with the proposal in order for the Partnership Committee to make a determination of confidentiality. Once the Partnership Committee determines that such information meets the criteria of this Section, such information shall be deemed to be confidential under the provisions of this Act and such special laws which protect trade secrets and proprietary, privileged or confidential information, and such information may not be disclosed to other Proponents or to third parties, except if otherwise provided in this Act and other applicable special laws. Such confidential or privileged information of the Authority shall be identified and marked as such by the Authority when received or generated. The report to be prepared by the Partnership Committee and to be submitted to the Boards of Directors and to the Secretaries or heads of Partnering Government Entities concerned, as well as to the Governor and to the Legislature, shall not contain confidential information. If so required, the Boards of Directors, the Secretaries or the heads of the Partnering Government Entities concerned or the Governor, based on the need of evaluating the information to make a determination as to the report and the contract, separate access to such confidential information shall be provided insofar as appropriate measures are taken to protect confidential information and consent is obtained from the party to whom the information belongs.

(j) *Publicity*. —

The Authority shall at least grant public access as provided hereinbelow to the following documents: the study on desirability and convenience in connection with a Partnership; the

documents generated by the Authority to request qualifications and to request proposals in connection with a partnership; and the report prepared for the Partnership Committee, by publishing the same on their webpage and in a newspaper of general circulation, as per the rules established in this chapter or in the regulation of the Authority, as well as any other document or report as set forth in this Act. The Authority may publish as provided above any other document that, in its full discretion, it may deem pertinent. The foregoing shall not be interpreted as to impair the rights of citizens to access public information and the Authority shall make such information available for public review. However, the Authority may not publish or disclose information deemed to be confidential under the provisions of Section 9(i) of this Act or any such information whose publication or disclosure could affect the proponent selection process.

Section 10. — Partnership Contract. — (27 L.P.R.A. § 2609)

(a) *Required Terms and Conditions.* — A Partnership Contract executed under the provisions of this Act shall contain, insofar as applicable, provisions concerning:

(i) A definition and description of the Services to be rendered, the Function to be discharged or the Facility to be developed or improved by the selected Proponent;

(ii) In the case of new Facilities or repairs, replacements or improvements to existing Facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation or administration of the Facility;

(iii) The term for the Partnership, which in the case of grants, may not exceed the term provided for in Section 10(e) of this Act;

(iv) The kind of right, if any, that the selected Proponent or the Partnering Government Entity or both shall have over income or any portion thereof, in connection with the Function, Service or Facility under the Partnership or any real property included as part of the Partnership;

(v) The contractual rights and the mechanisms available to the Partnering Government Entity to assure compliance by the selected Proponent with the conditions of the Partnership Contract, including but not limited to compliance with quality standards set for the Function or Service under the Partnership or adequate maintenance of the Facility under the Partnership or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the Proponent with its obligations under the Partnership Contract;

(vi) In the case of Partnership Contracts whereby the Proponent shall fix, impose and charge fees to citizens or to the Partnering Government Entity for rendering a Service or discharging a Function or for the use of a Facility: (A) the right that the selected Proponent shall have, if any, to determine, impose, and charge fees, rental fees, rates and any other kind of charge for rendering such Service or discharging such Function or for the use of such Facility, (B) the contractual limitations and conditions with which the Proponent must comply in order to alter or modify such fees, rental fees, rates or charges, and (C) the mechanisms available to the Partnering Government Entity to ensure that the Proponent complies with such limitations and conditions. It may also be provided that the adjustments in prices, rental fees, charges or rates may be computed (1) on the basis of fixed adjustment amounts previously agreed in the Partnership Agreement or (2) by price units as specified in the Partnership Contract or (3) on the basis of costs that are attributable to the circumstances which have lead to the adjustment

as provided for in the Partnership Contract or (4) in such other way as the parties mutually agree. The Partnership Contract may also provide that, in cases in which there is no discrepancy and in which adjusting prices, rental fees, rates or charges is in order, but there is no agreement as to how to determine the adjustment amount, the Authority may be the entity that determines the adjustment amounts that are in order. The contractual limitations and conditions regarding the adjustment of prices, rates, rental fees, and charges negotiated between the parties shall take into account any previous commitment with bondholders and other creditors of the Partnering Government Entity whose debt remains effective throughout the duration of the Partnership Contract; It shall also contain the mechanisms and procedures to be used by the Partnering Government Entity to resolve and adjudicate controversies and complaints from the citizens regarding the Service, Function or Facility object of the Public Private Alliance. The Authority shall likewise have the obligation to conduct an external audit on the compliance with the Partnership Contract every five (5) years or before, when it is deemed necessary, during the term of the thereof. A copy of the audit report shall be presented before the Office of the Secretary and of the Clerk of both Legislative Bodies.

