

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

NEPR

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IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Informative Motion Regarding
Organizational Conflict of Interest Avoidance and
Mitigation Plan Adopted Pursuant to LUMA
Consolidated Procurement Plan**

**INFORMATIVE MOTION REGARDING ORGANIZATIONAL CONFLICT OF
INTEREST AVOIDANCE AND MITIGATION PLAN ADOPTED PURSUANT TO
LUMA CONSOLIDATED PROCUREMENT PLAN**

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 to the Energy Bureau a copy of the Consolidated 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 T&D OMA on June 1, 2021.

2. On January 21, 2022, this Energy Bureau issued a Resolution and Order that took notice of LUMA's Consolidated Procurement Manual and included a document entitled "Attachment A" with questions to LUMA ("February 21st Order on LUMA's Procurement

Manual”). This Energy Bureau stated that the purpose of the questions included in Attachment A was to “further understand elements” of the Consolidated Procurement Manual. *See* February 21st Order on LUMA’s Procurement Manual at page 3.

3. On February 25, 2022, LUMA filed its responses to the questions issued by this Energy Bureau in Attachment A of the February 21st Order on LUMA’s Procurement Manual, with the understanding that these responses were meant to clarify aspects of the LUMA Procurement Manual. *See* LUMA’s *Motion in Compliance with Resolution and Order of January 21, 2022, and Submitting Responses to Requests on the LUMA Procurement Manual* of that date (“February 25th Motion”). In these responses, LUMA indicated that the organizational conflict of interest (“OCI”) mitigation process referenced in Section 2.2.3 of the Consolidated Procurement Manual is subject to the approval of the Puerto Rico Public Private Partnerships Authority (“P3 Authority”) and the Government of Puerto Rico’s Central Office for Recovery, Reconstruction and Resiliency (“COR3”) prior to implementation and that LUMA had developed an OCI mitigation process that at the time was under review by these entities. *See* February 25th Motion at Exhibit A, Response: RFI-LUMA-MI-2021-0004-20220121-PREB-005. LUMA also explained that the approved OCIAMP shall be deemed part of the Consolidated Procurement Manual. *See id.*

4. LUMA hereby informs this Energy Bureau that LUMA’s OCI Avoidance and Mitigation Plan (“OCIAMP”), attached to this Motion as **Exhibit 1**, was approved by the P3 Authority and COR3 on January 13, 2023 (*see* **Exhibit 2**) and is therefore final.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **accept Exhibits 1 and 2** and **take notice** of the above for all relevant purposes.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of February 2023.

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 Katiuska Bolaños-Lugo, kbolanos@diazvaz.law.



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Exhibit 1

Final OCIAMP



LUMA ENERGY SERVCO, LLC.

**ORGANIZATIONAL CONFLICTS OF INTEREST
AVOIDANCE AND MITIGATION PLAN**

**Version 1
December 27, 2022**

LUMA ENERGY SERVCO, LLC

ORGANIZATIONAL CONFLICTS OF INTEREST AVOIDANCE AND MITIGATION PLAN (OCIAMP)

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1.0 Introduction

1.1 The O&M Agreement

On June 22, 2020, LUMA Energy, LLC, LUMA Energy ServCo, LLC (collectively “LUMA”), the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”), and the Puerto Rico Electric Power Authority (“PREPA”) entered into the Operations and Maintenance Agreement (“Agreement”) for the improvement, operation and maintenance of Electric Power Transmission and Distribution System of Puerto Rico (“T&D System”).

LUMA is owned in equal parts by Quanta Utility Operations, LLC (an indirectly, wholly owned subsidiary of Quanta Services, Inc. (“Quanta”)) and by 2240385 Alberta Ltd. (an indirectly, wholly owned subsidiary of ATCO, Ltd. (“ATCO”)). As reflected in LUMA’s proposal and in the P3 Authority’s Partnership Committee Report, dated May 15, 2020, at page 58, LUMA’s vision for the Project was founded on providing “a team of best-in-class companies organized for the sole purpose of participating in the Project.” This team includes affiliate and subsidiary companies of both Quanta and ATCO (“Covered Affiliates”) that are well-suited to assist PREPA and the P3 Authority in capital projects, construction, repairs, modernization, and other projects or tasks that may be related to the T&D System.¹

The O&M Agreement documents LUMA’s status as agent for PREPA and, with respect to the T&D System, confers upon LUMA the right to engage contractors to perform: (a) the O&M Services; (b) any Federally Funded Capital Improvements, consistent with applicable federal agency requirements, including applicable requirements in the Federal Funded Procurement Manual; and, (c) any Non-Federally Funded Capital Improvements, consistent with applicable requirements of the Non-Federally Funded Procurement Manual.²

Further, the O&M Agreement provides for the creation of two separate procurement procedures, one for Federally Funded Capital Improvements and another for Non-Federally Funded Capital Improvements.³ However, to help maximize the potential realization of Federal Funding and ensure such funding is administered in accordance with all applicable requirements, the P3 Authority and the Central Office for Recovery, Reconstruction and Resiliency (“COR3”) directed LUMA to combine both Procurement Manuals into a single Consolidated Procurement Manual (“PM”) that:

- A. Does not make a distinction between state and federal funds.⁴

¹ As defined in section 1.1 of the O&M Agreement, the term “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, including through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person; provided, that each Equity Participant and its Affiliates will be deemed “Affiliates” of Operator.

² Section 11.1 of the O&M Agreement.

³ Section 4.1 (e) and (f) of the O&M Agreement.

⁴ According to 2 C.F.R. 200.317

- B. Complies with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (“Federal Uniform Rules”).
- C. Contains procurement guidelines to be applied to, and contractual provisions to be included in, any contract involving Federal Funded and Non-Federally Funded Capital Improvements.
- D. Includes procedures for contract administration and oversight, including standards and methods for:
 - 1. Addressing employee and organizational conflicts of interest (“OCI”).
 - 2. Avoiding acquisition of unnecessary or duplicative items.
 - 3. Granting awards to responsible contractors.
 - 4. Maintaining records of procurement history.
 - 5. Managing time-and-materials contracts.
 - 6. Resolving disputes.
 - 7. Selecting transactions for procurement.
 - 8. Conducting technical evaluations.
- E. Ensures that any response to an Emergency Event would be compliant with Federal Funding Requirements.

On May 31, 2021, the P3 Authority and COR3 approved the PM. Subsequently, the PM was acknowledged by PREPA’s Governing Board on August 25, 2021, through Resolution Number 4908.

1.2 Overview of the PM

The PM includes multiple provisions related to contract administration and oversight including those intended to address and avoid employee and organizational conflicts of interest. It defines “apparent conflict of interest”, “conflict of interest”, “covered party”, “covered person”, “financial interest”, and “organizational conflict of interest”, prohibits covered persons from participating directly or indirectly in the selection, award, administration or monitoring of any contract or purchase order if there is an unmitigated conflict of interest or apparent conflict of interest, and further prohibits any LUMA officers, employees and agents from exchanging anything of value with any parent company, affiliate or subsidiary of either LUMA or PREPA.

Per section 4. 3 of the PM, LUMA will identify, avoid, neutralize, and mitigate OCIs in procurements “involving LUMA parent companies, affiliates, subsidiaries and Covered Parties” as outlined in the PM. A Covered Party is “a parent company, affiliate, or subsidiary organization of PREPA or LUMA or a Covered Person.” A Covered Person is, in turn, “a PREPA or LUMA official/officer, agent or employee or officer, agent or employee of PREPA or LUMA affiliates.”

