

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

IN RE: REVIEW OF LUMA'S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Procurement Manual - Amended Supplemental Response to Request for Information Number 7

RESOLUTION AND ORDER

I. Introduction:

On February 24, 2021, LUMA¹ filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* ("Initial Budgets Petition")², pursuant to Act 57-2014³, as amended by Act 17-2019⁴; and pursuant to LUMA's obligations under Section 4.2 (e) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA"), dated June 22, 2020, executed by and among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and LUMA.

On April 5, 2021, the Energy Bureau issued a Resolution and Order ("April 5 Resolution")⁵ through which it directed LUMA to comply with several requests for information ("ROI") identified in Attachment A.⁶ The Energy Bureau required as per ROI number 7 for LUMA to submit copies of (i) the Federal Funding Procurement Manual; and (ii) the Non-Federal Procurement Manual required under the OMA.⁷

On July 16, 2021, LUMA filed a document titled *Motion Supplementing Response to Request for Information Number 7* ("July 16 Motion"). LUMA states that it is supplementing its response to ROI 7 filed on April 12, 2021, identified as RFI-LUMA-MI-21-0004-210405-PREB-007 ("ROI 7 Response") and submitted a Consolidated Procurement Manual that was prepared and approved in compliance with OMA Section 4.1(e) and (f). LUMA indicates that the Consolidated Procurement Manual was approved by the P3 Authority and COR-3.⁸

On July 22, 2021, LUMA Energy Bureau, a document titled *Motion Submitting Amended Supplemental Response to Request for Information Number 7* ("Amended Supplemental Response").⁹ In the Amended Supplemental Response, LUMA submitted its Consolidated Procurement Manual, encompassing both the Federal Procurement and the Non-Federal

¹ LUMA Energy, LLC ("ManagementCo") and LUMA Energy ServCo, LLC. ("ServCo"), (jointly referred as "LUMA").

² See *Petition for Approval of Initial Budgets and Related Terms of Service, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, February 24, 2021, ("Initial Budgets Petition"),

³ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

⁴ Known as the *Puerto Rico Energy Public Policy Act*.

⁵ See, *Resolution and Order, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, April 5, 2021 ("April 5 Resolution").

⁶ See *Id.*, p. 3.

⁷ *Id.*, p. 6.

⁸ July 16 Motion, p. 2, ¶ 5., Exhibit 1.

⁹ See *Motion Submitting Amended Supplemental Response to Request for Information Number 7, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, July 21, 2021.



Handwritten blue ink signatures and initials on the left margin, including "Jmr", "JAA", and "Jm".

Procurement procedures. An earlier version was submitted in July 16 Motion, which LUMA stated was an incorrect version.¹⁰

II. LUMA's Consolidated Procurement Manual:

The Energy Bureau has noted the criticality of efficient use of federal funding, and how the maximum utilization of federal funding was a key aspect of the Energy Bureau's consideration of its Initial Budgets.¹¹ It is unquestionable that any significant positive impact in building a more resilient energy grid, lies in the effective identification of funding and its utilization. A fundamental component of this process is how LUMA procures products and services with both federal and non-federal monies. Procurements must comply with local, state, and federal regulations, and align with the Integrated Resource Plan¹² and its progeny.

LUMA defines its Consolidated Procurement Manual as, "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 the PREPA Transmission and Distribution System ("T&D System")."¹³ Among the functions to address in the Procurement Manual, the OMA requires a manual that includes standards and methods for:

- (A) addressing employee and organization conflicts of interest;
- (B) avoiding acquisition of unnecessary or duplicative items;
- (C) granting awards to responsible contractors;
- (D) maintaining records of procurement history;
- (E) managing time-and-materials contracts;
- (F) resolving disputes;
- (G) selecting transactions for procurement;
- (H) conducting technical evaluations; and
- (I) if an Emergency Event relates, or could potentially relate, to an event that may be or has been declared a Declared Emergency or Major Disaster, seeking to ensure that any response to such Emergency Event complies with the Federal Funding Requirements¹⁴

