

**From:** [Delgado-Rodriguez, William \(CTR\)](#)  
**To:** [Ortega Narvaez, Vilmary](#)  
**Subject:** Tax funds allocated under New PW 90/10  
**Date:** Wednesday, February 20, 2019 3:16:00 PM  
**Attachments:** [General Work Eligibility.pdf](#)

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Vilmary,

After talking again to Roger regarding the funds allocation for taxes associated with work performed under PW00251, PW00466 and the New PW, he stated that FEMA does not break down costs of eligible work under the Public Assistance program.

Based on that statement, we decided to go back to the PAPPG and start from the beginning, what is considered Emergency Eligible Work under the PA program.

For Emergency work, on page 19, Section B of PAPPG, we can find the Minimum Work Eligibility Criteria (see document marked as 1, attached), which is:

### **B. Minimum Work Eligibility Criteria**

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the designated area, with the exception of sheltering and evacuation activities; and
- Be the legal responsibility of an eligible Applicant.<sup>73</sup>

<sup>73</sup> 44 CFR § 206.223(a)

The work performed by our applicant meets the described criteria, therefore we continued to evaluate the criteria for contracts (PW00251 and PW00466) eligibility.

On page 32, Section 2. Of PAPPG, we can find the criteria for cost reimbursement of contracts under the PA program (see document marked as 2, attached), which is:

### **2. Contracts**

FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (T&M).

FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work (SOW). T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.<sup>127</sup>

<sup>127</sup> 2 CFR § 200.318(j).

Note that the PAPPG does not break down costs associated with contracts, therefore we can understand that it refers to the 100% of the costs for eligibly work.

Now, if we refer to the PW00251 Contract between PREPA and COBRA, under Article 41: OTHER TAXES (see document marked as 3, attached), states:

**ARTICLE 41: Other Taxes**

All sales unemployment, retirement, and other Social Security contributions and taxes; all sales, use and excise, privilege, business and occupational taxes, and any other taxes or fees payable by the Contractor are and shall be included as part of his prices.

Also, ARTICLE 69 of the same contract (see document marked as 4, attached), states:

**ARTICLE 69: Compliance with Commonwealth of Puerto Rico Contracting Requirements**

The Contractor shall comply with applicable Commonwealth Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico.

Therefore, COBRA Energy LLC is responsible to comply with all Commonwealth of Puerto Rico laws and regulations while performing the duties contracted, including the payment of taxes and fees applicable.

Articles 36 and 49 of PW00466 contract evidence the same requirements of compliance with all Commonwealth of Puerto Rico laws and regulations, including the payment of taxes and fees applicable. (refer to attached documents marked 5 & 6)

Our conclusion regarding the payment of Taxes claimed by our applicant is that THEY ARE ELIGIBLE.

Please review and advise.

Best regards,

**William Delgado-Rodríguez, P.E.**

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