Pursuant to section 4.3.2 of the PM, procurements must be conducted free of conflicts of interest and in a manner designed to identify actual OCIs and apparent conflicts of interest as early in the

procurement process as possible.⁵ In cases where an actual or apparent Organizational Conflict of Interest arises, the PM requires LUMA to take appropriate action to avoid, neutralize, or mitigate such conflicts of interest as set forth in section 2.2.3. Where appropriate, LUMA will use an independent third party to control the evaluation of Proposals / Bids and selection of the awarded Vendor, in accordance with this OCI Avoidance and Mitigation Plan (“OCIAMP” or “Plan”).

The PM further sets out processes for oversight related to OCIs:

- A. Section 4.3.4 sets out processes for LUMA to seek an exception to the conflict-of-interest provisions, consistent with applicable law and regulations.
- B. Section 2.2.3 requires that if and when a LUMA parent company, affiliate, subsidiary, covered party, or covered person has submitted a Proposal / Bid, it will notify the Federal Funding Team (as defined in the PM) and LUMA will implement a tailored avoidance and mitigation plan, as appropriate for the circumstances. While not controlling, LUMA will use the concepts in Federal Acquisition Regulation (FAR) Subpart 9.5 to inform its OCI mitigation process. Mitigation techniques could include, for example, firewalls, physical and/or geographic separation, engagement of third parties to undertake the procurement or any of its stages, execution of non-disclosure agreements, and increased monitoring and oversight by the P3 Authority and/or COR3, as applicable. The PM sets forth the parameters for review and approval of OCI mitigation plans by the P3 Authority and COR3 prior to implementation by LUMA and incorporation as part of the PM. Upon such request for approval by LUMA, the P3 Authority and COR3 shall promptly provide a response. In order to facilitate and coordinate effective operational procurement activities, P3 Authority and COR3 shall approve, reject, comment on, or request additional time to consider the OCI mitigation plan within 10 days. In the event P3 Authority or COR3 requests additional time to consider the subject OCI mitigation plan, P3 Authority or COR3, as applicable, will provide LUMA an estimated time required to make a final determination on said OCI mitigation plan.
- C. Section 2.2.4 authorizes a deviation from the competitive procurement processes in the event of emergency or exigent circumstances. In order to limit the need for Emergency procurements in exigent circumstances, LUMA will identify the types of work that will be needed in the most common emergency events anticipated for PREPA’s T&D system, such as repair of damaged power distribution or transmission lines and transformers. These pre-disaster procurements will meet the requirements in this PM for competitive procurement including those governing organizational conflicts of interest. In the event of a public Exigency or Emergency requiring resources not available through prepositioned contracts, the OCI process in Section 2.2.3 does not apply for a limited time. LUMA may forego a competitive procurement and award work for the duration of the emergency but not exceeding thirty (30) days, unless a longer period is approved by the P3 Authority and COR3, provided justification is documented.

⁵ 2 CFR § 200.318(c)(2).

- D. Section 5.2 requires LUMA to exclusively use an electronic bidding (including ITTs and RFPs) platform, called the Sourcing Platform, to conduct its procurement activities. All bidding and associated communication must be conducted within the System (as defined in the PM). All documentation related to the competitive bid is contained within the System and retained / archived as required by the organization.
- E. Section 5.2.2 requires additional document retention procedures if and when a Federally Funded procurement includes a Covered Party or Covered Person. Those procedures include a separate account within Sourcing Platform for the Federal Funding Team that has access to all procurement related artifacts (draft and final) with an appropriate firewall preventing unauthorized access.

1.3 The OCI Avoidance and Mitigation Plan (“OCIAMP”)

To further develop the above-mentioned processes, LUMA has prepared this OCI Avoidance and Mitigation Plan (“OCIAMP” or “Plan”), which adopts best practices in the early identification and management of OCIs. This OCIAMP is established in accordance with the PM and does not change or supersede the PM.⁶ The objective of LUMA’s Plan is to ensure that there is no preferential treatment for any Covered Affiliate, that contracts are awarded and administered using arms-length procedures as appropriate, and that the goods and services purchased from a Covered Affiliate provide the best value to PREPA at fair and reasonable prices.

As reflected in the Plan, LUMA is committed to working with all stakeholders to identify, avoid, mitigate, and/or neutralize any actual or apparent OCI in the procurement process and to ensure that competition is maximized consistent with applicable law. When an actual or apparent OCI is identified, LUMA will work to avoid or mitigate any conflict through the steps defined in this Plan, including the use of an independent Third-Party Procurement Office (“3PPO”), as appropriate (see Appendix D to this Plan, “3PPO Framework”). Through this Plan and the 3PPO Framework, LUMA has established an environment that enables it to:

- A. Identify and evaluate actual or apparent OCIs as early in the procurement process as possible;
- B. Avoid, neutralize, or mitigate significant actual or apparent conflicts before contract award, consistent with the terms of the O&M Agreement and the PM;
- C. Provide unbiased, impartial, and objective advice and assistance;
- D. Prevent the existence of conflicting roles that could result in impaired objectivity; and;
- E. Prevent unfair competitive advantage.

LUMA is committed to working with all stakeholders to identify, avoid, mitigate and/or neutralize any actual and apparent OCI as early in the procurement process as possible, while ensuring a fair and transparent procurement process to any proponent, that may compete for contract

⁶ The provisions of the PM regarding the approval of OCI mitigation plans by the P3 Authority and COR3 shall be deemed satisfied upon the issuance of this Plan and no subsequent approval shall be required for LUMA’s implementation of the procedures detailed herein.

opportunities, consistent with applicable law. When an OCI arises (or is likely to arise), LUMA will work to mitigate such instance through the steps defined in this Plan, including the use of the 3PPO (see Appendix D, 3PPO Framework), and in accordance with applicable law and regulation. In the situation in which an actual or apparent OCI is reported, an investigation will be performed, and if necessary, an appropriate mitigation action will be implemented, as stated in the Plan.

2.0 OCI AVOIDANCE PLAN AND PROCEDURES

2.1 Purpose and scope of this Organizational Conflict of Interest Avoidance and Mitigation Plan (OCIAMP or Plan)

This Plan establishes procedures for identifying, reporting, avoiding, mitigating, and/or neutralizing actual or apparent OCIs that may arise when LUMA acts on behalf of PREPA in performing and executing procurement activities. This Plan is prepared in accordance with 2 C.F.R. Part 200 (the Uniform Rules) and other applicable laws, as well as with the guidance and standards set forth in Federal Acquisition Regulation (FAR) Subpart 9.5. This OCIAMP is established in accordance with the PM and does not change or supersede the PM⁷. The Plan seeks to:

- A. Provide safeguards to ensure that LUMA performs objectively and in the best interest of the public;
- B. Prevent the existence or appearance of conflicting roles that might bias LUMA's judgment;
- C. Eliminate circumstances that could provide, potentially provide, or cause a reasonable person to think that an unfair competitive advantage has been provided to a Covered Affiliate; and
- D. Provide a mechanism for resolution of any OCI issues that may arise during LUMA's performance of its procurement activities.

2.2 Applicability

This Plan is set forth to protect and provide transparency to procurement activities performed on behalf of PREPA, as defined in the PM. All LUMA employees⁸, as well as LUMA's Contractors and Subcontractors, must comply with the policies and procedures set forth herein to the extent they are applicable.

2.3 Key roles and responsibilities with respect to the implementation of this OCIAMP

A. P3 Authority

⁷ The requirements set forth in Section 2.2.3 of the PM regarding the approval of OCI mitigation plans by the P3 Authority and COR3 shall be deemed satisfied upon the issuance of this OCIAMP. Both the P3 Authority and COR3 have reviewed and commented on this Plan, therefore, no additional procurement-specific approval shall be required from COR3 or the P3 Authority for LUMA's implementation of any of the procedures detailed herein.

⁸ References herein to LUMA employees include LUMA employees who may be seconded at LUMA from another entity or organization. LUMA seconded employees shall not have any involvement in the 3PPO procurement process where the LUMA affiliate from which they are seconded is an offeror. This includes but is not limited to responding to anonymized questions from the 3PPO.

