



VIA EMAIL

July 10, 2019

Mr. Fermin Fontanes
Chief Legal Counsel
Puerto Rico Public Private Partnerships Authority
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Re: Puerto Rico Electric Power Authority Transmission and Distribution System (PREPA T&D)
Request for Proposal (RFP) 2019-2—Mitigation and Resolution of Potential Conflicts of Interest

Dear Mr. Fontanes:

Pursuant to our teleconference held on July 2, 2019, and our follow-up communications on July 3, 2019, Innovative Emergency Management, Inc. (IEM) hereby submits this letter to address, and alleviate, the Puerto Rico Public Private Partnerships Authority's (Authority) recent questions regarding the potential conflicts of interest that may arise from IEM's participation in the PREPA T&D competition. Due to the large number of jurisdictions that annually receive federal funding following the issuance of a Presidential Disaster Declaration, coupled with the relatively small number of qualified companies that have an ability to perform disaster relief mitigation work, such actual or perceived conflicts of interest are common in the industry and have been successfully mitigated by many other jurisdictions; in our review of DHS OIG reports we found no issues with such arrangements. IEM has experience in serving both the Recipient and Subrecipient in many jurisdictions. IEM recognizes that the Authority is particularly focused on avoiding any actual or perceived conflict of interest related to such work. As such, IEM appreciates this opportunity to demonstrate its approach for conflict of interest mitigation, as that term is defined in Section 5.7 of the PREPA T&D RFP, and commonly understood in federal disaster relief funding guidelines and federal procurement regulations.

Background

As your Office is aware, on June 6, 2019, Governor Rosselló announced that IEM was selected as the awardee under the Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance (HMA) Program HMA Support and Technical Assistance opportunity under COR3-RFP-01, issued by the Central Office of Recovery, Reconstruction and Resiliency (COR3). Pursuant to teleconference on July 2, 2019, IEM understands that formal issuance of the HMA contract is being temporarily withheld by the Authority due to IEM's participation in the PREPA T&D competition as a part of the Quanta, ATCO, and IEM Consortium (Consortium). At this juncture, however, PREPA T&D proposals have not yet been submitted and an award is not anticipated until Q4 2019.

Based on IEM's review of the PREPA T&D opportunity, we understand that a narrow portion of work, which is specifically related to the 404 Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM), and Flood Mitigation Assistance (FMA) efforts, may potentially give rise to a situation where IEM employees performing under the HMA contract at the recipient level might be required to interact with IEM employees supporting the subrecipient, such as by making recommendations to COR3 regarding the grant activities of the Consortium, or performing day-to-day grant activities such as grant reporting, and reviewing the submission of requests for reimbursement packages. Accordingly, out of an abundance of caution and to minimize the risk that any actual or perceived conflicts of interest arise, IEM has conducted a conflict of interest analysis and proposes the mitigation strategy below.

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Conflict of Interest Mitigation

Pursuant to the COR3 Disaster Recovery Federal Funds Management Guide Uniform Rules, an organizational conflict of interest (OCI) arises when, because of other activities or relationships with other entities, a contractor is unable or potentially unable to render impartial assistance or advice to the Government client, the contractor's objectivity in performing the contract work is or might be otherwise impaired, or the contractor has an unfair competitive advantage. The three types of OCIs are Biased Ground Rules, Unequal Access to Information, and Impaired Objectivity:¹

- Biased Ground Rules: A contractor, as part of its performance of a federally-funded contract, has in some sense set the ground rules for another federally-funded contract by, for example, writing the statement of work (SOWs) or the specifications. In biased ground rules OCIs, the primary concern is that the contractor could skew the competition, whether intentionally or not, in favor of itself. The COR3 Uniform Rules require that, in order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.
- Unequal Access to Information: A contractor has access to nonpublic information as part of its performance of a federally-funded contract and that information may provide the contractor with a competitive advantage in a later competition for a separate contract. In cases of unequal access to information, the concern is limited to the risk of the firm gaining a competitive advantage; there is no issue of bias.
- Impaired Objectivity: A contractor's work under one federally-funded contract could entail evaluating itself or an affiliated entity, either through a performance assessment or an evaluation of proposals for *another* contract. The concern is that the contractor's ability to render impartial advice to the Government could appear to be undermined by its relationship with the entity whose work product is being evaluated.

