DRAFT Organizational Conflict of Interest (OCI)
Avoidance and Mitigation Principles

1. Introduction

LUMA is committed to working with all stakeholders to identify, avoid, and neutralize any potential conflicts as early as possible, and to help ensure that LUMA affiliate entities are eligible to participate and do not benefit from any improper advantage. These Principles underscore this commitment. LUMA also understands the importance of diligent compliance with both the letter and the spirit of applicable procurement rules and regulations.

2. Purpose and Scope of these Principles

LUMA has carefully reviewed applicable organizational conflict of interest (OCI) regulations and identified techniques to avoid, eliminate or mitigate any potential conflicts. The purpose of these Principles is to outline those techniques in broad terms. LUMA will address any OCI issues in greater detail as they may arise during performance of the Transmission and Distribution Operation and Maintenance Agreement effective June 22, 2020 (T&D OMA) via the Consolidated Procurement Manual (the Procurement Manual) and the Operator's in-house compliance monitoring program (*see, e.g.*, para. 4.e).

These Principles will provide the necessary framework to identify, avoid, and mitigate actual or potential conflicts of interest concerns and issues in accordance with the Federal Acquisition Regulation (FAR) Subpart 9.5,[1] 2 C.F.R. § 200 (the Uniform Rules), the Puerto Rico Public-Private Partnerships Authority (P3) Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts (promulgated by P3, dated as of December 19, 2009), and other applicable laws, regulations, policies, and codes of ethics. LUMA is committed to complying with all ethics and procurement laws related to performance of the T&D OMA.

Given the work anticipated under the T&D OMA, these Principles seek to:

- Provide safeguards to ensure that the Operator can and will perform objectively and in the best interest of the public;
- Prevent the existence of conflicting roles that might bias the judgment of LUMA;
- Eliminate circumstances that could potentially provide an unfair competitive advantage;
- Provide a mechanism for resolution of any OCI issues that may arise during performance of the T&D OMA; and
- Address both actual and perceived issues related to OCIs.

3. Identification of Potential Conflicts

LUMA is committed to developing a systematic approach to identify and avoid, mitigate, or neutralize OCI issues. Based upon the scope of work as provided in the T&D OMA, LUMA has preliminarily identified areas in which OCIs could arise:

- <u>Impaired objectivity</u> arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to a non-Federal entity (NFE) due to other relationships, contacts, or circumstances. This would comprise circumstances where a contractor's work under one contract could entail it evaluating itself through an assessment of performance under another

[1] While the Federal Acquisition Regulations (FAR) are not strictly applicable to the OMA, FAR Subpart 9.5 is referenced as a guide because its requirements and considerations regarding organizational conflicts of interest are often mirrored in other applicable authorities and codes of conduct.

contract or an evaluation of proposals. Impaired objectivity might become an issue where the LUMA is evaluating proposals and one of those proposals is from a LUMA affiliate.

- Unequal access to information occurs when a contractor has access to nonpublic information as part of its performance under another contract with the NFE and where that information may provide the contractor with a competitive advantage in a later competition for an NFE contract. This OCI might become an issue where LUMA, due to its performance of the OMA, has access to non-public information that may provide a competitive advantage in subsequent NFE procurements.

- Biased ground rules issues arise where a contractor, as part of its performance of work under a contract with the NFE, has in some sense set the ground rules for another NFE contract. Biased ground rules concerns might arise where LUMA prepares a statement of work or specifications for a contract and later competes for that contract itself. Notably, the Uniform Rules require that contractors that develop or draft specifications, statements of work, and invitations for bids, or requests for proposals be excluded from competing for such procurements. Biased ground rules concerns may also arise where an affiliate of LUMA competes for a contract that includes a statement of work or specifications drafted by LUMA.

4. Mitigation Techniques

Our goal is to avoid OCI's whenever possible. Close communication between LUMA and government stakeholders is essential to ensure that a conflict-free environment exists. However, when an OCI is unavoidable, it must be documented, and a strategy developed to neutralize or mitigate the OCI.

Considering the potential OCIs identified above, LUMA may implement the following techniques, or combination of techniques, as appropriate, to eliminate or mitigate potential OCIs. These techniques are commonly used across many industries and have been recognized by a wide variety of forums as effective means of avoiding and/or mitigating potential OCIs. See, e.g., *Organizational Conflicts of Interest*, Cantu, Daniel, 06-12 *Briefing Papers* 1.

a. Firewalls

Firewalls – or communication barriers – are a common mitigation technique, but are not by themselves sufficient in many circumstances. While walling off employees and/or LUMA using a firewall arrangement may resolve certain types of conflicts of interest (such as those involving unfair access to information), it may not resolve an OCI involving potentially impaired objectivity. As a result, the Operator may use firewalls in combination with other mitigation techniques.

Firewalls focus on preventing the communication or sharing of information between two separate organizations or groups of people (e.g., employees who may have access to certain customer-sensitive data vs. employees who would gain a competitive advantage from access to such information). Therefore, written firewall procedures are typically; (i) prepared on a project-specific or work-specific basis; (ii) distributed to all affected employees; and (iii) administered and overseen by a single organization (e.g., Human Resources, Corporate Compliance).

Effective firewall procedures typically identify:

- two or more divisions or groups of employees to be separated;

- notices and instructions to be provided to each group;

- measures to segregate and prevent sharing of information between the groups, including electronic separation and denials of access;

- prohibitions on oral and written communications between the groups;
- procedures for non-transfer of personnel between groups;
- any common management or executive personnel who will have oversight of both groups, and any restrictions on their activities; and
- method for escalating and addressing any problems that may arise.

b. Organizational/Physical/Geographic Separation

Another common mitigation technique, sometimes used as a complement to firewalls, is organization, physical, and/or geographic separation of the conflicted groups or entities. The purpose of this technique is to formalize the separation between the groups and reduce the risk of inadvertent disclosures among organizations or employees. Geographic separation establishes an environment that prevents inappropriate information from being released. Separation can also be done on at the organizational level or at the office level within the same building (e.g., dedicated areas with access controls and dedicated telecommunications equipment). These steps can be helpful in conjunction with other mitigation techniques.

