

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MASTEC RENEWABLES PUERTO RICO, LLC,

Plaintiff,

v.

MAMMOTH ENERGY SERVICES, INC. and
COBRA ACQUISITIONS, LLC,

Defendants.

Case No. 20-cv-20263-RNS

DECLARATION OF MICHAEL BYRNE

Pursuant to 28 U.S.C. § 1746, I, Michael Byrne, declare as follows:

1. I am currently a Specialist Executive at Deloitte, a position I have held since May 2019.

2. I have spent my career in positions relating to public safety and disaster management, including 20 years with the New York City Fire Department (1979-1999), where among other things I was a Captain and Chief Information Officer; while working at FEMA I was detailed to the White House (2001-2003) as Senior Director for Preparedness, Response and Recovery for the Department of Homeland Security; private-sector positions at Microsoft and ICF International relating to the application of technology to public safety (2004-2010); and Division Disaster Executive for the American Red Cross (2013-2015).

3. I have also held several positions with the Federal Emergency Management Agency (“FEMA”), including as Division Director for Response and Recovery for FEMA Region 2 (covering New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands), during which time, as Deputy Federal Coordinating Officer for Operations (1999-2001), I directed recovery operations

in response to the 9/11 attacks. I have also served with FEMA as a National Incident Management Assistance Team Leader (2010-2013); and more recently again as Deputy Regional Administrator for FEMA Region 2 (Sept. 2015-Oct. 2016) and Assistant Administrator for Field Operations (Oct. 2016-July 2018). In these positions, FEMA would generally call on me to coordinate the response in difficult and complicated situations, including FEMA's response to Tornados in Alabama in 2011 and Hurricane Sandy in New York City in 2012, among others.

4. Beginning in October 2017, I was appointed Federal Coordinating Officer ("FCO") for FEMA's response to Hurricane Irma and Hurricane Maria in Puerto Rico, which position I held until April 2019. In that capacity I was deployed to Puerto Rico for approximately a year, and then for the next six months divided my time between Puerto Rico and the U.S. Virgin Islands, which was also recovering from those two storms. As FCO in Puerto Rico, I was responsible for coordinating FEMA's disaster and recovery response.

5. I met Dr. Ahsha Tribble in or around 2015 or 2016, when I was Deputy Regional Administrator for FEMA Region 2. She held the same position for FEMA Region 9 (which includes California, Arizona, Nevada, Hawaii, and several Pacific territories). It is my understanding that because Dr. Tribble was an experienced FEMA executive and her own research had focused on storm-related power restoration, she was assigned to the recovery efforts in Puerto Rico.

6. Dr. Tribble was already deployed to Puerto Rico when I was appointed FCO for FEMA's response to Hurricanes Irma and Maria. I appointed her as a Deputy FCO, in which capacity she acted as Energy Sector Chief and Infrastructure Lead for Puerto Rico and reported to me. Dr. Tribble was well regarded within FEMA at the time and had a good reputation. When she completed her deployment in Puerto Rico, she became the Deputy Administrator for Region 2.

Because the “emergency” phase of the Puerto Rico work was largely concluded by the time she left the island, I did not appoint a Deputy FCO for power restoration.

7. From my experience and roles at FEMA, I am generally familiar with the process by which FEMA approves and allocates funds for particular work—including for the restoration and reconstruction work performed in Puerto Rico in the wake of Hurricanes Maria and Irma.

8. As set forth in FEMA’s *Public Assistance Program and Policy Guide* (“PAPPG”), prior to approving the obligation of funds that can then be drawn down to pay for certain work, FEMA requires information sufficient to prepare a “Project Worksheet” (“PW”), which consists generally of information sufficient to show (a) the applicant for funds is an eligible applicant; (b) the funds would be applied to eligible work; and (c) the work would be done at a reasonable cost.

9. In this case, for restoration work after Hurricanes Irma and Maria, the applicant was the Commonwealth of Puerto Rico and the Puerto Rico Electric Power Authority (“PREPA”) was the sub-applicant.

10. FEMA is tasked with determining whether the work for which the Commonwealth and its sub-applicant were seeking funding was eligible work. In the immediate aftermath of Hurricanes Maria and Irma, eligibility would mean, among other things, that (i) the work was intended to restore something actually damaged by the disaster, as opposed to having already been damaged before Hurricanes Irma and Maria; and (ii) the work was “emergency” work designed to address imminent threats to life and safety, such as the initial restoration of power to hospitals and residences. Part of FEMA’s determination as to whether proposed costs are reasonable is whether the applicant has provided appropriate documentation regarding those costs and the scope of work.

11. Exhibit A is an e-mail chain including Dr. Tribble, Brock Long (then Administrator of FEMA), and myself, reflecting that, as of the end of May 2018, emergency work was coming

to an end. Once emergency work has been completed, FEMA would be unlikely to obligate funds for “emergency” work. The process for obligating funds for “permanent” work—that is, work intended to improve the resilience of Puerto Rico’s power generation, transmission, and distribution assets and their resistance to damage in future disasters—is different from the process for obligating funds for “emergency” work. These procedures are set forth in FEMA’s PAPPG. Exhibit B is a memorandum from Dr. Tribble that was sent to me, which states that as part of one potential option MasTec could be used for hurricane season standby and permanent work once PREPA and COR3 provide a scope of work, and pending the review of MasTec’s contract and rates.

12. Given the complex and evolving nature of the situation in Puerto Rico, FEMA put in place additional measures to ensure FEMA’s funds would be spent appropriately. Exhibit C is a memorandum that I prepared that provided an overview of the procedure and requirements for (a) the obligation of funds for specific work; and (b) the actual draw-down of those funds by the applicant for dispersal. My memorandum also noted that any applicant for Public Assistance funds must follow the documentation requirements in Chapter 3 of the PAPPG. The Commonwealth was required to adhere closely to the guidelines in my memorandum and the PAPPG, particularly in light of the importance of the substantial dollar amounts requested from FEMA.

13. In general, if an applicant sought FEMA funding, but FEMA determined the work was not eligible, the proposed costs were not reasonable, or that additional documentation was necessary, the applicant could supplement their submission. An applicant could also appeal an adverse determination.

14. Determinations as to whether work was eligible for FEMA funding were made after multiple levels of review, by various FEMA individuals working in various capacities. The steps

include several tiers of review, which likely would have included legal, program, engineering, insurance, and environmental review, and then review by FEMA headquarters. Where the PW sought to obligate a significant amount of funds for certain work, the PW would also be reviewed by the Office of Management and Budget in Washington, D.C. (“OMB”), after which OMB could then authorize FEMA to obligate funds and make them available for the applicant to draw them down. The approval and obligation of a Project Worksheet can be a lengthy process.

15. Only after both FEMA and the OMB, if significant funds are involved, approves the relevant work can FEMA obligate funding.

16. FEMA’s ultimate determination as to whether work was eligible for FEMA funding was set forth in an Eligibility Determination Memorandum (“Determination Memo” or “DM”). Exhibit D is a December 22, 2017 Determination Memo, which concludes that certain work submitted by PREPA, to be performed by Cobra, was eligible for FEMA funding. DMs were created in the ordinary course of FEMA’s work, and were a regular part of FEMA’s business. A Determination Memo would set forth the materials required for a successful application in the event that the funding was denied.

17. Exhibit D also shows that PREPA could incur obligations, if it chose to do so, to contractors even before FEMA funds were obligated for the work that the contractor was performing, and therefore also before PREPA was able to draw down the funds that FEMA had obligated for that work. In other words, FEMA’s funding was really reimbursement for funds already committed to eligible work. FEMA had no role in PREPA’s contracting process, and in particular would have no role in PREPA determining to award contracts to Cobra or MasTec, and FEMA never paid Cobra for any work. Exhibit E is an e-mail from myself to Keith Ellison of

Cobra, copying several individuals who worked at FEMA, noting that FEMA is not a party to the contract between Cobra and PREPA.

18. There was no single individual with the authority to determine whether work was eligible, or whether to obligate funds for work. Even as the FCO in Puerto Rico, I did not have authority to determine unilaterally whether work was eligible for funding. Dr. Tribble, as Deputy FCO, likewise lacked such authority.

