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PROCUREMENT MANUAL

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I. Introduction

A. Purpose and Applicability

The purpose of this Procurement Manual is to document the procurement policies and procedures that LUMA Energy Servco, LLC ("LUMA") will use when procuring goods and services as agent for the Puerto Rico Electric Power Authority ("PREPA"). This Procurement Policy is established under the authority of the Operations and Maintenance Agreement ("O&M Agreement" or "OMA") dated as of June 22, 2020, among PREPA, as owner of the Transmission and Distribution System ("T&D System"), the Puerto Rico Public Private Partnerships Authority ("P3A"), as Administrator, and LUMA Energy ServCo, LLC and LUMA Energy, LLC as Operator of the T&D System. Any language regarding LUMA's responsibilities or involvement in procurement activities is intended to provide clarity on the way that LUMA employees will conduct their responsibilities in fulfillment of LUMA's role as agent of PREPA.

This Procurement Manual was prepared, approved and adopted in accordance with the substantive and procedural requirements of (i) the Public-Private Partnership Authority Act, Act No. 29-2009 of the Legislative Assembly of Puerto Rico, as amended ("Act 29") which provides the legal framework for the creation and development of public-private partnerships agreements, (ii) the Puerto Rico Electric System Transformation Act, Act No. 120-2018, of the Legislative Assembly of Puerto Rico, as amended ("Act 120") which authorizes PREPA to conduct any PREPA Transaction (as defined thereunder) and to enter into Partnerships or Sales Contracts (as defined thereunder) in relation thereto and also designates P3A as the sole government entity authorized to and responsible for implementing the public policy on PREPA Transactions (as defined thereunder) conducted in accordance with Act 120; determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives and principles established in the energy policy and the regulatory framework to be developed pursuant to Section 9 thereunder; and determining which PREPA Assets (as defined thereunder) related to electric power transmission and distribution shall be sold or transferred through Sales Contracts and also provides that contracts executed in connection with any PREPA Transaction may include exceptions or alternative procedures to statutory provisions, including those in the Puerto Rico Electric Power Authority Act, Act 83 of May 2, 1941, as amended ("Act 83"), deemed reasonable by P3A's Partnership Committee under the circumstances, to ensure the feasibility of the PREPA Transaction; and (iii) Sections 4.1(e)(ii) and 4.1(f)(ii) of the O&M Agreement.

This Procurement Manual was prepared, approved and adopted in accordance with the substantive and procedural requirements of (i) the Public-Private Partnership Authority Act, Act No. 29-2009 of the Legislative Assembly of Puerto Rico, as amended ("Act 29") which provides the legal framework for the creation and development of public-private partnerships agreements, (ii) the Puerto Rico Electric System Transformation Act, Act No. 120-2018, of the Legislative Assembly of Puerto Rico, as amended ("Act 120") which authorizes PREPA to conduct any PREPA Transaction (as defined thereunder) and to enter into Partnerships or Sales Contracts (as defined thereunder) in relation thereto and also designates P3A as the sole government entity authorized to and responsible for implementing the public policy on PREPA Transactions (as defined thereunder) conducted in accordance with Act 120; determining the Functions, Services, or Facilities for which such Partnerships shall be established, subject to the priorities, objectives and principles established in the energy policy and the regulatory framework to be developed pursuant to Section 9 thereunder; and determining which PREPA Assets (as defined thereunder) related to electric power transmission and distribution shall be sold or transferred through Sales

Contracts and also provides that contracts executed in connection with any PREPA Transaction may include exceptions or alternative procedures to statutory provisions, including those in the Puerto Rico Electric Power Authority Act, Act 83 of May 2, 1941, as amended ("Act 83"), deemed reasonable by P3A's Partnership Committee under the circumstances, to ensure the feasibility of the PREPA Transaction; and (iii) Sections 4.1(e)(ii) and 4.1(f)(ii) of the O&M Agreement.

This Procurement Manual is not limited to procurements funded in whole or in part with grants but is compliant with applicable Commonwealth of Puerto Rico and federal statutory and regulatory requirements for procurements funded by grants.

This document is to be applied in concert with any other applicable policy established by LUMA for its operations as agent for PREPA. In the event of a conflict between the terms of this document and LUMA's other policies applicable to its role as agent for PREPA, the more restrictive requirement applies. For the avoidance of doubt, consistent with the O&M Agreement, to the extent that this document differs from the PREPA Procurement Manual or the procurement manual issued by any other PREPA agent in the fulfillment of the other agent's responsibilities, the other procurement manual(s) do not apply to LUMA, as agent to PREPA. Similarly, this Procurement Manual does not apply to PREPA's own procurements or the procurements by any other PREPA agents.

B. Exclusions and Exceptions to this Procurement Manual

Pursuant to Act 29-2009, as amended, Act 120-2018, as amended, and the OMA, this Procurement Manual governs all matters regarding procurement under the OMA to the extent not in contravention of federal procurement requirements. Notwithstanding the foregoing, and for the avoidance of doubt, this Procurement Manual does not apply to (i) contracts not payable with federal funds where LUMA is acting as principal, not agent to PREPA (ii) donations, (iii) intergovernmental agreements, (iv) agreements or understandings whereby PREPA is not required to make payments and/or reimbursements.

1. State Procurement and/or Contracting Requirements Not Applicable to this Procurement Manual

Puerto Rico government procurement and/or contracting requirements that directly contradict this Procurement Manual do not apply to procurements under the OMA.

As matter of example, the below is a non-exhaustive list of local requirements that do not apply to procurements under this Procurement Manual:

a. Compliance with Act 73-2019, including but not limited to vendors' requirements to register with the General Services Administration's bidders' registry or professional service providers' registry (RUL and RUP, respectively). Vendors (with the exception of vendors for purchases below the Micro-Purchase Threshold) are required to be registered with LUMA's Vendor Registry.
b. Compliance with Circular Letter 001-2021, of the Office of the Governor of Puerto Rico and the Office of Management and Budget.
c. Compliance with Act No. 3-2017, as amended, known as the Act to Address the Economic, Fiscal and Budget Crisis and Guarantee the Functioning of the Government.

d. Compliance with Act 230-1974, as amended, known as the Government Accounting Act, and any other law, order, circular letter or regulation prohibiting or limiting the use of credit cards for public procurement.
e. Compliance with OE-2021-003, or other applicable law, order or circular letter, granting the Chief of Staff the authority to terminate a contract.
f. Compliance with Act 69-1991, known as the Law to Regulate the Deposit of Public Funds and to Provide for its Security.
g. Compliance with any laws, rules, orders, circular letters or regulations related to the Puerto Rico Innovation and Technology Service, including but not limited to Act 75-2019.
h. Compliance with Act 265-2003.
i. Compliance with Article 3(f) of Act 237-2004, or any law, rule or regulation establishing a maximum term amount for PREPA contracts.
j. Compliance with OE-2021-029.