1. This Plan, and any substantive amendments hereto, are subject to the approval of the P3 Authority prior to implementation by LUMA. Once approved, the Plan will be incorporated as an integral part of the PM. The P3 Authority will also procure and manage the 3PPO contract.

B. Procurements & Contracts

The Vice President of LUMA Procurement and Contracts, or designee, will be responsible for the avoidance, identification, mitigation, and proper reporting to the Director of Compliance (“DOC”) of any actual or apparent OCI. The Vice President of Procurement and Contracts, or designee, will also be responsible for reporting and record-keeping with respect to identified OCIs and final determinations issued by the DOC.

C. Director of Compliance (“DOC”)

The DOC, or designee, ensures oversight and management of OCIs. The DOC, or designee, will support LUMA’s compliance with this Plan. The DOC shall determine when investigation is required, conduct any required investigations, help draft tailored mitigation plans, make final OCI determinations for LUMA, and notify the 3PPO of any concerns as contemplated in the 3PPO Framework (See Appendix D, Section B 4, 19, 21 and Section C).

D. Regulatory

The Chief Regulatory Officer, or designee, is responsible for notifying the P3 Authority (and as appropriate the Puerto Rico Energy Bureau) of actual or apparent OCIs and LUMA’s mitigation efforts, as required by the PM.

E. Other LUMA personnel with responsibilities under this Plan

All LUMA employees must adhere to the PM (which includes this Plan), where applicable, as well as the Code of Ethics and Business Conduct of LUMA. Employees must comply with the OCIAMP and are responsible for reporting any OCI and will participate and cooperate in any investigation related to a reported OCI allegation. All LUMA employees involved in the procurement process must complete annual training on these responsibilities.

F. Contractors’ and Subcontractors’ responsibilities

1. Potential proponents, including Covered Affiliates, if any, are responsible for disclosing any actual or apparent OCI at the earliest reasonable point in a procurement. In addition, at the earliest reasonable point, contractors must notify LUMA promptly if an actual or apparent OCI arises, including an interest in subcontracting with any Coveed Affiliate.

2. Not complying with any of the aforementioned requirements could result in penalties that may include disqualification, cancellation of an award, or termination of a contract.
3. The content of paragraphs F(1) and F(2) will be included in all procurement documents and contracts.

2.4 Procedures for reporting of all actual/apparent OCI

All LUMA employees, Contractors, and Subcontractors are responsible for reporting actual or apparent OCIs to the Vice President of Procurement and Contracts. The report should include the following information:

- A. identification number or name of the procurement or contract;
- B. a description of the apparent or actual OCI identified;
- C. names of Contractors, Subcontractors and employees involved;
- D. any other relevant information related to the OCI;
- E. mitigation measures taken prior to notification; and
- F. date filed and name(s) of the reporting entity.

See Appendix A for the prescribed format for such reports.

Once reported, the information will be reviewed by the Vice President of Procurement and Contracts, or designee, logged into the OCI open log form, and referred to the DOC for investigation or other action, as appropriate. If an investigation is performed, the DOC will determine if there is an apparent or actual OCI. If such an OCI is identified, then LUMA will proceed with mitigation steps as appropriate. The P3 Authority will be notified of the outcome of all investigations.

2.5 Monitoring and Compliance

The Procurement and Contracts Department, as well as the LUMA End User (as defined in the PM), will be responsible for monitoring compliance with this Plan. The DOC will be responsible for overseeing and providing advice related to compliance with this Plan and engaging Legal and other groups as required.

A log of all reported OCI's will be maintained by the Procurement and Contracts Department.

The OCI log format is attached as Appendix B.

2.6 Plan Records

The vendor file or bid process documentation, including any required by this Plan, is maintained by the Procurement and Contracts Department whether the procurement is performed by LUMA independently or with the assistance of a 3PPO or other third party. If an investigation is performed, documentation of the investigation will be maintained by the DOC, with a copy of the investigation report and the final determination provided to the Procurement and Contracts Department.

3.0 OCI IDENTIFICATION AND AVOIDANCE/MITIGATION

3.1 Identification of OCI

Organizational Conflicts of Interest may arise when, because of other activities or relationships, a person is unable or potentially unable to render impartial assistance or advice under the contract, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has unequal access to information that could result in an unfair competitive advantage.

Types of OCIs that may arise when LUMA conducts procurements on behalf of PREPA include the following:

A. Impaired objectivity

Impaired objectivity arises where a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice due to other relationships, contacts, or circumstances. This would include circumstances where a contractor's work under one contract could entail it evaluating itself through an assessment of performance under another contract or through an evaluation of proposals. For example, impaired objectivity might become an issue if LUMA was evaluating proposals, and one of those proposals was from a Covered Affiliate, and appropriate mitigation techniques were not implemented.

B. Unequal access to information

Unequal access to information occurs when a contractor has access to nonpublic information as part of its performance under another contract and where that information may provide the contractor (or its affiliates) with a competitive advantage in a later competition. For example, if Company A is selected to perform work for LUMA and proprietary information from other companies will be provided to Company A in the performance of the Scope of Work for LUMA that will provide Company A competitive advantage over its competitors, then an OCI exists, and mitigation actions are required.

C. Biased ground rules

Biased ground rules can arise where a contractor, as part of its performance of work under a contract, has in some sense set the ground rules for another contract. This OCI rule intends to prevent a contractor from influencing requirements or review criteria that provide an unfair advantage to the contractor over potential competitors.

Given LUMA's operational requirements related to the development of the statements of work and specifications as PREPA's agent, there is risk of biased ground rules where a

Covered Affiliate intends to or competes for a PREPA contract. Accordingly, mitigation actions discussed below in paragraph 3.2 and throughout this Plan are appropriate to identify, avoid, and/or neutralize any such unfair advantage to Affiliates in the procurement of goods and services for PREPA.

3.2 Mitigation of OCIs

A. Impaired Objectivity

To reduce the risk of impaired objectivity in LUMA procurement activities, the following mitigation measures may be implemented:

1. excluding any “impaired” Contractor or Subcontractor from the procurement;
2. changing the scope of the contract and re-bidding;
3. installing a firewall;
4. transitioning the procurement to the 3PPO;
5. using anonymized identifiers the 3PPO, in its discretion, presents LUMA with technical questions during the course of a procurement⁹; and
6. increasing involvement of the 3PPO in oversight.

B. Unequal access to information

To reduce the risk of unequal access to information in LUMA procurement activities, the following mitigation measures will be implemented: (i) establishing a firewall, security measures, or procedures that effectively limit the flow of competitively sensitive information between the personnel who have access to the nonpublic information, and the personnel that would benefit from the competitively sensitive information; and (ii) sharing the information with all competing offerors to avoid or mitigate any potential competitive advantage.

C. Biased ground rules

To reduce the risk that any procurement could contain biased ground rules, the following mitigation measures will be implemented:

1. LUMA will recuse itself from procurements that involve a Covered Affiliate, and instead use a 3PPO established by the P3 Authority. LUMA will 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 section 2.2.2

⁹ All technical questions from the 3PPO and responses from LUMA will be made in writing, and placed in the procurement file.

of the Procurement Manual, if it is known that a LUMA parent company, affiliate, or subsidiary is likely to participate in the competitive bid, LUMA will refer the procurement to the 3PPO. LUMA employees will not contact colleagues at affiliated entities to inquire if they would be interested in competing for future award.

