LUMA Procurement Manual

Glossary of Terms

Term	Definition
Apparent Conflict of Interest	An apparent conflict of interest is an existing situation or relationship that would cause a reasonable person to think that a Covered Party's judgment is likely to be compromised because the Covered Party, their agent, any member of his or her immediate family, or an organization whichemploys or is about the employ any of the parties indicated herein, has a financial or other interest in or would derive a tangible benefit from a fdecision or action to be taken by LUMA or the Puerto Rico Electric Power Authority (PREPA), including but not limited to contract awards.
Addendum / Addenda	Addendum/addenda are changes to the scope of the RFx and may only be issued prior to Proponents / Bidders submitting bids. If an Addendum is required post-bidsubmission, all Proponents / Bidders must be given an opportunity to resubmit or withdraw.
Arbitrary Action	A discretionary action that showed preference or prejudice to Vendors in a manner not consistent with full and open competition.
Best Value	Procurement by competitive proposal process in which LUMA reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price, consistent with the stated evaluation criteria. Under such a process, LUMA may award a contract to the offeror whose offer is the most technically superior but is higher in price than the lowest priced, technically acceptable proposal.
Bid	A Vendor's response to an Invitation to Tender (ITT) or a Request for Quote (RFQ). Bids are not subject to negotiation once submitted.
Bid Evaluation Award & Authorization	The Bid Evaluation Award & Authorization (BEAA) is the document that summarizes the procurement process and outcome. The BEAA is approved in accordance with LUMA's established limits of authority and uploaded into the System along with the contract.
Bid Guarantee	Consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid by LUMA, execute such contractual documents as may be required within the time specified.
Bond	A bond is a written instrument executed by a Vendor (the "principal") and a second party ("the surety" or "sureties") to assure fulfilment of the principal's obligations to a third party (the "Obligee"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligation.
Cardinal Change	A cardinal change is a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the Vendor is required to perform very different work from that described in the original contract.
CFR	CFR means Code of Federal Regulations.

Change Order	A change order is work that is added to or deleted from the original scope of work of a contract.
Clarification	During a competitive bidding process, clarifications may be required pre- or post-bid submission and may be issued to only one Proponent if immaterial to the effective understanding of the RFx Package. If material, clarifications will be issued to all Proponents / Bidders to maintain the fairness of process. A clarification shall be deemed "material" when, if not made to all Proponents or Bidders, it could have a material adverse effect on another Proponent or Bidder or change the outcome of the process.
COR3	Puerto Rico Central Office for Recovery, Reconstruction and Resiliency.
Conflict of Interest	Any situation that may arise in which the personal or financial interests of LUMA, its employees, officers, directors or affiliates, are adverse to the best interests of PREPA or LUMA, including for purposes of procurement processes, situations in which these entities or persons may directly or indirectly obtain for themselves or for a third party any profit, utility, advantage or gain by reason of their improper act or exercise of their influence or position or by way of acquiring information in the course of or as a result of any task entrusted to them and uses such information to obtain directly or indirectly, any financial advantage or benefit for itself or any other person, business, or entity related or affiliated to it.
Construction Work	The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.
Constructive Change	An act or omission by LUMA that, although not identified as a "change order," does in fact cause a change in the contract work.
Contract Certifications	Specific requirements established by LUMA for a contract to be signed with a Vendor. Contract certifications can include government agencies certifications, insurance policies, sworn statements, etc.
Contract Execution Authority	LUMA's internal delegation of approved signatories to contracts and agreements that legally bind the organization, acting as the agent of PREPA, to terms and conditions with third parties.
Contract Request Form (CRF)	The CRF is the first step in LUMA's Procurement process for materials and services. This document informs the next steps in the process and ensures that LUMA Vendors are selected objectively.
Contract Requisition	An electronic document (object) created in the appropriate System by an End User to request a contract for services. A Contract Requisition includes information such as a description of service requested, unit of measure (UOM), quantity required, estimated price, account to be used for payment, the LUMA contact, needed by date and any other documentation to support the request.
Covered Party	A parent company, affiliate, or subsidiary organization of PREPA or LUMA or a Covered Person.
Covered Person	A PREPA or LUMA official/officer, agent or employee or officer, agent or employee of PREPA or LUMA affiliates.

Emergency	Has the meaning as defined in the O&M Agreement including (i) any Outage Event, (ii) any Declared Emergency or Major Disaster and (iii) any other circumstance defined as an Emergency in the Emergency Response Plan.
End User	The LUMA employee, work group, team, or department who has identified the business requirement.
Exigency	An exigency is a situation that demands immediate aid or action, where ther is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and use of competitive procurement proposals would prevent the urgent action required to address the situation.
Federally Assisted Construction Contract	Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of theGovernment pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
Federal Awarding Agency	The U.S. Federal agency that provides a Federal award directly to a non-Federal entity such as the Recipient COR3, or through COR3 to PREPA.
Financial Interest	The potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement.
Full and Open Competition	Generally, means that a complete requirement is publicly solicited and all responsible sources are permitted to compete.
Funding Agreement	(Definition under 37 CFR § 401.2(a)) Any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority and any Vendor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
Grant Manager	Grant Manager means the relevant Governmental Body and any third-parties, in either case, authorized by PREPA, and reasonably acceptable to LUMA, to act as grant manager to administer Federal Funding. The Grant Manager may be a contractor of LUMA, but for the services of the Grant Manager to be submitted for Federal funding as grant or project Management Costs, the Grant Manager must have been selected through a competitive procurement meeting Federal procurement requirements.
HUD	US Department of Housing and Urban Development
Invitation to Tender / Bid (Tender or ITT / ITB) or Sealed Bid	A formal competitive bidding process whereby LUMA issues an offer to selected Vendors for acceptance through pricing, scope, qualifications, etc. No post-submission negotiation is permitted.

Limits of Authority	LUMA's internal financial approval matrix for requisitions, bid evaluations and expenditures. Such approval matrix to be reviewed and updated annually, or as needed.
Materials Requisition	An electronic document (object) created by an End User in the appropriate System to request materials. A Materials Requisition includes information such as a description of service requested, unit of measure (UOM), quantity required, estimated price, account to be used for payment, the LUMA contact, ship to location, needed by date and any other documentation to support the request.
Micro Purchase (or "Micro Purchase Threshold")	A purchase of property or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a LUMA's small purchase procedure. LUMA uses such procedures to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burdens and costs. Currently set at $10,000.00.
Minority Business Enterprise (MBE)	Business that meets the requirements and is certified and registered as a Minority Business Enterprise with System for Award Management (http://dsbs.sba.gov).
Non-Disclosure Agreement	An agreement signed by parties involved in procurement processes by which they commit to not disclose confidential information that they have learned by way of their participation in the process.
Organizational Conflict of Interest (OCI)	Has the definition provided in Section 4.3 (via definitions for "Impaired Objectivity," "Unequal Access," and "Biased Ground Rules" OCIs).
Payment Bond	A bond executed in connection with a contract to assure payment as required by law for all persons supplying labor and material in the execution of work provided for in the contract.
Performance Bond	A form of Security executed in connection with a contract to secure fulfilment of all the Vendor's obligations under such contract.
Personal Property	Property other than real property. It may be tangible, having physical existence, or intangible.
Procurement by Competitive Proposals	Procurement by the competitive proposal method is where more than one vendor submits an offer and LUMA awards either a fixed price or cost-reimbursement type contract.
Property	Real property or personal property.
Proponent	A Vendor who submits a response to a Request for Proposals (or RFx) issued by LUMA.
Proposal	A Vendor's response to a Request for Proposal (RFP). Proposals can be negotiated with the Proponent after submission.
Purchase Order	Created by LUMA's Procurement and Contracts Team, an electronic document (object) created in the appropriate System, committing LUMA to the purchase of goods or services. Purchase Orders are approved in accordance with LUMA's Procurement and Contracting Practice, Section 4.1.

Purchase Order Approval Limit(s)	LUMA's internal Procurement & Contracts approval matrix authorizing the creation of purchase orders in the System. Such approval matrix to be reviewed, updated and set in the System annually, or as required.
Real Property	Land, including land improvements, structures, or appurtenances thereto, but excludes machinery and equipment.
Request for Proposal (RFP) or Competitive Proposals	A formal competitive bidding process whereby LUMA issues an invitation to selected Vendors for make an offer to LUMA through pricing, scope, qualifications, etc. Post-submission negotiation is permitted with short-listed Proponents in order to procure best value.
RFx Package	The set of documents that is provided to Vendors as part of the Pre-Award Contracting Process that is issued for RFPs, RFQs, ITTs, or other solicitations. This may include, but is not limited to: ▪ Non-Disclosure Agreement ▪ Instructions to Proponents / Bidders, including all evaluation criteria used to evaluate Proponents / Bidders. ▪ Detailed Requirements ▪ LUMA's Form of Agreement
Sealed Bids	Sealed bidding is a permissible method of procurement, where bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
Security	Monetary or financial guarantee to be furnished by the successful Proponent / Bidder to LUMA, as agent for PREPA, for due performance of the contract placed on it and may include Performance Bond, letter of credit or parental guarantee.
Simplified Acquisition Threshold	The dollar amount below which LUMA may purchase property or services using small purchase methods. LUMA adopt small purchase procedures to expedite the purchase of items costing less than the Simplified Acquisition Threshold. Currently set at $250,000.00.
Small Business Enterprise (SBE)	Business that meets the requirements and is certified and registered as a Small Business Enterprise with System for Award Management (SAM.gov).
Single Source	Single Source procurement is one in which only one Vendor can reasonably supply the commodity and /or perform the services required by the End User. Single Sourced Justification is required. Refer to Appendix A.2.1 Contract Request Form Template.
Sourcing Platform	The electronic platform where LUMA publishes its RFx Packages.
Specialized Category	A category of good or service that has been determined to require a second level of due diligence and evaluation prior to a Vendor becoming qualified to bid during the Pre-Qualification process. Refer to Appendix A.1.2 for a list of Specialized Categories.
State	Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and any agency or instrumentality thereof exclusive of local governments.

System	The electronic system(s) used to track and manage procurement activities and house the supplier registry.
Time and Materials Contract (T&M Contract)	Contract whose cost to LUMA is the sum of the actual cost of materials, equipment and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.
Value Engineering	The systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost. Normally associated with construction or production contracts.
Vendor(s)	A service contractor, supplier of goods, or both. During a solicitation or competitive bid, Vendor may be referred to as Proponent or bidder.
Vendor Record	Set of documents related to the Vendor's capabilities and performance, many of which are submitted by the Vendor in order to enter LUMA's Vendor Registry. This record also includes evaluations, audits and other information that LUMA has created or gathered related to Vendor conduct and history of contractual compliance.
Vendor Registry	Electronic database of Vendors accredited by LUMA to supply goods or services to the organization. The Vendor Registry will be public, as any suppliers or contractors hired by LUMA will be hired on behalf of PREPA.
Women's Business Enterprise (WBE)	Business that meets the requirements and is certified and registered as a Women's Business Enterprise with System for Award Management (http://dsbs.sba.gov).

Revision History

LUMA Energy Procurement Manual			
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Procurement Manual

1.0 Introduction

Purpose:

This Procurement Manual (the "Procurement Manual") is a comprehensive set of policies, rules, roles, responsibilities, processes and systems for the procurement of management, operation, maintenance, repair, restoration, replacement and other related services for Puerto Rico Electric Power Authority's ("PREPA") Transmission and Distribution System ("T&D System").

Applicability:

The Procurement Manual is to be used by LUMA Energy ServCo, LLC ("LUMA"), while acting as agent for PREPA, to manage the end-to-end procurement or purchasing of third-party goods and services in connection with LUMA's operation and maintenance services ("O&M Services") for the T&D System, as provided in the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 among PREPA, as Owner, the Puerto Rico Public Private Partnerships Authority ("P3A"), as Administrator, LUMA and LUMA Energy, LLC as Operator of the T&D System) (the "O&M Agreement" or "OMA").

This Procurement Manual regularly speaks directly to processes and actions that will be taken by LUMA due to the relationship between LUMA as agent for PREPA when performing the O&M Services as established in the O&M Agreement. Any such language is intended to provide clarity in the way that LUMA will conduct its responsibilities as agent of PREPA and does not apply to other procurement activities by LUMA unrelated to PREPA.

Adoption and Scope:

This Procurement Manual was prepared, approved and adopted in accordance with the substantive and procedural requirements of (i) Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009 ("Act 29") which provides the legal framework for the creation and development of public-private partnerships agreements, (ii) Act No. 120 of the Legislative Assembly of Puerto Rico, enacted on June 21, 2018 ("Act 120") which authorizes PREPA to conduct any PREPA Transaction (as defined thereunder) and to enter into Partnerships or Sales Contracts in relation thereto and also designates the P3A as the sole government entity authorized to and responsible for implementing the public policy on PREPA Transactions (as defined thereunder) conducted in accordance with Act 120; determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives and principles established in the energy policy and the regulatory framework to be developed pursuant to Section 9 thereunder; and determining which PREPA Assets (as defined thereunder) related to electric power generation shall be sold or transferred through Sales Contracts and also provides that contracts executed in connection with any PREPA Transaction may include exceptions or alternative procedures to statutory provisions, including those in the Puerto Rico Electric Power Authority Act, Act 83 of May 2, 1941, as amended ("Act 83"), deemed reasonable by P3A's Partnership Committee under the circumstances, to ensure the feasibility of the PREPA Transaction; and (iii) Sections 4.1 (e)(ii) and 4.1e (ii) of the O&M Agreement, setting forth the procedure for approval of the Procurement Manual, by P3A and COR3.

Upon approval by P3A and COR3, this Procurement Manual shall be acknowledged by PREPA's Government Board, through Resolution Number _____ of _____ 2021, which shall incorporated herein by reference and attached as Addendum hereto with.

This Procurement Manual is subject to periodic updates,consistent with the terms of the OMA.

Sections 4.1 (e) and (f) of the O&M Agreement require that the Procurement Manual set out the procurement guidelines to be applied to, and contractual provisions to be included in, any contract involving Federally Funded and Non-Federally Funded Capital Improvements as well as provide for procedures for contract administration and oversight, including standards and methods for:

- Addressing employee and organizational conflicts of interest;
- Avoiding acquisition of unnecessary or duplicative items;
- Granting awards to responsible Vendors;
- Maintaining records of procurement history;
- Managing time-and-materials contracts;
- Resolving disputes;
- Selecting transactions for procurement;
- Conducting technical evaluations; and
- If an Emergency Event relates, or could potentially relate, to an event that may be or has been declared a Declared by the President under the Stafford Act to be an Emergency or Major Disaster, seeking to ensure that any response to such Emergency Event complies with the Federal Funding requirements.

1.1 Compliance with Federal Regulation

The Procurement Manual applies to all purchases of goods and services paid for either fully or in part with Federal Funding, including purchase of services of a Grant Manager for which LUMA as agent for PREPA, seeks federal reimbursement. These purchases must comply with all applicable Federal, Puerto Rico and Recipient regulations, rules and requirements, unless otherwise provided in the O&M Agreement. In addition, capital improvements in the T&D System regardless of source of funding must be aligned with the Integrated Resources Plan ("IRP") as approved in part by the Puerto Energy Bureau ("PREB") by Final Resolution and Order of August 24, 2020 in Case No. CEPR-AP-2018-0001 ("August 4th Order") and the Action Plan in this IRP as modified by PREB in the mentioned Resolution and Order, referred to by PREB as the "Modified Action Plan". In addition, as per the requirements of the August 24th Order, these capital improvements must be previously approved by PREB. Specific references to *Titles 2 and 24 Code of Federal Regulations* include:

Title 2 Code of Federal Regulations	Title 24 Code of Federal Regulations
2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards ("Uniform Guidance").	24 CFR Part 75, Economic Opportunities for Low and Very Low-Income Persons.
2 CFR Part 2400, Department of Housing andUrban Development.	24 CFR Part 570, Community Development Block Grants

2 CFR § 3002.10, Department of Homeland Security	

The Uniform Guidance regulations that apply to State entities include:

- 2 CFR § 200.317 Procurements by States;
- 2 CFR § 200.321 Contracting with small and minority businesses, women's business enterprises and labor surplus area firms. Contracting with small and minority businesses, women's business enterprisesand labor surplus area firms;
- 2 CFR § 200.322 Domestic preferences for procurements, including compliance with the Buy American Act as required by 41 U.S. Code chapter 83;
- 2 CFR § 200.323 Procurement of recovered materials;
- 2 CFR § 200.327 Contract provisions; and
- 2 CFR § Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

In addition to the Uniform Guidance regulations that apply to all State entities noted above, the following Uniform Guidance and 24 CFR regulations apply to State entities receiving Community Development Block Grant (CDBG) funds:

- 2 CFR § 200.318 General Procurement Standards
- 2 CFR § 200.319 Competition
- 2 CFR § 200.320 Methods of Procurement to be Followed
- 2 CFR § 200.324 Contract Cost and Price
- 2 CFR § 200.325 Federal Awarding Agency or Pass-Through Entity Review
- 2 CFR § 200.326 Bonding Requirement
- 24 CFR § 75.19 Requirements
- 24 CFR § 75.27 Contract Provisions
- 24 CFR § 570.487 Other applicable laws and related program requirements.
- 24 CFR § 570.489 Program administrative requirements (g) Procurement.
- 24 CFR § 570.489 Program administrative requirements (h) Conflict of Interest

1.1.1 Recipient, Policies and Procedures

COR3 is the Recipient of Puerto Rico's FEMA PA funds. For the disaster-related Federal funds received from HUD's CDBG-DR funds that are used to satisfy the FEMA match requirements, Puerto Rico's Department of Housing (PRDH) is the Recipient. The Puerto Rico Public Private Partnerships Authority (Administrator), under which COR3 is established, was created by the Public-Private Partnerships Act, Act No. 29-2009, as amended. PREPA is the Subrecipient to COR3 and of PRDH, respectively, for these disaster-related FEMA PA and CDBG-DR match funds.

In its Recipient role of these Federal funds, COR3 provides the centralized oversight and financial controls for Puerto Rico's recovery efforts. COR3 has documented its governing policies, procedures and related responsibilities for the management and oversight of Federal funds received to fund disaster recovery efforts in its Disaster Recovery Federal Funds Management Guide (DRFFMG).

In addition to following Federal and State regulations, rules, policies and procedures, subrecipients of Federal funds must follow the program guidelines established by the Recipient.

1.1.2 Conflict Between Federal, State and Recipient Procurement Standards or Regulations

Where a direct conflict exists between a Federal procurement standard, a Puerto Rico procurement standard or regulation, or the Recipients' procurement standard, as applicable, LUMA must apply the more restrictive procurement standard. For CDBG-DR funding, where a direct conflict exists between 24 CFR and 2 CFR, LUMA must use the provisions found at 24 CFR.[1]

1.2 LUMA's Procurement Teams and Purpose

Reporting into LUMA's Chief Financial Officer, the Procurement & Contracts team (or "Procurement") owns and operates to the Procurement Manual. Procurement & Contracts is accountable for the management and execution of all Processes and Procedures described within the document and for training LUMA End Users on their derivative responsibilities. Further, Procurement & Contracts manages and retains all procurement documentation.

To assist with managing Federal Funding procurements, LUMA has contracted and will maintain a team of Federal Funding specialists from a firm with specific expertise in compliance and administration of federal grants (the "Federal Funding Team" or "FFT" in each process diagram set out below). The FFT is also independent of the organizational reporting structure for Procurement & Contracts. As specified in the Procurement Manual, the FFT has specific responsibilities and will follow specific rules and guidelines when there is a Federally Funded procurements. The Federal Funding Team ensures compliance with applicable laws and regulations by supporting and guiding LUMA and Procurement & Contracts throughout any Federally Funded procurement activities.

By maintaining both Procurement & Contracts and the Federal Funding teams, the Procurement Manual has the requisite transparency and safeguards. It complies with and has been approved in accordance with the requirements and provisions of Act 120 and the O&M Agreement, which mandate and authorize the establishments of procurement processes applicable to the T&D System. Moreover, the Procurement Manual was created under the umbrella of LUMA's commitment to transform Puerto Rico's energy system into a modern, sustainable, reliable, efficient, cost-effective and resilient system. From a procurement perspective, this transformation is facilitated by implementing a streamlined set of procedures wherever possible but always focused on transparent and fair processes, the highest ethical standards and the ability to procure and report on the best value for public funds. As such, in addition to the above stated O&M Agreement requirements, the Procurement Manual incorporates the following four strategic pillars of best-in-class electric transmission and distribution utility procurement.

- **Compliance:** Procurement is central to the organization's visibility, management and negotiation of its Vendor relations and commercial arrangements and must be informed of and adhere to corporate and Federal policies and practices, Puerto Rican and U.S. law, regulation, financial and administrative oversight to which PREPA is subject.

[1] U.S. Department of Housing and Urban Development, September 2017, *Buying Right CDBG-DR and Procurement: A guide to Recovery*, page 89.

- **Strategic Thinking:** In a complex regulated business, strategy should remain at the center of every decision. Collaboration, engagement and alignment across all aspects of daily operations are foundational for organizational success.
- **Operational Excellence:** Optimizing the source-to-pay business and technology processes can greatly improve value-generating procurement performance. By standardizing processes and linking tasks, procurement will be able to do more with less and reallocate the time spent on more tactical activities to focus on more strategic initiatives that move the business forward.
- **Results Oriented:** In order to unlock value for the organization, procurement will implement a robust set of metrics and reporting with respect to customer service, spend, Vendor and contract analysis, strategic initiatives and cost savings.

1.3 Organization of the Manual

Structurally, the Procurement Manual is divided into four parts: Processes & Procedures; Contract Management; Policies & Practices; and Roles & Recordkeeping. Each part (i) informs and builds on the others as generally described below; and (ii) demonstrates and identifies critical integrations, clarifications and additions required of Federal Funding and Non-Federal Funding procurement.

PART A. PROCESSES & PROCEDURES

The process documentation contained in the Procurement Manual is a collection of sequential business and Systems steps taken in the end-to-end procurement process. Each process map has associated procedure documentation to provide further detail on stakeholder responsibilities, accountabilities, consultation and information. The three main procurement processes include: Vendor Pre-Qualification; Pre-Award Contracting; and Post-Award Contract Administration.

Processes	Purpose
(i) Vendor Pre-Qualification Systems: certification and registry	The process whereby initial Vendor information is gathered and recorded before LUMA proceeds to contract with or award any work. This includes required certifications, insurance, workers' compensation, health & safety and commercial information including but not limited to confirmation that the entity is not suspended or debarred by the State or Federal government.
(ii) Pre-Award Contracting Systems: competitive bidding, Requisition to Purchase Order (PO)	The process whereby End Users in the business request services, how Procurement and / or the Federal Funding Team manages competitive bidding, strategic sourcing, contract negotiation & creation and Requisition to Purchase Order issuance.
(iii) Post-Award Contract Administration Systems: PO maintenance, invoice receiving	The process whereby internal End Users, the Federal Funding Team, contract administrators, project managers, etc. manage and track Vendor payments and change orders as well as generally receive support from Procurement with respect to contract and Vendor management.

PART B: CONTRACT MANAGEMENT

Where Post-Award Contract Administration describes the procedural steps to be taken when managing Vendors and contracts, Part B: Contract Management focuses on the contract documentation itself used throughout the procurement process. It identifies the suite of contract templates to be used by Procurement

& Contracts when engaging Vendors, various situations in which certain templates may be used (including scope and risk) and material contract provisions that must be included in each contract. It also identifies prescriptive contract language that must exist in each LUMA contract with Vendors for Federally Funded work.

While updates, revisions and control of the contract templates themselves are the accountability of LUMA's Legal team, Procurement & Contracts (with the Federal Funding Team supporting, as applicable) serves as the first point of contact for all organizational contract requests. As such, Procurement has access to a robust set of contracting tools and instructions and engages LUMA's Legal team as required.

Existing Contract Assignment

Existing PREPA contracts do not require assignment as PREPA continues to be the Owner or Buyer of all contracts. Prior to the Service Commencement date, PREPA will issue notice of the agency relationship between LUMA and PREPA to all affected Vendors.

Contracts which are entered into by LUMA Energy, LLC or LUMA Energy ServCo, LLC prior to Service Commencement, may be assigned to PREPA, with LUMA Energy ServCo, LLC acting as agent (the "Operator") for use post Service Commencement, provided that the contract was awarded in accordance with the Procurement Manual. Upon assignment of a contract to PREPA, the contracting parties will promptly amend the existing contract to include a clause referring to the need to register the contract with the Puerto Rico Comptroller's Officer, as well as any other clauses required by Puerto Rico law, the O&M Agreement or regulations for contracting with a government party. Following such amendment, the contracting parties will ensure the contract or amendment is so registered, as appropriate.

There may be contracts which are entered into by LUMA Energy, LLC for its own benefit, which will not be assigned to PREPA post Service Commencement.

PART C: POLICIES AND PRACTICES

LUMA policies and practices, Puerto Rican and Federal law and regulation that directly impact LUMA's procurement activities and require compliance by Vendors have been included in the Procurement Manual. Policies are defined as LUMA's overarching corporate principles established by senior management to guide how strategic decisions are to be made whereas practices may be seen as a procurement specific subset of those policies. Furthermore, Part C of the Procurement Manual captures and summarizes all applicable Federal regulation and legislation that apply to LUMA, PREPA and the Vendors.

PART D: ROLES & RECORDKEEPING

This section focuses on the organizational structure of Procurement & Contracts that enables LUMA's procurement activities with three teams: Strategic Sourcing: Operational Procurement; and Procurement Systems Support. A brief description of each of the teams lends insight to how they work together to achieve value for LUMA and PREPA. Further, it is critical that LUMA establishes and maintains a framework for how procurement activities are conducted in order to protect the integrity, transparency and fairness of both the Federally Funded and Non-Federally Funded procurement processes. Managed use of an e-bidding platform and LUMA's Enterprise Resource Planning System enables the retention of documents for audit and segregation purposes, as required. This section also documents oversight by P3A of LUMA's procurement activities.

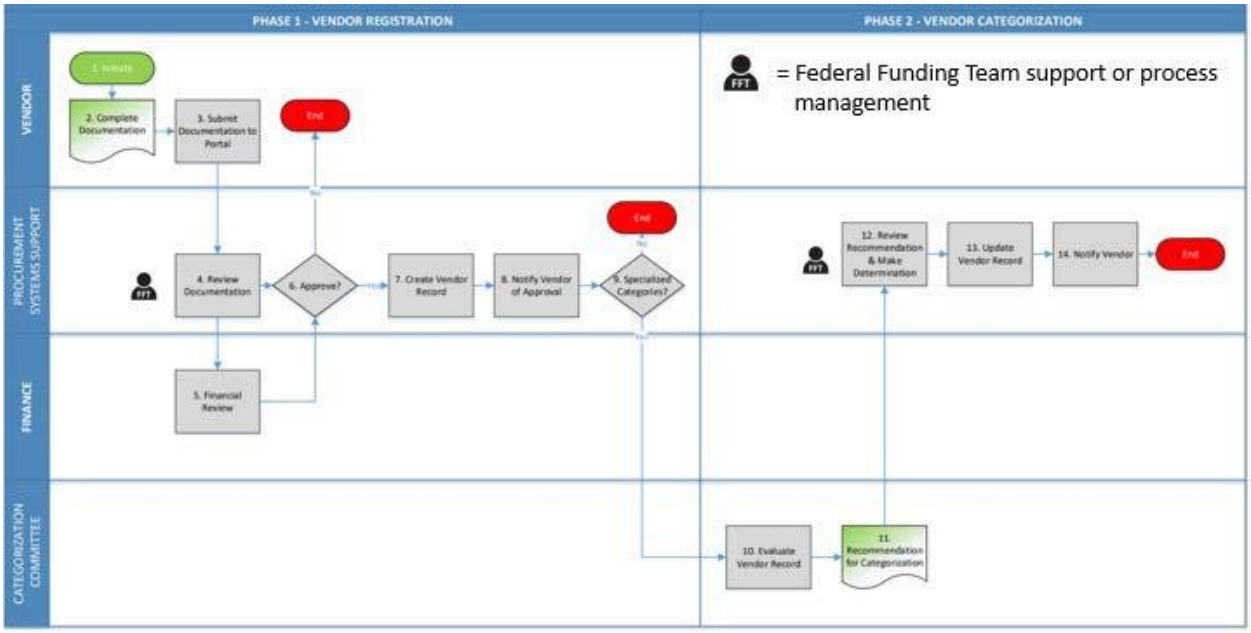
2.0 Part A. Processes & Procedures

The procedures that follow and detail each of the three processes (Vendor Pre-Qualification, Pre-Award Contracting and Post-Award Contracting) will identify one or two stakeholders responsible for each process step. If two stakeholders are identified and the conjunction “and” is used, it means a collaborative step with the first stakeholder listed as the primary responsible (i.e. End User “and” Federal Funding Team). If two stakeholders are identified and the conjunction “or” is used, it denotes stakeholders responsible for either Federally Funded procurement or Non-Federally Funded procurement activity (i.e. Procurement & Contracts “or” Federal Funding Team). For clarity, the Federal Funding Team does not participate in any procurement activity that is known to be Non-Federally Funded.

2.1 Vendor Pre-Qualification

The Vendor Pre-Qualification Process collects, evaluates and tracks basic Vendor corporate and commercial details, required insurances and Puerto Rican Government certifications, as well as vetting certain policies and procedures like health, safety and environment. This ensures that LUMA’s Vendor ecosystem contains qualified suppliers and contractors who meet the business, regulatory and legal requirements before they are qualified to conduct work. Completing the Vendor Pre-Qualification Process prior to awarding contracts or work allows the Pre-Award Contracting Process to proceed in a streamlined and timely manner.

2.1.1 Vendor Pre-Qualification Process



2.1.2 Vendor Pre-Qualification Procedure

PURPOSE

The Vendor Pre-Qualification Procedure (VPP) describes the initial vetting of Vendors who wish to supply LUMA, as agent for PREPA, with goods and / or services. Appropriate due diligence is conducted to ensure

that Vendors are responsible, ethical and capable of meeting standards of quality and informed competitive pricing. For clarity, in the event a competitive bid (or RFx) is issued by LUMA, Vendors not already pre-qualified will be permitted to submit Proposals or Bids but must have met all the requirements of Vendor Pre-Qualification before any work, contract or purchase order may be awarded to such Vendors.

Generally, this process is led entirely by LUMA's Procurement System Support ("PSS") team within the Procurement & Contracts department as outlined in the Procurement Manual. However, the Federal Funding Team will have access to the System and Vendor-submitted documentation for the purposes of confirming Vendor compliance with Federal Funding requirements. For further detail, refer to Section 4.2.2.4 of the Procurement Manual.

OVERVIEW

The VPP is broken down into two phases: (i) Standard Vendor Registration for all Vendors; and (ii) Vendor Categorization (for Specialized Categories). Standard Vendor Registration is open to the public and includes an assessment of the Vendor's compliance with Government Contracting Requirements and LUMA Policies & Practices. Satisfaction of these requirements is sufficient for addition to LUMA's Vendor Registry, at which time Vendors are qualified to bid on categories not designated as Specialized Categories (refer to Appendix A.1.2: List of Specialized Categories). In order to bid on Specialized Categories, a second review for compliance with defined technical requirements is needed. The Vendor Categorization phase involves evaluation of technical capabilities and specifications by a cross-functional team (the Categorization Committee) to ensure suitability for high-risk or complex categories.

ACCOUNTABILITIES

Role	Accountability
Categorization Committee	Appointed by the Supervisor, Procurement Systems Support, this cross-functional team includes technical experts from the various stakeholder groups. The role of this committee is to evaluate and categorize each potential Vendor's capacity to supply LUMA with goods or services classified as Specialized Categories.
Finance	The team that completes due diligence related to the financial characteristics of potential Vendors.
Procurement Systems Support	A team within Procurement & Contracts that oversees the Vendor Pre-Qualification Process. Procurement Systems Support is responsible for managing governance, technological customer support, maintenance and optimization of LUMA's procurement Systems. Procurement Systems Support also manages spend intelligence and vendor registration (pre-qualification) processes.

PROCEDURE

Step	Responsible	Procedural Step
Phase 1: Standard Vendor Registration		
1	Vendor	**Initiate** In the event any Vendor wishes to register in the Vendor Registry, Vendor visits http://www.lumapr.com.
2	Vendor	**Complete Documentation**

		Vendors complete a series of documents in order to qualify for and activation in LUMA's Vendor Registry. If the Vendor is applying to supply one of LUMA's Specialized Categories, then additional documentation is required such as: ▪ List of Required Certificates ▪ List of Specialized Categories ▪ Information and Documents Required for Vendor Categorization
3	Vendor	**Submit Documentation to Portal** Vendors submit an application, which includes the documents, digitally via the electronic portal http://www.lumapr.com in order to be evaluated for admission to the Vendor Registry. Refer to Appendix A.1 Supporting Documentation.
4	Procurement Systems Support	**Review Documentation** Procurement Systems Support team reviews the documentation for completeness and suitability.
	and Federal Funding Team	Federal Funding Team: ▪ Reviews documents for additional Federal Funding requirements. If Vendor is pre-qualified but does not meet Federal Funding requirements and Vendor wishes to compete, Vendor is notified to provide additional information.
5	Finance	**Financial Review** ▪ Finance reviews the Vendor Record to evaluate the Vendor's financial capacity to supply the goods or services. ▪ Finance advises Procurement Systems Support of their recommendation.
6	Procurement Systems Support	**Approve** Based on successful completion of Vendor Pre-qualification requirements, Procurement Systems Support makes the final determination of whether to add the Vendor to LUMA's Vendor Registry.
7	Procurement Systems Support	**Create Vendor Record** Procurement Systems Support creates the Vendor Record in the System. ▪ Strategic Sourcing and Operational Procurement reviews Vendor Record for the participating Vendors during each competitive bid or solicitation to ensure updated and compliant Vendor information. If not pre-qualified or if certifications have lapsed, Vendor is advised to apply or update. ▪ Procurement Systems Support reviews all Vendor Records annually to ensure updated information and compliant Vendor information.
8	Procurement Systems Support	**Notify Vendor of Approval** ▪ Procurement Systems Support notifies the Vendor that they have been added to LUMA's Vendor Registry. ▪ Vendors who are declined entry to LUMA's Vendor Registry will be notified and advised as to which area(s) they were noncompliant but will continue to have an opportunity to become compliant.
9	Procurement Systems Support	**Specialized Categories** If the Vendor has applied to support one or more of LUMA's *Specialized Categories* of goods or services, then a secondary evaluation must occur to confirm suitability. The documents and information listed in Appendix A.1 are evaluated. The evaluation may also include site visits, reference checks, equipment testing and any other due diligence required to confirm qualifications.

Phase 2: Vendor Categorization (Specialized Categories)

10	Categorization Committee	**Evaluate Vendor Record** The Categorization Committee, appointed by the Supervisor, Procurement Systems Support, evaluates the Vendor Record and completes all necessary due diligence, including site visits as necessary, to confirm Vendor's capability to provide the goods / services indicated on their application.
11	Categorization Committee	**Recommendation for Categorization** The Categorization Committee makes a recommendation to the Supervisor, Procurement Systems Support, regarding which Specialized Categories the Vendor is qualified to support.
12	Procurement Systems Support and Federal Funding Team	**Review Recommendation & Make Determination** The supervisor, Procurement Systems Support, reviews the recommendation of the Categorization Committee and makes the final determination as to which Specialized Categories the Vendor can bid on.
		Federal Funding Team: ▪ Reviews documents for additional Federal Funding requirements. If Vendor is pre-qualified but does not meet Federal Funding requirements and Vendor wishes to compete, Vendor is notified to provide additional information.
13	Procurement Systems Support	**Update Vendor Record** Procurement Systems Support updates the Vendor Record in the System to indicate the Specialized Categories for which Vendor is eligible.
14	Procurement Systems Support	**Notify Vendor** Procurement Systems Support notifies the Vendor of the Specialized Categories for which they are pre-qualified. The Vendor Pre-Qualification Procedure ends here.

