

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

NEPR

Received:

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Submission of Responses to Requests in
Attachment A of Resolution and Order of January 21,
2022**

**MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF JANUARY
21, 2022, AND SUBMITTING RESPONSES TO REQUESTS ON THE LUMA
PROCUREMENT MANUAL**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

1. On July 16, 2021, amended on July 22, 2021, and to supplement a prior response to a request for information that this Puerto Rico Energy Bureau ("Energy Bureau") issued to LUMA in connection with LUMA's proposed Initial Budgets (Request for Information Number 7, issued on April 5, 2021), LUMA submitted a copy of the LUMA Procurement Manual that was prepared and approved in compliance with the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 20, 2020 ("T&D OMA"), Section 4.1 (e) and (f). *See also* Section 1(a) of the Limited Waiver executed by the parties to the OMA on June 1, 2021.

2. On January 21, 2022, this Energy Bureau issued a Resolution and Order that takes notice of the LUMA Procurement Manual and includes a document entitled "Attachment A" with requests to LUMA ("February 21st Order on LUMA's Procurement Manual"). This Energy Bureau stated that the purpose of the requests included in Attachment A is to "further understand

elements” of the LUMA Procurement Manual. *See* February 21st Order on LUMA Procurement Manual at page 3.

3. In compliance with the February 21st Order on the LUMA Procurement Manual and with the understanding that LUMA’s responses to Attachment A are meant to clarify aspects of the LUMA Procurement Manual, LUMA hereby submits as Exhibit 1, its responses to the requests issued by this Energy Bureau in Attachment A of the February 21st Order on LUMA’s Procurement Manual.

WHEREFORE, LUMA respectfully requests that the Bureau **take notice** of the LUMA’s submission of responses to the questions issued by this Energy Bureau in Attachment A of the February 21st Order on the LUMA Procurement Manual and **deem** that LUMA complied with the February 21st Order on the LUMA Procurement Manual.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 25th day of February 2022.

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.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147
/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com

Exhibit A



Initial Budgets LUMA Response: PREB Requests

NEPR-MI-2021-0004

Initial Budgets

Responses to Resolution and Order

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-001

REQUEST

The OMA contemplated two individual manuals under the OMA: (i) the Federal Funding LUMA Procurement Manual in Section 4.1(e); and (ii) the Non-Federal LUMA 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 LUMA Procurement Manual over the OMA's use of two separate manuals?

RESPONSE

On June 22, 2020, the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico Public-Private Partnerships Authority (P3 Authority), LUMA Energy LLC and LUMA Energy ServCo LLC (collectively, LUMA), (together with the P3 Authority and PREPA, Parties), entered into the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (T&D OMA).

Section 4.3 (e) of the T&D OMA, provides that the Federal Funding LUMA Procurement Manual (FFPM) will be prepared by LUMA, with the input of a planning team composed of representatives of each of the Parties to the T&D OMA, and the Central Office for Recovery, Reconstruction and Resiliency (COR3). Upon LUMA finalizing the FFPM, it was submitted to the P3 Authority for comments, changes, or modifications and then to the COR3 for its review and approval, incorporating or rejecting any of the modifications or changes suggested by the P3 Authority. The Non-Federal Funding LUMA Procurement Manual (NFFPM) followed a very similar process, although it does not require approval of the COR3.

After LUMA submitted both LUMA's FFPM and NFFPM for approval, the P3 Authority and the COR3 advised the need of having a single LUMA procurement manual that does not make a distinction between federal funds and non-federal funds. The P3 Authority and the COR3 indicated that two separate manuals with two different procedures increases the risks of non-compliance with federal or state funding requirements since for some procurements it may be unclear whether they will be federally or non-federally funded until after the procurement. In this context, LUMA agreed to having a single LUMA Procurement Manual, providing that the federal requirements will apply to both Federal and Non-Federal Funding procurements but specifying those circumstances that are exempt from the general Federal rules. Both the P3 Authority and the COR3 approved the single LUMA procurement manual (LUMA Procurement Manual) on May 30th, 2021, and May 31st, 2021, respectively. Pursuant to the Limited Waiver executed by PREPA, LUMA and the P3 Authority on June 1, 2021, the parties agreed to waive the requirement to finalize each of a Federal Funding Procurement Manual and a Non-Federal Funding Procurement Manual as a condition precedent to the commencement of O&M Services, based on the understanding that LUMA prepared a consolidated procurement manual as required by the P3 Authority and COR3, and that was approved by the P3 Authority and COR3. See Limited Waiver at Section 1(a).

