

**FEMA's Eligibility
Determination of Puerto
Rico Electric Power
Authority's Contract with
Cobra Acquisitions LLC**





DHS OIG HIGHLIGHTS

FEMA's Cost Eligibility Determination of Puerto Rico Electric Power Authority's Contract with Cobra Acquisitions LLC

July 3, 2019

Why We Did This Audit

This interim report is part of an ongoing audit to determine whether FEMA's PA grants to Puerto Rico Electric Power Authority (PREPA) and PREPA's contracts with Whitefish Energy Holdings LLC and Cobra comply with Federal laws and regulations and PA program guidelines. This report is limited to our review of FEMA's determination of whether Cobra contract costs were eligible for the PA grant program.

What We Recommend

We made one recommendation to address issues specific to FEMA's cost eligibility determination of Cobra contract costs.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The Federal Emergency Management Agency's (FEMA) eligibility determination of Cobra Acquisitions LLC (Cobra) contract costs for the Public Assistance (PA) Grant Program was not sound and lacked supporting documentation. Following Hurricane Maria in 2017, Puerto Rico Electric Power Authority entered into a 12-month contract with Cobra to provide storm restoration services. According to FEMA's *Public Assistance Program and Policy Guide*, one of the four key elements of eligibility for Public Assistance funding is the cost claimed by an applicant. To be eligible for PA funding, costs must be necessary and reasonable to accomplish the work properly and efficiently.

FEMA conducted an analysis of the Cobra contract rates and determined that contract costs were reasonable and eligible for the PA program. However, FEMA's eligibility determination was not sound because it did not evaluate the actual time and materials costs for reasonableness and because its analyses of contract rates for labor, equipment, and other costs were not always logical, complete, and supported. In addition, FEMA did not consider compliance with contract terms in its review of Cobra contract costs to transport equipment and people to Puerto Rico. As a result, FEMA approved a PA grant and reimbursed millions of dollars for Cobra contract costs based on an unsound eligibility determination.

FEMA Response

FEMA concurred with the recommendation and described corrective actions to address the issues we identified. FEMA will update its *Reasonable Cost Evaluation Job Aid* and *Public Assistance Program and Policy Guide* to include additional guidance specific to time and materials contracts. FEMA is also conducting additional analyses of the incurred costs to determine the reasonability and eligibility of Cobra contract costs for PA funding.



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 3, 2019

MEMORANDUM FOR: Thomas Von Essen
Regional Administrator
Federal Emergency Management Agency

FROM: ^{for} Sondra F. McCauley *Kristen Bernard*
Assistant Inspector General for Audits

SUBJECT: *FEMA's Cost Eligibility Determination of Puerto Rico
Electric Power Authority's Contract with Cobra
Acquisitions LLC*

For your action is the final version of our interim report, *FEMA's Cost Eligibility Determination of Puerto Rico Electric Power Authority's Contract with Cobra Acquisitions LLC*. As part of our ongoing audit, this interim report notifies you of issues specific to FEMA's determination of the eligibility of Cobra contract costs for the Public Assistance grant program. We incorporated your formal comments in this report.

The report contains one recommendation aimed at improving FEMA's compliance with Federal regulations and Public Assistance program guidelines for its grant awards to Puerto Rico Electric Power Authority. Your office concurred with the recommendation and outlined the corrective actions necessary to address the issues identified in the report. Based on information provided in your response to the draft report, we consider the recommendation resolved and open. Once FEMA completes the corrective actions, please submit a formal closeout letter within 30 days so that we may close the recommendation. The letter should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Maureen Duddy, Deputy Assistant Inspector General for Audits, at (617) 565-8723.



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Background

Hurricane Maria made landfall in Puerto Rico on September 20, 2017. The storm cut off all electricity across the island. On the same day, the President declared a major disaster and made Federal assistance available to Puerto Rico.

Puerto Rico Electric Power Authority (PREPA) is the sole provider of electricity in Puerto Rico. PREPA entered into a 12-month contract with Cobra Acquisitions LLC (Cobra) on October 19, 2017, to provide power restoration services. The parties agreed that Cobra would perform work on a time and materials (T&M) basis at the daily blended rate Cobra quoted and the total amount paid would not exceed \$200 million.

The Cobra contract included the following rates:

- A 250-lineman crew, including labor and equipment, at a daily blended rate¹ of \$4,000 per skilled lineman per day;
- A 550-person camp, including meals, lodging, power, and laundry, at a daily rate of \$155,000;
- A 104-person security team at \$2,000 per person per day;
- A 50-person logistics team at \$2,500 per person per day; and
- A 30-person management, operations, and safety team at \$2,500 per person per day.

