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BY ELECTRONIC MAIL

May 24, 2018

Walter Higgins  
Executive Director  
Puerto Rico Electric Power Authority

**Re: Cobra Acquisitions LLC  
Power Restoration Contract – Observations, Feedback not Required**

Dear Mr. Higgins:

In accordance with the contract review policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the form of the proposed contract between the Puerto Rico Electric Power Authority (“PREPA”) and Cobra Acquisitions, LLC, (“Cobra” or the “Contractor”) which has been submitted to the FOMB for its evaluation (the “Proposed Contract”).

After reviewing the Proposed Contract, the FOMB concludes “Observations, Feedback not Required” because the FOMB has identified areas of risk that do not require feedback from PREPA. It is PREPA’s responsibility to take corrective action based on the observations provided and proceed with the Proposed Contract as it sees fit. Additional observations are set forth in the annex attached hereto.

Please note that our review is solely limited to the compliance of the Proposed Contract with the applicable fiscal plan and the other matters indicated in the annex. The review performed by the FOMB does not cover (i) whether the procurement activities related to the selection of the contractors complied with all the applicable rules and regulations, or (ii) any requirements under the Proposed Contract applicable to the contractors and their compliance therewith. Any material change to the Proposed Contract must be submitted beforehand to the FOMB for its review.

Please note that this letter and its annex do not constitute legal advice nor guarantee that the Proposed Contract complies with all applicable laws, rules, and regulations. This letter

is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was conducted.

This letter is issued only to PREPA and solely with respect to the Proposed Contract.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime A. El Koury". The signature is stylized with a large initial "J" and a long, sweeping underline.

Jaime A. El Koury  
General Counsel

CC: Mr. Gerardo Portela Franco

## Contract between the Puerto Rico Electric Power Authority and Cobra Acquisitions LLC Observations

The Financial Oversight and Management Board for Puerto Rico established a contract review policy pursuant to section 204(b)(2) of the Puerto Rico Oversight, Management, and Economic Stability Act. Accordingly, there was a review of documents submitted by the Government related to the proposed master service contract for PREPA’s electrical grid repairs (the “Agreement”) to be executed by and between the Puerto Rico Electric Power Authority (“PREPA”) and Cobra Acquisitions LLC (“Cobra” or the “Contractor”). After the initial review, there are the following observations:

*i. Fiscal Plan Alignment*

There is clear strategic overlap between the desired outcomes of this contract, and the goals of PREPA’s Fiscal Plan. This Master Service Contract provides PREPA with labor, supervision, tools, equipment, and materials necessary to perform restoration services at various locations in PREPA’s service area.

The contract has no direct financial impact on the Fiscal Plan, so long as the costs to fund this project remain fully FEMA reimbursable (not part of this review). Although there will be no material financial impact on any Fiscal Plan, the reimbursement process should be closely monitored. To the extent there is less than 100% reimbursement, an analysis on impact on the budget must be carried out.

*ii. Competitive and transparent procurement and tender process and consistent with relevant federal regulations*

The observations are based on 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, specifically §200.318 “General procurement standards,” and other applicable FEMA documents:

	General Requirements	Policy Reference	Observations
1	<b>Has the Cost Estimate been provided and was the cost estimate prepared prior to the bids being received?</b>	<b>2 CFR 200.323(a)</b> "The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals."	<p>PREPA has prepared a memo regarding a reasonable cost analysis. In the reasonable cost analysis memo, PREPA states that it performed a cost analysis on the proposed services of Cobra and MasTec by comparing the fully loaded daily rates in the Cobra and MasTec Proposals with the bids proposed in the RFP process as well as to rates from the previous Cobra contract.</p> <p>PREPA has also prepared a high level memo regarding the assignments of the contract ceiling. This memo includes information which was used to determine the amount of funds to allocate against each contractor awarded under this RFP.</p> <p>It is noted that the original documentation provided (including the draft contract) appears to have Cobra being awarded a contract in the amount of \$100M, while updated estimates appear to have the award</p>

	General Requirements	Policy Reference	Observations
			<p>amount at \$700M. The documentation retained in the procurement file should be updated in advance of contract execution.</p> <p>Document reference: Memo regarding Reasonable Cost Analysis.pdf, Memo regarding assignments of contract ceiling.pdf, Contract Draft.pdf</p>
2	<p><b>Does the elimination of proposals based on the evaluations appear to reconcile with the results of the evaluation and bid selection criteria based on the documentation provided and does the RTA appear to accurately reflect the results of the technical evaluation results??</b></p>		<p>It does appear that, overall, the elimination of proposals as described in the Recommendation to Award reconciles with the scoring sheets and evaluation criteria provided. However, minor differences appear to exist between the evaluation data (scoring sheets) and the information within the RTA. These do not appear to impact the outcome or recommendation to award.</p> <p>PREPA should consider reconciling and retaining the final version in PREPA's procurement files.</p> <p>Document reference: Appendix_D_Evaluation_Criteria_02.16.18.pdf, Final for Eval. Report 03.15.18 Analysis - RFP 77844 Electric System Restoration Services dca-jam FINAL.xlsx, Memo regarding Reasonable Cost Analysis.pdf, Recent Review of final grading table with fluor's BAFO ( no change in result).pdf, Evaluation and Selection Report.pdf, att_Cobra Answers_current pricing description of support team rates.pdf</p>
3	<p><b>Are there any other observations?</b></p>		<p>There are various other minor observations that appear to have been made by either OCPC and their consultants and/or the FEMA PDAT team.</p> <p>PREPA should consider addressing these observations prior to executing the contract.</p>

*iii. Commercial terms review*

The initial value is estimated at \$100M and could be changed to \$700M prior to execution (ref. Cobra Acquisitions LLC - OCPC Review Package letter). The cost evaluation received for the work on distribution and transmission lines is lacking in rigor and detail for the contract size (over \$1.4-\$1.7B in total across contractors), and does not provide adequate detail on the methodology behind this estimate. It also does not explain how the work is broken down by each contractor (i.e., Cobra vs. MasTec vs. a third contractor), such that it is impossible to ascertain what would drive the Cobra contract value from \$100M to \$700M.

