

Byrne, Michael

From: Tribble, Ahsha
Sent: Fri 6/08/2018 2:04 PM (GMT-00:00)
To: Crager, Patricia Lea; Harich, Christopher; Huertas Ocasio, Katerina
Cc: Byrne, Michael; 'mmerritt (mmerritt@dcmcpartners.com)'
Bcc:
Subject: Heads up on PREPA Action that will likely have media attention

Memo to the File (June 7, 2018)

BLUF: MasTec (PREPA contractor) signed a contract with PREPA for electric power work over the next year with a \$500M ceiling.

- FEMA PDAT has not cleared the contract, there is no project worksheet, and no obligated funding at the time of this memo.
- PREPA provided MasTec with a Notice to Proceed earlier this week without any coordination with COR3/FEMA/UCG, and then provided MasTec with a Notice to Suspend today after meeting with FEMA and COR3 on the issues above could prevent FEMA reimbursement.
- **MasTec (large and influential contractor) is angry and said they will ignore the notice to suspend as they have already secured barges with the first to arrive in PR on June 18; they plan to show up; and they will sit here until the Federal Government and the Commonwealth of Puerto Rico figure out how to put them to work. This could become a political or media issue.** No action as of this morning.
- Actions Taken: *FEMA and COR3 met last night, and COR3 is working with the Governor's office on how to handle this issue with PREPA. FEMA submitted a memo to file to share information and seek guidance on any media or legal inquiries.* At this time, this is not FEMA's contract and PREPA/MasTec are free to enter into any agreement per its contract. FEMA's only interest is if there is a request for FEMA reimbursement for any work.

This memo follows up on a request from Administrator Long on May 29, 2018 to reach out to Lieutenant Governor Luis Martin of Puerto Rico who had questions regarding PREPA's contracting practices and FEMA's Public Assistance Program, specifically as it related to Foreman, another contractor seeking a contract with PREPA (contract is not signed by either party as of the time of this memo). See email below.

DETAILS ON WEEK'S EVENTS

Background: From my previous memo, on Wednesday, May 30, Lt. Gov Martin provided explicit guidance to PREPA, COR3, and FEMA to focus our planning efforts on permanent work so that we can have project worksheets ready for permanent work as the emergency work comes to a close. The purpose in his direction was to keep PREPA contractors on the island for permanent work under their new contracts, maintain a presence of contractors on island throughout hurricane season, and avoid having only one contractor on the island (for political and optics reasons).

5/31: Following that guidance, on Thursday, May 31 at 3:00 PM, FEMA, PREPA, COR3, TRC (engineering contractor), met to determine how best to meet the Lt. Gov's direction. FEMA and COR3 provided

guidance on the type of projects that could be considered for permanent work under this contract, considering 428 and the type of information that would be needed to build the PW. Out of that meeting, PREPA took the action to identify projects and report back to the same group on Thursday, June 7 at 1:00 PM. Also, on May 31, PREPA transmitted the Cobra contract for PDAT review.

6/1: On Friday, June 1 at 4:00 PM, COR3 briefed the UCG about the Thursday meeting, and **Mr. Higgins reinforced the direction to get PWs written so they could bring MasTec to the island** and have more than one contractor on the ground. The UCG concurred. Also note, PREPA dropped pressure on issues with Foreman as PREPA still does not have a contract with Foreman.

6/2: On Saturday, June 2, Ahsha Tribble was notified from Chris Harich and Kat Huertas Ocasio (field counsel) that PDAT HQ had questions about the Cobra contract, in so far as the increase in the cap amount from the original contract appears to a cardinal change. As background, GAR, COR3, Torres, and FEMA questioned Filsinger/PREPA for months about the artificial amount of \$300M as a cap for the Restoration and Reconstruction RFP awarded to Cobra and MasTec. PREPA contended for months that they just have to put a number in the contract and there would be no issue to change the amount as we knew the amount would be considerably higher; they simply go to the PREPA Board and seek a resolution for the increase, which was done. However, FEMA PDAT wants more justification.

