



FEMA

November 21, 2022

Mr. Manuel Laboy
Executive Director
Central Office for Recovery
Reconstruction and Resiliency, COR3
Governor's Authorized Representative
Commonwealth of Puerto Rico
P.O. Box 195014
San Juan, PR 00918-5014

Ms. Mary Zapata
Deputy Executive Director of Operations
PR Electric Power Authority
#1110 Ponce de Leon Avenue
San Juan, PR 00936

Re: FEMA-4339-DR-PR
PR Electric Power Authority, PA ID 000-UA2QU-00
Grants Manager Project 49848
FEMA Public Assistance Eligibility Determination
Log ID: 25974

Dear Mr. Laboy and Ms. Zapata:

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) has determined that the work and costs described in the referenced project are partially ineligible for Public Assistance funding. Please see the enclosed FEMA Public Assistance Determination Memorandum (DM) for detailed information on this determination.

The PR Electric Power Authority (Applicant) may appeal this determination to the Regional Administrator, pursuant to Title 44 of the Code of Federal Regulations § 206.206, Appeals. The appeal may be submitted electronically via the FEMA Grants Portal/Grants Manager System (GM) or submitted via email to fema-r2pa-appeals@fema.dhs.gov. If the Applicant elects to file an appeal, the appeal must: 1) contain documented justification supporting the Applicant's position, 2) specify the monetary figure in dispute, and 3) cite the provisions in federal law, regulation, or policy with which the Applicant believes the initial action was inconsistent. The

Mr. Laboy and Ms. Zapata
PR Electric Power Authority, GM Project 49848
Public Assistance Eligibility Determination
November 21, 2022
Page 2 of 2

appeal must be submitted to COR3 by the Applicant within 60 days of its receipt of this determination. COR3's transmittal of that appeal, with recommendation, is required to be submitted to our office within 60 days of the receipt of the Applicant's letter.

Although the DM includes determinations that are equally applicable to Project 49831, the dollar amounts remain subject to validation and any necessary adjustments. The appeal rights set forth in this letter are applicable only to Project 49848 (PW 466). A separate DM will be issued for Project 49831 upon completion of the validation process.

Should you have any questions, please contact FEMA Public Assistance Correspondence Unit at fema-pr-pacorrespondence@fema.dhs.gov.

Sincerely,

José G. Baquero
Federal Disaster Recovery Coordinator
Joint Recovery Office Director of Puerto Rico
FEMA-4339-PR-DR/FEMA-4473-PR-DR

Enclosure:
FEMA PA Eligibility Determination Memorandum

**ELIGIBILITY DETERMINATION MEMORANDUM
PR ELECTRIC POWER AUTHORITY, PA ID 000-UA2QU-00
FEMA-4339-DR-PR**

Applicant Type	<input checked="" type="checkbox"/> State Agency <input type="checkbox"/> Local Government <input type="checkbox"/> Tribe <input type="checkbox"/> Private Nonprofit		
Grants Manager: <i>Only fill out this section if the project is in Grants Manager.</i>		EMMIE: <i>Only fill out this section if the project worksheet is in EMMIE.</i>	
Project No.	(1) 49848 (2) 49831	EMMIE Project Worksheet No.	(1) 466 (2) N/A
Version No.		Version No.	0
Damage Inventory No.	(1) 134886 (2) 142458	EMMIE Project Cost	\$
		Total Amount Obligated	\$250,000,000
Project Title	[49848] MEPA145-TRANSMISSION-COBRA [49831] MEPA161-TRANSMISSION-COBRA		
Project Size	<input checked="" type="checkbox"/> Large <input type="checkbox"/> Small <i>(Potentially subject to Net Small Project Overrun appeal)</i>	Category of Work:	B
Issue(s):			
Amount at Issue	SEE ATTACHMENTS A, A-1, A-2	Eligibility Issue Type(s)	<input type="checkbox"/> Applicant Eligibility <input type="checkbox"/> Facility Eligibility <input checked="" type="checkbox"/> Work Eligibility <input checked="" type="checkbox"/> Cost Eligibility
Amount Denied	SEE ATTACHMENTS A, A-1, A-2		
Issue Keyword(s)	Allowable Costs; Direct Result of Disaster		

