

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

<p><b>NEPR</b></p> <p><b>Received:</b></p> <p><b>Aug 31, 2022</b></p> <p><b>8:54 PM</b></p>
---

**IN RE:**

IMPLEMENTATION OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY  
INTEGRATED RESOURCE PLAN AND  
MODIFIED ACTION PLAN

**CASE NO. NEPR-MI-2020-0012**

**SUBJECT: Submittal of Qualified Proponents for IRP  
Consultant Procurement and Related Information and  
Request for Confidentiality**

**MOTION TO SUBMIT LIST OF QUALIFIED PROPONENTS FOR IRP CONSULTANT  
PROCUREMENT AND RELATED INFORMATION AND REQUEST FOR  
CONFIDENTIALITY**

**TO THE PUERTO RICO ENERGY BUREAU:**

**COMES NOW LUMA Energy ServCo, LLC** (“LUMA”), through the undersigned legal counsel, and respectfully states and requests the following:

**I. Factual and Procedural Background**

1. On August 24, 2020, this honorable Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) issued a Final Resolution and Order in Case CEPR-AP-2018-0001, *In Re: Puerto Rico Electric Power Authority Integrated Resource Plan* (“August 24<sup>th</sup> Resolution”) regarding the Integrated Resource Plan (“IRP”) of the Puerto Rico Electric Power Authority (“PREPA”) wherein it approved in part and rejected in part PREPA’s IRP and established a Modified Action Plan (“Approved IRP and Modified Action Plan”). Section V(B)(2) of the August 24<sup>th</sup> Resolution contained requirements governing the process to contract the technical consultant for the next IRP.

2. On October 6, 2020, the Energy Bureau issued a Resolution and Order (the “October 6<sup>th</sup> Resolution”) opening this docket to “manage the implementation phase of the Approved IRP and Modified Action Plan.” *See* October 6<sup>th</sup> Resolution at p. 1.

3. After other procedural events, on December 17, 2021, LUMA filed with the Energy Bureau a proposed Request for Qualifications (“RFQ”) and Request for Proposals (“RFP”) with a first draft of the proposed contract for LUMA to engage a technical consultant for IRP-related services (“IRP Technical Consultant”) pursuant to Section V(B)(2) of the August 24<sup>th</sup> Resolution (*see* Exhibit 3 of LUMA’s *Motion to Submit Report on Resource Planning Process for Next IRP Cycle and Draft RFQ/RFP for IRP Consultant and Request for Confidential Treatment* of that date (“December 17<sup>th</sup> Motion”)), and requested the Energy Bureau to approve a proposed streamlined process to procure for and contract the IRP Technical Consultant which would reduce the steps and shorten the timeframe to meet the requirements to such process under Section V(B)(2) of the August 24<sup>th</sup> Resolution (*see* December 17<sup>th</sup> Motion at pages 2-6). LUMA requested that the RFQ, RFP and draft of the proposed contract (“RFQ/RFP Package”) in Exhibit 3 of the December 17<sup>th</sup> Motion be kept and maintained confidential as part of a procurement process and which disclosure could adversely impact the integrity of that process. LUMA submitted a Memorandum of Law in support of this request on December 27, 2021.

4. On January 25, 2022, the Energy Bureau held a Technical Conference (the “January 25<sup>th</sup> Technical Conference”), wherein LUMA gave a presentation regarding, among others, the proposed Streamlined IRP Consultant Contracting Process, copy of which LUMA had submitted to this Energy Bureau on January 20, 2022. *See Motion to Submit LUMA’s Presentation for Technical Conference Scheduled for January 25, 2022*, filed by LUMA on January 20, 2022.

