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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

November 27, 2017

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

Dear Mr. Long:

I write to request additional 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.

On November 2, 2017, I sent you a letter requesting 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. In my letter, I outlined new information I had learned about the award by the Puerto Rico Electric Power Authority (PREPA) of 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.¹ 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.²

Although FEMA issued an official statement representing it “has not provided any reimbursement to Puerto Rico for the PREPA contract with Whitefish,”³ it is possible that PREPA has already been using federal taxpayer dollars to pay the company. A FEMA official informed Committee staff in the course of a briefing that, “It is possible that FEMA funds will be

¹ 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).

² *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).

³ *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).

used by Whitefish.”⁴ 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.⁵

I recently learned that FEMA officials may have been more involved in the contract between PREPA and Whitefish than previously known. At a hearing before this Committee on October 31, 2017, you testified:

PREPA entered into this contract in late September. We were notified several weeks after the fact. There is no lawyer inside FEMA that would have ever agreed to the language that was in the contract to begin with, so let me be very clear about that. And we raised a red flag and basically saying, you know, we are not sure this is a sole-source contract or a competitive rate. There were many things wrong. There was also language in there that would suggest that the Federal Government would never audit Whitefish, which there is a not a lawyer inside FEMA that would ever agree to that type of language.⁶

However, recently released documents appear to indicate that FEMA attorneys in the local office and at headquarters reviewed versions of the draft contract signed by PREPA and Whitefish. One email containing the subject line “PREPA—Whitefish” appears to indicate that a lead legal advisor in the Office of Chief Counsel of FEMA received an electronic copy of the draft Whitefish contract from the outside counsel for PREPA on October 11, 2017.⁷ In this email, the FEMA lead legal advisor wrote: “I am an attorney working for FEMA in Puerto Rico. ... We have elevated this contract issue to our Headquarters Office of Chief Counsel.”

In order to clarify the involvement of FEMA in reviewing the Whitefish draft contract, I request that you provide a briefing on this topic and respond to my letter dated November 2, 2017 without delay. Thank you for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

⁴ *Id.*

⁵ FEMA, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 30, 2017).

⁶ Senate Committee on Homeland Security and Government Affairs, *Hearing on 2017 Hurricane Season: Oversight of the Federal Response* (Oct. 31, 2017).

⁷ Email from Lead Legal Advisor, Office of Chief Counsel, Federal Emergency Management Agency, to New York Co-Managing Shareholder, Greenberg Traurig, LLP (Oct. 11, 2017) (PREPA0000905 – PREPA0000907).

The Honorable Brock Long
November 27, 2017
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cc: Ron Johnson
Chairman

Enclosure

>>
>> Melissa Prusock
>> Associate
>> Greenberg Traurig, LLP | 2101 L Street N.W. | Washington, D.C. 20037
>> [REDACTED] >>> om> | www.gtlaw.com<<http://www.gtlaw.com>>>

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>>
>> -----Original Message-----

>> From: Schaengold, Michael J. (Shld-DC-GvtCntr)
>> Sent: Thursday, October 12, 2017 12:05 PM
>> To: Cleary, David (Shld-Phx-Bky)
>> Cc: Mitchell, Nancy A (Shld-NY-CP-Bky); Prusock, Melissa
>> (Assoc-DC-GvtCntr); Bradet, Ryan C. (OfCnsl-DC-GvtCntr)
>> Subject: RE: PREPA - Whitefish

>>
>> The statements by the FEMA attorney are consistent with the advice that Melissa has been providing.

>>
>> Michael J. Schaengold
>> Shareholder
>> Greenberg Traurig, LLP | 2101 L Street N.W. | Washington, D.C.

>> [REDACTED]
>> www.gtlaw.com<<http://www.gtlaw.com>>>
>> -----Original Message-----
>> From: Cleary, David (Shld-Phx-Bky)
>> Sent: Thursday, October 12, 2017 11:54 AM
>> To: Nelson Morales Rivera
>> [REDACTED] Ramon O Caldas Pagan; JAVIER MORALES TAÑON
>> [REDACTED]
>> Cc: Mitchell, Nancy A (Shld-NY-CP-Bky); Schaengold, Michael J.
>> (Shld-DC-GvtCntr); Prusock, Melissa (Assoc-DC-GvtCntr); Bradet, Ryan
>> C. (OfCnsl-DC-GvtCntr)
>> Subject: FW: PREPA - Whitefish

>>
>> Please see below, Ramon- when you have a moment, can you please forward the proposed modifications that you sent to Chris. Thanks. Also, Javier, I do not have Laura's email, can you forward? Thank you.

>>
>> David D. Cleary
>> Greenberg Traurig, LLP

>> [REDACTED]
>>
>> -----Original Message-----
>> From: Zavaia-Garcia, Graciela
>> [REDACTED]
>> Sent: Thursday, October 12, 2017 11:42 AM
>> To: Mitchell, Nancy A (Shld-NY-CP-Bky); Cleary, David (Shld-Phx-Bky)
>> Cc: Morales, Jose; Harich, Christopher; Rios, Rosa
>> Subject: FW: PREPA - Whitefish

>>
>> Ms. Mitchell:
>>
>> I am an attorney working for FEMA in Puerto Rico. Jose has asked me to respond to your email below. We have elevated this contract issue to our Headquarters Office of Chief Counsel. It has been concluded that the PREPA contract does not contain some

necessary provisions. Please see the following websites for aids that have been developed that can assist in this endeavor:

