

**ELIGIBILITY DETERMINATION MEMORANDUM
 APPLICANT, PA ID 000-UA2QU-00
 FEMA-4339-DR-PR, Project Worksheet 00251
 Applicant/Facility/Work/Cost Eligibility - Issue Keyword(s)**

Date:	December 22, 2017		
PW Facility / Title:	PREPA Puerto Rico State Wide	Applicant Type:	<input checked="" type="checkbox"/> State Agency <input type="checkbox"/> Local Government <input type="checkbox"/> Tribe <input type="checkbox"/> Private Nonprofit
Category:	B		
Amount Requested:	\$ 200,000,000.00	Amount Approved:	\$ 200,000,000.00
Small Project potentially subject to Net Small Project Overrun (NSPO) Appeal:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Project Description:

On September 20, 2017 the Island of Puerto Rico experienced the landfall of Category 4 Hurricane Maria (FEMA-4339-DR) causing widespread and catastrophic damages throughout the island.

The Puerto Rico Electric Power Authority (PREPA) is an electric power company and a government-owned corporation producing, transmitting, and distributing electricity to customers throughout the island. It is the sole provider of electricity for 1.5 million residential, commercial and industrial clients in Puerto Rico.

The electric power system, which PREPA owns and operates in Puerto Rico, was extensively damaged by Hurricane Maria. PREPA has undertaken substantial response activities to restore electric power to save lives, protect public health and safety, and protect improved property. This funding is authorized under Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

As part of the emergency restoration of power after Hurricane Maria, PREPA contracted for the services of Cobra Acquisitions, LLC (Cobra) to perform emergency repairs to electric transmission and distribution lines. In particular, this contractor is performing critical repairs to transmission lines that are essential to the restoration of the overall system to generate, transmit and distribute electric power throughout Puerto Rico. In addition to \$14,067,000 in mobilization costs and a \$15,000,000 retainer, the contractor has already invoiced for over \$100,000,000 in ongoing emergency repair work. This PW is written to PREPA for emergency power restoration conducted by Cobra, in the amount of \$200,000,000.

Issue(s):

Is the cost reasonable under the Public Assistance Program?

Based on comparison with other contract proposals submitted by a number of other private power companies, FEMA has determined the costs under this contract to be reasonable.

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Applicable Statutes, Regulations, and Policies in Effect at the Time of the Emergency or Disaster:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288:
- Title 44 of the Code of Federal Regulations (C.F.R.):
 - 2 CFR § 200.404
- FEMA Policy:
 - Public Assistance Program and Policy Guide (PAPPG), FP 104-009-2, at 23 (April 1, 2017)*

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost. FEMA determines reasonableness by evaluating whether:

- The cost is of a type generally recognized as ordinary and necessary for the type of facility or work.
- The cost is comparable to the current market price for similar goods or services based on:
 - Historical documentation;
 - Average costs in the area; or
 - Published unit costs from national cost estimating databases.
- Any of the following factors caused escalation of costs:
 - Shortages in equipment, materials, supplies, labor, or contractors. When escalating costs are due to shortages, FEMA considers whether the Applicant's work continued beyond the period of shortages and whether there was an opportunity for the Applicant to obtain more reasonable pricing;
 - Project-specific complexities, such as environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort; or
 - The Applicant deviated from its established practices.
- Exigent circumstances existed. If so, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred.
- The Applicant participated in ethical business practices, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control of the other.
- The Applicant complied with procurement requirements.

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable.

Specifically here, the following was considered:

- Project-specific complexities, such as environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort.

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- Applicant's shortages in equipment, materials, supplies, labor, or contractors.
- The cost is comparable to the current market price for similar services based on average costs in the area.
- The cost is of the type generally recognized as ordinary and necessary for the type of facility work.
- Circumstances prevailing at the time the Applicant made the decision to incur the cost.