5. After other procedural events, on April 22, 2022, the Energy Bureau issued a Resolution and Order (the “April 22<sup>nd</sup> Order”) approving “LUMA’s plan to consolidate technical consultant contracting issues as described in its January 25, 2022 Technical Conference presentation, and as described in its December 17<sup>th</sup> Motion” (*see* April 22<sup>nd</sup> Order at page 5) (“Approved IRP Consultant Contracting Process”) and “LUMA’s use of a draft RFQ/RFP/contract form” (that is, the RFQ/RFP Package). *See id.* at page 5. In addition, the Energy Bureau granted confidential designation and treatment to Exhibit 3 of the December 17<sup>th</sup> Motion, which contained the RFQ/RFP Package. *Id.* at page 6.<sup>1</sup>

6. In compliance with the directive in the April 22<sup>nd</sup> Order regarding the filing of status updates, on July 1, 2022, LUMA filed a motion with the Energy Bureau providing a status update on the Approved Technical Consultant Contracting Process informing that it had issued the RFQ/RFP Package for the IRP Technical Consultant publicly for bid and multiple proponents had submitted Statements of Qualifications (“SOQ”) which were in the process of being evaluated by LUMA.

## **II. Submittal of Information on Potential Proponent’s Qualifications**

7. Now, LUMA informs this honorable Energy Bureau that it has completed its evaluation of the proposals received, including the SOQs, and, in accordance with the Approved IRP Consultant Contracting Process herein submits to this honorable Energy Bureau the names of the proponents that submitted complete proposals (“Potential Proponents”) and those Potential Proponents that LUMA determined meet the qualification requirements in the RFQ/RFP Package

---

<sup>1</sup> In the April 22<sup>nd</sup> Order, the Energy Bureau also issued several other determinations and directives regarding the IRP development process.

(“Qualified Potential Proponents”) and further, upon review also of the Qualified Potential Proponents’ proposals in terms of the scope of services and commercial terms, the name of the selected potential proponent for which award of a contract is recommended (“Selected Potential Proponent”), the rationale for such determinations and copies of the documents relied upon by LUMA to make such determination. *See* Exhibit 1. Exhibit 1 includes LUMA’s evaluation and determinations in selecting the Qualified Potential Proponents and the Selected Potential Proponent. In addition, as Attachment A to this document, LUMA includes copy of the RFQ/RFP Package issued, as revised, updated and clarified for purposes of issuance in this procurement process, the complete Proposals, including SOQs, submitted by all Potential Proponents (not including disqualified proponents), and the Evaluation Criteria Scoring document in an Excel sheet. The final RFQ/RFP Package included as Attachment A of Exhibit 1 also includes the following additional standard documents: the standard guide to use the PowerAdvocate system, the standard form sheets to request clarifications and submit responses during the procurement process, and the standard four-page (without signatures) professional services agreement form to which the substantive contractual terms, conditions and associated forms and provisions included in the original RFQ/RFP Package (Exhibits A through H) will be attached. As per the Approved IRP Consultant Contracting Process, in a later stage of this process, the professional services agreement, with these Exhibits A through H, as negotiated with the selected proponent will be submitted to the Energy Bureau for approval prior to execution by the parties.

8. LUMA submits Exhibit 1, under seal of confidentiality, and requests, pursuant to the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009 (“Policy on Confidential Information”), issued on August 31, 2016, as amended by the Resolution

dated September 20, 2016, that the Energy Bureau keep and maintain Exhibit 1 confidential. LUMA provides below the Memorandum of Law in support of this request.

### **III. Memorandum of Law in Support of Request for Confidential Treatment**

#### **A. Applicable Laws and Regulations**

9. The bedrock provision on management of confidential information that is filed before this Bureau, is Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” It provides, in pertinent part, that: “[i]f any person who is required to submit information to the Energy Commission [now Energy Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such [...]” 22 LPRA §1054n. If the Bureau determines, after appropriate evaluation, that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.*, Section 6.15 (a).

10. Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that an electric power service company shall “provide documents and information as requested by customers, except for: ... confidential information in accordance with the Rules of Evidence of Puerto Rico.”

11. Per Act 57-2014, access to the confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.*, Section 6.15(b). Finally, Act 57-2014 provides that this Energy

Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Energy Bureau] who needs to know such information under nondisclosure agreements. However, the [Energy Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.*, Section 6.15 (c).

12. The Energy Bureau’s Policy on Confidential Information details the procedures that a party should follow to request that a document or portion thereof, be afforded confidential treatment. In essence, the referenced Policy requires identification of the confidential information and the filing of a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 20, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation and a summary of the reasons why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.*, paragraph 3. The party who seeks confidential treatment of information filed with the Energy Bureau must also file both “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.*, paragraph 6.

