

Invitation to Tender



**ITT 139730 - 795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and
WIRE GUY**

LUMA Energy ServCo, LLC

**Date Initial ITT Issued: 2/14/2023
Quotation Submissions Due: 3/14/2023**

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1. INTRODUCTION

LUMA Energy ServCo, LLC (“LUMA”) is a limited liability company organized under the laws of the Commonwealth of Puerto Rico, acting as an agent to the Puerto Rico Electric Power Authority (“PREPA”), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act 83 of May 2, 1941, as amended (Act 83).

Proponents are advised that LUMA is engaged with PREPA under the Operations and Maintenance Agreement, effective June 22, 2020 (the “OMA”, a copy of which can be viewed at <https://www.p3.pr.gov/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf>) LUMA is currently operating Puerto Rico’s Electric Transmission and Distribution (“T&D”) system on behalf of PREPA.

LUMA must provide electric power in a safe, efficient, reliable, and cost-effective manner, contributing to the general welfare and sustainability of Puerto Rico.

2. DEFINITIONS / ACRONYMS

For the purposes of this ITT Package, words and phrases that are not defined herein shall have the meaning given to them in the Draft Agreement. The following capitalized words and phrases when used in this ITT Package shall have the meanings ascribed below:

"Addendum" or **"Addenda"** means any additional information or responses to clarification requests issued by LUMA for review and use by Proponent in the preparation of its Proposal.

"AST" - Atlantic Standard Time. It subtracts four hours from Coordinated Universal Time (UTC). Puerto Rico does not observe the daylight savings time.

"BAFO" – Best and Final Offer/Proposal.

"CDBG-DR" - Community Development Block Grant – Disaster Recovery program, which is a flexible program that provides communities with resources to address a wide range of unique community development needs.

"Chief Executive Officer" - CEO of LUMA.

"Closing Date" – the final date specified on the face page of these Instructions on which any Proposal may be submitted by Proponent to **LUMA** in accordance with this ITT Package.

"Closing Time" – the exact time on the Closing Date specified on the face page of these Instructions prior to which any Proposal shall be submitted to **LUMA** by Proponent.

"Contract" - document which includes LUMA’s terms and conditions, Scope of Services, pricing information.

"Contractor(s)" or **"Selected Proponent(s)"** - one or more Proponents awarded a contract resulting from this ITT.

"Draft Agreement" – the form of agreement attached as Attachment D – Master Supply Agreement will be used as the starting point for any negotiations between Vendor and LUMA regarding the terms and conditions of the contract.

"Evaluation Committee" (EC) - a committee composed of at least three (3) members, designated by LUMA,

which will evaluate proposals and will recommend ranking of all submitting Proponents.

“Federal Agency” - any of the departments of the Executive Branch of the Government of the United States of America, or any department, corporation, agency or instrumentality created, or which may be created, designated or established by the United States of America.

“FEMA” - United States Federal Emergency Management Agency.

“Government Entity” - refers to any department, agency, board, commission, body, bureau, office, public corporation or instrumentality of the Executive Branch of the Government of Puerto Rico, whether existing or to be created in the future.

“Key Individuals” - an individual who will play an important role in the engagement or contract on behalf of a Team Member resulting from this ITT.

“Liabilities” – any and all actions, causes of action, prosecutions, change orders, claims (including third party claims), damages, losses, liabilities, costs and expenses (including legal fees and expenses and court costs on a solicitor and own client basis), however arising, including whether consequential, special or otherwise, howsoever arising, including whether by contract, tort (including negligence) or otherwise, including any costs, expenses, third party claims preparation costs or loss of profits, whatsoever which Proponent may sustain, incur or pay, or which may be brought against Proponent (including liability for any Proposal, if applicable), however the same may be caused, arising from or in relation to the submission by Proponent of the Proposal or any act or omission of LUMA in relation to this ITT Package, including the exercise of any right specified hereunder or at Law and including any decision by LUMA to reject any or all Proposals.

“Local Parties” - local subcontractors or professionals (which may include architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence in Puerto Rico.

“LUMA” – LUMA Energy ServCo, LLC., Operator retained by Owner and the Puerto Rico Public-Private Partnerships Authority (the “P3A”), under the Operation and Maintenance Agreement (the “OMA”) dated as of June 22, 2020, as amended. Operator is acting as Owner’s agent under this Contract.

“Owner” - Puerto Rico Electric Power Authority.

“PREPA”- Puerto Rico Electric Power Authority (PREPA).

“Proponent” - a (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this ITT that is not currently debarred.

“Proposal” – the response, defined in this ITT, to be presented by the Proponent, detailing the services it can offer, and its costs.

“Public Interest” – any government action directed to protecting and benefitting citizens at large, whereby essential goods and services are provided for the welfare of the population.

“ITT” – the documents comprising this Invitation to Tender and any addenda issued by LUMA.

“SOW” – Scope of Work is a deliverable to be provided by the Contractor as required by the ITT.

“Release” – a document with a not-to-exceed amount and specific requirements for delivery of equipment by the Contractor, as assigned by LUMA.

3. BACKGROUND & PURPOSE

In September 2017, Puerto Rico's T&D system was completely devastated by the landfall of Hurricane María, resulting in the longest electrical blackout in modern U.S. history. As a result, different category assets, including the electrical wire & conductor were damaged as a direct result of the hurricanes and need to be restored, replaced, or repaired to provide electric service to the people of Puerto Rico. As part of the long-term rebuild of the entire electrical system, bulk quantities of these materials will be required. A long-term agreement is required to support the transactional nature of regular inventory replenishment and will ensure economies of scale can be obtained reducing costs for all LUMA projects, developing a dependable relationship with a world class vendor, and reducing inventory carrying requirements.