LUMA's Procurement Manual contains dispositions for both Federal and Non-Federal procurements. For compliance with Federal regulation, LUMA identifies Titles 2 and 24 Code of Federal Regulations (CFR), including Uniform Guidance Regulations applicable to State entities and Uniform Guidance applicable to State entities receiving Community Development Block Grant (CDBG) funds, among other regulations.¹⁵ LUMA further states that, "Where a direct conflict exists between a Federal procurement standard, a Puerto Rico procurement standard or regulation, or the Recipient's procurement standard, as applicable, LUMA must apply the more restrictive procurement standard."¹⁶ To oversee compliance and administration of federal grants, and assist in managing Federal Funding procurements, LUMA will employ a "Federal Funding Team" (FFT).¹⁷

¹⁰ *Id.*, p.1, ¶ 2.

¹¹ *See*, Resolution and Order, *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, May 31, 2021 ("May 31 Resolution").

¹² *See* Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re. Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 24, 2020

¹³ Amended Supplemental Response, Exhibit 1, p. 8.

¹⁴ OMA Section 4.1 (e) and (f).

¹⁵ Amended Supplemental Response, Exhibit 1, p. 10.

¹⁶ *Id.*, p. 11.

¹⁷ *Id.*



For both Federal and Non-Federal, LUMA will designate a Procurement & Contracts team which reports to LUMA's Chief Financial Officer. The FFT will be independent of the organizational procurement structure for the Procurement & Contracts team. LUMA explains this bifurcation achieves the transparency and safeguards of the procurement process.¹⁸

LUMA structures its Procurement Manual in four main parts:

1. Processes & Procedures;
2. Contract Management;
3. Policies & Practices;
4. and Roles & Recordkeeping.

Within Process & Procedures, LUMA centers into three main procurement stages: Vendor Pre-Qualification; Pre-Award Contracting; and Post-Award Contract Administration. Contract Management delineates the documentation around vendors and contracts, templates, and the provisions included in each contract. Policies & Practices delves into the local and Federal law and regulation around LUMA's procurement and Vendor compliance. And finally, Roles & Recordkeeping describes the organizational structure which LUMA explains the three teams around Procurement & Contracts, along with document management and retention practices.¹⁹

LUMA's assertions raise questions which the Energy Bureau seeks to clarify and are enumerated and discussed in **Attachment A** of this Resolution and Order. The Energy Bureau seeks to further understand elements such as the independence of criteria from teams tasked with procurement activities, the mitigation and control of organizational conflicts of interest, the distinct rigors of federal funding vis a vis non-federal, among other punctual topics.

III. Conclusion

For the above reasons, the Energy Bureau **ORDERS** LUMA, on or before February 25, 2022, to (i) provide the information identified in Attachment A of this Resolution and Order; and (ii) supplement its answers if additional information becomes available or if previously submitted information changes.

Be it notified and published.



Edison Avilés Delia
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soeggar
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

¹⁸ *Id.*

¹⁹ *Id.*, Exhibit 1, p. 12



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 20, 2022. I also certify that on January 21, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com; kbolanos@diazvaz.law; jmarrero@diazvaz.law. I also certify that today, January 21, 2022, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today January 21, 2022.