Section 5.7 of the PREPA T&D RFP further defines "conflict of interest" to include any situation or circumstance where "the Qualified Respondent submitting a Proposal or any Team Member of such Qualified Respondent has other commitments, relationships or financial interests that: (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the Authority's or PREPA's independent judgment; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Partnership Contract." This definition appears to be consistent with, and falls squarely within, the three types of prohibited OCIs addressed in grant funding guidance.

Given that an award has not been issued – or proposals submitted – under the PREPA T&D program, ***IEM has not identified any actual OCIs***. IEM also does not identify any potential Biased Ground Rules OCI, given that its work under the HMA contract does not include the development of any RFP SOWs or specifications for the PREPA T&D opportunity. Nor does IEM identify any potential Unequal Access to Information OCI, given that IEM will not have access to information under the HMA contract that would provide IEM/the Consortium with an unfair competitive advantage while pursuing the PREPA T&D opportunity. Should the Consortium ultimately win the PREPA T&D contract, then out of an abundance of caution, IEM will further mitigate any potential risk of an Unequal Access to Information OCI by using different teams to staff the HMA and PREPA T&D projects

¹ See COR3 Disaster Recovery Federal Funds Management Guide, Chapter 3.0 Procurement (May 15, 2019), available here: <https://documents.recovery.pr/assets/documents/CH3%20Procurement%20FINAL%20V1.1.pdf>. [The OCIs identified in COR3's Uniform Rules closely track the definition of OCIs commonly understood in federal procurement regulations.](#) See e.g., Federal Acquisition Regulation (FAR) § 2.101 (definition of organizational conflict of interest). The federal regulations regarding both the substance of the OCI prohibitions and the procedures for agency consideration and resolution of OCI issues are set forth in the FAR Part 9.5.

(below the Management level), and by firewalling off any confidential information accessed under the HMA contract.

IEM does recognize, however, that a small percentage of the federal funding allocated for the PREPA T&D opportunity has the potential to give rise to an Impaired Objectivity OCI due to IEM's performance under HMA. To mitigate this risk upon award, IEM proposes that:

1. Under the PREPA T&D program, the Consortium will utilize a completely separate and firewalled subcontractor to perform any work related to pass-through FEMA-funded 404 HMGP, PDM or FMA work (where IEM would be providing technical assistance to COR3), thereby eliminating any risk that IEM HMA employees could evaluate or assess the Company's performance, or process any related requests, under PREPA T&D;
2. Neither the Consortium, nor its team members, would receive any profit from the use of the proposed subcontractor, thereby ensuring that IEM is not receiving any financial incentive that could potentially undermine the objectivity of its performance under HMA; and
3. If, during the course of IEM's performance under the HMA contract IEM finds itself in a position where it is required to evaluate itself, IEM will immediately notify COR3 and propose appropriate mitigation measures under the HMA contract, subject to the input and approval by COR3.

Additional details regarding this mitigation strategy, along with an identification of the proposed subcontractor, will be contained in the Consortium's final PREPA T&D proposal due later this year. Upon request we can provide documentation demonstrating our experience in mitigating these conflicts in other jurisdictions.

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IEM is sensitive to any situation that may create an actual or potential conflict of interest, or appearance of impropriety. We trust that this letter will resolve any concerns the Authority may have about the award to IEM of FEMA's Hazard Mitigation Assistance Program and IEM's continued participation in the PREPA T&D competition, and further allow the Authority to proceed with IEM's award of the HMA contract.

To the extent that the Authority has any additional questions or would like to further discuss IEM's proposed mitigation strategy, please do not hesitate to contact me directly at Bryan.Koon@iem.com or at (850) 519-7966.

Sincerely,



Bryan Koon
Vice President
International Homeland Security and Emergency
Management

cc: Quanta Services, Inc.
ATCO Ltd.