(vii) The obligation to comply with applicable Federal and local laws;

(viii) The causes for terminating the Partnership Contract, as well as the rights and remedies available in cases of the noncompliance or the delay in the compliance of obligations under the Partnership Contract by both the Partnering Government Entity and the selected Proponent; provided, that (A) the Partnering Government Entity shall not be responsible for unforeseeable, special, indirect or punitive damages, and (B) the unilateral authority to terminate a contract for reason of convenience (or for any other reason) shall not apply to Partnership Contracts simply by providing notice thirty (30) days in advance, but rather, such terms and conditions as the parties may have agreed and entered into the Partnership Contract shall apply to the termination for reason of convenience or for any other reason;

(ix) Nonbinding informal proceedings to hear allegations by the parties as to breach or interpretation of contract, which proceeding may provide for the Board of Directors of the Authority and the Partnering Government Entity, or the delegates thereof, and the equivalent governing body of the Contractor, or the delegates thereof, to meet to discuss their discrepancies and try to settle these before resorting to such formal methods for the settlement of disputes as they may have agreed;

(x) The procedures and rules for amending or assigning the Partnership Contract;

(xi) The rights concerning inspections by the Authority and the Partnering Government Entity or any independent engineer of the parties or the creditors of the project for the building or repair of or improvements to the Facility, as well as the operational compliance under the terms and conditions agreed to under the Partnership Contract;

(xii) The requirements for obtaining and maintaining all such insurance policies as required by law and such other additional policies as the Authority, in its judgment, deems to be necessary for the Partnership Contract;

(xiii) The requirement for the selected Proponent to periodically file audited financial statements with the Authority or the Partnering Government Entity or with such other entity as the parties may agree;

(xiv) The requirement for the selected Proponent to file such other report in connection with Services, Functions or Facilities under the Partnership as may be requested by the Partnering Government Entity or the Authority;

(xv) The circumstances under which the Partnership Contract may be modified in order to maintain a financial balance between the parties, as well as the provisions on noncompliance and the remedies allowed in such cases, including the imposition of penalties, fines and such other circumstances as the parties may agree under the Partnership Contract. The Partnership Contract shall likewise contain a provision on sanctions for breach thereof and shall include the following clauses:

a. All Contractors shall be subject to the provisions of Act No. 84 of June 18, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico;"

b. The breach of a Partnership Contract by the Contractor could be sufficient cause for the Government Entity to claim damages caused to the public treasury;

c. Every Contractor who fails to comply with the Partnership Contract and whose noncompliance causes the termination of said Contract, shall be disqualified from contracting with any other Government Entity for a period of ten (10) years, counting from the date in which the termination of the Contract is complied with by the Contracting Party or is declared final and binding by a court or forum with jurisdiction;

d. The sanctions imposed by this Act shall not exclude any other sanction that could be established by the parties in the Partnership Contract or established in this Act.

(xvi) The terms and conditions related to the transfer of the goods or service object of the Partnership Contract, once said Contract has been terminated.

(xvii) The kind of bond or security to ensure compliance with the Partnership Contract.

(xviii) The provision establishing that the Partnership Contract shall be governed by the laws of the Commonwealth of Puerto Rico.

(xix) All clauses, conditions and laws that govern Partnership Contracts shall be binding and demandable for all parties from the creation to the term of the Partnership Contract. Therefore, any change or transfer of the rights of a Contractor to a third party with respect to the rights of the Contractor shall make this third party a Successor Contractor and shall have the same responsibilities and benefits of the original Contractor, and shall also comply with the requirement of a qualifies and selected Proponent. The change in Contractor shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Contract. If the Successor Contractor requests a change in the Partnership Contract, it shall be submitted to and approved by the Board of the Authority.

(b) *Additional Terms and Conditions*. — A Partnership Contract executed under provisions of this Act shall also provide for the following:

(i) The review and approval by the Partnering Government Entity, within the term of effectiveness of the Partnership Contract, of the selected Proponent's plans for developing and operating the Facility, rendering the Service or discharging the Function;

(ii) The financing obligations of the selected Proponent and the Partnering Government Entity.

(iii) The distribution of expenses between the selected Proponent and the Partnering Government Entity;

(iv) The rights to acquire or convey ownership over intellectual property created or developed by the Contractor or the Partnering Government Entity or both during the term of the Partnership Contract and the compensations required, if any, for conveying or retaining such rights over intellectual property;

(v) A clause through which each contracting party makes a commitment to defend and indemnify the other party for any claim caused by its own acts or omission;

(vi) The conditions under which income derived from a Service, Function or Facility is to be shared in the event that such income exceeds the projected income by the parties to the Partnership Contract;

(vii) The settlement of disputes between the contracting parties by means of alternate methods, such as commercial mediation and arbitration;

(viii) Subject to the limitations of clause (viii)(A) of Section 10(a), damages as applicable under certain circumstances, such as payable specific or liquid damages in cases of termination without just cause or delays in building, if applicable;

(ix) Provisions on extensions to the Partnership Contract within the limits allowed under subsection (e) of this Section 10;

(x) Provisions on compliance with those norms and regulations on public safety and transportation established by Public Service Commission that are applicable to the activities object of the Partnership Contract .

(xi) Any other term or condition as the Partnership Committee may deem appropriate.

(c) *Exemption from Procedures to Fix Rates*. — A Contractor who, under the Partnership Contract, is empowered to assess, fix, alter, impose and charge fees, rental fees, rates, and any other kind of charges for rendering the Service or discharging the Function, or for building, repairing, improving or using the Facilities, pursuant to the provisions of the Partnership Contract, needs not meet the requirements imposed on a Government Entity under its organic act or the pertinent special laws to raise or lower such fees, rental fees, rates or charges. The Contractor shall comply with any provision on the procedures for changes in rates which shall be included in the Partnership Contract, excepting the provisions of subsection (b)(x).