In addition to the blended daily rate of \$4,000 per skilled lineman, Cobra allocated the costs of its 550-person camp, as well as its security, logistics, and management teams, to the daily rate. These costs varied from \$1,200 to \$1,600 per lineman per day, based on the number of personnel Cobra had on its roster.

The Federal Emergency Management Agency (FEMA) prepared a project worksheet (PW) in December 2017 to provide Federal assistance for Cobra contract costs under the Public Assistance (PA) grant program. PREPA requested FEMA to review the Cobra contract and rates. According to FEMA, under the exigent circumstances after Hurricane Maria, FEMA determined that PREPA awarded the Cobra contract in compliance with emergency procurement provisions of the Commonwealth of Puerto Rico and Executive Orders issued because of the disaster. FEMA also conducted an analysis of the Cobra contract rates to determine whether the costs under the contract were reasonable under the PA program. In its analysis, FEMA compared the labor

¹ Cobra quoted a daily blended rate per lineman for labor and equipment unlike two other proposals PREPA considered before selecting Cobra that quoted hourly labor rates by position and hourly equipment rates by asset.



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and equipment rates in the Cobra contract to the rates in two other proposals PREPA considered before selecting Cobra.

In a December 2017 Eligibility Determination Memorandum, FEMA stated that Cobra's daily blended rate was competitive with the other proposals when PREPA decided to incur the cost. FEMA also concluded that Cobra's contract costs were reasonable and eligible for PA funding. In a letter dated December 23, 2017, FEMA informed the Government of Puerto Rico that it determined the costs under the Cobra contract to be reasonable. (Appendix B includes a copy of the letter.) FEMA approved PW-251 on December 29, 2017, which obligated \$200 million for the full reimbursement of Cobra contract.

PREPA and Cobra amended the Cobra contract on January 28, 2018, to raise the contract amount from \$200 million to \$445 million. The parties amended the contract again on February 27, 2018, further raising the contract amount to \$945 million. FEMA subsequently amended PW-251 to approve a total of \$945 million in PA funds for the Cobra contract. As of October 2018, FEMA had reimbursed PREPA more than \$800 million for Cobra contract costs.

FEMA's Cost Eligibility Determination Was Unsound and Unsupported

FEMA's eligibility determination of Cobra contract costs was not sound for several reasons. First, FEMA did not evaluate the reasonableness of the actual time and materials costs incurred under the contract. Second, FEMA improperly analyzed the cost reasonableness of the contract rates for labor. Third, FEMA's cost-reasonableness analysis of Cobra's equipment rates was incomplete and unsupported. Fourth, FEMA did not fully analyze the reasonableness of additional costs, such as Cobra's costs for helicopters, fuel, security and logistics. Finally, FEMA did not consider compliance with contract terms in its review of Cobra's costs to transport equipment and people to Puerto Rico.

According to FEMA's *Public Assistance Program and Policy Guide*, one of the four key elements of eligibility for PA funding is the cost claimed by an applicant. To be eligible for PA funding, costs must be necessary and reasonable to accomplish the work properly and efficiently. The guide further states that "[a] cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the [a]pplicant makes the decision to incur the cost."² Factors FEMA considers in a cost-reasonableness determination include:

² FEMA, *FEMA Public Assistance Program and Policy Guide*, FP-104-009-2, January 2018, p. 23.



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- whether the cost is a type recognized as ordinary and necessary for the type of work;
- current market pricing based on historical documentation, average costs in the area, or published costs from national cost estimating databases;
- factors causing escalation of costs, such as shortages or project-specific complexities;
- exigent circumstances; and
- compliance with procurement requirements.

The applicant—PREPA, in this case—is responsible for providing documentation showing that claimed costs are reasonable.

FEMA Did Not Assess the Reasonableness of the Actual Time and Materials Costs

FEMA determined that Cobra contract costs were reasonable and eligible for PA grant without assessing the reasonableness of the actual T&M costs incurred. The Cobra contract is a T&M contract with a blended daily rate. Although more than \$170 million in costs had been incurred under the contract at the time of its eligibility determination, FEMA did not assess the actual costs for reasonableness before determining the eligibility.