2. Contracts Not Subject to Certain Provisions of this Procurement Manual

a. Contracts of Adhesion

Certain industry contracts or agreements may be subject to market research to determine cost reasonableness, but the provisions of the contract itself are not subject to negotiation. Contracts of adhesion include pre-populated contracts for (i) insurance, (ii) shipping, (iii) hotels, (iv) car rentals, (vi) off-the-shelf software or information systems or (vii) similar goods or services where vendors in the marketplace typically do not allow substantive modification to standard terms and conditions. LUMA may enter into contracts of adhesion when not using federal funds without the representations set forth in Sections IV.A.8 and IV.B; provided, however, LUMA shall aim to include such representations when feasible.

C. Contracting Principles

1. Acquisition of Unnecessary or Duplicative Items

LUMA will avoid the acquisition of unnecessary or duplicative items. In furtherance of that goal, acquisition actions should:

a. Expend funds for current and reasonably expected needs and avoid acquisition of unnecessary or duplicative items.
b. Include written justification for the purchase of goods or services in the Procurement File before the initiation of any procurement process.
c. Consider consolidating or breaking out procurements to obtain a more economical purchase. However, “project splitting”—breaking up a larger procurement merely to bring it under the micro purchase ($10,000) or Simplified Acquisition Threshold ($250,000) —is not permitted.
d. Consider, where appropriate, lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

2. Economy of Scale

To encourage favorable pricing, LUMA should seek to purchase the full quantity of goods or services necessary to fulfill the approved scope of the allocation or subgrant at the time of the procurement. Where the acquisition of goods or services is divided into multiple procurements from the same vendor, the total anticipated cost must be used to determine the method for each procurement.

D. LUMA CPM Toolkit

Throughout this Procurement Manual, references are made to various template documents and forms, and other LUMA plans and policies applicable to LUMA procurements governed by this Manual. These references are italicized herein and may be found in the compilation document known as the *LUMA CPM Toolkit,* which may be revised from time to time.

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II. Definitions

A. "*Best Value*" Best Value shall be understood as the most advantageous combination of the total cost and quality needed to meet LUMA's requirements. Best Value may not necessarily mean the lowest cost but provides the greatest overall benefit in response to the requirements.

B. *"Cardinal Change"* is a significant change to an existing contract that is beyond the scope of the original contract work, costs or time; causes a major deviation from the original purpose of the work or the intended method of achievement; or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

C. *"Competitive Proposals"* is a method of vendor selection that provides Full and Open Competition and includes the issuance of a Request for Proposals ("RFP") and the negotiation of contract terms.

D. *"Competitive Sealed Bidding"* is a method of vendor selection that provides Full and Open Competition where the award is made to the lowest acceptable bid and is initiated by the issuance of a written Invitation for Bids ("IFB").

E. *"Conflict of Interest"* means a real or apparent personal or organizational conflict of interest. A personal conflict of interest may arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these persons (other than a public agency/organization in which he or she is serving as an officer, director, trustee, partner, or employee), has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An organizational conflict of interest may arise where, because of its relationship with a related entity such as a parent, affiliate, or subsidiary, an entity submitting a bid or proposal is or appears to be unable to be impartial with regard to decisions that might affect the related organization. (See Section X for more information on Conflict of Interest.).

F. "Construction Work" is the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

G. *"Emergency"* means a threat to life, public health, or safety, or improved property or some other form of dangerous situation that requires immediate action to alleviate the threat and the use of competitive procurement proposals would prevent the timely acquisition of goods or services needed to respond to or lessen the harm from the threat or dangerous situation. Emergencies do not require a declaration of emergency by the Governor or President, and conversely, such a declaration by the Governor or President does not automatically create an emergency for the purposes of triggering Emergency procurement procedures in this Procurement Manual.

H. *"Exigency"* means a situation that demands immediate aid or action, where there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and use of competitive procurement proposals would prevent the urgent action required to address the situation.

I. *"Full and Open Competition"* means allowing bidders and offerors to compete for contracts on an equal footing, ensuring that no restrictions are placed on procurements of goods or services that may unduly limit competition. Examples of prohibited or undue restrictions that prevent Full and Open Competition include but are not limited to:

1. Allowing prohibited conflicts of interest, including allowing companies that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals to compete for such procurements. These companies must be excluded from bidding.
2. Imposing prohibited geographical preferences. LUMA will not impose state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this Section preempts Puerto Rico licensing laws. When contracting for architectural and engineering ("A/E") services, LUMA may use geographic location as a selection criterion provided the limitation leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. Placing unreasonable requirements that either favor or disqualify certain prospective offerors.
4. Requiring unnecessary experience.
5. Requiring excessive bonding.
6. Supporting non-competitive pricing practices between firms or between affiliated companies.
7. Issuing non-competitive solicitations or contracts to persons or firms on retainer contracts (or currently under another contract) that were not procured in compliance with this document or where the award is not for property or services specified for delivery under the scope of the retainer contract.
8. Specifying only a "brand name" product instead of allowing for "an equal" product to be proposed and describing the performance of relevant requirements of the procurement. Similarly, specifying a preferred item is a form of a brand name only specification. It is not permissible unless there is an appropriate justification as to the need of the specific item.
9. Any arbitrary action in the procurement process, e.g., unfairly restrictive time limits for a potential vendor to respond to a request.

J. "Infrastructure": Solely for the purposes of determining applicability of the Build America, Buy America Act (Public Law 117-58 §§ 70901-27) ("BABAA"), the term "*Infrastructure*" includes, at a minimum, the structures, facilities, and equipment for utilities; broadband infrastructure; and buildings and real property, in the United States.

K. "*Micro Purchase Threshold*" is as defined at 2 C.F.R. § 200.1 and was $10,000 as of the date this version of the Procurement Manual was issued.

L. *"Minor Discrepancies"* are defects or errors which do not materially affect the deadlines or process for submitting bids or proposals, or the price, quality, quantity or delivery schedule of the goods or services being procured.