(d) *Contract Oversight*. — The Authority, with the assistance of the Partnering Government Entity and the Bank, shall oversee the performance and compliance of the Contractor under the Partnership Contract. To such effect, the Authority shall submit to the Governor of Puerto Rico and the Legislative Assembly an annual report on the development of projects and the compliance by Contractors with the Partnership Contracts in effect, as well as an oversight work plan for the following year. The budget request filed by the Authority with the Legislative Assembly shall show the actual efforts made to oversee said contracts, so as to show the relation between the requested budget and the efficiency thereof.

(e) *Term of Partnership Contract.* — The term of a Partnership Contract executed under this Act shall be that which the Authority deems shall serve the best interests of the People of Puerto Rico, but in no case shall such term exceed fifty (50) years; however, upon evaluation of its merits and efficiency and effectiveness results, such Partnership Contracts may be extended for successive terms which collectively do not exceed twenty-five (25) additional years, as the Authority, the Partnering Government Entity, and the Governor or the executive official on whom he/she delegates, may determine. Said extension must be approved by legislation.

(f) *Nontransferable Obligations of the Partnering Government Entity*.—It is hereby provided, that the Contractor under a Partnership Contract neither assumes nor is responsible for any existing obligations or debts of the Partnering Government Entity, unless the Partnership Contract expressly provides that the contractor is indeed assuming or is responsible for the same. Furthermore, the Contractor shall not be responsible for the obligations concerning the merits, time and service accrued by employees of the Partnering Government Entity that the Contractor agrees to hire at the time of executing the Partnership Contract, nor for any other obligation of such Partnering Government Entity with such employees, except for such obligations and responsibilities as the Contractor may assume expressly under the Partnership Contract. In the event that the Contractor does not agree to assume the cost of the obligations referred to in the above sentence, the Partnering Government Entity shall assume the costs of liquidating such obligations.

(g) *Inapplicability of Prohibition on Employee Transfers*.—In the case of a Partnering Government Entity that during the fiscal year in which the same executes a Partnership Contract or in any preceding fiscal year has or has had an operational deficit, or which is or was in a fiscal situation that is or has been certified by the Bank as a precarious fiscal situation, such Partnering Government Entity shall be exempted from the application of, and no labor contract clause shall have any force or effect that prohibits the transfer to the Contractor of any Function, Service or Facility of such Partnering Government Entity or on the transfer of employees of the latter who are assigned these Functions, Services or Facilities, and such clause shall not prevent such transfers from being made as a result of the establishment of a Public-Private Partnership. In the event that such prohibition exists and is rendered ineffective, the Authority shall require that the Contractor, in the course of the procedures for selecting the persons who shall work with the Contractor, the latter guarantee that he/she shall give preferential treatment to employees of the Partnering Government Entity who shall be affected by the establishment of the Partnership and who shall not be transferred to other positions within the Partnering Government Entity or other government agencies. Said employees shall be exempted from the restrictions for acts of former public servants included in the Ethics in Government Act. The parties shall implement a Displaced Employees Transition Plan for other employments and retraining, whose cost shall be defrayed in equal parts by the Contracting parties.

Every public employee who is a participant of the following retirement systems of the Government of Puerto Rico, Act No. 447 of May 15, 1951, as amended, known as the "Commonwealth of Puerto Rico Employees Retirement System Act;" Act No. 91 of March 29, 2004, known as the "Commonwealth of Puerto Rico Teacher's Retirement System Organic Act" *[Note: Repealed and replaced by the Act 160-2013, as amended],* Act No. 12 of October 19, 1954, as amended, known as the "Judicature Retirement Act;" Act No. 1 of January 20, 1966, as amended, known as the University of Puerto Rico Act, the Electric Power Authority Employees Retirement System approved by the Board of Directors of the Authority through the approval of Resolution 200 of June 25, 1945, who has ten (10) years or more of service accumulated and is part of a Partnership, shall maintain the vested rights under said system and may continue to make his/her individual contribution to the retirement System, and his/her new employer shall make its employer contribution. Provided, that the beneficiaries of Act No. 305 of December 31, 1999, are excluded.

In the case that the new employer has its own Retirement System and the employee chooses to avail him/herself of the same, the transfer of the total contributions shall be allowed, without the employee having to pay taxes for the contributions transferred.

No system, that is to say, the system of the University of Puerto Rico, of the Electric Power Authority, the Teacher's Retirement System or the Employees Retirement Systems of the Government and the Judicature may interfere with the faithful compliance of this Section.

Section 11. — Federal Funds and Other Sources. — (27 L.P.R.A. § 2610)

The Partnering Government Entity or the Authority may accept discretionary funds available in the Federal Government of the United States of America and its agencies to further the purposes of this Act, be it through loans, securities or any other kind of financial aid. The Commonwealth of Puerto Rico shall comply with any requirement, condition or term of any Federal funds accepted by the Partnering Government Entity or the Authority. The Partnering Government Entity or the Authority may execute contracts and other agreements with the Federal Government of the United States of America or any of its agencies as necessary to carry out the purposes of this Act. Furthermore, the Partnering Government Entity and the Authority may accept any donation, gift or any other conveyance of land, money, other kinds of real or personal property or any other valuable provided to the Partnering Government Entity or the Authority to carry out the purposes of this Act. Any Partnership Contract in connection with a Service, Function or Facility may be financed in whole or in part through funding or other contributions by any Person or Partnering Government Entity that is a party to a Partnership Contract. The Partnering Government Entity may combine Federal, local and private funds or other resources to finance a Partnership Contract under this Act.

