

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

November 2, 2017

The Honorable Brock Long
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20024

Dear Mr. Long:

I write to request information about the role of the Federal Emergency Management Agency (FEMA) in providing oversight of taxpayer dollars used to fund the repair of Puerto Rico's electrical grid. As of October 31, more than 40 days after Hurricane Maria made landfall, nearly 70% of Puerto Rico is still without power.¹ As efforts to restore power across the island continue, it is imperative that any taxpayer dollars used in this effort are spent effectively and are not subject to waste, fraud, or abuse.

The Puerto Rico Electric Power Authority (PREPA) awarded a \$300 million contract to Whitefish Energy Holdings, LLC (Whitefish)—a small Montana company with little disaster response experience—to coordinate the electrical grid restoration.² Despite PREPA's recent announcement that it would be cancelling the contract, several significant concerns remain.³ I am particularly troubled by two recent revelations: first, PREPA may already have paid Whitefish using federal disaster relief funding, possibly without FEMA's knowledge,⁴ and second, PREPA has awarded another large contract that contains questionable terms and implicates hundreds of millions of federal taxpayer dollars.⁵

¹ Government of Puerto Rico, Dashboard (www.status.pr/home) (accessed Oct. 31, 2017).

² See *Puerto Rico Turns to Unproven Montana Company for Massive Power Restoration Job, But No One Knows Why*, Weather Channel (Oct. 16, 2017) (weather.com/news/news/puerto-rico-power-whitefish).

³ See *Puerto Rico: Whitefish energy grid deal to be scrapped*, BBC News (Oct. 29, 2017) (www.bbc.com/news/world-us-canada-41795774).

⁴ FEMA, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 30, 2017).

⁵ See *Echoes of Whitefish surface in \$200M Puerto Rico grid deal*, E&E News (Oct. 31, 2017) (www.eenews.net/stories/1060065137).

I have recently learned additional details about this contract, including the possibility that PREPA may be using federal disaster relief funds to pay Whitefish. Between October 10 and October 23, 2017, FEMA awarded more than \$215 million in Public Assistance grant funding directly to PREPA for power restoration efforts.⁶ A FEMA official informed Committee staff, “It is possible that FEMA funds will be used by Whitefish.”⁷ The FEMA official also indicated that FEMA did not review and approve PREPA’s actual expenses prior to awarding the \$215 million in Public Assistance funds.⁸ Although FEMA issued an official statement representing it “has not provided any reimbursement to Puerto Rico for the PREPA contract with Whitefish,”⁹ it is possible that PREPA has already been using federal taxpayer dollars to pay the company.

The costs specified in PREPA’s contract with Whitefish appear to be significantly higher than what PREPA would have paid had it initially accepted assistance offered through the American Public Power Association (APPA) shortly after Hurricane Maria struck the island. The members of the APPA, approximately 1,400 public power utilities across the United States (including PREPA), routinely provide on-the-ground assistance rebuilding energy infrastructure damaged by natural disasters through mutual aid agreements.¹⁰ In fact, such APPA mutual aid agreements were activated following Hurricanes Harvey and Irma, allowing member utilities to rapidly deploy skilled personnel and equipment to repair damaged energy infrastructure in Texas and Florida.¹¹ Under its contract with Whitefish, PREPA will pay individual subcontractors hourly rates of between \$319 and \$462, in addition to nightly lodging fees of \$332 per worker and a daily charge of \$80 per worker for food.¹² However, at least two of these subcontractors,

⁶ *FEMA Approves More than \$500 Million in Assistance to Puerto Rico*, FEMA Press Release (Oct. 23, 2017) (www.fema.gov/news-release/2017/10/23/4339/fema-approves-more-500-million-assistance-puerto-rico).

⁷ *Id.*

⁸ FEMA, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 30, 2017).

⁹ *FEMA Statement on Puerto Rico Electric Power Authority’s Contract with Whitefish* (Oct. 27, 2017) (www.fema.gov/news-release/2017/10/27/updated-fema-statement-puerto-rico-electric-power-authoritys-contract).

¹⁰ *See Puerto Rico Turns to Unproven Montana Company for Massive Power Restoration Job, But No One Knows Why*, Weather Channel (Oct. 16, 2017) (weather.com/news/news/puerto-rico-power-whitefish).