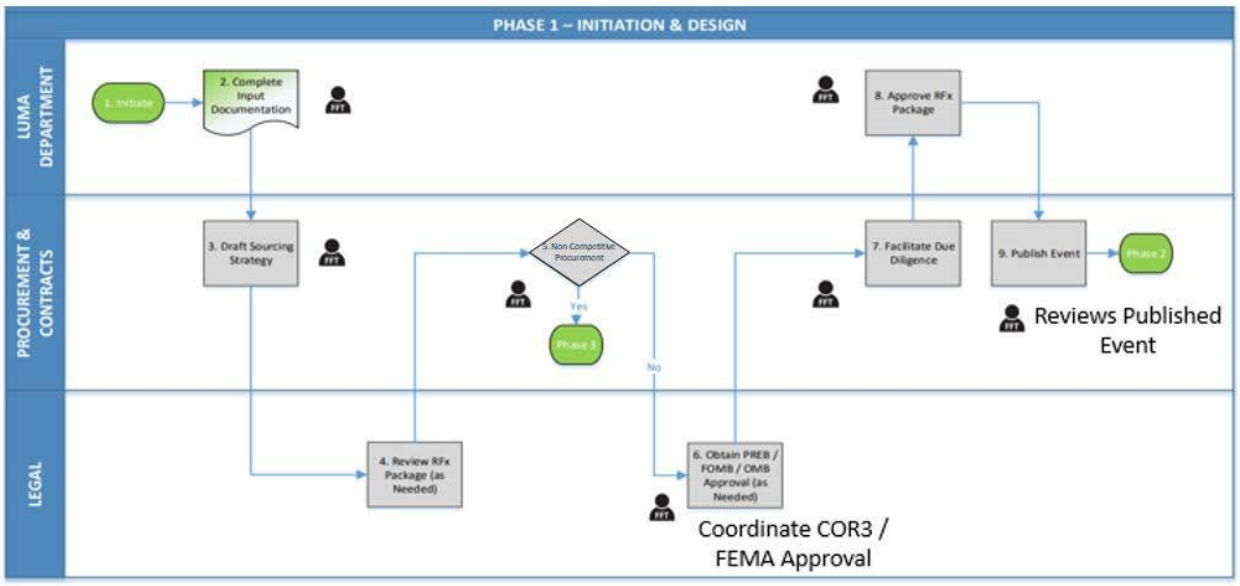
2.2 Pre-Award Contracting

Pre-Award Contracting Process describes the roles, responsibilities and steps required towards awarding a Vendor an agreement, contract or purchase order. This cross-functional process ensures appropriate segregation of duties to drive a fair, transparent, competitive and technically compliant selection of Vendors. The process is broken down into three phases:

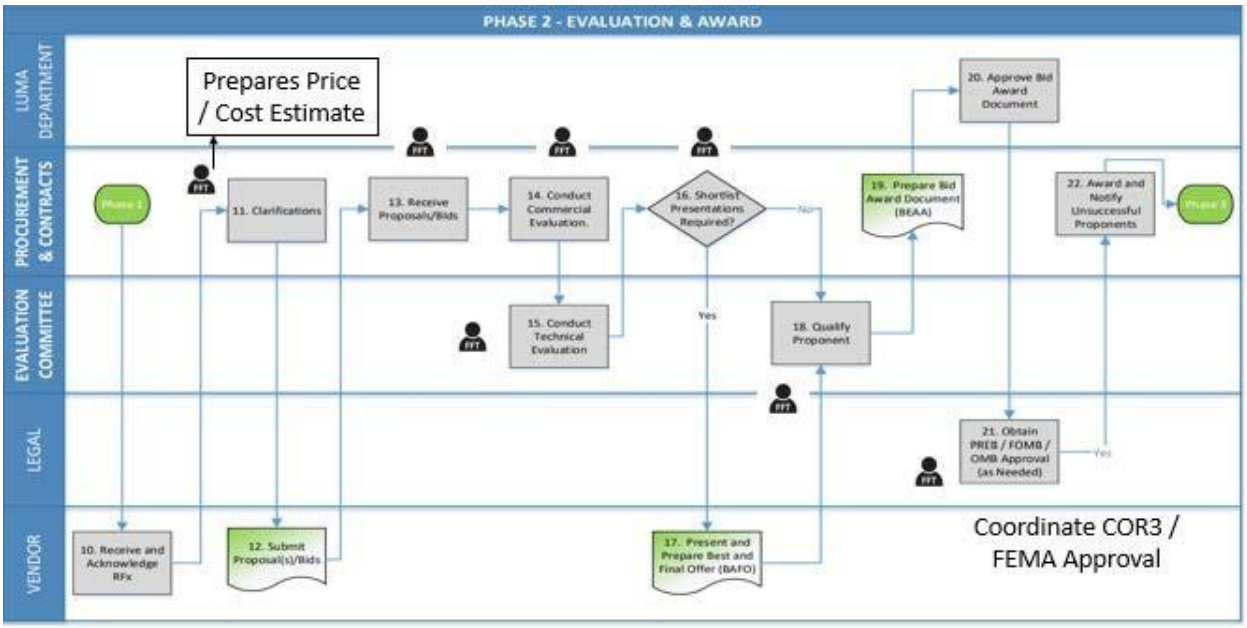
- **Initiation & Design**: identifying a need to outsource Services or deliver Goods and developing a contracting strategy to engage the Vendor community;
- **Evaluation & Award**: quantifying, documenting and obtaining the appropriate approvals to award work to a Vendor; and
- **Contract Execution**: ensuring compliance with LUMA policies and practices.

2.2.1 Pre-Award Contracting Process

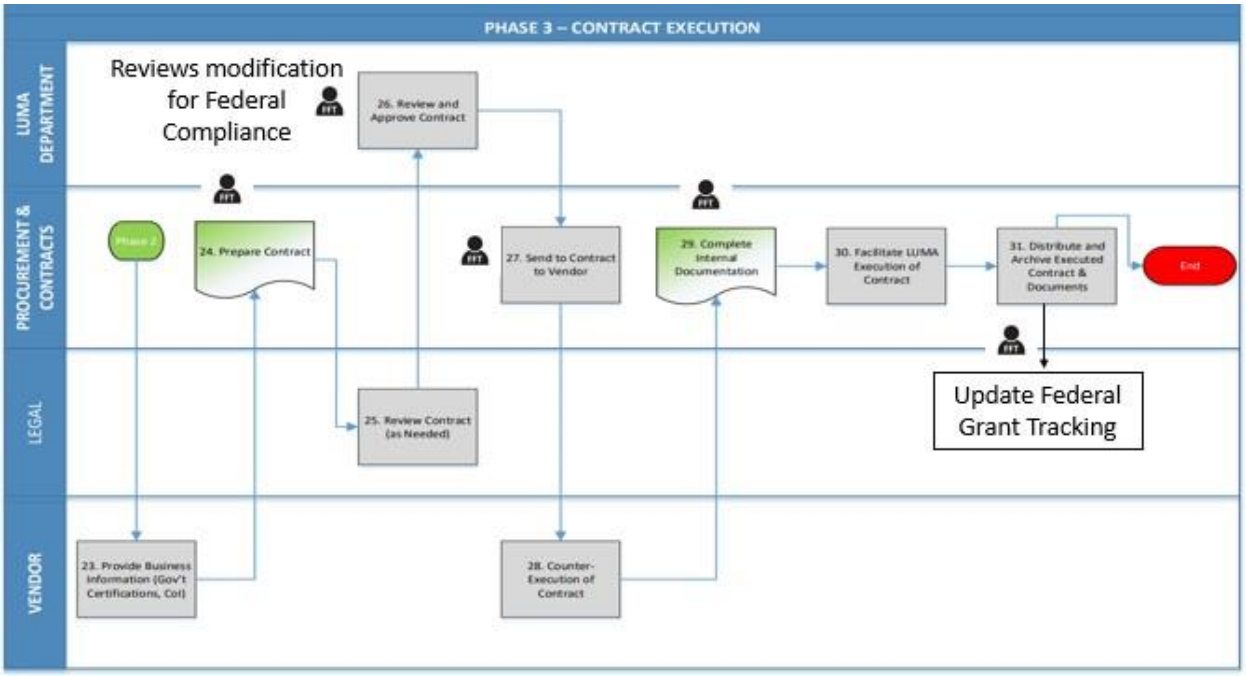
PHASE 1: INITIATION & DESIGN



PHASE 2: EVALUATION & AWARD



PHASE 3: CONTRACT EXECUTION



2.2.2 Pre-Award Contracting Procedure

PURPOSE

The Pre-Award Contracting Procedure describes the process steps taken by Procurement & Contracts and / or the Federal Funding Team, as applicable, working collaboratively with LUMA's Legal team and End Users as well as Vendors to procure goods and / or services. It outlines actions, responsibilities, documents, inputs and outcomes associated with each activity to ensure that Vendor selection for work is approached in a consistent, fair and transparent manner while achieving maximum value for PREPA and its customers in Puerto Rico.

OVERVIEW

The Pre-Award Contracting Process and Procedure always begins with a Contract Request Form (CRF) from the End User, culminating in the execution of a Contract. A Bid Evaluation Award & Authorization (BEAA) is completed and approved prior to the Contract being executed. As the Federal Funding Team will be supporting LUMA on the holistic Federal grant process, they will provide End User visibility on which procurements will be, or are likely to be, Federally Funded prior to CRF submission. It is critically important that LUMA analyze each planned acquisition to:

- Identify whether the procurement will be Federally Funded or could be used in a Federally Funded activity in the future; and
- Determine whether the procurement involves a potential Organizational Conflict of Interest (OCI) or instances of LUMA parent company, affiliate, subsidiary, Covered Party, or Covered Person participating in the competitive process.

ACCOUNTABILITIES

Role	Accountability
Evaluation Committee	▪ A cross-functional team of stakeholders nominated by Procurement & Contracts or the Federal Funding Team, as applicable and the End User to conduct the technical evaluation and recommend award. This may include, construction operations, finance, health & safety, engineering, IT, etc., as required by the scope of the procurement. ▪ The size and scope of the Evaluation Committee varies with the size, complexity and risk profile of each procurement. The End User is always heavily represented on the Evaluation Committee and other stakeholder groups are included as appropriate.
Legal	▪ Internal and external Legal support for procurement processes and contract negotiations, as necessary. ▪ Interprets the applicable regulations and legislation and advise Procurement & Contracts or the Federal Funding Team, as applicable and the End User as to considerations that must be made.
LUMA End User	▪ The LUMA functional area requesting goods or services to be procured. For example, this may include a subject matter expert (SME), the project manager, the departmental representative, a contract administrator or a Manager.

PROCEDURE

Step	Responsible	Procedural Step
Phase 1: Initiation & Design		
1	End User	**Initiate**
2	End User and Federal Funding Team	**Complete Input Documentation** ▪ The End User (includes, but not exclusive to, Capital Programs) initiates and completes documentation. ▪ The CRF is the document by which the LUMA departments engage with Procurement. This document is completed by the End User and informs the next steps in the process. Information provided in the CRF includes: ○ General information about the request and the requestor and background information regarding the progress made to date; ○ The purpose of the contract being requested; ○ Notwithstanding the public advertising of the RFx Package, additional Vendor contact information, if known; ○ If known, whether a LUMA parent company, affiliate, subsidiary, or Covered Party (OCI) is likely to participate in the competitive bid; and ○ Business requirements to inform a competitive process; or ○ A justification to support a single source procurement. Refer to Section 4.1.1 Procurement Methods. ▪ End User completes documentation to support their request (scope and specifications). This stage includes the consultation and coordination with all stakeholder groups, including but not limited to HSEQ, Human Resources, Risk & Insurance and external advisors as needed. ▪ End User consults with Finance at this stage to ensure any financial commitments created are appropriately budgeted for and funds are available.

		▪ The CRF is reviewed and approved in accordance with the LUMA's established limits of authority. ▪ Once approved, CRF to be retained in the System. Refer to Appendix A.2.1, Contract Request Form Template. Federal Funding Team: Works proactively with End User to identify potentially Federally Funded procurements at the CRF development stage. ▪ Guides End User scope and specifications to ensure Federal Funding compliance. ▪ Signs off on the CRF before it goes for approval pursuant to LUMA's limits of authority.
3	Procurement & Contracts or Federal Funding Team	**Draft Sourcing Strategy** and seek validation from End User. ▪ The Sourcing Strategy includes: ○ The approach to market (i.e., ITT, RFP, etc.) ○ A list of key stakeholders who will participate in the evaluation of responses (Evaluation Committee); ○ A timeline for the process; ○ Evaluation criteria and weighting; and ○ The contract template that will be used and added to the RFx Package ▪ Review Section 4.0 of the Procurement Manual, Policies & Practices ▪ Establishing the evaluation criteria and weighting will depend on the collaborative effort of Procurement & Contracts or Federal Funding Team, as applicable and the Evaluation Committee based on specific requirements of the work. Once established, it may not be changed or adjusted unless by way of communication (Addendum) to all Proponents / Bidders. ▪ Drafts the RFx Package based on the Sourcing Strategy and the information provided in the CRF. ▪ Once finalized, Sourcing Strategy to be retained in the System.
4	Legal	**Review RFx Package** (as required) ▪ Legal reviews the RFx Package prior to its issuance for procurements that impact work performed by LUMA's workforce.
5	Procurement & Contracts	**Non-Competitive Procurement** ▪ Refer to Section 4.1.3 Exceptions to Competitive Bidding and Formal Procurement.
6	Regulatory	**Obtain Approvals** (submit RFx Package, as required) ▪ Administrator (P3A) ○ P3A approval is needed for all contracts with expenditures over $10 million in any contract year or over $30 million in the aggregate. ▪ PREB ○ Where Regulation 8815 (or other successor or similar regulation) applies. ○ PREB approval is required on procurements that relate to "generation modernization" (including power purchase agreements) and procurements that impact rate base – i.e., the funds to be expended are over and above what was approved in the budget. ○ PREB requires minimum 45 days for review from the original submission and for each subsequent response to questions. ▪ Financial Oversight and Management Board (FOMB)

		○ FOMB approval is needed for contracts with expenditures over $10 million, so long as PREPA is in Title III.
7	Procurement & Contracts or Federal Funding Team	**Facilitate Due Diligence** ▪ This is the final opportunity to confirm that all approvals are in place and the technical specifications are correct prior to sending the RFx Package to market. Confirm completeness and correctness of the RFx Package and sends to the End User for review and approval. ▪ Evaluation Committee advised of strict confidentiality to be maintained throughout the process vis-à-vis potential Proponents / Bidders. ▪ Procurement & Contracts confirms the status of Proponents / Bidders in the Vendor Registry.
		Federal Funding Team: ▪ The Federal Funding Team works with the End User to confirm technical specifications are compliant with Federal Funding requirements and the Buy America Act (41 U.S. Code chapter 83) prior to sending the RFx Package to market.
8	End User	**Approve RFx Package** ▪ End User reviews the RFx package and provides approval to publish the procurement.
9	Procurement & Contracts or Federal Funding Team	**Publish Event** ▪ Event and supporting documentation (RFx Package) are published via the Sourcing Platform and advertised in AEEPR.com and / or newspaper, as required for Proposals / Bids $250K and over. ▪ The publication notice is to be advertised to the general public for a reasonable time before the event is issued via the Sourcing Platform.

Phase 2: Evaluation & Award

10	Vendor	**Receive and Acknowledge RFx** ▪ The Proponents / Bidders will receive the RFx Package and will acknowledge receipt / confirm their intent to bid by submitting a signed copy of the NDA.
11	Procurement & Contracts or Federal Funding Team	**Clarifications** ▪ All questions (commercial and technical) from Proponents / Bidders received. ▪ Address questions from Proponents / Bidders related to the commercial components (pricing, contract terms and conditions, RFx process), including questions concerning Pre-Qualification for Proponents / Bidders who are not yet Pre-Qualified. ▪ Questions related to the technical components will be forwarded to the appropriate End User within the Evaluation Committee. ▪ All communication to Proponents / Bidders in relation to both commercial and technical clarifications will be managed via the Sourcing Platform. ▪ In the event a clarification prompts a change to the RFx Package, an Addendum will be communicated to all Proponents / Bidders. ▪ Post-submission addenda are discouraged. However, if required, all Proponents / Bidders are given an opportunity to resubmit or withdraw their respective Proposals / Bids.
		Federal Funding Team - Cost Estimating:

		▪ Prior to Proposals / Bids being submitted, the Federal Funding Team will prepare a price / cost estimate.
12	Vendor	**Submit Proposals / Bids** ▪ Proponents / Bidders submit their Proposals / Bids in response to the RFx Package via the Sourcing Platform before the stated closing time. Late submissions or submissions made outside of the channels specified in the RFx Package will not be accepted.
13	Procurement & Contracts or Federal Funding Team	**Receive Proposals / Bids** ▪ Receive all Proposals / Bids in the Sourcing Platform and open at the closing date and time specified in the RFx Package.
14	Procurement & Contracts or Federal Funding Team	**Conduct Commercial Evaluation** ▪ Complete an evaluation of the commercial components of the Proposals / Bids received (cost analysis, redlines to form of agreement, etc.) using the evaluation criteria established in the Sourcing Strategy. ▪ Forward Proposals / Bids for evaluation of the technical components to the Evaluation Committee. ▪ Consult with PSS verify any Contract Certifications that may have expired or changed since Vendor Pre-Qualification. If expired, changed or absent, Proponents / Bidders are notified to update or register, as required.
15	Evaluation Committee and Federal Funding Team	**Conduct Technical Evaluation** ▪ The Evaluation Committee conducts a technical evaluation against the scope, specifications and evaluation criteria established in the Sourcing Strategy. Federal Funding Team: ▪ Federal Funding Team works with the Evaluations Committee during the technical evaluation to ensure compliance with Federal Funding requirements.
16	Procurement & Contracts or Federal Funding Team	**Shortlist Presentations** (as required) ▪ Coordinate and attend shortlist oral presentations by Proponents with Evaluation Committee. ▪ For Sealed Bids / ITTs, no post bid negotiation is permitted. Skip to Step 18 – Qualify (Select) Proponent. ▪ For RFPs, based on the outcome of the initial commercial and technical evaluations the Evaluation Committee can either pursue an award to the leading Proponent, or create a shortlist of leading Proponents for further negotiation. ▪ If a leading Proponent has been clearly identified as having the best weighted commercial and technical Proposal based on the outcome of the evaluation, a shortlist presentation is not required. ▪ If the outcome of the evaluation has resulted in two or more Proponents or interest, a meeting or call will be organized with each such Proponent to present their Proposal to the Evaluation Committee for further clarification, negotiation and discussion.
17	Vendor	**Present and Prepare Best and Final Offer (BAFO)**

		▪ Each Proponent presents their proposal to for further clarification and discussion to the Evaluation Committee. ▪ Shortlisted Proponents to provide their Best and Final Offer (BAFO) for the scope of work and pricing as a result of such clarifications, negotiations and discussion. ▪ Based on the outcomes of the presentations and BAFO, the Evaluation Committee identifies a successful Proponent with which to proceed with contract execution.
18	Evaluation Committee	**Qualify (Select) Proponent / Bidder** ▪ The evaluation is completed and the successful Proponent is recommended for award by the Evaluation Committee.
19	Procurement & Contracts or Federal Funding Team	**Prepare Bid Award Document** ▪ Prepare a Bid Evaluation and Award Authorization (BEAA), summarizing the competitive process undertaken and the results therein. Refer to Appendix A.2.2, Bid Evaluation and Award Authorization Template ▪ BEAA to be retained in the System once approved.
20	End User	**Approve Bid Evaluation and Award Authorization** ▪ Reviews the contents of the BEAA and suggests edits if required. The BEAA is approved by the appropriate leader(s) according to LUMA's established limits of authority.
21	Regulatory	**Obtain P3A, PREB and FOMB Approval** (as required) ▪ If required, Regulatory submits the BEAA to P3A, PREB and FOMB for approval.
22	Procurement & Contracts	**Award and Notify Unsuccessful Proponents / Bidders** ▪ Procurement notifies the successful Proponent / Bidder that they have been awarded work. At the same time, regret letters are issued to the unsuccessful Proponents / Bidders. ▪ To ensure a full and transparent process, the non-selected Proponents / Bidders will be provided a period of five (5) days from the date LUMA issued its regret letter to protest the result of the procurement. Refer to Section 4.4 Dispute Resolution.

Phase 3: Contract Execution

23	Vendor	**Provide Business Information** (Government Certifications, Insurance) ▪ The successful Proponent / Bidder provides information sufficient to prepare the contract. This includes information regarding the Vendor's legal entity, insurance and up to date Contract Certifications, if not already provided. ▪ Security / Bonding, to be provided, as required.
24	Procurement & Contracts or	**Prepare Contract** ▪ The contract template selected as part of the Sourcing Strategy will be updated to reflect the scope of work, pricing, work schedule, etc. agreed upon. ▪ Final negotiations with the Vendor on any remaining terms and conditions of the contract (if exceptions to the contract were identified by Vendor in the RFx Package) and engages the support of the Legal team as appropriate.

	Federal Funding Team	Federal Funding Team: ▪ Confirmation that contract conforms to Federal Funding requirements including suspension or debarment SAM.gov and Federal Funding contract provisions.
25	Legal	**Review Contract** (as required) ▪ Reviews revised contract and supports negotiations as required for any material changes made to the standard contract template included in the RFx Package.
26	End User and Federal Funding Team	**Review and Approve Contract** ▪ End User reviews and approves the contract for execution or modifies as required.
		Federal Funding Team: ▪ Reviews any End User modifications to ensure compliance with Federal Funding requirements. ▪ Enterprise software for tracking public grants – The FFT establishes / updates enterprise software for tracking public grants with approved Vendor / successful Proponent / Bidder and contract.
27	Procurement & Contracts	**Send Contract to Vendor** ▪ Send the final version of the contract to the Vendor for execution. Procurement & Contracts requests any outstanding documentation and the Vendor executed copy of the contract.
28	Vendor	**Counter Execution of Contract** ▪ Execute the contract and return to Procurement & Contracts along with a blank copy of their invoice and any documentation required for payment.

29	Procurement & Contracts
	
	or
	Federal Funding Team
		Complete Internal Documentation
		▪ Draft a Contract Summary, which contains the following information:
		  ○ Executive Summary;
		  ○ Vendor Selection Checklist and process summary;
		  ○ Work scope and schedule; and
		  ○ Critical commercial terms and risk management.
		▪ This document summarizes the contract for LUMA senior management and acts as a useful reference for regulatory and contract administration. Refer to Appendix A.2.3 – Contract Summary Template.
		▪ The Contract Summary serves as a cover to the contract for execution and is to be retained in the System.

30	Procurement & Contracts	**Facilitate LUMA Execution of Contract** ▪ Circulate the contract, along with the Contract Summary, to LUMA authorized signatories for execution according to LUMA's Contract Execution Authority.
31	Procurement & Contracts	**Distribute & Archive Executed Contracts & Documents** ▪ Distribute executed copies of the contract to the Vendor, End User and Federal Funding Team, as required. ▪ Upload the contract and all supporting documentation into the System. ▪ The Pre-Award Contracting Procedure ends here.
		Federal Funding Team: ▪ Update enterprise software for tracking public grants with documentation, as required.

2.2.3 Pre-Award Contracting Procedure – Organizational Conflicts of Interest (OCI)

Further procedural detail and policy requirements found in Section 4.3 Conflicts of Interest in this Procurement Manual.

FEDERALLY AND NON-FEDERALLY FUNDED OCI

LUMA complies with Federal requirements, including those governing matters involving a potential Organizational Conflict of Interest ("OCI"), such as when a LUMA parent company affiliate, subsidiary, Covered Party, or Covered Person participates in a competitive process. Procurement & Contracts will confirm if and when a LUMA parent company, affiliate, subsidiary, Covered Party, or Covered Person has submitted a Proposal / Bid indicating that an organizational conflict exists and will thus advise the Federal Funding Team.

LUMA shall implement a tailored avoidanceand mitigation plan, as appropriate for the circumstances. LUMA's OCI mitigation process is intended to identify, avoid and / or mitigate actual or potential conflicts of interest concerns and issues as early in the procurement process as possible in accordance with 2 CFR Part 200 (the Uniform Rules) and other applicable laws and regulations. While not controlling, LUMA also uses the concepts in Federal Acquisition Regulation (FAR) Subpart 9.5 to inform its OCI mitigation process. Mitigation techniques could include, for example, firewalls, physical and/or geographic separation, engagement of third-parties to undertake the procurement or any of its stages, execution of non-disclosure agreements, and increased monitoring and oversight by the P3 Authority and/or COR3, as applicable. Any OCI mitigation plans or techniques shall be subject to the prior approval of the P3 Authority and COR3 prior to implementation by LUMA, and shall be deemed part of the Procurement Manual. Upon such request for approval by LUMA, the P3 Authority and COR3 shall promptly provide a response. In order to facilitate and coordinate effective operational procurement activities, P3 Authority and COR3 shall approve, reject, comment on, or request additional time to consider the OCI mitigation plan within 10 days. In the event P3 Authority or COR3 request additional time to consider the subject OCI mitigation plan, P3 Authority or COR3, as applicable, will provide LUMA an estimated time required to make a final determination on said OCI mitigation plan.

2.2.4 Declared Emergencies, Public Exigency, or Crisis Procurements

Notwithstanding the processes and procedures identified in the Procurement Manual and in particular Sections 2.1 and 2.2, LUMA may deviate from or forgo those processes and procedures in the event of a public Exigency and / or Emergency situations. In order to protect the health and safety of the residents of Puerto Rico and the integrity of theT&D System, delays in the provision of goods and / or services caused by the competitive bidding process are unacceptable.[7]

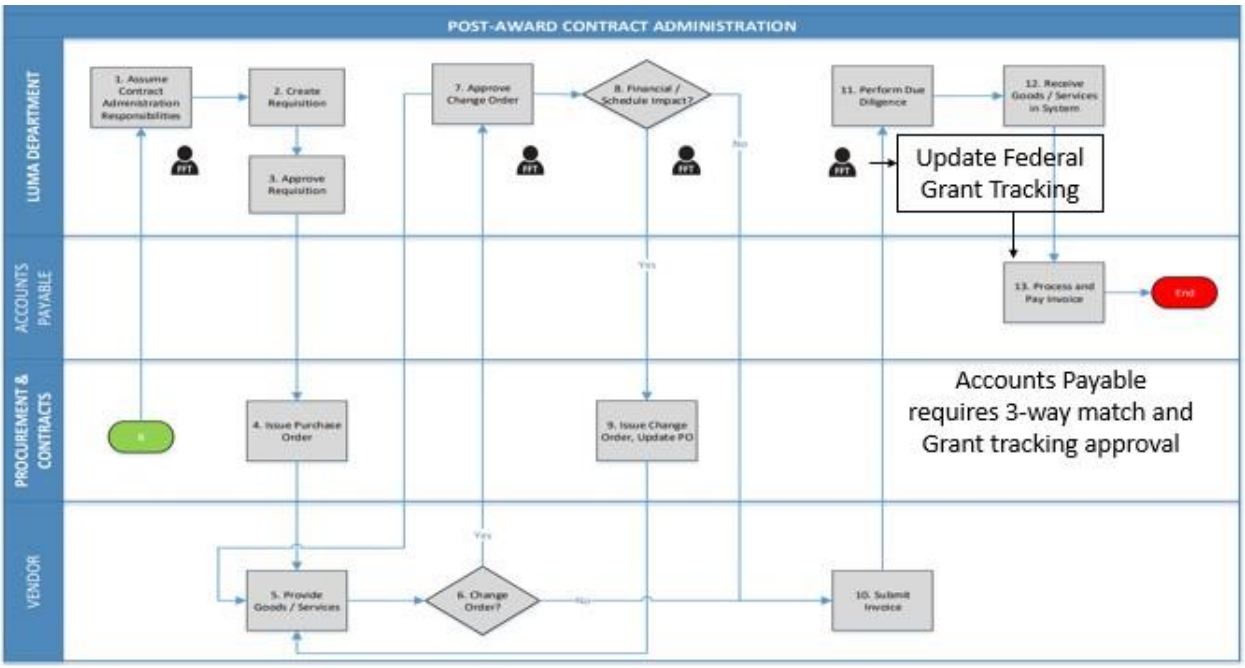
An Exigency is a situation that requires or demands immediate aid or action. An Emergency is an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. Use of the public Exigency or Emergency exception is only permissible during the actual Exigent or Emergency circumstance. In such circumstances, LUMA may award work based on non-competitive procurement , including awarding work to a Vendor with a pre-existing contract. Once the public Exigency or Emergency ceases to exist, LUMA must transition back to standard procurement practices as per the Procurement Manual.

In order to limit the need for Emergency procurements in Exigent circumstances, LUMA will identify the types of work that will be needed in the most common Emergency events anticipated for PREPA's T&D

system, such as repair of damaged power distribution or transmission lines and transformers. These pre-disaster procurements will meet the requirements in this Procurement Manual for competitive procurement including those governing organizational conflicts of interest. In the event of a public Exigency or Emergency requiring resources not available through prepositioned contracts, the OCI process identified in Section 2.2.3 above does not apply for a limited time. LUMA may forego a competitive procurement and award work for the duration of the Emergency but not exceeding [thirty (30)] days, unless a longer period is approved by the P3A and COR3, provided justification is documented.

2.3 Post-Award Contract Administration

Post-Award Contract Administration describes the steps taken by LUMA and external Vendors to transact against the agreements created in the Pre-Award Contracting stage. The process establishes the approach undertaken to requisition, approve, issue and amend purchase orders and to validate, process and pay Vendor invoices.



2.3.1 Post-Award Contract Administration Procedure

PURPOSE

The Post-Award Contract Administration Process describes the steps taken by the Federal Funding Team, Procurement & Contracts, LUMA departments, Vendors and Accounts Payable to transact against the contracts created in the Pre-Award stage. This procedure ensures that proper segregation of duties is maintained, that procurement processes are consistently conducted and that contracts are administered in accordance with agreed-upon terms and conditions.

Step	Responsible	Procedural Step

1	End User and Federal Funding Team	**Assume Contract Administration Responsibilities** ▪ LUMA is accountable for contract administration. The Federal Funding Team supports all activities to ensure Federal compliance. ▪ Once the contract has been executed, the End User (or as required pursuant to Section 2.2.3) assumes responsibility for the administration of the contract. This includes: ○ Verifying goods delivered or work performed and adherence to contract terms and conditions; ○ Evaluating, coding and approving invoices for payment; ○ Ensuring Vendor compliance with terms and conditions; ○ Initiating contract amendments; ○ Monitoring contract milestones including payments; ○ Managing quality assurance and claims; and ○ Managing and monitoring Vendor performance.
	Federal Funding Team	**Post-Award Vendor Monitoring and Change Management** ▪ Working with the End User, the Federal Funding Team monitors the Vendor and participates in contract oversight to include scope, schedule, risk management, reporting, etc. ▪ All contract modifications including change orders that rise to the level that require Federal Awarding Agency (FEMA) competitive procurement processes to be followed would trigger the need for the appropriate level of Federal Funding Team and / or independent third-party involvement outlined above. ▪ End User and the Federal Funding Team perform key contract closeout activities.
2	End User	**Create Requisition** ▪ End user submits Contract Requisition or Materials Requisition in the appropriate system.
3	End User and Federal Funding Team	**Approve Requisition** ▪ Requisition is approved in the appropriate system in accordance with LUMA's established limits of authority. ▪ The Federal Funding Team forms part of the requisition approval processes in the System to review and confirm Federal compliance.
4	Procurement & Contracts	**Issue Purchase Order** ▪ Procurement creates the Purchase Order and sends to the Vendor through electronic means. Purchase Orders are approved in accordance with the established limits of authority.
5	Vendor	**Provide Goods/Services** ▪ The Vendor fulfills the Purchase Order and provides the goods or performs the services.

6	End User and Federal Funding Team or Vendor	**Change Order** If the original Purchase Order was insufficient or needs to be amended, a Change Order will be required in accordance to the commercial terms. This may be requested by the Vendor but must be approved by LUMA. ▪ If a Cardinal Change, work is to be competitively bid. Refer to Section 2.2.2 Pre-Award Contracting. ▪ If a Cardinal Change with a parent company, affiliate or subsidiary refer to Section 2.2.3 Organizational Conflicts of Interest.
7	End User and Federal Funding Team	**Financial/Schedule Impacts** ▪ If there are changes to cost, scope, or schedule, a Change Order will be required. ▪ The Federal Funding Team reviews for Federal compliance. The Federal Funding Team reviews and prepares independent cost estimate and scope review to determine if changes are significant and require a competitive bidding process.
8	End User Federal Funding Team	**Approve Change Order** ▪ Change Order is approved in the System in accordance with LUMA's established limits of authority. ▪ The Federal Funding Team forms part of the requisition change approval processes in the System to review and confirm Federal Funding requirement compliance.
9	Procurement & Contracts	**Issue Change Order, Update Purchase Order** (as required) ▪ Procurement creates the Purchase Order and sends to the Vendor through electronic means. Purchase Orders are approved in accordance with the established limits of authority.
10	Vendor	**Submit Invoice** ▪ Vendor provides an invoice for the goods and/or services rendered. The invoice shall reference the Purchase Order number, as well as the quantity of goods/services invoiced, the date and other key information required to process the payment.
11	End User and Federal Funding Team	**Perform Due Diligence** ▪ End User receives the invoice and validates it against the goods received or the work performed. ▪ The Federal Funding Team is provided a copy.
12	End User And Federal Funding Team	**Receive Goods / Services in the System** ▪ End User receives the goods or services in the System. ▪ A 3-way match is completed between the Purchase Order, the invoice and the receiving report to validate the details of the purchase before recommending for payment.
		Federal Funding Team: ▪ Enterprise Software for Tracking Public Grants ▪ The Federal Funding Team processes "Ok to Pay" in enterprise software for tracking public grants. A daily extract is uploaded to AP System.

13	Accounts Payable	**Process and Pay Invoice** ▪ The invoice is forwarded to Accounts Payable for processing and payment. ▪ AP must receive 3-way PO match and "OK to Pay" from enterprise software for tracking public grants. ▪ The Post Award Contract Administration Procedure ends here.

3.0 Part B. Contract Management

3.1 Introduction: LUMA Agreement and Contract Templates

Once a third party has been selected to perform work through the competitive bidding or solicitation process (RFP or ITT) or direct negotiation, LUMA Procurement & Contracts completes the Pre-Award Contracting Process by facilitating the execution of an approved LUMA agreement or contract template. While Procurement & Contracts generally has the latitude to negotiate (change or alter) the commercial terms of the templates in collaboration with End Users (and Federal Funding Team, as required), LUMA Legal must approve any substantive changes to the risk allocation. LUMA Legal will review the terms of any template in accordance with Puerto Rico and Federal law and regulation, as applicable. In the event LUMA Procurement & Contracts is uncertain as to whether a change is substantive, advice from LUMA Legal will be sought.

As of the approval date of the Procurement Manual, LUMA Procurement & Contracts will have access to a number of procurement template forms listed below. New templates are developed by LUMA Legal during the course of the operation of the O&M Agreement. Any permanent changes to these templates or creation of new agreement or contract documents must be developed by LUMA Legal and in compliance with the Procurement Manual.