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-002

REQUEST

Section 1.2 of the LUMA 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?”

RESPONSE

As stated in Section 1.2 of the LUMA Procurement Manual, the Federal Funding specialists (Federal Funding Team) have responsibilities and will follow rules and guidelines when there is a Federally Funded procurement. Furthermore, the Federal Funding Team seeks compliance with applicable laws and regulations by supporting and guiding LUMA and Procurement & Contracts throughout Federally Funded procurement activities.

LUMA's Federal Funding Team is Innovative Emergency Management (IEM). Together with ATCO Ltd. (ATCO) and Quanta Services Inc. (Quanta), IEM was a key member of the bidding consortium that was awarded the contract that resulted in the T&D OMA. The T&D OMA was awarded after a robust and competitive procurement process led by the P3 Authority pursuant to Act No. 29-2009 and Act No. 120-2018. As part of this process, the Partnership Committee established by the P3 Authority issued a Partnership Committee Report which recommended that the T&D OMA be awarded to the consortium due to, among other reasons the “expertise in obtaining, managing, and retaining federal funds” that was offered “through IEM”.¹

IEM has more than 35 years of experience helping the public and private sectors enhance preparedness, mitigate risks, and effectively respond to and recover from disasters. IEM excels in the effective management of recovery programs funds, which will enable LUMA to act efficiently and accurately in rebuilding and modernizing Puerto Rico's electric grid.

IEM's Grants Management group including Compliance Lead, Completeness Lead, Specialist, Disaster Recovery Specialist, and appropriate leadership will serve as the Federal Funding Team as outlined in the LUMA Procurement Manual. Their expertise is related to their specific role or position.

¹ Puerto Rico Public-Private Partnerships Authority, *Partnership Committee Report: Puerto Rico Public-Private Partnership for the Electric Power Transmission and Distribution System* (May 15, 2020) at 4 (<https://www.p3.pr.gov/wp-content/uploads/2020/06/20-0520-02-partnership-committee-report-r18.pdf>). The report also highlights that IEM is:

[A] comprehensive emergency management and disaster recovery firm that has supported over 300 state and local jurisdictions with a wide range of emergency management services, including (i) obtaining, managing, and retaining federal funds and (ii) implementing disaster recovery programs funded by federal, state, and local sources. IEM has overseen over \$51 billion in disaster recovery programs and has managed the most recent U.S. disasters: hurricane Harvey in Texas; hurricanes Irma, Matthew, and Hermine in Florida; hurricane Matthew in North Carolina; hurricane Sandy in New Jersey and New York; and the severe floods of 2016 in Louisiana.

Id. at 3.

Initial Budgets

LUMA intends to maintain this team through close collaboration and monitoring of performance. However, in the event of needing to replace such Federal Funding Team, LUMA will undertake applicable procurement process to select such team of specialists. Team members may be replaced, added, or removed on an as-needed basis.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-003

REQUEST

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?

RESPONSE

Paragraphs (e) and (f) of Section 4.1 of the T&D OMA require that the LUMA Procurement Manual provide methods for ensuring that LUMA only award contracts to responsible contractors. Additionally, Article 9 of the T&D OMA imposes several requirements that must be met by contractors and subcontractors, including the submission of the documents and certifications listed in Exhibits B and C of the T&D OMA.

Section 2.1 (Vendor Pre-Qualification) of the LUMA Procurement Manual seeks to ensure compliance with the T&D OMA as well as any other requirements imposed by Applicable Law, by establishing a thorough vetting and due diligence procedure. As part of this procedure, potential vendors are required to submit the documentation required under LUMA's Vendors Registry Requirements (refer to RFI-LUMA-MI-2021-0004-20220121-PREB-003 Attachment 1 – LUMA's Vendors Registry Requirements). The list of documents required under LUMA's Vendors Registry Requirements includes all the documents required under Appendix A.1 (Supporting Documentation) of the LUMA Procurement Manual, as well as any other documents required to comply with Applicable Law, the T&D OMA, and the LUMA Procurement Manual.