Project Description:

Hurricane Maria produced heavy rain, strong winds, flooding, and mudslides, which caused extensive damage throughout the Commonwealth of Puerto Rico between September 17, 2017, and November 15, 2017. On September 20, 2017, the President issued a major disaster declaration (FEMA-4339-DR-PR). This major disaster declaration, as subsequently amended, authorized Public Assistance (PA) for all 78 of Puerto Rico's municipalities. The PR Electric Power Authority (PREPA), a public corporation of the Government of Puerto Rico, is the sole provider of electricity in Puerto Rico.

To perform emergency repairs and restore power to the island, PREPA entered into Memoranda of Understanding with multiple investor-owned and municipality-owned utility companies, as well as commercial contracts.

In February 2018, PREPA issued RFP-77844 to procure one or more contracts to perform electric system restoration services. In response to the RFP, Cobra Acquisitions LLC (Cobra)

submitted its proposal dated March 2, 2018 to PREPA (Proposal).¹ On May 26, 2018, PREPA and Cobra entered into a Master Service Contract for PREPA's Electrical Grid Repairs – Hurricane Maria (Contract 2).² Contract 2 was awarded on a time-and-materials (T&M) basis – meaning that PREPA would pay Cobra based upon days worked, multiplied by the daily rates for the work, plus the cost of any necessary materials. Contract 2 contains a not-to-exceed ceiling of \$900 million.

Contract 2 covers work performed between July 21, 2018 and May 26, 2019, and FEMA prepared (1) Grants Manager Project No. 49848 and Project Worksheet (PW) 466 to cover the period of time for which a 100% federal cost share remained in effect (July 21, 2018 to August 16, 2018), and (2) Grants Manager Project No. 49831 for the balance of the term of Contract 2 (August 17, 2018 to May 26, 2019) for which a 90/10% federal/Commonwealth cost share was in effect.

For historical perspective, FEMA notes that PREPA and Cobra had previously entered an Emergency Master Service Agreement for PREPA's Electrical Grid Repairs – Hurricane Maria, as amended (Contract 1),³ which covered work performed by Cobra “at various locations in PREPA's service areas” between October 19, 2017 and July 20, 2018.⁴

For purposes of this Eligibility Determination Memorandum (DM), neither PREPA's compliance with federal procurement and contracting requirements nor the reasonableness of the rates Cobra charged to PREPA are at issue. Although the reasonableness of certain terms of Contract 2 is questionable (for example, not including an unskilled labor rate), contract costs are generally considered reasonable when an applicant adheres to full and open procurement under applicable Federal procurement under grants requirements, and the scope of work in the contract and level of effort is consistent with respect to the eligible scope of work.⁵

Notwithstanding the presumption of reasonableness of the overall costs for the *general* scope of work (SOW) performed under Projects 49848 and 49831, FEMA did review the costs claimed by PREPA by category to determine whether certain categories of activities are *authorized* under the terms of Contract 2, and for eligibility per FEMA regulations, policy, and guidance. As such, this DM is based on whether the claimed costs at issue (1) were authorized under Contract 2, and/or (2) can be directly tied to the performance of eligible work and therefore, reimbursable.

Issue:

Are costs claimed by PREPA under Projects 49848 in the aggregate amount of \$74,753,396.74 eligible for PA funding?

Applicable Statutes, Regulations, and Policies in Effect as of the Declaration of the Emergency or Disaster:

¹ See Grants Manager/Grants Portal (GM/GP), Documents Tab, 49848-DR4339-PW466-PROPOSAL_CONTENT_FINAL.pdf.

² See GM/GP, Project 49848, Documents Tab, MEPA145-COBRA+CONTRACT+SIGNED.pdf.