FEMA's Analysis of Contract Labor Rates Was Unsound

FEMA's cost-reasonableness analysis of Cobra labor rates was not sound. FEMA extracted an average hourly labor rate from the Cobra blended rate and calculated an average hourly labor rate for the other two proposals to perform a direct comparison of the rates. This calculation and comparison of hourly labor rates was unsound for the following reasons:

1. FEMA did not use any documented support to verify the accuracy of the daily labor cost or hours used to calculate Cobra's hourly rate.
2. FEMA may have underestimated Cobra's labor rate. When calculating Cobra's labor rate from the daily rate, FEMA assumed that Cobra's linemen would work 2 hours more than what Cobra and PREPA may have agreed to in the contract.
3. FEMA's calculation of the hourly labor rates for the two other proposals may not be accurate. FEMA averaged the hourly rates for 13 different job positions in the proposals, ranging from general foreman to step one apprentice. These positions are likely not represented equally on the ground, and the labor rates vary among the positions. Straight averages of the rates without considering the likely number and mix of positions



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on the ground may not reflect the actual average labor rates.

4. FEMA added a 15 percent increase to the hourly labor rates for the other two proposals for cost associated with doing business in Puerto Rico, but did not do the same to Cobra's rates.

FEMA's Analysis of Equipment Rates Was Incomplete and Unsupported

FEMA's cost-reasonableness analysis of Cobra's equipment rates was incomplete and unsupported. FEMA attempted to calculate hourly costs of Cobra's equipment and compare them with rates of similar equipment in one of the other two proposals. We identified the following issues:

1. Cobra's daily rate included 17 types of equipment listed in its contract. FEMA compared only 6 of the 17 types of equipment with the other proposals before concluding that the Cobra rates were significantly lower.
2. FEMA did not assess the accuracy or reliability of the equipment cost data Cobra provided for the calculation of hourly rates.

FEMA's Analysis of Additional Costs Was Incomplete

FEMA did not analyze part of the daily blended rate, which includes costs for helicopters, fuel, office space, and gross margin. Additionally, FEMA did not assess the reasonableness of additional costs Cobra charged for the 550-person camp, as well as for the security, logistics, and management teams. Such costs varied from \$1,200 to \$1,600 per lineman per day, in addition to the \$4,000 blended daily rate.

FEMA Did Not Consider Compliance with Contract Terms

In its review of Cobra's mobilization costs (costs of transporting equipment and people to Puerto Rico), FEMA did not consider compliance with contract terms. Consistent with relevant provisions of the Code of Federal Regulations³, the contract required Cobra to invoice mobilization costs on a cost reimbursement basis (i.e., based on actual costs) rather than at the daily blended rate. However, Cobra charged PREPA a daily rate of \$1.5 million, which represents the blended daily rate for 250 linemen and logistics, and totaled more than \$14 million. FEMA fully reimbursed PREPA for these mobilization costs.

³ See 2 C.F.R. § 200.473 and 200.474(a).
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Conclusion

FEMA determined that Cobra contract costs were reasonable and eligible for the PA grant program without assessing the actual costs incurred under the contract. Additionally, FEMA used PA funds to reimburse PREPA millions of dollars for Cobra contract costs based on an unsound cost eligibility determination. Using the same methodology when analyzing future contracts could lead to more such reimbursements. FEMA's approval of blended daily rates in the Cobra contract may also lead to future requests for proposal and contracts that use blended rates instead of a more transparent rate structure.

Recommendation

Recommendation 1: We recommend the Federal Coordinating Officer for FEMA-4339-PR conduct a comprehensive analysis of Cobra contract costs in accordance with PA grant guidelines and disallow any costs that are not reasonable.

FEMA Comments and OIG Analysis

In its response to our draft report, FEMA concurred with the recommendation. We incorporated FEMA's comments and our analysis of the comments in the report. We also included a copy of FEMA's comments in their entirety in appendix A. FEMA also provided technical comments to our draft report. We evaluated those comments and made necessary changes where appropriate.

FEMA Response: FEMA concurred with our recommendation and described corrective actions necessary to address the issues identified in the report. Specifically, FEMA will update its Job Aid issued in October 2018 entitled *Public Assistance: Reasonable Cost Evaluation* to include additional guidance specific to time and materials contracts and incorporate it in the next version of the *Public Assistance Program and Policy Guide*.

FEMA is also conducting additional analyses to determine whether the actual contract costs are reasonable. FEMA and the Homeland Security Operational Analysis Center⁴ are analyzing the time and quantities claimed by PREPA for cost reasonableness. Based on the results of both analyses, FEMA will make a final determination of the eligibility of the contract costs and disallow any costs that are not reasonable. Estimated completion date is May 29, 2020.

⁴ The Homeland Security Act of 2002 authorizes the Secretary of Homeland Security to establish one or more federally funded research and development center (FFRDC) to provide independent analysis of homeland security issues. The RAND Corporation operates the Homeland Security Operational Analysis Center as an FFRDC for DHS under contract HSHQDC-16-D-00007.