Analysis:

The geography in the Island of Puerto Rico is mostly mountainous with coastal areas in the north and south regions. The topography has many environmentally sensitive areas. Many of the components of the transmission lines (e.g., towers and poles) cross over the island through mountains, which creates difficulty in accessing these facilities for repair. Unlike the States, restoration work on many of the transmission towers require specialized linemen personnel with capability to perform the job in remote and rugged environments. Many of the repairs require specialized helicopters to work and access.

PREPA received and evaluated proposals from six (6) private power companies including Mastec, Power Secure, Southern Electric, State Electric, B&B Electric, and Cobra. PREPA selected Cobra based on the following elements:

1. Experience/expertise in construction of transmission systems and the capability to perform transmission work in austere, remote, and rugged environments.

Power construction companies in the market of electrical services may specialize in both transmission and distribution while others specialize in only one area. PREPA considered the experience of the contractors as it related to the restoration of transmission systems specifically. PREPA eliminated Southern Electric, State Electric and B&B Electric because PREPA was informed that these companies specialized in distribution systems. Additionally, Cobra had the added capability of bringing helicopters to address work in the hard to access mountainous areas.

2. Willingness to work with PREPA given PREPA's financial condition and not demanding an onerous upfront payment.

After eliminating Southern Electric, State Electric and B&B Electric the remaining three (3) proposals were compared to establish reasonable costs.

Three of the compared proposals requested a deposit: Mastec requested a first deposit of \$20M, Power Secure required \$25M and Cobra with \$15M. The amount should be paid by PREPA at signing of contract and applied against the contractor's final, undisputed invoice. This element was a limiting factor due to the economic situation of PREPA. In this case, Cobra was the lowest alternative.

3. The Company must be self-sustaining and have self-provided logistics.

PREPA included this stringent parameter due to the shortages in lodging, commodities, equipment, materials, supplies and labor on the island. Power Secure's proposal required PREPA to supply interpreters and fuel.

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The proposals from Mastec, Power Secure and others were based on hourly labor and equipment rates; whereas, Cobra's proposal offered a daily blended rate of \$4,000/day. The daily rate includes linemen, equipment, fuel and worker's compensation as required by Puerto Rico. FEMA worked with the applicant to extract an average hourly labor rate from the blended daily rate in order to compare the rates to the rates of the other proposals. The attached document "Contractor Reasonability - Rates Analysis" presents a breakdown of the items included in Cobra's rate and the composition of the extracted hourly labor rate.

FEMA calculated the average hourly labor rate of Mastec and Power Secure and compared it with Cobra's extracted average hourly labor rate. The second tab of the attached document "Contractor Reasonability - Rates Analysis" illustrates the comparison of the rates. Mastec and Power Secure submitted proposals charging the first 40 hours for transmission to be paid at time-and-a-half rates and hours above 40 hours to be paid at double time rates. As detailed in the first tab of the attached spreadsheet, the extracted average hourly rate for Cobra is \$167.82, the average rate for Power Secure is \$213.69 and the rate for Mastec is \$199.81.

Furthermore, Cobra's proposal was based on 250 linemen and 6 helicopters; whereas, they have increased the amount of linemen to 391 and the amount of helicopters to 8 without increasing the blended daily rate.

FEMA also reviewed the hourly equipment rate for each contractor (see third tab in the attached document). Equipment was difficult to compare because the rates for each contractor revealed different situations. For example, Mastec presented their Equipment rates including fuel. Power Secure offered rates without adding fuel but made it clear that PREPA would provide fuel. The equipment rate for Cobra has no fuel because it is included inside their blended rate. Nonetheless, extracting the rates that Cobra used to build its blended rate and comparing them to Power Secure (both rates without fuel), the Cobra rates are significantly lower.

Other items included in the proposals are listed in the fourth tab of the attached document.

Based on the circumstances prevailing at the time, PREPA made the decision to incur the cost. PREPA determined that Cobra was one of the contractors that presented the best option for emergency services, taking in to account the totality of the circumstances at the time.