2. LUMA will exclude any Covered Affiliate from participating as a prime contractor or subcontractor in any procurement process in which the 3PPO was not engaged.
3. When the 3PPO is controlling a procurement, the 3PPO will set the evaluation criteria, but may pose questions to LUMA, as appropriate, to inform the 3PPO's decision-making.
4. Any bid protests for PREPA procurements involving allegations of unmitigated biased ground rules will be reviewed by the P3 Authority, consistent with its oversight responsibilities under the OMA and Sections 4.4 and 5.2.4 of the PM.

Further, all RFx's will be reviewed by the 3PPO before release to help ensure that there are no biased technical specifications, unless LUMA provides a reasonable justification that such measure is inapplicable or inappropriate under the specific circumstances.

The P3 Authority will periodically review open PREPA solicitations for biased ground rules, consistent with its oversight responsibilities under the OMA and Section 5.2.4 of the PM and shall work with LUMA to promptly address any issues with as little disruption to the procurement as possible.

- D. In addition to the mitigation activities above, LUMA will obtain an annual independent audit (by an auditor chosen by LUMA and approved by the P3 Authority) of the following:
 - a. Compliance with this OCIAMP and with the LUMA procurement manual requirements related to OCI mitigation (as changed from time to time) (e.g., market research, solicitation content, proposals received and evaluations thereof, etc.)
 - b. Proper management of OCI process (e.g., errors, observations, limitations on competition)

The auditor will propose corrective action and/or recommend revisions to processes to address any material issues identified that relate to the OCIAMP.

A copy of the audit report will be provided to the Executive Director of the P3 Authority, or their designee.

3.3 Procedures for identifying, avoiding, or mitigating actual or apparent OCIs *prior* to the initiation of a procurement process

A. Impaired Objectivity & Biased Ground Rules

Under the O&M Agreement, LUMA is responsible for undertaking procurement activities related to the operation of PREPA's T&D System.

To prevent the existence of conflicting roles that might bias LUMA's judgment and to prevent any unfair competitive advantage, a 3PPO will be used for all procurements where a Covered Affiliate has formally expressed interest in participating, for example, via responses to public notices, vendor qualifications, or requests for information. LUMA may also use the 3PPO as a mitigation measure whenever deemed appropriate by the DOC. In accordance with this Plan, the 3PPO will be inserted into the procurement process as early as practicable when needed to mitigate an actual or apparent OCI. In executing its role, the 3PPO will assume control of the procurement and take the actions necessary to mitigate the OCI, as defined in the 3PPO Framework document (Exhibit D hereto). No Covered Affiliate will be allowed to participate as a prime contractor or subcontractor in any procurement process in which the 3PPO was not engaged as set forth in the 3PPO Framework.

As further provided below and in the 3PPO Framework, the 3PPO will be responsible for, among other matters, independently reviewing and approving the contracting strategy established by LUMA and any tender documents prepared by LUMA (and other parties as appropriate), including specifications, work statements, and scope, to avoid any unfair competitive advantage to a Covered Affiliate or any bias in favor of a Covered Affiliate. The 3PPO will also be responsible for evaluating bids and issuing an award determination to LUMA using anonymous identifiers. For any disputes in which a Covered Affiliate is involved as either a bidder or contractor, the 3PPO will fulfill all duties in section 4.4 of the PM otherwise performed by LUMA.

Additional actions to mitigate the risk of biased ground rules are provided in section 3.2.C above.

B. Unequal access to information

To avoid or mitigate the risk of unfair advantage, any of the following mitigation strategies may be considered:

1. Firewalls

- a. LUMA's Code of Ethics and Business Conduct prohibits LUMA employees from sharing any non-public information related to PREPA's transmission and distribution system with employees who lack proper authorization, proponents, or Contractors, including those from a Covered Affiliate.
- b. Any employee or entity that may have an OCI based on unequal access to information (including employees from Covered Affiliates) should be under a non-

disclosure requirement, firewalled as appropriate, or excluded from the procurement process if the OCI cannot be adequately mitigated.

- c. “Seconded Employees” from Covered Affiliates must disclose any actual or apparent OCI and are required to sign Non-Disclosure Agreements, and abide by firewalling procedures, as appropriate.

2. Organizational/Physical/Geographic Separation

Organizational, physical, and/or geographic separation between LUMA and a Covered Affiliate will be established to reduce the risk of inadvertent disclosures. Such separation will include the following considerations:

- a. The degree of the organizational, physical, or geographic separation, if any, that already exists between LUMA and Covered Affiliates (for example, work areas separate from other business segments and work in a controlled-access facility, precluding access by other contract or proposal teams).
- b. The degree to which there is separate management responsibility for the two conflicted groups of employees.
- c. The degree to which there are separate accounting/financial systems and controls for the two conflicted groups of employees: and
- d. The degree to which there are separate IT systems or controls for document storage/access.

3. Non-Disclosure Agreements (“NDAs”)

NDAs will be established in appropriate circumstances to ensure that affected employees understand their obligations with regard to proprietary and competitively sensitive information. In situations where NDAs may be utilized, LUMA and, where appropriate, the 3PPO shall consider:

- a. Who will be responsible for determining if NDAs are necessary (normally carried out by DOC and as appropriate, the 3PPO);
- b. Who will be responsible for overseeing NDAs (normally carried out by DOC and, as appropriate, the 3PPO);
- c. The actual or apparent OCI that requires the NDA, including the specific information that is covered by the terms of the NDA; and

- d. Storage and management of executed NDAs (will be kept by Procurement and, as appropriate, the 3PPO as part of the bidding or vendor file).

The NDA is included as Appendix C hereto.

3.4 Procedures for identifying, avoiding, or mitigating actual or apparent OCIs after the initiation of a procurement process

In the event an actual or apparent OCI is identified after the procurement process has begun, and a 3PPO is conducting the procurement process, then the 3PPO will conduct an investigation and determine mitigation steps, as appropriate (See Appendix D).

If the procurement process is not being conducted by a 3PPO, then the DOC is responsible for conducting an investigation and determining the appropriate mitigation steps, subject to the P3 Authority's review as set forth in Section 2.2.3 of the PM.¹⁰ DOC investigations will also be included in a quarterly report to the P3 Authority (see Attachment D, section B, paragraph 25), as part of LUMA's reporting requirements under Section 5.2.4 of the PM.

¹⁰ Although the requirements set forth in Section 2.2.3 of the PM regarding the approval of OCI mitigation plans by the P3 Authority and COR3 shall be deemed satisfied upon the issuance of this OCIAMP, the implementation of any other procedure not detailed herein will still require the P3 Authority's approval. In addition, LUMA will timely respond to reasonable information requests from the P3 Authority related to this OCIAMP.

4.0 Additional Considerations

4.1 Selection and Operation of the 3PPO

P3 Authority will award and oversee the 3PPO contract. The 3PPO Framework attached as “Exhibit D” describes how the 3PPO will independently perform procurement activities, providing full transparency and objectivity to the process.

4.2 Increased Monitoring/Oversight of Conflicted Work by an Independent Party

If a Covered Affiliate is awarded a contract after a 3PPO conducts the procurement process described above (and as further provided in Appendix D), LUMA and the 3PPO will perform the management, direction, and monitoring of the contractor during performance of the awarded agreement as set forth in section B.20 of Appendix D. Contract administration duties performed by LUMA will be supported by documentation and subject to audit. LUMA will provide a quarterly report on significant contract administration issues to the P3 Authority as part of its reporting obligations under Section 5.2.4 of the PM. (See Attachment D, section B, paragraph 20, subparagraph e.)

4.3 Discipline for Noncompliance

Violations of this Plan shall be reported to the individual’s immediate manager and to the DOC. Engaging Legal and other groups leaders may be required. Appropriate administrative and/or disciplinary action will be taken for violations, up to and including termination. Additionally, violations may subject an employee to criminal liability under applicable laws.

4.4 Emergency

In case of an emergency, the entirety of the OCIAMP or some of its provision may be waived in accordance with the Emergency procedures set forth in the PM.