#### **B. Request for Confidential Treatment**

13. It is respectfully submitted that the documents included in Exhibit 1 herein are confidential because they were documents generated as part of a competitive procurement process. As mentioned, these documents include LUMA’s evaluation and determinations in selecting the Qualified Potential Proponents and the Selected Potential Proponent, the RFQ/RFP Package issued

and the complete Proposals, including SOQs, submitted by all Potential Proponents. Thus, LUMA maintains these documents in confidence to protect the purity of its competitive procurement processes. In addition, the documents submitted as Exhibit 1 are subject to review by this honorable Energy Bureau, and the Energy Bureau's determination could potentially affect the determinations made by LUMA in this stage or subsequent stages of the competitive procurement process. Disclosure of any of the above information would adversely affect the financial, competitive or bargaining position of LUMA and/or the Proponents. Moreover, this honorable Energy Bureau already ruled in the April 22<sup>nd</sup> Order that the RFP/RFQ Package included in Exhibit 3 of the December 17<sup>th</sup> Motion is subject to confidentiality. *See* April 22<sup>nd</sup> Order at page 6.

14. Furthermore, LUMA is required to keep the documents in Exhibit 1 herein confidential as per the terms of the RFQ/RFP Package, which was approved by the Energy Bureau. The RFP/RFQ Package provides that LUMA's report on the procurement and selection process will be made public upon completion of the RFP process, with certain restrictions on the publication of trade secrets, proprietary information and privileged information of the proponents established therein. *See* December 17<sup>th</sup> Motion, Exhibit 3, Section 14. Pursuant to this provision, the confidentiality of these documents is appropriately limited to the time period during which the procurement process is ongoing and ends when the process ends, at which time the documents in Exhibit 1 will be made public (except for specified information protected as confidential under other provisions of law). Therefore, LUMA respectfully submits that the protection requested for Exhibit 1 herein is proposed in a manner that least affects the public interest, transparency, and the rights of the parties involved and this proceeding.

15. It bears noting that this Energy Bureau grants confidential treatment to proposals received by PREPA during the evaluation and selection period, as well as the associated administrative record, in connection with RFPs conducted pursuant to the *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation, and Award Process for the Modernization of the Generation Fleet*, Regulation No. 8815 (“Joint Regulation 8815”) (see Joint Regulation, Section 4.8(g)), which information would be made public after the conclusion of the RFP process (*see id.*). Although the IRP Consultant Contracting Process is not ruled by Joint Regulation 8815, it is respectfully submitted that the confidentiality concerns that apply to communications between this Energy Bureau and PREPA related to the proposal evaluation and selection process under Joint Regulation 8815, are also present in the submissions made by LUMA to this Energy Bureau relating to the evaluation of proposals submitted in the competitive procurement process for the IRP Technical Consultant.

16. In sum, Exhibit 1 contains detailed information and requirements pertaining to a competitive procurement process that are **not common knowledge or readily accessible** by third parties, the disclosure of which may affect the integrity or purity of a competitive procurement which affects the preparation of the IRP. Reasonable measures have been taken to protect the documents included in Exhibit 1 and safeguard this Energy Bureau’s authority to review and approve them. These measures apply only during the time the procurement is ongoing (except for specified information protected as confidential under other provisions of law). Therefore, the public interest is best served if this Energy Bureau keeps and maintains Exhibit 1 confidentially and



pursuant to the Energy Bureau’s Policy on Confidential Information. See CEPR-MI-2016-0009, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009.

