

**COMMONWEALTH OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

NEPR

Received:

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IN RE: REVIEW OF PUERTO RICO
ELECTRIC SYSTEM
REMEDATION PLAN

CASE NO. NEPR-MI-2020-0019

SUBJECT: Request for partial reconsideration of determination on LUMA's Request for Confidential Designation of Portions of Additional Information filed on May 19, 2021 and Motion in Compliance with Order.

**MOTION FOR PARTIAL RECONSIDERATION OF RESOLUTION AND
ORDER ON CONFIDENTIALITY ISSUED ON JUNE 11, 2021 AND IN COMPLIANCE
WITH ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as "LUMA"), through the undersigned counsel and respectfully state and request the following:

I. Introduction and Procedural Background

LUMA herein requests partial reconsideration of several portions of the Resolution and Order issued by this honorable Puerto Rico Energy Bureau ("Energy Bureau") on June 11, 2021 ("June 11th Resolution and Order") in relation to a request for confidential treatment of very particular commercially sensitive information that LUMA filed under seal of confidentiality in response to several requests for information that the Energy Bureau issued during the technical conferences held in this proceeding. As explained in Section III *infra*, LUMA is also partially complying with the June 11th Resolution and Order.

On February 24, 2021, LUMA filed before this honorable Energy Bureau a Request for Approval of the System Remediation Plan (“SRP Petition”), pursuant to LUMA’s obligations under Section 4.1 (d) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, executed by and among LUMA, the Puerto Rico Electric Power Authority (“PREPA”) and the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) (“OMA”).

On April 6, 2021, this honorable Energy Bureau issued a Resolution and Order on “Completeness” of LUMA’s System Remediation Plan (“SRP”) (“April 6th SRP Order”) whereby, among others, this honorable Energy Bureau directed LUMA to, within ten days, provide information and responses to the requests for information that were included in Attachment A to the April 6th SRP Order (“Requests for Information”). *Id.* On April 16, 2021, LUMA filed before this honorable Energy Bureau a “Motion in Compliance with Resolution and Order of April 6, 2021 and Submitting Responses to Requests for Information” (“Motion Submitting Responses to SRP Requests for Information”). Exhibit 1 to the Motion Submitting Responses to SRP Requests for Information included LUMA’s responses to the Requests for Information and several attachments some of which are confidential (“Responses to SRP Requests for Information”).

On April 23, 2021, this Energy Bureau issued a Resolution and Order that set a procedural calendar in this proceeding and included a technical conference scheduled for May 14th and 17th, 2021 (“April 23rd Order”). The April 23rd Order also directed that LUMA would have until May 19, 2021, to file additional information that the Energy Bureau could require during the technical conference.

A technical conference was held on May 14th and 17th, 2021. Throughout the two days of the technical conference, Commissioners and Bureau consultants issued requests for additional

information. Similarly, LUMA representatives offered and requested leave to file additional information or responses with regards to several topics, and/or to provide written clarifications on several matters. The Energy Bureau issued bench orders granting LUMA leave to provide additional information or supplemental written responses to certain questions and/or to submit clarifications, on or before May 19, 2021. In compliance with the April 23rd Order and with the bench orders issued during the technical conference, on May 19, 2021, LUMA submitted the additional information requested by the Energy Bureau as well as additional responses and/or clarifications, as the Energy Bureau authorized during the technical conference (“LUMA’s May 19th Submission”).

LUMA’s May 19th Submission included one partially confidential response, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, seven confidential attachments to said response, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 1 through 7, and one confidential attachment to TC-RFI-LUMA-MI-21-0019-210514-PREB-004, Attachment 1 (together, “the May 19th Confidential Responses”).

On June 1, 2021, LUMA filed a “Memorandum of Law in Support of Request for Confidential Treatment of Portions of Motion in Compliance with Order Submitting Additional Information Requested in Technical Conference, Supplemental Responses to Question and Clarifications,” (“June 1st Confidentiality Memorandum”). Section IV of the Memorandum identified the confidential information.

On June 11, 2021, the Energy Bureau issued a Resolution and Order granting in part and denying in part the request for confidential treatment of portions of LUMA’s May 19th Confidential Responses. The Energy Bureau directed that portions of the May 19th Confidential Responses

should be filed for the public record and that LUMA should file amended public versions of several of the May 19th Confidential Responses. *See* June 11th Resolution and Order at pages 6 through 8.

