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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

July 17, 2018

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

Dear Mr. Long:

I write with questions regarding Federal Emergency Management Agency (FEMA) reimbursement for potentially wasteful debris removal contracts the State of Florida awarded in the aftermath of Hurricane Irma. According to recent press accounts, the Florida Department of Transportation (FDOT) awarded at least two emergency contracts for debris removal in the Florida Keys rather than using prepositioned contracts that were negotiated in advance of the storm.<sup>1</sup>

Prepositioned contracts are awarded when government agencies are not facing an urgent need for emergency goods and services and are therefore able to maximize competition, conduct market research, and thoroughly evaluate vendors' qualifications. As you know, the need for more competitively bid, prepositioned contracts was a key lesson learned in the wake of Hurricane Katrina, which struck the Gulf Coast in 2005. The following year, Congress enacted the Post-Katrina Emergency Management Reform Act, which required FEMA to adopt a "contracting strategy that maximizes the use of advance contracts to the extent practical and cost effective."<sup>2</sup>

I have previously raised concerns regarding FEMA's failure to use competitively-bid, prepositioned contracts. As I highlighted in a February 22, 2018, letter to you, FEMA ultimately canceled a \$156 million contract for the provision of 30 million emergency meals in Puerto Rico after awarding the contract to a one-person company with no relevant experience nearly a month after Hurricane Maria made landfall.<sup>3</sup> In April, Minority staff of the committee, at my request, published a report detailing FEMA's failure to use prepositioned contracts for emergency tarps

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<sup>1</sup> *Exclusive: Rick Scott's 'Rookie Mistake' May Have Cost Taxpayers Millions*, CBSMiami (June 12, 2018) ([miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions](http://miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions)).

<sup>2</sup> Pub. L. No. 109-295 (2006).

<sup>3</sup> Letter from Claire McCaskill, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, to The Honorable Brock Long, Administrator, Federal Emergency Management Agency (Feb. 22, 2018).

and sheeting in Puerto Rico following Hurricane Maria.<sup>4</sup> Rather than using prepositioned contracts, your agency awarded \$73 million in contracts to two companies with no relevant experience several weeks after the storm. These contracts were ultimately canceled. I have also repeatedly called for answers to questions about FEMA reimbursement for a problematic \$300 million contract the Puerto Rico Electric Power Authority (PREPA) awarded to Whitefish Energy Holdings for electrical grid repairs in the wake of Hurricane Maria.<sup>5</sup> This contract was also canceled, and, to date, hundreds of Puerto Rican electric customers still lack power.<sup>6</sup>

You have noted the importance of prepositioned contracts in testimony before this committee. On April 11, 2018, in response to my questions, you testified, “We have to do more pre-event contracts, but not just at FEMA. We need those at the state and local level. We need to make sure that state leaders and local leaders are putting pre-event contracts in place.”<sup>7</sup>

In Florida, prior to Hurricane Irma, FDOT reportedly had 18 debris removal contracts in place, including contracts with six different companies in Monroe County, where the Florida Keys are located.<sup>8</sup> Numerous Florida cities and counties also had prepositioned debris removal contracts in place.<sup>9</sup> The Florida Division of Emergency Management (FDEM) in a September 18, 2017 memorandum warned county officials against re-negotiating the terms of these existing contracts, stating, “the State may limit the amount of Federal reimbursement to the rates established in pre-disaster, negotiated contracts.”<sup>10</sup>

FDOT reportedly entered into two emergency debris removal contracts – with Munilla Construction Management (MCM) and Community Asphalt – three days after Hurricane Irma made landfall, rather than activating prepositioned contracts that were already in place.

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<sup>4</sup> Senate Committee on Homeland Security and Governmental Affairs, *Government Oversight: Failures in FEMA Contracting for Emergency Tarps & Sheeting During the 2017 Hurricane Season* (Apr. 10, 2018).

<sup>5</sup> See, e.g. Letter from Claire McCaskill, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, to The Honorable Brock Long, Administrator, Federal Emergency Management Agency (Nov. 2, 2017).

<sup>6</sup> StatusPR ([www.status.pr](http://www.status.pr)) (accessed June 25, 2018).