¹¹ *See Federal Government to Lead Power Restoration Efforts in Puerto Rico*, American Public Power Association Press Release (Sept. 28, 2017) (www.publicpower.org/publication/federal-government-lead-power-restoration-efforts-puerto-rico).

¹² *Small Montana firm lands Puerto Rico’s biggest contract to get the power back on*, Washington Post (Oct. 23, 2017) (www.washingtonpost.com/national/small-montana-firm-lands-puerto-ricos-biggest-contract-to-get-the-power-back-on/2017/10/23/).

Jacksonville Electric Authority and Kissimmee Utility Authority, are APPA members,¹³ meaning that their assistance could have been obtained through mutual aid agreements. APPA documents suggest that PREPA may have been charged significantly less for the same assistance under a mutual aid agreement.¹⁴

I am also concerned about Whitefish's apparent attempt to circumvent federal oversight. According to publically released documents, on October 17, 2017, Whitefish and PREPA executed an amendment to their original agreement. This amendment states:

In no event shall PREPA, the Commonwealth of Puerto Rico, the FEMA Administrator, [or] the Comptroller General of the United States . . . have the right to audit or review the cost and profit elements of the labor rates specified herein."

This clause is in direct conflict with both PREPA and FEMA's obligations to ensure that any costs—including labor rates—associated with taxpayer-funded contracts are fair and reasonable.

Additionally, recent reports detailing a similar \$200 million contract awarded by PREPA to Cobra Acquisitions, LLC (Cobra), raise new questions about whether FEMA has appropriate oversight mechanisms in place to ensure that recipients of Public Assistance grant funds are spending taxpayer dollars responsibly. Reportedly, PREPA and Cobra signed a \$200 million contract on October 19, 2017, after consultation with FEMA and other federal agencies. The CEO of Cobra's parent company is quoted as saying that FEMA was "in the room every step of the way." PREPA's contract with Cobra contains the same language that appears in the Whitefish contract purporting to bar government entities from auditing or reviewing cost and profit elements.¹⁵

In light of these revelations, I have significant concerns regarding the management and oversight of the federal funding used to support the Puerto Rico recovery effort. In order to assist this Committee with its oversight of federal spending and disaster response efforts, I request that you provide the following information as soon as possible, but no later than November 27, 2017.

¹³ American Public Power Association, *Public Power in Florida* (www.publicpower.org/public-power-florida) (accessed Oct. 24, 2017).

¹⁴ The standard Mutual Aid Agreement posted on the APPA website states that "charges for meals, lodging, and other expenses . . . shall be the reasonable and actual costs incurred." APPA "Mutual Aid Agreement" (www.publicpower.org/sites/default/files/documents/Public%20Power%20Mutual%20Aid%20Agreement.pdf) (accessed Oct. 24, 2017).

¹⁵ *Echoes of Whitefish surface in \$200M Puerto Rico grid deal*, E&E News (Oct. 31, 2017) (www.eenews.net/stories/1060065137).

1. What are the respective roles and responsibilities of FEMA, USACE, the Puerto Rican government and the Puerto Rico Electric Power Authority (PREPA) in restoring power in Puerto Rico?
2. Has FEMA determined whether any Public Assistance funding has been used by PREPA to pay Whitefish? If FEMA has not yet made such a determination, please describe the steps FEMA is taking to do so.
3. Please identify the dates and amounts of all Public Assistance funding awarded by FEMA to PREPA.
4. Please describe the information that FEMA obtained from PREPA prior to approving each Public Assistance award listed above.
5. Please describe any restrictions or conditions on PREPA's use of any funding received from FEMA, including any reporting obligations.
6. Is PREPA is able to spend Public Assistance grant funds without first providing FEMA with documentation of specific costs and expenses?
7. Is PREPA able to spend Public Assistance grant funds prior to FEMA making a determination that PREPA's planned expenditures are reasonable?
8. Please provide a copy of all documents related to Public Assistance funding awarded by FEMA to PREPA, including all agreements, amendments, project worksheets, statements of work, grant applications, and expense reporting.
9. Please identify all claims for reimbursement under FEMA's Public Assistance program submitted to FEMA by PREPA, including the date, amount, and status of each such claim.
10. Please describe FEMA's efforts to "verify that [PREPA] has, in fact, followed applicable regulations to ensure that federal money is properly spent," including any findings made to date.¹⁶
11. Please describe the specific steps FEMA has taken or plans to take to determine whether the costs associated with PREPA's contracts with Whitefish and Cobra are fair and reasonable.
12. Has FEMA obtained or reviewed any information related to the cost and profit elements of the labor rates specified in PREPA's contracts with Whitefish or Cobra?