M. "Procurement File" means all procurement documents, such as solicitations, proposals, evaluations, approvals, executed agreements, and contract deliverables. (See Section VI for documentation maintained in the Procurement File.)

N. "Purchase Requisition" means the form used to document micro purchase procurements and the required approvals and vendor information. The Purchase Requisition shall be attached

to the invoice and made a part of the Procurement File. (See LUMA *Purchase Requisition Form*).

O. *"Responsible"* bidder, offeror, or vendor means a person or entity that has the capability, in all material respects, to perform fully the contract requirements, and the moral and business integrity and reliability that will assure good faith performance. A documented determination of responsibility with basis for that determination will be saved in the Procurement File. (See LUMA *Contractor Responsibility Worksheet*.)

P. *"Simplified Acquisition Threshold"* is as defined ar 2 C.F.R § 200.1 and was $250,000 as of the date this version of the Procurement Manual was issued.

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III. Methods of Procurement

A. General Rule

Transactions for goods or services in excess of the Simplified Acquisition Threshold shall be conducted through Competitive Sealed Bidding or Competitive Proposals unless otherwise provided by this policy. Goods and services should be procured by Competitive Sealed Bidding where price is the sole determinative factor and should be procured through Competitive Proposals where it is desirable to evaluate other factors in the decision to award a contract.

B. Informal Procurement Methods: Micro and Small Purchases

Though competition is encouraged in all purchases, the cost of a formal procurement for small purchases can outweigh its benefits. Accordingly, for purchases of goods and services costing less than the Simplified Acquisition Threshold, informal procurement procedures are permitted.

1. **Micro Purchases: purchases less than or equal to the Micro Purchase Threshold**
   a. Purchases of goods and services not exceeding the Micro Purchase Threshold in the aggregate may be made without Competitive Sealed Bidding or Competitive Proposals if LUMA considers the price to be fair and reasonable based on research, experience, purchase history or other information and documents the decision. Purchases that remain at or below the Micro-Purchase Threshold are not required to be documented with a written contract or purchase order, but costs must be documented by the vendor's invoice, proof of payment, and a LUMA *Purchase Requisition Form*. In addition, LUMA will document the determination regarding price, the determination that the contractor is a Responsible vendor and reason for selection if more than one vendor was considered. If applicable, LUMA will also document any determination that the otherwise lowest priced vendor is not Responsible. For a complete list of the documentation requirements, see Section VI.

   b. To the maximum extent practicable, micro purchases should be distributed equitably among qualified suppliers.

   c. LUMA may, but is not required to, use the Small Purchase or Formal Procurement Methods for Micro Purchases.

2. **Small Purchases: Purchases of more than $10,000, but no more than $250,000**
   a. Securing services, supplies, or other property which cost more than the Micro Purchase Threshold, but do not cost more than the Simplified Acquisition Threshold in the aggregate, may be conducted without Competitive Sealed Bidding or Competitive Proposals. However, LUMA must obtain written price or rate quotations from at least three qualified sources. LUMA will determine whether the number of price or rate quotations received is adequate under the circumstances. The contracts should be fixed price or not to exceed T&M contracts with assurances that the scope of work can be completed for less than the Simplified Acquisition Threshold. The Procurement File must include an independent cost estimate that the procurement is within the threshold to qualify for this type of procurement. Any future changes, particularly any that cause the procurement to rise above the Simplified Acquisition Threshold, should also be documented in the Procurement File. LUMA must also document its determination that the contractor is Responsible and, if applicable, their determination that the otherwise

lowest priced vendor is not Responsible. For a complete list of the documentation requirements, see Section VI.

b. Purchases exceeding the Micro Purchase Threshold require a written contract.

c. LUMA may, but is not required to, use Formal Procurement Methods for Small Purchases.

C. Formal Procurement Methods: Purchases above the Simplified Acquisition Threshold (currently $250,000)

1. The purchase of services, supplies, or other property in an amount expected to exceed the Simplified Acquisition Threshold must be documented in a written contract. Such contracts must be made through Competitive Sealed Bidding or Competitive Proposals, unless otherwise exempted under Sections III.E or III.F. LUMA must obtain bids or proposals from at least three qualified vendors. See Section III.E below in the event at least three bids or proposals are not received.

   a. **Competitive Sealed Bidding** begins with the issuance of an IFB containing the solicitation requirements set out in Section IV below. When it is impractical to initially prepare a purchase description to support an award based on price, the IFB may request the submission of unpriced offers to be followed by an IFB that contains a complete, adequate, and realistic specification or purchase description.

   Public notice of the IFB is given at least ten business days before the date set for receipt of bids by posting on LUMA's website, and optionally by publication in other media. In addition, bids and offers may be solicited directly from potential vendors, and LUMA must take the affirmative steps in Section VIII.A to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.

   LUMA may permit a shorter posting period where appropriate.

   Evaluation of bids will be based on the requirements set forth in the IFB, which may include life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose which may be helpful in determining acceptability.

   After evaluating all bids, LUMA may award to the lowest responsive and responsible bidder who is fully qualified and best suited among those submitting proposals, based on the evaluation factors included in the IFB.

   If procuring goods or services that will be funded in whole or in part by a HUD Community Disaster Block Grant, see the latest *Procurement Manual for the CDBG-DR Program* issued by the Puerto Rico Department of Housing for further instructions regarding the bid process.

b. **Competitive Proposals** begins with the issuance of an RFP containing the solicitation requirements set out in Section IV below. An RFP is typically designed to solicit a proposal to solve a stated problem or meet a stated need, versus purchasing a specific item. The proposal received is the product of the offeror's creative thoughts and provides the detailed approach and description of what is to be accomplished or produced, as well as a price for the services or goods to be provided.

Public notice of the RFP is given at least ten (10) business days before the date set for receipt of proposals by posting on LUMA's website, and optionally by publication in other media. In addition, proposals may be solicited directly from potential vendors and LUMA must take the affirmative steps in Section VIII.A to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.

LUMA may permit a shorter posting period where appropriate (with documented justification).

LUMA will consider all evaluation factors specified in the solicitation documents and evaluate offers only on those factors. Evaluation factors must include price and may include whether the offeror has complied with specifications; the ability of the offeror to carry out the work required; the relative quality and adaptability of the materials, goods, equipment, or services offered; the financial responsibility of the offeror; the offeror's expertise, experience, and reputation of business integrity; and the deadline for the delivery or performance offered.