- At 5:00 PM, Mark Merritt, Nathan Pollack (Filsinger/PREPA), Jan Maduro (COR3) and Ahsha Tribble met to discuss what type of justification needed to satisfy FEMA PDAT and get these contracts moving. We also recognize this issue will extend to the MasTec award as well.
- At this point, neither contract is approved for reimbursable work from FEMA until we have a determination that the contracts were properly procured. To date, this information has not been provided by PREPA.

6/7: On Thursday, June 7 at 9:00 AM, FEMA attended the weekly Distribution Planning meeting where we discuss the progress of emergency work, any reallocation of work that may be needed, completion dates, resource issues, and materials. There is a record of all of this information each week. At the end of the meeting, PREPA (Carlos Negron) made a comment that now that MasTec has been mobilized they were going to remove PREPA crews from the emergency work. I questioned when this decision was made and that there had been no discussion with COR3, GAR, or FEMA. Why a discussion would be important is because:

- There is no approved reimbursable contract for MasTec (we are still awaiting information from PREPA to provide to OCC that was due 6/2).
- There is no PW for any work for MasTec. (Recall, we had been tasked by the Lt. Gov and PREPA CEO to develop PWs for MasTec.)
- The emergency work is under a separate PW where mobilization and additional resources were already implemented per requirements stated at distribution meeting.
- This only occurred once Carlos Torres (Island Restoration Coordinator) departed. This would not have occurred with proper oversight. This completely went against the many months of planning to get to this point. We should be done with restoration within 45-60 days.

11:41 AM Text/Phone Call from Todd Filsinger contacted me to find out why MasTec was mobilizing. (He has been leading this effort, so it was confusing to hear why he was asking me what was going on. He was at DoJ this week.)

- 1:00 PM **Meeting on Implementation Plan for Lt Gov's direction for permanent work projects.** (COR3, TRC, FEMA PA/MIT, PREPA Planning, Transmission, Distribution). The meeting produced two potential projects (transmission pole replacement and distribution pole replacement). Other projects didn't meet the requirements. Follow up meetings will occur on Friday at 0900 (Distribution), Friday at 1300 (Transmission), and Monday at 0900 (Substation).
- 6:00 PM Met with Mark Merritt, Drew Sachs, and Jan Maduro (COR3)
- COR3 sent a letter to the Governor's staff outlining the issue and asking PREPA to cease and desist on all actions with MasTec until we get a handle on the next steps. (no additional information on this action at this time)
- 7:20 PM Returned Bob Apple's call (MasTec COO)
- PREPA and MasTec signed a contract last week, and PREPA provided a contract ceiling of \$500M, but no work has been assigned.
 - Bob was confused with why he was given a Notice to Proceed earlier this week and then today, PREPA told him that after talking to me (Ahsha) that they received a Notice to Suspend. I explained to him that his contract was between PREPA and MasTec; FEMA has no authority or visibility on their arrangement. However, if PREPA is seeking FEMA reimbursement, they will need an approved contract through the lens of FEMA FDAT, a project worksheet to explain scope of work, and obligated funding – none of which has occurred. They can proceed with PREPA, but understand the risk inherent with doing so.
 - Bob stated that he was going to proceed with mobilization for 300 people and equipment ("iron") on the four barges and park them. **He is confident that the Federal Govt and the Commonwealth will not allow good help to go to waste. So they are coming regardless of notice to suspend and will likely try to force the hand of the Federal Govt to get them work.** This is beyond FEMA's authority especially when permanent work has a cost share.

From: Tribble, Ahsha

Sent: Wednesday, May 30, 2018 8:12 PM

To: Long, Brock <Brock.Long@fema.dhs.gov>; Byrne, Michael <michael.byrne@fema.dhs.gov>

Subject: Closing the loop on call from Lt Gov Luis Rivera-Marin (PR)

Good afternoon,

I had a one-on-one phone call at 8AM this morning with the Lt Gov, and in-person meeting at 4PM with the Lt Gov, Walter Higgins (PREPA CEO), Mark Merritt, Jan Maduro (COR3), Todd Filsinger, and a few staff.

