

## IV. General Work Eligibility

Through the PA Program, FEMA provides:

- Grant funding for emergency protective measures and debris removal (Emergency Work)
- Grant funding for permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work)

### A. Categories of Work

To facilitate the processing of PA funding, FEMA separates Emergency Work into two categories and Permanent Work into five categories based on general types of facilities. These categories are shown in Figure 9.

### B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the designated area, with the exception of sheltering and evacuation activities; and
- Be the legal responsibility of an eligible Applicant.<sup>73</sup>

#### 1. Result of Declared Incident

The Applicant is responsible for showing that work is required:

- Due to an immediate threat resulting from the declared incident (for Emergency Work); or
- To address damage caused by the declared incident.

For debris removal, the Applicant must demonstrate that the debris causing an immediate threat was generated during the declared incident period and directly by declared incident.

For temporary repairs, mold remediation, and Permanent Work, the Applicant must demonstrate that damage was caused directly by the declared incident. FEMA does not provide PA funding for repair of damage caused by:

- Deterioration
- Deferred maintenance
- The Applicant's failure to take measures to protect a facility from further damage



### Administrative Plan Requirement for PA funding

In accordance with 44 CFR § 206.207(b), State Administrative Plan, before FEMA provides PA funding for any project, a Recipient must have a FEMA-approved Administrative Plan that describes how it intends to administer the PA Program. A Recipient must submit its Administrative Plan to FEMA on an annual basis. For any new incident that occurs within the year, the Recipient must also submit amendments to its Administrative Plan to address specifics of the new incident.

#### Emergency Work

Address an immediate threat:

- A Debris removal
- B Emergency protective measures

#### Permanent Work

Restoration of:

- C Roads/bridges
- D Water control facilities
- E Buildings/equipment
- F Utilities
- G Parks, recreational, and other facilities

Figure 9. Categories of Work

<sup>73</sup> 44 CFR § 206.223(a).

Tribal or local governments and PNPs must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold,<sup>119</sup> including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation. As a starting point, the Applicant must make independent estimates before receiving bids or proposals.<sup>120</sup> Additionally, the Applicant must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.<sup>121</sup>

FEMA PA staff coordinate with FEMA's Office of Chief Counsel when evaluating whether the Applicant complied with Federal procurement requirements. In the case of non-compliance with Federal procurement requirements, FEMA determines a reasonable cost for the eligible work completed based on all available information and documentation.<sup>122</sup>

## 2. Contracts

FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (T&M). The specific contract types related to each of these are described in FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)*.<sup>123</sup>

The Applicant must include required provisions in all contracts awarded<sup>124</sup> and maintain oversight to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.<sup>125</sup>

FEMA does not reimburse costs incurred under a cost plus a percentage of cost contract or a contract with a percentage of construction cost method.<sup>126</sup>

FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a reasonable time based on the circumstances during which the Applicant could not define a clear scope of work (SOW). T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.<sup>127</sup>

The Applicant should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

<sup>119</sup> The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR § 2.101. The threshold is adjusted periodically for inflation.

<sup>120</sup> 2 CFR § 200.323(a).

<sup>121</sup> 2 CFR § 200.323(b).

<sup>122</sup> 2 CFR § 200.338.

<sup>123</sup> [www.fema.gov/media-library/assets/documents/96773](http://www.fema.gov/media-library/assets/documents/96773).

<sup>124</sup> 2 CFR § 200.326.

<sup>125</sup> 2 CFR § 200.318(b).

<sup>126</sup> 2 CFR § 200.323(d).

<sup>127</sup> 2 CFR § 200.318(j).



Terms and Conditions  
Emergency Contract for PREPA's Electrical Grid Reconstruction  
Page 19 of 39

every calendar year; otherwise, payments under the Agreement shall remain subject to withholding at the source. All invoices shall be segregated by concepts (services, materials, equipment, etc.), to identify the amounts subject to withholding, and avoid undue deductions.

PREPA will deduct and withhold a Special Contribution to PREPA Net the equivalent of one point five percent (1.5%) from payment for services under this Agreement, in compliance with Article 1, Act 48-2013. PREPA shall forward such amounts to the Department of Treasury of Puerto Rico, and shall deliver evidence to PREPA Net of such payments. All amounts withheld pursuant to this clause shall be reimbursed by PREPA to Contractor. Contractor shall include any such reimbursement request as a separate miscellaneous line item on the applicable request for payment.

ARTICLE 40: Discrimination

The Contractor certifies that it is an equal opportunity employer, and does not discriminate by reason of race, color, gender, age, national or social origin, social status, political ideas or affiliation, religion; for being or perceived to be victim or domestic violence, sexual aggression or harassment; for physical or mental disability or veteran status.

ARTICLE 41: Other Taxes

3 All unemployment, retirement, and other Social Security contributions and taxes; all sales, use and excise, privilege, business and occupational taxes, and any other taxes or fees payable by the Contractor are and shall be included as part of his prices.

DM ARTICLE 42: Quality Assurance

The Contractor shall use commercially reasonable efforts to establish an adequate quality control program to satisfy all applicable regulation and requirements specified in the procurement documents. The program shall contain all those measures necessary to assure that all basic technical requisites are fulfilled.

PREPA reserves the right to conduct audits and inspections to the facilities, activities, and/or documents; limited to inspection and quality control documents that are strictly related to and relevant to the performance of Contractor's activities under this Contract; when estimated necessary in order to assure that the quality control program is adequate and is being properly implemented. The Contractor shall provide PREPA access to its facilities and documents; limited to inspection and quality control documents that are strictly related to and relevant to the performance of Contractor's activities under this Contract; so that PREPA, through audits and inspections can verify the quality of the purchased products or services.