If a contract will include options, LUMA will evaluate proposals for any optional quantities or periods contained in the solicitation if LUMA intends to exercise those options after the contract is awarded.

If LUMA finds that changes to the evaluation factors are necessary, and such changes would impact the field of competition, LUMA may only change the evaluation factors if the revised solicitation is reopened to all potential offerors.

The evaluation process may but is not required to include interviews with offerors.
After evaluating all evaluation factors in the RFP (including price) LUMA may, but is not required to, establish a competitive range of offerors whose proposals have a reasonable chance of being selected for award and invite the offerors within the competitive range to submit "best and final" cost proposals.

LUMA shall select the offeror which, in its opinion and using the evaluation factors specified in the RFP, is Responsible, and has made the best proposal and/or offers the Best Value, documenting the basis for selecting that offeror.
Negotiation of contract terms may be conducted with the selected offeror(s). However, if LUMA and the most qualified offeror fail to agree on contract terms, LUMA may conduct negotiations with the next most qualified offeror. If necessary, LUMA will conduct negotiations with successive offerors in descending order until a contract award can be made or LUMA decides to cancel or reissue the solicitation.

2. When the parties have agreed upon contract terms, LUMA will send a notice of award to all offerors. (Use the *Notice of Award Template*).

3. Awards may be made to more than one offeror only if the solicitation notified all potential offerors that LUMA may make multiple awards.

4. Formal procurements may result in one or more contract awards ("Multiple Award Contracts") and could include contracts for fixed quantities, or indefinite delivery, indefinite quantity ("IDIQ"). These contracts may be awarded as Master Service Agreements ("MSA") or other similar framework agreements. In cases where competitive solicitations, conducted in accordance with the procedures described above, result in Multiple Award Contracts, the issuance of orders under such contracts does not require additional competitive processes.

5. The requirement for full and open competition is satisfied when purchasing through a United States General Services Administration ("GSA") Schedule.

D. Pre-qualification

In addition to the Formal Procurement Methods, LUMA may allow vendors to prequalify before submitting bids or proposals in individual procurements or categories of procurements. Pre-qualified lists are not contracts, but simply aid in the procurement of future contracts by documenting the qualification of prospective contractors in advance of procurements and contract awards.

Prequalification shall be based on criteria related to that which is to be procured and are designed to solicit vendors fully capable of performing the anticipated contract. LUMA will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure Full and Open Competition. LUMA will not preclude potential bidders from qualifying during the solicitation period.

E. Non-competitive Procurements

1. When a contract will be funded in whole or in part with Federal funds, non-competitive procurement may only be used when one or more of the following circumstances apply:
    a. The aggregate dollar amount of the property or services does not exceed the Micro Purchase Threshold.
    b. The product or service is only available from a single source. Examples of situations where goods and/or services may only be available from a single source include:
        i. The offeror demonstrates a unique or innovative concept or capability not available from another source.
        ii. No other product provides equivalent or similar benefits.
        iii. There is no possibility of competition from other dealers or distributors (e.g., there are patent or data rights restrictions that would preclude competition).

iv. The contractor is already performing work for LUMA and transitioning to a new vendor would create a substantial duplication of costs that is unlikely to be recovered through competition.

v. Equipment compatibility.

c. An exigency or emergency need for the requirement does not permit sufficient time for a formal competitive procurement.

i. A Presidential emergency or major disaster declaration under the Stafford Act is not alone sufficient to justify the use of this exception to Full and Open Competition.

ii. Use of this exception is only permissible for goods or services specifically related to the Emergency or Exigency.

iii. Use of this exception is only permissible during the actual Emergency or Exigency. Upon awarding a non-competitive contract, LUMA will begin the process of competitively procuring similar goods and services to transition to the competitively procured contracts as soon as the actual Emergency or Exigency ceases to exist. Typically, Exigency or Emergency conditions exist when there is a widespread lack of power, transportation, and/or communications. Such conditions usually last up to 30 days, but may extend longer after catastrophic events. For example, once power and communications are restored such that normal business operations resume, LUMA will transition from sole source to competitive procurement, and compete any needs that persist including those that were initially awarded under sole source conditions. For the avoidance of doubt, once LUMA can perform competitive procurement it will initiate competitive procurement.

iv. To limit the need for non-competitive procurements during a public Exigency or Emergency, LUMA may identify the types of work that will be needed in the most common events anticipated for PREPA's Transmission & Distribution system in such circumstances. These pre-disaster procurements and the resulting prepositioned contract will meet the applicable requirements in this Procurement Manual for competitive procurement including those governing organizational conflicts of interest.

v. In the event of a public Exigency or Emergency requiring resources not available through prepositioned contracts, the OCI process identified in Section X, and *LUMA's OCI Avoidance and Mitigation Plan* ("*OCIAMP*"), does not apply during the time that Emergency or Exigency conditions prohibit competitive procurement. The exemption from the OCI process shall not exceed 30 days absent a written request with justification to P3A and COR3 and express written authorization from P3A and COR3.

vi. Contracts awarded during the public Exigency or Emergency period will have a contract term of 30 days or less, unless a longer period is approved by P3A and COR3, following receipt of a written justification from LUMA explaining: (i) why the good or service will be required for a longer term; (ii) why the Exigency or Emergency is prohibiting competitive procurement; and (iii) an estimate of time as to when LUMA will be capable of resuming the competitive procurement process and replacing the contract awarded using this exception with a competitive award. Considering the expected urgency

of such projects, P3A and COR3 shall provide such approval as promptly as possible in all cases.

d. The federal awarding agency approved the non-competitive procurement in writing.

e. When LUMA solicits responses from an adequate number of qualified offerors (which may be satisfied by posting on LUMA's website or Sourcing Platform and complying with the affirmative steps in Section VIII.A) and fewer than three qualified and responsible offerors respond, LUMA may proceed with a noncompetitive award if competition is determined to be inadequate. Before using this exception:

i. LUMA's solicitation efforts must be well-documented in the Procurement File.

ii. LUMA should review the solicitation and its publication to ensure that it did not unduly restrict or eliminate competition. In undertaking this review, LUMA may ask those firms solicited why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then LUMA should evaluate whether to cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers.

iii. If using this exception, LUMA must also perform a cost or price analysis to demonstrate the reasonable cost of the goods or services.