This Invitation to Tender ("ITT") is issued to solicit Tenders from responsible and qualified manufacturers and/or suppliers ("Proponent") to supply the materials outlined in this document. Currently, LUMA procures **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY** from various suppliers using at the time of requirement identification. This material is required for ongoing operations and maintenance activities, and to support upcoming distribution and transmission construction projects. LUMA reserves the right to add additional materials not outlined in this Tender in the future.

Upon commencement of the contract, the successful Proponent shall supply **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY** as specified in the technical specifications document in accordance with the requested quantity and timelines and as outlined by LUMA through contract releases.

Contracts may be awarded to those qualified persons or legal entities whose Tenders are in accordance with this ITT and offer the greatest total value to LUMA. In their Tenders, Proponents shall demonstrate their capacity to provide all work in compliance with the Section 10, Scope of Goods described in this ITT. LUMA will evaluate and analyze the information provided in the Tenders and determine which Tenders meet the minimum requirements.

The ITT shall be construed and interpreted in accordance with the laws in force in the Commonwealth of Puerto Rico and the federal laws of the United States of America, applicable therein.

4. STATEMENT OF CONFIDENTIALITY

This ITT contains confidential and proprietary information of LUMA, which is provided for the sole purpose of permitting the Proponent to respond to this ITT. The Proponent agrees to maintain the confidentiality of the information and to not disclose this information to any person outside the Proponent's team directly responsible for preparing the Tender for this ITT. This document can only be used to prepare the Tender for this ITT.

5. NON-DISCLOSURE AGREEMENT

The proponent submitted a Non-Disclosure Agreement ("NDA") on or before the due date of ITT if applicable.

6. CONTRACT TERM

In the event that LUMA decides to execute a contract for the Acquisition of **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY**, it will be effective for three (3) year from the effective date of the contract. The contract may include LUMA's option for one (1)-year extensions if mutually agreed upon by both parties, subject to Proponent's satisfactory performance, availability of funds, and required authorizations according to LUMA's rules and regulations.

A draft of the LUMA Master Supply Agreement contract, excluding goods descriptions and associated pricing

details that will be determined during the contracting phase, will be included with this ITT as **Attachment E – Master Supply Agreement**. Section 11.1.4, “Draft Contract”. provides details on submission requirements related to the Draft Contract.

NOTE: A proponent shall state in its proposal any and all exceptions it may have to the terms and conditions of the proposed contract. If the proponent does not state an exception at that time, the proponent is deemed to have accepted all the terms and conditions to which no exception was made, and these terms and conditions will be binding on the proponent if the proposed contract is awarded to it and executed. No negotiations will be admitted of a term and condition to which the proponent made no exception in its proposal. If the exceptions made by the proponent to the terms and conditions of the proposed contract are deemed to be excessive in kind, in number, or in materiality, that by itself will be a sufficient reason for the contract not to be awarded to the proponent. An exception means any change, amendment, or variation or proposed substitution, replacement, or elimination of a term and condition. When an exception is made, the proponent shall state the reasons for the exception, and if the proponent fails to state them, the exception will be deemed as if it had not been made. No exceptions are allowed after the proponent makes its proposal.

7. NOTICE OF INTENT TO BID

Proponents shall confirm their intent to submit a tender in response to this ITT by submitting to LUMA a completed version of the form set forth in **Attachment B– Notice of Intent to Bid**. The completed form must be submitted through the **Messaging** tab in PowerAdvocate® on or before the deadline for submission set forth in Section 9, “ITT Timeline”.

8. INVITATION TO TENDER SUBMISSION

Proponent shall submit its Tender through the corresponding tab of the ITT139730 event on the PowerAdvocate® platform, as noted in the table below. All Tender documents, including the price offer, discounts, and other requested details must be submitted via PowerAdvocate® on or before the due date noted in Section 8, “ITT Timeline”. LUMA will not accept Tenders (i) received after the specified date and time or (ii) submitted through the **Messaging** tab (which is exclusive for communications), and such Tenders will be disqualified from further evaluation. LUMA will not accept Tenders (i) received after the specified date and time or (ii) submitted through the **Messaging** tab (which is exclusive for communications), and such Tenders will be disqualified from further evaluation.

In addition to the above, Proponents must provide:

- A copy of each of the following sections of the Tender through the tab of the event No. 139730 on PowerAdvocate® as indicated below. Proponents must upload all applicable supporting documents or attachments of each section in the corresponding tab.

Tender Requirements (outlined in Section 10.5.1 to 10.5.9)	PowerAdvocate® Tab
10.5.1 Response Sheet	Messaging Data
10.5.2 Technical Specifications	Technical Data
10.5.3 Approach to Goods Fulfillment	Commercial Data
10.5.4 Draft Contract	Commercial Data
10.5.5 Supplementary Information	Commercial Data
10.5.6 Redacted Copy	Commercial Data
10.5.7 Requirement of Legal Entities	Commercial Data
10.5.8 Required Qualifications of Proponents	Commercial Data

The PowerAdvocate® guide is included as **Attachment A** of this ITT. For technical assistance with the sourcing platform application please contact PowerAdvocate®'s technical support at (857) 453-5800, or by email at: support@poweradvocate.com. It is the Proponent's responsibility to ensure that their Tender documents are fully uploaded before the closing date and time of the event.

8.1 Request for Clarification(s)

Note that a Proponent may submit question(s) to LUMA for explanation or interpretation of any matter contained in this ITT through one (1) Question and Answer ("Q&A") periods, as described in Section 8 "ITT Timeline". Proponent should submit each question in the Q&A form via PowerAdvocate® through the **Messaging** tab of ITT 139730 event.

Proponents must submit their questions in the Q&A form included in **Attachment C - Request for Clarification**. This document must be submitted in Microsoft Excel format and each question must reference the ITT page number, section of the ITT document, ITT Attachment, or section of the Draft Contract.

