

Byrne, Michael

From: Byrne, Michael
Sent: Mon 12/17/2018 4:53 PM (GMT-00:00)
To: Keith Ellison
Cc: Tribble, Ahsha; Guzman Gonzalez, Manuel; Miller, Thomas; Hernandez, Justo; Yee, Lai Sun
Bcc: Von Essen, Thomas
Subject: RE: Cobra/Payment/Work load

Dear Mr. Ellison,

Thank you for sharing with me the email you recently sent to PREPA with your concerns. I respect and appreciate the amount and quality of work that Cobra has contributed to this recovery mission. I can't overstate how important it is for me to be aware of the issues you've articulated, and address them to the every possible extent. As a federal funding agency, we are aware of the importance that timely reimbursement plays into continued recovery support. And while FEMA is not a party to the contracts between Cobra and PREPA, we are a committed partner to this effort.

One year ago, I sent a memo to the Governor's Authorized Representative (GAR), now also known as COR3, stating that Cobra "cannot continue to provide services without assurances that payment is forthcoming." I share your concern that issues with payment continue to saddle your collaboration with PREPA, and I want you to know that we are doing everything we can, within the legal limits of our role as a federal funding agency, to shepherd this situation into solvency.

My understanding is that to date, \$1.19B has been obligated to PREPA for Cobra work (this may increase, depending on the final list of emergency projects). Of that, \$477.9M still requires COR3 draw down, for PREPA to pay Cobra – meaning that the applicant has not submitted the necessary invoices, or COR3 has not triggered the draw-down, in order to immediately transfer these funds to PREPA's coffers.

The process of transferring payment to Cobra appears to be stymied at these junctions – PREPA's submittal of paperwork, or COR3's final request, to draw down the funds from FEMA. This junction is also where typically FEMA would take no action, but simply receive necessary paperwork and immediately transfer funds. However, the reimbursement relationship with this particular applicant, and state entity, over the last year has been unprecedented in its complexity and duration. Therefore, FEMA has been in almost constant communication with PREPA, engaging in weekly meetings and check-ins, to try and enable the applicant toward timely draw-downs and contractor payments. Clearly, the results of this communication have been varied, and this process continues to be challenging.

We acknowledge everyone's continued commitment to recovery work, in spite of these challenges. FEMA intends to honor that diligence through our own commitment to informing, guiding, and enabling COR3's transfer of funds to Cobra, to the extent that it is feasible and judicious, in light of our legal limitations as a federal funding agency.

With that said, we have weekly meetings with PREPA and COR3 representatives. Your email will headline those agendas, and our discussions will focus on helping the Commonwealth resolve the issues you've presented.

Again, thank you for your service to this mission, and the people of Puerto Rico. I am committed in helping us all overcome the challenges of this past year, and move forward toward long-term recovery.

Best regards,
Mike

Michael Byrne
Acting CAD Director
347-404-0955

From: Keith Ellison <kellison@mammothenergy.com>
Sent: Tuesday, December 4, 2018 2:28 PM
To: Byrne, Michael <michael.byrne@fema.dhs.gov>
Subject: Fwd: Cobra/Payment/Work load

Mr. Byrne,

I wanted to reach out to you regarding PREPA. As the FCO whom executed the guarantee letter to our company it is only fair that you be brought up to speed as to the issues we are facing with PREPA. Please see the email correspondence between myself and Jose Ortiz the CEO of PREPA.

Any guidance you may provide would be much appreciated.

KE

Sent from my iPhone

Begin forwarded message:

From: Keith Ellison <kellison@mammothenergy.com>
Date: December 4, 2018 at 9:10:25 AM MST
To: "Jose.ortiz@prepa.com" <Jose.ortiz@prepa.com>, "Fernando M. Padilla" <FERNANDO.PADILLA@prepa.com>
Subject: Cobra/Payment/Work load

Good Morning, Jose and Fernando!

I am writing you to discuss the 3 biggest issues that face Cobra and continue to plague our PREPA contract after nearly 13 months of service. These are items are payment / the lack of payment

specifically in a timely manner, PREPA recent position to take discounts upon payments issued to Cobra based upon reasoning that is outside of the commercial terms associated with the current contract and work load. Please understand that for the past several months I have all but begged for communication with PREPA and have not gotten a single response, with this in mind please realize that we must correct or address the issues to the items below.