2. Use of Noncompetitive Procurement procedures for federally funded procurements does NOT relieve LUMA's responsibility to perform other required procurement activities as set forth in this Procurement Manual, which may include, but are not limited to the following examples:

a. Include the applicable required federal clauses discussed in Section VIII.D of this Procurement Manual and available in the *Federal Contracting Clauses* section of the *LUMA CPM Toolkit*.

b. Include the Federal bonding requirements at 2 C.F.R. § 200.326 if the contract is for construction or facility improvement.

c. Award only to a responsive and Responsible contractor.

d. For any contract or contract modification above the Simplified Acquisition Threshold, complete a written cost or price analysis and determine if the cost or price is fair and reasonable.[1]

e. Never award cost plus percentage of cost contracts.

f. Use a T&M contract (see Section VII.B.3 below) only if no other contract method is suitable, and if so, document that determination, include a ceiling price in the contract that the contractor may not exceed, and assert a high degree of oversight to ensure that the contractor is using efficient and effective methods of cost control. (Use *Template Determination Regarding Suitability for Time and Materials Contracts*).

g. If less than three vendors respond to a Formal Procurement, ensure that the Procurement File contains information on the solicitation efforts undertaken and either

[1] If the determination relies on comparison to a prior procurement, that procurement must have been a competitive one. The determination must also identify similarities in the goods, services, and costs in the prior procurement.

cancel the solicitation and resolicit bids or proposals or document the reason for proceeding with a non-competitive award instead of cancelling the solicitation and resoliciting bids or proposals.

F. Exceptions to Formal Procurement for Procurements that are Not Eligible for Federal Funding

1. When in the best interest of good administration, goods or services that are not eligible for Federal Funding may be procured through a non-competitive procurement when:
   a. The Total Contract Value does not exceed $2.5M in the aggregate, or, with documented P3A approval, does not exceed $5M in the aggregate; and
   b. Written justification is provided as to why it is in the best interest of good administration to use non-competitive procurement.

2. When in the best interest of good administration, LUMA may procure goods or services that are not eligible for Federal Funding through an informal procurement process to more than one vendor when:
   a. The Total Contract Value does not exceed $5M in the aggregate; and
   b. Written justification is provided as to why it is in the best interest of good administration to use an informal procurement process.

3. When spare parts, accessories, or supplemental equipment or services are required to support, maintain, repair, or effectively operate previously supplied goods or contracted services - to the extent authorized by Act 83-1941.

4. Real estate lease and/or purchase agreements.

5. Operational fuel purchases, to the extent authorized by Act 83-1941.

6. Professional, expert, highly technical, or specialized services (“Professional Services”) are required, and LUMA deems it in the best interests of good administration for such works or services to be contracted without a competitive procurement.

7. After solicitation of a number of sources, competition is determined inadequate.

8. The acquisition of goods or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold.

9. The item is only available from a single source.

10. The immediate delivery of equipment, materials, effects, performance of services, or construction works are required due to an Emergency or public Exigency but are not available through pre-existing or pre-positioned contracts and the circumstances will not permit a delay resulting from publicizing and completing a competitive solicitation as required under this Procurement Manual.

IV. Solicitation Requirements

A. Solicitation Requirements

All solicitations used in formal procurements (Competitive Sealed Bidding or Competitive Proposals) must meet the following requirements:

1. A clear and accurate description of the technical requirements for the good or service to be procured, including any unique capabilities or qualifications that will be required of the vendor. This description must not contain features which unduly restrict competition.

2. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if practical.
   a. Performance or functional specifications are preferred over detailed technical specifications except where appropriate to ensure functionality, such as for electronic equipment and systems that must meet certain performance criteria, including interoperability with other equipment or systems. A performance specification describes the outcome, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. When using performance specifications, the solicitation should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.
   b. Although a brand name may not be requested or required, when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which are required must be clearly stated.

3. All solicitations must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. If using an RFP to procure by Competitive Proposals, the solicitation should state if LUMA is reserving its right to award the contract to other than the lowest priced offeror and whether LUMA intends to award one or more than one contract.

4. If applicable, solicitations must acknowledge LUMA’s use of federal grant funding for the contract in compliance with the terms of its financial assistance award and notify prospective bidders/offerors that the applicable Federal grant contracting clauses discussed in Section VIII.D of this Procurement Manual will be required in the resulting contract. The solicitation may include the applicable required clauses.

5. Solicitations must also set forth the requirements related to contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms set forth in Section VIII.A, below.

6. Solicitations should state the type of contract that will be awarded. Cost plus percentage of cost contracts are prohibited. Fixed Price and Cost Reimbursement contracts are

preferred. T&M contracts may only be used if justified through completion of a *Template Determination of Suitability for Time and Materials Contracts*.

7. To the extent the Buy American Act applies to the purchase and no exception applies, include the applicable solicitation provision. Also, include in the solicitation the following brief questionnaire:
    1. Is the material American-made? _____Yes _____No
    2. If not, did you attempt to source American-made material? _____Yes _____No
    3. If no, please explain why not: _____
    4. If yes, what was the reason American-made material was not included in your proposal? _____ Price _____ Availability _____ Other
    5. If price, note the difference in price: _____
    6. If other, please explain: _____

8. When procuring services onshore or offshore (including the "service" of delivery of Goods), the solicitation will require a vendor to make the following representations and warranties and deliver the following documents, as required by applicable law (terms capitalized, but not otherwise defined, shall have the meaning set forth in the O&M Agreement):

    a. Vendor represents and warrants that it does not have any outstanding debts for unemployment insurance, temporary disability or chauffeur's social security with the Department of Labor and Human Resources of the Commonwealth, workman's compensation with the State Insurance Fund, income taxes or sales and use taxes with the Department of Treasury of the Commonwealth or real or personal property taxes with the Municipal Revenues Collection Center ("CRIM").

    b. Vendor shall deliver the certifications and sworn statement listed in Section IV.B below.

    c. Vendor shall not violate, conspire to violate or aid and abet the violation of any Anti-Corruption Laws. No funds transferred by PREPA to Vendor shall be transferred by Vendor, directly or indirectly, in violation of any Anti-Corruption Laws.

    d. Vendor is neither a Sanctioned Person nor located, organized, or a resident in a Sanctioned Country.

    e. Vendor shall maintain and implement policies, procedures and controls reasonably designed to ensure compliance with the Anti-Corruption Laws and Sanctions, promptly notify PREPA, via LUMA, in writing if Vendor becomes subject to any investigation by law enforcement or regulatory authorities in connection with the Anti-Corruption Laws or Sanctions, at all times comply with all Applicable Law regarding non-discrimination.

f. Vendor attests, subject to the penalties for perjury, that no Representative of Vendor, directly or indirectly, to the best of Vendor's knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of the Agreement.

g. Vendor shall inform PREPA, via LUMA, at any time during the Term, of any material tax disputes with any Governmental Body of the Commonwealth (other than Commonwealth Tax liabilities for which Vendor is not responsible under this Agreement, if any).

h. Vendor shall inform PREPA, via LUMA, at any time during the Term, if it or its Representatives become aware that they are subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function or charges involving public funds or property.