Eligibility Determination: **Approved** **Partial** **Denied**

Due to the exigent circumstances after Hurricane Maria, PREPA awarded this contract in compliance with the emergency procurement provisions of the Commonwealth of Puerto Rico. PREPA substantially complied with its own standards and, where it did not strictly comply, it was exempted from doing so by Executive Order. Based on our review of the costs and other considerations described in this document, Cobra Acquisitions, LLC presented a competitive rate when compared with other proposals at the time the Applicant made the decision to incur the cost. FEMA has determined the Cobra costs to be reasonable.

Preparer: Carlos L. Rodriguez Lozano

Date: 12/21/2017

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Signature _____

QA/QC:

Date:

Signature _____

Office of Chief Counsel: [Print Name and Position]

Date:

Signature GRACIELA E ZAVALA-
GARCIA Digitally signed by GRACIELA E
ZAVALA-GARCIA
Date: 2018.01.09 10:05:54 -0400'

PA Management: Rachel A. Hildebrand, Deputy Infrastructure Branch Director
Date:

Signature 

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Document Index:

The following documents are directly considered by FEMA and relied upon in making the PA eligibility determination

Description	File Name
Cobra Blended Rate Description	
Rates Comparison	
Equipment Rate Comparison between Proposals	
Other Considerations in Proposals	
Mastec Budgetary Proposal	
PREPA-Cobra Contract	
Power Secure Budgetary Proposal	
Southern Electric Proposal	

U.S. Department of Homeland Security
Region II
FEMA-4336-DR-PR
FEMA-4339-DR-PR
P.O. Box 70105
San Juan, P.R. 00936-8105



FEMA

December 23, 2017

Mr. José I. Marrero, Esq., CPA
Governor's Authorized Representative
Government of Puerto Rico
P.O. Box 9023228
San Juan, PR 00902-3228

RE: FEMA-4339-DR-PR
Puerto Rico Electric Power Authority – Emergency Power Restoration
Review of Contract and Funding for Cobra Energy

Dear Mr. Marrero:

Cobra Energy entered into a contract with the Puerto Rico Electric Power Authority (PREPA) on October 19, 2017 to perform emergency repairs to the transmission and distribution systems throughout Puerto Rico as a result of Hurricane Maria. Since the start of the incident period, the majority of Puerto Rico has been without power and there are limited resources available for power restoration on the island. Cobra Energy is currently performing critical emergency repairs to transmission lines that are essential to the restoration of the overall system to transmit and distribute electric power throughout Puerto Rico.

At the request of PREPA, the Federal Emergency Management Agency (FEMA) reviewed the Cobra Energy contract, amendment, and rates for service. Under the exigent circumstances after Hurricane Maria, PREPA awarded this contract in compliance with the emergency procurement provisions of the Commonwealth of Puerto Rico and Executive Orders issued as a result of the disaster. FEMA has also determined the costs under this contract to be reasonable.

FEMA prepared Project Worksheet (PW) #251 for emergency repairs to transmission and distribution lines for \$200,000,000 including the Cobra Energy and anticipate it will be obligated soon. As of today, Cobra Energy has billed PREPA \$174 million and has indicated that it cannot continue to provide services without assurances that payment is forthcoming. Puerto Rico must provide an SF-270 draw down request to FEMA with validated, supporting documentation within 1 day of the obligation of PW #251.

FEMA_0022674

Mr. José I. Marrero, Esq., CPA, GAR
Re: FEMA-4339-DR-PR
Puerto Rico Electric Power Authority- Emergency Restoration
Review of Contract and Funding for Cobra Energy
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Should you have any questions or require further assistance, please contact Mrs. Ana Luz Morales, Infrastructure Branch Director, at (787) 296-3500 or ana.morales@fema.dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Byrne". The signature is fluid and cursive, with a large initial "M" and "B".

Michael Byrne
Federal Coordinating Officer
FEMA-4339-DR-PR