These LUMA agreement and contract templates are categorized as either (i) the supply and delivery of Goods provided by "Suppliers" or; (ii) the provision of Services by "Contractors." Suppliers and Contractors are collectively referred to as "Vendors."

Generally, the terms "Agreement" and "Contract" can be used interchangeably. LUMA has adopted the term "Agreement" to refer to continuous, long-term or evergreen arrangements where services or goods are provided via work orders, while a "Contract" refers to one-time services or purchases. As such, LUMA defines the term Agreement to capture general terms and conditions that will apply in the event a work order with defined pricing, scope and schedule is executed.

	Goods	Services
Multi-project/repetitive procurement Agreements	▪ Supply Agreement	▪ Construction Services Agreement ▪ Professional Services Agreement
Single Project / One-off procurement Contracts	▪ Goods Purchase Contract ($250K-$1M) ▪ Goods Purchase Contract (>$1M) ▪ Purchase Order*	▪ Construction Contract (up to $1M) ▪ Construction Contract (>$1M) ▪ General Services Contract ▪ Purchase Order* ▪ Engineering & Architectural Services Contract

* Both Goods and Services

3.2 Noncompliance

Each LUMA form of agreement and contract includes the consequences for noncompliance. Generally, contracts with the government include, in addition to termination provisions, relief provisions requiring return by the Vendor of any funds received, suspension of payment, withholding of payment and others, as may be agreed by the parties.

3.3 Government Contracting Requirements

VENDORS DOING BUSINESS IN PUERTO RICO

When providing services in Puerto Rico (including the "service" of delivery of Goods), a Vendor shall make the following representations and warranties and shall deliver the following documents, as required by applicable law:

1. Vendor represents and warrants that it does not have any outstanding debts for unemployment insurance, temporary disability or chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, workman's compensation with the State Insurance Fund, income taxes or sales and use taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center ("CRIM").
2. Vendor shall deliver:
    - A copy of its current Certificate of Incorporation, Certificate of Organization or Certificate of Authorization to do Business in Puerto Rico;
    - A copy of Merchant's Registration Certificate;
    - A Certificate of Good Standing;
    - A certification issued by the Puerto Rico Treasury Department indicating that Vendor and its members and partners, if applicable, do not owe Puerto Rico sales and use taxes to the Commonwealth;
    - A Puerto Rico Sales and Use Tax Filing Certificate issued by the Puerto Rico Treasury Department reflecting that Vendor has filed its Puerto Rico Sales and Use Tax returns for the last sixty (60) tax periods;
    - A certification issued by the Puerto Rico Treasury Department indicating that Vendor and its members and partners, if applicable, do not owe Puerto Rico income taxes to the Commonwealth;
    - A Puerto Income Tax Return Filing Certificate issued by the Puerto Rico Treasury Department reflecting that Vendor has filed its Puerto Rico Income Tax returns for the last five (5) tax years;
    - A certification issued by the Puerto Rico Child Support Administration (ASUME) reflecting that is in compliance with the withholdings required to be made by employers;
    - A sworn statement under Act 2-2018.
3. Vendor shall not violate, conspire to violate or aid and abet the violation of any Anti-Corruption Laws. No funds transferred by Owner to Vendor shall be transferred by Vendor, directly or indirectly, in violation of any Anti-Corruption Laws.
4. Vendor is not a Sanctioned Person or is located, organized or resident in a Sanctioned Country.
5. Vendor shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance with the Anti-Corruption Laws and Sanctions, promptly notify Owner in writing if Vendor becomes subject to any investigation by law enforcement or regulatory

authorities in connection with the Anti-Corruption Laws or Sanctions, at all times comply with all Applicable Law regarding non-discrimination.

6. Vendor attests, subject to the penalties for perjury, that no Representative of Vendor, directly or indirectly, to the best of Vendor's knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of the Agreement.
7. Vendor shall inform Owner and Operator if, at any time during the Term, there are any material tax disputes with any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Vendor is not responsible under this Agreement, if any).
8. Vendor shall inform Owner if, at any time during the Term, it or its Representatives become aware that they are subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property.

VENDORS DOING BUSINESS OUTSIDE OF PUERTO RICO

When providing services from outside Puerto Rico (including the "service" of delivery Goods), Vendor shall not be required to deliver the following documents:

- Merchant's Registration Certificate;
- Certificate of Good Standing issued by Puerto Rico Department of State;
- Sales and Use Tax Return Filing Certificate; and
- Child Support (ASUME) Debt Certificate.

However, the following sworn statements are required:

- A sworn statement indicating that the Vendor has no tax liability with the Puerto Rico taxing authorities;
- A sworn statement under Act 2-2018;
- A sworn statement indicating that the Vendor has not property tax liability with the CRIM.

3.4 Template Common Provisions

While each LUMA form of Agreement and Contract necessarily has provisions to allow for different functionality, the templates contain a standard set of terms and conditions that exist in every form. Generally, these standard terms and conditions reflect (i) LUMA's relationship to PREPA (agent/owner); (ii) best practice risk mitigation; and (iii) requirements of any Vendor to contract with PREPA. Below is a summary of those commonly included terms and conditions.

Note: The following is not a comprehensive set of standard terms and conditions; it does not necessarily transcribe the precise language in LUMA Agreements or Contracts. The following is meant as an informative guide to understand the general legal concepts covered in LUMA's procurement templates.

Provision	Description
Parties to the Agreement and/or Contract	By and between PUERTO RICO ELECTRIC POWER AUTHORITY, an instrumentality of the Government of the Commonwealth of Puerto Rico ("Owner"), represented herein by its agent, LUMA ENERGY SERVCO, LLC, a limited liability company organized under the laws of the Commonwealth of Puerto Rico ("LUMA" or "Operator") and [●], a [legal entity][NTD: Insert type of entity] [●] ("Vendor").

Relation to the O&M AGREEMENT — Agency	Operator was retained by Owner and the Puerto Rico Public-Private Partnerships Authority ("Administrator"), under the Operation and Maintenance Agreement dated as of June 22, 2020, as amended from time to time in accordance with its terms (including any amendments as may be contemplated by the Supplemental Agreement (as defined in Exhibit F-1 to such agreement)) (collectively the "OMA"), pursuant to which Operator has agreed to provide certain services to the Owner and Administrator as more specifically set out therein. In accordance with the terms and conditions of the OMA, Operator is acting as Owner's agent when performing the Work under this Agreement and any Work Order. All provisions hereunder relating to Owner taking any action shall be understood to refer to Operator, acting on Owner's behalf.
Definitions	▪ Confidential Information - means (i) with respect to the Operator: any and all written or oral information (whether or not on paper, in electronic form, or otherwise, whether or not marked or identified as confidential and whether or not disclosed or learned prior to the execution of this Agreement) disclosed to Vendor or its Personnel by or on behalf of Operator or any of Operator's Affiliates, or learned by Vendor or its Personnel during the course of performing the Work, including all offers, maps, reports, assay or other statistical, geological, or geophysical data, technical data, financial, operating, or other information, in each case related to the business, operations, assets, or affairs of Operator or any of Operator's Affiliates, or confidential information of third parties to whom Operator or any of Operator's Affiliates owes an obligation of confidence, to the extent Notice of such obligation is given to Vendor and any derivatives of any such information; and (ii) with respect to the Owner: any and all written or oral information (whether or not on paper, in electronic form, or otherwise, whether or not marked or identified as confidential and whether or not disclosed or learned prior to the execution of this Agreement) disclosed to Vendor or its Personnel by or on behalf of Owner, or learned by Vendor or its Personnel in the course of performing the Work, deemed information that if disclosed would pose a threat to public security and/or safety, or any other information considered privileged or confidential pursuant to applicable Law. ▪ Emergency – any situation which may result in death, injury, or disease of any person, a release of hazardous material, damage to or loss of property, or damage to the environment, or that results in contact with an overhead power line or causes a power outage. ▪ Force Majeure - not within the reasonable control of the Party, could not reasonably foresee, prevent, or overcome and does not arise by reason of the negligence, action, omission, or default.
Government Contracting Requirements	The Government Contracting Requirements described above are attached as a schedule or exhibit to all forms of LUMA templates. As LUMA will be procuring Goods and Services on and off the island of Puerto Rico, not all Requirements are necessary for Off-Shore procurement although Buy America requirements may be applicable (41 U.S. Code chapter 83).
Right to Assign	▪ Owner may, without the prior consent of Vendor, but upon reasonable prior Notice to Vendor, assign all or part of its rights, title and interest in and/or delegate its duties. ▪ Vendor shall not assign this … without the prior written consent of Owner acting in its discretion.
Conflict of Interest	Vendor certifies that: ▪ none of its representatives under this Agreement receive payment or compensation for services rendered regularly through an appointment to a governmental body of Puerto Rico. ▪ It owes a duty of complete loyalty towards Owner which includes not having adverse interests to those of Owner related to the services. ▪ in the event that any of the partners, directors or employees of Vendor should participate in the conduct described herein, said conduct shall constitute a violation to the prohibitions provided herein. Vendor shall avoid even the appearance of the existence of conflicting interests. ▪ acknowledges that Owner shall have the power to intervene regarding the enforcement of the prohibitions contained herein. ▪ at the time of execution of this Agreement, it does not have any other contractual relation that could be considered a conflict of interest with this Agreement. Vendor also certifies that no public employee, including employees of Operator, has any personal or economic interest in this Agreement.
Termination and / or Suspension	Termination for Cause: ▪ Parent has suffered an Insolvency Event or ceases, or demonstrates an intention to cease, to carry on its business. ▪ Assigns, delegates, or transfers this Agreement without consent. ▪ fails to provide and maintain in good standing or is suspended or debarred by the Federal government, or if fails to supplement or replace the security. ▪ Any covenant, representation or warranty made in this Agreement was false or misleading when made or at any time becomes false or misleading. ▪ Termination upon Notice (with 5-day remedy period) if Vendor:

	▪ Fail to obtain and maintain the insurance. ▪ refuse, neglect, or become unable to supply properly skilled workmen or tools and equipment of the proper quality or quantity or fail in any respect to perform the Work or any portion thereof in an efficient, good and workmanlike, skilled and careful manner in accordance with the Specified Industry Standard. ▪ Fail to pay any of its personnel. ▪ Fail to comply with the Law, any applicable permits, or any of the provisions of this Agreement. ▪ Suspend the Work without the approval of, or Notice from, Owner. ▪ Termination for Convenience ▪ Owner may, at any time and in its sole discretion, for any reason, terminate all or any portion of this Agreement by providing Notice to Vendor.
Representations and Warranties	Vendor represents and warrants to Owner that: ▪ It confirms and agrees it has read and will abide by the requirements, where applicable, contained in Exhibit "K" - LUMA Policies and Exhibit "J" – Government Contracting Requirements, which are requirements that Owner is obligated to obtain from its Vendors (as defined in the OMA) pursuant to the OMA and by the Puerto Rico government contracting requirements. ▪ It is an entity duly constituted and has duly authorized, executed and delivered this Agreement. ▪ It has all requisite power, legal capacity and authority to enter into this Agreement, the Agreement is a valid and binding agreement, Vendor is duly licensed and qualified and in good standing under the Laws of the Commonwealth of Puerto Rico wherein the nature of the Project and all Work or the business transacted by it makes such licensing or qualification necessary, Shall supervise and direct all Work using the highest industry standards and requisite skill and attention ordinarily required for operations similar to the Work. ▪ Be deemed to be aware of the purpose and intended use of the facilities and improvements to be constructed, modified, or replaced therein. ▪ Fully responsible for any act or omission of any of its invitees to the Site or of any Personnel directly or indirectly employed or otherwise engaged. ▪ It shall comply with the Law when performing the Work ▪ It is not aware of the existence of any relationship, family, business, contractual, or otherwise, between itself, its principals, officers, or employees and Owner, including its Affiliates, directors, officers, employees, or agents, shall not perform any work for or enter into any contract with others that may conflict with its contractual, professional, equitable, or other obligations to Owner without first obtaining the written approval of Owner and it shall not use for the benefit of others, or reveal to others, any Confidential Information or any other information or knowledge not otherwise in the public domain. ▪ It owns, or has the right to use, all intellectual property necessary to perform the Work. ▪ It shall pay all Subcontractors promptly and in accordance with the terms of any contractual arrangements made with them and shall incur no indebtedness to such Subcontractors including Act 173 and any other applicable Laws in force in the Commonwealth of Puerto Rico.
Dispute Resolution	Any dispute between Owner and Vendor which may arise in connection with this Agreement, or the interpretation, application, implementation, validity or breach of this Agreement ("Dispute") shall be resolved as follows: ▪ The Party believing that a Dispute has arisen shall promptly give Notice thereof to the other Party ("Dispute Notice"); and upon delivery and receipt of a Dispute Notice by the other Party, the Parties shall promptly attempt to resolve the Dispute. ▪ If the Parties cannot resolve a matter within fifteen (15) Business Days of the receipt of a Dispute Notice, the Parties will escalate the matter first to an appropriate senior officer of each of Owner and Vendor and, if the matter is still unresolved after a further fifteen (15) Business Days of such escalation, to the President of each of Owner and Vendor. ▪ If the Dispute is not resolved within fifteen (15) days of the date the Dispute is escalated to the President of each of Owner and Vendor, then it may, if agreed by the Parties, be submitted to non-binding mediation employing a commercial mediation service. If the Parties do not agree to mediation within an additional fifteen (15) Business Days after the aforementioned fifteen (15) Business Days or if, after agreement to mediation, the Dispute is not resolved within an additional thirty (30) Business Days after referral to mediation, then any such Dispute, including the arbitrability of the Dispute, shall exclusively be referred to arbitration. (i) There shall be an arbitration panel composed of three (3) arbitrators, appointed in accordance with the Arbitration Rules; (ii) the place of arbitration shall be San Juan, Puerto Rico; (iii) the official language of the arbitral proceedings shall be English; however, if the arbitrators are bilingual and the Parties so agree, documentary evidence in Spanish may be submitted without an English translation and Spanish-speaking witnesses may testify in Spanish without the need of an interpreter; (iv) all arbitral proceedings shall be private and confidential; they may be attended only by the

	arbitrators, the Parties and their representatives and witnesses to the extent they are testifying in the proceedings.
Work Product	All Documents developed, prepared or compiled by any member of Vendor's Group relating to any of the Goods or Services performed, including the information contained therein and all rights relating thereto (the "Work Product"), shall be exclusive property of Owner or Operator, as applicable, for use by Owner or Operator, as applicable, without limitation.
Jurisdiction	The Courts of the Commonwealth of Puerto Rico have exclusive supervisory jurisdiction with respect to the matters relating to this Agreement other than with respect to enforcement and the Parties agree and irrevocably submit to such exclusive jurisdiction. Vendor hereby specifically agrees that any order or award obtained in any arbitration relating to this Agreement can be enforced in the courts of any jurisdiction in which Vendor carries on business, has offices, or has assets and Vendor hereby consents to the same.
Invoicing and Payment	▪ LUMA to pay Vendor NET 45 from date of compliant invoice receipt. ▪ Withholding Payment – Upon notice, LUMA may withhold the whole or a part of any payment to protect Buyer from loss on account of non-compliance with Agreement or specifications, encumbrances or claims, Vendor's failure to make payments due, evidence of financial difficulty, audit discrepancy, performance.

3.5 Template-Specific Provisions and Functionality

Each of the LUMA procurement templates serve a specific purpose (scope). Additionally, the templates are used, operationalized and administered in different ways. The following is a summary of those specific differences.

1. Construction Services Agreement ("CSA")

LUMA's Construction Services Agreement is used for multi-year and multi-project construction work. Costs for each project will be tracked and accounted for separately, as required by LUMA project management practices. This includes ongoing transmission and distribution maintenance, vegetation management and civil and earthworks. For the largest transmission construction work, it is recommended that project-specific contracts be used. The CSA itself contains a general scope of work which is further refined by each Work Order (scope, specifications, schedule, agreement price, key personnel etc.) issued against the CSA. A suite of CSAs may be awarded for a similar scope (i.e. powerline maintenance). With multiple CSAs in place with pre-qualified vendors, a Request for Quotes (pricing) may be sent to all CSA holders for project specific / fixed price bids or used on a call-down list basis where the CSA with the best Reimbursable Rates is used.

A summary of the structure, content and functionality of the CSA is as follows.

Construction Services Agreement
Exhibit "A" General Terms and Conditions: ▪ No guarantee of Work. Work Orders establish specific scope, schedule and pricing. ▪ Lump Sum or fixed price Work Orders may be through negotiation or competitive bidding for project specific Work. In the event a Work Order is to be priced using Unit Rates, in whole or in part, the Lump Sum Work Order is to be used as each Unit is ostensibly a fixed price multiplied by completed volumes. ▪ Reimbursable or (hourly) rates-based Work Orders include a "Target Reimbursable Price" or an estimate for the Work. Reimbursable Rates may be competitively bid prior to the execution of the CSA to be used for Emergency Work or in conjunction with other single sourced justification.
Exhibit "B" Scope of Work: General Scope of Work and Specifications that will apply to all Work Orders.

Exhibit "C" Agreement Price:

- "Agreement Price" means the aggregate of all Lump Sum and / or Reimbursable Work Orders, plus any Security costs. Prior to the issuance of any Work Order, the Agreement Price is $0.
- "Target Control Amount" means the estimated total annual value of the agreement x Term.
- Invoicing - All Work Orders will have a Purchase Order issued from the Procurement system. Invoices will refer to PO #. Contractors do not bill against the agreement itself. LUMA, on behalf of Owner will pay Contractor, within forty-five days after receipt by Owner of a valid Contractor's invoice.
- Audit Rights - with respect to all documents ("Books and Records") created, developed, generated, or provided by or on behalf of Contractor, including books, records and accounts.

Attachment 1 Lump Sum (fixed) Agreement Price

- May include Unit Rate concept as "Contractor shall only be entitled to payment of Lump Sum Work actually and properly performed in connection with performance of Lump Sum Work"

Attachment 2 Reimbursable (Hourly Rate) Agreement Price:

- All-Inclusive Charge Out Rates – hourly personnel rates
- Equipment Costs – Contractor equipment rates
- Pass-Through Costs – 3rd Party costs to Contractor (with or w/o mark-up) for materials, subcontracts, travel, accommodation, etc.

Attachment 3 Actual Costs:

- Rates "without markup" for equipment and personnel.
- Used where a Change Order cannot be agreed to prior to Work commencing or upon suspension of Work, Force Majeure, etc.

Attachment 4 Excluded Costs:

- LUMA will not pay for entertainment, local meals and housing, insurance deductibles, Contractor's costs for permits, arbitrations, remedial work, penalties, expressly excluded in Agreement, etc.

Exhibit "D" Insurance:

Builders' Risk; Employer's Liability ($5M); Workers Compensation Insurance as required by Puerto Rico Compensation System for Work-Related Accidents Act, Act No. 45-1935; Owned Autos, Hired Autos and non-owned Autos ($5M); CGL ($5M); Prof. Liability ($2M); Pollution ($5M); Property for Contractor's property. Insurance limits can be provided in a combination of primary limit and follow-form excess. Insurance shall name PREPA (Owner) and LUMA Energy (Operator) and provide a Waiver of Subrogation to PREPA and LUMA. Any policies of insurance provided hereunder shall require a 30-Day Notice of Cancellation.

Exhibit "E" Forms of Security:

- One, some, all, or none to be used if level of risk determines necessary.
- Owner shall reimburse Contractor $[●], constituting the actual cost incurred by Contractor for obtaining the security.

Attachment 1 Performance Bond:

- a performance bond, as a guarantee of the performance of the Contractor's obligations in an amount equal to (100%) the Target Control Amount and in a form and from a surety acceptable to Owner and from a surety registered to carry on business in the Commonwealth of Puerto Rico.

Attachment 2 Parent Guarantee:

- guaranteeing performance of Contractor's obligations pursuant to this Agreement and each Work Order.

Attachment 3 Irrevocable and Unconditional Letter of Credit:

- equal to fifteen (15%) percent of the Target Control Amount.

Exhibit "F" Change Order Forms:

- Contractor only has limited right to a Change Order under Exhibit "A" Terms and Conditions

Attachment 1 Change Order Form:

- Change will only be paid for with executed Change Order.
- Attachment 2 Change Order Proposal Form:
- LUMA may request preparation or Contractor may propose a Change.

Exhibit "G" Owner Supplied Items:

- All items to complete Work are responsibility of Contractor unless identified in Agreement or Work Order (i.e. poles, transformers, etc.)

Attachment 1 LUMA Material Withdrawal Form

- Used for Contractor's withdrawal of Owner Supplied Items.

Exhibit "H" HSE Obligations:

HSE terms and conditions to be attached to the CSA according to risk associated with the Work.

Exhibit "I" Government Contracting Requirements:

- Vendor Engaged in Business in or outside of Puerto Rico.

Exhibit "J" LUMA Policies:

- Policies to be attached that apply to the scope of Work (i.e., Vendor Code of Conduct)
- Contractor agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A" General Terms and Conditions.

Exhibit "K" RFI Form:

- Contractor's form to use in the event of requested information from LUMA during a project.
- The RFI and any response to it by the Owner, does not and shall not, constitute a request for Change, Change Order, or an amendment to the Agreement or any Work Release and relates solely to a request for information only.

Exhibit "L" Substantial Completion Certificate Form:

- Issued by LUMA upon confirmation the Work is "Substantially Complete" (the Work in relation to any Work Order is substantially complete to the point that it is ready for use or is being used for the purpose intended).
- Warranty Period is for 2 years after issuance of Substantial Certificate.

Exhibit "M" Form of Work Order

- *As per the Procurement and Contracting Practice, Work Orders may be executed by the requisite financial approval authority, subject to an executed Agreement being in place. Work Orders submitted through the requisitioning process and attached to associated Purchase Orders.

Attachment 1 Lump Sum Work Order:

- Schedules (Work Schedule, Specifications, Drawings, Subcontractor and Key Personnel).

Attachment 2 Reimbursable Work Order:

- Schedules (Work Schedule, Specifications, Drawings, Subcontractor and Key Personnel).

2. Supply Agreement ("SA")

LUMA's Supply Agreement is used for the provision of Goods from Vendors (Suppliers) on an ongoing basis, typically to replenish PREPA's inventory for maintenance or future unspecified projects. While it is possible to use the SA for ongoing supply of project-specific Goods, it is recommended that the Goods Purchase Contract (Large) be used for those purposes instead as it is better suited for detailing specific delivery and site-specific deliverables. The SA contains a list of Goods priced on a Unit Rate basis. These Goods can be ordered through LUMA's System via an approved requisition that links each Purchase Order to the sourced SA. A suite of SAs may be awarded to multiple Suppliers for a similar scope of critical supply (i.e., distribution transformers). With multiple SAs in place, a secondary Supplier may be engaged in the event the primary (best price) Supplier is unable to maintain supply in a timely fashion or in the event of quality issues. A justification in this regard would be attached to the requisition to source the Goods from the alternate Supplier.

Supply Agreement

Exhibit "A" General Terms and Conditions:

- No guarantee of Orders. Purchase Orders issued by LUMA establish specific quantities and location of Goods (i.e., Warehouse).
- The Supplier has an opportunity to notify LUMA of its inability to fill the order as issued on the PO. LUMA may revise the PO or source the Goods from alternate Suppliers.
- Production Schedule - after execution of this SA, the Supplier to submit a detailed schedule showing all stages of the procurement of materials, including date of purchase of the materials and manufacture, packing and shipment of each item of the Goods.
- Insurance — $10M CGL, Insurance covering the total value of loss or damage to Goods, or any portion thereof, including while the same are in transit between any facilities of Supplier, Workers' Compensation and Employer's Liability $5M.
- Warranty — beginning on the Effective Date, Supplier shall, at its own expense, promptly repair or replace any Goods, including any portion thereof, furnished to Buyer that, within the Warranty Period, fail to conform to the requirements of the SA. The Warranty Period is the later of (i) twelve (12) months after incorporating the Goods into operation; or (ii) thirty-six (36) months after the date all Goods in respect of any Purchase Order are Delivered.

Exhibit "B" Delivery, Key Dates and Packing, Shipping Requirements:

- The Goods to comply with all requirements of this SA including the Specifications and Drawings.
- Price and Payment — Unit Rates are all-inclusive of overhead and profit. A Maximum Purchase Price (estimated value) is required to establish the SA in the ERP and cannot be changed without prior written approval of Buyer.

Attachment 1 Specifications and Drawings:

- Establish the minimum standards and scope of supply for the Goods and shall not be construed as eliminating any requirements to be in accordance with Supplier's standard shop practices, any Laws and any applicable industry standards.

Attachment 2 Unit Price for Goods:

- Description, Unit of Measure and Price per Unit.

Exhibit "C" Delivery, Key Dates and Packing, Shipping Requirements: ▪ DEFAULT INCOTERMS 2010 – DDP: Supplier responsible for delivering the Goods to the named place in the country of the Buyer and pays all costs in bringing the goods to the destination including import duties and taxes. The Supplier is not responsible for unloading. Default DDP Incoterms 2010. Procurement to assess whether DDP, ExWorks, etc. are most appropriate / cost effective through competitive process. ▪ Hazardous Goods – If the Goods may cause harm to the environment or may endanger human health or safety, Supplier shall package, ship, handle and deliver the Hazardous Materials in accordance with all applicable Laws, the applicable Purchase Order and corresponding Safety Data Sheet(s).	**Attachment 1 Lead Times for Delivery of Goods:** ▪ Each item of Goods may have a separate time require for manufacturing or supply. **Attachment 2 Packing and Shipping Instructions:** ▪ As required. **Attachment 3 Quality Plan and Quality Surveillance Requirements:** ▪ As required. **Attachment 4 Maximum Termination Cost:** ▪ In the event a Purchase Order is issued and in the process of filling. **Attachment 5 Form of Progress Report:** ▪ As required.
Exhibit "D" Seller Data Requirements: ▪ Supplier to provide specific data and drawing requirements including shop drawings, recommended maintenance instructions, material data sheets, performance curves showing load performance, catalogue data, quality control data books, certified material test reports, mill certificates.	
Exhibit "E" Performance Security: ▪ One, some, all, or none to be used if risk determines necessary for a single large Purchase Order. ▪ Owner shall reimburse Supplier $[●], constituting the actual cost incurred for obtaining the security.	**Attachment 1 Performance Bond:** ▪ a performance bond, as a guarantee of the performance of the Supplier's obligations in an amount equal to (100%) the Purchase Price (i.e., large Transmission Transformer) and from a surety registered to conduct business in the Commonwealth of PR. **Attachment 2 Parent Guarantee:** ▪ guaranteeing performance of Supplier's obligations pursuant to the Supply Agreement. **Attachment 3 Irrevocable and Unconditional Letter of Credit:** ▪ equal to fifteen (15%) percent of a Purchase Order's Purchase Price (i.e., large Transmission Transformer).
Exhibit "F" Government Contracting Requirements: ▪ Vendor Engaged in Business in or outside of Puerto Rico.	
Exhibit "G" Change Order Forms: ▪ Supplier shall not, without prior written authorization, make a Change.	**Attachment 1 Change Order Form:** ▪ Change will only be paid for with executed Change Order. **Attachment 2 Change Order Proposal Form:** ▪ LUMA may request preparation or Supplier may propose a Change.
Exhibit "H" Form of Purchase Order: ▪ A draft form of Purchase Order generated from the System upon an approved requisition is included to identify payment details including Bill To address.	
Exhibit "I" LUMA Policies: ▪ Policies to be attached, as required (i.e. Vendor Code of Conduct). ▪ Supplier agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A".	

3. Professional Services Agreement ("PSA")

LUMA's Professional Services Agreement is used for services that require specific or special training and / or certification (finance, accounting, consulting) beyond what might be defined as general services. The PSA is used for such services on an ongoing or repetitive basis where it is anticipated a number of separate projects may occur with that Contractor. Generally, the PSA will be used for professional services conducted off-site from PREPA and LUMA facilities. In the event, the services are provided on-site, additional health, safety and environmental terms and conditions are to be included. Due to the highly regulated nature of

engineering and architectural services in Puerto Rico, those professional services are out of scope for the PSA. A separate LUMA agreement will provide for such services.

A summary of the structure, content and functionality of the PSA is as follows.

Professional Services Agreement

Exhibit "A" General Terms and Conditions:

- No guarantee of Orders. Work Orders issued by LUMA discretion. General Scope of Work included with specifics, including Work Schedule and estimated Agreement Price (Reimbursable and / or Unit Rate), in each Work Order.
- Key Personnel identified in PSA for subsequent Work Orders. No changes shall be made to such Personnel without the prior written consent of Owner, at its discretion.
- Subcontracting - Contractor shall not subcontract the Services or any portion of the Services, without Owner's prior written consent, at Owner's discretion.
- Insurance - professional errors and omissions liability insurance $2M, CGL $5M, automobile $2M.Warranty - all Services shall be performed in accordance with PSA (including the standard of care or the prudence, diligence, care and skill required of a competent and reputable international Contractor specializing in the provision of the type of work) commencing on the Effective Date until one (1) year period after Owner's acceptance of the Services. Contractor further warrants that the Remedial Work shall be free from failure or defect and conform to the Warranty for a period of one (1) year following the completion of the Remedial Work.

Exhibit "B" Scope of Services:

- LUMA to insert a general description of the applicable scope of services and the locations at which the same is being performed]
- Permits — The Contractor shall obtain and pay for all Permits required for the performance of the Services. LUMA to identify any Permits it may responsible to put in place.

Exhibit "C" Agreement Price:

- "Agreement Price" means the aggregate of all Unit Rate and/or Reimbursable Work Orders.
- "Reimbursable Target Control Amount" or "Unit Rate Target Control Amount" means the estimated value of the Work Order.
- Invoicing — All Work Orders will have a Purchase Order issued from System. Invoices will refer to PO #. Contractors do not bill against the agreement itself. LUMA, on behalf of Owner will pay Contractor, within forty-five days after receipt by Owner of a valid Contractor's invoice.
- Audit Rights — with respect to all documents ("Books and Records") created, developed, generated, or provided by or on behalf of Contractor, including books, records and accounts.

Attachment 1 Reimbursable (Hourly Rate):

- All-Inclusive Charge Out Rates — hourly personnel rates
- Equipment Costs — Contractor equipment rates
- Pass-Through Costs — 3rd Party costs to Contractor (with or w/o mark-up) for materials, subcontracts, travel, accommodation.

Attachment 2 Unit Rate:

- Unit Rate table includes Description, Estimate Quantity, Unit of Measure, Rate per Unit and Subtotals.

Attachment 3 Excluded Costs:

- LUMA will not pay for entertainment, local meals and housing, insurance deductibles, Contractor's costs for permits, arbitrations, remedial work, penalties, expressly excluded in Agreement, etc.

Attachment 4 Actual Costs:

- Rates "without markup" for equipment and personnel.
- Used where a Change Order cannot be agreed to prior to Work commencing or upon suspension of Work, Force Majeure, etc.

Exhibit "D" Form of Work Order

- *As per the Procurement and Contracting Practice, Work Orders may be executed by the requisite financial approval authority, subject to an executed Agreement being in place. Work Orders submitted through the requisitioning process and attached to associated Purchase Orders.
- Schedules (Work Schedule, Specifications, Drawings, Subcontractor and Key Personnel).

Exhibit "E" Government Contracting Requirements:

- Vendor Engaged in Business in or outside of Puerto Rico.

Exhibit "F" Key Personnel:

- Name, title, Location during execution of the Services and Duration of Assignment. Work Order Key Personnel to be drawn from or added to Exhibit "K".

Exhibit "G" LUMA Policies:

- Policies to be attached, as required (i.e., Vendor Code of Conduct).
- Contractor agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A".

Exhibit "H" Change Order Process: ▪ Contractor shall not, without prior written authorization, make a Change.	**Attachment 1 Change Order Form:** ▪ Change will only be paid for with executed Change Order. **Attachment 2 Change Order Proposal Form:** ▪ LUMA may request preparation or Contractor may propose a Change.

4. Engineering Architectural Services Contract ("EASC")

LUMA's procurement template for Engineering or Architectural Services is used specifically for onsite technical / professional services that require special training and/or certification with respect to design engineering or building architecture (i.e., mechanical, electrical, civil, structural). Due to the high-risk (regulation and litigation) nature of engineering and architectural services in Puerto Rico, having a stand-alone contract that is separate from the PSA and project specific is required.

A summary of the structure, content and functionality of the EASC is as follows.

Engineering Architectural Services Contract	
Exhibit "A" Definitions and Interpretation: ▪ "Design Completion Date" means the date by which all of the definitive design, drawings and specifications for the Project must be completed, which date is set out in the Services Schedule. ▪ "Information for Guidance" means the information or documentation specified as such in Exhibit "H" — Owner Provided Documentation. ▪ "Information for Review and Use" means the information or documentation specified as such in Exhibit "H" — Owner Provided Documentation. ▪ "Information for Verification" means the information or documentation specified as such in Exhibit "H" – Owner Provided Documentation. ▪ "Project Management Contractor" or "PMC" means a project management contractor with respect to the Project, to the extent same is appointed and in the case of Owner, its representative designated in writing in Section 7(a) of the Master Agreement shall also include the PMC, if same is so appointed.	
Exhibit "B" General Terms and Conditions: ▪ Review and Responsibility for Owner Provided Documentation - Contractor shall, as part of the Services to be performed under this Contract, review the Owner Provided Documentation and apply the Contractor's Standard of Care to any reliance thereon and Contractor relies upon any Information for Guidance at its own risk and Owner shall have no Liability with respect to same. ▪ Reporting — Contractor obliged to provide reports as outlined in Scope of Services, Weekly Progress Reporting (Exhibit "J") and via in-person meetings. Owner and PMC, if applicable, shall be provided the same management tools, reports and Project Documents that Contractor uses to effectively manage the Services to ensure that the Project is on time and on budget Contractor shall apply these Management Tools during execution of the Services. ▪ Timeframe for completion of Services - Contractor Covenants to diligently perform the Services to achieve any time requirements set out in Exhibit "C" — Scope of Services (Services Schedule), Exhibit "D" - Agreement Price, including the Design Completion Date, or, in the absence of any specific time requirements, in accordance with Owner's reasonable requirements communicated in writing.	
Exhibit "C" Scope of Services: ▪ Definitions include: BOM, CWP, EAWP, I/O, SCADA ▪ Contractor shall provide the Services in order to enable the development of the Facilities and same shall meet the requirements of this Contract even though the exact required facilities, materials, equipment, services or other items necessary for such completion are not specifically mentioned. ▪ Owner and/or the PMC, (if applicable) intend to have a presence at Owner's office during the Project. While working on the Project, all participants shall work together in an atmosphere of respect and cooperation to the benefit of the whole team. ▪ Services include: Project Meetings, Review and Approval Process, Project Control Plan.	**Attachment 1:** ▪ Services Schedule — consider whether the Services Schedule is to be developed during Contract negotiation or following execution of the Contract. **Attachment 2:** ▪ WBS — Work Breakdown Structure and code of accounts —Contractor shall ensure that provisions exist within its project controls systems to accommodate or map the Owner and/or PMC, if applicable, approved coding structure. All Project reports shall be organized and submitted to Owner in a format that corresponds to the Project WBS & code of accounts. **Attachment 3:** ▪ Drawing, Schedule and Documentation (if applicable) All Work Product shall comply with the standards for technical data identification specified.