BLUF: The Lt Gov now has all of the fact presented with everyone hearing the same message. PREPA has only executed one of three selected contracts under its RFP to Cobra, which continues to be the only tool in the toolbox. Due to optics (and Whitefish) and the upcoming hurricane season, the Lt Gov wants more than one contractor on the ground. However, it took 4 months to award a single contract. During that time, progress on restoration continues and we don't have as much work as we once had when the RFP was announced. To retain contractors on the ground they really need some shovel ready permanent work projects, and that was the direction from the Lt Gov. Mr. Higgins (PREPA) acknowledged PREPA's deficiencies and took lead to move on contracts and get permanent work assigned.

Here is the much longer version, but provides context:

- Progress is made everyday on emergency work and the number of crews needed is shrinking not growing. The amount of work needed to energize customers and stabilize the grid is in concentrated areas and more crews will not fix that. The right crews and equipment will.
- On May 18, Governor asked for existing resources to stay on the ground from USACE.
- Cobra is the only prime contractor on the ground with a signed contract that has been shared with FEMA. (The RFP process started in early February; three contractors were selected in March; only Cobra was signed yesterday (5/29). MasTec is expected this week. It has taken four months and only one award has been completed to date. This is the core of the issue.)
- Bird was working under USACE and is now a subcontractor to Cobra. No mobilization costs required for equipment as it was already here. They will work up to 90 days or until their assigned work is complete. This solution, presented by Ottmar Chavez (Commonwealth), addressed the Governor's request; however the optics are bad because it looks like one contractor got all of the work when in fact, it is two — Bird and Cobra. Walt stated that the Governor did us a favor by pushing us in this direction because it minimized the gap on the ground between USACE demob and the execution of the contracts/mobilization; yet this decision upset their plans for the new potential contractors.)
- MasTec has a pending contract, but no equipment on the ground (float time is 2-4 weeks depending on barge schedule and weather). Original intent was to have MasTec get some of the emergency work, but since the contract is still not signed to date and there are no resources on the ground, Bird Electric is now doing that work. MasTec will have a signed contract soon and PREPA assured them that they will get permanent work once scoped by PREPA.
- Foreman (the contractor making the most noise), does NOT have a contract with PREPA yet. That contract still has several hurdles to clear before it comes forward to FEMA for review. We also do not know their rate structure yet, so we have to manage expectations on timing of execution. However they took a risk and refused the demob costs under USACE and left their equipment on island before executing a contract with PREPA. Now they are upset because they don't have a contract, assigned work or a demob plan. So they are going to continue to push hard to get some immediate work.

- We are nearing the end of emergency work. We will have about 1900 linemen by Saturday working the last mile. That pretty much saturates the remaining areas to work safely. We expect completion of that work in 75-90 days barring no major issues.

- Finally, we have been asking PREPA for some early permanent work projects that will serve to stabilize the grid and serve as the foundation for the larger 428 project. This will help them take advantage on contractors that are already on the ground and remove mob costs from the projects. To date, we only have Vieques and Culebra at FEMA's urging due to the other projects we are starting on Vieques.

- Lt Gov's message was to get more contractors on the island and GET MOVING ON PERMANENT WORK PLANNING! There is a legitimate fear from all sides that Cobra is assigned too much work. However, Cobra is still the only tool in the toolbox today and emergency work must continue. This was not the intent, but where we are until PREPA executes other contracts.

The Lt Governor was thankful for the meeting, but in my perspective disappointed that the earlier information he received did not match what was stated in the meeting. To Walter Higgin's credit, he took the blame for the delays and poor execution of contracts and will press the team hard to move forward. The Lt Governor will stay engaged going forward.

Let me know if you have any questions.

Thanks,
AT

Sent from my iFEMA mobile device.