Section 12. — Tax Liability and Benefits. — (27 L.P.R.A. § 2611)

(a) *Tax Liability*.—The following kinds of property shall be exempted from any tax on real or personal property levied by the Government, its agencies, public corporations, Municipal Entity and instrumentalities and any political subdivision thereof for the term and at the percentages established by the Authority under the Partnership Contract: (i) the Facility; (ii) the Property used exclusively in or for the Facility or for the Services or Functions that **(A)** belongs to the Partnering Government Entity and is leased, licensed, financed or otherwise made available to the Contractor, **(B)** is acquired, built or owned by the Partnering Government Entity and is made available to the Contractor. The Contractors and the municipal governments may establish payment agreements or exemptions for municipal license fees, excise taxes or municipal taxes pursuant to the provisions of Act No. 81 of August 31, 1991, as amended, known as the "Commonwealth of Puerto Rico Autonomous Municipalities Act." The Contractors in a Partnership established under this Act shall be subject to a fixed income tax rate of ten percent (10%) over the net income derived from the operations provided in the Partnership Contract, calculated in accordance with the Puerto Rico Internal Revenue Code, as of the date of the beginning of the Partnership's operations, in lieu of any other income tax, if any, provided by this Code or by any other Act. In the case of corporations or regular partnerships, the distribution of income to the shareholders or partners shall be subject to the tax levied by Section 1012(b) of the Puerto Rico Internal Revenue Code, as amended. It is

further clarified that said special rate shall not be applicable nor shall it in any way alter the taxes levied by Sections 1221 and 1231 of the Puerto Rico Internal Revenue Code. Neither shall it be subject to the surtax provided in Act No. 7 of March 9, 2009, the "Special Act to Declare a State of Fiscal Emergency and to Establish a Comprehensive Fiscal Stabilization Plan to Salvage the Credit of Puerto Rico."

The contracting corporations and partnerships may choose to be treated, for tax purposes, pursuant to the provisions of Subchapter K of the Puerto Rico Internal Revenue Code, as amended. In this case, the shareholder of a special Contracting partnership shall be subject to a fixed income tax rate of twenty percent (20%) over the net income derived from the operations provided in the Partnership Contract. Said tax shall be withheld at source and deposited in the Department of the Treasury of Puerto Rico on or before the fifteenth day of the second month, after the end of the fiscal year of the special partnership. The provisions of Sections 6040 and 6041 of the Puerto Rico Internal Revenue Code, as amended, shall be applicable to the late payment of this tax. The Special Employee-Owned Corporations parties to a Partnership Contract may avail themselves of the benefits provided in Subchapter M of Chapter 3 of Subtitle A of Act No. 120 of October 31, 1994, as amended, better known as the "Puerto Rico Internal Revenue Act of 1994." The participation of a nonprofit corporation in a Partnership Contract, regardless of the type of organizational or juridical structure under which it is organized, shall not affect its eligibility for the purpose of availing itself of the benefits of the Puerto Rico Internal Revenue Code provided for the type of particular entity or organization in question.

(b) *Tax Benefits*. — A Contractor under a Partnership Contract may not receive tax benefits provided for under the Economic Incentives Act for the Development of Puerto Rico, Act No. 73 of May 28, 2008, for the activity covered under such Contract.

Section 13. — Agreement of the Commonwealth of Puerto Rico. — (27 L.P.R.A. § 2612)

The Government agrees and assures any Person party to a Partnership Contract and the entities that finance such Contracts, that the Government shall neither limit nor restrain the rights or powers conferred to the Authority and the Partnering Government Entity or such others held by the Partnering Government Entity under its Organic Act at the time of entering into the Partnership Contract.

Section 14. — Obligation Observance Assurances by Partnering Government Entities under Partnership Contracts. — (27 L.P.R.A. § 2613)

The Bank is hereby authorized to design and implement any mechanism, method or instrument as the Bank may deem pertinent and appropriate, including, but not limited to, total or partial sureties, letters of assurance, letters of credit, and others to ensure compliance by the Partnering Government Entity of its contract and financial obligations under the Partnering Contract. Any mechanism, method or instrument that the Bank may decide to implement in connection with a Partnering Contract, shall be subject to such terms and conditions that the Board of Directors of the Bank may determine and shall be previously recommended by the Director of the Office of Management and Budget and approved by the Governor or the executive official on whom he/she delegates. Amounts disbursed by the Bank under any such mechanism, method or instrument shall

be annually repaid with the moneys available, if any, in the fund created for such purpose in Section 17 of this Act. Insofar as such funds are not sufficient to repay all amounts paid or advanced by the Bank, the Director of the Office of Management and Budget shall include in the operating budgets of the Commonwealth of Puerto Rico submitted each year by the Governor to the Legislature, beginning in the fiscal year following the date on which the Bank made a disbursement under any mechanism, method or instrument and the moneys available in the fund created by Section 17(d) of this Act have been depleted, such amounts as necessary to enable the Bank to recover principal and interest, except for Public Corporations or Municipal Entities, which shall respond with their own resources.

