

**MEMORANDUM FOR THE RECORD (5/19/18)**

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**TOPIC:** Options to Retain USACE Contract Crews

**ISSUE:** On the evening of May 18, 2018, Mr. Omar Marrero sent a letter to FCO Mike Byrne reinforcing the Commonwealth's request for 100% cost share, and for USACE to continue power restoration line work until the power restoration mission is completed. Mr. Marrero stated that PREPA needs additional time to transition as the lead and take over all responsibilities for power. Currently, 1.08% or roughly 16,000 customer remain without power and work must continue.

**ACTION:** COR3, the Governor's office, PREPA, and FEMA are working on options to meet the Governor's intent, with the Commonwealth as the ultimate decider of the action it will put forward.

**BACKGROUND:** Emergency power restoration continues in Puerto Rico, and the Unified Command Group for Power Restoration worked towards a plan as we approached 95% to transition out of emergency contracts and Direct Federal Assistance (DFA). PREPA, USACE, and FEMA agreed that PREPA would have the requisite capacity to contract for the final emergency restoration work using its internal procurement procedures via RFPs. The RFP process for these contracts, intended to complete emergency work and begin permanent work, began in February 2018. PREPA awarded work to two contractors in March, but as of the date of this memo, none of those contracts have been signed.

Of note, on May 2 and again on May 17, PREPA CEO Mr. Walter Higgins sent an email confirming that he did not request USACE to remain engaged in line restoration in favor of PREPA letting its own contracts. The PREPA contract would allow for a plus up of 400 resources, in addition to what Cobra already has on the ground. Because the contracts are still under review within the PREPA system, there may be a gap in crews in some locations. FEMA received multiple assurances that PREPA would have contracts in place prior to USACE demobilizing. For a multitude of reasons, including inefficient internal and external approval processes, these contracts remain un-signed. To mitigate the impact of this possible gap, the Incident Management Team moved PREPA crews into some of the areas being worked by USACE contract crews and moved additional Cobra crews into the Yabucoa area. In addition, Cobra agreed to mobilize another 100 crews at risk (low dollars on amendment cap, behind on payments, and no RPF awarded), and those crews arrive over the next 10 days.

Because of PREPA's inability to have contracts approved in a timely fashion, hundreds of contractor resources remain on the mainland. Had PREPA stuck to the intended timeline to issue contracts, or notified the UCG in a timely fashion that it would not meet its timeline, additional resources and a last-minute scramble would not be necessary. Unfortunately, in order to address the gap in restoration work, we have had to consider the options outlined in this paper.

**OPTIONS CONSIDERED:** Following a meeting with COR3, PREPA, Commonwealth, IMT, and FEMA, the following options were developed and ranked.

**OPTION 1: Complete the approval of the RFP award to Cobra. This will allow Cobra to retain USACE contract crews through a subcontract that will meet the intent of the Governor's request. We also suggested contractor oversight (external firm) given the number of line works that will be under one contractor. (LEAST RISK; BEING PURSUED BY COMMONWEALTH)**

Pros: Meets the Governor's intent to keep crews on the ground. The Cobra contract under the RFP has had many levels of review already, including PDAT. The PW is written already for emergency work for Cobra, and we would move all of the remaining \$900M for emergency work under this cap. We can move it through the system for obligation once we have an executed contract.

Cons: FOMB has the final sign off and we don't control that process. Required contractor oversight given the number of workers on the ground.

**OPTION 2: Complete Amendment #6 for Cobra's emergency (sole source) contract initiated in October 2017. This will allow Cobra to retain USACE contract crews through a subcontract that will meet the intent of the Governor's request. (RISKY)**

Pros: Meets the Governor's intent to keep crews on the ground with little to no interruption in the schedule.

Cons: Time required to initiate an amendment; this is another amendment to an emergency contract which will raise additional questions; all Commonwealth entities would need to get together and move this through the approval process quickly before resources leave the island. Additionally, the final signoff is FOMB and we don't control that process.

**OPTION 3: FEMA to contract directly with USACE contract crews and Cobra, as well as a contracting management firm, to oversee the remainder of the emergency restoration. If done quickly, FEMA would manage the remainder of the emergency work. (SLIGHT RISK)**

Pros: FEMA would manage the process and there would be less of an issue with the contracting process within the Commonwealth; FEMA can directly pay the contractors.

Cons: FEMA does not typically manage this type of contract; FEMA's contracting process may not be that expeditious.

**OPTION 4: Retain USACE for line restoration work. This would require another contract extension and USACE stated to the UCG that this option passed on May 11 and they already ordered barges to pick up equipment. This would mean that USACE would need to enter into another contract which may or may not occur before equipment is moved off island. (SLIGHT RISK)**

Pros: USACE already has a relationship with the contractor and oversight would be in place.

Cons: USACE still needs to negotiate another contract and that likely would not happen in time to keep the resources on island. USACE overhead is expensive; they would be using a prime with additional overhead adding to the cost; and USACE does not accelerate the restoration mission, the crews do.

If none of these options are accepted and no other actions are taken, Cobra can work until it runs out of money (around June 15), and PREPA crews would have to pick up the remainder of the work. This does not allow for the same treatment to the last one percent needing to be restored as the first one percent that was restored.

**NEXT STEPS:** COR3 and the Commonwealth are currently meeting with the intent on briefing the Governor about their path to Option 1. Cobra is in early contract with the USACE contracts crews to discuss options to subcontract and keep the USACE crews on the island. FEMA is positioned to push the PW through the process to obligation when the contract is signed. FEMA will stand by to understand the Commonwealth's decision and will respond to Mr. Marrero's letter once we understand their path.

Summary of Option 1:

- There is a \$1.4B cap as approved by the PREPA Board for the RFP of which \$900M was for emergency work. PWs are already written for emergency work. FEMA will need an executed contract to obligate the funds.
- The decision from the Commonwealth and the path of least resistance is to finish Cobra's contract to meet the Governor's requirement to keep resources on the island.
- The USACE contract crews will begin to load barges this week and crews will be flying off island, as demob has begun. Cobra is in contact with that company to get a better timeline and negotiate a subcontracting agreement should Option 1 work.
- FEMA will need to obligate the \$900M for emergency work to the Cobra Contract as a cap as articulated in the PW:
  - This allows them to immediate subcontract to USACE contract crews to keep roughly 250 lineman on island (as they are limited to 60% of their workforce being their own, not subcontractors)
  - This allows them to continue the emergency work for transmission (20% of the system still needs repair)
  - This allows them to continue to emergency work on distribution in Yabucoa and Utuado, to include the plus up of 100 resources, to include significant helicopter and drone work
  - This will also free up Cobra resources to begin Vieques permanent work (under a different PW)
- PREPA will need to finish all emergency work under this dollar amount.
- PREPA can use MasTec (another awardee under the RFP) for hurricane season standby and permanent work when PREPA/COR3 has a scope of work. Even if they get awarded next week, we still have rate and contract review.

*May 19, 2018; 1730*