On June 13, 2021, LUMA requested additional time to respond to the June 11th Resolution and Order and/or request reconsideration. LUMA hereby requests reconsideration of portions of the June 11th Resolution and Order and complies with several portions of said Resolution and Order.

II. Applicable Standard to a Motion for Reconsideration

Regarding the specific issue of the filing of confidential information before this Energy Bureau the Resolution entitled *In Re: Policy on Management of Confidential Information in Procedures before the Commission*, CEPR-MI-2016-0009, issued August 31, 2016 (“Confidential Management Policy”), as amended, states on Section C(5), that “[i]f the Commission denies a confidentiality claim, the Commission will disclose such information within thirty (30) days from the date its determination is notified, unless the Producing Party requests reconsideration, judicial review, or any other remedy it deems appropriate, which will interrupt the thirty (30) day term to disclose such information.” *See also* Section 11.01 of Bureau Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*: “Any party dissatisfied with the Commission’s final decision may file a motion for reconsideration before the Commission, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Commission should have granted.” Section 11.01 adds that this request shall be filed and served in accordance with the terms and provisions of the Puerto Rico Uniform Administrative Procedure Act, Act 170 of August 12, 1988, which was repealed and substituted by Act 38-2017. Act 38-2017, on Section 3.15, 3 P.R. Laws Ann. § 9655, and allows a party

adversely affected by a partial or final resolution or order to request reconsideration within 20 days of the notification of the resolution or order.

Pursuant to the aforementioned provisions LUMA is filing this request for partial reconsideration.

III. Compliance with Order

A. TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 1

With this Motion, LUMA is submitting a revised redacted and public version of the RFP Instructions for bill printing, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 1. In compliance with the June 11th Resolution and Order whereby the Energy Bureau directed that LUMA shall redact employee and third-party names, key dates and information on LUMA's internal business operations, LUMA redacted the following:

1. Employee names and contact information, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 1, at page 3;
2. Section 2.1 with key date, *id.* at page 18; and
3. Information that reveals details related to LUMA's internal processes on evaluation or proposals and analysis for bill printing which is sensitive commercial information and confidential assessments of operational needs on bill printing that are protected under law as LUMA explained in the June 1st Confidentiality Memorandum. The redacted portions are:
 - a. Section 4.8 at pages 10-11;
 - b. Section 5 at pages 11-12;
 - c. Section 5.3 at pages 12-13;
 - d. Section 5.4 at pages 13-14;

- e. Section 5.6 at page 15; and
- f. 6.2.2 and 6.2.3

The aforementioned sections and portions of the RFP Instructions document include sufficient details on operational methods and needs related to billing that reveal LUMA's methods and internal processes that are not part of the public domain and that LUMA reasonably protects from disclosure. It is information protected under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 P.R. Laws Ann. §§ 4131-4144 (2019). It must be noted that Act 80-2011 has been interpreted expansively by the Puerto Rico Supreme Court to protect commercial information that is confidential in nature. *Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891, 901-02 (2017) (citation omitted); *see also Next Step Medical Co. v. MCS Advantage Inc.*, 2016 WL 6520173, KLCE201601116 (P.R. Court of Appeals, September 13, 2016 at page 11 (holding that in Puerto Rico, what constitutes trade secrets is evaluated applying a broad definition). As held by the Puerto Rico Supreme Court, a trade secret includes **any and all information** from which a real or potential value or economic advantage may be derived; that is not common knowledge or accessible through other means; and as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR. at 906.

The redacted portions of the RFP Instructions Documents reveal details of bill printing services and needs identified by LUMA, methods developed by LUMA to satisfy its operational bill printing needs, and analysis on procurement process and how LUMA will operate bill printing. These are trade secrets protected under law. It is respectfully requested that the Energy Bureau accept the revised redacted version of the RFP Instructions and designate as confidential the discrete information that has been redacted.

B. TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 2

With this Motion, LUMA is submitting and unredacted copy of TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 2, “RFP Description of Services”.

C. TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 3

At page 6 of the June 11th Resolution and Order, the Energy Bureau granted confidential designation of certain information and directed that LUMA shall redact information on quantities, design criteria and LUMA’s business operations. In compliance with that directive by the Energy Bureau, with this Motion, LUMA is submitting a revised redacted version of TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachment 1, “RFP Detailed Requirements”, which is a document filed in excel spreadsheet format. LUMA redacted the following cells of the excel spreadsheet:

1. C6 and C7 that include confidential quantities and needs for bill printing that are commercially sensitive information, *see* June 11th Resolution and Order, Table 3, Section 2.3 at page 6;
2. C10, C11, C12 and C13 that include details of bill printing services and needs identified by LUMA, methods developed by LUMA to satisfy its operational bill printing needs, and analysis of how LUMA will operate bill printing; *Id.* and
3. C23; *Id.*

As directed by the Energy Bureau, LUMA has redacted the following additional cells that include commercially sensitive information on billing operations and required capabilities:

1. C8, C9, C27, C28, C38 and C40- that include details on operations and quantity needs, as well as LUMA’s operational needs on timing of production of bills and details on the bills and their characteristics and needs for producing the bills and other components;
2. C22- includes information on key dates for LUMA’s Operation regarding bill printing;

3. C24 and C25- include information on LUMA's current software capabilities and future needs;
4. C30- references needs for bill design testing key to billing operations;
5. C43 and C44- includes operational details on reporting, analytics and processing bills which were identified by LUMA as necessary for its operations; and
6. C46 and C47- where LUMA identifies unique capabilities required from vendors, which capabilities were chosen considering LUMA's operational needs and shed light on LUMA's commercial processes and methods.

It is respectfully submitted that the redacted portions of the RFP Detailed Requirements reveal details of bill printing services and needs identified by LUMA and provide information on analysis of how LUMA will operate bill printing. These are trade secrets protected under Act 80-2011. It is respectfully requested that the Energy Bureau accept the revised redacted version of the RFP Detailed Requirements and protect the discrete information that has been redacted.

IV. Request for Reconsideration

A. Reconsideration of Designation as Public Information of Vendor Master Service Agreement, Vendor Service Addendum and Vendor Model Printing Rendering Service Addendum. TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7.

In Table 3, pages 7 through 8 of the June 11th Resolution and Order, the Energy Bureau issued several orders that denied LUMA's request to designate as confidential information, RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, and 7 and granted partial confidential treatment to Attachment 6. LUMA respectfully requests reconsideration.

RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7 are confidential trade secrets on their face, as they are commercial contracts between LUMA and a vendor and maintained confidentially between LUMA and the vendor. They are the epitome of confidential

trade secrets that reveal methods, formulas and structure for contracting that are unique. As the documents show, they bear the copyright of the vendor. Thus, LUMA cannot disclose the agreements to the public.

Disclosure of these confidential commercial documents will arm future vendors and LUMA contractors with the ability to know before-hand important terms and conditions, thereby giving them advantages that will hinder LUMA's position in contractual negotiations and procurement processes and will harm the interests of rate payers and raise the possibility of an increase in costs and rates.

As a matter of law, it is key to underscore that in Puerto Rico, precedent dictates that trade secret include **any and all information** from which a real or potential value or economic advantage may be derived; that is not common knowledge or accessible through other means; and as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR. at 906. RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7 meet all of those criteria as they are: (1) commercial agreements with actual and potential economic and financial value for LUMA and the vendor, (2) involve data, information and insight into commercial processes that are **not common knowledge or readily accessible** by third parties who may seek to profit from or gain commercial advantages to the detriment of LUMA and the vendor; and (3) LUMA and the vendor have undertaken reasonable and measured steps to protect the contracts from disclosure, including agreed-upon confidentiality provisions that bind LUMA, proponents and the selected vendor, such as execution of Non-Disclosure Agreements and confidentiality clauses included in the vendor service agreement. *See* Attachment 5, Article 5, including Article 5.2(b). The agreements are also protected by Act 122-2019, Article 5, (ix) and (x), protecting from disclosure commercial information designated confidential by a contract and

commercial information whose disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Respectfully, the June 11th Resolution and Order does not explain the conclusion that not all of the redacted portions of RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7 contain trade secrets or commercially sensitive information. LUMA thus lacks guidance as to the interpretation applied by the Energy Bureau of Act 80-2011 and consideration of Puerto Rico precedents on trade secrets.

Disclosure of the agreements filed as RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7, which on their face are commercially sensitive, will stifle future negotiations with vendors and reduce the possibility of competitive interactions that control costs since possible vendors will have had the benefit of seeing templates, methods and formulas for commercial contracts. The whole of the agreements or the agreements themselves are commercially sensitive and trade secrets of LUMA and the vendor whose disclosure will contravene the dictates of Act 80-2011. Their disclosure exposes LUMA and the vendor to commercial harms. Disclosure will also harm ratepayers as LUMA would lose competitive advantages that commercial entities enjoy in their business dealings with vendors and service providers.