³ See GM/GP, Project 49797, Documents Tab, 49797-DR4339-PW251-PREPA+MSA-Cobra+Complete.pdf.

⁴ Project 49797, PW 251, Versions 0, 1 and 2.

⁵ FEMA Job Aid, *Public Assistance: Reasonable Cost Evaluation*, at 1 (Oct. 13, 2018).

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93-288:

Stafford Act § 403(a)(4), *Essential Assistance*

- Title 44 of the Code of Federal Regulations (C.F.R.):

44 C.F.R. § 206.32(f), *Definitions*

44 C.F.R. § 206.223, *General Work Eligibility*

- FEMA Policy:

Public Assistance Program and Policy Guide, (PAPPG), FP 104-009-2 (Apr. 2018):

PAPPG, at 9, 19, 21-22, 30, 34, 133

- Other Applicable Statutes and Regulations:

2 C.F.R. §§ 200.403(a) and (g)

Analysis:

Section 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”) authorizes FEMA, in relevant part, to make contributions to State and local governments and certain private nonprofit organizations for performing work or services essential to meeting immediate threats to life, public health and safety, and improved property resulting from a major disaster. FEMA categorizes work and services of this nature as “emergency protective measures.”⁶

The four basic components of eligibility for PA funding are: (1) applicant, (2) facility, (3), work, and (4) cost.⁷ The applicant is responsible for providing documentation to support that each component is eligible.⁸

For work to be eligible, FEMA implementing regulation, 44 C.F.R. § 206.223(a)(1) and applicable FEMA policy, an applicant must demonstrate that the work is required to address damage caused directly by the disaster.⁹

For costs to be eligible, an applicant must demonstrate that the costs are directly tied to the performance of eligible work, adequately documented, and necessary and reasonable to accomplish the work properly and efficiently.¹⁰ When work is performed under a contract, FEMA provides PA funding based on the terms of a contract provided that the contract complies

⁶ *Public Assistance Program and Policy Guide*, FP 104-009-2 (PAPPG), at 19 (Apr. 2018).

⁷ *Id.*, at 9.

⁸ *Id.*, at 9, 133.

⁹ *See id.*, at 19.

¹⁰ *Id.*, at 21-22; 2 C.F.R. §§ 200.403(a) and (g).

with applicable federal procurement and contracting requirements.¹¹ FEMA is not aware of any procurement or contracting compliance issues affecting Contract 2.

As noted above, pursuant to the RFP and Proposal, PREPA and Cobra entered into Contract 2. As set forth in Article 1 of Contract 2, the general SOW is for Cobra to perform *hurricane restoration and reconstruction services at various locations in PREPA's service areas*. The specific services are to be evidenced by a Contract Release for each line, feeder, segment, substation, or switchyard project (sub-projects). Nevertheless, Appendix A of the Proposal contemplates that the overall SOW under Contract 2 will be for "Phase 2 and Phase 3 Restoration" stating that almost 65% of the transmission system and almost 85% of the distribution system has been restored.¹² Therefore, FEMA has concluded that the Contract 2 SOW sub-projects were those necessary to complete the restoration of the balance of the electrical system (35/15%) that was not completed under Phase 1 (Contract 1).

1. Access Mapping and Environmental Remediation

PREPA submitted costs in the amount of \$2,379,837.65 under Project 49831 for access mapping activities consisting primarily of obtaining and recording GPR coordinates and taking photos of structures whose locations deviated from their original locations. PREPA also claimed costs in the amount of \$779,638.16 under Project 49848 and submitted costs in the amount of \$2,967,605.62 under Project 49831 for environmental remediation activities consisting primarily of soil stabilization measures and the installation of erosion controls in the vicinity of structures 56 and structures 88, 89 and 90–96 and associated access roads.

Both the access mapping and environmental remediation activities were performed in relation to the work previously performed by Cobra under Contract 1 for which PREPA claimed costs for 100% completed work, and FEMA reimbursed said costs under Project 49797/PW 251.