17. In compliance with the Policy on Confidential Information, CEPR-MI-2016-0009, a table summarizing the hallmarks of this request for confidential treatment:

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Summary of Legal Basis for Confidentiality Protection, if applicable
Exhibit 1	August 30, 2022	Document titled “Confidential Exhibit 1” Integrated Resource Plan (IRP) Consultant Qualification and Selection (which discusses the evaluation and selection process of the confidential proposals submitted by Potential Proponents in the Approved IRP Consultant Contracting Process) and its <i>Attachment A</i> , which includes:	Determinations subject to approval by this Energy Bureau; documents that have not been disclosed to protect the integrity of a competitive procurement process; and documents are also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau.
		Electronic folder titled “RFP” (which contains final RFQ/RFP Package issued): <ul style="list-style-type: none"> <li>• LUMA RFP 133811- LUMA 2024 IRP</li> <li>• LUMA RFP 133811- Addendum No. 1 (RFP)</li> <li>• LUMA RFP 133811- Addendum No. 2 (RFC)</li> <li>• LUMA RFP 133811- Attachment A - Power Advocate Guide</li> <li>• LUMA RFP 133811- Attachment B - Request for Clarification Form</li> </ul>	Documents that have not been disclosed to protect the integrity of a competitive procurement process and are associated to RFQ/RFP Package determined to be confidential by the Energy Bureau in

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Summary of Legal Basis for Confidentiality Protection, if applicable
		<ul style="list-style-type: none"> <li>• LUMA RFP 133811- Attachment C - Response Sheet</li> <li>• LUMA RFP 133811- Attachment D - Draft Contract</li> <li>• LUMA RFP 133811- Exhibit A - General Terms and Conditions</li> <li>• LUMA RFP 133811- Exhibit B - Scope of Services</li> <li>• LUMA RFP 133811- Exhibit C - Agreement Price</li> <li>• LUMA RFP 133811- Exhibit D - Form of Work Order</li> <li>• LUMA RFP 133811- Exhibit E - Government Contracting Requirement (Off Shore)</li> <li>• LUMA RFP 133811- Exhibit E - Government Contracting Requirement (On Shore)</li> <li>• LUMA RFP 133811- Exhibit F - Key Personnel</li> <li>• LUMA RFP 133811- Exhibit G - LUMA Policies</li> <li>LUMA RFP 133811- Exhibit H - Change Order Process</li> </ul>	<p>the April 22<sup>nd</sup> Resolution.</p>

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Summary of Legal Basis for Confidentiality Protection, if applicable
		<p>Electronic folder titled “Submissions” (which contains the documents and information submitted by the Proposed Proponents<sup>2</sup>):</p> <ul style="list-style-type: none"> <li>○ Electronic subfolder for Proponent 1: <ul style="list-style-type: none"> <li>▪ Approach to Services Fulfillment 10.1.2 RFP 1338.11</li> <li>▪ Proponent 1 Response Sheet 10.1.3 RFP 1338.11</li> <li>▪ Proponent 1 Supplementary Information 10.1.5 RFP 1338.11</li> <li>▪ Proponent 1 Requirement of Legal Entities 10.1.7 RFP 1338.11</li> <li>▪ Proponent 1 Proponent Qualification</li> <li>▪ Proponent 1 Statement of Qualifications 10.1.1 RFP 1338.11</li> <li>▪ Gantt Chart for Proposal</li> <li>▪ LUMA Exhibit A Proponent 1 Redline 7.4.22</li> <li>▪ LUMA Exhibit B Proponent 1 Redline 7.4.22</li> <li>▪ LUMA Master Agreement Proponent 1 Redline 7.4.22</li> <li>▪ LUMA RFP 133811- Attachment B - Request for Clarification Form</li> <li>▪ LUMA RFP 133811 - Attachment D - Draft Contract Proponent 7-5-22</li> <li>▪ Redacted Proponent 1 Approach to Services Fulfillment 10.1.2 RFP 133811</li> <li>▪ Redacted Proponent 1 Response Sheet 10.1.3 RFP 133811</li> </ul> </li> </ul>	<p>Documents that have not been disclosed to protect the integrity of a competitive procurement process; and are also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau.</p>

<sup>2</sup> To protect the confidentiality of the documents, the names, initials or identifying information of the three (3) Proposed Proponents have been eliminated from the description/title of the documents listed in this table and substituted with Proponent 1, Proponent 2 and Proponent 3.