<sup>7</sup> Senate Committee on Homeland Security and Governmental Affairs, *Hearing on FEMA: Prioritizing a Culture of Preparedness*, 115th Cong. (Apr. 11, 2018).

<sup>8</sup> Florida Department of Transportation, 2017 Pre-Event Contracts ([www.fdot.gov/contracts/Debris\\_Removal/2017%20Pre-Event%20Contracts.pdf](http://www.fdot.gov/contracts/Debris_Removal/2017%20Pre-Event%20Contracts.pdf)) (accessed June 25, 2018).

<sup>9</sup> See, e.g. *South Florida Poaches Debris Pickup Trucks Once Headed to Tampa Bay*, Tampa Bay Times (Sept. 22, 2018) ([www.tampabay.com/news/weather/hurricanes/south-florida-poaches-debris-pickup-trucks-once-slotted-for-tampa/2338455](http://www.tampabay.com/news/weather/hurricanes/south-florida-poaches-debris-pickup-trucks-once-slotted-for-tampa/2338455)).

<sup>10</sup> Florida Association of Counties, *Florida Division of Emergency Management Memorandum* (Sept. 18, 2017) ([fl-counties.com/sites/default/files/2017-09/Debris.pdf](http://fl-counties.com/sites/default/files/2017-09/Debris.pdf)).

According to press accounts, these awards were made with limited competition. State officials reportedly solicited emergency debris removal proposals from only “a handful of companies,” and prepositioned vendors were not given an opportunity to bid. State officials reportedly sent emails to this pre-selected pool of vendors on September 12, 2017 and required a response by 11 a.m. the following day. Perhaps due to this limited competition, the rates charged by MCM and Community Asphalt far exceeded rates included in FDOT’s prepositioned contracts. For example, MCM reportedly charged the state \$913 for every mile of curb and gutter that was swept, compared to rates of \$123 per mile, \$32 per mile, and \$12 per mile in three of the prepositioned contracts. The company also reportedly charged \$77.50 per cubic yard for hauling rock, sand, soil, and sediment, compared to rates of \$15.95, \$11, and \$6.50 per cubic yard in the prepositioned contracts. Ultimately, the total cost of the two emergency contracts may have exceeded pre-negotiated rates by more than \$30 million.<sup>11</sup>

As of July 16, 2018, FEMA had reportedly reimbursed 55 applicants in 31 Florida counties for more than \$26 million worth of debris removal expenses.<sup>12</sup> It does not appear that any applicants in Monroe County have been reimbursed by FEMA for debris removal expenses to date.<sup>13</sup> A FEMA spokesman was quoted in the press as saying, “Until we receive all documentation, eligibility cannot be determined. . . . Before making a decision, FEMA will review the entire situation and all documentation, including contracts and procurement procedures.”<sup>14</sup>

As you know, in order to be eligible for FEMA reimbursement, project costs must be deemed “necessary and reasonable to accomplish the work properly and efficiently.”<sup>15</sup> According to federal code, “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 decision was made to incur the cost.”<sup>16</sup> When seeking reimbursement from FEMA, individual applicants are required to provide documentation demonstrating that claimed costs are reasonable, and, in making its reasonableness determination, FEMA is to consider whether costs are comparable to “the current market price for similar goods or services based on: historical

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<sup>11</sup> *Exclusive: Rick Scott’s ‘Rookie Mistake’ May Have Cost Taxpayers Millions*, CBSMiami (June 12, 2018) ([miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions](http://miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions)).

<sup>12</sup> Federal Emergency Management Agency, 2017-2019 Daily Public Assistance Grant Awards Activity ([www.fema.gov/media-library/assets/documents/128200](http://www.fema.gov/media-library/assets/documents/128200)) (accessed July 16, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Exclusive: Rick Scott’s ‘Rookie Mistake’ May Have Cost Taxpayers Millions*, CBSMiami (June 12, 2018) ([miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions](http://miami.cbslocal.com/2018/06/12/rick-scott-rookie-mistake-cost-millions)).

<sup>15</sup> Federal Emergency Management Agency, *Public Assistance Program and Policy Guide* (FP 104-009-2) (Apr. 2017).

<sup>16</sup> 2 CFR § 200.404.

documentation; average costs in the area; or published unit costs from national cost estimating databases.”<sup>17</sup>

As part of my ongoing oversight of the disaster contracting process, I ask that you respond to the following questions as soon as possible, but in no event later than August 7, 2018.

