

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

December 1, 2022

Mr. Mariano Mier Romeu
Vice President, Procurement & Contracts
LUMA Energy Servco, LLC

Re: Wright Tree Emergency Contract

Dear Mr. Mier Romeu:

In accordance with the contract review policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed emergency service contract between LUMA Energy Servco, LLC (“LUMA”), as agent to the Puerto Rico Electric Power Authority (“PREPA”), and Wright Tree Service of Puerto Rico, LLC (the “Contractor”) (the “Proposed Contract”).

After reviewing the Proposed Contract, the FOMB concludes “Approved with Observations.” Observations related to the Proposed Contract are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Contract with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the FOMB does not cover a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

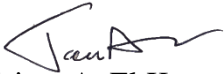
In addition, the FOMB has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Contract must be submitted to the FOMB for its review and approval **prior to execution**.

Mr. Mier Romeu
December 1, 2022
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This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was conducted. In addition, during the course of our review, we may receive information which we may refer to the relevant authorities.

This letter is issued only to LUMA and solely with respect to the Proposed Contract.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime A. El Koury". The signature is stylized with a large initial "J" and a long, sweeping horizontal line extending to the right.

Jaime A. El Koury
General Counsel

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LUMA ENERGY SERVCO, LLC – WRIGHT TREE SERVICE OF PUERTO RICO, LLC

Fiscal Plan Alignment

This review covers the Proposed Contract between LUMA and the Contractor for vegetation management, and tree and debris removal.

The Proposed Contract is an emergency contract procured pursuant to the requirements of the LUMA Consolidated Procurement Manual (the “Procurement Manual”) through a non-competitive procurement process. The Procurement Manual provides that, in the event of a public exigency or emergency, “LUMA may forgo a competitive procurement and award work for the duration of the emergency,” during a thirty (30) day period (the “Emergency Period”), “unless a longer period is approved by the P3A and COR3, provided that justification is documented.”¹

Pursuant to the Proposed Contract, if at any time P3A and COR3 approve an additional extension of the Emergency Period, LUMA may, at its discretion and with prior notice to the Contractor, extend the Proposed Contract’s expiration date for an additional time up to the number of days or months established by P3A and COR3 as the new duration of the Emergency Period. The documentation provided by LUMA reflects that P3A and COR3 have extended the Emergency Period for an additional six months.

If P3A and COR3 extend the Emergency Period, LUMA may, at its discretion and with prior notice to the Contractor, extend the Proposed Contract’s term up to the number of days or months established by such extension. We remind LUMA that any extensions allowed under the Proposed Contract must be submitted to the FOMB for its review and approval, prior to execution.

Further, LUMA should document that at the time of the Proposed Contract’s non-competitive procurement, there were no available or sufficient resources through prepositioned contracts to perform the necessary work, in accordance with Section 2.2.4 of the Procurement Manual and as required by COR3 and P3A in their letter dated September 29, 2022, whereby the extension of the Emergency Period was approved.

The Proposed Contract has a term from its date of execution until **March 16, 2023** and a maximum payable amount of **\$39,000,000**.

The services to be performed under the Proposed Contract shall generally be vegetation clearing activities and may include reducing and eliminating vegetative material that affects the distribution lines and prevents the work to be performed during the declared emergency. The services also include identification and corrective actions related to hazardous vegetation, consisting of branches, limbs, and trees that pose an immediate or imminent threat to infrastructure throughout Puerto Rico’s electrical grid.

According to the information submitted by LUMA, the Proposed Contract shall be payable with

¹ LUMA Procurement Manual § 2.2.4.

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funds allocated in **Account No. 03-5003-58200-550-346**. LUMA, on behalf of PREPA, has certified that it shall only incur costs against the Proposed Contract to the limit considered in the GridCo Budget contemplated within the PREPA Certified Budget for Fiscal Year 2023. LUMA indicated it will seek federal funding to cover all expenses related to the Proposed Contract.

LUMA is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submission Questionnaire) and to request a re-review of the Proposed Contract should any changes occur.

Finally, we include the following observations based on 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and other applicable FEMA documents:

Observation	Suggested Action
1. Per Section 2.2.4 of LUMA’s Procurement Manual: “LUMA may forego a competitive procurement and award work for the duration of the Emergency but not exceeding [thirty (30)] days, unless a longer period is approved by the P3A and COR3, provided justification is documented.”	LUMA should clearly document how it complied with its procurement policy and maintain this documentation, along with any required approvals, in the procurement file. LUMA should also maintain documentation regarding the declared state of emergency, including applicable dates, in the procurement file.
2. It appears that LUMA is conducting a noncompetitive procurement, relying on the emergency/exigency exception for competitive procurement. However, it does not appear that a justification for noncompetitive procurement memorandum has been provided.	LUMA should prepare and maintain in the procurement file a justification that includes, at a minimum, the following elements: <ul style="list-style-type: none">· Identify which circumstances justify a non-competitive procurement· Provide a brief description of the product or service being procured, including the expected amount· Explain why the noncompetitive procurement is necessary. Explain the nature of the public exigency/emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency/emergency· State how long the noncompetitively procured contract will be used for the defined scope of work and the impact of that scope of work should the noncompetitively procured contract not be available for that amount of time

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	<ul style="list-style-type: none">· Describe the steps taken to determine that full and open competition could not have been used· Discussion of cost reasonableness and the method(s) used to justify cost reasonableness· Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest· Describe why no other contract type was suitable other than T&M at this point in time· Describe how LUMA will maintain oversight over the contractor to ensure the contractor is using efficient methods and effective cost controls· Include any other information necessary to justify the noncompetitive procurement
3. The Proposed Contract’s term extends through March 2023.	<p>LUMA should consider if the emergency/exigency circumstances continue to exist through March 2023 and may consider putting out a competitive RFP for these services.</p> <p>Note that an exigent/emergency procurement exception only applies during the actual exigent/emergency circumstances. FEMA guidance encourages including language in the contract that limits the duration of the contract to a short time period, thus providing LUMA time to develop a scope of work and transition to competitive procurement procedures.</p>
4. LUMA provided information to the FOMB on November 17, 2022, which states that “A cost comparison and analysis was performed based on similar companies and past contracts related to emergency vegetation work performed by the vendor.” Additionally, LUMA stated that “the rates were compared to RS Means along with other submitted proposals.”	<p>LUMA should maintain the underlying analyses referenced in the procurement file to justify cost reasonableness of both the Contractor’s hourly rates and overall contract amount.</p>
5. Section 3.3 of the Proposed Contract, Invoices, states that invoices must have the following information in order for payments to be made:	<p>LUMA may consider including language in Section 3.3 (Invoices) that requires the Contractor to include location worked as part of the invoice support.</p>

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invoice number invoice date Date(s) that the services were provided Detailed description of the service provided (or milestones completed/delivered, as applicable) itemized invoice amount · Certifications	LUMA may also consider including language in the Proposed Contract about what documentation and support is required for reimbursable expenses to help facilitate federal reimbursement.
6. Exhibit B to the Proposed Contract indicates that lodging shall be paid at cost.	LUMA should consider that FEMA may not reimburse lodging rates greater than the established Department of Defense rates.

This contract review was conducted on the basis of information submitted by LUMA. The FOMB has not independently verified the information included in the submission. Should the FOMB become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.