Exhibit "D" Agreement Price:

- "All-Inclusive Man-Hour Rates" includes hourly rates for "Staff Employees" (Personnel) and "Agreement/Agency Personnel (Subcontractors) who are 3rd party engineers/architects.
- "Estimated Total Agreement Costs" — estimated Contract Value.
- Contractor shall submit to Owner for review and acceptance a project budget (the "Project Budget") for: (i) the design phase of the Services ending on the Design Completion Date; (ii) the construction support phase beginning on the Design Completion Date and ending on Project Completion; and (iii) the commissioning phase.
- Article 3 and 4 — managing the risk of the time and materials EASC.

Attachment 1:

- All-Inclusive Man-Hour Rate for Staff Employees.
- All-Inclusive Man-Hour Rate for Agreement/Agency Personnel.

Attachment 2:

- Excluded Costs.

Exhibit "E" Project Description:

- The EASC is used in conjunction with major Projects that have an outsourced element of Engineering/Architectural Services. As such, the description of the holistic Project (Line, Substation, Civil Construction) needs to be understood by the Contractor.
- Exhibit "E" includes: a Project Overview, Location, required Permits, Objectives and Priorities.
- Includes Attachment 1 — Site Map.

Exhibit "F" Insurance:

- CGL ($10M), Cross-Liability, Contractor's Property Insurance for tools and equipment owned or in the care and control of Contractor, Pollution Liability ($10M), Auto Liability ($10M) and Workers Compensation.
- Errors and Omissions / Professional Liability ($10M).
- Insurance limits may be provided in a combination of primary limit and follow-form excess. PREPA (Owner) and LUMA Energy (Operator) will be included as an Additional Insured on Auto Liability, General Liability & Pollution on a Primary & Non-Contributory basis and PREPA and LUMA will be provided a Waiver of Subrogation and a 30-Day Notice of Cancellation.

Exhibit "G" Key Personnel:

- As per Exhibit "B" General Terms and Conditions, Contractor unapproved removal of Key Personnel results in immediate default of the Contract allowing LUMA to exercise its Termination rights.

Exhibit "H" Owner Provided Documents:

- Information for Guidance — helpful background information for Contractor in respect of the Project.
- Information for Review and Use — it shall be reviewed and used by Contractor but cannot be reasonably assumed that Contractor is, nor has been, in a position to verify its correctness in respect of the Project or Services.
- Information for Verification — shall require Contractor's use and verification in respect of the Project or Services.

Exhibit "I" Change Forms:

- Change Request
- Change Order
- Request for Information

Exhibit "J" Form of Weekly Progress Report:

- To be amended, as required. Default includes: Meetings and Site visits, Services, Factors affecting progress/budget.

Exhibit "K" HSE Obligations:

- Low Risk to be included as some portion of Services to be onsite.

Exhibit "L" LUMA Policies:

- Policies to be attached, as required (i.e., Vendor Code of Conduct).
- Contractor agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A."

Exhibit "M" Government Contracting Requirements:

- Engaged in Business in Puerto Rico only.

5. Purchase Order — Goods and Services (up to $250K) ("PO")

LUMA's Purchase Orders issued on behalf of PREPA contain a set of default terms and conditions (insurance, warranty, title and risk, etc.) that are attached to the System generated body of the PO. These terms and conditions are intended to be used for the one-off purchase of both Goods or Services (excluding professional services) having a projected value up to and including $250K in the aggregate. No written

Agreement or Contract is required for these lowest risk transactions. In the event an Agreement or Contract has been executed between the Vendor and LUMA, the default terms and conditions are removed and the governing terms and conditions of the Agreement or Contract (or Work Order) is cited. Depending on the risk profile or complexity of the Goods or Services being ordered, a formal Agreement or Contract may be considered notwithstanding the value being $250K or below.

Notes: As per the Procurement and Contracting Practice, a PO is issued by Procurement upon the receipt of a requisition that has been approved in accordance with the established limits of authority. As such:

1. LUMA signatures are not required on the PO. Vendor acknowledgement of PO receipt is required.
2. The aggregate value of all POs related to a particular Agreement (Goods or Services) may not exceed the Agreement's Target Control Amount.
3. Executed Contracts and Work Orders are attached to the PO when issued to the Vendor.
4. Government Contracting Requirements are attached to the PO terms and conditions, as required.
5. Additional Health, Safety and Environment terms and conditions (Low Risk) are attached to the PO in the event Services are to be performed on or at LUMA and/or PREPA facilities.

6. General Services Contract ("GSC")

LUMA GSC is intended to be used for the purchase of low-risk general services that do not include higher risk professional or construction related work. The GSC will be used for general services with a one-off projected value above $250K in the aggregate. The scope of general services includes, but is not limited to janitorial and waste disposal, physical security, landscaping, general maintenance and mail and parcel delivery services. The GSC may be considered for services estimated to be below $250K, if the scope of work is determined to be of a complexity that excludes the stand-alone terms and conditions of the PO.

A summary of the structure, content and functionality of the GSC is as follows.

General Services Contract
Exhibit "A" Standard Terms and Conditions: ▪ A one-off (single project) Contract. The Purchase Order Value and the Total Contract Value are the same and the GSC is attached to the issued PO. ▪ Contractor to perform the Services: (i) safely, efficiently and in a workmanlike manner with the level of skill care and diligence of a similar experienced professional in that field and (ii) in compliance with the Contract, including specifications; and (iii) in accordance with applicable laws. ▪ Insurance - errors and omissions (professional liability) $2M, automobile liability $2M, CGL $5M. ▪ Change Order process is not as prescriptive as in other Agreements or Contracts (no template form provided in the Contract). However, no changes may be made without written authorization from Owner.
Exhibit "B" Scope of Work and Technical Requirements: ▪ Licenses and permits to be obtained by Contractor, unless specified. ▪ Inspections and Testing, Owner-Supplied Items (i.e., PPE) to be identified. ▪ Location and Key Personnel.

Exhibit "C" Agreement Price:
- "Contract Price" means the aggregate of all LUMP Sum and / or Reimbursable Services.
- A Work Schedule is provided with Payment Milestones to be achieved. For General Services, this may mean monthly payments.
- A "Target Reimbursable Contract Price" (estimate) is included if any portion of the Services are to be provided as time and materials.

Attachment 1 Lump Sum:
- Some, all, or none of the Services may be provided on a Lump Sum / fixed price basis. Work Schedule attached.

Attachment 1 Reimbursable (Hourly Rate):
- All-Inclusive Charge Out Rates — hourly personnel rates
- Equipment Costs — Equipment rates used for the Services
- Pass-Through Costs — 3rd Party costs to Contractor (with or w/o mark-up) for materials, subcontracts, travel, accommodation.
- Work Schedule attached.

Exhibit "D" HSE Obligations:
- Low Risk

Exhibit "E" Government Contracting Requirements:
- Engaged in Business in Puerto Rico version only as no professional services are covered under the GSC.

Exhibit "G" LUMA Policies:
- Policies to be attached, as required (i.e., Vendor Code of Conduct).
- Contractor agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A".

7. Goods Purchase Contract ($250 - 1M) ("GPC")

LUMA's Goods Purchase Contract ($250K – $1M) is intended to be used for the one-off purchase of Goods having a projected value above $250K – $1M in the aggregate. As a "Contract" defined in this Part B. of the Procurement Manual, the total value and quantity of the purchase is identified in the GPC and matching the single Purchase Order issued to the Supplier. While this procurement template is designed for purchases between $250K and $1M, it may be used for purchases below $250K depending on the complexity or risk of the purchase. Procurement engages with End Users and LUMA Legal, as required.

A summary of the structure, content and functionality of the GPC ($250K – $1M) is as follows.

Goods Purchase Contract ($250-$1M)

Exhibit "A" Terms and Conditions:
- Supplier responsible for loading the Goods and Delivery of the Goods to the Delivery Location. LUMA responsible for unloading the Goods from the means of transport at the Delivery Location.
- Title and Risk — The Goods remain at the sole risk of Supplier until Delivery has been made. Buyer (PREPA, with LUMA as Agent) acquires a property interest and title to the Goods on Delivery to Buyer at the Delivery Locations. Buyer acquires the entire property interest and title in the Goods whether yet paid in full or not. Default DDP Incoterms 2010. Procurement to assess whether DDP, ExWorks, etc. are most appropriate / cost effective through competitive process.
- Change Order process is not as prescriptive as in other Agreements or Contracts (no template form provided in the Contract). However, no changes may be made without written authorization from Buyer.
- Insurance — $5M CGL, Insurance covering the total value of loss or damage to Goods, or any portion thereof, including while the same are in transit between any facilities of Supplier, Workers' Compensation and Employer's Liability $5M.Warranty – beginning on the Effective Date, Supplier shall, at its own expense, promptly repair or replace any Goods, including any portion thereof, furnished to Buyer that, within the Warranty Period, fail to conform to the requirements. The Warranty Period is the later of (i) twelve (12) months after incorporating the Goods into operation; or (ii) thirty-six (36) months after the date all Goods in respect of the Purchase Order are Delivered.

Exhibit "B Goods, Price and Requirements":
- Pricing for Goods may be Lump Sum, Cost-Plus, Unit Rate or a combination of any.
- Rights to Withholding Payment (non-conformance), Set Off and Back charge (Supplier owing to Buyer), Audit (books, records, accounts).

Attachment 1 Deliverable Goods List:
- Description of Goods and Delivery Dates.
- Attachment 2 Technical Specifications and Drawings:

Attachment 3 Lump Sum:
- All, some, or none of the Goods may be priced on a Lump Sum basis.

Attachment 4 Cost-Plus:
- All, some, or none of the Goods may be priced on a Cost-Plus basis.
- Supplier to provide the actual, verifiable and documented cost of all parts comprising, or consumed in the course of the production of, the Cost-Plus Goods (Actual Costs)).
- Includes a "Target Actual Cost" amount (estimate).

Attachment 5 Unit Price:
- Description of Goods, Unit of Measure, Price per Unit

Exhibit "C" Government Contracting Requirements:
- Engaged in Business in Puerto Rico
- Engaged in Business outside of Puerto Rico

Exhibit "D" LUMA Policies:
- Policies to be attached, as required (i.e., Vendor Code of Conduct).
- Supplier agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A".

8. Goods Purchase Contract (>$1M) ("GPC")

LUMA's Goods Purchase Contract (>$1M) is intended to be used for the one-off purchase of Goods having a projected value above $1M in the aggregate. Examples of such purchases would include large transformers and generators. As a "Contract" defined in this Part B. of the Procurement Manual, the total value and quantity of the purchase will be identified in the GPC and matching the single Purchase Order issued to the Supplier.

A summary of the structure, content and functionality of the GPC (>$1M) is as follows.

Goods Purchase Contract (>$1M)

Exhibit "A" Terms and Conditions:
- Supplier to provide a "Production Schedule" outlining all stages of the procurement of materials, including date of purchase and manufacturing information, packing and shipment of the Goods, to ensure the Delivery and receipt of the Goods at the Delivery Location by the Delivery Dates.
- Supplier to work collaboratively with LUMA, including engineers and subcontractors to ensure Goods are fully integrated and compatible with all Components, Systems and phases of any Buyer projects.
- Supplier responsible for loading the Goods and Delivery of the Goods to the Delivery Location. LUMA responsible for unloading the Goods from the means of transport at the Delivery Location.
- Title and Risk - The Goods remain at the sole risk of Supplier until Delivery has been made. Buyer (PREPA, with LUMA as Agent) acquires a property interest and title to the Goods on Delivery to Buyer at the Delivery Locations. Buyer acquires the entire property interest and title in the Goods whether yet paid in full or not.
- Insurance - $5M CGL, Insurance covering the total value of loss or damage to Goods, or any portion thereof, including while the same are in transit between any facilities of Supplier, Workers' Compensation and Employer's Liability $5M.
- Warranty – beginning on the Effective Date, Supplier shall, at its own expense, promptly repair or replace any Goods, including any portion thereof, furnished to Buyer that, within the Warranty Period, fail to conform to the requirements. The Warranty Period is the later of (i) twelve (12) months after incorporating the Goods into operation; or (ii) thirty-six (36) months after the date all Goods in respect of the Purchase Order are Delivered.

Exhibit "B Goods, Price and Requirements":
- Pricing for Goods may be Lump Sum, Cost-Plus, Unit Rate or a combination of any.
- Rights to Withholding Payment (non-conformance), Set Off and Back charge (Supplier owing to Buyer), Audit (books, records, accounts).

Attachment 1 Deliverable Goods List:
- List of Goods, Spare Parts and Delivery Dates.

Attachment 2 Technical Documents, Drawings and Attachments:
- "Specifications and Drawings"

Attachment 3 Lump Sum:
- All, some, or none of the Goods may be priced on a Lump Sum basis.

Attachment 4 Cost-Plus:
- All, some, or none of the Goods may be priced on a Cost-Plus basis.
- Supplier to provide the actual, verifiable and documented cost of all parts comprising, or consumed in the course of the production of, the Cost-Plus Goods (Actual Costs)).
- Includes a "Target Actual Cost" amount (estimate).

Attachment 5 Unit Price:
- Description of Goods, Unit of Measure, Price per Unit

Exhibit "C" Delivery, Key Dates and Packing, Shipping Requirements and Inspection:
- Delivery may be made to project sites or warehouses.
- Default DDP Incoterms 2010. Procurement to assess whether DDP, ExWorks, etc. are most appropriate / cost effective through competitive process.
- Buyer may prepare and provide to Supplier one or more supplementary schedules (the "Buyer Required Schedules") each for the Delivery of a specified portion of the Goods to accommodate Buyer's construction schedule.
- Supply by installment may be permitted. Temporary Storage may be requested.

Attachment 1 Schedule for Delivery of the Goods:
- List of Delivery Dates.
- Production Schedule.

Attachment 2 Labelling, Packing and Shipping Instructions:
- May be N/A.

Attachment 3 Quality Plan:
- May be N/A.

Attachment 4 Maximum Termination Cost:
- If Buyer terminates this Contract, the maximum liability of Buyer to Supplier at any time shall not exceed the Maximum Termination Amount as specified in Attachment 4 to this Exhibit.

Attachment 5 Form of Progress Report:
- As required.

Exhibit "D Seller Data Requirements:
- Buyer may require Supplier to provide: Shop drawings for all components within three weeks after execution of the Contract, Recommended maintenance instructions, Material data sheets, Performance curves showing load performance, Catalogue data, Quality control data books, Certified material test reports setting out the test details for the dimensional and mechanical proportions and chemical composition of a material according to the material specifications for same including as set out in the Specifications and Drawings and / or Mill certificates.

Exhibit "E" Performance Security:
- One, some, all, or none to be used if risk determines necessary for a single large Purchase Order.
- Owner shall reimburse Supplier $[●], constituting the actual cost incurred for obtaining the security.

Attachment 1 Performance Bond:
- a performance bond, as a guarantee of the performance of the Supplier's obligations in an amount equal to [50%] the Purchase Price (i.e., large Transmission Transformer) and from a surety registered to carry on business in the Commonwealth of PR.

Attachment 2 Parent Guarantee:
- guaranteeing performance of Supplier's obligations pursuant to the Supply Agreement.

Attachment 3 Irrevocable and Unconditional Letter of Credit:
- equal to fifteen (15%) percent of a Purchase Order's Purchase Price (i.e., large Transmission Transformer).

Exhibit "F" Government Contracting Requirements:
- Engaged in Business in Puerto Rico
- Engaged in Business outside of Puerto Rico

Exhibit "G" Change Order Forms:
- Supplier shall not, without prior written authorization, make a Change.

Attachment 1 Change Order Form:
- Change will only be paid for with executed Change Order.

Attachment 2 Change Order Proposal Form:
- LUMA may request preparation or Supplier may propose a Change.

Exhibit "H" LUMA Policies:
- Policies to be attached, as required (i.e., Vendor Code of Conduct).
- Supplier agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A".

9. Construction Contract (>$1M)

LUMA's Construction Contract (>$1M) is used for the largest and most complex project contracting. Often, these projects require a high degree of coordination between Contractors and LUMA where robust project management and contract administration practices and reporting are critical. Large transmission line and transmission substation construction are examples where the Construction Contract (>$1M) is most appropriate.

A summary of the structure, content and functionality of the Construction Contract (>1M) is as follows.

Construction Contract (>$1M)

Exhibit "A" General Terms and Conditions:

- Contractor agrees that all reports, surveys, studies, specifications, memoranda, drawings, other documents, work products and materials furnished by Contractor, or by any of its Personnel, to Owner or used in the performance of the Work (the "Project Documents") shall be the sole and exclusive property of Owner for use by Owner
- Owner's Representative shall be authorized to administer, represent and act for and on behalf of Owner in connection with this Contract, to exercise all the rights granted to Owner and to seek all the remedies available to Owner under this Contract on behalf of Owner, including: direct or approve Contractor's performance with respect to the Work, resolve any conflicts, reject any equipment, investigate the cause of any delay, order Contractor to suspend the Work.
- Contractor shall be responsible for security measures at the Site necessary to protect the Work and any Owner supplied items and materials in their care custody and control.
- Throughout performance of the Work, Contractor shall provide progress reports, cost baseline, change and trend reporting, monthly, weekly and daily updates, as required.
- Contractor shall obtain and pay for all permits required for the performance of the Work which are usual and necessary for Contractor's performance of the Work (including all construction and building permits necessary to facilitate temporary and permanent construction for the Work and all trucking and weigh scale permits).
- Owner and Owner's Representative shall, at all times, have access to review the Work and attend at the Site. Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by Owner and Owner's Representative and the inspection of the Work by authorized agencies.
- Warranty - In addition to all other covenants, representations, warranties and guarantees expressed in this Contract, Contractor warrants and guarantees with respect to each Facility and the Project that the Work and the Equipment incorporated into the Work (if any) shall be: performed in accordance with the Specified Industry Standard: that the Work and Equipment incorporated into the Work (if any) shall comply with the requirements of the Contract, including the Construction Specifications. Warranty Period is 2 years from Mechanical Completion.

Exhibit "B" Scope of Work:

- Project Location and General Description – Contractor responsible for its materials laydown yard at Site.
- To attend Owner orientation, submit a draft construction quality plan, waste management plan, project control plan.

Exhibit "C" Contract Price and Payment:

- "Contract Price" means the aggregate of all Lump Sum and / or Reimbursable and / or Unit Rate Work.

Attachment 1 Lump Sum:

- If Lump Sum, a Payment Milestone Schedule may be included with reference to the Work Schedule.

Attachment 2 Reimbursable:

- All-Inclusive Charge Out Rates – hourly personnel rates
- Equipment Costs – Contractor equipment rates
- Pass-Through Costs – 3rd Party costs to Contractor (without mark-up) for materials, subcontracts, travel, accommodation, etc.

Attachment 3 Unit Rate:

- If Unit Rate, estimated quantities, unit of measure, rate per unit and estimated cost required. A Target Contract Price may not be exceeded without approval.

Attachment 4 Excluded Costs:

- LUMA will not pay for entertainment, local meals and housing, insurance deductibles, Contractor's costs for permits, arbitrations, remedial work, penalties, expressly excluded in Contract, etc.

Exhibit "D" Insurance:

- Builders' Risk; Employer's Liability ($5M); Workers Compensation Insurance as required by Puerto Rico Compensation System for Work-Related Accidents Act, Act No. 45-1935; Owned and non-owned Auto ($2M); CGL ($5M); Prof. Liability ($2M); Pollution ($5M); Property for Contractor's property.

Exhibit "E-1" Work Schedule:
- Work Schedule for Lump Sum – Milestone Description, Date by which Milestone is to be achieved and actual amount to be paid for Milestone.
- Work Schedule for Reimbursable or Unit Rate – Milestone Description, Date by which Milestone is to be achieved and estimated amount to be paid for Milestone.

Exhibit "E-2" Project Program:
- The Project Programs attached to this Exhibit provide a sufficient level of detail needed to assess if Contractor shall be able to meet completion dates and any other Milestone Dates. The Project Programs are provided in a bar chart format. In addition, sufficient detail has been added such that a basic critical path can be analyzed. The Project Programs include key phases such as site preparation, foundations, steel work, equipment installation, mechanical and electrical work. The Project Programs also show key completion dates, milestones (including Milestones), key external restraints and any external influence acting on Contractor's schedule.

Exhibit "F-1" Construction Specifications:
- LUMA to insert Specifications (Line, Substation, etc.).

Exhibit "F-2" Drawings and Lists:
- LUMA to insert.

Exhibit "G" Government Contracting Requirements:
- Engaged in Business in Puerto Rico

Exhibit "H" Forms of Security:
- One, some, all, or none to be used if risk determines necessary.
- Owner shall reimburse Contractor $[●], constituting the actual cost incurred by Contractor for obtaining the security.

Attachment 1 Performance Bond:
- a performance bond, as a guarantee of the performance of the Contractor's obligations in an amount equal to [50%] the Target Control Amount and in a form and from a surety acceptable to Owner and from a surety registered to carry on business in the Commonwealth of Puerto Rico.

Attachment 2 Parent Guarantee:
- guaranteeing performance of Contractor's obligations pursuant to this Contract

Attachment 3 Irrevocable and Unconditional Letter of Credit:
- equal to fifteen (15%) percent of the Contract Price.

Exhibit "I" Change Order Forms:
- Contractor only has limited right to a Change Order under Exhibit "A" Terms and Conditions

Attachment 1 Change Order Form:
- Change will only be paid for with executed Change Order.

Attachment 2 Change Order Proposal Form:
- LUMA may request preparation or Contractor may propose a Change.

Exhibit "J" Work Site Conditions:
- Contractor acknowledges that the right of way Work Site may contain riparian areas, wetlands, dunes and sensitive areas and other environmental constraints and it shall, at its own cost, take the required precautions in relations to such constraints in performing the Work.

Attachment 1 Surface Conditions:
- Generally, describe the surface condition of the right of way Work Site in its natural state prior to any right-of-way preparation.

Attachment 2 Characteristics of Site:
- Geotechnical and / or environmental reports.

Exhibit "K" Owner Supplied Items:
- All items to complete Work are responsibility of Contractor unless identified in Contract.

Attachment 1 LUMA Material Withdrawal Form:
- Used by Contractor to withdraw Owner Supplied Items.

Exhibit "L" Subcontractor and Key Personnel:
- Table of those Subcontractors that have been approved by Owner.
- Table of those Key Personnel committed by Contractor.

Exhibit "M" HSE Obligations:
- HSEQ "High Risk" terms and conditions to be attached to the CSA.

Exhibit "N" LUMA Policies:
- Policies to be attached that apply to the scope of Work (i.e., Vendor Code of Conduct)
- Contractor agrees to comply with attached LUMA Policies under representations and warranties in Exhibit "A" General Terms and Conditions.

Exhibit "O" RFI Form:
- Contractor's form to use in the event of requested information from LUMA during a project.
- The RFI and any response to it by the Owner, does not and shall not, constitute a request for Change, Change Order, or an amendment to the Contract and relates solely to a request for information only.

Exhibit "R" Substantial Completion Form:
- List of deficiencies to be completed.

Exhibit "S" Notice to Proceed:
- Contractor has complied with all elements required prior to Owner allowing access to Work Site to begin Work.

10. Construction Contract (Up to $1M)

LUMA's Construction Contract (up to $1M) is used for single project work which may include small transmission and distribution maintenance or construction, vegetation management, civil and earthworks. While the critical concepts are captured in the General Terms and Conditions, this Contract does not contain an express set of Exhibits (RFI, Change Order Process, Contractor Security, Mechanical Completion, etc.) that may be required for larger construction project reporting and / or contract administration.

A summary of the structure, content and functionality of the Construction Contract (up to $1M) is as follows.

Construction Contract (Up to $1M)

Exhibit "A" General Terms and Conditions:
- Contractor to begin Work on the Commencement Date and complete Work on the Final Work Date as defined in the Work Schedule. LUMA to issue a notice of final completion to confirm.
- Change Order process is not as prescriptive as in other Agreements or Contracts (no template form provided in the Contract). However, no changes may be made without written authorization from Owner.
- Owner and its representatives shall, at all times, have access to review the Work, wherever the same may be in preparation or progress and attend at the Site, for the purpose of general inspection of the Work and the Site, respectively.
- Contractor may not delay without approval. Owner may delay in which case the Contractor is entitled to a Change Order.
- Notwithstanding any other remedies Owner may have hereunder, at Law, or otherwise, Contractor shall promptly correct or remedy any breach of its warranties hereunder or otherwise, or any of the Work which appears defective, at any time during a period commencing on the Effective Date until two (2) years after the Final Completion Notice is issued (the "Remedial Work").

Exhibit "B" Scope of Work:
- Contractor shall develop the Site and provide complete operating facilities that meet the requirements of this Contract, even though the exact required materials, equipment, services, or other items necessary for such completion are not specifically mentioned in this Exhibit or Contract.
- Description of the Work
- Contractor to pay for all permits unless identified to be paid for by Owner. Owner to deliver materials to Site "Owner Supplied Items".
- Insert list of Key Personnel, if required. No change without consent of Owner.

Attachment 1 Construction Specifications
Attachment 2 Drawing and Lists
Attachment 3 Material Withdrawal Form
- If Owner Supplied Items are provided

Exhibit "C" Contract Price: ▪ "Contract Price" means the aggregate of all Lump Sum and / or Reimbursable and / or Unit Rate Work.	**Attachment 1 Lump Sum:** ▪ If Lump Sum, a Payment Milestone Schedule may be included with reference to the Work Schedule. **Attachment 2 Reimbursable:** ▪ All-Inclusive Charge Out Rates – hourly personnel rates ▪ Equipment Costs – Contractor equipment rates ▪ Pass-Through Costs – 3rd Party costs to Contractor (without mark-up) for materials, subcontracts, travel, accommodation, etc. **Attachment 3 Unit Rate:** ▪ If Unit Rate, estimated quantities, unit of measure, rate per unit and estimated cost required. A Target Contract Price may not be exceeded without approval. **Attachment 4 Excluded Costs:** ▪ LUMA will not pay for entertainment, local meals and housing, insurance deductibles, Contractor's costs for permits, arbitrations, remedial work, penalties, expressly excluded in Contract, etc.
Exhibit "D" Insurance: ▪ Builders' Risk; Employer's Liability ($5M); Workers Compensation Insurance as required by Puerto Rico Compensation System for Work-Related Accidents Act, Act No. 45-1935; Owned and non-owned Auto ($2M); CGL ($5M); Prof. Liability ($2M); Pollution ($5M); Property for Contractor's property.	
Exhibit "E" HSE Obligations: ▪ HSEQ "High Risk" terms and conditions to be attached to the Construction Contract.	
Exhibit "F" Work Schedule: ▪ The Payment Milestone concept is not in this form of Contract. LUMA to confirm whether same to be reinserted based on particulars of specific Work. If concept to be reinserted, the Work Schedule and payment of the Contract Price will need to be tied to Milestone Dates.	
Exhibit "J" Government Contracting Requirements: ▪ Engaged in Business in Puerto Rico	
Exhibit "K" LUMA Policies: ▪ Policies to be attached that apply to the scope of Work (i.e., Vendor Code of Conduct) ▪ Contractor agrees to comply with attached LUMA Policies.	

3.5.1 Permissible Contract Pricing Models Specific to Federal Funding

The content, structure, purpose and usage of the procurement templates listed in this Section 3.5, or as may be developed by LUMA, comply with all Federal Funding requirements outlined in Sections 3.5.1 to 3.5.3 inclusive.

Pricing Model	Description
Fixed Price (or "Lump Sum")	A firm-fixed-price or lump sum contract provides for a price that is not subject to any adjustment based on the Vendor's cost experience in performing the contract. This contract type places upon the Vendor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the Vendor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.[2] Fixed price contracts may include an economic price adjustment, incentives, or both.
Cost Reimbursement	Cost-reimbursement type contracts provide for payment of certain incurred costs to the extent provided in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the

[2] FAR 16.202(1).

(or "Reimbursable")	Vendor may not exceed (except at its own risk) without the approval LUMA. They normally provide for the reimbursement of the Vendor for its reasonable, allocable, actual and allowable costs, with an agreed-upon fee. There is a limit to the costs that a Vendor may incur at the time of contract award and the Vendor may not exceed those costs without LUMA's approval or does so at its own risk.[3] In a cost-reimbursement contract, LUMA bears more risk than in a fixed price contract. There are many varieties of cost-reimbursement contracts, such as cost-plus-fixed-fee, cost-plus-incentive-fee and cost-plus-award-fee.
Time and Materials Contracts	LUMA may use a Time and Materials ("T&M") contract only after a determination that no other contract is suitable and when the contract includes a ceiling price that the Vendor exceeds at its own risk.[4] A time and materials contract is a contract whose cost to LUMA is the sum of: ▪ The actual cost of materials; [5] and ▪ Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.[6] Oversight – T&M type contracts provide no positive profit incentive to the Vendor for cost control or labor efficiency, which is why the Uniform Guidance requires the inclusions of a contract ceiling price. The Uniform Guidance also requires LUMA to assert a high degree of oversight to obtain reasonable assurance that the Vendor is using efficient methods and effective cost controls.[7] Discouraged use of T&M type contracts – LUMA discourages the use of T&M type contracts; however, where their use is unavoidable, limit the use of these contracts to a reasonable time based on the circumstances during which a clear scope of work cannot be defined. Unilateral right to terminate contract – LUMA will include a clause that ensures LUMA has the unilateral right to terminate the contract for convenience that will enable LUMA to award a follow-on fixed price or cost reimbursement contract type or take other action as appropriate. Recipient and Federal Awarding Entity Review – LUMA acknowledges that COR3 and the Federal Awarding Agency will review LUMA's determination to use a time and materials contract under a reasonable basis standard.

COST PLUS PERCENTAGE OF COST CONTRACTS

LUMA is prohibited from using the cost-plus percentage of cost and percentage of construction cost methods of contracting. A cost-plus a percentage of cost contract is considered to be a contract containing some element that obligates LUMA to pay the Vendor an amount (in the form of either profit or cost), undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs. The inclusion of a ceiling price does not make these forms of contracts acceptable.

[3] FAR 16.301(1).

[4] 2 CFR § 200.318(j)(1).

[5] 2 CFR § 200.318(j)(1)(i).

[6] 2 CFR § 200.318(j)(1)(ii).

[7] 2 CFR § 200.318(j)(2).

The following four-part analysis will be used determine if a certain contract is a prohibited cost-plus percentage of cost or percentage of construction cost contract:

- Payment is made on a pre-determined percentage rate;
- The pre-determined percentage rate is applied to actual performance costs;
- The Vendor's entitlement is uncertain at the time of contracting; and
- The Vendor's entitlement increases commensurately with increased performance costs.

The prohibition against a cost-plus percentage of cost and percentage of construction cost applies to subcontracts of the Vendor in the case where the prime contract is a cost-reimbursement type contract or subject to price redetermination.

3.5.2 Required Contract Provisions for Federal Funding

For Federally Funded procurements, LUMA must ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.[8] LUMA's contracts must contain the applicable contract clauses included in Appendix II of the Uniform Guidance and HUD regulations, which are set forth below.[9] Provisions listed below that are not standard in the procurement templates are attached as an schedule or exhibit to the procurement template used for the Federally Funded work.

Provision	Description
Remedies	Contracts for more than the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where Vendors violate or breach contract terms and provide for such sanctions and penalties as appropriate. Applicability - This requirement applies to all Federal financial assistance programs more than the current Simplified Acquisition Threshold.[10]
Termination for Cause and Convenience	All contracts more than $10,000 must address termination for cause and for convenience by the LUMA including how it will be affected and the basis for settlement. Applicability - This requirement applies to all Federally funded financial assistance programs and cooperative agreement programs, more than $10,000.[11]
Equal Employment Opportunity	All contracts that meet the definition of "Federally Assisted Construction Contract" must include the equal opportunity clause provided under 41 CFR § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*. Applicability - This requirement applies to all Federally funded financial assistance programs.[12]

[8] 24 CFR § 570.489(g).

[9] 2 CFR § 200.327.

[10] 2 CFR Part 200 Appendix II(A).

[11] 2 CFR Part 200 Appendix II(B).

[12] 2 CFR Part 200 Appendix II(C).

Third-Party Contract Provisions	LUMA's contracts will include the required third-party contract provisions required for third-party contracts under Federal law, regulation and executive order, including requirements for each third-party Vendor to extend applicable requirements subcontractors.
Davis Bacon Act and Copeland Anti-Kickback Act	Applicability - The Davis-Bacon and Copeland-Anti-Kickback Acts apply to CDBG grants as well as select FEMA grant programs, such as the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program. These Acts do not apply to other FEMA grant and cooperative agreement programs, such as FEMA's Public Assistance Grant Program. However, if LUMA's own procurement standards include equivalents to or adopt the Davis-Bacon and Copeland-Anti-Kickback Acts, under those circumstances, they should be applied by LUMA. All prime construction contracts in excess of $2,000 awarded by LUMA must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § § 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR § 5 (Labor Standards Provisions). In accordance with the statute, Vendors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Vendors must be required to pay wages not less than once a week. LUMA must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. LUMA must report all suspected or reported violations to the Federal Awarding Agency. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 CFR § 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each Vendor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. LUMA must report all suspected or reported violations to the Federal Awarding Agency.[13]
Contract Work Hours and Safety Standards Act	Where applicable (see 40 U.S.C. § 3701), all contracts awarded by LUMA in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. § § 3702 and 3704, as supplemented by Department of Labor regulations at 29 CFR § 5. Under 40 U.S.C. § 3702, each Vendor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

[13] 2 CFR Part 200 Appendix II(D).

	The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of property or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Applicability - This requirement applies to all Federally funded financial assistance programs and cooperative agreement programs.[14]
Rights to Inventions Made Under a Contract or Agreement	If the Federal award meets the definition of a "Funding Agreement" under 37 CFR § 401.2(a) and LUMA wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," LUMA must comply with the requirements of 37 CFR § 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements) and any implementing regulations issued by the Federal Awarding Agency. Applicability - This requirement does not apply to the FEMA's Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."[15]
Clean Air Act and the Federal Water Pollution Control Act	Contracts for amounts in excess of the Simplified Acquisition Threshold must contain a provision that requires the Vendor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § § 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency. Applicability - This requirement applies to all Federal financial assistance programs, more than the Simplified Acquisition Threshold.[16]
Debarment and Suspension	LUMA and Vendors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 CFR § 180 and the Department of Homeland Security's regulations at 2 CFR § 3000 (Non procurement Debarment and Suspension). These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration

[14] 2 CFR Part 200 Appendix II(E).

[15] 2 CFR Part 200 Appendix II(F).

[16] 2 CFR Part 200 Appendix II(G).

	that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. Applicability - This requirement applies to all Federal financial assistance programs.[17]
Byrd Anti-Lobbying Amendment	Vendors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Applicability - This requirement applies to all Federal financial assistance programs where Vendors apply or bid for an award of $100,000 or more.[18]
Telecommunications and Video Surveillance	Certain Telecommunications and Video Surveillance Services or Equipment are prohibited.[19]
Procurement of Recovered Materials[20]	LUMA and its Vendors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962).[21] The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Applicability - This requirement applies to all Federal financial assistance programs, consistent with the guidance found above.
Domestic Purchasing	Domestic Preferences for Procurements.[22] There is a preference to buy domestically and the requirements can be found in 2 CFR § 200.322.

[17] 2 CFR Part 200 Appendix II(H).

[18] 2 CFR Part 200 Appendix II(I).

[19] 2 CFR § 200.216.

[20] 2 CFR Part 200 Appendix II(J).

[21] 2 CFR § 200.322; 2 CFR § 200, Appendix II, ¶ J.

[22] 2 CFR § 200.322.

Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms	Requirements with respect to contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.[23] See 2 CFR § 200.321.
HUD Section 3	LUMA shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 75. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible and consistent with existing Federal, Puerto Rico and local laws and regulations, be given to low- and very low-income persons. Applicability - This requirement applies to HUD Federal financial assistance programs, consistent with the guidance found above.[24]
Architectural Barriers Act and the Americans with Disabilities Act	The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 and that meets the definition of residential structure as defined in 24 CFR 40.2, or the definition of building as defined in 41 CFR 101-19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR part 101-19.6. Applicability - This requirement applies to HUD Federal financial assistance programs, consistent with the guidance found above.[25]
Additional Contract Provisions	The Uniform Guidance authorizes a Federal Awarding Agency to require additional provisions for LUMA's contracts. FEMA, pursuant to this authority, requires or recommends the following: ▪ Changes – LUMA will include a changes clause in its contracts that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured. ▪ Access to Records - LUMA must place into their contracts a provision that all Vendors and their successors, transferees, assignees and subcontractors acknowledge and agree to comply with applicable provisions governing LUMA, COR3 and Federal access to records, accounts, documents, information, facilities and staff. ▪ DHS Seal, Logo and Flags - For contracts applicable to FEMA, LUMA must place in their contracts a provision that a Vendor shall not use the

[23] 2 CFR § 200.321.

[24] 24 CFR § 570.487(d).

[25] 24 CFR § 570.487(e).

	DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. ▪ Compliance with Federal Law, Regulations and Executive Orders - LUMA must place into their contracts an acknowledgement that the applicable Federal agency (e.g., FEMA and/or CDBG-DR) financial assistance will be used to fund the contract along with the requirement that the Vendor will comply with all applicable Federal law, regulations, executive orders and applicable Federal agency (e.g., FEMA and/or CDBG-DR) policies, procedures and directives. ▪ No Obligation by Federal Government - LUMA will include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to LUMA, Vendor, or any other party pertaining to any matter resulting from the contract. ▪ Program Fraud and False or Fraudulent statements or Related Acts - LUMA must include a provision in its contract that the Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and statements) applies to its actions pertaining to the contract.

3.5.3 Other Federal Funding Contract Requirements

BONDING REQUIREMENTS

There are bonding requirements for construction or facility improvement contracts exceeding the Simplified Acquisition Threshold. For clarity, if LUMA is procuring neither construction nor facility improvement services, then there are no bonding specified requirements imposed by the Uniform Guidance or COR3. The bonding requirements are as follows:[26]

- The Federal Awarding Agency / COR3 may accept LUMA's bonding policy and requirements provided that the Federal Awarding Agency / COR3 has decided that the Federal interest is adequately protected.[27] This means that the Federal Awarding Agency will approve the bonding policy and requirements of a Recipient (e.g., COR3) and that the Recipient will approve the bonding policy and requirements of its Subrecipients (e.g., PREPA).
- If the Federal Awarding Agency / COR3 has not made such a determination, then LUMA must meet the bid guarantee, performance bond and payment bond requirements below:[28]
    - Bid Guarantee - Each bidder must provide a bid guarantee equivalent to five percent of the bid price.
    - Performance Bond (or "Security")- There must be a performance bond on the part of the Vendor for 100% of the contract price.
    - Payment Bond - There must be a payment bond on the part of the Vendor for 100 percent of the contract price.

[26] 2 CFR § 200.326.
[27] 2 CFR § 200.326.
[28] 2 CFR § 200.326.

CONTRACT AMENDMENTS

Existing contracts may require changes or amendments. For example, during performance, changes may be required in order to fix inaccurate or defective specifications, react to unforeseen circumstances, or otherwise modify the work to ensure the contract meets project requirements. In the event an amendment to a Federal Funding contract is required, the following considerations are considered:

Consideration	Action
LUMA Responsibility **Federal Funding Team**	LUMA is responsible for issuing, evaluating and making necessary decisions involved in any change to its third-party contracts and any change orders it may issue. LUMA is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. The Federal Funding Team will confirm Federal compliance.
Cardinal Change	A Cardinal Change is considered a non-competitive award. The Federal Funding Team evaluates whether LUMA meets the necessary conditions precedent for using the procurement through non-competitive proposal method. For clarity, a change within the scope of the contract (or an “in-scope” change) is not a Cardinal Change. Nothing restricts LUMA from exercising reasonable freedom to make in-scope adjustments contemplated fairly and reasonably by the parties when they entered into the contract.
Evaluation of Change	In order to determine if a change is a non-competitive Cardinal Change, the Federal Funding Team must evaluate whether the change is “within the general scope of the contract” and “within the scope of competition” and advise the End User accordingly. ▪ Scope of the Contract - Compare the total work to be performed by the Vendor under the proposed change to the work called for by the original contract. This includes evaluating the nature of the work being performed and the amount of effort the Vendor is required to perform in order to evaluate the cumulative impact on the contract’s quantity, quality, costs and delivery terms. ▪ Scope of Competition - Evaluate whether there is a material difference between the modified and original contract that was originally competed, to include considering whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes at issue or whether the changes are of a nature that potential offerors would have reasonably anticipated them.

4.0 Part C. Policies and Practices

4.1 Procurement & Contracting Practice

POLICY

LUMA believes in working with Vendors (goods suppliers and service contractors) who demonstrate high standards of ethical business conduct. LUMA will not knowingly work with Vendors who operate unethically, unsafely or who violate the law, compete dishonestly or use unfair business practices. Any Vendor conduct that does not align with LUMA’s standards is taken seriously and may lead to the termination of contractual

relationships. Employees and representatives will not be retaliated against for raising in good faith, concerns about the practices of non-compliant Vendors.

LUMA carries out appropriate due diligence prior to engaging with Vendors operating in high-risk regions of the world and/or who perform high-risk services on its behalf and as agent for PREPA. LUMA strives to bring the best possible value through strategic sourcing and procures goods and services which offer the best combination of price, quality, safety and level of service.

PURPOSE

The purpose of this *Procurement & Contracting Practice* is to establish common governance for the purchasing of goods and services for LUMA, as agent for PREPA over the course of the Interim Period, as stipulated in the Supplemental Terms Agreement and the 15-year O&M Agreement.

SCOPE

The *Procurement & Contracting Practice* applies to all directors, officers, agents and employees of LUMA in any situation where they are involved in a purchasing process, whether as requisitioners or specifiers, purchasers or negotiators or those who validate or authorize payment. Purchasing includes all procurement and sourcing activities, whether with Federal or Non-Federal Funds, including the lifecycle of goods or service agreements and the end-of-life disposal of materials which have been procured.

The *Procurement & Contracting Practice* does not apply to costs that cannot be reduced or negotiated due to policy or law and include, but are not limited to, employee reimbursements, utilities, taxation, membership fees, sponsorships, bank fees, donations or statutory payments. The *Procurement & Contracting Practice* shall be followed in every case, to ensure that the Vendor is selected objectively. Approved purchasing agreements, including approved templates or purchase orders, will be used wherever possible to ensure that the company's (i) interests are fully protected and (ii) initiatives are appropriately implemented.

4.1.1 Procurement Methods

LUMA must use one of four procurement methods to obtain goods and / or services on behalf of PREPA:

- Micro-Purchases;
- Small Purchase Procedures;
- Sealed Bids (Invitations to Tender or ITT); and
- Competitive Proposals (Request for Proposals or RFP).

Multiple factors, including type of goods or services required, cost and Federal, Puerto Rico and local requirements will determine the proper procurement method. The applicability and procedural requirements are in this section. The key criteria and components of each these methods are summarized in the figure below.

Procurement by Micro-Purchases	Procurement by Small Purchase Procedures	Procurement by Sealed Bids (Formal Advertising)	Procurement by Competitive Proposals (Formal Advertising)
Applies to goods & services less than the micro-purchase threshold	Applies to goods & services less than the simplified acquisition threshold	Applies to goods & services over the simplified acquisition threshold	Applies for contracting services for which pricing should not be the only factor.
Competition not required	Minimum of 3 quotes required	Minimum of 3 bids required	Adequate competition required
PO or Contract	Independent cost estimate	Cost or price analysis required	Cost or price analysis required
	Award to lowest-priced responsive contractor	Award to lowest-priced responsive contractor	Award to low-price or best value
	PO or Contract	PO and Contract	PO And Contract

MICRO- PURCHASES

Micro-purchases comprise a subset of LUMA's small purchase procedures and LUMA uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.[29]

LUMA has determined based on internal controls and its evaluation of risk, an appropriate micro-purchase threshold which does not exceed the established FAR threshold and is acceptable in accordance with Puerto Rico's procurement laws.[30] Based on COR3's assessment of PREPA as a high-risk subrecipient, LUMA's Micro-purchase threshold is $10,000.00 USD which is in accordance with the current Uniform Guidance threshold. However, in accordance with 2 CFR § 200.320, LUMA may be able to increase its Micro-purchase threshold, up to $50,000.00 USD, once it can document a self-certification that contains clear justification of its achievement of either:

- Receiving a qualification as a low-risk auditee, as defined by the criteria found in 2 CFR § 200.520, for their most recent audit; or
- LUMA conducts an institutional risk assessment to identify, mitigate and manage financial risks.

Further, LUMA may be able to increase its Micro-purchase threshold payable with Federal Funds beyond $50,000.00 USD with Federal Awarding Agency / Recipient approval. Once LUMA completes the process described above under 2 CFR § 200.320 and LUMA is allowed to increase the Micro-purchase threshold to up to $50,000, it may use the same threshold for non-federal purchases

Requirements	Description

[29] 2 CFR § 200.320(a).

[30] 2 CFR § 200.320(a)(2)(ii).

Applicability	LUMA is authorized to use micro-purchase procedures to purchase goods and services where the aggregate dollar amount of the goods or services does not exceed the micro-purchase threshold, unless otherwise required to adhere to the *more restrictive* procurement methods.[31]
Competition	LUMA may award micro-purchases without soliciting competitive quotations if LUMA considers the price to be fair and reasonable. To the extent practical, LUMA must distribute micro-purchases equitably among qualified Vendors.[32]
Prohibited Divisions	LUMA must not split a larger procurement merely to lower the cost of a procurement to less than the micro-purchase threshold to take advantage of the streamlined procurement process associated with this method.[33]
Contract Documentation	Contract or purchase order required.
Vendor Responsibility	LUMA must award contracts only to responsible Vendors having the ability to perform successfully under the terms and conditions of the contract or purchase order.[34]

SMALL PURCHASES

LUMA may use relatively simple and informal small procurement procedures (not publicly advertised and use of Request for Quotations or RFQ) when procuring goods or services if the aggregate dollar amount of the goods or services is higher than the Micro-purchase threshold but does not exceed the Simplified Acquisition Threshold of $250,000.00 USD. LUMA has determined based on internal controls and its evaluation of risk, that the appropriate small purchase threshold is the same as the Simplified Acquisition Threshold of $250,000.00 USD.

Requirements	Description
Applicability	Small purchase procedures may be used to acquire services and property where the aggregate dollar amount of the acquisition does not exceed the Simplified Acquisition Threshold unless otherwise required to adhere to the *more restrictive* procurement methods.[35] The contracts should be fixed price or not-to-exceed cost-reimbursement contracts with assurances that the scope of work can be completed for less than the Simplified Acquisition Threshold.
Competition	LUMA must obtain price or rate quotations from at least 3 qualified Vendors. In the event 3 quotations are not received, documentation evidencing seeking of at least 3 quotes and why 3 were not obtained.

[31] 2 CFR § 200.320(a)(1).
[32] 2 CFR § 200.320(a)(1).
[33] FAR 13.003(c)(2).
[34] 2 CFR § 200.318(h).
[35] 2 CFR § 200.320(a)(2)(i).

Prohibited Divisions	LUMA must not split a larger procurement merely to bring the cost of a procurement under the Simplified Acquisition Threshold. Similarly, LUMA may not intentionally limit the size of a procurement to only a portion of a known requirement in order to lower the cost of a procurement to under the Simplified Acquisition Threshold and then, to fulfill the entire requirement, issue a follow-on change order that brings the procurement above the Simplified Acquisition Threshold.[36]
Documentation	LUMA must document the estimate of the costs of the procurement that indicates the total estimated cost to fall below the Simplified Acquisition Threshold. LUMA must document its determination for the successful bidder. If the lowest-priced bidder is determined not responsible, LUMA must also document its non-responsibility determination. LUMA must document any contract modifications. LUMA must document the procurement history with the appropriate record keeping requirements set out in this Procurement Manual.
Contract Documentation	Contract or purchase order required.
Vendor Responsibility	LUMA must award contracts only to responsible Vendors having the ability to perform successfully under the terms and conditions of the solicitation and contract.[37]
Change impacting Simplified Acquisition Threshold	It may be the case that LUMA properly used small purchase procedures to acquire services or property below the Simplified Acquisition Threshold, but later needs to modify the contract to an amount above the threshold to cover unforeseen circumstances or an unexpected overrun in the quantity of work. Such a change may be permissible under certain circumstances, particularly where such a change falls within the scope of the original contract. In these situations, LUMA must document its justification as to why it chose to not competitively bid the contract amendment. ▪ In the case of Federal Funding, LUMA acknowledges that COR3 will use this justification, along with the independent LUMA estimate completed before the procurement, in reviewing whether LUMA's decision to use small purchase procedures was permissible.

SEALED BIDS (FORMAL ADVERTISING)

Sealed bidding (Invitations to Tender / Bid or ITT / ITB) is a permissible method of procurement where bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.[38] Formal advertising (sealed bidding or competitive proposals) is required for the acquisition of goods and construction services that exceed the Simplified Acquisition Threshold or exceed a lower

[36] FAR 13.003.

[37] 2 CFR § 200.318(h).

[38] 2 CFR § 200.320(b)(1).

threshold mandated by applicable Puerto Rico or local law.[39] Sealed bidding is preferred for procuring construction when the following conditions apply:[40]

- Specification: A complete, adequate and realistic specification or purchase description is available;
- Adequate Price Competition: Two or more responsible bidders are willing and able to compete effectively for the business;
- Fixed Price Contract: The procurement lends itself to a firm fixed price contract; and
- Price Determinative: The successful bidder can be selected principally based on price, which includes the price-related factors included within the solicitation. Other than the responsibility determination, LUMA may not select a Vendor based on non-price related factors.

Requirements	Description
Public Advertisement	LUMA must publicly advertise the Invitation to Tender / Bid.[41]
Affirmative Steps	LUMA must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises and labor area surplus firms are used, when possible.[42]
Solicitation from Adequate Sources	LUMA must solicit Bids from an adequate number of known Vendors, providing them with sufficient response time before the date set for opening the Bids.[43]
Invitation to Bid	The ITT must define the items or services for the Bidder to properly respond and must include any specifications and pertinent attachments.[44]
Bid Opening	LUMA must open the Bids with all Tenderers afforded an opportunity to attend at the time and place prescribed in the ITT.[45]
Fixed Price Contract	LUMA will make a firm fixed price contract in writing to the lowest responsive and responsible Bidder.[46] LUMA may include the following: ▪ Price-Related Factors: Where specified in the RFx Package, LUMA may consider discounts, transportation costs and life cycle costs in deciding which Bid is lowest. LUMA will only use payment discounts to decide the low Bid when prior experience indicates such discounts are typical.[47] ▪ Incentives and Economic Adjustments: COR3 considers a fixed price incentive contract or inclusion of an economic price adjustment provision in a fixed price contract as permissible if LUMA documents a rational basis for using those forms of fixed price contracts.

[39] 2 CFR § 200.320(b).
[40] 2 CFR § 200.320(b)(1).
[41] 2 CFR § 200.320(b)(1)(ii)(A).
[42] 2 CFR § 200.321(a).
[43] 2 CFR § 200.320(b)(1)(ii)(A).
[44] 2 CFR § 200.320(b)(1)(ii)(B).
[45] 2 CFR § 200.320(b)(1)(ii)(C).
[46] 2 CFR § 200.320(b)(1)(ii)(D).
[47] 2 CFR § 200.320(b)(1)(ii)(D).

Rejection of Bid	LUMA may reject any or all Bids if it documents a sound reason for the rejection.[48]
Vendor Responsibility	LUMA must award contracts only to responsible Vendors having the ability to perform successfully under the terms and conditions of the solicitation and contract. LUMA must consider such matters as Vendors integrity, compliance with public policy, record of past performance and financial and technical resources.[49]
Documentation	LUMA must document the procurement history with the appropriate record keeping requirements set out in the Procurement Manual.[50]
Contract Documentation	Contract and associated purchase order required.

COMPETITIVE PROPOSALS (FORMAL ADVERTISING)

Procurement by the competitive proposal (Request for Proposals or RFP) method is an acceptable form of procurement, where more than one Vendor submits an offer and LUMA awards either a fixed price or cost-reimbursement type contract.[51]

LUMA will generally use this method when conditions are not appropriate for the use of sealed bids,[52] such as when LUMA cannot base the contract award exclusively on price or price-related factors due to the nature of the service or property to be acquired and negotiations with Proponents may be appropriate. When LUMA's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection and weighs against the need to use this procurement method. On the other hand, the less definitive the requirements, the more development work required, or the greater the performance risk, the more that technical capability, past performance and prior experience considerations may play a dominant role in source selection and weigh in favor of this procurement method. This method is used for professional service contracts exceeding the Simplified Acquisition threshold.

Requirements	Description
Public Advertisement	LUMA must publicly advertise the RFP.[53]
Affirmative Steps	LUMA must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises and labor area surplus firms are used when possible.[54]

[48] 2 CFR § 200.320(b)(1)(ii)(E).
[49] 2 CFR § 200.318(h).
[50] 2 CFR § 200.318(i).
[51] 2 CFR § 200.320(b)(2).
[52] 2 CFR § 200.320(b)(2).
[53] 2 CFR § 200.320(b)(2)(i).
[54] 2 CFR § 200.321(a).

Solicitation from Adequate Sources	LUMA must solicit Proposals from an adequate number of qualified sources,[55] providing them with sufficient response time before the date set for the receipt of Proposals.[56] The facts and circumstances of the procurement will determine the number of adequate sources. LUMA has defined an adequate number of qualified sources as three.
Evaluation Criteria	The Request for Proposals (RFP) must identify all evaluation factors and their relative importance.[57] When developing evaluation factors, LUMA should consider: The evaluation factors for a specific procurement should reflect the subject matter and elements that are most important to LUMA. The evaluation factors may include such things as technical design, technical approach, length of delivery schedules, past performance and quality of proposed personnel. LUMA may use any one or a combination of source selection approaches as permitted under Puerto Rico laws, regulations and procedures and these approaches will often differ based on the relative importance of price/cost factors and non-price/cost factors for the procurement. LUMA may award a contract to the Proponent whose Proposal offers the “best value” to LUMA, as agent for PREPA. The solicitation must, in addition to the items described above, inform potential Proponents that the award will be made on a “best value” basis, which should include a statement that LUMA reserves the right to award the contract to other than the lowest-priced offeror. The RFP must identify evaluation factors and their relative importance but need not disclose numerical or percentage ratings or weights.
Consideration	LUMA must consider any response to publicized RFP to the maximum extent practical.[58]
Evaluation Methodology	When evaluating proposals, LUMA considers all evaluation criteria specified in its RFx Package and evaluates offers only on the evaluation factors included in the solicitation documents. LUMA may not change its evaluation criteria after receipt of proposals without re-opening the solicitation. In awarding a contract that will include options, LUMA will evaluate proposals for any option quantities or periods contained in the solicitation.
Award	LUMA must make the award to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.[59] Price must be a factor evaluated by LUMA unless the procurement is for architectural/engineering professional services[60] and other professional services.

[55] 2 CFR § 200.320(b)(2)(i).
[56] 2 CFR § 200.319(d).
[57] 2 CFR § 200.320(b)(2)(i).
[58] 2 CFR § 200.320(b)(2)(i).
[59] 2 CFR § 200.320(b)(2)(iii).
[60] 2 CFR § 200.320(b)(2)(iv).

Vendor Responsibility	LUMA must award contracts only to responsible Vendors possessing the ability to perform successfully under the terms and conditions of the solicitation and contract. LUMA must consider such matters as Vendor integrity, compliance with public policy, record of past performance and financial and technical resources.[61] LUMA must document its responsibility determination for the winning Vendor and must (if applicable) also document its determination that the otherwise lowest bidder is not responsible.
Documentation	LUMA must document the procurement history with the appropriate record keeping requirements set out in the Procurement Manual.[62]
Contract Documentation	Contract and an associated purchase order are required.

NOTE: Architectural and Engineering Services. LUMA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering services.[63] It is permissible that price is not used as an evaluation criterion but may only be used in procurement of architectural / engineering services. This method cannot be used to purchase other types of services though architectural/engineering firms are a potential source to perform the proposed effort.[64]

In the event of architectural / engineering RFP without pricing as an evaluation criterion, LUMA evaluates Vendors' qualifications and selects the most qualified Proponent for award, subject to negotiation of fair and reasonable compensation.[65] Failing such negotiation:

- LUMA may conduct negotiations with the next most qualified Proponent; and
- Then, if necessary, LUMA will conduct negotiations with successive Proponents in descending order until contract award to the offeror whose price LUMA believes is fair and reasonable.

COR3 considers the following to fall within the scope of architectural / engineering services:

- Architectural or engineering services, as defined by Act 173 of August 12, 1988, and which the State law requires such services to be performed or approved by a registered architect or engineer.
- Architectural or engineering services associated with design or construction of real property.
- Other architectural or engineering services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

[61] 2 CFR § 200.318(h).
[62] 2 CFR § 200.318(i).
[63] 2 CFR § 200.320(b)(2)(iv).
[64] 2 CFR § 200.320(b)(2)(iv).
[65] 2 CFR § 200.320(b)(2)(iv).

4.1.2 Procurement Method Thresholds and Contract Execution

Procurement & Contracts is responsible for managing the financial and administrative aspects of purchasing agreements, contracts and purchase orders; the End Users (operational unit(s) or beneficiary departments) are responsible for managing the operational aspects.

All purchases of materials and services are made in three ways (Spend Channels). The following outlines the number of quotes required before purchasing materials or services through the associated Spend Channel.

Goods (paper, building materials, small equipment, etc.)				
Purchase Amount	Up to $10K	>$10K-$250K	>$250K-$10M	>$10M
2 CFR Classification	**Micro-Purchase**	**Small Purchase**	**Large Purchase**	
Minimum Offers Received	1	3 Quotes	3 Sealed Bids (ITT) or Proposals (RFP)	
Invoice / Receipt	Yes			
Purchase Order	Yes			
Contract	Yes			
Contract Registration #	Yes			
FOMB Approval	No			Yes

Construction (repair, maintenance, reconstruction, or improvement work)				
Purchase Amount	Up to $2K	>$2K-$250K	>$250K-$10M	>$10M
2 CFR Classification	**Micro-Purchase**	**Small Purchase**	**Large Purchase**	
MinimumOffers Received	1	3 Quotes	3 Sealed Bids (ITT) or Proposals (RFP)	
Invoice / Receipt	Yes			
Purchase Order	Yes			
Contract	Yes			
Contract Registration #	Not Required	Yes		
FOMB Approval	No			Yes

Architectural & Engineering and Professional Services (i.e., Environmental, Consulting, etc.) *See Section 4.1.3 Exceptions to Competitive Bidding and Formal Procurement					
Purchase Amount	Up to $5K	>$5K-$10K	>$10K-$250K	>$250K-$10M	>$10M
2 CFR Classification	**Micro-Purchase**		**Small Purchase**	**Large Purchase**	
Minimum Offers Received	1		3 Quotes	3 Sealed Bids (ITT) or Proposals (RFP)	
Invoice / Receipt	Yes				
Purchase Order	Yes				
Contract	Yes				
Contract Registration #	Not Required		Yes		

FOMB Approval	No	Yes

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Lease or rental of heavy equipment (no operator)				
Purchase Amount	Up to $10K	>$10K-$250K	>$250K-$10M	>$10M
2 CFR Classification	**Micro-Purchase**	**Small Purchase**	**Large Purchase**	
Minimum Offers Received	1	3 Quotes	3 Sealed Bids (ITT) or Proposals (RFP)	
Invoice / Receipt	Yes			
Purchase Order	Yes			
Contract	Yes			
Contract Registration #	Yes			
FOMB Approval	No			Yes

NOTES:

1. **Purchase Orders Generally**. Any purchase or service order made by any agency, department, public corporation, or instrumentality of Puerto Rico shall: (i) be prospective; (ii) identify the budget items from which said purchase or service order shall be paid; and (iii) be furnished to the Vendor prior to rendering such services, so the expenses incurred under the purchase order are included in the budget. Any purchase or service order that fails to meet the requirements established herein shall considered null and void.
2. **Non-Contract Purchase Orders** (or standalone purchase orders) are efficient commercial instruments that are legally binding and are not associated with formal written contracts. Non-Contract Purchase Orders are not physically signed by either LUMA or the counterparty. Legal execution of Non-Contract Purchase Orders is managed by Purchase Order Approval Limits in the System. Non-Contract Purchase Orders: (i) must include sufficient item descriptions and associated unit prices (ii) contain appropriate terms and conditions as outlined in the Procurement Manual; and (iii) may only be created as a result from a requisition in the System approved through the Limits of Authority.
3. **Contract Purchase Orders** are Purchase Orders that have been created as the result of a formal written contract or agreement between PREPA as Owner and LUMA as agent and a counterparty. Subject to required approvals, contracts and agreements are executed pursuant to LUMA's Contract Execution Authority.

4.1.3 Exceptions to Competitive Bidding and Formal Procurements

Notwithstanding anything to the contrary set forth herein, the following exceptions apply:

4.1.3.1 Exceptions to Competitive Bidding:

1. The item is available only from a single source; or

2. After solicitation of a number of sources, competition is determined inadequate; or

3. The acquisition of goods or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold; or

4. The immediate delivery of equipment, materials, effects, performance of services, or construction works are required due to an Emergency or public Exigency but are not available through pre-existing or pre-positioned contracts and the circumstances will not permit a delay resulting from publicizing and completing a competitive solicitation as required under this Procurement Manual (Refer to Section 2.2.4); or

5. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

6. Professional, expert, highly technical, or specialized services ("Professional Services") are required, and these are not contracted to be compensated with Federal Funds or are otherwise not required to be competitively procured by a Federal awarding agency.

In the case of any of the above exceptions, no LUMA parent company, affiliates or subsidiaries may be contracted, except for Professional Services. The exception will also be available for other services necessary during the first twelve (12) months of operations by LUMA to complete the knowledge transfer and support during this initial period of operations.

4.1.3.2 Exceptions to Formal Procurement:

1. When in the best interest of good administration, goods or services that are not eligible for Federal Funding may be procured through a non-competitive procurement when:

    a. The award is only to a Pre-Qualified Vendor;

    b. The award is not to a LUMA parent company, affiliate or subsidiary;

    c. The Total Contract Value does not exceed $2.5M in the aggregate or if the Total Contract Value exceeds $2.5M but is less than or equal to $5M in the aggregate, P3A, acting reasonably, provides its approval to award;[66] and

    d. Written justification is provided as to why it is in the best interest of good administration to use non-competitive procurement.

2. When in the best interest of good administration, LUMA may procure goods or services that are not eligible for Federal Funding through an informal procurement process to more than one Vendor when:

    a. Invitations to Bid or submit Proposals are only to Pre-Qualified Vendors;

    b. Invitations to Bid or submit Proposals are not sent to a LUMA parent company, affiliate or

[66] P3A's approval will be provided within five (5) days of the receipt of LUMA's request for the Exception to Formal Procurement. In the event P3A does not provide it's approval or rejection within five (5) days, approval will be deemed to have been given.

subsidiary; and

c. The Total Contract Value does not exceed $5M in the aggregate.

3. When spare parts, accessories, equipment or supplementary services are required to support, maintain, repair, or provided for effective operation of previously supplied goods or contracted services; or

4. Operational fuel purchases.

Exceptions to Competitive Bidding and Formal Procurement in this section 4.1.3.2 may only be employed when the cost of the goods or services are not eligible to be submitted for Federal Funding. Notwithstanding the Exceptions listed above, LUMA shall ensure that any work related to the T&D System which may be submitted for Federal Funding shall be performed in compliance with the applicable procurement rules set forth in 2 CFR Part 200.

4.2 Other Procurement Standards

4.2.1 General Competitive Bidding / Solicitation Requirements

LUMA must ensure that all competitive bids or solicitations meet the following requirements:[67]

Requirements	Description
Clear Description	The competitive bid or solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
Nonrestrictive Specification	The description of the technical requirements must not contain features that unduly restrict competition.
Qualitative Requirements	The description of the technical requirements may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. LUMA is to avoid detailed product specifications if possible, including: • Brand name or equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, LUMA may use a “brand name or equal” description as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by Proponents / Bidders must be clearly stated. • Preference for performance specifications. Using performance specifications, LUMA should describe what the product is able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.

[67] 2 CFR § 200.319.

Proponent / Bidder Requirements	The solicitation must identify all requirements which the Proponents / Bidders must fulfill and all other factors to be used in evaluating Proposals / Bids. If using the procurement through Competitive Proposals (RFP) method, LUMA should state if it is reserving its right to award the contract to other than the lowest priced Proponent.
Federal Funding	The RFx Package must acknowledge LUMA's use of Federal Funding for the contract. LUMA ensures that all solicitations include all clauses required by Federal statutes, Executive orders and implementing regulations.[68]
Contract Type	The RFx should state the type of contract that will be awarded.
Necessity	LUMA must avoid acquisition of unnecessary or duplicative items.[69]
Vendors involved in the RFx development are Prohibited from Bidding	To ensure objective Vendor performance and eliminate unfair competitive advantage, Vendors that develop or draft specifications, requirements, statements of work, or RFPs or ITTs must be excluded from competing for such procurements.[70]
Debarred or Suspended Vendors	LUMA will not contract with Vendors that are on the debarred or suspended Vendors list. LUMA will obtain certification from any transaction participant that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation.[71]
Procurement Dispute Resolution	Refer to the Procurement Manual, Section 4.4 Dispute Resolution.[72]
PR Intergovernmental Agreements	LUMA may enter into Puerto Rico and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services to promote greater economy and efficiency and to promote cost-effective use of shared services across the Federal Government. LUMA must ensure competition requirements are met with applied documented procurement procedures using strategic sourcing, shared services and other similar procurement arrangements.[73]
Excess and Surplus Federal Property	LUMA may consider using excess and surplus Federal property in lieu of purchasing new equipment and property when feasible and the use of such property reduces project costs.[74]
Contract Value Engineering Clauses	LUMA may use contract value engineering clauses for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is used as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.[75]

[68] 24 CFR § 570.489(g).
[69] 2 CFR § 200.318(d).
[70] 2 CFR § 200.319.
[71] 2 CFR § 200.318(h); see also 2 CFR §200.214 Suspension and Debarment.
[72] 2 CFR § 200.318(k).
[73] 2 CFR § 200.318(e).
[74] 2 CFR § 200.318(f).
[75] 2 CFR § 200.318(g).

Lease vs. Purchase	The procurement procedures must ensure that, where appropriate, LUMA makes an analysis of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.[76]

4.2.2 Vendor Selection

LUMA has a responsibility to select a Vendor that can successfully perform the contract at a reasonable cost. Additional factors, such as ensuring Minority, Small, Women's and Labor Surplus Area Business Participation will affect the award determination. This Section outlines LUMA's its practices with respect to:

- Independent Cost Estimates (Estimated Contract Value – Contract Request Form);
- Minority, Small, Women's and Labor Surplus Areas Business Participation;
- HUD Section 3;
- Vendor Qualifications and Duties; and
- Cost or Price Analysis.

4.2.2.1 Develop the Independent Cost Estimate

LUMA will develop an independent estimate for all contract work that is anticipated to exceed the micro-purchase threshold.[77] The purpose of the independent cost estimate is to provide a tool to determine if pricing is reasonable and to help determine whether Proponents / Bidders have understood the scope of work as outlined. Below are guidelines for how this independent cost estimate is to be determined:

- Must be independent of any potential Proponent or Bidder. They may be prepared by LUMA, End Users, other knowledgeable person, or a third-party cost estimator, as appropriate.
  - Should be developed prior to Proposals / Bids.
  - At times, Vendors and consultants submit Change Order proposals that include pricing; LUMA will seek to avoid such situations by instructing Vendors and consultants not to include pricing with change order proposals.
  - Where a Change Order proposal includes pricing, LUMA will seek an estimate from someone without knowledge of the Vendor's price proposal.
- Must be sufficient detail to be useful.
  - Estimates for items such as goods can be simply an estimated amount, e.g., a piece of heavy equipment for which there is a competitive market may have a "sticker" price. It is sufficient for the estimate to contain the purchase price without more detail. Where the equipment is custom built, the estimate should be a build-up of labor, materials, overhead and profit to aid in analysis of price reasonableness and contract negotiation.
  - Estimates for construction contracts should be in sufficient detail to allow for careful evaluation of bids.
  - Estimates for construction management services should be in the same detail as that which firms will be asked to base their proposals, e.g., fee for pre-construction services, General Condition's amount, fee for services, etc.
  - FEMA has established cost curves which are provided in its Public Assistance Cost Estimating Tool for Engineering and Design Services (December 2015) for various kinds of construction. FEMA's current Public Assistance Program and Policy Guide does not reference

[76] 2 CFR § 200.318(d).

[77] 2 CFR § 200.324(a).

these curves; however, LUMA may still use these older curves to develop an independent cost estimate for Architectural and Engineering (A/E) services. For change order work, LUMA's A/E contracts must provide that A/E services may not exceed a specified percentage of the construction costs. If the percentage is within the applicable FEMA cost curve, the percentage will serve as the independent cost estimate.

- Estimates of other professional services should be based on estimates of hours of effort and rates for various tasks.

4.2.2.2 Contracting with SBE, MBE, WME and Labor Area Surplus Firms

LUMA shall take appropriate affirmative action to ensure that small business enterprises (SBE), minority business enterprises (MBE), women's business enterprise (WBE) and labor surplus area businesses have sufficient opportunity to participate in all procurement processes financed in whole or in part with Federal funds.[78] LUMA shall, consistent with applicable Federal and Puerto Rico laws and regulations, establish goals for the participation of the above-referenced businesses in the appropriate Federal grant program policies and procedures. These steps are in addition to full and open competition and must include, at a minimum, the following six affirmative steps:[79]

1. Solicitation Lists. LUMA must place SBE, MBE, WME and Labor Area Surplus Firms on solicitation lists.
2. Solicitations. LUMA must assure that it solicits SBE, MBE, WME and Labor Area Surplus Firms whenever they are potential sources.
3. Dividing Requirements. LUMA must divide total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by SBE, MBE, WME and Labor Area Surplus Firms.
4. Delivery Schedules. LUMA must establish delivery schedules, *where the requirement permits*, which encourages participation by SBE, MBE, WME and Labor Area Surplus Firms.
5. Obtaining Assistance. LUMA must use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Prime or General Contractor Requirements. LUMA must require the prime contractor, if subcontracts are anticipated or let, to take the affirmative steps described in 2 CFR § 200.321(b)(6).

4.2.2.3 HUD Section 3

Except for the purchase of goods supply contracts, LUMA's fully or partially funded HUD projects are required to apply Section 3 objectives.[80]

A *Section 3 project* applies to housing rehabilitation, housing construction and other public construction projects assisted under HUD programs that provide community development financial assistance when the total amount of assistance for the project exceeds a threshold of $200,000. The projects are the site or sites

[78] 2 CFR § 200.321(a).
[79] 2 CFR § 200.321(b).
[80] 24 CFR § 75.3.

together with any building(s) and improvements located on the site(s) that are under common ownership, management and financing.[81]

LUMA must ensure contracts for work awarded in connection with HUD Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within a metropolitan area (or nonmetropolitan county) in which the Section 3 project is located to the greatest extent feasible and consistent with existing Federal, Puerto Rico and local laws and regulations.[82]

Preference for Section 3 business concerns in contracting opportunities must be given in accordance with 24 CFR § 75. Where feasible, LUMA will give priority for contracting opportunities described in this section to:[83]

- Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project and
- YouthBuild programs that are receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C 3226).

