

Congress of the United States
House of Representatives
Washington, DC 20515

March 20, 2018

The Honorable William B. "Brock" Long
Administrator
Federal Emergency Management Agency
500 C St. SW
Washington, DC 20024-2523

Dear Administrator Long:

Today marks six months since Puerto Rico was devastated by Hurricane Maria, one of the strongest Atlantic hurricanes on record. The deadly hurricane caused catastrophic damage to critical infrastructure, leaving the entire island in the dark and without running water or adequate food supplies. Responding to this unprecedented level of devastation would have been beyond the capacity of any local, state, or territorial government and required quick, decisive Federal assistance to our fellow Americans.

Instead, the Federal approach to Puerto Rico resulted in concerning delays and challenges that continue to frustrate response and recovery efforts. We have three primary concerns following an oversight trip by members of our staff last month. First, we are deeply concerned that the Trump Administration has failed to provide Puerto Rico the same support as other American communities hit by disasters, with the White House making the territory wait an unheard-of 43 days for a disaster declaration for permanent Public Assistance.¹ Second, key challenges remain with respect to power restoration, and thousands of Americans in Puerto Rico are still living without power, half a year after the storm, in part due to the inadequate Federal response.² Lastly, FEMA's questionable vetting of contractors has delayed relief to thousands of Puerto Ricans. We explain each of these concerns in turn below.

The "Puerto Rico Special" Raises Concerns of Disparate Treatment

We are disturbed by the disparate treatment Puerto Rico has received from the Trump Administration compared to other areas hit by hurricanes in 2017. Key examples include requiring that the Commonwealth use a voluntary program for permanent public assistance projects, failing to approve any permanent construction, and developing disaster cost estimate and guidance specifically for Puerto Rico, which could lead to inaccurate estimates and could further delay critical restoration work.

¹ <https://www.fema.gov/disaster/notices/amendment-no-4-6>.

² <http://status.pr/>.

The White House allegedly refused to approve FEMA Public Assistance grants for Puerto Rico unless the territory agreed to carry out permanent Public Assistance projects using alternative procedures authorized under Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. As you are aware, the law provides that the program is voluntary. Specifically, Section 428 (d) states that “Participation in the alternative procedures adopted under this section shall be *at the election* of a State, tribal or local government, or owner or operator of a private nonprofit facility”³ (emphasis added).

Nevertheless, when the President declared Puerto Rico eligible for Public Assistance Categories C – G, the declaration specified that the work would be performed using Section 428.⁴ This treatment, the so-called “Puerto Rico Special,” is contrary to the plain language and intent of Section 428 and an unprecedented requirement for any jurisdiction. It also appears to be slowing the pace of recovery in Puerto Rico.

During a Congressional staff oversight visit last month, FEMA informed participants that no permanent work has been approved in Puerto Rico, not even small projects. However, FEMA has approved permanent work, including small projects, in the other states affected by Hurricanes Harvey, Irma, and Maria, which were not required to utilize Section 428. Indeed, Puerto Rico is the only grantee affected by the hurricanes that have been forced to use alternative procedures for all permanent construction, leaving the territory behind.

FEMA is also handling disaster assistance differently in Puerto Rico than elsewhere in the U.S. by developing disaster cost estimate and guidance specifically for Puerto Rico. We are concerned that this special requirement may lead to inaccurate estimates and could further delay critical restoration work. Without any permanent work completed, the health and safety of Puerto Rican residents are at risk as hurricane season begins June 1.

Therefore, we strongly urge the Administration to treat Puerto Rico, as well as any local government or private nonprofit facility, in the same manner as other states and territories with respect to the voluntary use of Section 428 and development of project cost estimates. This should allow Puerto Rico to begin permanent recovery efforts in the fair and impartial manner that the government and people of Puerto Rico deserve.

Key Challenges Remain for Power Restoration Efforts

We remain gravely concerned about the continued slow pace of power restoration to Americans living in Puerto Rico. A reliable and cost-effective electric grid is fundamental to the Commonwealth’s long-term economic success and all aspects of life in Puerto Rico. However, as of this month, 8 percent of the island’s electric customers – over 100,000 businesses and families – remain without service,⁵ and the U.S. Army Corps of Engineers estimates that several regions will not have power restored until April or May. It is simply not acceptable for U.S. citizens to live without power for so long.

³ 42 U.S.C. § 5189f(d).

⁴ <https://www.fema.gov/disaster/notices/amendment-no-5-4>.

⁵ <https://www.energy.gov/sites/prod/files/2018/03/f49/Hurricanes%20Maria%20%20Irma%20Event%20Summary%20March%2014%2C%202018.pdf>.

The task of restoring power is complicated and requires a clear strategy developed in conjunction with the territory. While we recognize that restoring the last mile presents significant challenges, the Administration must take responsibility for its role and resolve ongoing power restoration challenges.

With thousands of Americans in remote areas still living without power, it is particularly troubling that electric restoration contractors have begun to pull out of Puerto Rico.⁶ As restoration work continues, the deployed workforce must be appropriately matched with outstanding needs. Additionally, present grid restoration efforts do not appear to include modernization efforts or other strategies to increase resiliency of Puerto Rico's electric grid. Absent such efforts, we are extremely concerned that Puerto Rico's grid remains vulnerable to future storms as the next hurricane season fast approaches.