¹⁶ FEMA Congressional Advisory, *Statement on PREPA/Whitefish Energy Contract* (Oct. 26, 2017).

13. Is FEMA aware of any statute, regulation, or contractual provision, that would prevent PREPA from using Public Assistance funding it receives from FEMA to pay for expenses related to PREPA's contracts with Whitefish and Cobra? If so, please explain.
14. Please describe FEMA's understanding of PREPA's ability to obtain assistance from through mutual aid agreements facilitated by the APPA. Is FEMA aware of any statute, regulation, or contractual provision that would prevent PREPA from using Public Assistance funding to pay for assistance provided by another public utility under a mutual aid agreement? If so, please explain.
15. When and how did FEMA first learn of the contract between PREPA and Whitefish?
16. When and how did FEMA first learn that PREPA was considering awarding a contract to Cobra?
17. Please describe FEMA's role in the October 19, 2017, contract between PREPA and Cobra.
18. Did FEMA review and approve the contract between PREPA and Cobra?
19. Is it FEMA's understanding that Public Assistance funding will be used by PREPA to pay for costs and expenses related to PREPA's contract with Cobra?

If you have any questions please contact Claudine Brenner of my staff at (202) 224-2627 or Claudine_Brenner@hsgac.senate.gov. Please send any official correspondence related to this request to Lucy Balcezak at Lucy_Balcezak@hsgac.senate.gov. Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

JOHN MCCAIN, ARIZONA
BOB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
MICHAEL B. ENZI, WYOMING
JOHN HOEVEN, NORTH DAKOTA
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CHRISTOPHER R. WILSON, STAFF DIRECTOR
MARGARET E. DALAN, MINORITY STAFF DIRECTOR

November 2, 2017

Lieutenant General Todd T. Semonite
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Dear Lt. Gen. Semonite:

I write to request information about the role of the U.S. Army Corps of Engineers (USACE) in providing oversight of taxpayer dollars used to fund contracts to repair Puerto Rico's electrical grid.

As you know, USACE, through a mission assignment from FEMA, is leading the federal effort to restore power throughout Puerto Rico, and is working closely with the Puerto Rico Electric Power Authority (PREPA) on this project.¹ As of October 23, 2017, USACE had awarded three major contracts: a \$35.1 million contract to Weston Solutions for new generators, a \$240 million contract to Fluor Corporation for personnel and equipment,² and a \$40 million contract to PowerSecure Inc. to provide additional repair assistance.³ However, by the time these awards were made, PREPA had already entered into a \$300 million contract with Whitefish Energy – a small Montana company with little disaster response experience – to coordinate the power grid restoration.⁴

¹ See: *U.S. Army Corps of Engineers awards first contract for power grid restoration*, U.S. Army Press Release (Oct. 9, 2017) (www.army.mil/article/195068/us_army_corps_of_engineers_awards_first_contract_for_power_grid_restoration).

² *Puerto Rico and Federal Partners Unite to Address Power Restoration Needs*, FEMA Press Release (Oct. 17, 2017) (www.fema.gov/news-release/2017/10/17/4339/puerto-rico-and-federal-partners-unite-address-power-restoration-needs).

³ *U.S. Army Corps of Engineers awards additional contract for Puerto Rico*, U.S. Army Press Release (Oct. 19, 2017) (www.army.mil/article/195644/us_army_corps_of_engineers_awards_additional_contract_for_puerto_rico).

⁴ See: *Puerto Rico Turns to Unproven Montana Company for Massive Power Restoration Job, But No One Knows Why*, Weather Channel (Oct. 16, 2017) (weather.com/news/news/puerto-rico-power-whitefish).