ARTICLE 43: Code of Ethics



If, as a result of any uncured violation of applicable law by Contractor, any U.S. Federal agency or the Commonwealth of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Contract, or if any penalty is imposed due to an act or omission by the Contractor, the Contractor shall be responsible for such penalty, disallowed costs, or repayment demand to the extent of its fault and/or responsibility, and shall reimburse PREPA in full within ten (10) days of determination of its appropriate share of such penalty, disallowance, or repayment demand. Any monies paid by the Contractor pursuant to this provision shall not relieve the Contractor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Contract.

ARTICLE 69: Compliance with Commonwealth of Puerto Rico Contracting Requirements

④ The Contractor shall comply will applicable Commonwealth Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico. Particularly: Act No. 237-2004 as amended that establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico and the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16. Available at: <http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16>. Subject to the availability of the respective Government of Puerto Rico Department Offices, the Contractor shall provide the following certifications and sworn statement as applicable in a term of fifteen (15) days after the execution of this Contract:

- 
- 1) An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that Cobra Acquisitions LLC has filed his Income Tax Return for the last five (5) years.
  - 2) Certification issued by the Treasury Department of Puerto Rico which indicates that it does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms.
  - 3) Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues.
  - 5) Certification issued by the Treasury Department of Puerto Rico which indicates that it does not owe Puerto Rico Sales and Use Taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms.
  - 7) Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that Cobra Acquisitions LLC does not owe any tax to such governmental agency.
  - 8) Certification issued by Municipal Revenues Collection Center (MRCC) demonstrating that Cobra Acquisitions LLC has filed the Personal Property Tax Return to such governmental agency. Additionally, if Cobra Acquisitions LLC does not own personal property in the Commonwealth of Puerto Rico, Cobra Acquisitions LLC shall provide a sworn statement which states that:
    - a) Its income is derived and paid for professional services (explain the nature of such services);

Master Services Contract – PREPA's Electrical Grid Repairs Hurricane María  
Page 23

If a Release Letter has been issued to PREPA Net by the Treasury Department, PREPA Net shall be responsible to submit a copy of said Release Letter to PREPA for every calendar year; otherwise, payments under the Agreement shall remain subject to withholding at the source. All invoices shall be segregated by concepts (services, materials, equipment, etc.), to identify the amounts subject to withholding, and avoid undue deductions.

ARTICLE 35: Discrimination

X The Contractor certifies that it is an equal opportunity employer, and does not discriminate by reason of race, color, gender, age, national or social origin, social status, political ideas or affiliation, religion; for being or perceived to be victim or domestic violence, sexual aggression or harassment; for physical or mental disability or veteran status.

ARTICLE 36: Other Taxes

(5) All unemployment, retirement, and other Social Security contributions and taxes; all sales, use and excise, privilege, business and occupational taxes, and any other taxes or fees payable by the Contractor are and shall be included as part of his prices.

ARTICLE 37: Quality Assurance

The Contractor shall use commercially reasonable efforts to establish an adequate quality control program to satisfy all applicable regulation and requirements specified in the procurement documents. The program shall contain all those measures necessary to assure that all basic technical requisites are fulfilled.

PREPA reserves the right to conduct audits and inspections to the facilities, activities, and/or documents; limited to inspection and quality control documents that are strictly related to and relevant to the performance of Contractor's activities under this Contract; when estimated necessary in order to assure that the quality control program is adequate and is being properly implemented. The Contractor shall provide PREPA access to its facilities and documents; limited to inspection and quality control documents that are strictly related to and relevant to the performance of Contractor's activities under this Contract; so that PREPA, through audits and inspections can verify the quality of the purchased products or services.

n.r.



Master Services Contract – PREPA's Electrical Grid Repairs Hurricane María  
Page 31

Contractor and PREPA may supplement or amend the rates set forth on Exhibit B and Exhibit C by written amendment between the parties.

ARTICLE 47: Assignment

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of PREPA.

ARTICLE 48: Subcontracting

✓ The Contractor may not subcontract any of the Services that it has committed to perform or provide pursuant to this Contract without the prior written approval of PREPA, which consent can be provided via email. Such approvals shall not be unreasonably withheld. Such consent to subcontract shall not relieve the Contractor of its full responsibilities under this Contract. Consent to the subcontracting of any part of the services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the Contractor's request for the making of a subcontract between the Contractor and its chosen subcontractor. The Contractor shall be responsible for all services performed by the subcontractor and all such services shall conform to the provisions of this Contract.

ARTICLE 49: Compliance with Commonwealth of Puerto Rico Contracting Requirements

⑥ The Contractor shall comply will applicable Commonwealth Law, Regulations or Executive Orders that regulate the contracting process and requirements of the Commonwealth of Puerto Rico. Contractor shall provide the following certifications and sworn statement as applicable in a term of seven (7) days after the execution of this Contract:

- 1) An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues, assuring that Cobra Acquisitions LLC has filed his Income Tax Return for the last five (5) years.
- 2) Certification issued by the Treasury Department of Puerto Rico which indicates that it does not owe taxes to the Commonwealth of Puerto Rico; or is paying such taxes by an installment plan in full compliance with its terms.
- 3) Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico, Area of Internal Revenues.

A.B.