Section 15. — Lawsuits against the Commonwealth of Puerto Rico and Partnering Government Entities. — (27 L.P.R.A. § 2614)

In Partnership Contracts by and between a Contractor and a Partnering Government Entity other than a public corporation or a Municipal Entity, such Contractor is hereby authorized to file suit against the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico in San Juan for civil actions, up to the maximum of the amounts or the unearned remainder thereof, as established in the Partnership Contract and on the grounds of claims that the Contractor may have against such Partnering Government Entity under such Partnership Contract, for which the limitations set forth in Section 2(c) of Act No. 104 of June 29, 1955, as amended, "Claims and Lawsuits against the Commonwealth Act," shall not apply; provided, that the aggregate amount claimed may not exceed the extent of the damages set forth in the Partnership Contract, insofar as such extent complies with the provisions of this Act. The civil action authorized herein shall comply with the procedures provided in the Claims and Lawsuits against the Commonwealth of Puerto Rico Act, and any procedure set forth in the Partnership Contract. No Proponent shall be entitled to claim indemnity for damages against the Authority or a Government Entity under this Act; likewise, no claims may be filed as top indemnity, reimbursement, or any payment whatsoever on account of expectations arisen at any of the stages conducive to the award of a Partnership.

Section 16. — Indemnity of Officials. — (27 L.P.R.A. § 2615)

The members of the Board of Directors of the Authority, the Board of Directors of the Partnering Government Entity (or the Secretary or head of a Partnering Government Entity), the Board of Directors of the Bank, the members of the Partnership Committee, and the employees of the Authority or those assigned to it of the Bank and the Partnering Government Entity with functions relative to the Partnership, shall not be held civilly liable for any action or omission in the discharge of their duties, except when conduct which constitutes a crime or gross negligence is present. The provisions of this Section shall continue in effect after termination of the Partnership Contract.

In the event a cause of civil or administrative action is instituted against any of the persons identified in the above paragraph, on the grounds of any action or omission of the same in connection with a Partnership authorized under this Act, said persons may request representation or indemnity by the Authority, and if the latter lacks the funds, by the Commonwealth of Puerto Rico pursuant to the provisions of this Section for all defense expenses or for any payment of

sentence imposed on them, insofar as the action on which a sentence is delivered does not constitute a crime or an instance of gross negligence.

Section 17. — Use of Initial or Periodic Payments of a Partnership. — (27 L.P.R.A. § 2617)

In the event that a Partnership Contract, after having defrayed the costs incurred by the Authority, the Partnering Government Entity or the Bank as part of the process of evaluating, selecting, negotiating, and executing such Partnership Contract, generates an initial payment or periodic payments to the Partnering Government Entity or the Commonwealth of Puerto Rico by the Contractor under the Partnership Contract, such payments may only be employed for any of the following uses: (a) to pay debts of any kind, even operational debts, of the Partnering Government Entity; (b) to pay debts of any kind, even operational debts, of the Commonwealth of Puerto Rico; (c) to create a capital investment fund for the capital improvement program of the Partnering Government Entity or the Commonwealth of Puerto Rico, in which case, such payment shall be remitted by such Partnering Government Entity to the Bank, which shall deposit such money into an account created for such purpose; (d) to create a fund whose purpose shall be to repay the line of credit granted by the Bank to the Authority to cover its operating expenses and to accomplish the purposes of this Act, pursuant to the provisions of paragraph (viii) of Section 6 thereof, and to refund or compensate the amounts expended, paid, or advanced by the Bank to meet the obligations incurred by any Partnering Government Entity under a Partnership Contract. The Bank shall consult with the Office of Management and Budget and submit to the Governor its recommendations together with those of the Office of Management and Budget concerning the best use of the initial payment or the periodic payments arising out of the Partnership Contract. Such payment shall be used as finally approved by the Governor. In the case of a Small Scale Project that generates an initial payment or periodic payments, said payment shall be used as provided in this Section, but said use need only be recommended by the Bank and approved by the Board of the Authority and the Partnering Government Agency. The use of the funds corresponding to the General Fund must be authorized by the Legislative Assembly.

Section 18. — Assignment of Rights and Constitution and Assignment of Lien under Partnership Contract. —

(a) *Authority to Assign or Lien.* — A Partnership Contract shall allow for the Contractor to assign, sublease, subconcede or encumber its interests under a Partnership Contract, or for its stockholders, partners or members to assign, pledge or encumber their shares or interests upon the Contractor. The Partnership Committee shall determine and establish in the
Partnership Contract the conditions, if any, under which the Contractor may assign, sublease, subconcede or encumber its interests.
(b) *Constitution of Liens by the Contractor*. — A Partnership Contract may constitute or allow for the constitution of a lien on the rights held by the Contractor over the Partnership Contract, including but not limited to: a pledge, an assignment or any other lien on the rights under the Partnership Contract, on any payments pledged by the Government or the Partnering Government Entity to the Contractor by virtue of the Partnership Contract, on the income of the Contractor over any property of the Contractor or on the use, enjoyment, usufruct or other rights granted to the

Contractor under the Contract, as well as allow for bondholders, partners or members of the Contractor to assign, pledge or encumber their shares or interest in the Contracting entity, all of the foregoing, to secure any financing relative to the Partnership Contract. Furthermore, any Person that has provided financing for a Partnership contract and that has secured such financing through a lien on the income or the Property under a Partnership Contract, shall be entitled, in the event of noncompliance by the Contractor or its affiliate, to foreclose such lien and to designate, with the consent of the Authority, the Person that shall assume the Partnership Contract and such Person must comply with the requirements for the Proponent qualified and selected under the provisions of this Act. The Person that assumes the Partnership Contract shall do so subject to the terms established thereunder.