It bears noting that Attachment 7 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, which is a service addendum, reveals trade secrets and commercially sensitive information of the chosen vendor because it provides details on how the bill printing services will be provided. The service addendum is sufficiently detailed to reveal commercial processes by the vendor. It is commercial information from a third party whose disclosure will harm its competitive interests. The vendor's competitors may gain insights on the commercial services that the vendor offers in

the bill printing market in Puerto Rico. It constitutes trade secrets and commercially sensitive information protected from disclosure contractually and by law. *See* Act 80-2011; *see also* Act 122-2019, Article 5, (ix) and (x) (protecting from disclosure commercial information designated confidential by a contract and commercial information whose disclosure would cause substantial competitive harm to the person from whom the information was obtained).

LUMA filed these agreements with the Energy Bureau under the well-founded expectation that they would be protected as trade secrets under Act 80-2011. Respectfully, the June 11th Resolution and Order is contrary to Act 80-2011 and the public interests underlying said statute. Consideration by the public of LUMA's proposed SRP is not hindered by honoring the confidentiality mandates of Act 80-2011 as it applies to RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7.

On reconsideration, LUMA requests that the Energy Bureau designate RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7 as confidential information protected under Act 80-2011.

B. Reconsideration of SRP and Non SRP Programs Screening, TC-RFI-LUMA-MI-21-0019-210514-PREB-004, Attachment 1 (excel file).

In Table 3, at page 8 of the June 11th Resolution and Order, the Energy Bureau concluded that TC-RFI-LUMA-MI-21-0019-210514-PREB-004, Attachment 1, does not state or identify sensitive commercial information or trade secrets. That portion of the June 11th Resolution and Order does not include an explanation for the Energy Bureau's conclusion. Respectfully, LUMA posits that the Energy Bureau erred in denying confidential designation to TC-RFI-LUMA-MI-21-0019-210514-PREB-004, Attachment 1. This excel spreadsheet includes the same type of confidential and commercially sensitive information on LUMA's methodology for prioritization of initiatives, that the Energy Bureau designated as confidential in a Resolution and Order issued in

this proceeding on May 6, 2021, table 2 at page 8, designating LUMA's prioritization tool as confidential information, RFI-LUMA-MI-20-0019-21046-PREB-0003 Attachment 1. Importantly, LUMA's prioritization tool was also designated as confidential in the Initial Budgets proceeding, NEPR-MI-2021-004, RFI-LUMA-MI-21-0004-21045-PREB-0009 Attachment 1, *see* Resolution and Order of April 21, 2021, Case No. NEPR-MI-2021-004 at page 10.

Attachment 1 to Response Number 4, which is an excel document, is commercially sensitive and protected as trade secrets. It is part and parcel of LUMA's methods to prioritize investments and remediation initiatives. It was prepared in the early stages of the prioritization process and does not represent complete or final allocation of SRP / Non-SRP prioritization which was formally done at the program level. Attachment 1 to response 4 contains LUMA's original work product with analysis and assumptions on LUMA's prioritization and sequencing for SRP programs. This is an original document that has not been disclosed to third parties and whose disclosure would reveal sensitive and private commercial processes employed by LUMA in designing the SRP and, more importantly, in effectuating prioritization for initiatives.

Respectfully, as a matter of law, Attachment 1 to Response Number 4, is a document protected as LUMA's commercial trade secrets. It is a confidential business tool not shared with third parties, that includes data and analysis on LUMA's methods and assumptions to prioritize its initiatives. It cannot be considered a public document, nor does it contain public information. On balance, the confidentiality of this original working paper and assessment should be protected as it includes information on LUMA's internal processes and commercial methods. It is important to stress that throughout this proceeding, the Bureau designated as confidential information, data and documents that LUMA has filed on the SRP Prioritization tool. *See* Resolution and Order of May 6, 2021, table 2 at page 8, designating LUMA's prioritization tool as confidential information, RFI-

LUMA-MI-20-0019-21046-PREB-0003 Attachment 1. It is respectfully submitted that the same justifications for confidentiality that apply to RFI-LUMA-MI-20-0019-21046-PREB-0003 Attachment 1 and RFI-LUMA-MI-21-0004-21045-PREB-0009 Attachment 1, also apply to Attachment 1 to TC-RFI-LUMA-MI-21-0019-210514-PREB-004.