B. Required Certificates

The solicitation will require a vendor to provide the following certifications and any other as may be required under law from time to time.

Vendors that are otherwise subject to Puerto Rico General Services Administration (ASG, by its Spanish acronym) requirements for membership in the Professional Services Providers Sole Registry (“RUP”, by its Spanish acronym) or the Bidders Sole Registry (“RUL”, by its Spanish acronym) may provide evidence of current RUL or RUP registration in lieu of providing the documents listed below.

1. Vendor Engaged in Business in Puerto Rico

a. Certificate of Incorporation, Certificate of Organization or Certificate of Authorization to do Business in Puerto Rico issued by the Puerto Rico Department of State.

b. Merchant Registration Certificate.

c. Certificate of Good Standing issued by the Puerto Rico Department of State.

d. Sales and Use Tax Debt Certificate.

e. Income Tax Debt Certificate.

f. Income Tax Return Filing Certificate

g. Property Tax Debt Certificate from CRIM

h. Child Support (ASUME) Debt Certificate

i. Act 2-2018 Sworn Statement

2. Vendor Not Engaged in Business in Puerto Rico

a. Certificate of Existence, issued by the relevant jurisdiction.

b. Sworn Statement certifying no tax debts with Puerto Rico agencies.

c. Sworn Statement certifying no ownership of property in Puerto Rico.

d. Act 2-2018 Sworn Statement

C. Addenda

LUMA may either remain silent or issue an amendment to address any Minor Discrepancies in the solicitation documents. The solicitation documents should provide that LUMA may waive Minor Discrepancies in bids and proposals.

D. Cardinal Changes

Drafting a new contract to include a Cardinal Change or revising an existing contract to include a Cardinal Change is equivalent to a non-competitive award. When determining whether a change is a Cardinal Change, LUMA should evaluate whether the change is within the general scope of the contract work, costs and time, and within the scope of competition; if not, the contract should be canceled and re-solicited or the additional requirements should be met through a new procurement.

V. Evaluation of Submissions

E. Evaluation Panel

1. LUMA will convene an evaluation panel for all competitive procurements, except for emergency or exigency procurements. The purpose of the evaluation panel is to verify that vendors and their offers satisfy the requirements of the solicitation documents and to evaluate offers according to the evaluation criteria predefined in the solicitation documents.

2. The evaluation panel should be a cross-functional team of subject matter experts that will consist of at least three individuals, preferably LUMA employees. Evaluation panel members must evaluate all responsive proposals and if vendor interviews occur, must participate in all vendor interviews or review recorded interviews if they cannot attend. They may revise their initial scores as a result of the vendor interviews.

3. The evaluation panel will evaluate all offers consistent with the terms of the solicitation documents and prepare a written evaluation that addresses the technical aspects of each proposal. Authorized procurement personnel will conduct and document a cost or price analysis. The cost or price analysis will evaluate each offeror's cost or price proposal against the others, as well as against the independent cost or price estimate that was developed before opening bids or proposals.

VI. Documentation

A. All purchases must be documented in writing.

B. For all procurements, LUMA shall document the procurement process that was followed and the basis for recommendations of particular vendors in the Procurement File.

C. For every procurement (including noncompetitive procurements that don't exceed the Micro Purchase Threshold), LUMA must maintain the following documents in the Procurement File in sufficient detail to show the history of the procurement and the resulting contract (as applicable):

1. Initiating the Procurement:

a. Written justification for the purchase of the good or service.

b. Rationale for the method of procurement selected, i.e. micro purchases (not to exceed $10,000); small purchase procedures (not to exceed the Simplified Acquisition Threshold); formal procurement (above the Simplified Acquisition Threshold) using Competitive Sealed Biding or Competitive Proposals; or non-competitive proposals.

c. For Micro Purchases, a *Purchase Requisition Form.*

d. For non-competitive purchases (including micro, small, and formal procurement methods), a *Non-competitive Procurement Justification Worksheet*. The form must be completed with sufficient detail that a reasonable person unfamiliar with the circumstances can identify and understand the reasons for the non-competitive procurement.

e. Rationale for selection of contract type, i.e., fixed fee, cost reimbursement, time and materials. If a time and materials contract is used, include a completed *Template Determination of Suitability for Time and Materials Contract.*

f. For formal procurements and noncompetitive awards (above the Simplified Acquisition Threshold), conduct an independent cost estimate before receiving bids or proposals using a *Contract Cost or Price Analysis Worksheet*. For procurements expected to fall below the Simplified Acquisition Threshold, but above the Micro Purchase Threshold, LUMA will document its cost estimate, but is not required to use the *Contract Cost or Price Analysis Worksheet* to do so.

g. To the extent the procurement is subject to the Buy American Act, documentation to memorialize the consideration and application of any exceptions thereto.

h. LUMA procurement team approval or approval of the appropriate LUMA officer to release the procurement.

2. Publicizing the Solicitation:

a. List of sources solicited.

b. Copies of published notices of proposed contract action.

c. Copy of the solicitation documents (IFB, RFP or other evidence of solicitation) including all addenda, amendments, requests for clarifications and all other documents issued in relation to the procurement.

d. Documentation describing the affirmative steps taken to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (See Section VIII.A for the required affirmative steps.)

e. All bids/proposals received in response to the solicitation, including pricing.

