



FEMA

January 5, 2024

Manuel A.J. Laboy-Rivera
Executive Director
Governor's Authorized Representative
Central Office for Recovery, Reconstruction and Resiliency

Dear Mr. Laboy-Rivera:

By letter dated December 26, 2023, FEMA Administrator Criswell informed the Central Office for Recovery, Reconstruction and Resiliency (COR3) that FEMA has determined PREPA's acquisition of the equipment at two power generation sites at Palo Seco and San Juan is an eligible expense under the Stafford Act from funding made available to Puerto Rico and PREPA under sections 406 (42 U.S.C. § 5172) and 428 (42 U.S.C. § 5189f) from Hurricane Maria.

The installation and operation of these two sites through March 15, 2024, is provided by FEMA as direct Federal assistance (DFA), through the USACE, pursuant to section 403 (42 U.S.C. § 5170b). The USACE established and operates these two sites through contracts with Weston Solutions, Inc., and Weston sub-contracted with New Fortress Energy (NFE). NFE acquired all of the equipment and infrastructure necessary to operate the two facilities, some through purchase and some through leasing arrangements. Total FEMA and Puerto Rico costs for this project will not be definitive until after final invoicing and auditing. These costs are dependent on several factors including the contract completion date, and whether contractual obligations to Weston and NFE after that date are reduced because PREPA acquires the equipment by lease or purchase.

It is critically important for both FEMA and Puerto Rico costs and a seamless transfer of the equipment, that USACE-managed contracting requirements necessary to transition the equipment to PREPA inform, and be informed by, COR3/PREPA's acquisition negotiations with the equipment owners. FEMA will provide close oversight to ensure USACE's winding down and COR3/PREPA's acquisition complement one another and together are as fiscally responsible as possible.

FEMA approves COR3 negotiating acquisition of the equipment by lease or purchase utilizing Commonwealth procurement procedures applicable to a sole source procurement, given the equipment is installed and it is in the fiscal interest of both the Federal government and Puerto Rico that the contracted equipment transition to PREPA by March 15, 2024, without interruption of service.

COR3 should commence negotiations with NFE as the sub-contractor to Weston responsible for acquiring the equipment. NFE owns some of the generators and other equipment, and it has lease

agreements with other entities for the rest. The USACE will inform its contractors that COR3, with FEMA's approval, will be attempting to negotiate through NFE to lease or purchase all the equipment at both sites. Though sole source contracting is authorized, COR3 should perform market analysis to validate proposed offer prices. COR3 will share with FEMA this market analysis and keep FEMA informed on the progress of negotiations. COR3 must obtain FEMA's pre-approval of final negotiated lease or purchase agreement(s) to ensure FEMA reimbursement.

COR3 must ensure that Genera, as a subsidiary of NFE, be excluded from all discussions and sharing of information between Puerto Rico and the Federal government concerning the potential acquisition of NFE equipment, and any negotiations with NFE for the acquisition of that equipment.

FEMA will fund COR3/PREPA acquisition costs through a Project Worksheet. FEMA is in receipt of your December 26, 2023, letter that outlines potential funding scenarios. Although your letter includes the potential of continued funding under section 403, pursuant to Administrator Criswell's letter of December 26, 2023, FEMA will provide funding for acquisition only pursuant to section 406 or section 428. Further, the eligible scope of work for the Project Worksheet will be premised on the equipment being utilized for temporary power generation only. FEMA staff will continue to work with COR3 to identify and implement a funding solution, and satisfaction of environmental review and Clean Air Act and other applicable requirements.

FEMA will perform its coordinating function for both the USACE contract completion and the COR3/PREPA acquisition through Nancy Casper and the FEMA Power Stabilization Task Force Lead. Please ensure you coordinate all your activities on this matter through them.

Sincerely,



Adrian Sevier
Chief Counsel

cc: Anne Bink, Associate Administrator Response and Recovery
David Warrington, Regional Administrator Region 2
Nancy Casper, Federal Coordinating Officer
Colonel Brad A. Morgan, Commander Wilmington District, U.S. Army Corps of Engineers