4.2.2.4 Vendor Qualifications and Duties

LUMA must award contracts only to responsible Vendors possessing the ability to perform successfully under the terms and conditions of a proposed requirement. While LUMA is afforded great discretion in its responsibility determination, LUMA must consider such matters:[84]

- Integrity. A Vendor must have a satisfactory record of integrity and business ethics. Vendors that are debarred or suspended must be rejected and cannot receive contract awards at any level. For those Vendors that are not debarred or suspended, LUMA may also analyze whether the Vendor has:
  - Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract,
  - Violated Federal or State antitrust statutes,
  - Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion,
  - Made false statements,
  - Violated Federal criminal tax laws,
  - Received stolen property,
  - Committed any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Vendor,
  - Been indicted for any of the offenses described in 1) a) i)-vii), or
  - Has delinquent Federal or State taxes.
- Public Policy. A Vendor must have complied with the public policies of the Federal Government and State, local government, or tribal government. This includes, among other things, past and current compliance with the:
  - Equal opportunity and nondiscrimination laws,

[81] 24 CFR § 75.3(a)(2).
[82] 24 CFR § 75.19(b)(1).
[83] 24 CFR § 75.19(b)(2).
[84] 2 CFR § 200.318(h).

  - The affirmative steps described at 2 CFR § 200.321(b) and
  - Applicable prevailing wage laws, regulations and executive orders.
- Record of Past Performance. A Vendor must be able to provide a satisfactory past performance record, which could include:
  - Sufficient Resources - The Vendor has key personnel with adequate experience and subcontractors with adequate experience that will be performing work under the prospective contract.
  - Adequate Past Experience - A Vendor has successful experience in conducting similar work, including a record of:
    - Having the necessary organization, accounting and operational controls;
    - Conforming to requirements and standards of good workmanship;
    - Forecasting and controlling costs and showing appropriate budgetary controls;
    - Adherence to schedules, including the administrative aspects of performance;
    - Reasonable and cooperative behavior and commitment to customer satisfaction;
    - Business-like concern for the interest of the customer; and
    - Meeting quality requirements.
- Financial Resources. A Vendor must have adequate financial resources to perform the contract or the ability to obtain such resources. LUMA should consider analyzing the existing cash flow of the Vendor, account receivables and other financial data as well as existing business prospects in making this evaluation.
- Technical Resources. A Vendor must have or be able to acquire the required construction, production and/or technical facilities, equipment, employees and other resources to perform the work under the contract.

Additionally and in accordance with COR3's requirements, LUMA will document its determination that a prospective Vendor qualifies as responsible and set forth the basis for that determination.

- Organizational Conflict of Interest - LUMA must exclude Vendors that developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements in order to ensure objective Vendor performance and eliminate unfair competitive advantage.
- Lobbying Certification - LUMA must obtain a lobbying certification and, if applicable, a lobbying disclosure from a prospective Vendor if the contract will exceed $100,000 before awarding the contract.
- Debarment and Suspension - Prior to any contract award, the Vendor must be screened to ensure it is in good standing to perform the contract. The Vendor must be in good standing with the U.S. Government and vetted through the centralized government debarment and suspensions lists. Prospective Vendors will be verified through www.sam.gov.

4.2.2.5 Contract Price and Cost Analysis

As part of its evaluation of Proposal / Bids, LUMA must perform a cost or price analysis in connection with every procurement action more than the Simplified Acquisition Threshold, including contract modifications.

The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, LUMA must make independent estimates before receiving bids or proposals.[85]

- Price Analysis – LUMA must negotiate profit as a separate element of the price for each contract when there is no price competition and for all cost analysis. LUMA is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. When negotiating profit, LUMA must consider:
  - Complexity of work to be performed;
  - Risk borne by the Vendor;
  - Vendor's investment;
  - Amount of subcontracting;
  - Quality of record of past performance; and
  - Industry profit rates in the surrounding geographical area for similar work performed[86].
- Cost Analysis – A cost analysis is the review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal to determine a fair and reasonable price for a contract and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. The Cost Analysis is typically used to establish the basis for negotiating contract prices when:
  - Using the procurement through competitive proposals method;
  - Using the procurement through sealed bidding where price competition was not sufficient;
  - Making contract modifications; and
  - Any other case when a price analysis, by itself, does not ensure price reasonableness.

LUMA has discretion as to which cost analysis techniques will ensure a fair and reasonable price. Some of the ways in which a cost analysis could be performed include: (i) verification of the cost or pricing data; (ii) evaluation of cost elements; and (iii) comparison of costs proposed for individual cost elements with previously incurred actual costs and/or independently developed estimates by LUMA.

4.2.3 Restricting Competition

RESTRICTIVE ACTIONS

LUMA must follow its procurement procedures which reflect applicable Puerto Rico and local laws and regulations, provided they conform to applicable Federal law and standards.[87] As such, LUMA conducts all procurement activities in a manner consistent with full and open competition as required in 2 CFR § 200.319 and 200.320. Additionally, LUMA's procurement activities are aligned with COR3's definition of "full and open" competition which means an acquisition of goods and services is publicly solicited (except if specifically, not required) and all responsible sources that are interested in doing so, are permitted to compete.[88]

Actions and requirements restrictive of competition are prohibited unless an exception applies as they prevent full and open competition. The following list describes seven situations provided in 2 CFR §

[85] 2 CFR § 200.324(a).

[86] 2 CFR § 200.324(b).

[87] 2 CFR §200.318(a)

[88] COR3 Disaster Recovery Federal Funds Management Guide, Chapter 3 Procurement, page 8.

200.319(b) and three additional situations identified by COR3 considered to be restrictive of competition and are avoided or mitigated by LUMA, as applicable.

Restrictive Action	Avoidance and Mitigation
2 CFR § 200.319(b)	
Unreasonable Requirements	LUMA does not place unreasonable requirements on firms in order for them to qualify to do business. This means that LUMA should include only those requirements that are the least restrictive as necessary to fulfill the requirement.
Unnecessary Experience and Excessive Bonding	LUMA does not require unnecessary experience and excessive bonding: ▪ Unnecessary experience could include unnecessary levels or years of experience for Vendors as organizations, the Vendors' workforce, or for the Vendors' key personnel on a project. ▪ Excessive bonding increases the cost associated with the contract and restricts competition by reducing a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work. LUMA might find it desirable to exceed the bid, performance, or payment bond requirements at 2 CFR § 200.326 for construction or facility improvements or might find bonds desirable for work other than construction or facility improvements. In these cases, LUMA's bonding requirements should be reasonable, not unduly restrictive and in accordance with any applicable Puerto Rico and local government standards.
Non-competitive Pricing Practices	LUMA undertakes reasonable efforts to ensure that prospective Vendors have not engaged in non-competitive pricing practices in responding to a solicitation.
Non-competitive Contracts to Consultants	LUMA does not make a non-competitive award to a consultant on a retainer contract. Although the Uniform Guidance does not define the term "retainer contract," COR3 considers a retainer contract to be a form of agreement for general, unspecified services entered in advance of work to be done.[89] Under such an agreement, the consultant remains available when the client needs services during a specific period or on a specified matter. As such, it would be restrictive of competition if LUMA simply made a non-competitive contract award for work to be done under a Federal award to a consultant that was already on retainer, specifically where the non-competitive contract award was for property or services not specified for delivery under the retainer contract or where the retainer contract was not originally procured in a manner that met all of the Federal requirements.
Organizational Conflicts of Interest	LUMA follows its plan to identify, avoid, neutralize and mitigate potential Organizational Conflicts of Interest in procurements involving LUMA parent companies, affiliates, subsidiaries and Covered Parties as outlined in this Procurement Manual. Refer to Section 4.3. Further, LUMA may implement a tailored avoidance and mitigation plan, as appropriate for the circumstances.

[89] COR3 Federal Funds Management Guide, Chapter 3 Procurement, page 8 number 4

Specifying Only a Brand Name	LUMA shall not specify only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, LUMA may use a "brand name or equal" description as a means to define the performance or other salient requirements of procurement. LUMA should determine that only a brand name product is acceptable to fulfill a requirement and that determination must be documented and justified in the same manner as a non-competitive procurement. The specific features or salient characteristics of the named brand which must be met by offerors must be clearly stated.
Any Arbitrary Action	LUMA does not engage in any other arbitrary action in the procurement process that would restrict competition.[90]
COR 3's Disaster Recovery Federal Funds Management Guide, Chapter 3 Procurement[91]	
Price Matching	Providing local Vendor opportunity within a certain percentage of the lowest bid to a solicitation to match the lowest bid. If the local Vendor does not match the bid, then LUMA awards the contract to the next lowest bidder.
Reducing Bids	LUMA does not add weight on evaluation criteria to a Puerto Rican or local business as part of a procurement by competitive proposals.
Adding Weight to Evaluation Factors	LUMA does not reduce by a percentage a bid submitted by a local vendor during the evaluation of bids submitted during sealed bidding. For example, a preference may deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.

These ten situations above are illustrative and non-exclusive. Other situations may be considered restrictive of competition are similarly avoided and / or mitigated by LUMA, as required.

PROHIBITED GEOGRAPHICAL PREFERENCES

LUMA must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed Puerto Rico or local geographical preferences in the evaluation of Proposals / Bids.. Prohibited geographic preferences may come in a variety of forms, such as the exclusion from consideration of all Vendors incorporated or primarily doing business outside Puerto Rico, or a requirement that a Vendor be located in the local geographical area in which LUMA is located. In other words, LUMA cannot simply set aside a contract for a Puerto Rico based local Vendor.

The above notwithstanding, there are exceptions to the prohibition of geographical preference:[92]

Exception	Description
Architectural and Engineering Contracts	When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number

[90] 2 CFR § 200.319(b)(7).

[91] COR3 Federal Funds Management Guide, Chapter 3 Procurement, page 9 numbers 10 – 11.

[92] 2 CFR § 200.319.

	of qualified firms, given the nature and size of the project, to compete for the contract.[93]
Puerto Rico Licensing Laws	Nothing in the Uniform Guidance or this document preempts Puerto Rico licensing laws.
Federal Law Factors	LUMA may use a Puerto Rico geographical preference in the evaluation of bids or proposals where applicable Federal statutes expressly mandate or encourage geographic preference. For clarity, work funded by FEMA's grant programs do not encourage or mandate geographic preference.
Prequalified Lists	LUMA may use prequalified lists of persons, firms and products established in order to compete. Prequalified lists are not contracts. They are tools to aid in the procurement of future requirements by allowing LUMA to review the qualifications of prospective Vendors prior to contract award of an anticipated future need. Refer to Section 2.1 Vendor Pre-Qualification of the Procurement Manual. The Uniform Guidance set forth two requirements that must be met in using such a list: ▪ Sources - LUMA ensures that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. ▪ Qualification Period - LUMA does not exclude potential Proponents / Bidders from qualifying during the solicitation period. LUMA must allow Vendors an opportunity to qualify during the solicitation period for the service or propertyin order to afford Vendors the opportunity to demonstrate that its product or services meet the pre-qualification requirements (e.g., technical capability, management capability, prior experience and past performance). While LUMA may submit a solicitation directly to those Vendors identified on a pre-qualified list, LUMA must still publicly advertise the requirement pursuant to the applicable standards contained in the Uniform Guidance and allow any additional interested Vendors to submit their qualifications and, if deemed qualified, submit their bids or proposals in response to the solicitation. The solicitation, evaluation and subsequent award of a contract or contracts must also conform to the standards identified in this Procurement Manual and the standards identified in 2 CFR §§ 200.318-327.

4.2.4 Procurement of Recovered Materials

LUMA and its Vendors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a

[93] 2 CFR § 200.319(c).

manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.[94]

EPA-designated products that must include the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, include:[95]

- Construction Products. Building insulation products, including the following items:
  - Loose-filled insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite and perlite;
  - Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
  - Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics and composites; and
  - Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate and spray-on cellulose.
- Landscaping Products. Compost and fertilizer made from recovered organic materials; garden and soaker hoses containing recovered plastic or rubber; hydraulic mulch containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control and soil reclamation; lawn and garden edging containing recovered plastic or rubber; plastic lumber landscaping timbers and posts containing recovered materials.
- Miscellaneous Products. Pallets containing recovered wood, plastic, or paperboard; sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding; industrial drums containing recovered steel, plastic, or paper; awards and plaques containing recovered glass, wood, paper, or plastic; mats containing recovered rubber and/or plastic; non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum; sign supports and posts containing recovered plastic or steel; manual-grade strapping containing recovered steel or plastic; bike racks containing recovered steel or plastic; blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.
- Non-paper Office Products. Office recycling containers and office waste receptacles; plastic desktop accessories; toner cartridges; plastic-covered binders containing recovered plastic, chipboard binders containing recovered paper and solid plastic binders containing recovered plastic; plastic trash bags; printer ribbons; plastic envelopes; plastic clipboards containing recovered plastic; plastic file folders containing recovered plastic; plastic clip portfolios containing recovered plastic; plastic presentation folders containing recovered plastic; office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.
- Paper and Paper Products. Paper and paper products, excluding building and construction paper grades.
- Park and Recreation Products. Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete; plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications; playground equipment containing recovered plastic, steel, or aluminum; playground surfaces and running tracks containing recovered rubber or plastic.

[94] 2 CFR § 200.323.

[95] 40 CFR § 247.

- Transportation Products. Channelizers containing recovered plastic or rubber; delineators containing recovered plastic, rubber, or steel; flexible delineators containing recovered plastic; parking stops made from concrete or containing recovered plastic or rubber; traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- Vehicular Products. Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids and gear oils, excluding marine and aviation oils; tires, excluding airplane tires; reclaimed engine coolants, excluding coolants used in non-vehicular applications; rebuilt vehicular parts.

4.2.5 Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, LUMA should to the greatest extent practicable provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products) .[96] This requirement must be included in all subawards, including all federally or non-federally funded procurements, including all contracts and purchase orders for work or products subject to the Buy America Act..[97]

- "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.[98]
- "Manufactured Products" mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.[99]

4.2.6 Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment

LUMA is prohibited from obligating or expending public funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or serves as a substantial or essential component of any system, or as critical technology as part of any system.

- As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

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[96] 2 CFR § 200.322(a).

[97] *Id.* 41 U.S.C. §8101 *et seq.*

[98] 2 CFR § 200.322(b)(1).

[99] 2 CFR § 200.322(b)(2).

- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See 2 CFR § 200.216 and Public Law 115-232, Section 889 for additional covered companies and information.

4.3 Conflicts of Interest

4.3.1 Personal Conflicts of Interest

No LUMA or PREPA official, officer, agent or employee, ("Covered Person") shall participate directly or indirectly in the selection, award, administration or monitoring of any contract or purchase order if there is a Conflict of Interest or Apparent Conflict of Interest.[100] For CDBG-DR funds, the definition of Covered Persons includes a consultant or a unit of general local government or of any designated public agencies or subrecipients which are receiving CDBG funds.[101]

A personal Conflict of Interest would arise, for example, when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

Notwithstanding 2 CFR § 200.318(c)(1) permitting an exchange of business courtesies or items that are *de minimis* (not substantial or of nominal value), LUMA's officers, employees and agents will not do so with any parent company, affiliate or subsidiary of either LUMA or PREPA.[102]

ETHICAL STANDARDS IN PUBLIC CONTRACTING

All LUMA officials, officer, agents, employees and Vendors shall maintain an exemplary degree of honesty, integrity and impartiality when procuring, directly or indirectly, goods, work and/or services and in the execution and/or performance of LUMA contracts or purchase orders. It is mandatory that every official, officer, employee, agent and Vendor adhere strictly to the ethical standards in public contracting as set forth in 2 CFR § 200.318(c) (1), the Puerto Rico Government Ethics Act of 2011 (Law Number 1, approved on January 3, 2012, as amended), Law Number 2, approved on January 4, 2018, this Procurement Manualand all applicable Federal and Puerto Rico laws and regulations in force now or as they may be amended in the future.

All provisions contained in the Anti-Corruption Code for the New Puerto Rico, Law Number 2, approved on January 4, 2018, as amended, shall be deemed applicable to this Policy. Specifically, those prohibitions included in Title III "Code of Ethics for Vendors, Suppliers and Applicants for Economic Incentives from Puerto Rico's Government."

[100] FEMA PDAT Manual at 30; see also 2 CFR § 200.318(c)(1).
[101] 24 CFR § 570.489(h).
[102] 2 CFR § 200.318(c)(1).

CONSEQUENCES FOR CONFLICT OF INTEREST VIOLATIONS

LUMA will take appropriate disciplinary actions for all violations of the aforementioned standards by officers, officers, employees, or agents of LUMA.[103] For example, the penalty for employees may be dismissal and the penalty for a Vendor might be the termination of the contract and being barred from submitting future Proposals / Bids.

4.3.2 Organizational Conflicts of Interest

LUMA must conduct procurements free of conflicts of interest and in a manner designed to identify actual or potential Organizational Conflicts of Interest and Apparent Conflicts of Interest as early in the procurement process as possible[104] In cases where an actual or potential Organizational Conflict of Interest or Apparent Conflict of Interest arise, LUMA takes appropriate action to avoid, neutralize, or mitigate such conflicts of interest. Refer to Section 2.2.3 of the Procurement Manual.

The Uniform Guidance provides that an organizational conflict of interest can arise where, because of relationships with a parent company, affiliate, or subsidiary organization, one entity is unable or appears to be unable to be impartial with regard to decisions that might affect a related organization.

In addition, an organizational conflict of interest may arise in circumstances of impaired objectivity, unequal access to information and biased ground rules, irrespective of whether the Vendor is a related organization (parent, affiliate, or subsidiary) or not.[105] For clarity, these organizational conflict of interest terms can be further understood as described in the table below[106].

Term	Definition
Impaired Objectivity	Impaired objectivity arises where a Vendor is unable, or potentially unable, to provide impartial and objective assistance or advice to LUMA, acting as agent for PREPA due to other relationships, contracts, or circumstances. This would comprise circumstances where a Vendor's work under one contract could entail it evaluating itself through an assessment of performance under another contract or an evaluation of proposals.
Unequal Access	Unequal access to information occurs when a Vendor has access to nonpublic information as part of its performance under another contract with LUMA, acting as agent for PREPA and where that information may provide the Vendor with a competitive advantage in a later competition for a LUMA contract.

[103] 2 CFR § 200.318(c)(1).

[104] 2 CFR § 200.318(c)(2).

[105] 2 CFR § 200.318(c)(2).

[106] COR3 Disaster Recovery Federal Fund Management Guide Chapter 3 Procurement.

Biased Ground Rules	Biased ground rules arise where a LUMA parent company, affiliate or subsidiary, as part of its performance of work under a contract with LUMA, has in some sense set the ground rules for another LUMA's contract. An example would be where a LUMA parent company, affiliate or subsidiary prepares a statement of work or specifications as its scope under a contract and later competes to perform the work defined by that statement of work or specification under another contract. Notably, the Uniform Guidance requires that, in order to ensure objective Vendor performance and eliminate unfair competitive advantage, Vendors that develop or draft specifications, requirements, statements of work and invitations for bids or requests for proposals must be excluded from competing for such procurements.

When a Conflict of Interest or Apparent Conflict of Interest is identified, LUMA must be diligent to protect the transparency and fairness of the procurement process, as described in Section 2.2.3 of the Procurement Manual. Moreover, where appropriate, LUMA will employ an independent third party to control the evaluation of Proposals / Bids and selection of the awarded Vendor.

4.3.3 HUD CDBG-DR Conflicts Prohibited

When LUMA uses CDBG-DR funding for the procurement of supplies, equipment, construction and services, the personal and Organizational Conflicts of Interests sections of this Procurement Manual apply. For the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of local government or its subrecipients to individuals, businesses and other private entities, the definition of Covered Persons that would result in a Conflict of Interest is modified and certain restrictions apply.[107] Except for eligible administrative or personnel costs, any Covered Person who exercises or exercised any functions or responsibilities with respect to CDBG-DR funding activities for LUMA, is in a position to participate in a decision-making process, or gains inside information regarding those activities, may not:

- Obtain a financial interest or benefit from the activity,
- Have an interest or benefit from the activity,
- Have an interest in any contract, subcontract, or agreement, or
- Receive proceeds from those activities, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.[108]

When a Conflict of Interest or Apparent Conflict of Interest is identified in the context of a Federally funded purchase, the Federal Funding Team must be diligent to protect the transparency and fairness of the procurement process, as more specifically described in Section 2.2.3 of the Procurement Manual. Moreover, where appropriate, the Federal Funding Team will employ an independent third party to control the evaluation of Proposals / Bids and selection of the awarded Vendor.

4.3.4 Request and Approval for Conflict of Interest Exceptions

4.3.4.1 Federal Funding Procurement Conflict of Interest Exceptions

In addition to following the key controls identified to manage a Conflict of Interest or Apparent Conflict of Interest as described in the Procurement Manual, in cases where the Conflict of Interest or Apparent Conflict

[107] 24 CFR § 570.489(h)(ii).

[108] 24 CFR § 570.489(h)(2).

of Interest cannot be sufficiently avoided, neutralized, or mitigated, LUMA may submit a written request for an exception to the Conflict-of-Interest provision involving Covered Persons which the Federal Awarding Agency (e.g., FEMA) or PRDH (Recipient) may approve on a case-by-case basis. The Federal Awarding Agency or Recipient may grant the exception after determination that the exception will serve to further the purpose of the Federal award and the effective and efficient administration of the LUMA program or project.[127] To request an exception for the conflict of interest, LUMA must provide the following:

- A disclosure of the nature of the conflict;
- Evidence of the public disclosure of the conflict and a description of how the public disclosure was made and
- A third-party legal opinion (obtained by LUMA and approved by P3A) that the interest for which the exception is sought would not violate Puerto Rico or local laws.[109]

LUMA will also provide the Federal Awarding Agency with a justification that addresses the following key factors (not all inclusive) the Federal Awarding Agency may use for determining whether to grant a LUMA requested exception:[110]

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the LUMA program or project which would otherwise not be available;
- Whether an opportunity was provided for open competitive bidding or negotiation;
- Whether the Covered Persons have withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- Whether the interest or benefit was present before the affected Covered Person was in a position as described in this section;
- Whether undue hardship will result either to Puerto Rico and / or to PREPA when weighed against the public interest served by avoiding the prohibited conflict; and
- Any other relevant considerations.

For HUD purchases, LUMA will also include in the conflict of interest justification whether the Covered Person is a member of a group or class of low-or-moderate-income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.[111]

4.3.4.2 Non-Federal Funding Procurement Conflict of Interest Exceptions

In addition to following the key controls identified to manage a Conflict of Interest or Apparent Conflict of Interest as described in the Procurement Manual, in cases where the Conflict of Interest or Apparent Conflict of Interest cannot be sufficiently avoided, neutralized, or mitigated, LUMA may submit a written request for an exception to the Conflict of Interest provisions to P3A on a case-by-case basis.

P3A will provide its approval, rejection, or request for more information within five (5) business days. In the event five (5) business days have elapsed and P3A has not provided its approval, rejection, or request for

[109] 24 CFR § 570.489(h)(4).
[110] 24 CFR § 570.489(h)(5).
[111] 24 CFR § 570.489(h)(5)(iii).

more information, approval for LUMA to proceed is deemed to have been approved upon LUMA's written notice to P3A.

To request an exception for the Conflict of Interest or Apparent Conflict of Interest, LUMA must provide the following:

- A disclosure of the nature of the conflict to P3A.
- Justification that addresses the following key factors (not all inclusive) P3A may use for determining whether to grant a LUMA requested exception:
  - Whether the exception would provide a significant cost benefit or an essential degree of expertise to the LUMA program or project which would otherwise not be available;
  - Whether an opportunity was provided for open competitive bidding or negotiation;
  - Whether the Covered Persons has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  - Whether the interest or benefit was present before the affected Covered Person was in a position as described in this section;
  - Whether undue hardship will result either to Puerto Rico and / or to PREPA when weighed against the public interest served by avoiding the prohibited conflict; and
  - Any other relevant considerations.

4.4 Procurement Dispute Resolution

In the event a Vendor is contracted with LUMA to perform work, the dispute resolution process is outlined in the subject contract or agreement. However, in the event a prospective Vendor who is not yet contracted with LUMA and wishes to dispute how LUMA has conducted its Pre-Award Contracting Process (including Vendor Pre-Qualification), the following procedure shall apply.

4.4.1 Procurement Dispute Resolution Generally

1. Dispute submissions should be concise, logically arranged and clearly state the grounds for the dispute and must include, at a minimum the name, address, telephone number and email address of the disputing party as well as:

   - Identification name and number of the competitive bid / solicitation;
   - A written statement of the grounds for the dispute and the law alleged to have been violated, including this Procurement Manual;
   - The dispute shall be accompanied by relevant supporting documentation and the relief requested; and
   - An authorized signature of the disputing party.

2. Disputes shall be submitted to: Director of Compliance, LUMA:

   Name: TBD
   Address: TBD
   Phone: TBD

3. A dispute must be filed in accordance with the timing requirements set forth in this Procurement Manual. Any dispute received after the applicable deadline will not be considered.

4.4.2 Disputes Prior to Contract Award

1. Disputes regarding restrictive specifications or alleged improprieties in the competitive process must be submitted in writing five (5) business days prior to the closing date for receipt of Proposals / Bids. If the written dispute is not received by the time specified, award may be made in the normal manner unless LUMA, upon investigation in its discretion, finds that remedial action is required, in which event such action should be taken. Oral protests not followed up by a written dispute will be disregarded.

2. Notice of a dispute and the basis therefore will be given to all Proponents / Bidders who have a reasonable prospect of receiving an award. In addition, when a dispute against the making of an award is received and LUMA determines to withhold the award pending disposition of the dispute, the Proponents / Bidders who are eligible for award may be requested (prior to the expiration of the time for acceptance of their Proposals / Bids) to extend the time for acceptance (with consent of sureties, if any) to avoid the need for re-advertising. LUMA will provide a written response to each material issue raised in the written dispute.

3. Where a written dispute against the making of an award is received in the time specified, the award will be held until resolution of the dispute. However, LUMA reserves the right to proceed with appropriate action in the procurement process when:

    - The subject goods or services are urgently required;
    - LUMA determines the dispute was vexatious or frivolous; or
    - Where performance of the work will be unduly delayed or other undue harm will occur by failure to make prompt award.

4. When the award is made pursuant to Section 3 above, LUMA will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the disputing party and, as appropriate, to others concerned.

4.4.3 Disputes After Contract Award

1. A dispute after award must be made in writing and received by the Director, Compliance within five (5) business days after the communication of the Notice of Award is made to all participating Proponents / Bidders.

2. Informal conference. Five (5) business days after a dispute has been timely and properly filed, the disputing party may submit a request for an informal conference. LUMA may, at its option, hold an informal conference on the merits of the dispute with all interested and available parties. The parties will be given at least two days' notice of the informal conference.

3. Final determination. LUMA will review a timely and properly filed dispute and provide a written decision to the disputing party within thirty (30) business days after the submission date, unless LUMA notifies the disputing party that additional time is needed to prepare a final decision. The basis of the decision will be the information submitted by the disputing party, the result of any meetings with the disputing party and LUMA's own investigation. LUMA will respond to each substantive issue with the level of detail LUMA deems appropriate.

4. If the dispute is upheld, LUMA's actions may include, but are not limited to, any appropriate steps or actions, in LUMA's discretion, to correct the offending procurement process.

4.4.4 Appeals

1. If, within fifteen (15) business days of the date the Director, Compliance has made a final determination of the dispute pursuant to 4.4.3 above, then if LUMA and the Vendor agree, the dispute may be submitted to non-binding mediation employing a commercial mediation service.

2. If LUMA and Vendor do not agree to mediation within a further fifteen (15) Business Days after the aforementioned fifteen (15) business days or it, after agreeing to mediation, the Dispute is not resolved within an additional thirty (30) business days after referral to the mediation, then any such dispute, including the arbitrability of the dispute, shall exclusively be referred to arbitration. LUMA and the Vendor shall submit to binding arbitration and waive all rights to a jury trial or class action. Either LUMA or Vendor may submit a request for arbitration to finally settle the dispute, pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC) (the "Arbitration Rules"). For the purposes of any arbitration proceedings commenced pursuant to this Section 4.4.4:

    a. There shall be an arbitration panel composed of three (3) arbitrators, appointed in accordance with the Arbitration Rules;
    b. the place of arbitration shall be San Juan, Puerto Rico;
    c. the official language of the arbitral proceedings shall be English; however, if the arbitrators are bilingual and the Parties so agree, documentary evidence in Spanish may be submitted without an English translation and Spanish-speaking witnesses may testify in Spanish without the need of an interpreter;
    d. all arbitral proceedings shall be private and confidential; they may be attended only by the arbitrators, the Parties and their representatives and witnesses to the extent they are testifying in the proceedings;
    e. the arbitrators shall endeavor to issue their award within six (6) months of appointment; and;
    f. any arbitral award for monetary damages shall be in United States Dollars and shall include interest from the date of any breach or violation of this Contract or any Work Order until paid in full at the rate determined by the arbitrators.

5.0 Part D. Roles and Recordkeeping

5.1 Procurement & Contracts Organization

To effectively enable LUMA's procurement Processes and Procedures (Part A), leverage the Contract Management structure (Part B) and comply with relevant Policies and Practices (Part C), Procurement & Contracts must be strategically organized to execute different but critical activities within the function. Procurement & Contracts is comprised of three distinct but interrelated teams: Operational Procurement, Strategic Sourcing and Procurement Systems Support. While each team has its own clear purpose and measures to achieve, they rely on one another for departmental success.

OPERATIONAL PROCUREMENT

Operational Procurement is viewed as the most traditional "purchasing" function. Procurement Specialists are responsible for the procurement of goods and services, internal customer service and purchase order management. As the first point of contact for the organization's transactional procurement needs, the focus

of the team is to manage a timely competitive bidding process and issuance of purchase orders to third-party Vendors. The Procurement Specialist converts approved business requisitions into Purchase Orders as specific requirements are identified by projects or inventory replenishment. The Operational Procurement Team will work closely with the Federal Funding Team to support the FFT lead on Federal Funding Procurement activities.

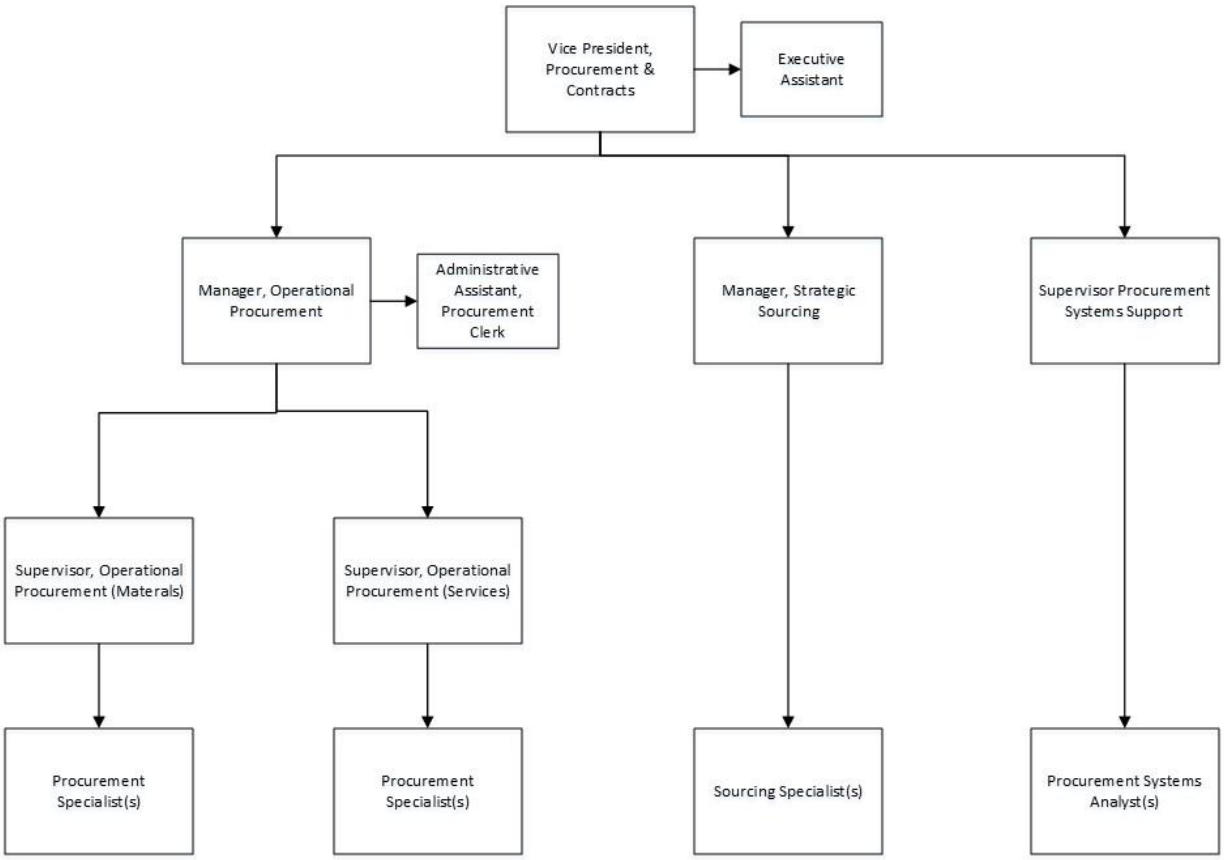
STRATEGIC SOURCING

Strategic Sourcing is accountable for a larger enterprise view of Vendors, contracts, stakeholders and organizational spend than Operational Procurement which is more focused on speed-to-market. Sourcing Specialists are responsible for the procurement, negotiation and implementation of high-risk or complex contracts and category strategies. This includes working closely with and supporting the Federal Funding Team during Federal Funding procurements. Extensive proactive (prior to project planning) stakeholder engagement throughout the organization is required as the primary focus of the team is to provide and maintain contract and spend category solutions that drive source to pay efficiencies, Vendor development and ongoing procurement improvement initiatives.

PROCUREMENT SYSTEMS SUPPORT

Procurement Systems Support is accountable for governance, technological customer support, maintenance and optimization of procurement systems, processes and tools as they relate to procurement and contracting functionality. Procurement Systems Analysts will support Procurement & Contracts to ensure the appropriate systems permissions and licenses are in place and perform key reporting to support the department. Procurement Systems Support is a key link between the End User and IT operations and strategy, finance, human resources, as well as day-to-day users of the systems. It is accountable to manage, update, communicate and maintain the operation of the Vendor Pre-Qualification Process and the Vendor Registry.

PROCUREMENT & CONTRACTING ORGANIZATIONAL CHART



5.2 Recordkeeping

LUMA exclusively uses an electronic bidding (including ITTs and RFPs) platform, the Sourcing Platform, to conduct its procurement activities. All bidding and associated communication must be conducted within the System. All documentation related to the competitive bid is contained within the System and retained / archived as required by the organization.

All other supporting documentation related to a procurement and subsequent contract, agreement, or purchase order (e.g., Contract Request Form, Sourcing Strategy, Bid Evaluation and Award Authorization, Contract Summary, etc.) is archived in the Enterprise Resource Planning System and retained / archived as required by the organization.

Copies of executed contracts are filed with the Puerto Rico Comptroller's Office (OCPR) and other agencies as required by law or regulation. All other procurement documents retained will not be posted online, but will be available for review (except for confidential and privileged information of other participants) in order to provide standard transparency to demonstrate that no unfair, arbitrary or illegal awarding has been made and for a bidder to be able to request a review or challenge the decision through the dispute processes.