LUMA Procurement & Contracts, in consultation with other key stakeholders of the company, is responsible for maintaining and updating as necessary LUMA's Vendors Registry Requirements. Vendors who offer certain goods and services deemed Specialized Categories are also required to submit the information detailed in Appendix A.1.3 of the LUMA Procurement Manual (See Appendix A.1.2 of the LUMA Procurement Manual for a list of Specialized Categories). In addition, under the LUMA Procurement Manual, the Federal Funding Team is tasked with reviewing documents for additional Federal Funding requirements.

Vendors who have been declined entry to LUMA's Vendor Registry will be notified and advised as to which area(s) they were non-compliant but will continue to have an opportunity to become compliant.

Rejected or non-qualified vendors may dispute such rejection as per Section 4.4 (Procurement Dispute Resolution) of the LUMA Procurement Manual. Specifically, Section 4.4 provides that "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 procedure established in Section 4.4.1 shall apply. Such dispute process is conducted by LUMA's Director of Compliance.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-004

REQUEST

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.

RESPONSE

For adequate context, the LUMA Procurement Manual Glossary of Term's definition of Grant Manager states the following:

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.

As the Grant Manager definition indicates, the Grant Manager may be a contractor of LUMA. IEM is a contractor of LUMA, but more importantly, a key member of the consortium that was awarded the T&D OMA. Moreover, the P3A Authority Committee recommended that the T&D OMA be awarded to the consortium due to, among other reasons the expertise in obtaining, managing, and retaining federal funds that was offered through IEM.

LUMA has been of the view that IEM was already selected through a competitive procurement process and may serve as Grant Manager. However, LUMA is initiating, with the assistance of the P3 Authority, a RFP for Grant Management services, in compliance with federal funding compliant procurement processes.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-005

REQUEST

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.

RESPONSE

As stated in Section 2.2.3 of the LUMA Procurement Manual, 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. The OCI mitigation plan is also subject to the prior approval of the P3 Authority and the COR3 prior to implementation by LUMA, and shall be deemed part of the Procurement Manual. LUMA has developed an OCI mitigation process which is currently under review by the P3 Authority and COR3.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-006

REQUEST

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.

RESPONSE

The threshold in the LUMA Procurement Manual requires a modification to reflect the protocol agreement made between LUMA and the FOMB for the Interim Period as outlined in the Supplemental Agreement of the T&D OMA. The protocol agreement was finalized after the draft procurement manual was submitted to P3A as such it reflects prior thresholds. LUMA will endeavor to update the LUMA Procurement Manual as per the amendment procedures in the T&D OMA.

The threshold currently stated in the LUMA Procurement Manual was based on the FOMB Contract Review Policy². The updated threshold, based on agreement between LUMA and the FOMB will read as follows: “FOMB approval is needed for contracts with expenditures over \$10 million in any fiscal year or \$30 million in the aggregate, so long as PREPA is in Title III.”

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<http://www.asg.pr.gov/ReformaCompras/Contratos%20y%20Formularios/A.%20FOMB%20Pol%C3%ADticas%20para%20Contratos/FOMB%20-%20Policy%20-%20Contracts%20Review%20-%20As%20Modified%2020180703.pdf>

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-007

REQUEST

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?

RESPONSE

Time reasonability depends on the complexity of the goods or services being procured. For Federally funded processes, LUMA usually allows at least 3 weeks. A minimum publication time is not advisable because it might negatively affect projects that require more expedited processes. As per reasonable, but realistic, (i.e., “emergency” may be 3 days, if at all. Large Transmission may be 3 months). All Bid procurements, will inform, at its publication, the times and deadlines at each stage of execution. Similarly, the proponents can submit their requests for time extensions, which will be evaluated and replied.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-008

REQUEST

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

RESPONSE

PowerAdvocate® is the electronic sourcing platform used by LUMA to publish an RFP, Request for Quotations (RFQ), Invitations to tender/Bid (ITT, collectively with RFP and RFQ, RFx), receive responses, proposals, or bids, communicate with vendors regarding the RFx package, etc. PowerAdvocate® allows suppliers to participate in online procurement events issued by LUMA for a variety of products and services. It allows suppliers to easily access their RFx documents and manage their current and past proposals and/or bid documents simply by logging into the website.