4.5 Request and Approval for Conflict-of-Interest Exceptions

In cases where the OCI or apparent OCI cannot be sufficiently avoided, neutralized, or mitigated, LUMA may submit a written request for an exception in accordance with Sec. 4.3.4 of the PM.

5.0 Approval & Revision History

5.1 LUMA OCIAMP Approval

LUMA Energy OCIAMP Approval	
Owned By	Financial Management
Creation Date	
Approved by	[LUMA Representative Signature]
	[LUMA Representative Name & Title]
LUMA Approval Date	
P3 Authority Approval Date	

5.2 OCIAMP Revision History

LUMA Energy OCIAMP Revision History				
Revision No.	Nature of Revision	LUMA Approval Date	P3 Authority Approval Date	

6.0 **Appendix A*****Organizational Conflict of Interest Reporting Document*****Name of person(s) reporting:****Date actual or apparent OCI identified:****Date LUMA notified:****Identification No. or name of RFP or Contract:****Mitigation measures taken prior to notification:**

Description of the Actual or Apparent Organizational Conflict of Interest (OCI):

Names of Contractors, Subcontractors and/or Luma employees involved:

Any other relevant information related to the OCI or apparent OCI:

7.0 Appendix B

Open OCI Report Log

[illegible]

Reported and Logged OCIs will remain in this list from the time they are identified until their resolution

8.0 Appendix C

CONFIDENTIALITY AGREEMENT

I, _____ **[insert name]**, acknowledge that LUMA Energy, LLC, a Puerto Rico Limited Liability Company, and LUMA Energy ServCo, LLC, a Puerto Rico Limited Liability Company ("**DISCLOSER**"), has provided me with Confidential Information (as defined below) respecting its businesses, products and undertakings present and future, and hereby acknowledge and agree that:

- A. I am completing this Confidentiality Agreement due to the following actual or apparent conflict of interest:
- _____ ;
- and
- B. My employment, consulting agreement, or position as an officer, director of, or ownership interest in or other affiliation with DISCLOSER creates a relationship of confidence and trust between myself and DISCLOSER with respect to all confidential information disclosed to me by, or on behalf of, DISCLOSER or otherwise acquired, created, discovered, developed, learned or made known by, or to, me during the course of my employment or consulting agreement with DISCLOSER (collectively, the "**Confidential Information**"); and
- C. Confidential Information includes, without limitation, information related to the DISCLOSER's procurement of or contract for any good or service, the DISCLOSER's past, present or future need for or evaluation of any good or service, the DISCLOSER's funding, budgets, specifications, requirements, strategies, deliberations, evaluations, judgments, discussions, potential markets, suppliers, vendors or contractors, in each case as related to any past, present or future procurement or contract for any good or service, but does not include information which is: (i) now or in the future publicly available other than through my own actions, provided however that where any part of such information is publicly available but a compilation of information which includes such part is not publicly available then such compilation shall be treated as Confidential Information hereunder; (ii) made available to me from a source which is not prohibited from disclosing such information to me by a legal, contractual or fiduciary obligation; or (iii) as shown by documentary evidence, already in my possession at the time of disclosure to me.

In consideration of the payment of \$_____ to me by DISCLOSER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I hereby acknowledge and agree by the execution of this Confidentiality Agreement (the "**Agreement**") as follows:

Confidentiality

- Both during the term of my employment or consulting agreement with DISCLOSER and for a twelve-month period after its termination:

- (a) I will keep in strictest confidence and trust all Confidential Information known to me;
 - (b) I will not use, divulge, disclose or communicate, either directly or indirectly, in any manner whatsoever, any Confidential Information, or anything relating to it, to any party, including but without limitation to the DISCLOSER's affiliates, without the written consent of the DISCLOSER's Privacy Officer; and
 - (c) I will use all reasonable and prudent efforts to keep the Confidential Information confidential and to protect and safeguard such information from misuse, loss, theft, publication, disclosure, destruction, or the like.
2. In the event that I am required to disclose Confidential Information, pursuant to any applicable law or regulation, or to any government or governmental department, ministry, board, commission, agency, court, securities commission, or stock exchange having jurisdiction, I shall disclose such information as I am legally required to disclose and shall use all reasonable efforts to obtain confidential treatment for any information so disclosed. In addition, I shall, to the extent permitted by law, promptly provide notice of the required disclosure to the management of DISCLOSER setting out the requirements and circumstances surrounding the required disclosure and any other relevant information.

Notwithstanding the other provisions of this Agreement, and in compliance with section 1225 of the Disaster Recovery Reform Act of 2018, I acknowledge and agree that no language in this Agreement is intended to prohibit compliance with authorized audits or internal reviews by the Government of Puerto Rico, Federal grant making agencies, or the Comptroller General of the United States. Consistent with Section 5.2.1 of the PM, this provision does not restrict or change LUMA's existing rights and/or obligations to provide certain governmental entities (i.e., COR3, PREPA, the Federal grant making agency, DHS Office of Inspector General, the Comptroller General of the United States, or their authorized representatives) the right of access to any documents, papers, or other records of LUMA which are directly pertinent to a Federal award, in order to make audits, examinations, excerpts and transcripts.

3. Upon request by DISCLOSER, I will promptly deliver to DISCLOSER all documents, notes, drawings, specifications, programs, and data and other materials of any nature that contain Confidential Information and I will in no way retain or take with me any of the foregoing or any reproduction of any of the foregoing or any Confidential Information.

General

1. I understand and agree that in the event of a breach or a threatened breach by me of any of the provisions of this Agreement, DISCLOSER, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to an injunction and/or an order of specific performance, in order to prevent or to restrain any such breach or threatened breach by me or any other persons directly or indirectly acting for or on behalf of myself.
2. This Agreement contains the entire agreement between me and DISCLOSER with respect to the issues addressed herein. Except in respect of any prior non-disclosure or confidentiality agreement, assignment, or confirmation of assignment of Inventions or Works entered into by me, it supersedes any and all other agreements, either oral or in writing, between me and DISCLOSER

with respect to the issues addressed. DISCLOSER and I both acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied in this Agreement.

3. This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the Commonwealth of Puerto Rico.

4. This Agreement may not be modified by oral agreement, or course of conduct, but only by an agreement in writing signed by an authorized officer of DISCLOSER and me.

I FREELY AND VOLUNTARILY ACKNOWLEDGE AND AGREE THAT I HAVE HAD THE OPPORTUNITY TO OBTAIN LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT AND HAVE CAREFULLY READ AND CONSIDERED THE PROVISIONS OF THIS AGREEMENT AND HAVING DONE SO, AGREE THAT THE PROVISIONS OF THIS AGREEMENT ARE FAIR AND REASONABLE AND ARE REASONABLY REQUIRED FOR THE PROTECTION OF DISCLOSER.

Dated

Signature

Please Print Name

(In addition, initial each page on the bottom left corner)

ACCEPTED BY AND AGREED TO:

[DISCLOSER]

By_____

9.0 Appendix D

LUMA OCI Mitigation Plan

This OCI Mitigation Plan is drafted pursuant to Section 2.2.3 of LUMA's Procurement Manual (which manual, as updated from time to time in accordance with the OMA, is referred to herein as the "PM"), which was developed and approved in accordance with the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 (the "OMA") entered into among LUMA Energy, LLC, LUMA Energy ServCo, LLC ("LUMA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority" or "P3A") and the Puerto Rico Electric Power Authority ("PREPA"). As provided more fully below, LUMA will employ multiple means to timely avoid, mitigate, and/or neutralize actual or apparent Organizational Conflicts of Interest ("OCIs"), including, in appropriate circumstances (as outlined below), the use of a Third-Party Procurement Office (the "3PPO") under the leadership of a third party that has appropriate expertise and independence from LUMA.