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Summary of Legal Basis for Confidentiality Protection, if applicable
		<ul style="list-style-type: none"> <li>○ Electronic subfolder for Proponent 2: <ul style="list-style-type: none"> <li>▪ Att C - Appendix A - Proponent 2 in PR</li> <li>▪ Att C - Appendix B- Proponent - 2 FY20-21</li> <li>▪ Att C - Appendix C- Proponent 2 - AG Credit Rating</li> <li>▪ CA-001 93085 Proponent 2 Exhibit A</li> <li>▪ LUMA RFP 133811 - Attachment B – Request for Clarification Form</li> <li>▪ LUMA RFP 133811 - Attachment C – Response Sheet- Proponent 2</li> <li>▪ RFP 133811 LUMA 2024 IRP - Proponent 2 P327-22</li> <li>▪ RFQ 133811 LUMA 2024 IRP - Proponent 2 P273-22</li> </ul> </li> </ul>	<p>Documents that have not been disclosed to protect the integrity of a competitive procurement process; and are also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau.</p>
		<ul style="list-style-type: none"> <li>○ Electronic subfolder for Proponent 3: <ul style="list-style-type: none"> <li>▪ 10.1.3 LUMA RFP 133811 - Attachment C - Response Sheet Proponent 3</li> <li>▪ 10.1.3 LUMA RFP 133811 - Attachment C - Response Sheet Proponent 3 7.5.22</li> <li>▪ 10.1.4 LUMA RFP 133811 - Attachment D - Draft Contract Proponent 3</li> <li>▪ LUMA RFP 133811 - Attachment B – Request for Clarification Form Proponent 3</li> <li>▪ Proponent 3 Proponent Qualification</li> <li>▪ Proponent 3 Response to LUMA - RFP Final- 070522</li> <li>▪ Team Proponent 3 6.3.22 Final</li> <li>▪ Team Proponent 3 6.3.22 Final 1</li> <li>▪ Team Proponent 3 Statement of Qualifications 6.3.22 Final</li> </ul> </li> </ul>	<p>Documents that have not been disclosed to protect the integrity of a competitive procurement process; and are also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau.</p>

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Summary of Legal Basis for Confidentiality Protection, if applicable
		<ul style="list-style-type: none"> <li>▪ Team Proponent 3 Statement of Qualifications 6.3.22 Final 1</li> </ul>	
		<p>Electronic folder titled “Evaluation” (containing the completed scoring sheet to evaluate the proposals):</p> <ul style="list-style-type: none"> <li>○ RFP 133811- RFX Evaluation Criteria Scoring (Excel native file)</li> </ul>	<p>Determinations subject to approval by this Energy Bureau; document that has not been disclosed to protect the integrity of a competitive procurement process; and information subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau.</p>

**IV. Conclusions**

18. LUMA respectfully requests this Energy Bureau’s approval of the Selected Potential Proponent included in Exhibit 1, and that it keep and maintain Exhibit 1 confidential pursuant to the Policy on Confidential Information. LUMA also respectfully requests that this honorable Energy Bureau expeditiously provide its determination with respect to Exhibit 1 so that

LUMA can promptly proceed with the subsequent steps of the Approved IRP Consultant Contracting Process.

**WHEREFORE**, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **approve** the Selected Potential Proponent as indicated in *Exhibit 1* herein, in an expeditious manner, so that LUMA can promptly proceed with the subsequent steps of the Approved IRP Consultant Contracting Process, and **grant** the request for confidential treatment of *Exhibit 1* herein.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31<sup>st</sup> day of August 2022.

We hereby certify that we filed this notice and request using the electronic filing system of this Puerto Rico Energy Bureau and that courtesy copy of this notice and request was notified to PREPA counsel [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law) and [kbolanos@diazvaz.law](mailto: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/ Laura T. Rozas*  
Laura T. Rozas  
RUA Núm. 10,398  
[laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com)

*/s/Ana Margarita Rodríguez Rivera*  
Ana Margarita Rodríguez Rivera  
RUA Núm. 16195  
[ana.rodriguezrivera@us.dlapiper.com](mailto:ana.rodriguezrivera@us.dlapiper.com)

*Exhibit 1*

SUBMITTED ELECTRONICALLY VIA SHAREFILE TO THE ENERGY BUREAU  
UNDER SEAL OF CONFIDENTIALITY