If responses to the questions constitute a modification or additional information to the original ITT, LUMA will provide such clarification through an addendum posted on PowerAdvocate® based on the timeline specified in Section 8 "ITT Timeline". Questions from Proponents must not contain proprietary information because the answers may be published in the public domain. Please note that LUMA does not guarantee answers to all questions or comments received. Be advised that LUMA will not accept any questions that are not submitted as stated in this section.

8.2 Addenda

LUMA reserves the right to modify the ITT documents up to three (3) days prior to the closing date of the event.

It is the sole responsibility of the Proponent to monitor the event in PowerAdvocate® for additional information, updates, or modifications concerning this ITT. Any changes or modifications to this ITT's terms, conditions, or specifications will be made through addenda posted on PowerAdvocate®.

8.3 Communications

For this ITT, all communications must be made through the **Messaging** tab of PowerAdvocate® and addressed to LUMA's designated Procurement Representatives for this ITT:

Jose Montalvo Ambrosio – Procurement Specialist
Francisco Jorge– Manager, Operational Procurement

Neither Proponents nor any Proponent team members nor any of their respective advisors, employees, or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the ITT process, any of the following persons on matters related to this ITT process, the ITT documents, or the Tenders: (a) any member of the Evaluation Committee; (b) any advisor of LUMA for this ITT process; (c) any LUMA employee or representative; (d) any directors, officers, or consultants of LUMA.

Proponents and members of their team are prohibited from directly or indirectly contacting other Proponents, such as directors, officials, employees, consultants, advisers, agents, or representatives in matters related to their Tender preparation, content, or presentation. Failure to comply with these communication restrictions will result in the rejection of the Proponent's Tender.

Tenders shall be submitted with no connection to, knowledge of, information comparison, or arrangement, with other Proponents including their directors, officials, employees, consultants, advisers, agents, or

representatives.

All communications between LUMA and Proponent shall be in the English language.

8.4 Non-Binding Nature & Validity of Tender

The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the laws applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the ITT shall not give rise to any legal obligations; and (b) neither the Proponent nor LUMA shall have the right to make any breach of contract, tort, or other claims against the other concerning the award of a contract, failure to award a contract or failure to honor a response to the ITT.

The ITT process is intended to identify prospective vendors to negotiate potential agreements. No legal relationship or obligation regarding the procurement of any good shall be created between the Proponent and LUMA by the ITT process until the successful negotiation and execution of a written agreement for the acquisition of such goods.

9. ITT TIMELINE

The following schedule is to advise all Proponents of key dates of the ITT process. Please note that the ITT timeline includes target dates that are subject to change. It is the sole responsibility of Proponent to monitor PowerAdvocate® for updates to the ITT timeline.

Key Review Process Events	Targeted Timeline
Invitation to Tender issued	2/14/2023
Intent to bid document due, attached via the Messaging tab in PowerAdvocate®	2/21/2023
Q&A Round 1: Question(s) from Proponent due, via the Messaging tab in PowerAdvocate®	2/28/2023
Q&A Round 1: LUMA to answer question(s)	3/07/2023
Tender submission due, via the PowerAdvocate® tabs noted in Section 8	3/14/2023
Public, online Tender opening	3/28/2023
LUMA to issue award of business	4/18/2023

Tender submissions that have not been completely uploaded by **3/14/2023, 8:00PM** Atlantic Standard Time (“AST”), will not be considered. Proponents are encouraged to allow enough time to upload their Tenders and to confirm that the files are available for LUMA’s review.

Upon the Tender submission due date, LUMA will host an online Tender opening, which will be accessible to the public. The Tender opening will take place on Teams, following the Tender submission due date noted in the table above. Tender opening date and link to teleconferencing will be provided and announced via messaging in the PowerAdvocate® tabs.

10. GENERAL EXPECTATIONS

Proponent shall demonstrate the following behaviors when supplying the goods described in this ITT:

- Fulfillment of quality goods delivered on-time and according to required specifications
- Execute services with efficiency and accuracy, while maintaining continuous availability of trained and experienced staff, technical support personnel, and subject matter expertise as well as expertise in

- operating on the island of Puerto Rico
- Source and manage subcontractors and supply as required to achieve operational and project-based initiatives.
- Adhere to all relevant safety regulations for the industry with a demonstrated safety culture and program.
- Engage in continuous improvement programs including cost avoidance, reductions, and savings.
- Utilize industry best practices, processes, and enabling technologies to provide transparency, and the goods of the highest quality to LUMA.
- LUMA expects open and honest communication regarding all steps in relation to the contract and each contract release, including but not limited to: raw material sourcing, market fluctuations, logistical constraints, personnel shortages/changes, new/alternate options, changes to production, or any other variables that may affect the contract in any way.

11. SCOPE OF GOODS

LUMA requires Tenders from Proponent to provide **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY** in accordance with the requirements below.

Proponent(s) must be capable of providing the goods, in compliance with LUMA approved specifications, LUMA’s standards, and Puerto Rico and United States of America applicable codes and standards, enabling high service continuity, implementing quality materials and equipment, with low maintenance costs and safe operation.

All supply of goods shall be in accordance with LUMA’s technical requirements and approval of design by LUMA, in compliance with Federal, State, and Local regulations and all applicable laws and permits. Proponent shall be responsible for clearly communicating to LUMA’s authorized representative for the MSA, their requirements for deliverables and informing any possible delays in the provision of the goods.