Sonia Seda Gaztambide
Clerk



Attachment A²⁰

1. The OMA contemplated two individual manuals under the OMA: (i) the Federal Funding Procurement Manual in Section 4.1(e); and (ii) the Non-Federal Procurement Manual in Section 4.1(f). If the OMA purposely addressed the need for two separate manuals, what are the underlying reasons at this time for consolidating the two manuals? What are the advantages and disadvantages of the Consolidated Procurement Manual over the OMA's use of two separate manuals?
2. Section 1.2 of the Procurement Manual states that "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. "Please identify the firm with whom you have contracted; its specific expertise; and the specialists who will serve on the Federal Funding Team. Describe the contract process by which you selected and retained the firm. How did the selection criteria and process assure impartiality? Describe how you intend to maintain a team of specialists in the future, including replacing the firm and team members, if needed in the future?"
3. Section 2.1 provides for a pre-qualification process that will allow early vetting of potential Vendors who wish to supply LUMA, as agent for PREPA, with goods or services. Under this process, you say you will collect, evaluate, and track certain corporate and commercial details, required insurances and certifications, and other business, regulatory and legal requirements needed for a Vendor to be qualified to conduct work on your behalf. Please provide more specifics as to what a vendor will be asked to provide or requirements with which a vendor will need to comply in order to be pre-qualified. How are these requirements and qualifications established and by whom? What recourse or process for reconsideration or appeal does a vendor have if they are rejected or determined not to qualify?
4. The Glossary of Terms' definition of Grant Manager provides that the Grant Manager whose services will be submitted for Federal funding must have been selected through "a competitive procurement meeting Federal procurement requirements." Describe the process and criteria for selecting a Grant Manager whose services will not be submitted for Federal funding.
5. Section 2.2.2 states it is critically important to 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" and Section 2.2.3 states that 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.*" Please explain how the OCI determination will be made, who makes the determination and at what stage of the procurement process the determination should be made. Further, explain the OCI mitigation process, including the process for approving the OCI mitigation terms and conditions and the effect of timeframes set out in Section 2.2.3 for OCI mitigation approval on any timelines in the RFx Package.
6. Section 2.2.2. Pre-Award Contracting Procedure provides that "FOMB approval is needed for contracts with expenditures over \$10 million, so long as PREPA is in Title III." Please identify the source for the \$10 million threshold and confirm that the threshold is correct.
7. Section 2.2.2. also provides that publication notice of a procurement event is to be "advertised to the general public for a reasonable time." How will a reasonable time be determined? Should a minimum time of publication be established, and if not, why?
8. Section 2.2.2. provides that procurement events, the event's supporting documentation and all other communication to Proponents / Bidders in relation to both commercial and technical clarifications will be published and managed via the

²⁰ All information responses should be provided in searchable PDF, DOC or EXCEL (with all formulas intact).



Sourcing Platform. Please describe the Sourcing Platform and how it works for communication with potential bidders and vendors.

9. Through the different phases of the Procurement Process, the Manual provides for review and evaluation for compliance with Federal Funding requirements: during vendor registration; in development of the Contract Request Form; and in the evaluation and award of a procurement contract. This activity is to be primarily performed by the Federal Funding Team. How does LUMA intend to build accountability into these responsibilities identified in the Procurement Process to ensure utilization and the highest level of compliance with federal funding requirements?
10. Section 2.2.3 provides that any "OCI mitigation plan 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." Please explain why an OCI mitigation plan should not be subject to some level of oversight by the Energy Bureau where it is deemed to be a part of the Procurement Manual subject to the Energy Bureau's approval and potentially affects the expenditure of federal and other public funds under the Energy Bureau's regulatory authority.
11. Section 2.2.4 provides that "in the event of a public Exigency or Emergency requiring resources not available through contracts, (i) the OCI process identified in Section 2.2.3 above does not apply for a limited time; and that (ii) 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." Please describe whether there are any other limitations or conditions, such as monetary limits, that would apply to such Exigency or Emergency procurements? Are there any other controls for such procurements to ensure there is no abuse of this process?
12. Subject to some specified 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." What other exceptions are expected during the first 12 months? What are the monetary limits and controls for these exceptions?
13. Section 4.3.2, Organizational Conflict of Interest provides that "where appropriate, LUMA will employ an independent third party to control the evaluation of Proposals / Bids and selection of the awarded Vendor." Please describe the conditions that would make employment of an independent third party "appropriate?" Is this a discretionary determination by LUMA or determined based on a set of criteria? What is the selection process and who selects the third party?
14. Vendors accredited by LUMA will be included in LUMA's Vendor Registry. Appendix A.1 sets out the documents and information that a Vendor must supply to be included in LUMA's Vendor Registry. Please clarify whether professional services vendors will have to comply with the General Services Administration Unique Certification for Professional Services Providers for inclusion in the Vendor Registry?
15. The Procurement Dispute provides for a process that includes voluntary mediation and binding arbitration but requires vendors to waive all rights to a jury trial or class action. Please provide LUMA's reasoning in support of a binding arbitration process that changes how disputes are handled in the current procurement process. Further describe what role the Energy Bureau could have in the Appeal process set out in Section 4.4.4 for it to exercise its regulatory authority to protect the public interest in the expenditure of federal and other public funds, particularly where an arbitrator might find conduct by LUMA abusive of the procurement process.