WHEREFORE, LUMA respectfully requests this Honorable Bureau to **partially reconsider** its June 11th Resolution and Order as requested in this Motion; **grant** confidential designation and treatment of the Vendor Master Service Agreement, Vendor Service Addendum and Vendor Model Printing Rendering Service Addendum, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 5, 6 and 7, and the SRP and Non SRP Programs Screening, TC-RFI-LUMA-MI-21-0019-210514-PREB-004, Attachment 1 (excel file); and **accept** the submission of a revised public version of TC-RFI-LUMA-MI-21-0019-210514-PREB-002, Attachments 1, 2 and 3.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of June 2021.

I hereby certify that I filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law.



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/s/ Margarita Mercado Echegaray
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REQUEST FOR PROPOSAL Instructions to Proponents and Conditions of Proposal	RFP #00003 Date Issued: October 30th, 2020
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PART A – INSTRUCTIONS TO PROPONENTS AND CONDITIONS OF PROPOSAL (Instructions)

REFERENCE: LUMA Bill Print and Delivery RFP #00003

PROJECT LOCATION: COMMONWEALTH OF PUERTO RICO, USA

REQUESTED WORK / SERVICES: BILL PRINT AND DELIVERY
December 4th, 2020

CLOSING DATE AND TIME: (2:00:00 p.m. **Atlantic Time, according to the owner's clock**)

**PROCUREMENT & CONTRACTING
REP.:**

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October 30, 2020

Dear Vendor:

LUMA is a purpose-built operator that has been designed to provide the people and communities of Puerto Rico with a resilient, reliable, and sustainable electric grid, while also delivering outstanding customer service. LUMA is committed to high standards of transparency, integrity, safety, and operational excellence.

LUMA combines:

- Industry-leading technical experience in building reliable, sustainable infrastructure and best-in-class craft skilled workforce training;
- Decades of operational excellence managing several world-class utilities that deliver safe and reliable energy to millions of customers; and
- Expert and transparent management of federal funds.

LUMA presents to you this Request for Proposal (RFP) for a bill print and delivery services solution.

This document outlines the functionality requirements identified by LUMA's business to provide solutions for the printing, inserting and mailing services.

Your proposal will be reviewed by the LUMA Selection Committee to further their understanding of both the solution and your implementation and support services, as well as to identify any additional questions the team may have.

We look forward to reviewing your proposal and potentially meeting with you in the near future.

Regards,



LUMA Energy
www.lumapr.com

1. GENERAL

1.1 Invitation to Submit Proposal

- 1.1.1 Proponent is invited by **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.

THE PROPONENT ACKNOWLEDGES AND AGREES THAT THIS PROPOSAL, THE RFP PACKAGE, AND PROCUREMENT PROCESS DOES NOT CONSTITUTE A FORMAL LEGALLY BINDING BIDDING PROCESS, THERE WILL BE NO LEGAL RELATIONSHIP OR OBLIGATIONS CREATED UNTIL LUMA AND SELECTED PROPONENT, HAVE NEGOTIATED, AND EXECUTED A MUTUALLY AGREEABLE WRITTEN CONTRACT.

1.2 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:

- 1.2.1 description and requirements of the Proposal preparation and submission process provided for in this RFP Package;
- 1.2.2 LUMA's evaluation criteria in reviewing Proposals;
- 1.2.3 a general description of the Project and the Scope of Services to be performed by Contractor;
- 1.2.4 certain information on the form of Agreement which will form the starting point of the negotiations of a formal written agreement for the Services;
- 1.2.5 key dates for the completion of the Services; and
- 1.2.6 other commercial instructions/requirements for Proposals submitted in response to this RFP Package.

1.3 RFP Package Documents

- 1.3.1 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** – Detailed Requirements

- 1.3.2 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.

- 1.3.3 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.
- 1.3.4 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.
- 1.3.5 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.

1.4 Definitions and Interpretation

- 1.4.1 For the purposes of this RFP 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 RFP Package shall have the meanings ascribed below:
 - 1.4.1.1 "**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.
 - 1.4.1.2 "**Agreement**" means the form of agreement which will be used as the starting point for any negotiations between Vendor and LUMA regarding the provision of the Services.
 - 1.4.1.3 "**LUMA** " or "**Owner**" means LUMA Energy, LLC.
 - 1.4.1.4 "**BAFO**" has the meaning given to it in Section 6.2.2.
 - 1.4.1.5 "**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.
 - 1.4.1.6 "**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.
 - 1.4.1.7 "**Instructions**" means this Part A - Instructions to Proponents and Conditions of Proposal.
 - 1.4.1.8 "**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.