(c) *Constitution of Liens by the Partnering Government Entity*. — The Partnering Government Entity may secure any of its obligations by pledging or by constituting a lien on the Partnership Contract and all or part of the income yielded by such Partnership Contract.

(d) *Constitution and Perfection of Lien*. — The constitution of liens as described in subsections (b) and (c) of this Section 18 shall be valid and binding, subject to the provisions of Act No. 75 of July 2, 1987, known as the "Puerto Rico Notary Act," as amended, as well as Act No. 198 of August 8, 1979, as amended, the "Mortgage and Property Registry Act."

(e) *Agreement to Assignment*. — The Authority, the Partnering Government Entity or both shall enter into such agreements with the Contractor and with any third party financing the applicable Partnership Contract as may be reasonably necessary to provide the conditions for the agreement of the Authority, the Partnering Government Entity or both to the assignments, subleases, subconcessions or liens executed, perfected or foreclosed pursuant to the Partnership Contract.

(f) *Exemption from Requirements for Government Credit Assignments*. — All assignments and liens provided for under this Section are hereby exempted from compliance with the provisions of Articles 200 and 201 of the Political Code of 1902 in connection with the transfer of rights under contracts with the Government and claims against the Government.

Section 19. — Inapplicability of Certain Laws. — (27 L.P.R.A. § 2618)

(a) *Exemption from the Government Accounting Act*. — The Authority and all Partnership Contracts shall be exempted from the provisions of Act No. 230 of July 23, 1974, as amended, known as the "Puerto Rico Government Accounting Act."

(b) *Exemption from the Antitrust Act*. — For the purposes of this Act, the main activity of a Partnership Contract shall not be deemed to be a contract that has the effect of substantially diminishing competition or leading to the creation of a monopoly. However, any action conducted beyond the scope of the Partnership Contract and any contracting by the Contractor with other nongovernmental entities shall be governed by Act No. 77 of June 25, 1964, the "Antitrust Act." Partnership Contracts may not restrain free trade by third parties in activities that are secondary, ancillary or subsidiary to the primary activity established in such Contracts.

(c) *Exemption from the Uniform Administrative Procedures Act*. — All procedures and actions authorized under this Act, including but not limited to procedures and actions in connection with the approval of regulations, the determination of projects for the establishment of Partnerships, the selection of proposals, and the award of Partnership Contracts, are hereby exempted from all of

the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico."

(d) *Exemption from Act No. 237 of August 31, 2004.* — The Authority and the Partnering Government Entities shall comply with subsections A-K and N-P of Section 5 of Act No. 237 of August 31, 2004, and shall be exempted from compliance with the remaining provisions of such Act.

(e) *Exemption from Certain Requirements for Government Contracting.* — All Government Entities that are parties to a Partnership are hereby exempted from compliance with the provisions on contracting and bidding contained in their organic acts, the pertinent special laws or any corresponding regulation, including any obligation or requirement that compels contracting or bidding through the General Services Administration. As to Partnerships, only the provisions of the regulation adopted by the Authority under this Act shall apply.

Section 20. — Judicial Review Procedures. — (27 L.P.R.A. § 2619)

(a) *Right to Review.* — Only such Persons that have requested to be evaluated in a procedure of request for qualifications and that have submitted the necessary documents to be evaluated, as per the requirements established by the Authority or by the Partnership Committee, and that have not been qualified, shall be entitled to request a judicial review of such determination. Persons that have not submitted the documents required by the Authority or the Partnership Committee in the course of the qualification procedures, shall be automatically disqualified and may not request a judicial review of the final qualification determination made by the Partnership Committee.

Likewise, only such Proponents that have been qualified to participate in the procedure for selection of proposals, who have submitted to the Partnership Committee complete proposals and all documents required under the procedures established for Proposal evaluation, but who have not been selected for the award of a Partnership Contract, may request a judicial review of the approval of a Partnership Contract by the Governor or the person onto whom he/she delegates.

Such review may be requested after: (i) the determination not to qualify the Proponent by the Partnership Committee, pursuant to the requirements established in subsection (a) of this Section, to participate in the procedures for the establishment of a Partnership or (ii) the final determination to execute the Partnership Contract with another Proponent, which determination to execute the Contract shall be final after having completed the approval procedures as provided for in Section 9(g)(ii)-(v).

These requests for review must comply with the procedure established in this Section, which shall preempt any other jurisdictional or competence criterion or procedure that would otherwise apply pursuant to other applicable laws and regulations.

(b) *Request for Judicial Review.* — Non-qualified petitioners or non-selected Proponents shall have a jurisdictional term of twenty (20) days counted as of the date of the sending by certified mail of the notice of the Partnership Committee or the Authority, as the case may be, of the final determination to file a writ for administrative review with the Court of Appeals by a recourse in Aid of Jurisdiction to said Court. An interlocutory resolution by the Partnership Committee or the Authority shall not be reviewable; it may only be reviewed concurrently with the final determination. If the date of notice by the Partnership Committee or the Authority is different from

the date of mailing such notice, the term shall be counted as of the date of mailing. The reconsideration mechanism shall not apply before the Partnership Committee or the Authority.