1. What was the role of FEMA, including any role assigned to the U.S. Army Corps of Engineers (USACE), in administering debris removal activities in Monroe County, Florida following Hurricane Irma? What was the role of state and local officials?
2. Please list all prepositioned debris removal contracts FEMA and/or USACE had in place on September 10, 2017, and please identify any of these contracts that FEMA and/or USACE used in the State of Florida following Hurricane Irma.
  - a. Did FEMA and/or USACE enter into any additional contracts for debris removal activities in the State of Florida following Hurricane Irma? If so, please provide a list of these contracts, and, for each contract, please identify the contracting agency, vendor name, vendor DUNS number, award date, award amount, performance period, a description of services rendered, and the extent to which the contract was competed.
3. Please identify the dates and amounts of all FEMA Public Assistance funding awarded to or requested by FDEM, FDOT, Monroe County, or any other political subdivision within the State of Florida for debris removal activities in Monroe County following Hurricane Irma.
  - a. Please provide a copy of all documents related to this Public Assistance funding, including all agreements, amendments, project worksheets, statements of work, grant applications, and expense reporting.
  - b. Please identify all claims for reimbursement submitted to FEMA by FDEM, FDOT, Monroe County, or any other political subdivision within the state for debris removal in Monroe County, including the date, amount, and status of each such claim.
4. When and how did FEMA first learn that the state was considering awarding – or had awarded – emergency contracts for debris removal in Monroe County?
  - a. Please provide copies of all communications, including emails, sent or received between September 3, 2017, and October 1, 2017, between any FEMA employee and any employee of the State of Florida regarding these awards.

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<sup>17</sup> Federal Emergency Management Agency, *Public Assistance Program and Policy Guide* (FP 104-009-2) (Apr. 2017).

- b. Did FEMA review and/or approve these contracts prior to their execution?
5. Please provide copies of any guidance or other communications, including emails, sent between any FEMA employee and any employee of the State of Florida, and/or Monroe County regarding the eligibility for FEMA reimbursement of prepositioned debris removal contracts that were re-negotiated following Hurricane Irma.
6. Please describe the steps FEMA has taken or plans to take to determine whether the costs associated with the emergency debris removal contracts FDOT awarded are necessary and reasonable.
  - a. What historical documentation, average costs in the area, or published unit costs from national cost estimating databases has FEMA used or does FEMA plan to use to evaluate cost reasonableness?
  - b. Is it FEMA's understanding that Public Assistance funding will be used to reimburse the State of Florida for expenses the state incurred through FDOT's emergency contracts for debris removal in Monroe County? If so, how much Public Assistance funding has been – or will be – used for this purpose?
7. Please list all prepositioned debris removal contracts that FEMA and/or USACE have in place currently.
  - a. What efforts has FEMA and/or USACE made to either solicit additional prepositioned debris removal contracts or to incentivize state, local, tribal, and territorial governments to enter into additional prepositioned debris removal contracts following the 2017 hurricane season?
8. What is FEMA's current policy for incentivizing state, local, tribal, and territorial governments to enter into competitively bid, prepositioned contracts in preparation for future disasters?
  - a. What additional authorities do you require in this regard?
9. What is FEMA's current policy for ensuring that state, local, tribal, and territorial governments actually use the prepositioned contracts they have in place in the aftermath of a disaster?
  - a. What additional authorities do you require in this regard?
10. What is FEMA's current policy for ensuring that vendors honor the terms of their prepositioned contracts with federal, state, local, tribal, and territorial governments after a disaster strikes?

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a. What additional authorities do you require in this regard?

If you have questions regarding this request, please contact Joel Walsh of the Committee staff at [Joel\\_Walsh@hsgac.senate.gov](mailto:Joel_Walsh@hsgac.senate.gov). Please send any official correspondence related to this request to [Rina\\_Patel@hsgac.senate.gov](mailto:Rina_Patel@hsgac.senate.gov).

Sincerely,



Claire McCaskill  
Ranking Member

cc: Ron Johnson  
Chairman

Lt. Gen. Todd T. Semonite  
Commanding General and Chief of Engineers  
U.S. Army Corps of Engineers