- 1.4.1.9 **"Project"** means LUMA's requirement for bill printing and delivery solutions.
- 1.4.1.10 **"Proposal"** means the documents prepared and submitted by Proponent to **LUMA** in response to this RFP Package.
- 1.4.1.11 **"Proponent"** means a recipient of this RFP Package.
- 1.4.1.12 **"RFP Package"** means the documents comprising this Request to Proposal, as further specified in Section 1.3 herein, and includes any Addendum.
- 1.4.1.13 **"Services"** means the Services as defined in the 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.
- 1.4.1.14 **"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 formal written agreement with LUMA for the Services.
- 1.4.1.15 **"Customer"** means a customer of LUMA (residential, commercial, etc.).
- 1.4.2 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.
- 1.4.3 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.
- 1.4.4 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".
- 1.4.5 Unless otherwise specified, references in this RFP Package to an "Exhibit" are references to an Exhibit of the Agreement.

1.5 Addenda

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

- 1.5.2 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.
- 1.5.3 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.

1.6 Communication with LUMA

- 1.6.1 All correspondence, and requests for interpretation, made by Proponent to LUMA pertaining to this RFP Package must be delivered via email to the attention of the following individual:

(collectively the "**Contact Information**"). 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.

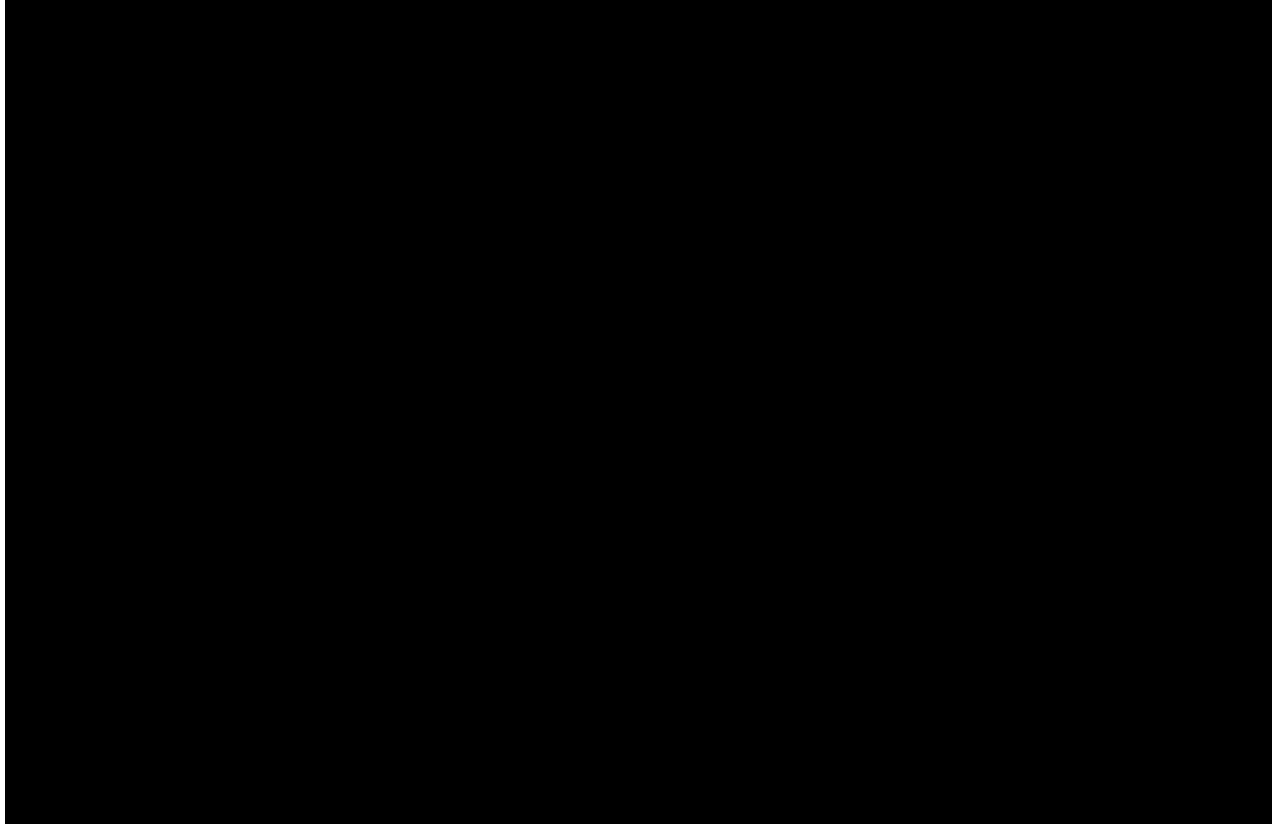
- 1.6.2 All communications between LUMA and Proponent shall be in the English language.
- 1.6.3 LUMA may change the designated Contact Information from time to time by notice in writing to Proponent.