The writ of review shall be issued discretionally by the Court of Appeals. Such Court shall issue a statement on the writ requested within a term of ten (10) days as of the date of filing the resource. The decision of the Court may be to accept the recourse and shall issue a resolution indicating that it shall issue the writ requested, or it may deny it outrightly, in which case, the Court may issue a resolution not stating the grounds. If the Court of Appeals does not issue a statement within ten (10) days following the filing of the recourse or denies the issue of the writ, a jurisdictional term of twenty (20) day shall begin to lapse for resorting to the Supreme Court of Puerto Rico, by writ of certiorari. In the first case, the term shall begin to lapse on the day following the tenth day after having filed the recourse with the Court of Appeals; however, if the Court of Appeals issues a statement on the recourse, the term shall begin to lapse as of the date of filing in the Court's records a copy of the notice on the resolution, order or sentence, as the case may be.

If the Court of Appeals accepts the recourse, it shall issue a final determination within thirty (30) days of having accepted the same. Otherwise, the Court of Appeals shall lose jurisdiction and the twenty (20)-day term for resorting to the Supreme Court shall begin to lapse on the day following such thirty (30)-day term.

The review recourse filed with the Court of Appeals and the writ of certiorari filed with the Supreme Court shall be deemed to be the allegation of the petitioner, unless the reviewing Court provides otherwise. In the event that the Court of Appeals issue the writ of review, the party adversely affected by the determination of said Court may resort to the Supreme Court by writ of certiorari within the jurisdictional term of twenty (20) days as of the date of filing in the Court's records the final determination of the Court of Appeals.

(c) *Notice.* — The petitioner before the Court of Appeals or the Supreme Court of Puerto Rico shall give notice, with a copy of the writ, to the Authority, the Partnering Government Entity, the selected Proponent (in the event the award of the Partnership Contract is challenged), the Proponents not selected (in the event the award of the Partnership Contract is challenged), the Persons that were qualified (in the event the qualification by the Partnership Committee is challenged), within the twenty (20)-day term established in Section 20(b), provided, that compliance of such notice shall be a requirement of a jurisdictional nature. All notices under this Section 20(c) shall be made by certified mail. Provided, that if the date of notice to the Authority and all other parties is different from the date of mailing of such notices, the term shall be computed from the date of mailing.

The Authority and any other party interested may, within ten (10) days of having been notified of the writ of review or certiorari, or within the additional term that the Court of Appeals or the Supreme Court may grant, file its opposition to the issue of the writ.

(d) *Effect of the Issue of the Writ of Administrative Review or the Writ of Certiorari.* — The issue by the Court of Appeals or the Supreme Court of a writ of administrative review or a writ of certiorari shall not stay the procedures for the qualification of petitioners, or for the evaluation or selection of proposals or negotiation of the Partnership Contract by the Partnership Committee with the Proponent or Proponents not disqualified, nor shall such issue stay the procedures for the authorization by the Boards of Directors, by the Secretary or the head of the Partnering Government Entity and by the Governor or the executive official onto whom he/she delegates. Neither shall the same stay the execution and effectiveness of the Partnership Contract or its terms

and conditions, unless the Court with jurisdiction so orders expressly. The Court may only stay the execution and effectiveness of the Contract when the petitioner of the stay is able to demonstrate that such petitioner shall sustain irreparable damages if such recourse is not stayed; that such stay order is indispensable to protect the jurisdiction of the Court; that such petitioner is highly likely to prevail on the grounds of merits; that the stay order shall not bring substantial damages to the other parties; that such order shall not harm the public interest; that there is no reasonable alternative to prevent the alleged damages; and that such damages cannot be compensated by granting a monetary remedy or any other proper remedy under the law. As a requirement for the issue of a stay order, the Court with jurisdiction shall request that the petitioner post a bond or letter of credit sufficient to respond for all damages caused as a consequence of such stay order, the amount of which shall be not lesser than 5% of the proposed project's worth as determined by the Partnership Committee and as specified in the request for proposals. Neither the mere loss of income due to the assumption of the risk of participating as a petitioner or Proponent nor the mere loss of income or money due to the fact that one has not been the selected Proponent shall constitute "irreparable damages."

(e) *Scope of the Judicial Review*. — The qualification determinations of the Partnership Committee and the approval of the Partnership Contract by the Governor or the official onto whom he/she delegates, as provided under Section 9(g)(ii)-(v), shall be revoked only if there is a manifest mistake, fraud or arbitrariness.

(f) *Payment of Fees*. — The party defeated after proceedings for judicial review under Section 20(b) shall defray the expenses incurred by the other parties involved in such proceedings, and the amount of these expenses may be deducted, compensated or withdrawn from any letter of credit or bond posted in connection with the judicial review proceedings.

(g) *Limitation of Damages*. — The petitioning party may not, under any circumstance, as part of its remedies, claim the right to be redressed for indirect, special or foreseeable damages, including profits not made.

(h) *Exclusivity of the Recourse*. — No lawsuit, action, proceeding or recourse of any kind shall be admissible in any court other than those set forth in this Section 20, except for such proceedings for eminent domain that the Authority or the Commonwealth may exercise pursuant to the authority conferred under this Act. Any judicial review made with respect to the determination regarding the qualification of the Proponent made by the Partnership Committee, or the approval of a Partnership Contract by the Governor or the executive official on whom he/she delegates, shall be conducted by following the procedures provided for in this Section 20, and the Authority shall act as a representative of all of the abovementioned parties that participate in the procedures for the approval of a Partnership Contract pursuant to this Act. No proceedings may be instituted for the petition of concurrent or further judicial reviews other than through the Authority and following the provisions of this Section 20.

