

## MEMORANDUM

**To:** Rep. Rob Bishop, Chairman, House Committee on Natural Resources  
Rep. Bruce Westerman, Chairman, Subcommittee on Oversight & Investigations

**From:** Majority Staff, Subcommittee on Oversight & Investigations

**Date:** November 13, 2017

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### **Key Takeaways from Initial PREPA Document Productions**

- The unusual process by which PREPA negotiated, signed, and administered the September 26th and October 17th contracts raises serious concerns about its ability to effectively enter into and manage large contracts. The Committee has received two document productions containing over 2,000 pages from PREPA's law firm, Greenberg Traurig, and it expects to receive additional document productions.
- In response to the Committee's October 26, 2017 request letter, documents produced to date demonstrate that dysfunction at PREPA created vulnerabilities resulting in PREPA approving higher rates of pay and costs, particularly in the October 17th, \$300,000,000 contract. (*See Exhibit 6*).
  - PREPA's incompetency, as evidenced by its discussions with Whitefish, results in PREPA declining offers through the APPA's mutual assistance program. (*See Exhibit 7*).
    - PREPA opts out of activating its mutual aid agreements. Instead, PREPA pursues Whitefish's offer to have public utilities act as Whitefish subcontractors. (*See Exhibit 7*).
    - One public utility, JEA, appeared uneasy with this arrangement and sought express approval from PREPA to work as a Whitefish subcontractor because of the higher costs PREPA would incur. (*See Exhibit 7*).
  - PREPA's judgment is further called into question as the terms of both the September 26th and October 17th contracts were questionably favorable to Whitefish.
    - The standard hourly labor rates in both contracts were exorbitant. Moreover, the October 17th contract's labor rates were approximately 50% higher than the hourly labor rates in the September 26th contract. (*See Staff-Created Exhibit 8*). Produced documents to the Committee do not justify the hourly rate increase between the two contracts.
    - In the October 17th contract PREPA agreed to reimburse Whitefish for, at a minimum, the 1.5% tax levied to support PREPA-owned internet infrastructure and possibly have PREPA also reimburse it for all territorial tax withholdings. (*See Exhibit 6*). Whitefish also unsuccessfully sought to obtain exemptions from Puerto Rican taxes and labor laws. (*See Exhibit 9*)
    - The October 17th contract assumed a 16-hour, 7-day work week, allowing contractors and subcontractors to charge PREPA for huge amounts of overtime with little supporting documentation. (*See Exhibit 6*). Some subcontractors appear to have billed PREPA for nearly every waking hour they spent in Puerto Rico. (*Exhibit 10*).

- Neither PREPA nor Whitefish seemed to know how to draft a FEMA compliant contract. Eventually, Greenberg Traurig had their government contracting team review drafts of the Oct 17th contract. (*See Exhibit 11*). FEMA’s local attorney in Puerto Rico was so concerned about the contract that he contacted FEMA’s general counsel’s office. (*See Exhibit 12*).
    - PREPA appears to have ignored Greenberg Traurig’s advice regarding portions of the \$300,000,000 October 17 contract. Based on a comparison between Greenberg Traurig’s suggested edits and PREPA’s final contract, nearly every deviation from the law firm’s advice is to PREPA’s disadvantage. (*See Staff-Created Exhibit 13*).
  - PREPA and Whitefish encountered major shipping problems because it appears neither had prepared basic shipping information required to send equipment by sea. PREPA and Whitefish eventually asked for help from JEA and APPA’s mutual aid coordinator. The delays forced PREPA to approve charter jets at higher costs to transport significant amounts of cargo. (*See Exhibit 14*).
- Questionable contract terms were agreed upon due to mismanagement, inept decision-making and pervasive dysfunction at PREPA.
  - The original request from PREPA for a proposal from Whitefish Energy may have originated on LinkedIn. (*See Exhibit 1*).
  - Just two days before PREPA signed the first contract, Whitefish’s CEO asked PREPA’s Chief of Supply Chain Division & CPO if, “you or your families need anything (generators, water, food, etc) for us to bring to help them?” (*See Exhibit 2*). Later emails suggest Whitefish may have supplied generators to the PREPA executive. (*See Exhibit 3*).
  - PREPA officials sent the PREPA Board a misleading PowerPoint presentation at 1:04 am on the day PREPA signed the contract the \$300,000,000 contract with Whitefish. The degree to which the board was involved in the contracting process is unknown, pending additional document production. (*See Exhibit 4*).
  - An employee from the Office of Risk Management emailed PREPA explaining that they had never evaluated the contract and, despite the urgency of the work, there are high risks associated with the scope of the work. (*See Exhibit 5*).
- Given the substantial amounts of taxpayer dollars that will be invested in Puerto Rico for rebuilding after Hurricane Maria, these findings raise grave concerns about PREPA’s ability to competently negotiate, manage, and implement critical infrastructure projects without significant independent oversight.