PowerAdvocate messaging is designed to support event-specific communication between the buyer team and the supplier's team. Suppliers can send messages to and receive messages from the buyer team for any event. Messages are automatically addressed to the event contact on the buyer team and copied to the supplier team and other members of the buyer team. Supplier teams cannot message each other and will never see correspondence between buyers and other teams.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-009

REQUEST

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?

RESPONSE

The Federal Funding Team has been contracted based on its expertise in compliance and administration of federal grants, and for the purpose of assisting with managing Federal Funding procurements, LUMA's Procurement & Contracts team is ultimately accountable for the management and execution of all processes and procedures established in the Procurement Manual, including ensuring compliance with federal funding requirements during the procurement process. Additionally, LUMA's Director of Compliance oversees the Procurement & Contracts team's compliance with the Procurement Manual as well as with other laws, regulations, and internal policies. Moreover, LUMA has implemented a robust internal audit function, is subject to audit by the P3 Authority and, as expressly provided under Sec. 6.2(a) of the T&D OMA, to the P3 Authority's oversight over LUMA's compliance with federal funding requirements.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-010

REQUEST

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 LUMA 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 LUMA 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.

RESPONSE

The T&D OMA and the LUMA Procurement Manual do not contemplate PREB approval of the LUMA Procurement Manual nor PREB oversight over the OCI mitigation plan. It is LUMA’s view that such plan is adequately supervised by the P3 Authority and COR3. The P3 Authority, as Administrator under the T&D OMA, has the right and responsibility of overseeing LUMA’s performance under the T&D OMA, including, but not limited to, the review, approval, and oversight of LUMA’s compliance with Budgets and oversight of LUMA’s compliance with Federal Funding Requirements. See T&D OMA, Section 6.2(a) (vi). In addition, the P3 Authority has the right to audit LUMA’s compliance with the T&D OMA, including in connection with all Federally Funded Capital Improvements. *Id.* at Sections 6.3(a) and (c). COR3, in turn, provides the centralized oversight and financial controls for Puerto Rico’s recovery and reconstruction efforts and is tasked with ensuring the most efficient and effective use of available resources for such purposes. See OE-2017-65. COR3 is the recipient of Puerto Rico’s FEMA Public Assistance funds, of which PREPA is subrecipient, and, as such, also has a role in ensuring the OCIAMP is duly implemented. As in the case of the P3 Authority, COR3 also has the right under the T&D OMA to conduct audits in relation to Federally Funded Capital Improvements. See T&D OMA at Section 6.3(c). The OCIAMP is intended to be notified periodically to P3 Authority in order to ensure transparency of the procurement processes.

LUMA did not find any provision of Applicable Law providing oversight authority to PREB with respect to the LUMA Procurement Manual or the OCI mitigation plan. PREB nonetheless also has a right to audit Federally Funding Capital Improvements under the T&D OMA. See *id.*

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-011

REQUEST

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 P3 Authority 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?

RESPONSE

For the Exigency or Emergency exception to apply, the situation or event must meet the definition of Exigency or Emergency set forth in the Procurement Manual which provides that an “Exigency” is a “situation that requires or demands immediate aid or action, where there 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” (see id., Glossary of Terms) and an “Emergency” is an “unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief” (see id. at Section 2.2.4). As further context to this exception, the Procurement Manual indicates that “in order to protect the health and safety of the residents of Puerto Rico and the integrity of the T&D System, delays in the provision of goods and / or services caused by the competitive bidding process are unacceptable”. See id.

The LUMA Procurement Manual does not impose monetary limits, to procurements under a public Exigency or Emergency. However, even under a public Exigency or Emergency, LUMA is required to comply with applicable state and federal funding requirements, such as:

- documenting in detail the circumstances that justify a noncompetitive procurement in accordance with document retention requirements in Section 5.2.1 of the Procurement Manual and Appendix A, Section E;
- ensuring that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement as required under Section 2.2.4 of the Procurement Manual;
- transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist as required under Section 2.2.4 of the Procurement Manual;
- completing a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold as per Section 4.2.2.5 of the Procurement Manual.
- following the guidelines for Time and Material Contracts in Section 3.5.1 of the Procurement Manual if a Time and Material Contract is being considered.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-012

REQUEST

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?