I have since learned many troubling details about this contract, including the possibility that PREPA has used federal disaster relief funds to pay Whitefish.⁵ Although PREPA recently announced it was initiating the process of cancelling its contract with Whitefish, several significant concerns remain.⁶

I recently learned that USACE considered contracting with Whitefish to assist with power restoration in Puerto Rico, but declined to do so both because USACE's contracting officers determined that Whitefish was unwilling to agree to comply with federal procurement laws and that its rates were more than double what USACE considered appropriate.⁷

In order to assist this Committee with its oversight of federal spending and disaster response efforts, I request that you provide the following information as soon as possible, but no later than November 27, 2017.

1. Please provide any reason that USACE is aware of why PREPA initially should not have accepted APPA's offer of assistance.
2. When and how did USACE first learn of the contract between PREPA and Whitefish?
3. How did the Whitefish contract relate to USACE's other power restoration contracts including with Weston Solutions, Fluor, and PowerSecure? How do these contracted services differ or overlap?
4. Please provide copies of all contracts that USACE has awarded related to disaster recovery efforts in Puerto Rico, including any associated amendments, addenda and documentation of applicable labor rates.
5. Please identify the dates and amounts of all funding awarded by USACE to PREPA (either directly or indirectly), including current estimates for future funding.
6. Is USACE aware of any federal disaster relief funding being used by PREPA to pay for expenses related to its contract with Whitefish? If so, please explain.
7. Is USACE aware of any statute, regulation, or contractual provision that would prevent PREPA from using federal funding it receives from FEMA or USACE to pay for expenses related to PREPA's contract with Whitefish? If so, please explain.

⁵ *Puerto Rico: Whitefish energy grid deal to be scrapped*, BBC News (Oct. 29, 2017) (www.bbc.com/news/world-us-canada-41795774); FEMA, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 30, 2017).

⁶ *Puerto Rico: Whitefish energy grid deal to be scrapped*, BBC News (Oct. 29, 2017) (www.bbc.com/news/world-us-canada-41795774).

⁷ U.S. Army Corps of Engineers, Briefing with Senate Committee on Homeland Security and Government Affairs Staff (Oct. 27, 2017).

8. Please provide a copy of all agreements between USACE and PREPA related to funding awarded by USACE.

If you have any questions please contact Claudine Brenner of my staff at (202) 224-2627 or Claudine_Brenner@hsgac.senate.gov. Please send any official correspondence related to this request to Lucy Balcezak at Lucy_Balcezak@hsgac.senate.gov. Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

United States Senate

COMMITTEE ON
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WASHINGTON, DC 20510-6250

November 2, 2017

Andrew Techmanski
Chief Executive Officer
Whitefish Energy Holdings, LLC
144 Aspen Ridge Way
Whitefish, MT 59937

Dear Mr. Techmanski:

I write to request information about the \$300 million contract that the Puerto Rico Electric Power Authority (PREPA) awarded to Whitefish Energy Holdings, LLC (Whitefish) for the restoration of Puerto Rico's electrical grid in the wake of Hurricane Maria.

I have recently learned additional details about this contract, including the possibility that PREPA may be using federal disaster relief funds to pay Whitefish. Between October 10 and October 23, 2017, FEMA awarded more than \$215 million in Public Assistance grant funding directly to PREPA for power restoration efforts.¹ A FEMA official informed Committee staff, "It is possible that FEMA funds will be used by Whitefish."² The FEMA official also indicated that FEMA did not review and approve PREPA's actual expenses prior to awarding the \$215 million in Public Assistance funds.³ Although FEMA issued an official statement representing it "has not provided any reimbursement to Puerto Rico for the PREPA contract with Whitefish,"⁴ it is possible that PREPA has already been using federal taxpayer dollars to pay your company.

Although PREPA recently announced it was initiating the process of cancelling its contract with Whitefish, several significant concerns remain regarding the terms of this contract and the circumstances surrounding its award.⁵ Recent reports suggest that this contract was awarded in the absence of meaningful competition and without transparency during the

¹ *FEMA Approves More than \$500 Million in Assistance to Puerto Rico*, FEMA Press Release (Oct. 23, 2017) (www.fema.gov/news-release/2017/10/23/4339/fema-approves-more-500-million-assistance-puerto-rico).

² *Id.*

³ FEMA, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 30, 2017).