To ensure independence, the P3 Authority will select the 3PPO with reasonable input from LUMA. This document provides the process by which the 3PPO will conduct procurements that involve a LUMA Covered Party, ("Covered Affiliate"). Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the OMA, or in the PM. In case of conflict between definitions in the OMA and PM, the PM shall prevail. This Mitigation Plan, as it may be modified or supplemented from time to time, is incorporated into the PM as an integral part thereto, but does not change or supersede existing requirements under the PM.

3PPO PROCUREMENT PROCESS FRAMEWORK

A. Procurement Process Framework

- a. Tenders will be based on the projects required to be implemented as part of, among others:
 - i. LUMA's Initial Budgets as approved by the Puerto Rico Energy Bureau ("PREB") which included LUMA's Long-Term Investment Plan
 - ii. the System Remediation Plan approved by P3A and PREB, as modified from time to time (and further approved by PREB, as applicable), and
 - iii. projects that may be required by other plans, of, or applicable to, LUMA, approved by PREB, as applicable.
- b. Thus, LUMA's role in developing the scope and requirements for tenders, will be based on priorities as established by LUMA to execute its obligations under the OMA with consideration of the above planning documents, and in accordance with PREB approvals.

- c. The process to prepare the tender, including without limitation, to determine the scope of work must follow the PM, as updated from time to time.
- d. Unless otherwise stated, all references to steps below correspond to the process steps in section 2.2.2 of the PM. Except to the extent addressed below, the steps set out in section 2.2.2 shall continue to apply to tenders, as applicable.

B. Process/Functional Owner for Procurement/Compliance (PM Section 2.2.2)

1. Procurement Strategy (Phase 1, Step 1 – Initiate)

- a. When LUMA is required to procure services and/or materials, a procurement process as defined in the LUMA Procurement Manual will be followed. To initiate the process, LUMA will review requirements and determine a procurement strategy including the definition of required timelines for the particular RFx for review and acceptance by the 3PPO.
- b. The procurement strategy will consider how work should be procured (i.e., scope of work (e.g., bundling of activities, etc.), type of contract (i.e., lump-sum or other) and what method of procurement should be used (i.e., ITT, etc.). During the development of this strategy, the potential for OCI will be evaluated, and mitigation measures taken if appropriate. If a Covered Affiliate is substantially involved in the strategy development, the Covered Affiliate will be prohibited from bidding on the contract. Based on the nature of the work and potential OCI concerns (work is generic or specialized; work may be more or less likely to have a Covered Affiliate as a potential Proposer/Bidder), this will help determine how work should be bundled and which work will require additional mitigation to avoid an OCI. This may include how the Input Documentation (next step) is developed. For instance, if a Covered Affiliate is likely to be a Proposer/Bidder on the work, the development of the Input Documentation (Step 2 below) and Tender Documents (Step 3 below) will be developed by a third party as performed or contracted by the 3PPO. If asked by the 3PPO, LUMA may provide reasonable input to the 3PPO for the 3PPO's consideration as needed to support the development consistent with LUMA's existing contractual obligations.

2. Tender Preparation (Phase 1, Step 2 – Complete Input Documentation)

- a. As described in step 1 above, LUMA or the 3PPO will prepare the tender documents that set forth the program and technical requirements for the project based on the planning documents above. Tender documents will include:
 - i. Scope of Work
 - ii. Standards (which will be LUMA Engineering and Construction standards or based on typical industry practices where no LUMA standards are available)
- b. After preparation, all RFx Packages will be reviewed and approved by the 3PPO, consistent with the planning documents described above.

The 3PPO will explore the value of creating a bank of standard technical specifications for frequently procured goods and services.

3. Sourcing Strategy (Phase 1, Step 3 – Draft Sourcing Strategy)

- a. LUMA or the 3PPO (see step 1 above) will prepare the tender documents that set forth the commercial and proposal-related requirements for the project based on the Scope of Work and Standards, including, without limitation:
 - i. Commercial requirements (bonding, payment schedules based on milestones, etc.)
 - ii. Proposal/bid requirements, schedules, etc.
 - iii. Evaluation criteria
- b. If the tender documents are prepared by the 3PPO, the 3PPO will set evaluation criteria, but may pose questions to LUMA, as appropriate, to inform the 3PPO's decision-making.
- c. After preparation, all RFx Packages will be reviewed and approved by the 3PPO, consistent with the planning documents described above.

4. Request for Interest ("RFI")/Request for Qualifications ("RFQ") (Phase 1, Step 3 – Request for Interest and Request for Qualifications)

- a. If the tender documents are prepared by the 3PPO,
 - i. the 3PPO will issue a combined RFI/RFQ to LUMA's pre-qualified Vendors and advertise publicly (i.e., published twice in a general circulation newspaper and posted in LUMA's website) to gather a list of companies that may participate in the resulting tender.
 - ii. If, upon publication, LUMA has any concern about the tender requirements, LUMA and the 3PPO will follow the Review process below (Section C), and the 3PPO may withdraw, revise, or supplement the RFI/RFQ.
- b. If the tender documents are prepared by LUMA,
 - i. before issuing a combined RFI/RFQ, LUMA will coordinate a Requirements Review and approval of the document with 3PPO to (I) validate program and tender requirements, and (II) ensure that requirements are stated in a manner that promotes competition and that complies with the PM, the OMA requirements, and Applicable Law.
 - ii. Following receipt of 3PPO's approvals noted above, LUMA will then issue a combined RFI/RFQ to LUMA's pre-qualified Vendors (using Power Advocate or similar) and advertise publicly (i.e., published twice in a general circulation newspaper and posted in LUMA's website) to gather a list of companies that may participate in the resulting tender.
- c. The combined RFI/RFQ will:
 - i. request the submittal by Proponents/Bidders of specific qualifications in accordance with the nature of the prospective project; provide potential Proponents/Bidders an opportunity to identify ambiguous, unrealistic, and unduly restrictive requirements; and establish how potential Proponents/Bidders will be evaluated (e.g., competency, safety, prior work experience, financial health, capacity, independence, and other relevant factors for the scope of work);

- ii. disclose that, if a Covered Affiliate expresses an interest in bidding on the project, the procurement will be managed by the 3PPO. The RFI/RFQ will also explain that if a Covered Affiliate expresses an interest in bidding, but no Covered Affiliate submits an offer, LUMA will manage the evaluation, contract award, and post-award contract administration; and will not disclose proposal information to Covered Affiliates;
- iii. require that Covered Affiliates identify themselves as such on the cover page of their response and that the substantive content of the Covered Affiliate's submittal be separated from the cover page and be secured (security mechanisms to be determined jointly with 3PPO) until further instructions are provided; and
- iv. require any Proponents/Bidders disclose if a Covered Affiliate is part of its bid team (as subcontractor, partner or otherwise).

5. Proposer/Bidder Pre-Qualification (Phase 1 - Step 3D, Procurement & Contracts)

- a. The RFI/RFQ responses will be reviewed and evaluated based on criteria established in the RFI/RFQ.
- b. When a Covered Affiliate responds to an RFI/RFQ, as identified in the cover page of its submittal, the 3PPO will assume control of the review and evaluation process and will be the exclusive party to access the submittals.
- c. In such case, based on the results of its evaluation, the 3PPO will establish a list of pre-qualified Proposers/Bidders.
- d. If no Covered Affiliate responds to the RFI/RFQ, LUMA will perform the review and evaluation process and establish a list of pre-qualified Proposers/Bidders.
- e. Only pre-qualified Proponents/Bidders may participate in the resulting tender.