FEMA notes that for the access mapping, only one Contract Release under Contract 2 was issued by PREPA, which was limited to work relative to Line 4001-03 (Contract Release 81388-014, as amended) in the total amount of \$551,144. Therefore, per the terms of Contract 2, PREPA did not authorize the performance of approximately 75% of the access mapping work for which it is submitted associated costs. In this regard, FEMA notes that PREPA has not yet paid any of the invoices for the access mapping work.¹³ FEMA provides PA funding based on the terms of a contract. FEMA has determined that the terms of Contract 2 do not support the billing by Cobra or payment by PREPA of the costs associated with access mapping work that was not specifically authorized by PREPA.

In its response to a Request for Information, PREPA asserts that access mapping and environmental remediation is allowed under Contract 2 and points to the SOW stating, "they are activities necessary to perform the power restoration services in compliance with FEMA guidelines and regulations."¹⁴ In support of its position, PREPA notes that Article 53(DD) of Contract 2 further requires compliance with FEMA policies. This identical provision appears in

¹¹ PAPPG, at 30.

¹² See GM/GP, Documents Tab, MEPA145+-+APPENDIX A-Technical_Specificactions_rev_02.16.pdf.

¹³ See GM/GP, Documents Tab, Access Mapping Closeout- Revised Final_.pdf (page 20).

¹⁴ See GM/GP, Project 49831, Documents Tab, 49831 8-19-22 RFI Response sheet-.pdf (uploaded 09/06/2022).

Contract 1. As implicitly acknowledged by PREPA, the access mapping and environmental remediation activities were required to be performed under Contract 1, but apparently were not.

As stated in the RFP, the Contract 2 SOW sub-projects encompass those needed to complete “Phase 2 and Phase 3” restoration work, not the performance of work that Cobra failed to perform under Contract 1. Per Articles 7 and 53E of Contract 2, changes in the services or work to be performed within the general SOW – in particular those causing an increase or decrease in the cost of, or time required for, the performance of services contemplated under Contract 2, must be the subject of a written change order. Per PREPA, “no amendments or any other modifications were formulated to change the contract terms established [in Contract 2]”.¹⁵

Both the access mapping and environmental remediation required the diversion of resources intended to be used for the Phase 2 and Phase 3 restoration work contemplated by Contract 2. FEMA notes that for access mapping, Cobra assigned 391 T&D linemen over 6 days to perform this work, and for environmental remediation, Cobra assigned 646 T&D linemen over 52 days. By doing so, the time needed to perform the contemplated Contract 2 SOW was extended and the cost of the work increased.

Regardless of whether the work was the subject of a Contract Release, the Contract 2 SOW does not include the performance of access mapping and environmental remediation required in connection with work previously performed by Cobra, accepted by PREPA, and reimbursed by FEMA under Contract 1 as 100% completed work. As such, to be authorized under the terms of Contract 2, the access mapping and environmental remediation activities would have to have been the subject of a change order or an amendment to Contract 2, which they were not.

For the reasons set forth above, FEMA has determined access mapping (including those in relation to Line 4001-03) and environmental remediation activities are not authorized under the terms of Contract 2. As a result, the costs associated with these activities are not eligible for reimbursement. FEMA notes that PREPA has not yet paid any of the 12 invoices submitted for access mapping activities.

2. Line 2702-01 Work

PREPA submitted costs in the amount of \$27,150,358.63 under Project 49831 for work performed on or in the immediate vicinity of a distribution feeder line identified as L2702-01.¹⁶

Based on FEMA’s review of invoices and other documentation, submitted by PREPA in support of its costs claimed under Contract 1 (GM Project 49797), Cobra first performed storm restoration work on distribution feeder line L2702-01 between April 4, 2018 and June 19, 2018.¹⁷ PREPA claimed costs and FEMA approved PA funding in PW 251 for this work in the aggregate amount of \$6,864,666.65. Included in the support documentation were copies of Contract Release #79503-00079 and relevant Final Inspection Report – representing the

¹⁵ *Id.*

¹⁶ FEMA notes that PREPA has not paid Cobra the costs billed to PREPA for work on L2702-01 under nine separate invoices. *See* GM/GP, Documents Tab, 2702-01 Closeout Package Final.pdf (page 5).