RESPONSE

LUMA does not foresee invoking this exception to award a noncompetitive contract to a LUMA parent company, affiliates, or subsidiaries during the first 12 months of operations. To the extent that LUMA intends to award a contract to a Covered Affiliate, the OCI mitigation plan shall be implemented and followed (under review by the P3A).

For monetary limits and controls contemplated within the LUMA Procurement Manual, please refer to Section 4.1.3.2.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-013

REQUEST

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?

RESPONSE

In connection with the Response to RFI-LUMA-MI-2021-0004-20220121-PREB-005 above, the independent third-party selection process will be addressed by the OCI mitigation plan, which is under review by the P3 Authority.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-014

REQUEST

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?

RESPONSE

LUMA's professional services agreements require that the professional services vendor represents that it is registered with the GSA's Professional Services Providers Registry.

Initial Budgets

Response: RFI-LUMA-MI-2021-0004-20220121-PREB-015

REQUEST

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.

RESPONSE

Consistent with state and federal public policy, a voluntary mediation and binding arbitration process is prompt, cost-effective and an efficient resolution of procurement disputes. Additionally, the privacy and confidentiality of these processes protect vendors as well as PREPA.

The T&D OMA and the LUMA Procurement Manual do not contemplate direct PREB oversight over the dispute appeals process. In addition, public interest is protected under the LUMA Procurement Manual since appeals must be resolved by impartial arbitrators. The public interest in the sound use of public funds is further safeguarded by the several state and federal entities which oversee LUMA, and, especially, LUMA's use of public funds. None of the foregoing diminishes PREB's role and authority to review and approve electricity rates.



LUMA'S VENDORS REGISTRY REQUIREMENTS

LUMA'S VENDORS REGISTRY REQUIREMENTS

LUMA Energy, LLC. (LUMA) performs a Vendor Pre-Qualification Process to collect, evaluate and tracks basic Vendor corporate and commercial details, required insurances and Puerto Rico 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.

To become part of LUMA's Vendor Registry, vendors must provide the following requirements identified for their type of business:

Corporation- Are those created under the General Corporations Act of Puerto Rico.

Individual /DBA - individual ownership and operation of a business which is not incorporated.

Cooperative - A business owned and operated for the benefit of the members of the organization that use its services

¹Foreign Corporation Engaged - Are those created under the laws of other countries and states of the United States with authorization to do and physically conducting business in Puerto Rico.

¹Foreign Corporation Not Engaged - Are those created under the laws of other countries and states of the United States, that are not providing their services from Puerto Rico. If the vendor changes location, and provides the service or part of the service from Puerto Rico, it must notify Procurement immediately.

All requirements shall be submitted digitally via the following email address: suppliers@lumapr.com

Requirement	Agencies that provide the Certificate	Corporation	Individual/ DBA	Cooperative	Foreign Engaged	Foreign Not Engaged
Vendor Registration Form	<i>LUMA's Vendors Registration Form</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
LUMA's Goods and Services Code Form	<i>LUMA's Goods and Services Codes Form to identify the vendor's categories.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Certificate of Incorporation / Certificate of Organization	<i>Issued by state government or, in some jurisdictions, by non-governmental entity/corporation.</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Certificate of Authorization to do Business in Puerto Rico	<i>Issued by the Puerto Rico Department of State</i>				<input checked="" type="checkbox"/>	
Current Certificate of Good Standing	<i>Good Standing Certificate issued by the Department of State where the company is incorporated.</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Merchant Registration Certificate	<i>Treasury Department Contractor's Merchant's Registration Certificate. If they don't have one, they must provide a sworn statement certifying why is not applicable to them.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sales and Use Tax Debt Certificate	<i>Certification issued by the Treasury Department of Puerto Rico which indicates that Contractor does not owe Puerto Rico Sales and Use Taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan and is in full compliance with its terms.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

¹ For foreign corporations, LUMA advise vendor to seek for Legal advisement to determined which type of registration is applicable to their business.