6. Single Source Situations (Phase 1- Step 5 – Non-Competitive Procurement)

- a. As part of the process for exceptions to competitive bidding (section 4 of the PM, including section 4.1.3.1 thereof), LUMA will prepare a justification for single sourcing when required.
- b. If the single sourcing involves a Covered Affiliate, LUMA will submit the request to the 3PPO for its review and approval. The 3PPO will provide its evaluation, findings, conclusions and recommendation for approval or rejection to P3A and LUMA.
- c. For all single sourcing, approval from P3A will be requested as defined in the LUMA Procurement Manual.
- d. If P3A approves the single-source recommendation to a Covered Affiliate, 3PPO will implement the recommendation consistent with Section 4 of the LUMA Procurement Manual.

7. Tender Final Review (Phase 1 - Step 8 – Approve RFx Package)

- a. When the final pre-qualified Proponents/Bidders list includes a Covered Affiliate, the RFx Package will be finalized and approved by the 3PPO (with further consultation with P3A as appropriate) prior to posting.

- b. When the final pre-qualified Proponents/Bidders list does not include a Covered Affiliate, the RFx Package will be finalized and approved by LUMA.

8. Tender Posting (Phase 1 - Step 9 – Publish Event)

- a. The 3PPO or LUMA, as appropriate, will issue the RFx Package to pre-qualified Proponents/Bidders.
- b. The tender will notify all eligible Proponents/Bidders when a Covered Affiliate is among the list of pre-qualified bidders. In such circumstances, the tender will also state that the OCI Avoidance and Mitigation Plan is available at [Power Advocate environment] and that any objection to the RFx Package's requirements will be waived unless timely raised in accordance with the RFx Package's requirements. The tender will also notify eligible Proponents/Bidders that, if no Covered Affiliate submits an offer, LUMA will manage the evaluation, contract award, and post-award contract administration; and will not disclose proposal information to Covered Affiliates.
- c. LUMA will require confirmation from all bidders that they intend to propose/bid or not propose/bid on the tender at least 1 week before closure. A proponent/bidder will be ineligible to participate in the tender if it does not confirm its intention to bid at least 1 week before closure.

9. RFx Clarifications (Phase 2 - Step 11 – Clarifications)

If a Covered Affiliate is among the list of pre-qualified bidders, the 3PPO will receive and respond to any questions and clarification requests from Proponents/Bidders. The 3PPO will coordinate with P3A and LUMA, as appropriate, to provide accurate and responsive answers to clarification requests. Any coordination with LUMA regarding questions and clarification requests will be in writing, will use anonymized identifiers to avoid identifying the requesting competitor, and both the 3PPO inquiry and LUMA's written response will be placed in the procurement file.

10. Process/Functional Owner for Procurement/Compliance (Phase 2 -Step 13 Receive Proposals / Bids)

As outlined in Section 2.2.2, Phase 1 – Step 13 of the PM, this step addresses responsibility for receiving proposals/bids.

11. Process for Tender Evaluation, Award and Execution without Covered Affiliate's Participation (without 3PPO engagement) (Phase 2 - Step 13 Receive Proposals / Bids)

If no Covered Affiliate confirms its intention to bid, then LUMA will complete the procurement/bid evaluation and award process without 3PPO involvement and will manage the contracting process through execution and administer the contract as contemplated in the PM, without further reference to the OCIAMP.

12. Process for Tender Evaluation and Award with Covered Affiliate's Participation (3PPO engagement) (Phase 2 - Step 13 Receive Proposals / Bids)

Upon receipt of confirmation of intention to propose/bid by a Covered Affiliate, Proponents/Bidders will be directed to deliver proposals directly to the 3PPO, and the 3PPO shall comply with the requirements of the PM, as applicable, and as complemented by the following process which shall also apply thereto.

13. Review Process (Phase 2 - Steps 14 Through 18)

- a. The 3PPO will assign each Proposer/Bidder an anonymized identifier for use in any follow-up technical or commercial questions with LUMA. If the 3PPO presents LUMA with any technical or commercial questions, the question to LUMA and the response from LUMA will be documented in the procurement file.
- b. If, upon review, the 3PPO finds that no Covered Affiliate submitted a proposal/bid (despite confirming its intention to do so), then the 3PPO will transfer all bids back to LUMA and LUMA will complete the evaluation and award process and will manage the contracting process through execution and administer the contract as contemplated in the PM, without further reference to the OCIAMP.

14. Phase 2 - Step 14 – Conduct Commercial Evaluation

Where the tender contemplated a trade-off of cost and non-cost evaluation factors, the 3PPO will conduct and document its commercial evaluation according to the tender rules specified in the RFx Package and the evaluation criteria specified therein (Sourcing Strategy).

15. Phase 2 - Step 15 – Conduct Technical Evaluation

- a. The 3PPO will conduct the technical evaluation according to the tender rules specified in the RFx Package and the evaluation criteria specified in the Sourcing Strategy. In its review of technical proposals, the 3PPO may consult with LUMA as appropriate (using the anonymized identifier if needed) to verify that proposals/bids meet the requirements set forth in the RFx Package and the Sourcing Strategy (e.g., specification interpretation, alternative features, new options, confirmation of capability, etc.). LUMA shall have established a Consultation Team to liaise with the 3PPO. The Consultation Team will be required to keep all aspects of said consultation in strict confidence.
- b. If the 3PPO presents LUMA with any technical or commercial questions, the question to LUMA and the response from LUMA will be documented in the procurement file.

16. Phase 2 - Step 16 - Shortlist Presentations

The 3PPO will determine if any proposal/bid submittal is non-responsive, materially deviates from the scope of work or other technical requirements or is non-compliant with the RFx

Package requirements and the Sourcing Strategy. The 3PPO may request, coordinate, and attend presentations by Proponents/Bidders and thereafter summarize the evaluation all in order to assist the 3PPO in making an award decision.

17. Phase 2 - Step 18 –Select Awardee

The 3PPO will identify its recommended awardee, based on the criteria set forth in the RFx and the Sourcing Strategy.

18. Phase 2 - Step 19 – Prepare Bid Award Document

The 3PPO will document its evaluation, findings, and conclusions (including the scoring given to each Proponent/bidder, the basis therefor, and any notes regarding variations and potential noncompliance). The 3PPO will transmit its recommendation to P3A along with a summary of the evaluation and the basis for award. P3A will notify LUMA of the award along with a summary of the evaluation and the basis for award using the anonymized identifiers.

19. Phase 2 - Step 20 – Approve Bid Evaluations and Award Authorization

- a. If LUMA believes the 3PPO's recommendation is inconsistent with applicable law, the OMA, the terms of the RFx, or the Sourcing Strategy, LUMA will advise P3A, and the 3PPO of its concerns within 2 business days of receipt of the notice, which will trigger the Review Process set forth below (Section C).
- b. After review, and the close of the 2-day objection period, LUMA will provide notice of award.
- c. LUMA may shorten the award period by, any time within the 2-day objection period, notifying the 3PPO and P3A in writing that it has no concerns with the 3PPO's recommendation.

