

February 8, 2025

VIA E-MAIL (esoria@cor3.pr.gov)

Mr. Eduardo Soria Rivera, Esq., CPA  
Executive Director  
Central Office for Recovery, Reconstruction and Resiliency  
Commonwealth of Puerto Rico  
P.O. Box 42001  
San Juan, PR 00940-2001

RE: January 31, 2025 Meeting re FEMA's Seconded Labor Determination

Dear Mr. Soria Rivera:

On January 31, representatives of FEMA, P3A, COR3, PREPA, and LUMA met at FEMA's Joint Recovery Office in Guaynabo to discuss various issues, including FEMA's December 27, 2024 determination that LUMA's use of seconded personnel is not compliant with the federal procurement standards at 2 C.F.R. Part 200 (the "Determination"). I wanted to thank you for COR3 and P3A's participation in that meeting and provide you a summary of LUMA's position on the Determination, which, as discussed in the meeting, is that FEMA should rescind its Determination.

FEMA's Determination is based on an analysis performed by its Procurement Disaster Assistance Team (PDAT) that is fundamentally flawed. It is clear that PDAT may not have been provided or did not understand all documents relevant to its analysis—namely, the T&D Operations & Maintenance Agreement that establishes LUMA's relationship to PREPA (the "OMA") or the current version of the LUMA Procurement Manual and Procurement Toolkit.

The crux of the Determination is based on PDAT's statement that "**it appears** the Secondment Agreement between LUMA and Quanta and its affiliates is a contract" subject to 2 C.F.R. Part 200.<sup>1</sup> The federal procurement standards define "Contract" as "a legal instrument by which a recipient or subrecipient conducts procurement transactions under a Federal award."<sup>2</sup> Neither LUMA nor Quanta are a "recipient" or "subrecipient" and thus the Secondment Agreement between them does not meet this definition.



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<sup>1</sup> FEMA Determination re LUMA Seconded Labor (Dec. 27, 2024) at 2 (emphasis added).

<sup>2</sup> 2 C.F.R. § 200.1.

The regulations also refer to 2 C.F.R. § 200.331 “[f]or additional information on subrecipient and contractor determinations.” This is the regulation that PDAT cited in its analysis. But, 2 C.F.R. § 200.331 provides guidance for Recipients like COR3 “to determine whether the entity receiving Federal funds is a subrecipient or a contractor.”<sup>3</sup> Neither LUMA nor Quanta is “the entity receiving Federal funds” and so the regulation **does not apply**. The Secondment Agreement is not a contract independently subject to the procurement standards at 2 C.F.R. Part 200.

PDAT was also concerned that “[t]he Secondment Agreement presents the potential for organizational conflicts of interest to arise” and supposed it “would likely be in violation of” the OMA’s written standards of conduct covering conflicts of interest. To the contrary, the OMA provides for two distinct categories of agreements that LUMA can use when outsourcing work. The requirements of the OMA will be discussed in greater detail in the administrative appeal, but in sum:

- LUMA may enter into “Contracts” which are procured on PREPA’s behalf. PREPA signs these contracts and pays invoices directly to contractors. “Contracts” are subject to the OMA’s federal funding requirements, including compliance with LUMA’s Procurement Manual.
- LUMA may also enter into “Subcontracts” which are awarded by LUMA on its own behalf. PREPA is not a party to “Subcontracts” and does not pay them directly. LUMA passes through Subcontractor costs to PREPA at cost, with no markup for profit, as it does with all other costs related to its performance of services under the OMA. Subcontracts are not subject to the OMA’s federal funding requirements or LUMA’s Procurement Manual.

The Secondment Agreement is between LUMA and Quanta. PREPA is not party to it. LUMA’s costs incurred under the Secondment Agreement are passed through to PREPA at cost **without a markup for profit by either LUMA or Quanta**. Thus, under the OMA, the Secondment Agreement is not a “Contract” subject to federal funding requirements.

To the extent a LUMA affiliate seeks to participate in the procurement of a “Contract” award under the OMA, the procurement is conducted pursuant to LUMA’s Organizational Conflict of Interest Avoidance and Mitigation Plan which requires a third-party contractor of P3A to administer the procurement, independent of LUMA. Thus, there is no unmitigated organizational conflict of interest in LUMA’s contracting or subcontracting process with its affiliates.

A contractor under a federally-funded contract is ordinarily not required to follow the federal procurement standards in awarding subcontracts. As noted above, where the recipient or

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<sup>3</sup> 2 C.F.R. § 200.331.





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subrecipient is not the entity awarding the contract, such agreement does not meet the definition of "contract" under the federal procurement standards and the regulations do not govern the procurement.

LUMA is hopeful that, as requested at our meeting last week, FEMA will rescind its Determination, which is not only incorrect, but which will have an immediate material adverse impact on the reconstruction of the electric grid, including during the time normally required by the administrative appeal process. However, it has been more than a week since our meeting and we have not yet heard from FEMA on this pressing issue. Accordingly, we ask that COR3 request, in writing, that FEMA rescind its Determination.

LUMA stands ready to provide any additional information or documentation that FEMA may require to allow a more thorough and accurate analysis of this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Juan Saca", is written over the printed name and title.

Juan Saca  
President and Chief Executive Officer  
LUMA Energy Servco, LLC

cc: Josué A. Colón-Ortiz, Executive Director, P3A