2. RFP PACKAGE KEY DATES AND SITE VISIT

2.1 Key Dates

The following dates are applicable to this RFP Package:

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2.2 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.

3. REVIEW, CLARIFICATIONS, MEETINGS AND SHORT-LISTING

3.1 Duty to Examine and Review this RFP Package

- 3.1.1 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.
- 3.1.2 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.

3.2 Clarification Requests

- 3.2.1 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.
- 3.2.2 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.

3.3 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.

3.4 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.

4. PROPOSAL REQUIREMENTS

4.1 Proposal Contents and Format

- 4.1.1 A Proposal must contain all the information, acknowledgements and documentation required by this RFP Package.

4.2 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.

4.3 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.

4.4 Non-Binding Nature and Validity of Proposal

4.4.1 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 law applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFP shall not give the rise to any "Contract A" – based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; 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.

4.4.2 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.

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

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

4.6 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.

4.7 Disclosure of Interest

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

4.7.2 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 Agreement without liability to Vendor regardless of whether such Agreement specifically states that existence of such relationship would be a material default under the Agreement.

4.8 LUMA Bill Printing and Delivery – High Level Overview

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. LUMA EVALUATION CRITERIA

[REDACTED]

[REDACTED]

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]

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5.1 Vendor Financial Stability

Please provide an overview of your company's history and financial performance, along with any other key information demonstrating financial stability.

- History of company (e.g., number of years in business, ownership structure, # of employees, locations, etc.)
- Typical scope of services (e.g., bill printing/delivery, design services, return mail processing, other value-added services, etc.)
- Approximate number of clients separated by the following:
 - Total customers (all industries)
 - Total customers within utility industry
- Financial position / key financial metrics (last 3 years)
 - Annual revenues
 - Approximate profitability
 - Outstanding debt
 - Any other relevant financial information indicating financial health of the company

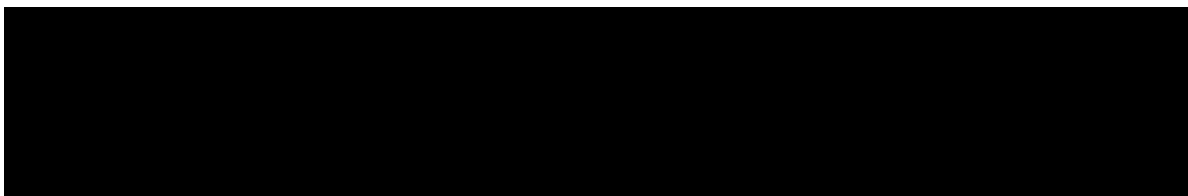
5.2 Proposed Solution Summary

Based on your review and understanding of LUMA's business and LUMA's functional and technical requirements (e.g., PART C), please describe your proposed solution, including the specific operations, operational processes, machines, software platform(s), licenses, services provided and other ways you define your total proposed solution. **NOTE: Please ensure that you respond to all sections of the Evaluation Criteria (5.1 - 5.6) from this document as well as provide detailed responses in the attached document "PART C – DETAILED REQUIREMENTS".**

IMPORTANT: Please disclose the third-party solutions (if any) that are included as part of your overall solution. Third-party solutions include any key services offered that are sub-contracted to third-parties and not provided by internal resources.

5.3 Solution Requirements

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5.4 Scope of Work

The Scope of Work provided below is divided into three section: Bill Print & Delivery Services, Support Services and Reliability Services.

Bill Print & Delivery Services

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[illegible]

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[REDACTED]

Support Services

Proponent shall create an outline of the support services it offers and what it would recommend based on its understanding of LUMA's requirements.