11.1 Defined Goods

Proponent will provide **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY** to LUMA. The following goods are included in the scope of this ITT:

Item Number	DESCRIPTION	QTY	Column1
042-82942	ALUMINUM CONDUCTOR, ACSR/GA DISTRIBUTOR SYSTEM - CABLE 795 MCM, CABLE, ALUMINUM, 042-82942, 26/7, ALUMINUM CONDUCTOR, ACSR/GA DISTRIBUTOR SYSTEM - CABLE 795 MCM	9,000,000	FT
046-00235	ALUMINUM-CLAD MESSENGER & OVERHEAD GROUND CABLE 3#6, CABLE, ALUMINUM, 046-00235, ALUMINUM-CLAD MESSENGER & OVERHEAD GROUND CABLE 3#6	3,000,000	EA
046-00227	GUY WIRE 19#5, WIRE, GUY (BRAIDED), 046-00227, GUY WIRE 19#5	800,000	EA

11.1.1 Description of Goods

10.1.1.1 Proponent will provide DDP Pricing, Lead Times, and Distribution of Utility Transmission & Distribution **795 MCM CONDUCTOR, ALUMINUM-CLAD MESSENGER and WIRE GUY** to LUMA sites in Puerto Rico as detailed in the Attachments.

10.1.1.2 Proponent will provide detailed manufacturing plans and schedules to meet LUMAs requirements for the first and subsequent deliveries as per issued releases from the contract.

11.1.1.3 The proponent must outline their plans to maintain supply stability that address raw material sourcing and supply, existing global and local logistical challenges, and labor shortages.

11.1.1.4 The Proponent will outline their abilities and limitations to ramp up/down production based on LUMAs changing needs.

11.1.1.5 The Proponent will outline all available price escalation/reduction methodologies and preferred adjustment timeframes ie. use of quarterly market indices.

11.1.1.6 The Proponent will provide information on the planned account management strategy, monthly performance reporting, existing internal quality procedures, and emergency response supply capabilities.

11.1.2 See Attachment I –Technical Specifications.

11.1.3 Service Level Requirements

11.1.3.1 The Proponent is expected to provide immediate notification to LUMA of changes to supply availability including but not limited to: raw material shortages, labor constraints, equipment breakdowns and/or planned maintenance, logistical challenges, etc. that may impact delivery timelines or established lead times.

11.1.3.2 The Proponent is expected to provide an account management representative to manage the relationship and communication with LUMA for orders, technical queries, expediting, and any other requirements during the contract term.

11.1.3.3 The Proponent is expected to provide monthly performance and quality reporting metrics and details that provide visibility into existing order status, on-time delivery percentages, production availability, and other metrics as established through the contract kick-off meeting.

11.2 Delay Penalty

If Contractor is delayed in completing the deliveries, work, or any separable part thereof, within the timeframe established in Proposal, Commencement and Completion of Work or Delivery, Contractor shall pay to LUMA half percent (0.5%) per each day on delay and up to a maximum of ten percent (10%) of the price of the contract release that was delayed, and the Contractor and any of its subcontractors shall be jointly and severally liable for said amount. The amounts payable for delay established in this Article are the sole and exclusive remedies for all delay claims and shall be paid as liquidated damages and not as penalty.

In case of delay, the Contractor shall within ten (10) calendar days from the beginning of any such delay notify the SECTION MANAGER in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of facts justify such an extension, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal by the Contractor as provided in the ARTICLE herein provided on Disputes hereof; provided that, no claim made by Contractor against LUMA, its agents, contractors, subcontractors, employees, successors, assignees, for any cause whatsoever, during the progress of any portion of the work or delivery embraced in the Sourcing Agreement Contract shall relieve any of the

parties from the performance of its obligations and of the work under this Contract, which shall not suffer any delay by reason of a claim being ascertained by either Party under this Contract. Any damages caused by delays or hindrances exclusively caused by LUMA shall be considered as fully compensated for by the extensions of time as provided above, except in the event of suspension of the work or deliveries by LUMA as per Article X of this Order.

11.2.1 If LUMA does not terminate the right of the Contractor to proceed, the Contractor shall continue the work and deliveries, in which event shall pay to LUMA the amounts set forth above for each calendar day of delay; provided that, the right of the Contractor to proceed shall not be terminated and the Contractor shall not be charged for any amounts in relation to any delays in the completion of the work or deliveries due to Force Majeure events or situations, or failures on the part of LUMA or any of its other contractors to carry out its obligations.

11.2.2 LUMA shall have the right to the payment or to the withholding of Contractor's payments in case of Contractor's delay in completion of the work or deliveries.

11.3 Geographic Scope

Materials will be used on the island of Puerto Rico. Goods will be delivered to LUMA's specified Ship-To location **PALO SECO - GENERAL DEPOT (A11)** as per the release in compliance with contracted lead times.

11.4 Transition Planning

Material will be required as per defined lead times and need-by dates outlined within each contract release.

11.4.1 TENDER REQUIREMENTS & METHOD OF AWARD PROCESS

The purpose of this ITT is to receive Tenders that meet LUMA's requirements and clearly establish the Proponent's approach to successfully provide the goods. LUMA may use any one source selection/multiple source selection approaches as permitted under Puerto Rico laws, regulations, and procedures. LUMA will review all the Tenders in a timely manner to determine if they comply with the requirements of the ITT. Tenders that do not meet the submission requirements or have omitted material documents may be rejected. (Form included in **Attachment H**).

Each Tender meeting all submission requirements will be independently evaluated by the Evaluation Committee ("Evaluation Committee"), which will consider the price, price related factors, goods performance and full compliance with all the terms & conditions to determine the most advantageous Tender, as listed below in this section, unless they are determined to be non-responsive according to the purposes and requirements of the ITT.

LUMA may reserve the right to require additional information or clarifications after the Tender submission due date as described in Section 8, "ITT Timeline", in order to assist the Evaluation Committee to gain additional understanding of the Tender.

If there is any conflict or inconsistency between the terms of this ITT and terms implied by any custom, policy, practice, usage or agreement in the industry or trade, or any other policy or practice, or any term implied by or any decision rendered by any court, the terms of this ITT shall govern and prevail.

11.5 Tender Requirements

See Section 7, "Invitation to Tender Submission" for details. Proponents must upload their completed Tender documents in the corresponding Power Advocate® tab, as noted in Section 7, "Invitation to Tender Submission". A table of contents must be included, indicating the section and the page number where the Tender meets the criteria stated below in the exact order herein.