LUMA

Requirement	Agencies that provide the Certificate	Corporation	Individual/DBA	Cooperative	Foreign Engaged	Foreign Not Engaged
Sales and Use Tax Return Filing Certificate	<i>A Puerto Rico Sales and Use Tax Filing Certificate issued by the Treasury Department of Puerto Rico assuring that Contractor has filed his Puerto Rico Sales and Use Tax. (Form SC 2927)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Treasury Department (Income Tax Debt Certification)	<i>Certification issued by the Treasury Department of Puerto Rico which indicates that Contractor does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms for all concepts. (Form SC 6096)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Treasury Department (Filing of Income Tax Returns)	<i>An Income Tax Return Filing Certificate issued by the Treasury Department of Puerto Rico assuring that Contractor has filed his Income Tax Return for the last five (5) tax years. (Form SC 6088). If the most recent filing, does not show on the certification, then you must provide copy of the first page with evidence of filing for said year. If the certification states that for another period covered by the certification, the Contractor has not filed an income statement, then it should file form SC2781 or form SC288 as applicable.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
CRIM's Property Filing Certificate	<i>Certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Contractor does not owe any tax accruing during the last five (5) years to such governmental agency with respect to personal property; or Negative Debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Contractor indicating that (i) its revenues are derived from the rendering of professional services, (ii) during the last 5 years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (iii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (iv) that for such reason it does not have an electronic tax file in the MRCC's electronic system.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Property Tax Debt Certificate from CRIM	<i>All Concepts Debt Certification issued by the MRCC assuring that Contractor does not owe any taxes to such governmental agency with respect to real and personal property; or Negative Debt certification issued by the MRCC with respect to real property and personal property taxes.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

Requirement	Agencies that provide the Certificate	Corporation	Individual/ DBA	Cooperative	Foreign Engaged	Foreign Not Engaged
Unemployment Certifications	<i>Certificate, issued by the Department of Labor and Human Resources of Puerto Rico, assuring that Contractor has paid to the Department of Labor and Human Resources of Puerto Rico its employees' contributions in accordance with the Puerto Rico Employment Security Act (unemployment, temporary disability or sickness or social security for drivers/chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Child Support (ASUME) Debt Certificate	<i>Certification, issued by the Child Support Administration, assuring that Contractor is in compliance with the withholdings required by law as an employer.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sworn Statement re: Act 2-2018	<i>Contractor shall furnish a sworn statement to the effect that neither Contractor nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for Contractor has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sworn Statement certifying no Tax Debt with Puerto Rico agencies and no ownership of property in Puerto Rico.	<i>Sworn Statement certifying no tax debts with Puerto Rico agencies and no ownership of property (real and personal) in Puerto Rico.</i>					<input checked="" type="checkbox"/>
Corporate Resolution	<i>Written statement created by the board of directors of a company detailing the authorization of the person who will signing contracts.</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Financial Statement	<i>If the Vendor's annual revenues do not exceed \$3,000,000, the Vendor may submit financial statements prepared by a CPA in accordance with the Generally Accepted Accounting Principles (GAAP) may be submitted. If annual revenues are below \$10,000,000 but above \$3,000,000, a report prepared by a CPA based on agreed upon procedures or compliance attestation may be submitted. If annual revenues are below \$3,000,000 financial statements prepared by a CPA in accordance with GAAP may be submitted.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COSSEC Authorization	<i>Copy of Authorization issued by the Puerto Rico Public Corporation for Oversight and Insurance of Cooperatives (COSSEC)</i>			<input checked="" type="checkbox"/>		