⁴ *FEMA Statement on Puerto Rico Electric Power Authority's Contract with Whitefish* (Oct. 27, 2017) (www.fema.gov/news-release/2017/10/27/updated-fema-statement-puerto-rico-electric-power-authoritys-contract).

⁵ *Puerto Rico: Whitefish energy grid deal to be scrapped*, BBC News (Oct. 29, 2017) (www.bbc.com/news/world-us-canada-41795774).

solicitation process.⁶ Additionally, the contract's specific price terms appear to be significantly higher than those contained in other federally funded contracts for similar work.

I also have concerns about Whitefish's apparent attempt to circumvent federal oversight. According to publicly released documents, on October 17, 2017, Whitefish and PREPA executed an amendment to their original agreement. This amendment states:

In no event shall PREPA, the Commonwealth of Puerto Rico, the FEMA Administrator, [or] the Comptroller General of the United States . . . have the right to audit or review the cost and profit elements of the labor rates specified herein."

This clause is in direct conflict with both PREPA and FEMA's obligations to ensure that any costs—including labor rates—associated with taxpayer-funded contracts are fair and reasonable.

In order to assist this Committee with its oversight of federal spending and disaster response efforts, I request that you provide the following information as soon as possible, but no later than November 27, 2017.

1. Please describe the contracting process, including bid submission and negotiations, between PREPA and Whitefish.
2. Please explain the understanding of corporate officials regarding terms and sources of payment from PREPA under the contract.
3. Please describe any representations made by PREPA to Whitefish regarding PREPA's ability to obtain FEMA Public Assistance funding and utilize such funding to pay for costs associated with PREPA's contract with Whitefish.
4. Please explain the purpose of "ARTICLE 59: Access to Records," included in the October 17, 2017 amendment to the original contract between PREPA and Whitefish. What is the legal basis for the stated prohibition on the ability to "audit or review the cost and profit elements of the labor rates specified [in the contract]"?
5. Please provide a copy of the following documents:
 - a. The "Emergency Master Service Agreement for PREPA's Electrical Grid Reconstruction" executed by PREPA and Whitefish on September 26, 2017 ("original agreement");
 - b. Any amendments or addenda to the "original agreement";

⁶ See, e.g., *Tiny Montana firm's Puerto Rico power deal draws scrutiny*, Reuters (Oct. 27, 2017) (www.reuters.com/article/us-usa-puertorico-power/tiny-montana-firms-puerto-rico-power-deal-draws-scrutiny-idUSKBN1CW1X1).

- c. Any other agreements between PREPA and Whitefish related to the restoration of power in Puerto Rico;
 - d. The request for proposals, or similar notice of opportunity, released by PREPA;
 - e. All formal proposals or other responses provided by Whitefish to PREPA prior to the award of the contract;
 - f. All subcontracts awarded by Whitefish related to its contract with PREPA; and
 - g. All invoices submitted by Whitefish to PREPA.
- 6. Please identify all payments Whitefish has received from PREPA. For each payment, please state the following:
 - a. The date Whitefish received the payment;
 - b. The amount of the payment;
 - c. The date that any invoice corresponding to the payment was submitted to PREPA; and
 - d. A description of the work performed by Whitefish for which the payment was made.
- 7. Please identify all invoices or other requests for payment that Whitefish has submitted to PREPA for which payment has not been received by Whitefish. For each invoice or payment request, please state the following:
 - a. The date the invoice or request for payment was submitted to PREPA by Whitefish;
 - b. The amount requested;
 - c. A description of the work performed for which payment was requested; and
 - d. The dates on which the work for which payment was requested was performed.
- 8. Please describe all work that has not been completed, but which Whitefish plans to complete under its contract with PREPA.
- 9. Please provide the actual or estimated cost (under the terms of Whitefish's contract with PREPA) of the work described above.

10. Please describe all costs associated with the cancellation of the contract, including the actual or estimated amounts and which party is responsible for payment.
11. Please provide all communications Whitefish has received from PREPA related to the cancellation of the contract.
12. Please identify any contractors or firms that Whitefish has hired to perform any responsibilities related to media and public relations.

If you have any questions please contact Jackson Eaton and Claudine Brenner of my staff at (202) 224-2627. Please send any official correspondence related to this request to Lucy Balcezak at Lucy_Balcezak@hsgac.senate.gov. Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman