

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**



IN RE: OVERSIGHT MEASURES RELATED
TO THE PROCUREMENT AND
MANAGEMENT OF RESTORATION
SERVICES BY PREPA WITH REGARD TO AN
EMERGENCY DECLARATION

CASE NO.: NEPR-MI-2019-0002

SUBJECT: Oversight Measures Related to
the Procurement and Management of
Restoration Services by PREPA with regard
to an Emergency Declaration

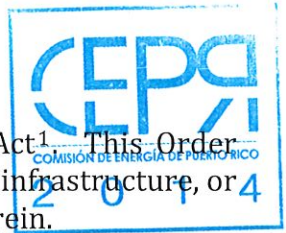
ORDER

I. Introduction

Puerto Rico went through two major emergencies due to Hurricanes Irma and María on September 6 and September 20, 2017, respectively. These hurricanes caused devastation in Puerto Rico leaving scores of deaths, and an electric grid severely damaged. The prompt restoration of the electric grid, including the generation, transmission and distribution functions is paramount since many lives depend on it. Thus, the recovery and restoration of the electric system in the above referenced situations, or similar ones, must be performed expeditiously, yet efficiently. The procurement under these pressing circumstances needs to be modified in order to provide an agile and expeditious process based upon prudent policies and actions. The Puerto Rico Electric Power Authority ("PREPA") prudent actions in the aftermath of emergency events will ensure an effective recovery and prevent further long-term damages to the overall utility service and its customers.

Each year Puerto Rico faces the risk of hurricanes and other natural events that may cause similar emergency situations as Hurricanes Irma and María. Under these circumstances, restoring the electric system expeditiously is a priority. The Puerto Rico Energy Bureau ("Energy Bureau") issues the instant Order to establish a procurement framework that is agile and adequately responsive to an emergency situation while taking into consideration the necessary controls for such process.

This Order will apply during emergencies caused by catastrophic events including, but not limited to, hurricanes, tidal waves, earthquake, volcanic eruption, drought, fire, explosion, and similar events, or any serious disruption of the public law and order, or an attack by enemy forces through sabotage or through the use of bombs, artillery or explosives of any nature, or by atomic, radiological, chemical, or bacteriological means, or by any other means that the enemy may use that have a direct impact on the electric system of Puerto Rico and for which it is needed the mobilization and extraordinary use of human and economic resources to remedy, avoid, prevent or diminish the severity or magnitude of the damages caused or that could be caused if and when the Governor of Puerto Rico has issued a declaration of a state of



emergency pursuant the Special Provisions for Emergency Proceedings Act¹. This Order excludes any declaration of emergency caused by grave deterioration of the infrastructure, or any emergency that has not been caused by events of the kind described herein.

Through this Order, the Energy Bureau identifies and implements a set of measures, requirements and directives aimed at ensuring optimal accountability, prudence and reasonability in the procurement and prospective management of restoration support services acquired by PREPA in the wake of an emergency declaration as defined herein. The provisions set forth in this Order shall not exceed the duration of the state of emergency, as declared by the Governor.

These measures are taken to ensure that PREPA prudently uses all funds allocated towards the restoration and recovery of the electric grid, including, without limitation, the generation facilities and the transmission and distribution system. It is of the utmost importance that in the wake of an emergency PREPA exerts an agile yet prudent recovery procurement.

Whether the funds utilized for the restoration of services in the wake of an emergency come ultimately from PREPA customers, Puerto Rico taxpayers or federal taxpayers, it is PREPA'S obligation, and within the Energy Bureau's regulatory powers, to promote and ensure they are spent effectively and efficiently, producing measurable and quantifiable results. Another objective of this Order is to avoid wasteful, fraudulent or abusive practices. By holding PREPA, its contractors and sub- contractors accountable for the quality of their work, we promote an effective and efficient procurement process during the time of emergency. The measures taken herein are consistent with the Energy Bureau's overall goal and statutory mandate of inducing administrative and financial discipline to PREPA's operations and culture. They are not meant to duplicate any efforts by any other state or federal agency, but rather to support such efforts. The measures and directives identified herein are necessary and essential to ensure PREPA's prudent response to emergency situations.

II. Background

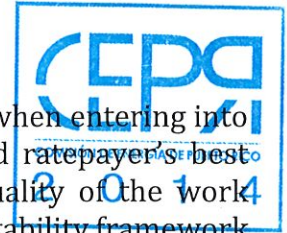
A. *The Need for Consistently Prudent Procurement and Contracting by PREPA amid an Emergency*

Before Act 57-2014² PREPA operated as a self-regulated publicly-owned monopoly which raised legitimate concerns regarding its accountability and efficiency. The dire economic situation that PREPA currently faces as well as the additional economic burden posed by an emergency, as defined herein, increase the need of an effective accountability framework. Throughout many of its proceedings, the Energy Bureau or its consultants have

¹ PR Laws tit. 3, §1931.

² Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as emended.

raised concerns regarding the terms and conditions agreed to by PREPA when entering into contracts (and whether such terms and conditions are in PREPA's and ratepayer's best interest), as well as the lack of performance metrics to ensure the quality of the work performed by the contractor. Undoubtedly PREPA requires a keen accountability framework that will address these concerns, and which shall not succumb completely when contracting during an emergency declaration.



The Energy Bureau has a genuine concern that PREPA acts within the desirable frame of prudence for a proper restoration of its operations in the short, as well as the long run, amid of the emergency it may face. This Order sets forth the minimal requirements of procurement in the emergency response situation caused by an emergency or major natural disaster as defined herein.

B. The Case for Energy Bureau Oversight

To be financially and operationally sustainable, a utility's rates must be sufficient to recover all of its costs, provided such costs are deemed by the regulator to be prudent. In the traditional setting of an investor-owned utility, a regulator is able to induce prudent spending and performance by preventing a utility from recovering through its rates costs which are deemed by the regulator to be the result of imprudent actions—those costs are thus paid for by the utility's shareholders, not ratepayers. This *after-the-fact* review is known as *cost disallowance*. The certainty that imprudent actions will result in lost revenues aligns the interests of shareholders and ratepayers, leading to better performance.

PREPA's case is different. PREPA is a government-owned, non-profit utility; it has no shareholders. Thus, the recovery during a declared emergency poses additional challenges and burdens than those faced by private companies. Therefore, this Order and other strict and sound procurement process are necessary to reduce customers' and PREPA's exposure to imprudent costs amid an emergency and prevent an additional long-term economic burden for both.

The Energy Bureau recognizes that in the wake of an emergency or major disaster PREPA's key personnel are deeply involved in the restoration effort, as well as efforts to secure federal resources. But it is precisely at such times of crisis that discipline in spending, procurement and management can pose the difference in both the short and long run recovery and stability. Lack of discipline and oversight can as well delay restoration services by reducing the effectiveness and efficiency in which emergency resources are allocated towards emergency response and restoration efforts.

The measures and directives identified in Part III of this Order are specifically designed to encourage procurement discipline during an emergency or major disaster and the period immediately after. While the Energy Bureau will subject PREPA to rigorous oversight, the measures adopted herein are also designed to avoid unnecessary burdens which may delay PREPA's restoration efforts. Emergency and major disaster situations require a procurement and management discipline appropriate for the situation, one that facilitates the recovery while providing certainty, transparency and accountability. Thus,

requiring PREPA and its contractors to account for their activities and costs in the recovery and restoration.



C. The Energy Bureau's Authority to Require Review

Act 57-2014 grants the Energy Bureau express and unambiguous authority to review PREPA's operations and implement the regulatory actions necessary to "guarantee the capacity, reliability, safety, efficiency and reasonability of electricity rate [in] Puerto Rico."³ Accordingly, the Energy Bureau is empowered to address "all types of operations, processes and mandates pertaining to the efficiency of the energy sector of the Island."⁴ This broad authority is further strengthened by the closing sentence of Section 6.3 of Act 57-2014, which states that the Energy Bureau shall have all those "implicit and incidental powers that are pertinent and necessary" to comply with its mandates. Equally vital is the Energy Bureau unquestionable authority to "require and gather [from PREPA and certified energy companies] any pertinent or necessary information to properly carry out its powers and duties."⁵

III. Requirement for Contract Review

The foregoing factors highlight the need to establish several requirements for PREPA's contracting and spending under such contracts.

A. Required Contract Provisions

For any contract or amendment to an existing contract related to the procurement of energy, grid services, and fuel⁶ for an aggregate value of at least \$10 million; contracts for infrastructure work⁷ for an aggregate value of at least \$1 million; and contracts for

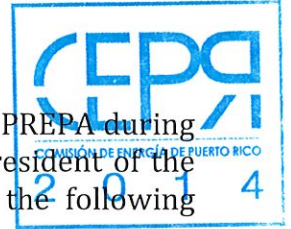
³ See sub-section (c) of Section 6.3 of Act. 57-2014.

⁴ See Statement of Motives of Act 57-2014 at ¶ 20.

⁵ See sub-section (1) of Section 6.3 of Act 57-2014.

⁶ The Energy Bureau intends the term "energy, grid services, and fuel" to refer to provision of energy to be consumed by PREPA or sold by PREPA to customers; to the commitment to make generating capacity available when needed (commonly referred to as "capacity services"); to credits associated with production of "green" or renewable energy as defined by Act 83-2010; to administration of energy efficiency, demand response, and other demand-side management programs; to the services necessary to support the transmission of electric power to customers, including but not limited to frequency and voltage regulation, operating and spinning reserves, startup-related costs, black start capabilities, and flexible ramping capabilities; to purchases of combustible fuels; and to tolling, transportation, or other delivery payments associated with fuel purchases.

⁷ The Energy Bureau intends the term "infrastructure work" to refer to materials purchased for and labor applied to PREPA's physical assets. These assets include, but are not limited to, generation, transmission, distribution, fuel delivery, information technology, warehousing, and transportation infrastructure and assets.



professional services⁸ for an aggregate value of at least \$250,000, executed by PREPA during a period of emergency, as declared by the Governor of Puerto Rico or the President of the United States of America, the Energy Bureau **ORDERS** PREPA to include the following provisions:

- (1) A clause stating that the contract will be notified to the Energy Bureau within five (5) days of its execution;
- (2) A clear, detailed scope of the work and activities included in the contract;
- (3) A total budget associated with the described scope, provided that PREPA may seek from the Energy Bureau a modification of this requirement in extraordinary circumstances;
- (4) An estimated spending schedule associated with the described scope and budget, with both monthly spending estimates and clear and objective milestones.⁹ Spending schedules must include spending estimates associated with those milestones;
- (5) A schedule of all labor, material, and/or service rates associated with the contract;
- (6) A scope and budget amendment process, which shall include a requirement to provide advanced notice, with no less than 30 calendar days in advance, to the Commission, of any proposed amendment to the contract scope, budget and amount, provided PREPA may seek an exception to the 30-day requirement (but not to the advance notice requirement) in extraordinary circumstances;
- (7) A scope and budget amendment process.
- (8) Require invoices to be submitted to PREPA on, at least, a monthly basis in electronic format. Invoices must contain the amount invoiced under the contract since the last invoice and the total amount invoiced since the contract's execution, as well as a description of the work completed and being invoiced and the total amount of contract funds remaining after deducting the amount included in the most recent invoice;
- (9) A requirement wherein PREPA's contractor must submit, ten (10) calendar days in advance of a new month, monthly budget updates, with milestones accomplished and

⁸ The Energy Bureau intends the term "professional services" to refer to work for hire that has no impact on PREPA's physical assets, including but not limited to: legal services; advisory services; modeling, potential studies, and other analyses; engineering and design work, and others.