20. Phase 3 - Step 26 - Review and Approve Contract

- a. If award will be to a Covered Affiliate, the 3PPO will prepare the contract using existing contract templates. If the award will not be to a Covered Affiliate, LUMA will prepare the contract using its existing contract templates.
- b. If the 3PPO prepared the contract, after negotiation with the contractor, the final recommended contract will be transmitted to P3A by the 3PPO.
- c. P3A will provide the final recommended contract to LUMA for signature and award.
- d. Where award is made to a Covered Affiliate, the post-award contract management, direction, and monitoring of contractor activity, in keeping with the awarded agreement and LUMA's obligations under the O&M Agreement, will occur as follows:
 1. Activities performed by LUMA supported by documentation subject to audit:
 - i. Progress reviews;

- ii. Commissioning acceptance;
 - iii. Safety and environmental compliance oversight; and
 - iv. Day-to-day management.
- 2. Activities performed by LUMA only after pre-approval by the 3PPO (all activities must be documented and are subject to audit):
 - i. Contractor performance evaluations; and
 - ii. Other contract administration responsibilities not specifically identified in this section 20.
- 3. Activities performed by the 3PPO:
 - i. Any activities for which the 3PPO denies LUMA's request for pre-approval;
 - ii. Review, approve, and administer payments to Covered Affiliates; and
 - iii. Contract changes and circumstances that involve a relief event, supervening event, change request (technical, schedule, or cost), or other subjective judgment with respect to the Covered Affiliate's performance of, or compliance with contract requirements. In the case of a relief event, supervening event, or change request, the procedures in section 21 below will apply.
- e. To mitigate against impaired objectivity by LUMA in the performance of any contract awarded to a Covered Affiliate, the 3PPO and LUMA will collaborate without limitation in providing a quarterly report, as part of LUMA's reporting requirements under Section 5.2.4 of the PM, on the contracted work progress, issues, and risks of all contracts awarded to Covered Affiliates. The report will specifically identify procurements where OCI mitigation measures have been implemented. This report will also identify any subjective evaluations or oversight of the contractor that should be managed by the 3PPO. The report will be provided to the Executive Director of the P3 Authority, or their designee.

21. Changes or Supervening Events (Section 2.3.1 - Steps 7, 8 and 9)

- a. In the case of a relief event, supervening event, or change request (i.e., technical, schedule, or cost) where a 3PPO is being utilized to help mitigate real or apparent OCI's:
 - i. The contractor will prepare the request for relief or change in accordance with the PM (e.g., Section 2.3) and the contract, and provide to LUMA and the 3PPO.
 - ii. Before any request (including Change Orders) is approved, the 3PPO will review the request and decide whether to accept the request, request further

information, or to reject the request. The 3PPO may consult with LUMA as the 3PPO deems necessary. The 3PPO will notify LUMA of its decision concerning such a request.

- iii. If LUMA does not concur with the 3PPO's decision, then LUMA and the 3PPO will follow the Review process below (Section C).
- b. The Vendor will only be entitled to relief or changes that were permitted by the contract and accepted by the 3PPO or determined through the Review Process set forth below.

C. Review Process

Management of the Review Process described below is a 3PPO responsibility, in all instances where the 3PPO assumes control of the procurement or contract administration activity.

Review Process:

- a. If LUMA does not concur with the 3PPO's findings and decisions, then LUMA will notify the 3PPO in writing the reasons it does not concur.
- b. The 3PPO and P3A will review the decision, considering LUMA's concerns. The 3PPO and P3A may seek additional information from LUMA in the course of their review.
- c. Within 15 business days of receiving the notice of nonconcurrence from LUMA, the 3PPO will issue the final decision, which will be documented and transmitted to the P3A and LUMA. LUMA and the 3PPO will implement the decision with due regard for project objectives and schedule.

Exhibit 2

P3 Authority and COR3 Approval of OCIAMP and



GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

January 13, 2023

BY ELECTRONIC MAIL

Mr. Wayne Stensby

Chief Executive Officer
LUMA Energy, LLC
wayne.stensby@lumapr.com

with copy to:
LUMA Energy, LLC
General Counsel
legal@lumamc.com

Re: OCIAMP Approval

Dear Mr. Stensby:

Reference is made to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 ("O&M Agreement") among (i) the Puerto Rico Electric Power Authority ("PREPA"), (ii) the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and (iii) LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA"). Reference is also made to the LUMA Procurement Manual ("Procurement Manual") as approved by the P3 Authority and the Central Office for Recovery Reconstruction and Resiliency ("COR3") on May 31, 2021.

Pursuant to Section 4.3.2 of the Procurement Manual which requires LUMA to conduct procurements free of conflicts of interest and in a manner designed to identify actual and apparent organizational conflict of interest ("OCI") as early in the procurement process as possible, LUMA has developed the Organizational Conflict of Interest Avoidance and Mitigation Plan ("OCIAMP") attached herein as Annex I.

Following extensive review and subject to any revisions needed to address and implement any comments that are received on or after the date of this letter from the Federal Management Agency, the P3 Authority hereby approves the content of the OCIAMP as attached hereto.

Notwithstanding the foregoing, as the OCIAMP shall be incorporated as part of the Procurement Manual, the P3 Authority reserves the right, pursuant to the language set forth in Section 5.9 (d) of the O&M Agreement, to require LUMA to update the Procurement Manual and or the OCIAMP every three (3) months, or as otherwise deemed necessary by the Parties, to reflect any changes in Applicable Law that affect Federal Funding, or in response to commentary from the relevant Federal Funding Agencies.

Respectfully,



Fermín Fontanes (Jan 13, 2023 17:41 AST)

Fermín E. Fontanés Gómez
Executive Director
Puerto Rico Public-Private Partnerships Authority

ANNEX I



GOVERNMENT OF PUERTO RICO

CENTRAL OFFICE FOR RECOVERY,
RECONSTRUCTION AND RESILIENCY

Hon. Pedro R. Pierluisi Urutia
Governor

Manuel A.J. Laboy Rivera
Governor's Authorized
Representative

VIA ELECTRONIC MAIL

January 13, 2023

Mr. Wayne Stensby
Chief Executive Officer
LUMA Energy, LLC
wayne.stensby@lumapr.com

with copy to:

LUMA Energy, LLC
General Counsel
legal@lumamc.com

Re: OCIAMP Approval

Dear Mr. Stensby:

Reference is made to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 ("O&M Agreement") between the: (i) Puerto Rico Electric Power Authority ("PREPA"); (ii) Puerto Rico Public-Private Partnerships Authority ("P3 Authority"); and (iii) LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA"). Reference is also made to the LUMA Procurement Manual ("Procurement Manual") as approved by the P3 Authority and the Central Office for Recovery Reconstruction and Resiliency ("COR3") on May 31, 2021.

Pursuant to Section 4.3.2 of the Procurement Manual, which requires LUMA to conduct procurements free of conflicts of interest and in a manner designed to identify actual and apparent organizational conflict of interest ("OCI") as early in the procurement process as possible, LUMA has developed the Organizational Conflict of Interest Avoidance and Mitigation Plan ("OCIAMP") attached herein as Annex I.

Following extensive review and subject to any revisions needed to address and implement any comments that are received on or after the date of this letter from the Federal Emergency Management Agency ("FEMA"), COR3 hereby approves the content of the OCIAMP as attached hereto.

Please note that pursuant to Section 4.1(e) of the O&M Agreement, COR3's review was limited to the federal funding requirements generally applicable to state entities, as set forth in 2 C.F.R. Part 200, and did not cover matters otherwise governed by the U.S. Department of Housing and Urban Development funding regulations, or state laws and regulations. Furthermore, COR3's approval, and any future approval, rejection, or technical assistance related to OCI mitigation plans or techniques presented by LUMA pursuant to Section 2.2.3 of the Procurement Manual, shall not be construed as a determination of eligibility for any federal funding requests for procurements conducted under the Procurement Manual.

It is important to note that pursuant to the language set forth in Section 5.9 (d) of the O&M Agreement, LUMA may be required to update its Procurement Manual and/ or the OCIAMP every three (3) months, or as otherwise deemed necessary by the Parties, to reflect any changes in Applicable Law that affect Federal Funding, or in response to commentary from the relevant Federal Funding Agencies. Furthermore, COR3 reserves the right to seek technical advice from FEMA regarding the provisions of the OCIAMP, in which case the Parties shall be required to revise the same accordingly.

Respectfully,

A handwritten signature in blue ink, appearing to read "Margarita Mosquera Méndez".

Margarita Mosquera Méndez, M. Arch.
Acting Executive Director

c: Administrator
Attention: Fermín E. Fontanés Gómez