All documents created by the Proponent (except allowable brochures, addenda to Response Sheet, or pre-printed reference materials) should be formatted as follows:

- **Paper Size:** 8.5 x 11 inch
- **Minimum Font Size:** 11 point (except for footnotes, headers, or footers)
- **Ready for Printing:** All electronic files submitted will be pre-formatted for printing
- **Software:** All electronic files submitted should be created (or fully compatible) with the following software suites or packages: Microsoft Office, Microsoft Project, or Adobe Acrobat
- **Language:** English

11.5.1 Response Sheet

Upload a complete and accurate response sheet, included as **Attachment G – Response Sheet** onto the **Messaging** tab in PowerAdvocate®, in the Microsoft Excel format. Proponent shall include information regarding requested authorization, cover letter, table of contents, company information, requirements, pricing, and available discounts.

11.5.2 Technical Specifications

11.5.2.1 Proponent can supply all goods in accordance with the technical requirements outlined in **Attachment I**.

11.5.2.2 Meets specification minimum strength requirements

11.5.2.3 Complies with all industry standards listed in specification.

11.5.2.4 Destructive and non-destructive tests results are provided with tender

11.5.3 Approach to Goods Fulfillment

11.5.3.1 Describe approach to fulfilling the goods as described in the ITT including best practices.

11.5.3.2 Include a production plan for the manufacture of required goods, including raw materials sourcing, resourcing, and the process for identification of subcontractors or vendors, and estimated timeline for initial shipments.

11.5.3.3 Clearly state any and all assumptions within the Tender, including any support (resources, systems, equipment, etc.) required from LUMA to fulfill the goods.

11.5.3.4 Respond to all service level requirements as detailed in **Attachment G – Response Sheet**

11.5.4 Draft Contract

A draft of the LUMA contract template that is intended to be used for this ITT is included as **Attachment E – Master Supply Agreement**. The selected template for this ITT and the content included in the template are subject to change. Proponent to upload (in the **Messaging** tab in PowerAdvocate®) a copy of the Draft Contract, in PDF format, with any comments or tracked changes, as applicable, clearly identifying and explaining the concern. Proponent may include any proposed modifications to a specific language in the contract with which it disagrees, or it is unable to comply, and must include a detailed explanation of the proposed modification. If Proponent agrees with the contract language and can comply with all its terms, conditions and requirements, it will specify this in writing (refer to **Attachment E**).

A proponent shall state in its proposal any and all exceptions it may have to the terms and conditions of the proposed contract. If the proponent does not state an exception at that time, the proponent is deemed to have accepted all the terms and conditions to which no exception was made, and these terms and conditions will be binding on the proponent if the proposed contract is awarded to it and executed. No negotiations will be admitted of a term and condition to which the proponent made no exception in its proposal. If the exceptions made by the proponent to the terms and conditions of the proposed contract are deemed to be excessive in kind, in number, or

in materiality, that by itself will be a sufficient reason for the contract not to be awarded to the proponent. An exception means any change, amendment, or variation or proposed substitution, replacement, or elimination of a term and condition. When an exception is made, the proponent shall state the reasons for the exception, and if the proponent fails to state them, the exception will be deemed as if it had not been made. No exceptions are allowed after the proponent makes its proposal. (Reference: LUMA Procurement Manual p. 24, Phase 3: Contract Execution, Step no. 24.)

11.5.5 Supplementary Information

May provide supplementary facts or information if they consider it will be helpful in the evaluation of their Tenders. Proponents are encouraged to be selective with this information to ensure it is relevant.

11.5.6 Redacted Copy

Upload a redacted copy of their Tender as required in Section 17, “Confidentiality of Responses and Proprietary Information”.

11.5.7 Requirement of Legal Entities

Proponents that are corporations, partnerships, or any other legal entity, U.S. or Puerto Rico based, shall be properly registered or capable to be registered, or capable and willing to be registered to do business in Puerto Rico and the U.S. at the time of the submission of their Tenders, and comply with all applicable Puerto Rico or U.S. laws and/or requirements.

Submit evidence that it is duly and properly organized and is qualified to do business in Puerto Rico or provide a statement confirming that the Proponent will be qualified prior to contract execution if selected.

A selected Proponent must be part of LUMA’s Supplier Registry in order to execute a contract.

11.5.8 Required Qualifications of Proponent

Provide information and/or certifications in Tender that demonstrate the following:

11.5.8.1 Certify that neither it nor any person or entity who is partnering with it has been the subject of any adverse findings that would prevent LUMA from selecting it. Such adverse findings include, but are not limited to, the following:

- Negative findings from a Federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state.
- Pending or unresolved legal action from the U.S. Attorney General or from the U.S. an attorney general in Puerto Rico or another state.
- Arson conviction or pending case
- Harassment conviction or pending case.
- Puerto Rico and Federal or private mortgage arrears, default, or foreclosure proceedings
- In rem foreclosure.
- Sale tax lien or substantial tax arrears.
- Fair Housing violations or current litigation.
- Defaults under any Federal and Puerto Rico-sponsored program.
- A record of substantial building code violations or litigation against properties owned and/or managed by Proponents or by any entity or individual that comprises Proponents.
- Past or pending voluntary or involuntary bankruptcy proceedings.
- Conviction(s) for fraud, bribery, or grand larceny.

- Debarment (sam.gov).

11.5.8.2 Disclose any potential conflicts of interest as described in Section 17, "Conflicts of Interest".

11.5.8.3 Document any concerns regarding the qualifications detailed in this ITT.

12. METHOD OF AWARD

This Method of Award is applicable for each of the goods outlined in this ITT, independent of one another. LUMA will award the ITT based on the Tender(s) most advantageous to Puerto Rico's Electric Grid projects. The Proponent with the lowest price, price-related factors, product performance, and full compliance with all the terms & conditions included on this Invitation to Tender will be considered the most advantageous Tender. LUMA may use any one source selection/multiple source selection approaches as permitted under Puerto Rico laws, regulations, and procedures.