¹⁷ *See* GM/GP, Documents Tab, 49797-DR4339-PW251-2702-01 Closeout Final_Part1.pdf. through 49797-DR4339-PW251-2702-01 Closeout Final_Part9.pdf.

authorization of and acceptance by PREPA of the storm restoration work for L2702-01 under Contract 1.¹⁸

Based on FEMA's review of the invoices, daily work logs, location maps, and other related information, FEMA has verified that *some* of the work performed on L2702-01 was necessary to correct deficiencies or omissions in the work previously performed and paid for under Contract 1.¹⁹ FEMA notes that this work was undertaken by a total of 2,208 linemen over a 37-day period, and associated costs total \$12,201,594.89. The duplicated work locations are identified in Grants Manager/Grants Portal.²⁰

FEMA need not consider whether this duplicated work is authorized under Contract 2 because FEMA has determined that PREPA previously accepted and paid Cobra for the partial restoration of L2702-01 per Contract Release #79503-00079 and relevant Final Inspection Report, and PREPA was previously reimbursed by FEMA for this work. Therefore, to reimburse PREPA for this work and associated costs in the amount of \$12,201,594.89 would be a duplication of previously provided PA funding for the original restoration work. Furthermore, FEMA has determined that the duplicated work was required as a result of deficiencies or omissions in work previously completed and not as a direct result of the disaster as required by 44 C.F.R. § 206.223(a)(1) and FEMA policy.²¹ As a result, the costs cannot be tied directly to the performance of eligible work and are therefore not themselves eligible.²²

3. *Training Activities*

PREPA is claiming costs in the amount of \$753,954.44 under Project 49848 and submitted costs in the amount of \$10,947,042.43 under Project 49831 for various training courses and activities, including, as described in the Daily Work Logs, climbing competence, bucket rescues, pole setting, pole framing, pole top rescues, driver's awareness, tying rope knots, and flagging. In several Daily Work Logs, the training is noted as being needed to renew certifications. PREPA also submitted costs for "mandatory safety trainings."

As a preliminary matter, FEMA notes that although Contract 2 is not a mutual aid agreement, FEMA considers training and exercises performed by a "Providing Entity" under a mutual aid agreement to be ineligible work.²³ This policy is based on the fact that these activities do not directly benefit or support the performance of the eligible scope of work. Therefore, FEMA considers the associated costs to be indirect at best and not chargeable to any one project.

Contract 2 and the labor rates payable thereunder are predicated upon the furnishing by Cobra of skilled T&D linemen to perform the SOW. That Cobra was supplying PREPA with skilled linemen is made clear in the RFP and abundantly clear in Cobra's Proposal.²⁴ The Contract 2 SOW sub-projects do not include the conduct by Cobra, in its sole discretion, of training courses

¹⁸ *Id.*

¹⁹ See Attachment A-2, Tab "Previous Work".

²⁰ See GM/GP, Documents Tab, DL-2702-01 conflicting points big picture.pdf.

²¹ PAPP, at 19.

²² *Id.*, at 21.

²³ *Id.*, at 34.

²⁴ In its Introduction Letter included in the Proposal, Cobra states that its "wide range of services ensures success in meeting the specific requirements of this project. In addition, our...high level of productivity and efficiency increase the overall value of our services... [and our] group has the capabilities to ensure quality, time, and cost-effective results for work in this RFP in full compliance with your specifications and requirements."

and exercises for its workers. While Article 39 of Contract 2 does require that Cobra comply with all applicable federal, state, and local occupational safety and health regulations, it is solely the obligation/responsibility of Cobra for ensuring that its employees are adequately trained to ensure adherence to the terms of Contract 2. As such, the training-related costs should be characterized as indirect costs or general/administrative expenses, which are included in the daily rates per Article 44.1 of Contract 2.