19. I am not personally aware of any wrongful actions on the part of anyone, including Dr. Tribble, to obstruct FEMA from obligating funds for work that PREPA wished to assign to MasTec. Given the process involved multiple tiers of review, it is unlikely that anyone could have unilaterally obstructed the obligations of funds. Moreover, in order to hold up funding for otherwise eligible work, someone working within the approval process would have to articulate a reason that funding could not yet be obligated, and others working on the same process would review that reason. FEMA's EMMIE system shows every step that a PW goes through, and therefore any reasons for holding up funding would be clear and could be validated. Had the EMMIE system indicated that all necessary steps had been taken for a PW to move to the next approval step, but the PW was not proceeding to that next step, numerous people within FEMA would have taken notice and would have sought to resolve the issue. Similarly, Exhibit F reflects some of the scrutiny over the recovery process, which included inquiries from the National Security Council at the White House.

20. An example of one of the several stages of review is Exhibit G, which is an e-mail chain that includes myself, Dr. Tribble, Brian Applebee, who performed economic and other analysis for the Office of Response and Recovery, and James Pittman, FEMA's Comptroller. In

this e-mail, Dr. Tribble states to be checking on the status of the PWs for both Cobra and MasTec with FEMA personnel who were part of the economic and analytical review process.

21. All of us who were overseeing the recovery effort were concerned about the lack of contractor resources in Puerto Rico and about the time it was taking PREPA to provide the documents necessary to bring additional resources to Puerto Rico, including executed contracts and the documents necessary to prepare PWs for additional work. Exhibit H is an e-mail chain dated May 19, 2018 that includes myself and Dr. Tribble and reflects this collective concern.

22. I recall discussions with Omar Marrero—then the head of COR3, which also had a significant role in reviewing PWs—around the time that PREPA was working to bring additional contractors to Puerto Rico, and I do not recall that Mr. Marrero raised any complaint or claim that FEMA or Dr. Tribble was obstructing funds for work that could be performed by MasTec.

23. If PREPA felt, for instance, that anyone at FEMA was incorrect that additional information was required before the work in MasTec's draft PW could be funded or disagreed with any ultimate eligibility determination for proposed work, PREPA could have raised or appealed those issues. To my knowledge, PREPA never initiated any appeal, nor to my knowledge did PREPA ever lodge any complaint with me about Dr. Tribble's decisions or performance.

24. Following FEMA's process was particularly important to me in Puerto Rico because we did not want to be in the position of having to pull funds back. I recall my colleagues expressing that they felt the same way and being very dedicated to the restoration effort.

25. It is worth noting that Puerto Rico is still in the early stages of its full recovery, and that a large portion of FEMA funds for the work performed, or to be performed, in connection with that recovery are just now being spent. This extended timeline is typical for a major disaster: for

reference, Hurricane Katrina, which struck New Orleans in 2005, is still considered an open disaster.

26. Exhibit I is a letter from myself to Jose I. Marrero, the Governor of Puerto Rico's Authorized Representative, dated December 23, 2017. It is stated in this letter that FEMA reviewed the October 19, 2017 contract between Cobra and PREPA, its amendments, and the relevant rates for service. FEMA concluded that the work assigned by PREPA to Cobra met FEMA's eligibility criteria. I likely executed this letter with the oversight and approval of FEMA counsel. I was not pressured by any one person, including Dr. Tribble, to do so. Nor have I been told by any FEMA personnel that she pressured them in connection with the work in Puerto Rico, including that she pressured them to somehow steer work to Cobra. Likewise, I never witnessed Dr. Tribble exert any such pressure.

27. Exhibit J is an email from Dr. Tribble to several individuals, including myself, dated May 16, 2018. Dr. Tribble prepared this e-mail in the regular course of conducting FEMA business, and it was a regular part of her duties to provide updates concerning the status of recovery efforts.

28. Exhibit K is an email chain between myself, Dr. Tribble, and Jeffrey Byard, dated May 17, 2018. Dr. Tribble prepared the portions of this e-mail that she wrote in the regular course of conducting FEMA business, and it was a regular part of her duties to provide updates concerning the status of recovery efforts.

29. Exhibit L is an email from Dr. Tribble to myself and other individuals, dated July 9, 2018 consisting of Dr. Tribble's notes about a July 8, 2018 meeting. Dr. Tribble prepared this e-mail in the regular course of conducting FEMA business, and it was a regular part of her duties to provide updates concerning the status of recovery efforts.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed on April 15, 2021 at _____.

Michael Byrne

Michael Byrne