Contracting Challenges Continue

Finally, we are concerned about the number of contracts FEMA entered into last fall to provide disaster relief and assistance without competitive bidding or to contractors with no Federal contracting experience. Section 691 of the Post-Katrina Emergency Management Reform Act (PKEMRA) of 2006 (Public Law 109-295)⁷ requires FEMA to submit a report on recurring disaster requirements that the agency can and cannot contract for in advance of a natural disaster. PKEMRA also requires FEMA to enter into, and maintain, contracts for goods and services that can be contracted for in advance. At the end of each fiscal quarter, FEMA is required to submit to Congress a report on each disaster assistance contract entered into by other than competitive procedures.⁸

Seemingly, Section 691 of PKEMRA⁹ requires FEMA to have entered into and maintained contracts for commodities, tarps, and other types of goods and services that are required for recurring disasters. Had these two contracts been in place, there would have been no need for last-minute contracts with contractors who were unable to fulfill them. The fact that contracts for basic goods essential to response and recovery efforts were not in place raises serious concerns about FEMA's ability to assist state and local governments in disaster response activities in future disasters.

Moreover, although we understand that the resources provided through pre-existing contracts can be exhausted by overwhelming demand, we are concerned that the FEMA contracting workforce failed to perform due diligence when hastily awarding contracts. From Bronze Star, LLC to Tribute Contracting, LLC, FEMA has delayed relief to disaster survivors by awarding contracts to firms that lack the capacity to deliver. FEMA must utilize more appropriate contracting mechanisms and better train its contracting workforce to ensure efficient delivery of goods and services.

Taken together, the challenges we have identified reflect concerning gaps in FEMA's capabilities. In describing the troubled response effort, the Mayor of San Juan stated recently "[w]heels are spinning, but

⁶ Frances Robles, "Contractors Are Leaving Puerto Rico, Where Many Still Lack Power," *The New York Times* (Feb. 26, 2017), available at <https://www.nytimes.com/2018/02/26/us/puerto-rico-power-contractor.html>.

⁷ 6 U.S.C. § 791(a).

⁸ 6 U.S.C. § 791(d).

⁹ 6 U.S.C. § 691(b).

things don't seem to get off the ground.”¹⁰ This assessment is consistent with what our staff observed during their visit to Puerto Rico last month.

We take our responsibility to ensure that disaster relief services are provided to survivors in a timely manner seriously, and want to be FEMA's partner in correcting course and identifying lessons learned in order to better prepare for future natural disasters. Therefore, we request a response to the following inquiries by April 3, 2018:

1. Why did it take 43 days for the Federal government to issue a disaster declaration for Puerto Rico, when other jurisdictions affected by hurricanes received their declarations in a matter of hours or a handful of days?
2. Why is the Federal government requiring Puerto Rico to use Section 428 alternative procedures for Public Assistance projects, when such a requirement is contrary to law and has not been imposed on any other State or Territory seeking FEMA disaster assistance? When will FEMA issue the necessary guidance for Public Assistance projects in Puerto Rico? Please provide a copy of that guidance when available.
3. What is the current timeline for restoring power to all customers in Puerto Rico?
4. Please explain the level of support and any additional contract services needed to support successful execution of power restoration for existing areas without power.
 - a. What analysis has FEMA conducted to determine how demobilization of contractors or departure of utilities providing mutual aid assistance will affect timelines for power restoration? Please provide the Committees any reports of memoranda supporting this analysis.
 - b. Please explain the power restoration transition plans and transition goals for projects not yet completed, including but not limited to plans to fully restore grid power in Arecibo, Caguas, Vieques, and Culebra. In addition to transition information, for all projects not yet completed, please include planned completion dates and list each entity responsible for line segments and other key restoration benchmarks.
 - c. With respect to work currently assigned to Fluor Corporation or any subcontractor and PowerSecure or any subcontractor:
 - i. Please provide a list of line segments, including location of the line as well as other key restoration projects which remain incomplete, including a projected completion date and entity responsible for completion for each.
 - ii. Where a line segment or other key restoration project will not be restored prior to the end of the contract, please identify which resource will become responsible for completing the restoration effort, including a projected completion date for each.

¹⁰ Rick Jervis, “6 Months After Hurricane Maria, Life in Puerto Rico Is Better – But Will ‘Never Be Normal Again,’” *USA Today* (Mar. 5, 2016), available at <https://www.usatoday.com/story/news/2018/03/05/6-months-after-hurricane-maria-life-puerto-rico-better-but-far-normal/380127002/>.

5. Last fall, FEMA awarded contracts to firms that were not capable of performing their obligations.
 - a. Please provide us with copies of all reports FEMA prepared pursuant to Section 691 as well as a list of contracts entered into and maintained for recurring disaster requirements.
 - b. Please describe how FEMA is adjusting its contracting practices to ensure firms awarded contracts pursuant to disaster declaration are able to perform their obligations.
 - c. Please describe how FEMA is adjusting training provided to its disaster contracting workforce.
6. Please explain the extent to which FEMA has ensured that Puerto Rican small businesses have been afforded opportunities to bid on contracts both prime and subcontract.
 - a. Please explain how FEMA has ensured that contracts were competitively bid, as appropriate.
 - b. If barriers existed to preventing FEMA from awarding contracts to Puerto Rican small businesses, please explain those barriers, how these barriers can be mitigated?
7. The common theme throughout the various challenges undermining an effective, expeditious Federal response to the devastation in Puerto Rico is the lack of an overarching Federal recovery strategy, similar to the Hurricane Sandy Rebuilding Task Force. At this point, are you aware of any effort to convene similar interagency rebuilding task force for Puerto Rico?
 - a. If so, please state the expected launch of such a task force, Federal entity that will be charged with leading the task force, and the Federal entities that will participate.
 - b. If not, does FEMA plan to put forth a Puerto Rico recovery strategy to ensure a better-coordinated strategy?

Thank you for your prompt attention to this matter.

Sincerely,



PETER A. DEFAZIO
Ranking Member
Committee on Transportation
and Infrastructure



BENNIE G. THOMPSON
Ranking Member
Committee on Homeland Security



FRANK PALLONE, JR.
Ranking Member
Committee on Energy and
Commerce