- >>
- >> The Appendix II to Part 200 of 2 C.F.R. contract provisions can be
- >> found here:
- >> [https://urldefense.proofpoint.com/v2/url?u=https-3A_www.ecfr.gov_cgi](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.ecfr.gov_cgi-2Dbin_text-2Didx-3F5ID-3Db1b13e64d9c7ba2bf1b112db940599eb-26mc-3Dtru-e-26node-3Dap2.1.200-5F1521.li-26rgn-3Ddiv9&d=DwIFAg&c=2s2mvbfY0UoSkkI6_OI9wg&r=5Aj-T1gZVhgyGF9HFMdy7i3dGZKlvGd3VpadAnqyy1E&m=69MzWMLmsSX2CGcHZFUIdUUMI8joANH6_eZ6alvGgP8&s=cRSjQ6lWaT1_utfQcdB6F6nV9tPnJAF-LII-tTjUKuZl&e=)
- >> -2Dbin_text-2Didx-3F5ID-3Db1b13e64d9c7ba2bf1b112db940599eb-26mc-3Dtru
- >> e-26node-3Dap2.1.200-5F1521.li-26rgn-3Ddiv9&d=DwIFAg&c=2s2mvbfY0UoSkk
- >> I6_OI9wg&r=5Aj-T1gZVhgyGF9HFMdy7i3dGZKlvGd3VpadAnqyy1E&m=69MzWMLmsSX2
- >> CGcHZFUIdUUMI8joANH6_eZ6alvGgP8&s=cRSjQ6lWaT1_utfQcdB6F6nV9tPnJAF-LII
- >> tTjUKuZl&e=
- >>
- >> Here's a link to the template that I've attached:
- >> [https://urldefense.proofpoint.com/v2/url?u=https-3A_www.fema.gov_med](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.fema.gov_med-ia-2Dlibrary-2Ddata_1483976790556-2D96bfcf3bf2c64e94d6f63dd4169a7d2c_RequiredContractClauses2C.F.R.200.326and2C.F.R.Part200AppendixII10917.pdf&d=DwIFAg&c=2s2mvbfY0UoSkkI6_OI9wg&r=5Aj-T1gZVhgyGF9HFMdy7i3dGZKlvGd3VpadAnqyy1E&m=69MzWMLmsSX2CGcHZFUIdUUMI8joANH6_eZ6alvGgP8&s=0CEd0G_IKQzScVTr4r-yfYE6dl4CWs3U6jmBP-npV8&e=)
- >> ia-2Dlibrary-2Ddata_1483976790556-2D96bfcf3bf2c64e94d6f63dd4169a7d2c_
- >> RequiredContractClauses2C.F.R.200.326and2C.F.R.Part200AppendixII10917
- >> .pdf&d=DwIFAg&c=2s2mvbfY0UoSkkI6_OI9wg&r=5Aj-T1gZVhgyGF9HFMdy7i3dGZKl
- >> vGd3VpadAnqyy1E&m=69MzWMLmsSX2CGcHZFUIdUUMI8joANH6_eZ6alvGgP8&s=0CEd0
- >> G_IKQzScVTr4r-yfYE6dl4CWs3U6jmBP-npV8&e=
- >>

>> In addition, as long as PREPA is a state agency, they must follow the laws of the Commonwealth of Puerto Rico for procurement and contracts. Lastly, FEMA Public Assistance will make the determination as to the reasonableness of the costs.

- >>
- >> Graciela E. Zavala-Garcia
- >> Lead Legal Advisor, Office of Chief Counsel Federal Emergency
- >> Management Agency DR-4339-PR

>> [REDACTED]@a.dhs.gov> [REDACTED]

>>

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>> FEMA: Compassion. Fairness. Integrity. Respect.

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- >>
- >>
- >> -----Original Message-----

>> From: [REDACTED] >> w.com> [REDACTED]

>> Sent: Wednesday, October 11, 2017 12:01 PM

>> To: Morales, Jose

>> [REDACTED]

>> Subject: PREPA - Whitefish

>>

>> This is the Whitefish Contract. They have a cost-plus concept in here. As a result, they have tried to correct that with the language below. Their issue is that they subcontract so they need to be able to get paid to manage those subcontractors. Let me know who best to talk to about this so I can help them provide guidance.

- >>
- >>
- >> DRAFT DRAFT DRAFT

>>

>> Replace exiting language in Article 44 with the following:

- >>
- >> The Contractor shall submit to PREPA all contract costs outside of
- >> Contractor's internal rates in Schedule 1, as updated per this
- >> Contract, on a time and materials basis. Such costs shall be
- >> reasonable and customary and, for third party contracts, include an
- >> allocation for Contractor's program management and oversight of such

>> third party contracts. Costs related to meals and lodging shall be
>> the reasonable and actual costs incurred. [Nancy: there is a lot of
>> cost incurred in the management of these, so we are struggling with
>> possibly offering this provision, but our interpretation of various
>> guidelines was that this may be a strict prohibition (Food & Lodging
>> 'markup')]

>>
>> Nancy A. Mitchell
>> New York Co-Managing Shareholder
>> Greenberg Traurig, LLP | MetLife Building
>> 200 Park Avenue | New York, NY 10166 Tel 212.801.3085 | Fax

>> [REDACTED] >> w.com> | www.gtlaw.com<<http://www.gtlaw.com>>>

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>> >> - If you are not an intended recipient of confidential and privileged
>> information in this email, please delete it, notify us immediately at postmaster@gtlaw.com<<mailto:postmaster@gtlaw.com>>, and
>> do not use or disseminate such information.

>
> <171014_EMERGENCY CONTRACT FOR PREPAS ELECTRICAL GRID REPAIR -
> HURRICANE MARIA- WHITEFISH.docx>