Lack of compliance, or major deviation, with the technical specification will result in the Tender being considered non-responsive and not in substantial compliance, and any such Tender shall not be considered. A major deviation is a deviation to the technical specification that affects the safety, quality, quantity, price, delivery, warranty, and functionality.

In determining whether a Tender is most advantageous, in addition to price, LUMA may consider the following:

12.1 Commercial

12.1.1 Proponent is capable of fulfilling the commercial service level requirements in accordance with those outlined in the *Requirements* tab of **Attachment G – Response Sheet**.

12.1.2 Minimum dollar value required for an order delivered to a single location shall be no more than \$100,000

12.1.3 No "restocking" fee may be collected on items cancelled for failure to be delivered within the specified time frame.

12.1.4 Proponent will set pricing or standard discount per contract year, at a minimum, with any pricing increases for the following year not to exceed CPI.

12.1.5 Proponent can comply with the Terms & Conditions of LUMA's Contract

12.2 Technical Specifications

12.2.1 Proponent is capable of fulfilling the goods in accordance with the technical specification requirements outlined in **Attachment I – Technical Specification**.

12.3 Company Standing

12.3.1 Proponent is in good company standing, including but not limited to:

- Financial stability, including providing proof to confirm stability
- Company culture and involvement in the Puerto Rican community
- Capability to provide goods and experience in relevant market
- Compliance with applicable laws, regulations, safety, and technical standards of LUMA

12.4 Past Performance & Compliance

12.4.1 Proponent has the ability, capacity, and skill to fulfill the goods indicated, including prompt fulfillment and service within the time specified without delay or interference and demonstration of quality based

on:

- Similar goods provided in compliance with this technical specification
- Goods in service in compliance with this technical specification
- Quality of goods provided
- Compliance history
- Quality of performance on previous contracts
- Previous compliance with laws and ordinances by the Proponent

12.5 Goods Fulfillment

12.5.1 Proponent is capable of fulfilling the goods in accordance with the service level requirements outlined in the *Requirements* tab of **Attachment G – Response Sheet**.

Award of the ITT will be to the qualified and experienced person(s)/company/companies whose Tenders, comply with the terms and conditions of this ITT and have the most advantageous Tender.

13. TENDER CLARIFICATION REQUESTS

LUMA reserves the right, at any time, to request that any one or more Proponents clarify its Tender in accordance with these ITT instructions. Without limiting the generality of the foregoing, LUMA may request clarification where any one or more Proponent's intent is unclear (including, where there is an irregularity or omission in the information or documents provided by Proponents in their Tenders). LUMA may, in its discretion, choose to discuss with one, some, or all Proponents to clarify any aspects of their Tenders. LUMA may require Proponents to submit supplementary documents clarifying any matters contained in their Tenders or LUMA may prepare a written interpretation of any aspect of a Tender (including, meeting minutes) and seek the respective Proponent's acknowledgment of that interpretation.

14. PARTICIPATION: MINORITY & WOMEN OWNED BUSINESS ENTERPRISES & SECTION 3

LUMA is taking necessary steps to utilize minority businesses, women's business enterprises, and labor surplus area firms when possible.

LUMA encourages Proponents to engage local subcontractors, professionals and relevant service providers headquartered in Puerto Rico ("Local Parties") as possible while maintaining the requirements, standards, and quality standards of the goods provided to LUMA. Section 3, Women Business Enterprise (WBE)/Minority Business Enterprise (MBE)/Veterans Owned Small Businesses (VOSB) and all sizes of companies, are encouraged to submit Tenders for consideration. LUMA reserves the right to request additional information and/or documentation in order to evidence Proponent's certification, per 2 CFR 200.321.

Pursuant to Section 3 of the Housing & Urban Development Act of 1968, LUMA is committed to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons. Proponents are encouraged to submit with the work approach portion of their Tenders a plan for compliance with Section 3 ("Plan"). All Proponent(s) and subcontractor(s) can use "Section 3 Opportunity Portal" for posting jobs, contract opportunities or searching for eligible workers to fill positions. Also, all Proponent(s) and subcontractor(s) are required to report on Section 3 annually, beginning with the recipient's first full fiscal year after July 1, 2021. Submitted Plans will be evaluated based on the Plan's overall reasonableness.

For the Plan to be found reasonable, it must clearly establish how the Proponent will comply with the Section 3 numerical goal for non-construction contracts of at least 3% of the total dollar value of the Tender. In their

Plan, the Proponent must establish their employment and training goals, their participation certification procedures, and if preference will be given to Section 3 Business concerns. Proponents should seek to answer the following questions in their Plan:

- For what positions do you believe you will be able to hire a Section 3 qualified individual and/or firm?
- How would you go about advertising this opportunity to reach the target group? (i.e. local newspapers, social media, work force training programs, and other social and human service organizations. Presentations to groups that are attended by and/or serve to the target group. This is not an exhaustive list of examples.)

The Proponents agree to carry out this policy in the awarding of subcontracts fully consistent with efficient contract performance. The Proponent further agrees to cooperate in any studies or surveys as may be conducted by HUD, as may be necessary to determine the extent of the Proponent's compliance with this clause.

15. GENERAL FEDERAL GRANTS REQUIREMENT

Because the contract may be eligible for federal funds, the contract shall be governed by certain federal terms and conditions for federal grants, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200.

A contract awarded under this ITT must contain the provisions required by 2 C.F.R. § 200.326, Appendix II to 2 C.F.R. Part 200, and provisions required by certain Federal agencies, as applicable (e.g., FEMA, HUD).

A sample contract including these provisions may be provided as an Attachment at a later date. These provisions are non-negotiable. Federal funds may be granted under the FEMA Public Assistance Program, FEMA Hazard Mitigation Grant Program, HUD Community Development Block Grant – Disaster Recovery Program, or other federal programs. Accordingly, the contract may be subject to the regulations, policy, and guidance applicable to one or more of these federal programs.