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FEMA acknowledged that it used the terms “contract rates” and “contract costs” interchangeably in the determination memo, project worksheet, and all correspondence and the language it used could have been clearer. FEMA’s intent was to communicate the results of its comparative review of Cobra contract rates with other proposals available to PREPA at the time.

OIG Analysis of FEMA’s Comments: FEMA’s commitment to analyze the reasonableness of time and quantities claimed against the work completed is responsive to our recommendation. We consider this recommendation resolved and open. We will close the recommendation once FEMA provides documentation supporting its final eligibility determination of the contract costs and disallowance of any unreasonable costs. Furthermore, FEMA’s decision to update the *Public Assistance: Reasonable Cost Evaluation Job Aid* and the *Public Assistance Program and Policy Guide* with guidance specific to time and materials contracts is responsive to our recommendation and may help prevent a similar issue from taking place in the future.

It is important to note that FEMA’s comparative analysis of the rates was not sound to conclude that the rates were reasonable. Additionally, PREPA officials and PREPA’s Board of Governors relied on FEMA’s conclusion of cost reasonableness to support its authorization of a fourth amendment to the Cobra contract, which raised the contract amount from \$200 million to \$445 million.

Objective, Scope, and Methodology

This interim report is part of an ongoing audit to determine whether FEMA’s PA grants to PREPA and PREPA’s contracts with Whitefish Energy Holdings LLC and Cobra complied with Federal laws and regulations and PA program guidelines. This report is limited to our review of FEMA’s determination of whether Cobra contract costs were eligible for a PA grant.

We reviewed FEMA’s efforts to determine the cost eligibility of Cobra contract for PW-251. To assess FEMA’s methodology, we reviewed FEMA’s Eligibility Determination Memorandum, supporting analyses and documents, Federal laws concerning the PA program, and FEMA’s *Public Assistance Policy and Program Guide*. We also interviewed FEMA officials who conducted the analyses and approved the Cost Eligibility Determination Memorandum. We did not assess the Cobra contract rates for reasonableness.

We reviewed FEMA’s cost eligibility determination for its PA grant to PREPA, PW-251, between January 2018 and November 2018 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards, except for fully developing all elements of a finding necessary to address the original audit objective. Government auditing



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standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We will issue an audit report addressing the audit objective at the conclusion of the audit.

The Office of Audits major contributors to this report include Carolyn Hicks, Director; Johnson Joseph, Audit Manager; Eddie Jones, Lead Auditor; David Porter, Auditor; Victor Leung, Program Analyst; Jose Torres, Program Analyst; Lindsey Koch, Communications Analyst; and Corinn King, Independent Reference Reviewer.



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Appendix A
FEMA Comments to the Draft Report


U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 11, 2019

MEMORANDUM FOR: Sondra F. McCauley
Assistant Inspector General for Audits

FROM: Thomas Von Essen 
Regional Administrator

SUBJECT: Management Response to Draft Interim Report: "FEMA's Cost
Eligibility Determination of Puerto Rico Electric Power
Authority's Contract with Cobra Acquisitions LLC"
(Project No. 18-044(a))

Thank you for the opportunity to review and comment on this draft interim report. The Federal Emergency Management Agency (FEMA) appreciates the Office of Inspector General (OIG) in conducting its review and issuing this report.

Hurricane Maria's devastating impact caused widespread damage that cut all electricity to the residents of Puerto Rico, as noted by the OIG draft interim report. Under such unprecedented and exigent circumstances, Puerto Rico Electric Power Authority (PREPA), the sole electricity provider in Puerto Rico, entered into a 12-month contract with Cobra Acquisitions LLC (Cobra) to provide storm restoration services. In accordance with applicable federal grant rules, PREPA was responsible for conducting the procurement, selecting the contractor, and managing the grant and project in compliance with the rules associated with the use of federal funds.

Previously, FEMA reviewed the rates, terms and conditions of the Cobra Time and Materials contract and determined:

- (1) PREPA awarded the contract in compliance with the applicable federal procurement under grant standards, which include following the emergency procurement provision of the Commonwealth of Puerto Rico's laws and regulations; and,
- (2) The contract rates were reasonable when compared with other proposals available to PREPA at the time.



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FEMA requested that the Homeland Security Operational Analysis Center (HSOAC) independently review the Cobra contract rates. On March 28, 2019, HSOAC reported its findings to FEMA and FEMA transmitted the report to the OIG. HSOAC concluded that Cobra's contract rates fall within a representative range that is reasonable for emergency work.