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5.2.1 Document Retention Principles

LUMA must ensure the generation and retention of records sufficient to detail the history of the procurement which includes but is not limited to, the rationale for method of procurement, selection of contract type, Vendor selection, or rejection and the basis for contract price.[112] Further detail of the procurement history includes:

- Procurement Method – LUMA must document its rationale for the method of procurement used for each contract (micro-purchases, small purchase procedures, sealed bidding, competitive proposals and non-competitive procurement), including required justification.
- Contract Type - LUMA must document its rationale for selecting the contract type it used (fixed price, cost reimbursement, or time and materials). In addition, time and materials contracts have additional requirements described in the Contract Type section.
- Vendor Selection - LUMA must document its rationale for Vendor selection or rejection, including a written responsibility determination for the successful Vendor.
- Price – LUMA must document the basis for the contract price, which will include the cost or price analysis for contracts exceeding the Simplified Acquisition Threshold.

Each procurement file may also include the following documentation, as appropriate:

- Acquisition planning information and other pre-solicitation documents;
- List of sources solicited;
- Records demonstrating compliance with the requirement to take Affirmative Steps to solicit disadvantaged firms, as required by 2 CFR § 200.321(a);
- Copies of published notices of proposed contract action;
- Independent cost estimate;
- Copy of the solicitation, all addenda and all amendments;
- Determination of Vendor's responsiveness;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of protests, disputes and claims;
- Bid, performance, payment and other bond documents;
- Records demonstrating compliance with or exemption from the Buy America Act (41 U.S. Code chapter 83); and
- Notice to proceed.

EXTENT OF THE DOCUMENTATION

LUMA will maintain reasonable documentation, such that documents included in a procurement history should be commensurate with the size and complexity of the procurement.

ACCESS TO RECORDS

COR3, PREPA, the Federal Awarding Agency, DHS Office of Inspector General, the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to any

[112] 2 CFR § 200.318(i).

documents, papers, or other records of LUMA which are pertinent to the Federal award, in order to make audits, examinations, excerpts and transcripts.

LUMA must acknowledge and agree and require any Vendors, successors, transferees and assignees acknowledge and agree to comply with applicable provisions governing the Federal Awarding Agency (e.g., FEMA or HUD) access to records, accounts, documents, information, facilities and staff.

5.2.2 Organizational Conflicts of Interest Procurement

As identified in Sections 4.3 and 2.2.3 of the Procurement Manual, LUMA takes additional document retention procedures if and when the Federally Funded procurement includes a LUMA parent company, affiliate, subsidiary or Covered Party. These additional procedures include:

- The Federal Funding Team manages Sourcing Platform with an account separate and apart from the general account used by Procurement & Contracts: and All procurement related artifacts (draft and final) will be maintained separately from the Procurement & Contracts System with an appropriate firewall preventing unauthorized access.

Once the Proponent is selected, the final document artifacts will be uploaded to the Procurement & Contracts System for general retention purposes.

5.2.3 Federal Agency or Pass-Through Entity Procurement Review

LUMA will make available, if requested by P3A, COR3, or the Federal Awarding Agency responsible for the Federal funding, the technical specifications on proposed procurements where requesting agency believes such review is needed to ensure the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the specification being incorporated into a solicitation document. However, LUMA may request COR3 or the Federal Awarding Agency to review the technical aspects of the proposed purchase after a solicitation has been developed.[113]

In addition to the Access to Records requirement at Section 5.2.1, LUMA will make available pre-procurement reviews, procurement documents consisting of Request for Proposals or Invitations to Tender, or independent cost estimates as requested by P3A, COR3, or the Federal Awarding Agency when any of the following circumstances occur:[114]

- LUMA's procurement procedures or operation fails to comply with Federal procurement standards;
- LUMA's procurement is expected to exceed the Simplified Acquisition Threshold and is awarded without competition or only one bid or offer is received in response to a solicitation;
- LUMA procurements are expected to exceed the Simplified Acquisition Threshold which specifies a "brand name" product;
- LUMA's proposed contract is higher than the Simplified Acquisition Threshold and is not awarded to the lowest bidder under a sealed bid procurement; or
- LUMA's proposed contract modification changes the scope of a contract or increases the contract amount exceeding the Simplified Acquisition Threshold.

[113] 2 CFR § 200.325(a).

[114] 2 CFR § 200.325(b).

5.2.4 Recipient and Subrecipient Oversight

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

- The number and nature of the entities in LUMA's vendor registry;
- New Federally Funded contract requirements that were identified since the last briefing;
- The status of pre-award Federally Funded contracts;
- The status of post-award Federally Funded contracts;
- Any contracts awarded under Emergency/Exigent contracting procedures since the last briefing;
- Problems or concerns with the implementation of this Manual.

Appendix A: Supporting Documentation and Template Forms

A.1: Supporting Documentation

A11 .1: LIST OF REQUIRED CERTIFICATES

To enter LUMA's Vendor Registry, suppliers must provide the following and any other as may be required under law from time to time:

Vendor Engaged in Business in PR	Vendor Not Engaged in Business in PR
Certificate of Incorporation, Certificate of Organization or Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State	Certificate of Existence, issued by the relevant jurisdiction
Merchant Registration Certificate	N/A
Certificate of Good Standing issued by the Puerto Rico Department of State	N/A
Sales and Use Tax Debt Certificate	Sworn Statement certifying no tax debts with Puerto Rico agencies.
Sales and Use Tax Return Filing Certificate	N/A
Income Tax Debt Certificate	Sworn Statement certifying no tax debts with Puerto Rico agencies.
Income Tax Return Filing Certificate	N/A
Property Tax Debt Certificate from CRIM	Sworn Statement certifying no ownership of property in Puerto Rico
Child Support (ASUME) Debt Certificate	N/A
Sworn Statement re: Act 2-2018	Sworn Statement re: Act 2-2018

A12 .2: LIST OF SPECIALIZED CATEGORIES

The following is a listing of the Specialized Categories of goods and services, for which Vendors must pass a secondary evaluation in order to be Pre-Qualified to receive such work.

Goods & Products

- Cables & accessories
- Overhead line equipment & accessories
- Transformers, reactors & capacitors
- Electrical control & instrumentation equipment
- Mechanical machinery, equipment & spares
- Substation materials
- Heavy equipment
- Fuel
- Others at LUMA's discretion

Services

- Security services
- Mechanical, electrical, instrumentation, control & automation services
- Meter & associated services
- Emergency restoration services
- Vegetation management
- Others at LUMA's discretion

A13 . 3 : INFORMATION & DOCUMENTS REQUIRED FOR PRE-QUALIFICATION EVALUATION AND VENDOR CATEGORIZATION, AS REQUIRED

The following information must be submitted electronically. Items which do not apply to the Vendor's line of business are excluded.

1. Brief history of the company
2. Services and products offered
3. Documents that authorize the representation of services and products
4. Company organization:
   - Organization chart where the line of command is indicated
   - Main officers and position occupied
   - Representatives who will attend to business with LUMA
5. Work hours (be specific - days and hours)
6. Staff recruitment process
7. Number of employees (in numbers and describe their functions)
   - Regular
   - Temporary or contract
   - Professional staff and licensed technicians
   - Specialized staff for the different work areas
8. External technical advisors (contractual relationship)
9. Provide copies of the certifications, licenses and associations of professional, technical or specialized personnel and external advisers.
10. Unionized workforce(s):
    - Personnel training
    - Briefly explain how and how often staff are trained types of training
    - Copy of documents and certificates of training
11. Protection system against vandalism, theft or fire
12. Main customers of the company
13. Subcontractors used
14. Drug & Alcohol policy
15. Health and safety program
16. Working method used for the services offered
17. List of projects carried out in the last 3-5 years reference of the mentioned projects
18. Typical organization of a project
19. Existing equipment in the facilities
20. Copy of equipment licenses (transportation)
21. Quality control program
22. Name and classification of the chemical products used in your processes (send MSDS) and DOT records, as applicable.
23. Licenses, certifications or permits of associations, institutions or regulatory agencies
24. Financial statements audited by a CPA (last three aliases)
25. Bonding capacity of insurance company

A14 .4: ADDITIONAL PRE-QUALIFICATION DOCUMENTATION

Health & Safety

LUMA's contractor health and safety program is based on the Edison Electric Institute (EEI) Contractor Safety Initiative model. This ensures that LUMA's expectations are aligned with industry standard expectations for contractor safety. LUMA requires the following documentation from each of its Contractors:

- LUMA Contractor / Seller Qualification Questionnaire; and, depending on the risk profile of the engagement, either:
  - LUMA High Risk Contractor Qualification Scoresheet; or
  - LUMA Low Risk Contractor Qualification Scoresheet.

Vendor Code of Conduct

Prior to admission to the Vendor Registry, all Vendors must sign off indicating that they have read and will comply with LUMA's *Vendor Code of Conduct*.

A.2: Form Templates

All templates are indicative and are subject to regular update and revision. Additional templates can be added should the need arise.

A21 .1: CONTRACT REQUEST FORM TEMPLATE

The Contract Request Form (CRF) is the first step in LUMA's Procurement process for materials and services. This document informs the next steps in the process and ensures that LUMA vendors are selected objectively.

How to Complete the CRF

For all contract requests, please complete the following sections of this form:

- Section A: General Information
- Section B: Background & Purpose
- Section C: Vendor Contact Information

Additional sections of the CRF are required depending on whether the procurement approach is compliant with Procurement Process or non-compliant (i.e., Single Source).

Procurement Process

To engage Procurement & Contracts to assist with sourcing additional quotes via a competitive process (i.e., an RFP), please also complete Section D: Required Documentation (complete only the sections that are relevant to the engagement)

Single Source - To deviate from the minimum acceptable Spend Channel and Quote Thresholds, you must provide a robust justification by completing Section E: Deviation from Procurement & Contracting Practice and Approval.

PROCUREMENT METHODS & QUOTE THRESHOLDS

All purchases of materials and services are made in three ways (Spend Channels) — using a credit card, a standalone purchase order or a purchase order that is associated with an existing master contract. LUMA's *Procurement and Contracting Practice* (Section 4.1 of the Procurement Manual) outlines the number of quotes required before purchasing goods or services and the associated permissible procurement method.

A. GENERAL INFORMATION

Vendor Name		**Item/Services Required**	
Est. Value ($)		**LUMA Department**	
Work Start / Completion Date OR **Delivery Date for the required Goods**		**LUMA Functional Team**	
Requestor Name		**Requestor Phone number:** **Email:**	
Approved Budget (Annual):		**Accounting Codes:**	
Procurement Approach:	☐ Single Source	☐ Procurement Process	
Work Location:	☐ On-Island	☐ Off-Island	☐ Combination
Is this a Federally Funded Procurement?	☐ Yes	☐ No	☐ Uncertain

B. BACKGROUND & PURPOSE

Brief Descriptions

Vendor Name [Quick description of actions performed to date; progress made on the action to date.]
Purpose [Brief description of the business objective that this procurement supports. Please briefly describe why LUMA requires Vendor to meet this objective? (i.e., specialized personnel, availability, expertise)]

C. VENDOR CONTACT INFORMATION

For Single-Source Engagements: Please provide vendor contact information.
For Procurement Processes: Please provide contact information for all vendors you would like to include in the competition if they are not already Pre-Qualified. This will be a publicly advertised procurement if meeting the thresholds as stated in the *Procurement & Contracting Practice*.

Company	Contact Info	
1.	Name:	Title:
2.	Name:	Title:
3.	Name:	Title:
4.	Name:	Title:

D. REQUIRED DOCUMENTATION

(to be completed for competitive processes only, for Single Source, complete Section E)

Description	Checklist
Scope of Work & Technical Specifications (If Additional Comments are not sufficient, please attach separately to the CRF)	Choose an item.
Work Schedule & Milestones Attach desired Work Schedule for each Work Scope Plan, if known. Procurement & Contracts will ask the Vendors to propose milestones if LUMA does not dictate.	Choose an item.
HSE Documents Relevant HSE terms and conditions to be included, if required. (HS&E consultation may be required)	Choose an item.
Pricing Schedule(s) Attach desired Pricing Schedule requirements, if known. Procurement & Contracts will ask the Vendors to propose Pricing Schedule (Rates Sheet) if LUMA does not dictate.	Choose an item.
Evaluation Criteria & Weighting List all requirements in **Additional Comments** that will be evaluated and included in the RFx package: Commercial (Price, terms & conditions, etc.) Quality (Warranty, References, Resumes, etc.) Service (KPIs, Resourcing, Timelines) Safety & Environment (Sustainability, Incidents, Safety Program, etc.)	Choose an item.
Additional Comments, instructions, or requirements:	

E. DEVIATION FROM PROCUREMENT & CONTRACTING PRACTICE & APPROVAL:

In order to deviate from **Procurement & Contracting Practice** minimum acceptable permissible Procurement Methods and Quote Thresholds, refer to the Procurement Manual, Section 4.1:

Single Source Justification:		
Review and Approval (required for single sourced only):		
Name	**Title**	**Signature & Date**

NOTES:

The completed document must be submitted to Procurement & Contracts
If you need assistance, please contact Procurement & Contracts prior to submission

Single Source Justification (Business Case)

EXECUTIVE SUMMARY

- Generally: What — Why — Who — When — Where
- Description of the requirement;
- History of prior purchases and their nature (competitive vs. non-competitive);
- Statement as to the unique circumstances that require award by non-competitive proposals;

- Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- Statement as to efforts that will be taken in the future to promote competition for the requirement; and
- Price Reasonableness - The reasonableness of the price for all procurements based on non-competitive proposals shall be determined by performing a cost or price analysis, as applicable.

PROJECT DESCRIPTION

Scope:

- What specific actions will be taken? How will these actions address the established needs and objectives?
- What related issues, if any, are notably outside the scope of the project?

Schedule:

- What milestone dates or duration for completion of specific deliverables have been identified?
- When will the post-completion review, if any, be conducted?

Cost:

- How much will it cost to take the action? Break down by relevant time period or milestone or deliverable.
- Have all the costs been considered over the asset's (action's) life? Include financial models, detailed revenue requirements and other relevant material, if any, as appendices.

Location:

- Where will the action take place? (PR, Mainland US, Canada, other; roughly what portion of work in each location)

Vendor Management and Personnel:

- Who will take the action?
- Who is responsible for the project?
- What staff, if any, will be required for the project? Include reporting structures as applicable.
- Who will be impacted by the project? Will the Vendor be in regulator contact with specific stakeholders (i.e., PREB, others)?

EXECUTION STRATEGY

- What general strategies will be implemented to ensure the project is completed within scope, schedule and budget? (Specific strategies → Risk analysis)
- What quality or level of performance is required?
- Are the objective(s)/requirement(s) met by selected Vendor and alternative providers?
- How does the selected party fit contract requirements, desired outcome?

Alternative Providers (Evaluating the Options)

- Where possible, focus on a quantifiable ($/#) analysis vs. qualitative (subjective) analysis.
- Summarize how cost, risk and performance have been considered for selection of Vendor
- Why was the recommended action chosen (i.e. instead of competitively bidding the work)? What benefits does it offer vs. the alternatives? (Refer to risk, performance and cost on alternatives. Discuss if had unviable alternatives that you rejected and why? What viable alternatives were considered and why were they rejected? How does the selection of this Single Sourced Vendor ultimately benefit the public interest?).
- Do the Vendors have specific expertise / knowledge? Rationale for single source - timing/cost/expertise?

RISK ASSESSMENT

- What are the risks associated with this project, both for pre/post risk (before and after alternative is undertaken)? Has the probability and impact of failure been considered for all options?
- Does the alternative reduce/increase the risk?
- How will these risks be mitigated?
- Consequences of not proceeding. What happens if the action isn't taken?

RECOMMENDATION

Explicitly recommend the action

APPENDICES

- Provide supporting material as necessary
- Provide information relevant to assessing the proposal
- Don't include overly technical information

A22 .2: BID EVALUATION AWARD & AUTHORIZATION TEMPLATE

Part A. Agreement Details	
Agreement Reference:	Contract Term:
Procurement Method:	Effective Date:
RF[x]Issued:	Maximum Contract Value:
RF[x] Closing Date:	**Recommended Award:**

Part B. Evaluation
Executive Summary
Process Summary EXCEL Analysis: Attached Link to Procurement & Contracts SharePoint location
Recommendation

Part C. Authorization		
Pursuant to LUMA's *Procurement & Contracting Practice*, this BEAA requires the financial approval as per the established limits of authority and others as required pursuant to the Procurement Manual. Once approved via your signature(s) below, Procurement & Contracts will proceed to award the Agreement as per the RECOMMENDATION.		
Name	**Position & Department**	**Authorization**

A23 .3 CONTRACT SUMMARY TEMPLATE

Part A. Contract Details	
Contract Name:	(Estimated) Contract Value:
Contract Reference:	Procurement Method:
Awarded Contractor:	Contract Template:
Effective Date:	Pricing Model:
	Contract Term:

Part B. Executive Summary
[Summarize the purpose of the contract and the business need it fulfills]
Part C. Vendor Selection Details
[Attach Contract Request Form (single source) or Bid Evaluation Authorization & Award]
Part D. Critical Commercial Terms and Risk Management
[Summarize the key terms and conditions of the contract. Highlight any deviations from the standard form of agreement]

Prepared By:

Date:

Appendix B: Competitive Bidding Invitation Document Templates

B.1: Invitation to Tender / Sealed Bid (ITT)

GENERAL

Invitation to Submit Tender

Tenderer is invited by Administrator's Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts (promulgated by the Administrator, dated as of December 19, 2009) LUMA **Energy Servco, LLC ("LUMA")** to submit a Tender for the provision of the Work in accordance with the terms and conditions of this ITT Package. A full description of the Work and LUMA's related requirements is contained in this ITT Package.

Tenderer is advised that LUMA is engaged with the Puerto Rico Electrical Power Authority (PREPA) under the *Operations and Maintenance Agreement*, effective June 22, 2020 (the "OMA"). LUMA is currently preparing to operate Puerto Rico's Electric Transmission and Distribution grid on behalf of PREPA. This transition is anticipated to occur on June 1, 2021, at which time LUMA will become agent for PREPA. The transition is subject to the occurrence of a number of conditions precedent and as such this date is subject to change at any time.

The Tenderer acknowledges and agrees that:

1. **This ITT Package was advertised and will be opened publicly for a full and transparent procurement process; and**
2. **The Tenderer has been advised that LUMA parent company, affiliate or subsidiary companies may submit a Bid for the provision of the Services in accordance with the terms and conditions of this ITT Package. LUMA parent companies affiliates or subsidiaries are subject to the Conflict of Interest policies and procedures as set out in LUMA's Procurement Manual.**

Purpose of the ITT Package

This ITT Package is intended to provide Tenderer with information such that the estimates, rates or pricing information included in any Tender will be accurately priced to reflect the risk borne by Contractor in its performance of the Work, including:

description and requirements of the Tender preparation and submission process provided for in this ITT Package;

LUMA's evaluation criteria in reviewing Tenders;

a general description of the Project and the Scope of Work to be performed by Contractor;

certain information on the form of Agreement upon which LUMA will contract for the Work;

key dates for the completion of the Work;

how LUMA will compensate the Contractor for the Work; and

other commercial instructions/requirements for Tenders submitted in response to this ITT Package.

- **ITT Package Documents**

This ITT Package is comprised of the following documents:

- Part A – Acknowledgment Form [including Confidentiality Agreement] **[NTD: Include reference to Confidentiality Agreement if one being requested.]**
- this Part B – Instructions to Tenderers and Conditions of Tender
- Part C – ITT Tender Submission Form, including Tender Form A (Pricing) and Tender Form B (Non-Pricing Commercial Requirements)
- Part D – Description of Work, Project and Form of Agreement

In the event of any conflict or inconsistency among any documents forming part of this ITT Package, the document taking precedence shall be this Part B – Instructions to Tenderers and Conditions of Tender. However, Tenderer is encouraged to request a clarification with respect to such conflict or inconsistency.

LUMA may, in its discretion, amend the contents of any document comprising part of this ITT Package at any time and from time to time prior to the Closing Time, in which event LUMA shall provide a written Addendum to Tenderer.

LUMA may, in response to changing circumstances with respect to the requested Work or the Project, amend and re-issue the entirety of this ITT Package. If such circumstances arise LUMA will permit each Tenderer the same reasonable opportunity to re-submit the applicable portions of its Tender in response to the amended and re-issued ITT Package.

If there is any conflict or inconsistency between the terms of this ITT Package and terms implied by any custom, policy, practice, usage or agreement in the industry or trade, or any other policy or practice, or any term implied by or any decision rendered by any court, the terms of this ITT Package shall govern and prevail.

- **Definitions and Interpretation**

Procurement Manual

For the purposes of this ITT Package, words and phrases that are not defined herein shall have the meaning given to them in the Agreement. The following capitalized words and phrases when used in this ITT Package shall have the meanings ascribed below:

"**Acknowledgement**" means Part A – Acknowledgment Form unaltered other than to include the information of Tenderer requested thereby.

"**Addendum**" or "**Addenda**" means any additional information or responses to clarification requests issued by LUMA for review and use by Tenderer in the preparation of its Tender.

"**Agreement**" means the form of agreement to be entered into between the Contractor and LUMA, a proposed form of which may be included as part of this ITT Package (see Part D).

"**Alternate Tender**" means a document that is in addition to the compliant Tender submitted by a Tenderer in accordance with this ITT Package, which document deviates from LUMA's requirements specified in this ITT Package by potentially, among other things, proposing alternative Work, pricing, schedule or other requirements other than as set forth in this ITT Package, but for which Tenderer believes results in a benefit to LUMA.

"**LUMA**" means LUMA Energy Servco, LLC.

"**Closing Date**" means the final date specified on the face page of these Instructions on which any Tender or Alternate Tender may be submitted by Tenderer to LUMA in accordance with this ITT Package.

"**Closing Time**" means the exact time on the Closing Date specified on the face page of these Instructions prior to which any Tender or Alternate Tender shall be submitted to LUMA by Tenderer.

"**Contractor**" means Tenderer whose Tender is accepted by LUMA pursuant to the process provided for in the ITT Package and which enters into the Agreement with LUMA for the Work.

"**Instructions**" means this Part B - Instructions to Tenderers and Conditions of Tender.

"**ITT Package**" means the documents comprising this invitation to Tender, as further specified in Section [x] herein and includes any Addendum.

"**Liabilities**" means any and all actions, causes of action, prosecutions, change orders, claims (including third party claims), damages, losses, liabilities, costs and expenses (including legal fees and expenses and court costs on a solicitor and own client basis), however arising, including whether consequential, special or otherwise, howsoever arising, including whether by contract, tort (including negligence) or otherwise, including any costs, expenses, third party claims, preparation costs or loss of profits, whatsoever which Tenderer may sustain, incur or pay, or which may be brought against Tenderer (including liability for any Tender, including Alternate Tender(s), if applicable), however the same may be caused, arising from or in relation to the submission by Tenderer of the Tender and/or Alternate Tender or any act or omission of LUMA in relation to this ITT Package, including the exercise of any right specified hereunder or at Law and including any decision by LUMA to reject any or all Tenders, including all Alternate Tenders, accept a Tender (including a non-compliant Tender) submitted by another potential third party, or procure the supply of the Work, in whole or in part, from a third party.

"**Project**" means the **[NTD: Insert Program]** Program.

"**Tender**" means the documents prepared and submitted by Tenderer to LUMA in response to this ITT Package.

"**Tender Submission Form**" means the Part C – ITT Tender Submission Form, including Tender Form A (Pricing) and Tender Form B (Non-Pricing Commercial Requirements), unaltered other than to include the information of Tenderer requested thereby.

"**Tenderer**" means a recipient of this ITT Package.

"**Validity Period**" means a period of **ninety (90) days** after the Closing Date.

[NTD: LUMA to confirm Validity Period appropriate in each case and revise accordingly.]

"**Work**" means the Work as defined in the Agreement, being [**NTD: LUMA to insert brief description**] and the obligations to be performed by Contractor for the Project that is the subject matter of this ITT Package, which is further described herein.

The words "include", "includes" and "including", when used in this ITT Package shall be construed to mean "include, without limitation", "includes, without limitation" and "including, without limitation" respectively, as appropriate.

Any reference to LUMA's "judgment", "discretion" or decision-making capacity shall mean any such judgment, discretion or decision is at the sole, absolute and unfettered discretion of LUMA, whether reasonable or unreasonable.

Any reference to a "Tender" shall be deemed to also be a reference to an "Alternate Tender", where appropriate.

Any reference to "business day" means any date other than a Saturday, Sunday and recognized national or local holidays which are observed in San Juan, Puerto Rico, United States of America The word "day" refers to a calendar day, unless used as part of the term "business day".

Unless otherwise specified, references in this ITT Package to an "Exhibit" are references to an Exhibit of the Agreement.

- **Addendums**

LUMA may, at any time, prior to the Closing Time, issue one or more Addendums.

Each Addendum issued by LUMA shall be in writing and shall be circulated to all Tenderers. All Addendums shall be deemed to become part of this ITT Package. Instructions, corrections or interpretations that are provided orally or by other informal means, but in any case not within a formal Addendum, should not be relied upon and are not part of this ITT Package.

If Tenderer has already submitted its Tender, or any part thereof, to LUMA prior to the issuance of an Addendum, Tenderer shall, by the applicable Closing Time, re-submit its Tender to LUMA based upon this ITT Package as revised by the Addendum.

- **Communication with LUMA**

All correspondence and requests for interpretation, made by Tenderer to LUMA pertaining to this ITT Package must be delivered [**via email / PowerAdvocate Sourcing Platform]** to the attention of the following individual:

Name: xxx

[NTD: LUMA to confirm address appropriate.]

All communications between LUMA and Tenderer shall be in the English language.

LUMA may change the designated Contact Information from time to time by notice in writing to Tenderer.

Except as otherwise specified in this Section [x], the delivery requirements set forth in the Agreement shall apply to all correspondence and/or notices provided hereunder, including **[NTD: LUMA to select applicable]**

- **Acknowledgment of Receipt of This ITT Package**

Tenderer shall: (a) confirm receipt of this ITT Package within **three (3) business days** of receipt of this ITT Package by circling the appropriate response within and executing, the document contained in Part A – Acknowledgment Form and faxing, mailing or emailing (in Portable Document Format ("**PDF**")) a copy of the Acknowledgement back to the fax number, address or e-mail address, as applicable, specified in Section [x] herein; and (b) where Tenderer is requested to execute a Confidentiality Agreement in the Acknowledgement Form (Part A – Acknowledgement Form), Tenderer shall execute the enclosed Confidentiality Agreement Form within **three (3) business days** of receipt of this ITT Package and return the executed copy to LUMA by faxing, mailing or emailing (in PDF) a copy of same back to the fax number, address or email address, as applicable, specified in Section [x] herein.

If your company does not wish to submit a Tender, please destroy this ITT Package and retain no copies (paper, electronic or otherwise) and provide LUMA with the signed Acknowledgment Form with the appropriate selection circled.

Without waiving the foregoing requirement, any Tenderer that indicates it does not wish to participate in the Tender process set forth in the ITT Package, or any Tenderer that does not submit the acknowledgment form in the manner prescribed herein (in which case such Tenderer will be deemed to be not interested in submitting a Tender in response to this ITT Package), will not be entitled to and will not, receive any further communications issued by LUMA in connection with this ITT Package, including any Addendum issued in connection therewith, whether prior to or after the Closing Time, except where determined otherwise by LUMA, acting in its discretion.

- **About LUMA**

[x]

ITT Package Key dates AND SITE VISIT

- **Key Dates**

The following dates are applicable to this ITT Package: **[NTD: LUMA to insert/provide all dates below]**

<table>
<tr><th colspan="2">ITT Package Milestone</th><th colspan="2">Date</th></tr>
<tr><td colspan="2">ITT Package issued to Tenderers</td><td colspan="2">[•], 20[•]</td></tr>
<tr><td colspan="2">Deadline for acknowledgement of receipt of ITT Package by Tenderer</td><td colspan="2">[•], 20[•]

See Section [x] of these Instructions</td></tr>
<tr><td>OPTION A:

Tenderer Mandatory Site Visits</td><td>OPTION B:

Tenderer Optional Site Visits</td><td>OPTION A:

Mandatory Site Visit shall occur on:

[•], 20[•] [NTD: mark item "N/A" if Site Visits are not mandatory]</td><td>OPTION B:

Optional Site Visit shall occur on:

[•], 20[•] [NTD: mark item "N/A" if Site Visits are not optional]</td></tr>
<tr><td colspan="4">[NTD: LUMA to specify if Option A: Mandatory Site Visit or Option B: Optional Site Visit, will be used. Delete Option that is not applicable. See Section [x] below. If neither then insert N/A.]</td></tr>
<tr><td colspan="2">Deadline for Receipt of Tenders and Alternate Tenders</td><td colspan="2">Tenderer to submit Tender and any Alternate Tender prior to the Closing Time on the Closing Date specified on the face page of these Instructions</td></tr>
<tr><td colspan="2">Projected date for Agreement award and execution with Contractor</td><td colspan="2">[•], 20[•]

[NTD: LUMA to specify date]</td></tr>
</table>

- **Revisions to Key Dates**

LUMA may extend the Closing Date and/or Closing Time or any of the other dates specified above, at its sole discretion, from time to time. LUMA will provide written notice of any such change to Tenderer as soon as is reasonably possible by Addendum.

- **Site Visits**

[**NTD: Mark item as "[Not used]." if Site visits will not be held. If Site visit is mandatory, use Option A below and delete Option B. Alternatively, if Site visits are optional upon request of Tenderer use Option B below and delete Option A. Language in square brackets should be deleted and language amended accordingly, including in [x] Table above. Do not delete Section [x] as this may affect numerous references throughout ITT Package**]

[Option A - Mandatory Site Visit:] Tenderer shall visit the Site(s) on the dates provided for in Section [x] herein. Such Site visits are mandatory. Each Tenderer shall comply with any conditions imposed by LUMA on such visit.

[Option B – Optional Site Visit:] If Tenderer desires to undertake a visit of the Site(s), it may do so by providing written notice to LUMA at least **[●] business days** prior to the proposed Site Visit Date set forth in Section [x] herein. If LUMA does not receive such notice then Tenderer will be deemed to have waived any rights to visit the Site(s).

Tenderer's access to the Site(s) shall be at Tenderer's sole risk, cost and expense and Tenderer shall indemnify and hold LUMA harmless for any damage caused to the Site(s) or any property thereon as a result of the actions of Tenderer or those for whom Tenderer is responsible. Notwithstanding any such access, LUMA shall not entertain any questions regarding this ITT Package during any such access. All requests for clarifications shall be made in writing in the manner set forth in this ITT Package, including Section [x].

the AGREEMENT, The services AND THE PROJECT

LUMA has included its form of Agreement together with a brief summary of certain highlights of the Agreement in Part D of this ITT Package. The terms and conditions provided in the Agreement set out the terms under which LUMA intends to deal with various risk-allocation topics related to LUMA's commercial requirements. The Agreement contains further information regarding the Project, the required Work to be performed by the Contractor, the dates such Work are required to be completed and compensation for the Work. Tenderer shall be assumed to have reviewed the Agreement in its entirety prior to the submission of any Tender. The process, if any, by which Tenderer may submit comments or exceptions to the Agreement that Tenderer wishes to make must be submitted by way of an Alternate Tender in accordance with these Instructions, including Section [x] herein.

review, clarifications, meetings and short-listing

- **Duty to Examine and Review this ITT Package**

Tenderer shall carefully review the contents of this ITT Package. Unless otherwise indicated, Tenderer shall be deemed to have satisfied itself as to the correctness and sufficiency of the information contained in this ITT Package for the purposes of preparing and submitting its Tender.

LUMA shall not be responsible for any Liabilities whatsoever arising out of Tenderer's failure to review this ITT Package.

- **Clarification Requests**

If Tenderer finds discrepancies or errors in, or omissions from, this ITT Package, or if any part of the documents' intent or meaning is unclear or ambiguous, or if any other question arises relative to this ITT Package, Tenderer may request clarification by way of written notice to LUMA, but shall do so at least **three (3) business days** prior to the Closing Date. Subsequent clarifications or interpretations will be provided by LUMA, at its discretion, by way of an Addendum and LUMA shall have the right to send such Addendum to all Tenderers.

LUMA reserves the right, at any time, whether prior to or after the preparation of the list of short-listed Tenderers (if applicable), to request that any one or more Tenderers clarify its Tender in accordance with these Instructions. Without limiting the generality of the foregoing, LUMA may request clarification where any one or more Tenderer's intent is unclear (including, where there is an irregularity or omission in the information or documents provided by Tenderers in their Tenders). LUMA may, in its discretion, choose to meet with one, some, or all Tenderers to clarify any aspects of their Tenders. LUMA may require Tenderers to submit supplementary documents clarifying any matters contained in their Tenders or LUMA may prepare a written interpretation of any aspect of a Tender (including, meeting minutes) and seek the respective Tenderer's acknowledgement of that interpretation.

- **Meetings and Presentations**

Tenderer may be required to attend meetings at LUMA's offices in San Juan, Puerto Rico or elsewhere as directed by LUMA, for clarifications of technical, commercial or other components of its Tender and the finalization of contractual terms during the Tender evaluation period or at such other dates and times as required by LUMA, all at LUMA's discretion. Not all Tenderers may be asked to present and those requested to present will be at the discretion of LUMA including LUMA's evaluation committee.

- **No Collusion**

Tenderer shall not discuss or communicate, directly or indirectly with any other party who performs work similar to that of Tenderer, the contents of this ITT Package, Tenderer's intention to submit a Tender, or any of the contents of Tenderer's Tender or proposed Tender in a manner that would contravene applicable Law. Tenderer should prepare its Tender independently and without any exchange of knowledge with another Tenderer or prospective Tenderer.

TENDER requirements

- **Tender Contents and Format**

A Tender (other than an Alternate Tender) must contain all the information, acknowledgements and documentation required by this ITT Package. Specifically, Tenderers should ensure that all information, acknowledgements and documentation requested in the Tender Submission Form, including Tender Form A (Pricing Requirements) and Tender Form B (Non-Pricing/Commercial Requirements), is included in such Tender.

A Tender (other than an Alternate Tender) shall be organized and in the format specified (if applicable) in the Tender Submission Form. If no such format is specified in the Tender Submission Form then Tenderer shall ensure its Tender is submitted in hard-copy format.

- **Tender to be Submitted Prior to Closing Time**

A Tenderer shall submit a Tender and any Alternate Tender by the Closing Time. LUMA is under no obligation to accept late Tenders.

- **Location for Submission of Tender**

A Tender and any Alternate Tender (if applicable) shall be submitted to the location and in the manner outlined in the Tender Submission Form**.**

- **Modification and Withdrawal of Tenders by Tenderers Prior to Closing Time**

Tenderer may modify or withdraw its Tender and any Alternate Tender (if applicable) through written notice to LUMA at any time between the receipt of the Tender by LUMA and the Closing Time. Following withdrawal or modification, Tenderer may submit a new Tender and/or Alternate Tender (as applicable), provided it is submitted prior to the Closing Time and in accordance with this ITT Package. Only the latest Tender and any Alternate Tender (if applicable), will be considered by LUMA.

- **Binding Nature and Validity of Tender**

LUMA may accept any Tender, including any Alternate Tender, during the Validity Period. In consideration of LUMA agreeing to send to Tenderer this ITT Package and agreeing to receive and review Tenders, Tenderer who submits its Tender agrees that it will perform the Work if selected by LUMA and the rates and other pricing information contained in such Tender shall remain valid, irrevocable and open for acceptance by LUMA for the entire duration of the Validity Period.