As part of the submission of any contract redlines, Proponent shall provide a description of their experience with such grant requirements and affirmatively represent and certify that the Proponent shall adhere to any applicable federal requirements. Any funds disallowed by any federal government entity due to the contractor's noncompliance, its subcontractor's noncompliance, with this contract or Federal laws, regulations, or policies, shall be disallowed from any fee or compensation to contractor.

16. Buy American Act , and Section 70914 of Public Law N0: 117-58

On April 18, 2022, the Office of Management and Budget (OMB) issued an memo that provides implementation guidance for federal agencies on the application of "Buy America" preference to federal financial assistance programs for infrastructure and a transparent process to waive such preference, when necessary.

Build America, Buy America Act (BABAA) is section 70914 of Public Law No. 117-58, §§ 70901-52[PM1] , also know as the Infrastructure Investment and Jobs Act.

OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure **Application of "Buy America" Preference**

In accordance with OMB Memo M-22-11, by May 14, 2022, FEMA must ensure that all of its applicable federal financial assistance programs comply with section 70914 of BABAA. This includes incorporating a "Buy America" preference in the terms and conditions of each financial award for an infrastructure project. The Act requires the following "Buy America" preference:

1. All iron and steel used in the project are produced in the United States.

This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. All manufactured products used in the project are produced in the United States.

This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

17. RIGHT TO REJECT TENDER

Notwithstanding anything to the contrary contained herein, LUMA reserves the right, in its discretion, to reject and not review any Tender which does not comply with or meet the requirements set out in the ITT. LUMA may use any one source selection approach as permitted under Puerto Rico laws, regulations, and procedures, and this approach will often differ based on the relative importance of price/cost factors and non-price/cost factors for the procurement.

LUMA reserves the right to award the contract to other than the lowest-priced offeror.

Notwithstanding anything else contained in the ITT, express or implied, LUMA may procure the goods in such manner as it may elect, in its discretion, and reserves the following rights, in its discretion to:

- request clarifications or enter into discussions in respect of the goods with one or more Proponents or their respective partners, consortium members, or joint venturers at any time;
- enter into one or more agreements for the supply or performance of all or any part of the goods with one or more Proponents or their respective partners, consortium members, or joint venturers, upon the same or different terms and conditions as set forth in the ITT, for the purpose of obtaining the best agreement possible for all or any part of the goods that LUMA, in its discretion, deems to be in LUMA's best interests;
- discuss the terms of a Tender submitted by a Proponent for the purposes of clarification, which discussions may or may not result in the final agreement entered into between LUMA and Proponent being substantially different from the terms and conditions of the ITT;
- cancel all or any portion of this Tender process at any time, without prior notice to Proponent, and procure the goods, or any portion of the goods, by some other means or obtain all or any portion of the goods from one or more potential Proponents or any other third party or parties of LUMA's choice and on terms and conditions of LUMA's choosing; and
- enter into a contract (including a contract which is substantially the same as the contract draft) in respect of the goods, or a portion or portions thereof, with any other third parties.

18. CONFIDENTIALITY OF RESPONSES & PROPRIETARY INFORMATION

Upon completion of the ITT process, LUMA will make its report public regarding the procurement and selection process, which shall contain certain information related to this ITT process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as proprietary by the Proponents. In order to ensure that documents identified by Proponents as confidential or proprietary will not be subject to disclosure by LUMA, Proponents are required to submit a redacted copy of their Tender. The redacted copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by LUMA. LUMA reserves the right to make public the redacted copies of the Tenders at the conclusion of the ITT process. If a redacted copy is not submitted by a Proponent, LUMA will assume that the original copy of the Tender can

be made public. Tenders containing substantial contents marked as confidential or proprietary may be rejected by LUMA. Provision of any information marked as confidential or proprietary shall not prevent LUMA from disclosing such information if required by law. The executed contract(s), if any, and all prices set forth therein shall not be considered confidential or proprietary, and such information may be made publicly available.

19. CONFLICT(S) OF INTEREST

Any contract awarded under this ITT will preclude the selected Proponents from representing before LUMA any Proponent other than those Proponents who may be assigned under this contract during its effectiveness.

An apparent conflict of interest is an existing situation or relationship that would cause a reasonable person to think that a Covered Party's judgment is likely to be compromised because the Covered Party, their agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or would derive a tangible benefit from a decision or action to be taken by LUMA or PREPA, including but not limited to contract awards. A Covered Party is a parent company, affiliate, or subsidiary organization of PREPA or LUMA.

Proponent certifies that:

- none of its representatives are employed by and receive payment or compensation for such employment from any governmental agency, body, public corporation or municipality of Puerto Rico;
- no Puerto Rico government employee has any personal or economic interest in this Tender;
- it may have service contracts with other governmental agencies, bodies, public corporations, or municipalities of Puerto Rico, but such contracts do not constitute a conflict of interest for Proponent; and
- to the best of its knowledge, at the time of this ITT publishing date, it does not have any other contractual relationship that could be deemed to constitute a conflict of interest with LUMA or with public policy.

Proponent acknowledges that it has a duty of ethical behavior towards LUMA. Such duty includes that Proponent shall not have interests that conflict with LUMA's interest in this Tender or the goods performed pursuant to this Tender. Those conflicting interests include:

- the representation of clients which have, or may have, interests opposed to those of LUMA in relation to the goods (if applicable based on the type of goods to be performed by the Proponent);
- when Proponent's conduct is described as such in the canons of ethics that may be applicable to the Proponent and its personnel or in the laws or regulations applicable to the Proponent and its personnel assigned to the goods; or
- when the Proponent, persons that control the Proponent, or Proponent's employees, directors, or officers directly or indirectly, for themselves or any other third party, obtain, request or give to LUMA or an employee, officer, director or agent of LUMA, any profit, utility, advantage or gain by way of improper acts or exercise of undue influence.