3. Evaluating Bids/Proposals:

a. Documentation evidencing appointment of evaluation panel or description of how the contractor was selected.

b. The grading sheets and panel evaluations that apply the evaluation criteria in the solicitation documents, and reasons for rejection of any bid.

c. The cost or price analysis comparing the offerors' prices against the Independent Cost Estimate and any independent research on cost or price (Use a *Contract Cost or Price Analysis Worksheet*).

d. Determination that the contractor is Responsible (Use a *Contractor Responsibility Worksheet.)*

e. Documentation confirming good standing of the selected contractor (copy of search via www.sam.gov and applicable Commonwealth lists).

f. Completed Suspension & Debarment Certification (Use a *Certification Regarding Suspension and Debarment*).

g. If the contract will exceed $100,000, a completed Byrd Anti-lobbying Certification (See *Byrd Anti-Lobbying Certification and Disclosure Form*).

h. If the contract is for Infrastructure (as defined above), funded by a Federal Grant that is not a disaster grant, and not otherwise exempt from compliance with the Build America, Buy America Act under Section 70912(4)(B), a Completed Build America Buy America Self Certification (*See Build America Buy America Self Certification*). For more information on the Build America Buy America Act requirements, see FEMA's BABAA Guidance online at https://www.fema.gov/grants/policy-guidance/buy-america. This requirement does not apply to contracts funded by FEMA's Public Assistance Program, FEMA's Hazard Mitigation Grant Program, or HUD's Community Disaster Block Grant – Disaster program.

i. To the extent applicable, documentation of compliance with the Buy American Act.

j. Documentation regarding any Conflict of Interest issues that arise and a description of how they were handled.

4. Award:

a. Notice of Award. (Use a *Notice of Award*).

b. Bid, performance, payment, and other bond documents (if applicable).

c. Copy of contract.

d. Task order(s), if applicable (Use a *Task Order Form*).

D. The level of detail of the documentation included in the Procurement File should be commensurate with the size and complexity of the procurement.

E. Contract documents must be retained:

a. For a period of three years from the date of contract termination for contracts that are not funded with federal grant funds; or

b. For federally funded contracts other than CDBG-DR, three years from the date that PREPA or the pass through entity awarding the subgrant to PREPA submits its final expenditure report to the federal agency awarding the grant (see 2 C.F.R.§ 200.334); or

c. For contracts funded by CDBG-DR grants, five years after grant close-out with HUD.

VII. Contracts

A. Cost or Price Analysis

1. The contract cost and price must be reasonable. LUMA must prepare an independent cost estimate for all federally funded procurements above the Micro Purchase Threshold. The independent cost estimate must be completed before receiving bids or proposals. In addition, after receiving bids or proposals, LUMA will perform a cost or price analysis for every procurement action that is expected to exceed the Simplified Acquisition Threshold. A cost or price analysis is also required for contract modifications that exceed $250,000. The method and degree of the analysis depends on the facts surrounding the particular procurement. A *Contract Cost or Price Analysis Worksheet* is available in the *LUMA CPM Toolkit*.

2. Because a cost estimate is required before pricing is negotiated for a contract amendment or change order, LUMA should instruct contractors not to include pricing with change order proposals. Where a change order proposal includes pricing, LUMA will obtain a cost estimate from someone without knowledge of the contractor's price proposal.

B. Contract Types

1. Fixed Price

Provides a firm price that remains irrespective of the contractor's actual cost of performing the work, putting the risk on the contractor. It may include an economic price adjustment, incentives, or both.

2. Cost Reimbursement

Provides for payment of certain incurred costs and for the reimbursement of the contractor's reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. This type of contract must include a limit to the costs that a contractor may incur which cannot be exceeded without LUMA's approval, except at the contractor's own risk. Examples include cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee contracts.

3. Time and Materials ("T&M") Contracts

Generally, use of T&M contracts will be limited to projects for which LUMA cannot under the circumstances establish a clearly defined scope of work to be completed within a reasonable period of time.

a. Under T&M contracts (which term includes time and equipment contracts), the cost to PREPA is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost.

b. T&M contracts are generally discouraged but may be unavoidable. Thus, LUMA will award and use such contracts only after a determination that no other contract is suitable and only if the contract includes a ceiling price to the purchaser that the

contractor may not exceed. The ceiling price must be reasonable and not so high as to render it meaningless as a cost control measure (Use a *Template Determination of Suitability for Time and Materials Contract*).

c. LUMA will exercise a high degree of oversight of T&M contracts in order to obtain reasonable assurance that the contractor is using efficient and effective cost control methods.

d. LUMA will comply with the *T&M Policy*.

4. Cost Plus a Percentage of Cost

The use of cost plus a percentage of cost and cost plus a percentage of construction cost contracts are ***prohibited***. Cost plus a percentage of cost contracts permit the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel) plus profit in the form of a percentage rate of actual costs.

5. Differentiating T&M and Cost Plus Percentage of Cost Contracts

T&M contracts require payment of labor costs at fixed hourly billing rates specified in the contract. These hourly rates include wages, indirect costs, general and administrative expense, and profit. Materials must be billed at actual cost, and no additional fee for profit is allowed apart from what may be included in the fixed billing rate for hours of labor. In contrast, a cost plus percentage of cost contract applies a profit percentage to the total hourly labor and material charges.

C. Period of Performance

LUMA will use sound business judgment in establishing and extending a contract's period of performance which should not exceed the time necessary to accomplish the purpose of the contract.

D. Special Considerations for Architectural/Engineering ("A&E") Professional Services

1. LUMA may use Competitive Proposal procedures for qualifications-based procurement of A&E professional services whereby offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A&E professional services. *This method cannot be used to purchase other types of services even though A&E firms may be potential sources to perform the proposed effort*.

2. If LUMA and the most qualified offeror fail to agree on a fair and reasonable price, LUMA may conduct negotiations with the next most qualified offeror. If necessary, LUMA will conduct negotiations with successive offerors in descending order until a contract award can be made to the offeror whose price LUMA believes is fair and reasonable.

3. For contracts funded in whole or in part with funds from a subgrant from COR3, COR3 considers the following to fall within the scope of A&E services:

a. Architectural or engineering services associated with design or construction of real property.

b. Architectural or engineering services, as defined by Act 173 of August 12, 1988, and which requires such services to be performed or approved by a registered architect or engineer.

c. Other architectural or engineering services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

E. Contract Execution

1. No contract may be executed and no commitments to vendors may be made, formal or informal, until appropriate approvals are obtained, consistent with subrecipient's internal delegations of authority or other internal control mechanisms.

2. The Financial Oversight and Management Board for Puerto Rico ("FOMB") approval is required for contracts of more than $10,000,000.00 or as established in FOMB's contract review policy with regard to LUMA.

3. P3A approval is required for contracts of more than $10,000,000.00 in any Contract Year or $30,000,000.00 in the aggregate.

4. PREB approval is required:

   a. Where Regulation 8815 (or other successor or similar regulation) applies; or

   b. Where procurement relates to "generation and modernization" (including power purchase agreements and procurements that impact rate base).