FEMA provides PA funding for contract costs based on the terms of the contract.²⁵ Because the training-related costs are not authorized under Contract 2, FEMA cannot approve funding for these costs. Additionally, FEMA has concluded that PREPA has not demonstrated that these discretionary training activities were required as a direct result of the disaster as required by 44 C.F.R. § 206.223(a)(1) and FEMA policy.²⁶ As a result, the costs cannot be tied directly to the performance of eligible work and are not themselves eligible.²⁷

4. *Equipment Maintenance*

PREPA is claiming costs in the amount of \$2,364,148.05 under Project 49848 and submitted costs in the amount of \$10,182,641.44 under Project 49831 for various maintenance activities described generally, and also more specifically, as including cleaning trash and discarded materials off of trucks, cleaning and restocking of tools on trucks, making repairs, ensuring correct mechanical operation of bucket trucks, verifying inspection dates, power washing equipment, and making sure “all is in good working order”.

Under Project 49848, Cobra charged PREPA daily blended T&D linemen rates for a total count of 13 days and 480 linemen solely for the performance of maintenance activities. Under Project 49831, Cobra charged PREPA daily blended T&D linemen rates for a total count of 53 days and 1,738 linemen solely for the performance of maintenance activities.

As set forth in Article 3 of Contract 2, “...PREPA agrees to pay and [Cobra] accepts that PREPA will make payment *for the work performed* on a Time and Materials (Equipment) basis at the rates, and subject to the terms, set forth in Exhibit B and Exhibit C.”

Per Exhibit C of Contract 2, the blended T&D linemen rate charged to PREPA is made up of daily labor rates and daily rates for standard equipment, such as bucket trucks, semi-tractors, and cranes.

As a general rule, equipment rates, whether hourly or daily, are understood to include all costs associated with the ownership and operation of equipment including fuel and oil, equipment overhaul (labor, parts, and supplies), and maintenance (labor, parts, and supplies). Therefore, the rates charged by Cobra to PREPA when the equipment was being operated to perform power restoration work include the costs associated with activities for which Cobra is also directly (and independently) billing PREPA and for which PREPA is, in turn, requesting PA funding. As such, FEMA has determined that costs billed exclusively for Cobra’s performance of equipment-related maintenance activities are duplicative of costs claimed for the sub-projects making up the general SOW. Moreover, it is Cobra’s responsibility under Contract 2 to supply the equipment

²⁵ PAPP, at 30.

²⁶ *Id.*, at 19.

²⁷ *Id.*, at 21.

necessary to perform the SOW. Therefore, the costs of doing so are rightly borne by Cobra. For these reasons, FEMA is disallowing these costs.

5. Standby - No Work Performed

On approximately 33 days, Cobra did not perform work on any poles, conductors, transformers, anchors, cross arms, insulators, or services (the categories of work specified on each Daily Work Log). Associated billings and costs are for a total of 457 linemen in the amount of \$2,454,001.19 under Project 49848, and for a total of 685 linemen in the amount of \$4,073,469.84 under Project 49831.

Article 3 of Contract 2 states that payment will be made for work performed. On those days for which no restoration work was performed by Cobra, and were spent for example, “awaiting PREPA to release work...”, “waiting for PREPA to release access clearance for new line segment...”, and “waiting on new work orders from PREPA...”, FEMA has concluded that the terms of Contract 2 do not support the billing or payment of costs for labor and equipment that were not actively engaged in work necessary to carry out any SOW sub-projects. Therefore, FEMA is disallowing the costs claimed by PREPA for days on which no work was performed by Cobra on PREPA’s electrical power system components.