1. PREPA continues to owe Cobra values excess of \$250mm. For the past year PREPA has been unable to process invoices in timely manner. We have met numerous times to discuss this issue and during our last face to face meeting regarding this subject you directed your PMO department to issue us \$35mm in payment from the original contract and we were told that we would receive an additional \$15mm from the new contract. A week later we received \$2.5mm in payment. This is just one of the many examples as to PREPA's inability or unwillingness to issue payment to Cobra for the restoration services rendered.
 - a. We must find a working solution or middle ground that will allow PREPA to honor the agreement it has entered into with Cobra?
 - b. Over the recent days I received a phone call from Mr. Fernando Padilla regarding payment and PREPA's ability to issue further Payment due to lack of FEMA funds.
 - i. Under the original contract PREPA has roughly \$200mm worth of FEMA funds still waiting to be drawn down. It is my understanding that the last time PREPA requested a drawdown of FEMA funding was August 10th. This should not come as a shock to either of you as this has been discussed countless times over the past 6 months.
 - ii. Mr. Padilla went on to further state that under the new contract he could utilize our support on the hill to get FEMA to release the funds associated with the new PW for the remainder of Emergency work. I explained to Fernando that I am aware that FEMA has been asking for the list of associated project or line segments that will be funded by the new PW since June of 18. We have all been a part of the numerous meeting were various members of FEMA have clearly stated that they needed the remaining emergency work list to avoid this very situation.
 - i. My questions are simple when it comes to both i and ii, Where does PREPA stand on requesting the drawdown of funds for the original PW and has PREPA submitted the list of emergency work items to FEMA to allow for the funding of the PW associated with the new contracts.
 - c. Workload, Our contract is simple it is a day rate based upon the number of men Cobra has on island. For the past year we have ramped our resources up and down based upon the workload that PREPA has provided to Cobra to perform. We have done so without direction from PREPA due to our understanding of the audit process and trying to truly be mindful of the US tax payers dollars. We have requested for months now our projected work assignments as we were the only contractor on island performing work for PREPA. We now need PREPA to provide Cobra with written direction as to how many resources it will require in order to meet the projected work load for Cobra?
 - i. Vieques and Culebra project, Cobra had been directed by PREPA under three different CEO's now to move forward with the design of the project and the construction of the project. Now I have come to understand from many sources that PREPA intends to issue this work to a recently approved contractor whom could not meet the RFP requirements for the past year. Is this correct? If so please simply

provide us with the answers needed so that we can bill PREPA for the work PREPA directed COBRA to perform.

- ii. I must say that from my position it does not appear to be by chance that PREPA has drug its feet on payment and issuance of work. It appears that PREPA or personnel within PREPA has intentionally held up upon providing the emergency work list to FEMA over the course of the past 6 months in hopes of getting a contractor on system that had not been able to meet the simplest of requirements associated with the RFP. Therefor creating a situation where the two contractors that had met all of the requirements of the RFP and the one whom is mobilized and fully engaged in performing emergency restoration services would not receive the work that should have been underway months ago.

Gentlemen, I have been extremely honest and direct with you from day one. Over the past several months I have been made painfully aware of the lack of transparency and the tactics that have been implemented by rogue elements within the PREPA and or the Common Wealth to try to at best push Cobra and its team out and at worst tarnish the name of our company. It is fairly simple to me, if you wish to end your contract with Cobra whom has been the most productive and lowest price provider to PREPA and the US Tax payers please simply tell me so. I and my team have been approached numerous times of the past several months by parties claiming to have inside information and potentially be acting on your behalf of the PREPA Leadership. In many of these cases that are seeking monetary payment as I could only describe as corruption and or bribery. I am not interested in going down that rabbit hole, what I am interested in is simply being paid for the work we have performed and either developing a partnership that best supports the people of PR or simply moving our resources back to North America as with work draws down to a close. Please let me know how we can resolve the issues listed above?

Sincerely,

Keith Ellison