⁹ In the case of contracts for energy, grid services, and fuel, "milestones" means delivery of such energy, grid services, or fuel. The requirement for spending estimates associated with delivery of milestones does not apply to such contracts. However, the schedule of labor, material, and/or service rates must include a rate for the delivery of energy (in MWh), capacity (in MW), fuel (in MMBTU and physical units), or other services (in the appropriate units).

estimated spending and work to be completed in the upcoming month;



- (10) A clear description of performance guarantees in the contract, including a requirement that work performed under the contract will conform to all applicable legal and regulatory requirements. Contracts must include a certification from the contractor that they are aware of all legal and regulatory requirements and that, except for unforeseen or extraordinary circumstances, the contracted budget is sufficient to meet these requirements; and
- (11) A clear description of risk-sharing provisions, including provisions describing the allocation of responsibility for costs between PREPA and PREPA's contractor in the event of error on PREPA's part, error on the part of PREPA's counterparty, shared error, and the occasion of circumstances beyond the control of PREPA and PREPA's counterparty.

B. Contract and Invoice Oversight

For any contracts contemplated in Part III(A) of this Order, the Energy Bureau **ORDERS** the following:

- (1) PREPA shall submit to the Energy Bureau contracts for review within one week of approval of contracting language by the contracting officer at PREPA. Contract submission must include at least: the contract itself; all appendices and attachments; a total budget estimate; a spending and milestone schedule; and a schedule of rates for labor, materials and services. The PREPA contracting officer who approved the contract shall certify to the Energy Bureau that the contract complies with the requirements established in Part III(A) of this Order. None of the materials submitted by PREPA may contain any redactions whatsoever; however, PREPA may request confidential treatment of those documents, or portions thereof, it deems confidential, pursuant to Energy Bureau Order CEPR-MI-2016-0009, as amended, or its successor. The Energy Bureau's approval of the contract and/or contract language shall not be deemed preliminary nor final approval of such expenses as prudent, nor shall it mean that there is a waiver of the Energy Bureau's right to review in due course the expenses or costs directly or indirectly related to the contract reviewed by the Energy Bureau pursuant this Order.
- (2) PREPA shall designate and identify the individual within PREPA responsible for reviewing invoices and contractor performance for each contract and whom shall act as liaison between PREPA and the Bureau on matters related to the contracts under their supervision ("PREPA contract manager"). PREPA shall submit the name, title, e-mail address, and phone number of this individual to the Energy Bureau concurrently with each contract.
- (3) PREPA shall notify the Energy Bureau within seven (7) calendar days of any change to the identity or contact information of the PREPA contract manager.

Handwritten signatures in blue ink, including what appears to be 'H', 'JAB', and 'JSP'.

- (4) PREPA shall keep and maintain all documents related to each contract, including all those documents identified in sub-section (1) above, in a secure Internet server, to which server the Energy Bureau shall have access immediately upon request.
- (5) Immediately upon receipt of an invoice or budget update, and of approval of such invoices, the PREPA contract manager shall upload all relevant documentation to the secure Internet server.
- (6) Upon request from the Energy Bureau, the PREPA contract manager shall schedule a briefing call or meeting, at a mutually convenient time, with PREPA officials and contractor representatives familiar with the contract under review.

C. Contract Review

For any contract or amendment to an existing contract related to the procurement of energy, grid services, and fuel for an aggregate value of at least \$10 million; contracts for infrastructure work for an aggregate value of at least \$1 million; and contracts for professional services for an aggregate value of at least \$250,000, executed by PREPA during the period of time that the declaration of emergency issued by the Governor of Puerto Rico due to Hurricanes Irma and María was in full force, including OE 2017-047 of September 17, 2017, the Energy Bureau **ORDERS** PREPA to submit such contracts within thirty days (30) from the issuance of this Order.

Be it notified and published.


Edison Avilés Deliz
Chairman


Ángel R. Rivera de la Cruz
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


José J. Palou Morales
Associate Commissioner

CERTIFICATION



I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on February 15, 2019. I also certify that on February 15, 2019, I have proceeded with the filing of the Orden regarding the Case No. NEPR-MI-2019-0002 issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today February 15, 2019.

A handwritten signature in blue ink, which appears to read 'M. del Mar Cintrón Alvarado', is written over a horizontal line.

María del Mar Cintrón Alvarado
Clerk