6. Demobilization – Blended Rates

Cobra billed PREPA and PREPA is claiming costs under Project 49831 for demobilization activities in the amount of \$39,940,394.07. Demobilization costs in the amount of \$25,309,534.35 were billed to PREPA based on the blended T&D linemen daily rates and calculations illustrated in Cobra’s invoices.

Per Exhibit B (the Contractor’s Rate Schedule) of Contract 2, the term “reimbursable items” is defined to include “any items and costs associated with mobilization and demobilization.” Exhibit B states that reimbursable items shall be reimbursed at cost. The term “at cost” is understood to mean actual costs. Nevertheless, Cobra billed demobilization-related labor and equipment costs based on the daily blended T&D linemen rate formula. Exhibit B expressly distinguishes between the billing basis for work performed and for demobilization. The demobilization costs billed by Cobra in excess of the actual costs stipulated in Contract 2 are not authorized under Contract 2. Therefore, FEMA cannot approve funding for these costs. In the absence of documentation to support the actual costs of demobilization payable under Contract 2, FEMA is, at this time, disallowing all of the demobilization costs that were billed to PREPA based on the daily blended T&D linemen rate formula. FEMA notes that PREPA has only paid approximately 16.4% of these costs (\$4,157,230.97)

Eligibility Determination: ☒ Partially Approved ☐ Denied

As set forth above, FEMA has determined that costs in the aggregate amount of \$74,753,396.74 under Projects 49848 and 49831 are not supported by the terms of Contract 2 and/or cannot be tied to the performance of eligible work. Therefore, these costs are not eligible for PA funding.

For Project 49848, obligated advance funding totals \$250,000,000 under PW 466 Version 0. Therefore, in Version 1, FEMA will deobligate advance funding in excess of the aggregate amount of costs paid to date by PREPA and determined by FEMA to be eligible in the amount of

\$49,278,985.61.²⁸ This deobligation will include a line item in the PW 466 Version 1 for the ineligible costs in the amount of \$5,599,775.33 that are the subject of this DM.

For Project 49831, approved funding will be limited to only those costs *paid to date* by PREPA and determined by FEMA to be eligible in the amount of \$123,492,481.52. This amount takes into account costs in the amount of \$26,527,380.30 determined to be ineligible that are tied to paid invoices. Costs in the aggregate amount of \$41,534,345.92 for currently unpaid invoices (if and to the extent subsequently paid by PREPA) will be disallowed. Attachment A-2 reflects the breakdown of these ineligible costs between paid and unpaid invoices.

Although currently included in the costs that are disallowed per this DM, FEMA notes that for the days on which the work/costs claimed have been determined to be ineligible for the reasons set forth in this DM, costs for the man-camp are considered eligible and shall be calculated by FEMA based on the actual head count of rostered personnel in the field as shown on the relevant invoices.

FEMA notes that under the terms of Contract 2 – specifically, Exhibit B (the Contractor’s Rate Schedule), the amount that PREPA is required to reimburse Cobra includes the actual amount of taxes (including withholding) paid by Cobra to the Government of Puerto Rico in excess of 8.5% so that Cobra receives the same amount that it would have received under Contract 2 if Cobra were exempt from such taxes. If, at closeout, PREPA provides to FEMA documentation demonstrating the actual amount of taxes paid to the Government of Puerto Rico in excess of said 8.5% threshold, FEMA will at that time deduct the amount of the taxes included in the actual amount of taxes paid that are associated with the ineligible work/costs addressed in this DM. In this regard, FEMA notes that taxes associated with ineligible work and/or costs are also ineligible for PA funding.

Preparation and Review:

Preparer: Dana Waller, PA Program Analyst

Office of Chief Counsel Reviewer: Katherine E. Ruiz Díaz, Attorney Advisor

Approval:

PA Management: Danna Planas Ocasio, Infrastructure Division Director

DANNA E
PLANAS OCASIO

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Signature: _____

Date: _____

Document Index:

²⁸ There will also be adjustments made to the aggregate amount of the invoices submitted by PREPA in the aggregate amount of \$4,098,402.04 for costs falling under the period of performance of Project 49831 or Project 49797 (PW 251). See GM/GP, Documents Tab, 49848 - DR4339PR - DVS Final.xlsx.