Factors to consider in this area include:

- The degree of the organizational, physical, or geographic separation, if any, that already exists between the two conflicted groups of employees (for example, work areas separate from other business segments and work in a controlled access facility, precluding access by other contract or proposal teams);
- The degree to which there is separate management responsibility for the two conflicted groups of employees;
- The degree to which there are separate accounting/financial systems and controls for the two conflicted groups of employees; and
- The degree to which there are separate IT systems or controls for document storage/access.

c. Non-Disclosure Agreements

The use of Non-Disclosure Agreements (NDAs), in which affected employees agree to protect and not disclose certain information to which they are privy, is another common mitigation technique. NDAs are particularly important where the OCI concern relates to the transfer of non-public information that could provide an unfair competitive advantage or result in unequal access to information. NDAs can also be important in preventing the transfer of knowledge of future requirements.

Factors to consider in this area include:

- who will be responsible for determining if NDAs are necessary;
- who will be responsible for administering and overseeing NDAs;
- the specific contents of the NDA; and
- storage and management of executed NDAs.

d. Increased Customer Monitoring/Oversight of Conflicted Work

Another mitigation technique is for government stakeholders to assume an enhanced, ongoing role in identifying and resolving OCIs during contract performance. LUMA anticipates this technique being particularly useful during performance of the O&M Agreement due, in part, to the existing joint efforts among the Parties in preparing and updating the Procurement Manual, and because of P3's review and analysis procedures as provided in the P3 Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public Private Partnership Contracts. For example, one of the mitigation techniques might be for the appropriate government personnel to independently review proposed procurement actions, followed by tailored updates to the Procurement Manual to address specific concerns, if any.

e. Compliance Monitoring

All Operator employees working on federally funded procurement will receive access to the Procurement Manual, including the OCI policy. The LUMA Compliance Office maintains the information up to date.

Compliance monitoring is designed to be a continuous and ongoing activity undertaken by the Operator to verify compliance with these Principles. The Operator will be responsible for developing an appropriate avoidance, neutralization, or mitigation strategy to address each new actual, apparent, or potential conflict of interest identified during the monitoring and review process. We will also develop OCI resolution strategies and establish remedial measures to address any instances of non-compliance. We intend for the Operator's in-house compliance monitoring to overlap with, and reinforce, the conflict avoidance and mitigation procedures provided in the Procurement Manual.

In-process reviews play an important role in ensuring that a high-quality, proactive OCI Avoidance/ Mitigation plan exists for achieving OCI compliance. We will conduct in-process reviews on a periodic basis.

f. Violations and Enforcement

Violations of OCI policy shall be reported to the individual's immediate manager. Appropriate administrative and/or disciplinary action will be taken for violations, up to and including termination. Additionally, the Office of Federal Procurement Policy Act (41 U.S.C. Section 423, Procurement Integrity) and Puerto Rico's Anticorruption Code state that violations thereof may subject an employee to criminal liability.

LUMA will conduct a timely and thorough investigation of any suspected or reported violations of OCI policy.

LUMA employees may be required to sign a certification stating that (a) the employee has read and understands the OCI policy, and (b) the employee will report to managers/supervisors any past, present or future relationship that may result in an actual, perceived or potential OCI. This certification also requires acknowledgement that the employee will comply with authorized uses and mandatory protections of sensitive information required in performing the contract.

5. Impaired Objectivity / Biased Ground Rules – An Example of Avoidance and Mitigation

A Biased Ground Rules OCI could potentially arise where an affiliate of LUMA submits a proposal for a scope of work that was drafted by the Operator. Similarly, there could be Impaired Objectivity issues where the affiliate's proposal is evaluated by the Operator. In addition to the techniques described above, the Operator may employ an avoidance and mitigation strategy that includes delegating to a third-party the material procurement activities associated with Federal grant funding. Under such a strategy, a qualified subcontractor could be hired, which would be dedicated as the Federal Funds Management Procurement Office (the Procurement Office). The Procurement Office would be involved with: creating

statements of work; producing bid solicitations; establishing evaluation panels; evaluating bids; and potentially making awards.

This strategy would help mitigate potential OCI issue under procurements for which one of LUMA's affiliates might compete and ensure that Operator affiliates and non-affiliates are on equal footing, on an actual and perceived basis. While the Operator would have no control over the Procurement Office, the separation between the organizations would be further fortified through additional measures, such as:

- Procurement Office employees would sign NDAs prohibiting the sharing of information outside of their Office, with emphasis on prohibition against sharing information with LUMA affiliates. Under the NDAs, employees would be subject to termination upon unauthorized disclosures, among other penalties.

- The Procurement Office subcontract would invite the P3 Authority to oversee its contract actions to verify compliance with all relevant authorities and agreements.

- The above would be implemented in the Procurement Manual, as appropriate, with input from the P3 Authority, among other stakeholders.

6. Summary

We are committed to avoiding and/or mitigating any actual or potential OCIs and protecting proprietary information in its performance of the O&M Agreement. These OCI Principles address potential conflicts of interest in connection with the work to be performed and would be implemented at no additional cost, consistent with the proposed pricing reflected in this offer. As noted above, these Principles would be updated, as appropriate, during performance and incorporated as part of an OCI policy and the broader Procurement Manual. These Principles establish a strong framework to facilitate awareness of and compliance with avoidance and mitigation of OCIs in performance of the O&M Agreement.