Please outline your proposed support services, including the following details:

[REDACTED]

Reliability Services

[REDACTED]

5.5 Safety Requirements

Please outline your company's experience with clients (including any utility clients) and how you approach strict safety requirements that utilities typically place on contractors and third-party solution providers.

5.6 Pricing & Fees

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[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6. SELECTION OF PROPONENTS FOR NEGOTIATIONS

6.1 Selection Process for Negotiations

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

6.1.2 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.

6.2 Negotiation of a Formal Agreement

6.2.1 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.

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6.2.2

[REDACTED]

6.2.3

[REDACTED]

6.2.4 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 formal written agreement for the provision of all, or part of, the Services as a result of those negotiations.

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

6.2.6 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.

6.3 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 Agreement (whether materially or otherwise) included in the RFP Package.

7. LUMA'S RIGHTS AND OTHER TERMS AND CONDITIONS

7.1 LUMA's Discretion to Select Proponents

7.1.1 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 any factors LUMA determines are relevant, including expertise, quality, timeliness, reputation, price, reliability, safety, creditworthiness, access to funds, dates for performance of the Services, etc. LUMA is under no obligation to provide any explanation of the reasons for its choices.

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

7.2.1 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.

7.2.2 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:

- 7.2.2.1 reject or select a Proponent for negotiations or submission of a BAFO;
 - 7.2.2.2 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;
 - 7.2.2.3 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;
 - 7.2.2.4 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;
 - 7.2.2.5 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
 - 7.2.2.6 enter into a contract (including the Agreement) in respect of the Services, or a portion or portions thereof, with any other third parties.
- 7.2.3 LUMA's rights described in the RFP Package, including in Sections 7.2.1 to 7.2.2, inclusive, are irrespective of whether LUMA has invited Proponent to submit a Proposal following a pre-qualification process or otherwise.

7.3 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 5.7.

7.4 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 Work/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 Work/Services, including, the 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.

7.5 Ownership of Proposal

LUMA shall own any Proposal submitted in accordance with this RFP Package, and any subsequent BAFO submitted in accordance with Section 6.2.2, 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).

7.6 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 Agreement with respect to same.

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REQUEST FOR PROPOSAL Description of the Services	RFP #00003 Date Issued: October 30th, 2020
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PART B – Description of the Services

REFERENCE: LUMA Bill Printing and Delivery RFP #00003

PROJECT LOCATION: COMMONWEALTH OF PUERTO RICO, USA

REQUESTED WORK / SERVICES: Bill Printing and Delivery

RFP CLOSING TIME AND CLOSING DATE: December 4th, 2020
(2:00:00 p.m. **Atlantic Time, according to the owner's clock**)

PROCUREMENT & CONTRACTING REP.:

1. DESCRIPTION OF SERVICES AND PROJECT

1.1 About LUMA

LUMA Energy, LLC (“LUMA”) is a limited liability company organized under the laws of the Commonwealth of Puerto Rico.

Headquartered in San Juan, Puerto Rico, LUMA is engaged with the Puerto Rico Electrical Power Authority (PREPA) under the *Operations and Maintenance Agreement*, effective June 22, 2020 (the “OMA”). Under the OMA, LUMA will establish the framework to assume Electric Transmission and Distribution operations from PREPA over the next twelve (12) months (Front End Transition Services or “FETs”).

Upon completion of FETs, LUMA will assume responsibility and accountability for the operations of Puerto Rico’s Electric Transmission and Distribution grid from PREPA. For a period of 15 years, LUMA will be responsible for the management, administration, operation, maintenance, repairs, upgrades, restoration and replacement of Puerto Rico’s electricity transmission and distribution systems.

Puerto Rico is a Commonwealth of the United States of America and is home to 3.2 million people. The Puerto Rican electricity grid is a network of more than 18,000 miles of transmission and distribution lines, which currently provide power to more than 1.5 million residents.

1.2 Scope of Work

The primary intent of this RFP is to implement a comprehensive and integrated bill printing and mailing services solution to satisfy the functional and technical requirements stated in Parts A and C of LUMA’s Bill Print & Delivery RFP package (attached).

THE FORM OF AGREEMENT

1.3 Form of Agreement

LUMA requests Proponent submit its form of agreement (the “Agreement”) for LUMA’s consideration and evaluation. Terms and conditions more favorable to LUMA will be evaluated accordingly. Proponent acknowledges that upon submitting its form of Agreement, LUMA is not bound to any such terms and conditions until negotiation and execution of same.