Document Description	File Name
Contract 2	(Project 49848) MEPA145-COBRA+CONTRACT+SIGNED.pdf
RFI	RFI 49831-DR4339-COBRA's second contract documents.pdf
RFI Response	49831 8-19-22 RFI Response sheet- .pdf
Proposal	49848-DR4339-PW466-PROPOSAL_CONTENT_FINAL.pdf
Proposal Appendix A	MEPA145+-+APPENDIX_A-Technical_Specificactions_rev_02.16.pdf
Proposal Appendix B	MEPA145+-+Apendix+B+of+Proposal+-+Cobra.pdf
Contract 1	49797-DR4339-PW251-PREPA+MSA-Cobra+Complete.pdf
Contract Release 81388-014	81388---R14--resumen.pdf
Amendment to Contract Release 81388-014	81388- 0014--E1.pdf
Contract 1 Closeout Package – Line 2702-01	49797-DR4339-PW251-2702-01 Closeout Final_Part1.pdf. through 49797-DR4339-PW251-2702-01 Closeout Final_Part9.pdf
Closeout Package	Access Mapping Closeout- Revised Final_.pdf
Location Map	49797-DR4339-PW251-2702-01 LOCATION MAP.pdf
Location Map	49831-DR4339-MEPA161 DL2702-01 Location Map.pdf
Locations Map	DL-2702-01 conflicting points big picture.pdf
Master Table of 49831 Invoices	49831-DR4339-MEPA161-Master Table Version 0 2.22.22.xlsx
Master Table of 49849 Invoices	Updated PW466 Master Table 10.20.22 final with discounts and payments

Ineligible Work Breakdown	MEPA161 Ineligible work details rev.1 w payment.xlsx
Invoice Payment Status	MEPA161 Summary of invoice Payment Status.xlsx
Ineligible Work Breakdown	49848 Ineligible work detail.xlsx
Invoice Payment Status	PW466 Summary of invoice Payment status.xlsx
Validation of 49848 Costs	49848 - DR4339PR - DVS Final.xlsx

ATTACHMENT A

Project 49848: Total Invoice Costs Claimed: \$61,609,558.08 (pre-discounts/credits)*
Total Costs Paid by PREPA to Date: \$57,330,158.70 (post-discounts/credits)
Total Ineligible: \$5,599,775.33

* Please note that there are costs billed under one invoice (#1800-09) that are included in the costs considered by FEMA to be claimed by PREPA, but have not yet been paid. The costs billed in Invoice #1800-09 are not affected by this DM. *Please see* GM/GP, Project 49848, Documents Tab, PW466 Summary of invoice Payment Status.xlsx. If these costs are paid, in whole or in part, by PREPA, reimbursement of eligible costs will be made in a Version to PW 466.

Project 49831: Total Invoice Costs Claimed: 309,411,741.36 (pre-discounts/credits)*
Total Costs Paid by PREPA to Date: \$150,019,861.82 (post-discounts/credits)
Total Ineligible: \$68,061,726.22
Total Current Deductions – Paid Invoices: \$26,527,380.30

* Please note that there are costs billed under a number of invoices that are included in the costs considered by FEMA to be claimed by PREPA, but have not yet been paid. These unpaid invoices represent approximately 50% of the invoices submitted by PREPA to FEMA, and include almost all of the access mapping and demobilization invoices. *Please see* GM/GP, Project 49831, Documents Tab, MEPA161 Summary of invoice Payment Status.xlsx. If these costs are paid, in whole or in part, by PREPA, reimbursement of eligible costs and the disallowance of ineligible costs will be made in a Version or Versions to the Project's PW.

PROJECT-SPECIFIC BREAKDOWN OF DEDUCTIONS ATTACHED (ATTACHMENTS A-1 and A-2)