F. Post-Procurement Modification of Contracts

The amount payable to a vendor shall be as permitted by its contract and may not be increased without an amendment to the contract that justifies the increased payment. LUMA will be careful to avoid Cardinal Changes. Contract modifications above the Simplified Acquisition Threshold require an independent cost estimate and cost or price reasonableness determination.

VIII. Other Topics

A. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

LUMA will ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for contracts.

1. LUMA will perform and document compliance with the following affirmative steps:
   a. Place qualified small and minority businesses, women's business enterprises, and labor surplus area firms on solicitation lists and solicit these businesses whenever they are potential sources. LUMA shall research state and local lists of qualified small and minority businesses and women's business enterprises to update its solicitation list.
      i. A "small business" is independently owned and operated, not dominant in the field of operation in which it is bidding and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Chapter 21.
      ii. A "women's business enterprise" is (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.
      iii. A "minority business" is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
      iv. A "labor surplus area firm" is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the Department of Labor's Employment and Training Administration. The Department of Labor's list of labor surplus areas is available at https://www.doleta.gov/programs/lsa.cfm.
   b. When economically feasible, divide project requirements into smaller tasks or quantities to maximize participation opportunities for small and minority businesses and women's business enterprises.
   c. Establish delivery schedules, where practical, that encourage participation by small and minority businesses, and women's business enterprises.
   d. Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. This can be accomplished by searching the SBA's dynamic small business search site (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm) and contacting the local Minority Business Development Agency Business Center (See https://www.mbda.gov/mbda-programs/business-centers for location and contact information).
2. LUMA will require that its contractors and subcontractors comply with the affirmative steps in paragraphs (a) through (d) above. To accomplish this, LUMA will include the "Contracting with Small and Minority Businesses, Women's Business Enterprises, and

Labor Surplus Area Firms" clause in all prime contracts. Language is available as part of the *Federal Contract Clauses section of the LUMA CPM Toolkit*

B. HUD Section 3

When using HUD CDBG funds, LUMA will also comply with the HUD "Section 3" requirements. See 24 CFR Part 135 and the HUD Section 3 clause in the Federal C*ontract Clauses* section *of the LUMA CPM Toolkit* for more information.

C. Construction and Facility Improvement Bonding

All procurements, contracts, and subcontracts for construction work or facility improvements that exceed the Simplified Acquisition Threshold require, at a minimum, the following bonds:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of their bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material for execution of the work provided for in the contract.

D. Contract Clauses for Contracts Funded in Whole or in Part with Federal Funds

Federally funded contracts must contain the applicable provisions described in Appendix II to Title 2 of the Code of Federal Regulations (C.F.R.), Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Federally funded contracts may also contain those provisions recommended by the Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development. Language for these required and suggested clauses, with instructions for use, are contained in the *Federal Contracting Clauses* section of the *LUMA CPM Toolkit.*

IX. Proprietary and Confidential Information

A. Proposals submitted to LUMA may contain proprietary information, and employees must maintain the confidentiality of such information, sharing it only on a need-to-know basis.

B. Employees with information about the weighting of evaluation criteria, the evaluation of vendor proposals and selection of vendors may not share such information with anyone outside of LUMA, or with other employees who do not have a bona fide need to know. Nothing in this Procurement Manual is intended to restrict cooperation with audits or internal reviews by the Puerto Rico Comptroller's Office, P3A, or in the case of federal grants, the federal awarding agency, the Puerto Rico entity serving as pass-through entity, or the Comptroller General of the United States.

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X. Conflicts of Interest

A. No employee, officer, or agent of LUMA may participate in the selection, award, or administration of a contract if he or she has a real or apparent Conflict of Interest.

B. LUMA must exclude potential contractors that developed, drafted, advised, or supported LUMA in developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements.

C. LUMA employees will act in accordance with any applicable rules regarding ethics or business conduct. LUMA will conduct procurements free of conflicts of interest and in a manner designed to identify actual or potential personal and organizational conflicts of interest as early in the procurement process as possible. As soon as an actual or potential Conflict of Interest is discovered, LUMA will consider action to avoid, neutralize, or mitigate such Conflict of Interest in compliance with LUMA's OCIAMP.

D. The LUMA procurement team is responsible for identifying and reporting any apparent or actual Conflicts of Interest. For formal procurements, LUMA is encouraged to address Conflicts of Interest by including the following provision in the solicitation documents:

> The proposal [or bid] must notify LUMA if the vendor, or any of its principals, or any of its subcontractors or their principals, have an actual or potential personal or organizational conflict of interest. If an actual or potential conflict of interest exists, the proposal [or bid] must explain how it will be avoided or eliminated.

E. If a vendor notifies LUMA of, or if LUMA personnel independently identify, a mitigatable Conflict of Interest, LUMA will consider action to avoid, neutralize, or mitigate such Conflict of Interest in compliance with LUMA's OCIAMP.

F. An unmitigated Conflict of Interest is prohibited

XI. Dispute Resolution

A. Any vendor adversely affected by a contract award may submit a written request for reconsideration to LUMA within five (5) business days from the Notice of Award Date.

B. The mere submission of a request for reconsideration will not paralyze the adjudication of the contested contract award.

C. LUMA shall consider the request for reconsideration within thirty (30) business days from filing, unless LUMA notifies the disputing party that additional time is needed to prepare a final decision.

D. All requests for reconsideration shall be made in writing, in a searchable Adobe Acrobat PDF document and shall include:

1. The title and number of the solicitation under which the request reconsideration is made;
2. Full name, electronic address and phone number of the alleged aggrieved party;
3. A detailed description of the specific grounds for the request and all supporting documentation; and,
4. The specific ruling or relief requested.

All requests for reconsideration shall be submitted electronically to an electronic mail address specified in the solicitation documents.

XII. Recipient and Subrecipient Oversight

COR3 as the eligible FEMA-PA recipient, P3A as Administrator of the O&M Agreement, and PREPA as the eligible subrecipient have a responsibility to monitor LUMA's performance as PREPA's agent. To ensure appropriate monitoring and oversight, LUMA will provide quarterly briefings to P3A and/or PREPA on the following:

A. The number and nature of the entities in LUMA's vendor registry;

B. New Federally Funded contract requirements that were identified since the last briefing;

C. The status of pre-award Federally Funded contracts;

D. The status of post-award Federally Funded contracts;

E. Any contracts awarded under Emergency/Exigent contracting procedures since the last briefing;

F. Problems or concerns with the implementation of this Policy.

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