Considering that the Scope of work will be defined under individual Contract Releases, it is necessary that each one of these releases will address the following points:

- Clear and quantified scope of work and pricing approach.
- Clear definition of Contractor's and PREPA's obligations.
- Schedule to perform the work.
- Progress reporting requirements.
- Start-up and Commissioning requirements, and completion of work definition.

A competitive RFP process was issued, and Cobra is the first contractor to be retained for this work (ref. OCPC letter to FOMB). Clear evaluation criteria appear to have been used for the bid evaluation, with weighted factors covering both qualitative and quantitative aspects. However, no scope of work description was included as part of the RFP documents. The intent is to develop the scope definition under Contract Releases as execution gets under way. There is no evidence that any tender check estimate or "clean-sheet" analysis was done to assist in the tender evaluation process. Further, no evidence provided, nor are there statements in the contract to determine how performance will be measured. It is strongly recommended that PREPA develop key deliverables and performance indicators, and closely monitor against those to provide value assurance.

A comparison was done on the blended daily rate for skilled lineman and equipment for transmission and distribution to the rates from their previous contracts as well as the rates submitted by competitors through the RFP process (Ref. PREPA Memorandum regarding reasonable cost analysis). However, Exhibit B on Contractor's rate structure was not provided as part of the documents to be reviewed.

A Time and materials pricing scheme was selected for this contract, considering that there was no clear scope definition at the time of the RFP. We recommend that, for some of the Contract Releases where this is feasible, PREPA negotiates lump sum pricing for clearly defined scope of work packages.

It is not possible to assess the risk level of the anticipated contract value, given that the scope has not been defined. This therefore leaves PREPA with the risk of cost overruns should the actual level of effort exceed what was anticipated to develop the value mentioned above.

**Observations on compliance with applicable Contracting Laws and Regulations**

The Agreement was evaluated to confirm compliance with applicable Puerto Rico government contracting laws and regulations. Following are some key observations applicable to each contract:

- The invoices do not contain the certifications required by the Code of Ethics for Contractors as per ACT NO. 2-2018, ART. 3.2(e). Although no invoices were submitted for review, Article 3 of the Agreement provides for such certification to be included.

- The Agreement does not indicate that the Contractor is committed to be governed by the provisions of the Code of Ethics for Contractors as per ACT NO. 2-2018, ART. 3.3.
- The Agreement does not mention the specific provision that authorizes PREPA to grant contracts as per P.R. LAWS ANN. Tit. 3, § 8613(b). However, the preamble of the Agreement mentions PREPA's Enabling Act.
- The Contractor's articles of incorporation were not submitted as per P.R. LAWS ANN. Tit. 3, § 8613(d).
- The Agreement does not state the Contractor's employer social security number as per P.R. LAWS ANN. Tit. 3, § 8613(e). Nonetheless, note that the Agreement provides for such information to be included in the signature page.
- The Agreement does not indicate the dates of its execution and effectiveness as per P.R. LAWS ANN. Tit. 3, § 8613(f). However, Article 4.3 of the Agreement provides that the same shall be in effect for a period of 12 months beginning on the day of its execution. Note that the Agreement provides for the execution date to be included in the signature page.
- We cannot comment as to the whether the fees set forth in the Agreement reflect market values as per P.R. LAWS ANN. Tit. 3, § 8614.
- The Agreement does not include a clause stating that the Contractor accepts that he/she knows the ethical standards of its profession and assumes responsibility for its actions as per P.R. LAWS ANN. Tit. 3, § 8615(o). Although Article 21(1) of the Agreement mentions the canons of ethics applicable to the Contractor's profession it does not expressly includes such provision.
- The Governor of Puerto Rico or a person delegated by him has not authorized the Agreement as per ACT NO. 3-2017, ARTICLE 18; OFFICE OF THE CHIEF OF STAFF MEMORANDUM NO. 2017-001; OGPE CIRCULAR LETTER 141-17.
- Evidence that the supplier was registered in PREPA's Bidder Registry does not seem to have been provided as per the Procedures for Purchases by Request of Quotations of Offer Exempted from PREPA's Formal Auction Process, Section III(A).
- Evidence that the Governing Board of PREPA authorized the Agreement for exemption from the bid procedure does not seem to have been provided as per the Procedures for Purchases by Request of Quotations of Offer Exempted from PREPA's Formal Auction Process, Section III(G).
- Evidence that the Executive Director of PREPA authorized to subscribe the Agreement pursuant to a resolution of the Governing Board as per P.R. LAWS ANN. Tit. 22, § 194(b) does not seem to have been provided.