Proponent agrees to avoid even the appearance of a conflict of interest. The mere appearance of a conflict of interest shall constitute sufficient cause for the rejection of a Tender(s). LUMA will cancel any contract executed pursuant to this ITT in the event of a conflict of interest, or if the appearance of a conflict of interest is not cured immediately to LUMA's satisfaction.

Proponent shall have the continuous obligation to disclose to LUMA if any relationship with third parties could represent a conflict of interest with LUMA in connection with this ITT or the goods.

20. SUBMITTAL OF ADDITIONAL INFORMATION

20.1 Rejection of Submittals; Cancellation of ITT and Waiver Informalities

This ITT process does not constitute a commitment by LUMA to award the ITT and execute a contract. LUMA reserves the right to accept or reject, in whole or in part, and without further explanation, any or all Tenders submitted and/or cancel this solicitation and reissue this ITT or another version of it, if it deems that doing so is in LUMA's best interest.

LUMA reserves the right to waive minor informalities or deviations in a Tender if in the best interest of LUMA and if they do not affect the technical and professional requirements, payment terms, deliverables, warranties, and the contract terms and conditions.

20.2 Ownership of Submittal

All materials submitted in response to this ITT shall become the property of LUMA. Selection or rejection of a submittal does not affect this provision.

20.3 Cost of Preparing Responses

All costs associated with the response to this ITT are the sole responsibility of the Proponent. Neither LUMA, PREPA, the Government of Puerto Rico, nor any of its instrumentalities or entities of the Federal Government will be responsible for any expenses incurred or for the disclosure of any information or material received in connection with this ITT.

20.4 Tender Errors, Omissions, and Modifications

A Proponent may modify or withdraw its Tender at any time before the due date (closing date in PowerAdvocate®) as established in the ITT Timeline. All modifications must be made in writing and will be submitted in the same manner as the original Tender per the terms of this ITT. The Proponent shall submit its modified Tender along with a cover letter with the modified ITT and shall include Proponent's name, contact information, mailing address, submission date, modification number, and the Project Title.

Timely withdrawal of a Tender does not preclude Proponent's right to submit another Tender provided if it is submitted by the due date. Withdrawals must be notified before the due of the Tenders, in writing, through the **Messaging** tab, or by deleting the uploaded Tender documents from the event before the closing date of the ITT.

LUMA reserves the right to reject a Tender that contains a non-minor error or omission. LUMA also reserves the right to request corrections of any minor errors or omissions and/or to request any clarification or additional information from any or all Proponents. The determination of a non-minor or minor error or omission will be at LUMA's sole discretion.

21. NO LOBBYING, NO COLLUSION, & NO PROHIBITED ACTS

Neither the Proponent nor any member of their team, including their respective directors, officers, employees, consultants, agents, advisers, or representatives (as it relates to the project or ITT) is allowed to participate in any way or in any type of political or other lobbying; nor can they communicate in any way with any representative of the Evaluation Committee or any LUMA employee, including any Restricted Party such as any director, officer, employee, agent, advisor, staff member, consultant, or representative of any of the aforementioned parties, as applicable, for any purposes, including, but not limited to:

- to comment or try to influence the opinion on the merits of a Tender, or in relation to the Tender of another Proponent;
- to influence, or to try to influence, the result of the ITT phase, or the competitive selection process, including the review, evaluation, and classification of the Tenders, the selection of the selected Proponent, or any negotiation with the selected Proponent;
- to promote their interests or those of the Proponent in the project, including the interests of another

Proponent;

- to criticize or comment on aspects of the ITT, the competitive selection process, or the project, in any way that can give a competitive advantage or any other advantage to the Proponent over other Proponent; and,
- to criticize the Tender of another Proponent.

The Proponent or members of its team shall not discuss or communicate, directly or indirectly, with any other Proponent, or any director, officer, employee, consultant, adviser, agent, or representative of any other

Proponent, including any member of the team of any other Proponent, regarding the preparation, content or representation of their Tenders. Tenders will be submitted without any connection (for example, arising from an interest in or from a Proponent or member of a Proponent's team), knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent, including any member of the team of any other Proponent. To ensure this, all potential Proponents must sign and accept a Confidentiality Agreement, prior to having access to any of the documents that have been selected to be protected through the Confidentiality Agreement. The violation of the agreements and instructions included in this section will be enough cause for the rejection of the Proponent's participation in this ITT. LUMA also reserves the right to separate and eliminate definitively the Proponent from LUMA's Registry of Suppliers; this, in addition to the legal and financial sanctions which may be imposed as a result of one or several of the violations previously mentioned.

22. SAFETY, HEALTH, & ENVIRONMENT REGULATIONS

Proponent must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 USC 7401, and the Federal Water Pollution Control Act, 33 USC 1251, and other appropriate requirements of Environmental Protection Agency Regional Office. Also, the contractor must comply with the Safety and Health Regulations 29 CFR 1926 and 29 CFR 1910, and other appropriate requirements of Occupational Safety and Health Regional Office (PROSHA) and Federal Office (OSHA).

23. DEBARMENT, SUSPENSION, & INELIGIBILITY

Federal regulations restrict LUMA from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Proponents can verify their status and the status of their principals, affiliates, and subcontractors at www.SAM.gov. A copy of their current status should be submitted with their Tender.

24. ATTACHMENTS

- Attachment A – PowerAdvocate® Guide
- Attachment B – Notice of Intent to Bid
- Attachment C – Request for Clarification
- Attachment D – Procurement Manual
- Attachment E – Master Supply Agreement
- Attachment F – Federal Funding Requirements
- Attachment G – Response Sheet
- Attachment H – Method of Award
- Attachment I – Technical Specification
- Attachment J- LUMA Vendor Registry Requirements