During the Validity Period, Tenderer shall not withdraw, amend or impair its Tender or any Alternate Tender. Notwithstanding any clarifications, negotiations or discussions that may take place between LUMA and any Tenderer before, on or after the Closing Time, the Tender shall not expire or lapse and shall remain valid during the Validity Period, unamended by any such clarifications, negotiations and discussions.

- **Whether Tender Compliant at the Discretion of LUMA**

Failure by Tenderer to meet any or all of the requirements specified herein may result in the Tender being deemed non-compliant by LUMA. Determination of whether a Tender has been submitted and/or is in compliance with the other requirements for a Tender specified herein shall be at the discretion of LUMA. Blanket exceptions or general statements by Tenderer to the effect that the Tender may or may not meet the requirements of LUMA, or that the Tender is subject to general market availability for labour or materials, are not acceptable.

- **LUMA's Consideration for Tenderer's Submission of a Tender**

LUMA's sole consideration and responsibility for Tenderer preparing and submitting a Tender in accordance with the ITT Package is that LUMA undertakes to review all Tenders submitted.

- **Costs and Expenses of Preparation of Tender**

All costs and expenses incurred by Tenderer associated with its preparation, submittal, clarification, negotiation and discussions with respect to a Tender and any Alternate Tender (as applicable) shall be at the sole cost and expense of Tenderer.

- **Disclosure of Interest**

Tenderer shall make full disclosure in its Tender of any relationship between Tenderer or its Subcontractors and any employee, officer or director of LUMA.

If Contractor is later determined to have failed to disclose the type of relationship specified above and/or the relationship is falsely or insufficiently reported, LUMA may terminate or cancel the Agreement without liability to Contractor regardless of whether such Agreement specifically states that existence of such relationship would be a material default under the Agreement.

- **No Compliant Tenders**

If all Tenders are non-compliant, LUMA reserves the right to proceed howsoever it chooses, in its discretion, without further obligation to any Tenderer and may, among other things and without in any way derogating from LUMA's rights specified in these Instructions including Section [x] of these Instructions, request each Tenderer to correct any non-compliance issues in its Tender, retender the Work, cancel the ITT, select a non-compliant Tender, or conduct Agreement negotiations with one or more non-compliant Tenderers or with any other Person or Persons.

ALTERNATE Tenders

- **Pre-Condition to Submitting an Alternate Tender**

An Alternate Tender may only be submitted by Tenderer if Tenderer has also submitted a Tender that is in compliance with and meets, the requirements of, this ITT Package.

- **Alternate Tenders**

In addition to a Tender that complies with and meets, the requirements of this ITT Package, if Tenderer believes it would be beneficial to LUMA to: deviate from the requirements set forth in this ITT Package or as requested by LUMA in the Tender Submission Form; or to propose an alternative method or timing for providing the Work; or to provide different Work, such deviations, submissions or alternatives shall be presented as an "**Alternate Tender**" in accordance with this Section [x].

An Alternate Tender shall be clearly marked as an "Alternate Tender" and in a manner such that it is clearly distinguishable from the Tender that complies with and meets, the requirements of this ITT Package.

Any Alternate Tender shall explain in full detail the nature and extent of the proposed deviations from the ITT Package requirements and the consequent impact of each proposed deviation on the pricing requirements, commercial requirements, dates for performance of the Work, or any other aspect of the ITT Package, on an item by item basis. Such deviations, if any, shall be clearly identified and contained in a separate Alternate Tender devoted explicitly to that purpose.

Any Alternate Tender shall confirm the contractual terms and conditions upon which it is based. As such, Tenderer shall confirm whether the Alternate Tender is based upon the Agreement contained in this ITT Package (whether amended or unamended) or include Tenderer's proposed form of contract upon which any pricing in the Alternate Tender is based. If the Alternate Tender is based upon an amended version of the Agreement contained in this ITT Package, Tenderer shall include a "track changes" or "redline" version of the Agreement contained in this ITT Package showing Tenderer's proposed changes to the Agreement, including all changes necessary to reflect the alternate scope of work or pricing proposed by Tenderer. Any differences in proposed commercial terms should be clearly specified in the Alternate Tender.

Review, consideration, clarification, negotiation and/or discussion of any Alternate Tender shall be at the discretion of LUMA.

LUMA Evaluation Criteria

In evaluating a Tender, LUMA may evaluate the contents of the Tender, including the Tender Submission Form and any other information that Tenderer provides as a part of its Tender in accordance with the requirements of the ITT Package, as well as considering any other factors, information, or reasons that LUMA, in its discretion, deems relevant.

LUMA's evaluation criteria may include in no order of preference:

The proposed rates, estimates and pricing for the Work;

Tenderer's expertise in providing similar services to the Work;

Health and safety performance;

Use of local subcontractors by Tenderer;

Ability to meet any required dates specified for performance of the Work;

Experience in projects similar to the Project;

Management team experience and key personnel that will be committed to the Work;

Management and execution structures protocols for the Work; and

Management systems and project controls that will be utilized for the Work.

Acceptance and Rejection of a Tender

- **Selection of a Tender Must be in Writing**

Once LUMA has determined which Tender (or Alternate Tender) it wishes to select, LUMA will use reasonable efforts to indicate to Tenderer in writing that its Tender has been selected, subject to the finalization and negotiation of the Agreement at LUMA's discretion. The successful Tenderer will, within the Validity Period and upon notice from LUMA, enter into the Agreement with LUMA.

- **Finalization of Agreement After Acceptance**

After the acceptance of a Tender, LUMA has, in its discretion, the right to clarify, finalize, discuss and negotiate with Tenderer in question and, as part of that clarification, finalization, discussion and negotiation, to negotiate changes, amendments, or modifications to the Tender as submitted (any of which may result in changes, amendments or modifications to a Tender).

- **Rejection of a Tender**

LUMA will use reasonable efforts to notify an unsuccessful Tenderer if its Tender has not been selected. If Tenderer is unsuccessful, it agrees that by submitting a Tender it will not have a claim for and hereby irrevocably, absolutely and finally releases LUMA from, any breach of procedural fairness, including where the terms of the Agreement are altered (whether materially or otherwise) from those set out in the ITT Package.

LUMA's Rights and other terms and conditions

- **Lowest Priced Tender Not Necessarily Binding**

The Tender containing the lowest rates, estimates or other pricing information (including any Alternate Tender, if applicable) will not necessarily be accepted by LUMA. LUMA reserves the right in its discretion to reject or accept any and all Tenders (including any Alternate Tender, if applicable), irrespective of whether such Tenders (including any Alternate Tender, if applicable) are compliant with and meet, the requirements of this ITT Package and LUMA shall not be obliged to reject or accept any Tender (including any Alternate Tender, if applicable) regardless of whether it is the lowest-cost compliant Tender, or otherwise.

The acceptance of any Tender (including any Alternate Tender, if applicable) by LUMA is contingent upon LUMA's sole determination, acting in its discretion, that it is in the best interests of LUMA to accept any such Tender (including any Alternate Tender, if applicable), in whole or in part, based upon any factors LUMA determines are relevant, including expertise, quality, timeliness, reputation, price, reliability, safety, creditworthiness, access to funds, dates for performance of the Work, etc. LUMA is under no obligation to Tenderers to provide any explanation of the reasons for its choices.

- **LUMA's Sole Discretion to Procure the Work or Reject or Accept a Tender**

Notwithstanding anything to the contrary contained herein, LUMA reserves the right, in its discretion, to reject or accept, in whole or in part, any Tender (including any Alternate Tender, if applicable) which does not comply with, or meet, the requirements set out in the ITT Package.

LUMA expressly reserves the right to reject or accept, at LUMA's discretion, any Tender (including any Alternate Tender, if applicable) if, in LUMA's sole determination, acting in its discretion:

there is an obvious and demonstrable defect, error or mistake in the Tender (including any Alternate Tender, if applicable) whether such defect, error or mistake is material or immaterial;

the Tender (including any Alternate Tender, if applicable) is conditional, incomplete, irregular, unrealistic or otherwise deficient;

Tenderer's Tender (including any Alternate Tender, if applicable) may give rise to adverse cost or schedule consequences to LUMA; or

the Tender (including any Alternate Tender, if applicable) is not received in the manner specified in the ITT Package, in strict compliance with the ITT Package, including being received by the Closing Time specified in the ITT Package and for clarity LUMA may, acting in its discretion, reject or accept any Tender submitted after the time period specified in the ITT Package, including after the Closing Date and Closing Time specified in this ITT Package.

Notwithstanding anything else contained in the ITT Package, express or implied, LUMA may procure the Work in such manner as it may elect, in its discretion and reserves the following rights, in its discretion to:

reject or accept a Tender (or Alternate Tender, if applicable) that does not comply with, or meet, the requirements of this ITT Package, notwithstanding any material or immaterial nonconformity, condition, defect, irregularity, error, mistake or deficiency in respect of the Tender;

reject or accept an Alternate Tender;

reject or accept any Tender (or Alternate Tender, if applicable) for the supply or performance of all or any portion of the Work;

request clarifications or enter into discussions or negotiations in respect of the Work with one or more Tenderers or their respective partners, consortium members or joint venturers at any time;

enter into one or more agreements for the supply or performance of all or any part of the Work with one or more Tenderers or their respective partners, consortium members or joint venturers, upon the same or different terms and conditions as set forth in the ITT Package, for the purpose of obtaining the best agreement possible for all or any part of the Work that LUMA, in its discretion, deems to be in LUMA's best interests;

reject or accept any Tender (including any Alternate Tender, if applicable) contingent upon Tenderer entering into a subcontract joint venture or consortium with another Tenderer or third party where LUMA wishes to have a specific portion of the Work supplied by such other Tenderer or third party under the supervision and control of Tenderer;

discuss the terms of a Tender (including any Alternate Tender, if applicable) submitted by Tenderer for the purposes of clarification and negotiation, which discussions may or may not result in the final agreement entered into between LUMA and Tenderer being substantially different from the terms and conditions of the ITT Package;

cancel all or any portion of this Tender process at any time, without prior notice to Tenderer and procure the Work, or any portion of the Work, by some other means or obtain all or any portion of the Work from one or more potential Contractors or any other third party or parties of LUMA's choice and on terms and conditions of LUMA's choosing; and

enter into a contract (including the Agreement) in respect of the Work, or a portion or portions thereof, with any other third parties.

LUMA's rights described in the ITT Package, including in Sections [x] to [x], inclusive, are irrespective of whether LUMA has invited Tenderer to submit a Tender (including any Alternate Tender, if applicable) following a pre-qualification process or otherwise.

- **Limitation of Liability**

LUMA shall in no event be responsible or held liable to Tenderer for any Liabilities and Tenderer hereby irrevocably, absolutely and finally releases and indemnifies and agrees to hold LUMA harmless from any such Liabilities (consequential, special or otherwise, howsoever arising, including whether by contract, tort (including negligence) or otherwise), including costs, expenses and third party claims, preparation costs, or loss of profits. LUMA's sole consideration and responsibility for Tenderer's submission of a Tender and/or Alternate Tender shall be the review specified in Section [x].

- **Joint Ventures and Consortiums**

A Tenderer may only submit a Tender together with a partner, joint venturer or as part of a consortium with the written approval of LUMA, acting in its discretion.

Tenders by a partnership, joint venture or consortium shall designate one single participant to represent all those forming Tenderer for purposes of the Tender.

Any Tender submitted by a partnership, joint venture, or consortium shall be signed by authorized signatories of all members of the partnership, joint venture or consortium so as to be legally binding on each such partner, joint venturer or consortium member, shall include a representation stating that all such partners, joint venturers or consortium members are jointly and severally liable for all of the Liabilities and obligations arising from such Tender and shall confirm that the entity will remain intact until the expiry of the obligations under all warranty periods specified in the Agreement.

A Tender from a partnership, other than a limited liability partnership recognized as such in Alberta, joint venture or consortium shall also include the form of contractual relationship that has been entered into among itself and the proposed partners, joint venturers, consortium members or other third parties, as well as a copy of the executed confidentiality agreement that has been entered into among Tenderer and the foregoing entities with respect to the preparation of the Tender. In addition, Tenderer shall provide a brief explanation as to how the proposed partners, joint venturers, consortium members or other third parties will benefit LUMA. If Tenderer is a limited liability partnership recognized as such in Alberta, the foregoing shall not apply, however, the general partner of such limited liability partnership shall be jointly and severally liable to LUMA for such limited liability partnership's obligations hereunder.

- **Confidentiality**

This ITT Package, together with the attachments and any other plans, schedules and information that LUMA may have previously provided, or may in the future provide to, or discuss with, Tenderer, relating to or otherwise in connection with the Work or the Project, constitutes confidential information of LUMA. All such information is provided to Tenderer on the condition that Tenderer will keep it confidential, that Tenderer will

use it solely for the purposes of its review in connection with the Tender process and the negotiation and entering into of contracts relating to the Work, including, the Agreement and that Tenderer will disclose same only to those of Tenderer's employees or professional advisors who need to review same in order for Tenderer to participate in this process in the manner noted above. Tenderer is responsible for ensuring that all such employees and advisors retain any such information confidential in the same manner as Tenderer is required to do so.

- **Ownership of Tender or Alternate Tender**

LUMA shall own any Tender or Alternate Tender submitted in accordance with this ITT Package, provided that LUMA will retain the financial information received from Tenderer in response to the request for annual consolidated financial statements of Tenderer or other information in lieu of such financial statements that will allow Owner to properly assess the financial status of Tenderer as required by Part A of Tender Form B (Non- Pricing Commercial Requirements) confidential and that such financial information shall only be used, copied and reproduced by LUMA and disclosed to its directors, officers, employees, representatives, agents, consultants and professional advisors for the purpose of LUMA dealing with this ITT Package, including evaluating any Tender or Alternate Tenders received by LUMA pursuant to this ITT Package, provided the foregoing shall not apply where such financial information: was, at the time of disclosure, or becomes, part of the public record; or was already, or later becomes, in the lawful possession of LUMA and not subject to on-going confidentiality requirements. Notwithstanding anything to the contrary contained herein, LUMA shall have the right to disclose any or all of a Tender (including any such financial information) to the extent it is legally compelled to do so by any applicable Laws, including by oral questions, interrogatories, requests for confidential information, regulatory requirement, requirement of any stock exchange or other legal requirement (including as may be required by any regulatory Authority).

- **Choice of Law and Attornment**

The ITT Package shall be construed and interpreted in accordance with the Laws in force in the Commonwealth of Puerto Rico and the federal Laws of the United States of America applicable therein and LUMA and Tenderer each irrevocably attorn to binding arbitration in accordance with the provisions of the Draft Agreement with respect to same.

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B.2: Request for Proposals (RFP)

GENERAL

Invitation to Submit Proposal

- Proponent is invited by LUMA **Energy Servco, LLC ("LUMA")** to submit a Proposal for the provision of the Services in accordance with the terms and conditions of this RFP Package. A full description of the Services and LUMA's related requirements is contained in this RFP Package.

Proponents are advised that LUMA is engaged with the Puerto Rico Electrical Power Authority (PREPA) under the *Operations and Maintenance Agreement*, effective June 22, 2020 (the "OMA"). LUMA is currently preparing to operate Puerto Rico's Electric Transmission and Distribution grid on behalf of PREPA. This transition is anticipated to occur on June 1, 2021, at which time LUMA will become agent for PREPA. The transition is subject to the occurrence of a number of conditions precedent and as such this date is subject to change at any time.

Should your organization receive an award as a result of this RFP, you will be granted a provisional award by LUMA. Once the transition has occurred and LUMA may act as agent for PREPA, a contract will be executed between your organization and LUMA, as agent of PREPA.

The Proponent acknowledges and agrees that:

3. **this Proposal, the RFP Package and the procurement process does not constitute a final legally binding bidding process. There will be no legal relationship or obligations created until LUMA and the selected Proponent have negotiated and executed a mutually agreeable written contract;**
4. **This RFP Package was advertised publicly for a free and transparent procurement process; and**
5. **The Proponent has been advised that LUMA parent company, affiliate or subsidiary companies may submit a Proposal for the provision of the Services in accordance with the terms and conditions of this RFP Package. LUMA parent companies, affiliates or subsidiaries are subject to the Conflict of Interest policies and procedures as set out in LUMA's Procurement Manual.**

RFP Package Content

This RFP Package is intended to provide Proponent with information such that Proponent may prepare and submit a Proposal in relation to performance of the Services, including:

- description and requirements of the Proposal preparation and submission process provided for in this RFP Package;

- LUMA's evaluation criteria in reviewing Proposals;

- a general description of the Project and the Scope of Services to be performed by Vendor;
- certain information on the Draft Agreement which will serve as the starting point for the negotiation of a final written agreement between Vendor and LUMA, as agent for PREPA, for the Services;
- key dates for the completion of the Services; and
- other commercial instructions/requirements for Proposals submitted in response to this RFP Package.

RFP Package Documents

- This RFP Package is comprised of the following documents:
    - this **Part A** – Instructions to Proponents and Conditions of Proposal
    - **Part B** – Description of Services
    - **Part C** – Proposal Submission Form
    - **Annex 1** – Draft Agreement
- In the event of any conflict or inconsistency among any documents forming part of this RFP Package, the document taking precedence shall be this Part A – Instructions to Proponents and Conditions of Proposal. However, Proponent is encouraged to request a clarification with respect to such conflict or inconsistency.
- LUMA may, in its discretion, amend the contents of any document comprising part of this RFP Package at any time and from time to time prior to the Closing Time, in which event LUMA shall provide a written Addendum to Proponent.
- LUMA may, in response to changing circumstances with respect to the requested Services or the Project, amend and re-issue the entirety of this RFP Package. If such circumstances arise LUMA will permit each Proponent the same reasonable opportunity to re-submit the applicable portions of its Proposal in response to the amended and re-issued RFP Package.
- If there is any conflict or inconsistency between the terms of this RFP Package and terms implied by any custom, policy, practice, usage or agreement in the industry or trade, or any other policy or practice, or any term implied by or any decision rendered by any court, the terms of this RFP Package shall govern and prevail.

Definitions and Interpretation

- For the purposes of this RFP Package, words and phrases that are not defined herein shall have the meaning given to them in the Draft Agreement. The following capitalized words and phrases when used in this RFP Package shall have the meanings ascribed below:

"**Addendum**" or "**Addenda**" means any additional information or responses to clarification requests issued by LUMA for review and use by Proponent in the preparation of its Proposal.

"**Draft Agreement**" means the form of agreement attached as Exhibit 1 to the Memorandum of Understanding which will be used as the starting point for any negotiations between Vendor and LUMA regarding the provision of the Services.

"**LUMA** " means LUMA Energy Servco, LLC.

"**BAFO**" has the meaning given to it in Section [x].

"**Closing Date**" means the final date specified on the face page of these Instructions on which any Proposal may be submitted by Proponent to **LUMA** in accordance with this RFP Package.

"**Closing Time**" means the exact time on the Closing Date specified on the face page of these Instructions prior to which any Proposal shall be submitted to **LUMA** by Proponent.

"**Instructions**" means this Part A - Instructions to Proponents and Conditions of Proposal.

"**Liabilities**" means any and all actions, causes of action, prosecutions, change orders, claims (including third party claims), damages, losses, liabilities, costs and expenses (including legal fees and expenses and court costs on a solicitor and own client basis), however arising, including whether consequential, special or otherwise, howsoever arising, including whether by contract, tort (including negligence) or otherwise, including any costs, expenses, third party claims preparation costs or loss of profits, whatsoever which Proponent may sustain, incur or pay, or which may be brought against Proponent (including liability for any Proposal, if applicable), however the same may be caused, arising from or in relation to the submission by Proponent of the Proposal or any act or omission of LUMA in relation to this RFP Package, including the exercise of any right specified hereunder or at Law and including any decision by LUMA to reject any or all Proposals.

PREPA means the Puerto Rico Electrical Power Authority.

"**Project**" means LUMA's requirement for **[NTD: INSERT BUSINESS REQUIREMENT].**

"**Proposal**" means the documents prepared and submitted by Proponent to **LUMA** in response to this RFP Package.

"**Proposal Submission Form**" means the Part C – Proposal Submission Form, unaltered other than to include the information of Proponent requested thereby.

"**Proponent**" means a recipient of this RFP Package.

"**RFP Package**" means the documents comprising this Request to Proposal, as further specified in Section [x] herein and includes any Addendum.

"**Services**" means the Services as defined in the Draft Agreement and the obligations to be performed by Vendor for the Project that is the subject matter of this RFP Package, which is further described herein.

"**Vendor**" means a Proponent who is selected by LUMA to enter negotiations pursuant to the process provided for in the RFP Package and which ultimately enters into a final written agreement with LUMA, as agent of PREPA, for the Services.

- The words "include", "includes" and "including", when used in this RFP Package shall be construed to mean "include, without limitation", "includes, without limitation" and "including, without limitation" respectively, as appropriate.
- Any reference to LUMA's "judgment", "discretion" or decision-making capacity shall mean any such judgment, discretion or decision is at the sole, absolute and unfettered discretion of LUMA, whether reasonable or unreasonable.
- Any reference to "business day" means any date other than a Saturday, Sunday and recognized national or local holidays which are observed in San Juan, Puerto Rico, United States of America. The word "day" refers to a calendar day, unless used as part of the term "business day".
- Unless otherwise specified, references in this RFP Package to an "Exhibit" are references to an Exhibit of the Draft Agreement.

Addenda

- LUMA may, at any time, prior to the Closing Time, issue one or more Addenda.
- Each Addendum issued by LUMA shall be in writing and shall be circulated to all Proponents. All Addenda shall be deemed to become part of this RFP Package. Instructions, corrections or interpretations that are provided orally or by other informal means should not be relied upon and are not part of this RFP Package.
- If Proponent has already submitted its Proposal, or any part thereof, to LUMA prior to the issuance of an Addendum, Proponent shall, by the applicable Closing Time, re-submit its Proposal to LUMA based upon this RFP Package as revised by the Addendum.

Communication with LUMA

- All correspondence and requests for interpretation, made by Proponent to LUMA pertaining to this RPF Package must be delivered [**via email / PowerAdvocate Sourcing Platform]** to the attention of the following individual:

Name: xxx

Any correspondence or contact with any LUMA representative other than identified in the Contact Information may be deemed to offend the fairness of the competitive process. As such, Proponents who do not comply with this requirement may be disqualified from further consideration.

Correspondence or requests may be made by email.

- All communications between LUMA and Proponent shall be in the English language.
- LUMA may change the designated Contact Information from time to time by notice in writing to Proponent.

RFP Package Key dates AND SITE VISIT

Key Dates

The following dates are applicable to this RFP Package:

RFP Package Milestone	**Date**
RFP Package issued to Proponents	**[ ], 2020**
Deadline for acknowledgement of receipt of RFP Package by Proponent **Note that by returning a signed copy of the Non-Disclosure Agreement, Proponent acknowledges receipt of this RFP package and confirms its intent to bid.*	**[ ], 2020**
Clarifying questions submitted by Proponents via email	
Answers to clarifying questions via written (email) response	
Deadline for Receipt of Proposals	**Proponent to submit Proposal prior to the Closing Time on the Closing Date specified in the face page of these Instructions**
Projected date for notification of selection of one or more Proponents to enter negotiations with LUMA	**[ ], 2021 or as advised by LUMA**

Revisions to Key Dates

LUMA may extend the Closing Date and/or Closing Time or any of the other dates specified above, at its sole discretion, from time to time. LUMA will provide written notice of any such change to Proponent as soon as is reasonably possible by Addendum.

review, clarifications, meetings and short-listing

Duty to Examine and Review this RFP Package

- Proponent shall carefully review the contents of this RFP Package. Unless otherwise indicated, Proponent shall be deemed to have satisfied itself as to the correctness and sufficiency of the information contained in this RFP Package for the purposes of preparing and submitting its Proposal.

- LUMA shall not be responsible for any Liabilities whatsoever arising out of Proponent's failure to review this RFP Package, or with respect to any inaccuracy, error or deficiency in the information contained in the RFP Package. LUMA makes no representation or warranty as to the accuracy of the information contained in the RFP Package.

Clarification Requests

- If Proponent finds discrepancies or errors in, or omissions from, this RFP Package, or if any part of the documents' intent or meaning is unclear or ambiguous, or if any other question arises relative to this RFP Package, Proponent may request clarification by way of written notice to LUMA but shall do so at least three (3) business days prior to the Closing Date. Subsequent clarifications or interpretations will be provided by LUMA, at its discretion, by way of an Addendum and LUMA shall have the right to send such Addendum to all Proponents.

- LUMA reserves the right, at any time, whether prior to or after the preparation of the list of short-listed Proponents (if applicable), to request that any one or more Proponents clarify its Proposal in accordance with these Instructions. Without limiting the generality of the foregoing, LUMA may request clarification where any one or more Proponent's intent is unclear (including, where there is an irregularity or omission in the information or documents provided by Proponents in their Proposals). LUMA may, in its discretion, choose to meet with one, some, or all Proponents to clarify any aspects of their Proposals. LUMA may require Proponents to submit supplementary documents clarifying any matters contained in their Proposals or LUMA may prepare a written interpretation of any aspect of a Proposal (including, meeting minutes) and seek the respective Proponent's acknowledgement of that interpretation.

Meetings and Presentations

Proponent may be required to attend meetings at LUMA's offices in San Juan, Puerto Rico, United States, or elsewhere as directed by LUMA, for clarifications of technical, commercial or other components of its Proposal during the Proposal evaluation period or at such other dates and times as required by LUMA, all at LUMA's discretion. Not all Proponents may be asked to present and those requested to present will be at the discretion of LUMA including LUMA's evaluation committee.

No Collusion

Proponent shall not discuss or communicate, directly or indirectly with any other party who performs work similar to that of Proponent, the contents of this RFP Package, Proponent's intention to submit a Proposal, or any of the contents of Proponent's Proposal or proposed Proposal in a manner that would contravene applicable law. Proponent should prepare its Proposal independently and without any exchange of knowledge with another Proponent or prospective Proponent.

PROPOSAL requirements

Proposal Contents and Format

- A Proposal must contain all the information, acknowledgements and documentation required by this RFP Package. Specifically, Proponents should ensure that all information, acknowledgements and documentation requested in the Proposal Submission Form, including Proposal Form C (Proposal) is included in such Proposal.

Proposal to be Submitted Prior to Closing Time

A Proponent shall submit a Proposal by the Closing Time. LUMA is under no obligation to accept or review late Proposals.

Modification and Withdrawal of Proposals by Proponents Prior to Closing Time

Proponent may modify or withdraw its Proposal through written notice to LUMA at any time. Following withdrawal or modification prior to the Closing Time, Proponent may submit a new Proposal, provided it is submitted prior to the Closing Time and in accordance with this RFP Package. Only the latest Proposal will be considered by LUMA.

Non-Binding Nature and Validity of Proposal

- The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the laws applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFP shall not give rise to any legal obligations ; and (b) neither the Proponent nor LUMA shall have the right to make any breach of contract, tort or other claims against the other with respect to the award of a contract, failure to award a contract or failure to honor a response to the RFP.

- The RFP process is intended to identify prospective vendors for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service shall be created between the Proponent and LUMA by the RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

LUMA's Consideration for Proponent's Submission of a Proposal

LUMA's sole obligation for Proponent preparing and submitting a Proposal in accordance with the RFP Package is that LUMA undertakes to review all Proposals submitted in a commercially reasonable manner.

Costs and Expenses of Preparation of Proposal

All costs and expenses incurred by Proponent associated with its preparation, submittal, clarification, negotiation and discussions with respect to a Proposal (as applicable) shall be at the sole cost and expense of Proponent.

Disclosure of Interest

- Proponent shall make full disclosure in its Proposal of any relationship between Proponent or its Subcontractors and any employee, officer or director of LUMA or PREPA.

- If Vendor is later determined to have failed to disclose the type of relationship specified above and/or the relationship is falsely or insufficiently reported, LUMA may terminate or cancel the final agreement without liability to Vendor regardless of whether such agreement specifically states that existence of such relationship would be a material default under the final agreement.

LUMA Evaluation Criteria

- In evaluating a Proposal, LUMA may evaluate the contents of the Proposal, including information that Proponent provides as a part of its Proposal in accordance with the requirements of the RFP Package, as well as considering any other factors, information, or reasons that LUMA, in its discretion, deems relevant.

- Key evaluation criteria include in no order of preference:

Quality, including:

•

Service, including:

•

Safety, including:

•

Commercial and Financial (Pricing), including:

•

selection of proponents for negotiations

Selection Process for Negotiations

- LUMA will, acting in its discretion, following the Closing Time, select one or more Proponents, in accordance with the evaluation criteria, to enter negotiations with LUMA. LUMA will use all reasonable efforts to indicate to a Proponent in writing that it has been selected to enter into negotiations.

- At LUMA's discretion the selection process may occur in multiple stages and Proponents not initially selected may be invited to enter negotiations with LUMA following the commencement of negotiations with other Proponents.

LUMA may provide further information to the selected Proponents which is not provided to any Proponents that have not been selected.

Negotiation of a Final Agreement

- LUMA will enter into negotiations with one or more selected Proponents. In the event LUMA enters into negotiations with more than one selected Proponent, such negotiations will be concurrent. LUMA will provide each of the selected Proponents with any additional information and will seek further information and proposal improvements from each of the selected Proponents.

- Following the negotiations, each of the selected Proponents will be invited to revise its initial proposal and submits its best and final proposal ("**BAFO**") to LUMA.

- The BAFO of each of the selected Proponents will be evaluated against the same criteria as the initial proposals submitted by the selected Proponents. The top-ranked Proponent will then be selected to enter into a final round of non-binding discussions and negotiations to determine the possibility of LUMA and such Proponent entering into a final written agreement for the provision of all, or part of, the Services. Any such final agreement will be based on the Draft Agreement (included in Part B of the RFP Package). The terms of the Draft Agreement enclosed with this RFP may be materially altered as a result of the above discussions, negotiations, changes, amendments, or modifications between LUMA and the successful Proponent.

- LUMA reserves the right, in its discretion, to identify one or more successful Proponents who will enter into a final round of non-binding discussions and negotiations to determine the possibility of LUMA and such Proponent entering into a final written agreement for the provision of all, or part of, the Services as a result of those negotiations.

- LUMA shall incur no liabilities to any Proponent as a result of, or arising from, a failure to enter into a final written agreement in relation to the Services.

- LUMA reserves the right, in its discretion, to choose not to engage in the BAFO process and to proceed to enter into direct negotiations with the top Proponent.

Non-Selection of a Proponent

LUMA will use reasonable efforts to notify an unsuccessful Proponent if it has not been initially selected for negotiations. If Proponent is unsuccessful, it agrees that by submitting a Proposal it will not have a claim for and hereby irrevocably, absolutely and finally releases LUMA from, any breach of procedural fairness, including where the terms of any final agreement differ from those in the Draft Agreement (whether materially or otherwise) included in the RFP Package.

LUMA's RIGHTS AND other terms and conditions

LUMA's Discretion to Select Proponents

- The decision to select a Proponent for further negotiation and discussion by LUMA is contingent upon LUMA's sole determination, acting in its discretion, that it is in the best interests of LUMA to select such Proponent, in whole or in part, based upon the evaluation factors indicated in the RFP Package, e.g. expertise, quality, timeliness, reputation, price, reliability, safety, creditworthiness, access to funds, dates for performance of the Services, etc. LUMA is under no obligation to Proponents to provide any explanation of the reasons for its choices.

LUMA's Sole Discretion to Procure the Services or Reject a Proposal

- Notwithstanding anything to the contrary contained herein, LUMA reserves the right, in its discretion, to reject and not review any Proposal which does not comply with, or meet, the requirements set out in the RFP Package.

- Notwithstanding anything else contained in the RFP Package, express or implied, LUMA may procure the Services in such manner as it may elect, in its discretion and reserves the following rights, in its discretion to:

reject or select a Proponent for negotiations or submission of a BAFO;

request clarifications or enter into discussions or negotiations in respect of the Services with one or more Proponents or their respective partners, consortium members or joint venturers at any time;

enter into one or more agreements for the supply or performance of all or any part of the Services with one or more Proponents or their respective partners, consortium members or joint venturers, upon the same or different terms and conditions as set forth in the RFP Package or a BAFO, for the purpose of obtaining the best agreement possible for all or any part of the Services that LUMA, in its discretion, deems to be in LUMA's best interests;

discuss the terms of a Proposal submitted by a Proponent for the purposes of clarification and negotiation, which discussions may or may not result in the final agreement entered into between LUMA and Proponent being substantially different from the terms and conditions of the RFP Package;

cancel all or any portion of this Proposal process at any time, without prior notice to Proponent and procure the Services, or any portion of the Services, by some other means or obtain all or any portion of the Services from one or more potential Vendors or any other third party or parties of LUMA's choice and on terms and conditions of LUMA's choosing; and

enter into a contract (including a contract which is substantially the same as the Draft Agreement) in respect of the Services, or a portion or portions thereof, with any other third parties.

- LUMA's rights described in the RFP Package, including in Sections [x] to [x] inclusive, are irrespective of whether LUMA has invited Proponent to submit a Proposal following a pre-qualification process or otherwise.

Limitation of Liability

LUMA shall in no event be responsible or held liable to Proponent for any Liabilities and Proponent hereby irrevocably, absolutely and finally releases and indemnifies and agrees to hold LUMA harmless from any such Liabilities (consequential, special or otherwise howsoever arising, including whether by contract, tort (including negligence) or otherwise), including costs, expenses and third party claims, preparation costs, or loss of profits. LUMA's sole consideration and responsibility for Proponent's submission of a Proposal shall be the review specified in Section [x].

Confidentiality

This RFP Package, together with the attachments and any other plans, schedules and information that LUMA may have previously provided, or may in the future provide, to, or discuss with, Proponent, relating to or otherwise in connection with the Services or the Project, constitutes confidential information of LUMA. All such information is provided to Proponent on the condition that Proponent will keep it confidential, that Proponent will use it solely for the purposes of its review in connection with the Proposal process and the negotiation and entering into of agreements relating to the Services, including, the final written agreement and that Proponent will disclose same only to those of Proponent's employees or professional advisors who need to review same in order for Proponent to participate in this process in the manner noted above. Proponent is responsible for ensuring that all such employees and advisors retain any such information confidential in the same manner as Proponent is required to do so.

Ownership of Proposal

LUMA shall own any Proposal submitted in accordance with this RFP Package and any subsequent BAFO submitted in accordance with Section [x], provided that LUMA will retain any financial information received from any Proponent in confidence and such financial information shall only be used, copied and reproduced by LUMA and disclosed to its directors, officers, employees, representatives, agents, consultants and professional advisors for the purpose of LUMA dealing with this RFP Package, including evaluating any Proposal received by LUMA pursuant to this RFP Package, provided the foregoing shall not apply where such financial information: was, at the time of disclosure, or becomes, part of the public record; or was already, or later becomes, in the lawful possession of LUMA and not subject to on-going confidentiality requirements. Notwithstanding anything to the contrary contained herein, LUMA shall have the right to disclose any or all of a Proposal or BAFO (including any such financial information) to the extent it is legally compelled to do so by any applicable Laws, including by oral questions, interrogatories, requests for confidential information, regulatory requirement, requirement of any stock exchange or other legal requirement (including as may be required by any regulatory authority).

Choice of Law and Attornment

The RFP Package shall be construed and interpreted in accordance with the Laws in force in the Commonwealth of Puerto Rico and the federal Laws of the United States of America applicable therein and LUMA and Proponent each irrevocably attorn to binding arbitration in accordance with the provisions of the Draft Agreement with respect to same.

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