Section 21. — Tax Exemption for the Authority. — (27 L.P.R.A. § 2620)

The Authority shall not be required to pay any tax or levy on any goods acquired or to be acquired by such Authority, nor on its operations or activities, or on income received on account of any of its operations or activities.

Section 22. — Joint Committee on Public-Private Partnerships. — (27 L.P.R.A. § 2621)

The Joint Committee on Public-Private Partnerships of the Legislative Assembly of Puerto Rico is hereby created, to be composed of six (6) senators and six (6) representatives. Among these, one (1) member of each minority party represented in each legislative house shall be appointed. Initially, the Committee shall be Chaired by one of the senators designated by the President. Said designation shall alternate every quadrennial with the House of Representatives.

The Joint Committee shall have jurisdiction to: (a) examine, investigate, evaluate, and study all matters relative to Public-Private Partnerships, including, but not limited to, the provisions of Section 9(b)(ii); (b) evaluate and recommend any Public-Private Partnership proposal not included into the Priority Projects established in Section 3 of this Act; (c) recommend the use of funds from the General Fund, as provided in Section 17(d) of this Act, in which case, the Committee shall make its recommendation to the Committees with jurisdiction over budgetary affairs on both Legislative Houses; discharge any other function entrusted through a Concurrent Resolution; and (d) provided further, that, in seeking to protect the public interest, every three (3) years, the Joint Committee on Public-Private Partnerships shall review the need and convenience of this Act and submit a report to the Governor and the Legislative Houses.

The Joint Committee shall approve bylaws within a term not greater than twenty (20) days as of the date of approval of this Act. Such Bylaws shall contain any norms, procedures, and considerations as necessary to discharge the various tasks entrusted thereto. Based on the tasks entrusted, the Joint Committee created herein shall prepare and submit any such reports as necessary, in order to keep both Legislative Houses apprised of the results, recommendations, and conclusions gathered in the course of discharging such tasks.

The employees of the Joint Committee shall be subject to the provisions of the Personnel Regulations for each Legislative House, as per the body holding the Chair of the Committee. Joint Committee expenses shall be chargeable to the General Budget Fund of the Commonwealth Treasury. To achieve the purposes of this Act, the sum of one hundred, seventy-six thousand dollars ($176,000) is hereby appropriated. Beginning in Fiscal Year 2012-2013, the sum of three hundred seventy-six thousand dollars ($376,000) shall be appropriated. Said funds shall be earmarked in the Joint Resolution of the General Budget of the Commonwealth of Puerto Rico. However, for this Fiscal Year 2011-2012, the Joint Committee is hereby empowered to receive an additional sum of two hundred thousand dollars ($200,000), which shall be provided by the Public-Private Partnerships.

Section 23. — Applicability of the Ethics in Government Act. — (27 L.P.R.A. § 2622)

The Ethics in Government Act of the Commonwealth of Puerto Rico, Act No. 12 of July 24, 1985, as amended *[Note: Repealed and replaced by the Act 1-2012, "Puerto Rico Government Ethics Act of 2011"]*, particularly the Code of Ethics under Article III of said Act, shall apply to all members of the Board of Directors of the Authority, including public interest representatives, directors, officers, and employees of the Authority, members of the Partnership Committees, the Board of Directors, and officials and employees of the Partnering Government Entity.

The members of the Board of Directors of the Authority; the members serving as alternates to public interest representatives in the Board of Directors of the Authority, when substituting the

latter; the members of the Board of Directors of the Partnering Government Entity or the persons onto whom these delegate; and the members of Partnership Committees, even those who render their services for no pay or who receive per diems only, shall be subject to the provisions of Chapter IV of the Ethics in Government Act concerning the submittal of financial reports. Likewise, the executives of the Authority, the Bank or the Partnering Government Entity who are appointed by the Partnership Committee to negotiate a Partnership Contract must comply with the provisions of Chapter IV of the Ethics in Government Act. The same obligation shall be placed on the executive official onto whom the Governor may delegate the authority to approve a Partnership Contract through an Executive Order, or the person onto whom the Board of Directors of the Partnering Government Entity delegates the authority to sign a Partnership Contract. Furthermore, employees and officials of the Authority, the Bank, and the Partnering Government Entity, or persons on assignment in the aforementioned government entities, with functions regarding the Partnerships, such as the inspection and oversight of operational compliance under the terms and conditions agreed under the Partnership Contract or who are in charge of supervising the performance of the agreed endeavor, shall be under the obligation to submit financial reports.

Section 24. — Provisions in Conflict Rendered Ineffective. — (27 L.P.R.A. § 2623)

In the event that the provisions of this Act are in conflict with the provisions of any other law, the provisions of this Act shall prevail.

Section 25. — Severability Clause. — (27 L.P.R.A. § 2601 note)

If any Section or provision of this Act were to be found to be null or unconstitutional by any court with competence and jurisdiction, the ruling thus pronounced the remaining provisions of this Act, shall not affect nor invalidate the remaining provisions of this Act, and its effect shall be limited to the paragraph, Section, part or provision thus found to be null or unconstitutional.

Section 26. — Effectiveness. — This Act shall take effect immediately after its approval.

Note. This compilation was prepared by the Puerto Rico Office of Management and Budget staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text and the collection of Laws of Puerto Rico Annotated LPRA. The state links acts are property of Legislative Services Office of Puerto Rico. The federal links acts are property of US Government Publishing Office GPO. Compiled by the Office of Management and Budget Library.

See also the **Original version Act**, as approved by the Puerto Rico Legislature.