FEMA has received PREPA's documentation associated with the complex work, locations and timeline. FEMA and HSOAC are analyzing the time and quantities claimed which, when considered in combination with the previously reviewed contract rates, will determine if the actual contract costs are reasonable.

FEMA understands that clearer language could have been used in the Determination Memo, Project Worksheet, and all correspondence. While FEMA's intent was to communicate the results of its review of the contract rates, FEMA used the terms "contract rates" and "contract costs" interchangeably.

On October 13, 2018, FEMA Headquarters issued a Job Aid entitled *Public Assistance: Reasonable Cost Evaluation*, which FEMA Public Assistance staff use for evaluating contract costs for reasonableness. FEMA will update this Job Aid by including information and additional guidance specific to Time and Materials contracts and incorporate this Job Aid into the next version of the *Public Assistance Program and Policy Guide*.

The draft report contains one recommendation, with which FEMA concurs. Technical comments and a copy of the HSOAC analysis report were previously provided to OIG under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Attachment: Management Response to Recommendations Contained in OIG 18-044 (a)

The OIG recommended that the Federal Coordinating Officer for FEMA-4339-PR:

Recommendation 1: Conduct a comprehensive analysis of Cobra contract costs in accordance with Public Assistance grant guidelines and disallow any costs that are not reasonable.

Response: Concur. FEMA is in the process of conducting additional analysis in accordance with PA grant guidelines to determine if the actual contract costs are reasonable. As FEMA has already determined the contract rates are reasonable, this remaining analysis will focus on the reasonableness of quantities (labor, equipment, and material units) based on the actual scope of work completed. Due to the complex nature of the work and the significant costs associated, FEMA has also requested that HSOAC review the documentation submitted by PREPA to complete its own, independent analysis of the reasonableness of the contract costs. Based on the results of both analyses, FEMA will make a final determination of the eligibility of the contract costs and disallow any costs that are not reasonable. Estimated Completion Date: May 29, 2020.



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Department of Homeland Security

Appendix B

FEMA's December 23, 2017 Letter to Puerto Rico

U.S. Department of Homeland Security
Region II
FEMA-4336-DR-PR
FEMA-4339-DR-PR
P.O. Box 70105
San Juan, P.R. 00936-8105



FEMA

December 23, 2017

Mr. José I. Marrero, Esq., CPA
Governor's Authorized Representative
Government of Puerto Rico
P.O. Box 9023228
San Juan, PR 00902-3228

RE: FEMA-4339-DR-PR
Puerto Rico Electric Power Authority – Emergency Power Restoration
Review of Contract and Funding for Cobra Energy

Dear Mr. Marrero:

Cobra Energy entered into a contract with the Puerto Rico Electric Power Authority (PREPA) on October 19, 2017 to perform emergency repairs to the transmission and distribution systems throughout Puerto Rico as a result of Hurricane Maria. Since the start of the incident period, the majority of Puerto Rico has been without power and there are limited resources available for power restoration on the island. Cobra Energy is currently performing critical emergency repairs to transmission lines that are essential to the restoration of the overall system to transmit and distribute electric power throughout Puerto Rico.

At the request of PREPA, the Federal Emergency Management Agency (FEMA) reviewed the Cobra Energy contract, amendment, and rates for service. Under the exigent circumstances after Hurricane Maria, PREPA awarded this contract in compliance with the emergency procurement provisions of the Commonwealth of Puerto Rico and Executive Orders issued as a result of the disaster. FEMA has also determined the costs under this contract to be reasonable.

FEMA prepared Project Worksheet (PW) #251 for emergency repairs to transmission and distribution lines for \$200,000,000 including the Cobra Energy and anticipate it will be obligated soon. As of today, Cobra Energy has billed PREPA \$174 million and has indicated that it cannot continue to provide services without assurances that payment is forthcoming. Puerto Rico must provide an SF-270 draw down request to FEMA with validated, supporting documentation within 1 day of the obligation of PW #251.



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Mr. José I. Marrero, Esq., CPA, GAR
Re: FEMA-4339-DR-PR
Puerto Rico Electric Power Authority- Emergency Restoration
Review of Contract and Funding for Cobra Energy
December 23, 2016
Page 2

Should you have any questions or require further assistance, please contact Mrs. Ana Luz Morales, Infrastructure Branch Director, at (787) 296-3500 or ana.morales@fema.dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Byrne", is positioned above the printed name.

Michael Byrne
Federal Coordinating Officer
FEMA-4339-DR-PR



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Appendix C

Report Distribution

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