Sourcing Intelligence® Quick Start for Suppliers

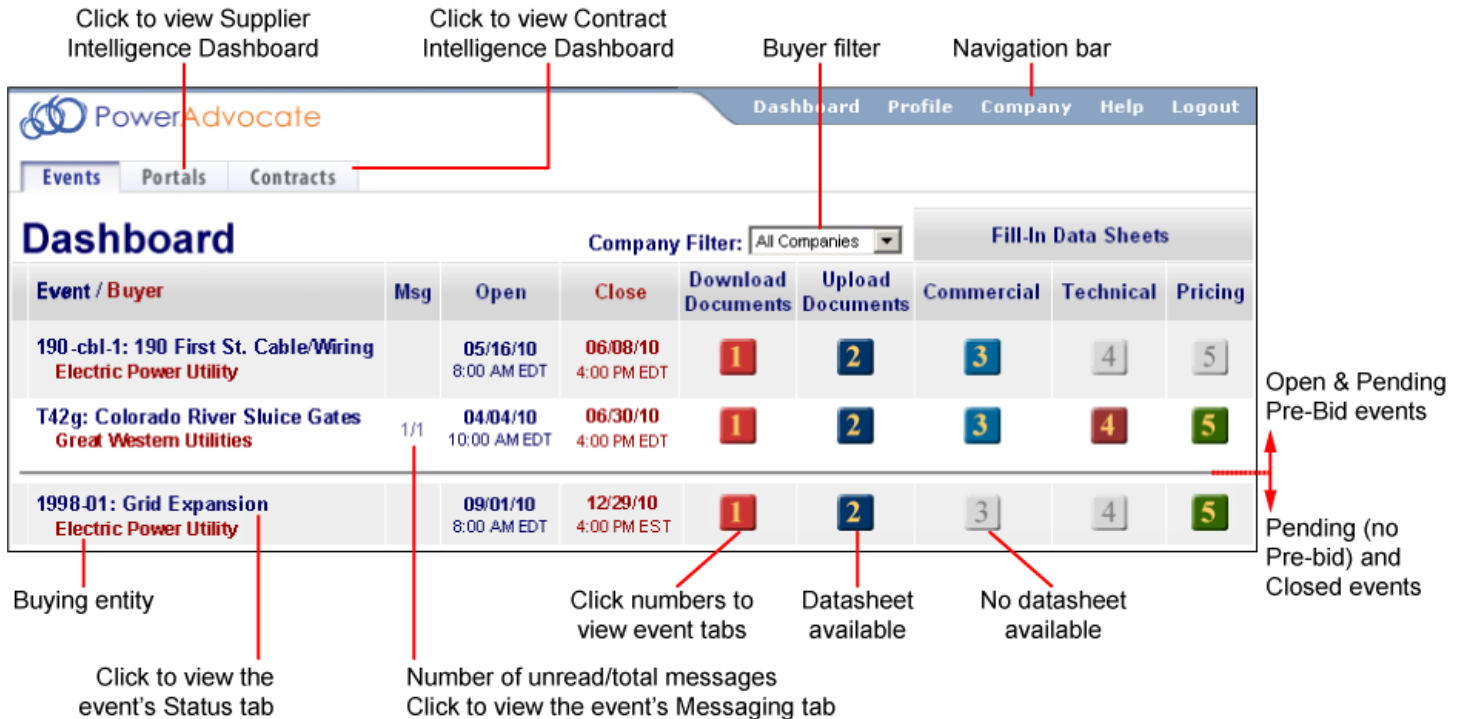
PowerAdvocate Sourcing Intelligence enables suppliers to access buyer documents and submit documents over a web-based sourcing platform.

Logging In

1. Launch a web browser and go to www.poweradvocate.com.
2. Click the orange **Login** button.
3. Enter your account **User Name** and **Password** (both are case-sensitive) and click **Login**.
4. Click the **Events** tab if it is not already displayed.

Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.



The screenshot shows the PowerAdvocate Sourcing Intelligence Dashboard. Annotations include:

- Click to view Supplier Intelligence Dashboard**: Points to the 'Events' tab.
- Click to view Contract Intelligence Dashboard**: Points to the 'Contracts' tab.
- Buyer filter**: Points to the 'Company Filter' dropdown menu.
- Navigation bar**: Points to the top navigation bar containing 'Dashboard', 'Profile', 'Company', 'Help', and 'Logout'.
- Buying entity**: Points to the event name '190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility'.
- Click to view the event's Status tab**: Points to the 'Event / Buyer' column header.
- Number of unread/total messages**: Points to the 'Msg' column header.
- Click to view the event's Messaging tab**: Points to the 'Msg' column header.
- Click numbers to view event tabs**: Points to the numbered buttons (1, 2, 3, 4, 5) in the 'Download Documents' and 'Upload Documents' columns.
- Datasheet available**: Points to the '3' button in the 'Commercial' column.
- No datasheet available**: Points to the '3' button in the 'Commercial' column.
- Open & Pending Pre-Bid events**: Points to the first two event rows.
- Pending (no Pre-bid) and Closed events**: Points to the third event row.

Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	3	4	5

- Click an event name to view its Status tab, which displays a summary of your activity and key event dates. To view specific details of an event, click the buttons **1 2 3 4 5** to view the corresponding tab.
- To return to the Dashboard, click **Dashboard** in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until the Bid Event Coordinator has added you as a participant.

In addition to the Events tab, you may also see:

- An **Opportunities** tab, if a buyer opens an event to all PowerAdvocate suppliers; you can review a high-level event description, and may request full access to the event.
- A **Portals** tab, if a buyer subscribes to PowerAdvocate Supplier Intelligence
- A **Contracts** tab, if a buyer subscribes to PowerAdvocate Contract Intelligence.

Downloading Bid Packages

All of the buyer's bid package documents, including specifications and engineering drawings, are centrally stored on the PowerAdvocate platform. To view bid documents, click **1** on your Dashboard or on the **1. Download Documents** tab from within the event.

Document Description	Issue Date	Ref ID	Rev #	File Name	File Size	Download
Pier23 Pilings RFP	5/30/10	133-01	C	p23pile.pdf	742 KB	

- You can access the **Bid** sub-tab after the bid opens. You can access Buyer documents before the event from a **Pre-Bid** sub-tab if the buyer requires a Pre-Bid submittal; the buyer must approve your submittal before you can access the **Bid** sub-tab. Likewise, you will see a **Post Bid** sub-tab if the buyer invites you to participate in post-bid negotiations.
- To view or download a document, click the file name; you may be prompted to open or save the file.
- To download multiple documents:
 1. Select the checkbox in the **Download** column for each document you wish to download, or click **Select All**.
 2. Click **Download Selected Files**.
 3. Click **Start** to download a .zip file containing the selected documents.

Uploading Documents

To upload your documents, click **2** on your Dashboard, or on the **2. Upload Documents** tab from within the event.

Document Description	Issue Date	Ref ID	File Name	File Size	Upload Date	Actions
Pier 23 Architectural	6/01/10	133-22	p23abp.pdf	420 KB	6/01/10	

- As with the **1. Download Documents** tab, you may be able to access and upload documents to **Pre-Bid**, **Bid**, and **Post Bid** sub-tabs as appropriate.
- To upload a document:
 1. Specify a **Document Type**, and edit the Issue Date and Reference ID if necessary.
 2. Click **Browse**, navigate to and select the document, and then click **Open**; multiple files can also be compressed into one .zip file for upload.
 3. Click **Submit Document**.
- Late documents are accepted at the Buyer's option, but are flagged in red text.

Completing Datasheets

To view the event datasheets, click **3** **4** **5** on your Dashboard or on the **3. Commercial**, **4. Technical**, or **5. Pricing** tabs from within the event. Buttons/tabs are grayed out (e.g., **3**) if the buyer did not create a particular type of datasheet.

- Complete the datasheets over the course of the Bid Open period; datasheets may have multiple sub-tabs.
- Click **Save Data** often to avoid data loss. Once the bid closes, saved data is automatically submitted to the buyer.
- Once the bid closes, you are normally unable to modify datasheets. However, at the buyer's option, you may upload additional documents on the **2. Upload Documents** tab (which are flagged as being late).
- To view a printer-friendly version of a datasheet, click **Printable**.

Communicating with the Bid Event Coordinator

Buyer companies use one of two communication options in Sourcing Intelligence: Email or PowerAdvocate Messaging.

Email

Click the next to the Buyer Contact's name to contact them through your default email application (e.g., Outlook).

PowerAdvocate Messaging

To send a message to the Bid Event Coordinator (BEC), go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.

- You can send messages to the BEC and Buyer Team; replies are sent your Supplier Team and the Buyer Team.
- BECs can message the Buyer Team and all Supplier Teams at once; Supplier Teams can respond but not see other Supplier Teams' responses.
- Supplier Teams cannot message each other, or see other Supplier Teams' correspondence with the Buyer Team.
- You can receive external email notification of new PowerAdvocate messages.

Getting More Information

- Click **Help** on the navigation bar to display the online help.



Dashboard Profile Company **Help** Logout

- Supplier documentation can be downloaded from the online help system.
- Call PowerAdvocate support at 857-453-5800 (Mon-Fri, 8 a.m. to 8 p.m. Eastern Time) or email support@poweradvocate.com.

May 2016